

2019 SENATE FINANCE AND TAXATION

SB 2193

2019 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Lewis and Clark Room, State Capitol

SB 2193
1/16/2019
Job # 30864

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Alicia Larsgaard

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact sections 40-57.3-01, 40-57.3-01.1, and 40-57.3-02 of the North Dakota Century Code, relating to city lodging and restaurant tax and visitors' committee membership.

Minutes:

Attachments: 1-5

Chairman Cook: Called the hearing to order on SB 2193.

Amy Krueger, Executive Director of the Williston Convention and Visitor Bureau: Submitted attachment #1 in favor of SB 2193.

Suzie Kenner, Executive Director of the Devils Lake Convention and Visitors Bureau: Submitted attachment #2 in favor of SB 2193.

Doug Bolken, Tourism Director for McKenzie County Tourism: Submitted attachment #3 in favor of SB 2193.

Senator Rich Wardner, Senate Majority Leader: Introduced SB 2193. In request of constituent in our community, the queen of Dickinson. What this bill is, is clean up language and Terri Thiel will go through this and tell you why they needed to do that. With that Mr. Chairman, I am going to turn it over to her.

Terri Thiel, Executive Director of the Dickinson Convention and Visitors Bureau: Testified in favor of SB 2193. See attachment #4. What we were doing in 2192, was looking at what should reflect back. As the tax dept. had mentioned, first there was the tourist quote in there which we wanted to clean up. The other part of it was going back into the visitor's committee. Where we started with the other one in the county, was general language of makeup. As we go through this, there will be those amendments. You will see at the bottom where I scratched off at the bottom, "being registered at the state" because the chambers or CBCs typically are. What was outdated was the amount of board members and the terms. We all have bylaws, reports, annual meetings, and we are very structured. Originally, the 2% was introduced in 1981 and that was the very beginning of it. It was trying to create the structure for those committees and those board members and making sure they were doing

things correctly. What we will do is work and try to get this to match the language with it. It was nothing more than other boards who have a few more. We have 7. We all have those terms that alternate within our bylaw system. This really is just a cleanup on that.

Senator Unruh: Typically, when we see this specific in code about the way a committee is set up, it was done for a purpose. Do you happen to know when the last time the structure of these committees in century code changed?

Terri Thiel: I believe this is the original from 1981.

Chairman Cook: Further testimony in support? Testimony opposed? Neutral?

Charles Dendy, Legal Council, Tax Department: Testified under neutral. Proposed amendments to SB 2193. See attachment #5. When 2193 was drafted, the old language was changed to other accommodations. These amendments make the same change in the sales and use tax laws. Making the change is important because it keeps all the laws the synchronized and keeps all the people from wondering why it is different in one place compared to somewhere else.

Chairman Cook: So the changes made in the tourist tax here and made the same in the sales tax?

Charles Dendy: Correct, Mr. Chairman.

Chairman Cook: Is there no need to do it in the use tax chapter? Most of the bills we see, if they change the sales tax, it also does the use tax.

Charles Dendy: This language just appears in the sales tax.

Chairman Cook: Any other testimony? We will now close the hearing on SB 2193.

(5:12) Committee discussed various issues. Myles Vosberg joined in on the discussion and addressed some of the committee's questions.

(9:30) Discussed and voted on SB 2191.

(17:18) Committee work ended.

2019 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Lewis and Clark Room, State Capitol

SB 2193
1/29/2019
Job #31701

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Alicia Larsgaard

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact sections 40-57.3-01, 40-57.3-01.1, and 40-57.3-02, subsections 21, 22, and 23 of section 57-39.2-01, subdivision e of subsection 1 of section 57-39.2-02.1, and subsection 22 of section 57-39.2-04 of the North Dakota Century Code, relating to city lodging and restaurant tax and visitors' committee membership and references to tourist court accommodations.

Minutes:

Attachments: 2

Chairman Cook: Called the committee to order on SB 2193.

Senator Brad Bekkedahl, District 1, Williston: See attachment #1 and #2. SB 2193 is the companion bill to SB 2192. It removes the language and statute that we removed in the other bill which is the appointment of a visitor's committee. It takes the committee that is not being used and not functioning and puts all the responsibility to the local destination organization. The other changes take the words "tourists court" out because that is not used anymore.

Chairman Cook: Williams county already imposes a lodging tax correct?

Senator Bekkedahl: No they do not yet. They felt this would give them the opportunity to do that.

Senator Unruh: Is the CVB a government created entity? Is it just a private entity that compliments something like the chamber? Do they receive tax dollars to function or not?

Senator Bekkedahl: I will answer with what I know about the Williston CVB. They are treated as a city department even though they have an independent board that is made up of the organizations that pay the tax. The hotels and restaurants that pay the tax, have representation. The actual appointment of the board is maybe city appointed. I am not sure. I do know that their budget comes through the budget process with the city as if it is a city department. Their tax scrutiny is through the city budget process.

Sherri Grossman: We are not a political subdivision. We are a non for profit. The mayor does not approve our committees. We have city administrators on ours. Minot might, though.

Chairman Cook: Who does appoint the board?

Sherri Grossman: The membership does.

Senator Unruh: Then they spend tax dollars?

Chairman Cook: Yes, of the lodging money.

Sherri Grossman: Every city has their own contract. For example, Fargo has a three percent lodging tax and we just have a two percent one. We get 85% of ours and Fargo gets all of theirs.

Chairman Cook: Only the city has the authority to raise the tax?

Sherri Grossman: Correct.

Senator Unruh: How do they raise that tax again.

Chairman Cook: Is it by city vote?

Sherri Grossman: I think it would have to be a city vote.

Senator Unruh: It is a city council, and not a vote of the people.

Sherri Grossman: Yes. The reason that Fargo and Grand Forks gets 3% because they collect their own. The tax does not go through the state. The city does it all. Because they do it differently, they get the 3%. I think Grand Forks, Fargo, and Minot, are the only ones that don't go through the state and collect their own.

Senator Dotzenrod: These convention and visitor bureaus; is there any part of their operations or duties that are covered in the century code where they are given some authority to operate in the century code or are they just a private vote that is funded by members who are in the hospitality business in a community and not covered in our law?

Sherri Grossman: I think our checks and balances are with our contract with the city. They give us the money and we have to apply through those guidelines.

Senator Patten: In Watford City, we have what is called lodging tax committee that is appointed by the city commission and consists of those vendors. They are the ones that make the recommendations as far as dispersing and so forth. At the county level, the job development authority has some responsibilities related to cooperating and we have a joint budget that we use with the lodging tax committee. We fund part and the lodging tax fund the other part.

Senator Dotzenrod: Do they have a convention and visitor's bureau or is this in the place of?

Senator Patten: It is in the place of.

Senator Unruh: Moved to adopt the amendments.

Senator Meyer: Seconded.

Chairman Cook: Any Discussion?

A Voice Vote Was Taken.

Motion Carried.

Senator Patten: Moved a Do Pass as Amended.

Senator Dotzenrod: Seconded.

A Roll Call Vote Was Taken. 6 yeas, 0 nays, 0 absent.

Motion Carried.

Senator Dotzenrod will carry the bill.

