

2009 HOUSE FINANCE AND TAXATION

HB 1354

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1354

House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: February 9, 2009

Recorder Job Number: 8961

Committee Clerk Signature

Minutes:

**Chairman Belter:** We will open the hearing on HB 1354.

**Representative Weiler:** HB 1354 is seeking to somewhat undo the bill passed two years ago which changed the amount of years needed before a tax foreclosure can take place. The old law was four years of delinquent taxes, which was changed to two years last session. The foreclosure process can start after two years. It takes about another year after that before the property can actually be taken away from you. This bill had some unintended consequences which affected developers across North Dakota. It hurt developers by not allowing enough time for things to get going on their projects. What we attempted to do in this bill is to change it back from two years to four years. After talking with the bill sponsors from two years ago, some committee members and other members in the house, I realize there is not a lot of support for changing this back. They question why developers weren't here two years ago opposing this. I spoke with John Walstad this morning and we are working on some amendments to put some kind of exemption in for any development started prior to this law going into effect and "grandfather" them in. Obviously anything that was started after this law went into effect would not be affected. I guess I will stand for any questions, but we would like to look at these amendments later today.

**Chairman Belter:** The intent of your amendments is to leave current language in effect, but to go back and grandfather in any projects prior to what we did last session?

**Representative Weiler:** We want to be able to have some kind of exemption for developers who started a plan two or three years ago under the assumption that they would have four years to complete it. Whether it was right or wrong, they may have put this in their business plan. All of a sudden, things have slowed up and after two years, they get a notice that they have to take care of this right away or lose the property. Although I do understand the purpose of the bill last time, I think there are unintended consequences and that as a legislative body, we need to do the right thing and at least take care of those who got caught off guard by this.

**Kevin Turnbow, Riverfront Properties, Inc.:** I own this company which is a corporation that develops land, mainly waterfront property. Right now I have just spent \$15 million since the middle of 2006 building a lake. As of the middle of last June, I annexed 200 lots in the city limits. I didn't know this bill had passed. Because of the size of this project, you have to do it all at once; you can't do it piecemeal. You have to make the lake; and once you do that, you want to have all your lots for sale. I did not put money away for paying property taxes ahead of time. Without that in my financial plan and the amount it would cost for that extra two years, my bank will not be going for it. I will be giving them my property. My biggest problem is that it caught me off guard. I don't know if I would do a development like this again not having the five years. I end up spending \$40-50,000 a lot per lot for waterfront development. This will slow down people developing things like I do. When I did Southport, it took seven years before it got going. I had 70 lots there and I did 35 at a time. I could pay tax on 20-30 lots; but if I am sitting there with 150 lots, it isn't going to happen. I would have to pay taxes in 2010 and I just annexed the lots in 2007. I would like to see this bill split (09:30). I have ideas for a number of

developments, not only in Bismarck but in a couple of smaller towns. I think it brings people here. I spend a lot of energy and time seeing these developments are done right.

**Representative Kelsh:** Can you help me understand the development process? I assume that you go in and ask for a zoning change. How are the property taxes paid from the time of the purchase to the zoning change and the development?

**Kevin Turnbow:** Until they are turned into lots, you are being charged for rural property. That part isn't a big deal until you turn it into lots and annex it in. Now all of a sudden, it is \$1,000 a lot. The cheapest lot I will sell will be \$75,000 because of the expense involved. I moved a million and a half yards of dirt. I prorate taxes as I close on the lots, but I ride tax options coming it. It isn't in my projections. When I did Southport, I did it more to prove a point than anything else. It did work; it just took longer. Developments started going up all over the place—Lakewood, Borden Harbor, Misty Waters. Other developers did the same thing; you have to take advantage wherever you can. If I have to put in a quarter million dollars in property tax a year, it won't happen.

**Representative Pinkerton:** We appreciate your risking your capital to do these things. On the second page of the bill, it talks about delinquent taxes and special assessments coming in at 12% per annum. Is that what you are used to paying?

**Kevin Turnbow:** Yes, you get penalties, etc. but you hope for the best and prorate it. In order to make the development work, with the way the country is going now, it bothers me more than ever. If I do this development and don't make anything, that's alright. I always take that risk, but this might actually end up throwing me over the top. I know it is costing me more money than me taking money from the bank, but I don't have an option. The bank does appraisals on these properties at 50 cents on the dollar. They appraise as if I had to sell it as a whole to cover themselves. I spent \$15 million doing this and the bank appraisal is \$8,600,000. I have

already borrowed more than that and I'm not done yet. (15:35) I wouldn't be able to make it work if I had to worry about property taxes.

**Representative Pinkerton:** If it didn't work and the bank took it back, it would be appraised at a different value. If it works, the city gets their 12% and it is appraised at a higher value so you are actually creating greater wealth for the city than vacant land.

**Kevin Turnbow:** When I did Southport, I spent more per square foot to do development than any other development in the state. What I sold my lots for was more per square foot than anywhere in the state, and the resale of the homes I built in Southport was the highest in the state. No one has higher resale of home prices than me. I have created a lot of property tax. I want to keep doing this. There is no reason North Dakota cannot have developments like this.

**Representative Pinkerton:** The entities (counties, cities and townships) collecting taxes have almost become your equity partner because they hold off collecting their money until you build up greater wealth they are going to collect taxes on.

**Kevin Turnbow:** If for some reason, the bank took the property back and the city ended up with the lots, that is the best thing that could happen to them. They would end up with lots they wouldn't have trouble getting their taxes out of.

**Representative Pinkerton:** My understanding is that most of these developments are usually assumed by a developer or the bank assumes them and turns them over to another developer. They appraise at 50 cents on the dollar because they want to make sure they are covered.

**Representative Kelsh:** I remember this bill from two years ago and the reason for this bill was to get individuals who simply wouldn't pay their property tax. They lived in a certain place for a long time and became so delinquent they would never be able to catch up. It wasn't to go after developers.

**Kevin Turnbow:** One of the things I asked was whether you couldn't split this bill. I am sure you have good reasons for doing the bill. When I did South Bay, I drew up seven developments, all water front, three on the river and four off and two in other counties. I would still like to do these developments; I just don't know how I am going to handle the property tax issue. I don't know if I can do another development like this with what it costs per square foot to do them. If I was doing a development of 30-50 lots, it wouldn't be a big deal; but when I spend \$15 million and I have 250 lots sitting there, it is a big deal. Now I can't afford it. The grandfather clause would be great, but what I would really like is if there is some way you can split it or if the city would have some say for something for the future. Not many people stick their neck out like I do.

**Representative Brandenburg:** I am just trying to understand how this impacts you. You have 250 lots in development and you are talking big dollars.

**Kevin Turnbow:** I have parks and amenities I am putting in. You won't see the true value for five years. I have a few homes going up on the land. Five years from now, it will look completely different, but if I can't make it that long....

**Representative Schmidt:** You said you talked to the City of Bismarck and you have certainly been an asset to the City of Bismarck. Did they have any ideas how the state legislators could fix this problem?

**Kevin Turnbow:** They never offered. When I found out, I called and talked to them. They said they did not have any right to separate me from the rest and make it work. That is kind of why this happened. I figured they like it this way because they get their money faster. I wasn't sure where to go.

