

2011 SENATE FINANCE AND TAXATION

SB 2189

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

SB 2189
1/19/2011
Job Number 13060

☐ Conference Committee

A. Rittmiller

Explanation or reason for introduction of bill/resolution:

Relating to the acreage of church property eligible for the church property tax exemption

Minutes:

Written Testimony Attached

Chairman Cook opened the hearing on SB 2189.

Senator Kilzer, District 47 – I ask your support of SB 2189. I was asked by a constituent to bring forward SB 2189 because it relates to churches and their tax exempt status. It relates to the tax exempt status for the land on which the churches reside. Existing law allows churches up to but not exceeding 2 acres. SB 2189 would change the 2 acres to 20 acres. Times have changed; some churches and congregations have become much larger than the size of the churches when this law was put into place. Churches have additional missions besides the one hour Sunday morning service that most of us remember. Many churches now have more than one building, like a youth activity center, or an education building. Congregations in some cases now have multiple pastors, meaning that there are even additional residents within that same complex. For you and I, parking on and off the street is often a problem. At times churches purchase property away from their original location in order to have more room for expansion, sometimes even outside the city limits. Then when annexation occurs, there are problems. Most of our churches are small and can live within the 2 acre limit. But there are some who will be discriminated against because they have become large and have exceeded the 2 acres and that will be the case you will hear about in a moment here. I would ask you to favorably consider this amendment to the law so the churches can carry out their ministry and have more space.

Senator Burckhard – I'm curious as to why it's so much larger. From 2 acres to 20 acres, that's a fairly large increase. Is there a particular reason for that?

Senator Kilzer, District 47 – The reason that I put in 20 acres is because that is the size of the church that you will be hearing about in a little bit. If your concern is that churches will use the 20 acres just to hold on to property and speculate and hope for an increase in value and then sell it, I would certainly not be opposed to an amendment that would have some objective criteria that would disallow that sort of thing.

Jon Patch, Member and serves on the Board of Deacons, Evangel Assembly of God
– (See attached testimony A in support if SB 2189)

Keith Ritchie, Pastor, Cornerstone Church – My church is at the corner of Wachter Avenue and Washington Street and I have 3.03 acres. Recently we received the same letter saying I was going to be taxed. I just paid my specials of \$24,000 for the repaving of Washington Street and that was all donations out of my church. The rule does not allow a play field, a soccer field, or any outdoor recreation for the children of the church and that is one of our major outreaches. We do camps, we do events like that. We are ready for our next expansion and we would like to expand where we presently are. But, in all honesty, 3.03 acres is not a large church. I am for the passing of the bill, and I do understand there is a second bill, but the truth of the matter is, church has changed over the years. We do a lot more. We have Tuesday night programs, Wednesday night programs; we have children who come to church, who bring their homework to church at 4pm because they don't have parents at home. We become a community center as well.

Roger Will, Pastor, Evangel Assembly of God – I have been with Jon Patch to some of the meetings with our county auditor and the city assessor and one of the meetings we were talking with our city assessor and she recommended that we have this law changed. She said she would support a change in the law. So I bring that to you today and again recommend this law be changed. I think we are going to be alright but there is confusion with city assessors as it was with the Bismarck city assessor. She was not aware of the Attorney General's opinions until later on. I think bringing clarity to this would be very helpful in changing this law.

Christopher Dodson, Executive Director, North Dakota Catholic Conference – I'm also here in support of this bill. Just to reemphasize a few things, it is certainly the case that the types of ministry have changed especially across the nation among Protestant traditions. So you have more ministries involved in one location. But even in our own state with the traditional churches we have changing demographics which require a combination of parishes. Fargo just this week announced they are going to have to combine and expand. Close down some parishes, combine, expand in West Fargo, and expand elsewhere. According to the finance director of the Fargo Diocese, he thinks most of the parishes in the Fargo Diocese already exceed 2 acres with their worship space, rectory, and parking. He emphasizes what would be nice is some consistency on this. Some look at the Attorney General's opinion and others just turn a blind eye. Whether a change in the law is necessary I think needs to be researched a little more. One interpretation of this statute is it's just an implementation, the clarification of what is meant by exclusion in the constitution. So you do need what is legitimate to have a statute. You could take the other approach and just exempt all religious property all together and not explain what exclusion is. I think the demographics change and changes in ministry have necessitated a change in the way we look at this particular provision.