Call
1/27

PROPOSED AMENDMENTS TO SENATE BILL NO. 2193

Page 1, line 1, after "40-57.3-02" insert ", subsections 21, 22, and 23 of section 57-39.2-01, subdivision e of subsection 1 of section 57-39.2-02.1, and subsection 22 of section 57-39.2-04"

Page 1, line 3, after "membership" insert "and references to tourist court accommodations"

Page 2, line 28, overstrike the first comma and insert immediately thereafter "and"

Page 2, line 28, overstrike ", and a visitors' committee. The visitors'"

Page 2, line 29, overstrike the first "committee" and insert immediately thereafter ". The local destination marketing organization or visitors' committee"

Page 3, line 4, after "The" insert "advisory"

Page 3, line 4, remove the overstrike over "~~committee~~"

Page 3, line 5, overstrike "governing body of the city"

Page 3, line 5, replace "shall appoint the committee members" with "consists of the local destination marketing organization or the visitors' committee"

Page 3, after line 10, insert:

"SECTION 4. AMENDMENT. Subsections 21, 22, and 23 of section 57-39.2-01 of the North Dakota Century Code are amended and reenacted as follows:

21. "Retail sale" or "sale at retail" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrental. "Retail sale" or "sale at retail" includes the sale, including the leasing or renting, to a consumer or to any person for any purpose, other than for processing or for resale, of tangible personal property; the sale of steam, gas, and communication service, excluding internet access service, to retail consumers or users; the sale of vulcanizing, recapping, and retreading services for tires; the ordering, selecting, or aiding a customer to select any goods, wares, or merchandise from any price list or catalog, which the customer might order, or be ordered for such customer to be shipped directly to such customer; the sale or furnishing of hotel, motel, or ~~tourist court~~ other accommodations, tickets, or admissions to any place of amusement, athletic event, or place of entertainment; and the sales of magazines and other periodicals. By the term "processing" is meant any tangible personal property, including containers which it is intended, by means of fabrication, compounding, manufacturing, producing, or germination shall become an integral or an ingredient or component part of other tangible personal property intended to be sold ultimately at retail. The sale of an item of tangible personal property for the purpose of incorporating it in or attaching it to real property must be considered as a sale of tangible personal property for a purpose other than for processing; the delivery of possession within the state of North Dakota of tangible personal property by a wholesaler or distributor to an out-of-state retailer who does not hold a North Dakota retail sales tax permit or to a person who by contract

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incorporates such tangible personal property into, or attaches it to, real property situated in another state may not be considered a taxable sale if such delivery of possession would not be treated as a taxable sale in that state. As used in this subsection, the word "consumer" includes any hospital, infirmary, sanatorium, nursing home, home for the aged, or similar institution that furnishes services to any patient or occupant. The sale of an item of tangible personal property to a person under a finance leasing agreement over the term of which the property will be substantially consumed must be considered a retail sale if the purchaser elects to treat it as such by paying or causing the transferor to pay the sales tax thereon to the commissioner on or before the last day on which payments may be made without penalty as provided in section 57-39.2-12.

22. "Retailer" or "seller" includes every person engaged in the business of leasing or renting hotel, motel, or ~~tourist court~~ other accommodations, and every person engaged in the business of selling tangible goods, wares, or merchandise at retail, or furnishing of steam, gas, and communication services, excluding internet access service, or tickets or admissions to places of amusement, entertainment, and athletic events, or magazines or other periodicals; and includes any person as herein defined who by contract or otherwise agrees to furnish for a consideration a totally or partially finished product consisting in whole or in part of tangible personal property subject to the sales tax herein provided, and all items of tangible personal property entering into the performance of such contract as a component part of the product agreed to be furnished under said contract shall be subject to the sales tax herein provided and the sales tax thereon shall be collected by the contractor from the person for whom the contract has been performed in addition to the contract price agreed upon, and shall be remitted to the state in the manner provided in this chapter; and shall include the state or any municipality furnishing steam, gas, or communication service to members of the public in its proprietary capacity. For the purpose of this chapter, retailer shall also include every clerk, auctioneer, agent, or factor selling tangible personal property owned by any other retailer. A retailer also includes every person who engages in regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising fliers, or other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone, computer database, cable, optic, microwave, or other communication system.
23. "Sale" means any transfer of title or possession, exchange or barter, conditional or otherwise, in any manner or by any means whatever, for a consideration, and includes the furnishing or service of steam, gas, or communication, excluding internet access service, the furnishing of hotel, motel, or ~~tourist court~~ other accommodations, the furnishing of tickets or admissions to any place of amusement, athletic event, or place of entertainment, and sales of magazines and other periodicals. Provided, the words "magazines and other periodicals" as used in this subsection do not include newspapers nor magazines or periodicals that are furnished free by a nonprofit corporation or organization to its members or because of payment by its members of membership fees or dues.

SECTION 5. AMENDMENT. Subdivision e of subsection 1 of section 57-39.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

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- e. The leasing or renting of a hotel or motel room or ~~tourist court~~other accommodations.

SECTION 6. AMENDMENT. Subsection 22 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

- 22. Gross receipts from the leasing or renting of manufactured homes, modular living units, or sectional homes, whether or not placed on a permanent foundation, for residential housing for periods of thirty or more consecutive days and the gross receipts from the leasing or renting of a hotel or motel room or ~~tourist court~~other accommodations occupied by the same person or persons for residential housing for periods of thirty or more consecutive days."

Renumber accordingly

Date: _____
Roll Call Vote #: _____

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2193

Senate	Finance and Taxation	Committee
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☐ Subcommittee

Amendment LC# or Description: 19.0738.0100Z

Recommendation: ☒ Adopt Amendment

☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation

☐ As Amended ☐ Rerefer to Appropriations

☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐

Motion Made By Unruh Seconded By Meyer

[illegible]

Total (Yes) _____ No _____

Absent

Floor Assignment

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

Date: 1-29-19
Roll Call Vote #: 2

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2193

Senate Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Patten Seconded By Dotzenrod

Senators	Yes	No	Senators	Yes	No
Chairman Cook	<input checked="" type="checkbox"/>		Senator Dotzenrod	<input checked="" type="checkbox"/>	
Vice Chairman Kannianen	<input checked="" type="checkbox"/>				
Senator Meyer	<input checked="" type="checkbox"/>				
Senator Patten	<input checked="" type="checkbox"/>				
Senator Unruh	<input checked="" type="checkbox"/>				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Dotzenrod

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

REPORT OF STANDING COMMITTEE

SB 2193: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2193 was placed on the Sixth order on the calendar.

Page 1, line 1, after "40-57.3-02" insert ", subsections 21, 22, and 23 of section 57-39.2-01, subdivision e of subsection 1 of section 57-39.2-02.1, and subsection 22 of section 57-39.2-04"

Page 1, line 3, after "membership" insert "and references to tourist court accommodations"

Page 2, line 28, overstrike the first comma and insert immediately thereafter "and"

Page 2, line 28, overstrike ", and a visitors' committee. The visitors'"

Page 2, line 29, overstrike the first "committee" and insert immediately thereafter ". The local destination marketing organization or visitors' committee"

Page 3, line 4, after "The" insert "advisory"

Page 3, line 4, remove the overstrike over "committee"

Page 3, line 5, overstrike "governing body of the city"

Page 3, line 5, replace "shall appoint the committee members" with "consists of the local destination marketing organization or the visitors' committee"

Page 3, after line 10, insert:

"SECTION 4. AMENDMENT. Subsections 21, 22, and 23 of section 57-39.2-01 of the North Dakota Century Code are amended and reenacted as follows:

