

2011 HOUSE FINANCE AND TAXATION

HB 1347

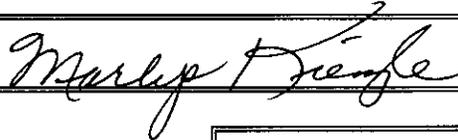
2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1347
January 26, 2011
Job# 13446

Conference Committee

Committee Clerk Signature



Minutes:

See attached testimony #1 #2 #3 #4

Representative Belter: We will open the hearing for HB 1347.

Representative John Wall from District 25: Please refer to attached testimony #1.

Vice Chairman Craig Headland: Do you have knowledge as to how many tons of gravel are currently mined in the State today?

Representative Wall: I do not. I am unsure if I will be able to come up with that data.

Vice Chairman Craig Headland: What drove the .10 cents per ton figure for the tax?

Representative Wall: Actually a couple of bills were introduced in past sessions. The last time a bill was introduced was in 1995, which was when the figures applied to at that time. It was a very arbitrary figure and again if this committee has merit in amending this bill that would be fine.

Senator Luick: I agree with what Rep Wall had to say about the problem we are having and there are others around the state having the identical problems. I also feel there may be tweaking needed to be done to the bill. I hope you consider passage of this bill.

Tim Schulte, County Engineer for Richland County: Please refer to testimony 2

Representative Glen Froseth: You said .10 cents per ton would equate to .14 cents per cubic yard.

Tim Schulte: Yes it would.

Vice Chairman Craig Headland: You said you would like to have these funds available to help you maintain these haul roads. As a county that owns the pit, is there really that much cost to the county in keeping these roads up to what is needed be to carry this load.

Tim Schulte: Yes, there is quite a cost. Our haul road is a paved road not a gravel road, so you just can't blade the road.

Normally at the end of each season we have some maintenance activity on the areas that we see problems with. Fortunately we can work with the state and get that work completed.

Chairman Wesley R. Belter: Don't some of the privately gravel pit owned assist in maintaining some of those roads?

Tim Schulte: I think there will be testimony from some of the townships. They usually don't have formal haul road agreements like the county or the state does. In our case we usually have a haul road contract and agreement with the contractor so that any damage that happens because of the hauling, we can go after them to get it done. In most cases the township they do not have these contracts and rely on their honor to come back and take of these problems.

Steven Ginsbauck: I am a lifelong resident of (Brightwood) Township. I am a township officer and I am support of this bill. I have watched the deterioration of our roadways because the county has a paved haul road going out to the Interstate on the east side. On the west side of the gravel pit are gravel township roads. Last year there was heavy traffic from private contractors and the road has become a roller coaster.

Chairman Wesley R. Belter: Instead of a tax, might there be a need for legislation that the townships can have agreements that the private contractors can have on how these road are maintained?

Steven Ginsbauck: That could be an option. There are some Minnesota contractors that come over to get gravel without paying taxes, so we feel tax would be the best avenue.

Perry Miller, Richland County Commissioner: I am here on of Richland County in support of this bill. It may not be perfect and may need some tweaking but we do have out of state companies coming in with out of state trucks, with out of state labor, buys the fuel out of state, comes in and take our gravel and other aggregate out of state and leaves an empty hole. These are not the most cooperative companies. If we would ask for help they would laugh and say no. This is a way to collect revenue for the entities' that are picking up the tap for out of state companies.

Vice Chairman Craig Headland: Who owns the gravel in the private pit, is it the company that is excavating it?

Perry Miller: That is correct.

Representative Glen Froseth: If this bill was changed to allow the counties and townships to oppose a fee for damages, do you think you could negotiate with the companies to come up with an agreement that some sort of fee would be presentable?

Perry Miller: I think it would be difficult and somewhat challenging and I speak from personal experience. This very same company parked some of their equipment on my land without permission, over the week-end. They did some significant damages to the

property, I had witnesses that saw it and they denied doing it and even denied parking their trucks on there. It painted a real moral fiber of this company.

I think it would be similar as saying which bushel makes it to heavy. They will ask for proof.

Russ Hanson, Association of General Contractors: This is in opposition. The Association of General Contractors is an association of Contractors, Sub-Contractors and Material suppliers that work in the state of North Dakota. In passing this around I hope a couple of Contractors are mentioned here are not members of the AGC. One of the questions that were brought up, was how much money would this raise. I had one of our contractors do a gravel scenario to give you an idea of what a mile of gravel at 2 inches would generate at 10 cents a ton. Minnesota does have this which is 15 cents a ton.

