

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1226

2007 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1226

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1226

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: 01-23-2007

Recorder Job Number: 1643

Committee Clerk Signature

Lisa M Thomas

Minutes:

Vice chairman Johnson opened the hearing on HB 1226.

HB 1226 relates to limitations on for profit activities of nonprofit organizations.

Rep. Keiser introduced the bill.

Rep. Keiser: I am here to bring you reemployment act for lobbyists. We all say that with some humor, but it's true. This is a simple bill. It says that nonprofits receiving federal, state or local tax revenues, directly, or indirectly, may not have an ownership interest in a for-profit organization that competes with other for-profit organizations. That is the bill. How do you become a non-profit or for-profit? To become a non-profit, it is the federal government designation; you have to go through a lot of hurdles with the federal government. You have to fill out forms and the federal government has to determine that you qualify as a non-profit and you qualify under a variety of options. There are 5013c's and a lot of other combinations that you qualify under. In qualifying you are going to qualify for some specific purpose and basically to do good things. There is no question about it; non-profits do good things in the various communities. One of the restrictions that the feds put on them is that you can earn as much money as you want, as long as it comes from certain kinds of channels. But you have to use it in specific ways, what we call related activities. The federal government watches that very

closely. What has evolved is that the first non-profit organization in the United States was in 1913 and it was called the Gift Shop, it is a national museum of art. It started there and it has grown and what has grown is that non-profits recognize that they have to be very careful, according to the guidelines, the revenue they generate; only a certain percent can be from unrelated activity. As a result, they then look forward and said, we need to look at how we are structured and what our limitations are and one thing they discovered is that we can form a for-profit entity that is kind of free-standing, how does the money go. So what they discovered was that they could structure these non-profits to go into business, do some business and provide an additional source of revenue. Otherwise, why would a non-profit want? There would be no reason for a non-profit. The interesting argument is that the for-profits all managed and controlled by the non-profits, do pay taxes. They will pay property taxes; they will pay income taxes on profits, if there is any, sales tax, etc. How much do they pay in tax? If they are not receiving any state, local or federal income tax revenue, then their taxes are going into the big fund to help everybody else. But if a non-profit does pay taxes for their for-profit subsidiary, are they getting more in tax revenue that is being transferred into them, than what they are paying in to the system. If that's the case, who is paying for that? The businesses that they are competing with. That is who is paying. That is what this bill is about.

Rep. Clark: How would this bill effect?

Rep. Keiser: I can't answer that because I don't know what their purpose structure is.

Rep. Kasper: What is the advantage to the non-profit to create a down-stream for-profit as opposed to simply creating a down stream non-profit?

Rep. Keiser: When you create a non-profit, it is a federal designation and you have certain restrictions that you have operate under, the income into that system must be a certain, large percentage, must be for certain functions. So if I have a non-profit, having a thrift shop or an

any other kind of business, they are unrelated to my non-profit status and I can't have that much income into that, so I have to create this for-profit entity, take it off to the side and transfer the income to the charity.

Rep. Thorpe: Is this being looked at in other states?

Rep. Keiser: I don't know. My job is to look at the policy of North Dakota.

Rep. Dosch: What would happen with existing businesses that are operating that would be in violation, would they be grandfathered in or would they have to?

Rep. Keiser: It is clear in the bill that they are not grandfathered in; they would have to look for an alternative corporate structure. I talk to one very large nonprofit that, the hospital, that said they have a one for-profit element with our corporate structure at this time. He brought his attorney in and said you know, we could move that into a non-profit status, but it would inquire. I think that is why a study resolution, would be from a much broader solution.

Opposition to HB 1226

Dave Anderson, Downtown Community Partnership spoke in opposition to the bill.

Anderson: In response to what Chairman Keiser said, as I was driving over here this morning, it occurred to me that there may be some dramatic in this situation that is not like, we need to have these conversations around the state, so we can build and understand what it is, the impacts are out of the nonprofit community, as well as what it is that drives us to get into a for-profit business. I came to offer a couple of suggestions on what we have done in order to accomplish something that wasn't being done. I think that for our little non-profit, we have responded to what may be termed as opportunities, but we are also termed. About four years ago after we had done the original work of rebuilding the Broadway in Fargo, some of the amenities going to be put together were put into that street required some care. There was no money to do that and when we did explore the private sector to see who could step up in a

contract to water flower baskets, there was nobody who wanted to do that, so it was not an attractive opportunity, it wasn't a real related activity for us either so we created a little managing company in order to take care of the flowers to make sure they were alive. Out of that little company, we pay taxes. Nothing roles to a non-profit, we just take care of the expenses of that kind of business.

