

2011 HOUSE FINANCE AND TAXATION

HB 1246

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1246
January 31, 2011
#13681

☐ Conference Committee

Committee Clerk Signature

Mary Brucher

Explanation or reason for introduction of bill/resolution:

A Bill relating to the property tax exemption for church property; and to provide an effective date.

Minutes:

See attached testimony #1, #2

Representative Weisz: Sponsor. Support. This bill says that any religious corporation or organizations property would be exempt from property tax if it's not producing revenue. Currently, there is a two acre exemption; anything over and above that is taxed regardless of whether it's producing revenue or a place to park the buses or parking lot or whatever it might be currently it is subject to property tax if indeed the communities want to go after it. It is my understanding in a lot of cases this hasn't been happening but it is the law and some political subdivisions are going after it. I think it's common sense as this wouldn't allow, for example, particularly in a rural church where they may own several quarters of land and they are renting it out to the farmer they will pay the property tax because it is producing revenue. If an institution owns some apartment complexes they will pay the property tax on it but if they have 10 or 20 acres or whatever it might be that they have their church on and they may have some youth facility then the property would not be taxed.

Representative Lonny B. Winrich: Are there examples of where this is happening now?

Representative Weisz: Yes there is. There will be examples here today. In some cases in can be substantial when they are not producing revenue.

Representative Glen Froseth: This would not exempt any special assessments on property?

Representative Weisz: That is correct. This doesn't deal with special assessments. I understand that is an issue also in some areas but this bill doesn't touch that whatsoever, it's strictly property taxes.

Representative Mark S. Owens: The way this is worded I have two things that pop up that would generally be an argument is that upon which there is a building used for the religious organization so I can see there becoming an argument that this religious organization would own a lot of land and they just hold one religious service a year at this

location and thus they don't have to pay property tax on it. How would you address that argument?

Representative Weisz: I guess if they own the property and they are not using it for any income producing purposes I guess I still don't have a problem with it being exempt, if indeed it's truly a religious organization as defined by the law regardless if they meet every week or twice a week or twice a year. It's not the use of the property it's the organization itself who owns the property that is important here. How they determine its use should be up to them as long as it's not revenue producing. If you have an extra 40 acres of land that someday maybe plan to build a new church 20 years down the road and the land is idle should they be taxed on that while they are busy trying to raise their funds over the next 20 years to get enough to build that new facility. That to me is an example of what this bill would address.

Representative Mark S. Owens: In your last example I've experienced that example where the church that I'm in owns five acres and it was several years before we got out \$10 to build our building. The other issue I can see somebody raising would be the definition of "produce any revenue." While I don't consider it revenue because you're talking about activities designed specifically to elicit revenue. I can see someone arguing if it's not clear enough in the law that donations are a form of revenue. Even people tithing might be considered a form of revenue by some.

Representative Weisz: I would leave it up to the wisdom of this committee if they think there needs to be further clarification. If your interpretation could be that some would interpret that then clarifying language in the bill would be perfectly acceptable.

Representative Patrick Hatlestad: What about bingo games? If we host weekly bingo games to generate money to carry out church activity?

Representative Weisz: My understanding is that it wouldn't be considered revenue producing. I can acknowledge the fact that revenue is vague and that may need to be further clarified.

Representative Lonny B. Winrich: Is there a definition of religious organization in code?

Representative Weisz: I believe there are several. When I looked at the code earlier there are several definitions. That is vague because sometimes it talks about house of worship, etc. I assume they have to be listed as one but someone else might be able to further clarify that.

Representative Lonny B. Winrich: What I'm thinking is that if I go on the internet and be ordained as a minister in the Whole Life Church in California or something, could I get my house off the tax rows?

Representative Weisz: I suppose if you're holding services there and it's not being used for your domicile I suppose you could.

Roger Will, Assistant Pastor of the Evangel Assembly of God congregation in Bismarck: Support. Please refer to attached testimony #1. Mr. Will included a letter from the City Assessor, Debra Goodsell.

Representative Scot Kelsh: Do you know if churches are a nonprofit under the law or do they have their own classification as far as property taxes are concerned?

Roger Will: Churches with the federal government are a 501 (c) (3) corporation; our church is anyway and I believe most churches are. We have to gain that status in order to be exempt.

Representative Scot Kelsh: In my other life I am a firefighter and one of our other duties is to inspect properties and commercial properties and make sure they comply with fire code. I had to do that with a lot of churches this past summer in the city of Fargo and obviously that takes resources and takes city funds in order to pay us to do this. We need to make sure the occupants are in a safe environment and that the surrounding properties are also free from any fire hazards. I'm wondering what your thoughts are if nonprofits are willing to pay something for that type of protection or do you think that is a function of the city because you have a special place in the city itself and serve a purpose that can't be served in other ways?

Roger Will: I know we were going to be assessed \$11,000 for 2010 taxes. \$11,000 is about the amount that we as a church contribute to agencies around town such as Salvation Army, Ruth Meiers, a lot of different agencies that we refer people to because we can't help all the people who come to the church. We take and give to these agencies and work in a relationship with them. There are a lot of expenses involved in a church and to pay for fire protection on a separate measure I don't know.

Representative Glen Froseth: Would it be easier to change the wording on page 7 from two acres to 20 acres or what size or parcel would benefit your church?

Roger Will: That would work for us right now. It might not work for other churches and it might not work for us later on so we might be back here again to ask you to change it again. I think the constitution of North Dakota states that churches are to be exempt from property tax. You are going to help us who are legitimate and you need to do something to resolve in people who are doing and don't punish for us for the people who are trying to take advantage of the system so please help us we need your help.

Keith Ritchie, Pastor of Cornerstone Church: Support. I have 3.03 acres and answer to specials. My specials last year were \$24,000 for the repaving of Washington Street. We do an extreme amount in the community including missions. The way the law is worded, if we were to buy land just for development and let it sit we would have to pay taxes on it. We have many examples of this in Bismarck. Until you have occupancy and a building and then have church services on there you would pay taxes. With my three acres I have a play field that kids come and play on after school. We do soccer camps, we do football camps, we even have roller blade camps. It's actually expanded parking but we have to keep a green area. If you look at our future building needs we do build because we are a church, a unique animal in the idea of taxing, and so we build small and keep adding on to

our property. We've been in this town since 1954 and we had to relocate once because of lack of space. Churches are changing just as our communities are changing. What the churches do for the people is changing. I receive the same letters of the same things that are going on but the truth is that we have to look at what the law was intended for, what it includes, and what the need is. You are who we come to for help. The law is unclear. We have one city taxing and another city not taxing. We need clarity. We need help from you to get clarity. You can look at all the different parts of this bill and include revenue. Revenue is determined by the IRS, what is for tax exempt and what is not for tax exempt. We go by the IRS codes so I wouldn't ask to make any more laws instead have the IRS work for you, it's one time they can help you. The bottom line is I have 3.03 acres and I'm going to have to start paying property tax means I am going to have to take money that we would be putting out in the community to help the children, homeless, needy, Ruth Meiers, etc, and have to pull that money back in and give it to the city instead of pouring that money back into the people of Bismarck. I ask you to vote in favor of this bill.

Kevin Ternes, City Assessor in Minot: Neutral testimony. Please refer to attached testimony #2. It is my understanding right now in Minot that if you have over two acres of land but you're using it for parking or for anything or your building is that big or it's part of the entryway, we certainly don't assess that. I'm not aware of those opportunities where assessors are going out with a tape measure and starting to look for things over two acres. As long as its being used. We're mostly using a common sense approach if we have a lot of acreage that isn't being used then I think we're trying to comply with the law. We would have a concern about the revenue definitions. It's never as easy when your talking to taxpayers. I'm wondering if possibly something in the way of vacant land adjacent to the church might not assist us and not going after the extra acreage that's there for future expansion. Still allow us to handle some of these properties that are elsewhere that are owned by a religious corporation or church aren't being used for the religious purpose but are actually available for rent. They are competing for other renters. Once they are occupied do you want us to just tax half a building, the portion that's rented? We would need some direction on what you decide if you're going to say all property is exempt if its owned by a church.

Representative Lonny B. Winrich: Is there a definition in law of a religious organization?

