

1999 HOUSE FINANCE AND TAXATION

HB 1054

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1054

House Finance and Taxation Committee

Conference Committee

Hearing Date January 11, 1999

Tape Number	Side A	Side B	Meter #
1		x	35.2 - 56
Committee Clerk Signature <i>Garnie Stein</i>			

Minutes:

REP. BELTER Opened the hearing.

JOHN WALSTAD, ATTORNEY, LEGISLATIVE COUNCIL, Appeared before the committee to explain the bill. Mr. Walstad explained HB 1051, 1052, 1053 and 1054 during the hearing for HB 1051.

DAVE UHLER, HANKINSON, PRESIDENT OF THE NORTH DAKOTA TURKEY FEDERATION. Testified in support of the bill. Proceeded to clarify the need for the changes in the bill. He explained the difference in raising their own feed versus purchasing it. He felt the source of feed should not be a determining factor in this bill. Regarding animals being raised on the farm by the farmer, in the case of turkey producers, the growers of those birds, do in fact, own the birds in North Dakota. It is perhaps not true of other livestock. We are at full risk for

production and full risk for loss of those birds. Regarding to the source of replacement of animals, it is neither practical or feasible for turkey growers to raise their own replacement stock. That is such a specialized business, we couldn't afford to do it. In the area of contract feeding, these turkeys are raised under contracts. It is not a guaranteed profit contract, it basically guarantees us processing states. We are still at the risk of loss of that production.

WADE MOSER, ND STOCKMEN'S ASSN, Testified in support of the bill. He stated they had worked on this during the interium in order to address this situation. We feel it is very important to have the language in there specifically to the spring court decision so that there is no misunderstanding about what the intent was. Since Section 15 (a) does not discuss anything about ownership of animals, it doesn't discuss anything about the feed purchased, the spring court somewhere, came up with their definition, and I think we need to address that specifically. If this bill does not pass to address these issues, I think there is a lot of people who could be adversely affected, including a lot of dairy people who buy more than fifty percent of their feed on a regular basis, but yet, they are still in production agriculture. We also feel animal agriculture needs to be treated the same as other agriculture, such as grain farmers. Grain farmers can purchase all of their fuel, fertilizer and seed and they are not considered a commercial operation. In the purchase of replacement stock, in many cases, people may purchase calves to put in their lot as a normal operating business, those animals were not raised on their farm, they were purchased and put on there to utilize their feed grain. This needs to be clarified. We also think the share arrangement is unfair.

REP. WINRICH Stated he was not a farmer, so he was wondered, what the difference was between the animals being raised on the farm, not being owned by the farmer, and the farmer who contracts feed animals?

WADE MOSER, Was not able to answer the question because all four of the subsections (a) through (d) were specific decisions that the court had addressed. He stated he could get the answer.

REP. WINRICH Basically, I am asking what the difference is between (b) and (d).

PATTY LEWIS, ND FARM BUREAU, Testified in support of the bill. She stated this bill would help the fairness issue in all types of farming.

BRYAN HOIME, REPRESENTING ND TOWNSHIP OFFICER'S ASSN., Testified in support of the bill. Felt by correcting this and putting in these new changes to the law will give some guidance to townships as to how they are suppose to handle farming and commercial farming. It does also limit the ability to look at some of these choices. Farming has changed a lot and there needs to be guidance as to what you can assess and what you can't assess.

MARK SITZ, ND FARMERS UNION, Testified in support of the bill. Stated they like the provisions of this bill. On page 2, line 5, if we would have a concern, it would be on line 5 with defining contract feeding. Our concern is are we allowing a corporate entity to become involved in this. Answered Rep. Winrich's question as to the difference between (b) and (d), I really see a whole lot of difference. Maybe this could be clarified.

REP. KROEBER, Asked a question regarding the fiscal note, because of the possible impact to counties and school districts, are you paying taxes on these buildings right now?

