

2015 HOUSE FINANCE AND TAXATION

HB 1341

2015 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1341
1/21/2015
Job #22294

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature *Kenneth M. T. T. T.*

Explanation or reason for introduction of bill/resolution:

A Bill relating to the size of an improvement district for improvements by special assessments.

Minutes:

Attachment 1, 2,3, 4

Chairman Headland: Opened hearing.

Vice Chairman Owens: Introduced bill. My favorite subject: special assessments. Simply states, HB 1341 assumes all capital improvements across a political subdivision benefit everyone, and therefore should be assessed against every property in the taxing authority. According to IRS regulations, an assessment for your tax that is equally applied across all property holders is tax-deductible, unlike special assessments today with specific assessment zones. While currently, policy is that costs of capital improvements are applied to only those that benefit. And these costs are added to the cost basis of real property to be realized upon the sale of the property. This does not benefit our elderly or retired in many cases, when they are already in their retired home, "Oh, good. I get to get the benefit of that \$20,000 special assessment they just handed me when I sell the house. Oh, that's right; I'm dying here. It doesn't matter." So it's totally worthless to them to do it this way. In another example, recently in Fargo they built a road, east-west south of the Interstate. The special assessment district was one mile north, one mile south. Because the Interstate blocked any reasonable application to the people up north, but it was perfectly applicable to the shopping center and the housing district that was just due east of the intersection and due west of the intersection, but they weren't assessed. There's a problem with our assessment zones. This would solve that. If it's applied across the entire district, the assessment would be very small for each property owner, and could be deducted on Schedule A. This bill still allows a political subdivision the opportunity to create small assessment areas, but with clear reasoning and evidence that justifies the decision. With that, I will stand for any questions.

Chairman Headland: Can you define municipality in your language here? The reason I ask is because there is a big property tax reform bill that is being heard in the Senate, and in that bill, municipality is defined as the township or whatever the taxing district is, and in the case here, I don't know, are you going to be using that type of broad definition, or is it

really meant to just cover the city or the area where the special assessment is being asked for. Correct?

Vice Chairman Owens: My intent is that it refers to the taxing authority in that particular subdivision, so that it's throughout the entire taxing authority, subdivision so that it's equal, because that's what makes it deductible, and that's the key. But I did see that, and I was thinking, I better go upstairs and ask them about that, if we survive here.

Representative Steiner: Can you explain a little more about the IRS-deductible portion of your testimony?

Vice Chairman Owens: Ever since I had to pay taxes, I've deducted the only special assessment I've ever known until I moved to the Dakotas, off of Schedule A because it's maintenance. The IRS code actually says that, if a special assessment is done for maintenance purposes, you can deduct it as an improvement, or as a maintenance item off of your Schedule A, so I have been deducting sewer maintenance off my water bill my entire life. Sure, it's only \$14, but it's \$14 I don't have to pay federal tax on. So I deduct it every year. What it goes on to say is, that special assessments, because they're decided for a specific district and benefit only those that it applies for, assuming that it's done the way we traditionally do it here in the Dakotas, Minnesota and surrounding areas, is that it's not deductible and it adds to the cost basis of the property. That's where it comes from. But it went on to say that in order for it to be deducted, it would have to be taxed equally. Or the fee would be applied equally to everyone in the taxing authority, everyone in the district. Because if that was done, then, quite frankly, we call it something else; we call it property tax.

Chairman Headland: Is there anyone who would like to testify in support of HB 1341? Is there any opposition to HB 1341?

Jack McDonald, North Dakota League of Cities: Provided written testimony in opposition from **Erik Johnson, Fargo City Attorney**. See attachment #1. Also provided written testimony in opposition from himself. See attachment #2. I've been told the city of Grand Forks is considering a very specific, very small special assessment district. It centers around 5865(?) Fountain Vista Drive in Grand Forks, and it's going to be about a two-block special assessment district, and it's going to last for 30 years. We'll tell you a little more about that later on. Refers to Attachment #2. Refers to Attachment #1.

Chairman Headland: Further testimony in opposition to HB 1341?

Randy Bina, Executive Director of Bismarck Parks and Recreation District, and a past President of the N.D. Recreation & Park Association: Provided written testimony. See attachment #3.

Vice Chairman Owens: Am I to understand that if we made everything city-wide everyone would be happy?

Randy Bina: I don't think that's the case, but I don't want to speak for Mr. McDonald.

Vice Chairman Owens: My issue is, in their smaller districts, and yours is a perfect example, we're building a new neighborhood, we're putting in a park. Do the people who pay for the special assessment that benefit from the park being there, do they get a little badge or something? They're the only ones that can use the park? Nobody else from the city can use it?

