

2023 HOUSE FINANCE AND TAXATION

HB 1513

2023 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Room JW327E, State Capitol

HB 1513
1/30/2023

A bill relating to payment of use tax by contractors and relating to a sales tax exemption for sales to an eligible facility when used for the benefit of the facility's patient or occupant.

Chairman Headland opened the hearing at 10:28AM.

Members present: Chairman Headland, Vice Chairman Hagert, Representative Anderson, Representative Bosch, Representative Dockter, Representative Fisher, Representative Grueneich, Representative Hatlestad, Representative Motschenbacher, Representative Olson, Representative Steiner, Representative Toman, Representative Finley-DeVille, and Representative Ista. Members absent: none.

Discussion Topics:

- Construction contractor sales and use tax
- Sales and use tax exemptions
- Nonprofit tax exemptions

Representative Schreiber-Beck introduced the bill in support (#17613).

Stephen Astrup, Attorney for Hospice of the Red River Valley, testified in support (#17576).

Theresa Stahl, Director of Finance with Hospice of the Red River Valley, testified in support (#17577).

Paul Diederich, President of Industrial Builders Inc., testified in support (#17644).

Shannon Fleischer, Associate Director with the North Dakota Tax Department, answered questions from the committee.

Chairman Headland closed the hearing at 10:57AM.

Mary Brucker, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Room JW327E, State Capitol

HB 1513
1/30/2023

A bill relating to payment of use tax by contractors and relating to a sales tax exemption for sales to an eligible facility when used for the benefit of the facility's patient or occupant.

Chairman Headland opened the meeting at 3:21PM.

Members present: Chairman Headland, Vice Chairman Hagert, Representative Anderson, Representative Bosch, Representative Dockter, Representative Fisher, Representative Grueneich, Representative Hatlestad, Representative Motschenbacher, Representative Olson, Representative Steiner, Representative Toman, Representative Finley-DeVilley, and Representative Ista. No members absent.

Discussion Topics:

- Committee vote

Shannon Fleischer, North Dakota Tax Department, answered questions from the committee.

Representative Olson moved a Do Not Pass.

Representative Motschenbacher seconded the motion.

Roll call vote:

Representatives	Vote
Representative Craig Headland	Y
Representative Jared Hagert	Y
Representative Dick Anderson	Y
Representative Glenn Bosch	Y
Representative Jason Dockter	Y
Representative Lisa Finley-DeVilley	Y
Representative Jay Fisher	Y
Representative Jim Grueneich	Y
Representative Patrick Hatlestad	Y
Representative Zachary Ista	AB
Representative Mike Motschenbacher	Y
Representative Jeremy Olson	Y
Representative Vicky Steiner	Y
Representative Nathan Toman	Y

Motion carried 13-0-1

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Representative Olson is the bill carrier.

Chairman Headland adjourned at 3:37PM.

****This bill was reconsidered on February 7, 2023.

Mary Brucker, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Room JW327E, State Capitol

HB 1513
2/7/2023

A bill relating to payment of use tax by contractors and relating to a sales tax exemption for sales to an eligible facility when used for the benefit of the facility's patient or occupant.

Chairman Headland opened the meeting at 10:05AM.

Members present: Chairman Headland, Vice Chairman Hagert, Representative Anderson, Representative Bosch, Representative Dockter, Representative Fisher, Representative Grueneich, Representative Hatlestad, Representative Motschenbacher, Representative Olson, Representative Steiner, Representative Toman, Representative Finley-DeVille, and Representative Ista. No members absent.

Discussion Topics:

- Reconsideration

Representative Olson moved to reconsider our actions.

Representative Bosch seconded the motion.

Roll call vote:

Representatives	Vote
Representative Craig Headland	Y
Representative Jared Hagert	Y
Representative Dick Anderson	Y
Representative Glenn Bosch	Y
Representative Jason Dockter	Y
Representative Lisa Finley-DeVille	Y
Representative Jay Fisher	Y
Representative Jim Grueneich	Y
Representative Patrick Hatlestad	Y
Representative Zachary Ista	Y
Representative Mike Motschenbacher	Y
Representative Jeremy Olson	Y
Representative Vicky Steiner	N
Representative Nathan Toman	Y

Motion carried 13-1-0

Chairman Headland adjourned at 10:05AM.

Mary Brucker, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Room JW327E, State Capitol

HB 1513
2/14/2023

A bill relating to payment of use tax by contractors and relating to a sales tax exemption for sales to an eligible facility when used for the benefit of the facility's patient or occupant.

Chairman Headland opened the meeting at 11:12AM.

Members present: Chairman Headland, Vice Chairman Hagert, Representative Anderson, Representative Bosch, Representative Dockter, Representative Fisher, Representative Grueneich, Representative Hatlestad, Representative Motschenbacher, Representative Olson, Representative Steiner, Representative Finley-DeVille, and Representative Ista. **Members absent:** Representative Toman.

Discussion Topics:

- Reconsideration
- Proposed amendment 23.0964.02001
- Proposed amendment on effective date

Representative Bosch moved to reconsider our actions.

Representative Ista seconded the motion.

Voice vote-motion carried.

Chairman Headland distributed a proposed amendment 23.0964.02001 from Representative Schreiber-Beck (#20810).

Dee Wald, General Counsel with the State Tax Commissioner's Office, explained the proposed amendment.

Shannon Fleischer, Associate Director of Tax Administration with the State Tax Commissioner's Office, asked the committee questions on the proposed amendment.

Dee Wald, General Counsel with the State Tax Commissioner's Office, continued explaining the proposed amendment.

Representative Olson moved amendment 23.0964.02001.

Representative D. Anderson seconded the motion.

Roll call vote:

Representatives	Vote
Representative Craig Headland	Y
Representative Jared Hagert	Y
Representative Dick Anderson	Y
Representative Glenn Bosch	Y
Representative Jason Dockter	Y
Representative Lisa Finley-DeVille	Y
Representative Jay Fisher	Y
Representative Jim Grueneich	Y
Representative Patrick Hatlestad	Y
Representative Zachary Ista	Y
Representative Mike Motschenbacher	Y
Representative Jeremy Olson	Y
Representative Vicky Steiner	Y
Representative Nathan Toman	AB

Motion carried 13-0-1

Representative Anderson moved to further amend by changing the effective date to construction beginning after June 30, 2023.

Representative Fisher seconded the motion.

Roll call vote:

Representatives	Vote
Representative Craig Headland	Y
Representative Jared Hagert	Y
Representative Dick Anderson	Y
Representative Glenn Bosch	Y
Representative Jason Dockter	Y
Representative Lisa Finley-DeVille	Y
Representative Jay Fisher	Y
Representative Jim Grueneich	Y
Representative Patrick Hatlestad	Y
Representative Zachary Ista	Y
Representative Mike Motschenbacher	Y
Representative Jeremy Olson	Y
Representative Vicky Steiner	Y
Representative Nathan Toman	AB

Motion carried 13-0-1

Shannon Fleischer, Assistant Director of Tax Administration with State Tax Commissioner's Office, further explained the amendment to the committee.

Chairman Headland adjourned at 11:34AM.

Mary Brucker, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Room JW327E, State Capitol

HB 1513
2/14/2023

A bill relating to payment of use tax by contractors and relating to a sales tax exemption for sales to an eligible facility when used for the benefit of the facility's patient or occupant.

Chairman Headland opened the meeting at 3:50PM.

Members present: Chairman Headland, Vice Chairman Hagert, Representative Anderson, Representative Bosch, Representative Dockter, Representative Fisher, Representative Grueneich, Representative Hatlestad, Representative Motschenbacher, Representative Olson, Representative Steiner, Representative Toman, Representative Finley-DeVilleville, and Representative Ista. No members absent.

Discussion Topics:

- Proposed amendment
- Committee vote

Charles Dendy, Legal Counsel for the Office of the State Tax Commissioner, explained the amendment with some recommended changes to include only hospice care facilities on page 1, line 4, page 1, line 8, page 2, line 7, page 2, line 9, and page 3, line 19. Also, the effective date should state "for construction beginning after June 30, 2023." (Testimony #20839).

Representative Grueneich moved to further amend with the language above.

Representative D. Anderson seconded the motion.