Kevin Ternes: They have to file an application with us. It is my understanding we can ask them for their articles or their incorporation. At this point we haven't had trouble distinguishing from a church or a Tastee Freeze. We are comfortable in knowing the definition of a church. I'm not really concerned after 20 years in this business that we are going to have large scaled abuse. I have a piece of property that if this bill is passed will have to come off the tax rolls. As we all know that once it comes off the tax roll it spreads to everyone else.

Representative Mark S. Owens: You testified that they were actively trying to rent this building?

Kevin Ternes: Yes. They tried to rent it and there are some issues with it such as not enough parking around the building. In their quest to rent it, develop it, and fill it up I think after a year or two they just figured it wasn't working for them and decided to sell it.

Representative Mark S. Owens: The way this bill reads is if there is any revenue produced from this building and there is not religious services being held at it you can tax it. So this building would not be exempt under law.

Kevin Ternes: But it is not getting any revenue at all. It's totally vacant. If it's not generating any revenue would I not have to put it on the tax roll?

Representative Mark S. Owens: Your point is well taken, thank you.

Representative Patrick Hatlestad: If I read this law on line 12 it says "must be deemed to be property used exclusively for religious services." To me this building wouldn't qualify.

Representative Lonny B. Winrich: In reply to Representative Hatlestad's comment if you go back to the beginning of that portion of the sentence on line 10 after "organization," it says "or upon which there is a dwelling with usual outbuildings, intended and ordinarily used for the residence of the bishop, priest, rector, or minister...must be deemed to be property." That just applies to a building that is used as a residence.

Kevin Ternes: I understand what you're saying but after visiting with the State Tax Department we believe that as this is written and I believe is the intent of the sponsors that if they are not using it and it's owned by them and there's no revenue being generated they would prefer that all church property would be exempt. We'll just leave it in your hands how to best clarify that or where you want to go. It would help us a lot if the answer would be anything attached to the basic church parcel. That way if there is vacant land that is quite valuable that is sitting somewhere and there are plans being made to build on it then that wouldn't be treated differently than the person across the street who is trying to develop his land.

Representative Scot Kelsh: What about a situation where you have a private landowner who is leasing space then building a parking space to a religious organization, does that property owner pay property taxes on that property?

Kevin Ternes: That is correct. If I lease land or lease anything to a church and they pay me that is taxable. At that point the church is simply just another customer.

Roger Will: The point that was just brought up about being adjacent I think that could be a difficulty because sometimes churches may own property across the street so there might be a street running through it which would create difficulty in that scenario.

Chairman Wesley R. Belter: No further testimony. Hearing on HB 1246 closed.

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1246
February 7, 2011
#14153

☐ Conference Committee

Committee Clerk Signature

Mary Buckle

Explanation or reason for introduction of bill/resolution:

A Bill relating to the property tax exemption for church property; and to provide an effective date.

Minutes:

No attachments.

Representative Mark S. Owens: On line 8 after the word "revenue" it would be "from any real estate holdings." In other words, revenue from the land itself. The concern is from the activities they do and the income they produce from charitable things and what not. But then again we had that one where Minot is sitting there with an issue of something being exempt from property tax that was donated and yet it's a commercial building and is strictly being held for investment purposes only while they try to sell it. It's a California church and they are not paying property tax on it. If they buy the land and then rent it to a farmer they are then making income from the real estate holdings itself. If they lease an office building they are making revenue from the real estate holdings itself. At that point it would be taxable.

Vice Chairman Craig Headland: In the case of Minot where the building sits empty and they don't have any revenue on it, does that mean it would not be taxable?

Representative Mark S. Owens: That's a good point. I was trying to eliminate Minot's problem but I didn't quite do that.

Representative Patrick Hatlestad: I think what we need to do is under the first part include the term "exclusive for religious services" so that any real property must involve religious purposes.

Representative Bette Grande: Take Nativity where they have an elementary school attached to the church but they aren't holding religious services in that school but that school is exempt on the church grounds. I would hate to tell our private schools they have to be taxed when the public schools are not.

Representative Steven L. Zaiser: I concur with Representative Grande's comments. The definition of church services sometimes gets pretty messy. I don't know if there is a

definition in law or in code. There are some weird people who have weird definitions of what church services or religion is. Is there any place where that is defined in code?

Vice Chairman Craig Headland: Just to take that a step farther and I get ordained as a pastor and I want to hold a service in my house I think this law for that language would say my house is exempt.

Representative Steven L. Zaiser: That's precisely the point. There are folks who would have those intentions perhaps.

Chairman Wesley R. Belter: What's wrong with the bill as it currently stands?

Representative Roscoe Streyle: I think the argument was that you have a private owner that has some development land west of town and a church and the church isn't paying but the developer is so there is a competitive deal there. Can we not just increase it to 20, 30, or 40 acres and solve the problem?

Representative Dave Weiler: Just for the committee's information Representative Weisz brought this bill forward and I discussed the possibility of limiting the number of acres and he said the constituent who brought this forward with him their church owns 20 acres. It is clearly stated in there about the revenue. If it's generating revenue because it is selling widgets on two of their 20 acres then they are going to be taxed on the revenue from the widgets. I don't know if it really matters how many acres they have but I think the fact is that if they are being taxed on any revenue that is outside the scope of their religious activity then I think this bill is fine the way it is.

Chairman Wesley R. Belter: The question I would have is I can understand the idea that Representative Streyle brought forward about competition but I think it's a rare circumstance where the church would have so much money that they would buy more property than what they would need or expect to need in the future because of the sheer cost of it. I think we're maybe trying to make a bigger problem out of this than actually exists. The situation in Bismarck is where an assessor maybe just got a little bit hyperactive.

Representative Bette Grande: I have a concern on the revenue portion of this. Our church has a wing that is built on it that we use for Sunday school but during the week it's utilized by the YMCA for childcare purposes. So if the Y decided to move out of this facility because they built a bigger one and our church took that over, would that revenue exempt our church from being able to function in that entity? I have a little concern on the revenue wording. We don't accept revenue from the Y at this point; they just rent the facility so they didn't have to build until they were ready. I worry about using revenue in there. We did this to help our community. We didn't do this to help ourselves.

Representative Shirley Meyer: If they are renting then who is getting the revenue?

Representative Bette Grande: We charge them rent and they pay for the building. The building was brand new. They are paying off that portion. The agreement is that x amount

of years down the road when the building is paid off then they would tithe with the church but that is so far down the road.

Representative Glen Froseth: There are a lot of churches that have inherited land. The church can use the revenue off that property. If we don't word this carefully that ¼ land might be tax exempt too. I think if you look at this and read on number 9 and stated "all real property" and then skip down to line 9 "owned by any religious corporation organization upon which there is a building used for religious services."

Chairman Wesley R. Belter: What about adding a language of "educational services" or something because there are a lot of churches that run daycare services for which they charge and produces revenue. I don't think it is our intent to tax them. Or we can leave "revenue" in there but exempt for educational or child care or services such as that.

Representative Mark S. Owens: The problem that existed with this in the beginning...I think the reason it said two acres was because when they first wrote this law they realized they had the same problem we are having right now. How to define...I'll tell you what I wrote down for a definition; "Outside of donations or well established religious fund raising activities." But the more I thought about it the more I didn't think that worked. The only way we are going to successfully do this is if we pull out that and we remove the over strike from the current law and we pull out the new information and we go back and...the problem is right now there is no limit. The natural argument is then churches, whether we think they will or not, have the ability to have donated or left in wills, all this land and it just pulls them out of the tax row and they never have to pay taxes on it if we don't limit it. Why don't we just take the original language and change the two acres to 20 or 30 acres and leave it alone? That takes care of if they want to build on some new property or somewhere else, we are going buy 5 or 20 acres over here and as we build up our building fund we're going to improve and move the church to there. The rule about it being continuous is not going to help because that rules out the future home of...

Representative Patrick Hatlestad: I believe Kevin Ternes from Minot said if we passed this bill this commercial building is tax exempt. It is non-revenue producing.

Representative Lonny B. Winrich: I am coming to the conclusion that this is a far more complicated issue than we thought. I originally am becoming increasingly uncomfortable with our attempts to amend this thing on the fly. Initially I felt as Representative Owens said to just increase the acreage to something. At some point that is going to exempt the building in Minot again that everybody is concerned about. If we really want to do something like this I think there needs to be more study and investigation of how it's handled in other states or what other suggestions you have.

Chairman Wesley R. Belter: I have to agree with you that it's not a real simple fix.

