

2015 HOUSE FINANCE AND TAXATION

HB 1060

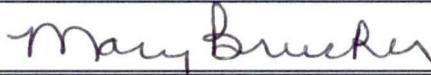
2015 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1060
1/13/2015
21884

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A Bill relating to disclosure of certain information in possession of Job Service North Dakota or the Tax Commissioner to the Department of Commerce and restricting the use and disclosure of that information by the Department of Commerce.

Minutes:

No attachments

Chairman Headland: Opened hearing. Clerk read the title.

John Walstad, Legal Director, Legislative Council: Introduced bill. The interim tax committee was really involved with a lot of tax issues. One of those issues was evaluation of the effectiveness of tax incentives at the state and local level. It's difficult for the legislature to evaluate how the incentives it provides are actually effecting economic development. In pursuing the information there is a lot of information the department of commerce is required to compile on economic development incentives. When the department of commerce presented information on that to the tax committee they asked a lot of questions. The department of commerce informed the committee that providing information on how effective those incentives are in a possession of Job Service North Dakota or the tax commissioner. Because of that it is subject to some pretty strict confidentiality requirements. There are a number of places in state law where confidential information is allowed to be shared between agencies but the receiving agency becomes subject to the same confidentiality that applies to the agency providing information. This bill draft is intended to address this. It would allow Job Service to enter an agreement with commerce to share information and that the information obtained would then be subject to the confidentiality requirements. The second section of the bill provides the same type of sharing arrangement for the tax commissioner. The tax department is extremely careful not divulging confidential information within its control. Disclosing confidential information is a class c felony. This bill is intended to let the Department of Commerce obtain some information that is currently confidential who would then be able to use that information in compiling reports for legislative consideration relating to how effective some kind of incentive might be. In disclosing it, it would have to be disclosed in a way that would not allow identification of the individual business or employee. It would have to be released in some aggregate format.

Chairman Headland: Any questions for Mr. Walstad? Is there any support of HB 1060?

Keith Lund, Vice President of the Grand Forks Region Economic Development Corporation: Support. I am here today in capacity of the president of Economic Development Association of North Dakota. Our primary goal is to support the creation of new wealth throughout the state of North Dakota and the diversification of North Dakota's economy. We represent over 80 state economic development organizations. We are here in support of HB1060 which is sharing confidential information among Tax Department, Job Service, and Commerce Department. We worked with the interim tax committee and looking into economic incentives at the state level and review them on a periodic base to make sure they were appropriate investments and demonstrate the value of those to the taxpayers of North Dakota. One of the key findings was realizing that not one agency or entity had all the information necessary to do that proper analysis. We see SB 2057 as a companion bill which is a sharing of information.

Chairman Headland: Are there any questions for Mr. Lund? Further support?

John Godfread, Greater North Dakota Chamber of Commerce: Support. We also support SB 2057, the comprehensive review. This is a companion bill to accomplish this. We stand in support and urge a Do Pass.

Chairman Headland: Is there any further support? Is there anyone else who would like to testify to HB 1060? Is there any opposition? Is there anything from the tax department? We will close the hearing on HB 1060.

Representative Klein: Made a motion for a Do Pass.

Representative Hatlestad: Seconded motion.

Roll Call Vote: 13 Yes 1 No 0 Absent

Motion carried.

Representative Mitskog will carry the bill.

Date: 1-13-15
 Roll Call Vote #: 1

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1060**

House Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Klein Seconded By Rep. Hatlestad

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN HEADLAND	✓		REP HAAK	✓	
VICE CHAIRMAN OWENS	✓		REP STRINDEN	✓	
REP DOCKTER	✓		REP MITSKOG	✓	
REP TOMAN		✓	REP SCHNEIDER	✓	
REP FROSETH	✓				
REP STEINER	✓				
REP HATLESTAD	✓				
REP KLEIN	✓				
REP KADING	✓				
REP TROTTIER	✓				

Total (Yes) 13 No 1

Absent —

Floor Assignment Klein Rep. Mitskog

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

REPORT OF STANDING COMMITTEE

HB 1060: Finance and Taxation Committee (Rep. Headland, Chairman) recommends DO PASS (13 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). HB 1060 was placed on the Eleventh order on the calendar.

2015 SENATE FINANCE AND TAXATION

HB 1060

2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

HB1060
3/4/2015
Job #24287

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to disclosure of certain information in possession of job service North Dakota or the tax commissioner to the department of commerce and restricting the use and disclosure of that information by the department of commerce.

Minutes:

Chairman Cook opened the committee hearing on HB1060.

