

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

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DESCRIPTION

11/41

2007 HOUSE FINANCE AND TAXATION

HB 1141

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1141 A

House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: January 29, 2007

Recorder Job Number: 2138

Committee Clerk Signature *Mickie Schmidt*

Minutes:

Chairman Belter opened the hearing on HB 1141. He asked for testimony in support.

Representative Owens: HB 1141 is a small business tax relief. Its purpose is to help save and make it a little more feasible for some of the businesses in rural ND to stay where they're at. Our goal is to try to grow businesses and job opportunities across the State, specifically the rural areas.

Sections 1, 2 and 3 allows for qualifying small businesses across the State to reduce its taxable income by \$250,000. But they have to meet certain qualifications as a small business. They're gross revenues less than \$2-1/2 million. They have less 25 or less employees and they have to be a North Dakota company, they can't be a subsidiary of a larger corporation from out of State. This is really about the Mom and Pop groceries and gas stations in the rural areas. Can it affect some of the small businesses in some of our Cities? Sure. It might very well help a few of those too. It's really about saving our infrastructure in our small areas because if these businesses leave, then we follow by people. If the people leave, that lowers the tax payers across our rural areas. And while the infrastructure needing to support the rural areas may diminish, so that there will still be infrastructure out there we need to maintain and you know who's going wind up paying for that? Anywhere there's a population base. In the

long run their taxes will go up to support infrastructure. In discussion with the Tax Dept. we did review the administration requirement necessary for the Tax Dept. And as such, they have provided an amendment that I'd like to share with you. This amendment is designed to do two things. It's to ease the administration of this but at the same time, the Bill the way it was written with somewhat restricts to retail, it would include retail and service across the State.

Chairman Belter: A convenience store under this Bill, could they incorporate the gas sales into one corporation, the food sales into another corporation?

Representative Owens: If it's possible under this Bill, someone will not only think about it but someone will attempt it. Yes, you're correct, but is not our intent. I wanted to give the ND residents the opportunity to protect their liability under corporations if they so desire, although there's less liability protection under LLC's. I didn't want to restrict them for being able to do that. Also, the \$250,000.00 was just a number I selected depending on the cost and the committee could reduce it to \$150,000.00.

Representative Headland: What happens if I own the local convenience store? Does that mean that I'm excluded from my convenience store since I am involved in farming?

Representative Owens: That would not be the intent; yes we had to rule out farming or ranching because if we didn't, then it was going to be a lot more out of the general fund. It would have been very, very large. That was deliberately left out for that reason. In that case though, I would expect the farmers do exactly what the Chairman suggested a moment ago.

Representative Wrangham: Maybe I misunderstood you or maybe the amendments changes. On line 6; it says 25 or fewer employees or less than \$2,500,000.00. Is there no limit on money?

Representative Owens: No, that was not the intent.

Representative Schmidt: What's your secret? You haven't got a fiscal note on it?

Representative Owens: We were talking about that earlier and the reason the fiscal note doesn't have a definite amount in it was that they did the best that they could based on the requirements including their amendment that they included to make the administration a little easier. And they took into account they're basing this on sales tax receipts, which they cannot properly identify the number of employees these companies have. And since that is supposed to be an additional requirement over and above gross revenues, they couldn't categorically state what the fiscal impact would do to that.

Chairman Belter: With the 25 or fewer employees. Is there a definition of an employee? I'm thinking of a business that hires 25 full time employees or 35 part time employees? Is it so many hours per week?

Representative Owens: I pulled that originally out of the existing definitions for small business within the Century Code. My intent was 25 employees or less, meaning at any one time, full or part time. So if you had 35 part timers, you wouldn't qualify. The whole purpose is to keep people employed, and part time doesn't keep them employed.

Bill Butcher, Director of the National Federation of Independent Business: We favor this Bill. We urge your Do Pass vote on it. NFIB is made up of nearly 3,000 small business owners in ND. This is a small business unique Bill.

Mike Rud, ND Petroleum and Retail Association: We too favor any kind of incentive for small businesses across the State.

Representative Froelich: How many small businesses out there that you know of that will fall into this?

Mike Rud: I would say quite a few would fall under this. Small town store average of employees would be about 5-6 full time people and the dollar amount; 2.5 million is a pretty big number to hit for a small town.

Chairman Belter: Any more support for 1141? Is there any opposition for 1141?