Representative Bette Grande: There is a senate bill and another bill coming up next week with a 5 acre limit on it. It would be kind of nice to know what we are going to have coming over here next to deal with and also to take a look at what the next bills draws to people in comment.

Chairman Wesley R. Belter: This bill has a fiscal note but it really doesn't apply.

Representative Scot Kelsh: A city block is about 1.4 acres. 300 foot by 300 foot block is about 1.4 acres; 90,000 square feet.

Representative Mark S. Owens: The senate bill is 2189.

Representative Lonny B. Winrich: If you accept it I will move a DO NOT PASS.

Chairman Wesley R. Belter: I would like to try and fix the bill if we can.

Representative Lonny B. Winrich: As Representative Grande said there are at least a couple of other bills dealing with this same issue.

Chairman Wesley R. Belter: Let's just hold it then. The fiscal note just states that it's indeterminable. We don't need to send that to appropriations either.

Representative Mark S. Owens: The senate bill is 2189. Read the senate bill to the committee.

Chairman Wesley R. Belter: Committee, do you think we could come up with a language that it has to be used for religious purposes and then dealing with to take care of these churches that are running a daycare or a Y so that they don't become taxed.

Representative Dwight Wrangham: If that is what your wish is I think we can work toward it. I think what we're trying to define here is something we really don't want to open. Local entities presently do determine whether a certain portion of church property is used for daycare and do tax it to that limit. I don't think that is currently a problem as far as I know.

Chairman Wesley R. Belter: They do tax it if it's used for daycare?

Representative Dwight Wrangham: Yes.

Representative Steven L. Zaiser: Maybe we should do a study. I see a lot of different kinds of issues with this. I don't know if we can come to any consensus here.

Chairman Wesley R. Belter: Representative Winrich, would you withdraw your motion for a do not pass. Some of you can work on this and we can review it.

Representative Lonny B. Winrich: I withdraw my motion.

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1246
February 8, 2011
#14222

☐ Conference Committee

Committee Clerk Signature

Mary Brucke

Explanation or reason for introduction of bill/resolution:

A Bill relating to the property tax exemption for church property; and to provide an effective date.

Minutes:

See attached amendments #1.

Representative Patrick Hatlestad: Distributed and explained amendments. Please refer to attached amendments #1. **Made a motion to move the amendments.**

Representative Dwight Wrangham: Seconded.

Representative Lonny B. Winrich: Is there any particular reason for the 20 or is it just to push the number up?

Representative Patrick Hatlestad: I think the gentleman from Bismarck came in here and said their acreage was 20 acres with the church and the parking lot.

Representative Dave Weiler: I am going to resist this amendment because in talking with Representative Weisz, I don't think the amount of acres is really the issue here. The issue is the revenue part which has been taken care of by the bill. This particular church that says they have 20 acres we are now going to limit them to 20 acres. What happens if they come back and its 20.2 acres they have? To pick a number out of the air, especially to pick a number that is the same amount as the people we're trying to fix the problem for...what if there is a church out there that has 25 acres? The problem with the current law is the revenue side of it. The bill takes care of that. I don't think we need the amendment and I'm going to resist that.

Representative Lonny B. Winrich: I would disagree a little bit. I think we did hear some examples of churches that brought property, held it for a few years and for whatever reason decided to sell it and profited from the appreciation from the land. As long as the property is being used for the church purposes I guess that is appropriate. Just because the church owns the land and isn't earning any revenue on it doesn't mean that it's not an asset for them. I would support the amendment.

Representative Patrick Hatlestad: My understanding is if you include line 8 in there then the building in Minot is tax exempt as it does not produce revenue. I think if we are going to pass the bill or we're going to give serious consideration to try and deal with the acreage issue if you include the revenue thing in there then you've opened a can of worms.

Chairman Wesley R. Belter: It says you need to use it for religious services of the organization so shouldn't that take care of the Minot problem?

Representative Patrick Hatlestad: I think there are two parts to it; the first part is "property that does not produce any revenue which is owned by a religious corporation or organization." Then the second part is "and all real property owned by which there is religious services."

Representative Dwight Wrangham: I think I agree with what Representative Hatlestad is saying. I think the bill as it came in "after religious corporation or organization and all real property owned by religious corporation or organization upon which there is a building used for religious services of the organization or" and then stop. My interpretation would be that there could be a section of land, as long as it had a church on it, would be exempt.

Voice vote was taken but it couldn't be determined if it passed or failed so a roll call vote was taken and the MOTION PASSED.

Chairman Wesley R. Belter: What are the committee's wishes?

Representative Patrick Hatlestad: Motion for a DO PASS AS AMENDED.

Representative Glen Froseth: Seconded.

Representative Lonny B. Winrich: (inaudible)

**A roll call vote was taken: YES 12 NO 2 ABSENT 0
MOTION CARRIED—DO PASS AS AMENDED.**

Representative Patrick Hatlestad will carry HB 1246.

FISCAL NOTE STATEMENT

House Bill or Resolution No. 1246

This bill or resolution appears to affect revenues, expenditures, or fiscal liability of counties, cities, or school districts. However, no state agency has primary responsibility for compiling and maintaining the information necessary for the proper preparation of a fiscal note regarding this bill or resolution. Pursuant to Joint Rule 502, this statement meets the fiscal note requirement.

Becky Keller
Senior Fiscal Analyst

Prepared by the Office
of State Tax Commissioner
for Representative Hatlestad
February 8, 2011

PROPOSED AMENDMENT TO HOUSE BILL NO. 1246

Page 1, line 7, remove the overstrike over "~~not exceeding~~", after "~~two~~" insert "twenty", remove the overstrike over "~~acres in extent~~", and remove "that does not"

Page 1, remove line 8

Page 1, line 9, remove "real property"

Renumber accordingly

Date: 2-8-11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1246

House Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

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

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Hatlestad Seconded By Rep. Wrangham

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

Total (Yes) 8 No 6

Absent 0

Floor Assignment _____

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

~~VOICE VOTE~~ couldn't verify so we did a roll call vote.

MOTION PASSED

February 9, 2011

V/K
2/9/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1246

Page 1, line 7, remove the overstrike over "~~not exceeding~~"

Page 1, line 7, after "~~two~~" insert "twenty"

Page 1, line 7, remove the overstrike over "~~acres~~"

Page 1, line 7, after the overstruck closing bracket insert "[8.09 hectares]"

Page 1, line 7, remove the overstrike over "~~in extent,~~"

Page 1, line 7, remove "that does not"

Page 1, remove line 8

Page 1, line 9, remove "real property"

Renumber accordingly

Date: 2-8-11
Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1246

House Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

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

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Hatlestad Seconded By Rep. Froseth

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

Total (Yes) 12 No 2

Absent 0

Floor Assignment Rep. Hatlestad

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

REPORT OF STANDING COMMITTEE

HB 1246: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1246 was placed on the Sixth order on the calendar.

Page 1, line 7, remove the overstrike over "~~not exceeding~~"

Page 1, line 7, after "~~two~~" insert "twenty"

Page 1, line 7, remove the overstrike over "aeres"

Page 1, line 7, after the overstruck closing bracket insert "[8.09 hectares]"

Page 1, line 7, remove the overstrike over "~~in extent,~~"

Page 1, line 7, remove "that does not"

Page 1, remove line 8

Page 1, line 9, remove "real property"

Renumber accordingly

2011 SENATE FINANCE AND TAXATION

HB 1246

2011 SENATE STANDING COMMITTEE MINUTES

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

HB 1246
3/8/2011
Job Number 15072

☐ Conference Committee

A. R. Hinkley

Explanation or reason for introduction of bill/resolution:

Relating to the property tax exemption for church property

Minutes:

Chairman Cook opened the hearing on HB 1246.

Representative Weisz – I make the point that I think 20 acres is a reasonable number. The bill does address the exemption for property tax. I think it's not uncommon considering the fact that churches aren't revenue producers and they are dependant solely on generosity of their members. It's not uncommon to have churches looking to buy property that use to be out of town and hopefully some day in the future they will build a new church, maybe a youth center or school. The current restriction is 2 acres, to me is very constrictive.

Chairman Cook – You do agree that there should be some limit?

Representative Weisz – Yes, I guess my original bill I had the acres unlimited but I had revenue down there and I know the committee problems determining if property was having revenue so I think you do have to look at some limitation.