Emily Thompson, staff attorney, Legislative Council --This is another interim taxation committee bill before us. I am here to testify in a neutral capacity to explain the provision of HB1060. This bill would allow Job Service North Dakota and the Tax Department to share otherwise confidential information with the Department of Commerce; and they would share that information for the purposes of evaluating economic development tax incentives. This bill came about due to the committee's discussion on how to better evaluate the effectiveness of economic development tax incentives. Review for those is now seen in what is SB2057. (meter 1:50-2:55)

Senator Oehlke -- How long do they get to keep that personal information? They keep it, they formulate the documents, and then they destroy it, or do they retain it, and if so, for how long?

Emily Thompson -- They aren't any provisions specifying when this information must be destroyed in any way. The limitations in these sections are only regarding the use of this information. I don't know if the agencies have specific time frames for when that information would no longer be retained. I know there are record retention rules for various agencies but I am not familiar with any specific provisions in this bill that orders them to destroy that information.

Chairman Cook -- That's a whole other issue, records retention.

Senator Oehlke -- I'd like to see that other section if you want to dig that up.

Chairman Cook -- I don't.

Senator Triplett -- The concern that I would have, and I am supportive of the other companion bill that you referenced in terms of evaluating our programs, but if this bill is intended to be retroactive in the sense of when we start evaluating programs allowing additional sharing of information that was not allowed when the people who applied for those economic assistance grants, 10 or 15 years ago, if we've changed the rules on them that makes me a little bit uncomfortable. Another way of doing this, instead of divulging the information to yet another agency, would be to require the agencies that already have the confidential information to compile the information. Was that considered as part of the drafting?

Emily Thompson -- That was considered in a sense, if you look at section 2 of the bill, the tax department did request during discussion at the interim committee that some additional language be added and you will note that on page 2, lines 6 & 7, the tax department did specifically supply additional language that a request under this subsection does not require the tax commissioner to compile or create a record, including compiling or creating a record from electronically stored information which does not exist.

Senator Triplett -- I do see that language and that is the source of my concern. I'm less concerned about what the tax department wants or doesn't want and more concerned about what the expectations of the people were who received grant funding from the state of North Dakota on the assurance that their information would be held confidential and now we are changing up the rules in the middle of the game and telling them that their information is going to be passed on to an agency that it wasn't going to be passed on to before. (meter 6:24-7:02)

Senator Bekkedahl -- Just as a follow-up to what I'm hearing is, later on in that section 2 it says information received by the department of commerce under this subsection may not be divulged by the department of commerce except in an aggregate format that does not permit taxpayer identification... Does it address some of the concerns of Senator Triplett if that is the way that it is packaged when it's sent to commerce from the tax department or does that just negate the opportunity that commerce needs to look at more information?

Emily Thompson -- Again, that provision only really applies to it being divulged by the department of commerce. I'm not sure, depending upon what the department of commerce would specifically be looking at, if that would negate that section or not. That has the potential to do so.

Senator Bekkedahl -- Is there anybody here from commerce, Mr. Chairman?

Carla Hahn, Accountability Manager, N.D. Dept. of Commerce -- My understanding is that commerce would only provide that information in aggregate to determine the value of the economic taxation provided.

Senator Bekkedahl -- Can you answer the question: would commerce receiving that information in a format that doesn't allow identification, specifically, of the company or corporate entity, does not negate the intent of this bill then? In other words, if the tax department packaged it such that you may know the industry or the type of work that they

are involved in and the type of incentive they got, but you may not know specifically the company? Does that negate this?

Carla Hahn -- I wasn't intimately involved in all of the discussions around this. I would be happy to get that answer and bring it back, if that would be acceptable to the committee.

Chairman Cook -- This bill, I think, is very careful not to reveal any information from an individual taxpayer. There are 2 sections, one deals with Job Service and the other is with the tax commissioner.

No further testimony on HB1060.

Senator Dotzenrod -- I'm just curious about the application of this bill. We want to be able to evaluate, at some point in the future, whether the incentives that the policy makers in North Dakota are providing in tax breaks and incentives. If this bill were to pass and we were to allow this information to be used, what would be a way that we could think about the way that would be used? Would we be looking at a specific industry that we've provided sales tax forgiveness on the construction or some other incentives and then wanting to know how that impacted salaries? Would we be looking for information about how it affected the area around the facilities as far as who got paid what? Not specifically who but did it increase the incomes of the people in the area? (meter10:46-11:17)

Chairman Cook -- With job service the information you're going to get is the employment changes and wage changes/ and you are going to look at it in aggregate so you are not going to look at any individual company but in aggregate you are going to be able to see 10 companies that took advantage of this economic development incentive and saw a 20% increase in employment and a 30% increase in salary. That would be the type.