**Chairman Belter:** Any further testimony in support of 1354? Any opposition to 1354?

**Terry Traynor, North Dakota Association of Counties: (Testimony 1).**

**Representative Weiler:** You said when this law was put in place, it was primarily for the agricultural sector because they needed a little more time. If it is okay to help out the agriculture section, why isn't it okay to help out the developers?

**Terry Traynor:** This was before my time, but it is my understanding that they had no options because the banks weren't willing to loan against that.

**Representative Weiler:** I understand that. We do a lot of things for the agricultural sector in the state, and we should; but we have obviously done a lot of damage to developers in the state and the potential for more development and I would just like to know why it is okay for us to help out agriculture but not developers? You mention in your testimony, Terry, that if this money doesn't get paid, that the citizens of ND or the county eventually pick up the tab. Could you explain to me what you meant by that?

**Terry Traynor:** If the tax is not paid after three years, formerly five years, the county acquires the property and they put it up for sale. They don't always sell it for taxes due on that property. At that point, the rest of the taxpayers have to make up the difference.

**Representative Weiler:** Through more property taxes? Then when these taxes do finally get paid, do the rest of the citizens in the county get a tax break because of that?

**Terry Traynor:** That goes against anticipated unpaid taxes in future years, lowering the cost so yes, the county could not raise their levy against that.

**Representative Headland:** Would it be possible to amend current law to make it possible, where in the case of development, the developer could come before he starts his development and negotiate with the political leaders of the political subdivisions being impacted? It seems to me in the long run that it is a real benefit to have this development. I realize it won't help Mr. Turnbow in looking back, unless we accept the other amendment; but for the future, would it be possible to go that direction to aid new development?

**Terry Traynor:** I think that is an excellent question. I don't know if I can answer it. There are a lot of mechanisms allowed in state law to exempt or provide in lieu of taxes for real property or improvements to real property, but the Constitution is real clear that you have to pay taxes on the land itself. I don't know if there is a constitutional problem there, but I do think it is worth looking at. When this bill was passed two years ago, it was prospective. Those taxes due that year had the five years. It was only after that that it became three years. Also, there was a provision to provide for forgiveness, understanding that in two years, there was going to be a period when people had five year delinquent taxes and then three year delinquent taxes coming due at the same time. There was a provision to allow for forgiveness of interest and penalty to help those situations. I know a number of counties granted forgiveness to allow particularly developers to get up to date if they could.

**Representative Froseth:** Don't cities have some mechanisms to grant exemptions in this case? (33:03)

**Terry Traynor:** My understanding is because this is land, you cannot exempt land. You can exempt improvements on land or provide payments in lieu, but you cannot exempt the taxes on the land itself.

**Representative Winrich:** There are programs in law, the Renaissance Zone tax credits, etc. and I believe there are others, where the legislature has specifically granted to local jurisdictions the ability to give property tax credit for a period of time, in some cases, partial property tax credit for two to five years. Could there be a mechanism to allow local jurisdictions to deal with this situation in special cases?

**Terry Traynor:** I think most of those tax credits are to improvements to land. (34:17).

**Representative Brandenburg:** I remember this bill very well. The purpose of the bill was to get people who weren't paying taxes and get that land back and give it to someone else who

would pay the taxes. As we look at someone who is developing an area, the goal was to give back taxes. Here we have somebody developing an area caught in the middle. I am surprised that the city couldn't work something out with this person so we wouldn't have to deal with this. You are talking half a million dollars a year for a few years. This is not small money. We spend all kinds of money in economic development. Why can't something be worked out?

**Terry Traynor:** I honestly don't think there are tools to do that. One tool that was written into the bill last time was forgiveness of interest and penalty if the taxes were paid up to date, which, in this case, would be a huge amount of money. That probably wasn't an option. Again, I think it is very difficult to provide an exemption for real land property, constitutionally, there is really no provision. Would there be other ways with grants or something? I don't know whether the county and city taxpayers really should be providing that investment without their agreement.

**Connie Sprynczynatyk, ND League of Cities: (Testimony 2 and 3)** The cities share the concerns Mr. Traynor has expressed. Since the committee has a number of questions about what tools are available, Marcy Dickerson would be the resident expert. We have a concern we have viable businesses within the community. Certainly as a resident of Bismarck, I appreciate the efforts of people like Kevin Turnbow, who really do put their necks out and risk a substantial investment before development finally takes off. There is no argument that it is an advantage for the community to have resources like that available. The problem is that I don't believe we have tools to do what you are talking about doing. There are a couple of things that come to my mind, but they all have a basis in state law. That would be, for example, we can exempt improvements to the property up to \$75,000 in value. We cannot exempt the land itself, but we can exempt improvements to the land; that is the two year, new construction exemption. The legislature has created a body of tools we can use for

remodeling; the Renaissance Zone credits is one of the best downtown redevelopment tools ever. Technical and financing districts all have a basis in state law. What we are talking about in this bill—we don't have a set of tools we can use to address a problem like Kevin's. If you want to know the reason cities object to this bill, we supported the change last time. I don't think anybody was thinking about this kind of consequence, whether it was intended or unintended. I don't think there was deep knowledge that tax delinquencies would be a financing tool used commonly by developers.

**Representative Froseth:** Would the League of Cities be okay with an amendment like Representative Weiler suggested to grandfather developers into the old rate?

**Connie Sprynczynatyk:** I would certainly take that back and ask the question. I don't know. Personally I can understand the difficulty this has created; but again, you are going to remember in your deliberations that if somebody doesn't pay and they should be part of the payer pool, then the rest of the pool does. This is a very difficult one.

**Representative Pinkerton:** At this point, isn't it hard for the cities to be negative on this bill when the unintended consequences can be so difficult for the developer?

**Connie Sprynczynatyk:** All we can do is respond to the bill the way it is written. There hasn't been any conversation about amendments. Again, I don't think there was broad awareness that this is actually part of the business plan. I don't think that is a commonly known fact.

(40:37)

**Representative Brandenburg:** How much tax credit would you have off this development if it wasn't developed?

**Connie Sprynczynatyk:** Good question. It depends upon how it is done. Kevin was talking about land annexing so prior to that I would assume it was zoned agricultural land and the rate changes as it comes into the city. If it were not in the city, it would be county.

**Representative Pinkerton:** I do have a clarification here. We do have the city of Belfield – wasn't that the city that went virtually bankrupt because of development and inability to collect the special assessments? Could you briefly address if we enacted this legislation, would this have those unintentional consequences where the city would finance special assessments?

**Connie Sprynczynatyk:** I still serve on the Bismarck City Commission. When I came onto the Commission in 1990, Bismarck was still experiencing impact from the last boom bust in the oil patch even though you think we are geographically distant from that. For a long time, the value of our residential property in the community was actually higher than the value of the commercial property and that finally turned around in the mid 90's. We were still getting lots back for taxes in 1990. The issue of special assessments is a problem. Not all communities treat special assessments the same way. That is a financing tool the city can use to help a developer and later a property owner pay off those public improvements over a period of time, but a city could say to all the developers, you have to stand all those costs up front. You are convinced you can sell these lots in this development, you have to pay up front for everything. I think in Fargo that the developer doesn't have to pay up front. In Bismarck, the policy is 40% so there is a mix of how that is treated. The issue of special assessments can come to roost back home if the lots don't sell and there have been public improvements and everybody has to help pay. The case in the early 90's caused lots of discussions with our county commissioners. When the lots finally sold, how does the money get divided up? Do we pay the special assessments first and then divy up or does it get divided up and the special assessments are a cost borne by the city residents? That was an issue in the 80's and 90's for virtually all of the communities in western North Dakota.