DAVE UHLER Answered the question, stating no, he is not paying taxes right now.

There are some exceptions to that. There is one turkey farm, currently, paying property tax.

REP. KROEBER So under this new provision, this person would not have to pay property taxes?

DAVE UHLER That would be my assumption.

REP. KROEBER So this would not be a widespread loss to counties and school districts, this is basically just clarification?

DAVE UHLER It would be my best guess, there would not be huge implications.

MARY CHRISTIANSON, DAKOTA RESOURCE COUNCIL, Testified in opposition of the bill. See attached written testimony.

With no further testimony, the hearing was closed.

COMMITTEE ACTION Tape #2, Side A Meter 3.0 1-11-99

REP. GROSZ, Made a motion for a DO PASS.

REP. RENNERFELDT, Second the motion.

Discussion was held as to different situations involving grain or livestock farming, contract farming, etc.

Members voted 15 Yes 0 No 0 Absent. MOTION CARRIED.

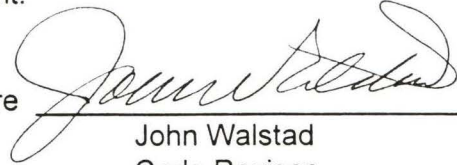
REP. FROELICH Was given the floor assignment.

FISCAL NOTE STATEMENT

House Bill or Resolution No. 1054

This bill or resolution appears to affect revenues, expenditures, or fiscal liability of counties, cities, or school districts. However, no state agency has primary responsibility for compiling and maintaining the information necessary for the proper preparation of a fiscal note regarding this bill or resolution. Pursuant to Joint Rule 502, this statement meets the fiscal note requirement.

Signature



John Walstad
Code Revisor

Please type or use black pen to complete

Date 1-11-99

Roll call vote # 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1054

House HOUSE FINANCE & TAX Committee

Subcommittee on _____

Conference Committee

} Identify or check where appropriate

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep. Grosz Seconded By Rep. Rennerfeldt

Representatives	Yes	No	Representatives	Yes	No
BELTER	✓		WINRICH	✓	
RENNERFELDT	✓				
CLARK	✓				
FROELICH	✓				
GRANDE	✓				
GROSZ	✓				
HERBEL	✓				
KROEBER	✓				
MICKELSON	✓				
NICHOLAS	✓				
RENNER	✓				
SCHMIDT	✓				
WARNER	✓				
WIKENHEISER	✓				

Total 15 0
(Yes) (No)

Absent 0

Floor Assignment Rep. Froelich

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

DO NOT USE HIGHLIGHTER ON ANY FORMS

REPORT OF STANDING COMMITTEE (410)
January 11, 1999 2:25 p.m.

Module No: HR-05-0479
Carrier: Froelich
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1054: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **DO PASS** (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1054 was placed on the Eleventh order on the calendar.

1999 SENATE FINANCE AND TAXATION

HB 1054

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1054

Senate Finance and Taxation Committee

Conference Committee

Hearing Date 01/19/99

Tape Number	Side A	Side B	Meter #
1,054	X		3756-END
Committee Clerk Signature <i>Shila Wald</i>			

Minutes:

Sen. Urlacher opened the hearing on HB 1054, A BILL TO APPLICATION OF THE PROPERTY TAX EXEMPTION FOR FARM BUILDINGS, AND TO PROVIDE AN EFFECTIVE DATE.

JOHN WALSTAD-Testimony submitted and attached. LEGISLATIVE COUNCIL.

Sen. Kinnoin-Could you explain primarily?

John Walstad-More than 50%.

Wade Moser-Stockmens Association. We do support HB 1054. Explains what we want done.

It treats livestock different than other agricultural property in its decision. We are hoping it will treat all agriculture equally. If you were to purchase 51% of your feed you eventually would have to pay taxes on a farm building, it fell under that decision. If this bill does not pass for what

ever reason your buildings could be taxed. The decision in 1997 was ignored and it caught fire and now we hope you can pass this bill and clarify everything.

