

2011 HOUSE POLITICAL SUBDIVISIONS

HB 1223

2011 HOUSE STANDING COMMITTEE MINUTES

House Political Subdivisions Committee Prairie Room, State Capitol

HB 1223
January 20, 2011
Job # 13164

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to property tax exemption of the leasehold interest when a political subdivision leases property from another political subdivision.

Minutes:

Handout #1

Chairman Johnson: Opened the hearing on HB 1223.

Rep. Belter: When a political subdivision has a leasehold interest in property leased by a political subdivision we have a situation where a jobs development corporation owns a building that they lease to the city for a library and subsequently they are being taxed on the library. If the city owned that building themselves they wouldn't be taxed so what this bill attempts to do is just clarify that language so that when one political subdivision leases to another one that is tax exempt.

Rep. Zaiser: When that lease ends is there any way then that the tax would be reinstated?

Rep. Belter: I would suspect the governing board of political subdivision which would be the city council would certainly be aware of that situation because they are always looking for property to tax.

Rep. Zaiser: Maybe in some cases it might be a lesser subdivision like a park district or in a larger city where a smaller subdivision like SCS where it wasn't clear to the public be tax exempt; how would they notify them then?

Rep. Belter: I am not aware of any specific notification in the code.

Rep. Klemin: If the leasehold is being leased by one political subdivision from another political subdivision wasn't it tax exempt in the hands of the landlord political subdivision to start with?

Rep. Belter: That is not my understanding and maybe the tax department could clarify that.

Rep. Klemin: So if Burleigh County owns the property and leases it to the City of Bismarck does it lose its tax exempt status because of that without this change?

Rep. Belter: I am not sure. The situation I am dealing with here is the Job Development Authority has this building; they are leasing a portion of it to a business which would be taxed; but the other portion is leased to the city library. What we are attempting to do here is that portion that is leased to the city library that would not be taxed.

Rep. Klemin: The Jobs Development Authority is a political subdivision?

Rep. Belter: Yes that is correct.

Rep. Klemin: If they leased the whole building to the library that would not be taxed.

Rep. Belter: You might want to ask the tax department.

Jerry Hjelmstad, ND League of Cities: If we understand the current law, if the property is owned by the US Government, State or political subdivision and there is a leasehold interest in that property that leasehold interest maybe come taxable. There is no provision to who has that leasehold interest under current law. If it was a political subdivision that leased from another political subdivision under some provisions it could become taxable property. The law is vague on that. I can see where it could be interrupted the other way as well.

Rep. Klemin: What if they leased it from the state or federal government? This doesn't cover that.

Jerry Hjelmstad: I think that would be a good addition to the bill to include when leased from a political subdivision to the US government, state or political subdivision because those properties also would be leasehold interest and they could be subject to taxation under some interpretations. I can see another interpretation where a leasehold interest being held by a political subdivision or state would be tax exempt, but there is some vagueness in the law the way it reads now.

Rep. Koppelman: Where in law does it trigger taxability when a private entity leases from a political subdivision. As I read this it seems to say all property belonging to a political subdivision; that would imply if Burleigh County owned a building and they leased it to your private business; it is still tax free. That may not be the right thing to do but I don't see anything in this statute that would change that?

Jerry Hjelmstad: Section 57-02-26 of the code provides for a leasehold interest in property leased from the US government, State or political subdivision.

Chairman Johnson: Explain to me a leasehold interest?

Jerry Hjelmstad: I understand it would be a lease for a term of years where it becomes an extended lease so basically it becomes a property interest held by that lease so it is that value of that lease otherwise tax exempt property has a value onto itself is my understanding.

Rep. Maragos: Are you aware of a particular situation that this bill is trying to address?

Jerry Hjelmstad: No I am not. We were not involved in drafting this bill. It could apply to other entities that lease from another political subdivisions or state or US government.

Rep. Maragos: Did the taxing authority decide to tax the whole building simply because a small interest was a private business. Is that what I understand or was it just that portion of the building? Because there was a private interest in the building did the whole building become taxable?

Rep. Belter: It is my understanding that the whole building was taxed because they were leasing it. I don't think it made any difference because the code wasn't clear as to whether they were tax exempt or not.

