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LaCosta Rickford  
Operator's Signature

10/15/03  
Date

2003 SENATE POLITICAL SUBDIVISIONS

SB 2053

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2053

Senate Political Subdivisions Committee

Conference Committee

Hearing Date January 17, 2003

Tape Number	Side A	Side B	Meter #
1		X	4,885 - 6230
2	X		0 -1105
Committee Clerk Signature <i>Shirley Borg</i>			

Minutes:

CHAIRMAN COOK opened the hearing on SB 2053 relating to cost estimates for improvements by special assessments.

John Walstad, Attorney for Legislative Council staff, served as attorney for the Interim Tax Committee. He is not for or against the bill. The committee looked at the big picture of special assessments and considered a lot of things regarding special assessments. The subject of this bill was brought to the committees attention by Steve Vogelwohl, a bond counselor who works with these issues. Mr. Vogelwohl had encountered questions about a couple of phrases that are used in statutory provisions requiring cities to determine project cost for special assessments projects. Those phrases are cost of the work and cost of the improvement. They sound pretty similar and that is where the confusion has come into the law over the years, that the wrong phrase got put into a statute and it should have maybe been the other phrase. The bill draft is intended to straighten that out. For the most part, the phrases are used consistently but

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Operator's Signature Date 10/15/03

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Senate Political Subdivisions Committee

Bill/Resolution Number SB 2053

Hearing Date January 17, 2003

there are these two provisions of law where some questions have arisen in consideration of these issues. First of all the engineer of the city is required to prepare a report and according to the statute that report has to provide an estimate of the probable cost of the work. Cost of the work appears to mean in statute the contract cost, the actual dollar amount of the construction bid that is accepted for a project. Cost of the improvement in statute appears to mean, the construction cost plus some add on cost which are any extra work, engineering, fiscal and attorney fees, publication costs, cost of printing once and then all expenses incurred. The expenses incurred by the city in handling a special assessment project can also be added to the cost and it is the cost of the improvement that covers the total cost that is going to be assessed against property. The bill draft makes clear that what we want the engineer to do is # 1. construction #2. add ons and the bottom line is cost of the improvement. The bill draft also amends another section which relates to; after the engineer has prepared what he thinks the project costs should be and then the bids are received . We have a statute that says if the bids come in more than 40% above what the engineer estimated the city can not accept those bids. In the second statute, with that 40% comparison, we are going to compare contract bids to the cost of the work portion which is what the engineer thinks contract bids were going to be . We are comparing bids to estimated bids not bids to estimated bids plus add ons.

**Testimony in support of SB 2053:**

Jerry Hjelmstad, League of Cities, appeared in support of SB 2053. Their legislative commission discussed the bill and feel it is moving in the direction they would like it to.

Steve Vogelpohl, bonding attorney, appeared in support of SB 2053. His concern, as a bond attorney, was the clarity in the law.

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10/15/03  
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Sonate Political Subdivisions Committee

Bill/Resolution Number SB 2053

Hearing Date January 17, 2003

SENATOR COOK stated that in 40-22-43 there is a little section of code that basically says cities can make mistakes and if they are not found to be in fraud, even if they are over the 40%, no action can be recognized in the courts. He questioned whether that was in there for bonding attorneys?

Mr Vogelpohl answered, that provision had been in the law for a long time. The language says that no action can be maintained on these alleged irregularities unless it is commenced within 30 days of the resolution awarding the sale of the bonds.

Dennis Schlenker, City of Bismarck, appeared in support of SB 2053.

Claus Lemke, ND Association of Realtors, appeared in support of SB 2053.

**No testimony opposed to SB 2053.**

SENATOR COOK closed the hearing on SB 2053.

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2053

Senate Political Subdivisions Committee

Conference Committee

Hearing Date January 24, 2003 (Action)

Tape Number	Side A	Side B	Meter #
1		X	3325 - 3413
Committee Clerk Signature <i>Shirley Borg</i>			

Minutes:

CHAIRMAN COOK called the committee to order. All Senators (6) in attendance.

SENATOR JUDY LEE moved a DO PASS on SB 2053

SENATOR SYVERSON seconded the motion.