**Claus Lembke, ND Association of Realtors:** As we saw the bill before us, we were opposed to the bill. I am confident after hearing the testimony and thoughts here, that we could support

some kind of amendment if Mr. Weiler had something to do with it. He is, after all, a realtor and a leader in real estate. I think you should take a look at classification or criteria at what time the use changes. There are really no services needed for a vacant lot; maybe you could look in that area at what time the taxation changes from ag to a smaller fee to the much increased fee. An empty lot doesn't need law enforcement, fire services or any of that. Or possibly look at it as economic development and give a five or ten year tax exemption that you have given the authority to local communities to do.

**Chairman Belter:** Any further testimony in opposition to 1354?

**Lynn Bergman:** I am not in opposition. I am neutral. Is that okay? Here is the case where probably the most important developer in the City of Bismarck in the last 20 years is going to go broke because a law changed which changed the rules in midstream. I am not saying that is anybody's fault, but we have the League of Cities and the League of Counties virtually ambivalent to this kind of thing. This is not what the taxpayers of ND want. We want the state to develop, we want progress. Mr. Turnbow is not a friend of mine; I don't know him but he should not be paying taxes on property until someone lives in that house, in my opinion.

**Chairman Belter:** Marcy, I guess the question asked was whether the cities and counties have the authority to work with a situation such as this. Is that the case?

**Marcy Dickerson, State Supervisor of Assessments:** Yes that's correct. There is a Constitutional prohibition about exempting land. Now there are specific exemptions to land allowed by the Constitution, which is if it is entirely used for charitable purposes, both the structures and the land can be exempt. That is about the only time land can be exempted. I would like to point out that last session you did enact legislation that allows the governing bodies of cities to consider the amount of vacant lots available for sale when valuing vacant lots. It doesn't direct them how to value them or how to change the value; but it does say

basically that they don't have to strictly follow a sales ratio study and have their vacant lots at 100% of market value. I don't know how many cities are using that tool. I know the city of Fargo is from an issue we had before the State Board of Equalization last year. I think the city of Minot is not using it and I don't know if Bismarck is using it. They can look at the number of vacant lots available, recognizing nothing else than time, value and money so if you sell a couple of lots for \$75,000 to \$100,000 now and you have 200 more lots out there, they won't sell for that today. It may take a couple of years and it may take four or five years to sell them. With the town value of money, you would not necessarily value the remaining lots at the same price that a couple had sold at.

**Representative Headland:** Marcy, is there anything that we could do as far as the timing of when lots get reclassified? I am assuming in this case that he went for his annexation before he started development because he wanted to make sure it was going to become part of the city. Is it at that point that they reclassify it? Is there something we could work with in that area as to the timing because although I don't agree with Mr. Bergman that he shouldn't be paying any tax on it, certainly until this development is finished, there might not be the need to reclassify it from ag to residential.

**Marcy Dickerson:** The statute is clear on property that has been divided after 1981 and that probably is the property you are talking about. I don't think Mr. Turnbow's property was platted before 1981. There are seven conditions that determine whether that property is still agricultural property or something else. Four of those seven conditions must be in place before you change it from agricultural to commercial. All vacant lots are by default commercial, not residential until there is a residence on them. That is a statutory test, four out of seven. One of those criteria is zoning, but actual annexation is not one of the criteria. If the

property meets four of the criteria and is still listed in a township, it would transfer to commercial property once four of those criteria are met.

**Representative Winrich:** It seems that we are not so much talking about exempting the land from taxation here, but rather extending the delinquency period. Is there some way we can deal with that?

**Marcy Dickerson:** There was prior to the last session when you determined to shorten the period of delinquency. This bill was introduced to put it back to where it was before.

**Representative Winrich:** Could the period of delinquency be determined by the property type rather than just a fixed number for all property?

**Marcy Dickerson:** I suppose it could if that would be your wish. I don't know if that would be equitable or not. It is not my position to make that call.

**Chairman Belter:** Further testimony of 1354? If not, I'll close the hearing on 1354.

## 2009 HOUSE STANDING COMMITTEE MINUTES

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House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: February 9, 2009

Recorder Job Number: 9023

Committee Clerk Signature

Minutes:

**Chairman Belter:** Let's discuss these bills and if anyone wants to do any amendments, we need to get moving on them because I want to get all the bills out this week. HB 1354 is Representative Weiler's bill.

**Representative Weiler:** I have not received amendments yet; however, the amendments specifically were to give some type of exemption for any developers that had projects in the works prior to the time we passed this bill a year and a half ago or the time that it came into effect. However, my sense is that from the questions that were asked of all the committee members that maybe there is some other suggestion we might have in order to try to help some of these developers who stick their necks out and create all kinds of wealth in communities, create all kinds of jobs and then we come along and shut them off in two years. Maybe there is a way we could do something.

**Representative Brandenburg:** I really think we have to do something with this guy in Southport. When we did that bill two years ago, the reason was to take care of land where the taxes were not being paid and to speed up the process, get somebody to take that land and end up paying taxes on it—not to penalize somebody. Yes, they are using the system to

develop, but look at the tax revenue they are creating a couple of years later. It is huge. It was not the intention of that bill whatsoever to stop that type of development.

**Representative Weiler:** I guess we did hear Mr. Turnbow say that if we don't do something, he has four or five other development areas that he is considering. I don't think our intention is to shut down developments. There were some things that were said from the opposition that I agree with. Is it right for these developers to take five years to pay up and use taxes as part of their business plan? Probably not and I agree it is probably not the right thing to do; but if anybody has any suggestions, I would love to bring something else up. If not, I will get the amendments drafted that I have and we will try to make something work.

**Chairman Belter:** In considering your amendments, you were going to take care of the current situation that was brought to us today. What about in the future? Are we going to give a local option to some of these boards that if somebody is going to start a development, they can give them that option or are we going to set some limits?

**Representative Weiler:** Those are the kind of ideas I would like to hear; I was stuck in the mindset of let's grandfather projects in. But again when everybody started talking and asking questions, I know there are more and maybe better ideas than that just as the one you brought forth. I will be happy to get something drafted up, but I guess I am looking for some other direction or some other ideas from committee members because I don't want to see developers all of a sudden shut down because of something that we did.

**Chairman Belter:** If the testimony I heard this morning was any indication, it was that the local governing body has no jurisdiction to give or to delay property tax on property, but what is happening where somebody is building a new plant of some kind or another project where they have passed a five-year property tax exemption? Is that exemption only on the buildings or is it also on the land? Do you want to answer that?

**Terry Traynor:** To a 10 year in lieu of taxes now, but it is only on improvements to land.

**Chairman Belter:** Land is always taxed in all these economic developments?

**Terry Traynor:** That is a constitutional provision. Marcy confirmed that. The land itself cannot be made exempt.

**Chairman Belter:** So we cannot change that unless it is constitutional.

**Terry Traynor:** That would be my understanding. There may be a way to delay collection of tax on the land; but as far as incurring the tax, I don't know how.