Kevin Glatt, Burleigh County Auditor, Treasurer – I'm not here so much in support but would like to give my experience in regard to Senator Hogue's question about 'used exclusively for religious purposes'. That's a tough one. I was in this situation between the City of Bismarck and these churches. To say 'used exclusively for religious purposes' makes it very difficult, I think, for assessment officials. What is a religious purpose and what isn't? The times are changing.

Chairman Cook asked for testimony opposed to SB 2189.

Keith Magnusson, North Dakota League of Cities – We are opposed to this bill. The current law is legislature's interpretation of the constitution and I think the legislature has been comfortable over the years. We think that going from 2 to 20 acres has potential to take a lot of property eventually off of the rolls. The property tax is one way the cities get revenue. It's part of the three legged stool we always talk about, and we think going from 2 to 20 acres is a quite a jump. I might call your attention to HB 1370 which has just been introduced that goes from 2 to 5 acres, and maybe that is much more realistic. I think 2 to 20 acres is too much of a jump.

Chairman Cook asked for neutral testimony for SB 2189. No one came forward.

Chairman Cook called Marcy Dickerson forward to answer questions.

Chairman Cook asked what the purpose of the very last sentence in section 1 is.

Marcy Dickerson, State Supervisor of Assessments and Director of the Property Tax Division for the Office of State Tax Commissioner – In my opinion that means that if there have been taxes levied on property that should have not been taxed that those taxes are canceled or should be canceled. That is the way I would interpret it.

Chairman Cook–Isn't that the interpretation with or without the last sentence? If the law says you can't tax it and it's levied, do we need to put this sentence in to make sure that they are void?

Marcy Dickerson, State Supervisor of Assessments and Director of the Property Tax Division for the Office of State Tax Commissioner – Personally, I would not think so but apparently at some time some legislature decided to put that in. That is old language.

Chairman Cook – But if it disappeared, it wouldn't change a thing.

Marcy Dickerson, State Supervisor of Assessments and Director of the Property Tax Division for the Office of State Tax Commissioner – It's kind of like in the old disabled veteran exemption before it became a credit the language has continued forward to the credit but it always said that any taxes that have been levied on this property have to be canceled. It doesn't say how far back. That was the same thing that particular property was deemed to be exempt, but they put that additional language on the end that anything is void or has to be canceled.

Chairman Cook – If you had a church downtown, no parking lot, and the church building covered 4 acres, is 2 acres taxable?

Marcy Dickerson, State Supervisor of Assessments and Director of the Property Tax Division for the Office of State Tax Commissioner – I would think under the existing law it probably would be. I would like to put in that we interpret the parking lot portion of this as not being included in that 2 acre limitation. All real property owned by any religious corporation or organization and used as a parking lot by persons attending religious services is exempt from taxation, and that comes after the 2 acre limitation. So we have said the parking lot isn't involved in that. But if the whole church building covered more than 2 acres under this existing language, I would say 2 acres would be taxable.

Chairman Cook – If you've got 2 acres of grass that you allow people to park on when you have a large crowd, is that considered a parking lot?

Marcy Dickerson, State Supervisor of Assessments and Director of the Property Tax Division for the Office of State Tax Commissioner – If it were used regularly as a parking lot I would consider it one. If it only happened once in a while for overflow, perhaps not. I don't know. The fact that it was not paved would not prevent me from calling it a parking lot. That is debatable. Nothing here says it has to be asphalt or concrete.

Senator Oehlke – Church camps, are they limited now to the 2 acres?

Marcy Dickerson, State Supervisor of Assessments and Director of the Property Tax Division for the Office of State Tax Commissioner – This language says used for religious services. I'm not sure if you would say that a church camp is holding religious services. If there is not a building used for religious services or for the residents of the pastor or individual in charge, I would say that would not be exempt.

Senator Oehlke – A lot of churches have owned parsonages that are off premises, just in the community somewhere, are they tax exempt now at all?

Marcy Dickerson, State Supervisor of Assessments and Director of the Property Tax Division for the Office of State Tax Commissioner – I think that would be exempt if there is a dwelling with usual out buildings intended and ordinarily used for the residents of the bishop, priest, etc. That does not necessarily have to be contiguous to the church property, at least it doesn't say that it has to.

Vice Chairman Miller – I was wondering about private schools or nonprofit recreation centers, those are non-taxable I assume?

