

2011 SENATE FINANCE AND TAXATION

SB 2159

# 2011 SENATE STANDING COMMITTEE MINUTES

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

SB 2159  
1/18/2011  
Job Number 12987

Conference Committee

A. Rittmiller

## Explanation or reason for introduction of bill/resolution:

Relating to sales and use tax exemption for purchases made by a contractor, subcontractor, or builder on behalf of a nonprofit hospital.

## Minutes:

Chairman Cook opened the hearing on SB 2159.

**Senator Klein** – The bill we have before us is certainly been around a bit for the last few sessions. It's a bill that came to us in an issue that certainly is close to my heart and that is trying to help out our small rural nonprofit hospitals. Those facilities are not only important as they give us some great health care out in the rural communities but also they provide a lot of jobs. How it generally works is, the nonprofits avoid the sales tax but when they install for example an air conditioner, when the installer installs it he has to then apply the use tax and thus the savings that they had hoped for is no longer there. I have tried to narrow this down; it's very narrow now down to just nonprofit hospitals. I would certainly hope we can move, and have some discussion on this.

**Senator Burckhard** asked if most hospitals in the state are nonprofit.

**Senator Klein** – I believe 'most' would be an acceptable adjective to use in this case.

**Senator Triplett** – This bill very clearly limits it to those who have the status of nonprofit pursuant to IRS.

**Senator Klein** – Yes, they have to have their certificate of nonprofit status.

**Rocky Zastoupil, President, St. Aloisius Medical Center** – I am in support of this bill. We have a facility that was built in the 1950's which I'm fairly certain a lot of the facilities in the state were built during that time. As you all might note, quite a few of the rural access and critical access hospitals have been running in negative margins in the past several years and it's difficult for us to plan for the future replacement of building much less just some replacement of equipment. Therefore this would make a considerable difference for us in being able to obtain new facilities as they need to be replaced.

**Tim Blasl, North Dakota Hospital Association** – I want to be on the record that we too support this bill.

**Dan Kelly, Chairman, North Dakota Hospital Association** – If I may, I would like to give 4 items of impromptu testimony in support of this bill. First of all, I'd like to point out that the study that was conducted recently reflects that North Dakota hospitals provide in excess of \$51 million in charity care. This is uncompensated care that we provide to the citizens of North Dakota. Secondly, I would like to bring to bear is the fact that North Dakota has the dubious distinction of having one of the highest ages of plants statistics in the state. This means that our physical plants are aged and have not been replaced. That is an item that has to be addressed at some point, as we need to be prepared for the new wave towards out-patient care in the new technologies, that take place. The third point that was eluded to before, that I'd like to put a little more rusticity to, is that I'm part of a group that conducts an annual study of the profitability, of the critical access hospitals of which there are 36 in the state and as of this last year, 24 of those were running in the red. Some of them having significant losses. My final point is that, as a hospital administrator, when we undertake any type of a project we have a limited budget. The reality is, if a portion of that budget, goes to paying sales tax, which really decreases the amount of money that can be spent, toward the upgrade of a physical plant or equipment. From my perspective, I think that the bill really affords the hospital a greater opportunity to bring about an increase in technology and upgrading of physical plants.

**Chairman Cook** asked for testimony opposed to SB 2159.

**Keith Magnusson, North Dakota League of Cities** – My testimony is quite a bit the same as when I came up after the thrift stores last week. Please keep in mind, that if you grant sales tax exemption for somebody, it's not only state money your giving up. The cities that you have granted the authority to collect sales tax would also be giving up something. The state may be flush with money but the cities aren't. I believe the fiscal note does not take in to account any affect on the cities. Any further tax exemptions you grant are going to have an effect on the cities.

**Chairman Cook** asked for testimony neutral to SB 2159.

**Myles Vosberg, North Dakota Tax Department** – The fiscal note is, at this point, a little bit of a rough estimate. We worked off of numbers that we had from last legislative session, when this bill came up. Mr. Blasl from the Hospital Association has been helping us with the fiscal note and doing a survey of the hospitals on projected projects that they are having in the upcoming biennium. I believe we will have some updated information and I do think that this fiscal note is actually understated to what it's going to be. The other comment I would like to make is on the bill on page 2 line 22. I believe there is an unintended consequence from this amendment. That portion of the bill deals with use tax that contractors have to pay on materials that they install. Right now there is an exemption for medical equipment that is purchased by a hospital or a long-term care facility and then later installed by a contractor. Without this provision the contractors would still have to pay tax on anything they install, even if it's been purchased tax exempt by the hospital. Senator Klein talked about an air conditioner which would not qualify for that exemption. This is limited to medical equipment.

By striking the language on line 21 and 22 you can see that exemption applies to long-term care facilities as well as hospitals, that has been struck out here and then added additional language to clarify that under this bill, anything that's installed by a contractor for a hospital would be exempt. By doing that, the long-term care facilities would lose that ability to purchase something, such as, medical equipment tax free.

**Chairman Cook** – That is an unintended consequence.

**Myles Vosberg, North Dakota Tax Department** – I don't believe the intent of this bill was to take that exemption away for the other long-term care facilities.

**Chairman Cook** – To remove what you believe is an unintended consequence of this bill, we would remove the overstrike of a long-term care facility or remove all the overstrike on 21 and 22?

**Myles Vosberg, North Dakota Tax Department** – I think we would have to look at how to do that and decide how to put the new exemption in, without losing the existing exemption. One might be taking the overstrike out and then adding a totally new subsection that would deal with a hospital contractor portion.

**Chairman Cook** – If a nonprofit hospital was to install a boiler or air conditioner, and the maintenance man that installed it, actually worked for the hospital and purchased everything on behalf of the hospital, it would be purchased tax exempt, is that correct?

**Myles Vosberg, North Dakota Tax Department** – That is correct. Under the existing exemption, anything that the hospital purchases is exempt. The tax is due when it's installed, only if it's done under contract. If it's done by an employee they would still enjoy the exemption.

**Chairman Cook** – If we were to pass this bill, how would you do an audit on a subcontractor to make sure that what he bought tax exempt to be installed in a nonprofit tax exempt hospital was used only there and not somewhere else?

**Myles Vosberg, North Dakota Tax Department** – I think part of the process would be to look at those contractors records. I would look at their job cost records and look at what actually went in to that job to verify whether it would be exempt from the tax or not. If there were a contract in place and the contractors records show that they purchased it for that job or they took the materials out of their inventory for that job and it went to the hospital job it would be exempt from tax.

**Senator Oehlke** – Is there a definition of medical equipment anywhere? Here's my perspective on this. I understand if someone buys an x-ray machine, that would be medical equipment. I can also see, where an entire surgical room would be considered medical equipment.

**Myles Vosberg, North Dakota Tax Department** – There is not a definition in the law. That question has come up on audits that we have done, a remodel or rebuild and they are putting in sinks for example; we wouldn't view that to be medical equipment.

**Senator Oehke** – Why not? You need to clean your medical tools. To me that's medical. You walk in to a medical facility, it's total medical, isn't it?

**Myles Vosberg, North Dakota Tax Department** – What we've used as a definition, is, if someone else could buy it and use it for another purpose, it's not medical equipment. It would be something produced and manufactured with the intention of some type of a medical purpose. That's how we've drawn the line as far as what is medical equipment.

**Chairman Cook** – Should there be a definition?

**Myles Vosberg, North Dakota Tax Department** – It would make things more clear if there were a definition.

**Senator Dotzenrod** – The term 'purchasing agent authorization letter' is used more than once. It is on line 16 and probably a couple other places in the bill. Does that term mean anything specific to the tax department? Would you envision that the letter would have to actually have the list in it of the things that need to be purchased or would it just be a letter that says "I, as an administrator of the hospital, authorize this construction company to come in and buy whatever they need".

**Myles Vosberg, North Dakota Tax Department** – That term is not in the law now. That's not something that we deal with. The letter would need to say that they authorize the contractor, as agent, for this particular job. They would have to make reference to that contract in order to cover those items.

