

2015 HOUSE FINANCE AND TAXATION

HB 1082

2015 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1082
1/13/2015
21885

- Subcommittee
 Conference Committee

Committee Clerk Signature

Mary Brucher

Explanation or reason for introduction of bill/resolution:

A Bill relating to application of property taxes to the value or the leasehold interest in state lands leased for pasture or grazing purposes.

Minutes:

No attachments.

Chairman Headland: Opened hearing.

Representative Keiser: Introduced bill. This section of the code deals with exemptions from property tax for counties and cities, etc. During the interim we went around the state and looked at various state properties and considered what to do with some properties and how to improve the utilization of some of the spaces. When we were at the State Hospital in Jamestown, which has in large part been converted to a prison, they have a significant amount of land that's owned by and operated by the prison that they have adjacent to the actual facilities. They lease that property for commercial application such as grazing and that sort of thing. We asked if they pay rent for the right to use this land and they said yes. We then asked if they pay taxes to the county in lieu of not owning it and they said no. We didn't think that sounded right. If that land were owned by you or me we would be using it for the same purpose and we would be paying taxes to the county and the city and whoever. I asked John Walstad at Legislative Council and he didn't have any idea how it got into law but the intent of this law was to make sure the state remains exempt from paying the taxes but there isn't an in lieu of tax payment to be made to the local political subdivision. That's the purpose of this bill.

Chairman Headland: I believe the way the leases are advertised is when you bid on that State Hospital property you are bidding on a per acre basis along with the tax burden of the property. The county is getting the taxes; it's just the lessee is paying the way it currently is. Your bill would say that this is the proper way to do things and the state is not responsible for those taxes?

Representative Keiser: That is correct.

Chairman Headland: Any questions for Representative Keiser? Any testimony in support?

Alex Schweitzer, Superintendent of North Dakota State Hospital: Your assessment of the tax situation is correct. We lease the property and the lease provides the taxes to the county. The state does not pay the taxes. The property is managed by the State Hospital, not by the State Prison. The person that has the lease should be paying the taxes.

Representative Trottier: Does the person doing the leasing pay it directly to the county or do you pay it?

Alex Schweitzer: The person with the lease pays it directly to the county. We have nothing to do with the taxes. We simply have a lease arrangement and they pay the taxes as part of their lease.

Chairman Headland: When we pay our property taxes we pay a year in rears so how does that all wash out?

Alex Schweitzer: I'm not sure. When we have the lease they are required to pay the taxes; we don't get involved in that at all.

Chairman Headland: Any other testimony in support? Is there any opposition to 1082? Would the tax department care to clarify anything related to 1082?

Representative Strinden: Are there any other examples in state law where someone doesn't own the property but pays the taxes on the property?

Chairman Headland: That would be a question for the tax department.

Sara Meier, Tax Department: Any leasehold interest in government owned property is subject to taxation. If the city owned a lot and somebody was using that lot they would have a lease hold interest in government property the lessee would pay the taxes.

Representative Schneider: What payment is the state making on the grazing land at the State Hospital?

Sara Meier, Tax Department: It would be that lease agreement that Mr. Schweitzer was talking about.

Representative Schneider: The way it's worded it says its payments made by the state in lieu of property taxes.

Sara Meier, Tax Department: The only other situation I can think of is land department who makes payments in lieu on their board of university and school lands which goes directly to the schools.

Representative Schneider: I would think it would be made to the states. I'm looking at 38 lines eight and nine.

Vice Chairman Owens: Currently in law it says property is exempt from property tax and state owned land that is leased is exempted from property tax if it's leased for pasture or grazing or payments in lieu of property tax. This bill removes if it's leased for pasture or grazing purposes. Anybody leasing pasture or grazing land from the state would then have to either pay taxes in lieu of or pay property tax.

Representative Schneider: I understand that was the intended outcome. I'm having a problem with the language.

Vice Chairman Owens: They're saying if you already pay taxes in lieu of property tax then you're exempt from property tax because you are already making a tax payment in another area to compensate for it.

Representative Froseth: The way I understand it is that it's the property that's leased to a university or some other organization where they pay in lieu of property tax on that leased property.

Representative Schneider: But doesn't it pay to the state rather than by the state?

