

2009 HOUSE FINANCE AND TAXATION

HB 1297

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1297**

House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: January 20, 2009

Recorder Job Number: 7284

Committee Clerk Signature

Minutes:

**Chairman Belter:** We will open the hearing on HB 1297.

**Representative Drovda:** The bill that you have before is the Streamline Sales and Use Tax Association. Back in 2001 North Dakota joined with a number of other states to form the Streamline Sales and Use Tax Association. When we did, we wanted to have the legislature in control of our delegates that go to the organizational meetings and to the annual and quarterly meetings of the association. We passed legislation to say that two senators and two house members would represent North Dakota at this organization. That has worked very clearly. When we go to those meetings, and I have had the privilege of attending those meetings as a representative of the State of North Dakota, we have received a lot of praise that we have kept control of this organization and input into that organization. A number of states have sent their revenue people and elected officials. You can tell the difference in philosophy between those individuals and legislators on approach to different definitions and ideas and so forth. We are coming before you now to say we want to continue to have the legislature in control, but we do want to include our revenue or Tax Department people as part of the delegation. What we found over the years is now there is only one house member and one senator who are attending and we need the technical assistance that the Tax Department gives us currently

also. But we would like to have them sitting at the table. One of the main reasons is there is a governing board that all of the delegates belong to. North Dakota gets one vote no matter how many people we send down there so they have to decide democratically how they are going to vote. The governing board elects an executive board and the executive board takes care of the monthly organizational meetings and the ins and outs of running the organization. The by-laws, as Streamline Sales Tax has it, that every other one is a legislator or an agency personnel. North Dakota is sitting with only legislators and only able to have a person on that committee every other year. We have been very lucky that Senator Cook has been very active in it and we have had him on the executive committee since the very start. But his time is starting to run out and sometimes the field between what is left (namely me and Representative Weiler), there may be a number of reasons why we will not be able to or may choose not to go on the executive board. It is very important that North Dakota has somebody on that executive board basically to protect our sovereignty and to protect our interests. Therefore, we are coming forward with a bill asking you to change the delegate selection to have one senator, one house member, the tax commissioner or his designee. If it happens to be like the current situation that one political party controls both the House and the Senate, there will be a fourth member who will be a member of the minority party; therefore you would be back up to four delegates. If the House and Senate are split, you would just have three delegates to send to the conferences. That basically is the bill, Mr. Chairman, and I will be glad to answer any questions.

**Chairman Belter:** Did I understand that the individual from the Tax Department could become a member of the executive board?

**Representative Drovdal:** That is correct. A number of states have their revenue people or tax commission people sitting on the executive board.

**Chairman Belter:** Would this legislation require that at some point that that person would be on the executive board?

**Representative Drovdal:** No, that would not be required. That would be at the vote of all the governing board. They would have to be nominated and so forth. No, it is not mandatory that they would be. You would give up an option of another name that could go on during the years that we can't nominate a legislator.

**Chairman Belter:** Was there any attempt on the part of the Streamline Sales Tax Committee to change the by-laws and only have legislators on the executive committee?

**Representative Drovdal:** I don't remember any attempt on that. The structure from the very beginning was this particular way. I think the debate on that was taken back in 2001 and I don't recall that well. I should add that Senator Cook, it is dangerous to speak for another elected official, but Senator Cook did ask me to relay that he was in full support of this bill also.

**Representative Headland:** I kind of like the fact that we have the legislature in control of who we have dedicated to the streamline sales tax. Is there a reason as to why we would want to allow the commissioner or his designee to become part of the executive board? I think that diminishes the legislature's role in the streamline sales tax.

**Representative Drovdal:** The legislature will still have control because they will have two or three out of three or four votes so they will still have the votes when any issue comes before them. The option, if we have a legislator on the executive board, as we currently do, they will not nominate somebody else from that state. We only have one member on that board at a time. To have someone from North Dakota, whether he was a legislator or an executive or a taxman is important to me. The only time that would happen is if we didn't have a legislator available and a position opened up that was not for a legislator.

**Representative Headland:** Is there a specific reason why we would want to allow the Tax Commissioner or his designee to be allowed to sit on the executive board?

**Representative Drovdal:** The reason would be that we would have someone from North Dakota at the monthly meetings listening to the discussion. If we have nobody there, it is hard to keep track of what is happening.

**Representative Headland:** Are there times when the representative from either body of the legislature has not been able to attend? Is that the reason why you are trying to expand.....?