Roll call vote:

Representatives	Vote
Representative Craig Headland	Y
Representative Jared Hagert	Y
Representative Dick Anderson	Y
Representative Glenn Bosch	Y
Representative Jason Dockter	Y
Representative Lisa Finley-DeVilleville	Y
Representative Jay Fisher	Y
Representative Jim Grueneich	Y
Representative Patrick Hatlestad	Y
Representative Zachary Ista	Y
Representative Mike Motschenbacher	Y
Representative Jeremy Olson	Y
Representative Vicky Steiner	Y

Representative Nathan Toman	Y
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Motion carried 14-0-0

Representative D. Anderson moved a Do Pass as Amended.

Representative Hagert seconded the motion.

Roll call vote:

Representatives	Vote
Representative Craig Headland	Y
Representative Jared Hagert	Y
Representative Dick Anderson	Y
Representative Glenn Bosch	N
Representative Jason Dockter	Y
Representative Lisa Finley-DeVille	Y
Representative Jay Fisher	Y
Representative Jim Grueneich	Y
Representative Patrick Hatlestad	Y
Representative Zachary Ista	Y
Representative Mike Motschenbacher	Y
Representative Jeremy Olson	N
Representative Vicky Steiner	N
Representative Nathan Toman	N

Motion carried 10-4-0

Representative Grueneich is the bill carrier.

Chairman Headland adjourned at 4:06PM.

Mary Brucker, Committee Clerk

February 14, 2023

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PROPOSED AMENDMENTS TO HOUSE BILL NO. 1513

Page 1, line 1, replace "subdivision to subsection 3 of section 57-40.2-03.3" with "section to chapter 57-39.2"

Page 1, line 2, replace "payment of use tax by contractors" with "a sales and use tax exemption for materials used to construct, expand, or upgrade a hospice care facility owned by a hospice program"

Page 1, line 3, replace "subsection 24 of section 57-39.2-04" with "subsection 3 of section 57-40.2-03.3"

Page 1, remove line 4

Page 1, line 5, replace "patient or occupant" with "use tax exemption for materials used to construct, expand, or upgrade a hospice care facility owned by a hospice program"

Page 1, replace lines 7 through 23 with:

"**SECTION 1.** A new section to chapter 57-39.2 of the North Dakota Century Code is created and enacted as follows:

Sales and use tax exemption for materials used to construct, expand, or upgrade a hospice care facility owned by a hospice program.

1. Gross receipts from sales of tangible personal property used to construct, expand, or upgrade a hospice care facility owned by a hospice program as defined in section 23-17.4-01 which qualifies as an exempt organization under subsection 24 of section 57-39.2-04 are exempt from taxes under this chapter.
2. The exemption may be received only at the time of purchase. To receive the exemption, the entity qualifying for an exemption under this section must receive from the tax commissioner a certificate indicating the tangible personal property the entity intends to purchase to construct, expand, or upgrade the facility qualifies for the exemption under this section.
3. This chapter and chapter 57-40.2 apply to an exemption under this section.

SECTION 2. AMENDMENT. Subsection 3 of section 57-40.2-03.3 of the North Dakota Century Code is amended and reenacted as follows:

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

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- c. Tangible personal property used to construct or expand a system used to compress, process, gather, or refine gas recovered from an oil or gas well in this state or used to expand or build a gas-processing facility in this state as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.5_{1,2}
- d. Tangible personal property used to construct or expand a qualifying oil refinery as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.6_{1,2}
- e. Tangible personal property used to construct or expand a qualifying facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.10_{1,2}
- f. Tangible personal property used to construct or expand a qualifying facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.11_{1,2}
- g. Materials used in compressing, gathering, collecting, storing, transporting, or injecting carbon dioxide for use in enhanced recovery of oil or natural gas as provided in section 57-39.2-04.14_{1,2}
- h. Tangible personal property used to construct a qualifying fertilizer or chemical processing facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.15_{1,2}
- i. Tangible personal property used to construct a qualified straddle plant, a qualified fractionator, or qualified associated infrastructure as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.16.
- j. Tangible personal property used to construct, expand, or upgrade a hospice care facility owned by a hospice program as authorized or approved for exemption by the tax commissioner under section 1 of this Act.

Page 2, line 1, replace "taxable events" with "construction"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1513: Finance and Taxation Committee (Rep. Headland, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). HB 1513 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "subdivision to subsection 3 of section 57-40.2-03.3" with "section to chapter 57-39.2"

Page 1, line 2, replace "payment of use tax by contractors" with "a sales and use tax exemption for materials used to construct, expand, or upgrade a hospice care facility owned by a hospice program"

Page 1, line 3, replace "subsection 24 of section 57-39.2-04" with "subsection 3 of section 57-40.2-03.3"

Page 1, remove line 4

Page 1, line 5, replace "patient or occupant" with "use tax exemption for materials used to construct, expand, or upgrade a hospice care facility owned by a hospice program"

Page 1, replace lines 7 through 23 with:

"SECTION 1. A new section to chapter 57-39.2 of the North Dakota Century Code is created and enacted as follows:

Sales and use tax exemption for materials used to construct, expand, or upgrade a hospice care facility owned by a hospice program.

1. Gross receipts from sales of tangible personal property used to construct, expand, or upgrade a hospice care facility owned by a hospice program as defined in section 23-17.4-01 which qualifies as an exempt organization under subsection 24 of section 57-39.2-04 are exempt from taxes under this chapter.
2. The exemption may be received only at the time of purchase. To receive the exemption, the entity qualifying for an exemption under this section must receive from the tax commissioner a certificate indicating the tangible personal property the entity intends to purchase to construct, expand, or upgrade the facility qualifies for the exemption under this section.
3. This chapter and chapter 57-40.2 apply to an exemption under this section.

SECTION 2. AMENDMENT. Subsection 3 of section 57-40.2-03.3 of the North Dakota Century Code is amended and reenacted as follows:

3. 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 tax commissioner under section 57-39.2-04.2;
 - b. Machinery, equipment, or other tangible personal property used to construct an agricultural commodity processing facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.3 or 57-39.2-04.4;
 - c. Tangible personal property used to construct or expand a system used to compress, process, gather, or refine gas recovered from an

- oil or gas well in this state or used to expand or build a gas-processing facility in this state as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.5₂.
- d. Tangible personal property used to construct or expand a qualifying oil refinery as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.6₂.
 - e. Tangible personal property used to construct or expand a qualifying facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.10₂.
 - f. Tangible personal property used to construct or expand a qualifying facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.11₂.
 - g. Materials used in compressing, gathering, collecting, storing, transporting, or injecting carbon dioxide for use in enhanced recovery of oil or natural gas as provided in section 57-39.2-04.14₂.
 - h. Tangible personal property used to construct a qualifying fertilizer or chemical processing facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.15₂.
 - i. Tangible personal property used to construct a qualified straddle plant, a qualified fractionator, or qualified associated infrastructure as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.16.
 - j. Tangible personal property used to construct, expand, or upgrade a hospice care facility owned by a hospice program as authorized or approved for exemption by the tax commissioner under section 1 of this Act.

Page 2, line 1, replace "taxable events" with "construction"

Renumber accordingly

2023 SENATE FINANCE AND TAXATION

HB 1513

2023 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1513
3/14/2023

Relating to a sales and use tax exemption for materials used to construct, expand, or upgrade a hospice care facility owned by a hospice program, relating to a use tax exemption for materials used to construct, expand, or upgrade a hospice care facility owned by a hospice program.

9:20 AM Chairman Kannianen opened hearing.

Senators Present: **Kannianen, Patten, Rummel, Piepkorn, Magrum.** Sen. Weber Absent

Discussion Topics:

- Hospice House Project
- Sales taxes
- Labor contracts

9:21 AM Representative Schreiber-Beck introduced bill. #24703

9:24 AM Stephen Astrup, Project and Regulatory Counsel for Hospice of the Red River Valley, testified in favor. #24653

9:36 AM Terry Effertz, introduced Kilee Harmon, testified in favor. #24824

9:38 AM Kilee Harmon, Executive Director of Gia Home, testified in favor. #24828

9:44 AM Shannon Fleisher, ND Tax Department, verbally testified neutral.

9:52 AM Chairman Kannianen adjourned meeting.

Nathan Liesen, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1513
3/20/2023

Relating to a sales and use tax exemption for materials used to construct, expand, or upgrade a hospice care facility owned by a hospice program, relating to a use tax exemption for materials used to construct, expand, or upgrade a hospice care facility owned by a hospice program.