**Representative Headland:** What occurred to me is the timing as to when the property gets reclassified. We could look into to see if it is possible that in the case of a development, when you are taking ag property and converting it to residential, if the timing could be held off until it was developed or at least until the lots were ready for sale. Something to hold off it right away being rezoned as residential because I think in this case, he wouldn't have a problem paying while he is developing the dirt work essentially to have it stay agricultural. Before he puts the shovel to the ground, it is being reclassified as residential. I think if that is an area that, I don't know if there are constitutional problems with it, but I think that might possibly be a direction we could go.

**Terry Traynor:** Mr. Chairman, if I may comment on that. Learning more about that project from our tax officials here in Burleigh County, the real property taxes are only about \$200 a lot, but what is really a burden to the developer is that he has about \$1500 to \$1800 a lot in specials that also incur and are ultimately what will put him over the edge. So the real money is in the specials. In order to get the specials in, you have to come into the city.

**Representative Pinkerton:** The taxes don't seem like they should be an issue. He has got 12% interest on that and if he can't pay it, the city or the county is going to be somewhere along the way ahead even if they have to repossess the property. That local option, while it

has some advantages, could be quite difficult for communities to administer, whether this party gets it and that party doesn't. There could be clerical fight there. What I guess I am concerned about is the special assessments. That is apparently what we are dealing with on this particular issue. If those special assessments, while the property taxes would simply be lost opportunity, the special assessments would be real money that had been put out by someone that they have to be..... Lost opportunity is lost opportunity; there is no reason not to take that chance; but if the special assessments are gone, there is \$1200 a lot and he has \$5 million in special assessments or whatever it is; the total bill must be way out—it must be \$4-5 million in special assessments. It is hard to think about the cities taking responsibility for that without some sort of forethought. Would you address that?

**Terry Traynor:** Possibly somebody from the city could address the special assessment and what goes into their decision to incur that cost. I don't know.

**Representative Pinkerton:** The special assessments have already been paid by the city like in Bismarck's case. Is that money that has been bonded out and the city is responsible for those bonds? If this developer walks away from the project, then the city has to assume that responsibility?

**Connie Sprynczynatyk:** Yes. Yes, that is exactly what happens and that is what my example was through the 90's when we were still getting lots back for taxes. That was the big discussion for political subdivisions. Do we pay the specials first because there is an actual cost incurred here that has to be borne by everybody else until you figure out how to solve that problem. So do you pay off specials first or do we just distribute the money to the political subdivisions that would already have received a piece of that pie when a lot is improved, sold and brought into the city?

**Representative Pinkerton:** Truly, because of the two separate issues, would that be a fair guess that is what his special assessments are--about \$5 million?

**Connie Sprynczynatyk:** I don't know that cost. Frankly, like Representative Weiler, I have been trying to think of a way that you could accomplish what appears to be an unintended consequence for an individual. What I haven't been able to figure out is where would you, how would you create par, where would you draw the line, would you pick a point in time, would you say any development flagged and annexed into the city by such and such a date—I haven't been able to figure out how you would do it. I do know there are considerable development costs everywhere from the road, the sidewalks, the curb and gutter, the streetlights, the water and sewer. Like I said, the special assessments would be a financing tool that a city can allow to be used for development if it is new stuff or for improvements like a chip seal project or if we are going through the streets in some neighborhoods and we are redoing water/sewer because the lines are 100 years old.

**Representative Pinkerton:** Connie, \$3 million or \$5 million—whatever his special assessments are, how much of that would he have fronted or would he have paid as a developer and how much of it would the city have fronted?

**Connie Sprynczynatyk:** That really depends city by city; because I am assuming that if you do something here, you are not just going to have it apply to one developer. You are going to have to look across the state and see how to make this work for anybody caught in that same situation. It depends upon what the improvement is, it depends on the city. In the west, and I can't tell you specifically, but in the western cities, when we surveyed this kind of thing before, it seems like most of the cities in the west are a little gun shy probably because of oil patch boom and bust. They might require—they could require a 100% up-front payment by the developer or a partial payment. Fargo, I am told, doesn't require participation. I was just

talking to Bill as I was trying to remember the details of Bismarck's particulars. He might be able to explain that better than I can; I will just tell you there is a difference across the state.

**Bill Wolf:** In Bismarck, typically we ask the developer in a residential area to up-front the water and sewer costs and the cost of rough grading the subdivision, as well as any trunk line charges. We will typically look at special assessing the road, the curb and gutter, the sidewalk, and the street lighting. We won't put street lighting in; however, until the subdivision is 50% developed. We are trying to keep the costs of the special assessments in line with the worth of the lots so we don't have special assessments on everything, have lots come back and end up with a liability. We try to do some balancing in that area. In commercial areas, we try to have a 40% prepayment so that we keep again the value of the lot and special assessments somewhat in balance.

**Representative Pinkerton:** Is this one size fits all—every developer gets the same or is individual? This developer gets a certain percentage and the next developer might get half that percentage or is it truly one size fits all?

**Bill Wolf:** It is one size fits all. We try to make a rule for all the developers. Special assessments are requested by the developer. One developer may decide he needs to have roads in place in order to sell his property and others may decide they can do just fine with having a dirt trail with the road assessment to come. We allow the developer to select. In Mr. Turnbow's case, he has a very up-scale development and he would like to have all of the improvements in place before he goes ahead and sells lots. Every developer chooses where they would like to go, but the city tries to have the same approach for each developer.

**Representative Pinkerton:** So really to make this work, special assessments vary from city to city all the way across the state. A city would almost have to have the ability to determine what they would do as far as increasing the timeframe before they have to be paid where taxes

are pretty uniform across the state—the policy for collecting taxes. (Inaudible). Would that be a fair assessment? (15:28)

**Bill Wolf:** That would also depend on what services the cities put in place. If we have the road and streets in place and those special assessments are then out; as you noted earlier, the payments have to be made, the specials come back to help make those payments. It depends also on the level of improvements that is out there.

**Representative Weiler:** The timing of the classification was touched on, Bill. Can you just walk briefly through when a guy buys a chunk of land that was outside the City of Bismarck, it was ag land and he buys it and is paying ag land property taxes? At what point does he start paying residential?

**Bill Wolf:** That is the seven point test that Marcy Dickerson testified to this morning. That test was put in place a number of years ago. It was called the Strindland Amendment; Bill Strindland was the author of that amendment. It applies seven tests to the property.

**Chairman Belter:** Is that in code?

**Bill Wolf:** Yes, it is.

**Representative Weiler:** We will look into that. We don't need to waste your time.

**Chairman Belter:** Any other discussion or questions? If you are going to look into.

**Representative Weiler:** Yes, I will look into that. I know you want it no later than Wednesday so if anybody has any ideas, I would appreciate some thoughts on this.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1354

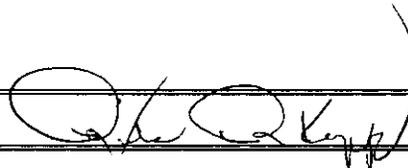
House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: February 11, 2009

Recorder Job Number: 9198

Committee Clerk Signature



Minutes:

**Chairman Belter:** We will look at HB 1354.

**Representative Weiler:** In this amendment, it simply states....from the original bill, we are going back to the two year, which is current law, and we are taking that part out but we are adding in there that any developer of a property for which the date of application for plot consideration (and that is the key phrase—I got the language from the city guy, Bill Wooten) before January 1, 2008. If a developer started a project prior to January 1, 2008, they are going to be operating under the old law for that development only. Starting with January 1, 2008, moving forward, two years is two years. Pay up or have it taken over; but when a developer started a development prior to this law going into effect, they were maybe operating under the old law and that is the purpose of this amendment. It gives them the opportunity to not be cut off in mid-stream. That's it, Mr. Chairman, that's the amendment. I move the amendment .0102.