**Representative Drovdal:** No, there is no hidden motive behind this. We just felt it would be important in case the legislator or representative of ND didn't have the opportunity to be on the board; then we could have at least one person who may be able to get on that board so that we have somebody from ND on that board all the time. There is no hidden agenda here.

**Representative Weiler:** If I could just take a minute to relieve Representative Headland of his concerns. It is partly a question also for Representative Drovdal. Doesn't this also have something to do with the continuity of the representation from ND because it is quite possible that in another 1½ to 2 years that the representatives that are on the Streamline Sales Tax Association representing ND may not be here (the legislators) so to have someone from the Tax Department that has a history of this and knows the ins and outs and what is going on—at least, that person has a history so when ND is represented, we are not sending four people who have never been there.

**Representative Drovdal:** That is why I have got you on the board; you do an excellent job. Yes, that is very accurate.

**Chairman Belter:** Might it not be a possibility that instead of the Tax Department being designated, they could just go as a resource person?

**Representative Drovdal:** They are currently going as a resource person and we rely on them heavily for information, just as we do as legislators here in this body. That would continue either way. The only reason for this change is in case we have no legislator that could serve on the executive board; at least we have somebody from ND looking out for the interests of ND. That is the only reason behind this.

**Chairman Belter:** I am very uncomfortable, and it has nothing to do with the Tax Department. For example, I served on a NCSL committee after 911. I was appointed to a terrorism committee and I am sure the majority of people on that committee are not legislators. Most states send people from their legislative council. California sends the sergeant-at-arms from the senate and I am troubled that that committee is taken over by non-legislative members. Consequently I do not want to open the door here and it looks like the door has been opened.

**Representative Drovdal:** The reason we still have the majority of legislators-on this committee is for that exact reason. The reason we thought about adding the State Tax Commissioner or his designee is just so we have somebody on the board, when the legislator can't. The legislator will still be—and I agree with your comments completely. As I said at the very beginning, you can see the difference in the train of thoughts from a legislator to the full-time state employees, the revenue people or sales tax people. I agree, but I just feel that the availability of somebody who could sit on the executive board when the option was up and it could be an executive appointed to it that it would be an option that would be good for ND to be right there on an everyday basis where the decisions are being made. A legislator will not always be available to sit on that board. When there is one not available, wouldn't it be nice to have some other North Dakotan sitting on there? I guess it is up to the wisdom of the committee. It is working the way it is, but I do see, as Representative Weiler pointed out, that

down the road we will not have a lawmaker who wants to sit on that committee. It is very technical.

**Representative Wrangham:** I am not understanding when you say a spot that is not available to a legislator. Why or who would determine that it is not available to a legislator? How could a spot be available to—if a spot is available, it is available, isn't it?

**Representative Drovdal:** Earlier I had said the way the by-laws are set up is that every other year, they elect a legislator and the off year, they elect a bureaucrat. Every other year, there will not be a spot available for a lawmaker. If ND did not have a lawmaker sitting on the executive board, we would not have anybody who could offer to sit on the executive board. That is really part of it. That is the by-laws of the Streamline Sales Tax Association.

**Representative Schmidt:** I am still a little fuzzy here on lines 8-17; you are talking about the governing board. On line 18 you are talking about the advisory council. How many members of the legislature are on this board? Is it two above and two below?

**Representative Drovdal:** Currently there are two senators and two house members and one of each of those serve on this board, which is appointed by the executive board like a subcommittee of the governing board. It is generally the same people.

**Representative Schmidt:** So you only have one representative and one senator?

**Representative Drovdal:** To that board you do have just one and you have one board so you have one person there. (15:15)

**Representative Schmidt:** But then on the advisory council, you have one senator and one representative.

**Representative Drovdal:** On the governing board, we have two senators and two representatives on the one board. The governing board elects an executive board that pretty

much runs the organization. That is what the effect of this bill is going to be to allow us to have the possibility of ....

**Representative Schmidt:** So you have two senators and two representatives on this whole bill?

**Representative Drovdal:** That is correct. The bottom line actually from 18 on you could just about eliminate off the bill. It is needless language. I do think you guys just about qualify for a terrorist organization when you are standing up here.

**Representative Weiler:** I doubt that Representative Drovdal can answer this question; but perhaps we could get someone from the Tax Department to give us a brief update as to the dollar amount that the streamline sales tax. Could we get that; I know it is not pertinent to the bill, but I can get it afterwards too.

**Representative Drovdal:** There was just an e-mail sent out to give by quarter, I believe, the amount of dollars raised by the streamline sales project. I don't know but we could get that for you.