Representative Froseth: This is just one subsection of section one so you'd really have to read the whole code to understand that.

Representative Schneider: I'll go back and read that.

Vice Chairman Owens: I just wanted to clarify this for the representative that this is property tax too so it's never paid to the state because the state doesn't collect property tax. It's paid to the counties and cities and schools.

Chairman Headland: I think we can take action on the bill while we're waiting.

Representative Froseth: Made a motion for a Do Pass.

Representative Dockter: Seconded.

Roll Call Vote: 14 yes 0 no
Motion carries.

Representative Schneider will carry this bill.

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

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1082

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. Froseth Seconded By Rep. Dockter

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) 14 No 0

Absent —

Floor Assignment Rep. Schneider

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

REPORT OF STANDING COMMITTEE

HB 1082: Finance and Taxation Committee (Rep. Headland, Chairman) recommends DO PASS (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1082 was placed on the Eleventh order on the calendar.

2015 SENATE FINANCE AND TAXATION

HB 1082

2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

HB1082
3/4/2015
Job #24301

- Subcommittee
 Conference Committee

Committee Clerk Signature

Alice Grove

Explanation or reason for introduction of bill/resolution:

Relating to application of property taxes to the value or the leasehold interest in state lands leased for pasture or grazing purposes; and to provide an effective date.

Minutes:

Vice Chairman Laffen opened the hearing on the HB1082.

Rep. George Keiser, Dist. 47, appeared and summarized HB1082. This is a very simple bill. It is simply a clarification bill. During the interim, we were out at the state prison in Jamestown and they lease a lot of land there. We got into a discussion about how much land do we have, how much are we leasing, etc., and we started to ask questions about what's the tax structure. If we are leasing it for commercial gain, is there an in lieu of taxes, or is there a property tax being assessed on that property? It appeared that there was an inconsistency in the current law. I went to the legislative council and the council said this isn't clear. We should clarify it and so this is simply a housekeeping bill to make it clear what the tax structure is on state land that is leased to the private sector and its implication. The leasehold interest in property owned by the state upon which payments, in lieu of property taxes, are made by the state, whether its pasture grazing or anything else, we are going to pay.

Senator Laffen -- You are saying the state is going to pay?

Rep Keiser -- No, the lessor is going to pay, in lieu of taxes. They are paying now. It just sort of suggested that you are going to pay under this condition but not under other conditions.

Senator Bekkedahl -- It really goes to the possessory taxes as well when these people are using state owned land, isn't that correct?

Rep. Keiser -- I don't know the answer to that but the tax department is here and they could answer that.

Senator Bekkedahl -- It's all a payment in lieu of taxes, but I think they call it a possessory interest on a property and that is what the assessors call it. I agree with what you are doing here. It makes all the sense in the world.

Senator Dotzenrod -- If there is someone here from the tax department, maybe they could explain, when we strike those words out, which has been leased for pasture or grazing, are we changing the sentence so that now it says that it doesn't matter anymore how you use this: it doesn't have to be pasture or grazing, it could be tilled. It could be for a parking lot or it could be for staging some equipment that needs to be used in a construction project or for whatever reason. If it belongs to the state and someone is leasing it, the use that the person puts that property to is irrelevant. If it's owned by the state, it's going to have some payments in lieu of property taxes paid. Is that what we are doing here?

Senator Laffen -- That's the way I would read it. But if the tax department wants to clarify that, that would be awesome.

Dustin Bakken, Property Tax Specialist, Office of State Tax Commissioner -- On a side note, before serving here I was director of tax equalization for Stutsman County so I'm very familiar with the state hospital. Just a point of clarification for Senator Bekkedahl, yes, all those agricultural lands that are owned by the state hospital are taxed under a possessory interest and I believe that the language in the bill, as proposed, would essentially make everything owned by the state that possessory interest.

Senator Triplett -- Rep. Keiser suggested that there was some inconsistency in the law but then I think I heard him later in his testimony say that everyone is pretty well paying property taxes in lieu. Can you help me understand, where's the inconsistency in the law? Do we have a different statement somewhere else to the effect of taxation regarding other kinds of lands?