Senator Dotzenrod -- I'm assuming that the changes in employment are information that we can probably get right now, but salary you can't get.

Chairman Cook -- It's one or the other and maybe both. If you remember the economic development bill, one of the conditions in that bill is the interim committee studies various economic development programs is identifying information that it cannot obtain to do a good evaluation and then see how they might go about getting that information. That's what this is basically for.

Senator Dotzenrod -- I think a lot of what we heard on 2057 was from the PEW charitable trust and how they have been able to find ways that they have found that they can actually measure these things that a lot of us thought couldn't be measured. I'm assuming that this is information that they would be able to help us use?

Chairman Cook -- Yes. Remember, also, when we had that discussion we found that there are some states that actually require those applying for certain economic development incentives to sign a disclosure that their income tax records could be disclosed. They know ahead of time.

Chairman Cook closed the hearing on HB1060.

2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

HB1060
3/16/2015
Job #24909

- Subcommittee
 Conference Committee

Committee Clerk Signature

Alice Grove

Explanation or reason for introduction of bill/resolution:

Committee work

Minutes:

Chairman Cook opened the committee work on HB1060.

Sen. Oehlke -- Do they address the information that is shareable in the amendment?

Charles Dendy -- I'm not certain what the amendments address. I know they were very brief and Dee does have them prepared. She is not here to present them.

Committee work is closed.

2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

HB1060
3/17/2015
Job #24995

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Committee work

Minutes:

Attachment #1

Chairman Cook opened the committee work on HB1060.

Dee Wald, General Counsel, State Tax Commissioner's Office -- (Attachment #1)

As you recall, you had 2340 over here before crossover which was the economic development incentive review; as I was going through that hearing I noticed that there were some sales tax incentives listed in that bill. At that point in time it came to my attention that there were some sales tax incentives that were included and that there was not an exemption to the sales tax confidentiality laws so that we would not be able to disclose to Dept. of Commerce without this amendment. What this amendment does is just allow us to give sales and use tax information to the Dept. of Commerce. It uses the same language that we had in 1060 as it came over. And then since 2340 added a section on there that any incentives passed by this legislature would also be included on that list so it is safe to put this on there in case there some sales tax exemptions that are signed and enacted into law.

Sen. Triplett -- By this language then the tax department would just forward individual taxpayers raw data over to the Dept. of Commerce and then commerce would work at compiling it, is that what I am reading?

Dee Wald -- That's correct. The only time we wouldn't provide them raw data is we have a disclosure policy that if there are 5 or less taxpayers that claim an incentive or any kind of credit deduction, that we will not provide that information because it's very easy, in some communities, to determine who those particular taxpayers are. There's probably more income tax deductions and credits that that would apply to; the sales tax and income tax incentives that are listed on that bill have more than 5 taxpayers that claim them, typically.

Sen. Triplett -- But still, you are giving out full information, including taxpayer names, and all that to the Dept. of Commerce. My concern is that the tax department, I believe, does specialized training in confidentiality and you people work with it day in and day out and it is

part of the job to hold that mindset of confidentiality; I'm concerned that if you give raw data to another department, confidential will be compromised. It worries me a bit that we are spreading this confidential information out to other departments who don't have the in-house culture of confidentiality. I would like this bill a whole lot better if we gave the tax department additional FTE's to provide whatever commerce wants in a summary form rather than sharing raw data.

Dee Wald -- We share your concerns. There are many other exceptions to confidentiality laws where we give them specific information and they are required, also, to keep that confidential. If that person or entity does not do so, then they are subject to the same criminal and civil penalties that the tax department employees are. I don't think, from an entity perspective, we are that concerned with giving the Dept. of Commerce this information.

Sen. Cook -- When my wife worked at the front desk of the AG's office, she couldn't even tell me who was going in to see Wayne Stenehjem. It was confidential and she followed it.

Sen. Oehlke -- I wasn't as concerned about the personal leaks as I would be about the cyber leaks. Is the Dept. of Commerce's security protection, relative to electronics, as good or the same as what the tax department has? Or does yours suck too?

Dee Wald -- Ours is fine. Dept. of Commerce is within the state's ITD and containing the same firewalls that our department is under. From an outside hacking point of view I think that would be very difficult to do. Our security, as far as cyber hacking, is the same as the Dept. of Commerce.

Sen. Cook -- Are we comfortable with these amendments?

Sen. Bekkedahl -- I would move the amendments to the bill 1060 as presented.

Sen. Laffen -- Seconded.