**Chairman Belter:** Are there any other questions for Representative Drovdal: Is there any further testimony in support of HB 1297? Any opposition? Any neutral testimony on HB 1297? If not, we will close the hearing on HB 1297.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1297

House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: January 20, 2009

Recorder Job Number: 7340

Committee Clerk Signature



Minutes:

**Vice Chairman Drovdal:** Let's look at HB 1297.

**Representative Weiler:** The question that I have is if in the House, the majority is Republican and in the Senate, the majority is Democrat, then there will be one member from each chamber, a Republican and a Democrat plus a person from the Tax Department. However, if both chambers as now are in control of the elephants, then we have to put in another person who is a member of the minority party for one of the chambers. Is that the way I understand that?

**Vice Chairman Drovdal:** That is correct.

**Representative Weiler:** I guess my concern, and I apologize to you because I am on the bill and perhaps I didn't think about it when I read it, my concern is that if we have a decision that has to be made and if we have the House and Senate equally split, we don't have a tie-breaking vote if we end up in a situation where our delegation has a Democrat and a Republican and, if they don't agree, what happens? How do we break the tie?

**Vice Chairman Drovdal:** Currently, we have three people there. You have a sales tax commissioner designee who would be the third person who would actually break the tie.

**Representative Weiler:** I am not sure. I think that is one of the problems in this. The problem is I don't know if I want a bureaucrat breaking the tie.

**Vice Chairman Drovdal:** Well that is a decision you have to make. Currently you have two senators and two house members and you could technically have a tie right now and you would have nobody to break the tie. In all reality, in the last two or three or four years, we have never had more than three people go to a meeting yet. If you have three going, you have the same problem. One house will control the other. What I have found as one of the delegates is that this is not a political question. It is not Republican or Democrat. It is the technicality that they are working on.

**Representative Weiler:** There may be philosophy where we do have some differences and I just had a concern.

**Representative Headland:** Is the governing board of streamline sales tax—is it one year a legislator and the next year, it has to be a bureaucrat?

**Vice Chairman Drovdal:** The executive board. The governing board is made up of all the delegates from all the states. They elect an executive board and it staggers. (3:59) They end up with an equal numbers of legislators and an equal number of (inaudible).

**Representative Headland:** The reason to have a tax commissioner or a designee is so in that off year on the executive committee, we do not preclude ourselves from having a representative on the executive committee. Is that correct?

**Vice Chairman Drovdal:** That is correct. I should also point out the complication that if we have a legislator on the board, they will not put a second member on the executive committee from the same state.

**Representative Headland:** Obviously other states did not look at the streamline board as we did. We attempted to keep the legislative perspective rather than a bureaucratic perspective

so in essence, what you are telling us is that the horse has already left the barn. If we want, in that off year, to have representation on the executive committee, the only way we can achieve that is by allowing the tax commissioner or his designee to serve. Otherwise, when it is restricted to legislators, we will never have an opportunity to have people on the executive committee. Is that correct?

**Vice Chairman Drovdal:** There are three-year terms so for three years; you are going to have a representative on there. But if it comes up in the next cycle, that you don't have somebody like a state official to go on, we will not have anyone from ND qualified to get on the executive board. The way it is set up, because ND is unique, (we are one of the few states who have sent legislators down there), as long as we have somebody interested in serving on that board, we will probably have somebody on that board. But I can also foresee that that is not always going to be the case.

**Representative Weiler:** Getting back to my point. In the first scenario, we have one Republican and one Democrat and one bureaucrat. In the second scenario, we have two from one party and now we have to have one from the other. I am okay with that. I just don't know why in both cases we wouldn't have three legislators on the bill plus if you wanted a representative from the Tax Department for the continuity, I kind of get that and understand that but I have a concern about not having three legislators in either scenario. I think I would like to see that.

**Vice Chairman Drovdal:** I think the reason they didn't do that is if you have one house controlled by the Republicans and one house controlled by the Democrats, how do you get your third person? If you wish to make an amendment to that effect, we could certainly do that. The bill is open to any amendments you wish to make. Whoever is on this committee gets all the input in the technical aspects, the definitions and it is like watching paint dry. They

don't make a decision for the streamline sales tax; they just make a recommendation back to the governing board. The delegates to the governing board make a decision about the direction to go. They bring that back to the state and the legislature is the one who makes the decision for the state, just as an explanation on how it works. Do you want to take action on this or wait until the chairman comes back?

**Representative Froseth:** Is it unworkable the way it is now?

**Vice Chairman Drovdal:** It isn't the end of the world if you kill it.

**Representative Weiler:** As a side note, for two years I have asked to be removed as one of the four members and they have never removed me. I don't know why they still want me on the board.

