

2009 SENATE FINANCE AND TAXATION

SB 2186

# 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2186

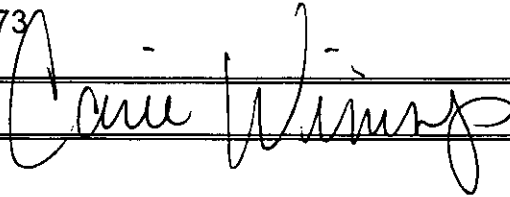
Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: 01/19/2009

Recorder Job Number: 7173

Committee Clerk Signature



Minutes:

**Chairman Cook:** Opened the hearing on SB 2186.

**Senator Jerry Klein, District 14:** Testified in support of the bill. Passed out a proposed amendment to bill, attachment #1, and then explains the bill. This relates to non-profit organizations and how we apply the sales tax. In the case here it is from the Harvey hospital, they purchases new air conditioner and did not pay any sales tax, but when they hired a local person to install it, he ended up paying a use tax. The gist of the bill is to go after looking at the hospitals and long term care facilities. I ask the council to research what other states do in this case, and what we came up with is this. It was drafted similar to Iowa. The tax department can explain what I cannot. It does create an issue in the small town community facilities where they have to contract out work.

**Arnold Thomas, President of North Dakota Healthcare Association:** See attached testimony #2 in support of SB 2186.

**Dan Huffman, Assistant Superintendent of Fargo School District:** See attached testimony #3 in support of SB 2186.

Senator Anderson: This came up to us before, and I have some personal experience from Wahpeton, and I realize no other city that have contractor that would take advantage of this,

but there was a project downtown and the city paid for the materials, but the contractors house that was being built at the same time ended up looking a lot like the building downtown. How would this be controlled?

**Dan Huffman:** I think that that could be addressed to the tax department. In reading the bill, I have some of the same questions as to how this might be administered. I don't know that I am in the position to just hand that to every contractor that walks in the door of the Fargo School District either. There should be some other discussion that has to occur. We would want to be assured that the contractor is using the materials purchased on our project only for our project.

**Chairman Cook:** How did you find this bill was out here?

**Dan Huffman:** I watch what is going on out here fairly closely. This was an issue that was proposed by the Fargo School District several years ago and it didn't get much traction. As we look at maintaining our facilities, this exemption just is something that makes sense.

**Chairman Cook:** Do you understand that the tax that contractor pays is on his cost, and the contractor would then end up allowing others to know what his markup was based on the amount of sales tax exemption. I am sure there are a few contractors out there that would be a little sensitive with their profit level on the supplies.

**Dan Huffman:** I understand that. The philosophy behind the bill is very solid, but I share the concern of these issues.

**Chairman Cook:** I think we all want to do this; it is just a matter of how we make this work.

**Myles Vosberg, Tax Commissioners Office:** I have not seen the amendment, but the problem with the original bill was that it provided an exemption for the acquisition of the materials. In the use tax law there is a section that requires contractors to pay tax on all of the materials they install, regardless of who owns the materials or who is the project owner. The intent of that section of the law was to avoid situations where an exempt entity buys materials

and they want everyone on the same playing field. That section of the law would need to be changed. I would guess that is what the amendment does.

**Chairman Cook:** I would like to accomplish what these folks want; I am concerned about how we would do it and also what the unintended consequences might be. Speak to me about a contractor buying supplies from out of state. How would they go about getting their exemption?

**Myles Vosberg:** Under our existing law, there is an exemption, more or a deferral in the law that allows any licensed contractor to purchase materials without paying tax, and then they take on the responsibility of reporting those purchases on their sales and use tax return and remitting the tax to us. There is language in the bill draft about providing a copy of the exemption certificate and a letter for the entity that this contract strikes.

**Chairman Cook:** Will this problem go away if a condition on the accepted bidder of a project would have to have a North Dakota tax permit?