Mark Sitz-Farmers Union Representative. We are in support of HB 1054.

Patty Lewis-Farm Bureau, We support the bill and feel it has a fair issue. Urge you to pass.

Mary Christenson-Dakota Resource Council. We do support many aspects of this bill, we do have some concerns with the language. On the word contract, Pg. 2 -line 5, we would like this bill to be put on hold until the word contract can be defined. We can not support as it is currently worded.

Sen. Christmann-Would you elaborate on what you see is the key difference is there.

Mary Christenson-I don't feel qualified to define these words, contract feeding can include factory style farms, and corporate farming operations and I would be worried that this would permit more of these to become tax defunct.

Sen. Christmann-When does it become custom or contract feeding to a factory feeding?

Mary Christenson-Many ways to get around the corporate farming law. Be a family farm and your funding could come from a large corporation, but I feel these communities have to put up with a lot of odors, traffic, road wear, pollution. The taxes they would get from the large facilities would only be good for them.

Sen. Urlacher-Any questions? We will get a clarification of contract or share.

Ruth Stefonowicz-NDEA. Anytime there is a tax exemption, we sit in on these hearings.

It affects local schools and because the local property tax is very important.

Sen. Urlacher- Any further question? We will close the hearing.

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Senate Finance and Taxation Committee

Bill/Resolution Number HB 1054Hb 1054

Hearing Date 01/19/99

DISCUSSION 01/25/99 TAPE #2 A SIDE METER 50-700. A MOTION WAS MADE TO DO PASS BY SEN STENEHJEM, AND SECONDED BY SEN. CHRISTMANN. CARRIER WILL BE SEN. CHRISTMANN. THE VOTE 7 Y , 0 N, 0 ABSENT OR NOT VOTING.

Date: 1-25-99
Roll Call Vote #: _____

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1054

Senate Senate Finance and Taxation Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Sen. Stenehjem Seconded By Sen. Christmann

Senators	Yes	No	Senators	Yes	No
SENATOR URLACHER	✓				
SENATOR CHRISTMANN	✓				
SENATOR SCHOBINGER	✓				
SENATOR STENEHJEM	✓				
SENATOR WARDNER	✓				
SENATOR KINNOIN	✓				
SENATOR KROEPLIN	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen. Christmann

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

REPORT OF STANDING COMMITTEE (410)
January 26, 1999 3:14 p.m.

Module No: SR-16-1160
Carrier: Christmann
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1054: Finance and Taxation Committee (Sen. Urlacher, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1054 was placed on the Fourteenth order on the calendar.

1999 Testimony

HB 1054



Mary Christianson

"Watchdogs of the Prairie"

Organizing North Dakotans Since 1978

Dakota Resource Council • PO Box 1095 • Dickinson, ND 58602-1095

HB1054

House Finance and Taxation Committee

Monday, January 11, 1999

Chairman Belter and Members of the House Finance and Taxation Committee,

The members of Dakota Resource Council urge you to vote NO on HB1054. There is no evidence that this bill would result in increased prices for producers.

This Bill attempts to define the terms 'farm' and 'farmer'. In recent history, this has become quite a challenge. The traditional farmer had a strong commitment to the land and to sustainable agriculture. This was necessary to his or her success and survival. The farmer had to provide good quality, safe food or he would not be farming long. The risks of weather and markets were shouldered by him personally. The traditional farmer brought stability to the community and its economy. The consumer saw the effects of the law of supply and demand on the shelves in the grocery store. Property tax relief for this farmer makes sense.

In recent years, our nation has been experiencing the industrialization of agriculture and with it, the creation of the 'factory style farm'. Now, the term 'farmer' defines a legal entity rather than a person. The risks and responsibilities taken on by any one person within this entity are minimal in comparison to that of the traditional farmer because contract feeding operations take

away the individual producer's ability to control production and put it in the hand of a second party.