11:30 AM Chairman Kannianen opened hearing.

Senator Present: **Kannianen, Patten, Rummel, Piepkorn, Magrum, Weber.**

Discussion Topics:

- Bill review
- Proposed amendment
- Exemption overload

Chairman Kannianen reviewed the bill.

Committee discussed.

11:40 AM Chairman Kannianen adjourned meeting.

Nathan Liesen, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1513
3/22/2023

Relating to a sales and use tax exemption for materials used to construct, expand, or upgrade a hospice care facility owned by a hospice program, relating to a use tax exemption for materials used to construct, expand, or upgrade a hospice care facility owned by a hospice program; and to provide an effective date.

9:27 AM Chairman Kannianen opened the meeting.

Senators present: Kannianen, Weber, Patten, Rummel, Piepkorn, Magrum.

Discussion Topics:

- Sales Tax Exemptions
- Committee Action

9:31 AM Shannon Fleisher, Associate Director of Tax Administration, Tax Department verbally provided information.

9:42 AM Senator Magrum moved DO Not Pass.

9:42 AM Senator Rummel seconded.

Roll call vote

Senators	Vote
Senator Jordan Kannianen	Y
Senator Mark F. Weber	N
Senator Jeffery J. Magrum	Y
Senator Dale Patten	Y
Senator Merrill Piepkorn	Y
Senator Dean Rummel	Y

Passed 5-1-0

Senator Rummel will carry the bill.

9:42 AM Chairman Kannianen closed the meeting.
Nathan Liesen, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1513, as engrossed: Finance and Taxation Committee (Sen. Kannianen, Chairman)
recommends **DO NOT PASS** (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING).
Engrossed HB 1513 was placed on the Fourteenth order on the calendar. This bill
does not affect workforce development.

TESTIMONY

HB 1513

TESTIMONY
HOUSE BILL 1513
HOUSE FINANCE AND TAXATION COMMITTEE
CHAIRPERSON CRAIG HEADLAND
JANUARY 30, 2023

Chairperson Headland and distinguished members of the House Finance and Taxation Committee, for the record my name is Stephen P. Astrup, Project and Regulatory Counsel for Hospice of the Red River Valley (HRRV) and I am joined by my colleague, Tracee Capron, Executive Director for HRRV, and Theresa Stahl, Director of Finance for HRRV. We are here today to provide testimony on House Bill 1513 and ask that you give this bill a **DO PASS** recommendation.

For purposes of the State sales and use tax laws, a construction contractor is generally considered a service provider, meaning it – rather than the real property owner for whom it works – is treated as the retail consumer of the building materials it incorporates into real property in performing a construction contract. Therefore, the construction contractor is responsible for paying sales tax or accruing and remitting use tax on purchases of building materials.

In the 2021 Legislative Session and the passage of House Bill 1309, provided that the general responsibility of a construction contractor to remit use tax on building materials in the performance of a contract “does not apply to a contractor...that does not enter into a contract for the purchase of building materials.” N.D.C.C. § 57-40.2-03.3(1). In essence, the Office of State Tax Commissioner has described the change, “[w]hen a contractor completes a labor-only contract, they will not be responsible for use tax on the [building materials] someone else provides that the contractor installs into real property. Sales or use tax is due from the person providing the [building materials].” Sales and Special Taxes Newsletter: 2021 Legislative Recap, N.D. Office of State Tax Commissioner (June 2021).

While the intent of this change was to restore the value of an exempt entity’s sales and use tax exemption in its dealings with a construction contractor, the reality of its positive effect has largely not been recognized in application. Under N.D.C.C. § 57-40.2-03.3(1) as revised in keeping with the Office of State Tax Commissioner’s description, if an exempt entity were to enter into a labor-only contract with a construction contractor, the construction contractor would have no responsibility in the ordinary course to accrue and remit use tax – and, as such, would have no tax cost that it could attempt to recoup from the exempt entity. Meanwhile, the exempt entity would assert its exemption and forgo paying sales tax or accruing and remitting use tax itself on its retail purchases of building materials that it would supply to the construction contractor.

It should be a logical extension of this law that an exempt entity be allowed to leverage its exemption without having to make the purchases of building materials incorporated and necessary in its construction project itself.

House Bill 1513 would help ensure building materials are purchased for an exempt entity's project are free from the taxes their exempt status allows and prevents exempt entities from being burdened with the unnecessary responsibility of having to purchase building materials, and assume the liability of those purchased building materials.

We acknowledge and recognize there is the potential for fraud and abuse in granting a construction contractor the ability to assert an exempt entity's sale and use tax exemption – as such, we would welcome oversight by the Office of the State Tax Commissioner is assuring these concerns are allayed and the integrity of the utilized sales and use tax exemptions will be maintained.

As you know, most nonprofit organizations qualify for exempt tax status. Nonprofit organizations play a vital role in building healthy communities by providing critical services that contribute to economic stability and are often the voice of the people they serve. In an era of growing needs and shrinking government resources, nonprofits are being asked to do more with less, placing an additional strain on their already limited resources. As a result, many nonprofits are starved for the kind of support that strengthen their operations, enable them to deliver their services more effectively and ultimately help create a stronger economy that is good for all sectors.

The passage of House Bill 1513 would allow nonprofit organizations desiring to establish a literal foundational base in North Dakota are allowed to focus on their mission focused initiatives and not on learning how to purchase construction materials. Please give House Bill 1513 a **DO PASS** recommendation.

This concludes my testimony. I am happy to answer any questions you may have. Should you have any questions subsequent to today's hearing, please feel free to contact me via phone (701) 356-1500 or via email at stephen.astrup@hrrv.org.

Respectfully Submitted,

Stephen P. Astrup, Project and Regulatory Counsel
Hospice of the Red River Valley



2023 House Bill 1513
House Finance and Taxation Committee
Craig Headland, Chairman
January 30, 2023

Chairman Headland and committee members of the Finance and Taxation Committee. I am Theresa Stahl, Director of Finance, Hospice of the Red River Valley. I testify in support of House Bill 1513 to create and enact a new subdivision in subsection 3 of section 57-40.2-03.3 of the North Dakota Century Code, relating to the payment of use tax by contractors; to amend and reenact subsection 24 of section 57-39.2-04 of the North Dakota Century Code, relating to a sales tax exemption for sales to an eligible facility when used for the benefit of the facility's patient or occupant; and to provide an effective date.

Sales tax exemptions are provided because of some characteristic of the buyer or the seller. They are based on the type of property being sold, the identity of the purchaser, or the use to which the property will be put. Most states offer exemptions for items needed to survive, such as food, clothing, or medicine. Exemptions also exist for sales to the state, its agencies, other municipalities, and sales to nonprofit charitable, religious, and educational organizations. Last, exemptions are based on type of use to encourage activities for the public good. As a hospice provider we fit into all three of the classifications. The services we provide are needed, we are organized as a North Dakota nonprofit corporation and exempt from federal income tax under internal revenue code 501(c)(3), and the services we provide are for the good of the citizens of our communities.

As a 501(c)(3) nonprofit provider, our income does not inure to any individual or private shareholder. Our revenue is used to provide services to our patients.

In 2022, we touched 2,523 patients and their families providing 149,580 days of care. We want and need to do more. To that point, we are building an inpatient unit to be able to provide acute care when needed by our patients, and to provide respite care when a care giver needs a much deserved break. Our project was impacted by COVID-19 as prices for construction rose dramatically. Unless we have a labor only contract, the sales tax is a significant cost. While we have received generous donations to our capital campaign, we still have millions to raise. We have secured a loan for a mortgage, but the principal and interest payments will take away from funds needed to provide the good quality care our patients deserve.

Entering into a labor only contract for construction is hard to facilitate due to the complexities created. We are health care providers and not construction contractors, which brings additional risk to the project as we attempt to maneuver through purchases of materials we know nothing about.

Thirteen states allow contractors to purchase building materials for use in construction contracts with state agencies and other exempt entities, such as municipalities and nonprofit organizations, without paying sales and use tax on them. The exemption applies to materials permanently installed or placed in the construction project, such as the bricks and mortar used for construction. It does not apply to the equipment and tools used to construct the building. A certificate can be used to present to sellers attesting the materials will be used for an exempt entity's project. Those states are Colorado, Connecticut, Illinois, Maine,

Massachusetts, Missouri, Nebraska, New Jersey, New York, Ohio, Rhode Island, Texas, and Vermont.