Senator Triplett – You just referenced someone is always upset depending on what side of the line they are on, are you aware of anyone that has outgrown the notion of 20 acres? Is there anyone for whom 20 acres would not be enough?

Representative Weisz – I'm not aware of anyone over 20. I know there are some at that 20 acre and are having an issue now.

Senator Triplett – I'm asking if somebody, if there is a church that you are aware of that has productively used up 20 acres or more for religious purposes and that in the sense of having built it up to having a church or a youth center, etc and has physically filled up 20 acres or even 10 acres.

Representative Weisz – It might depend on your definition. I am aware of a church that owns 20 acres, but it's not all developed. Are they using more than the current 2 acres? Yes.

Tom Frier, North Dakota Family Alliance – We believe 20 acres is an arbitrary number but 20 acres right now at least today and foreseeable, would be a good number. I think the purpose as we go back years, is that the church would have the opportunity to utilize a certain amount of acreage, space if you will, to carry out its mission. Today with the 2 acres limit, that is not adequate. Visiting with people around the state it seems like they have sort of settled on the 20 acres saying that's a pretty good number for now. None of them that I have visited with want more acres than they have use for because the maintenance cost on those acres is probably even more than the tax would be.

Senator Triplett – You said none of these churches want more acreage than they can use but yet Representative Weisz in his presentation said that sometime churches want to buy additional acres and hold it for a period of many years before they get around to developing it just so that when they do want to develop it they can have the campus together. I think the 2 of you are saying slightly different things and the concern our committee had was that we didn't think it was really appropriate, especially in large growing cities, for someone to be able to monopolize and chop out a chunk of 20 acres, which really is a significant amount of land, inside city limits for the city to have to plan and grow around if in the end they are just going to sell it anyway if the church doesn't develop as expected.

Tom Frier, North Dakota Family Alliance – I think we are on the same page. I think the instances I'm talking about and most of these would be the landlocked church in a residential area and some larger cities who have been dealing with parking issues whatever it might be for some time and eventually make that decision that we want to try to move for the purpose of improving the services we feel we can provide. Their view is one that they aren't going to put themselves in the same position again.

Christopher Dodson, North Dakota Catholic Conference – If there is any reason to support this one it's because it's simpler to understand. I understand the concerns so let's find a way to work out these differences. The changes you made to SB 2189 is difficult. I'm an attorney and I had to parcel it out and draw pictures to figure out how it would apply. I still think it could use some work. Let's keep these alive and figure something out because I do think we are going in the right direction.

Vice Chairman Miller asked for testimony opposed to HB 1246.

Keith Magnusson, North Dakota League of Cities – On SB 2189 we suggested 20 acres was too much and I said there was HB 1370 over in the House that had 5 acres. The House killed that one and came up with HB 1246 which is originally unlimited. I think you remember some testimony on SB 2189 that it should be unlimited based on the constitution. I think the Legislature has the power and probably the duty to define what is religious purposes especially for the property tax area. I have talked to some of the people of the city of Bismarck and I know a lot of the acreage if it's been assessed for property tax purposes it's been assessed at a pretty low valuation. HB 1246 ended up with 20 acres in it

just like SB 2189 did to start with. I would ask you that if you do not kill HB 1246 amend it to look just like SB 2189. I think that is a very good vehicle. We really don't need HB 1246.

Senator Dotzenrod – I think quite often the League of Cities is opposed to bills that exempt and take property off the tax rolls. The argument is, as you take more and more property off, the more property that is exempted and not subject to tax, what that means is the services that have to be paid for are spread out and have to be covered by those that are left and that has a tendency to, on a per lot or per person basis, those others that are taxed are going to pay a little more. Is this an exaggerated argument?

Keith Magnusson, North Dakota League of Cities – Bismarck for school purposes use to be known as basically a property tax poor district because there was so much exempt property. There are good things to these exempt properties too but it's one of those, more properties you take off the tax rolls, the more exemptions you grant to sales tax, the less revenue we have. Someone else has got to pay for that because services are needed and they are demanding, especially growing cities like Bismarck. They all sound good but pretty soon they mount up, where do you stop? Someone needs to pay it; you don't want us to raise property tax rates. If you take property off the rolls, someone else has to make up for that. Hopefully you are growing enough so that you can make up for that in the end but it's kind of a closed system.

Vice Chairman Miller asked for neutral testimony for HB 1246. No one came forward.

Vice Chairman Miller closed the hearing on HB 1246.

2011 SENATE STANDING COMMITTEE MINUTES

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

HB 1246
3/15/2011
Job Number 15467

☐ Conference Committee

A. Bittmiller

Explanation or reason for introduction of bill/resolution:

Relating to the property tax exemption for church property

Minutes:

Committee Work

Chairman Cook opened discussion on HB 1246.

Senator Hogue – I'll move a Do Not Pass.

Seconded by **Senator Oehlke**.

Chairman Cook – Discussion?

Senator Dotzenrod – Do we know has the House had a hearing on the Senate bill?

Alex Kelsch, Intern – The House killed it.

Chairman Cook – We have a motion for a Do Not Pass and a second.

Senator Hogue – I will withdraw my motion.

Senator Oehlke – I will withdraw my second.

Senator Hogue – My motion is to recast HB 1246 into the Senate bill we passed.

Chairman Cook closed discussion on HB 1246.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee

Lewis and Clark Room, State Capitol

HB 1246

3/21/2011

Job Number 15735

☐ Conference Committee

A. B. Miller

Explanation or reason for introduction of bill/resolution:

Relating to the property tax exemption for church property

Minutes:

Committee Work

Chairman Cook opened discussion on HB 1246.

Senator Hogue – These amendments do 2 things, amends it back to what you called the church bill that the Senate passed which is to provide the property tax exemption for the footprint of the building for the related buildings of the minister or priest and an additional 5 acres. Section 2 restores another study relating to charitable nonprofits that the House killed a couple days ago and that basically was a discretionary study to study why we give certain sales tax property tax exemptions to certain nonprofits and not others.

Senator Hogue – I'll move the amendments to HB 1246 numbered .02001.

Seconded by **Senator Burckhard**.

Senator Dotzenrod – The thing that had my attention on this from the time we started is I think the churches have constitutional protection there that when it's exclusively for religious activities but it appears to me what we are seeing as these churches develop is activities that are good citizenship and they foster fellowship and the activities that are extracurricular but I don't know, it seems to me if you've got a city with a downtown area or even an area outside the city in the suburbs that some of this property can be quite valuable and I think sometimes certain churches get left an estate or can have a wealthy benefactor and they can use their dollars for buying property and having privileges that other people that want to buy that property don't have. I'm trying to see if I can follow the spirit of the constitution which recognizes they ought to have some protection there for exclusively religious purposes. That is where I came from in being okay with this but I do think given the values of some of this property and how other people are competing to try to use it and have it for residences or other activities I think the churches are maybe taking advantage of some of this protection if they can get large chunks of land and not be subject to having to pay the same costs other people do.

Chairman Cook – All in favor of the amendments signify by saying yea, opposed? (6-0-1)

Senator Hogue – I'll move a Do Pass.

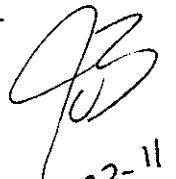
Seconded by **Senator Burckhard**.

Senator Triplett – My concern partly with the large acreage that was being proposed in the original bill is the notion of city planning and I understand that they say as a practical matter they would generally go to the outskirts of town but at some point the town starts moving around and for city planners to have to work with extending utilities out around what may continue to be a large undeveloped area for a period of years seems unfair to the other property owners who have to pay for extending utilities that distance.

Chairman Cook – Ask the clerk to take the roll on a Do Pass as Amended. (6-0-1)

Carried by **Senator Dotzenrod**.

March 16, 2011


3-22-11

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1246

Page 1, line 2, after the semicolon insert "to provide for a legislative management study;"

Page 1, line 7, overstrike "real property, not exceeding"

Page 1, line 7, remove "twenty"

Page 1, line 7, overstrike "acres"

Page 1, line 7, remove "[8.09 hectares]"

Page 1, line 7, overstrike "in extent,"

Page 1, overstrike lines 8 through 10

Page 1, line 11, overstrike "priest, rector, or other minister in charge of services," and insert immediately thereafter "buildings owned by any religious corporation or organization and used for the religious services of the organization, or if on the same parcel, dwellings with usual outbuildings, intended and ordinarily used for the residence of the bishop, priest, rector, or other minister in charge of services, land directly under and within the perimeter of those buildings, and up to a maximum of five additional acres [2.02 hectares] of area used for parking or reasonable landscaping or sidewalk area adjoining the main church building"

Page 1, line 13, after the period insert "If the residence of the bishop, priest, rector, or other minister in charge of services is located on property not adjacent to the church, that residence with usual outbuildings and land on which it is located, up to two acres [0.81 hectare], is exempt from taxation."

