

2009 HOUSE FINANCE AND TAXATION

HB 1084

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1084

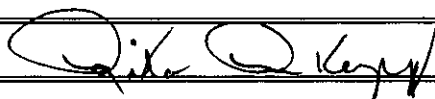
House Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: January 12, 2009

Recorder Job Number: 6836

Committee Clerk Signature



Minutes:

**Chairman Belter:** We will open the hearing on 1084. Even though we are ahead of schedule, if people come back in, we can reopen a bill.

**Dan Rouse, Legal Counsel for Tax Commissioner's Office: (See Testimony #1 attached.)**

**Chairman Belter:** How many positions fall under this category?

**Dan Rouse:** Mr. Chairman, we have six vacancies. We believe that three of those would be likely candidates for this. We are talking about auditor positions, legal counsel type positions. You would have to be at a certain level or above where there was direct access to banking account information, social security information, financial records, etc. so it's not every position. It is intended for those who have direct access to these types of information.

**Chairman Belter:** How many in total? Are you going to have to go back and get background checks on existing employees that are in these sensitive positions?

**Dan Rouse:** Mr. Chairman, let me take your second question first. No, it is essentially grandfathered—this is only for prospective applications. We want to make that perfectly clear.

None of present Tax Department employees would undergo this investigation and background check. This would be only for new hires. As for how many, at present we have 133 available

positions in the Tax Dept. I am looking at Glenda Anderson, our comptroller and financial officer. As for how many of those 133 positions, in theory, if this were to be applied retroactively, I am guessing it would be between one third and one half—more so the half. But again, this is only going to be applied prospectively.

**Representative Weiler:** Does it cost money to do these background checks; and if it does, where would that money come from? Secondly, did you say that there are currently 133 available positions in the Tax Dept.?

**Daniel Rouse:** If I said so, I was mistaken. Currently there are 133 employees in the Tax Dept. As far as Representative Weiler's first question, it costs \$47.25 per background check and it would come out of the Tax Dept.'s operating budget. We anticipate possibly three requests per year.

**Representative Wrangham:** I am not sure I followed when you said, "previous actions indicate" in your testimony. It seems to me there will be no discretion whether or not these background checks will be done. Second, do you currently ask on an employment application if the applicant has any criminal history?

**Daniel Rouse:** The State Auditor, in making significant audit findings, in his narrative, said it is difficult for the Tax Dept., as well as any other state agency, to determine if a finalist has a criminal background history in the areas of identity fraud, theft, embezzlement or fraud without the benefit of the criminal background check and the protocols that the State Auditor's office looks at—the book on the shelf that they pull out to make these specific recommendations indicates that the background check, particularly for those employees that have access to that sensitive information, would give light to prior actions of employment or some other situations the person may have been involved in. If I understand your question correctly, certainly we would have no knowledge of any prior actions, it wouldn't apply to present employees, there

would be no prior actions coming from the State Tax Dept. This would be to look outside.

What have they done in their past? Is there anything indicative of these profiles that the statewide and national background checks would look for? If there is any information that falls into this box, we would need to work with them to decide whether or not this is a qualified candidate so the prior actions would be prior criminal history elsewhere—anywhere else in the world or the nation. Does that answer your question?

**Representative Wrangham:** Yes it does. The second one was do you currently ask on the application about criminal history?

**Daniel Rouse:** Yes, I am being told by General Counsel that we do.

**Representative Schmidt:** You said that there were no other departments but the Tax Dept. that don't allow background checks?

**Daniel Rouse:** There is a large list of state agencies that do conduct criminal background checks. If you take a peek at section 12-60-24, you can see that it goes into aa, bb, cc so there are more than 27 agencies in the state that already have that authority. This bill would simply add the Tax Dept. to that list for those specified reasons.

**Representative Schmidt:** Why do you think they wouldn't allow background checks for tax employees?

**Daniel Rouse:** As a matter of history in the state, it required legislative approval and that is what we're asking for is this body's approval for us to conduct those criminal checks for those specified positions.

**Representative Schmidt:** I would just comment that we are hiring people all these years without background checks until now?

