

FISCAL NOTE
Requested by Legislative Council
02/16/2015

Amendment to: HB 1401

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

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

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

Engrossed HB 1401 authorizes the study of sales taxation as it relates to purchases by contractors on behalf of a tax exempt entity.

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

Engrossed HB 1401 has no fiscal impact.

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

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

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

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

Name: Kathryn L. Strombeck

Agency: Office of Tax Commissioner

Telephone: 328-3402

Date Prepared: 02/17/2015

FISCAL NOTE
Requested by Legislative Council
01/19/2015

Bill/Resolution No.: HB 1401

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

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			\$(51,100,000)	\$(4,900,000)		
Expenditures						
Appropriations						

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

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

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

HB 1401 creates a sales and use tax exemption for items being utilized by a non-profit entities.

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

HB 1401 creates a sales and use tax exemption for purchases made by a contractor for use in a project or expansion for a nonprofit entity. If enacted, HB 1401 is expected to reduce state general fund and state aid distribution fund revenues by an estimated \$56 million in the 2015-17 biennium.

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

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*
- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*
- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Name: Kathryn L. Strombeck

Agency: Office of Tax Commissioner

Telephone: 328-3402

Date Prepared: 01/26/2015

2015 HOUSE FINANCE AND TAXATION

HB 1401

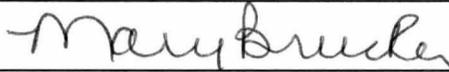
2015 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1401
1/28/2015
22725

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A bill relating to a sales and use tax exemption for purchases made by a contractor, subcontractor, or builder on behalf of an exempt entity.

Minutes:

Attachment #1

Chairman Headland: Opened hearing.

Representative Weisz: Introduced bill. We're not changing the purpose of this bill. This bill eliminates a contractor from having to pay a use tax when doing business with an exempt entity. The fiscal note is roughly \$55 million. It's nearly a shift; it's a transfer for the local political subdivisions. We are not adding a new category of tax exempt entities; they currently don't pay sales tax anyway.

Chairman Headland: Couldn't you make the argument that in every instance when the use tax is applied the beneficiary of the use tax is paying the use tax?

Representative Weisz: That is correct but in many of those cases they are not exempt anyway so they would pay the sales tax regardless. I looked at eliminated the use tax completely but that became a much larger argument. My issue is that if these entities are all exempt from sales tax then why should they be paying the use tax.

Chairman Headland: I suspect the answer would be that you're utilizing someone else's service and that service is something that we tax.

Representative Trottier: Do you suppose this could end up either with property tax reduction or will it show up as legislative property tax relief?

Representative Weisz: If I could, I would take the money from the local political subdivisions as property tax relief.

Chairman Headland: Unfortunately that's an argument we could make across government. The cost of government raises the cost of everything.

Representative Weisz: That's not the point I'm trying to make. The reality is that we're shifting. We can argue what we should spend in government but that's not the purpose of my debate. We're increasing costs to an agency but then it looks good because we have revenue coming in on the use tax; we're robbing Peter to pay Paul.

Chairman Headland: I think your point is taken. Would you consider trying to narrow the scope? You've talked a lot about political subdivisions. Sanford is spending hundreds of millions of dollars in Fargo and there's a lot of tax being generated because they have quite a few subcontractors and contractors that are not employees. There's a lot of tax being generated there.

Representative Weisz: I don't know when we made hospitals tax exempt. Yes they are generating hundreds of millions but we already decided they're exempt. I don't think we want to encourage people to play games to get around paying the tax.

Representative Klein: Could you also open it up then to schools, school districts, colleges, and so forth?

Representative Weisz: Absolutely, if they're exempt from paying taxes. The contractor would be exempt from having to charge the use tax.

Representative Steiner: Who polices line 15 that they completely consumed their product and that they didn't take it to another job?

Representative Weisz: The tax department could better answer that but anyone who has a sales and use tax permit is subject to audit.

Chairman Headland: We'll take support of HB 1401. Is there opposition? Tax department has some amendments.

Myles Vosberg, Tax Commissioner's Office: Provided proposed amendments and explained. See attachment #1. The original draft of the bill created an exemption for sales tax in the sales tax law when contractors purchase materials but it failed to include the use tax which the contractor is liable for. It had to be in both places; the sales and use tax laws. All this does is add language to the use tax law to carry out the intent of the bill.