Please refer to attached testimony #3.

Ron Ness, President of ND Petroleum Council: I am here in opposition. I think we have some law of unintentional consequences here. When we see the large amount being use in the west, I did not see a revenue note on this. I would assume this would be a pretty big tax. I assume the counties are not going to pay for it, the townships are not going to pay for it and the states not going to pay for it, the Oil Industries are going to pay for it. So this would be a significant tax increase. We have no quarrel with the sponsor's intent but would ask for an exemption to oil and gas related activity in this regard.

Sandy Clark, ND Farm Bureau: Farm Bureau policy calls for no new taxes. We look at this as a tax increase. We believe this tax would be passed on and would increase the cost of road construction. I stand in opposition to this HB 1347.

Sandi Tabor, Vice President of Government Affairs for the Lignite Energy Council: We are not here in true opposition but have concerns about the bill.

Please refer to attached testimony #4.

Marcy Dickerson, Office of State Tax Commissioner: Neutral testimony. I just want to purpose a one word amendment on line 9 page 2. I would suggest you insert the word personal between delinquent and property taxes. The reason for this suggestion is that the provisions for delinquent real taxes will not work in a case like this where what you are talking about is a tax on what is personal property. If you do need to use some method on collecting delinquent taxes on this the personal property taxes method on 57.22 would work.

Vice Chairman Craig Headland: I've got a few veins of gravel on my property. If I go and take a few loads out of one of my gravel pits for my own use, would I be taxed for that under this bill?

Marcy Dickerson: I don't really know the answer to that. I do have one question, in the testimony about state or county gravel pit, would that gravel be subject to that tax?

Larry Severson, Farmer from Mayville: Neutral testimony. I am President of North Dakota Township Offices Association. Our Association has not taken an official stance on this and would have to go to the floor to get an official stance. I will just offer some information on the cost of our own township. Our gravel comes out of our own county and

can see the damage over the road when the gravel is hauled to Traill County. The cost to my township is \$28.00 a mile and we typically do 9 miles.

Chairman Wesley R. Belter: Dan, would all levels of government be exempt.

Dan Rouse, Legal Council to Office of State Tax Commissioner: It depends on who is doing that work for that level of government. Is the county using their own equipment on their own property but if they are using a contractor it would change the circumstances.

Chairman Wesley R. Belter: Would that hold true to townships?

Dan Rouse: Correct. That's my understanding.

Chairman Wesley R. Belter: Cass County brings in a lot of their gravel by rail. Is that coming out of Richland County?

Tim Schulte: As far as I know Cass gets most of their product out of Minnesota. So they are already paying that 15 cent tax that they rail in. The commercial pit is our county we provide material to Minnesota counties and South Dakota counties.

Chairman Wesley R. Belter: Closed the hearing on HB 1347.

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1347
January 26, 2011
Job # 13471

Conference Committee

Committee Clerk Signature *Marlyp King*

Minutes:

No "attached testimony."

Chairman Wesley R. Belter: HB 1347, we heard this morning, which was Rep Wall's bill on tax for sand, rock and gravel. There was an amendment purposed by the Sandy Tabor, from the Lignite Council. I am unsure of what the committee's wishes are but I do think we should adopt the amendments she presented to us.

Representative Bette Grande: I would suggest we include Marcy Dickerson's amendment also. This is a one word amendment on line 9, page 2, inserting the word personal between delinquent and property taxes.
I move the Dickerson amendment and the Tabor amendments be adopted.

Representative Glen Froseth: Seconded the motion. The first person who testified said that 10 cents a ton equates to 14 cents a cubic yard. I was wondering if we should further amend the amendment to read on line 9, 14 cents a cubic yard.

Representative Shirley Meyer: There was also (Inaudible)

Chairman Wesley R. Belter: Let's deal with Rep Froseth's suggestion of 14 cents a cubic yard.

Representative Glen Froseth: Made a motion to adopt his amendment and it was seconded.

Representative Shirley Meyer: It was suggested that we put a percentage (inaudible)

Vice Chairman Craig Headland: I would personally object to this amendment because it really is the township and the counties that need the money and the state doesn't.

Representative Bette Grande: Discussion on what percentage went to the state and what percentage went to the county and township.

Representative Patrick Hatlestad: Made a motion that the bill be amended to have 70% go to the Township and 30% go to the County.

Representative Shirley Meyer: Seconded

Chairman Wesley R. Belter: Motioned failed

Representative Dave Weiler: Who collects this money?

