

1999 SENATE FINANCE AND TAXATION

SB 2155

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2155

Senate Finance and Taxation Committee

Conference Committee

Hearing Date 01/11/99

Tape Number	Side A	Side B	Meter #
1		x	5581-end
2	x		0-830
Committee Clerk Signature <i>Shirley Wood</i>			

Minutes:

Senator Urlacher-Opened the hearing on 2155, A BILL RELATING TO AN ELECTION TO POST A BOND IN LIEU OF CORPORATE OFFICER LIABILITY FOR THE TOBACCO PRODUCTS TAX, INCOME TAX, SALES AND USE TAX, MOTOR VEHICLE FUEL TAX AND SPECIAL FUEL TAX.

Tony Clark-Administrative Officer for State Tax Commissioner, testimony attached.

Senator Steneghem-Under the new option, Why would a Corporation want to post bond rather than being libel?

Tony Clark-Some may be skiddish to be held liable to the Corporation for the things they may do, this is specifically limited to the Corporate Officers who are responsible for the preparation. It gives them an option. We got this from South Dakota and inquired how often this is used, and every now and then it is used.

Senator Kinnoin-On the Bond, what determines the amount?

Tony Clark-The Bond is determined on Page 1, Line 20-23.

Senator Kinnoin-Start up business in LLC, how do you determine the amount of bond there.

Tony Clark-If there are no past years to look back on, they make estimate as best they can.

Senator Stenehjem-Section 2, the bill is on tobacco taxes, specifically spell out estimated annual tobacco products have liabilities. Agreements made to collect gasoline tax and others.

Tony Clark-Is this with regards to Tribal Gasoline Tax? We do have an agreement with Standing Rock Agency, much the same with Motor Vehicle and how they collect tax for them.

Senator Stenehjem-No place in State law that requires them to have this bond or anything for collection of the gas tax is there? Are you requiring them to have a bond?

Tony Clark-We do all the registration up front, so they would be required like any other business. The enforcement is up to the Tribes.

Donnita Wald -This is purely up to the Tribe to enforce. If it was in the agreement, we would collect the taxes.

Senator Urlacher-So it would have to be within the agreement?

Donnita Wald-That is correct. Tribe would have voluntary agreement.

Jess Cooper-GNDA. I have a question of jointly it has been added several times in the bill each officer would be responsible for payment of taxes or would have to get a bond. Is this correct?

Tony Clark-Only the corporate officer who is responsible for filling out the forms, could be held liable.

Donnita Wald-You could have two Officers that are liable, if they are responsible.

Senator Stenehjem-Define Corporate Officers?

Page 3
Senate Finance and Taxation Committee
Bill/Resolution Number 2155
Hearing Date 01/11/99

Donnita Wald-That is in the Corporation Law, Title 10. I can get that for you. Testimony submitted.

Senator Urlacher-Any questions or discussion? Fiscal note attached, with no effect. The hearing is closed on 2155, act on it later.

COMMITTEE ACTION-01/13/99

MOTION MADE BY SEN. B. STENEHJEM FOR DO PASS, SECONDED BY SENATOR CHRISTMANN. VOTE WAS 7 YEAS 0 NAY 0 ABSENT OR NOT VOTING. BILL CARRIER WAS SENATOR WARDNER.

FISCAL NOTE

(Return original and 10 copies)

Bill/Resolution No.: SB 2155

Amendment to: _____

Requested by Legislative Council

Date of Request: 12-30-98

1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts. Please provide breakdowns, if appropriate, showing salaries and wages, operating expenses, equipment, or other details to assist in the budget process. In a word processing format, add lines or space as needed or attach a supplemental sheet to adequately address the fiscal impact of the measure.

Narrative: SB 2155 is expected to have a fiscal impact of less than \$5,000 during the 1999-2001 biennium.

2. **State** fiscal effect in dollar amounts:

	1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						

What, if any, is the effect of this measure on the budget for your agency or department:

- a. For rest of 1997-99 biennium: _____
(Indicate the portion of this amount included in the 1999-2001 executive budget:)
- b. For the 1999-2001 biennium: _____
(Indicate the portion of this amount included in the 1999-2001 executive budget:)
- c. For the 2001-03 biennium: _____

4. **County, city, and school district** fiscal effect in dollar amounts:

1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

If additional space is needed
attach a supplemental sheet.