**Senator Dotzenrod** – The thing I'm thinking about is, if the contractor has a letter which authorizes them not to pay sales tax, could they at the same time, as long as they are buying the things they need, could they also buy some other things that they may not need for that job. They might want to have and use on some other job.

**Myles Vosberg, North Dakota Tax Department** – I suppose that is a possibility, I think that goes back to the audit issue. We would have to trace those purchases back to the job.

**Chairman Cook** – When contractors bid these jobs, they are purchasing at a wholesale price, probably marking it up and that is what they have in their bid. Does this somehow give some indication of what their mark up might be, if we were to allow a sales tax exemption on this? Is there any way to give some insight into what type of profit they are making on supplies that they are selling?

**Myles Vosberg, North Dakota Tax Department** – I don't think so. I think it depends on how they want it bid. I worked for a contractor here in town at one time and we did a lot of cost-plus work. We had to show the invoices to show our cost of materials and the tax that we paid was part of the cost and then we had to contract them out, percentage, to mark all those bills up. If it's just a bid job, lump sum, number of dollars for a project, I don't think that would be reflected in the contract at all.

**Vice Chairman Miller** asked about a type of rebate option. If the contractor would estimate the tax on the bill and the hospital could turn that in to the state for a refund of the taxes.

**Myles Vosberg, North Dakota Tax Department** – We have that situation to a certain extent now on certain incentives that are given, for example, a new manufacturer or expanding business. The other thing is, any time you have large projects where there is a potential refund at the end, it creates, particularly for the local taxes, the cities would be getting the revenue from the tax that the contractors are paying. After a big project, we refund it in a lump sum, and it's kind of a big hit to their revenue stream. That creates some difficulty for the local taxes.

**Senator Oehlke** – Isn't the sales tax a separate item on a bill?

**Myles Vosberg, North Dakota Tax Department** – It's a separate item on the bill when the contractor purchases the materials, but if the contractor lump sum bids a job to the hospital, the hospital never sees the tax amount. It's built in to the bid that they agree to but they don't see the itemized tax amounts.

**Senator Dotzenrod** verified that when a new hospital is built, all building materials are subject to tax except what is defined as medical equipment, because medical equipment is exempt.

**Myles Vosberg, North Dakota Tax Department** said that is correct.

No further action was taken.

Chairman Cook closed the hearing on SB 2159.

# 2011 SENATE STANDING COMMITTEE MINUTES

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

SB 2159  
1/25/2011  
Job Number 13379

Conference Committee

A. R. Miller

## Explanation or reason for introduction of bill/resolution:

Relating to sales and use tax exemption for purchases made by a contractor, subcontractor, or builder on behalf of a nonprofit hospital.

## Minutes:

Committee Work

**Chairman Cook** opened discussion on SB 2159.

**Senator Triplett** – My notes on the fiscal note at that time says Myles Vosberg reported to us that this fiscal note is a bit rough and that there was updates coming and that the fiscal note is likely understated.

**Chairman Cook** – Alex, check with Myles and see if there is a new fiscal note coming down.

**Senator Dotzenrod** – I was wondering on line 22, I thought he was saying that if you just leave the reference to tangible personal property then you are talking about a lot of things that are in the hospitals. Cabinets, floor coverings, door handles, shelves, countertops, and just about everything. That would all be tangible personal property and that the intent wasn't, as I understood, his purpose wasn't to do that. It wasn't to have all that become tax exempt.

**Vice Chairman Miller** – The workability of it was the problem last year. I'm just wondering if this should be a rebate type thing. Obviously the contractors are going to have to reveal some information but if they want to be competitive that's maybe what they are going to have to do.

**Chairman Cook** closed discussion on SB 2159.

# 2011 SENATE STANDING COMMITTEE MINUTES

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

SB 2159  
2/1/2011  
Job Number 13778

Conference Committee

A. R. Miller

## Explanation or reason for introduction of bill/resolution:

Relating to sales and use tax exemption for purchases made by a contractor, subcontractor, or builder on behalf of a nonprofit hospital.

## Minutes:

Committee Work

**Chairman Cook** opened discussion on SB 2159.

**Senator Oehlke** – It occurred to me from listening to SB 2202 that if they can figure out a way for contractors to be able to purchase equipment and not divulge their cost on that bill, why couldn't that language be amended in to this bill?

**Vice Chairman Miller** – I passed out amendments.

**Chairman Cook** – Let's take the time to go through Vice Chairman Miller's and Senator Oehlke's amendments.

**Chairman Cook** – One deal with the medical equipment purchased by long-term care facilities and the other one you did for Vice Chairman Miller that put in place a rebate.

**Myles Vosberg, Tax Department** – Correct.

**Chairman Cook** – The first question that Senator Oehlke asked is after we just heard SB2202, where the tax department came down with a bill to eliminate the rebate mechanism and offer for a refund directly to the contractors. The question he asked was, can we do that same thing here?

**Myles Vosberg, Tax Department** – The way SB 2159 is drafted right now, without any amendment, does include a provision in section 2 that allows the contractor to not pay tax on what they purchase and install into a hospital. So it's already there just like we do in SB 2202. The amendment that Senator Oehlke asked for was a recommendation in my testimony because the way section 2 was drafted it actually took the ability away for a long-term care facility to purchase medical equipment and have it installed by a contractor without paying taxes. I don't think that was the intent here. The amendment that I drafted



for Senator Oehlke would keep that provision and then basically exclude everything for the hospitals so that the contractors did not have to pay tax.

**Chairman Cook** – And the amendments you drafted for Vice Chairman Miller put in place a rebate program instead and still incorporates Senator Oehlke's amendment, correct?

**Myles Vosberg, Tax Department** – The amendment for Vice Chairman Miller does take a different approach where it creates an exemption on the materials that go into a hospital. It does preserve the exemption that exists for the long-term care facilities but then requires the refund for the contractor.

**Chairman Cook** – SB 2202, the tax department testified in support of, saying it's a good fix. I don't recall you testifying in support of SB 2159.

**Myles Vosberg, Tax Department** – We were neutral on SB 2159. The recommendation I made was basically a clarification or just to point out that I thought there were some unintended consequences there for the long-term care facility.

**Chairman Cook** – As far as allowing the subcontractor to take the exemption, you feel that would work just as well here, as it does in SB 2202?

**Myles Vosberg, Tax Department** – I believe it will because, again, the exemption is broad. It's all the materials that go in to any contract between a contractor and a hospital so there really isn't much chance to go wrong there, or to apply the exemption incorrectly.

**Chairman Cook** – No chance for abuse or mischief?

**Myles Vosberg, Tax Department** – I never say no chance.

**Chairman Cook** – You, through an audit would be able to discover if it was going on.

**Myles Vosberg, Tax Department** – Correct.

**Chairman Cook** – The fiscal note is simply the money that is paid in taxes today because contractors are buying the equipment, installing it in a hospital, and the hospital is not getting the exemption.

**Myles Vosberg, Tax Department** – That is correct. There is the ability right now to buy the medical equipment but not any of the rest of it.

**Senator Oehlke** – I would move the Oehlke amendment.

Seconded by **Senator Triplett**.

**Chairman Cook** – All in favor say yea. Opposed? (7-0-0) We have before us SB 2159 as amended.

**Senator Oehlke** – I move a Do Pass as Amended and rerefer to Appropriations.

Seconded by **Vice Chairman Miller**.

**FISCAL NOTE**  
 Requested by Legislative Council  
 02/21/2011

Amendment to: Reengrossed  
 SB 2159

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

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>			(\$386,400)	(\$33,600)		
<b>Expenditures</b>						
<b>Appropriations</b>						

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

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

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

Reengrossed SB 2159 creates a sales and use tax exemption for materials used in construction projects on behalf of nonprofit hospitals up to a maximum exemption of \$5000 per hospital per year.