Chairman Headland: If a nonprofit or a political subdivision hires a private contractor to install a product, they aren't paying both a sales and use tax when they do that?

Myles Vosberg: That is correct. The tax is due once; it's either sales or use tax.

Chairman Headland: Any further questions for the tax department? We will close the hearing on HB 1401.

2015 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1401
2/9/2015
23526

- Subcommittee
 Conference Committee

Committee Clerk Signature *Mary Brucher*

Explanation or reason for introduction of bill/resolution:

A bill relating to a sales and use tax exemption for purchases made by a contractor, subcontractor, or builder on behalf of an exempt entity.

Minutes:

Attachment #1

Myles Vosberg, Office of State Tax Commissioner: Distributed proposed amendments dated January 28, 2015 and explained. See attachment #1. The intent of this bill is to exempt from sales and use tax all the materials used by contractors in construction projects when the owner of that project is an exempt entity. This amendment says if the owner of the project is exempt then the contractor is also exempt.

Chairman Headland: That would certainly add on to the fiscal note, would it not?

Myles Vosberg: I believe the fiscal note already considered that it was both sales and use tax. There shouldn't be a change to the fiscal note.

Chairman Headland: This is just adding language that refers to the use tax which has already been implied by the fiscal note.

Representative Trottier: MADE A MOTION TO ADOPT THE AMENDMENT DATED JANUARY 28, 2015.

Representative Hatlestad: Seconded.

Chairman Headland: DID NOT ACCEPT THE MOTION. Representative Weisz has requested that we hold this bill for now. Let's wait for a bit and we'll discuss this later.

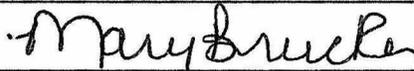
2015 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1401
2/10/2015
23576

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A bill relating to a sales and use tax exemption for purchases made by a contractor, subcontractor, or builder on behalf of an exempt entity.

Minutes:

Attachment #1

Chairman Headland: We had discussion yesterday and we were going to hold this for Representative Weisz. He hasn't been able to come up with anything. We have the amendment prepared by the tax department that we should put on the bill. This was clarifying the use tax portion. See attachment #1 of the amendment.

Vice Chairman Owens: MADE A MOTION TO ADOPT THE AMENDMENT DATED JANUARY 28, 2015.

Representative Schneider: SECONDED.

VOICE VOTE: MOTION CARRIES.

Representative Dockter: MADE A MOTION FOR A DO NOT PASS AS AMENDED.

Representative Klein: SECONDED.

Representative Trottier: On line 13 page 1, would that be more palatable if that was for political subdivisions and take out exempt entities?

Chairman Headland: It may have been more palatable; it certainly would be an altogether different bill because this was directed at one area. For us to make that change would be a stretch.

ROLL CALL VOTE: 11 YES 3 NO 0 ABSENT
MOTION CARRIES FOR A DO NOT PASS AS AMENDED.

Representative Haak will carry this bill.

2015 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1401
2/11/2015
23660

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A bill relating to a sales and use tax exemption for purchases made by a contractor, subcontractor, or builder on behalf of an exempt entity.

Minutes:

Attachment #1

Chairman Headland: I had a request from the bill sponsor to turn this into a study.

Representative Dockter: MADE A MOTION TO RECONSIDER OUR ACTIONS WHERE WE HAD A DO NOT PASS AS AMENDED.

Representative Hatlestad: SECONDED.

ROLL CALL VOTE: MOTION CARRIES.

Chairman Headland: Distributed proposed amendments 15.0952.02001. See attachment #1. This amendment turns this bill into a study.

Representative Haak: MADE A MOTION TO ADOPT THE AMENDMENT.

Representative Dockter: SECONDED.

VOICE VOTE: MOTION CARRIED.

Representative Klein: MADE A MOTION FOR A DO PASS AS AMENDED.

Representative Dockter: SECONDED.

ROLL CALL VOTE: 12 YES 0 NO 2 ABSENT
MOTION CARRIED FOR DO PASS AS AMENDED.