Intern printed a copy of 57-02-17 for the committees use. (handout #1)

Opposition:

Sara Meier: Property Tax Division, Commissioner Office: Rep. Zaiser was asking when the lease ends. This tax is on the lessee, the person that is leasing the property and I don't think anyone wants to pay taxes that they don't have to so I am sure they would be notifying the political subdivisions or the taxing authority that they no longer have that leased. Rep. Klemin asked about property being leased from a political sub. If it wouldn't be exempt to begin with? Property owned by a political sub is exempt. The leasehold interest from an entity that is not exempt on its own is taxable. This situation needs clarification. We have had Attorney General's opinions that have addressed it that a political sub leasing from a political sub is exempt. This would just clear it in the law and we would have it cleaned up.

Rep. Klemin: What about the question of what if it was from a state or federal government that the property was being leased from, would it be helpful if we added that to the bill?

Sara Meier: I think it would not be helpful; I think it would be a deterrent because land that is owned by the federal government or by the state is being paid in lieu of tax. The federal government has an appropriation that they have on all the land in ND. Grazing associations rent that land; individuals rent the state owned land. It is not necessary.

Rep. Kretschmar: What if the lessee is a non-profit corporation like a hospital; would they be exempt from the taxation?

Sara Meier: If they qualify on their own for an exemption they would have to apply for exemption first of all. That is a 501 3 c or another charitable organization.

Rep. Maragos: Did you say the lessee pays the property tax and not the property owners.

Sara Meier: Yes they are subject to the tax.

Rep. Koppelman: I am looking at 57-02-26 and there it talks about certain property taxable to the lessee or equitable owner. Property held under lease for a term of years or under the contract for the purchaser belonging to the US or to the state or a political subdivision there goes on so apparently there is an exemption already for the federal and state government.

Sara Meier: Yes and that goes into their payment in lieu of tax.

Hearing closed.

Discussion:

Chairman Johnson: There is a fiscal note on there that says there is not much to be measured. I have been asked to hold this open just for someone that wants to testify. The ND Bankers Association is in support of it but they did ask to hold it since they have banker's day going on.

Meeting adjourned.

Rick Clayburgh: I am in support of the bill as an individual. In the town of Kindred our banker there; he is involved with the local economic development committee; which is a tax exempt entity. It is owned by the city and they own a small building in the community and in that they do lease it out to a couple taxpaying entities, but in addition they rent a large portion of it out to the local library which is also a tax exempt political subdivision. If the library owned its own building outright they would not pay taxes. The economic development also does not pay taxes on the portion it uses, but because of the relationship of leasing the property to the local library and by law it makes it a taxable event. The folks do not like it because they are not making any money on these arrangements. They are trying to provide services in a small rural community and they have to pay property taxes in an event when they normally wouldn't if that entity owned the property on its own. It is actually two groups in of themselves who are exempt from property taxes but because of their relationship we would like merge that together. 25% of it is being leased out to a tax paying business, 25% is the economic development group and 50% is the library. Under the scenario that I just mentioned 75% of the building is being taxed. What we are saying is because the 25%, which would be the economic development portion of the community and 50% is the library and if by themselves if they owned the building they would not be taxed; then 75% of the building would not be subject to property tax. The portion that is owned by a tax paying entity tax is paid on that. The beauty shop is not making a lot of money on this; they are just trying to provide service to the community. The tax on top of it is causing them a problem. Rep. Kretschmar, we are not saying the taxpaying entity is not taxable; we are saying the portion that is being paid by another political subdivision should also be tax exempt in this case.

Rep. Maragos: You are telling me the Cass County Tax Assessor taxed the library.

Rick Clayburgh: That is correct and that is a correct interpretation of the current law. Because the library is leasing space they don't own it, they are paying tax on it. I can't tell you the rational or reason for that. I have talked with Ms. Dickerson and in my previous life

I don't recall this issue ever coming up. I think if the political subdivision actually sold that portion to the library, the library would be tax exempt and wouldn't be taxed but because of the lease arrangement it is making a taxable event to that political subdivision.

Rep. Klemin: The tax department told us there was an Attorney General's opinion is basically what this bill does that said you can't tax the library, but that the tax county assessor can't read the Attorney General's opinion. What you are telling us now is Marcy Dickerson at the tax department seems to be contrary to what Sarah Meier from the property tax division just told us.

Rick Clayburgh: That is the first I heard of an Attorney General's opinion. They may have put a little more effort into this in preparation to the hearing. I will go up to the tax department and visit with them. Our intent is to make sure our political subdivision doesn't do it. I still think this is good clarification.