21. "Retail sale" or "sale at retail" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrental. "Retail sale" or "sale at retail" includes the sale, including the leasing or renting, to a consumer or to any person for any purpose, other than for processing or for resale, of tangible personal property; the sale of steam, gas, and communication service, excluding internet access service, to retail consumers or users; the sale of vulcanizing, recapping, and retreading services for tires; the ordering, selecting, or aiding a customer to select any goods, wares, or merchandise from any price list or catalog, which the customer might order, or be ordered for such customer to be shipped directly to such customer; the sale or furnishing of hotel, motel, or ~~tourist court~~ other accommodations, tickets, or admissions to any place of amusement, athletic event, or place of entertainment; and the sales of magazines and other periodicals. By the term "processing" is meant any tangible personal property, including containers which it is intended, by means of fabrication, compounding, manufacturing, producing, or germination shall become an integral or an ingredient or component part of other tangible personal property intended to be sold ultimately at retail. The sale of an item of tangible personal property for the purpose of incorporating it in or attaching it to real property must be considered as a sale of tangible personal property for a purpose other than for processing; the delivery of possession within the state of North Dakota of tangible personal property by a wholesaler or distributor to an out-of-state retailer who does not hold a North Dakota retail sales tax permit or to a person who by contract incorporates such tangible personal property into, or attaches it to, real property situated in another state may not be considered a taxable sale if such delivery of possession would not be

treated as a taxable sale in that state. As used in this subsection, the word "consumer" includes any hospital, infirmary, sanatorium, nursing home, home for the aged, or similar institution that furnishes services to any patient or occupant. The sale of an item of tangible personal property to a person under a finance leasing agreement over the term of which the property will be substantially consumed must be considered a retail sale if the purchaser elects to treat it as such by paying or causing the transferor to pay the sales tax thereon to the commissioner on or before the last day on which payments may be made without penalty as provided in section 57-39.2-12.

22. "Retailer" or "seller" includes every person engaged in the business of leasing or renting hotel, motel, or ~~tourist court~~ other accommodations, and every person engaged in the business of selling tangible goods, wares, or merchandise at retail, or furnishing of steam, gas, and communication services, excluding internet access service, or tickets or admissions to places of amusement, entertainment, and athletic events, or magazines or other periodicals; and includes any person as herein defined who by contract or otherwise agrees to furnish for a consideration a totally or partially finished product consisting in whole or in part of tangible personal property subject to the sales tax herein provided, and all items of tangible personal property entering into the performance of such contract as a component part of the product agreed to be furnished under said contract shall be subject to the sales tax herein provided and the sales tax thereon shall be collected by the contractor from the person for whom the contract has been performed in addition to the contract price agreed upon, and shall be remitted to the state in the manner provided in this chapter; and shall include the state or any municipality furnishing steam, gas, or communication service to members of the public in its proprietary capacity. For the purpose of this chapter, retailer shall also include every clerk, auctioneer, agent, or factor selling tangible personal property owned by any other retailer. A retailer also includes every person who engages in regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising fliers, or other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone, computer database, cable, optic, microwave, or other communication system.
23. "Sale" means any transfer of title or possession, exchange or barter, conditional or otherwise, in any manner or by any means whatever, for a consideration, and includes the furnishing or service of steam, gas, or communication, excluding internet access service, the furnishing of hotel, motel, or ~~tourist court~~ other accommodations, the furnishing of tickets or admissions to any place of amusement, athletic event, or place of entertainment, and sales of magazines and other periodicals. Provided, the words "magazines and other periodicals" as used in this subsection do not include newspapers nor magazines or periodicals that are furnished free by a nonprofit corporation or organization to its members or because of payment by its members of membership fees or dues.

SECTION 5. AMENDMENT. Subdivision e of subsection 1 of section 57-39.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

- e. The leasing or renting of a hotel or motel room or ~~tourist court~~ other accommodations.

SECTION 6. AMENDMENT. Subsection 22 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

22. Gross receipts from the leasing or renting of manufactured homes, modular living units, or sectional homes, whether or not placed on a permanent foundation, for residential housing for periods of thirty or more consecutive days and the gross receipts from the leasing or renting of a hotel or motel room or ~~tourist court~~ other accommodations occupied by the same person or persons for residential housing for periods of thirty or more consecutive days."

Renumber accordingly

2019 HOUSE FINANCE AND TAXATION

SB 2193

2019 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

SB 2193
3/4/2019
33107

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Mary Brucker

Explanation or reason for introduction of bill/resolution:

Relating to city lodging and restaurant tax and visitors' committee membership and references to tourist court accommodations.

Minutes:

Attachment 1

Chairman Headland: Opened hearing on SB 2193.

Senator Wardner: Introduced bill. This is a companion bill to SB 2192. I put this in for the Convention and Visitors Bureau in Dickinson. They will go over the details.

Chairman Headland: We'll take supporting testimony.

Terri Thiel, Executive Director of the Dickinson Convention and Visitors Bureau: Distributed written testimony, see attachment 1. Ended testimony at 3:40.

Representative Steiner: When you say it doesn't include Air B&B, how does it not include them?

Terri Thiel: We're putting in other accommodations. They are already required to do that so it would mainly be a compliance issue. Instead of tourist accommodations it will say other accommodations.

Chairman Headland: Is there further support?

Sara Otte Coleman, Director of Tourism for the North Dakota Department of Commerce: I included support for SB 2193 in my initial testimony in SB 2192 since it's a companion bill.

Chairman Headland: Is there opposition? Seeing none we will close the hearing on SB 2193.

2019 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

SB 2193
3/11/2019
33528

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Mary Brucker

Explanation or reason for introduction of bill/resolution:

Relating to city lodging and restaurant tax and visitors' committee membership and references to tourist court accommodations.

Minutes:

No attachments

Chairman Headland: This is the companion bill for the city and puts it in a similar fashion with what we just passed for the county.

Representative Toman: Was this changing it from tourist court to other accommodations such as Air B&B or campgrounds to collect that tax?

Representative Steiner: Air B&Bs are already being collected. This was clean up language because the tourist court word is not used anymore. That was individual cabins or small one rooms so it's changing it to other accommodations.

Dee Wald, General Counsel for the Office of the State Tax Commissioner: This would not cover BRBO but the marketplace bill would cover that and online travel companies. Air B&B is collecting voluntarily.

Chairman Headland: It looks like they were also asking us to change language on page two.

Vice Chairman Grueneich: It's already in.

Chairman Headland: We should then be able to pass it as is.

Representative Ertelt: In section three, regarding the advisory committee, it's changing this committee from appointed members to the local destination marketing organization or visitors' committee. It's a step removed from those who are elected officials. It's also removing the limitation on compensation and duration of service. There's a four-year term and two-year limit for the Chairperson and Vice Chairperson. It appears it's making it wide open for whatever compensation the locals impose or there might not be a limit at all.

Representative Steiner: I wish we had more information on that. These committees don't always have five members and they've come up with their by-laws so there's a lot of difference between the different visitors' committees so we don't have a good grasp. I would be okay with taking some of this struck language off. I don't know why they would have to serve with compensation. We don't have enough information to make that call at this point. It's a change but they have all types of bylaws and they all operate differently.

Representative Ertelt: This section is in regards to cities. In determining the makeup on who serves on those committees it should probably be someone from the city if they're going to be acting on their behalf. On the bottom of page two line 30 I am suggesting to remove the strikethrough on lines 30-31 and overstrike the additional language. On page three line eight overstrike "consists" and replace that with "which may include five members of the local destination marketing organization provided they are residents of the city." Overstrike "or the visitors' committee" and retain the rest of that overstrike.

Chairman Headland: In the last bill we passed if the county commissioners impose this new tax then they are going to be the advisory committee to the local destination marketing organization. If it's good enough for the county, then why would we change it. That way the city would be the advisory committee. I think we could remove almost all the overstrike and leave it the way it is.

Representative Ertelt: I was proposing in "which may include five members" that deals with the number so it doesn't necessarily have to be five but could include five members of that organization.

Chairman Headland: The last bill speaks to the local destination marketing organization.