Page 1, line 16, overstrike "All real property owned by any religious corporation"

Page 1, overstrike lines 17 through 19

Page 1, after line 19, insert:

"SECTION 2. LEGISLATIVE MANAGEMENT STUDY - SALES TAX EXEMPTION FOR CHARITABLE NONPROFITS. During the 2011-12 interim, the legislative management shall consider studying the feasibility and desirability of extending the sales tax exemption on purchases of tangible property to all charitable nonprofit organizations so that all such organizations are treated equally and fairly under state law. The legislative management also may undertake a comparative analysis of the efficacy of sales tax exemptions and rate reductions, including, for each exemption or reduction, a detailed analysis of the fiscal impact to the state; benefits to the state economy from eliminating or retaining the exemption or rate reduction; the relationship of the exemption or rate reduction to tax policies of other states and to federal or state laws or regulations; and who are the beneficiaries of each exemption or rate reduction, specifically including the extent to which the benefits flow to out-of-state concerns. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly."

Renumber accordingly

Date: 3-21-11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1246

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 Hogue - Seconded By Senator Burckhard

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

Total (Yes) 6 No 0

Absent 1

Floor Assignment _____

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

Verbal vote

Date: 3-21-11
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1246

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 Burckhard

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

Total (Yes) 6 No 0

Absent 1

Floor Assignment Senator Dotzenrod

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

REPORT OF STANDING COMMITTEE

HB 1246, as engrossed: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1246 was placed on the Sixth order on the calendar.

Page 1, line 2, after the semicolon insert "to provide for a legislative management study;"

Page 1, line 7, overstrike "real property, not exceeding"

Page 1, line 7, remove "twenty"

Page 1, line 7, overstrike "acres"

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Renumber accordingly

2011 HOUSE FINANCE AND TAXATION

CONFERENCE COMMITTEE

HB 1246

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1246
April 5, 2011
#16346

☒ Conference Committee

Committee Clerk Signature

Mary Bruckner

Explanation or reason for introduction of bill/resolution:

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

Minutes:

No attachments.

Chairman Patrick Hatlestad: Opened conference committee hearing on HB 1246.

Senator Dotzenrod: The original bill had the 20 acres on the bill. It takes the two acres under current law and proposed to go to 20 acres. We as a committee took a look at the requirements that are set forth in the Constitution Article X where it says that property used exclusively for religious or other public purposes shall be exempt from taxation. The committee then had to consider what "exclusive use" was and that would not be for athletic competition or fellowship, it would be exclusively for religious purposes. The committee then tried to figure out how to separate it out because the constitution provides protection from taxation from those things that are exclusively religious purposes. In trying to make that determination we felt that if you had the church dwelling, church facility, buildings to support that facility, the residence of the priest or minister, and a reasonable amount of property around that so that the facility could look good and operate well with a parking lot and sidewalks in addition to those facilities we asked what a reasonable amount of property was needed for exclusive religious use. We felt that if you had a parking lot and some sidewalks and landscaping around the facility and the residence those five acres seemed like a number where you should be able to accomplish those objectives. We felt as a committee that within a city where all of the other property owners are paying taxes that there could be some use of the provisions of the 20 acre rule to do some speculating that there could be some property purchased for future use. We felt the other property owners are under the obligation to pay these taxes to support the fire department and the other functions of the city and that was a factor in trying to find some number that seemed it made sense to fit with the facility that was used exclusively for the religious facility. We saw some examples where when you get something that is as large as 20 acres and it exists there within a city where there is development going on around it that it requires the city to make quite a few adjustments in their water, sewer, sidewalks, planning and all the work that goes into laying out a city. When you take a large tract of 20 acres in an area of homes and residential area it is quite a chore for the city. We looked at the current two acres and felt if we went to five acres that was a pretty good adjustment up.

Senator Hogue: I think Senator Dotzenrod provided a good summary. We were struggling with the scenario that plays out in the larger cities more where the church acquires, say 20 acres, and will then subdivide several acres for their church, parking lot and outdoor youth activities and then they still have ten acres left which is still part of the original lot that they acquired so the question is whether than remaining ten acres they aren't using is being used for a charitable purpose under the North Dakota Constitution. We spent a lot of time on this and actually pulled out the most recent North Dakota Supreme Court decision that was related to another bill about real property taxation of charitable organizations. I read the decision and was surprised by what our Supreme Court said. One of the things that surprised me was a charitable organization that has a separate residence for the leader of that organization is not a charitable use of that property. The fact that the person is living there is an accommodation that is more convenient to them but a residential living quarters does not qualify as a charitable use. It seemed to me that the Supreme Court was willing to uphold the taxing authorities' decision not to include these collateral structures or improvements as being used as charitable purposes. We came up with the five acres and that was more than doubling the current law of two acres. We certainly heard the testimony about some of the larger churches now, two acres is simply not adequate so we tried to come up with a number that acknowledges the fact that these churches are using more space for charitable purposes than they were when we set it at two acres.

Representative Glen Froseth: In our testimony on the house side we received testimony from one that had property much greater than five acres to develop their congregation facilities to include parking and things so the five acres wouldn't cover that parcel of theirs. A total of 20 acres seemed like it would cover any needs or future developments at the present time and it seemed like a simpler way to go. If that didn't suffice and years down the road we could always come back and revisit that area again. I feel that making it as simple and as accommodating as possible would be the way to go. The Senate added section 2 with the study for sales tax exemption for charitable nonprofits and the House defeated that bill by a vote of 71-21 with the exact same language. Legislative Council said that same study had been conducted in 1987, 1991, 1995, and 2005 so we felt there wasn't any merit to having that same study again.

Chairman Patrick Hatlestad: We had testimony on a church in Bismarck that already has 20 acres and are using a significant amount of it already and anticipates expanding. They have a youth center as well as the main church facility, parking lot, recreational area for the young people, and also an area to pile up snow. What do you tell a church that already has the land and is already using a significant portion of that land that suddenly they have to give it up or sell it? What would you recommend?

Senator Hogue: I think you are referring to the Assembly Church and they have two separate tracts; one for 9.87 acres which is the one that the church and parking lot is situated and a second tract of 11.78 acres where their youth facility is located. In between the youth facility and the main church they have this large rolling acreage and the property to the north of that is listed for sale at \$8.00 a square foot. I think the Senate version as it's currently written exempts the buildings, both the youth center, maintenance shed, and the church and then gives them an additional five acres on top of that. Five acres is an awful

lot of land for outdoor youth activities and snow piling. Every number is arbitrary but it becomes a question of how much land and if the church had to pay taxes on a couple acres and if they wanted to have a youth center that was more than five acres that is certainly their prerogative. I think the Senate version is saying if you want to go beyond that then maybe you should pay some taxes on that last piece. The other issue we talked about in the Senate but we didn't adopt is maybe in addition to adding buildings and structures we should add paved parking because if the parking lot is paved that tells me that is actually being used for parking and we're not calling that excess parking. I think I proposed that on the Senate side but the thought was what about these rural churches that have gravel parking and as I thought about that those rural churches don't tend to run up against this limit of 20 acres, they tend not to have large tracts of land. That is something to think about.

Chairman Patrick Hatlestad: You mentioned the Supreme Court decision and the parsonage is not considered a church facility. Did I interpret that correctly?

Senator Hogue: Yes. Under the North Dakota Constitution the Supreme Court said you have a facility that is being used for a charitable purpose and in a particular case is the YMCA and as part of their compensation to their Executive Director provided a house to live in and that was his residential living quarter. The court said that simply because that was a form of compensation and it makes the organization run better by having the executive director living near the charitable use building that does not make those living quarters a charitable use. In our statute we say the church and the parsonage both count. Under our existing statutory law we allow the parsonage to be tax exempt but there is no constitutional obligation to do so.

