

2009 SENATE FINANCE AND TAXATION

SB 2244

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2244

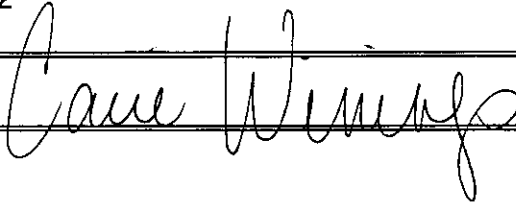
Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: 02/10/2009

Recorder Job Number: 9072

Committee Clerk Signature



Minutes:

Chairman Cook: Opened hearing on SB 2244.

Senator David O'Connell, District 6: Testified in support of the bill and gave an example of someone this bill would affect. Mentioned that he did not know of any other exemption you would lose to the death of a spouse. See Attachments #1 and #2 for additional testimony that he passed out from those that could not make it due to weather.

2.20 **Senator Jim Pomeroy, District 27:** See Attachment #3 for testimony as sponsor and in support of the bill.

3.45 **Senator Jerry Klein, District 14:** Testified in support of the bill. He had been working on this issue for a long time. We see it as a disparity and a direct example of a personal experience was given as to why this would be necessary. We need to treat all farm widows equally.

6.05 **Chairman Cook:** Any further testimony? No. Can someone from the tax department answer a question? I see the language in here for a beginning farmer also. Why is that necessary?

6.23 Marcy Dickerson, State Supervisor of Assessments: As I see this, the beginning farmer is just changing the language and the way the grammar is set out for the beginning farmer.

Chairman Cook: So the only thing we are doing with this bill is the definition of a surviving spouse on a farm?

Marcy Dickerson: That is the way I see it.

Vice Chairman Miller: Can you tell us about the current state of the law and what qualifies you?

Marcy Dickerson: The current law doesn't provide any thing for the surviving spouse. It is just silent on it. It does provide for a farmer who qualifies by income and by spending the majority of time working at farm work rather than doing something else. More than half of your income has to come from farming and if you have more than \$40,000 of non farm income you cannot qualify. That is in any one or all three of the preceding years. There is no reference to the surviving spouse. Our guideline goes back many years where it says the spouse of a deceased farmer is not eligible for the exemption unless that spouse is also a farmer and qualifies according to those requirements. The guideline also says that the spouse of a deceased retired farmer is eligible. We don't know how they came up with that. This language would make the spouse of a deceased active farmer and a deceased retired farmer to both qualify to retain the exemption.

Vice Chairman Miller: If you are retired, what qualifies you to retain the exemption?

Marcy Dickerson: You have to retire and live in the house that you lived in and owned when you were an active farmer.

Vice Chairman Miller: Is there a guideline on the number of years?

Marcy Dickerson: Nothing in the law or guideline.

Chairman Cook: An individual farmer could retire at age 50 and qualify then?

Marcy Dickerson: The Attorney General has ruled that the age of retirement is at the discretion of the local government.

Chairman Cook: Your job is uniformity, are you saying here that this one area that we don't have to have uniformity?

Marcy Dickerson: They do, but that is what the Attorney General has ruled.

Chairman Cook: There are no income requirements for a retired farmer?

Marcy Dickerson: That is correct.

Senator Triplett: What if someone later on in life farmed a little of their acreage and rented out most of their land, is that a retired farmer or is it not?

Marcy Dickerson: That is gray area. There is nothing definitive about that. It is at the local level to decide.

Senator Triplett: I suppose that it doesn't matter at some point.

Marcy Dickerson: It still has to be that he retired due to age or illness. If he retired because he has enough money in the bank, that would not qualify.

Senator Triplett: Really?

Marcy Dickerson: Yes.

Senator Triplett: By age you mean 65?

Marcy Dickerson: Some it can be a lower age. There is not universal agreement on the age.

Senator Triplett: Senator Klein mentioned that the surviving spouse didn't have paperwork that she had been involved in active farming, would that make a difference if the woman had been actively engaged with the farm work at all but also worked off the farm as well?

13.30 **Marcy Dickerson:** The requirement that the surviving spouse be an active farmer, would mean after the death of the original farmer, so if the person did claim to be working more

on the farm and less in town, then yes just like the farmer could. Then they would qualify as a farmer not an existing spouse.

Senator Dotzenrod: If they retire early and they still have that 50% income level to meet, and it falls below that percentage, then they would not qualify?

Marcy Dickerson: That is true, but still at local level they determined that then would be fine. Just to note the blind exemption does not pass on to the surviving spouse; the only exemption that does not pass to surviving spouse.

Chairman Cook: What if a surviving spouse remarries to someone and they were getting the benefit, would they still get it?

Marcy Dickerson: May be wise to include if you want to make sure that a remarriage does not still take advantage.

Chairman Cook: Closed hearing on SB 2244.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2244

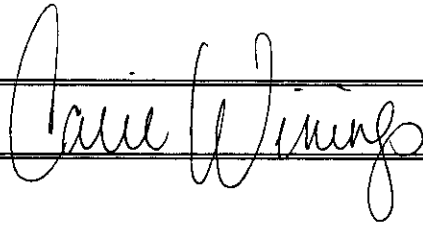
Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: 02/16/2009

Recorder Job Number: 9566

Committee Clerk Signature



Minutes:

Chairman Cook: Reopened discussion on SB 2244. Asked the committee what their wishes were.