**Chairman Belter:** We have a motion from Representative Weiler to **approve the amendments .0102** and a second from Representative Brandenburg to **HB 1354**. Is there any discussion?

**Representative Froseth:** What would prevent the developer from just basically sitting on the property? He gets the plot consideration as a developer and then if there is no timeframe limit, he can develop it piece by piece for 15-20 years and be exempt from paying back taxes.

**Representative Weiler:** That is why the key here is the date of application for plat consideration. If a developer has phase 1 and phase 2 and that application was prior to January 1, 2008; and all of a sudden, he starts phase 3 and the date of that application is after January 1 so he can't continue to go on and on. This makes it very narrow and it makes it very clear that if you started one under the old law, you can operate under the old law.

**Representative Froseth:** Well you see what I am getting at. The developer could go in there and say the project was under development, go in there and move a couple buckets of dirt every year and say, "I am still developing it" and extend it down the road. Just being the devil's advocate, I always think.....

**Representative Winrich:** Even if the project was started before January, 2008, he still only has four years. The new language says it may not be made until four or more years have passed so it is not indefinite.

**Representative Schmidt:** I got a lot of calls from county auditors. Will this take care of them? The way this bill was, it was going to create a bad deal. Is this going to take care of them so they don't have to put on extra people to change this?

**Representative Weiler:** If we changed it; I am not following you.

**Representative Grande:** Mr. Chairman. Yes. What we are doing is going back to current law with this one exception. Back to current law will make them happy.

**Representative Schmidt:** My feeling is that he (Kevin Turnbow) is a successful developer.

He should be able to go to the economic development people and borrow the money to pay his taxes, which a lot of other people have to do. That's my theory.

**Representative Winrich:** Just a question. I thought that in Connie Sprynczynatyk's testimony, when she rephrased this tax lien stuff as actually part of the financing, this was a new way of looking at it for me anyway. Do you know, Dave, how common it is for developers to essentially borrow money from the county for four years as part of their finance plan?

**Representative Weiler:** I don't know. I would imagine that most developers...I know that he mentioned that it was part of his business plan to use this over a four-year period. That was surprising to me; it was surprising to Connie Sprynczynatyk. I don't know that that is really a factor in this bill. If they are doing it, is it right? Maybe not. Maybe it is okay. I mean if they have four years, they have four years. That's what the law allows them to do then. But we are changing it to two years. I don't have a problem with it. I voted for it last year to change it to two years; but there are some developers who have been caught off guard by this, who have developments that are going on. They have operated under the old law. All of a sudden, cold turkey, we cut them off. I don't think that is fair; I don't think that is good public policy. To give this exception for that small window of time and those few developments that are out there, I think it is a good move to allow them to operate under the old law when they started the development under the old law.

**Representative Brandenburg:** I thought about this too when it was mentioned as using this as part of his business plan and then when Connie Sprynczynatyk got up and talked about using it in their business plan too. It really isn't any different than using financing as the cities using specials to get projects done. We all have different ways to figure out how to finance something. A city uses specials and spreads around the costs to everybody. This guy put together a system of using the taxes, not paying them for four years, and built a nice new area of town that put new houses on the tax bills. I think they are all trying to do something good for the community and the end result is good so to me, him not paying his taxes for four years to

build up a project is the same thing as the city using specials to put in streets, water and sewer. It's the only way you can get it done.

**Representative Grande:** Just a question for Representative Weiler on your amendments. I am just trying to incorporate the two together. Page 1 after line 18, insert a new section 2. Do we begin the section 2 with there or do we have two section 2's?

**Representative Winrich:** I think that is covered by the "renumber accordingly".

**Representative Weiler:** I have to read this, Mr. Chairman. Okay, page 1 after line 18, they are not taking out the old section 2....is that your question so it would be a grammatical?

**Representative Grande:** This new one on your amendment says chapter 57-20, then the next one goes -26 so there is probably code in between. Is that how I should interpret that?

**Representative Grande:** I am getting a nod "yes" from our future attorney so I think we are doing good.

**Jonathan Gottfreed:** Yes, once that section is inserted, the renumber accordingly will cut that all out.

**Representative Pinkerton:** Most of this is not taxes, but special assessments; at least that is what I understood during the hearing was that only \$200 of this \$1400 was taxes; the other \$1200 was special assessments. Under this scenario, is he liable to pay the interest while the... say at the end, it takes him three years to get everything above water so he pays everything off. Does the interest get paid at that time or does the interest get paid as it is billed?

**Representative Weiler:** I can't speak for the city and how they do that. I do know he is paying 12 or 12½% interest and I would imagine (I don't know if that is interest and penalties together), but I know he is required to pay it. How he pays it, I don't know and I don't know that we want to get that detailed into the city's issue as to how he pays off his debt.

**Representative Pinkerton:** Essentially he is using this as a financing plan to finance his special assessments. That's the bottom line. I am not saying he is right or wrong, but it is an unusual area for me to (inaudible).

**Representative Kelsh:** The bill passed last time allowed the political subdivisions to grant a forgiveness period and that I think has expired so I think that the developer in this case is responsible for all the fees and interest. I think he mentioned that that was part of his business plan and that he would make the penalty payments as they come due.

**Representative Pinkerton:** So the interest and penalty will only be paid when he pays at the end of potentially the four years from the date of the approval.

**Representative Kelsh:** I think he may pay when he has funds available, but he will end up paying all of them.

**Chairman Belter:** Any other discussion? If not, we have the amendments .0102 on HB 1354.

**The motion carried by a voice vote.** We have HB 1354 before us. Committee members, what are your wishes? I have a **motion for a "do pass as amended" from Representative Grande and a second from Representative Brandenburg. A roll call vote resulted in 11 ayes, 1 nay and 1 absent/not voting. Representative Brandenburg will carry the bill.**

JK  
2/11/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1354

Page 1, line 1, after "Act" insert "to create and enact a new section to chapter 57-20 of the North Dakota Century Code, relating to an extension of time of property tax delinquency before foreclosure of a tax lien for certain property developers;"

Page 1, line 12, remove the overstrike over "~~two~~" and remove "four"

Page 1, line 13, after "due" insert "or four years from the date the tax became due for property within a property development under section 2 of this Act"

Page 1, after line 18, insert:

**"SECTION 2.** A new section to chapter 57-20 of the North Dakota Century Code is created and enacted as follows:

**Extended time of foreclosure of tax lien for certain property held by developers.** Notwithstanding any other provision of law, for a developer of a property development for which the date of application for plat consideration was before January 1, 2008, foreclosure of a tax lien on property within the property development may not be made until four or more years have passed since the tax became due. This section does not apply to any property within a property development that has been sold or otherwise transferred by the developer. For purposes of this section, "property development" means a subdivision or platted group of lots of property intended for residential or commercial, or both, building development and sale."