Senator Dotzenrod: In response to your question on what you tell a church that already has a campus of that size and one of my thoughts on that was that the law at the time that they acquired the property and developed it was a two acre limit. The Constitution says exclusively religious purposes so we felt that was fairly narrow and that are many other events and athletic competitions and fellowship and a sense of community but we didn't feel that was an exclusively religious service or use. I think that any congregation should be free to buy whatever they want, they should be free to buy 40 acres if they feel they need it or 80 acres if they feel they need it but to change the law because they acquired a certain size parcel to me didn't make too much sense. All the neighbors around them are paying taxes on their property and if they want a large piece of land they could go outside the city limits if they like. If they acquire that large size inside the city and the city is growing around it they are by definition living on land that is going to be quite valuable and quite developable for homes and other purposes. I think it's a question of setting a policy that we think makes sense and complies with what the Constitution asks us to do which is provide that tax free area for those facilities that are exclusively for religious purposes.

Chairman Patrick Hatlestad: How would you anticipate church growth? Would you permit another five acres for potential growth?

Senator Dotzenrod: I think there are many large cities in the United States that have populations in the hundreds of thousands or millions that have people who have churches in their downtown area that are less than five acres for the building and the area around it

that have huge congregations. It's a question of what is needed to achieve an exclusively religious purpose and I don't know how they can justify going into these large facilities and continue to say that everything they do is exclusively religious. I realize culturally that we are in that time when that is the phenomena we're seeing. I think we in the committee were interested in trying to accommodate the needs of the church to grow but at the same time trying to put some number in statute that would comply with the requirements of the Constitution.

Chairman Patrick Hatlestad: Any further questions? I think we will need some time to consider what we've heard today so we will schedule another meeting.

Representative Glen Froseth: Senator Hogue mentioned that some modifications would have to be made to accommodate the church in Bismarck. It probably is already over the limits in the Senate amendments. Do you have any proposed language to do that?

Senator Hogue: You have a couple churches in Bismarck; the Good Shepard Lutheran which has 23.25 acres so they are over the 20 acres you provided to the Senate. I think we should all think about that if you included the buildings and the paved parking lots, because the paved parking lots for Assembly take up a good chunk of land, and it's clear that the parking lot is being used to facilitate attending the church. If you were to consider something like that you would provide them more acreage that isn't subject to the cap. On the Senate side we went against that because of the rural churches that choose to put gravel on their parking lots but they don't seem to be struggling with this limitation we have. There are three churches in Bismarck with this issue.

Representative Shirley Meyer: How are they being taxed currently? Are they carving out two acres and being assessed tax on the other 18 acres?

Senator Hogue: I had the opportunity to speak with the City Treasurer for the City of Bismarck because they are acquainted with this issue based on a number of churches. I can tell you the Good Sheppard Church have a separate parcel of 5.08 acres and are paying taxes on it. They don't say that it's being used for outdoor ministries so they are paying taxes on that portion. The First Assembly Church, I don't believe is paying taxes because it's a contiguous tract where you have the church property and the parking lot is on the west side and that is apparently the 9.87 acres and then you go farther to the east and you have a youth center and that's 11.7 acres so in between is this sloping ground so they aren't paying taxes on that.

Chairman Patrick Hatlestad: No further questions. We will recess until the next scheduled meeting and then we will see if we can work something out. Meeting adjourned.

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1246
April 8, 2011
#16438

☒ Conference Committee

Committee Clerk Signature

Mary Brucher

Explanation or reason for introduction of bill/resolution:

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

Minutes:

See attached amendments.

Chairman Hatlestad: Distributed proposed amendments. Please refer to attached amendments.

Representative Glen Froseth: Explained the amendments. We went on a tour and found a lot of these churches are not in compliance with these two acres. There are variations of properties and we saw one with over 20 acres. In visiting with a couple of the assessors they say they use their own judgment and whatever satisfies the different towns and cities. To put a limit of five acres is not going to bring a lot of the facilities into compliance with the law because there are quite a few who have more than five acres now. We thought that by taking the acreage out of there and designing the language so it would be the footprint of the facility that would be tax exempt regardless of how many acres they use as long as its being used for the purpose that is spelled out in the section of the bill for religious organizations and services and so forth. On the amendment on line 16 it would read "All buildings owned by any religious corporation or organization and used for the religious services of the organization or if on the same parcel dwellings with usual..." The underlined language on lines 19 through 22 will stay as it is so they'll have another two acres there for parsonages and rectors and so forth. That will eliminate the limited number of acres and it would be at the discretion of the local assessors to determine whether all the property they own is being used for religious purposes and grant the tax exemptions. It would be on a city to city or county to county basis.

Chairman Hatlestad: When we looked at the churches there were a number of them that had expanded their parking lot and had not yet paid them but it was obvious they were expanding and improving their parking area and they were also anticipating to expand as there was property behind the church that they were going to purchase to expand their parking so we would then include the additional two acres.

Representative Glen Froseth: The last thing a new facility would improve on is the paving of a parking lot. They might establish the area where they want parking but they would get by until they could raise enough money to put the black top on.

Senator Hogue: The city assessors can figure out what the reasonable amount of parking given the size of the structure because they have in code now based on the square footage of structures and number of occupants they can tell you right down to the number of parking spaces that are needed. I'm not concerned that if a larger church would say all the open grass is our parking lot and if it was substantially more than what the structure needed I have the confidence that the local assessor or the local entity would tell them what is reasonable because under their building code they would need so much parking space for the structure. I'm okay with that.

Senator Burckhard: Is it the footprint plus two extra acres?

Chairman Hatlestad: It's the building and all of the out buildings that would normally have sidewalks, parking lot, landscaping, and then an additional two acres which would allow them expansion.

Senator Dotzenrod: The way our current law is written it starts out with saying all property not exceeding two acres. This will define what we think is a legitimate type of things that would qualify for exclusively religious purposes and then at the end adding two acres to that. This definition that is in your amendment I assume that wouldn't include things like football fields, athletic ball diamonds, or anything they bought for a future project such as another piece of land to expand with in the future. It seems fairly reasonable to me if I understand correctly.

Representative Glen Froseth: We discussed that with the Bismarck assessor too and my interpretation is that if an area is developed like a youth organization developed for youth activities that come under the definition of religious organization and church activity they would probably consider that a parcel that is developed and improved for that purpose. If they regularly have a tennis court that is attached to their youth activity center then we would probably consider that as being tax exempt.

Senator Dotzenrod: When we looked at what the Constitution said it has that word "exclusively" so I suppose that would be part of what the assessor would use in trying to determine if the grounds are exclusively religious or are there some other events that are going on that have nothing to do with the church itself. By leaving things less clear we are always talking about an argument between a church and an assessor trying to figure out what is in and what is out. We've used words in here like "reasonable" so I'm going to assume that for the most part the differences will be obvious. I'm hoping if we do this we won't have cases that end up with an Attorney Generals' opinion which really wouldn't be so bad I guess, or another Supreme Court decision. I also think the communities are free to exempt what they want even under the law we have right now. If a city saw that it was over two acres but just felt it was a legitimate religious organization doing what they normally do then many citizens just turn the other way and say they have the authority not bound by the state requirement that they've had for the two acres. I think there have been cities that let those properties go and they always have that right. Even if we have a

definition in our Century Code they always at the local level have the ability to exempt something they feel is in a gray area. I think that if we do the residence on page 1 line 13 where it is not on the same site then we would have to repeal subsection 7. The bill itself deals with subsection 9 and subsection 7 is the residence part.

Chairman Hatlestad: I think by taking out the defined acreage that gives the assessors some latitude without having a conflict that we are screwing with state law. So I think that part is good.

Representative Shirley Meyer: On line 12 when it says "used for religious services of the organization" that covers that. When assessors look at this I think they understand a footprint better than an acreage amount. I know acres on a farm but when you look at the churches we visited we asked the acreages of the churches and it was interesting yet at the same time all three of us knew what the footprint of that church was. For us it became a lot clearer with the footprint versus the set acreage and I think it would be a more common approach for an assessor to say they understand that this is the religious service of this organization and here is their building that adjoined it and here's where the patrons park. To me I think this would be a much clearer approach than your set two acres are exempt and the rest isn't.

Representative Glen Froseth: In the original bill in section 9 that is present language with the residence of the priest or minister...

Senator Dotzenrod: I think that subsection 7 applies to if the residence is not co-located, that is if it is physically removed at a different site.

Senator Hogue: You're exactly right, Senator Dotzenrod. Read section 7 of the Code. I almost think we could strike that subsection because we are addressing that in this amendment for subsection 9.