While the request to include the words hospice program in subsection 24 of section 57-39.2-04 is for clarity, as we have been granted a sales tax exemption without the words explicitly stated, the sales tax exemption for tangible personal property purchased by a contractor on behalf of an entity qualifying for an exemption is critical. We ask for your support to better serve the citizens of North Dakota.

Thank you for the opportunity to testify today in support of HB 1513. This concludes my testimony. I am happy to answer any questions the committee may have.

Respectfully Submitted,

Theresa Stahl
Director of Finance
Hospice of the Red River Valley
Theresa.Stahl@hrrv.org
(701) 356-1507

HB1513 Introduction and Support Testimony
January 30, 2023 10:30a.m. House Finance and Taxation Committee

Chair Headland, Vice-Chair Hagert and Members of the Finance and Taxation Committee:

For the record, I am Cindy Schreiber-Beck, District 25 Representative.

House Bill 1513 was at the request of Hospice of the Red River Valley. The organization began construction on North Dakota's first hospice house in May of 2022. Located in Fargo, the hospice house provides a place for families to gather with hospice patients.

Hospice of the Red River Valley is exempt from paying sales tax. With the hospice house construction project, the only option for Hospice to not pay sales tax was to set up accounts with all vendors that supplied materials for the hospice house project. This bill simplifies the process by allowing a sales tax exemption to a contractor who purchases tangible personal property that is subsequently installed into a facility to be used by a qualifying entity. (on line 13, page 1 - hospice program was added to section 57-39.2-04)

Thank you for your favorable consideration of HB1513.

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 the property be in the contractor, subcontractor, contractee, subcontractee, or any other person, or whether the titleholder of the property would be subject to pay the sales or use tax, the 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 the property has been previously subjected to a sales tax or use tax by this state, and the tax due has been paid. This section does not apply to a contractor or subcontractor that does not enter a contract for the purchase of the tangible personal property.

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:

a. Production equipment or tangible personal property as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.2;

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

c. Tangible personal property used to construct or expand a system used to compress, process, gather, or refine gas recovered from an oil or gas well in this state or used to expand or build a gas-processing facility in this state as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.5;

d. Tangible personal property used to construct or expand a qualifying oil refinery as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.6;

e. Tangible personal property used to construct or expand a qualifying facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.10; Page No. 5

f. Tangible personal property used to construct or expand a qualifying facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.11;

g. Materials used in compressing, gathering, collecting, storing, transporting, or injecting carbon dioxide for use in enhanced recovery of oil or natural gas as provided in section 57-39.2-04.14;

h. Tangible personal property used to construct a qualifying fertilizer or chemical processing facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.15; or

i. Tangible personal property used to construct a qualified straddle plant, a qualified fractionator, or qualified associated infrastructure as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.16.

Industrial Builders, Inc.

PAUL W. DIEDERICH, PRESIDENT
DONN O. DIEDERICH, EXECUTIVE VICE PRESIDENT



General Contractors

PHONE 701/282-4977 FAX 701/281-1409
P.O. BOX 406 FARGO, NORTH DAKOTA 58107-0406

January 29, 2023

In support of HB1513

Industrial Builders, Inc. (IBI) has been incorporated in ND since 1953 and holds ND Contractors license #214A.

We have constructed projects for tax exempt entities many times since I started working for the company in 1980. We are currently a subcontractor to Meineke Johnson Company on a project being built for the Hospice of the Red River Valley in Fargo. When we bid the project in 2021, the specifications indicated that the project was exempt from sales and use tax. When we were awarded the subcontract and began construction, we discovered that the only way that the materials which we incorporated into the project could be exempt from sales and use tax was if the Hospice of the Red River Valley paid the vendor directly for the material. One of our vendors is Aggregate Industries (owned by Holcim which is a multinational company) who is unwilling to sell materials directly to Hospice of the Red River Valley and therefore IBI had to pay sales or use tax on the purchase of the gravel materials which we incorporated into the project but did not include in our bid.

I seem to recall that in the past when we constructed projects which were exempt from sales and use tax, we were issued an exemption certificate from either the owner or the state tax commissioner which we passed on to our vendors so they would not charge sales or use tax. Subsequently, we certified to the state tax commissioner that all of the purchases were indeed incorporated into the tax exempt project under the penalties of perjury. It may have been that we included the materials as a separate line-item on our invoice & the exempt entity did something, but the materials incorporated into the permanent works were not taxed.

If house bill 1513 proposes to allow contractors to purchase materials tax-exempt from their vendors which are ultimately incorporated into the finished project, instead of forcing the tax-exempt entity to purchase directly from the vendors in order to avoid the payment of sales or use tax, I support its passage.

Call me from the hearing if you have any questions, Russ Hanson has my number - I'd be happy to testify.

Industrial Builders, Inc.
Paul W. Diederich
/S/
President

P.S. I am a member of the Board of Directors of HRRV

2-14-23

23.0964.02001
Title.

Prepared by the Legislative Council staff for
Representative Schreiber-Beck
February 13, 2023

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1513

Page 1, line 1, replace "subdivision to subsection 3 of section 57-40.2-03.3" with "section to chapter 57-39.2"

Page 1, line 2, replace "payment of use tax by contractors" with "a sales and use tax exemption for materials used to construct, expand, or upgrade a facility owned by an eligible facility or emergency medical services provider"

Page 1, line 3, replace "subsection 24 of section 57-39.2-04" with "subsection 3 of section 57-40.2-03.3"

Page 1, remove line 4

Page 1, line 5, replace "patient or occupant" with "use tax exemption for materials used to construct, expand, or upgrade a facility owned by an eligible facility or emergency medical services provider"

Page 1, replace lines 7 through 23 with:

"SECTION 1. A new section to chapter 57-39.2 of the North Dakota Century Code is created and enacted as follows:

Sales and use tax exemption for materials used to construct, expand, or upgrade a facility owned by an eligible facility or emergency medical services provider.

1. Gross receipts from sales of tangible personal property used to construct, expand, or upgrade a facility owned by an entity that qualifies as an exempt organization under subsection 24 of section 57-39.2-04 are exempt from taxes under this chapter.
2. The exemption may be received only at the time of purchase. To receive the exemption, the entity qualifying for an exemption under this section must receive from the tax commissioner a certificate indicating the tangible personal property the entity intends to purchase to construct, expand, or upgrade the facility qualifies for the exemption under this section.
3. This chapter and chapter 57-40.2 apply to an exemption under this section.

SECTION 2. AMENDMENT. Subsection 3 of section 57-40.2-03.3 of the North Dakota Century Code is amended and reenacted as follows:

3. 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 tax commissioner under section 57-39.2-04.2;
 - b. Machinery, equipment, or other tangible personal property used to construct an agricultural commodity processing facility as authorized

or approved for exemption by the tax commissioner under section 57-39.2-04.3 or 57-39.2-04.4~~;~~

- c. Tangible personal property used to construct or expand a system used to compress, process, gather, or refine gas recovered from an oil or gas well in this state or used to expand or build a gas-processing facility in this state as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.5~~;~~
- d. Tangible personal property used to construct or expand a qualifying oil refinery as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.6~~;~~
- e. Tangible personal property used to construct or expand a qualifying facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.10~~;~~
- f. Tangible personal property used to construct or expand a qualifying facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.11~~;~~
- g. Materials used in compressing, gathering, collecting, storing, transporting, or injecting carbon dioxide for use in enhanced recovery of oil or natural gas as provided in section 57-39.2-04.14~~;~~
- h. Tangible personal property used to construct a qualifying fertilizer or chemical processing facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.15~~;~~
- i. Tangible personal property used to construct a qualified straddle plant, a qualified fractionator, or qualified associated infrastructure as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.16.
- j. Tangible personal property used to construct, expand, or upgrade a facility owned by an eligible facility or emergency medical services provider as authorized or approved for exemption by the tax commissioner under section 1 of this Act."