Marcy Dickerson, State Supervisor of Assessments and Director of the Property Tax Division for the Office of State Tax Commissioner – Some of those are questionable, a private school generally would be exempt. All schools would be exempt. A recreation center, generally it would depend on the ownership and the purpose of it. If it's considered charitable it would probably qualify for exemption under subsection 8, as a charitable activity and it would have to be a 501C3 ownership. Those have to apply for exemption as charitable.

Vice Chairman Miller – How about an auditorium?

Marcy Dickerson, State Supervisor of Assessments and Director of the Property Tax Division for the Office of State Tax Commissioner – Again it would have to be determined what was taking place was charitable. Charitable has been expanded to include public spirited and in my opinion it gets far away from my personal opinion of what's charitable but if it's something that is beneficial or provides a service that would otherwise have to be provided by a governmental unit, it has been said that is included in the exempt property, but you have to look at the ownership and what is taking place in that property. And there is a lot of controversy sometimes.

Senator Dotzenrod – This exemption on property taxes, I understand it does not apply to special assessments.

Marcy Dickerson, State Supervisor of Assessments and Director of the Property Tax Division for the Office of State Tax Commissioner – That is correct

Senator Dotzenrod – Also I was wondering about some of the public safety things that are provided for by taxing property. Fire, police, in some cases ambulance services that are funded and paid for by taxing property. If those services were needed, if there was a large church and they needed fire services, are the fire departments allowed to charge for that service if it's needed or does everyone else in the community provide that to the church as a charitable donation for the church?

Marcy Dickerson, State Supervisor of Assessments and Director of the Property Tax Division for the Office of State Tax Commissioner – To the best of my knowledge there is no provision for charging a church for any of those services. There are some special circumstances in different subsections of 570208 where for instance if you have a lodge or consistory or what have you it is basically exempt. Any portion of it in which food or alcoholic beverages are served or any portion which is not used for the ceremonies and business of the organization are subject to at least a fire levy, but that does not apply to churches to the best of my knowledge. There is not provision for that.

Vice Chairman Miller – How does the state of North Dakota define or recognize a religious organization? Is it through a specific federal chapter?

Marcy Dickerson, State Supervisor of Assessments and Director of the Property Tax Division for the Office of State Tax Commissioner – I'm not quite sure of that. I'm not aware of any specific language that says what church or what religious group qualifies as an official religious entity.

Chairman Cook closed the hearing on SB 2189.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

SB 2189
January 24, 2011
Job Number 13244

☐ Conference Committee

Eva Luteb

Explanation or reason for introduction of bill/resolution:

Relating to the acreage of church property eligible for the church property tax exemption

Minutes:

Committee Work

Chairman Cook: Talked about the amendment and the changes made and explained what the changes mean.

Senator Triplett: Was concerned that the, "parking lot", was a little vague. If the parking area was hard flat clay they might say they park anywhere they want and even though it isn't a developed parking lot. Some churches because of money may not be able to develop a larger parking lot but actually need it. She feels leaving it wide open without defining parking area better they are inviting abuse. She thinks it should be tighter.

Chairman Cook: Asked if she considered the definition of parking lot used before to be vague.

Senator Triplett: She answered that it was vague.

Chairman Cook: Asked Senator Triplett to work with Alex or council to come up with language she considers not to be vague but clear.

Senator Triplett: She said she would do her best.

Chairman Cook: Asked if there should be a limitation as to the amount of grass.

Senator Triplett: Said that it would be one way of doing it.

Chairman Cook: Commented to there often being an overflow onto church grass when there is a funeral.

Senator Triplett: Said that was her point. Certain amount of overflow to undeveloped parking area for overflow should be acceptable and should be exempted but not tens of acres.

Senator Hogue: Said that he was going to make the same suggestion but wanted to add into the amendment that you are trying to avoid mischief. It should be in use year round.

Chairman Cook: Made a comment of congregations opening a mission church and that they buy property in a future growth area of the city to someday build a church, stated that most congregations would look for five acres of property, so that property sits undeveloped for five years and asked if that property should be taxed for the time it doesn't have a church on it.

Senator Dotzenrod: Said that he thought it would be because the constitution refers to property of churches and cemeteries used for religious purposes. While it is sitting there it is not serving a religious purpose.

Chairman Cook: Today's law would exempt two of the five acres and tax the other three. Asked if he was saying that it should all be taxed.