Senator Dotzenrod: At one time in our process over in the Senate when we first had the bill we had Marcy Dickerson and she prepared this amendment with the language of up to two acres and we then had that in our version and repealed subsection 7 we can put this other residence and the two acres in there. Somewhere along the line in adopting amendments on the Senate side to HB 1246 we must have forgotten to put that repeal in there because at one time we had that repeal earlier in the session.

Chairman Hatlestad: Do we need to have a formal amendment made repealing subsection 7?

Representative Glen Froseth: I don't believe so. I think our intern can handle it.

Chairman Hatlestad: Is that acceptable to the members of the committee? We need a voice vote to accept that change.

Voice vote was taken to make the change deleting or repealing subsection 7 and submitting what we have included in the amendment here: MOTION CARRIED.

Representative Glen Froseth: I'm still not in favor of section 2. I don't think the study is necessary. There have been four previous studies since 1990 on this same issue. I don't want to hold up the process on this though. **I will make a motion for the House to accede to the Senate amendments and further amend the draft of April 8, 2011.**

Representative Shirley Meyer: **Seconded.**

Senator Hogue: This is exactly what was in the email you sent to us a couple days ago?

Chairman Hatlestad: Yes. Except we did not include section 2 in that email so the issue is whether we include section 2 and the amendments and section 2.

Representative Shirley Meyer: Are the amendments .03000?

Chairman Hatlestad: It will be the Senate amendments to the House bill.

Representative Glen Froseth: I believe its 11.0516.03000.

Senator Dotzenrod: I think we've had a number of studies on sales tax exemptions. The question of how are some of these sales tax exemptions working for us and how do they compare to other states. This has to do with a specific thing of charitable clinics and nonprofit organizations that buy things and for building improvements and things for themselves. We have some in the state that are not subject to sales tax and others that are subject to sales tax. I think this may be a bit narrower in terms of what it's asking for then some of these other sales tax studies that have been done. One of the things that I think is important about every bill we pass is that we can maintain those words in there "used exclusively for religious services." I think that's what the Constitution says and that's the protection that the churches and religious organizations should have and it appears that is all still going to be in there. Then I think this bill should work.

Chairman Hatlestad: If I look at this now it says, "All buildings owned by religious corporations or organizations and used for religious services of the organization." I don't think it says "exclusive."

Senator Dotzenrod: I think if you follow down to line 18 then you will find it. I think that covers it.

Senator Hogue: I think we're in agreement of what we want to do here but I wonder if this draft amendment isn't working off the wrong engrossed bill. If we're working off .03000 that already has the study in it.

John Walstad: We can't amend those bills. The one that says Senate Amendments on them those aren't real bills. In most of them we pull the Senate amendments out and tweak it with the new changes and put it back in.

Representative Glen Froseth: I would encourage both the conference committee chairmen should review the bill before it is finally sent to the floor.

Chairman Hatlestad: We have a motion on the floor so we should pull the motion off.

Representative Glen Froseth: I will withdraw my motion.

Representative Shirley Meyer: I will also withdraw my motion.

Chairman Hatlestad: We need to get the final draft all put together and then come back and vote on it.

Representative Shirley Meyer: I was trying to plug these amendments into that draft and I just couldn't make it work.

Senator Hogue: I was going off of 300.

Chairman Hatlestad: I will get together with Mr. Walstad and we'll get it all put together in the proper form and then we'll come back.

Meeting adjourned.

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1246
April 13, 2011
#16531

☒ Conference Committee

Committee Clerk Signature

Mary Brucher

Explanation or reason for introduction of bill/resolution:

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

Minutes:

See attached amendments.

Chairman Hatlestad: Distributed and reviewed amendments .02004. This should be all the information we had agreed to now in the proper form. The church, the land under the church, the out buildings, any improvements in off street parking does not have to be paved, landscaping, sidewalks, an additional two acres of land available for expansion plus the parsonage and up to two acres there, and then the study on the bottom. Any questions?

Senator Hogue: I would move that the Senate recede from its amendments as printed on pages 1154 and 1155 of the House Journal and pages 838 and 839 of the Senate Journal and that the Engrossed House Bill 1246 be amended as per amendment .02004 dated April 12, 2011.

Representative Glen Froseth: Seconded.

A roll call vote was taken: YES 6 NO 0 ABSENT 0
MOTION CARRIED.

Chairman Hatlestad: Conference Committee on HB 1246 is adjourned.

Amendment
4-8-11

DRAFT PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1246
DRAFT APRIL 8, 2011

Page 1, line 2, after the semicolon insert "to provide for a legislative management study;"

Page 1, line 7, overstrike "real property, not exceeding"

Page 1, line 7, remove "twenty"

Page 1, line 7, overstrike "acres"

Page 1, line 7, remove "[8.09 hectares]"

Page 1, line 7, overstrike "in extent,"

Page 1, overstrike lines 8 through 10

Page 1, line 11, overstrike "priest, rector, or other minister in charge of services," and insert immediately thereafter "buildings owned by any religious corporation or organization and used for the religious services of the organization, or if on the same parcel, dwellings with usual outbuildings, intended and ordinarily used for the residence of the bishop, priest, rector, or other minister in charge of services, land directly under and within the perimeter of those buildings, and improved offstreet parking or reasonable landscaping or sidewalk area adjoining the main church building and up to a maximum of two additional acres [.81 hectare]"

Page 1, line 13, after the period insert "If the residence of the bishop, priest, rector, or other minister in charge of services is located on property not adjacent to the church, that residence with usual outbuildings and land on which it is located, up to two acres [.81 hectare], is exempt from taxation."

Page 1, line 16, overstrike "All real property owned by any religious corporation"

Page 1, overstrike lines 17 through 19

Page 1, after line 19, insert:

"SECTION 2. LEGISLATIVE MANAGEMENT STUDY - SALES TAX EXEMPTION FOR CHARITABLE NONPROFITS. During the 2011-12 interim, the legislative management shall consider studying the feasibility and desirability of extending the sales tax exemption on purchases of tangible property to all charitable nonprofit organizations so that all such organizations are treated equally and fairly under state law. The legislative management also may undertake a comparative analysis of the efficacy of sales tax exemptions and rate reductions, including, for each exemption or reduction, a detailed analysis of the fiscal impact to the state; benefits to the state economy from eliminating or retaining the exemption or rate reduction; the relationship of the exemption or rate reduction to tax policies of other states and to federal or state laws or regulations; and who are the beneficiaries of each exemption or rate reduction, specifically including the extent to which the benefits flow to out-of-state concerns. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly."

Renumber accordingly

2011 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: House Finance + Tax

Bill/Resolution No. 1246 as (re) engrossed

Date: 4-5-11, 4-8-11

Roll Call Vote #: 1, # 2 *Withdrew*

Action Taken

- ☐ HOUSE accede to Senate amendments
☒ HOUSE accede to Senate amendments and further amend *Draft April 8, 2011*
☐ SENATE recede from Senate amendments
☐ SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) _____

☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) _____ was placed on the Seventh order of business on the calendar *★ WITHDREW MOTIONS ★*

Motion Made by: R. Froseth Seconded by: R. Meyer

Representatives	Y	N	OO	Yes	No		Senators	Y	N	OO	Yes	No
<i>Chairman Hatlestad</i>	✓	✓	✓				<i>Senator Hogue</i>	✓	✓	✓		
<i>Rep. Froseth</i>	✓	✓	✓				<i>Senator Burkhard</i>	✓	✓	✓		
<i>Rep. S. Meyer</i>	✓	✓	✓				<i>Senator Dotzenrod</i>	✓	✓	✓		

Vote Count Yes: _____ No: _____ Absent: _____

House Carrier _____ Senate Carrier _____

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

Voice Vote to add to amendment - MOTION CARRIED.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1246

That the Senate recede from its amendments as printed on pages 1154 and 1155 of the House Journal and pages 838 and 839 of the Senate Journal and that Engrossed House Bill No. 1246 be amended as follows:

Page 1, line 2, after the semicolon insert "to repeal subsection 7 of section 57-02-08 of the North Dakota Century Code, relating to a property tax exemption for certain church property; to provide for a legislative management study;"

Page 1, line 7, overstrike "real property, not exceeding"

Page 1, line 7, remove "~~twenty~~"

Page 1, line 7 overstrike "acres"