Signed: *Kathryn L. Strombeck*

Typed Name: Kathryn L. Strombeck

Department: Tax

Date Prepared: 1-5-99

Phone Number: 328-3402

Date: 1-13-99
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2155

Senate Senate Finance and Taxation Committee

- Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken do Pass

Motion Made By Sen. B. Stenehjem Seconded By Sen. Christmann

Senators	Yes	No	Senators	Yes	No
SENATOR URLACHER	✓				
SENATOR CHRISTMANN	✓				
SENATOR SCHOBINGER	✓				
SENATOR STENEHJEM	✓				
SENATOR WARDNER	✓				
SENATOR KINNOIN	✓				
SENATOR KROEPLIN	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen. Wardner

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
January 13, 1999 3:44 p.m.

Module No: SR-07-0568
Carrier: Wardner
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2155: Finance and Taxation Committee (Sen. Urlacher, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2155 was placed on the Eleventh order on the calendar.

1999 HOUSE FINANCE AND TAXATION

SB 2155

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2155

House Finance and Taxation Committee

Conference Committee

Hearing Date March 1, 1999

Tape Number	Side A	Side B	Meter #
1		x	28.3
Committee Clerk Signature <i>Jamie Stein</i>			

Minutes:

REP. BELTER Opened the hearing.

TONY CLARK, ADMINISTRATIVE OFFICER FOR THE OFFICE OF THE STATE TAX

COMMISSIONER, Testified in support of the bill. See written testimony.

REP. GROSZ How does this affect cooperatives?

TONY CLARK It doesn't.

REP. WARNER How many companies do you anticipate want to lose money every year?

TONY CLARK Probably not a lot, we talked to South Dakota who has this provision, in speaking to them, they say it is not used very often, however, sometimes corporations will inquire about it and take advantage of it.

With no further testimony, the hearing was closed.

COMMITTEE ACTION (3-1-99), Tape #2, Side A, Meter #9

REP. RENNER Made a motion for a DO PASS.

REP. WINRICH Second the motion. MOTION CARRIED.

- 14 Yes 0 No 1 Absent

REP. CLARK Was given the floor assignment.

Please type or use black pen to complete

Date 3-1-99
Roll call vote # 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2155

House HOUSE FINANCE & TAX Committee

Subcommittee on _____ } Identify or check where appropriate
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep. Renner Seconded By Rep. Winrich

Representatives	Yes	No	Representatives	Yes	No
BELTER	✓		WINRICH	✓	
RENNERFELDT	✓				
CLARK	✓				
FROELICH	✓				
GRANDE	✓				
GROSZ	✓				
HERBEL	✓				
KROEBER	✓				
MICKELSON	✓				
NICHOLAS	✓				
RENNER	✓				
SCHMIDT	✓				
WARNER	✓				
WIKENHEISER	✓				

Total 14 0
(Yes) (No)

Absent 1

Floor Assignment Rep Clark

If the vote is on an amendment, briefly indicate intent:

DO NOT USE HIGHLIGHTER ON ANY FORMS

REPORT OF STANDING COMMITTEE (410)
March 1, 1999 3:34 p.m.

Module No: HR-36-3809
Carrier: Belter
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2155: Finance and Taxation Committee (Rep. Belter, Chairman) recommends DO PASS (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2155 was placed on the Fourteenth order on the calendar.

1999 TESTIMONY

SB 2155



WICK CLAYBURGH
COMMISSIONER

STATE OF NORTH DAKOTA

OFFICE OF STATE TAX COMMISSIONER

STATE CAPITOL, 600 E. BOULEVARD AVE., DEPT. 127, BISMARCK, NORTH DAKOTA 58505-0599

701-328-2770

FAX 701-328-3700

Hearing/Speech Impaired 800-366-6888 (TTY Relay North Dakota)

[HTTP://WWW.STATE.ND.US/TAXDPT](http://www.state.nd.us/taxdpt)

