

2013 SENATE POLITICAL SUBDIVISIONS

SB 2058

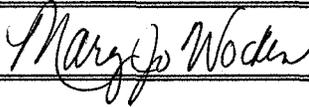
2013 SENATE STANDING COMMITTEE MINUTES

Senate Political Subdivisions Committee Red River Room, State Capitol

SB 2058
January 10, 2013
17079

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to contracting for in-state unclaimed property examinations.

Minutes:

You may make reference to "attached testimony."

Chairman Andrist opened the committee hearing on SB 2058. Chairman Andrist, Senators Lee, Anderson, Dotzenrod, Grabinger were present. Vice-chairman Ron Sorvaag was absent.

Linda Fisher, North Dakota Department of Land Trusts spoke in support of SB2058. See attached testimony.

Senator Howard Anderson: I've always had a little bit of a problem with this act. I know it is a Uniform Commercial Code Act. My guess is every business in North Dakota is in violation at some point or another because we write a check to somebody and they call us to say they never received the check. So we make a void entry in our accounting system and we write them another check. That puts us in violation of this act. Correct?

Linda Fisher: That is not correct. The only time you would be in violation of that is if you sent them another check and then another two years went by and they still had not cashed that check, and then it didn't get reported to us that is when you would be in violation.

Senator Howard Anderson: I get communications from your office about unclaimed property for the Board of Pharmacy for example. It is usually some check that somebody has issued to the Board of Pharmacy for their license fee that you have now. Well I don't issue any licenses unless they get the money. So that means they already have another check for that, but yet you have the original check that got lost in the mail and ends up in your office. So what is the situation with that? **Linda Fisher:** Just a point of clarification, we don't have the check. We're clear on that part, right? The business who wrote the original check didn't get it cashed. Then you got paid and so you issued your license but the business forgot to go back and void that first check. They didn't void it so it looked like it was not cashed and because it looked like it was not cashed it was reported to our office. I understand what you're saying and what he is referring to is that the statute requires us to contact state agencies that have unclaimed property and give them an opportunity to claim that property. In many cases it doesn't belong to the agency, just like he described. They've

already been paid and so they can decline that claim. They can say they are not owed this money, in which case it stays in the Common Schools Trust Fund or it can be reclaimed by the business that reported it in error. There is always the ability for them to reclaim that if they find that they should not have reported it in the first place. Does that help?

Chairman Andrist: When you say that it has to be voided, is there a way to do that other than through a stop payment order? **Linda Fisher:** Every business would have their own way of handling their books to make sure that they understand that the check is not valid any more. **Chairman Andrist:** I've had people say they didn't get the check and they write another one and take their word for it, so I don't bother to stop payment on the first one. It cost \$5 or \$10 dollars or something to do this. \$20 is it? But you said that it has to be voided. **Linda Fisher:** Just like a check is written to a party and its' lost, and then request another check and the check register would have void after that first check to show that you reissued it and that you're off the hook for that original one. **Chairman Andrist:** So, it just has to be in my own records. **Linda Fisher:** You just have to show it in your records that I'm not doing that anymore because I got my money with the second check. I need to make it clear that we don't want things reported to us that are not for that person. (Another example shared).

Senator Judy Lee: I was visiting with Marilyn Foss about something that she would like to also address with unclaimed property which is some confusion because of a court ruling about money orders and cashiers' checks. Now we can do this separately because she was talking about having a separate bill as she may not be aware of this one, or can we discuss with her whether or not an amendment to this particular bill about unclaimed properties is appropriate. Do you have any preference? **Linda Fisher:** I guess we wouldn't have any preference. I was aware that they were talking about that, but I had not seen that they submitted something so I wasn't sure if they were going to do that or not. I wouldn't object to rolling them together. **Senator Judy Lee:** It seems like it would be simpler maybe if we had two amendments to the same bill. We would have to have a hearing on the separate amendment. **Linda Fisher:** That bill is coming in, we would support that. **Senator Judy Lee:** There was confusion about whether or not to have a cashiers' check that had not been cashed is a money order which most of us would agree is not. But there is some ambiguity in the way the statute is and so they are looking at clarifying that so, we'll see if Ms. Foss would like to propose an amendment to this one or what she wants.

Linda Fisher: I can visit with her too. **Senator Judy Lee:** That would be great if you are willing to do that. I have had a very satisfactory experience with the unclaimed property office. You have a very user friendly process in my view. **Linda Fisher:** It doesn't cost anything to look, and we've just recently added another 6,000 names to the data base. We just passed the November 1 reporting deadline, and we're entering those reports now.