Senator Triplett: In reading Senator Pomeroy's testimony, I am reminded that the tax issue he is mentioning concerning the woman on whose behalf he brought this bill is now living with her daughter in Fargo because her husband died of a heart attack and she lost her farm. She is apparently not paying higher taxes to live in Fargo if she is staying in her daughter's home.

Chairman Cook: She is not paying any taxes.

Senator Anderson: It was pointed out during testimony that there is no other exemption that is lost because of death and to me this would give a surviving spouse the opportunity to stay there for a while until moving to another location without an extra expense.

Senator Dotzenrod: I would like to find some way to make this work. It does seem like there is a period of time after a death in the family when there is a lot of difficult decisions and adjustments to make and it would be nice if that spouse whether a man or a woman out there by themselves would have a period of time, and then after that period of time you would re-impose the farmer test. I don't know if there is a way to do that.

Vice Chairman Miller: It is certainly not going to be any loss to the tax role if the place doesn't get taxed right away; however it creates more gray matter for the whole issue to be putting this into code. I certainly don't want to chase any old ladies off their farm.

Chairman Cook: It could be the other way around; it could be the lady that is farming.

Vice Chairman Miller: I can't think of any cases where I have seen this to be a problem.

Senator Anderson: Moved a Do Pass.

Vice Chairman Miller: Seconded.

Chairman Cook: There a lot of surviving spouses that have to leave their spouses because they can't pay their taxes, and they are not on farmland.

Senator Hogue: I have no problem with requiring a retired farmer or a surviving spouse of a retired farmer to pay taxes on their residence. They are out there on the farm receiving

passive income from renting out their farm. I don't see why we should continue to provide that exemption. I realize the bill has structure and doesn't address that. I think we should.

Chairman Cook: I understand the difficulty in facing someone who might be affected by this. Gave a personal example.

Senator Dotzenrod: One of the things that I have always carried around with me as far as this farm home exemption is the sense that if we are going to finance education largely with the property owners then this farm home exemption makes sense to me because those people who are out there doing that farming are major contributors on a per capita basis at rates two and three times higher than everyone else. I don't have the same trouble that Senator Hogue has.

Chairman Cook: On the strip in Mandan, there is a bowling alley that probably appraised at 3 million dollars and that means they pay about \$75,000 in property tax. That means about 60% of that money goes to education. I think all of the commercial property is also contributing, so

should we exempt the owner of the bowling alley from property tax because of the argument just made?

Senator Dotzenrod: The argument I am making is that property taxes for everybody are too high and if we can do a dollar for dollar trade income tax increase, property tax decrease, I am with you all the way. I think the bowling alley is over taxed. I would like to see all property taxes go down.

Chairman Cook: I couldn't agree with you more. By 2012 we are supposed to make sure that no one is paying more than 1 1/2% tax. We have a long way to go yet.

Senator Triplett: Should we find a way to limit it to a period of years?

Senator Dotzenrod: Can we amend this on page 2, line 11 after claimed, and have it be limited to a period of 5 years after the date of the death of the spouse?

Chairman Cook: We need to have the motions taken off the floor.

Senator Anderson: So moved.

Vice Chairman Miller: So moved.

Senator Dotzenrod: Motioned to amend the bill so that the exemption for the surviving spouse of a farmer would expire at the end of the 5th tax year after the death.

Senator Triplett: Seconded.

Chairman Cook: Discussion?

A Voice vote was taken: 7 yeas, 0 nays, 0 absent.

Senator Anderson: Motioned for a Do Pass As Amended.

Senator Dotzenrod: Seconded.

A Roll Call vote was taken: 5 yea, 2 nay, 0 absent.

Senator Anderson will carry the bill.

Date: 02/16/09

Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. : 2244

Senate Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By Senator Anderson Seconded By Senator Miller

| 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 | | | | | |
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Total: Yes _____ No _____

Absent 0

Floor Assignment Senator

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

Date: 02/16/09

Roll Call Vote #: 2

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

2244

Senate Finance and Taxation Committee

Check here for Conference Committee Amend to end at end

Legislative Council Amendment Number of 5th tax year after the death

Action Taken Do Pass Do Not Pass Amended

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 | | | | | |
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Total: Yes 7 No 0

Absent _____

Floor Assignment _____

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

REPORT OF STANDING COMMITTEE

SB 2244: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2244 was placed on the Sixth order on the calendar.

Page 2, line 11, after the underscored period insert "The exemption under this subparagraph expires at the end of the fifth taxable year after the taxable year of death of the farmer."

Renumber accordingly

2009 HOUSE FINANCE AND TAXATION

SB 2244

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2244**

House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: March 10, 2009

Recorder Job Number: 10573

Committee Clerk Signature

Minutes:

Chairman Belter: We will open the hearing on SB 2244. Senator Pomeroy, you are on.

Senator Pomeroy: I will start with a story of how this bill came to me. Somebody who was a constituent was telling me she was living with her daughter because she lost her farm home.

The reason she lost her farm home was because her husband, who was a farmer, died. She didn't have her name on any of the papers; she thought all of the business should be taken care of by him. She worked in town and the way that the law was written, she had to get rid of her home and the farm and be able to pay the taxes and so she moved into town. The law, as it was written, said it has to be the wife of a retired surviving farmer who dies. With retirement, she could stay there; that would be her home. But before, if it was an active farmer, that was not true. He had died of a heart attack so that was what happened. Senator O'Connell says that there was a woman who was in his district who also had that same thing. When we testified before the Senate, she was going to come down; but with the weather as it was this time, she was not able to. But she also had the same experience. Senator Klein found out that I was carrying this bill and he was surprised because he was going to carry the bill; he also was going to do it. So it was because of this inequity that we decided that we would bring forth this bill. You will notice that there have been quite a few engrossments on it. The first

one that came had dropped out that retired farmer and so that placed back in. We did have that if the surviving spouse would remarry that then the tax exemption would go. That is not in the bill as it is now. We had a little disagreement on it, but it was in the first engrossment and not in the second. That is basically the bill. It is quite straightforward now except for one other thing that is questionable, that his exemption would last only for five years. If she were living in the house, should she have to move off the farm in five years. In the original bill, we did put five years in that. I think you will get some testimony on why five years. That is basically the bill and I am eager to answer any of your questions.

