

2009 HOUSE FINANCE AND TAXATION

HB 1411

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1411**

House Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: January 26, 2009

Recorder Job Number: 7711

Committee Clerk Signature

Minutes:

Chairman Belter: We will open the hearing on HB 1411.

Representative Matt Klein: HB 1411 is a very simple bill. What it does is move a credit from the long form to the short form. Right now basically only about 4% of the people use the long form and 90% of those, I understand, are not state residents. North Dakota, at the present time, has about 6,000 federal annuitants and about 5,000 military retirees. Numerous states allow this exemption, with Iowa and Missouri being the latest. Missouri allows the total credit. Basically this bill is related to economic development. Retired people, in especially the areas of Minot and Grand Forks, where the air bases are, are seeing many of those people making North Dakota their home. It affects firefighters, highway patrol, military retirees, and civil servants. Basically, if you look at the last part of the bill, that is where the change comes about. It starts on the bottom of page 3 and finishes at the end of page 4. That is about all I have, Mr. Chairman. I think this is one of those bills where we want to recognize retired military and the people who served our state and the country.

Representative Weiler: On page 4 of the bill, beginning with line 7, reduce by.....; now is this for military purposes only or is this not?

Representative Klein: It covers firefighters, highway patrol, military and guard retirees and it covers federal civil service retirees.

Representative Weiler: Explain to me what civil service entails. Is that just the military? Is that going to be FBI guys? IRS people?

Representative Klein: Those are people who work for the federal government and do not receive social security. Under the present law, you can deduct your social security income up to \$5,000. This would allow the same thing for those people who don't draw social security like our highway patrolmen.

Representative Drovdal: This gives exemptions to the government employees, the civil servants who we have paid off taxpayer dollars all these years. Why don't we give the \$5,000 to the taxpayers who have paid all this so that when they retire, they get a \$5,000 credit?

That's my first question. The second question has to do with firemen. Most of our firemen in ND volunteer and they do a great job. It costs them their clothes, time off work and everything else. This doesn't give any credit for them, does it?

Representative Klein: Yes it does. The volunteer groups, if they get a retirement, and there are several bills in place, I understand, and some of them do, that will cover them too.

Representative Pinkerton: As I understand this, the many kinds of employees because they opted out of social security and they have retirement through another entity, currently there is a \$5,000 deduction for social security, but there is not a \$5,000 deduction for military retirees or governmental employees and you are merely trying to bring equity between those who have paid social security and those who have jobs (and they are mostly jobs outside of the social security realm). Teachers, they pay social security, but highway patrolmen would not pay social security.

Representative Klein: Teachers are not specifically included in this area. I am just moving those four groups from the credit allowed on the long form, which very few people use, to the short form.

Representative Pinkerton: This bill is not so much that they are government retirees, but to create equity between social security retirement and governmental retirement.

Representative Klein: It is there and many of the states have done this now to bring them both into compliance because as many of you know, our highway patrolmen and so on, are not under the social security system. They don't get the \$5,000 credit on the front end like if they were drawing social security. This is basically an equity bill and it is also an economic development bill.

Chairman Belter: But these groups that haven't been on social security, aren't they lucky?

Because they haven't been on social security, theoretically their retirement funds should be much greater than anybody who has been on social security—except for those people that drew social security because of a disability. Anybody who reaches retirement, if they were out of the social security program, I think by and large those people are much better off than those people who have been on social security.

Representative Klein: Let me give you an example. Like I mentioned, there are about 6,000 government or civil service retirees in ND. Their annuities run considerably less than social security annuities because years ago, many of them were low-paid female workers that are not drawing a retirement even close to social security retirement. So if I look at the numbers, I am told that we have close to 5,000 military retirees, including the guard people in the state. That retirement probably isn't close to what many of the ones who have both social security and a separate retirement system through a company make because they only have the one.

Chairman Belter: On the military side, there must be very few military retirees that aren't under social security, aren't there?

Representative Klein: It probably runs around 40% that have—I talked to some of the highway patrolmen. Many of them go back to being guards at the federal building entrance to get social security credit; but you need ten years of coverage to do that.

Representative Headland: On page 4, line 3, a \$5,000 credit for a person 50 years of age. What is equitable about 50 years of age?