**Daniel Rouse:** Yes sir.

**Representative Schmidt:** Okay, let's do it.

**Representative Headland:** This would preclude you from doing a background check on anybody who is currently on staff?

**Daniel Rouse:** That is correct. This is applied prospectively.

**Representative Headland:** If for whatever reason, a red flag went up on somebody, how do you go about doing a background check if you want to check into their background currently?

**Daniel Rouse:** I assume you are referring to a present employee? The progressive discipline policy that the state has would apply. There would be an internal investigation, perhaps even an investigation by BCI, depending on the nature of the activity and how widespread it was. After that investigation, if any, was conducted, that information would come back to the supervisor, the division director and the commissioner and they would make a decision as to whether or not further investigation was necessary or whether they had enough information to take disciplinary action, which could be anything from an oral reprimand up to and including termination, again depending on the nature of the offense. In addition, the Gentex System, our new accounting system, gives us much greater control and oversight over all of the activities that take place in the Tax Dept. It is entirely possible, but highly unlikely that that would happen.

**Representative Kelsh:** Is your intention to use BCI for your background checks?

**Daniel Rouse:** Yes sir.

**Chairman Belter:** Any other questions? Further testimony in support of 1084? Opposition to 1084? If not, we will close the hearing on 1084. Committee members, what are your wishes on 1084?

**Representative Froseth recommended "Do Pass" on 1084.**

**Representative Winrich seconded.**

**Representative Wrangham:** I will be voting no on that. If we should be doing anything to the list of mandatory checks, we should be reducing it. It is a large list and as we are being asked here today, it is getting larger at a time when criminal activity is supposedly going down. I think when there is a red flag, then they should be able to ask for criminal background investigations when there is a reason, but for every applicant that they are considering, to get a background check is a waste of time and energy of the criminal investigation department. I think everyone should be asked if they have previous criminal history on their applications. Maybe what we should be doing is looking at the penalty for people who lie on their applications rather than more government expense in checking out backgrounds.

**Chairman Belter:** It is my understanding it is not for every position, is it?

**Daniel Rouse:** No, it is not. Again it is for those positions that have direct and immediate access to specific bank information, social security, income tax, insurance. Not every position has that in the Tax Dept. Second of all, with regard to the applicant question, there already is a provision in state law that if you commit perjury with regard to that type of information, it does subject you to criminal penalties.

**Representative Weiler:** But it is for every applicant so if you get 20 people applying for one position, do you have to do a background check for 20 people or is it just for the ones that are hired?

**Daniel Rouse:** It is for the finalists for a specific position—not every applicant.

**Representative Wrangham:** Did I understand that it would probably be about 50% of the hires?

**Daniel Rouse:** We believe that about 50% of the positions within the Tax Dept. would qualify for that background check. Currently we have six vacancies in the Tax Dept. out of 133 positions so we are not looking at a large number of background checks at any point in time.

**Representative Pinkerton:** I would encourage a “Do Pass” on this. In our business, we have about 25 employees and we check every time. When we get down to the finalists, before we offer the job, we do a criminal background check. We do it for every position, whether it is for a receptionist or kennel help—it doesn’t matter. I think it is well worth \$50.

**Chairman Kelsh:** One quick question. Is it limited to criminal background checks or does it involved financial bankruptcies?

**Daniel Rouse:** It applies to that which is a matter of record—criminal only—criminal record statewide and nationally.

**Chairman Belter:** Any other discussion? Committee members, as a point of order. I think we had some good questions here, but we should ask those questions prior to a motion and think a little faster on our questions. Any other discussion?