Chairman Belter: What I was wondering is this is the twelfth session that I have been on this committee and I have never heard of this problem happening before. I am assuming it must have happened. Was there any discussion over on the Senate side that this has been an ongoing problem?

Senator Pomeroy: I think you will get some more testimony on that.

Senator Jerry Klein: Yes, I agree with Senator Pomeroy. I had been working all last summer on an issue that was a direct result of a lady whose husband going to those darn auction sales in the spring had an accident and was killed. She is working in town but continues to live on the farm. However, that is not retirement in the law and she was no longer able to retain her exemption. Whether you feel strongly about the homestead exemption or not, the issue that seems to crop up is everybody is not applying it equally because some assessors don't see it that way. My constituent was one that was brought to task; the county equalizer went to the states attorney; they asked the question, "Are you a farmer?" She said, "Well I guess no", but she continues to live on the farm, rents out the machinery, rents out the land but has lost her exemption. This is something that I had been working on; I had met with the department a couple of times and it was pretty clear that no, she does not qualify any longer. I was trying to

bring this together and Senator Pomeroy was just a bit ahead of me on this. I am here to support it. The five-year issue is one that got put on in the Senate. After five years the spouse would lose that exemption. I guess we were all in hopes of getting it passed the Senate because some things are a little more difficult to get through the Senate. I was supportive of the five years at least to have another hearing another day. Whether the spouse is 40 years old or 63 years old, it probably shouldn't matter other than whether or not, Mr. Chairman, your brother-in-law would have a date or not up in our area. It isn't a cost to the state; it probably isn't a cost to the county because had this gentleman lived another year and retired, things would still be exempt. With that I would answer any questions, but that is my story and how I became very supportive of the issue.

Chairman Belter: If she is living on the farm and she owns the land, why can't she call herself a farmer?

Senator Klein: I will have someone who will read you the law explain that because if you say, "I am not a farmer", the state's attorney will take that as I am not a farmer. Now probably had she said, "Yes, I am still farming; I just have this job in town to supplement my farm income and for the insurance," but in this case, she said, "No, I am not a farmer" but she worked with her husband, continues to live on the farm. That is kind of where I got crosswise (?) (08:37), but it was explained very clearly to me by the Tax Department that the law says that by the law, she does not qualify.

Chairman Belter: Are there any questions?

Representative Brandenburg: She must have some farm income from the land she is renting now and she must have some income from the city. Wouldn't she be able to have about a three-year period there before she gets put on the tax rolls because of they are still farming? (Inaudible.)

Senator Klein: Exactly. I am right with you on that but it doesn't seem to have applied in this case. That is why we are here.

Representative Headland: Isn't it the fact that she had a job off the farm that classified her not as a farmer? When my dad died, as a young man still actively farming, my mother continued to live in the house until the day she moved off it. It was exempt even though she rented her land and machinery to her two sons.

Senator Klein: I don't know if that was the main reason. My understanding is that when she was asked by the assessor or by the states attorney as it went through the assessor (It wound up all the way to the state's attorneys office) when the question was asked, "Are you a farmer?", she said, "No, my husband was the farmer" and that is kind of where it was most likely the statement that she said "I am not the farmer" even though she continued to do exactly what you say, renting out the land. She has kept the machinery; she hasn't even sold that off. She leases that out.

Representative Headland: Doesn't her tax return filed jointly with her husband indicate she is a farmer?

Senator Klein: It is her tax man who has been pounding on me on this one because he sees this inequity. I know that he has had a lot of contact with the department, but I think he will find out that there is something there that says she is not a farmer.

Representative Brandenburg: How long since this individual passed away?

Senator Klein: I believe it is three years now. Under this five year provision, my understanding is she will only be able to get it for the next two, which is kind of what I am being told by the Senate chairman so time is ticking away for her.

Representative Froseth: What is the reason for the five-year exemption then? If she continues to own that land and continues to live in that house, why limit it to five years?

Senator Klein: The wisdom of the Senate Finance and Tax Committee, I am just not exactly sure where that came from. It seemed to me that I guess the chairman had that provision in an attempt to be able to support it because we certainly know how warm and fuzzy he feels for the farm's exemption.

Chairman Belter: Any other questions? Further testimony in support of SB 2244?