Senator Dotzenrod: He felt if it was purchased with the idea that someday it would be used for religious purpose, in mean time it should be treated like other property around it.

Chairman Cook: Asked about the two acre exemption.

Senator Dotzenrod: Stated that if they kept the two acres in the century code as it is right now, they may want to do that. Personally doesn't see why they would exempt any of it.

Chairman Cook: Stated he was thinking about two sentences, the first sentence and moving parking lot in to make sure one hundred percent of the property that is developed and used is taxed exempt. The other sentence would identify property that is grass or speculative, for a future church and have an acreage limit on how much of that could be taxed exempt.

Senator Hogue: Stated that he thought the current law was fine because it only permits the exemption where there is a building or out buildings on the property. He feels both the constitution and statue is clear.

Chairman Cook: Feels wherever there is a church parking lot it should be tax exempt if it is developed.

Senator Triplett: Comments that the constitution does require that and the only issues are part time use or the possibility of abuse by speculative uses.

Chairman Cook: Asked if he was hearing general consensus that is all that should be exempt.

Senator Oehlke: Stated if he wanted to leave it at two acres and have the real property on two acres that happens to be connected, if it is six or twenty acres, maybe you could exclude all that real property.

Senator Hogue: Said that the acreage limitation is helpful to avoid a situation where a church wants to speculate on other acres that it owns and sit on that land for years until it finds a buyer.

Senator Miller: Commented that his concern of wanting to limit some of this is because there are churches that are building large complexes that do a lot of things but religious organization. He would like to keep a lid on things like recreational centers. It is good for community health but a church should be there for religious purposes.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

SB 2189
January 25, 2011
Job Number 13409

☐ Conference Committee

Eva Lubelt

Explanation or reason for introduction of bill/resolution:

Relating to the acreage of church property eligible for the church property tax exemption

Minutes:

Discussion

Chairman Cook: Said that they would start with Senate Bill 2189, church property tax bill. Alex put some amendments together, amendment handed out.

Senator Triplett: Said she wasn't sure she liked the amendment. Felt it left it to wide open with not having any kind of an acreage specified.

Chairman Cook: Said it had five acres specified on the amendment. He then read from the amendment.

Senator Triplett: You could have five acres of undeveloped property, is that how you interpret it?

Chairman Cook: Yes, that is how I interpret the amendment; you could have five acres of grass around the building.

Continued discussion on the amendment that was drawn and the understanding of what the amendment means and the changes they would still like to see.

Chairman Cook: Does someone want to offer the amendments that Alex prepared for the first part, excluding what it on page one, line sixteen? So we can narrow our conversation down to one remaining issue.

Senator Triplett: Moved a do pass on the amendments.

Discussion

Senator Dotzenrod: Seconded the motion

Discussion on the interpretation of the amendment

Senator Triplett: Withdrew her motion.

Senator Dotzenrod: Withdrew his second.

Discussion if a church should be allowed to have any other property, without a building on it, tax exempt.

Chairman Cook: Closed the meeting.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee
Lewis and Clark Room, State Capitol

SB 2189
January 26, 2011
Job Number 13425

☐ Conference Committee

Erin Lubelt

Explanation or reason for introduction of bill/resolution:

Relating to the acreage of church property eligible for the church property tax exemption

Minutes:

Discussion

Chairman Cook: Started the meeting on Senate Bill 2189. You all have the new amendments on 2189.

Senator Miller: Made a motion to move the amendment.

Senator Burckhard: Seconded the motion.

Discussion on the understanding of the amendment and what needs to be added to the amendment to make it more clear.

Senator Miller: Made a motion to further amend the amendments and add; up to an additional five acres.

Chairman Cook: We have now before us an amendment to further amend; up to an additional five acres.

Discussion on what the meaning of the new proposed amendment would be.

Chairman Cook: We have a motion to further amend the motion to amend and add the words; an additional five acres. All in favor say I. That carries. Any further discussion on the motion to amend. All in favor say I.

Senator Hogue: Makes a motion to further amend the proposed amendments to Senate Bill 2189 by removing the word develop and inserting the word paved, page one, line eleven.

Discussion on the motion to further amend and add paved.

Chairman Cook: All in favor of adding the word paved? Replacing developed with paved, say I. Opposed, say I. That failed. We have before us as amended. We need to vote on the amendments. Any discussion, all in favor say I, any opposed.