Renumber accordingly

23.0964.02001

Sixty-eighth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1513

Introduced by

Representatives Schreiber-Beck, Dobervich, O'Brien, Pyle, Roers Jones, Strinden, Swiontek
Senator Hogan

1 A BILL for an Act to create and enact a new ~~subdivision to subsection 3 of section~~
2 ~~57-40.2-03.3~~section to chapter 57-39.2 of the North Dakota Century Code, relating to ~~payment~~
3 ~~of use tax by contractors~~a sales and use tax exemption for materials used to construct, expand,
4 or upgrade a facility owned by an eligible facility or emergency medical services provider; to
5 amend and reenact ~~subsection 24 of section 57-39.2-04~~subsection 3 of section 57-40.2-03.3 of
6 the North Dakota Century Code, relating to a ~~sales tax exemption for sales to an eligible facility~~
7 ~~when used for the benefit of the facility's patient or occupant~~use tax exemption for materials
8 used to construct, expand, or upgrade a facility owned by an eligible facility or emergency
9 medical services provider; and to provide an effective date.

10 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

11 ~~SECTION 1. AMENDMENT.~~ Subsection 24 of section 57-39.2-04 of the North Dakota
12 Century Code is amended and reenacted as follows:—
13 ~~24.~~ Gross receipts from all sales when made to an eligible facility or emergency medical
14 services provider for the use or benefit of its patient or occupant. For the purposes of
15 this subsection:
16 ~~a.~~ "Eligible facility" means any hospital, skilled nursing facility, intermediate care
17 facility, residential end-of-life facility, basic care facility, hospice program, or any
18 assisted living facility licensed by the department of health and human services;
19 and
20 ~~b.~~ "Emergency medical services provider" means an emergency medical
21 services operation licensed by the department of health and human services
22 under chapter 23-27.
23 ~~SECTION 2.~~ A new subdivision to subsection 3 of section 57-40.2-03.3 of the North Dakota
24 Century Code is created and enacted as follows:

1 ~~Tangible personal property purchased by a contractor on behalf of an entity~~
2 ~~qualifying for an exemption under subsection 24 of section 57-39.2-04 and~~
3 ~~subsequently installed into a facility used by the entity.~~

4 **SECTION 1.** A new section to chapter 57-39.2 of the North Dakota Century Code is created
5 and enacted as follows:

6 Sales and use tax exemption for materials used to construct, expand, or upgrade a
7 facility owned by an eligible facility or emergency medical services provider.

- 8 1. Gross receipts from sales of tangible personal property used to construct, expand, or
9 upgrade a facility owned by an entity that qualifies as an exempt organization under
10 subsection 24 of section 57-39.2-04 are exempt from taxes under this chapter.
11 2. The exemption may be received only at the time of purchase. To receive the
12 exemption, the entity qualifying for an exemption under this section must receive from
13 the tax commissioner a certificate indicating the tangible personal property the entity
14 intends to purchase to construct, expand, or upgrade the facility qualifies for the
15 exemption under this section.
16 3. This chapter and chapter 57-40.2 apply to an exemption under this section.

17 **SECTION 2. AMENDMENT.** Subsection 3 of section 57-40.2-03.3 of the North Dakota
18 Century Code is amended and reenacted as follows:

- 19 3. The tax imposed by this section does not apply to:
20 a. Production equipment or tangible personal property as authorized or approved
21 for exemption by the tax commissioner under section 57-39.2-04.2;
22 b. Machinery, equipment, or other tangible personal property used to construct an
23 agricultural commodity processing facility as authorized or approved for
24 exemption by the tax commissioner under section 57-39.2-04.3 or 57-39.2-04.4;
25 c. Tangible personal property used to construct or expand a system used to
26 compress, process, gather, or refine gas recovered from an oil or gas well in this
27 state or used to expand or build a gas-processing facility in this state as
28 authorized or approved for exemption by the tax commissioner under section
29 57-39.2-04.5.

- 1 d. Tangible personal property used to construct or expand a qualifying oil refinery as
2 authorized or approved for exemption by the tax commissioner under section
3 57-39.2-04.6~~7~~.
- 4 e. Tangible personal property used to construct or expand a qualifying facility as
5 authorized or approved for exemption by the tax commissioner under section
6 57-39.2-04.10~~11~~.
- 7 f. Tangible personal property used to construct or expand a qualifying facility as
8 authorized or approved for exemption by the tax commissioner under section
9 57-39.2-04.11~~12~~.
- 10 g. Materials used in compressing, gathering, collecting, storing, transporting, or
11 injecting carbon dioxide for use in enhanced recovery of oil or natural gas as
12 provided in section 57-39.2-04.14~~15~~.
- 13 h. Tangible personal property used to construct a qualifying fertilizer or chemical
14 processing facility as authorized or approved for exemption by the tax
15 commissioner under section 57-39.2-04.15~~16~~ ~~or~~.
- 16 i. Tangible personal property used to construct a qualified straddle plant, a qualified
17 fractionator, or qualified associated infrastructure as authorized or approved for
18 exemption by the tax commissioner under section 57-39.2-04.16.
- 19 j. Tangible personal property used to construct, expand, or upgrade a facility owned
20 by an eligible facility or emergency medical services provider as authorized or
21 approved for exemption by the tax commissioner under section 1 of this Act.

22 **SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable events occurring after
23 June 30, 2023.

23.0964.02001

Sixty-eighth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1513

*Hospice Programs
NDCC ch. 23-17.4*

Introduced by

Representatives Schreiber-Beck, Dobervich, O'Brien, Pyle, Roers Jones, Strinden, Swiontek
Senator Hogan

1 A BILL for an Act to create and enact a new ~~subdivision to subsection 3 of section~~
 2 ~~57-40.2-03.3~~ section to chapter 57-39.2 of the North Dakota Century Code, relating to ~~payment~~
 3 ~~of use tax by contractors~~ a sales and use tax exemption for materials used to construct, expand,
 4 or upgrade a facility owned by ~~an eligible facility or emergency medical services provider;~~ to
 5 amend and reenact ~~subsection 24 of section 57-39.2-04~~ subsection 3 of section 57-40.2-03.3 of
 6 the North Dakota Century Code, relating to a ~~sales tax exemption for sales to an eligible facility~~
 7 ~~when used for the benefit of the facility's patient or occupant~~ use tax exemption for materials
 8 used to construct, expand, or upgrade a facility owned by ~~an eligible facility or emergency~~
 9 ~~medical services provider;~~ and to provide an effective date.

10 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

11 ~~SECTION 1. AMENDMENT.~~ ~~Subsection 24 of section 57-39.2-04 of the North Dakota~~
 12 ~~Century Code is amended and reenacted as follows: _____~~

13 ~~24. Gross receipts from all sales when made to an eligible facility or emergency medical~~
 14 ~~services provider for the use or benefit of its patient or occupant. For the purposes of~~
 15 ~~this subsection:~~

16 ~~a. "Eligible facility" means any hospital, skilled nursing facility, intermediate care~~
 17 ~~facility, residential end-of-life facility, basic care facility, hospice program, or any~~
 18 ~~assisted living facility licensed by the department of health and human services;~~
 19 ~~and~~

20 ~~b. "Emergency medical services provider" means an emergency medical~~
 21 ~~services operation licensed by the department of health and human services~~
 22 ~~under chapter 23-27.~~

23 ~~SECTION 2. A new subdivision to subsection 3 of section 57-40.2-03.3 of the North Dakota~~
 24 ~~Century Code is created and enacted as follows:~~

1 Tangible personal property purchased by a contractor on behalf of an entity
2 qualifying for an exemption under subsection 24 of section 57-39.2-04 and
3 subsequently installed into a facility used by the entity.

4 **SECTION 1.** A new section to chapter 57-39.2 of the North Dakota Century Code is created
5 and enacted as follows:

6 Sales and use tax exemption for materials used to construct, expand, or upgrade a
7 facility owned by ^{hospice care} ~~an eligible facility or emergency medical services provider.~~
8 ^{← a hospice program}

9 1. Gross receipts from sales of tangible personal property used to construct, expand, or
10 upgrade a ^{hospice care} facility owned by ^{← a hospice program as defined in section 23-17.4-01} ~~an entity~~ that qualifies as an exempt organization under
11 subsection 24 of section 57-39.2-04 are exempt from taxes under this chapter.

12 2. The exemption may be received only at the time of purchase. To receive the
13 exemption, the entity qualifying for an exemption under this section must receive from
14 the tax commissioner a certificate indicating the tangible personal property the entity
15 intends to purchase to construct, expand, or upgrade the facility qualifies for the
16 exemption under this section.