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

If Reengrossed SB 2159 is enacted, building projects associated with the state's 42 qualifying hospitals could each receive a sales tax exemption of up to \$5000 per year. If all hospitals had projects that were able to utilize the maximum exemption, it would result in a revenue reduction of \$420,000 for the 2011-13 biennium.

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

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

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

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

<b>Name:</b>	Kathryn L. Strombeck	<b>Agency:</b>	Office of Tax Commissioner
<b>Phone Number:</b>	328-3402	<b>Date Prepared:</b>	02/21/2011

**FISCAL NOTE**  
 Requested by Legislative Council  
 02/03/2011

Amendment to: SB 2159

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

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>			(\$1,932,000)	(\$168,000)		
<b>Expenditures</b>						
<b>Appropriations</b>						

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

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

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

Engrossed SB 2159 creates a sales and use tax exemption for materials used in construction projects on behalf of nonprofit hospitals.

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

If Eng. SB 2159 is enacted, new information provided by the health care industry indicates the projects that are likely to occur will result in a revenue reduction of \$2.1 million for the 2011-13 biennium.

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

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

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

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

<b>Name:</b>	Kathryn L. Strombeck	<b>Agency:</b>	Office of Tax Commissioner
<b>Phone Number:</b>	328-3402	<b>Date Prepared:</b>	02/04/2011

# FISCAL NOTE

Requested by Legislative Council  
01/11/2011

Bill/Resolution No.: SB 2159

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

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			(\$1,592,000)	(\$138,000)		
Expenditures						
Appropriations						

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

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

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

SB 2159 creates a sales and use tax exemption for materials used in construction projects on behalf of nonprofit hospitals.

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

If SB 2159 is enacted, information provided by the health care industry indicates the projects that are likely to occur will result in a revenue reduction of \$1.730 million for the 2011-13 biennium.

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

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

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

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

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	01/17/2011

February 01, 2011

JF3  
2-2-11

PROPOSED AMENDMENTS TO SENATE BILL NO. 2159

Page 2, line 21, remove the overstrike over "~~medical equipment purchased as~~"

Page 2, line 22, remove the overstrike over "~~by a long term care facility as defined in~~"

Page 2, line 23, remove the overstrike over "~~section 50-10.1-01 and subsequently~~"

Page 2, line 23, remove the overstrike over "such"

Page 2, line 23, remove "a nonprofit"

Page 2, line 24, overstrike "hospital"

Page 2, line 24, remove the overstrike over "facility"

Page 2, line 24, replace the underscored comma with "or to tangible personal property  
completely consumed or installed by a contractor into a nonprofit hospital"

Page 2, line 25, remove the underscored comma

Renumber accordingly

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

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2159

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 Oehlke Seconded By Senator Triplett

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) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

verbal vote 7-0-0

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

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2159

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 Oehlke Seconded By Senator Miller

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

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Oehlke

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

**REPORT OF STANDING COMMITTEE**

**SB 2159: Finance and Taxation Committee (Sen. Cook, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2159 was placed on the Sixth order on the calendar.

Page 2, line 21, remove the overstrike over "~~medical equipment purchased as~~"

Page 2, line 22, remove the overstrike over "~~by a long term care facility as defined in~~"

Page 2, line 23, remove the overstrike over "~~section 50-10.1-01 and subsequently~~"

Page 2, line 23, remove the overstrike over "such"

Page 2, line 23, remove "a nonprofit"

Page 2, line 24, overstrike "hospital"

Page 2, line 24, remove the overstrike over "facility"

Page 2, line 24, replace the underscored comma with "or to tangible personal property completely consumed or installed by a contractor into a nonprofit hospital"

Page 2, line 25, remove the underscored comma

Renumber accordingly



2011 HOUSE FINANCE AND TAXATION

SB 2159

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee  
Fort Totten Room, State Capitol

SB 2159  
March 14, 2011  
#15371

Conference Committee

Committee Clerk Signature

*Mary Bruecker*

## Explanation or reason for introduction of bill/resolution:

A bill relating to a sales and use tax exemption for purchases made by a contractor, subcontractor, or builder on behalf of a nonprofit hospital; relating to a use tax exemption for untaxed materials used by a contractor under contract with a nonprofit hospital; and to provide an effective date.

## Minutes:

*See attached testimony #1 and proposed amendments.*

**Senator Klein:** Introduced bill. We have re-engrossed SB 2159 before us and this started three sessions ago when I was visiting with a gentleman who works for the Harvey Hospital who that summer had just installed an air conditioner and didn't pay any sales tax but when the installation was done the contractor had to charge them use tax. He came to me and said that in a big facility that wouldn't be charged because most likely they would have somebody on staff that could install this unit and thus avoid the sales tax. This over the years had looked a lot different and also looks a lot different than how I introduced it. Now it relates to nonprofit hospitals. It's been capped at \$5,000. I believe the tax department has an amendment as to how they get that in the form of a rebate rather than getting it up front. This is a bill to help some of the smaller hospitals.

**Myles Vosberg, Director of the Tax Administration Division of the Office of State Tax Commissioner:** Neutral testimony. Please refer to attached testimony #1 and amendments.

**Chairman Wesley R. Belter:** No further testimony. Closed hearing on SB 2159.

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee  
Fort Totten Room, State Capitol

SB 2159  
March 14, 2011  
#15402

Conference Committee

Committee Clerk Signature

*May Brueck*

## Explanation or reason for introduction of bill/resolution:

A bill relating to a sales and use tax exemption for purchases made by a contractor, subcontractor, or builder on behalf of a nonprofit hospital; relating to a use tax exemption for untaxed materials used by a contractor under contract with a nonprofit hospital; and to provide an effective date.

## Minutes:

*See attached amendments.*

**Chairman Wesley R. Belter:** I believe there is a tax department amendment.

**Vice Chairman Craig Headland:** I will move the tax department amendment of March 14, 2011.

**Representative Mark S. Owens:** Seconded.

A voice vote was taken: MOTION CARRIED.

**Representative Bette Grande:** I move a DO NOT PASS AS AMENDED.

**Representative Roscoe Streyle:** Seconded.

A roll call vote was taken: YES 10 NO 4 ABSENT 0  
MOTION CARRIED FOR DO NOT PASS AS AMENDED.

**Representative Roscoe Streyle** will carry SB 2159.

**FISCAL NOTE**  
 Requested by Legislative Council  
 02/21/2011

Amendment to:           Engrossed  
                                   SB 2159

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

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			(\$386,400)	(\$33,600)		
Expenditures						
Appropriations						

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

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

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

Reengrossed SB 2159 creates a sales and use tax exemption for materials used in construction projects on behalf of nonprofit hospitals up to a maximum exemption of \$5000 per hospital per year.

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

If Reengrossed SB 2159 is enacted, building projects associated with the state's 42 qualifying hospitals could each receive a sales tax exemption of up to \$5000 per year. If all hospitals had projects that were able to utilize the maximum exemption, it would result in a revenue reduction of \$420,000 for the 2011-13 biennium.

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

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

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

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

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	02/21/2011

PROPOSED AMENDMENT TO REENGROSSED SENATE BILL NO. 2159

Page 1, line 2, remove "and use" and remove "purchases made by a contractor,"

Page 1, line 3, replace "subcontractor, or builder on behalf of" with "materials used to construct, expand, or improve" and remove "to amend and reenact section"

Page 1, remove line 4

Page 1, line 5, remove "materials used by a contractor under contract with a nonprofit hospital,"

Page 1, line 10, replace "**Exemption for materials acquired by a contractor on behalf**" with "**Sales tax exemption for construction, expansion, or improvement**"

Page 1, line 12, replace "A contractor, subcontractor, or builder that acquired materials, supplies, or equipment" with "Gross receipts from building materials, supplies, equipment, or other tangible personal property used to construct, expand, or improve a nonprofit hospital in this state are exempt from the taxes under this chapter. To qualify for the exemption, the building materials, supplies, equipment, or other tangible personal property must be incorporated into the structure of the hospital or consumed in the construction process to the point of not having any residual economic value."