January 11, 1999

MEMORANDUM

To: Chairman Urlacher, Members of the Senate Finance and Taxation Committee

From: Donnita A. Wald, Legal Counsel, Office of State Tax Commissioner

Re: Senate Bill 2155

During the hearing on Senate Bill 2155, Senator Stenehjem requested information as to where in state law corporate officers are specifically defined. N.D.C.C. § 10-19.1-52 is the section of law which addresses this issue and states as follows:

The officers of a corporation must be individuals who are eighteen years of age or more and shall consist of a president, a secretary, and a treasurer and may also include one or more vice presidents and any other officers or agents as may be prescribed by the bylaws. Each of the officers must be elected by the board at a time and in a manner as may be provided in the bylaws unless the articles or bylaws provide that the shareholders may elect the officers.

N.D.C.C. § 10-19.1-52 (1997 Supp.)

I hope this answers the committee's question. If you need additional information, please do not hesitate to contact me at 8-2777.

SB 2155 -- Testimony
Presented By: Tony Clark
Administrative Officer - ND Office of State Tax Commissioner
Senate Finance & Taxation Committee
January 11, 1999

Chairman Urlacher and members of the Senate Finance and Taxation Committee, I'm Tony Clark, Administrative Officer for the Office of State Tax Commissioner. The last six months, I have been a member of an internal Tax Department committee which has studied our compliance and collections functions. Commissioner Clayburgh asked this team to review ways we could run a more efficient, but more importantly, more customer friendly Tax Department. One of the pieces of legislation which resulted from that review is in front of you today, SB 2155.

This bill deals with something known as corporate officer liability (or governor/manager liability in the case of LLC's). What this means, is that under current state law, the corporate officers having control, supervision or responsibility for preparing and/or making returns can be held liable for failure to remit certain state taxes.

First I'll give a general overview of the proposal. If approved, the legislation would make two changes:

Consolidated Forms: One change the team recommended was to consolidate the applications our department uses for withholding and sales tax permits. This is very achievable, except for one inconsistency in state law. Each tax type which has corporate officer liability, states that "any of its officers" (who are responsible) can be held liable. The only aberration to this, is withholding tax law, which states that the "chairman, president, or chief operating officer" can be held liable. Coordinating an application for sales tax and withholding permits which accounted for this inconsistency would be cumbersome, because of the differing signature requirements which are created because of this inconsistency.

We are proposing new language to equalize these laws, which will allow for a unified application. This means less bureaucracy for applicants, and more internal efficiency for the Tax Department.

A New Option for Corporate Filers: Secondly, in our team's review of other states which have corporate officer liability laws, we discovered a provision we thought the legislature may wish to consider as an option for taxpayers. If this legislation is passed, it would mean that corporations which do not wish to have their corporate officers held liable for failure to pay state taxes, could instead post a bond or cash deposit equal to the estimated annual tax for each of the tax types which are covered.

If passed, this portion of the legislation only changes North Dakota law to the extent that it opens a new option for taxpayers. It's an option which would provide greater flexibility than currently allowed by state law.

Section by Section Review: Section 1, is the current corporate officer liability statute for cigarette and tobacco taxes. You may wonder why the bill (on page 1, lines 11&12) changes the language from "any of its corporate officers" to "president, vice president, secretary or treasurer." This change wouldn't effect current law at all. That's because the term "corporate officers" is specifically defined elsewhere in state law as the "president, vice president, secretary or treasurer," and can not mean anything else. We simply felt that as long as this legislation was in front of the committee, we may as well make the language as clear as possible for a layman who might look at this section of code down the road. Subsection 2 of section 1 is the language which adds the bonding option for these tobacco taxes.

Section 2 adds the identical language to the governor and manager liability section of the tobacco tax chapter of the code. "Governor" and "Manager" liability is the same principle as

corporate office liability, only in the terminology used for Limited Liability Corporations.

Sections 3 & 4 make the changes to the income tax withholding chapter of state law.

You'll notice here is where we change the definition away from "chairman, president, or chief operating officer," and make it like all other chapters, "president, vice president, chief operating officer."

Sections 5 & 6 make the changes to the sales tax chapters affecting corporate officer, manager, and governor liability.

Section 7 makes the changes to the use tax chapter affecting corporate officer, manager, and governor liability.