17 3. This chapter and chapter 57-40.2 apply to an exemption under this section.

18 **SECTION 2. AMENDMENT.** Subsection 3 of section 57-40.2-03.3 of the North Dakota
19 Century Code is amended and reenacted as follows:

20 3. The tax imposed by this section does not apply to:

- 21 a. Production equipment or tangible personal property as authorized or approved
22 for exemption by the tax commissioner under section 57-39.2-04.2;
- 23 b. Machinery, equipment, or other tangible personal property used to construct an
24 agricultural commodity processing facility as authorized or approved for
25 exemption by the tax commissioner under section 57-39.2-04.3 or 57-39.2-04.4;
- 26 c. Tangible personal property used to construct or expand a system used to
27 compress, process, gather, or refine gas recovered from an oil or gas well in this
28 state or used to expand or build a gas-processing facility in this state as
29 authorized or approved for exemption by the tax commissioner under section
57-39.2-04.5;

- 1 d. Tangible personal property used to construct or expand a qualifying oil refinery as
2 authorized or approved for exemption by the tax commissioner under section
3 57-39.2-04.6~~;~~
- 4 e. Tangible personal property used to construct or expand a qualifying facility as
5 authorized or approved for exemption by the tax commissioner under section
6 57-39.2-04.10~~;~~
- 7 f. Tangible personal property used to construct or expand a qualifying facility as
8 authorized or approved for exemption by the tax commissioner under section
9 57-39.2-04.11~~;~~
- 10 g. Materials used in compressing, gathering, collecting, storing, transporting, or
11 injecting carbon dioxide for use in enhanced recovery of oil or natural gas as
12 provided in section 57-39.2-04.14~~;~~
- 13 h. Tangible personal property used to construct a qualifying fertilizer or chemical
14 processing facility as authorized or approved for exemption by the tax
15 commissioner under section 57-39.2-04.15~~;~~ ~~or~~
- 16 i. Tangible personal property used to construct a qualified straddle plant, a qualified
17 fractionator, or qualified associated infrastructure as authorized or approved for
18 exemption by the tax commissioner under section 57-39.2-04.16.
- 19 ~~j. Tangible personal property used to construct, expand, or upgrade a facility owned~~
20 ~~by an eligible facility or emergency medical services provider as authorized or~~
21 ~~approved for exemption by the tax commissioner under section 1 of this Act.~~

22 **SECTION 3. EFFECTIVE DATE.** This Act is effective for ~~taxable events~~ occurring after
23 June 30, 2023. ↑
construction

TESTIMONY
HOUSE BILL 1513
HOUSE FINANCE AND TAXATION COMMITTEE
CHAIRPERSON JORDAN KANNIANEN
MARCH 13, 2023

Chairperson Kannianen and distinguished members of the Senate Finance and Taxation Committee, for the record my name is Stephen P. Astrup, Project and Regulatory Counsel for Hospice of the Red River Valley (HRRV) and I am joined by my colleagues, Tracee Capron, Executive Director for HRRV, and Theresa Stahl, Director of Finance for HRRV. We are here today to provide testimony on House Bill 1513 and ask that you give this bill a **DO PASS** recommendation as it is in its current state.

We appreciate the support of the North Dakota House of Representatives in passing House Bill 1513, but want to ensure there is no untimely delay in its implementation.

HRRV is a 501(c)(3) nonprofit provider, our income does not inure to any individual or private shareholder. Our revenue is used to provide services to our patients. In 2022, we touched 2,523 patients and their families providing 149,580 days of care. We want and need to do more. We are currently building North Dakota's first free-standing, community-based hospice inpatient facility to provide acute care when needed by our patients, and to provide respite care when a caregiver needs a much-deserved break. The costs for this care are predominantly reimbursed medical expenses from the Centers for Medicare & Medicaid Services. Our project was impacted by COVID-19 as prices for construction materials dramatically increased – to the extent it jeopardized our project. Prior to the introduction of House Bill 1513, unless we had a labor-only contract, the sales tax in a significant – almost detrimental – cost. Entering into a labor-only contract for construction is excruciatingly difficult to facilitate due to the complexities created. We were an unintended consequence of House Bill 1309 passed in the 2021 Legislative Session. We are healthcare providers and not construction contractors, which brings additional risk to our project as we attempt to maneuver through purchases of building materials, we know nothing about.

HRRV plays a vital role in building healthy communities by providing critical services that contribute to economic stability and health of all North Dakotans we serve. In an era of growing needs and shrinking government resources, we are and continue to be asked to do more with less, placing an additional strain on our already limited resources. As a result, we are starved for the kind of support that strengthen our operations, enable us to deliver our services more effectively, and ultimately help create a stronger economy and healthier population – and this is good for all sectors.

The passage of House Bill 1513 would allow us to construct North Dakota's first and only free-standing, community-based hospice house and focus on our mission instead of learning how to purchase construction materials. Please give House Bill 1513 a **DO PASS** recommendation.

This concludes my testimony. I am happy to answer any questions you may have. Should you have any questions subsequent to today's hearing, please feel free to contact me via phone (701) 356-1500 or via email at stephen.astrup@hrrv.org.

Respectfully Submitted,

Stephen P. Astrup, Project and Regulatory Counsel
Hospice of the Red River Valley

HB1513 Introduction and Support Testimony

March 14, 2023 9:15am Senate Finance and Taxation Committee

Chair Kannianen, Vice-Chair Weber and Members of the Finance and Taxation Committee:

For the record, I am Cindy Schreiber-Beck, District 25 Representative.

House Bill 1513 was at the request of Hospice of the Red River Valley. The organization began construction on North Dakota's first Hospice House in May of 2022. Located in Fargo, the Hospice House will provide a place for families to gather with patients receiving Hospice care.

Hospice of the Red River Valley is exempt from paying sales tax. With the Hospice House construction project, the only option for Hospice to not pay sales tax was to set up accounts with all vendors that supplied materials for the Hospice House project – an immensely cumbersome task with the construction of a major facility. This bill, if passed, simplifies the process by allowing the sales tax exemption at the time of purchase after receiving a certificate from the tax commissioner indicating tangible personal property that Hospice House intends to purchase to construct, expand or upgrade the facility qualifies for the exemption.

Thank you for the opportunity to introduce Engrossed HB 1513 and I would appreciate a favorable consideration.

Chapter 57-39.2 - Sales Tax

Chapter 23-17.4 - Hospice Programs

Section	Section Name
23-17.4-01	Definitions
23-17.4-02	Hospice program license required
23-17.4-03	Scope of license
23-17.4-04	Application for license
23-17.4-05	Inspection of hospice program
23-17.4-06	Issuance of license - Renewal
23-17.4-07	Basic requirements for hospice program
23-17.4-08	Rules and standards
23-17.4-09	Inspection and investigation authority
23-17.4-10	Denial, suspension, or revocation of license

57-39.2-04. Exemptions.

There are specifically exempted from the provisions of this chapter and from computation of the amount of tax imposed by it the following:

24. Gross receipts from all sales when made to an eligible facility or emergency medical services provider for the use or benefit of its patient or occupant. For the purposes of this subsection:
 - a. "Eligible facility" means any hospital, skilled nursing facility, intermediate care facility, residential end-of-life facility, basic care facility, or any assisted living facility licensed by the department of health and human services; and
 - b. "Emergency medical services provider" means an emergency medical services operation licensed by the department of health and human services under chapter 23-27.

Chapter 57-40.2 - Use Tax

57-40.2-033 Use tax on contractors

Prepared for Senate Finance &
Taxation Committee
March 14, 2023
TLE

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1513

A BILL for an Act to create and enact a new section to chapter 57-39.2 of the North Dakota Century Code, relating to a sales and use tax exemption for materials used to construct expand, or upgrade a hospice care facility owned by a hospice program **or a residential end-of-life facility**; to amend and reenact subsection 3 of section 57-40.2-03.3 of the North Dakota Century Code, relating to a use tax exemption for material s used to construct, expand, or upgrade a hospice care facility owned by a hospice program **or a residential end-of-life facility**; and to provide an effective date.

SECTION 1. A new section to chapter 57-39.2 of the North Dakota Century Code is created and enacted as follows:

Sales and use tax exemption for materials used to construct, expand, or upgrade a hospice care facility owned by a hospice program.