Senator Howard Anderson: When I read the rest of the statute here it says that on the audit the fee to the business cannot exceed the value of the unclaimed property that is discovered by the auditor, either yours or in this case it would be the contract auditor. So that doesn't seem to be onerous, but I can see now that if they didn't put void on their checks they might say that was unclaimed and now they owe them. You talked some about penalties. Can you explain a little bit what the penalties would be to that business, if they found they weren't reporting? **Linda Fisher:** The statute does allow us to so much

per day that its' late or unreported. But first of all, we have to be able to prove that it is a 'willful' failure that they knew all about this and just said we're not doing it. We would have to be able to prove that. We have in North Dakota what we call an informal voluntary compliance where if businesses find that they are not in compliance at any point in time we expect them to do the right thing and get their property reported free of penalty and free of interest. Now if we are forced, we contact the business and we state we've noticed you haven't filed, could you please do it. And if they come in and they file it is all good. If they call us and say could you please help us with this, no fees, no penalty no interest. If they completely ignore us and we have to send an auditor that is when we charge the penalties and the interest, under the statute. So there are a number of opportunities for businesses to come compliant free of any penalty or any interest ahead of the audit process which were not interested in doing any more than the next person. Our intent is that the property gets reported. We're not interested in gauging people or hassling them. We're interested in helping them understand what the requirements of the law are to become compliant on their own. The only time penalties and interest would be enforced is if they chose not to do that after they have been notified. **Senator Judy Lee:** It seems to me that there is probably some additional business in your department now because maybe 40 years ago a bunch of folks who went together with some kind partnership and ended up owning mineral rights somewhere. So now there are 60 owners of a parcel that is maybe worth \$75 but there are now dollars available to those multiple partners in those partnerships that were developed probably in the 1970's when they were kind of doing this oil thing before. So there are more opportunities for people to find family names on there when they wouldn't have expected any of those kinds of things to be turning up now long after they may have died. **Linda Fisher:** Our data is only as good as what get reported to us of course. There is the potential for that to increase on some of these older properties. Now if the wells have been producing and they've been paying to somebody the only time we would receive that is if they have not been paying somebody or the checks haven't been getting cashed or there is something in suspense for a long time. But yes, the incidence of royalty money coming in and being posted on that website is increasing, even with the new stuff.

Chairman Andrist: From my frame of reference, coming from the oil patch, I don't think the tool of putting minerals into partnerships for corporations is really pervasive and is probably done in places, but that might be a reason too. **Linda Fisher:** It was common years ago, but I agree with you, not so much now.

Daniel R. Rouse: Legal Counsel to the North Dakota office of State Tax Commissioner and the North Dakota State Board of Equalization. There were amendments that her office requested and that we drafted to enable the unclaimed property division to be able to actually find some of these folks that are deserving of this property. We've had a long standing relationship with the Unclaimed Property Tax Division and if you actually look at the amendment, the first amendment that is proposed you will notice that were simply making proposed changes to an existing statute and that existing statute shows that we've had that relationship where we have shared information from time to time with the unclaimed property division, for selfish reasons to be honest with you to help get rid of unclaimed tax vouchers out there. So this simply broadens the door a bit further. The second amendment with respect to sales tax information is yet another opportunity for us to help the Unclaimed Property Division find the people that are rightfully owed this property. So we are here in support of this amendment. We respectfully request that you adopt them and do pass the bill as amended.

Marilyn Foss, General Council, and North Dakota Bankers Association: I am addressing Senator Lee's comments on the bill that we have with respect to cashiers' checks and the Unclaimed Property Act. But this morning I am here to object to 2058 specifically on behalf of banks. Here's why: I think that it would be a fair statement that banks are among the most compliant businesses with respect to unclaimed property; so compliant in fact partially I'm sure because they are already examined for compliance by their examiners. So adding another means of audit seems to me, is a duplication of a function that is always already occurring. (See written testimony of the Federal National Bank Act, unclaimed property administrators and the Office of the Comptroller of the Currency). This statute point out that it is inconsistent with the current language our statutes in several respects and so it would seem to me probably preempts the current statute and the change that is proposed would also not increase examination of national banks. The two features of the National Bank law that applies or the examination has to be made by an authorized state auditor/examiner. I think there is some issue with the third party vendor; also upon reasonable notice and upon reasonable suspicion of non-compliance. Our statute specifically says these audits can occur even though the administrator has no suspicion of non-compliance and we think that is sort of guilty until your prove yourself innocent standard which we questioned. We questioned it even more when it is being applied by a third party vendor. My other policy and practical objection to the bill is we think state functions which examine for compliance with the unclaimed property act should be really performed by state employees not by third party vendors. We think the bill drafted is really so open ended as to not giving any hint, any legislative policy as to how this is supposed to work? How is the third party vendors supposed to be compensated? What happens if the third party vendors' actions are unsatisfactory or objectionable by the public but the contract hasn't ended? Thirdly, we think the state has the responsibility to adequately fund departments when they impose examining responsibilities on them and think the system of the unclaimed property administrator having state employ examiners is more appropriated, more subject to being workable with the Department of Financial Institutions which examines for compliance. I did confirm that with the commissioner, they do specifically examine for compliance with the Unclaimed Property Act. Those are our reasons that we object to this proposed change in the bill. We would suggest that the department go about it another way in fulfilling its' legitimate compliance examination functions.