Representative Haak will carry this bill.

PROPOSED AMENDMENTS TO HOUSE BILL 1401

Page 1, line 3, after "entity" insert "; to amend and reenact section 57-40.2-03.3 of the North Dakota Century Code, relating to use tax on contractors"

Page 2, after line 3, insert:

"SECTION 2. AMENDMENT. Section 57-40.2-03.3 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-03.3. (Effective through June 30, 2017) Use tax on contractors.

1. When a contractor or subcontractor uses tangible personal property in the performance of that person's contract, or to fulfill contract or subcontract obligations, whether the title to such property be in the contractor, subcontractor, contractee, subcontractee, or any other person, or whether the titleholder of such property would be subject to pay the sales or use tax, such contractor or subcontractor shall pay a use tax at the rate prescribed by section 57-40.2-02.1 measured by the purchase price or fair market value of such property, whichever is greater, unless such property has been previously subjected to a sales tax or use tax by this state, and the tax due thereon has been paid.
2. The provisions of this chapter pertaining to the administration of the tax imposed by section 57-40.2-02.1, not in conflict with the provisions of this section, govern the administration of the tax levied by this section.
3. The tax imposed by this section does not apply to medical equipment purchased as tangible personal property by a hospital or by a long-term care facility as defined in section 50-10.1-01 and subsequently installed by a contractor into such hospital or facility.
4. The tax imposed by this section does not apply to:
 - a. Production equipment or tangible personal property as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.2;
 - b. Machinery, equipment, or other tangible personal property used to construct an agricultural commodity processing facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.3 or 57-39.2-04.4;
 - c. Tangible personal property used to construct or expand a system used to compress, process, gather, or refine gas recovered from an oil or gas well in this state or used to expand or build a gas-processing facility in this state as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.5;
 - d. Tangible personal property used to construct or expand a qualifying oil refinery as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.6;
 - e. Tangible personal property used to construct or expand a qualifying facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.10;
 - f. Tangible personal property used to construct or expand a qualifying facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.11; or

- g. Telecommunications infrastructure that is capable of providing telecommunications service as authorized or approved for exemption by the commissioner under chapter 57-39.2; or
- h. Materials, supplies, or equipment used in a contract with an exempt entity, as defined in Section 1 of this Act. In order for this exemption to apply, ownership of the tangible personal property used must transfer to the exempt entity upon completion of performance of the contract.

(Effective after June 30, 2017) Use tax on contractors.

1. When a contractor or subcontractor uses tangible personal property in the performance of that person's contract, or to fulfill contract or subcontract obligations, whether the title to such property be in the contractor, subcontractor, contractee, subcontractee, or any other person, or whether the titleholder of such property would be subject to pay the sales or use tax, such contractor or subcontractor shall pay a use tax at the rate prescribed by section 57-40.2-02.1 measured by the purchase price or fair market value of such property, whichever is greater, unless such property has been previously subjected to a sales tax or use tax by this state, and the tax due thereon has been paid.
2. The provisions of this chapter pertaining to the administration of the tax imposed by section 57-40.2-02.1, not in conflict with the provisions of this section, govern the administration of the tax levied by this section.
3. The tax imposed by this section does not apply to medical equipment purchased as tangible personal property by a hospital or by a long-term care facility as defined in section 50-10.1-01 and subsequently installed by a contractor into such hospital or facility.
4. The tax imposed by this section does not apply to:
 - a. Production equipment or tangible personal property as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.2;
 - b. Machinery, equipment, or other tangible personal property used to construct an agricultural commodity processing facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.3 or 57-39.2-04.4;
 - c. Tangible personal property used to construct or expand a system used to compress, process, gather, or refine gas recovered from an oil or gas well in this state or used to expand or build a gas-processing facility in this state as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.5;
 - d. Tangible personal property used to construct to expand a qualifying oil refinery as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.6;
 - e. Tangible personal property used to construct or expand a qualifying facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.10; ~~or~~
 - f. Tangible personal property used to construct or expand a qualifying facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.11; or
 - g. Materials, supplies, or equipment used in a contract with an exempt entity, as defined in Section 1 of this Act. In order for this exemption to apply, ownership of the tangible personal property used must transfer to the exempt entity upon completion of performance of the contract.