Mary Dickerson, State Supervisor of Assessments for the Tax Commissioner:

(Testimony 1) The testimony I am handing out deals only with an amendment that we recommend putting on the bill. (13:40-15:11) If I may, I would like to address some of the conversation that was just going on. The existing law for the farm residence exemption makes no provision for any surviving spouse. The Tax Department guidelines many years ago, at least over 15 years ago we found a record of it, interpreted that the surviving spouse of an active farmer who passed away was not entitled to the exemption unless that surviving spouse also continued as a farmer. The guideline also said that the surviving spouse of a retired farmer who had passed away was eligible for the exemption. We didn't find any documentation for the reason for that difference in the guideline. The only thing I can think of is after a farmer retires, their activities, their income, nothing affects that exemption. That retired farmer can have it forever once he qualifies as a retired farmer. That is probably why they said the surviving spouse of a retired farmer could do that, but the statute itself is silent on any surviving spouse. The question of the income, as you know, the statute says with reference to the farm residence exemption, the statute is to be strictly construed and it has the requirement first a person who is applying as a farmer has to normally spend the majority of their time in farming activities, must make more than half of their income from farming activities and cannot have income of more than \$40,000 in all of the three preceding years. When it comes to farm income, if a person is renting their land out for cash, that is not considered farm

income. The attorney general has made that determination. If they are renting their land out on shares, that is considered farm income because that person is assuming the risks that a farmer assumes with the shares. Under those circumstances, if a surviving spouse were renting the land out on shares, that person could conceivably be considered a farmer depending upon whether their income qualified. Also they would still have to be spending more than 50% of their time in the activities of farming. Well if they are renting it out on shares, it is unlikely that that is the only farming they are doing. They are not spending 50% of their time farming. That is why without a statutory provision for the surviving spouse to receive the exemption, the tax directors are instructed that this is not available to the surviving spouse. I have no problem with making this available to a surviving spouse because surviving spouses of other people who are entitled to exemptions which I just read to you are eligible for exemptions. I was a little surprised or unhappy with the amendments that were added in the Senate because it doesn't seem fair to treat surviving spouses differently under this. I am not aware of any other exemption where the surviving spouses are treated differently because of employment or age or anything. As I see it, an individual who is working at 75 who is an active farmer and dies while he is still working, his surviving spouse would be limited to five years; she might be 75 also. Whereas on the other hand, some farmer might retire at 62 and then die and his wife, being the surviving spouse of a retired farmer, would be eligible for an indefinite period where the 75 year old only gets five years. I feel it is inequitable, just as the present law combined with our interpretation in the guideline, is inequitable. That is just our opinion on that and I appreciate the opportunity to express it. I would be glad to answer any questions.

Representative Grande: I guess I am a little confused as to why we have some of these exemptions the way we have them in that we have a law and we have an exemption, as you mentioned, for the disabled veterans, for the disabled person, for the blind which makes sense.

There was a reason we did that. There was a need for that exemption and we justified that; we gave the exemption. But when that person is gone, the need for that exemption is really gone so I am curious as to...did we later add in the surviving spouses? It makes sense with the farming one if the farming continues and the reason for the exemption still exists; but on the other ones, the need for the exemption doesn't exist anymore because the person it was being exempted for is gone.

Marcy Dickerson: To the best of my knowledge, the provisions for the surviving spouse in these other sections have been there at least as long as I have worked here and I have been here for 33 years. I assume they were probably put in at the time those exemptions were enacted. Whether or not they are reasonable, I guess, is debatable. I haven't addressed that, but I do have a question as to why the surviving spouse of a blind person isn't eligible if the surviving spouse of a disabled person is. There is a bill that is amending the blind person's exemption to a larger value that can be exempted; but to the best of my knowledge, no one has put in any language about the surviving spouse in that case.

Representative Grande: My concern would be to go the opposite; instead of adding that, that we should be looking at taking away the exemption on the other side and equaling it out that way.

Marcy Dickerson: I haven't addressed that. I guess I don't have an opinion on that at this point.

Representative Winrich: Marcy, if we were to adopt your amendments and take out the five year limitation, that would make this exemption consistent with the other ones you referred to. Is that correct?

Marcy Dickerson: I believe it would.

Chairman Belter: Any other testimony in support of 2244?

Allan Ratne, Township Office, Richland County Homestead Township: The problems that we have had with that is when a person gets sick; if someone comes hold to take care of them, then the Director of Tax Equalization wants us to tax the house right away. We had a lady whose nephew brought her over from Holland in 1950; she had five children. He did give her the farm and he died. She was 102 years old still living on the farm; her daughter came out here to take care of her and the director said, "Tax it, tax that place," but we did not tax that place and it is not taxed now. Her daughter took her back to Fargo and at 104; she died so that problem was solved there. We had another neighbor there who lived on a farm all his life who was 85. He got cancer at 85 and his son came home to take care of him and the mother and the Director of Equalization wanted to tax that house right away. Of course, we argued with him on that and did not get the house taxed. The mother is still living there and, of course, the son is still there too and we don't tax the house yet. These are just some stories and sometimes you really don't know what to do.

Chairman Belter: Any questions? Further testimony in support of 2244? If not, any opposition against 2244? If there is no further testimony, we will close the hearing on 2244.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2244**


House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: March 10, 2009

Recorder Job Number: 10644

Committee Clerk Signature



Minutes:

Chairman Belter: Is this a good fix?

Representative Headland: Well it is for me. Well, no I am not a widow. It makes it consistent with what Marcy Dickerson mentioned to us. Let me pass it out. Mr. Chairman, what it does is it takes the five years off and also removes the exemption under this so that it applies for as long as the farmstead continues to be occupied by a surviving spouse; they don't have to be a retiree. I will move my amendments.

Chairman Belter: I have a motion from Representative Headland to move the .0300 amendments to 2244 and a second from Representative Froseth. Is there any discussion?

Representative Grande: Is there still farming going on?

Representative Headland: No.

Representative Grande: Well you said the surviving spouse was contracting out the land so the land was still being used. Is that correct with your language here?

Representative Headland: Whatever the bill did before, it still does; it just takes off the five year limit on it.

Representative Grande: Even if there is no farming activity.