1. Gross receipts from sales of tangible personal property used to construct, expand, or upgrade a hospice care facility owned by a hospice program as defined in section 23-17.1-01 **or a residential end-of-life facility as defined in section 23-17.7-01** which ~~qualifies~~ **qualify** as an exempt organization under subsection 24 of section 57-39.2-04 are exempt from taxes under this chapter. **To qualify for the exemption, the tangible personal property must be incorporated into the construction, expansion, or upgrade to the point of having no residual economic value.**
2. The exemption may be received only at the time of purchase. To receive the exemption, the entity qualifying for an exemption under this section must receive from the tax commissioner a certificate indicating the tangible personal property the entity intends to purchase to construct,

expand, or upgrade the facility qualifies for the exemption under this section.

3. This chapter and chapter 57-40.2 apply to an exemption under this section.

SECTION 2. AMENDMENT. Subsection 57-40.2-03.3 of the North Dakota Century Code is amended and reenacted as follows:

3. The tax imposed by this section does not apply to:
 - i. Tangible personal property used to construct, expand, or upgrade a hospice care facility owned by a hospice program or a residential end-of-life facility as authorized or approved for exemption by the tax commissioner under section 1 of this Act.

SECTION 3. ~~EFFECTIVE DATE.~~ This Act is effective for construction occurring after June 30, 2023 EMERGENCY. This Act is declared to be an emergency.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1513

Page 1, line 3, after “program” insert “or a residential end-of-life facility”

Page 1, line 6, after “program” insert “or a residential end-of-life facility”

Page 1, line 11, after “**program**” insert “**or a residential end-of-life facility**”

Page 1, line 14, after “23-17.4-01” insert “or a residential end-of-life facility as defined in section 23-17.7-01”

Page 1, line 14, replace “qualifies” with “qualify”

Page 1, line 15, after “chapter.” insert “To qualify for the exemption, the tangible personal property must be incorporated into the construction, expansion, or upgrade to the point of having no residual economic value.”

Page 2, line 30 after “program” insert “or a residential end-of-life facility”

Page 3, line 1, remove “EFFECTIVE DATE. This Act is effective for construction occurring after”

Page 3, line 2, remove “June 30, 2023.”

Page 3, Add EMERGENCY CLAUSE

Re-number accordingly



**Testimony in Support of Amended HB 1513
A More Inclusive Amendment
Senate Human Finance and Taxation Committee**

March 14, 2023 • 9:15 a.m. • Fort Totten

Kilee Harmon

kilee@thegaiahome.org • cell: 701.226.4546

Chairman Kannianen and members of the committee, my name is Kilee Harmon, and I am the Executive Director of Gaia Home, which is a nonprofit based in Bismarck that is working to create one of the first Residential End-of-Life Facility communities of its kind in the state. Today I am here to submit testimony and respectfully ask for a "Do Pass" recommendation to the amended version of House Bill 1513, which if enacted, will include Residential End-of-Life Facilities as an eligible facility in addition to a hospice care facility owned by a hospice provider, to receive the proposed sales and use tax exemption for tangible personal property used to construct, expand, or upgrade a facility.

I support the amendment for the following reasons:

1. Gaia Home's mission is to bring comfort, compassion, and dignity to all persons and their loved ones, as we nurture the human spirit through the end-of-life journey.
 - a. Since November of 2020, we have lived our mission by collaborating with hospice providers to fill a current gap in end-of-life care services in our community, region, and state with the creation of Residential End-of-Life Facilities.
 - b. During the 2021 legislative session, it was Gaia Home leadership that brought forth the legislation that created NDCC 23.17.7 which established the Residential End-of-Life Facilities licensure.
 - c. On March 7 of this year the Administrative Rules Committee adopted the administrative rules for Residential End-of-Life Facilities that were developed through a stakeholder group organized by ND Health and Human Services and was comprised of individuals from Gaia Home Leadership, the Health Division of Facilities, Division of Life Safety & Construction, and Hospice programs from across the state.
2. Residential End-of-Life Facilities have a similar purpose to that of a hospice care facility owned by a hospice provider – hospice services are provided in both, and the facilities are dedicated to offering the best end-of-life care to patients and their families.
 - a. The vision for Gaia Home is to build and operate a neighborhood of residential units and community spaces for families and their loved ones to move into, receive hospice services from a hospice provider of their



choosing, and Gaia Home's caregiving staff who specialize in end-of-life care, will provide 24-hour personalized care to the hospice patient and their family, taking the caregiving role off of the family members' shoulders, giving them all the chance to truly treasure their precious time together during the final season of life.

3. Gaia Home's leadership is currently working to bring the vision to life.
 - a. At this moment Gaia Home is in the leadership phase of a \$12 million capital campaign. We have just over \$4 million in pledges committed and are continuing our fundraising efforts with a goal to begin construction in 2024.
 - b. As a non-profit working to bring this solution to those who want a homier option for their end-of-life care, any and all dollars we can save during construction through this exemption will only further support our mission going forward.

That concludes my testimony. I thank you again for your time and attention, and I will happily stand for any questions you may have.

For Reference Only

Video explaining what Residential End-of-Life Facilities are: [Introduction of Gaia Home](#)

Who will Residential End-of-Life Facilities Like Gaia Home Be a Solution For?

Today, there is no place in North Dakota that specializes in end-of-life care in a true home setting, which is an option in many other states, but currently does not exist here.

For families and their loved ones facing the final season of life, in-home hospice care is the most desirable option. However, whether due to medical or other concerns, in-home hospice is just not feasible for many, and the current option is to spend the final journey in a non-home, unfamiliar setting. Gaia Home will provide a comfortable, homey solution for:

- People requiring hospice care who have limiting factors which make it difficult or impossible to receive services at their home.
- Families with loved ones who wish to remain in a comfortable home setting during the end-of-life journey but are unable to provide the home-based 24-hour caregiving needed.
- People needing compassionate end-of-life care who live outside of a hospice service.
- Family members currently acting as primary caregivers to their loved ones who need support in administering care or managing grief.
- Hospice patients whose home is no longer a viable option for their required care but do not wish to spend their final season in a non-home setting.



- Terminally ill individuals who are discharged from the hospital but have no housing to live out their final journey.

How Residential End-of-Life Facilities Like Gaia Home Are Different

- Gaia Home intends to open its residential units and community spaces to licensed hospice providers so they can offer this true home setting with 24-hour supportive care to their patients.
- Gaia Guests can receive hospice services from licensed hospice providers, and Gaia caregivers will collaborate with hospice providers to ensure the goals and priorities of the patients and families are met.
- Every Gaia Guest will receive personalized care 24 hours a day, seven days a week, with a significantly low guest to caregiver ratio. Family members can live with their loved one in a private home setting and spend quality time making lasting memories as Gaia caregivers relieve families of the many difficult caretaking tasks.

Why Residential End-of-Life Facilities Like Gaia Home Are Needed Now

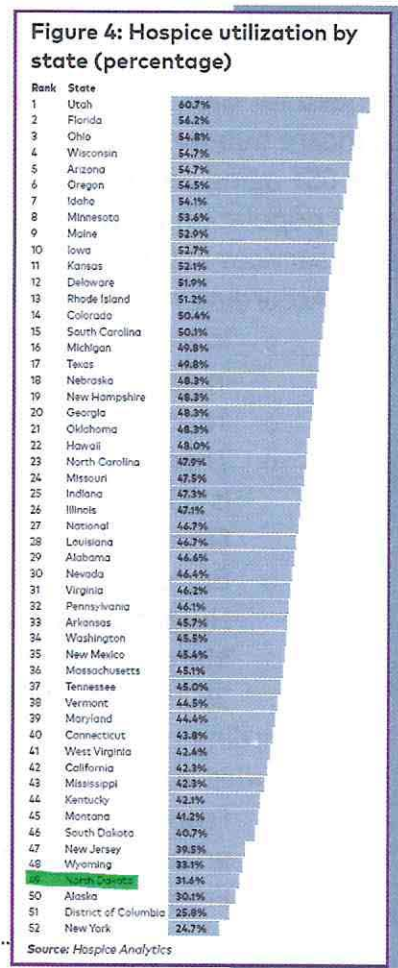
The need for Gaia Home and its placement in Bismarck – which is often referred to as the healthcare hub for Central and Western North Dakota – is evident because of: the increase in the 65+ aging population (the group that is most likely to utilize hospice services), the overall population growth expectations for the region, current hospice utilization, and the lack of services in the region.