Sen. Triplett -- I am going to vote against them because Ms. Wald says the bill would be ineffective without them. So if the amendments weren't on, my concerns would be taken care of.

Sen. Cook -- She said that?

Sen. Triplett -- She did, yes. I thought you said that without these amendments you wouldn't be able to share the information.

(Dee Wald spoke off microphone and her response was not recorded.)

Roll call vote on amendment 6-1-0

Sen. Cook -- We have before us HB1060, as amended.

Sen. Bekkedahl -- I would move a do pass on HB1060, as amended.

Sen. Unruh -- Seconded

Roll call vote 4-3-0. Carried

Carrier: Sen. Bekkedahl.

March 17, 2015

TV
3/17/15

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1060

Page 1, line 1, replace the second "and" with a comma

Page 1, line 2, after "57-38-57" insert ", and a new subsection to section 57-39.2-23"

Page 2, after line 12, insert:

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

9. The commissioner may provide the department of commerce information obtained through the administration of the sales tax under this chapter or the use tax under chapter 57-40.2. A request by the department of commerce for information must be in writing and must be limited to information necessary to evaluate the degree of success and compliance with statutory or contractual performance standards established for employers who received economic development assistance from this state. A request under this subsection does not require the commissioner to compile or create a record, including compiling or creating a record that does not exist from electronically stored information. Information received by the department of commerce under this subsection is not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota and may not be disclosed by the department of commerce except in an aggregate format that does not allow the identification of a taxpayer and does not contain any information in the returns or reports filed by a taxpayer."

Renumber accordingly

Date: 3.17.15

Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO HB 1060

Senate Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: Proposed Amendment prepared by
Office of Tot Commissioner

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Sen Bekkedahl Seconded By Sen. Laffen

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook	✓		Senator Jim Dotzenrod	✓	
Vice Chairman Lonnie Laffen	✓		Senator Connie Triplett		✓
Senator Brad Bekkedahl	✓				
Senator Dave Oehlke	✓				
Senator Jessica Unruh	✓				

Total (Yes) 6 No 1

Absent 0

Floor Assignment _____

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

Date: 3.17.15

Roll Call Vote #: 2

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO HB 1060

Senate Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: 15.0054.03001 Title .04000

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider

Motion Made By: Sen. Bekkedahl Seconded By Sen. Unruh

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook	✓		Senator Jim Dotzenrod	✓	
Vice Chairman Lonnie Laffen		✓	Senator Connie Triplett		✓
Senator Brad Bekkedahl	✓				
Senator Dave Oehlke		✓			
Senator Jessica Unruh	✓				

Total (Yes) 4 No 3

Absent 0

Floor Assignment Sen. Bekkedahl

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

REPORT OF STANDING COMMITTEE

HB 1060: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (4 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1060 was placed on the Sixth order on the calendar.

Page 1, line 1, replace the second "and" with a comma

Page 1, line 2, after "57-38-57" insert ", and a new subsection to section 57-39.2-23"

Page 2, after line 12, insert:

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

9. The commissioner may provide the department of commerce information obtained through the administration of the sales tax under this chapter or the use tax under chapter 57-40.2. A request by the department of commerce for information must be in writing and must be limited to information necessary to evaluate the degree of success and compliance with statutory or contractual performance standards established for employers who received economic development assistance from this state. A request under this subsection does not require the commissioner to compile or create a record, including compiling or creating a record that does not exist from electronically stored information. Information received by the department of commerce under this subsection is not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota and may not be disclosed by the department of commerce except in an aggregate format that does not allow the identification of a taxpayer and does not contain any information in the returns or reports filed by a taxpayer."

Renumber accordingly

2015 TESTIMONY

HB 1060

1.
3.17.15

PROPOSED AMENDMENTS TO HOUSE BILL 1060

Page 1, line 1, after "52-01-03" insert ",",

Page 1, line 1, remove the second "and"

Page 1, line 2, after "57-38-57" insert ", and a new subsection to section 57-39.2-23"

Page 2, after line 12, insert:

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

The commissioner may provide the department of commerce information obtained in the administration of the sales tax under this chapter or use tax under chapter 57-40.2. A request by the department of commerce for information must be in writing and must be limited to information necessary to evaluate the degree of success and compliance with statutory or contractual performance standards established for employers who received North Dakota state economic development assistance. A request under this subsection does not require the commissioner to compile or create a record, including compiling or creating a record from electronically stored information, which does not exist. Information received by the department of commerce under this subsection may not be divulged by the department of commerce except in an aggregate format that does not permit taxpayer identification and any information contained in the returns or reports filed by a taxpayer."

Renumber accordingly