Chairman Belter: The way I understand it, she would get the same benefit as if she and her husband were retired from farming and the husband dies, the widow would have that benefit. Now what he is doing is extending that benefit to somebody who has died prior to retiring if they don't get married.

Representative Grande: Mr. Chairman, just for clarification. The exemption for farming, we have that little caveat if you go off and work and a percentage is not farming anymore, too high of a percentage, then you lose that exemption. When the farmer retires and maintains that exemption on the homestead, what is the farm land doing? Is he usually renting that out then and still has the income on that, correct? So is that the assumption being made that the surviving spouse is renting out that land and still receiving farming income? Correct? That is why she is staying on the homestead because the income from the farm is coming in to her? I am going to make a point.

Chairman Belter: I would say probably not; not necessarily.

Representative Grande: So that goes back to my question on Marcy's amendment. We have a blind person and we give them a tax exemption on the house because the blind person lives there. The blind person passes away; the exemption should pass away.

Representative Winrich: It does.

Representative Grande: No it doesn't. For a blind person, it does. The handicapped person is in the house, a paraplegic; he passes away and so should the exemption, but it doesn't. The farmer receives the exemption because of the percentage of income of farming. That goes away, but we are still going to keep the exemption. Does anybody see a flaw in any of this? It is all inconsistent, but it is inconsistent all the way back to the point that when the reason for the exemption goes away, so thusly should the exemption.

Chairman Belter: Refresh my memory on why she said this is not consistent with what we do with others.

Representative Grande: It's because the blind are the only ones who don't get to keep the exemption. I am saying no one should get to keep the exemption; she is saying everyone should get to keep the exemption.

Representative Froseth: I think if you look back at the situation here where this lady was widowed and everything was in her husband's name; that was an oversight to that couple. They should have remedied that years and years before. More than likely, most farm couples on farms now have their property in both names, not just the husband's name. But that is the way they used to do it.

Chairman Belter: I think what the bill is clarifying is that we have got a tax assessor here that has created a situation that probably exists in many, many circumstances and they just let it go. Now here is one that is why Casey attempted it and so...

Representative Grande: And rightly so. She, in her case, should have retained the exemption because she did deal with farm income so she should have gotten it, no matter what. She just happened to not realize she could use the word "farmer" but she was farming the land if she had the income from the farm. That is what gives you the exemption.

Representative Winrich: I think there is some logic in what Representative Grande is saying, but I would respectfully suggest that that is an entirely different bill addressed in an entirely different policy. Frankly I have some reservations about the whole farmstead exemption anyway, but I am not prepared to introduce that bill because I don't think it would go any place. But I do think that it make sense to treat the widows of farmers who are still living on the farmstead in a manner similar to widows of retired farmers who are still living on the farmstead

and so on. I also think it is entirely reasonable to insert the unremarried restriction into this as Marcy suggested to make it at least consistent with most of the other exemptions in code.

Representative Froseth: Now you see a lot of farmyards with two houses on them; the son has taken over the operation of work and he has probably built a new house so there are two houses on the same farmstead, do both of those houses receive that exemption?

Chairman Belter: You moved the amendments, right? Are we done debating the amendment?

Representative Winrich: Would you prefer to treat the amendments separately or would you allow a motion to amend the amendments with the Dickerson amendment?

Chairman Belter: This is the Dickerson amendment, isn't it?

Representative Headland: This is supposed to be. That is what I requested from Dan, but unfortunately, I see, I suppose he just forgot about adding the Dickerson amendment on.

Representative Winrich: I would like to combine the two so I will move to amend the Headland amendments (.0300) and add the Dickerson amendments (03.TX).

Chairman Belter: Okay, we have a motion from Representative Winrich and a second from Representative Headland to include the .03TX amendments as well as the .0300 amendments.

Any discussion? **(The motion to amend 2244 with the two amendments passed.)** What are your wishes on 2244? We have a motion for a "do pass as amended" from

Representative Pinkerton and a second from Representative Drovdal. Any discussion?

A roll call vote resulted in 11-1-1. Representative Brandenburg will carry the bill.

(Chairman Belter requested that this bill be held for an amendment and it never went to the floor until a revote.)

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2244**

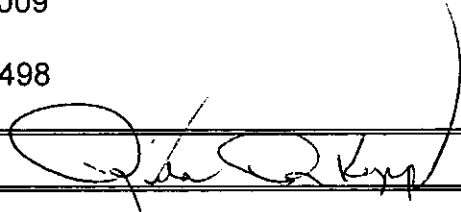
House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: March 24, 2009

Recorder Job Number: 11498

Committee Clerk Signature



Minutes:

Chairman Belter: We have SB 2244 which I have been holding. I have been working with Senator Cook over the issue of the capitalization rate. I have made a proposal to Senator Cook that we attempt to get the capitalization rate back to the formula. Currently we froze it at 8.3%. If we did not have a cap, we would be at 7.008%. What I have proposed to Senator Cook and he wanted to discuss with his committee, but my proposal was to reduce the cap over a four-year period by going .3 per year for three years and then the fourth year we would go for the formula. I am waiting for Senator Cook's response to my proposal. I know that members in your caucus had suggested doing it over a six-year period; I thought maybe that was asking for a little bit too much. That puts us through two more legislative sessions and that four years would be a reasonable compromise. I believe when Senator Cook's proposal was to go over two years—was it two years his proposal was in the Senate and that was defeated so I felt that my proposal of doing it over four years was a reasonable compromise. But, committee members, it is not a Republican or Democrat issue from my perspective; it is an issue that I feel we have a formula, which has worked well by and large for agriculture. On occasion we have manipulated the formula here and there. One of those manipulations, of course, was freezing the capitalization rate. Anyway, when we talk to them again today, we

will decide whether we will come in after session today or tomorrow. So I think what we will do is schedule to come in tomorrow at 10:00 unless I make an announcement from the floor that we come in this afternoon. Anyway, that is the last issue before us. Thank you for your time.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2244**