Renumber accordingly

Handwritten initials/signature

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1401

Page 1, line 1, after "A BILL" replace the remainder of the bill with " for an Act to provide for a legislative management study of sales and use taxation application for purchases by contractors on behalf of an exempt entity

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY. During the 2015-2016 interim, the legislative management shall consider studying sales and use taxation application for purchases by contractors on behalf of an exempt entity. The legislative management shall report its findings and recommendations, to the sixty-fifth legislative assembly."

Renumber accordingly

Date: 2-10-15
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1401

House Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: Office of State Tax Commissioners see attachment #1

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. Owens Seconded By Rep. Schneider

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) _____ No _____

Absent _____

Floor Assignment _____

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

Voice vote = Motion carries.

Date: 2-10-15
Roll Call Vote #: 2

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1401

House Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: Jan. 28, 2015

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. Dockter Seconded By Rep. Klein

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) 11 No 3

Absent -

Floor Assignment Rep. Haak

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

Date: 2-11-15
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1401

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
Do not pass as amended.

Motion Made By Rep Doelter 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) _____ No _____

Absent _____

Floor Assignment _____

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

Voice vote = Motion carries.

Date: 2-11-15
Roll Call Vote #: 2

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1401

House Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: 15.0952-01002 see attachment #1

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. Haak 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) _____ No _____

Absent _____

Floor Assignment _____

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

Voice vote = Motion carried.

Date: 2-11-15
Roll Call Vote #: 3

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1401

House Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: 15.0952.02001

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. Dockter

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

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep. Haak

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

REPORT OF STANDING COMMITTEE

HB 1401: Finance and Taxation Committee (Rep. Headland, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1401 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with " for an Act to provide for a legislative management study of sales and use taxation application for purchases by contractors on behalf of an exempt entity.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY. During the 2015-2016 interim, the legislative management shall consider studying sales and use taxation application for purchases by contractors on behalf of an exempt entity. The legislative management shall report its findings and recommendations, to the sixty-fifth legislative assembly."

Renumber accordingly

2015 SENATE FINANCE AND TAXATION

HB 1401

2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

HB1401

3/10/2015

Recording job number 24567

Subcommittee

Conference Committee

Committee Clerk Signature

Debra E. Perez

Explanation or reason for introduction of bill/resolution:

A bill for an Act to provide for a legislative management study of sales and use taxation application for purchases by contractor on behalf of an exempt entity.

Minutes:

Attachment #1, #2

Vice Chairman Laffen opened the hearing on HB1401.

Rep. Robin Weisz: I introduced the bill to eliminate the need for contractors to pay use tax on business they do with exempt entities, like state DOT, counties, townships and certain exempt nonprofits such as hospitals, etc... The issue was, for example a township that does not pay sales tax, buys the culvert and I dig a ditch put the culvert in, cover it up myself, they don't pay tax on the culvert. Other example if you hire someone to dig the trench for the culvert and we lay the culvert in, and I cover it up we don't pay any sales tax on the culvert; if we hire someone to dig the trench, drop the culvert in and cover it up, the contractor has to pay sales tax on the culvert even thou he did not purchase it which then means he is going to add the tax to the overall price. We are shifting sales tax to property tax, the state collects sales or use tax on that purchase which means property tax goes up because they are in the end the ones who are going to pay for it. Same thing for hospitals, they install equipment, don't pay sales tax on it, if they buy it and hire someone to install it, that person has to pay the use tax, has to charge more, It had a \$55M fiscal note, mostly state projects. The House Finance and Tax turned it into a study. Probably it needs to be studied. (No written testimony) Urge you to look favorably on studying this issue. (No written testimony) (00:61- 4:43)

Sen Laffen - I see a lot of this going on in my district, where they avoid the contractor and go at it on their own, it is very complicated. There is some liability. If we put it back to your original bill would it have any chance?

Rep. Robin Weisz -- I would love that. The bill came forward from a local contractor, he got audited, and he does work for townships. He didn't own the gravel but was liable for the sale tax on it. Almost went out of business until we found a loophole: if he spreads the gravel and doesn't blade it he didn't have to pay the tax.