Page 1, remove lines 13 through 23

Page 2, line 1, replace "If the contractor, subcontractor or builder is also a retailer holding a retail sales tax" with "If the building materials, supplies, equipment, or other tangible personal property are purchased and installed by a contractor, the hospital must apply to the tax commissioner for a refund of the sales tax paid by the contractor for the qualifying tangible personal property. The refund amount for each hospital claiming an exemption may not exceed five thousand dollars in any fiscal year beginning after June 30, 2011, and each subsequent fiscal year. Application for the refund must be made at the time and in the manner directed by the tax commissioner and must include sufficient information to verify the correctness of the refund claim."

Page 2, remove lines 2 through 6

Page 2, remove lines 10 through 30

Page 3, remove lines 1 through 8

Re-number accordingly

Date: 3-14-11  
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2159

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. Headland Seconded By Rep. Owens

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 Trotter					
Dave Weiler					
Dwight Wrangham					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

VOICE VOTE

MOTION CARRIED

March 14, 2011

VR  
3/15/11

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2159

Page 1, line 2, remove "and use"

Page 1, line 2, remove "purchases made by a contractor,"

Page 1, line 3, replace "subcontractor, or builder on behalf of" with "materials used to construct, expand, or improve"

Page 1, line 3, remove "to amend and reenact section"

Page 1, remove line 4

Page 1, line 5, remove "materials used by a contractor under contract with a nonprofit hospital;"

Page 1, line 10, replace "Exemption for materials acquired by a contractor on behalf" with "**Sales tax exemption for construction, expansion, or improvement**"

Page 1, line 12, remove "A contractor, subcontractor, or builder that acquires materials, supplies, or equipment"

Page 1, replace lines 13 through 23 with "Gross receipts from building materials, supplies, equipment, or other tangible personal property used to construct, expand, or improve a nonprofit hospital in this state are exempt from the taxes under this chapter. To qualify for the exemption, the building materials, supplies, equipment, or other tangible personal property must be incorporated into the structure of the hospital or consumed in the construction process to the point of not having any residual economic value."

Page 2, line 1, remove "If the contractor, subcontractor, or builder is also a retailer holding a retail sales tax"

Page 2, replace lines 2 through 6 with "If a contractor purchases and installs the building materials, supplies, equipment, or other tangible personal property, the hospital must apply to the commissioner for a refund of the sales tax paid by the contractor for the qualifying tangible personal property. The refund amount for each hospital claiming an exemption may not exceed five thousand dollars in any fiscal year beginning after June 30, 2011, and each subsequent fiscal year. The commissioner shall direct the time and manner by which the hospital must apply for the refund. The application must include sufficient information to verify the correctness of the refund claim."

Page 2, remove lines 10 through 30

Page 3, remove lines 1 through 8

Renumber accordingly

Date: 3-14-11  
Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2159

House Finance and Taxation Committee

Check here for Conference Committee

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

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment

Rerefer to Appropriations  Reconsider

Motion Made By Rep. Grande Seconded By Rep. Streyle

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) 10 No 4

Absent ∅

Floor Assignment Rep. Streyle

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



REPORT OF STANDING COMMITTEE

SB 2159, as reengrossed: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (10 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). Reengrossed SB 2159 was placed on the Sixth order on the calendar.

Page 1, line 2, remove "and use"

Page 1, line 2, remove "purchases made by a contractor,"

Page 1, line 3, replace "subcontractor, or builder on behalf of" with "materials used to construct, expand, or improve"

Page 1, line 3, remove "to amend and reenact section"

Page 1, remove line 4

Page 1, line 5, remove "materials used by a contractor under contract with a nonprofit hospital;"

Page 1, line 10, replace "**Exemption for materials acquired by a contractor on behalf**" with "**Sales tax exemption for construction, expansion, or improvement**"

Page 1, line 12, remove "A contractor, subcontractor, or builder that acquires materials, supplies, or equipment"

Page 1, replace lines 13 through 23 with "Gross receipts from building materials, supplies, equipment, or other tangible personal property used to construct, expand, or improve a nonprofit hospital in this state are exempt from the taxes under this chapter. To qualify for the exemption, the building materials, supplies, equipment, or other tangible personal property must be incorporated into the structure of the hospital or consumed in the construction process to the point of not having any residual economic value."

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Page 2, remove lines 10 through 30

Page 3, remove lines 1 through 8

Renumber accordingly

2011 SENATE APPROPRIATIONS

SB 2159

# 2011 SENATE STANDING COMMITTEE MINUTES

## Senate Appropriations Committee Harvest Room, State Capitol

SB 2159  
02-07-2011  
Job # 14082

Conference Committee

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

Relating to sales and use tax exemption for purchases made by a contractor, subcontractor, or builder on behalf of a nonprofit hospital

### Minutes:

See attached testimony.

**Chairman Holmberg** called the committee to order on Monday, February 7, 2011 in reference to SB 2159. Present: Tad H. Torgerson, OMB and Roxanne Woeste, Legislative Council.

**Senator Jerry Klein:** District 14. Testified in favor of SB 2159 and stated he has been working on this for the last 3 or 4 sessions. What we are attempting to do here is to provide for the sales tax exemption on nonprofit hospitals, when they install materials. (Example cited relating to his hospital in Harvey, North Dakota). There are folks that think we are depleting the sales tax base in the communities, but I would say that in a community such as Harvey, ND if we lose that hospital we are in a whale of a reduction in taxes, not only in sales tax but in property tax, because these folks are professionals, they work at the facilities, they earn a nice salary and they provide a tremendous amount of needed care in our community.

**Chairman Holmberg:** Made comments regarding a concern here, and this is not the only bill presented this session to exempt someone who is already paying the tax, but is tax exempt.

**V. Chair Grindberg:** On a scale of 1 to 10, how important is this to the hospitals in the state, given the debate over health care and other issues?

**Senator Klein:** We wonder how our facilities will continue to operate and to what level of profit or non-profit, one never really knows. Serving on a hospital board for 9 years in Harvey, ND, I understand how difficult it is to make a profit and how closely we have to monitor all our expenses and base it on whatever income we might have or have not. On a scale of 1 to 10 I'm going to give it a 7 or 8 because I look at it in my rural development, where a \$10,000 tax on a remodeling projects to buy larger equipment, that amounts to quite a bit of money.

**Keith Magnuson:** North Dakota League of Cities testified in opposition of SB 2159. There are quite a number of sales tax exemption bills and they do sound good. But if you look at the bigger picture, this does take away sales tax income from cities. Unless you have a new fiscal note that just came in, the fiscal note only has the impact on the state and not on cities.

**Chairman Holmberg:** We had a fiscal note earlier that did look at the impact on the cities and counties that would have a tax. This one does not. We just got a new fiscal note, that's dated the 3<sup>rd</sup> of February, which would be after the bill was acted on, in the committee. There is one dated 1/11 and this one shows an increase in the costs. February 1<sup>st</sup>, Finance and Tax amended the bill, so the fiscal note we now have dated 02-03 would be the accurate one, but there is no discussion of impact on communities.

**Keith Magnuson:** The Tax Department was asked about that during the committee hearing and they didn't estimate any impact on cities. I think there are a handful of counties that do collect sales tax too. It is going to be an impact. I know there are some cities paying off bond issues with proceeds from sales tax and they have anticipated all of this. If you grant one exemption, where do you stop?

**V. Chair Bowman:** How many nonprofit hospitals are there in ND? **Keith Magnuson:** I don't know that, and am sure others who can testify to that **V.Chair Bowman:** I've always heard that no hospitals are making a profit until I paid my bill and then I questioned it. **Keith Magnuson:** The law does require them all to file an IRS exemption.