Rep. Kasper: Did you disband your for-profit company now that you don't need your flowers watered?

Anderson: No, we still have the company and are working on both sides of the Red River and we provide services on the Moorehead side as well. We also do snow removal on the sidewalks.

Lynn Fundingsland, Director of Fargo Housing Authority, spoke in opposition to the bill.

Fundingsland: We have a 5013C housing development corporation. I feel a little bit like a bystander. In 1986, federal government changed the way they provided for affordable housing in the country. Just mentioning stop funding public housing and they created something called the low income housing tax credit that allowed for private capitol to go into affordable housing and in turn for that private capitol they were a tax credit given to the investors. HUD then encouraged the housing authority and they attempted to find way to find affordable housing, don't be so reliant on the feds. We are having declining federal budgets and we were asked to find ways to do that locally and encouraged to create 501c3's to help us in the endeavor. The main tool that we used in the process of providing affordable housing is low income tax credit. So our non-profit doesn't pay federal taxes, so we can't use the tax credit, so how that works is our non-profit will form a ownership entity for a senior affordable housing project. So we form a for-profit corporation and then we apply for and receive these tax credits associated with the low income housing and bring then for-profit equity investors into our partnership and they

provide the upfront equity to fifty or sixty percent of the cost of the housing. Which allows us to operate at these lower rents? So we've got today, seven of these for-profit entities that we are a partner in. There federal tax credits on a national level, ten percent of the credits are earmarked for non-profits. That goes to the state and ten percent are for non-profits. I think that is one of the things that need to be considered, if this goes to further discussion, it would shut down our operations and since 2000 and seven for-profits. We have generated affordable housing units for about two hundred units. About fifteen million dollars of investment refunds to the state and we have got approximately another five hundred units of rehab and public housing. This bill, if passed, would shut down those operations. We recommend a DO NOT PASS.

The hearing was closed on HB 1226. No action was taken at this time.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1226

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: 01-23-2007

Recorder Job Number: 1649

Committee Clerk Signature

Lisa M Thomas

Minutes:

Chairman Keiser allowed committee discussion on HB 1226. HB 1226 relates to limitations on for-profit activities of non-profit organizations.

There was no discussion from the committee.

Rep. Ruby moved to adopt the amendments. Rep. Clark seconded.

Voice vote: 12 yes. 1 no. 1 absent.

Motion carries amendments are adopted.

Rep. Ruby moved a DO PASS AS AMENDED. Rep. Boe seconded.

Roll Call Vote: 12 yes. 1 no. 1 absent.

Carrier: Rep. Kasper

**House Amendments to HB 1226 (70448.0101) - Industry, Business and Labor
Committee 01/30/2007**

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative council study of the feasibility and desirability of providing limitations on for-profit activities of nonprofit organizations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying during the 2007-08 interim the feasibility and desirability of providing limitations on for-profit activities of nonprofit organizations. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly."

Renumber accordingly

Date: 1-23-07
Roll Call Vote #: _____

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1226

House Industry Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass, as amended.

Motion Made By Rep. Ruby Seconded By Rep. Boe

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep. Amerman	X	
Vice Chairman Johnson	X		Rep. Boe	X	
Rep. Clark	X		Rep. Gruchalla	X	
Rep. Dietrich	X		Rep. Thorpe		X
Rep. Dosch	X		Rep. Zaiser		
Rep. Kasper	X				
Rep. Nottestad	X				
Rep. Ruby	X				
Rep. Vigesaa	X				

Total Yes 12 No 1

Absent 1

Floor Assignment Rep. Kasper

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

REPORT OF STANDING COMMITTEE

HB 1226: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). HB 1226 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 council study of the feasibility and desirability of providing limitations on for-profit activities of nonprofit organizations.

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Renumber accordingly

2007 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1226

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1226**

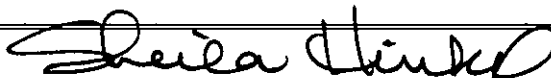
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **February 28, 2007**

Recorder Job Number: **4149**

Committee Clerk Signature



For-profit activities for non-profit organizations:

Bill Boetcher – State Director of National Federation of Independent Business NFIB

3,000 state wide small business owners - *In Favor*

Used the bill as a sample. This bill is different than one in the House, that bill called for make it illegal to conduct non-profits to do business in a for-profit arena. As Kaiser ended the presentation, he indicated that it was being changed into a study, interim study, than to take definitive action. At that hearing every non-profit lobbyist was there. Making it a study is just as important. Bill is simple. Says the Legislative Council shall consider a study during 2007-08 interim the feasibility and desirability of providing limitations on for-profit activities of non-profit organizations.