Sen. Dotzenrod -- Have we had this bill before? What if we fixed the problem part of the way but not all the way, by excluding the some entities?

Rep. Robin Weisz -- It had been introduced in the Senate; it has become a much broader issue. I would not object to limiting it.

Sen. Laffen -- It is just a revenue shift and it wouldn't cost us anything, because it isn't clear it will cause problems down the road.

Rep. Robin Weisz -- There is confusion about who does what.

Sen. Bekkedahl -- When we get to the final deliberations if the original bill was limited to governmental agencies. The fiscal note is not as bad as we think it is.

Rep. Robin Weisz -- The only fiscal impact would be to the nonprofits tax exempt entities. It would simplify things and be a win-win.

Larry Syverson, Chairman, Board of Supervisors of Roseville Township, Traill County, Executive Secretary ND Township officers Association -- (Attached testimony #1) Included "Christmas Tree" version of the original bill showing how the focus could be narrowed. Attachment #1-1.2 Urges support of bill. (16:04 - 17:42) Mr. **Vice-Chairman Laffen** we do not have an idea what the fiscal impact would be.

Sen. Bekkedahl -- You didn't include "state" in your Christmas tree.

Larry Syverson -- They weren't helping me fight so I didn't include them.

Jerry E. Jurena, President, North Dakota Hospital Association -- (Attached testimony #2) Requests HB1401 be returned to its original version. (19:03 - 20:04)

Sen. Triplett -- What is your best argument that you should be included in not paying sales taxes? Given that taxes are to help provide services to citizens.

Jerry E. Jurena -- nursing homes, hospitals are all reimbursed by the state for our allowable cost. Our costs come back to the state for reimbursement one way or another, (22:06 -23:12) Answered **Sen. Dotzenrod's** question about an earlier bill, it failed. (23:12-23:43)

No further testimony.

Vice Chairman Laffen -- Does it matter to the tax department if we turn this around?

Myles -- I'm not sure if it would make a difference.

Sen Triplett -- How about for auditing purposes? Is that a one-time event or are there others who get caught up? How big is the problem? One a year?

Myles -- It does happen. Contractors are installing something that they don't own. We try to promote that in our guidelines. I would say it is not a huge problem. The severity of the problem and you were a small contractor liability for that tax could be critical.

Vice Chairman Laffen -- I have a smoking gun we should discuss. Relates a story about UND & his company. (26:33 - 28:07)

Myles -- I would agree there would be additional savings. The part of the fiscal note that is not being considered here would be the federal government contracts. They are subject to tax.

Vice Chairman Laffen closed the hearing.

2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

HB1401
3/23/2015
Job #25244

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Committee work

Minutes:

Chairman Cook opened the committee work on HB1401.

Sen. Cook -- We will come back this afternoon and try to finish up the rest of these, if we can. If you are not ready, we will do them in the morning.

2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

HB1401
3/23/2015
Job #25278

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Committee work

Minutes:

Chairman Cook opened the committee work on HB1401.

Sen. Laffen -- One comment that I made right after the hearing, I think this is a bigger deal than most people who were working on this think. Right now, when they testified on this, most people think that the sales tax on construction simply is a turn-around from contractors to state and we are just spending that money and why do it. The more I thought about this, in reality contractors mark the project up 20%, and it's 20% on that tax. Engineers and architects mark that up. We're a lot less than engineers, but if it's an engineering project it's another 15. I would venture to say that 25% to 30% of this never gets back to the state. So there really isn't any sense in just turning that money out. I don't know if I want to go back to the original bill or not but certainly I think that we should study it. I would only want to go back if anybody else did. All the way back, I'm not seeing that.

Sen. Cook -- And your wishes, then?

Sen. Laffen -- I would move a do pass on engrossed HB1401.

Sen. Unruh -- Seconded.

No further discussion.

Sen. Cook -- We have a do pass on engrossed HB1401. Roll call vote 7-0-0. Carried.