Representative Ertelt: That language would still be on line eight page three, the local destination marketing organization. On page three line eight strike through "consists", replace with "which may include five members" and strike through "or the visitors' committee", and replace with "provided they are residents of the city", and remove the overstrike from the remainder of lines nine through thirteen.

Representative Hatlestad: In testimony they were looking at one marketing group and they would merge the two. Will that create a complication that one or the other or the combination of the two would put together the marketing group?

Representative Ertelt: The language I'm proposing doesn't name the specific local destination marketing organization would be the one that is acting as the visitors' committee but rather that you would retain the visitors' committee language and that committee may include members of that local destination marketing organization.

Representative Mitskog: I can't support that. Our local visitor's bureau is appointed by city council and has members that are very involved in tourism in our communities. Residency is not a requirement.

Chairman Headland: Are you trying to still allow for the elected members of the city council to advise the local destination marketing organization?

Representative Ertelt: To appoint.

Chairman Headland: I don't think the counties appoint, I think they just advise. They already exist with bylaws. I'm not sure if that's hired staff or how they come to be a board member today.

Representative Ertelt: That's on page three line seven, "the committee shall consist of five members appointed by the governing body of the city."

Chairman Headland: So they are appointed strictly by the city today and that's what we're overstriking.

Representative Ertelt: They can appoint that local destination marketing organization's members as the visitors' committee with the provision that they are residents of the city.

Chairman Headland: If we're going to extend it out to the county do they have to be members of the city?

Representative Ertelt: I don't know how this applies to the counties because everything we have in this section is referring to the cities.

Chairman Headland: The county bill refers to this marketing organization. How is that committee going to be made up if they're not appointed? The counties don't have the authority to appoint anyone but they are serving in an advisory capacity. They want their marketing people running this board. If we have a county advisory committee then we should have a city advisory committee. I think there is confusion on what the amendment would do. Even with the amendment I don't think they would be advisory, they would be the people on the board.

Representative Ertelt: That's the reason for the word "may" in there but with the qualifications that they are residents of the city.

Chairman Headland: Do we want them residents of the city when this tax is extended out into the county?

Representative Mitskog: I don't think a city residency should be our issue. My issue is if we're collecting the tax I think some oversight by an elected body for appointment of this advisory board is really important. Some Convention and Visitors Bureaus are combined with their chambers. When you're collecting a tax there should be some involvement of a political subdivision, like a city. I'd like to see something in the language that ensures they can make the appointments to these boards or advisory groups.

Chairman Headland: Dee, do the CVBs already have the spending authority over the lodging and restaurant tax in the city? Have we already given them all of the tax from prior legislation or does it go to the county general fund?

Dee Wald: It goes to a visitor's promotion fund.

Chairman Headland: Who oversees the visitor's promotion fund, is it the city or the CVB?

Dee Wald: It can be both. The advisory committee can be a CVB or whatever their local development community is and they advise the city on how to spend their money. They are just an advisory committee to the city.

Chairman Headland: Wouldn't the language in the bill work then?

Dee Wald: The language works. It's a policy decision if you want a citizen of the city requirement or if you want to let the local governing board appoint those members again.

Chairman Headland: Do we know how you become a member of the CVB today?

Representative Mitskog: I'm finding out.

Representative B. Koppelman: With these two bills working in parallel does that mean the county can't spend that money for the benefit of the city that already has the city tax?

Chairman Headland: What the city passes the county one goes away because you can't have both.

Dee Wald: No.

Representative B. Koppelman: The county one is charged everywhere except if a city chooses to have their own.

Dee Wald: That's correct.

Representative B. Koppelman: It seems like the one that passed isn't going to serve the purpose we heard in the testimony because the people that were here were from the CVB that's in the city of Williston. They wish the people outside would participate. Can they get the money from the donut to benefit the donut hole?

Dee Wald: It doesn't address that. Right now Williston is promoting some attractions out in the county. I would assume county funds have to be spent for county promotion and tourism but it could be in conjunction with the city.

Chairman Headland: Would they be limited to spending what they raise in the county?

Representative Trottier: On page one line 10, the governing body of any city by ordinance may impose a city tax not to exceed two percent, so how does that work? On line 23 the governing body may impose a city tax not to exceed one percent. How does that work?

Representative B. Koppelman: That's the city restaurant tax.

Dee Wald: Restaurant and lodging.

Chairman Headland: If a county imposes a tax doesn't county tax not apply to the resident within a city?

Dee Wald: When we specifically drafted this language we made it so if a county tax is imposed it will apply to everyone in the county until at which time the city imposes the tax then that county tax goes away according to the bill. The city tax is levied in the city and the county tax is levied in the rest of the establishments in the county.

Chairman Headland: We don't do that with any other type of sales tax do we? If the county has a ½ cent sales tax applied do, we only apply that outside of city limits?

Dee Wald: That applies everywhere.

Chairman Headland: Why would we treat this tax differently?

Dee Wald: It would be at a 6% potential tax to the hotel. There might be some jurisdictional issues if the city already has a tax.

Representative B. Koppelman: I think you're looking for an amendment that says if you have a county tax then all the cities in the county stop taxing.

Chairman Headland: I'm just looking for this to make sense. It looks to me that the city is just going to take the county money. I don't know that they understand their limitations are going to not allow them to use it inside city limits. That wasn't part of any discussion we had during the hearing.

Representative Mitskog: (inaudible as the microphone was not on)

Dee Wald: I don't know.

Representative Mitskog: Job Development Authority is levied by the county then city economic development groups administer those funds.

Linda Leadbetter, State Supervisor of Assessments with the Office of the State Tax Commissioner: The JDA is going to be a county-wide levy and they will have the JDA committee which is supposed to be made up of a certain area. They will have to have so many representatives from the cities and townships. The majority of those funds are going to be spent on city projects. It is going to be a county-wide levy that will be supporting that project.

Chairman Headland: We heard here that any money collected in the county cannot be spent for city promotion.

Linda Leadbetter: Here you're talking about a levy that's being applied for that service so they are being collected outside the city limits; it's not a standard overall mill levy. This is different where it's a fee. JDA is a county-wide mill levy that is applied to all property in the county and is distributed based on the decisions of that job development authority board.

Chairman Headland: In this case the money collected both within and outside the city limits is going to the same pot?

Linda Leadbetter: For the JDA it goes to the JDA levy at the county. These would be collected independently. The tax department would have a contract in how they are supporting those collections then they would get distributed that way. They are to the outside city limits.

Dee Wald: There are two funds; a county fund and a city fund.

Linda Leadbetter: It's similar to a sales tax.

Representative Mitskog: If this tax is collected by a county for tourism could the county give that money to the CVB to use for promotional purposes?

Linda Leadbetter: That would be in the powers of the board. I suspect they would have that authority to make those decisions.

Representative B. Koppelman: If they were to give that money from the county fund to the CVB I think they would have to give that money with the condition that it would be spent in that county, not more money spent in the city. We have to take into account how the county commissioners are elected as well.

Chairman Headland: We have Darcie Huwe, Finance Director with the City of Wahpeton, on the phone. How do CVB board members get appointed today?

Darcie Huwe: The century code specifies. They are appointed by the governing body so in our case that would be the city council. We've changed the committee composition to make sure we have representation from lodging and restaurants.

Chairman Headland: Are you familiar with SB 2192 that is going to extend this lodging and restaurant tax out into the county?

Darcie Huwe: I'm not.

Dee Wald: In SB 2192 on page two beginning on line 19 it allows them to contract with another entity. They can set up the advisory committee but they may be working or contracting with the city.

Representative B. Koppelman: On line 24 is the part that says they have to use it on the county.

Representative Mitskog: In Wahpeton they take a more regional approach for promotional purposes. They will do things to help all the businesses.