Senator Judy Lee: I am assuming they are all compliant right now; with all of the reviews that there are of banking functions I don't hear them saying they are going around and audit every business. If there already reporting unclaimed property which I am confident they are then there is nothing here to fear. The other thing is as far as having in-house versus outside auditors it is done all the time. The auditors department does not have enough people specifically educated in an area for a particular kind of audit and so outside auditors are regularly hired and I trust that those CPA's are professional and competent and confidential in what they are doing. **Marilyn Hoff:** As I said and I believed that Ms. Fisher agreed, banks are among the most compliant. But none-the-less, having yet another examining entity come in is something you have to cope with on a daily basis and you are already compliant. This statute as it is written makes very clear that the unclaimed property administrator can audit you even if he/she does not have the slightest suspicion that you are non-compliant and sending an auditor into a business is disruptive and takes away from your ordinary business activities. This is not an issue of whether banks are examined

enough at least in my view, banks are examined quite enough and adding yet another layer of examination is unwarranted and unnecessary from our perspective. Additionally, the other point about whether state functions should be performed by state employees; the department did have employees allocated to this function and administratively reassigned them to other functions. We as a matter of policy believe that it is better policy for state functions and examinations functions too be conducted of private citizens by state employees. We think there is more established avenue of regress if you feel you have been wronged. There are many businesses out there that will be examined for this who do not already have layers of state employees coming in and examining them, banks do. **Senator Judy Lee:** So why would you think that when you're already audited regularly just like bank audits and you are reporting or your membership is reporting, how would you think that they will come marching in with an additional audit and the second part is that the State Auditors Department can already perform performance audits without any legislative direction that they should do it? So there is no real protection even if it is a state employee that you're going to escape an audit. **Marilyn Hoff:** The statute itself says that the audit can occur without any reasonable suspicion of non-compliance. When you are essentially delegating these functions to a third party vendor without any guidance in the statute for that third party vendor I don't know how the program will be administered. I don't know who will exercise the discretion to say who is audited, who is not audited. I would think honestly that one of the appropriate changes to this to narrow its scope would be that you actually have to have a reasonable suspicion on non-compliance to go out and do the audit. I think that it is certainly true that with the surging economy and everybody finding that your grandmother had oil interests or mineral interests or whatever that you didn't ever know about that the scope of the unclaimed property division might be dramatically increased and it seems to me that as it becomes more important, it is more important for the state to insure that its functions are conducted by state employees rather than private vendors especially with such an open ended authority where we don't have any standards for the vendors or the auditors or the contract or clear regress, that kind of thing.

Chairman Andrist: Without making a proposal Marilyn, you would be more comfortable with the language that said that "administrator may contract for an examination done within the state only if they can establish if there is probable cause of a violation". **Marilyn Hoff:** We'd certainly think that would be an appropriate direction to move. I think reasonable suspicion is more of a civil standard which we would be talking about. I think that would be a move in the right direction.

Jeff Olson, Credit Union Association of the Dakotas: I will concur with our friends from the banks. We do have a couple minor concerns with it as well. Not that we as an association or financial service group want to curb our two state agencies from doing their job in servicing the citizens of the state, but one of the issues to is a privacy issue. But as you get into a third party situation, we know breaches do happen. We are mandated by law to keep our consumers and members information private and that is one of the things that we're very concerned about as well. It is too open-ended and vague. Who has over-sight of the third-party vendors? Do you as a legislative body, is due diligent, these are just some of the questions that we have? We also are opposed to the bill as it is without having had the opportunity to look at the amendments. **Senator Judy Lee:** Why would you assume that these recognized licensed accountants likely CPA's who are working for I. Bailey or Brady-Marts or who-ever else it might be; would be asked to do this and would be unprofessional

in their behavior in this kind of review? **Jeff Olson:** That is a fair question, but we don't know who they are going to be. We are mandated by law and send out privacy notifications every year to keep our consumers and members information private; our concern with the open-endedness of the bill. **Senator Judy Lee:** It is not giving any private financial information however as was stressed in the original introduction of this bill, it is just talking about identifiable information so that they can have property returned to them. I don't think anybody wants or would suggest that they are looking to share or publicize any kind of financial information but I just can't believe that you're over reacting as my view to the fact that a professional, competent licensed outside auditing firm would do it. Why do you feel any better about the auditors working for the state and don't tell me it's because they are accountable to us because they don't come and tell us what the terrible things are that are going on except when the performance audit are coming through. **Jeff Olson:** That is a fair statement, but again it is an issue that we have to comply with and we're just protecting our members and that is what we do. Who is going to have oversight again and what is the responsibility there? There are some questions on this bill as it appears to be too open-ended, and can we address that in the amendment process, possibly, but as it is today and how it is presented there are those concerns? **Senator Judy Lee:** So what are you suggesting for an amendment then? You're complaining about it, but you're not giving me a solution. **Jeff Olson:** I don't have a solution. **Senator Judy Lee:** If I like this idea and perhaps you and Marilyn should tell me how we can fix it so you can live with it then. **Jeff Olson:** If the Department of Financial Institutions (DFI) does comply with this and we are assured that there are not going to come in but breaches do happen. We know it happens on every level. We are also liable if our consumers or if our members information is breached. We are liable, not the auditor, not the state, we are liable. **Senator John Grabinger:** Would you be agreeable to the Chairman's suggestion of putting reasonable cause in there? **Jeff Olson:** We are certainly open. **Senator John Grabinger:** Marilyn seemed to think that might be workable and you would as well? **Jeff Olson:** Yes. We would work closely with our friends in the banks. **Senator John Grabinger:** It's getting to a point where we live with this and I think that would do it. **Jeff Olson:** Absolutely! There are certainly compromises that we can do, that is just our point and get it on the record.