Reads from the Century Code about non-profit description. Chapter 10-3301 definition.

The non-profits that are receiving profit work with the tax department. *Read from tax department information.* 501 C Corporations.

IRS – publication 598, entitled “Tax on Unrelated Business Income of Exempt Organizations”
Read several lines.

Also in publication talks about trade or business. Unrelated regularly carried on by an exempt organization that is not substantially related the performance.....

Examples of non-profit doing profit in the for profit arena.

Hospitals, pharmacies selling pharmaceuticals to public. Magazine advertisements sold to promote their corporations. Small towns have mom & pop stores, convenience, gas stations, they're competing with for-profit. For profit, electrical corporations, computer sales & services. IT services, BTI net.

HB 1226, not to be feared by non profits, it's a valid discussion to have. The only limits are making some changes to be involved with the non-profits and open for discussion.

S Heitkamp: When I first read this, was something different than what you're saying. The rules are different. When you're set up you have to pay taxes, competing for the advertising dollars. I thought we were sick of people coming through the door and being a non-profit organization and trying to sell you cookies or magazines, or whatever and if you're a small business owner, like the people you represent, you're pooched, you either got to say "yes," or you're the person that's known as the business that isn't community friendly.

Bill B: You're right. The revenues that drive profits to acquire inventory and set up the operation for a for-profit company.

S Heitkamp: Isn't this an issue for the tax code itself of how you get your non-profit status? You're trying to limit in one state something that is permissible in all other states because it's a Federal law. Why would we limit ourselves as a state, in a non-competitive situation to where other states would be that would allow such activity, until it's illegal all over.

Bill B: It does have to be at the Federal regulation. We need to look at it and make changes.

S Heitkamp: The bill was, but the study resolution, if this resolution came back and said, "it isn't fair." We need to take away state law the ability for non-profits to do such activity. It would be legal in SD, MN and MT.

Bill B: You're going from a non-profit to a for-profit between states.

S Heitkamp: That's my point, tighten it on the Federal level.

S Potter: The fact is I feel like I'm in the target of this. The Fort Lincoln Foundation is a 501 C3 organization, we have for-profit activities which we pay taxes just like anybody else. That's all they have to do is pay taxes on it's "for-profit" activities. That's the thing that I see here, it's almost is like the word, "NON-PROFIT," is a bad word to the people that you're representing. I'd like your comment on that.

Bill B: I serve as the director of the Village Family Service Center. I don't think there is any non-profit that I know of that's not engaged in somehow in for-profit operations. I don't see it as a way of targeting, not to me. To me it's a matter of discussion, there should be tweaking or changes that should be made to make sure it is fair, indeed to small business operators, I'm sure you can put yourself in a position that the small business operations making for-profit and looking at competition with the Five Nations. Are you tax exempt? Is it a target or is it an open discussion?

S Potter: My point is that the for profit activities of the non-profits aren't unfair and they are taxed just the same. I think you'd shut down every non-profit that runs a museum, Plains Art Museum or any of the other ones because you couldn't have a gift shop. That is a core activity of the non-profit organization to have a museum gift shop. I think it raises all sorts of red flags. If you have a non-profit having for-profit activities, they are paying taxes just like everybody else, so why can't they be the owners of the organizations?

Bill B: No where in the bill does it say, "shut down" anything. It says to study "limitations on." There's no more to it than that. You're feeling you are targeted. It is no more than the Village Family Services, and every other non-profit for any changes that need to be made or considered.

S Klein: One of the examples I heard, the League of Counties and now they are into the office equipment business. Is that true and would they fall into the same category as a non-profit; being an association, do they pay taxes on the amount of money they make on the goods?

Bill B: The non-profit hospital who's providing pharmaceuticals in house, as it's a perfect place to sell to the public, so whomever else, they use their untaxed revenues to set up shop, but the sales made are taxed.

S Heitkamp: I ran a non-profit for 23 years, so I know you pay taxes on. We had a 15% rule. If you're making above 15% of what you do in the course of the year, you then have made profits and you have a problem with the federal code. We audited every year. What was happening, what the non-profit organizations weren't set up to compete. Some years it was, "well, time to buy some pickups," to stay under that 15% threshold.