Representative B. Koppelman: It doesn't sound like that's true everywhere.

Representative Mitskog: Smaller communities benefit from the generalized promotions that attract people to Wahpeton or the surrounding area. Advertising campaigns are expensive. Why shouldn't that hotel that is right outside city limits tax their guests?

Chairman Headland: In your case with the local CVB, those people are appointed by the city officials. Who are they appointing?

Representative Mitskog: I believe it's been people that have a vested interest in tourism, hospitality or restaurants. You also have representation from the Chamber of Commerce as well as some city council members that sit on that CVB board. They've spent money on signage, advertising campaigns and events. The goal is to try and get more people to our area.

Chairman Headland: The goal of the county bill is to advise the existing CVB. How does the city council appoint someone from outside?

Representative Mitskog: In our CVB city residency is not a criterion. The common goal is promoting.

Chairman Headland: With the overstruck language of the five members do you think it's intentional to allow for an appointment of somebody who is an interested party outside the city limits in the county?

Representative Fisher: Read part of the testimony from the hearing on March 4, 2019 from Terri Thiel. She suggested striking the number of board members.

Representative Steiner: I tried to get a hold of Ms. Thiel. I am concerned that we are striking appointed by the governing body of the city. We're talking about tax dollars and without finding it anywhere else in between the two bills I don't know how they refurbish their councils. They all have different board member numbers but they all have at least five members. I don't see how they're going to get new board members if we strike "appointed by the governing body of the city." I like the idea of the city doing that. I don't like the idea of that board hand picking people to serve on their board and getting compensation with tax dollars and not having any oversight of the city.

Representative Mitskog: When you're dealing with taxpayer money there has to be some oversight. It's a simple appointment. The board in Wahpeton brings forth their recommended members for appointment and the city council makes the final decision.

Chairman Headland: Do we need that available in the counties as well then? We're just going to allow them to contract with the board that the city appoints because that's the way the bill reads.

Representative Hatlestad: As long as the county has set up a contract with the city group couldn't they specify the issues we're concerned about; representation, oversight, etc.?

Chairman Headland: I imagine you can put whatever you want in the contract.

Representative Mitskog: Can we ask the bill sponsors about this?

Chairman Headland: Yes, I think we need to talk to the bill sponsor to see what he had in mind.

2019 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

SB 2193
3/13/2019
33643

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Mary Brucker

Explanation or reason for introduction of bill/resolution:

Relating to city lodging and restaurant tax and visitors' committee membership and references to tourist court accommodations.

Minutes:

No attachments

Chairman Headland: I've had discussions with CVB members and Senator Wardner. It sounds like there are cities in the state that are doing things differently and some are not following the statute. I think this will make it clear. Those that aren't following the statute today can continue to do it the way they want. The oversight is there with the elected officials and the taxation. We were given an example where a city council withheld some funding and didn't give them all the tax so they do have control over the tax dollars. I think the oversight is covered. I want your thoughts.

Representative B. Koppelman: I have a hard time passing laws where it's okay if people break the law.

Chairman Headland: It sounded like city administrators were sitting on the CVBs so you know how it got there. It is kind of concerning that they do what they want to do. What are your wishes?

Representative Dockter: MADE A MOTION FOR A DO PASS

Representative Steiner: SECONDED

Chairman Headland: Discussion?

ROLL CALL VOTE: 10 YES 3 NO 1 ABSENT

MOTION CARRIED

Representative Trottier will carry this bill.

Date: 3-13-19
Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2193**

House Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Dockter Seconded By Rep. Steiner

Representatives	Yes	No	Representatives	Yes	No
Chairman Headland	X		Representative Eidson	X	
Vice Chairman Grueneich	X		Representative Mitskog	X	
Representative Blum	X				
Representative Dockter	X				
Representative Ertelt		X			
Representative Fisher	X				
Representative Hatlestad	X				
Representative Kading	A				
Representative Koppelman		X			
Representative Steiner	X				
Representative Toman		X			
Representative Trottier	X				

Total (Yes) 10 No 3

Absent 1

Floor Assignment Rep. Trottier

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

REPORT OF STANDING COMMITTEE

SB 2193, as engrossed: Finance and Taxation Committee (Rep. Headland, Chairman)
recommends **DO PASS** (10 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING).
Engrossed SB 2193 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

SB 2193

January 16, 2019

SB 2193

Senate Finance and Taxation

Chairman Cook and members of the Senate Finance and Taxation Committee:

I am Amy Krueger, Executive Director of the Williston Convention and Visitor Bureau.

The proposed clean up language would bring the existing bill to reflect what is happening within the industry and have the same language as SB 2192, as they should mirror each other.

I would ask you to support SB 2193.

Sincerely,



Amy Krueger

Executive Director



1/16
SB 2193
2 pg. 1

January 16, 2019

Senate Finance & Taxation

Chairman Cook and Members of the Senate Finance and Taxation Committee:

I am Suzie Kenner, the Executive Director of the Devils Lake Convention and Visitors Bureau and am also currently the President of the Destination Marketing Association of North Dakota.

Senate Bill 2193 proposes clean up language that would bring the existing bill to have the same language as SB2192. We ask for your consideration on making these updates to bring an outdated bill up to par for today's modernization. Visitor Committees have their own set of by laws that they follow and this would allow Visitor Committees to have a committee structure that best fit the needs of their cities.

I ask that you support SB2193.

Respectfully,

A handwritten signature in cursive script that reads "Suzie Kenner".

Suzie Kenner
Executive Director



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SB 2193
#3 pg.1

January 16, 2019

To: Senate Finance and Taxation Committee
Testimony of: Doug Bolken, McKenzie County Tourism
Re: Senate Bill 2193

Dear Chairman Cook and Members of the Senate Finance and Taxation Committee:

My name is Doug Bolken; I am the Tourism Director for McKenzie County Tourism.

Senate Bill 2193 primary purpose is to clean up the language in ND Century Code, sections 40-57.3-01, 40-57.3-01.1 and 40-57.3-02.

Thank you for your support of the changes noted SB 2193.

Sincerely,

Doug Bolken
Tourism Director



1/16
SB 2193
#4 pg. 1

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DICKINSON, NORTH DAKOTA 58601
701.483.4988 | 800.279.7391
F: 701.483.9261
E: INFO@VISITDICKINSON.COM

www.visitdickinson.com

January 16, 2019

To: Senate Finance and Taxation Committee
Testimony of: Terri Thiel, Dickinson Convention & Visitors Bureau
Re: Senate Bill 2193

Dear Chairman Cook and Members of the Senate Finance and Taxation Committee:

My name is Terri Thiel, I am the Executive Director of the Dickinson Convention & Visitors Bureau.

Senate Bill 2193 is intended to clean up old language in ND Century Code, sections 40-57.3-01, 40-57.3-01.1 and 40-57.3-02, which is the 2% lodging tax, 1% city and restaurant tax, and visitors committee Establishment.

The city 2% lodging tax first became law in 1981 with the passage of SB 2314, and in 1987, amendments were made to include the addition of a 1% tax on the gross receipts of lodging, food and beverage. Because of the early organizational and implementation of these taxes, words such as tourist court, a common description from the 1930's to the 1960's was used. And tourist courts were typically an individual cabin, or a series of very small one-room buildings. I would like to replace tourist court, an outdated term, with and other accommodations.

And because of today's changes in Visitors committee organization, see Visitors' committee – page 3, I would like to strike the verbiage on the organizing structure, except shall appoint the committee members. While guidelines are very important to the structure of an appointed visitors committee, the number of members, and their terms is very outdated. Today, visitor committees have their own By-laws which outline their own number of Board members and their terms.