**John Olson:** On behalf of the City of Fargo, ND testified in opposition of SB 2159 and presented Testimony attached # 1, stating this bill will have a serious impact on Fargo's locally imposed sales tax collections and would be a significant loss of state sales tax collections. He is urging a DO NOT PASS on SB 2159.

**Chairman Holmberg:** Asked if either John or Keith had testified in Finance and Tax on this bill. He was told that Keith had.

**V. Chair Bowman:** To give these non-profit tax exempt status on this, will that slow down the rate of increase as a cost to the person that's using the hospital or will they just use that money for something else?

**Senator Klein:** Many times you have to shift the money around in order to pay the bills when you are dealing with a limited amount of income. I look at it at a different perspective than that 1% the city of Harvey would get that they would lose, but if they lose that hospital with how many people are working in it, that certainly will be a problem and I would be surprised if the cities came in opposition to this bill. You have been on small boards before; do you shift the money around to pay the bills? I would be surprised that the cities came in; in opposition to something that is providing so much opportunity out in our communities. But nevertheless, you have to do it. I believe what you have to do. I don't think anyone can really answer that specifically. I think it's more of an are we going to continue to hang on for another 5 to 10 years? What's this going to amount to in a small facility, probably not a whole lot, but that's the issue we face here.

**Jerry Jurena:** President of the North Dakota Hospital Association. We have 46 member hospitals in the association, 6 of them are all nonprofit hospitals, we have 36 critical care access hospitals of which 34 belong to the Hospital Association, 2 do not belong to the association, and they are all non profit. We have two acute care long term hospitals, the Triumph Hospital in Mandan, and one in Fargo. They are investor owned. The State Hospital, VA hospital, and Prairie St. Johns are members of the association also. Most of the members are non- profit hospitals. Your second question about if we passed this bill would it offset charges, sad to say, no. We do a study every year based on the 36 critical access hospitals in the state. This last year was the first time; we've had all 36 hospitals supply its data. Of the 36 hospitals, 6 of them do make money, 6 of them are right at break even, 24 lose money. It is a process of cost shifting, if they're going to lose money where do you not pay, how do you operate? The depreciation money that they get off of operations is used for operations today; it's not being withheld for their future. So in the future if a boiler breaks down, or a roof blows off, they will have to go back to the communities and borrow the money. Because the funded depreciation is not there, it's being used on a day to day basis just for operation. So the money they would not be paying for sales tax would just lesson the loss at this point for most of the critical access hospitals.

**V. Chair Grindberg:** Of the 36 you mentioned are non profit, **Jerry Jurena:** Yes, the critical access hospitals. **V.Chair Grindberg:** Can you confirm that neither one of those pays any property tax? **Jerry Jurena:** I can't confirm that none of them pay property tax. **V.Chair Grindberg:** I'd like to know the answer to that. I know the large organization in Fargo does not. Would you have a list available, of any improvement on those 36 hospitals that would qualify under this bill? **Jerry Jurena:** I believe that Tim is working on that data. **V. Chair Grindberg:** I can't imagine in the big picture it is real money. Because you're not going to put 100's of millions of dollars into a small hospital in Rugby or Ashley, and so really what are the small numbers of a new air conditioner. It really is chump change from the way I see it. I would like to see some of that activity to give me a flavor of what it means because it might different dollar amounts per different situation. It is all driven by critical mass. **Jerry Jurena:** We could send out a survey and get that information for you. **V. Chair Grindberg:** No time for a survey. Whatever you could pull would be okay. **Jerry Jurena:** How soon do you want it? **V. Chair Grindberg:** 4PM from the last two years.

**Senator Christmann:** You don't have to research this, just your guess. When we hear from Mr. Magnusson and Mr. Olson, do these cities really need this money? Most of these at least in the smaller towns are supported by their cities, anyway; because they don't have enough money to keep going. How many of those critical access hospitals including the big ones have a fund drive or have gotten money from their cities or counties to keep the place going?

**Jerry Jurena:** Some hospitals get mill levies from the cities. I don't know if we have that information available as to what communities are getting money from their communities. They are tapping into the cities for donations. In the last 15 years we did a fund drive, each time we went to the community and asked for some type of a fund drive. I assume most cities are doing exactly the same thing.

**Senator Christmann:** My sense is that the cities are having to contribute more to their hospitals to help pay the sales tax, and then we charge them a sales tax because the cities say they need the revenue.

**Senator Wardner:** Didn't your colleague tell you to have the information forwarded of the project? Did I understand that correctly? So, that information would be good for us as to what the hospitals are going to plan to spend their money?

**Chairman Holmberg:** That has to be reflected in the fiscal note. New information provided by health care industry which would probably indicates that projects that are likely to occur will result in a revenue reduction of \$2.1 M. for the 2011-2013, so the tax commissioner's office had to have data from you folks. So that is the number you are dealing with a reduction in state revenues.

**Senator Wardner:** That would give us a flavor of what projects they are talking about, and apparently is available right now.

**Jerry Jurena:** Do you want that by community or in total dollars?

**Senator Wardner:** The reason, in reference to Senator Grindberg's question, he is asking for a flavor of projects we are going to be exempted here. I thought you had a list of those but you must've gotten them, with the information by dollar amounts. You don't have that?

**Jerry Jurena,** Correct. I think when you take a look at the 36 critical access hospitals; the projects are going to be small. When you take a look at the 6 PPS hospitals that is Altru, Trinity, Sanford, Innovis, MedCenter, St. Alexius, you know those projects are going to be much larger in statute.

**Chairman Holmberg:** In referencing Altru and Trinity, those bigger hospitals, I don't see those here saying give us this tax break which is curious.

**Jerry Jurena:** We don't have an answer, Senator Holmberg.

**Senator Klein:** It is my understanding the large facilities has a person on staff who is an employee of the facility, who could do that work, then the use tax is not paid. This is only when, primarily a smaller facility who have to hire a contractor from the outside to do the installations. Example cited. The large facilities have those personal on staff to install that equipment and do not then pay the use tax. This is just for facilities, which do not have a professional on staff that can install it.

**Chairman Holmberg:** The answer \$42 Million dollars worth of contemplated construction in small hospitals, that's how you get to the \$2.1 M.

**Myles Vosberg:** ND Tax Department: First of all the new fiscal note, is not because of the amendment to the bill. We had some clarifying language for administrative purposes that the Tax commissioner asked for. The amendment to the fiscal note is because we did get updated

information from the Hospital Association for this bill in the Senate Finance and Tax. I did testify that we were attempting to get some updated information. The previous fiscal note was \$1.73 Million the new fiscal note is \$2.1 Million and we assumed what we did receive from the Hospital Association a survey of their members to see what kind of contracts they anticipated doing the next two years, during the biennium. We used 40% of those total contract costs as estimated materials out of the total projects. The rest would be labor and so on, and then applied the tax rate to come with the \$2.1 Million. That is how we calculated the fiscal note.

**Chairman Holmberg:** We had testimony from the city of Fargo, that it reduced their income and we have had fiscal notes in the past I believe where it says the impact on cities and counties will be x,y,or z,. Is there any reason why we don't have any kind of number on that?

**Myles Vosberg:** We didn't address the local tax. I guess we could have and probably should've, the way we've been doing fiscal notes is that if there is specific language that addresses the local tax somehow, then we calculate a number. Otherwise we have not. So for example, I was with you last week on the compensation, which did involve combining the local tax and the state tax together for that calculation. The average rate in the state is roughly 1 ½%. There are some caps, so that not all of the transactions are subject to tax like they are for state purposes. (Example cited). Typically, if you have a 1% tax, you have a \$25.00 cap on that transaction. It would be less than probably 1 ½ % of the total amounts here.

**Myles Vosberg:** The other thing I wanted to mention is I am not all that familiar with the property tax. I can certainly find out about that if those hospitals are paying property tax.