Chairman Andrist: What is your comment on the possibility that Senator Grabinger's and I addressed, is whether we let you contract only if you had reasonable suspicion? **Linda Fisher:** From a practical standpoint and I agree with Marilyn, banks are best recorders. This legislation is not aimed at banks. We are looking to increase compliance in non-reporting entities and I should make it clear to that we're not talking just about compliance; we're talking about education too. There are truly and honestly businesses that don't know about this and I believe that. But the practical point I was trying to get at is we're going to have enough work to do with non-compliant organizations that we're not going to be interested in looking at people that are in-compliance. That is just practical. We don't have those kinds of resources even if we were to employ contract auditors. If I could take just a moment to explain how our contracts work on our out of state audits, there is no audit that is done without our approval. We are the ones who authorize the audits. There is a strict set of rules about how they are done. Most of our audits are done on a contingency fee basis, so we have a long standing history of managing third-party audits for contractors on out of state businesses which we would pattern this new program after. We would not object to those amendments by the way simply because of what I have just stated. We are more interested in looking at businesses that are completely non-compliant or completely

under compliant. (Example given). We would have no objection to the proposed language that you have discussed. **Senator John Grabinger:** Now you just said you have no objection to the reasonable suspicion. When you first got up it sounded like you were objecting to that. **Linda Fisher:** No. **Senator John Grabinger:** Because my fear with this is the bully in the room type deal. You can force yourself upon somebody and I don't we want to go there. **Linda Fisher:** We don't have time for that. **Senator John Grabinger:** Right, okay. As long as you are in agreement with it, that's fine.

Hearing closed on SB 2058.

Discussion Followed:

Senator Judy Lee: Could Bethany our legal clerk prepare an amendment for us to consider at our next meeting that might include the appropriate language for us to review so then we would have something to work around and so would the people in the room who have concerns so that both sides of the issue could do that. **Chairman Andrist:** That is what I was thinking because it seems like all sides would be pretty satisfied with this. So the language would be changed ' the administrator may contract for an examination from within the state only if reasonable suspicion is'. **Linda Fisher:** Suspicion is a bad work too, can we say grounds? **Chairman Andrist:** reasonable non-compliance...**Linda Fisher:** Reasonable grounds. **Senator John Grabinger:** or is it reasonable cause? **Linda Fisher:** We don't want to assume that everyone is the bad guy, reasonable suspicion.

Senator John Grabinger: As a point of order are we taking up the proposed amendments for Section 2 and 3? **Chairman Andrist:** We will have to do that but I didn't hear any objections from any of the people who testified to the amendments. **Senator John Grabinger:** So, at this time we are not taking them up? **Chairman Andrist:** We aren't going to be able to take action on the bill. We could take up those amendments and would be happy to do it if somebody would wish to move that we did it. But we won't finish action on the bill until we get Bethany's report. **Senator John Grabinger:** Would you rather we wait them as well? **Chairman Andrist:** Yes. **Senator Judy Lee:** I think it would be helpful for us if we just permit Bethany to look at what's being proposed in the amendment and then how best to meld in what we are talking about now with the reasonable grounds so that we would have one set of amendments to adopt rather than have to amend the amendments. **Chairman Andrist:** Okay, that sounds like a reasonable request, that she could add it to the proposed amendments that came from the agency.

Chairman Andrist: Adjourned until Friday 9AM.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Political Subdivisions Committee
Red River Room, State Capitol

SB2058
January 14, 2013
17101

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to contracting for in-state unclaimed property examinations.

Minutes:

You may make reference to "attached testimony."

Chairman Andrist opened the hearing on SB 2058. All senators were present.

If you would like to have this included as an amendment and I would welcome a motion to do so.

Senator John Grabinger: I will move that and I would like to add this is what the parties that were here yesterday thought was appropriate too. I would make a motion to approve the amended.

2nd: Senator Judy Lee

Chairman Senator John Andrist: I take it you mean where the language of the first option? **Senator John Grabinger:** That's correct Mr. Chairman. **Vice Chairman Ronald Sorvaag:** I wasn't here yesterday, but could somebody give me a two second tutorial on why we're amending what we are? **Chairman Andrist:** The bankers objected to this language. They said they face enough examinations the way it is; they normally don't have any problems with the system. Most of the violations are the failures to comply are from other sources. So they wanted to testify against the bill so we did some searching for language that might be compromise version and this appeared to be language that was acceptable to both the agency and the banks. Did I say that correctly?

Chairman Andrist: Roll call vote on the proposed amendment. 6 Yea 0 No 0 Absent

Senator Lee: I move do pass as amended. **Senator Jim Dotzenrod:** Are we going to consider the other amendments that were offered. **Senator Judy Lee:** Yes. **Chairman Andrist:** There included in here aren't they? **Senator Jim Dotzenrod:** No, not really.

Linda Fisher: They were in separate sections. **Chairman Andrist:** Okay, I thought they were putting them all into a package.

Chairman Andrist: Would you hold your amendment Senator Lee? **Senator Judy Lee:** I withdraw my motion. **Chairman Andrist:** okay.

Senator Anderson: I move the adoption of these amendments relative to Section 2 and Section 3 be adopted.

Chairman Andrist: Okay, I've got a motion from Senator Anderson to approve the proposed amendment to SB2058, section 2 and 3.

2nd: Senator Jim Dotzenrod

Roll Call 6 Yea, 0 No, 0 Absent

Chairman Andrist: We've adopted two amendments, one is formally drafted and one is informally drafted, but I think we'd be satisfied to go ahead with it.

