

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1251

2001 HOUSE FINANCE AND TAXATION

HB 1251

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1251

House Finance and Taxation Committee

Conference Committee

Hearing Date January 23, 2001

Tape Number	Side A	Side B	Meter #
1	X		3.035
Committee Clerk Signature <i>Ganice Klein</i>			

Minutes:

REP. AL CARLSON, CHAIRMAN, Opened the hearing.

REP. GEORGE KEISER, DIST. 47, BISMARCK, Introduced the bill. He stated this is a simple bill, but an important bill. This bill comes from the accountant throughout the state who, along with the practice of their industry and with their customers, have a frustration that exists in our current law. This is something that is very anti-business. He stated, a few years ago we started a few opportunities for businesses in our state. We created a limited liability company, a limited liability partnership, and now we have limited liability on top of limited liability, it seems. All of those measures that we passed, were designed to help the businesses within the state of North Dakota. When we did this, we created a limited liability company, and in so doing, we followed the federal guidelines, with exception of one, and that one exception, is relative to unemployment compensation. In this bill, if one fourth of the ownership of the company is controlled by the manager, the manager's parent, child, spouse, or combination of

those, this bill provides for an additional exclusion to subsection 18, which identifies employment, does not include. We are saying, if you are a limited liability company, and you meet this criteria, you are not considered to be an employee of the firm, but you are to be treated as an owner of the firm.

PAUL WOHNOUTKA, CPA, EIDE BAILLY, Testified in support of the bill. See attached written testimony and a copy of the North Dakota Century Code Tax Law 52-01-01. Mr. Wahnoutka gave an example of a client's situation and explained the mechanics of the bill.

REP. CARLSON Asked, in existing law, limited liability partners are already exempt?

PAUL WOHNOUTKA Yes.

REP. CARLSON This bill says an LLC, that is taxed as a partnership, will not have to pay the job service tax?

PAUL WOHNOUTKA That is right.

REP. KROEBER Asked Mr. Wahnoutka to explain the statement, "what would prevent making all one hundred or one thousand employees of the LLC owners, so they are all exempt from job service.

PAUL WOHNOUTKA It won't happen, but it is possible in theory. The point that needs to be made is if somebody really wanted to create an entity like that, for the purpose of avoiding job service tax, they wouldn't create an LLC. They would form an LLP and they have that exemption currently.

REP. KROEBER Is it clear to the employees then that they are exempt from unemployment and they can take and sue the partners if something occurs in the job?

PAUL WOHNOUTKA Only the owners are exempt, the employees are not exempt.

BOB OLSON, NORTH DAKOTA JOB SERVICE, Testified in a neutral position. He testified in place of Ray Gudajtes, see written testimony from Ray Gudajtes.

REP. LLOYD You mentioned, they would no longer be allowed to have the tax, in other words, they couldn't request it.

BOB OLSON The bill as it is written, would exempt them from the definition of employment.

REP. CARLSON Is that a good thing for those people or a bad thing?

BOB OLSON I think, as Mr. Wounoutka says, it probably isn't a big deal. The only question is, if there were a lot of people, maybe small owners, who would try to avoid the taxation. I don't know if that would happen or not.

REP. CARLSON When they avoid the taxation, they also avoid the benefits?

BOB OLSON Our concern is not the taxation, it would be the coverage for the worker.

REP. WINRICH It was pointed out that under certain circumstances a limited liability partnership, could be organized and gain this same sort of thing. If these same things could occur in either kind of company, why have two different forms?

BOB OLSON Stated he didn't know why they needed different forms.

With no further testimony, the hearing was closed.

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House Finance and Taxation Committee
Bill/Resolution Number HB 1251
Hearing Date January 23, 2001

COMMITTEE ACTION 2-06-01, TAPE #2, SIDE A, METER #3938

REP. GROSZ Gave an update on the research he did on the bill regarding to limited liability corporations and partnerships, etc. This bill gives them a choice to opt out of the unemployment compensation or pay it.

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

REP. RENNER Second the motion. **MOTION FAILED.**

REP. WINRICH Made a motion for a **DO NOT PASS.**

REP. CLARK Second the motion. **MOTION CARRIED**

8 YES 6 NO 1 ABSENT

REP. WINRICH Was given the floor assignment.