When a farm does not own its own animals, grow its own feed, produce its own replacements or contract feeds, it provides little long term stability for the community. When a farm is financed by the entity that owns the feed store, the slaughter house and the retailer, the producer market can be manipulated, resulting in lower producer prices which drive the traditional farmer out of business.

The consumer does not see the effects of low producer prices on the grocery store shelves. The "produce more for less" fallacy of large scale farming is perfectly illustrated by the current problems in the hog industry. In surrounding states, factory style farms have been courted with economic development funds and tax break incentives. The results have been devastating. Communities are left with the expenses of environmental clean up, jobless families and fewer traditional independent producers. We need to learn from these mistakes rather than follow the same path.

In the dispute as to the direction of our state's agricultural economy, many farmers feel we must 'progress' if we are to compete and survive. We must be cautious as to what we progress to. If we, ourselves, progress to factory style farms, have we survived?

Vote NO on HB1054.



Link Reinhiller
Rancher, Hazen, ND
Chair
Farm Preservation Committee
DRC



Linda Rauser
Rancher, Keene, ND
Secretary
DRC

variable for different counties. Over a period of 10 years, including a production cost index in the agricultural property valuation formula, and assuming all other factors remain the same, could result in an agricultural property tax decrease of 5.3 percent and a residential property tax increase of 17.1 percent in Benson County, an agricultural property tax decrease of 5.7 percent and a residential property tax increase of 15.1 percent in Nelson County, and an agricultural property tax decrease of 8.5 percent and a residential property tax increase of 10.6 percent in Walsh County. For the same time period, an agricultural property tax decrease of 21.4 percent would be accompanied by a residential property tax increase of 1.4 percent in Grand Forks County, an agricultural property tax decrease of 11.6 percent would be accompanied by a 1.1 percent residential property tax increase in Cass County, and a 12.9 percent agricultural property tax decrease would be accompanied by a 2.9 residential property tax increase in Williams County.

Recommendations

The committee recommends Senate Bill No. 2052 to create a separate category for inundated agricultural land for valuation purposes. The bill limits the county average valuation for inundated lands to 10 percent of the valuation of noncropland for the county. Establishing a separate classification category for inundated land will allow these lands to be assigned reduced valuations without affecting the valuation of other agricultural property in the county. This will address a significant problem that has arisen for counties in the Devils Lake Basin, where it has been necessary to transfer valuation from inundated agricultural lands to agricultural lands that remain in production. This will not solve the problem of loss of property tax revenue from inundated lands but will give counties a way to avoid the need to receive requests for abatements for inundated lands and the need to artificially inflate valuations of productive agricultural property. The bill defines inundated agricultural land as property that is unsuitable for growing crops or grazing farm animals for a full growing season or more due to the presence of water. The bill requires that classification of a parcel of property as inundated agricultural property must be approved by the county board of equalization for each taxable year. This will avoid the need for granting abatements but still allow the county to have decisionmaking authority to review the productive status of the property. The bill provides that valuation of individual parcels of inundated agricultural property may recognize the probability of whether or not the property will be suitable for production in the future.

The committee recommends Senate Bill No. 2053 to limit the capitalization rate in the agricultural property valuation formula to no less than 10 percent and no more than 11 percent. Under current law, the capitalization rate is one-half of the determinant of agricultural

property valuations. Limiting the capitalization rate fluctuation will avoid extreme effects on agricultural property values when interest rates are abnormally high or low.

The committee recommends Senate Bill No. 2054 to incorporate use of an index of prices paid by farmers in the agricultural property valuation formula. The bill requires establishing a base year index of prices paid by farmers which would be compared with an average of those costs over the most recent 10 years. Changes in prices paid by farmers would be factored into the valuation formula to increase valuations if costs decline or decrease valuations if costs increase. The index would be based on annual statistics prepared by the National Agricultural Statistics Service.