Representative Klein: That only applies to military, if you read further, retired military.

Representative Headland: But even so, most taxpayers can't receive...

Representative Klein: I fully understand, but many of them go in when they are 20 years old so they retire at less than 55, kind of like many of the school teachers do. That is existing in the military codes.

Representative Grande: Highway patrol's retirement plan, the pay is pretty good. We have a higher pay-in amount on the employer's side. When they are retiring, I believe our retirement is 60% salary by the rule of 85, so their retirement plan is set up at a defined benefit that allows them to retire earlier with a higher retirement amount guaranteed by the taxpayers of the state of ND forever.

Representative Klein: That is correct, but you are in the law enforcement area where typically even in the federal system, they can retire earlier than normal.

Representative Pinkerton: I don't really know. Is the state retirement, does that have an inflation factor built in or once you retire, is your retirement fixed at a certain level?

Representative Grande: Your retirement is guaranteed at a certain percentage set on what your salary was averaged out over your last five years after being vested. Then you have that dollar amount that is usually set; you do not have a cola built into it. We only move on a cola if

the fund is stable enough to handle an increase. The fund must be funded typically around 105% before we will do an increase to the fund to retirement side.

Representative Pinkerton: So there is no cola on the state. Do state employees have the option of going state retirement or social security?

Representative Grande: All employees are mandated social security except those that were exempted out umpteen years ago. That had to do only with law enforcement and fire had the option to stay opted out. Not all funds did.

Chairman Belter: Let's keep our questions to the testifier and we can hammer out these other questions in committee. Any other questions of Representative Klein?

Representative Ralph Metcalf: This particular bill, and I am not into the social security and other aspects of that, was brought forward, in my opinion, it was basically brought in to reward the people that have been putting their lives on the line for our service over the years. The firefighters, we all know that they put their lives on the line; our highway patrol, we all know that they put their lives on the line; and our military put their lives on the line. Granting this \$5,000 deduct on their state taxes basically gives them some reward (saying you were and are important to us in the running of the state of ND) and we feel that you are entitled to a certain amount of money. It is not going to be a great deal. The thing is that we have to be knowledgeable that other states are offering this. Other states are offering complete forgiveness of all the income on retirement so consequently, what do these military people do and even highway patrol? I don't know if too many firefighters do this, but they move to those other states or they can claim those other states as their home residence. By claiming the state of Texas as a home of residence, yes, you have to pay the Texas income taxes, but you don't have to pay it on your retirement. That is a considerable fortune. Basically, they say you do not have to pay on any part of your retirement. So that is one of the things I think ND can do

to come up to show our servicemen, to show our fire department, to show our highway patrol that we have cared for them in the past and we do care that they stay in ND rather than leaving ND just to get an exemption on income tax. Those are my thoughts on this and I welcome any questions you may have. (14:56)

Chairman Belter: Any further testimony in support of HB 1411? Any opposition to 1411? Committee members, do you have any questions of the Tax Department? Any neutral testimony?

Representative Headland: Joe, the statement just made by Representative Metcalf. Is it true they can move to other states and access these credits if they are a retired highway patrolman?

Joe Becker, Tax Department: If we have a ND highway patrolman who retires and moves to another state, by federal law, ND can no longer tax their pension. We are federally pre-empted from taxing the non-resident's pension.

Chairman Belter: Can an individual claim another state as their home of residence and live in ND when they are retired?

Joe Becker: It is a question of legal residency. One can have homes in more than one state, but only one of them can be claimed as their state of legal residence. I am not sure if I am getting to your question.

Chairman Belter: When you are on active duty in the military, you can be stationed at Minot Air Force Base and keep Texas as your residence?

Joe Becker: In that regard, again that is a federal statute. Service Member's Civil Relief Act prevents the state from treating the state as your residence simply because you are stationed within their borders.

Chairman Belter: Are you taxed as a Texas or a North Dakotan?

Joe Becker: Then only your home state can impose an income tax if they do so.

Chairman Belter: But when you are retired, that is probably a different deal.

Joe Becker: North Dakota can certainly tax the pensions of its resident citizens. For example, in my case, I may work here all my life and the pension may be considered compensation to me; but once I move out of state, federal law says, sorry, North Dakota, you cannot tax that anymore. But wherever I move to, if they have an income tax, they certainly could. But Mr. Chairman, with my wife and family here, I am not going anywhere.