FISCAL NOTE
 Requested by Legislative Council
 03/26/2001

Bill/Resolution No.:

Amendment to: HB 1251

1A. **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.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

This bill will exempt from unemployment coverage all limited liability company managers whose companies do not treat themselves as a corporation for purposes of federal income taxation. Currently, approximately 360 unemployment insurance tax accounts are limited liability companies. Current law provides managers with 25% or more ownership opportunity to exempt themselves from coverage.

Data is not available to identify which of the 360 accounts treat themselves as corporations for purposes of federal income taxation; nor is there data available to identify which if any employees reported by these accounts are managers. Consequently, we are unable to determine fiscal impact on the State Unemployment Insurance Trust Fund from exempting all limited liability company managers except those whose company treat themselves as a corporation for federal income taxation.

There will be some reduction of income and benefit payments, which we cannot estimate.

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, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Wayne Kindem	Agency:	Job Service North Dakota
Phone Number:	328-3033	Date Prepared:	03/27/2001

FISCAL NOTE
 Requested by Legislative Council
 01/15/2001

Bill/Resolution No.: HB 1251

Amendment to:

1A. 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.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

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Data is not available to identify which of the 360 accounts treat themselves as corporations for purposes of federal income taxation; nor is there data available to identify which if any employees reported by these accounts are managers. Consequently, we are unable to determine fiscal impact on the State Unemployment Insurance Trust Fund from exempting all limited liability company managers except those whose company treat themselves as a corporation for federal income taxation.

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C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Wayne Kindem	Agency:	Job Service North Dakota
Phone Number:	328-3033	Date Prepared:	01/19/2001

Date: _____
Roll Call Vote #: _____

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1251

House FINANCE & TAXATION Committee

Subcommittee on _____
or
 Conference Committee

Failed

Legislative Council Amendment Number _____

Action Taken 100 100

Motion Made By Rep Grosz Seconded By Rep L...

Representatives	Yes	No	Representatives	Yes	No
CARLSON, AL, CHAIRMAN	✓		NICHOLAS, EUGENE	✓	
DROVDAL, DAVID, V-CHAIR		✓	RENNER, DENNIS	✓	
BRANDENBURG, MICHAEL	✓		RENNERFELDT, EARL	✓	
CLARK, BYRON		✓	SCHMIDT, ARLO	✓	
GROSZ, MICHAEL	✓		WIKENHEISER, RAY		
HERBEL, GIL		✓	WINRICH, LONNY		✓
KELSH, SCOT					
KROEBER, JOE					
LLOYD, EDWARD		✓			

Total (Yes) 6 No 8

Absent _____

Floor Assignment Rep

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

Date: 2-6-01
 Roll Call Vote #: 2

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. HB 1251

House FINANCE & TAXATION Committee

Subcommittee on _____
 or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Rep. Winrich Seconded By Rep. Clark

Representatives	Yes	No	Representatives	Yes	No
CARLSON, AL, CHAIRMAN		✓	NICHOLAS, EUGENE	A	
DROVDAL, DAVID, V-CHAIR	✓		RENNER, DENNIS		✓
BRANDENBURG, MICHAEL		✓	RENNERFELDT, EARL		✓
CLARK, BYRON	✓		SCHMIDT, ARLO		✓
GROSZ, MICHAEL		✓	WIKENHEISER, RAY	✓	
HERBEL, GIL	✓		WINRICH, LONNY	✓	
KELSH, SCOT	✓				
KROEBER, JOE	✓				
LLOYD, EDWARD	✓				

Total (Yes) 8 No 6

Absent 1

Floor Assignment Rep. Winrich

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

REPORT OF STANDING COMMITTEE (410)
February 7, 2001 11:31 a.m.

Module No: HR-22-2571
Carrier: Winrich
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1251: Finance and Taxation Committee (Rep. Carlson, Chairman) recommends DO NOT PASS (8 YEAS, 6 NAYS, 1 ABSENT AND NOT VOTING). HB 1251 was placed on the Eleventh order on the calendar.

2001 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1251