Senator Judy Lee: I move that we Do Pass as amended on SB2058
2nd: Senator Anderson

Roll call vote on final passage on SB2058
6 Yea, 0 No, 0 Absent

It passed unanimously.

Carrier: Senator Judy Lee

January 11, 2013

TUS
1/11/13

PROPOSED AMENDMENTS TO SENATE BILL NO. 2058

Page 1, line 1, after "to" insert "create and enact a new subsection to section 57-39.2-23 of the North Dakota Century Code, relating to the disclosure of confidential tax information to the unclaimed property division; and to"

Page 1, line 1, after "47-30.1-30" insert "and subsection 6 of section 57-38-57"

Page 1, line 2, after "examinations" insert "and the disclosure of confidential tax information to the unclaimed property division"

Page 1, line 11, remove the overstrike over "~~The administrator may not~~"

Page 1, line 12, remove the overstrike over "~~contract for an examination done within this state~~" and insert immediately thereafter "without reasonable cause to believe that a person has failed to comply with this chapter"

Page 1, line 12, remove the overstrike over the overstruck period

Page 1, after line 12, insert:

"SECTION 2. AMENDMENT. Subsection 6 of section 57-38-57 of the North Dakota Century Code is amended and reenacted as follows:

6. ~~The~~Upon request, the tax commissioner may furnish to the unclaimed property division of the board of university and school lands, upon its request, a taxpayer's name, address, and federal identification number for the the sole purpose of identifying the taxpayer as the owner of an unclaimed voucher authorized by the tax commissioner or to locate the apparent owner of unclaimed property as provided under chapter 47-30.1.

SECTION 3. A new subsection to section 57-39.2-23 of the North Dakota Century Code is created and enacted as follows:

Upon request, the commissioner may furnish to the unclaimed property division of the board of university and school lands, a taxpayer's name, address, and federal identification number for identifying the owner of an unclaimed voucher authorized by the commissioner or to locate the apparent owner of unclaimed property as provided under chapter 47-30.1."

Renumber accordingly

**2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2058**

Senate Political Subdivisions Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.8049.01001

Action Taken Motion approve to amend

Motion Made By Sen. Grabinger Seconded By Senator Judy Lee

Senators	Yes	No	Senator	Yes	No
Chairman John Andrist	✓		Senator Jim Dotzenrod	✓	
Vice Chairman Ronald Sorvaag	✓		Senator John Grabinger	✓	
Senator Judy Lee	✓				
Senator Howard Anderson, Jr.	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

Date: January 10, 2013
Roll Call Vote #: 2

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2058

Senate Political Subdivisions Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Sen. Judy Lee Seconded By Senator Anderson

Senators	Yes	No	Senator	Yes	No
Chairman John Andrist	✓		Senator Jim Dotzenrod	✓	
Vice Chairman Ronald Sorvaag	✓		Senator John Grabinger	✓	
Senator Judy Lee	✓				
Senator Howard Anderson, Jr.	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Judy Lee

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

REPORT OF STANDING COMMITTEE

SB 2058: Political Subdivisions Committee (Sen. Andrist, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2058 was placed on the Sixth order on the calendar.

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Re-number accordingly

2013 HOUSE FINANCE AND TAXATION

SB 2058

2013 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee Fort Totten Room, State Capitol

SB 2058
March 6, 2013
Job #19493

Conference Committee

Committee Clerk Signature

Mary Brucker

Explanation or reason for introduction of bill/resolution:

A Bill relating to the disclosure of confidential tax information to the unclaimed property division; relating to contracting for in-state unclaimed property examinations and the disclosure of confidential tax information to the unclaimed property division.

Minutes:

Attached testimony #1.

Chairman Belter: Opened hearing on SB 2058.

Linda Fisher, Unclaimed Property Administrator of ND Trust Lands: See attached testimony #1.

Vice Chairman Headland: How many names do you normally have on a yearly basis? Is there a lot of unclaimed property?

Linda Fisher: I think it's a lot. Right now we have about 72,000 names and when you say normal you kind of threw me there because there isn't really a normal year; it depends on what gets reported. This year we are running at about 8,000 new names.

Vice Chairman Headland: When I said normal I should have said average.

Linda Fisher: We have increased the number of names steadily the past three or so years. We've been between 7,000 and 9,000 for the past three reporting seasons.

Vice Chairman Headland: Is there a certain percentage of transactions or cases where you find the people and are able to return the property?

Linda Fisher: Yes there is a certain percentage. We try to stay over 50% in what we pay out but that gets more difficult as property becomes older. The longer it sits in the system the harder it is to pay so we try to get as much of the new property paid back each year as possible because the faster we can get it back, posted, published and advertised the better the chance is of it being claimed.

Vice Chairman Headland: With passage of this bill will it help you in other areas and have other states seen improvement in finding these individuals?

Linda Fisher: I can't guarantee it will be helpful. On CNN there was a small clip about unclaimed property. On our website we had 33% of claims in two weeks register than we had for the whole twelve months prior to that clip on CNN. You never know which initiative is going to work. This is another tool that should help. Sometimes we don't get a lot of information with the larger claims and we would like to validate and make sure that it is being paid to the proper individual so revising this section of the code could help with that as well.

Vice Chairman Headland: Can you give us an idea of what happens to the dollars when you can't find someone?

Linda Fisher: It is invested with other financial assets to benefit the common school's trust fund. The property that stays in the fund is put to good use for the schools.