**Myles Vosberg:** That would certainly provide help to the situation, but I do not know if that addresses Senator Anderson's question.

**Chairman Cook:** If the contractor, during an audit, could prove that he used it on a school district project would you allow for that.

**Myles Vosberg:** During an audit we would look at the job cost record to identify what materials went to that particular job and verify whether they were taxed or not taxed.

**Senator Hogue:** I am looking at the fiscal note, and it shows about a \$20 million dollars per biennium, could you explain the \$1.7 million for the other funds.

**Myles Vosberg:** the \$1.7 million would be the state aid distribution fund. There is a formula within the sales tax law that allocates that.

**Chairman Cook:** This fiscal note, does it follow a logical sequence of things to come up with it, or did you just pull a number, it was a little tough wasn't it?

**Myles Vosberg:** This was a little tough. What we did was get information from the internet as to all of the departments that would be affected by this, for example material used in highway jobs, two Air Force bases, and those sorts of entities. It is an estimate.

**Senator Triplett:** I would just like for you to continue with the idea that you indicated that this bill was unnecessary, am I hearing you correctly? Those contractors can accomplish it now with their reporting on their taxes.

**Myles Vosberg:** There is already a method in place that allows contractors to purchase without paying tax, however under the current law, the law also requires them to report those purchases and remit the cost.

**Senator Triplett:** So you are saying that the concerns about methodology are not as great as they might otherwise be because of that other situation is in place.

**Myles Vosberg:** That is correct.

**Chairman Cook:** I would hope that after you look at the amendment Senator Klein, you would let us know what would be the least amount of burden on the tax department and/or contractors.

**Myles Vosberg:** In looking at the amendment here, this is the way that we would do it. I will talk with legislative council.

**Senator Dotzenrod:** I originally thought that this was a minor thing in looking at this bill, but I am finding that this really effects many, not just a few. I think that the bill ended up being a much bigger impact than originally intended.

**Myles Vosberg:** It is true that a lot of those maintenance type things are a problem if under a contractor that requires the tax to be paid, if an entity has their own employees that can install

things that are already tax exempt then they are not taxable. The way the bill is written, it removes the responsibility for all contracts if the contract is with an exempt entity, so very large.

**Vice Chairman Miller:** Then is it up to the contractor to decide to if they want the tax exemption on their taxes?

**Myles Vosberg:** That is correct. We have some refund processes in place right now that some of the incentives, like power plants, ag processing plants and so on, we have had some instances where the contractor was not aware upfront that they were going to have to provide that information, and they were not real happy to do that. I think those exemptions have been in place long enough that the contractors are aware of it. Generally the exempt projects are very good about providing information when they bid, and they can decide whether they want to do that. It does require them to disclose their cost somewhat.

**Vice Chairman Miller:** So they can choose whether to turn it in?

**Myles Vosberg:** There is a little complication in there because when contractors bid jobs now, a lump sum, they are going to build the tax into that price, and they will need to know before they bid the job whether they need to add that in or not.

**Vice Chairman Miller:** I think that this promotes more openness.

**Chairman Cook:** Closed hearing on SB 2186.

## 2009 SENATE STANDING COMMITTEE MINUTES

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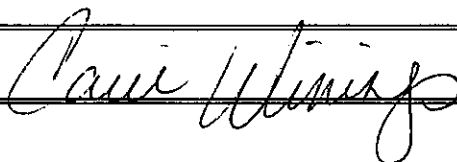
Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: 02/03/2009

Recorder Job Number: 8514

Committee Clerk Signature



Minutes:

**Chairman Cook:** Reopens discussion on the bill.

**Myles Vosberg, Tax Department:** Looks over John Walstad's drafted amendment and agrees that it will take care of the concern. There is no need for a refund provision.

**Chairman Cook:** If I sell a filter system to a contractor who is going to install it in a hospital, do I charge sales tax?

**Myles Vosberg:** You would not. Under the current law the contractors can purchase without paying tax, and then take care of it later. This exemption applies to personal property used for the non-profit hospital.