Senator Miller: Moved a do pass as amended.

Senator Burckhard: Seconded the motion.

Discussion on the amendment and that it is still not being clear.

Chairman Cook: We are going to vote on this before we sign it out, we will have the official Legislative Council amendments to look at and make clear on what it says. We have a motion of a do pass as amended. We will table this as it is until we have the official tax council down here.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

SB 2189
January 26, 2011
Job Number 13466

☐ Conference Committee

Eva Lebetth

Explanation or reason for introduction of bill/resolution:

Relating to the acreage of church property eligible for the church property tax exemption

Minutes:

Discussion

Chairman Cook: Asked what they thought of the amendments.

Marci Dickerson: She has a few issues, but doesn't think the five acres restriction is unreasonable. The one question is where it refers to the property owned by a religious corporation which there is a building. She isn't sure if they mean the land under the building or if it is the land that it is on. She wasn't clear on that. How much land around that church building is exempt in addition to the five acres or is none exempt in addition to the five acres?

Chairman Cook: Said the intent of the committee as they work toward these amendments, is the additional land around the building is limited to five acres.

Marci: Five acres plus what the building sits on, not the building plus landscaping?

More explanation is given on how they decided to state the amendment.

Marci: Is there any wording that can be added to make that clear, if she had a question she feels someone else will to.

Chairman Cook: We had you down here to make sure it was clear.

Discussion and Comments

Chairman Cook: We are going to put this back on the table and we will have Alex and John Walstad and you work together on clean amendments to do what it is we want to do.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

SB 2189
1/31/2011
Job Number 13712

☐ Conference Committee

A. R. Miller

Explanation or reason for introduction of bill/resolution:

Relating to disposition of township funds upon dissolution

Minutes:

Committee Work

Chairman Cook opened discussion on SB 2189.

Chairman Cook – You got here in this sentence, ‘within the perimeter of those buildings or developed parking lots, and any real property contiguous to the building dwelling or the developed parking lot up to an additional 5 acres’. That has to be contiguous, and yet the end of the next sentence I see, ‘whether the real property consists of one track or more’.

Chairman Cook – Is it one church could have more than one property, each one has buildings on it, and they can't have any more than 5 acres contiguous to these properties that would be tax exempt.

Senator Triplett – I didn't see a problem because I think sometimes a church might, in expanding, purchase the lot next door for example.

John Walstad, Legislative Council – It might be different lots, but they still have to be touching at some point.

Vice Chairman Miller – What about if we have a church with a parsonage on the other side of town?

John Walstad, Legislative Council – My understanding on this one, is the pastors residence needs to be contiguous to the church property, and the other one, it wouldn't need to be touching. It could be across the street or across town.

Chairman Cook – Where is the other one?

Senator Dotzenrod – When talking to Marcy she said in the current law, they are allowed for the parsonage and the residence and the area around it to be up to 2 acres. I thought that sounded ok, put that in there too then.

Senator Dotzenrod – I don't know just how different these 2 amendments are. You can see the underlined language deals with that 2 acres for the residence.

Senator Triplett – The other difference is that you don't have the developed parking lot as a whole separate zone. You just have that included within the plus 5 acres.

Senator Dotzenrod – I felt that I wanted the church building and the residence and that area, if there were 5 acres more, then that would be tax free. If you had the main church facility and the residence on the same property, my thought was to have another 5 acres beyond that would be free of any taxes. That would include parking lots, reasonable landscaping, and sidewalks, would be the 5 acres. The second thing about the residence that was kind of an afterthought, but we currently do allow that separated residence to be up to 2 acres so that's why that's in there.

Vice Chairman Miller – I like the residence exemption, not contiguous. Someone might donate a farmstead or something and it's just outside of town and that could be where the pastor lives. I think that's a good thing, I definitely don't have any problem with the amendment.

Senator Dotzenrod – The reason I asked Marcy to do a separate amendment from what the Chairman had requested was, I was thinking in terms of allowing the area to be, that we were going to grant the tax exemption to be a little smaller than what the committee had discussed. The committee I think was talking the buildings, and the footprint of the buildings, and the parking lots, plus 5 acres. I was thinking of the buildings, and the footprint of the buildings plus 5 acres. So that would include 5 acres of parking in there, up to. There is a little difference I think, the area I was thinking of; to be exempt might be a little smaller. It may not be a huge issue because all we've talked about is the difference in the size of the parking lot is probably what it amounts to.