John Risch, represents the United Transportation Union RR: We oppose HB1141. We view it as a special gift to business owners, gifts that workers don't receive. We pay our taxes every single payday. We strongly believe in the principle of the income tax, we think the income tax is fair, it's a self regulating tax based on ones ability to pay. HB 1141 kind of underlines that principle because it takes the first \$250,000 right off the top; you don't have to pay taxes on it. The Bill limits businesses to \$250,000 in revenues. What it might do is actually encourage businesses either to split up their business or look at going over the \$250,000 threshold deduction. I see no reference to small towns. I think this would have an enormous impact on our State budget.

Representative Weiler: Wouldn't some of the employees see a benefit and this is as well?

John Risch: There is no provision in this Bill to share.

Chairman Belter: Is there any testimony in support, opposition or neutral?

Representative Froelich: How will this affect the small store?

Donnita Wald, Counsel for the Tax Dept.: On page 1; line 14, Cenex may not, the principle office headquarters is out of State.

Representative Froelich: Also on #4 it says independently owned and operated. Sometimes I know that they are affiliated with that.

Donnita Wald: Actually that was one of the questions that we had was whether it was independently owned and operated, so the amendments that Rep. Owens presented uses that language.

Representative Pinkerton: I kind of like this, it's like a Dr. Welfare Bill to me. It has good ideas.

Chairman Belter: Is there a definition for employer?

Donnita Wald: The way the Bill is written right now it means full or part time employees.

Representative Froseth: I don't think I could give a commitment to this Bill unless I had some kind of idea what it was going to cost the State. There are 15,000 small businesses that could qualify. We'd have to know what kind of a hit it's going to be to the general fund. Is there any way we could get an estimate?

Donnita Wald: That information is in the fiscal note. Our withholding tax doesn't require e us to report how many employees you have. The sales tax doesn't have that, so what we've given you is 15,000 businesses into that 2.5 million dollar cap so you reduce that number by

Chairman Belter: On line 19; the only way you could for instance a person who is involved in any of those enterprises, they would have to have a separate corporation or LLP of some other business entity?

Donnita Wald: I don't necessarily think that would be the requirement. If you were an individual and you had your farming operation and you also had a small business that you were operating, both of those would be reported on separate forms for federal tax purposes. And I think administratively we'd probably look at what your schedule C was, pro sales and that would be your qualifier. We'd look at that for all the limitations and such and ignore your farming operation. You couldn't take that against your farming income.

Chairman Belter: Are there any other question? Hearing none, we'll close the hearing on HB 1141.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1141 B

House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: January 30, 2007

Recorder Job Number: 2275

Committee Clerk Signature

Mickie Schmidt

Minutes:

Chairman Belter opened the hearing on HB 1141.

Representative Owens: I would like to propose the amendment you have in front of you that was provided with the Bill by the Tax Dept. along with the addition of that, that essentially in every case lower it to \$100,000. It changes the "or" on line 16 on page 1, the second "or" should be an "and", also on page 2, line 5, and also on line 18, page 2. He goes on to explain the changes. **(See attachment #1)**

Chairman Belter: Is that .01TX?

Representative Owens: Yes. So what we're doing is accepting the amendments from the Tax Dept. to make it a little more easily administered, and reducing the tax benefit to \$100,000, changing the gross revenues to a million, and correcting the "or" and "and " to signify that it has to be 25 or fewer employees and the one million rather than the 1 million.

Representative Weiler: What kind of effect did that have on the fiscal note?

Representative Owens: I have yet to find out.

Representative Weiler: Given the fact that the first one really didn't have an effect.

Representative Weiler: I'll move the amendments.

Representative Brandenburg: Second it.

Chairman Belter: Is there any discussion?

Representative Wrangham: I believe in your remarks, you talked about this being for small towns and so forth, I don't find any reference in here as being limited to the locality?

Representative Owens: I did not deliberately say for a small communities less with population less than 3,000. I don't see any harm in the few that are in the big Cities helping them as well.

Chairman Belter: Is there any other discussion?

Representative Froseth: I should be totally in favor of this because I think this would affect me in every interest I've got. But I'm not going to support it. I think if we keep adding tax exemptions and deductions, who's left to pay the income taxes?

Chairman Belter: Any other discussion?

Representative Headland: I'm somewhat in agreement with Rep. Froseth. I don't think we got an accurate fiscal note to start and I don't think the Tax Dept. will provide us with an updated one that would give us any more information, so on that basis alone, I would have a hard time supporting it.