**Chairman Holmberg:** We won't pass the bill at this time.

**Senator Christmann:** Do we have the same issues with schools?

**Myles Vosberg:** Yes. Under the current sales tax law, we have schools and we have hospitals that are licensed by the Department of Health. We have Federal government, and so on that are exempt from paying sales tax on purchases of property they buy. However, under the use tax law, if a contractor is hired to install those materials even if they don't purchase them, they are liable for tax on those materials. So indirectly, a school does pay tax on the materials that go into their building, because the contractor has to build it into their price.

**Chairman Holmberg:** Close the hearing on 2159.

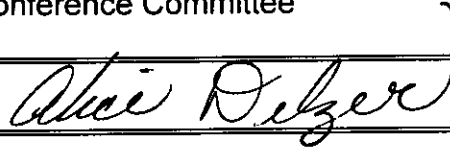
# 2011 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee  
Harvest Room, State Capitol

SB 2159  
02-17-2011  
Job 14716 (Meter 14.05)

Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

A Roll call vote on Sales & Use Tax Exemption for nonprofit hospitals

## Minutes:

You may make reference to "attached testimony."

**JOB # 14716 INCLUDES THE ROLL CALL VOTES ON THE FOLLOWING  
BILLS: 2345,2159,2029,2299,2298,2212,2334,2357.**

**Chairman Holmberg** called the committee on order on SB 2159. There are some amendments I mentioned the other day. This would be targeted to smaller hospitals.

**Senator Christmann** presented amendment #11.0368.02001 and explained that the point of the Bill is both a need and fairness issue. These hospitals, if there are repairs and maintenance projects and remodeling projects the supplies are exempt from state sales taxes. So if Med Center or St. A's, does a project, most of their stuff is exempt. If Senator Klein's little hospital in Harvey does a project and say puts in a new furnace and they don't have the people to do that so they get a contractor and buy law the contractor has to buy the furnace, not the hospital, and the contractor has to pay sales tax and charge them sales tax. So if you don't have a big enough hospital to afford all you own maintenance people who can do all these projects you pay it, the large hospitals who have these people don't pay it and these little hospitals, all or for the most part nonprofits, and the funds they raise hard-fought scratched in with 10s and 20s with bake sales to keep them going, and when they put in new carpeting, or something like that even the sales tax makes a big difference. Originally the fiscal note on this a couple million dollars, what this amendment does is limit it to \$5,000 a year. There are 38 small hospitals and 6 large ones.

**Senator Christmann** moved the amendment #11.0368.02001. seconded by Senator Erbele. A Roll Call vote was taken. Yea: 12; Nay: 0; Absent 1. Motion carried.

**Senator Erbele** moved Do Pass as Amended. Seconded by Senator Robinson.

A Roll Call vote was taken. Yea: 12; Nay: 1; Absent 0. Senator Erbele will carry the Bill. The hearing was closed on SB 2159. (Meter 20.05)



February 16, 2011

PROPOSED AMENDMENTS TO SENATE BILL NO. 2159

Page 1, line 14, after the underscored period insert "The exemption under this section and section 57-40.2-03.3 may not exceed a total exemption of more than five thousand dollars of sales and use taxes per year for each nonprofit hospital's contractors, subcontractors, or builders."

Renumber accordingly

Date: 2-17-11  
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2159

Senate Senate Appropriations Committee

Check here for Conference Committee

Legislative Council Amendment Number 11.0368.02001

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

Motion Made By Christmann Seconded By Erbele

Senators	Yes	No	Senators	Yes	No
Chairman Holmberg	✓		Senator Warner	✓	
Senator Bowman	✓		Senator O'Connell	✓	
Senator Grindberg	✓		Senator Robinson	✓	
Senator Christmann	✓				
Senator Wardner	✓				
Senator Kilzer	✓				
Senator Fischer	a				
Senator Krebsbach	✓				
Senator Erbele	✓				
Senator Wanzek	✓				

Total (Yes) 12 No 0

Absent 1

Floor Assignment \_\_\_\_\_

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

*Fischer*

Date: 2-17-11  
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2159

Senate Senate Appropriations 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 Erbele Seconded By Robinson

Senators	Yes	No	Senators	Yes	No
Chairman Holmberg	✓		Senator Warner	✓	
Senator Bowman	✓		Senator O'Connell	✓	
Senator Grindberg	✓		Senator Robinson	✓	
Senator Christmann	✓				
Senator Wardner	✓				
Senator Kilzer		✓			
Senator Fischer	✓				
Senator Krebsbach	✓				
Senator Erbele	✓				
Senator Wanzek	✓				

Total (Yes) 12 No 1

Absent 0

Floor Assignment Erbele

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

*Fischer*

**REPORT OF STANDING COMMITTEE**

**SB 2159, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2159 was placed on the Sixth order on the calendar.

Page 1, line 14, after the underscored period insert "The exemption under this section and section 57-40.2-03.3 may not exceed a total exemption of more than five thousand dollars of sales and use taxes per year for each nonprofit hospital's contractors, subcontractors, or builders."

Renumber accordingly

2011 TESTIMONY

SB 2159

Prepared by Myles Vosberg for Senator Oehlke

Office of the State Tax Commissioner

PROPOSED AMENDMENTS FOR SB 2159

Page 2, line 21, remove the overstrike over "~~medical equipment purchased as~~"

Page 2, line 22, remove the overstrike over "~~by a long term care facility as defined in~~"

Page 2, line 23, remove the overstrike over "~~section 50-10.1-01 and subsequently~~", remove the overstrike over "~~such~~", remove "a nonprofit"

Page 2, line 24, overstrike "hospital", remove the overstrike over "~~facility~~", remove "1" and immediately thereafter insert "or to tangible personal property completely consumed or installed by a contractor into a nonprofit hospital"

Page 2, line 25, remove "1"

Renumber Accordingly

PROPOSED AMENDMENT TO HOUSE BILL NO. 2159

Page 1, line 12 replace "A contractor, subcontractor or builder that acquires materials, supplies or equipment" with "Gross receipts from building materials, supplies, equipment or other tangible personal property used to construct, expand, or improve a nonprofit hospital in this state are exempt from taxes under this chapter. To be exempt, the building materials, supplies, equipment, or other tangible personal property must be incorporated into the structure of the hospital or consumed in the construction process to the point of having no residual economic value."

Page 1, remove lines 13 through 20

Page 1, line 21 replace "If the contractor, subcontractor, or builder is also a retailer holding a retail sales tax" with "If the building materials, supplies, equipment, or other tangible personal property are purchased and installed by a contractor, the owner of the hospital must apply to the tax commissioner for a refund of sales and use taxes paid by the contractor for which the sales or use is claimed as exempt under this section. Application for a refund must be made at the times and in the manner directed by the tax commissioner and must include sufficient information and to permit the tax commissioner to verify the sales and use taxes paid and the exempt status of the sale or use."

Page 1 remove lines 22 through 24

Page 2, remove lines 1 and 2

Page 2, line 21, remove the overstrike over "~~medical equipment purchased as~~"

Page 2, line 22, remove the overstrike over "~~by a long term care facility as defined in~~"

Prepared by the Office  
of State Tax Commissioner  
for Senator Miller  
January 31, 2011

PROPOSED AMENDMENT TO HOUSE BILL NO. 2159

Page 1, line 12 replace "A contractor, subcontractor or builder that acquires materials, supplies or equipment" with "Gross receipts from building materials, supplies, equipment or other tangible personal property used to construct, expand, or improve a nonprofit hospital in this state are exempt from taxes under this chapter. To be exempt, the building materials, supplies, equipment, or other tangible personal property must be incorporated into the structure of the hospital or consumed in the construction process to the point of having no residual economic value."