Representative Klein: What is an approximate figure of how much value you have right now in that fund?

Linda Fisher: About \$32 million that has been accumulated since 1975. Many millions have gone out of the fund since that time as well.

Chairman Belter: Of the \$32 million what is the average claim?

Linda Fisher: I haven't done that research recently. We post \$50 and greater so we have a lot of \$50 claims which brings the average down. I think that last time I did that analysis the average was around \$300 but that is really misleading because we have a lot of smaller claims with the occasional gigantic one. We paid one this week for \$90,000 so those tend to skew the average a little bit.

Representative Froseth: How do you value the property and then invest them?

Linda Fisher: Any money that is received in our office as unclaimed property gets invested in our investment pool along with some of our other assets. When you say the value I'm not entirely sure. Whatever money we receive is invested dollar for dollar. We don't place values on property.

Representative Froseth: Some of the property you have a value has to be placed on it because there isn't a face value to it when you receive it is there?

Linda Fisher: Absolutely it all has a face value.

Representative Hatlestad: You talk about utilizing third party contract auditors. Do they have access to out of state tax departments licensing bureaus or things this bill can do for North Dakota?

Linda Fisher: Third party contracts identify property that is passed due or ready to be reported. Then the law requires the business that they are working with to send in a notice to the last known address of the people that are listed in the records to let them know that

they have this property and they should claim it before it comes to the state. Then whatever is left over after that process comes to us with the address they have of record. It might be that some of those third party contractors have access to that and I know that some of them do and some of them require their holders to utilize that but it is our job to do that address stuff when it gets to our office. They just identify and report the property for the most part. There are some third party auditors that are using the death master files to seek individuals and doing address matches so that technology has allowed those things to progress as time goes on.

Representative Schmidt: Is it a self-sustaining division from that fund and if not then why is it not self-sustaining? If it isn't then how much does it cost the taxpayer to provide this service?

Linda Fisher: There is no tax dollars used to fund this program; it is completely self-funded. There are no general fund dollars that go to this either.

Representative Klein: Do you have claims for valuable assets like diamonds or jewelry or things like that or is it just property?

Linda Fisher: The law does allow for us to accept safe deposit box contents from financial institutions. Right now we do have some of that but very little in our vault that has significant value. Most of what we see get reported is paper; marriage licenses, birth certificates, life insurance and things like that. In 1993 the office held a public auction of all the tangible sellable property we were holding at that time and we haven't had an auction since then because our hope is that if there is any tangible property we would like to get that back to the owner in its current form. At the moment I am not aware of any big dollar items in our vault.

Representative Zaiser: How are you funded?

Linda Fisher: The program runs on a budget that is approved by the legislative body for operating. The program is self-sustaining in that we have \$32 million of property that is earning interest that is not being claimed at the moment. We don't charge an administrative fee for the public to make a claim. We don't pay interest on our properties.

Chairman Belter: Further testimony in support of 2058? Any opposition to 2058? Any neutral testimony? We will close the hearing on SB 2058.

2013 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2058
March 6, 2013
Job #19513

Conference Committee

Committee Clerk Signature

Mary Brucher

Minutes:

No attachments.

Chairman Belter: This is the unclaimed property bill. What are the committee's wishes?

Representative Klein: Made a motion for a Do Pass.

Representative Schmidt: Seconded.

ROLL CALL VOTE: 12 YES 0 NO 2 ABSENT

Representative Klein will carry this bill.

Date: 3-6-13
 Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2058**

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. Klein Seconded By Rep. Schmidt

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley Belter	✓		Rep. Scot Kelsh	✓	
Vice Chairman Craig Headland	✓		Rep. Steve Zaiser	✓	
Rep. Matthew Klein	✓		Rep. Jessica Haak	✓	
Rep. David Drovdal	AB		Rep. Marie Strinden	AB	
Rep. Glen Froseth	✓				
Rep. Mark Owens	✓				
Rep. Patrick Hatlestad	✓				
Rep. Wayne Trottier	✓				
Rep. Jason Dockter	✓				
Rep. Jim Schmidt	✓				

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep. Klein

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

REPORT OF STANDING COMMITTEE

SB 2058, as engrossed: Finance and Taxation Committee (Rep. Belter, Chairman)
recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING).
Engrossed SB 2058 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

SB 2058

**TESTIMONY OF LINDA FISHER
Unclaimed Property Administrator
North Dakota Department of Trust Lands**

IN SUPPORT OF SENATE BILL NO. 2058

**Political Subdivisions Committee
January 10, 2013**

Mr. Chairman and members of the Committee, I am Linda Fisher, Unclaimed Property Administrator for the ND Department of Trust Lands (Department). I am here today to testify in support of this unclaimed property bill and to offer amendments to the bill as pre-filed by the Board of University and School Lands.

For any of you who might be somewhat unfamiliar with the concept of unclaimed property, I should note that in this context "property" is not real estate, but rather consists of uncashed vendor or payroll checks, dormant bank accounts, undeliverable securities, forgotten utility deposits, stale-dated rebates, and various other financial assets.

A version of the Uniform Unclaimed Property Act (the Act) found in Chapter 47-30.1 of the North Dakota Century Code, has been enacted in all 50 states and three Canadian provinces and has been in effect in North Dakota since 1975.

