

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
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ROLL NUMBER

DESCRIPTION

1080

2007 HOUSE FINANCE AND TAXATION

HB 1080

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1080

House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: 1-10-07

Recorder Job Number: 860

Committee Clerk Signature

Marie Loran

Minutes:

Rep Drovdal: Opened the hearing on HB 1080 and the bill was read.

Chairman Belter, District 22: Introduced HB 1080. This bill was brought to my attention by a township supervisor who lives in northeastern Cass County. This particular situation was

that they had some culverts installed by a contractor & the contractor billed them for sales tax.

He said "We as a township are exempt from sales & used tax." Miles Vosberg explained that if

a township or a county buys a culvert & installs it themselves, there's no tax. If they buy the

culvert themselves and hire a contractor to install it then there is a tax, or if they hire a

contractor to buy & install it, there is also a tax. The same would be true for the township. I've

had the same experience myself, in needing a culvert on a county road, and I should have

been a little more consistent with my county, but when I called them they said they wouldn't put

it in so I went ahead and paid the sales tax. Had I been persistent and gotten one of my

county commissioners out there, I think he would have realized that I had a legitimate reason

for that culvert and had they put it in there would have been no sales tax. Another example

with the township I live in is when I needed a culvert and they said "Go ahead, buy the culvert

and charge it to us", I did that and there was no tax paid. This year when I needed a culvert

the township I was dealing with said we're not buying culverts, so I bought the culvert and paid

tax on it & we'll install it when the ground thaws out. There's an inconsistency here that needs to be addressed and this bill will need some amendments to make it correct and also we need to have a letter from a township supervisor saying that they are authorizing this culvert to be put in a county. If you're putting it in for your own use, then I think there should be a tax. If you have any questions, I'll try to answer them.

Rep Froseth: If you put a culvert in your own driveway, wouldn't that be determined by whoever owns the road, if the township owns the road it would be the township, but if you own the road, you own the driveway so it would be your responsibility?

Rep Belter: In my own personal case, my approach is on a township road.

Rep Drovdal: Isn't it true that township and county roads are actually owned by the landowner?

Rep Belter: I'm not sure what the rules are there, but I think there are rules and regulations that you need to follow. People have to have access to their property and I think townships and counties have policies on how much access that they will provide to a landowner.

Rep Vig: Doesn't a township supervisor sign off and say this is official business and purchase a culvert and say tax exempt ... that can't happen right now?

Rep Belter: In our area, our township supervisors are willing to put in a culvert. They just tell me to get a culvert and charge it to Maple River Township and that's the end of it, I don't know how other townships handle it.

Rep Drovdal: Did you request that you wanted more information from Miles?

Rep Belter: I think if you have questions on the differences, etc

Terry Traynor, North Dakota Assoc of Counties: We support this bill. Counties don't often find themselves in this situation, but they deal with townships a lot, often times counties purchase a whole pile of culverts prior to construction season and then they put them in on

both county and township roads. In some counties and in some situations, they get busy with their own roads and townships have to go to a contractor and request that one be put in and then they pay the tax, even if they purchased it because of the way it's written. This would really clarify things and make sure the same set of rules apply for everything. I'll comment a little on the ownership issue ... the landowner owns the land but there's an easement, constitutionally for the first 33' on each side and often times if the roads been upgraded, that easement may have been purchased even further. Generally the road authority has a responsibility within those easements to make sure that they construct the road as well as the approaches that come on in a manner that will allow for proper flow of the water. They have both an obligation as well as an interest in what culvert goes in the approaches and most counties and townships have rules about how many approaches per each quarter mile and how many to a particular farmstead.

Larry Severson, Roosevelt Township Officer in Trail County and on the Board of Directors for the ND Township Officers Assoc: We are in support of this legislation. It would have the effect of lowering the net cost to townships and given the limited funding, that would be a big benefit.

Rep Belter: In your township, are there instances where you are paying the tax sometimes and other times not, depending on who puts the culvert in?

Larry Severson: Yes, there are times we have troubled our contractor to do it and I'm sure in those cases we do pay taxes and in other cases in other cases we go to the county and they get the culverts from (*can't understand*) and then we don't get a tax bill.

Chairman Belter: Any other support, it not opposition? If not, Miles could you answer some questions.

Miles Vosberg, Director of Tax Administration for the Tax Commissioners office: I'll answer any questions that are causing confusion.

Rep Headland: I don't know who prepared the fiscal note, but if you could explain why it's so high.

Miles Vosberg: I was a little surprised at the amount also, but the way we calculated this was that we looked at the sales tax report of the major companies that are selling steel and concrete culverts and use 20% of their sales in assumption that 20% of those sales were by township or county roads and the remaining would be either state or other entities.

Chairman Belter: With the construction taking place on the Interstate, in those cases, is there sales tax paid on all those culverts going into the Interstate because it's all being done by the contractor?

Miles Vosberg: That's correct, if a contractors installing those culverts, they will be subject to tax. Under the current use tax law, the intent was to tax all tangible personal property that is installed into real property, regardless of who owned that property.

Chairman Belter: If the state hires a contractor to put in culverts, they pay taxes and if they put it in themselves they don't?

Miles Vosberg: Indirectly, they're paying the tax, the tax is imposed on the contractor that's doing the installation and they pass that cost on in their bid or contract. The government entity would ultimately end up paying the cost, it's a reimbursement of the contractor's expense.

Chairman Belter: To follow up on that, I'm just questioning your fiscal note, because if the State of North Dakota installs that culvert then there's no tax paid, but if you're hiring a contractor to do it, then you are paying a tax, so wouldn't your fiscal note reflect that part of that would actually be state expenditure?