- According to the Rural Health Information Hub (ruralhealthinfo.org):
 - In North Dakota's non-metro areas 16.9% of its population is 65 or older, and in its metro areas 13.7% is 65 or older.
 - 16.2% of Burleigh County's population is 65+
 - There are five counties in the state in which 29.8% or more of the population is 65 or older. Four of these counties (i.e., Sheridan, McIntosh, Grant, and Emmons) are within 120 miles of Bismarck.
 - Burleigh's neighboring counties (that are also part of Region VII West Central Human Service Center) of Sheridan, Grant, Emmons, Oliver, McClean, Kidder, Mercer, Morton and Sioux have a 65+ aging population equal to 32%, 29.8%, 28.7%, 24%, 23.4%, 20%, 16.4% and 8%, respectively.
- According to the ND Census Office Population Projections of the State, Region, and Counties 2016:
 - From 2020 to 2030, North Dakota's population of 65 or older is expected to grow 25% from 122,120 to 152,818.
 - From 2020 to 2030, the population in North Dakota's Western four regions combined is anticipated to grow from 402,853 to 468,512, a 16.3% increase.



- In the expected migration scenario, the Western four combined economic regions (Williston, Minot, Dickinson, and Bismarck) reach a population surpassing the four combined Eastern regions (Devils Lake, Grand Forks, Jamestown, and Fargo) of the state between 2025 and 2030.
- According to local hospice providers, and out-of-state providers who operate facilities similar to Gaia Home on a daily basis, 10-30% of people on hospice services may need a place like Gaia Home. The average daily census of people on hospice services in the Bismarck-Mandan and surrounding communities is roughly 92 people, which means anywhere from 9 to 28 individuals each day could possibly benefit from Gaia Home.
- According to the NDHHS hospice locator, in North Dakota’s Western four regions there is a total of 28 counties and four of those countries currently have no hospice services; and nine of those counties have only one hospice provider to choose from. People needing compassionate end-of-life care who live outside of a hospice service area or have too few hospice providers to choose from could benefit from Gaia Home.

Why is hospice utilization so low in ND, and what can be done? According to Figure 4: Hospice utilization by state (percentage) in the NHPCO Facts and Figures 2022 Edition, the proportion of North Dakota Medicare decedents enrolled in hospice at the time of death in 2020 was 31.6%, which makes ND ranked 49th out of all 52 states, territories and District of Columbia. Essentially, this indicates that the Medicare hospice benefit is not being fully utilized in North Dakota. This can be due to not having access to hospice services, and people not fully understanding what the hospice benefit all includes and can offer them. One way to increase hospice utilization is by increasing access to hospice services and homey facilities in which people can receive hospice services when in-home hospice care is not an option and they want to be in a home environment. Gaia Home and residential end-of-life facilities will support this effort.



What type of hospice care will hospice providers be able to provide within Gaia Home?

There are four levels of hospice care provided by the Medicare hospice benefit. They are routine home care, continuous home care, respite care, and general inpatient.

1. Routine Home Care

- a. It is the most utilized level of hospice care. According to Table 5: Percent of Days by Level of Care in the NHPCO Facts and Figures 2022 Edition, in 2020, 98.7% of the days of care were under Routine Home Care. That is when the hospice program’s interdisciplinary team (i.e., Patient and family, Physician including the medical director and attending physician, Registered nurse, Medical social worker, trained volunteers, providers of special services including a spiritual counselor, a registered pharmacist, a registered dietitian, or professional in the field of mental health may be included in the hospice care team as determined appropriate by the hospice program) creates the patient’s plan of care, sets up the durable medical equipment needed wherever the patient calls home, organizes the medication schedule, trains the patient’s caregivers on how to provide care per the plan, and more. The hospice program is not with the patient 24/7, and the caregiver role falls onto family and friends.

2. Continuous Home Care (CHC)

- a. It is care provided for between 8 and 24 hours a day to manage pain and other acute medical symptoms. CHC services must be predominately nursing care, supplemented with caregiver and hospice aide services, and are intended to maintain the terminally ill patient at home during a pain or symptom crisis. In 2020, .2% of days of care were CHC.

Spending by Level of Care

In 2020, the vast majority of Medicare days of care were at the routine home care (RHC) level with a slight increase from previous years. General inpatient (GIP) level saw a slight decrease from 2019 (1.2 to 1.0).

Table 4: Spending by Level of Care

Percent of Days by Spending	
Routine Home Care (RHC)	92.7%
General Inpatient Care (GIP)	5.6%
Inpatient Respite Care (IRC)	0.6%
Continuous Home Care (CHC)	1.1%

Source: Hospice Analytics

Table 5: Percent of Days by Level of Care

Percent of Days by Level of Care	2016	2017	2018	2019	2020
Routine home care	98.0%	98.0%	98.2%	98.3%	98.7%
General inpatient care	1.6%	1.3%	1.2%	1.2%	1.0%
Inpatient respite care	0.3%	0.3%	0.3%	0.3%	0.2%
Continuous home care	0.3%	0.2%	0.2%	0.2%	0.2%

Source: MedPAC March Report to Congress, various years; Hospice Analytics



3. Inpatient Respite Care (IRC)

- a. This level of care provides temporary relief to the patient's primary caregiver by moving the patient into a facility for 5-days. The facility's room and board is covered by the Medicare benefit for those 5-days. However, two consecutive 5-day stays are not allowed, so on the 6th and any consecutive day thereafter, the patient is responsible for room and board.
- b. Respite care can be provided in CMS certified facilities such as a hospital, hospice inpatient facility, or a long-term care facility.
- c. In 2020, .2% of days of care were IRC.
- d. Even though hospice programs would not be able to offer IRC in Gaia Home's Residential End-of-Life Facility, they could offer "relief care" in which people can stay longer than the 5-day respite benefit. The patient and/or family would be responsible for the room and board fees for "relief care" at Gaia Home and more than likely at other Residential End-of-Life Facilities. However, Gaia Home's goal is to substantially grow our endowment fund so we can subsidize 5-days (and possibly more) of patients' room and board fees for those who do not have an ability to pay.

4. Lastly, General Inpatient Care (GIP)

- a. This level of care is provided for pain control or other acute symptom management that cannot feasibly be provided in any other setting. GIP begins when other efforts to manage symptoms are not sufficient. GIP can be provided in a Medicare certified hospital, hospice inpatient facility, or nursing facility that has registered nursing available 24 hours a day to provide direct patient care.
- b. In 2020, 1% of days of care were GIP.
- c. Hospice programs would not be able to offer GIP in Residential End-of-Life Facilities.

Even though all levels of hospice care cannot be offered in Residential End-of-Life Facilities, routine home care – the most utilized level of care – and continuous home care can be offered.

What services are offered in a Residential End-of-Life Facility?

Based upon the recently passed Administrative Rules for Residential End-of-Life Facilities they will be able to offer the following:

1. Hospice Services by having an agreement with one or more hospice programs licensed under North Dakota Century Code chapter 23-17.4 to provide hospice services.



2. Residential services, which means intermittent, nonpersonal care tasks, such as housekeeping, laundry, shopping, and arranging for transportation.
3. Support services, which includes responsibility for patient health and safety, assistance with activities of daily living and instrumental activities of daily living, provision of leisure, recreational, and therapeutic activities, supervision of nutritional needs, and medication administration.
4. Volunteer services, which means the services provided by individuals, voluntarily and without remuneration, who have successfully completed a training program implemented by the facility.

What about employment and the shortage of nursing personnel?

We fully understand there is a nursing shortage on a national level and state level. Our hope is to help supplement the staffing with qualified volunteers which is what you will see in other similar places. However, even with that being the case, we do not foresee the nursing shortage as a reason to not be more inclusive of Residential End-of-Life Facilities in the language for the proposed bill.

If a hospice patient revokes from the hospice agency, are they still able to live in a Residential End-of-Life Facility?

If they choose to be a hospice patient of a different hospice program that provides services in the Residential End-of-Life Facility, a hospice patient would be able to stay.

If they are not a hospice patient, the patient will no longer be able to stay in a Residential End-of-Life Facility.