Carrier : Sen. Laffen

Date: 3-23-15

Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1401

Senate 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 Sen. Laffen 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) 7 No 0

Absent 0

Floor Assignment Sen. Laffen

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

REPORT OF STANDING COMMITTEE

HB 1401, as engrossed: Finance and Taxation Committee (Sen. Cook, Chairman)
recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed HB 1401 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

HB 1404

HB 1401
1-28-15
#1 p.1

Prepared by the
Office of State Tax Commissioner
January 28, 2015

PROPOSED AMENDMENTS TO HOUSE BILL 1401

Page 1, line 3, after "entity" insert "; to amend and reenact section 57-40.2-03.3 of the North Dakota Century Code, relating to use tax on contractors"

Page 2, after line 3, insert:

"**SECTION 2. AMENDMENT.** Section 57-40.2-03.3 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-03.3. (Effective through June 30, 2017) Use tax on contractors.

1. When a contractor or subcontractor uses tangible personal property in the performance of that person's contract, or to fulfill contract or subcontract obligations, whether the title to such property be in the contractor, subcontractor, contractee, subcontractee, or any other person, or whether the titleholder of such property would be subject to pay the sales or use tax, such contractor or subcontractor shall pay a use tax at the rate prescribed by section 57-40.2-02.1 measured by the purchase price or fair market value of such property, whichever is greater, unless such property has been previously subjected to a sales tax or use tax by this state, and the tax due thereon has been paid.
2. The provisions of this chapter pertaining to the administration of the tax imposed by section 57-40.2-02.1, not in conflict with the provisions of this section, govern the administration of the tax levied by this section.
3. The tax imposed by this section does not apply to medical equipment purchased as tangible personal property by a hospital or by a long-term care facility as defined in section 50-10.1-01 and subsequently installed by a contractor into such hospital or facility.
4. The tax imposed by this section does not apply to:
 - a. Production equipment or tangible personal property as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.2;
 - b. Machinery, equipment, or other tangible personal property used to construct an agricultural commodity processing facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.3 or 57-39.2-04.4;
 - c. Tangible personal property used to construct or expand a system used to compress, process, gather, or refine gas recovered from an oil or gas well in this state or used to expand or build a gas-processing facility in this state as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.5;
 - d. Tangible personal property used to construct or expand a qualifying oil refinery as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.6;
 - e. Tangible personal property used to construct or expand a qualifying facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.10;
 - f. Tangible personal property used to construct or expand a qualifying facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.11; or

- g. Telecommunications infrastructure that is capable of providing telecommunications service as authorized or approved for exemption by the commissioner under chapter 57-39.2; or
- h. Materials, supplies, or equipment used in a contract with an exempt entity, as defined in Section 1 of this Act. In order for this exemption to apply, ownership of the tangible personal property used must transfer to the exempt entity upon completion of performance of the contract.

(Effective after June 30, 2017) Use tax on contractors.

1. When a contractor or subcontractor uses tangible personal property in the performance of that person's contract, or to fulfill contract or subcontract obligations, whether the title to such property be in the contractor, subcontractor, contractee, subcontractee, or any other person, or whether the titleholder of such property would be subject to pay the sales or use tax, such contractor or subcontractor shall pay a use tax at the rate prescribed by section 57-40.2-02.1 measured by the purchase price or fair market value of such property, whichever is greater, unless such property has been previously subjected to a sales tax or use tax by this state, and the tax due thereon has been paid.
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 - e. Tangible personal property used to construct or expand a qualifying facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.10; ~~or~~
 - f. Tangible personal property used to construct or expand a qualifying facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.11; or
 - g. Materials, supplies, or equipment used in a contract with an exempt entity, as defined in Section 1 of this Act. In order for this exemption to apply, ownership of the tangible personal property used must transfer to the exempt entity upon completion of performance of the contract."

Renumber accordingly

HB 1401
2-9-15
#1 p. 1

Prepared by the
Office of State Tax Commissioner
January 28, 2015

PROPOSED AMENDMENTS TO HOUSE BILL 1401

Page 1, line 3, after "entity" insert "; to amend and reenact section 57-40.2-03.3 of the North Dakota Century Code, relating to use tax on contractors"

Page 2, after line 3, insert:

"**SECTION 2. AMENDMENT.** Section 57-40.2-03.3 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-03.3. (Effective through June 30, 2017) Use tax on contractors.