Page 1, line 7, remove "[~~8.09 hectares~~]"

Page 1, line 7 overstrike "in extent,"

Page 1, overstrike lines 8 through 10

Page 1, line 11, overstrike "priest, rector, or other minister in charge of services," and insert immediately thereafter "buildings owned by any religious corporation or organization and used for the religious services of the organization, or if on the same parcel, dwellings with usual outbuildings, intended and ordinarily used for the residence of the bishop, priest, rector, or other minister in charge of services, land directly under and within the perimeter of those buildings, improved off-street parking or reasonable landscaping or sidewalk area adjoining the main church building, and up to a maximum of two additional acres [81 hectare]"

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Page 1, line 16, overstrike "All real property owned by any religious corporation"

Page 1, replace lines 17 through 19 with:

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

SECTION 3. LEGISLATIVE MANAGEMENT STUDY - SALES TAX EXEMPTION FOR CHARITABLE NONPROFITS. During the 2011-12 interim, the legislative management shall consider studying the feasibility and desirability of extending the sales tax exemption on purchases of tangible property to all charitable nonprofit organizations so that all such organizations are treated equally and fairly under state law. The legislative management also may undertake a comparative analysis of the efficacy of sales tax exemptions and rate reductions, including, for each exemption or reduction, a detailed analysis of the fiscal impact to the state; benefits to the state economy from eliminating or retaining the exemption or rate reduction; the

relationship of the exemption or rate reduction to tax policies of other states and to federal or state laws or regulations; and who are the beneficiaries of each exemption or rate reduction, specifically including the extent to which the benefits flow to out-of-state concerns. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly."

Renumber accordingly

April 13, 2011

VR
4/13/11
102

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1246

That the Senate recede from its amendments as printed on pages 1154 and 1155 of the House Journal and pages 838 and 839 of the Senate Journal and that Engrossed House Bill No. 1246 be amended as follows:

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the state economy from eliminating or retaining the exemption or rate reduction; the relationship of the exemption or rate reduction to tax policies of other states and to federal or state laws or regulations; and who are the beneficiaries of each exemption or rate reduction, specifically including the extent to which the benefits flow to out-of-state concerns. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly."

Renumber accordingly

2011 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: House Finance + Tax

Bill/Resolution No. HB 1246 as (re) engrossed

Date: 4-13-11

Roll Call Vote #: 1

Action Taken

- ☐ HOUSE accede to Senate amendments
☐ HOUSE accede to Senate amendments and further amend
☐ SENATE recede from Senate amendments
☒ SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) 1154 - 1155

☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) HB 1246 was placed on the Seventh order of business on the calendar

Motion Made by: Senator Hogue Seconded by: Rep. Froseth

Representatives	4/13	Yes	No		Senators	4/13	Yes	No
Chairman Hatlestad	✓	✓			Senator Hogue	✓	✓	
Rep. Froseth	✓	✓			Senator Burkhard	✓	✓	
Rep. S. Meyer	✓	✓			Senator Dotzenrod	✓	✓	

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier _____ Senate Carrier _____

LC Number 11.0516.02005 _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

HB 1246, as engrossed: Your conference committee (Sens. Hogue, Burckhard, Dotzenrod and Reps. Hatlestad, Froseth, S. Meyer) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ pages 1154-1155, adopt amendments as follows, and place HB 1246 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1154 and 1155 of the House Journal and pages 838 and 839 of the Senate Journal and that Engrossed House Bill No. 1246 be amended as follows:

Page 1, line 2, after the semicolon insert "to repeal subsection 7 of section 57-02-08 of the North Dakota Century Code, relating to a property tax exemption for certain church property; to provide for a legislative management study;"

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benefits flow to out-of-state concerns. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly."

Renumber accordingly

Engrossed HB 1246 was placed on the Seventh order of business on the calendar.

2011 TESTIMONY

HB 1246

Mr. Chairman members of the committee, my name is Roger Will, I'm an assistant pastor of the Evangel Assembly of God congregation in Bismarck. I'm here to testify in favor of HB 1246 on behalf of our congregation.

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

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

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

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

In recent years the city planning and building have required us to have green space, parking spaces to match the capacity of the building and water retention ponds to help with storm sewer water control. All of this takes a lot of land surface.

Testimony #1 p. 2

We have recently become aware of two attorney general opinions (Wefald, 1981 (AGO-13) and Heitcamp, 1995 (95-F-05)) that addressed questions about church property tax exemption. Both of them basically concluded the same thing. NDCC 57-02-08(7) and (9) conflicts with Article X, Section 5 of our State constitution and where there is a conflict between the constitution and the law, the constitution wins. In recent days, we received word that the city of Bismarck is backing down from their position to assess a property tax to churches that exceed the two-acres. They also encouraged us to seek help from the legislature and said that they would support us in that effort. I believe they also became aware of these two AG opinions, and realized they were on the wrong side of the constitution. I don't think that the constitution intends to limit the size of a church.

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



Assessing Division

Testimony #1 p. 3

December 28, 2010

EVANGEL ASSEMBLY OF GOD
3225 N 14TH ST
BISMARCK ND 58503-0613

RE: Real Estate Property Tax Exemption for 3225 N 14TH ST

Dear Sirs:

After the omitted property tax hearing, our office did additional research into North Dakota Century Code 57-02-08(9) which states if a church has more than 2 acres of land, it will be taxed.

Mr. Kevin Glatt, Burleigh County Auditor, sent several Attorney General Opinions to our office to review, and I passed them along to Mr. Charlie Whitman, City Attorney. Mr. Whitman has reviewed those opinions along with the North Dakota constitution and is of the opinion that we should not put these on the tax rolls.

I would recommend that you continue to contact the State Legislators to try to change the wording on Subsection 9 of N.D.C.C. 57-02-08 not to limit the church exemption to 2 acres.

If you have any questions, please contact our office.

Thank you.

Sincerely

Debra K Goodsell
Acting Assessor

**Testimony to the House Finance & Taxation Committee,
Chairman Wesley R. Belter
HB 1246
Kevin Ternes, City Assessor
City of Minot
kevin.ternes@minotnd.org**

Testimony #2 p.1

January 31, 2011

House Bill 1246

Mr. Chairman, my name is Kevin Ternes and I am the City Assessor in Minot.

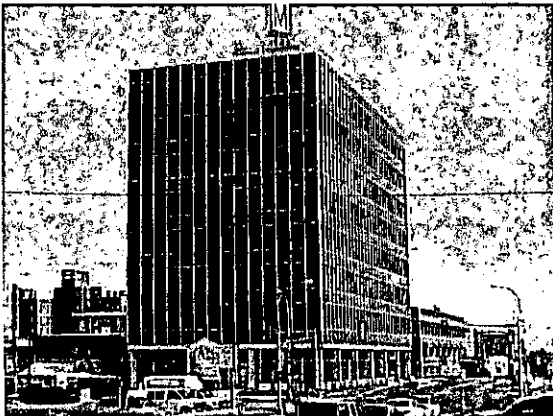
If I could I would like to submit neutral testimony.

Whether certain classes or types of property are tax exempt for property taxes is the decision of this assembly.

In Minot we have several churches that own valuable vacant land that is currently assessed and not always even adjacent to their church. Some churches will purchase land and hold for several years as they decide whether or not to build a new church. Some build, others decide to sell the land at quite a profit if their building plans get changed.

We did have a church that purchased some land in a developing area and then several years later sold it for about 3 times what they paid for it. I suppose you could say they were competing on a small basis with the other developers in town. They understood they weren't using this property for a charitable or religious purpose and therefore never questioned the property tax that was owed.

We also have the building pictured below, in downtown Minot that is owned by a religious corporation out of California and the building currently is vacant to my knowledge nor are they using it for a religious purpose. This building is currently listed for sale for \$750,000.



I believe vacant commercial land owned by churches that are speculating or investing and buildings like this would be 100% exempt under this proposal.

February 8, 2011

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1246

Page 1, line 7, remove the overstrike over "~~not exceeding~~" and insert immediately thereafter "twenty"

Page 1, line 7, remove the overstrike over "aeres" and insert immediately thereafter "[8.09 hectares]"

Page 1, line 7, remove the overstrike over "~~in extent,~~"

Page 1, line 7, remove "that does not"

Page 1, remove line 8

Page 1, line 9, remove "real property"

Renumber accordingly