In the interest of consumer protection, the Act requires that after a certain time period has elapsed, business owners report unclaimed financial assets to respective State Unclaimed Property Administrators. In turn, the States undertake initiatives aimed at returning the property to the rightful owner or their heirs.

Important to the success of the program is ensuring industry compliance with the requirements of the Act. If property is never reported, it can never be returned to the owner(s).

While certain property types (such as gift certificates and cooperative patronage dividends) have specific reporting exemptions, no business is exempt entirely from the Act, which provides authorization to assess penalties and interest on late-reported or non-reported property in the event it is determined there has been a "willful" failure to comply.

The Department recognizes the importance of educating businesses and ensuring compliance in accordance with the Act. In 1984 the Department entered into its first "third party" contingency custodial/compliance contract. Several third party audit vendors are currently under contract for conducting out-of-state audits; however, the statute restricts the use of contract auditors to examine North Dakota businesses.

At various times in program history the Department has had an in-house audit program that allowed Unclaimed Property staff to provide education and conduct exams within North Dakota. Those processes and procedures are still in place; however, turnover of auditors, limited FTEs for the position and overall burgeoning Department responsibilities, mostly related to energy activity growth, have required that vacant positions be reclassified to accommodate other staffing needs.

Current compliance measures have been limited to identifying industry groups with sparse or non-existent reporting records, providing those businesses with information related to the requirements of the Act, and offering assistance in helping them become compliant.

As a result, the *Financial Statements June 30, 2012 and 11* audit report prepared by Eide Bailly identified the following audit “condition” related to unclaimed property compliance:

While the board utilizes third-part contract auditors to address compliance issues out-of-state, currently there is no audit function in place in the Unclaimed Property Division to ensure North Dakota businesses are appropriately submitting unclaimed property and that penalties are appropriately assessed for noncompliance. The Board has compliance and audit policies and procedures in place; however they have no employee to currently fill this role internally.

We recommend that the Board find a way to implement this audit function with North Dakota entities to ensure that all unclaimed property is received and penalties properly assessed and collected for those businesses not in compliance.

With a strong and long-standing commitment to education and compliance, the Department concurs with the finding and recommendation and introduced this bill on behalf of the Board of University and School Lands with the hope we could gain approval to utilize additional tools to accomplish those objectives.

We believe there would be significant measurable benefits to allowing contract auditors to assist the Department in educating the business community and improving compliance with the Act within North Dakota, thereby preserving the assets of current and previous North Dakota citizens for claim by the rightful owner(s).

At this point I would like to take a moment to address the proposed amendments, which are submitted today with the support of the ND Tax Department. As I explained earlier in this testimony, once property is reported to the Department, various efforts are made to create and increase public awareness. We utilize a host of different advertising and publication methods to get the word out, but one tool not currently available is a broad-based data sharing option with the Tax Department that could help in validating claims and could also be useful in cross matching record sets for address updates. I need to be clear in stating that we have no interest in personal information related to income, deductions, or in knowing who has filed and who has not. Our only interest would be in obtaining current addresses and social security numbers for names that had already been reported to us. Data sharing under cooperative agreements between state agencies and unclaimed property offices is very common throughout the nation – the most common participants in other states are Taxation/Revenue Departments and/or Departments of Licensing/Transportation.

The ability to share information with other state agencies for the purpose of locating more owners and paying more claims is directly in line with the intent and requirements of the ND Uniform Unclaimed Property Act.

As such, we respectfully request a “do pass” recommendation of SB 2058 and the newly introduced amendments.

PROFESSIONALS

MARILYN FOSS
General Counsel
marilyn@ndba.com
foss@btinet.net

NORTH DAKOTA BANKERS ASSOCIATION

120 North Third Street Suite 200 PO Box 1438 Bismarck, ND 58502-1438
Phone: 701.223.5303 or 701.355.4538
www.ndba.com

12 U.S.
powers

484: Limitation on visitorial

Search 12 U.S.C. § 484 : US Code - Section 484: Limitation on visitorial powers

- [Search by Keyword or Citation](#)

(a) No national bank shall be subject to any visitorial powers except as authorized by Federal law, vested in the courts of justice or such as shall be, or have been exercised or directed by Congress or by either House thereof or by any committee of Congress or of either House duly authorized.

(b) Notwithstanding subsection (a) of this section, lawfully authorized State auditors and examiners may, at reasonable times and upon reasonable notice to a bank, review its records solely to ensure compliance with applicable State unclaimed property or escheat laws upon reasonable cause to believe that the bank has failed to comply with such laws.

[\[Notes\]](#)

[« Prev](#)
Special examination of member banks; information of condition furnished to Board of Governors of the Federal Reserve System

[Up](#)
Bank examinations

[Next »](#)
Examination of Federal reserve banks

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PROPOSED AMENDMENT TO SENATE BILL NO. 2058

Page 1, line 1, after "to" insert "create and enact a new subsection to section 57-39.2-23 of the North Dakota Century Code, relating to the disclosure of confidential tax information to the unclaimed property division; and to"

Page 1, line 1, after "47-30.1-30" insert "and subsection 6 of section 57-38-57"

Page 1, line 2, after "examinations" insert "and the disclosure of confidential tax information to the unclaimed property division"

Page 1, after line 12, insert:

"SECTION 2. AMENDMENT. Subsection 6 of section 57-38-57 of the North Dakota Century Code is amended and reenacted as follows:

6. The tax commissioner may furnish to the unclaimed property division of the board of university and school lands, upon its request, a taxpayer's name, address, and federal identification number for the ~~sole purpose~~ purposes of identifying the owner of an unclaimed voucher authorized by the tax commissioner or to locate the apparent owner of unclaimed property as provided under chapter 47-30.1.