Sections 8 & 9 make the changes to the motor vehicle fuels tax chapters affecting corporate officer, manager, and governor liability.

Sections 10 & 11 make the changes to the special fuels tax chapters affecting corporate officer, manager, and governor liability.

Thank you, Mr. Chairman and committee members, I ask for your favorable consideration of SB 2155 and I'll be happy to answer any questions you may have.

**SB 2155 – Testimony
Presented By: Tony Clark
ND Office of State Tax Commissioner
House Finance & Taxation Committee
March 1, 1999**

Chairman Belter and members of the House Finance and Taxation Committee, I'm Tony Clark, Administrative Officer for the Office of State Tax Commissioner. The last six months, I have been a member of an internal Tax Department committee which has studied our compliance and collections functions. Commissioner Clayburgh asked this team to review ways we could run a more efficient, but more importantly, more customer friendly Tax Department. One of the pieces of legislation which resulted from that review is in front of you today, SB 2155.

This bill deals with something known as corporate officer liability (or governor/manager liability in the case of LLC's). What this means, is that under current state law, the corporate officers having control, supervision or responsibility for preparing and/or making returns can be held personally liable for failure to remit certain state taxes.

First I'll give a general overview of the proposal. If approved, the legislation would make two changes:

Consolidated Forms: One change the team recommended was to consolidate the applications our department uses for withholding and sales tax permits. This is a very achievable goal, except for one inconsistency in state law. For each tax type that has corporate officer liability, the law states that "any of its officers" (who are responsible) can be held liable. The only aberration to this, is withholding tax law, which states that the "chairman, president, or chief operating officer" can be held liable. Coordinating a combined application for sales tax and withholding permits which accounted for this inconsistency would be cumbersome, because of the differing signature requirements.

Additionally, "Chief Operating Officer" is a term which is not defined in state law. This makes that particular chapter unnecessarily broad and vague.

We are proposing new language to equalize these laws, which will allow for a unified application. This means less bureaucracy for applicants, and more internal efficiency for the Tax Department.

A New Option for Corporate Filers: Secondly, in our team's review of other states which have corporate officer liability laws, we discovered a provision we thought the legislature may wish to consider as an option for taxpayers. If this legislation is passed, it would mean that corporations which do not wish to have their corporate officers held personally liable for failure to pay state taxes, could instead post a bond or cash deposit equal to the estimated annual tax for each of the tax types which are covered.

If passed, this portion of the legislation only changes North Dakota law to the extent that it opens a new option for taxpayers. It's an option which would provide greater flexibility than currently allowed by state law.

Section by Section Review: Section 1, is the current corporate officer liability statute for cigarette and tobacco taxes. You may wonder why the bill (on page 1, lines 11&12) changes the language from "any of its corporate officers" to "president, vice president, secretary or treasurer." This change would not effect the current application of law at all. That's because the term "corporate officers" is specifically defined elsewhere in state law as the "president, vice president, secretary or treasurer," and can not mean anything else. We simply felt that as long as this legislation was in front of the committee, we may as well make the language as clear as possible for a layman who might look at this section of code down the road. Subsection 2 of section 1 is the language which adds the bonding option for these tobacco taxes.

Section 2 adds the identical language to the governor and manager liability section of the tobacco tax chapter of the code. “Governor” and “Manager” liability is the same principle as corporate officer liability, only in the terminology used for Limited Liability Corporations.

Sections 3 & 4 make the changes to the income tax withholding chapter of state law. You’ll notice here is where we change the definition away from “president, vice president or chief operating officer,” and make it like all other chapters, “president, vice president, secretary or treasurer.”

Sections 5 & 6 make the changes to the sales tax chapters affecting corporate officer, manager, and governor liability.

Section 7 makes the changes to the use tax chapter affecting corporate officer, manager, and governor liability.

Sections 8 & 9 make the changes to the motor vehicle fuels tax chapters affecting corporate officer, manager, and governor liability.

Sections 10 & 11 make the changes to the special fuels tax chapters affecting corporate officer, manager, and governor liability.

Thank you, Mr. Chairman and committee members, I ask for your favorable consideration of SB 2155 and I’ll be happy to answer any questions you may have.