ROLL CALL VOTE: Yes 6 No 0 Absent 0

CARRIER: SENATOR COOK

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10/15/03  
Date

Date: 1-24-03  
Roll Call Vote #: 2

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2053 Do Pass

Senate Political Subdivisions Committee

Check here for Conference Committee

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

Action Taken Do pass

Motion Made By Senator Judy Lee Seconded By Senator Syverson

Senators	Yes	No	Senators	Yes	No
Senator Dwight Cook, Chairman	X				
Senator John O. Syverson, V C	X				
Senator Gary A. Lee	X				
Senator Judy Lee	X				
Senator Linda Christenson	X				
Senator Michael Polovitz	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Cook

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

DONE

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L. Costa Rickford 10/15/03  
Operator's Signature Date

REPORT OF STANDING COMMITTEE (410)  
January 24, 2003 1:36 p.m.

Module No: SR-14-1073  
Carrier: Cook  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**  
SB 2053: Political Subdivisions Committee (Sen. Cook, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2053 was placed on the Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-14-1073

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Operator's Signature

*La Costa Rickford*

Date

*10/15/03*



2003 HOUSE POLITICAL SUBDIVISIONS

SB 2053

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*LaCosta Rickford*

Date

*10/15/03*

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2053

House Political Subdivisions Committee

Conference Committee

Hearing Date: March 7, 2003

Tape Number	Side A	Side B	Meter #
1	X		9.5-23.9
Committee Clerk Signature <i>Mickie Schmidt</i>			3-18-03

Minutes:

**TAPE 1; SIDE A:**

**(9.8) CHAIRMAN GLEN FROSETH:** We will open the hearing on SB 2053.

**(10.1) JOHN WALSTAD; LEGISLATIVE COUNCIL:** (Testimony-neutral) This bill came from the Interim Taxation Committee. I served as council for that committee. The committee was studying all aspects of special assessments and during the committee's study of these issues, Steven Vogelpohl who is Bond Council here in Bismarck contacted me and said that there's an issue with usage of a couple of phrases in statutes governing special assessment estimates of costs. The usage is inconsistent in a couple of instances and that's what this bill draft addresses. The two phrases are "cost of the work" and "cost of the improvement." These sound very similar but, the most common statutory usage of these is, the cost of the work is what the contract with the contractor who does the work. What the contract calls for to paid to the contractor for performing the improvement. Cost of the improvement is referenced in another section of law.

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Operator's Signature

10/15/03  
Date

**Page 2**  
**House Political Subdivisions Committee**  
**Bill/Resolution Number SB 2053**  
**Hearing Date: March 7, 2003**

This is existing law and it says " cost of the improvement is the amount that can be certified to the assessment commission. This is the amount that actually goes against peoples property within the assessment district. Cost of the improvement includes the cost under the terms of the contract, that's the cost of the work, plus, a reasonable allowance for any extra work that's authorized under the plans. Then the engineering costs, fiscal agents costs, attorney's fees, cost of publication of required notices, printing of improvement warrants and all expenses incurred in making the improvement and levying the assessments for the improvement. Cost of the work is what the contractor gets, cost of the improvement includes all of these add-on things that are necessitated so that the governing city body doesn't have to eat those expenses. The bill draft in the first section, 40-22-10, this is a requirement for an engineers report and requires the engineer currently to estimate the probable cost of the work. That's what the contractors are going to get for doing the job. The bill changes that to require an estimate of probable cost of the encruded, that's what's actually going to go against people's property. We've laid it out so that that has to consist of two components. One is the cost of the work and all the add-on costs. The second section of the bill draft deals with another section. After bids have been received on an improvement contract, we have a section of law that prohibits the governing body from awarding the contract if the bids come in more than 40 percent above what the engineer estimated the cost to be. That section is somewhat loose in it's use of terminology and has made it clear that what we are going to compare here is the cost of the work for which proposals were advertised. If the bids as actually received for the cost of the work, not the cost of the improvement, so we're comparing for that 40 percent limit, we're comparing construction costs to construction costs and not considering any of those add-on amounts. This is what the Bill is intended to do. Mr.