Bill B: This is not something to be feared, it should be embraced and encouraged is to have some open session what our situation is right now. Some of the small businesses question on a regular basis and get very upset about this.

Q? S? O?

CLOSE

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1226 B

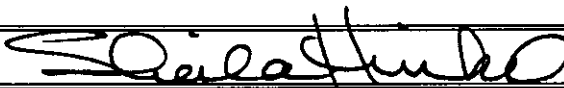
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **February 28, 2007**

Recorder Job Number: **4151**

Committee Clerk Signature



For profit activities for non-profit organizations:

S Andrist:...some of these organizations who are selling off their supplies. I don't know how you stop it. Federal government has been trying to stop churches from getting involved in political events.

S Hacker: As long as Burger Time is at the table, I'm ok with this bill.

S Potter: I move a DO NOT PASS

Second by S Heitkamp

S Heitkamp: I'll second it just to hear what he has to say.

S Potter: I believe there is an antipathy to non-profits here. People who are hostile to non-profits and really, they're carefully regulated, I don't think there is any harm in non-profits, I have all the business leaders in the community on the board of my non-profit and they're supportive of our activities. I really think they're making a mountain out of a mole hill and this is not a study that's necessary.

S Klein: I think there is a difference between YOUR non-profit and the LEAGUE OF COUNTIES committee, because I see yours as preserving our history and I think those guys are just building a bigger empire and THAT's my question, if the study should even get chosen

that they would need to sort out what are actually the non-profit's, and what are the other groups that are growing with those resources building a bigger and bigger office.

S Heitkamp: There's non-profits and then there's "non-profits." Certainly no question that at the end of the year when you look at what's happening at Abraham Lincoln or with some of the rural waters, they're a lot different than somebody taking their so-called "non-profit" and turning it into an insurance buyer or an equipment buyer or those types of things, then you're circumventing really what the non-profit was about. In all fairness, then I think they've got terrible boards overseeing them. Boards who don't have the discipline and say, "Wait a minute, let's use the association of counties. We bring in people's tax payers' dollars to make this thing click here. We're supposed to be shopping out there with those people that are paying taxes."

S Behm: I've seen outfits classified as non-profit, and they make huge amounts of money, I don't think a study would hurt.

S Hacker: I think that there's going to be a lot of protection for any piece of legislation that might come out of here because people in the state of ND do look highly upon those good, non-profits and they're going to look out for them. No, if that is going to hurt any of the good ones, then let's forget it.

S Heitkamp: The problem lies in the Feds. The discipline has to come from the Fed. Code who grants this "non-profit" status. It's not going to get fixed here. I was sitting here thinking, well, it ain't that bad, I'll vote for it, now I'm just..... The problem is in Washington, DC. Maybe a study sending it to DC, saying, "Look, this is why we've had it."

S Potter: In a second I'll withdraw my motion, and we can move on with a motion that's going to pass, but the thing is, it's so wide open, the "for-profit activities of a non-profit." Which are those? Are they the ones taxed on? Or is that any time we make a nickel rather than losing a

nickel that is the essence of your non-profit organization. I don't think this is a study that needs to be done, I don't think it's going to be helpful and I know that I'm going to be spending time worrying about it.

S Andrist: One more comment. The Legislative council is going to decide whether they think it's an appropriate study worth prioritizing.

S Klein: I can see this being a huge, huge wet bundle. How are they going to try to address this? I see the differences here and know how much they'll be separated.

S Heitkamp: Even if this vote loses, I may switch on the next one. I see what Bill brought up and I think there's legitimacy to it. I also don't think that the problem lies in the state of ND. I think the problem lies on the Federal level where as Senator Andrist pointed out, they can't even get around churches who are doing nothing but politics with the non-profit status, so it's legitimate. The problem's real. If you're main street small business, and you're selling copier machines and you have somebody using their non-profit status to start a copier company, there's a problem.

S Behm: This must have passed the House, or it wouldn't be here.

S Klein: Correct. Doesn't mean it's a good idea just because it passed the House. That's our job here. We need to look at everything. Sometimes things get across because of the bill sponsor which this might support them on one or two things.

Vote for a DO NOT PASS ON HB 1226 – 2-4-1 Failed (nays Klein, Hacker, Andrist, Behm)

Vote Failed

Motion for a DO PASS from S Andrist

Second by S Hacker

S Hacker: There are other things that the Federal government does that we regular further on the state level. If we can find anything that addresses those poor situations, that's why it needs more study.