Senator Triplett – I will approval of the Dotzenrod amendments.

Seconded by **Vice Chairman Miller**.

Chairman Cook – We have a motion to move amendments 01002.

Senator Triplett – I do like the piece without being really specific about the unattached residence because I think that is an issue for a lot of churches. Also, given our confusion on how to even define a parking lot, I think I just rather leave it out all together and let them park on the grass if they want.

Chairman Cook – We have a motion to amend with the Dotzenrod amendments. All in favor say yea. Opposed? (6-0-1)

Chairman Cook – We have before us SB 2189 as amended.

John Walstad, Legislative Council – Wanted to point out that subsection 7 of 57-02-08 has been repealed because it says virtually the same thing as the amended language and leaves room for interpretation.

Chairman Cook – Anyone want to reconsider their vote on the amendment with the repealer in it?

Chairman Cook – Your wishes?

Vice Chairman Miller – I move a Do Pass as Amended on SB 2189.

Seconded by **Senator Hogue**.

Chairman Cook – Ask the clerk to take the roll. (6-0-1)

Carried by **Senator Dotzenrod**.

FISCAL NOTE
Requested by Legislative Council
02/02/2011

Amendment to: SB 2189

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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 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.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 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).*

Engrossed SB 2189 deals with property tax exemptions for church property.

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.*

If enacted, Engrossed SB 2189 would shift some property taxes away from taxable church property to other taxpayers in the taxing jurisdiction. The amount of the shift cannot currently be estimated. The property exempted under Engrossed SB 2189 is less than the amount that would have been exempted under SB 2189 as originally introduced.

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:	02/04/2011

FISCAL NOTE

Requested by Legislative Council
01/13/2011

Bill/Resolution No.: SB 2189

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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 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.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 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).*

SB 2189 increases the allowable exempt acreage for church property from two acres to not more than 20 acres.

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.*

If enacted, SB 2189 would shift some property taxes away from taxable church property to other taxpayers in the taxing jurisdiction. The amount of the shift cannot currently be estimated. Property owned by church organizations that is currently being taxed is an unidentifiable component of commercial property.

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:	01/18/2011

703
2-1-11

PROPOSED AMENDMENTS TO SENATE BILL NO. 2189

Page 1, line 3, after "exemption" insert "; to repeal subsection 7 of 57-02-08 of the North Dakota Century Code, relating to a property tax exemption for church property"

Page 1, replace lines 5 through 19 with:

"SECTION 1. AMENDMENT. Subsection 9 of section 57-02-08 of the North Dakota Century Code is amended and reenacted as follows:

9. ~~All real property, not exceeding two acres [.81 hectare] in extent, owned by any religious corporation or organization, upon which there is a building used for the religious services of the organization, or upon which there is a dwelling with usual outbuildings, intended and ordinarily used for the residence of the bishop, priest, rector, or other minister in charge of services, buildings owned by any religious corporation or organization and used for the religious services of the organization, or, if on the same parcel, dwellings with usual outbuildings, intended and ordinarily used for the residence of the bishop, priest, rector, or other minister in charge of services, land directly under and within the perimeter of those buildings, and up to a maximum of five additional acres [2.02 hectares] of area used for parking or reasonable landscaping or sidewalk area adjoining the main church building must be deemed to be property used exclusively for religious services, and exempt from taxation, whether the real property consists of one tract or more. If the residence of the bishop, priest, rector, or other minister in charge of services is located on property not adjacent to the church, that residence with usual outbuildings and land on which it is located, up to two acres [.81 hectare], is exempt from taxation. The exemption for a building used for the religious services of the owner continues to be in effect if the building in whole, or in part, is rented to another otherwise tax-exempt corporation or organization, provided no profit is realized from the rent. All real property owned by any religious corporation or organization and used as a parking lot by persons attending religious services is exempt from taxation. All taxes assessed or levied on any of the property, while the property is used for religious purposes, are void.~~

SECTION 2. REPEAL. Subsection 7 of section 57-02-08 of the North Dakota Century Code is repealed."