Dustin Bakken -- I do believe what he was referring to was that the state hospital owns numerous acres, approaching 1000 acres, about 75% to 85% of that is cropland which is taxed as a possessory interest, however, there are these little pockets of pastureland or grazing land that aren't taxed because of the language that is being struck out. That is the inconsistency that he was referring to. All those parcels are subject to a lease and those lessees are paying on that but some just don't pay the actual property tax to the language of the law.

Senator Dotzenrod -- The payments that are made by the state, are they made in the manner that a conventional property tax would be made? That is, there's a tax statement generated? If the state owns the land, it probably wouldn't have a tax statement. How does the math work? How do you determine on land, like around the hospital, what the payment is going to be if you are not going to have a conventional style property tax statement?

Dustin Bakken -- I do believe that is just language that would be addressed in that lease from the state. Usually the state didn't assume any property tax liability and it all fell back on that possessory interest. Therefore, the lessee would be responsible, 100%, for that tax. The other situation where Senator Oehlke referred to as the game and fish land that

actually does pay in lieu of, those are more specific for lands that are available for more of a public use that pay in lieu of and they get a portion such as same as any other property tax would.

Senator Dotzenrod -- I am going to assume that there is not a property tax statement, a conventional style property tax statement. Am I right about that?

Dustin Bakken -- You are correct. If a lessee has that possessory interest, however, that would generate a normal property tax statement. It would just have a separate parcel number but would still include the legal description and the value that was assessed.

No further testimony.

Vice Chairman Laffen closed the hearing on HB1082.

2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

HB1082
3/16/2015
Job #24906

- Subcommittee
 Conference Committee

Committee Clerk Signature

Alice Grove

Explanation or reason for introduction of bill/resolution:

Committee work

Minutes:

Attachment #1

Chairman Cook opened the committee work on HB1082.

Sen. Unruh -- I think you missed the hearing Sen. Cook.

Sen. Triplett -- After we were off the record I had a conversation with Dan Rouse and Dustin Bakken and they both agreed with some of the conversation that we were having in the committee that this language really does not accomplish what Rep. Keiser stated as his objective. Dan Rouse caught me in the hallway a couple of days ago and said that he and Dustin are working on an amendment for us.

Sen. Oehlke -- On 1082 we had talked about some of the different lands that might be applicable and I noticed that everybody's name was on the memo that came out. **(Attachment #1)** I printed it off and saved it but maybe Cole could run and make more copies for everyone. There were some questions about things like Game & Fish land. We know they pay taxes on some of the land that rent out or that they lease.

Committee work closed.

2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

HB1082
3/23/2015
Job #25233

- Subcommittee
 Conference Committee

Committee Clerk Signature

Alice Grove

Explanation or reason for introduction of bill/resolution:

Committee work

Minutes:

Attachment #1

Chairman Cook opened the committee work on HB1082.

Sen. Cook -- If you have amendments for any of the bills that are listed on the board, be prepared to work on those bills.

On HB1082, you should have an amendment before you. Dan, do you want to speak to these amendments? Linda is going to.

Linda Leadbetter, Office of State Tax Commissioner -- (**Attachment #1**) Basically, we feel the amendment addresses the idea of the property, trying to make it equal, that we are addressing the pastureland as well as the other agricultural properties that are held under lease from the state government and has the possessory interest taxes applied to it. It is just striking the language where it has been leased for the pasture grazing, we think we are addressing all of it. We are making sure that the language presented defines that the lease grazing pastureland then is not going to be exempted from it. They will be taxed as well as a possessory interest.

Sen. Cook -- I kind of forgot the whole bill. Oh, I wasn't here when it was heard? Everybody understand this? One question, term of years is correct?

Linda Leadbetter -- Correct. The way a possessory interest is considered for a lease for a term of years. We are making sure that we have identified that is a long-term lease and that is just making an agreement to that section of law.

Sen. Dotzenrod -- In these amendments where they take the leasehold interest in property and overstrike that and just use the word property instead, on line 7, the bill would just say property owned by the state, upon which payments... We are getting rid of that leasehold term. Does that substantially change anything? I don't know if I really understand leasehold interest, I suppose that means the share that would go to the state

on a lease; and then we've got this other section 2. We are still keeping section 1, aren't we? Has section 1 of this bill been deleted?

Linda Leadbetter -- That still remains, it's just a clarification of another section of law that was impacted by this change.