Miles Vosberg: What we looked at was taxable sales made by the entities, so if they sold they sold them to the state, county or township, tax wouldn't have been paid.

Rep Drovdal: In reality then, much of this is a wash, because the state wouldn't collect the tax from the contractor, but on the other hand, the Highway Department wouldn't pay as much because they're not paying that tax amount and the county or township wouldn't be paying that much.

Miles Vosberg: I'm not sure I understand you, but if the state or a political sub purchases any materials, they're under the law able to buy that without paying tax. If they hire a contractor to install that into real property, the use tax law requires the contractor to pay the 5% use tax on the purchase price, even they don't own it. The contractor will in turn bill that into their contract price that's charged to the customer.

Rep Drovdal: Then if I'm a contractor and I have something that's \$1.00 and I include it in my \$1.00 plus tax, but if it's exempt I only charge \$1.00, so they may not be getting the tax, but they're not paying it, so it's really a wash, isn't it?

Miles Vosberg: The contractor is liable for the tax, if they purchase it themselves or they're liable for the tax if they're installing the product that was purchased by an exempt entity and the tax hasn't been paid. This bill would allow a contractor to purchase a culvert tax free, but the use tax law would turn around and say "Now you have to pay the use tax on it when you install it", so in order to make this bill work we would need to draft an amendment that would create an exclusion within the use tax law as well. We would be happy to work with that.

Rep Pinkerton: #1, would the contractor reduce their bill by the amount of the tax that they're not paying and #2 is the concern is that we could do this legislation by, if the contractor purchases the culvert and installs it could be dealt differently then if the township purchased it but it was installed. Could that be differentiated between those two ... that way we would

always be assured that if there were tax not paid on it, that they wouldn't be fed through as a total contract? Do they itemize out when they install this culvert or is it just one bill?

Miles Vosberg: I'm sure that depends on the type of contract, they may have a cost plus contract where they're required to show their cost which would include the tax, labor, etc. Or a contractor may just bid a lump sum bid contract for X number of dollars and it would not show the cost of the materials or the tax that the contractor's required to pay. As far as your earlier comment between distinguishing between the two transactions, I think the draft of this bill currently takes care of the sales tax at the time of purchase, but it doesn't address the use tax on the time of installation. By making a change to the use tax law, it would do what you're trying to accomplish here, it does say that the contractor's not responsible for paying the tax on that product that's installed, but originally purchased by an exempt entity or purchased by the contractor.

Rep Wrangham: I wondering about culverts being all alone in this (*can't understand*) with road surfacing or a door for the shop have the same (*can't understand*) culverts do?

Miles Vosberg: Under this bill, it only would address culverts, an exempt entity purchased or has a contractor purchase it and install ... tax will be applied. If the exempt entity purchases materials, like a door, for example, and installed it with their own employees, it wouldn't be subject to tax. If they hired a contractor, the use tax would require a contractor.

Rep Wrangham: So culverts are not unique, what about the black path that's used in the process of building the road, is that?

Miles Vosberg: Culverts are not, the use tax law does apply to anything (*can't understand*).

Rep Owens: I want to make sure I understand how you came about the \$339,000. You said that you went to major companies that sell these things, you looked at their sales tax records, and you took 20%?

Miles Vosberg: That is correct, I estimate that 20% of the sales of the culvert companies would be county or township roads.

Chairman Belter: If no further testimony, we'll close the hearing on HB 1080.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1080 B

House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: January 31, 2007

Recorder Job Number: 2377

Committee Clerk Signature

Mickie Schmidt

Minutes:

Chairman Belter opened the hearing on HB 1080. He asked what the committee's wishes are.

Representative Froseth: I move a Do Not Pass.

Representative Brandenburg: Second it.

Chairman Belter: Is there any discussion? Will the clerk read the roll; 11-y, 1-n, 2-absent; Rep Froseth will carry 1080. Close the hearing on HB 1080.

FISCAL NOTE
Requested by Legislative Council
12/27/2006

Bill/Resolution No.: HB 1080

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.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			(\$339,000)	(\$30,000)		
Expenditures						
Appropriations						

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

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

HB 1080 provides a sales tax exemption for culverts installed on county and township roads.

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.*

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.*

HB 1080 is expected to reduce state general fund revenues by \$339,000 and state aid distribution fund revenues by \$30,000 during the 2007-09 biennium.

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:	01/04/2007

Date:
Roll Call Vote #: 1080

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

House Finance & Tax Committee

Check here for Conference Committee

Legislative Council Amendment
Number _____

Action Taken Do Not Pass

Motion Made By Rep. Froseth Seconded By Rep. Brandenburg

Representatives	Yes	No	Representatives	Yes	No
Chairman Belter	✓		Rep. Froelich		✓
Vice Chairman Drovdal	✓		Rep. Kelsh		
Rep. Brandenburg	✓		Rep. Pinkerton	✓	
Rep. Froseth	✓		Rep. Schmidt	✓	
Rep. Grande			Rep. Vig	✓	
Rep. Headland	✓				
Rep. Owens	✓				
Rep. Weiler	✓				
Rep. Wrangham	✓				

Total (Yes) 11 No 1

Absent 2

Floor Assignment Rep. Froseth

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

REPORT OF STANDING COMMITTEE

HB 1080: Finance and Taxation Committee (Rep. Belter, Chairman) recommends DO NOT PASS (11 YEAS, 1 NAY, 2 ABSENT AND NOT VOTING). HB 1080 was placed on the Eleventh order on the calendar.