S Potter: I absolutely can see that whether intended or not, something like 5 Nations Art is clearly under the place where we're going to draw lines and we won't be able to draw that line. We are a non-profit organization running a for-profit business. We are certainly in competition with anyone else who wants to start an Indian Art Store in the community. The fact that no one ever has, or one started before has failed, that's why a non-profit is doing it, but how do you ever draw the line that says, "We don't want a non-profit to sell office machines, but it's ok to sell Indian art."

Vote for a DO PASS on HB 1226 – 4-2-1 (nays Behm, Potter)

Carrier: S Andrist

S Klein: This is a massager. This may not even pass. There are folks that will look at this and certainly have some issues.

Date: 2.28.07

Roll Call Vote: 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1226

Senate INDUSTRY BUSINESS & LABOR Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DO NOT PASS

Motion Made By S. Potter Seconded By Heitkamp

Senators	Yes	No	Senators	Yes	No
Chairman Klein, Jerry			Senator Behm, Arthur		✓
Senator Hacker, Nick VC		✓	Senator Heitkamp, Joel	✓	
Senator Andrist, John		✓	Senator Potter, Tracy	✓	
Senator Wanzek, Terry	NP				

Total Yes 2 No 4

Absent 1

Floor Assignment _____

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

FAKED.

Date: 2.28.07

Roll Call Vote: 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1226

Senate INDUSTRY BUSINESS & LABOR Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS

Motion Made By ANDRIST Seconded By HACKER

Senators	Yes	No	Senators	Yes	No
Chairman Klein, Jerry	✓		Senator Behm, Arthur		✓
Senator Hacker, Nick VC	✓		Senator Heitkamp, Joel	✓	
Senator Andrist, John	✓		Senator Potter, Tracy		✓
Senator Wanzek, Terry	NP				

Total Yes 4 No 2

Absent 1

Floor Assignment Andrist

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

REPORT OF STANDING COMMITTEE (410)
February 28, 2007 3:15 p.m.

Module No: SR-38-4126
Carrier: Andrist
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1226, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (4 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1226 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

HB 1226

HOUSE BILL 1226

If HB 1226 were enacted it would severely restrict the States' and Fargo's capacity to provide housing for low and moderate income households and so we have an interest.

As you may be aware, nonprofit entities regularly access the Federal Low Income Housing Tax Credit (LIHTC) program to assist them in accomplishing the mission of providing affordable housing. There is a Federal (and state) set-aside of the credits specifically for the use of nonprofits. The nonprofits facilitate the creation of a for-profit project ownership entity which then attracts equity investors who get their return primarily from the tax credit. The nonprofit maintains an interest in the for profit entity and, typically, after the 15 year compliance period for the credits the partnership is dissolved and the assets and liabilities of the project go to the nonprofit which then maintains the affordability per its mission. This model allows and encourages long term affordable housing throughout the state. Too, a common finance model for the renovation of public housing these days is for a Housing Authority to sell it's public housing to a for profit partnership in which it remains as the general partner and again, the needed rehab funds are raised primarily via the LIHTC program using the model described above. The Fargo HRA and it's affordable housing development affiliate, Beyond Shelter Inc. rely almost exclusively on this model to accomplish the mission of providing affordable housing alternatives to low and moderate income households in Fargo and the metro area. Several other nonprofit housing organizations are equally affected including the Eastern Dakota Housing Alliance and Affordable Housing Developers Inc., which operate in partnerships throughout the State,

Too, although the LIHTC can be and is used by for profit developers in North Dakota and throughout the country; a for-profit developer can not reach down to the rent levels a nonprofit can due to the fact that a nonprofit can typically access Government and foundation moneys to put into a project and, often will reinvest it's development fee back into a project instead of taking it out as a profit driven developer of course must do. The result is that more very low income persons can be served by the nonprofit than a for profit. The nonprofit can be viewed as competing with a for profit though and as HB1226 is written, these described activities would apparently be outlawed in North Dakota. We expect that is not the intention of the proposed legislation. Whether or not this is one of the goals though, or if this an inadvertent by-product, the consequences of adoption of the bill are equally damaging to the ability of the Fargo Housing and Redevelopment Authority and several area nonprofit housing providers to accomplishing the mission of providing needed affordable housing alternatives for low and moderate income households throughout the State.

We trust the committee will give due consideration to this consequence and agree that these types of public/private – for-profit/nonprofit partnerships are beneficial to the various communities which they serve.

Respectfully

Lynn Fundingsland
Executive Director,
Fargo Housing and Redevelopment Authority 701-478-2552

1/22/07