**Vice Chairman Drovdal:** That is one of the reasons I brought this forward. It isn't a real exciting job, I will tell you that. If you want to be on the board, put your name into the Legislative Council; they are the ones who appoint them. I wouldn't have any say in that whatsoever. We will put HB 1297 aside.

# 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB1297

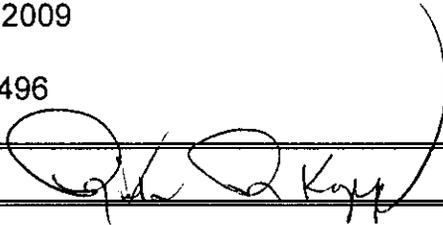
House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: January 21, 2009

Recorder Job Number: 7496

Committee Clerk Signature



Minutes:

**Chairman Belter:** Let's take a look at HB1297. That's the Representative's streamline sales tax bill. I will entertain a motion.

**Representative Drovdal:** I move a "do pass".

**Representative Pinkerton:** Second.

**Chairman Belter:** Is there any discussion?

**Vice Chairman Drovdal:** Mr. Chairman, I brought this bill in because I thought it would be good for the state of North Dakota. I guess you see a lot of boogiemens and I guess you have to vote what you see; but I still think it is a good idea. I spent a whole year trying to get something uninterrupted in the state. But if you see a boogieman, I am not going to start over.

**Chairman Belter:** It is my understanding that on this executive board there is a rotation process. In that rotation, there are legislators, as well as bureaucrats.

**Vice Chairman Drovdal:** That's right. Half the board is made up of legislators and half the board is made up of bureaucrats.

**Chairman Belter:** In that rotation, at some point in time, there may be a situation where if we want representation, the only way we can have representation is by putting a bureaucrat on instead of a legislator.

**Vice Chairman Drovdal:** My perception was that there is going to be a time .....Yes, that's true. We may not have a legislator qualified or willing to serve on that committee and one of the openings may be for a bureaucrat.

**Chairman Belter:** But that circumstance would only happen because legislators say that they didn't want to be on the committee so we are going to put somebody from the Tax Department on the committee?

**Vice Chairman Drovdal:** Bottom line. True. We have a legislator who has been on there since its inception. Pretty soon he is going to go off and we may not have a legislator who wants to serve on that committee because it is so darned technical. If we have nobody on there at the time, it's not an option. If you want to kill the bill, fine, kill it. I can see where your perception is that the bureaucrat may have a swing vote at some time and if that is a concern, then do what you have to do. I just thought that this was an opportunity to always have a ND citizen on that board. I thought that was important to ND, but if you see boogiemen, fine.

**Representative Weiler:** I do not like the makeup of one and one and that is why I can't support the bill. I don't see a boogiemer.

**Chairman Belter:** To expedite time here, it would be better if you withdrew your motion.

**Vice Chairman Drovdal:** I withdraw.

**Representative Pinkerton:** I withdraw the second.

**Chairman Belter:** I will entertain a new motion.

**Representative Weiler:** I move "do not pass".

**Representative Grande:** Second.

**Chairman Belter:** We have a "do not pass" from Representative Weiler and a second from Representative Grande. Any discussion?

**A voice vote on the "do not pass" resulted in 7 yeas, 3 nays, and 3 absent/not voting.**

**Representative Brandenburg will carry the bill.**

**Representative Weiler:** Mr. Chairman, I apologize for not reading the bill well enough.

**Chairman Belter:** These committees ought to be made up of legislators. If you want to bring staffers along, they sit behind you and you can turn around and ask them for information. But they should not be sitting on these boards.

**Vice Chairman Drovdal:** I got the message.

**Chairman Belter:** We have 67 bills. Next week we won't have time for philosophical discussions. We'll have to hammer away. We have a lot of bills with fiscal notes and they have to be heard by February 3.

Date: January 21, 2009

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1297

House FINANCE AND TAXATION Committee

Check here for Conference Committee

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

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Weiler Seconded By Grande

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

Total (Yes) 7 No 3

Absent 3 (Schmidt, Winrich, Froelich)

Floor Assignment Brandenburg

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

**REPORT OF STANDING COMMITTEE (410)**  
January 21, 2009 8:22 p.m.

**Module No: HR-12-0689**  
**Carrier: Brandenburg**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1297: Finance and Taxation Committee (Rep. Belter, Chairman) recommends DO NOT PASS (7 YEAS, 3 NAYS, 3 ABSENT AND NOT VOTING). HB 1297 was placed on the Eleventh order on the calendar.**