Sen. Dotzenrod -- So when we changed leasehold to property, does that change anything?

Linda Leadbetter -- I do not believe so. I think that is just addressing the type of property.

Sen. Laffen -- The amendment is really just adding 1 more section that needs to do the same thing?

Linda Leadbetter -- Correct. This is something else that, by reading this initial bill draft, there was another section that would have been impacted, if we didn't address it there they would contradict each other.

Sen. Laffen -- Do you want me to remind you what we think this was for?

Sen. Cook -- Sure.

Sen. Laffen -- There was a group that went to the state hospital on a tour for something unrelated to this bill and the state hospital had some property out back that they were using, not for pastureland, and the question came up, do you pay a fee in lieu of taxes, even though it is not pastureland, and they were. They realized that this needed to be clarified so that anybody leasing state property for any use should pay and not just pastureland. That is what this is trying to fix.

Linda Leadbetter -- And, then also to address that those who are already paying in lieu, we wanted to make sure that was addressed.

Sen. Laffen -- At the risk of carrying this now when it gets done.

Sen. Bekkedahl -- The leasehold interest in property owned by the state upon which payment in lieu of property taxes are made by the state, is the term leasehold interest also reflective of the term possessory interest? That is what I am used to dealing with when I deal with these issues. I want to make sure that we are using the terminology that best fits what people would understand.

Linda Leadbetter -- Yes, that is what it is. It is addressed as the leasehold here and then we apply that as a possessory interest to create a parcel. We have a tax exempt entity that owns property.

Sen. Bekkedahl -- So that is a technical interpretation that you use behind the scenes. We don't need to reflect possessory interest anywhere in statute then.

Linda Leadbetter -- That's correct because we use the leasehold to help us define a possessory interest parcel.

Dan Rouse, Legal Counsel to Tax Commissioner -- For what it's worth I did want to let you know that I visited with Rep. Keiser and he understood the amendments and he was in support of them as well.

Sen. Cook -- Committee, your wishes?

Sen. Triplett -- I will move the amendment offered by the office of tax commissioner.

Sen. Bekkedahl -- Seconded.

Sen. Cook -- All in favor of approving the amendments, signify by saying aye. Carried.

Sen. Cook -- We have before us, HB1082, as amended.

Sen. Oehlke -- Move do pass, as amended.

Sen. Laffen -- Seconded.

Roll call vote on HB1082, as amended. 7-0-0.

Carrier: Sen. Laffen

March 23, 2015

TD
3/23/15

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1082

Page 1, line 1, after "57-02-08" insert "and subsection 1 of 57-02-26"

Page 1, line 7, overstrike "The leasehold interest in property" and insert immediately thereafter
"Property"

Page 1, after line 9, insert:

"SECTION 2. AMENDMENT. Subsection 1 of section 57-02-26 of the North Dakota Century Code is amended and reenacted as follows:

1. Property held under a lease for a term of years, or under a contract for the purchase thereof, belonging to the United States or to the state or a political subdivision thereof, except such lands as ~~have been leased for pasture or grazing purposes or~~ upon which the state makes payments in lieu of property taxes, or to any religious, scientific, or benevolent society or institution, whether incorporated or unincorporated, or to any railroad corporation whose property is not taxed in the same manner as other property, must be considered, for all purposes of taxation, as the property of the person so holding the same."

Renumber accordingly

Date: 3-23-15

Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO HB 1082

Senate Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: proposed Amendments to HB 1082
offered by office of Tax 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. Triplett Seconded By Sen. Bekkedahl
voice vote aye all in favor

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) _____ No _____

Absent _____

Floor Assignment _____

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

Date: 3.23.15

Roll Call Vote #: 2

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO HB1082

Senate Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: 15.0151.01001 Title .02000

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. Oehlke 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) 7 No 0

Absent 0

Floor Assignment Sen. Laffen

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

REPORT OF STANDING COMMITTEE

HB 1082: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1082 was placed on the Sixth order on the calendar.

