

2013 SENATE FINANCE AND TAXATION

SCR 4007

2013 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

SCR 4007
2/19/2013
Job Number 19169

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A concurrent resolution directing the Legislative Management to study the growth in use of state False Claims Acts with qui tam provisions in state and local taxation matters and whether that approach is feasible and desirable in North Dakota.

Minutes:

Chairman Cook opened the hearing on SCR 4007.

Chairman Cook introduced SCR 4007.

Donnita Wald, Tax Department - Right now there are 29 states that have some form of false claims act with qui tam provisions in them. Some of them do prohibit specifically tax actions from them. Some limit the tax actions in some respect. False claims act originated with federal law, usually were used in Medicaid, whistleblower kind of acts where people or doctors weren't correctly reporting what the government should pay them for Medicaid payments. What qui tam does is it allows a private person to sue for a penalty part of which the government will receive. It usually involves an underpayment by the individual.

Donnita Wald then discussed what the element of New York's law requires and how the process works. (6:00)

Chairman Cook - The biggest issue regarding tax, which is, again and you can refresh my memory is that some of the states are, this is an action that is a tool that people have but it's starting to be abused and generally where the abuse is, is in tax policy, is that correct?

Donnita Wald - I guess where we've seen some of the abuse, well we haven't in North Dakota, but in the other states where they are bring the actions are basically sales tax.

Senator Dotzenrod - Is there a federal false claims act or are these just acts that states are doing and it doesn't say false tax claims it just says false claims so would the claims that could be pursued under this be someone who you suspect is getting a bribe or someone who is getting a favorable treatment by some regulator in exchange for something where it really isn't tax matter?

Donnita Wald - The states that do have false claims act from what I've read, and my research has just kind of focused on those states that have false claims act with the tax ability, those that deal with taxes, but within those statutes there are the ability to bring false claims act in a number of different matters. There is a federal false claims act but there in that particular act, there is what they call a tax bar, you cannot bring a false claims qui tam action for taxes.

Chairman Cook closed the hearing on SCR 4007.

Senator Miller - I'll move a **Do Pass**.

Seconded by **Senator Dotzenrod**.

Roll Call Vote 7-0-0

Carried by **Senator Oehlke**.

Date: 2-19-13
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 4007

Senate Finance & 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 Senator Miller Seconded By Senator Dotzenrod

Senators	Yes	No	Senator	Yes	No
Chairman Dwight Cook	X		Senator Jim Dotzenrod	X	
Vice Chairman Tom Campbell	X		Senator Connie Triplett	X	
Senator Joe Miller	X				
Senator Dave Oehlke	X				
Senator Randy Burckhard	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Oehlke

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

REPORT OF STANDING COMMITTEE

SCR 4007: Finance and Taxation Committee (Sen. Cook, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SCR 4007 was placed on the Eleventh order on the calendar.

2013 HOUSE FINANCE AND TAXATION

SCR 4007

2013 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

SCR 4007
March 18, 2013
Job #20062

Conference Committee

Committee Clerk Signature

Mary Bruker

Explanation or reason for introduction of bill/resolution:

A concurrent resolution directing the Legislative Management to study the growth in use of state False Claims Acts with qui tam provisions in state and local taxation matters and whether that approach is feasible and desirable in North Dakota.

Minutes:

Chairman Belter: Opened hearing on SCR 4007.