Randy Bina: The neighborhood parks are public parks. However, some of the smaller neighborhood parks are new developments. The way they are planned out, the typical use is by that neighborhood. When the citywide responsibility or park districtwide responsibility is maintaining that park, so the overall citizens are involved in some of the maintenance, but the creation of the park in the new developments is something that would be paid for by that new assessment district.

Representative Steiner: Can you explain how the special assessment district is voted on and, let's say most of the people don't want the park? Is it voted on and they don't go ahead with the park. Can you explain that process if there is a protest on a park project?

Randy Bina: I know of a couple communities that have established a neighborhood park assessment policy. I believe it's done in Fargo. In Bismarck, the city just approved one a year ago, so we are in the process of implementing that. We haven't built a park that way yet, but we would be working with the developer and signing a park development agreement, and there would be an assessment for that new area, so new lot owners who are coming in would know about the assessment for that park. If there are any types of community amenities in that park, we would look at a park districtwide assessment for those.

Representative Steiner: There isn't really a vote. Is it determined at the park district level that we're going to do this, and this is the cost, and you tell the developer, "put this on all the lots," and that's the way it goes and there isn't a vote? I guess I'm curious if someone can protest, was there a vote taken initially?

Randy Bina: With our assessment process, we would always allow for a public hearing and allow for public input. If there's any comments for or against, and establish an improvement district.

Representative Kading: Would you object to this bill if the standard, the burden, was preponderance of evidence?

Randy Bina: We would have to give some thought to that. But it's something we could consider.

Representative Hatlestad: Does the city of Bismarck have an ordinance that any new development must set aside green space? If they do that, is it automatic then that there will be a special assessment district?

Randy Bina: The neighborhood park and open space policy we have, it's in policy form at this point. We don't have an ordinance that requires landowners to set aside a certain percentage of developable property in a new development. Our process allows for the

dialogue between a developer and the city planning and the park district to pick out a space and decide on a plan for that particular area.

Representative Hatlestad: So the decision to build the park is with the three groups, not necessarily the people that will be acquiring property?

Randy Bina: That would be correct because we wouldn't know who those people would be at that time. This is done early on, but the developer, the park district and the city would approve a park development agreement for that particular new area.

Vice Chairman Owens: You mentioned that if something was included in a park then you might consider a park-wide assessment. Can you give me an example of what might be included in the park that would force you to consider a taxing-authoritywide assessment?

Randy Bina: A typical neighborhood park is about three to five acres. If we got additional acres to include tennis courts or if it was in an area that hooked into the trail system, those would be a couple examples that we would consider as communitywide amenities vs. a small playground that sizewise could probably service a smaller group of people.

Chairman Headland: Further testimony in opposition?

Shane Goettle, City of Minot, Assistant City Attorney: No matter what the standard, whether it be clear and convincing or preponderance of the evidence, there would be additional burdens for the city. For example, in addition to finding that the project only benefits a smaller area, the amendment would appear to give property owners in the improvement district an additional reason to challenge city action. No matter what the standard. The bottom line is, and the city really needs to spend more time and resources identifying and documenting the benefits to the properties in the smaller district, and the property owners would have an additional reason to challenge any city action creating a smaller district, and a greater chance of success if they did so. Because this creates a presumption in favor of citywide districts. And so the city has to document and face the additional administrative burdens associated with that documentation in order to sort of overcome that presumption. So this would increase some costs, if the city wanted to try to continue to assess just for that district and the property owners affected by it. That could lead to more grounds for protest, more hearings and potentially more lawsuits. And so there would be some more costs associated with this.

Chairman Headland: Further opposition?

Bill Wocken, City Administrator for Bismarck: Submitted written testimony in opposition. See attachment #4. I am going to ask for a Do Not Pass recommendation for HB 1341.

Chairman Headland: Closed the hearing on HB 1341.

2015 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1341
2/2/2015
Job #23029

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature *Kenneth M. Terjesen*

Explanation or reason for introduction of bill/resolution:

A Bill relating to the size of an improvement district for improvements by special assessments.

Minutes:

Chairman Headland: Opened the hearing.

Vice Chairman Owens: This is a very simple bill. It says that you can't build a special assessment district. It has to be political subdivision-wide. And that just aggravates the hell out of the counties and cities, and everybody else. So I really like it.

Rep. Trottier: I like it, too.

Chairman Headland: Does anybody want to take some action on this bill?

Rep. Steiner: I move Do Not Pass.

Rep. Schneider: I second.

Chairman Headland: Discussion on the Do Not Pass?

Vice-Chairman Owens: Just to clarify, this bill is step one to eliminating special assessments in the state of North Dakota.

Chairman Headland: Any other comments? Seeing none, would the clerk read the roll on a Do Not Pass on HB 1341.

ROLL CALL VOTE TAKEN.

Chairman Headland: The Do Not Pass, I believe, carried 10-4. Rep. Schneider, would you like to carry the Do Not Pass?

Rep. Schneider: Yes, I would be happy to.