1. When a contractor or subcontractor uses tangible personal property in the performance of that person's contract, or to fulfill contract or subcontract obligations, whether the title to such property be in the contractor, subcontractor, contractee, subcontractee, or any other person, or whether the titleholder of such property would be subject to pay the sales or use tax, such contractor or subcontractor shall pay a use tax at the rate prescribed by section 57-40.2-02.1 measured by the purchase price or fair market value of such property, whichever is greater, unless such property has been previously subjected to a sales tax or use tax by this state, and the tax due thereon has been paid.
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 - c. Tangible personal property used to construct or expand a system used to compress, process, gather, or refine gas recovered from an oil or gas well in this state or used to expand or build a gas-processing facility in this state as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.5;
 - d. Tangible personal property used to construct or expand a qualifying oil refinery as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.6;
 - e. Tangible personal property used to construct or expand a qualifying facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.10;
 - f. Tangible personal property used to construct or expand a qualifying facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.11; or

- g. Telecommunications infrastructure that is capable of providing telecommunications service as authorized or approved for exemption by the commissioner under chapter 57-39.2; or
- h. Materials, supplies, or equipment used in a contract with an exempt entity, as defined in Section 1 of this Act. In order for this exemption to apply, ownership of the tangible personal property used must transfer to the exempt entity upon completion of performance of the contract.

(Effective after June 30, 2017) Use tax on contractors.

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 - b. Machinery, equipment, or other tangible personal property used to construct an agricultural commodity processing facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.3 or 57-39.2-04.4;
 - c. Tangible personal property used to construct or expand a system used to compress, process, gather, or refine gas recovered from an oil or gas well in this state or used to expand or build a gas-processing facility in this state as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.5;
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 - e. Tangible personal property used to construct or expand a qualifying facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.10; ~~or~~
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 - g. Materials, supplies, or equipment used in a contract with an exempt entity, as defined in Section 1 of this Act. In order for this exemption to apply, ownership of the tangible personal property used must transfer to the exempt entity upon completion of performance of the contract.

Renumber accordingly

#B 1401
2-10-15
#1 p. 1

Prepared by the
Office of State Tax Commissioner
January 28, 2015

PROPOSED AMENDMENTS TO HOUSE BILL 1401

Page 1, line 3, after "entity" insert "; to amend and reenact section 57-40.2-03.3 of the North Dakota Century Code, relating to use tax on contractors"

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 - f. Tangible personal property used to construct or expand a qualifying facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.11; or

- g. Telecommunications infrastructure that is capable of providing telecommunications service as authorized or approved for exemption by the commissioner under chapter 57-39.2-; or
- h. Materials, supplies, or equipment used in a contract with an exempt entity, as defined in Section 1 of this Act. In order for this exemption to apply, ownership of the tangible personal property used must transfer to the exempt entity upon completion of performance of the contract.

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 - c. Tangible personal property used to construct or expand a system used to compress, process, gather, or refine gas recovered from an oil or gas well in this state or used to expand or build a gas-processing facility in this state as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.5;
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 - e. Tangible personal property used to construct or expand a qualifying facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.10; ~~or~~
 - f. Tangible personal property used to construct or expand a qualifying facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.11-; or
 - g. Materials, supplies, or equipment used in a contract with an exempt entity, as defined in Section 1 of this Act. In order for this exemption to apply, ownership of the tangible personal property used must transfer to the exempt entity upon completion of performance of the contract.

Renumber accordingly

HB 1401
2-11-15
#1

15.0952.02001
Title.

Prepared by the Legislative Council staff for
House Finance and Taxation Committee
February 11, 2015

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1401

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study of sales and use taxation application for purchases by contractors on behalf of an exempt entity."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY. During the 2015-16 interim, the legislative management shall consider studying sales and use taxation application for purchases by contractors on behalf of an exempt entity. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-fifth legislative assembly."

Renumber accordingly

In support of HB 1401

Senate Finance and Tax Committee

March 10, 2015

Good morning Chairman Cook and Committee Members.

I am Larry Syverson from Mayville, I raise soybeans on my farm in Traill County, I am the Chairman of the Board of Supervisors of Roseville Township of Traill County and I am also the Executive Secretary of the North Dakota Township Officers Association. NDTOA represents the 6,000 Township Officers that serve in more than 1,100 dues paying member townships.