FARM BUILDINGS PROPERTY TAX EXEMPTION STUDY

Background

Farm residences and farm buildings other than residences are exempt from property taxes under NDCC Section 57-02-08(15). The provision relating to farm residences is much more detailed than the provision relating to other farm buildings. The exemption for residences provides criteria to determine what qualifies as a farm and who qualifies as a farmer and imposes income limitations. The exemption for farm buildings other than residences does not apply to any structure or improvement used in connection with a retail or wholesale business other than farming, any structure on platted land within the corporate limits of a city, or any structure located on railroad-operating property.

The North Dakota Supreme Court decision in *Butts Feed Lots v. Board of County Commissioners*, 261 N.W.2d 667 (1977) concluded that a feedlot operation was an industrial activity and the property did not qualify for the farm buildings exemption. The Supreme Court found that contract feeding of cattle not owned by the owner of the facility is an industrial activity and that raising cattle owned by the owner of the facility is an industrial activity if the feed for the cattle is not grown onsite. The Supreme Court also said an operation may be industrial if replacement animals are not raised onsite. The Tax Commissioner adopted guidelines that are intended to follow the Supreme Court decision. The guideline for animals raised and owned by the operator provides that the feed must be primarily grown by the person raising the animals and the enterprise must be operated in connection with or incidental to an ordinary farming operation.

4029

1995-96 Interim Committee Considerations

The 1995-96 interim Taxation Committee study of the farm buildings exemption arose because of events that transpired in Richland County, although the topic is of relevance in each county in the state. In 1995 a large turkey-raising operation was established in Richland County. Richland County officials assumed that the

property would not qualify for the farm buildings exemption under the *Butts* analysis. During consideration of this issue, however, Richland County officials recognized that several existing operations raising turkeys, cattle, or hogs would also become taxable under the Tax Commissioner's guidelines adopted to implement *Butts*. Several issues arose regarding application of these guidelines in specific instances and Richland County officials decided to seek a legislative solution to clarify when the farm buildings exemption applies.

Richland County officials said the impact to Richland County's road budget for maintenance of the road to the new turkey facility exceeds normal costs of maintenance for a county road by approximately \$28,000 per year. The road in question is subjected to high-volume truck traffic due to the existence of the turkey-raising operation. Committee members asked whether granting county authority to levy special assessments for road damages would alleviate the problem. Richland County officials said levying special assessments in the situation at hand would not resolve the problem because several properties under different ownership abut the road, but traffic attributable to only one property is responsible for most of the road deterioration.

The committee considered several factors to distinguish industrial or commercial operations from agricultural operations, but none of the factors provided a solution without problems. Basing the exemption on whether the farmowner owns the animals that are being fed would require monitoring ownership of animals. Basing qualification for the exemption on the source of feed, as was done by the Supreme Court in *Butts*, requires monitoring feed and may force operators to grow their own feed when it could be a better management decision to purchase feed from off the farm. Basing the exemption on whether the owner lives on the site might unduly restrict a person's freedom to choose where to live. Limiting the number of paid employees could result in loss of jobs for employees above the limit. Limiting the value of farm buildings eligible for exemption would require assessment of all farm buildings. Causing excessive road repairs for the county or township could involve arbitrary decisions on who is responsible for road damage. Limiting the number of animals raised would require establishment of an accurate count of animals at any time of year and different limitations would be required for different kinds of animals. Basing the exemption on whether replacement animals are raised on the farm, as was discussed by the Supreme Court in *Butts*, was described as inappropriate for some kinds of animals and an interference with management decisions.

The committee discussed eliminating the farm buildings exemption and offsetting the property tax increase by a corresponding reduction in taxes against agricultural land. This would eliminate the need to determine who qualifies for the farm buildings exemption. However, this would reduce the tax burden for persons who own agricultural land but have few or no buildings or

do not actively farm the land, including nonresident landowners.