**Chairman Cook:** So when the contractor invoices the hospital for the materials that he provided?

**Myles Vosberg:** The contractor would not need to pay tax nor charge any.

**Chairman Cook:** What did this do to the fiscal note?

**Myles Vosberg:** It will drop it substantially.

**Chairman Cook:** Would it be under \$50,000?

**Myles Vosberg:** Probably not.

**Senator Anderson:** I would like to see the actual fiscal note on this bill.

**Chairman Cook:** When can we have it?

**Myles Vosberg:** I will check on that.

**Chairman Cook:** Suspends discussion on SB 2186.



# 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2186

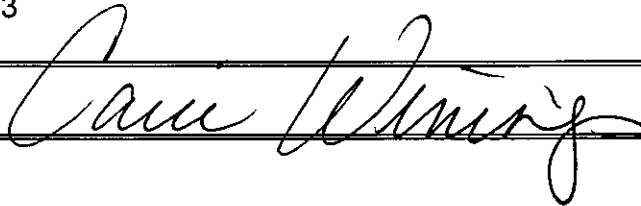
Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: 02/03/2009

Recorder Job Number: 8463

Committee Clerk Signature



Minutes:

**Chairman Cook:** Reopened discussion on SB 2186. See Attachment # 1 for amendments presented that would exempt non-profit hospitals.

**Senator Hogue:** Doe this need a new fiscal note?

**Chairman Cook:** It will. Are you comfortable with moving this direction?

**Senator Dotzenrod:** Comment.

**Chairman Cook:** This will narrow the fiscal note. The contractor could still cheat the system, but I don't think that we can completely get rid of that.

**Vice Chairman Miller:** I would like to maybe include nursing homes as well.

**Chairman Cook:** They will be here next session.

**Vice Chairman Miller:** Moved a Do Pass on Amendments 90451.0102.

**Senator Dotzenrod:** Seconded.

**Vice Chairman Miller:** I think the amendments addresses the concerns of what initiated the bill.

**Voice vote was taken on the amendment. 7Yeas, 0 Nays.**

**Chairman Cook:** Would you like to wait for a new fiscal note?

**Vice Chairman Miller:** Moved a Do Not Pass.

**Senator Anderson: Seconded.**

**Senator Anderson:** I am not opposed to this thing, I just have seen problems personally and you are opening yourself up for temptation.

**Chairman Cook:** A fiscal note would not change your mind.

**Senator Anderson:** Not me.

**Chairman Cook:** How about the rest of you?

**Senator Dotzenrod:** I am assuming it would really bring it down.

**Vice Chairman Miller:** I like the premise of the bill; it just puts more things in code that complicate mess. There is an enticement for fraud.

**Senator Dotzenrod:** I would continue to support the bill.

**Senator Oehlke:** One of the problems with the bill from a contractor's perspective, in order to know what not to charge for he has to bare his soul and show his profit. The last thing they want to do is show their profit.

**Senator Dotzenrod:** The exposure of all their records, that is in a tax audit though?

**Chairman Cook:** Yes

**Vice Chairman Miller:** I don't understand the real need for it. I know there are complications in making the purchases, but that would be the most logical thing to make the hospital go out and make the purchase.

**Senator Oehlke:** That sounds great in theory, but if I am the contractor, I would want to build in some profit. For major purchases that is not going to happen.

**Chairman Cook:** This would still require contractor to reveal his costs, but Myles can correct that so it does not. I would want to wait for that.

**Vice Chairman Miller:** I withdraw my motion for the Do Not Pass.

**Senator Anderson:** I withdraw my second.

**Chairman Cook:** We will give it one more attempt to get a decent amendment on there.

Suspended discussion on SB 2186.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2186

Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: 02/04/2009

Recorder Job Number: 8671

Committee Clerk Signature



Minutes:

**Chairman Cook:** Reopened discussion on SB 2186. Reminded that they already passed the amendments.

**Senator Dotzenrod:** Moved a Do Pass As Amended and Re Referred to Appropriations.

**Senator Triplett:** Seconded.

**Chairman Cook:** Discussion?

**Senator Anderson:** I still oppose it; it still leaves the temptation out there for increasing inventory and that kind of thing.