Chairman Wesley R. Belter: The state would have to collect this money.

Representative Dave Weiler: I am going to oppose this amendment. I really feel I am going to oppose this bill regardless of what amendment you put on this bill. I don't want to make this bill more palatable so that it passes. I just don't want to do another tax increase to the business.

Chairman Wesley R. Belter: Did a vocal call for the amendment, it failed and asked the committee for their wishes.

Representative Dave Weiler: Made a motion for do not pass.

Vice Chairman Craig Headland: Seconded the motion.

Representative Owens: Is this bill robbing Peter to pay Paul? If we put a tax on the people that do the work, they are going to just raise the prices when they charge the county to fix or supply materials on the roads.

Representative Dave Weiler: Russ Hanson did say that the fee would just be added on.

Chairman Wesley R. Belter: These townships with gravel pits do get pounded, but in our area the contractor spends money and dumps gravel to maintain the roads and get out of that pit too.

Representative Bette Grande: Just for a clarification the motion needs to be do not pass as amended.

Representative Glen Froseth: I signed onto this bill because I attended The Farm Bureau annual meeting in Grandville County. This bill was one of their resolutions that moved forward to the State Farm Bureau Convention. At the State Farm Bureau Convention, I found out that Sandy Clark was going to oppose this bill. I did say this was one of their resolutions and she said no the State Farm Bureau rejected this resolution. The Township Organization also opposes this bill. I have no problem with defeating it.

Representative Scott Kelsh: The gravel is not only being use by the counties the gravel is coming out of. It is going much further, even out of state.

Vice Chairman Craig Headland: Committee I think, that the township officers have the authority on a township road to restrict the weight, the speed or things like that. So if the roads are being torn up they need to slow them down or force them to take care of the damages they are causing.

Do not Pass as amended 11 Yeas 1 Nays 2 absent Carrier: Rep Owens

FISCAL NOTE

Requested by Legislative Council
01/18/2011

Bill/Resolution No.: HB 1347

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

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

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

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

HB 1347 imposes a county severance tax on materials extracted for use in road construction and maintenance.

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

HB 1347 imposes a county severance tax of ten cents per ton for all materials severed within the county for use in road construction and maintenance. This tax is remitted to the county for distribution to the township and county road funds. Additionally a portion of the tax is distributed by the county to the State Treasurer for depositing into the state highway and township funds.

We are unable to estimate the fiscal impact of this bill as it is not known how many tons requiring this severance tax will be extracted in the 2011-13 biennium.

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

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

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

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

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	01/25/2011

January 27, 2011

VR
1/28/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1347

Page 1, line 9, after "ton" insert "[907.18 kilograms] or fourteen cents per cubic yard [1.76 cubic meter]"

Page 1, line 13, remove "moved incidental to mining or reclamation"

Page 1, line 14, remove "operations or materials"

Page 1, line 15, after the underscored period insert "This section does not apply to surface coal mining operations regulated under chapter 38-14.1."

Page 2, line 9, after the first "delinquent" insert "personal"

Renumber accordingly

January 27, 2011

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1347

Page 1, line 9, after "ton" insert "or fourteen cents per cubic yard"

Page 1, line 13, remove "moved incidental to mining or reclamation"

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Renumber accordingly

Date: 1-26-11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1347

House Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

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

Motion Made By Rep Froseth Seconded By Shirley Meyer

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

Total (Yes) 12 No 0

Absent 2

Floor Assignment _____

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

AYE 12 NAY 0

Date: 1-26-11
Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1347

House Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment

Rerefer to Appropriations Reconsider

Motion Made By Rep Hatlestad Seconded By Shirley Meyer

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

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

AYE

NAY

MOTION FAILS

2880#
13471

Date: 1-26-11
Roll Call Vote # 3

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1347

House Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

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

Motion Made By Rep. Weiler Seconded By Rep. Headland

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

Total (Yes) 11 No 1

Absent 2

Floor Assignment Rep. Owens

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

MOTION CARRIED

REPORT OF STANDING COMMITTEE

HB 1347: Finance and Taxation Committee (Rep. Belter, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO NOT PASS (11 YEAS, 1 NAYS, 2 ABSENT AND NOT VOTING). HB 1347 was placed on the Sixth order on the calendar.

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Page 1, line 14, remove "operations or materials"

Page 1, line 15, after the underscored period insert "This section does not apply to surface coal mining operations regulated under chapter 38-14.1."