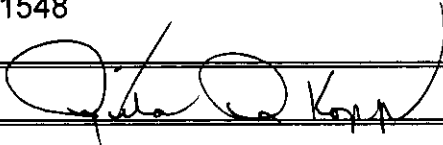
House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: March 25, 2009

Recorder Job Number: 11548

Committee Clerk Signature



Minutes:

Chairman Belter: I have some amendments for that. These are the amendments dealing with the capitalization rates I have been talking to everybody about over the last week or so and talked to you about yesterday when we met. Anyway what these amendments do is back in 2003 the legislative assembly froze the capitalization rate on the productivity formula for agricultural properties. What this bill does will bring us back to the formula over a period of four years, beginning with the 2009 tax year. Currently we are frozen at 8.3%; for 2009, it will take it to 8%; then the following year we will go to 7.7%, and in 2011 it will go to 7.4%. After that, it will go to the formula. Currently if we were at the formula, we would be at 7.008%, which is where the formula is right now. This is an issue that I have struggled with. I woke up this morning and asked myself, "Why am I doing this?" The answer I guess is because I think it is the right thing to do. I have discussed this with both sides of the aisle both in the House and in the Senate and it appears that there is support for this. Senator Cook had introduced a bill this session which would have put us back to the formula in two years; that bill was defeated but I did take these amendments to Senator Cook yesterday and he agrees with these amendments. He discussed this with his Finance and Tax Committee and it was the agreement of his Finance and Tax Committee that this is an amendment they would be willing

to support. He wanted to do a three year and his committee said, no, if we are going to do anything, we will do the House proposal so I guess I would ask for a motion.

Representative Headland: I move the amendments.

Representative Grande: Second.

Chairman Belter: We have a motion and a second to **move the .0302 amendments to SB 2244.**

Representative Grande: Do we have the bill in front of us, Mr. Chairman?

Chairman Belter: We need to reconsider.

Representative Headland: I move to reconsider.

Representative Grande: Second.

Chairman Belter: We have a motion to reconsider our action on 2244 from Representative Headland and a second from Representative Grande. Any discussion. **(The motion to reconsider carried by a voice vote.)** Representative Headland moves the .0302 amendments and it is seconded by Representative Grande. Is there any discussion? If not, all those in favor of the proposed amendments signify by saying aye. **(The motion to approve Amendment .0302 carried by a voice vote.)** I guess I would ask for a motion on the bill then. We have a motion for a **“do pass as amended” on SB 2244 from Representative Grande and a second from Representative Headland.** Is there any discussion? **(A roll call vote resulted in 8 ayes, 0 nays and 5 absent/not voting. Representative Belter will carry the bill.)** That concludes our work for the day unless anybody else has anything else. I thought we had another bill for next week, but fortunately the Majority Leader came by and I questioned it and said it belongs in IBL instead of here and I gladly gave it up. Anyway, until the call of the chair, stand by.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2244

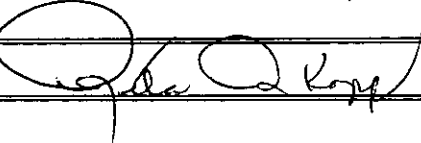
House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: April 7, 2009

Recorder Job Number: 11772 (Also contains 2199)

Committee Clerk Signature



Minutes:

Chairman Belter: Committee members, we have got SB 2244 that I have brought back to committee. We had amended it. I have talked to Sara in the Tax Department. She put together some numbers for me and she is sending it to Gary Coleman to get us some information on whether there would be any impact on the foundation aid with the amendment that we had adopted – the capitalization rates. Hopefully, we will get those tomorrow. I would like to hopefully act on that bill tomorrow so we can get it out of our committee.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2244**


House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: April 14, 2009

Recorder Job Number: 0000

Committee Clerk Signature



Minutes:

SB 2244 had been rereferred to Finance and Tax Committee. After holding for a week, Chairman Belter, after checking with House floor personnel, resigned the bill and returned it to the floor.

February 26, 2009

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2244

Page 2, line 7, replace ""Surviving"" with ""Unmarried surviving"" and after "the" insert "unremarried""

Page 2, line 10, after the first "the" insert "unremarried""

Page 2, line 15, after "the" insert "unremarried""

Page 2, line 18, after "the" insert "unremarried""

Page 2, line 19, after the second "the" insert "unremarried""

Renumber accordingly

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL 2244 (.0300)

*Prepared by the Office of State Tax Commissioner for Representative Headland
March 10, 2009*

Page 2, line 11 remove "The exemption under this subparagraph expires at the"

Page 2, remove lines 12 through 16

Re-number accordingly

March 10, 2009

VR
3/11/09

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2244

Page 2, line 7, replace ""Surviving" with ""Unmarried surviving" and after "the" insert "unremarried"

Page 2, line 10, after the first "the" insert "unremarried"

Page 2, line 11, remove "The exemption under this subparagraph expires at the"

Page 2, remove lines 12 through 16

Page 2, line 18, after "the" insert "unremarried"

Page 2, line 19, after the second "the" insert "unremarried"