**Senator Hogue:** I am having a real problem with broadening these sales tax exemptions. I cannot support it either.

**A Roll Call Vote was taken: Yea 2, Nay 4, Absent 1 (Senator Oehlke).**

**Motion Failed.**

**Senator Anderson: Moved a Do Not Pass As Amended.**

**Senator Hogue: Seconded.**

**A Roll Call Vote was taken: Yea 5, Nay 1, Absent 1 (Senator Oehlke).**

**FISCAL NOTE**  
**Requested by Legislative Council**  
02/06/2009

Amendment to: SB 2186

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.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>			(\$1,937,000)	(\$168,000)		
<b>Expenditures</b>						
<b>Appropriations</b>						

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **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 SB 2186 creates a sales and use tax exemption for materials used in construction projects for nonprofit hospitals.

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.*

If enacted, Engrossed SB 2186 is expected to reduce state general fund and state aid distribution fund revenues by an estimated \$2.105 million in the 2009-2011 biennium. This estimated impact is based on healthcare industry supplied statistics regarding expected projects to be undertaken by the state's hospitals in the next 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 is also included in the executive budget or relates to a continuing appropriation.*

<b>Name:</b>	Kathryn L. Strombeck	<b>Agency:</b>	Office of Tax Commissioner
<b>Phone Number:</b>	328-3402	<b>Date Prepared:</b>	02/07/2009

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/12/2009

Bill/Resolution No.: SB 2186

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.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>			(\$19,964,000)	(\$1,736,000)		
<b>Expenditures</b>						
<b>Appropriations</b>						

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

SB 2186 creates a sales tax exemption for materials acquired by a contractor on behalf of an 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.*

If enacted, SB 2186 will reduce state general fund and state aid distribution fund revenues by an estimated \$21.7 million in the 2009-2011 biennium.

Note: This fiscal note assumes that these contractor purchases are also exempt from the use tax. It may need to be clarified that the bill is intended to create a sales and use tax exemption for these purchases.

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 is also included in the executive budget or relates to a continuing appropriation.*

<b>Name:</b>	Kathryn L. Strombeck	<b>Agency:</b>	Office of Tax Commissioner
<b>Phone Number:</b>	328-3402	<b>Date Prepared:</b>	01/16/2009

January 17, 2009

PROPOSED AMENDMENTS TO SENATE BILL NO. 2186

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 a use tax exemption for untaxed materials used by a contractor under contract with an exempt entity"

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. 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 property owned or under the control of an exempt entity under a contract between the contractor and that exempt entity.~~ For purposes of this subsection, "exempt entity" means an entity that, if it acquired or used the tangible personal property on its own behalf, would be entitled to a sales or use tax exemption for that acquisition or use.
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 commissioner under section 57-39.2-04.2; or
  - b. Machinery, equipment, or other tangible personal property used to construct an agricultural commodity processing facility as authorized or approved for exemption by the commissioner under section 57-39.2-04.3 or 57-39.2-04.4."

Renumber accordingly

February 2, 2009

PROPOSED AMENDMENTS TO SENATE BILL NO. 2186

Page 1, line 3, replace "an exempt entity" with "a nonprofit hospital; to amend and reenact section 57-40.2-03.3 of the North Dakota Century Code, relating to a use tax exemption for untaxed materials used by a contractor under contract with a nonprofit hospital"

Page 1, line 7, replace "an exempt entity" with "a nonprofit hospital"

Page 1, line 9, replace "an exempt entity" with "a nonprofit hospital"

Page 1, line 14, replace "exempt entity" with "nonprofit hospital"

Page 1, line 17, replace "exempt entity" with "nonprofit hospital"

Page 1, line 21, replace "an exempt entity" with "a nonprofit hospital"

Page 1, line 23, replace "exempt entity" with "nonprofit hospital"

Page 2, line 1, replace "exempt entity means an entity that, if it acquired" with "nonprofit hospital means a hospital licensed by the state department of health and exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)]."