Page 1, remove lines 13 through 20

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Page 1 remove lines 22 through 24

Page 2, remove lines 1 and 2

Page 2, line 21, remove the overstrike over "~~medical equipment purchased as~~"

Page 2, line 22, remove the overstrike over "~~by a long-term care facility as defined in~~"



Page 2, line 23, remove the overstrike over "~~section 50-10.1-01 and subsequently~~", remove overstrike over "~~such~~"; and remove "a nonprofit"

Page 2, line 24, overstrike "hospital", remove overstrike over "facility" and replace "licensed by the state department of health and exempt from federal" with "; or building materials, supplies, equipment, or other tangible personal property purchased by a nonprofit hospital licensed by the state department of health and subsequently installed by a contractor into the hospital facility."

Page 2, remove lines 25 and 26

Renumber accordingly

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

**SENATE BILL 2159**

**March 14, 2011**

Chairman Belter, members of the House Finance and Taxation Committee, I am Myles Vosberg, Director of the Tax Administration Division of the Office of State Tax Commissioner and I am here today to offer an amendment to Senate Bill 2159.

**BACKGROUND**

The Tax Commissioner's Office is neutral regarding SB2159; however, we foresee administrative problems with the current version of this bill. The bill as amended in the Senate Finance and Taxation Committee created a sales tax exemption without limitation on materials, supplies, equipment and other tangible personal property used by contractors to construct, expand or improve a nonprofit hospital. Section 1 of the bill allowed contractors to purchase tangible personal property tax exempt when the property was to be used under contract with a nonprofit hospital. Section 2 of the bill removed the contractor's responsibility for reporting and paying use tax on materials purchased tax free and installed by the contractor.

The Tax Commissioner's Office did not have administrative concerns with Senate Bill 2159 until an additional amendment was placed in Section 1 to limit the exemption to \$5,000 per hospital each year. Under the current version of SB2159, there is no realistic method to manage the \$5,000 limitation because multiple contractors may be purchasing materials simultaneously without knowledge of purchases made by other contractors. Likewise, if a hospital applies for a refund of tax paid by a contractor, the Tax Commissioner may not have any information regarding other tax exempt purchases made by that contractor or other contractors.

**PROPOSED AMENDMENT**

To resolve the administrative issue with Senate Bill 2159, the Tax Commissioner proposes the amendment I handed out this morning. The amendment does the following:

- Strikes the language in subsection 1 of Section 1 that allows contractors to acquire materials without payment of sales tax and replaces it with new language that

provides for a general exemption on tangible personal property used to construct, expand, or improve a nonprofit hospital.

- Replaces the language in subsection 2 of Section 1 that describes how a contractor would make an exempt purchase with language authorizing nonprofit hospitals to apply for a refund each year of up to \$5,000 of tax paid by contractors.
- Adds subsection 3 to Section 1 of the bill defining nonprofit hospital.
- Deletes Section 2 of the bill, which would remove a contractor's responsibility to report and pay use tax on property used under hospital contracts.

#### CONCLUSION

Our proposed amendment results in the same \$5,000 sales tax exemption per hospital as the current version of SB2159. However, it provides for a refund rather than an upfront exemption, which cannot be administered effectively by our office. Contractors will see no change in the way they currently operate and will be responsible to pay sales and use tax on all materials used under contract with nonprofit hospitals. Hospitals eligible for the exemption will have the authority to apply for a refund each year of up to \$5,000.

Thank you for your consideration of this amendment.

Sixty-second  
Legislative Assembly  
of North Dakota

**REENGROSSED SENATE BILL NO. 2159**

Introduced by

Senators Klein, Miller, Murphy

Representatives Weisz, Pollert, Damschen

1 A BILL for an Act to create and enact a new section to chapter 57-39.2 of the North Dakota  
2 Century Code, relating to a sales and use tax exemption for purchases made by a contractor,  
3 subcontractor, or builder on behalf of materials used to construct, expand, or improve a  
4 nonprofit hospital; to amend and reenact section 57-40.2-03.3 of the North Dakota Century  
5 Code, relating to a use tax exemption for untaxed materials used by a contractor under contract  
6 with a nonprofit hospital; and to provide an effective date.

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

8 **SECTION 1.** A new section to chapter 57-39.2 of the North Dakota Century Code is created  
9 and enacted as follows:

10 **~~Exemption for materials acquired by a contractor on behalf~~ Sales tax exemption for**  
11 **construction, expansion, or improvement of a nonprofit hospital.**

12 1. A contractor, subcontractor, or builder that acquires materials, supplies, or equipment  
13 Gross receipts from building materials, supplies, equipment, or other tangible personal  
14 property used to construct, expand, or improve a nonprofit hospital in this state are  
15 exempt from the taxes under this chapter. To qualify for the exemption, the building  
16 materials, supplies, equipment, or other tangible personal property must be incorporated  
17 into the structure of the hospital or consumed in the construction process to the point of  
18 not having any residual economic value. ~~for use in the performance of a contract with a~~  
19 ~~nonprofit hospital is entitled to a sales and use tax exemption for the acquisition of those~~  
20 ~~items of tangible personal property. The exemption under this section and section 57-~~  
21 ~~40.2-03.3 may not exceed a total exemption of more than five thousand dollars of sales~~  
22 ~~and use taxes per year for each nonprofit hospital's contractors, subcontractors, or~~  
23 ~~builders. To qualify for the exemption under this section, the contractor, subcontractor, or~~  
24 ~~builder shall present to the retailer a purchasing agent authorization letter and an~~

1 ~~exemption certificate or exemption number from the nonprofit hospital. Acquisition of~~  
2 ~~building materials, supplies, or equipment is exempt under this exemption only to the~~  
3 ~~extent the building materials, supplies, or equipment is installed or completely consumed~~  
4 ~~in the performance of the contract with the nonprofit hospital.~~

- 5 2. If the contractor, subcontractor, or builder is also a retailer holding a retail sales tax  
6 If the building materials, supplies, equipment, or other tangible personal property are  
7 purchased and installed by a contractor, the hospital must apply to the tax commissioner  
8 for a refund of the sales tax paid by the contractor for the qualifying tangible personal  
9 property. The refund amount for each hospital claiming an exemption may not exceed  
10 five thousand dollars in any fiscal year beginning after June 30, 2011, and each  
11 subsequent fiscal year. Application for the refund must be made at the time and in the  
12 manner directed by the tax commissioner and must include sufficient information to  
13 verify the correctness of the refund claim. ~~permit under this chapter and transacting retail~~  
14 ~~sales of materials, supplies, or equipment, the exemption under this section applies to~~  
15 ~~building materials, supplies, or equipment withdrawn from inventory for use in a contract~~  
16 ~~with a nonprofit hospital if the person possesses a purchasing agent authorization letter~~  
17 ~~and exemption certificate or exemption number from the nonprofit hospital.~~
- 18 3. For purposes of this section, "nonprofit hospital" means a hospital licensed by the state  
19 department of health and exempt from federal taxation under section 501(c)(3) of the  
20 Internal Revenue Code [26 U.S.C. 501(c)(3)].