**A roll call vote was taken: Yeas: 11, Nays: 1, Absent: 1 (Froelich).**

**Representative Froseth will carry the bill.**

Date: January 12, 2009

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1084

House FINANCE AND TAXATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ☒ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Froseth Seconded By Winick

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter	X		Representative Froelich		
Vice Chairman David Drovdal	X		Representative Kelsh	X	
Representative Brandenburg	X		Representative Pinkerton	X	
Representative Froseth	X		Representative Schmidt	X	
Representative Grande	X		Representative Winick	X	
Representative Headland	X				
Representative Weiler	X				
Representative Wrangham		X			

Total (Yes) 11 No 1

Absent 1 (Froelich)

Floor Assignment Rep Froseth

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



**REPORT OF STANDING COMMITTEE**

**HB 1084: Finance and Taxation Committee (Rep. Belter, Chairman) recommends DO PASS (11 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). HB 1084 was placed on the Eleventh order on the calendar.**

2009 SENATE FINANCE AND TAXATION

HB 1084

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1084

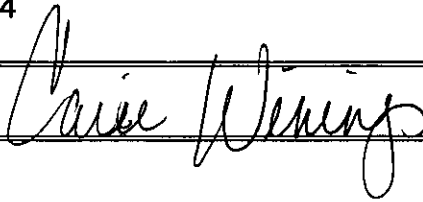
Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: 03/11/2009

Recorder Job Number: 10704

Committee Clerk Signature



Minutes:

**Chairman Cook:** Opened hearing on HB 1084.

**Daniel Rouse, Legal Counsel, Tax Department:** See Attachment #1 for testimony in support of the bill.

**2.20 Senator Triplett:** The law itself doesn't say who you would impose this against, it just references specified occupations. Your testimony says that you would do it for full time equivalent positions when the employee would have access to sensitive information. Is that generic enough that it would apply to every new hire in your office?

**Daniel Rouse:** I do believe it does apply to virtually everyone. Everyone does have some form of access. We are looking at peoples whose duties include accounting, financial oversight, access to personal information, and access to tax information. All but about 5 people in our office have access. We have an authorized line of 133 people.

**Senator Triplett:** You would probably exclude someone like a receptionist then?

**Daniel Rouse:** Actually our receptionist does have access to those kinds of information. Our human resources officer does not have access for example.

**Chairman Cook:** Comment. I assume your office has stringent confidentiality requirements, as far as what they share etc.?

**Daniel Rouse:** Before you can step foot in the tax department as an employee you have to sign both a state and federal confidentiality agreement.

**Chairman Cook:** Further testimony? (no) Closed hearing.

**Vice Chairman Miller: Moved a Do Pass.**

**Senator Dotzenrod: Seconded.**

**Chairman Cook:** Discussion?

**Senator Triplett:** For the record, I do not like background checks, so I will likely vote against this bill.

**Senator Hogue:** I agree with Senator Triplett on this, if we are going to go this route why don't we just have background checks on everyone. That is where this subsection of the law is headed. For that reason I will vote against it.

**Senator Anderson:** I will vote in favor of it. It is a different world. If it is abused, we will do something later.

**Chairman Cook:** I don't like them either, but I am voting for it.

**Senator Oehlke:** In my business of the insurance world, but when I hired someone it was cart blanch that what happened in the office stayed in the office. This happens in private industry all the time, I guess I don't have a problem voting for it but I share your concern about it.

**Chairman Cook:** Further Discussion? (no)

**A Roll Call vote was taken: Yea 5, Nay 2, Absent 0.**

**Senator Cook will carry the bill.**

Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. : 1081

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken ☒ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Senator Miller Seconded By Senator Dotzenrod

[illegible]

Total: Yes 5 No 2

Absent 0

Floor Assignment Senator Cook

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

**REPORT OF STANDING COMMITTEE (410)**  
March 11, 2009 10:20 a.m.

**Module No: SR-44-4545**  
**Carrier: Cook**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1084: Finance and Taxation Committee (Sen. Cook, Chairman) recommends DO PASS (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1084 was placed on the Fourteenth order on the calendar.**

2009 TESTIMONY

HB 1084

**TESTIMONY OF THE NORTH DAKOTA OFFICE OF STATE TAX COMMISSIONER  
BEFORE THE  
HOUSE FINANCE AND TAXATION COMMITTEE**

**HOUSE BILL 1084**

**January 12, 2009**

Chairman Belter, members of the House Finance and Taxation Committee, I am Daniel Rouse, Legal Counsel for the North Dakota Office of State Tax Commissioner. I am here today on behalf of the Tax Commissioner to testify in support of House Bill 1084.