Page 2, line 4, remove the overstrike over "~~second~~" and remove "fourth"

Page 2, line 5, after "delinquent" insert "or the fourth year following the year in which the taxes became delinquent for a property development under section 2 of this Act"

Page 2, line 11, remove the overstrike over "~~two~~", remove "four", and after "passed" insert ", or four years have passed since the tax became due for a property development under section 2 of this Act,"

Page 2, line 12, remove "retroactive and is"

Page 2, line 13, replace "2006" with "2008"

Re-number accordingly

Date: 2/11/09

Roll Call Vote #: \_\_\_\_\_

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 1354**

House FINANCE AND TAXATION Committee

Check here for Conference Committee

Legislative Council Amendment Number 90688.0102

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By \_\_\_\_\_ Seconded By \_\_\_\_\_

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

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

Absent \_\_\_\_\_

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

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

*Am*

Date: 12/11/09

Roll Call Vote #: 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1354

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 Grande Seconded By Brandenburg

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) 11 No 1

Absent 1

Floor Assignment ~~Brandenburg~~ Brandenburg

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

**REPORT OF STANDING COMMITTEE**

**HB 1354: Finance and Taxation Committee (Rep. Belter, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). HB 1354 was placed on the Sixth order on the calendar.

Page 1, line 1, after "Act" insert "to create and enact a new section to chapter 57-20 of the North Dakota Century Code, relating to an extension of time of property tax delinquency before foreclosure of a tax lien for certain property developers;"

Page 1, line 12, remove the overstrike over "~~two~~" and remove "four"

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Page 2, line 12, remove "retroactive and is"

Page 2, line 13, replace "2006" with "2008"

Re-number accordingly

2009 SENATE FINANCE AND TAXATION

HB 1354

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1354

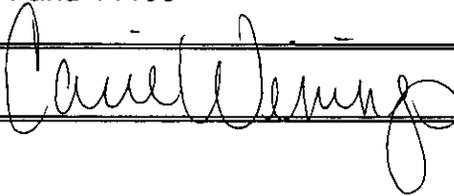
Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: 03/18/2009

Recorder Job Number: 11164 and 11166

Committee Clerk Signature



Minutes:

**Chairman Cook:** Opened the hearing on HB 1354.

**Representative Dave Weiler, District 30:** Testified as sponsor and in support of the bill.

(Explained the bill) The reason for changing the dates back to four is because some of the

developers have been caught up in it and would like us to get this changed back. This is an unintended consequence from the prior session. The date of application is the key here.

5.29 **Senator Triplett:** Are you suggesting that developers routinely choose to not pay the property taxes on the properties they are developing?

**Representative Weiler:** I am not saying they choose to not do it. When you get some of these larger developments, and it can turn into some pretty high taxes and maybe in a period where maybe things have slowed down a little bit, I think it is a problem for them to all the sudden in two years have it paid off.

**Senator Triplett:** Isn't that following the law and abiding by the property taxes part of their business plan? Shouldn't they expect to pay their property taxes?

**Representative Weiler:** You are correct. I don't think having that as part of your business plan is a wise idea. I don't know that it is part of their business plan. Things have slowed

down a little bit across the state and I think that some of the builders were caught off guard and to allow them the four years they thought they would have.

**Chairman Cook:** You picked the date of Jan 1 2008, isn't that 6 months after the law became effective?

**Representative Weiler:** Yes it would have been.

**Chairman Cook:** Are you saying that there are some developers that were not aware that the law was changed?

**Representative Weiler:** There are some that did not know that this had happened.

**9.07 Doreen Riedman, North Dakota Association of Builders:** Testified in support of the bill. We see this bill as a safety net for those builders that got caught after the last session.

This bill was not one that we tracked last session and we take some responsibility for the situation. This is a very few amount of developers that this affects from the contacts that we have had. With the economic slowdown it is difficult for those few.

**11.45 Chairman Cook:** I suppose the other option is to try and have a big sale and sell the property?

**Doreen Riedman:** I think he is trying to do that with some.

**Senator Oehlke:** Earlier we dealt with something relative to tax relief for developers, could you refresh my memory on that, and whether that would affect any of this?

**Doreen Riedman:** That would be SB 2239. That bill helps during the phase of construction and up to 2 years after the property would be taxed as the property itself and not on the improvements through that; whether or not that is going to help these developers in their situations. There are vacant lots sitting there. Forty or fifty may end up coming back to the city in a large chunk when that due date comes up. We are talking about a lot of money. This is just that little catchall for those developers for that two year period.

**Chairman Cook:** I am trying to see how this is all going to work with the due date.

**Doreen Riedman:** I cannot really answer that.

**Senator Dotzenrod:** What is the right time to have in the law?

**Doreen Riedman:** I don't know that the new 2 year time is a mistake; this was an unintended consequence and it just caught a few developers off guard. This was a tool for them to use in their business plans. We are not asking for the years to be changed back.

17.26 **Mark Johnson, North Dakota Association of Counties:** See Attachment #1 for testimony in opposition to the bill.

22.05 **Chairman Cook:** I think that it was last session that we allowed some flexibility in local assessors as they assess the value on empty lots based on the quantity and demand of the lots that are in their taxing district, is that not correct?

**Mark Johnson:** That is correct. In order to be fare to the developers we collectively in the counties wrote in to the bill that we would be allowed to forgive those penalties if they would come in and clean up the delinquent taxes on the fourth and fifth year. In essence the counties gave away a lot of penalty revenue. With this bill we would be rewarding those that didn't come in and ask for their penalties to be eliminated and pay up the fourth and fifth year of taxes.

**Senator Hogue:** How does this work as a business plan to finance a project and not paying the property taxes, I don't understand that. If they lose the 5% discount of they don't pay the taxes and then there are penalties and interest, how does that work for the prudent contractor who could presumably borrow that money for substantially less than that?

**Mark Johnson:** What has happened is that some developers are so extended that banks aren't interested in loaning them money. So all of the sudden 12% interest is attractive by

being able to pay that interest and then not get the 5% discount also. It can allow them to hang on longer than they normally would, but it is at the expense of the taxpayers.

**Chairman Cook:** It doesn't look as attractive though when real estate quits inflating 10% a year.

**Senator Triplett:** You said that in 2007 there was about \$9 million not being collected, did you break that down between individuals and developers?

**Mark Johnson:** No

**Senator Anderson:** On your testimony, you had this question about a developer who doesn't pay taxes for five years and then eventually a new developer gets it and they get five years, if I read it right it says on page 2, 5 and 6, that the section does not apply to any property within a property development that has been sold or otherwise transferred by the developer. Am I reading that wrong?

**Mark Johnson:** No I don't think so. This would be a great question for Marcy Dickerson.

**26.30 Marcy Dickerson, State Supervisor of Assessments:** Appeared to answer questions in a neutral capacity to the bill. In response to Senator Anderson's question, I interpret that to mean that if some houses within this development have been sold, they would not be eligible for this break. It is just to the developer.

**Chairman Cook:** The developer if he has 250 lots that were all plotted before January 1, 2008, he would have 5 years until those lots were eventually sold?

**Marcy Dickerson:** That is true under those provisions, the three year provision you can still keep paying off the most delinquent year.

**Chairman Cook:** Walk me through the mechanics.

**Marcy Dickerson:** I think that it is a 2007 assessment. I think that it would be a second year after it became delinquent you would lose your property by October 1<sup>st</sup> of the second year after

it became delinquent. In this case it would mean 2006 taxes, it wouldn't apply to them. Dan Rouse can check on that. I think it applies to the 2007 taxes.