21 **~~SECTION 2. AMENDMENT.~~** Section 57-40.2-03.3 of the North Dakota Century Code is  
22 amended and reenacted as follows:

23 **~~57-40.2-03.3. Use tax on contractors.~~**

- 24 ~~1. When a contractor or subcontractor uses tangible personal property in the performance~~  
25 ~~of that person's contract, or to fulfill contract or subcontract obligations, whether the title~~  
26 ~~to such property be in the contractor, subcontractor, contractee, subcontractee, or any~~  
27 ~~other person, or whether the titleholder of such property would be subject to pay the~~  
28 ~~sales or use tax, such contractor or subcontractor shall pay a use tax at the rate~~  
29 ~~prescribed by section 57-40.2-02.1 measured by the purchase price or fair market value~~  
30 ~~of such property, whichever is greater, unless such property has been previously~~  
31 ~~subjected to a sales tax or use tax by this state, and the tax due thereon has been paid.~~
- 32 ~~2. The provisions of this chapter pertaining to the administration of the tax imposed by~~  
33 ~~section 57-40.2-02.1, not in conflict with the provisions of this section, govern the~~  
34 ~~administration of the tax levied by this section.~~

1 ~~3. The tax imposed by this section does not apply to medical equipment purchased as~~  
2 ~~tangible personal property by a hospital or by a long-term care facility as defined in~~  
3 ~~section 50-10.1-01 and subsequently installed by a contractor into such hospital or~~  
4 ~~facility or to tangible personal property completely consumed or installed by a contractor~~  
5 ~~into a nonprofit hospital licensed by the state department of health and exempt from~~  
6 ~~federal taxation under section 501(c)(3) of the Internal Revenue Code [26 U.S.C.~~  
7 ~~501(c)(3)] under a contract between the contractor and the nonprofit hospital.~~

8 ~~4. The tax imposed by this section does not apply to:~~

9 ~~a. Production equipment or tangible personal property as authorized or approved for~~  
10 ~~exemption by the commissioner under section 57-39.2-04.2; or~~

11 ~~b. Machinery, equipment, or other tangible personal property used to construct an~~  
12 ~~agricultural commodity processing facility as authorized or approved for exemption~~  
13 ~~by the commissioner under section 57-39.2-04.3 or 57-39.2-04.4.~~

14 **SECTION 32. EFFECTIVE DATE.** This Act is effective for taxable events occurring after  
15 June 30, 2011.

PROPOSED AMENDMENT TO REENGROSSED SENATE BILL NO. 2159

- ✓ Page 1, line 2, remove "and use" and remove "purchases made by a contractor,"
- ✓ Page 1, line 3, replace "subcontractor, or builder on behalf of" with "materials used to construct, expand, or improve" and remove "to amend and reenact section"
- ✓ Page 1, remove line 4
- ✓ Page 1, line 5, remove "materials used by a contractor under contract with a nonprofit hospital;"
- ✓ Page 1, line 10, replace "Exemption for materials acquired by a contractor on behalf" with "Sales tax exemption for construction, expansion, or improvement"

Page 1, line 12, ~~replace~~ <sup>removed</sup> "A contractor, subcontractor, or builder that acquired materials, supplies, or equipment" <sup>replaced lang in 13-23 w/ new lang.</sup> with Gross receipts from building materials, supplies, equipment, or other tangible personal property used to construct, expand, or improve a nonprofit hospital in this state are exempt from the taxes under this chapter. To qualify for the exemption, the building materials, supplies, equipment, or other tangible personal property must be incorporated into the structure of the hospital or consumed in the construction process to the point of not having any residual economic value.

Page 1, remove lines 13 through 23 \*

Page 2, line 1, ~~replace~~ <sup>removed</sup> "If the contractor, subcontractor or builder is also a retailer holding a retail sales tax" <sup>replaced lang in 2-6 w/ new lang.</sup> with If the building materials, supplies, equipment, or other tangible personal property are purchased and installed by a contractor, the hospital must apply to the tax commissioner for a refund of the sales tax paid by the contractor for the qualifying tangible personal property. The refund amount for each hospital claiming an exemption may not exceed five thousand dollars in any fiscal year beginning after June 30, 2011, and each subsequent fiscal year. Application for the refund must be made at the time and in the manner directed by the tax commissioner and must include sufficient information to verify the correctness of the refund claim.

changed tax commir to commir etc defined in chapter.

\* Passive to Active Change

fine application

- Page 2, remove lines 2 through 6 \*
- Page 2, remove lines 10 through 30
- Page 3, remove lines 1 through 8

Renumber accordingly

March 14, 2011

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2159

Page 1, line 2, remove "and use"

Page 1, line 2, remove "purchases made by a contractor,"

Page 1, line 3, replace "subcontractor, or builder on behalf of" with "materials used to construct, expand, or improve"

Page 1, line 3, remove "to amend and reenact section"

Page 1, remove line 4

Page 1, line 5, remove "materials used by a contractor under contract with a nonprofit hospital;"

Page 1, line 10, overstrike "**Exemption for materials acquired by a contractor on behalf**" and insert immediately thereafter "Sales tax exemption for construction, expansion, or improvement"

Page 1, line 12, remove "A contractor, subcontractor, or builder that acquires materials, supplies, or equipment"

Page 1, replace lines 13 through 23 with: "Gross receipts from building materials, supplies, equipment, or other tangible personal property used to construct, expand, or improve a nonprofit hospital in this state are exempt from the taxes under this chapter. To qualify for the exemption, the building materials, supplies, equipment, or other tangible personal property must be incorporated into the structure of the hospital or consumed in the construction process to the point of not having any residual economic value."

Page 2, line 1, remove "If the contractor, subcontractor, or builder is also a retailer holding a retail sales tax"

Page 2, replace lines 2 through 6 with: "If a contractor purchases and installs the building materials, supplies, equipment, or other tangible personal property, the hospital must apply to the commissioner for a refund of the sales tax paid by the contractor for the qualifying tangible personal property. The refund amount for each hospital claiming an exemption may not exceed five thousand dollars in any fiscal year beginning after June 30, 2011, and each subsequent fiscal year. The commissioner shall direct the time and manner by which the hospital must apply for the refund. The application must include sufficient information to verify the correctness of the refund claim."

← passive  
to  
active  
change

Page 2, remove lines 10 through 30

Page 3, remove lines 1 through 8

Page 3, line 9, replace "3." with "2."

Re-number accordingly



March 14, 2011

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2159

Page 1, line 2, remove "and use"

Page 1, line 2, remove "purchases made by a contractor,"

Page 1, line 3, replace "subcontractor, or builder on behalf of" with "materials used to construct, expand, or improve"

Page 1, line 3, remove "to amend and reenact section"

Page 1, remove line 4

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Page 2, remove lines 10 through 30

Page 3, remove lines 1 through 8

Page 3, line 9, replace "3." with "2."

Re-number accordingly

**Senate Appropriations Committee**  
**Legislative Testimony on SB 2159 Hearing**  
**2/7/11 Harvest Room**  
**11:00 a.m.**

*John Olson*

Honorable Chairman Holmberg and members of the Senate Appropriations Committee thank you for the opportunity to provide legislative testimony on behalf of the City of Fargo.

This bill will have a serious impact on Fargo's locally imposed sales tax collections and would be a significant loss of State sales tax collections. Fargo and Cass County's single highest priority over the next several years is to continue constructing interim flood control improvements and obtaining federal approval for a long term flood diversion project. The loss of local sales tax revenue is expected to be significant at a time when there is a critical need to continue flood protection. We urge you to consider the negative fiscal impact of this bill.

Fargo voters approved a ½ cent sales tax dedicated exclusively for flood control projects. Cass County recently passed a ½ cent sales tax to help secure the local share of funding for the proposed diversion project which begins in April. State leaders have pledged their financial support and are also funding their share of the flood diversion project proposed in Cass County.

The Army Corp of Engineers predicts the diversion project could take up to ten years to be constructed. During this time local leaders continue to fight back-to-back floods spending millions of dollars each flood event. Over the last two years Fargo has focused on the acquisition of flood prone homes through a flood buyout program and improved several levies funded exclusively by our local sales tax collections. We leveraged our resources by issuing bonds for this purpose due to the urgent and critical need to protect our community. There are plans for many more home buyouts and interim flood control levy enhancements over the next several years. The need to reduce the ongoing temporary emergency flood protection measures such as sandbagging and temporary clay levees continues each year. Ironically, as we present this testimony Fargo is preparing to make three million sandbags in preparation for the anticipated flooding this spring.

The health care industry is one of Fargo's key economic sectors providing an abundance of jobs and care for many. We anticipate that this industry will continue to expand in our community and will continue to construct facilities to accommodate their growth over the next several years. The sales taxes collected on materials and supplies used to construct these facilities will be redirected locally on interim flood control protection and other key infrastructure needs.

We urge you to consider the importance of our flood sales tax resources and urge a DO NOT PASS vote on this bill. Thank you for the opportunity to provide this testimony.