~~I would like to see the addition of The visitors committee must be registered with the secretary of state. This ensures that the committee is fiscally organized, and reportable to the state.~~

Please support the changes to SB 2193.

Sincerely,

A handwritten signature in blue ink, appearing to read "Terri Thiel", written over a horizontal line.

Terri Thiel
Executive Director

Explore
the WESTERN EDGE

PROPOSED AMENDMENTS TO SENATE BILL NO. 2193

Page 1, line 1, remove "and"

Page 1, line 1, after "40-57.3-02" insert ", subsections 21, 22, and 23 of section 57-39.2-01, subdivision e of subsection 1 of section 57-39.2-02.1, and subsection 22 of section 57-39.2-04"

Page 1, line 3, after "membership" insert "and the definition of hotel, motel, or tourist accommodation"

Page 3, after line 10, insert:

"SECTION 4. AMENDMENT. Subsections 21, 22, and 23 of section 57-39.2-01 of the North Dakota Century Code are amended and reenacted as follows:

21. "Retail sale or "sale at retail" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrental. "Retail sale" or "sale at retail" includes the sale, including the leasing or renting, to a consumer or to any person for any purpose, other than for processing or for resale of tangible personal property; the sale of steam, gas, and communication service, excluding internet access service, to retail consumers or users; the sale of vulcanizing, recapping, and retreading services for tires; the ordering, selecting, or aiding a customer to select any goods, wares, or merchandise from any price list or catalog, which the customer might order, or be ordered for such customer to be shipped directly to such customer; the sale or furnishing of hotel, motel, or ~~tourist court~~ other accommodations, tickets, or admissions to any place of amusement, athletic event, or place of entertainment; and the sales of magazines and other periodicals. By the term "processing" is meant any tangible personal property, including containers which it is intended, by means of fabrication, compounding, manufacturing, producing, or germination shall become an integral or an ingredient or component part of other tangible personal property intended to be sold ultimately at retail. The sale of an item of tangible personal property for the purpose of incorporating it in or attaching it to real property must be considered as a sale of tangible personal property for a purpose other than for processing; the delivery of possession within the state of North Dakota of tangible personal property by a wholesaler or distributor to an out-of-state retailer who does not hold a North Dakota retail sales tax permit or to a person who by contract incorporates such tangible personal property into, or attaches it to, real property situated in another state may not be considered a taxable sale if such delivery of possession would not be treated as a taxable sale in that state. As used in the subsection, the word "consumer" includes any hospital, infirmary, sanatorium, nursing home, home for the aged, or similar institution that furnishes services to any patient or occupant. The sale of an item of tangible personal property to a person under a finance leasing agreement over the term of which the property will be substantially consumed must be considered a retail sale if the purchaser elects to treat it as such by paying or causing the transferor to pay the sales tax

thereon to the commissioner on or before the last day on which payments may be made without penalty as provided in section 57-39.2-12.

22. "Retailer" or "seller" includes every person engaged in the business of leasing or renting hotel, motel, or ~~tourist court~~ other accommodations, and every person engaged in the business of selling tangible goods, wares, or merchandise at retail, or furnishing of steam, gas, and communication services, excluding internet access service, or tickets or admissions to places of amusement, entertainment, and athletic events, or magazines or other periodicals; and includes any person as herein defined who by contract or otherwise agrees to furnish for a consideration a totally or partially finished product consisting in whole or in part of tangible personal property subject to the sales tax herein provided, and all items of tangible personal property entering into the performance of such contract as a component part of the product agreed to be furnished under said contract shall be subject to the sales tax herein provided and the sales tax thereon shall be collected by the contractor from the person for whom the contract has been performed in addition to the contract price agreed upon, and shall be remitted to the state in the manner provided in this chapter; and shall include the state or any municipality furnishing steam, gas, or communication service to members of the public in its proprietary capacity. For the purpose of this chapter, retailer shall also include every clerk, auctioneer, agent, or factor selling tangible personal property owned by any other retailer. A retailer also includes every person who engages in regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising fliers, or other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone, computer database, cable, optic, microwave, or other communication system.
23. "Sale" means any transfer of title or possession, exchange or barter, conditional or otherwise, in any manner or by any means whatever, for a consideration, and includes the furnishing or service of steam, gas, or communication, excluding internet access service, the furnishing of hotel, motel, or ~~tourist court~~ other accommodations, the furnishing of tickets or admissions to any place of amusement, athletic event, or place of entertainment, and sales of magazines and other periodicals. Provided, the words "magazines and other periodicals" as used in this subsection do not include newspapers nor magazines or periodicals that are furnished free by a nonprofit corporation or organization to its members or because of payment by its members of membership fees or dues.

SECTION 5. AMENDMENT. Subdivision 3 of subsections 1 of section 57-39.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

- e. The leasing or renting of a hotel or motel room or ~~tourist court~~ other accommodations.

SECTION 6. AMENDMENT. Subsection 22 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

22. Gross receipts from the leasing or renting of manufactured homes, modular living units, or sectional homes, whether or not placed on a permanent foundation, for residential housing for periods of thirty or more consecutive days and the gross receipts from the leasing or renting of a hotel or motel room or ~~tourist court~~ other

1/6 SB 2193 #5

accommodations occupied by the same person or persons for residential housing for periods of thirty or more consecutive days."

Renumber accordingly

Sixty-sixth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2193

Introduced by

Senators Wardner, Bekkedahl, Meyer

Representatives Lefor, Schreiber-Beck, Zubke

1 A BILL for an Act to amend and reenact sections 40-57.3-01, 40-57.3-01.1, and 40-57.3-02,
2 subsections 21, 22, and 23 of section 57-39.2-01, subdivision e of subsection 1 of section
3 57-39.2-02.1, and subsection 22 of section 57-39.2-04 of the North Dakota Century Code,
4 relating to city lodging and restaurant tax and visitors' committee membership and references to
5 tourist court accommodations.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1. AMENDMENT.** Section 40-57.3-01 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **40-57.3-01. City lodging tax - Imposition - Amount - Disposition.**

10 The governing body of any city ~~may~~, by ordinance, may impose a city tax, not to exceed two
11 percent, upon the gross receipts of retailers on the leasing or renting of hotel, motel, or ~~tourist~~
12 ~~court~~ other accommodations within the city for periods of ~~less~~ fewer than thirty consecutive
13 calendar days or one month. The tax imposed by this section ~~shall~~ must be in addition to the
14 state sales tax on rental accommodations provided in chapter 57-39.2 and any city ~~which~~ that
15 imposes the tax upon gross receipts described in this section shall deposit all proceeds in the
16 city visitors' promotion fund. Moneys deposited in the city visitors' promotion fund ~~shall~~ must be
17 spent only as provided in this chapter. This chapter applies to all cities and does not limit the
18 authority of a home rule city to levy any taxes authorized by other provisions of law.