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House Political Subdivisions Committee  
Bill/Resolution Number SB 2053  
Hearing Date: March 7, 2003

Vogelpohl is here and will give you a more detailed explanation of the kinds of problems that these sections create in interpretation for bond council.

**(14.9) STEVEN VOGELPOHL; BOND ATTORNEY:** The concern that a bond attorney has with these provisions of chapter 40-22-10, that there is clarity in what the requirements are of the law. One of the major points that this addresses are the obligations of the source and the security for repayment of the bonds. These statutes that are involved in this bill are in chapter 40-22 of the Century Code. That is the first of about 5 chapters that deal with doing improvements under the special assessment by the cities. The opening section of chapter 40-22 says that any municipality upon complying with the conditions of this chapter may defray the expense of any or all of the following types of special assessments. Chapter 40-22 deals primarily with the matter of which the project is approved and constructed. The later chapters deal with the actual process of spreading the special assessments to those who are involved. What is key here is that the opening sentence in this section says that any municipality that has complied with the provisions of this chapter may be defray the cost of the special assessment. The legal problems that we look at the compliance with the divisions of this chapter as jurisdictional in order for the city to spread the special assessments. In 1985, when this change was made in the law that restricted the ward of the contract. All of a sudden we got concerned with what the dissipated estimate of the cost were. In looking at the Legislative history, we can reach the conclusion that at that point and time and from that time forward, the defrayed estimate of the cost of the work, then estimate of the cost of the construction work, not the whole project. But to reach that conclusion you have to resort to Legislative history.

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La Costa Rickford 10/15/03  
Operator's signature Date

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House Political Subdivisions Committee

Bill/Resolution Number SB 2053

Hearing Date: March 7, 2003

**(19.6) REP. ALON WIELAND:** Is there an allowance in the additional cost's such as a reserves for an efficiency or if someone doesn't pay? Arbitrage laws?

**(20.0) STEVEN VOGELPOHL:** So far as the Arbitrage law, the obligations that are issued are special assessment obligations. When you have those kinds of obligations you cannot have a reserve fund.

**(20.5) CHAIRMAN GLEN FROSETH:** So what's happened up until now before that improvement project was assessed to the taxpayers?

**(20.8) STEVEN VOGELPOHL:** By the time that the project proceeds down to the point of despair, those costs are generally ??? (couldn't hear.) This is an estimate that is put together before the project is even started.

**(21.0) CHAIRMAN GLEN FROSETH:** Any questions by the committee? Is there testimony in support? Opposition? Seeing none, I will close the hearing on SB 2053. What are the committee's wishes?

**(21.9) REP. WILLIAM KRETSCHMAR:** I MOVE A DO PASS.

**(22.0) REP. ALON WIELAND:** I SECOND IT.

**(22.1) CHAIRMAN GLEN FROSETH:** Any committee discussion? Seeing none, I will have the clerk take the Roll Call Vote: 12-y; 0-n; 2-absent; Carrier: Rep. Wieland. (23.9)

Date: 3-7-03

Roll Call Vote #: 2

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2053

House "POLITICAL SUBDIVISION" Committee

Check here for Conference Committee

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

Action Taken Do Pass

Motion Made By Rep. Kretschmar Seconded By Rep. Wieland

Representatives	Yes	No	Representatives	Yes	No
Chairman Glen Froseth	✓				
Vice-Chairman Nancy Johnson	✓				
Mike Grosz	✓				
Gil Herbel	✓				
Ron Iverson	✓				
William E. Kretschmar	✓				
Andrew Maragos	✓				
Dale Severson	✓				
Alon Wieland	✓				
Bruce Eckre	0				
Mary Ekstrom	0				
Carol A. Niemeler	✓				
Sally M. Sandvig	✓				
Vonnie Pietsch	✓				

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep. Wieland

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

**REPORT OF STANDING COMMITTEE (410)**  
March 7, 2003 12:16 p.m.

Module No: HR-41-4220  
Carrier: Wieland  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

**SB 2053: Political Subdivisions Committee (Rep. Froseth, Chairman) recommends DO PASS (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2053 was placed on the Fourteenth order on the calendar.**