Rep. Maragos: The tax county tax assessor; what statute did they use to interrupt that they could tax another tax exempt entity.

Rick Clayburgh: I can't answer that question.

Hearing closed.

2011 HOUSE STANDING COMMITTEE MINUTES

House Political Subdivisions Committee
Prairie Room, State Capitol

HB 1223
February 3, 2011
Job # 13940

☐ Conference Committee

Committee Clerk Signature



Minutes:

Chairman Johnson: reopened the hearing on HB 1223. That was the bill where an economic development corporation leased part of their building to a public library board and the library board had to pay property taxes on that. The bill came in saying one political subdivision leasing to another political subdivision you do not need to pay the taxes. It was determined that the economic development corporation is not a political subdivision. If it had been a jobs development authority that would have been a political subdivision. The group that wanted to have this changed; this bill would not make any difference. I visited with Marcy Dickerson in the Tax office and asked her if we were to change it where an economic development corporation could do this it would be allowing a different type of entity which is not a political subdivision to do it. If we do that we have the change that some other groups would try to come in. There would probably be a lot of groups wanting tax relief because in a lot of political subdivision lease space from entities that aren't so now we could get tax relief for doing this one or this one. I asked her if this law was necessary.

She said that is not in current law so groups do it but this particular section is not in current law.

Rep. Koppelman: The bill as written would not solve the problem that was presented, but it would put something common sense into law that isn't there.

Chairman Johnson: that is exactly what it would do. It does have a small fiscal note on it. It was hard to identify. The fiscal note says it creates an exemption from property taxes when property is leased by one political subdivision to another. It appears that the situation addressed by this bill occurs very infrequently. The total level of revenue shift from any property exemption by the provision of HB 1223 to other tax payers in taxing district will be minimal.

Do Pass Motion Made by Rep. Koppelman: Seconded by Rep. Hatelstad:

Discussion: None

Vote: 13 Yes 0 No 1 Absent Carrier: Rep. Pietsch

House Political Subdivisions Committee

HB 1223

February 3, 2011

Page 2

Hearing closed.

FISCAL NOTE

Requested by Legislative Council
01/17/2011

Bill/Resolution No.: HB 1223

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

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

HB 1223 creates an exemption from property taxes when property is leased by one political subdivision from another.

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

It appears that the situation addressed by this bill occurs very infrequently. The total revenue shift from any property exempted by the provisions of HB 1223 to the other taxpayers in the taxing district, will be minimal.

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

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

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

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

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	01/19/2011

Date: 2-3-11
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1223

House Political Subdivisions Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

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

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep Koppelman Seconded By Rep Hatelstad

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson	✓		Rep. Kilichowski	✓	
Vice Chairman Hatelstad	✓		Rep. Shirley Meyer	✓	
Rep. Beadle	0		Rep. Mock	✓	
Rep. Devlin	✓		Rep. Zaiser	✓	
Rep. Heilman	✓				
Rep. Klemin	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos	✓				
Rep. Pietsch	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Pietsch

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

REPORT OF STANDING COMMITTEE

HB 1223: Political Subdivisions Committee (Rep. N. Johnson, Chairman) recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1223 was placed on the Eleventh order on the calendar.

2011 SENATE FINANCE AND TAXATION

HB 1223

2011 SENATE STANDING COMMITTEE MINUTES

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

HB 1223
3/7/2011
Job Number 15003

☐ Conference Committee

A. Bittmiller

Explanation or reason for introduction of bill/resolution:

Relating to property tax exemption of the leasehold interest when a political subdivision leases property from another political subdivision

Minutes:

Chairman Cook opened the hearing on HB 1223.

Representative Belter – What HB 1223 does, is, there was a situation in my district where, what was thought to be a political subdivision was leasing property to the local library and they were being taxed on this property. So what this bill would do is if one political subdivision, which is tax exempt, is leasing, that owns property that is leased to another political subdivision that property would not be taxable. This bill was not heard in Finance and Tax it was heard in Political Subdivisions.

Chairman Cook – I'm for the life of me lost as to how somebody could decide it is taxable. Political subdivisions don't pay tax, right?