Page 2, remove lines 2 and 3

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. 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 a nonprofit hospital or facility, licensed by the state department of health and exempt from federal taxation under~~



section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)],  
under a contract between the contractor and the nonprofit hospital.

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 commissioner under section 57-39.2-04.2; or
  - b. Machinery, equipment, or other tangible personal property used to construct an agricultural commodity processing facility as authorized or approved for exemption by the commissioner under section 57-39.2-04.3 or 57-39.2-04.4."

Renumber accordingly

Date: 02/03/09

Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. : 2186

Senate Finance and Taxation Committee

Check here for Conference Committee

90451.0102

Legislative Council Amendment Number

Amendment

Action Taken

Do Pass

Do Not Pass

Amended

Motion Made By

Miller

Seconded By

Dotzenrod

Senators	Yes	No	Senators	Yes	No
Sen. Dwight Cook - Chairman			Sen. Arden Anderson		
Sen. Joe Miller - Vice Chairman			Sen. Jim Dotzenrod		
Sen. David Hogue			Sen. Constance Triplett		
Sen. Dave Oehlke					

All in Favor

Total: Yes 4 No \_\_\_\_\_

Absent Triplett

Floor Assignment \_\_\_\_\_

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

Withdrawn

Date: 02/04/09

Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.: 2186

Senate Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number Re Referred to Appropriations

Action Taken  Do Pass  Do Not Pass  Amended <sup>AS</sup>

Motion Made By Senator Dotzenrod Seconded By Senator Triplett

Senators	Yes	No	Senators	Yes	No
Sen. Dwight Cook - Chairman		✓	Sen. Arden Anderson		
Sen. Joe Miller - Vice Chairman		✓	Sen. Jim Dotzenrod		✓
Sen. David Hogue		✓	Sen. Constance Triplett	✓	
Sen. Dave Oehlke					

Total: Yes 2 No 4

Absent \_\_\_\_\_

Floor Assignment Failed

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

Date: 02/04/09

Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. :

2186

Senate Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  Amended<sup>As</sup>

Motion Made By Senator Anderson Seconded By Senator Hogue

Senators	Yes	No	Senators	Yes	No
Sen. Dwight Cook - Chairman	✓		Sen. Arden Anderson	✓	
Sen. Joe Miller - Vice Chairman	✓		Sen. Jim Dotzenrod		
Sen. David Hogue	✓		Sen. Constance Triplett	✓	✓
Sen. Dave Oehlke					

Total: Yes 5 No 1

Absent 1 Oehlke

Floor Assignment Senator Hogue

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

**REPORT OF STANDING COMMITTEE**

**SB 2186: Finance and Taxation Committee (Sen. Cook, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (5 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). SB 2186 was placed on the Sixth order on the calendar.

Page 1, line 3, replace "an exempt entity" with "a nonprofit hospital; to amend and reenact section 57-40.2-03.3 of the North Dakota Century Code, relating to a use tax exemption for untaxed materials used by a contractor under contract with a nonprofit hospital"

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**57-40.2-03.3. 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 a nonprofit hospital or facility, licensed by the state department of health and exempt from federal taxation under

section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)],  
under a contract between the contractor and the nonprofit hospital.

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 commissioner under section 57-39.2-04.2; or
  - b. Machinery, equipment, or other tangible personal property used to construct an agricultural commodity processing facility as authorized or approved for exemption by the commissioner under section 57-39.2-04.3 or 57-39.2-04.4."