19 **SECTION 2. AMENDMENT.** Section 40-57.3-01.1 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **40-57.3-01.1. City lodging and restaurant tax - Imposition - Amount - Disposition -**
22 **Referral.**

23 In addition to the tax under section 40-57.3-01, the governing body of any city ~~may~~, by
24 ordinance, may impose a city tax, at a rate not to exceed one percent, upon the gross receipts

1 of retailers on the leasing or renting of hotel, motel, or ~~tourist court~~ other accommodations within
2 the city for periods of ~~less~~ fewer than thirty consecutive calendar days or one month and upon
3 the gross receipts of a restaurant from any sales of prepared food or beverages, not including
4 alcoholic beverages for consumption off the premises where purchased, which are subject to
5 state sales taxes. For purposes of this section, "restaurant" means any place where food is
6 prepared and intended for individual portion service for consumption on or off the premises and
7 "prepared" includes heating prepackaged food. Accommodations, food, and beverages may all,
8 each, or in any combination be ~~subjected~~ subject to the tax under this section, if all items in any
9 category which are taxable under state law are taxable, except as otherwise provided in this
10 section. The tax imposed under this section is in addition to state sales taxes on rental
11 accommodations and restaurant sales and any city ~~which~~ that imposes the tax under this section
12 shall deposit all proceeds in the city visitors' promotion capital construction fund. Moneys
13 deposited in the city visitors' promotion capital construction fund ~~shall~~ must be spent only as
14 provided in this chapter. An ordinance adopted under this section may not become effective
15 sooner than sixty days after it is adopted by the governing body of the city. The provisions of
16 chapter 40-12 with regard to referral of ordinances apply to an ordinance adopted under this
17 section except that a petition to refer an ordinance adopted under this section must be
18 presented to the governing body of the municipality before four p.m. on the sixty-fourth day after
19 the ordinance described in the petition was adopted by the governing body of the municipality.
20 Revenues from a tax imposed under this section may not be pledged under section 40-57.3-03
21 to payment of bonds or evidences of indebtedness until after the time has passed for filing a
22 referral petition against an ordinance under this section or, if a referral petition is filed, until after
23 the referral petition has been submitted to the vote of the electors of the municipality.

24 **SECTION 3. AMENDMENT.** Section 40-57.3-02 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **40-57.3-02. City visitors' promotion fund - City visitors' promotion capital**
27 **construction fund - Visitors' committee - Establishment - Purpose.**

28 The governing body of any city ~~which~~ that imposes a city tax pursuant to section 40-57.3-01,
29 40-57.3-01.1, or 40-57.3-01.2 ~~shall~~, as appropriate, shall establish a city visitors' promotion
30 fund, and a city visitors' promotion capital construction fund, ~~and a visitors' committee. The~~
31 ~~visitors' committee. The local destination marketing organization or visitors' committee~~ shall

1 serve as an advisory committee to the city governing body in administering the proceeds from
2 the taxes available to the city under this chapter. The moneys in the visitors' promotion fund
3 must be used generally to promote, encourage, and attract visitors to come to the city and use
4 the travel and tourism facilities within the city. The moneys in the visitors' promotion capital
5 construction fund must be used generally for tourism or the purchase, equipping, improving,
6 construction, maintenance, repair, and acquisition of buildings or property consistent with visitor
7 attraction or promotion. The advisory committee shall consist of five members appointed by the
8 governing body of the city shall appoint the committee members consists of the local destination
9 marketing organization or the visitors' committee. These appointees shall serve without
10 compensation, except for reimbursement for necessary expenses. Committee members shall
11 serve for a term of four years, except that two of those initially appointed must be appointed for
12 an initial term of two years. Vacancies must be filled in the same manner as the initial
13 appointment. The committee shall elect a chairperson and vice chairperson from among its
14 members to serve for a term of two years.

15 **SECTION 4. AMENDMENT.** Subsections 21, 22, and 23 of section 57-39.2-01 of the North
16 Dakota Century Code are amended and reenacted as follows:

17 21. "Retail sale" or "sale at retail" means any sale, lease, or rental for any purpose other
18 than for resale, sublease, or subrental. "Retail sale" or "sale at retail" includes the sale,
19 including the leasing or renting, to a consumer or to any person for any purpose, other
20 than for processing or for resale, of tangible personal property; the sale of steam, gas,
21 and communication service, excluding internet access service, to retail consumers or
22 users; the sale of vulcanizing, recapping, and retreading services for tires; the
23 ordering, selecting, or aiding a customer to select any goods, wares, or merchandise
24 from any price list or catalog, which the customer might order, or be ordered for such
25 customer to be shipped directly to such customer; the sale or furnishing of hotel,
26 motel, or ~~tourist court~~ other accommodations, tickets, or admissions to any place of
27 amusement, athletic event, or place of entertainment; and the sales of magazines and
28 other periodicals. By the term "processing" is meant any tangible personal property,
29 including containers which it is intended, by means of fabrication, compounding,
30 manufacturing, producing, or germination shall become an integral or an ingredient or
31 component part of other tangible personal property intended to be sold ultimately at

1 retail. The sale of an item of tangible personal property for the purpose of
2 incorporating it in or attaching it to real property must be considered as a sale of
3 tangible personal property for a purpose other than for processing; the delivery of
4 possession within the state of North Dakota of tangible personal property by a
5 wholesaler or distributor to an out-of-state retailer who does not hold a North Dakota
6 retail sales tax permit or to a person who by contract incorporates such tangible
7 personal property into, or attaches it to, real property situated in another state may not
8 be considered a taxable sale if such delivery of possession would not be treated as a
9 taxable sale in that state. As used in this subsection, the word "consumer" includes
10 any hospital, infirmary, sanatorium, nursing home, home for the aged, or similar
11 institution that furnishes services to any patient or occupant. The sale of an item of
12 tangible personal property to a person under a finance leasing agreement over the
13 term of which the property will be substantially consumed must be considered a retail
14 sale if the purchaser elects to treat it as such by paying or causing the transferor to
15 pay the sales tax thereon to the commissioner on or before the last day on which
16 payments may be made without penalty as provided in section 57-39.2-12.

- 17 22. "Retailer" or "seller" includes every person engaged in the business of leasing or
18 renting hotel, motel, or ~~tourist court~~ other accommodations, and every person engaged
19 in the business of selling tangible goods, wares, or merchandise at retail, or furnishing
20 of steam, gas, and communication services, excluding internet access service, or
21 tickets or admissions to places of amusement, entertainment, and athletic events, or
22 magazines or other periodicals; and includes any person as herein defined who by
23 contract or otherwise agrees to furnish for a consideration a totally or partially finished
24 product consisting in whole or in part of tangible personal property subject to the sales
25 tax herein provided, and all items of tangible personal property entering into the
26 performance of such contract as a component part of the product agreed to be
27 furnished under said contract shall be subject to the sales tax herein provided and the
28 sales tax thereon shall be collected by the contractor from the person for whom the
29 contract has been performed in addition to the contract price agreed upon, and shall
30 be remitted to the state in the manner provided in this chapter; and shall include the
31 state or any municipality furnishing steam, gas, or communication service to members

1 of the public in its proprietary capacity. For the purpose of this chapter, retailer shall
2 also include every clerk, auctioneer, agent, or factor selling tangible personal property
3 owned by any other retailer. A retailer also includes every person who engages in
4 regular or systematic solicitation of a consumer market in this state by the distribution
5 of catalogs, periodicals, advertising fliers, or other advertising, or by means of print,
6 radio or television media, by mail, telegraphy, telephone, computer database, cable,
7 optic, microwave, or other communication system.

- 8 23. "Sale" means any transfer of title or possession, exchange or barter, conditional or
9 otherwise, in any manner or by any means whatever, for a consideration, and includes
10 the furnishing or service of steam, gas, or communication, excluding internet access
11 service, the furnishing of hotel, motel, or ~~tourist court~~other accommodations, the
12 furnishing of tickets or admissions to any place of amusement, athletic event, or place
13 of entertainment, and sales of magazines and other periodicals. Provided, the words
14 "magazines and other periodicals" as used in this subsection do not include
15 newspapers nor magazines or periodicals that are furnished free by a nonprofit
16 corporation or organization to its members or because of payment by its members of
17 membership fees or dues.

18 **SECTION 5. AMENDMENT.** Subdivision e of subsection 1 of section 57-39.2-02.1 of the
19 North Dakota Century Code is amended and reenacted as follows:

- 20 e. The leasing or renting of a hotel or motel room or ~~tourist court~~other
21 accommodations.