Representative Belter – That's correct. The problem that it has was the entity that thought they were a political subdivision, really was not. They were an economic development corporation that owned this building that they were leasing for a library. It was a misunderstanding on their part. When I originally introduced the bill they indicated to me that they were actually a job development authority, but they were not. They were an economic development. This bill will not solve my problem but it would solve the problem for any other, it does clarify the language for any other situation and that is why the committee put a Do Pass on the bill.

Sara Meier, Tax Department – We do support this bill. It clarifies the language, there would be no more need for anymore Attorney Generals opinions about if a political subdivision leasing from a political subdivision or leasing from anybody that would be exempt from taxation. That lease hold interest would be exempt.

Chairman Cook – They are both tax exempt.

Sara Meier, Tax Department – They are.

Chairman Cook – Then why do we need it?

Sara Meier, Tax Department – It's just clarity. It clarifies it in the statute instead of needs for Attorney General's opinion, which we have had.

Senator Triplett – How many Attorney Generals opinions have we had?

Sara Meier, Tax Department – I have one, there may have been more but I have come across one that addresses this.

Chairman Cook – What specifically were the 2 political subdivision properties that were questioned in the Attorney General's opinion?

Sara Meier, Tax Department – Attorney General's opinion, 2007-L-17 addresses several questions concerning whether real property owned by the Jamestown-Stutsman Development Corporation is exempt from real property taxation. Then in the other Attorney General's opinion 2006-L-9, the following reasons, it is my opinion that real property owned by a city job development authority is exempt from property taxation under 57-02-08.3 as property belonging to a political subdivision. Then it talks about leasehold interest.

Chairman Cook – Would there be a question if the 2 political subdivisions, one was a city and one was a county?

Sara Meier, Tax Department – I don't think there would be, no. There is a situation that I know of where a city is leasing from a county.

Chairman Cook – And it's exempt.

Sara Meier, Tax Department – It is exempt.

Chairman Cook – So someone was questioning whether a job development authority was a political subdivision?

Sara Meier, Tax Department – Somebody was questioning it in that Attorney General's opinion and if their property was exempt, yes.

Chairman Cook – My only question then is, passing this is not going to change the tax status of a single piece of property in North Dakota.

Sara Meier, Tax Department – Not that I know of, there may be some.

Chairman Cook – If it does change the tax status, then it's a piece of property that's being taxed today that should not be.

Sara Meier, Tax Department – Yes, it clarifies it.

Chairman Cook asked for testimony in opposition to HB 1223. No one came forward.

Chairman Cook asked for neutral testimony for HB 1223. No one came forward.

Chairman Cook closed the hearing on HB 1223.

Vice Chairman Miller – I'll move a Do Pass on HB 1223.

Seconded by **Senator Dotzenrod**.

Chairman Cook – Ask the clerk to take the roll. (7-0-0)

Carried by **Senator Oehlke**.

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

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1223

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

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

☐ Rerefer to Appropriations ☐ Reconsider _____

Motion Made By Senator Miller Seconded By Senator Dotzenrod

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

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Oehlke

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

REPORT OF STANDING COMMITTEE

HB 1223: Finance and Taxation Committee (Sen. Cook, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1223 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

HB 1223

57-02-17. Listing of personal property moved between April first and June first. Repealed by S.L. 1981, ch. 558, § 2.

57-02-18. Listing of range stock. Repealed by S.L. 1971, ch. 538, § 1.

57-02-18.1. Taxation of livestock after thirty days. Repealed by S.L. 1971, ch. 538, § 1.

57-02-18.2. Livestock tax proration after April first. Repealed by S.L. 1971, ch. 538, § 1.

57-02-18.3. Livestock list submitted to auditor. Repealed by S.L. 1971, ch. 538, § 1.

57-02-18.4. Livestock assessment by auditor. Repealed by S.L. 1971, ch. 538, § 1.

57-02-18.5. Notice to auditor of livestock movement. Repealed by S.L. 1971, ch. 538, § 1.

57-02-18.6. Livestock tax collectible where danger of movement. Repealed by S.L. 1971, ch. 538, § 1.

57-02-18.7. Effect of prior livestock assessment. Repealed by S.L. 1971, ch. 538, § 1.

57-02-19. Assessment of oil and gas drilling equipment. Repealed by S.L. 1953, ch. 309, § 1.

57-02-20. Exemption of farm machinery for one year. Repealed by S.L. 1981, ch. 581, § 4.