Page 1, line 1, after "57-02-08" insert "and subsection 1 of 57-02-26"

Page 1, line 7, overstrike "The leasehold interest in property" and insert immediately thereafter "Property"

Page 1, after line 9, insert:

"SECTION 2. AMENDMENT. Subsection 1 of section 57-02-26 of the North Dakota Century Code is amended and reenacted as follows:

1. Property held under a lease for a term of years, or under a contract for the purchase thereof, belonging to the United States or to the state or a political subdivision thereof, except such lands as have been leased for pasture or grazing purposes or upon which the state makes payments in lieu of property taxes, or to any religious, scientific, or benevolent society or institution, whether incorporated or unincorporated, or to any railroad corporation whose property is not taxed in the same manner as other property, must be considered, for all purposes of taxation, as the property of the person so holding the same."

Renumber accordingly

2015 TESTIMONY

HB 1082

TAX BILL

1.
LB 1082
3-16-15

STATE LAND BOARD PROPERTY (Excluding "Original Grant Lands")

57-02.3-01. Definition.

As used in this chapter, unless the context or subject matter otherwise clearly indicates, "property subject to valuation" means real property owned by the board of university and school lands or by the state treasurer as trustee for the state of North Dakota, title to which was obtained after January 1, 1980, by foreclosure or deed in lieu of foreclosure of a mortgage given to the Bank of North Dakota, including a mortgage assigned to the state treasurer under section 54-30-02. "Property subject to valuation" also means real property owned by the board of university and school lands or by the state treasurer as trustee for the state of North Dakota, title to which was obtained on or before January 1, 1980, and which is leased to a leaseholder who uses the property for growing hay or crops.

57-02.3-02. Imposition of in lieu of tax payments.

The board of university and school lands shall annually make payments, subject to legislative appropriations, to any county in which property subject to valuation is located. The payments are in lieu of ad valorem taxes that would be payable to the county if the real property for which the payments are made were not owned by the state. This chapter does not affect the provisions of chapter 57-29.

ORIGINAL GRANT LANDS

15-04-23. County services benefiting school trust lands - Payment - Continuing appropriation.

On or before March first of each year, the board of university and school lands shall pay a fee to the board of county commissioners of each county in which the state retains original grant lands if that county has requested payment under this section and included certification of the number of mills levied for county road and bridge purposes. The board of county commissioners shall forward a prorated portion of any fee received under this section to the organized townships in which the original grant lands are located for use in the repair, maintenance, and construction of roads and bridges and shall use the remainder of the fee for the repair, maintenance, and construction of roads and bridges in unorganized townships in which original grant lands are located. The total fees paid under this section may not be in an amount greater than the amount of property taxes that would have been payable if the original grant lands in the county had been subject to property tax levies. There is appropriated annually the amounts necessary to pay all fees under this section. Each payment must be made from the trust fund for which the land is held.

PROPERTY OWNED OR LEASED BY STATE GAME & FISH

57-02.1-01. Definition.

As used in this chapter, unless the context or subject matter otherwise clearly indicates, "property subject to valuation" means real property owned by the state or real property leased or held by lease or license from the United States or a political subdivision of this state, and controlled by the state game and fish department but does not include any land leased by such department if such land is being assessed for ad valorem taxation to the owner.

57-02.1-02. Imposition of payments.

The director of the game and fish department shall annually make payments, subject to legislative appropriations, to the counties in which property subject to valuation is located pursuant to the provisions of this chapter. The payments are in lieu of taxes which would otherwise be available to the counties if the real property upon which these payments are based were not owned by the state, United States, or a political subdivision of this state.

1.
3-23-15
HB 1082

PROPOSED AMENDMENTS TO HOUSE BILL 1082

Page 1, line 1, after "57-02-08" insert "and subsection 1 of section 57-02-26"

Page 1, line 7, overstrike "The leasehold interest in property" and insert immediately thereafter
"Property"

Page 1, after line 9, insert:

"SECTION 2. AMENDMENT. Subsection 1 of section 57-02-26 of the North Dakota Century Code is amended and reenacted as follows:

1. Property held under a lease for a term of years, or under a contract for the purchase thereof, belonging to the United States or to the state or a political subdivision thereof, except such lands as have been leased for pasture or grazing purposes or upon which the state makes payments in lieu of property taxes, or to any religious, scientific, or benevolent society or institution, whether incorporated or unincorporated, or to any railroad corporation whose property is not taxed in the same manner as other property, must be considered, for all purposes of taxation, as the property of the person so holding the same."

Renumber accordingly