Renumber accordingly

Date: 1-31-11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2189

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Triplett Seconded By Senator Miller

Senators	Yes	No	Senators	Yes	No
Dwight Cook – Chairman			Jim Dotzenrod		
Joe Miller – Vice Chairman			Connie Triplett		
Randy Burckhard					
David Hogue					
Dave Oehlke					

Total (Yes) 6 No 0

Absent 1

Floor Assignment _____

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

Verbal Vote

Date: 1-31-11
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2189

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Miller Seconded By Senator Hogue

Senators	Yes	No	Senators	Yes	No
Dwight Cook – Chairman	X		Jim Dotzenrod	X	
Joe Miller – Vice Chairman	X		Connie Triplett	X	
Randy Burckhard	X				
David Hogue	X				
Dave Oehlke		X			

Total (Yes) 6 No 1

Absent 0

Floor Assignment Senator Dotzenrod

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

REPORT OF STANDING COMMITTEE

SB 2189: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2189 was placed on the Sixth order on the calendar.

Page 1, line 3, after "exemption" insert "; to repeal subsection 7 of 57-02-08 of the North Dakota Century Code, relating to a property tax exemption for church property"

Page 1, replace lines 5 through 19 with:

"SECTION 1. AMENDMENT. Subsection 9 of section 57-02-08 of the North Dakota Century Code is amended and reenacted as follows:

9. ~~All real property, not exceeding two acres [.81 hectare] in extent, owned by any religious corporation or organization, upon which there is a building used for the religious services of the organization, or upon which there is a dwelling with usual outbuildings, intended and ordinarily used for the residence of the bishop, priest, rector, or other minister in charge of services, buildings owned by any religious corporation or organization and used for the religious services of the organization, or, if on the same parcel, dwellings with usual outbuildings, intended and ordinarily used for the residence of the bishop, priest, rector, or other minister in charge of services, land directly under and within the perimeter of those buildings, and up to a maximum of five additional acres [2.02 hectares] of area used for parking or reasonable landscaping or sidewalk area adjoining the main church building must be deemed to be property used exclusively for religious services, and exempt from taxation, whether the real property consists of one tract or more. If the residence of the bishop, priest, rector, or other minister in charge of services is located on property not adjacent to the church, that residence with usual outbuildings and land on which it is located, up to two acres [.81 hectare], is exempt from taxation. The exemption for a building used for the religious services of the owner continues to be in effect if the building in whole, or in part, is rented to another otherwise tax-exempt corporation or organization, provided no profit is realized from the rent. All real property owned by any religious corporation or organization and used as a parking lot by persons attending religious services is exempt from taxation. All taxes assessed or levied on any of the property, while the property is used for religious purposes, are void.~~

SECTION 2. REPEAL. Subsection 7 of section 57-02-08 of the North Dakota Century Code is repealed."

Renumber accordingly

2011 HOUSE FINANCE AND TAXATION

SB 2189

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee Fort Totten Room, State Capitol

SB 2189
March 7, 2011
#15015

☐ Conference Committee

Committee Clerk Signature

Mary Bruckner

Explanation or reason for introduction of bill/resolution:

A bill relating to the acreage of church property eligible for the church property tax exemption; relating to a property tax exemption for church property; and to provide an effective date.

Minutes:

No attachments.

Chairman Wesley R. Belter: This is similar to two other bills we have and for those who wish to testify it will be the intent of the Chairman either to amend this bill to the identical language that was in the other 20 acre bill or we will defeat this.

No testimony.

Representative Patrick Hatlestad: On lines 20-23 I don't think that is in the bill that we passed and I think it should be a consideration.

Representative Shirley Meyer: When we discussed that the thought was that in the 20 acres that would fit in there.

Representative Bette Grande: My concern is that we need a way of saying that it doesn't have to be contiguous. I think of our properties that we have there is some land set over that is the pastor's land. He doesn't live on the church land as most of the bishops would.

Chairman Wesley R. Belter: Is the committee telling me that we need this alive because HB 1246 doesn't cover all that we wanted covered? We will hold this.

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2189
March 7, 2011
SB 15030

☐ Conference Committee

Committee Clerk Signature

Mary Brucher

Explanation or reason for introduction of bill/resolution:

A bill relating to the acreage of church property eligible for the church property tax exemption; relating to a property tax exemption for church property; and to provide an effective date.

Minutes:

No attachments.

Representative Bette Grande: I had a chance to look at that a little bit and in the 1246 we have it so they can have it off campus, which is how we would consider it in our church language. It stays pretty much the same but with the 20 acres. I feel we could move a DO NOT PASS.