Re-number accordingly

Date: March 10, 2009

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2244

House FINANCE AND TAXATION Committee

Check here for Conference Committee

Legislative Council Amendment Number 0300 + 03TX

Action Taken Do Pass Do Not Pass Amended

Motion Made By Headland ^{Winick} Seconded By Froseth ^{Headland}

| Representatives | Yes | No | Representatives | Yes | No |
|-----------------------------|-----|----|--------------------------|-----|----|
| Chairman Wesley R. Belter | | | Representative Froelich | | |
| Vice Chairman David Drovdal | | | Representative Kelsh | | |
| Representative Brandenburg | | | Representative Pinkerton | | |
| Representative Froseth | | | Representative Schmidt | | |
| Representative Grande | | | Representative Winrich | | |
| Representative Headland | | | | | |
| Representative Weiler | | | | | |
| Representative Wrangham | | | | | |
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Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Date: March 10, 2009

Roll Call Vote #: 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2244

House FINANCE AND TAXATION Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By Pinkerton Seconded By Drovdal

| Representatives | Yes | No | Representatives | Yes | No |
|-----------------------------|-----|----|--------------------------|-----|----|
| Chairman Wesley R. Belter | / | | Representative Froelich | | |
| Vice Chairman David Drovdal | / | | Representative Kelsh | / | |
| Representative Brandenburg | / | | Representative Pinkerton | / | |
| Representative Froseth | / | | Representative Schmidt | / | |
| Representative Grande | / | | Representative Winrich | / | |
| Representative Headland | / | | | | |
| Representative Weiler | | / | | | |
| Representative Wrangham | / | | | | |
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Total (Yes) 11 No 1

Absent 1

Floor Assignment Representative Brandenburg

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

Date: March 25, 2009

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2244

House FINANCE AND TAXATION Committee

Check here for Conference Committee

Legislative Council Amendment Number Reconciliation

Action Taken Do Pass Do Not Pass Amended

Motion Made By Headland Seconded By Grande

| Representatives | Yes | No | Representatives | Yes | No |
|-----------------------------|-----|----|--------------------------|-----|----|
| Chairman Wesley R. Belter | | | Representative Froelich | | |
| Vice Chairman David Drovdal | | | Representative Kelsh | | |
| Representative Brandenburg | | | Representative Pinkerton | | |
| Representative Froseth | | | Representative Schmidt | | |
| Representative Grande | | | Representative Winrich | | |
| Representative Headland | | | | | |
| Representative Weiler | | | | | |
| Representative Wrangham | | | | | |
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Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Motion Carried

VR
3/25/09

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2244

Page 1, line 2, after "57-02-08" insert "and subsection 4 of section 57-02-27.2"

Page 1, line 3, after "farmer" insert "and the capitalization rate for valuation of agricultural property"

Page 2, after line 16, insert:

"SECTION 2. AMENDMENT. Subsection 4 of section 57-02-27.2 of the North Dakota Century Code is amended and reenacted as follows:

4. To find the "capitalized average annual gross return", the average annual gross return must be capitalized by a rate that is a ten-year average of the gross agribank mortgage rate of interest for North Dakota, but the rate used for capitalization under this section may not be less than ~~eight and nine-tenths percent for taxable year 2005 and eight and three-tenths percent for taxable years after 2005 year 2009, seven and seven-tenths percent for taxable year 2010, and seven and four-tenths percent for taxable year 2011.~~ seven and seven-tenths percent for taxable year 2009, seven and seven-tenths percent for taxable year 2010, and seven and four-tenths percent for taxable year 2011. The ten-year average must be computed from the twelve years ending with the most recent year used under subdivision a of subsection 3, discarding the highest and lowest years, and the gross agribank mortgage rate of interest for each year must be determined in the manner provided in section 20.2032A-4(e)(1) of the United States treasury department regulations for valuing farm real property for federal estate tax purposes, except that the interest rate may not be adjusted as provided in section 20.2032A-4(e)(2)."

Page 2, line 18, after "and" insert "section 1 of this Act"

Renumber accordingly

Date: March 25, 2009

Roll Call Vote #: 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2244

House FINANCE AND TAXATION Committee

Check here for Conference Committee

Legislative Council Amendment Number .0302 Belter

Action Taken Do Pass Do Not Pass Amended

Motion Made By Headland Seconded By Grande

| Representatives | Yes | No | Representatives | Yes | No |
|-----------------------------|-----|----|--------------------------|-----|----|
| Chairman Wesley R. Belter | | | Representative Froelich | | |
| Vice Chairman David Drovdal | | | Representative Kelsh | | |
| Representative Brandenburg | | | Representative Pinkerton | | |
| Representative Froseth | | | Representative Schmidt | | |
| Representative Grande | | | Representative Winrich | | |
| Representative Headland | | | | | |
| Representative Weiler | | | | | |
| Representative Wrangham | | | | | |
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Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Motion carries

Date: March 25, 2009

Roll Call Vote #: 3

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2244

House FINANCE AND TAXATION Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By Grande Seconded By Headland

| Representatives | Yes | No | Representatives | Yes | No |
|-----------------------------|-----|----|--------------------------|-----|----|
| Chairman Wesley R. Belter | / | | Representative Froelich | | |
| Vice Chairman David Drovdal | | | Representative Kelsh | | |
| Representative Brandenburg | / | | Representative Pinkerton | | |
| Representative Froseth | / | | Representative Schmidt | / | |
| Representative Grande | / | | Representative Winrich | / | |
| Representative Headland | / | | | | |
| Representative Weiler | | | | | |
| Representative Wrangham | / | | | | |
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Total (Yes) 8 No 0

Absent 5

Floor Assignment Representative Belter

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

REPORT OF STANDING COMMITTEE

SB 2244, as reengrossed: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (8 YEAS, 0 NAYS, 5 ABSENT AND NOT VOTING). Reengrossed SB 2244 was placed on the Sixth order on the calendar.