**Chairman Cook:** Then it would be October 1, 2010.

**Marcy Dickerson:** October 1, 2010 you would lose the property you had delinquent 2007.

**Chairman Cook:** OK. Closed the hearing.

**JOB 11166 starts here.**

**Chairman Cook:** Reopened discussion for Dan Rouse to give answer to question during hearing.

**Dan Rouse, Legal Council, Tax Department:** The bill that was discussed in 2007 was HB 1332 and in fact it applies to taxable years after December 31<sup>st</sup>, 2006. I would have been the 2007 property tax year.

**Chairman Cook:** 2007 is the first year, 2008 is the second year, 2009 on October 1<sup>st</sup>?

**Marcy Dickerson:** 2009 is the first year after it comes delinquent, and 2010 would be the year of foreclosure.

**Chairman Cook:** OK. Closed discussion.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1354

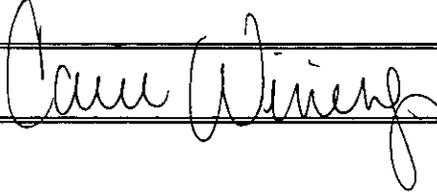
Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: 03/23/2009

Recorder Job Number: 11418

Committee Clerk Signature



Minutes:

**Chairman Cook:** Reopened discussion on HB 1354.

**Senator Anderson:** I am torn on this one. I will probably vote in favor. It looks like it is for a very few. It seems to end quickly. I guess with the economy we have right now. I don't like it a little less than 50%.

**Chairman Cook:** If you are going to get property back to the city, do you want it with 2 years of delinquent taxes or 4 years?

**Senator Triplett:** I cannot support this bill. I think that if someone is in this position they have other options. I was appalled that someone would use not paying their taxes as a business model for doing business.

**Chairman Cook:** I hope that was a case of someone misspeaking.

**Senator Triplett:** I hope so too. I was appalled.

**Vice Chairman Miller:** I think it is worth passing to give that guy a second chance.

**Senator Triplett:** I would like to move a do not pass.

**Chairman Cook:** Should we amend this first? I would like to change to July 1, 2007. That is when the law came into effect. I would like to see it defeated. I don't buy the idea that they didn't know. I can't believe the builders association did not see this bill last session and

neglected to tell the developers. It is more than one developer. I don't know that if we amend it – it might take some of the sting out of it.

**Senator Oehlke:** If you moved it back, it would have to be something that started before that time.

**Senator Triplett:** No one has suggested any amendments. I don't like the bill in general.

**Chairman Cook:** That is why we have a finance and tax committee.

**Senator Triplett:** I understand that. I just don't like this bill.

**Chairman Cook:** I agree; there is still a reason I want to amend this bill.

6.30 **Senator Dotzenrod:** One of the things that came up in testimony, that the people that hold these properties can go to the city and ask the city to, because of the economy and circumstances out there, give them more time. I don't know if anyone has tried that.

**Chairman Cook:** Yes they have. When we changed this two years ago, we tried to do that. We are moving risk from a developer and putting it on the city. Chances are it is coming back anyway. It is going to be easier for a developer to lower his price to pay out two years of property taxes and still walk away with a little bit of money than it is to pay off four years. The intent of the amendment is to narrow the number of lots that will be affected.

**Senator Triplett:** Moved to amend Jan1, 2008 to July 1, 2007.

**Vice Chairman Miller:** Seconded.

**Chairman Cook:** Discussion? (no)

**A voice vote was taken: Yea 7, Nay 0, Absent 0.**

**Motion passed.**

**Senator Triplett:** Moved a Do Not Pass As Amended.

**Vice Chairman Miller:** Seconded.

**Senator Hogue:** I can support the do not pass. I think we have been pretty generous to the general contractors out there building houses. This one seems to be more special legislation for those that don't manage their affairs like they should.

**Senator Oehlke:** The testimony by the builders association seemed forced and half hearted compared to other times they have testified.

**Chairman Cook:** Any further discussion? (no)

**A Roll Call vote was taken: Yea 6, Nay 1, Absent 0.**

**Senator Cook will carry the bill.**

Date: 03/23/09

Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. : 1354

Senate Finance and Taxation Committee

Check here for Conference Committee Amend

Legislative Council Amendment Number Jan 1, 2008 to July 1, 2007

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Senator Triplett Seconded By Senator Miller

Senators	Yes	No	Senators	Yes	No
Sen. Dwight Cook - Chairman			Sen. Arden Anderson		
Sen. Joe Miller - Vice Chairman			Sen. Jim Dotzenrod		
Sen. David Hogue			Sen. Constance Triplett		
Sen. Dave Oehlke					

*Allen*

Total: Yes 7 No 0

Absent 0

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

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

Date: 03/23/09

Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. :

1354

Senate Finance and Taxation Committee

Check here for Conference Committee

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

Action Taken  Do Pass  Do Not Pass  Amended <sup>AS</sup>

Motion Made By Senator Triplett Seconded By Senator Miller

Senators	Yes	No	Senators	Yes	No
Sen. Dwight Cook - Chairman	✓		Sen. Arden Anderson		✓
Sen. Joe Miller - Vice Chairman	✓		Sen. Jim Dotzenrod	✓	
Sen. David Hogue	✓		Sen. Constance Triplett	✓	
Sen. Dave Oehlke	✓				

Total: Yes 6 No 1

Absent 0

Floor Assignment Senator Cook

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

**REPORT OF STANDING COMMITTEE**

HB 1354, as engrossed: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). Engrossed HB 1354 was placed on the Sixth order on the calendar.

Page 2, line 3, replace "January 1, 2008" with "July 1, 2007"

Renumber accordingly

2009 TESTIMONY

HB 1354

**Testimony To The  
THE HOUSE FINANCE & TAXATION COMMITTEE  
Prepared February 9, 2009 by  
Terry Traynor, Assistant Director  
North Dakota Association of Counties**

**REGARDING HOUSE BILL No. 1354**

Chairman Belter and committee members, on behalf of the State's 53 counties and 500 county officials, I want to present the opposition of our Association for House Bill 1354. As the Committee is aware, this bill reverses a very significant policy change made by the Legislature in 2007. I would like to review why that change was made.

Prior to the 2007 change, the law allowed four years from when property taxes become due to when the notice of foreclosure is given to the owner of the property. This was the foundation of a process, established over 100 years ago, that actually took almost five years (57 months) for a parcel to be sold for non-payment of taxes. Few private businesses could stay in operation if accounts payable were left unpaid for five years, and the Legislature was convinced that it was reasonable to shorten this period for local government to three.

When budgeting each year, local government (then as now) must anticipate the revenue that will not be received, for parcels whose owners have not paid taxes. The difference is that now they only need to be concerned about three years of tax delinquencies instead of five. When we testified last Session, the 4<sup>th</sup> & 5<sup>th</sup> year of unpaid taxes (statewide) were estimated at \$9.3 million dollars, \$5 Million of which should have been supporting schools.

As this Committee understands, the amount of unpaid taxes must be levied against all other property of the taxing district by school boards and commissions to offset the revenue that will be uncollected. While it may be appropriate for allowances to be made for the first few years, returning to a policy of allowing this to happen for five years county officials believe is excessive. Although local government will at times recapture the taxes and interest owed, through the eventual sale of the property; it seems improper for the financing of this tax bill to be done with other taxpayers' money. County officials firmly believe that the changes implemented in 2007 must be preserved so that we as a State can treat all taxpayers, and particularly those that pay their taxes on-time, in a fair and competent manner.