The 1995-96 interim Taxation Committee made no recommendation on the farm buildings exemption study. The committee did not agree with the criteria established under the Supreme Court's *Butts* decision but could not find a workable, fair method to distinguish farming operations. Committee members expressed preference for flexibility to allow common sense decisions by local governing bodies, over establishing statutory criteria that might be excessively rigid and unfair in some situations. Recent events in other counties indicate there is likely to be continued growth in the number and impact of livestock and poultry feeding operations, and the chairman of the Legislative Council assigned this subject to the interim Taxation Committee to continue the study.

Committee Considerations

The income limitations for the farm residence exemption were examined. Net income from farming or ranching as interpreted by the Tax Commissioner includes income from producing unmanufactured products of the soil, poultry, or livestock, or from dairy farming. This includes taxable farm income for income tax purposes and excludes income from custom work. Interest expense is deducted from income if it was incurred in the farm or ranch operation and was deducted in computing taxable income. Net income from farming or ranching does not include cash rent, mineral leases or royalties, wages or salaries, interest income from contract for deed payments on sale of farmland, or any other income not specifically included in farm income for federal income tax purposes. Depreciation of farm equipment is treated like other farming expenses and is deducted from gross revenues to determine net income from farming activities. A Tax Commissioner representative said obtaining and verifying net farm income information can be difficult.

Ward County officials informed the committee that it recently came to their attention that a beginning farmer cannot qualify for the farm residence exemption because the statutory provision defines a farmer as one who has not received more than 50 percent of annual net income from nonfarm sources during any one of the three preceding calendar years. The problem with this provision is that any individual who is just starting farming will be disqualified from the exemption because the person would have no farm income history to qualify under the statutory provision. Committee members were surprised that this statutory provision has existed for many years and has not been interpreted to cause problems for beginning farmers. Committee members said it would be appropriate to change the statutory provision to encourage efforts of individuals to begin farming.

The North Dakota Ag Coalition, Stockmen's Association, Turkey Growers Association, and Farm Bureau suggested that the criteria established by the North

Dakota Supreme Court in *Butts* are inappropriate in the current farm economy. These criteria were described as management decisions that are based on economics efficiency. The Ag Coalition recommended limiting the definition of farm activities to raising or growing unprocessed agricultural products, regardless of feed source. An Ag Coalition representative said determining what constitutes processing of agricultural products should be the key to whether the exemption applies and suggested that anything involved with final preparation of the product for human consumption would be considered processing.

Another issue that was brought to the committee's attention involves establishing assessed valuations for tax-exempt farm buildings and residences. The state supervisor of assessments said farm buildings and residences are not required to be assessed or valued under 1997 legislation but a preexisting law originally enacted in 1897 requires assessors to establish values for all property except governmental property. It was suggested that the law be amended to exclude farm buildings and residences from the properties for which values must be established.

Recommendations

The committee recommends House Bill No. 1053 to allow beginning farmers to qualify for the farm buildings

property tax exemption. The bill defines a beginning farmer as one who has begun occupancy of a farm within the three preceding calendar years, who normally devotes the majority of time to farming activities, and who does not have a history of farm income for each of the three preceding calendar years.

The committee recommends House Bill No. 1054 to eliminate consideration in farm buildings tax exemption decisions of the criteria established by the North Dakota Supreme Court in *Butts*, based on whether the farmer grows or purchases feed for animals, whether the farmer owns the animals, whether replacement animals are produced on the farm, and whether the farmer is engaged in contract feeding of animals. The bill provides that buildings are not eligible for the exemption if they are primarily used for processing to produce a value-added physical or chemical change in an agricultural commodity beyond the ordinary handling of that commodity by a farmer prior to sale. The language is intended to allow flexibility of interpretation by assessment officials to recognize ordinary farm practices but exclude processing that goes beyond ordinary handling.

The committee recommends House Bill No. 1055 to provide that farm buildings and residences are not among the properties for which assessors must establish a valuation.