SECTION 3. A new subsection to section 57-39.2-23 of the North Dakota Century Code is created and enacted as follows:

The tax commissioner may furnish to the unclaimed property division of the board of university and school lands, upon its request, a taxpayer's name, address, and federal identification number for the purposes of identifying the owner of an unclaimed voucher authorized by the tax commissioner or to locate the apparent owner of unclaimed property as provided under chapter 47-30.1."

Re-number accordingly

**TESTIMONY OF LINDA FISHER
Unclaimed Property Administrator
North Dakota Department of Trust Lands**

IN SUPPORT OF SENATE BILL NO. 2058

**House Finance and Taxation
March 6, 2013**

Mr. Chairman and members of the Committee, I am Linda Fisher, Unclaimed Property Administrator for the ND Department of Trust Lands (Department). I am here today to testify in support of this unclaimed property bill.

For any of you who are unfamiliar with the concept of unclaimed property, I should note that in this context "property" is not real estate, but rather consists of uncashed vendor or payroll checks, dormant bank accounts, undeliverable securities, forgotten utility deposits, stale-dated rebates, and various other financial assets.

A version of the Uniform Unclaimed Property Act (the Act) found in Chapter 47-30.1 of the North Dakota Century Code, has been enacted in all 50 states and three Canadian provinces and has been in effect in North Dakota since 1975.

In the interest of consumer protection, the Act requires that after a certain time period has elapsed, business owners report unclaimed financial assets to respective State Unclaimed Property Administrators. In turn, the states undertake initiatives to return the property to the rightful owners or their heirs.

Important to the success of the program is ensuring industry compliance with the requirements of the Act. If property is never reported, it can never be returned to the owner(s).

While certain property types (such as gift certificates and cooperative patronage dividends) have specific reporting exemptions, no business is exempt entirely from the Act, which provides authorization to assess penalties and interest on late-reported or non-reported property in the event it is determined there has been a "willful" failure to comply.

The Department recognizes the importance of educating businesses and ensuring compliance in accordance with the Act. In 1984 the Department entered into its first "third party" contingency custodial/compliance contract. Several third party audit vendors are currently under contract for conducting out-of-state audits; however, the statute restricts the use of contract auditors to examine North Dakota businesses.

At various times in program history the Department has had an in-house audit program that allowed Unclaimed Property staff to provide education and conduct exams within North Dakota. Those processes and procedures are still in place; however, turnover of auditors, limited FTEs for the position and overall burgeoning Department responsibilities, mostly related to energy activity growth, have required that vacant positions be reclassified to accommodate other staffing needs.

#1
P. 2

Current compliance measures have been limited to identifying industry groups with sparse or non-existent reporting records, providing those businesses with information related to the requirements of the Act, and offering assistance in helping them become compliant.

As a result, the *Financial Statements June 30, 2012 and 11* audit report prepared by Eide Bailly identified the following audit “condition” related to unclaimed property compliance:

While the board utilizes third-part contract auditors to address compliance issues out-of-state, currently there is no audit function in place in the Unclaimed Property Division to ensure North Dakota businesses are appropriately submitting unclaimed property and that penalties are appropriately assessed for noncompliance. The Board has compliance and audit policies and procedures in place; however they have no employee to currently fill this role internally.

We recommend that the Board find a way to implement this audit function with North Dakota entities to ensure that all unclaimed property is received and penalties properly assessed and collected for those businesses not in compliance.

With a strong and long-standing commitment to education and compliance, the Department concurs with the finding and recommendation and introduced this bill on behalf of the Board of University and School Lands with the hope of gaining approval to utilize additional tools to accomplish those objectives.

We believe there would be significant measurable benefits to allowing contract auditors to assist the Department in educating the business community and improving compliance with the Act within North Dakota, thereby preserving the assets of current and previous North Dakota citizens for claim by the rightful owner(s).

Section 2 and Section 3

These two sections involve suggested changes to tax statutes and were submitted with the knowledge and support of the ND Tax Department. As I explained earlier, once property is reported to the Unclaimed Property Division, various efforts are made to create and increase public awareness. A host of different advertising and publication methods are utilized to get the word out, but one tool not currently available is a broad-based data sharing option with the Tax Department, which could help in validating claims and could also be useful in cross matching record sets for address updates. We have no interest in personal information related to income, deductions, or in knowing who has filed and who has not. Our only interest would be in obtaining current addresses and social security numbers for names that had already been reported to the Unclaimed Property Division. Data sharing under cooperative agreements between state agencies and unclaimed property offices is very common throughout the nation – the most common participants in other states are Taxation/Revenue Departments and/or Departments of Licensing/Transportation.

The ability to share information with other state agencies for the purpose of locating more owners and paying more claims is directly in line with the intent and requirements of the ND Uniform Unclaimed Property Act.

These proposed changes to current unclaimed property law would not only enhance the ability to improve reporting compliance, but would provide additional tools to be used in returning property to rightful owners as well.

As such, we respectfully request a “do pass” recommendation of SB 2058.