Representative Scot Kelsh: I'm guessing then that your concerns about the Senate killing that bill are not what they were this morning?

Chairman Wesley R. Belter: I guess so.

A roll call vote was taken: YES 13 NO 0 ABSENT 1
MOTION CARRIED FOR DO NOT PASS.

Representative Patrick Hatlestad will carry SB 2189.

Date: 3-7-11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2189

House Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☒ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Grande Seconded By Rep. Headland

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter	✓		Scot Kelsh	✓	
Vice Chair. Craig Headland	✓		Shirley Meyer	✓	
Glen Froseth	✓		Lonny B. Winrich	✓	
Bette Grande	✓		Steven L. Zaiser	✓	
Patrick Hatlestad	✓				
Mark S. Owens	✓				
Roscoe Streyle	✓				
Wayne Trottier	✓				
Dave Weiler	✓				
Dwight Wrangham	AB				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Hatlestad

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

REPORT OF STANDING COMMITTEE

SB 2189, as engrossed: Finance and Taxation Committee (Rep. Belter, Chairman)
recommends **DO NOT PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
Engrossed SB 2189 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

SB 2189

January 19th, 2011

The Honorable Dwight Cook, Chairman

Senate Finance and Taxation Committee

Re: Support for SB2189 – Property tax exemption for churches

Mr. Chairman and members of the committee, my name is **Jon Patch**, I'm a member of the **Evangel Assembly of God** congregation in **Bismarck** and currently serve on the board of deacons for our church. Thank you for this opportunity to testify in favor of SB 2189 on behalf of our congregation.

Our church has been in existence since 1929 and has owned property in at least three locations, each time moving to a larger facility on a larger tract of land. Our current church campus is located on approximately 20 acres in north Bismarck near the former home depot location. We acquired this property before it was in the city limits in the late 1980s and early 1990s. We have two major worship facilities (our main church building and the Element youth ministries building) located on each end of the property with an open area between them. We've used this open area for many functions over the years including children, youth and adult outdoor activities and services, overflow parking, parking lot snow storage, bus barn, etc. There is also a private paved road connecting the parking lots of the two facilities.

We received a letter a few weeks back from Bismarck's acting city assessor, Debra Goodsell stating that the City would now be implementing the specifics of North Dakota Century Code which allows only a two-acre exemption from property taxes for churches.

We have not been assessed property taxes in the past. According to Ms. Goodsell this had been an oversight on their part. Our 2010 tax bill was set at about \$11,000. However, Ms. Goodsell attempted to mitigate this amount by saying they put an unrealistically low value on the property (\$1.25 per square foot) to keep the assessment down. She said neighboring property is valued at 10 times that amount. This was no comfort to us, rather a potential \$100,000+ annual tax bill hanging over our heads when a future city administrator decides that we should be taxed at the true and full value of the property.

We believe the intention of the law is to exempt churches from having to pay property tax. The two-acre limitation we think may be archaic. Although appropriate at the time it was enacted, we feel the two-acre limitation is too restrictive in today's society. Large churches, such as ours and many others throughout the state today, were not common or possibly even nonexistent at the time the two-acre limitation was put in place. Our current attendance on a Sunday is typically 1000 to 1200 people. Our adherents number around 2000-2500. We employ 6 full-time pastors and have a large support staff. We are totally supported by charitable donations from our members and attenders. We do not hold the property with a view toward profit and do not intend to sell it into the private

sector. We do plan to continue expanding our campus and using the grounds for our church related activities.

We have recently become aware of two attorney general opinions (Wefald, 1981 and Heitkamp, 1995) that addressed questions about church property tax exemption. Both of them basically concluded the same thing. NDCC 57-02-08(9) conflicts with Article X, Section 5 of our State constitution and where there is a conflict between the constitution and the law, the constitution wins. In recent days, we received word that the city of Bismarck is backing down from their position to assess a property tax to churches that exceed the two-acres. I believe they also became aware of these two AG opinions, and realized they were on the wrong side of the constitution.

I would request that the committee take the appropriate actions to reconcile the law and the constitution to the original intent – exempting all churches from property taxation, regardless of their size.

Links to AG opinions:

<http://www.ag.nd.gov/Opinions/1981/Formal/81-13.pdf>

<http://www.ag.nd.gov/Opinions/1995/Formal/9505.pdf>