**BACKGROUND**

The Tax Commissioner recently underwent a comprehensive audit by the State Auditor's Office. In its Significant Audit Findings, the State Auditor recommended the Tax Commissioner conduct statewide and national criminal history record checks on finalists for full-time equivalent positions with the Tax Commissioner when the employee would have access to sensitive information such as tax returns, social security numbers, and bank account information.

The State Auditor observed that the lack of a background check made it difficult for the Tax Commissioner to determine if the finalist had a criminal history in the areas of identity theft, embezzlement, and fraud. The State Auditor further observed that internal control protocols it relies upon in making such observations mandated completion of a background investigation for candidates for employment, particularly with regard to prior actions or activities considered unacceptable.

Currently, neither OMB Policy 112, which limits background checks to employees having access to personal information of state employees in the State's *PeopleSoft* database, nor the law authorizing background checks, N.D.C.C. § 12-60-24, allow the Tax Commissioner to conduct the checks recommended by the State Auditor.

**REASONS FOR BILL**

The bill, if enacted, would accomplish three things:

(1) Authorize the Tax Commissioner to request and obtain statewide and national criminal history record checks from the North Dakota Bureau of Criminal Investigation on finalists for positions with the Tax Commissioner when the employee's duties include: accounting; financial oversight; access to personal information; and access to tax information;

(2) Create a new subdivision to the subsection of law to authorize criminal history record checks for specified positions with the Tax Commissioner; and



- (3) Meet the recommendation provided by the State Auditor.

This bill, if enacted, would be applied only to newly-hired employees in the above-described positions. In other words, it would only be applied prospectively.

#### **CONCLUSION**

The Tax Commissioner respectfully requests you give favorable consideration to House Bill 1084. I would be happy to respond to any questions. Thank you.

#1

TESTIMONY OF THE NORTH DAKOTA OFFICE OF STATE TAX COMMISSIONER  
BEFORE THE  
SENATE FINANCE AND TAXATION COMMITTEE

HOUSE BILL 1084

March 11, 2009

Chairman Cook, members of the Senate Finance and Taxation Committee, I am Daniel Rouse, Legal Counsel for the North Dakota Office of State Tax Commissioner. I am here today on behalf of the Tax Commissioner to testify in support of House Bill 1084.

BACKGROUND

The Tax Commissioner recently underwent a comprehensive audit by the State Auditor's Office. In its Significant Audit Findings, the State Auditor recommended the Tax Commissioner conduct statewide and national criminal history record checks on finalists for full-time equivalent positions with the Tax Commissioner when the employee would have access to sensitive information such as tax returns, social security numbers, and bank account information.

The State Auditor observed that the lack of a background check made it difficult for the Tax Commissioner to determine if the finalist had a criminal history in the areas of identity theft, embezzlement, and fraud. The State Auditor further observed that internal control protocols it relies upon in making such observations mandated completion of a background investigation for candidates for employment, particularly with regard to prior actions or activities considered unacceptable.

Currently, neither OMB Policy 112, which limits background checks to employees having access to personal information of state employees in the State's *PeopleSoft* database, nor the law authorizing background checks, N.D.C.C. § 12-60-24, allow the Tax Commissioner to conduct the checks recommended by the State Auditor.

### REASONS FOR BILL

The bill, if enacted, would accomplish three things:

- (1) Authorize the Tax Commissioner to request and obtain statewide and national criminal history record checks from the North Dakota Bureau of Criminal Investigation on finalists for positions with the Tax Commissioner when the employee's duties include: accounting; financial oversight; access to personal information; and access to tax information;
- (2) Create a new subdivision to the subsection of law to authorize criminal history record checks for specified positions with the Tax Commissioner; and
- (3) Satisfy the recommendation provided by the State Auditor.

### CONCLUSION

This bill, if enacted, would be applied only to newly-hired employees in the above-described positions. In other words, it would only be applied prospectively. The cost of each background check is currently \$47.25 each.

The Tax Commissioner respectfully requests you give favorable consideration to House Bill 1084. I would be happy to respond to any questions. Thank you.