Representative Drovdal: I am told that when somebody retires from the military, they are asked what state they want to claim as their resident state. They get to pick whatever and they don't necessarily have to live in that state, but they get to pick their residency. They may own a mobile home and drive all over the country and all they have got is a mail box in that state but it still qualifies as their resident state. Do you know if that is true?

Joe Becker: Again, getting into the issue of legal residence and what a particular state wants to do with respect to that, if someone from the military declares a state as their legal residence, there is a presumption that they are in fact a legal resident of that state. They have ties to that state. All the factors we look at from family to home to job to bank account, we try to get a sense of their factual situation to see if what they have told you is in fact holding up. That is a difficult question. In my experience, I have been up to the bases over the years to do some income tax training. I sometimes hear military folks talk about declaring Texas or Florida and they seem to have an understanding that once they do that, they can live anywhere they want to and that is not true. If the state that they are living in has an income tax, they are certainly interested in knowing if you are a resident there or not. If we run into that situation, we have to ask questions about their factual situation.

Representative Drovdal: Your answer raises more questions. If nobody brings up an issue, the Tax Department certainly doesn't go out and check the residency address of all taxpayers unless somebody brings up an issue on a particular taxpayer, do they? So they really wouldn't know.

Joe Becker: It is a compliance issue at times. We don't know unless we inquire, I agree.

Chairman Belter: Any other questions of Mr. Becker? If there is no further testimony, we will close the hearing on HB 1411.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1411

House Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: January 26, 2009

Recorder Job Number: 7788

Committee Clerk Signature

Minutes:

Chairman Belter: Committee, what do you want to do on this bill?

Representative Grande: I move "do not pass".

Representative Headland: Second.

Chairman Belter: Any discussion?

A roll call vote was taken, resulting in 9 ayes, 3 nays, and 1 not voting (Froelich).

Representative Brandenburg will carry the bill.

FISCAL NOTE
Requested by Legislative Council
01/15/2009

Bill/Resolution No.: HB 1411

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.*

| | 2007-2009 Biennium | | 2009-2011 Biennium | | 2011-2013 Biennium | |
|----------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
| | General Fund | Other Funds | General Fund | Other Funds | General Fund | Other Funds |
| Revenues | | | (\$2,761,000) | | | |
| Expenditures | | | | | | |
| Appropriations | | | | | | |

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

| 2007-2009 Biennium | | | 2009-2011 Biennium | | | 2011-2013 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 1411 authorizes individual income tax deductions for certain retirement income. These deductions are made available on the state's primary income tax form, Form ND-1.

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.*

HB 1411 creates three Form ND-1 tax deductions for the first \$5000 of military, qualifying civil service, firefighter and highway patrol retirement income. If enacted, HB 1411 is expected to reduce state general fund revenues by an estimated \$2.761 million during the 2009-11 biennium.

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: | 01/23/2009 |

Date: January 26, 2009

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1411

House FINANCE AND TAXATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☐ Do Pass ☒ Do Not Pass ☐ Amended

Motion Made By Grande Seconded By Headland

| Representatives | Yes | No | Representatives | Yes | No |
|----------------------------|-----|----|--------------------------|-----|----|
| Chairman Wesley R. Belter | / | | Representative Froelich | | |
| Vice Chairman David Drovda | / | | Representative Kelsh | | / |
| Representative Brandenburg | / | | Representative Pinkerton | | / |
| Representative Froseth | / | | Representative Schmidt | / | |
| Representative Grande | / | | Representative Winrich | | / |
| Representative Headland | / | | | | |
| Representative Weiler | / | | | | |
| Representative Wrangham | / | | | | |
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Total (Yes) 9 No 3

Absent 1 (Froelich)

Floor Assignment Representative Brandenburg

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

REPORT OF STANDING COMMITTEE (410)
January 26, 2009 5:42 p.m.

Module No: HR-15-0979
Carrier: Brandenburg
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1411: Finance and Taxation Committee (Rep. Belter, Chairman) recommends DO NOT PASS (9 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING). HB 1411 was placed on the Eleventh order on the calendar.