Donnita Wald, General Counsel for Office of State Tax Commissioner: I am in a neutral position. This is a national issue. A false claims act is basically a whistle blower act. The federal government uses them in instances where defense contractors charging \$300 for a hammer or there is Medicaid fraud or those kinds of things. A false claims act with a qui tam provision allows a private citizen to bring a lawsuit on behalf of the government. Qui tam means he who sues in this matter for the king as well as for himself. If somebody brings a qui tam action he is entitled to a portion of whatever the government wins and is entitled to attorney's fees. In the concurrent resolution it says there are 20 states that have false claims acts with some having qui tam provisions. Usually you'll see these false claims acts are in Medicare and Medicaid claims and more recent are seeing them in tax matters. New York has qui tam provisions and it allows an individual to bring a lawsuit for a false or fraudulent claim for a payment or approval and allows an individual to file a lawsuit for someone who fails to transfer money or property to the state or local government. An example of this is someone who fails to pay sales tax. There are specific procedures in New York being the person who files the lawsuit the attorney general can intervene. He reviews that case in consultation with the tax department, he can participate in a lawsuit with the individuals, take the lawsuit away from the individual, or he can drop it. If the plaintiff or the government is successful the individual is liable for trouble damages which sometimes can be three times the amount of the tax that is owed. There is a statutory penalty of \$6,000, no more than \$12,000 per claim, and the individual is responsible for attorney's fees which could end up being a large amount of money. This has been an issue with some telecommunications companies as well.

Representative Zaiser: Have any of the states who have had false claims acts had incidences where there were false claims made against false claims? That could be a problem to defame another person. Do they have remedies for that kind of action as well?

Donnita Wald: Yes, there are some that have occurred but I am not sure if there have been penalties against those individuals.

Chairman Belter: Any other testimony on 4007? If not, we will close the hearing.

2013 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

SCR 4007
March 18, 2013
Job #20078

Conference Committee

Committee Clerk Signature

May Brucher

Minutes:

Chairman Belter: This is a study.

Representative Klein: Made a motion for a Do Pass.

Representative Trottier: Seconded.

Representative Kelsh: I don't see language that legislative management shall consider studying but this says that it directs them to study.

Vice Chairman Headland: I believe that means that it will be studied.

Chairman Belter: I'm not sure.

Representative Zaiser: I agree with Representative Kelsh. I see it as a mandatory study.

Chairman Belter: Would you like to withdraw your motion and we can amend it to put "may" in?

Representative Kelsh: Motion withdrawn.

Representative Drovdal: Made a motion that on line 15 put in "management may study".

Representative Hatlestad: How about line 1?

Representative Drovdal: Take out "to" and put in "may" on line 1 also.

Representative Froseth: I think the language is usually "shall consider"?

Chairman Belter: Will, get the proper language on that so we know it's not a mandatory study.

Representative Owens: Seconded motion.

VOICE VOTE: MOTION CARRIED.

Chairman Belter: What are your wishes?

Representative Klein: Made a motion for a Do Pass as Amended.

Representative Kelsh: Seconded.

ROLL CALL VOTE: 10 YES 4 NO 0 ABSENT

Representative Kelsh will carry this bill.

****Vonette Richter, Legislative Council, spoke with Chairman Belter and explained that this amendment was not needed.

March 18, 2013

PROPOSED AMENDMENTS TO SENATE CONCURRENT RESOLUTION NO. 4007

Page 1, line 1, after "to" insert "consider"

Page 1, line 1, replace "study" with "studying"

Renumber accordingly

Date: 3-18-13
 Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 4007**

House Finance and Taxation Committee

Check here for Conference Committee ★ WITHDRAWN
 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. Trotter

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			Rep. Marie Strinden		
Rep. Glen Froseth					
Rep. Mark Owens					
Rep. Patrick Hatlestad					
Rep. Wayne Trotter					
Rep. Jason Dockter					
Rep. Jim Schmidt					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Date: 3-18-13
 Roll Call Vote #: 2

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 4007**

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. Kelsh

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	✓		Rep. Marie Strinden	✓	
Rep. Glen Froseth		✓			
Rep. Mark Owens	✓				
Rep. Patrick Hatlestad	✓				
Rep. Wayne Trottier	✓				
Rep. Jason Dockter		✓			
Rep. Jim Schmidt		✓			

Total (Yes) 10 No 4

Absent 0

Floor Assignment Rep. Kelsh

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

*Spoke w/ Rep Belter
 - explained that
 this amendment
 is not needed.*

Vonette Ruster

REPORT OF STANDING COMMITTEE

SCR 4007: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **DO PASS** (10 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). SCR 4007 was placed on the Fourteenth order on the calendar.