Vice Chairman Drovdal: I just wonder why it wasn't put in place 3 years ago when I was in business, I wouldn't have to pay income taxes. It is a very generous offering but I have to agree with Rep. Froseth that this would eliminate 90% of the business people who pay taxes in ND.

Representative Owens: My whole goal was to help the small Mom and Pop's out there. I still think we could do something like this to help the rural areas. I think in order to grow, it's going to be next to impossible if we don't keep what we got in the rural areas.

Chairman Belter: Any other discussion? I would ask for a motion.

Vice Chairman Drovdal: I move a **Do Not Pass**.

Representative Brandenburg: **Second it.**

Chairman Belter: Any discussion?

Representative Froseth: Did we adopt the amendments?

Vice Chairman Drovdal: Yes, I said as amended.

Representative Owens: We didn't vote on the amendments.

Chairman Belter: Ok, will you withdraw your motion?

Vice Chairman Drovdal: I withdraw my motion.

Representative Weiler: I did, it was seconded and then we had discussion, we did not adopt them.

Chairman Belter: Any more discussion on the amendments? If not, all those in favor of the proposed amendments signify by saying aye. The motion carries. Now I would entertain a motion on the Bill.

Representative Froseth: I move a Do Not Pass as Amended.

Representative Brandenburg: Second it.

Chairman Belter: Any discussion? Will the clerk read the roll; 8-y; 5-n; 1-absent; Rep. Headland will carry the Bill. We'll close the hearing on HB 1141.

FISCAL NOTE

Requested by Legislative Council

02/02/2007

Amendment to: HB 1141

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

| | 2005-2007 Biennium | | 2007-2009 Biennium | | 2009-2011 Biennium | |
|----------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
| | General Fund | Other Funds | General Fund | Other Funds | General Fund | Other Funds |
| Revenues | | | | | | |
| Expenditures | | | | | | |
| Appropriations | | | | | | |

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

| 2005-2007 Biennium | | | 2007-2009 Biennium | | | 2009-2011 Biennium | | |
|--------------------|--------|------------------|--------------------|--------|------------------|--------------------|--------|------------------|
| Counties | Cities | School Districts | Counties | Cities | School Districts | Counties | Cities | School Districts |
| | | | | | | | | |

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Eng. HB 1141 grants an individual and corporate income tax deduction of up to \$100,000 for qualifying small businesses.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Sales statistics indicate that there may be up to 10,000 small businesses in the state that could qualify for this deduction, based on the requirement that gross revenue not exceed \$1.0 million annually. However, it is not known how many of those 10,000 businesses also meet the other requirements such as the employee limit. Qualifying corporations could reduce their income tax liabilities by up to \$6,500 annually, and qualifying businesses filing as individuals could reduce their income tax liabilities by up to \$5,540 annually.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

| | | | |
|----------------------|----------------------|-----------------------|----------------------------|
| Name: | Kathryn L. Strombeck | Agency: | Office of Tax Commissioner |
| Phone Number: | 328-3402 | Date Prepared: | 02/04/2007 |

FISCAL NOTE
Requested by Legislative Council
01/05/2007

Bill/Resolution No.: HB 1141

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

| | 2005-2007 Biennium | | 2007-2009 Biennium | | 2009-2011 Biennium | |
|-----------------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
| | General Fund | Other Funds | General Fund | Other Funds | General Fund | Other Funds |
| Revenues | | | | | | |
| Expenditures | | | | | | |
| Appropriations | | | | | | |

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

| 2005-2007 Biennium | | | 2007-2009 Biennium | | | 2009-2011 Biennium | | |
|--------------------|--------|------------------|--------------------|--------|------------------|--------------------|--------|------------------|
| Counties | Cities | School Districts | Counties | Cities | School Districts | Counties | Cities | School Districts |
| | | | | | | | | |

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1141 grants an individual and corporate income tax deduction of up to \$250,000 for qualifying small businesses.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Sales statistics indicate that there may be up to 15,000 small businesses in the state that could qualify for this deduction, based on the requirement that gross revenue not exceed \$2.5 million annually. However, it is not known how many of those 15,000 businesses also meet the other requirements such as the employee limit. Qualifying corporations could reduce their income tax liabilities by up to \$16,250 annually, and qualifying businesses filing as individuals could reduce their income tax liabilities by up to \$13,850 annually.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

| | | | |
|----------------------|----------------------|-----------------------|----------------------------|
| Name: | Kathryn L. Strombeck | Agency: | Office of Tax Commissioner |
| Phone Number: | 328-3402 | Date Prepared: | 01/26/2007 |