57-02-21. Tax exemption of personal property of certain persons with minimum income - Penalty for false statement. Repealed by S.L. 1981, ch. 581, § 4.

57-02-22. Place of listing in case of doubt. Repealed by S.L. 1981, ch. 558, § 2.

57-02-23. Number or name of school district to be listed. Repealed by S.L. 1985, ch. 604, § 22.

57-02-24. Assessors to list coal and minerals. Repealed by S.L. 2009, ch. 544, § 2.

57-02-25. Procedure in assessment of coal and mineral reserves. Repealed by S.L. 2009, ch. 544, § 2.

57-02-26. Certain property taxable to lessee or equitable owner - Exception.

1. Property held under a lease for a term of years, or under a contract for the purchase thereof, belonging to the United States or to the state or a political subdivision thereof, except such lands as have been leased for pasture or grazing purposes or upon which the state makes payments in lieu of property taxes, or to any religious, scientific, or benevolent society or institution, whether incorporated or unincorporated, or to any railroad corporation whose property is not taxed in the same manner as other property, must be considered, for all purposes of taxation, as the property of the person so holding the same.
2. Property held under an easement or a lease for a term of years and any improvements upon that property which are used for any purpose relating to discovery, exploration, processing, or transportation of oil or gas must be considered the property of the lessee or easement holder. For the purposes of this subsection,

"improvements" does not include property subject to the provisions of chapter 57-06 or property subject to the in lieu of ad valorem tax provisions of chapter 57-51.

3. Property owned by the state and held under a lease and any structure, fixture, or improvement located on that property is not taxable to the leaseholder if the structure, fixture, or improvement is used primarily for athletic and educational purposes at any state institution of higher education.

57-02-26.1. Assessment to lessee of personal property owned by a bank. Repealed by S.L. 1973, ch. 446, § 4.

57-02-27. Property to be valued at a percentage of assessed value - Classification of property - Limitation on valuation of annexed agricultural lands. All property subject to taxation based on the value thereof must be valued as follows:

1. All residential property to be valued at nine percent of assessed value. If any property is used for both residential and nonresidential purposes, the valuation must be prorated accordingly.
2. All agricultural property to be valued at ten percent of assessed value as determined pursuant to section 57-02-27.2.
3. All commercial property to be valued at ten percent of assessed value.
4. All centrally assessed property to be valued at ten percent of assessed value except as provided in section 57-06-14.1.

The resulting amounts must be known as the taxable valuation. In determining the assessed value of real and personal property, except agricultural property, the assessor may not adopt a lower or different standard of value because the same is to serve as a basis of taxation, nor may the assessor adopt as a criterion of value the price at which said property would sell at auction, or at forced sale, or in the aggregate with all the property in the town or district, but the assessor shall value each article or description by itself, and at such sum or price as the assessor believes the same to be fairly worth in money. In assessing any tract or lot of real property, there must be determined the value of the land, exclusive of improvements, and the value of all taxable improvements and structures thereon, and the aggregate value of the property, including all taxable structures and other improvements, excluding the value of crops growing upon cultivated lands. In valuing any real property upon which there is a coal or other mine, or stone or other quarry, the same must be valued at such a price as such property, including the mine or quarry, would sell for at a fair voluntary sale for cash. Agricultural lands within the corporate limits of a city which are not platted constitute agricultural property and must be so classified and valued for ad valorem property tax purposes until such lands are put to another use. Agricultural lands, whether within the corporate limits of a city or not, which were platted and assessed as agricultural property prior to March 30, 1981, must be assessed as agricultural property for ad valorem property tax purposes until put to another use. Such valuation must be uniform with the valuation of adjoining unannexed agricultural land.

57-02-27.1. Property to be valued at true and full value. All assessors and boards of equalization shall place the values of all items of taxable property at the true and full value of the property except as otherwise specifically provided by law, and the amount of taxes that may be levied on such property must be limited as provided in this chapter. For the purposes of sections 57-02-27, 57-02-27.1, 57-02-27.2, and 57-55-04, the term "true and full value" has the same meaning as provided in subsection 15 of section 57-02-01, except that "true and full value" of agricultural lands must be as determined pursuant to section 57-02-27.2.

The governing body of the city may establish valuations that recognize the supply of vacant lots available for sale.

57-02-27.2. Valuation and assessment of agricultural lands.