Page 1, line 2, after "57-02-08" insert "and subsection 4 of section 57-02-27.2"

Page 1, line 3, after "farmer" insert "and the capitalization rate for valuation of agricultural property"

Page 2, after line 16, insert:

"SECTION 2. AMENDMENT. Subsection 4 of section 57-02-27.2 of the North Dakota Century Code is amended and reenacted as follows:

4. To find the "capitalized average annual gross return", the average annual gross return must be capitalized by a rate that is a ten-year average of the gross agribank mortgage rate of interest for North Dakota, but the rate used for capitalization under this section may not be less than ~~eight and nine tenths percent for taxable year 2005 and eight and three tenths percent for taxable years after 2005~~ year 2009, seven and seven-tenths percent for taxable year 2010, and seven and four-tenths percent for taxable year 2011. The ten-year average must be computed from the twelve years ending with the most recent year used under subdivision a of subsection 3, discarding the highest and lowest years, and the gross agribank mortgage rate of interest for each year must be determined in the manner provided in section 20.2032A-4(e)(1) of the United States treasury department regulations for valuing farm real property for federal estate tax purposes, except that the interest rate may not be adjusted as provided in section 20.2032A-4(e)(2)."

Page 2, line 18, after "and" insert "section 1 of this Act"

Renumber accordingly

2009 TESTIMONY

SB 2244

11/1

Mr. Chairman, Members of the Committee:

My name is Deb Middaugh. I live on a farm near Lansford with my 17 year old son.

In July of 2006, my husband died very suddenly while working in a pasture with our son. We had a cow calf operation as well as crops in the fields at the time of his death. Thanks to the generosity and help of my neighbors, family, and friends, we took care of those immediate needs.

As you can imagine, the time since then has been filled with many overwhelming challenges. Many decisions, demands, and changes have been a part of my life since then. We sold our cattle and had a farm equipment sale. I no longer farm, but rent the land.

One further burden has been the additional tax I am now paying on our farm home. If my husband had been retired from farming at the time of his death, or survived me, that tax would not have been levied. I believe this is particularly unfair to widows . At a time when my income has been severely affected, an additional expense is not a welcome burden, especially when one wishes to continue to live on the farm. I feel it is best for my son to be raised there with a continued connection to his dad, community, and school.

I urge you to look at the fairness of this situation. I know that I am not the only woman in this position, and that it will continue to be a burden to those who suffer the untimely death of their spouse and choose to remain on their farms.

I ask you to vote yes on Senate bill # 2244. Thank you.

#2

Mr. Chairman, Members of the committee:

My name is Fred Tyler. I am a Bottineau County Commissioner. I am here to voice my support for Senate Bill 2244.

In the past four years, two of the farmers in my township have passed away, both of them in their early 50s. These unfortunate incidents have left two young widows and in one case a young high school boy who would like to stay involved in farming. The wives have rented out the farmland and continue to live on the farmsteads. The North Dakota Century Code requires them to pay property taxes on their houses because they are not considered to be farmers. If their husbands had been a little older and been retired before they passed away, they would have been exempt under the law. SB 2244 provides the needed relief.

In closing I would urge your support of this bill and would answer any questions.

#3

Chairman Cook and the finance and Taxation Committee. I am Senator Jim Pomeroy, District 27, the sponsor of this bill. I know a woman in Fargo who is now living with her daughter because her husband died of a heart attack and she lost her farm because of the taxes she had to pay. Unfortunately, she had allowed her husband to do the farm business while she worked in town. Her name was not on any of the farm records, which had not seemed necessary, until the death of her husband. She needed to leave her home of many years because she, under the current tax laws, could not prove that she was a "farmer". Bill Number 2244 would do much to remedy this. This testimony I a brief description of the reason I brought this problem forward. I am willing to answer any questions and others following will have additional testimony.

**TESTIMONY OF THE OFFICE OF STATE TAX COMMISSIONER
BEFORE THE
HOUSE FINANCE AND TAXATION COMMITTEE**

SENATE BILL 2244

MARCH 10, 2009

Chairman Belter, members of the House Finance and Taxation Committee, I am Marcy Dickerson, State Supervisor of Assessments and Director of the Property Tax Division for the Office of State Tax Commissioner, and I am here today to propose amendments to Senate Bill 2244.

The proposed amendments, which are attached to my testimony, insert the word “unremarried” before every reference to “surviving spouse” in Senate Bill 2244. This language is consistent with other exemption statutes including the exemption for a paraplegic disabled veteran or unremarried surviving spouse, a disabled veteran or unremarried surviving spouse, or a permanently and totally disabled person permanently confined to a wheelchair or unremarried surviving spouse under subdivisions a, b, and c of subsection 20 of § 57-02-08; a paraplegic disabled person or unremarried surviving spouse under subsection 26 of § 57-02-08; and a disabled veteran or unremarried surviving spouse under subdivision c of subsection 1 of § 57-55-10. An exception is the exemption for a home owned and occupied by a blind person under subsection 22 of § 57-02-08, which remains in effect only as long as the blind person resides in the home.

CONCLUSION

These amendments will make the language in this exemption statute consistent with other exemption statutes quoted above. I request that you approve these amendments.

This concludes my prepared testimony.