1-29-07

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1141

Page 1, line 13, after "resale" insert "or provides a service for which the service activity is performed in North Dakota"

Page 1, line 14, after "office" insert "and a majority of the small business's employees"

Page 1, line 17, replace "revenue" with "sales" and after the semicolon insert "and"

Page 1, remove line 18

Page 1, line 19, replace "(5)" with "(4)"

Page 2, line 1, after "resale" insert "or provides a service for which the service activity is performed in North Dakota"

Page 2, line 3, after "office" insert "and a majority of the small business's employees located"

Page 2, line 6, replace "revenue" with "sales" and after the semicolon insert "and"

Page 2, remove line 7

Page 2, line 8, replace "(5)" with "(4)"

Page 2, line 15, after "resale" insert "or provides a service for which the service activity is performed in North Dakota"

Page 2, line 16, after "office" insert "and a majority of the small business's employees located"

Page 2, line 19, replace "revenue" with "sales" and after the semicolon insert "and"

Page 2, remove line 20

Page 2, line 21, replace "(5)" with "(4)"

Renumber accordingly

January 30, 2007

**House Amendments to HB 1141 (70253.0101) - Finance and Taxation Committee
01/31/2007**

Page 1, line 9, replace "two" with "one" and remove "fifty"

Page 1, line 13, after "resale" insert "or provides a service for which the service activity is performed in this state"

Page 1, line 14, after "office" insert "and a majority of the small business's employees located"

Page 1, line 16, replace the second "or" with "and", replace "two" with "one", and remove "five"

Page 1, line 17, remove "hundred thousand", replace "revenue" with "sales", and after the underscored semicolon insert "and"

Page 1, remove line 18

Page 1, line 19, replace "(5)" with "(4)"

Page 1, line 22, replace "two" with "one" and remove "fifty"

**House Amendments to HB 1141 (70253.0101) - Finance and Taxation Committee
01/31/2007**

Page 2, line 2, after "resale" insert "or provides a service for which the service activity is performed in this state"

Page 2, line 3, after "office" insert "and a majority of the small business's employees located"

Page 2, line 5, replace the second "or" with "and", replace "two" with "one", and remove "five"

Page 2, line 6, remove "hundred thousand", replace "revenue" with "sales", and after the underscored semicolon insert "and"

Page 2, remove line 7

Page 2, line 8, replace "(5)" with "(4)"

Page 2, line 11, replace "two" with "one" and remove "fifty"

Page 2, line 15, after "resale" insert "or provide a service for which the service activity is performed in this state"

Page 2, line 16, after "office" insert "and a majority of the small business's employees located"

Page 2, line 18, replace the second "or" with "and", replace "two" with "one", and remove "five"

Page 2, line 19, remove "hundred thousand", replace "revenue" with "sales", and after the underscored semicolon insert "and"

Page 2, remove line 20

Page 2, line 21, replace "(5)" with "(4)"

Renumber accordingly

Date: 1-30-07
Roll Call Vote #: 1141

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

House _____ Finance & Tax _____ Committee

Check here for Conference Committee

Legislative Council Amendment
Number _____

Action Taken Do Not Pass as Amended

Motion Made By Rep. Froseth Seconded By Rep. Brandenburg

| Representatives | Yes | No | Representatives | Yes | No |
|-----------------------|-----|----|-----------------|-----|----|
| Chairman Belter | ✓ | | Rep. Froelich | | ✓ |
| Vice Chairman Drovdal | ✓ | | Rep. Kelsh | | ✓ |
| Rep. Brandenburg | ✓ | | Rep. Pinkerton | ✓ | ✓ |
| Rep. Froseth | ✓ | | Rep. Schmidt | ✓ | ✓ |
| Rep. Grande | | | Rep. Vig | | ✓ |
| Rep. Headland | ✓ | | | | |
| Rep. Owens | | ✓ | | | |
| Rep. Weiler | | ✓ | | | |
| Rep. Wrangham | ✓ | | | | |
| | | | | | |
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Total (Yes) 8 No 5

Absent 1

Floor Assignment Rep. Headland

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

REPORT OF STANDING COMMITTEE

HB 1141: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (8 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). HB 1141 was placed on the Sixth order on the calendar.

Page 1, line 9, replace "two" with "one" and remove "fifty"

Page 1, line 13, after "resale" insert "or provides a service for which the service activity is performed in this state"

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