22 **SECTION 6. AMENDMENT.** Subsection 22 of section 57-39.2-04 of the North Dakota
23 Century Code is amended and reenacted as follows:

- 24 22. Gross receipts from the leasing or renting of manufactured homes, modular living
25 units, or sectional homes, whether or not placed on a permanent foundation, for
26 residential housing for periods of thirty or more consecutive days and the gross
27 receipts from the leasing or renting of a hotel or motel room or ~~tourist court~~other
28 accommodations occupied by the same person or persons for residential housing for
29 periods of thirty or more consecutive days.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2193

Page 1, line 1, after "40-57.3-02" insert ", subsections 21, 22, and 23 of section 57-39.2-01, subdivision e of subsection 1 of section 57-39.2-02.1, and subsection 22 of section 57-39.2-04"

Page 1, line 3, after "membership" insert "and references to tourist court accommodations"

Page 2, line 28, overstrike the first comma and insert immediately thereafter "and"

Page 2, line 28, overstrike ", and a visitors' committee. The visitors'"

Page 2, line 29, overstrike the first "committee" and insert immediately thereafter ". The local destination marketing organization or visitors' committee"

Page 3, line 4, after "The" insert "advisory"

Page 3, line 4, remove the overstrike over "committee"

Page 3, line 5, overstrike "governing body of the city"

Page 3, line 5, replace "shall appoint the committee members" with "consists of the local destination marketing organization or the visitors' committee"

Page 3, after line 10, insert:

"SECTION 4. AMENDMENT. Subsections 21, 22, and 23 of section 57-39.2-01 of the North Dakota Century Code are amended and reenacted as follows:

21. "Retail sale" or "sale at retail" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrental. "Retail sale" or "sale at retail" includes the sale, including the leasing or renting, to a consumer or to any person for any purpose, other than for processing or for resale, of tangible personal property; the sale of steam, gas, and communication service, excluding internet access service, to retail consumers or users; the sale of vulcanizing, recapping, and retreading services for tires; the ordering, selecting, or aiding a customer to select any goods, wares, or merchandise from any price list or catalog, which the customer might order, or be ordered for such customer to be shipped directly to such customer; the sale or furnishing of hotel, motel, or ~~tourist court~~ other accommodations, tickets, or admissions to any place of amusement, athletic event, or place of entertainment; and the sales of magazines and other periodicals. By the term "processing" is meant any tangible personal property, including containers which it is intended, by means of fabrication, compounding, manufacturing, producing, or germination shall become an integral or an ingredient or component part of other tangible personal property intended to be sold ultimately at retail. The sale of an item of tangible personal property for the purpose of incorporating it in or attaching it to real property must be considered as a sale of tangible personal property for a purpose other than for processing; the delivery of possession within the state of North Dakota of tangible personal property by a wholesaler or distributor to an out-of-state retailer who does not hold a North Dakota retail sales tax permit or to a person who by contract

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#2 pg. 2

incorporates such tangible personal property into, or attaches it to, real property situated in another state may not be considered a taxable sale if such delivery of possession would not be treated as a taxable sale in that state. As used in this subsection, the word "consumer" includes any hospital, infirmary, sanatorium, nursing home, home for the aged, or similar institution that furnishes services to any patient or occupant. The sale of an item of tangible personal property to a person under a finance leasing agreement over the term of which the property will be substantially consumed must be considered a retail sale if the purchaser elects to treat it as such by paying or causing the transferor to pay the sales tax thereon to the commissioner on or before the last day on which payments may be made without penalty as provided in section 57-39.2-12.

22. "Retailer" or "seller" includes every person engaged in the business of leasing or renting hotel, motel, or ~~tourist court~~ other accommodations, and every person engaged in the business of selling tangible goods, wares, or merchandise at retail, or furnishing of steam, gas, and communication services, excluding internet access service, or tickets or admissions to places of amusement, entertainment, and athletic events, or magazines or other periodicals; and includes any person as herein defined who by contract or otherwise agrees to furnish for a consideration a totally or partially finished product consisting in whole or in part of tangible personal property subject to the sales tax herein provided, and all items of tangible personal property entering into the performance of such contract as a component part of the product agreed to be furnished under said contract shall be subject to the sales tax herein provided and the sales tax thereon shall be collected by the contractor from the person for whom the contract has been performed in addition to the contract price agreed upon, and shall be remitted to the state in the manner provided in this chapter; and shall include the state or any municipality furnishing steam, gas, or communication service to members of the public in its proprietary capacity. For the purpose of this chapter, retailer shall also include every clerk, auctioneer, agent, or factor selling tangible personal property owned by any other retailer. A retailer also includes every person who engages in regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising fliers, or other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone, computer database, cable, optic, microwave, or other communication system.
23. "Sale" means any transfer of title or possession, exchange or barter, conditional or otherwise, in any manner or by any means whatever, for a consideration, and includes the furnishing or service of steam, gas, or communication, excluding internet access service, the furnishing of hotel, motel, or ~~tourist court~~ other accommodations, the furnishing of tickets or admissions to any place of amusement, athletic event, or place of entertainment, and sales of magazines and other periodicals. Provided, the words "magazines and other periodicals" as used in this subsection do not include newspapers nor magazines or periodicals that are furnished free by a nonprofit corporation or organization to its members or because of payment by its members of membership fees or dues.

SECTION 5. AMENDMENT. Subdivision e of subsection 1 of section 57-39.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

- e. The leasing or renting of a hotel or motel room or ~~tourist court~~ other accommodations.

SECTION 6. AMENDMENT. Subsection 22 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

- 22. Gross receipts from the leasing or renting of manufactured homes, modular living units, or sectional homes, whether or not placed on a permanent foundation, for residential housing for periods of thirty or more consecutive days and the gross receipts from the leasing or renting of a hotel or motel room or ~~tourist court~~ other accommodations occupied by the same person or persons for residential housing for periods of thirty or more consecutive days."

Renumber accordingly



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#1
SB 2193
3-4-19

March 4, 2019

To: House Finance and Taxation Committee
Testimony of: Terri Thiel, Dickinson Convention & Visitors Bureau
Re: Senate Bill 2193

Dear Chairman Headland, and Members of the House Finance and Taxation Committee:

My name is Terri Thiel, I am the Executive Director of the Dickinson Convention & Visitors Bureau.

Senate Bill 2193 is intended to clean up old language in ND Century Code, sections 40-57.3-01, 40-57.3-01.1 and 40-57.3-02, which is the 2% lodging tax, 1% city and restaurant tax, and Visitors Committee Establishment.

The city 2% lodging tax first became law in 1981 with the passage of SB 2314, and in 1987, amendments were made to include the addition of a 1% tax on the gross receipts of lodging, food and beverage. Because of the early organizational and implementation of these taxes, words such as tourist court, a common description from the 1930's to the 1960's was used. And tourist courts were typically an individual cabin, or a series of very small one-room buildings. I would suggest replacing tourist court, an outdated term, with and other accommodations.

On page 2 of SB 2193, bottom of the page inserting the **local destination marketing organization** or visitors' committee reflecting updates of the terminology used in our industry.

Page 3 – Because of current structure and By-laws in local destination marketing organizations, or visitors' committee Board organization, I would suggest striking the number of Board members and their terms. Today, DMO's and visitor committees have By-laws which outline their own number of Board members and their terms, many of which have more than the current five members that are listed in current ND Century Code.

Please support the changes to SB 2193.

Sincerely,

A handwritten signature in blue ink, appearing to read "Terri Thiel", written over a light blue circular background.

Terri Thiel
Executive Director

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