NDTOA supports HB 1401 in any form, we supported it in its original form and that is possibly why it is still around, albeit as a study.

Our support for the original bill came in late because I was thrown off by the reference to "exempt entities" in the bill, which of course is a much larger group than "political subdivisions". I believe that larger group and the resulting large fiscal note led to the demise by study of HB 1401.

NDTOA is committed to eliminating this tax on tax dollars no matter what direction it has to go, reconstructing this bill, a study of the issue or failing all else, getting a more focused bill introduced in the 65th session.

I have included my "Christmas Tree" version of the original HB 1401 to illustrate how the focus could be narrowed to prevent much needed transportation funding dollars being side-tracked into "use tax", which becomes taxing to pay taxes. Please note that it specifies: Counties, Townships, Cities and Water Resource Districts and limits what can be exempted and where it has to be used.

Please give HB 1401 your favorable recommendation.

Thank you Chairman Cook and Committee Members, I will try to answer any questions you might have.

1.2
3.10.15

HOUSE BILL NO. 1401

Sixty-fourth Legislative Assembly

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-39.2 of the North Dakota Century Code is created and enacted as follows:

Exemption for road or highway materials acquired by a contractor on behalf of ~~an exempt entity~~ county, township, city or water resource district.

1. A contractor, subcontractor, or builder that acquires road or highway materials, culverts, supplies, or equipment for use in the performance of a contract with a ~~an exempt entity~~ county, township, city or water resource district is entitled to a sales and use tax exemption for the acquisition of those items of tangible personal property. To qualify for the exemption under this section, the contractor, subcontractor, or builder shall present to the retailer a purchasing agent authorization letter and an exemption certificate or exemption number from the ~~exempt entity~~ county, township, city or water resource district. Acquisition of road or highway building materials, culverts, supplies, or equipment is exempt under this exemption only to the extent the road or highway building materials, culverts, supplies, or equipment is installed or completely consumed in the performance of the contract with, and within a road right-of-way or easement of, the exempt entity a county, township, city or water resource district.

2. If the contractor, subcontractor, or builder is also a retailer holding a retail sales tax permit under this chapter and transacting retail sales of road or highway materials, culverts, supplies, or equipment, the exemption under this section applies to road or highway building materials, culverts, supplies, or equipment withdrawn from inventory for use in a contract with a ~~an exempt entity~~ county, township, city or water resource district if the person possesses a purchasing agent authorization letter and

1.3
HB 1401
3.10.15

exemption certificate or exemption number from the ~~exempt entity~~ county, township, city or water resource district.

~~3. For purposes of this section, "exempt entity" means an entity that, if it acquired tangible personal property on its own behalf, would be entitled to a sales or use tax exemption for that acquisition.~~

3. If the county, township, city or water resource district has purchased the road or highway materials, culverts, supplies or equipment and provides them for the contractor, subcontractor or builder to install or apply within the road right-of-way or easement of a county, township or city, the contractor, subcontractor or builder is exempt from any sales or use tax on those items.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable events occurring after

June 30, 2015.



Vision

The North Dakota Hospital Association will take an active leadership role in major Healthcare issues.

Mission

The North Dakota Hospital Association exists to advance the health status of persons served by the membership.

**Testimony: HB 1401
Sales and Use Tax Exemption
Senate Finance and Taxation Committee
March 10, 2015**

Good morning Chairman Cook and Members of the Senate Finance and Taxation Committee. I am Jerry E. Jurena, President of the North Dakota Hospital Association. I am here today asking for your consideration in returning HB 1401 to the original version.

A number of our rural hospitals in North Dakota are struggling with the increased population growth in the state. As a result hospital boards in many of the communities are trying to find viable options to remodel or construct new hospitals. The cost of construction is increasing each day, some projects have increased as much as 30% in one year. A small hospital will incur an additional cost of over one million dollars in sales tax during their construction.

Hospital boards are struggling with rapidly expanding populations, a shortage in the workforce and increasing construction costs. Returning HB 1401 to its original intent would create some relief to their financial issues.

I respectfully request that you give this your consideration.

Respectfully Submitted,

Jerry E. Jurena, President
North Dakota Hospital Association