Page 2, line 9, after the first "delinquent" insert "personal"

Renumber accordingly

2011 TESTIMONY

HB 1347

Testimony #1

Testimony for HB 1347
January 26, 2011
Representative Wall

Good morning Chairman Belter and Members of the Tax and Finance Committee.

For the record, I am Representative John Wall from District 25, which encompasses the eastern half of Richland County in Southeastern North Dakota.

I appear this morning to introduce and testify in favor of HB 1347 which would place a severance tax on all road construction and maintenance materials severed in the state at a rate of ten cents per ton.

The concept for this bill was brought to me by constituents who felt their infrastructure was being negatively affected because they had gravel pits operating in their area.

I do not believe passage of this bill will necessarily constitute a new tax as the cost to maintain roads has and always will remain. In some instances, there may be a tax savings to many local government entities as products hauled out of state for private or public use will now have to help pay for the maintenance and repair of these haul roads. These costs are now absorbed by the local governing entities where these materials originated. This bill would provide a fair and equitable manner of distributing the costs of maintenance of haul roads.

The formula for distributing the fees paid may need tweaking. For instance, some have suggested that the county share should be increased and the township share decreased. If you believe the bill has merit, amendments changing the formula to make a better bill would be welcomed.

This concludes my testimony on HB 1347 and I would respectfully ask for a Do Pass recommendation on this bill. At this time I will try to answer questions you might have.

RICHLAND COUNTY HIGHWAY DEPARTMENT

Courthouse
418 Second Avenue North
Wahpeton, North Dakota 58075
Phone: (701) 642-7810 Fax: (701) 642-7824

Testimony #2

Tim G. Schulte, P.E.
County Engineer

Harlan Bladow
Road Superintendent

Lowell Bladow
Bridge Foreman

Darlene Irion
Office Manager

January 26, 2011

Honorable Wesley Belter
Chairman, Finance and Taxation Committee

RE: HB 1347 Testimony

Dear Representative Belter:

Mr. Chairman, committee members, my name is Tim Schulte and I am the County Engineer for Richland County. I am here today in support of HB 1347, but would like to offer a few amendments for the committee's consideration.

Richland County is in the very Southeast corner of our State and thanks to the glacial Lake Aggasiz and the glacial outwash from the prehistoric Sheyenne River we are blessed with excellent aggregate sources in the western region of our County.

The County owns and actively mines a 63 acre pit southwest of the City of Hankinson. The State of North Dakota has a 75 acre pit in this same area and there are numerous privately owned pits in our County, with the largest owned by Mark Sand and Gravel, Co. adjacent to the State and County's pit. Last year over 500,000 tons of material came out of the County and State pits alone. That is roughly 20,000 truck loads over a six month period. Most of this material was hauled across county roads to the state highway.

I believe HB 1347 has merit. This bill is similar to the gravel tax our neighbors in Minnesota currently have in place. I would like to see the tax at a rate of 10 cents per ton or 14 cents per cubic yard. Not all material that leaves these pits is weighed and most material such as dirt, clay, and rock are measured by volume in cubic yards.

I would also like to see the distribution percentages changed to be equally distributed between the Township and County. For example: 40% County, 40% Township and 20% State.

HB 1347 will not generate a great deal of revenue for the county or township, but would help recoup some of the costs of maintaining the haul roads from these pits.

I will gladly answer any questions you or the committee may have, if not, thank you for the opportunity to testify on this bill.

Sincerely,

Tim G. Schulte, P.E.
Richland County Engineer

Testimony #3
HB 1347

January 25, 2011

Russ:

- 1 mile of roadway = 5,280 LF
- Roadway width = 30 LF
- $5,280' \times 30' = 158,400/SF/9 = 17,600 SY/Mile$
- $17,600 SY \times 1''/36 \times 1.5 \text{ (Tons per CY)} = 733 \text{ Ton/Mile}$
- $\pm 750 \text{ Tons per inch per mile}$
- Example: 2" overlay on 1 mile = $\pm 1,500 \text{ Ton} - 1,500 \text{ Ton at } \$0.10 = \$150.00$
- Cost to administer for contractor, state, county, and township would be more than the funds produced
- Paper work nightmare

Testimony # 4

Prepared by Sandi Tabor
Lignite Energy Council
January 26, 2011

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1347

Page 1, line 13, remove "moved incidental to mining or reclamation operations or materials"

Page 1, line 15, after the underscored period, "This section does not apply to surface coal mining operations regulated under chapter 38-14.1."