Mr. Chairman and committee members, I hope you return a Do Not Pass recommendation on HB1354.

Testimony  
February 9, 2009

## TESTIMONY ON HOUSE BILL 1354

Mr. Chairman and members of the House Finance and Taxation Committee, my name is Leslie Korgel and I am the McLean County Auditor/Treasurer. Since I am unable to attend the hearing today, I am supplying some written testimony.

In a prior life, I worked as a bank loan officer and one of the keys to collecting a delinquent loan was a timely collection effort. Loans that became more than 90 days delinquent become very difficult to collect. Property taxes are no different. The longer taxes remain unpaid, the harder it is for the taxpayer to pay them. There seems to be no difference whether the property is residential, commercial or agricultural. The exception is that agricultural and commercial use the nonpayment of taxes as a financing method. In other words get needed services now and not pay for them until you absolutely have to.

I will give you a couple of examples of what I am talking about. The largest delinquent taxpayer in McLean County is a real estate developer from Bismarck. This company bought some property in Washburn three + years ago. The lots were developed with paving, curb and gutter to facilitate the sale of the properties. This was done by bonds paid by special assessments. There have been several lots sold but of the remaining 24 lots not a single penny of taxes have been paid. Eleven lots have no special assessment and have three years of outstanding taxes in the amount of \$919.40. The other 13 lots have outstanding taxes in the amount of \$82,582.43 of which approximately \$81,500.00 is special assessments. This is money used to pay bond payments, in other words the rest of the citizens of Washburn are paying those bond payments with a deficiency levy against their property to help finance a company from Bismarck.

The other example I have is a farmer who owes over \$42,000 in real estate taxes in just this county. This farmer now is only two years delinquent because of the current law. He had been five

years delinquent with the dollar amount over \$80,000 when the law was at five years. In this time he has been delinquent, he has been buying more land in several counties, built a shop building that is over two hundred feet long and six combines. In the meantime the township has to mow his roads which they bill to his property taxes which he does not pay for several years.

McLean County does not want to be in the banking business nor become a landlord, but changing the 3 year time period back to a 5 year time period will put us in that position again.

I urge a do not pass on HB 1354.

## TESTIMONY ON HOUSE BILL 1354

Mr. Chairman and members of the committee, my name is Charlotte Sandvik and I am the Cass County Treasurer. I wanted to send you a few words on HB 1354 since I am unable to attend the hearing today.

Some of the reasons we, as a county, wanted to change from five years to three years for the delinquent tax process are as follows:

1. The longer taxes are delinquent property ownership may change numerous times, but there has been no deed recorded—taxes need to be paid in order for a deed to be recorded.
2. Property owners may have moved and the county no longer has a current address, as well as addresses for liens and judgments are not current. This results in a lot of research done on the county's part, which is costly.
3. Some property owners use the county as a bank.
4. Developers sometimes use the county as a bank.
5. Some of the elderly, including widows and widowers, don't have the income to make these tax payments and after five years, they are not able to catch up on their taxes.
6. Some taxpayers have their children pay their taxes, which creates a burden on the family.

We don't want to "take" property from landowners. The county prefers to collect taxes sooner in order to provide necessary services to the citizens of Cass County. The longer the property tax bill is outstanding, the more difficult it is for the property owner to pay the taxes.

From August, 2007 to October, 2007, the county opted to waive penalty and interest. Cass County had 944 parcels in which the delinquent taxes were paid. There

were 220 properties on the five-year list and almost 100 parcels were paid through this option to waive the penalty and interest. Cass County has approximately 60,000 tax parcels and even with a few delinquent properties, it takes an insurmountable time to collect the taxes.

I urge a do not pass on HB 1354.

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**Testimony To  
THE SENATE FINANCE & TAXATION COMMITTEE  
Prepared March 18, 2009 by  
Mark A. Johnson, CAE – Executive Director  
North Dakota Association of Counties**

**REGARDING ENGROSSED HOUSE BILL No. 1354**

Chairman Cook and members of the Senate Finance & Taxation Committee; county officials are strongly opposed to the unfair and preferential property tax treatment mandated by Engrossed House Bill 1354.

As the Committee is aware, this bill reverses, for a very few taxpayers, a significant policy change made by the Legislature in 2007. I would like to review why that change was made.

Prior to the 2007 change, the law allowed four years from when property taxes become due to when the notice of foreclosure is given to the owner of the property. This was the foundation of a process that actually took almost five years (57 months) for a parcel to be sold for non-payment of taxes. Few private businesses could stay in operation if accounts payable were left unpaid for five years, and the Legislature was convinced that it was reasonable to shorten this period for local government to three.

When budgeting each year, local government (then as now) must anticipate the revenue that will not be received, for parcels whose owners have not paid taxes. The difference is that now they only need to be concerned about three years of tax delinquencies instead of five. When we testified last Session, the 4<sup>th</sup> & 5<sup>th</sup> year of unpaid taxes (statewide) were estimated at \$9.3 million dollars – \$5 Million of which should have been supporting schools.

As this Committee understands, the amount of unpaid taxes must be levied against all other property of the taxing district by school boards and commissions to offset the revenue that will be uncollected. While it may be appropriate for allowances to be made for the first few years, returning to a policy of allowing this to happen for five years, county officials believe is excessive – enacting a policy allowing a very few taxpayers to have five years while all others must pay more for the financial benefit of the few; county officials believe is wrong.

Local property tax incentives for economic development, which everyone else must pay, are usually granted by the governing body which can be unelected if they go too far. The economic incentive proposed by HB1354 is granted by the recipient themselves, by simply not paying their taxes.

Additionally, the language of HB1354 leaves many unanswered questions – most importantly, how do county tax officials identify a developer?

- If someone has platted a 50 lot subdivision and they don't pay the taxes for 5 years, and then pay up the taxes on 20 lots in order to sell them to another developer; does that second developer have 5 years as well?
- If the “developer” sells to a “builder”, does “builder” get only 3 years?
- If the first developer pays one year of taxes on the remaining 30 lots can he now get a sixth year, and then carry this 5-year delinquency out into the distant future until every last lot is developed?
- If the developer paid is currently up-to-date on his taxes and this bill passes, can he now stop paying and get the full five years?
- Can the developer continue to pay taxes for 3, 5, 10 years, but then become 5-years delinquent in 2023?
- If developer ABC also owns ABC, LLC, and ABC sell lots to the limited liability company, is the 5-year clock started all over again?

All of the scenarios ultimately include the questions – how is this fair to those that pay their taxes on time, and how are county tax officials to keep track?

The 2007 Legislature allowed county commissions to forgive penalties and interest to incentivize delinquent taxpayers to get up-to-date during the transition to the 3-year cycle. This bill, rather than rewarding those for paying their taxes, we are rewarding those that didn't.

While only one developer testified in the House in favor of this bill, it is estimated to impact property in at least 4 counties and possibly more. From over 475 “developer” lots in Cass County that are already delinquent in their taxes, to a handful of individual lake lots in Mountrail County that are currently up-to-date, but may decide not to pay in the future.

Although local government will at times recapture the taxes and interest owed, through the eventual sale of the property whether it is 3 or 5 years; it seems improper for the financing of this tax bill to be done with other taxpayers' money.

Mr. Chairman and committee members, please return a Do Not Pass recommendation on Engrossed HB1354.