Renumber accordingly

2009 TESTIMONY

SB 2186



**Vision**

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

**Mission**

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

Testimony in Support of SB 2186  
January 19, 2009

Chairman Cook, members of the Senate Finance and Tax Committee. I am Arnold Thomas, President of the North Dakota Healthcare Association, here in support of SB 2186.


SB 2186 provides a sales tax exemption for materials purchased by a contractor for hospital construction and renovation projects.

Passage of SB 2186 would establish consistency in how the sales tax is applied on materials used in hospital renovation and construction projects. Currently, the cost of materials purchased by a contractor for a hospital renovation or construction project are subject to sales tax. The cost of materials purchased by a hospital for the same purpose however, are not, subject to sales tax. SB 2186 eliminates this inconsistency in applying the sales tax based on who submits the purchase order.

SB 2186 is important in another respect: it provides relief to increasing capital pressures facing hospitals.

Hospital construction and renovation projects are contingent upon capital availability. In prior years, capital expense was either a pass through item to the payer or included as part of the rates paid for services. This is no longer the case. Today, capital expense is not a pass through nor is it a recognized component in rate determination. In fact, the majority of rates paid to ND hospitals are not negotiated. They are set by the payer. This control of a hospitals revenue stream by third parties over time has created major capital challenges for ND hospitals.






How much challenge is capital for ND hospitals? The age of a hospital's physical plant is an important indicator of a hospital's capital strength. Nationally, the age of plant for US hospitals is about eleven years. In ND, the age of plant is near fifteen years.

SB 2186 will not provide broad relief to this increasing capital pressure challenging hospitals. However, by eliminating the sales tax hospitals pay on materials purchased by contractors, SB 2186 will reduce project capital cost, a direct benefit in this time of capital pressure.


The diversity of financial conditions in the field do not allow me to estimate with any degree of confidence, the impact upon the state's sales tax revenue if you adopt the provisions of SB 2156. However, I can give you two examples of what passage of this bill would mean at the hospital level if this bill becomes law.




The Jamestown Hospital recently announced plans to build a replacement facility. The construction estimate for this replacement facility is approximately 40 million dollars. Of this amount, the sales tax on materials is estimated to be slightly more than one million dollars. Interestingly, if the hospital was able to undertake this project on its own without the use of contractors, it would not have to pay the sales tax, thereby reducing its capital obligation by that amount.

The hospital in Harvey recently completed a renovation project for which the tax on materials used in the renovation was approximately \$40,000. Had the hospital been able to undertake the renovation itself by purchasing the materials and using its own labor force, the sales tax on materials would not have applied.

Like the Jamestown Hospital example, the capital cost of the Harvey hospital renovation project would have been less.





Because hospital capital costs are no longer treated separately by payers and because hospitals are exempt from sales tax if they purchase materials for renovation or construction projects, it is consistent that a sales tax levied on materials purchased for hospital applications not be determined by who submits the purchase order.

We respectfully request a Do Pass on SB 2186.



North Dakota State Senate

Senate Finance and Tax Committee

61<sup>st</sup> Legislative Assembly of North Dakota

Senate Bill 2186

Each year our school district undertakes multiple facility improvement projects. These projects keep our facilities current, address energy conservation, improve indoor air quality, provide a safe environment for students and staff, and address changing student population demographics. Roof repairs, floor covering replacement, window replacement, lighting and other electrical projects, HVAC improvements and repairs, kitchen and food service upgrades, painting, intercom systems, communications and telephone needs, and technology infrastructure all need to be continuously addressed. Like other entities, we struggle with having adequate resources to meet all of these facility needs.

SB 2186 would help by reducing the cost of these projects. If we bought these materials ourselves and had the labor resources to install, the materials would have been exempt from sales tax. This proposed language would make the material tax exempt if a contractor installed them in our facilities.

Fargo Schools supports this proposed language because it would allow us to complete more projects with the same resources.

We support a due pass recommendation.

Testimony provided by

Dan Huffman, Assistant Superintendent

Fargo Public School District #1