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Rep. Schneider to carry the Do Not Pass to the floor.

Chairman Headland closed the hearing.

Date: 2-2-15
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1341

House Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☐ Do Pass ☒ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Steiner Seconded By Rep. Schneider

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN HEADLAND	✓		REP HAAK	✓	
VICE CHAIRMAN OWENS		✓	REP STRINDEN	✓	
REP DOCKTER		✓	REP MITSKOG	✓	
REP TOMAN		✓	REP SCHNEIDER	✓	
REP FROSETH	✓				
REP STEINER	✓				
REP HATLESTAD	✓				
REP KLEIN	✓				
REP KADING	✓				
REP TROTTIER		✓			

Total (Yes) 10 No 4

Absent 0

Floor Assignment Rep. Schneider

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

REPORT OF STANDING COMMITTEE

HB 1341: Finance and Taxation Committee (Rep. Headland, Chairman) recommends **DO NOT PASS** (10 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). HB 1341 was placed on the Eleventh order on the calendar.

2015 TESTIMONY

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HB 1341

TESTIMONY OF ERIK R. JOHNSON

CITY ATTORNEY – FARGO

House Bill 1341 would quite literally turn the well-established and heavily relied upon process for financing public projects through special assessment levy and bonding on its ear.

Special Assessments are the spread of benefit. The basic special assessment concept is to allocate the cost of public improvements to the property owners who benefit from the improvement. The simplest example is a public project to resurface a local road where the standard practice in Fargo is to allocate the cost of the local road resurfacing to the properties adjacent to the road. HB 1341 would create a presumption that the local road resurfacing should be a city-wide assessment. Thus, someone on the other side of town would be paying for the resurfacing of my road.

Special Assessments process requires certainty. HB 1341 would permit a smaller-than-city-wide special assessment only when the city council or commission finds, by “clear and convincing evidence” that the benefits of the project are confined to a smaller area. This is dangerous language. The special assessment process is the backbone for financing of improvements by cities throughout North Dakota. The special assessment statutes provide an orderly process for a city to identify an appropriate project, to advertise and collect bids to seek the lowest competitive price, to award a contract and then to borrow money (issue special assessment bonds) to finance the project, using the collection of the special assessments to repay the loan. HB 1341 would insert an opportunity for a claim that could undermine the entire process. The threat of litigation or commencement of litigation over whether or not a city council’s finding of “clear and convincing evidence” could cause protracted delays on an otherwise perfectly legitimate project. By contrast, current special assessment law provides a disgruntled property owner to challenge an assessment without undermining the authority of a city to award a contract and to borrow money to finance the project.

City-wide assessments dilute the protest of affected property owners. Currently, special assessment law prohibits a project from being approved over a majority protest of the affected property owners. If the “city-wide assessments” becomes the rule, opponents of small projects will have to rally the protest of the majority of residents of the city. This could be an insurmountable task in anything other than the most extreme of examples and would, thus, weaken the power of individual property owners to control public improvements in their neighborhood.

#1 p 2

City of Fargo home rule charter requires 60% city-wide approval for city-wide special assessments. Some time ago, the residents of the city of Fargo implemented a home rule charter amendment that prohibits city-wide special assessments without a 60% city-wide vote. [Amendment No. 1, Fargo HRC.] This charter provision is, actually, quite consistent with the theoretical concept of allocating assessments to benefiting properties. There are few examples where a public improvement should properly be assessed on a city-wide basis. Examples might include a new sewage lagoon, a new water treatment plant or the like. Perhaps those improvements should be financed through a city-wide assessment; however, these should be the exception rather than the rule.

REQUESTED ACTION:

We respectfully suggest a "do not pass" recommendation from the House Finance and Taxation Committee.

Sincerely,

Erik R. Johnson
Fargo City Attorney

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#2

January 21, 2015

HOUSE FINANCE & TAXATION COMMITTEE HB 1341

CHAIRMAN HEADLAND AND COMMITTEE MEMBERS:

My name is Jack McDonald. I'm appearing on behalf of the North Dakota League of Cities. The League opposes HB 1341 and urges you to give this a Do Not Pass.

You will objections to this bill from several of our members this morning who deal with these issues on a regular basis. They will be able to give much more detail about our objections than I can.

One of our chief objections is using the "clear and convincing "test regarding the size of the district. This is a difficult legal test to meet. It is proof which results in reasonable certainty of the truth of the ultimate fact in controversy. It requires more than a preponderance of the evidence, but less than proof beyond a reasonable doubt.

It is not the type of language that belongs in this type of a bill. Please give this a Do Not Pass.

Thank you for your time and consideration. If you have any questions I would be glad to try to answer them.



Testimony of Randy Bina

North Dakota Recreation & Park Association

To House Finance & Taxation Committee

In Opposition to HB 1341

Wednesday, January 21, 2015

Chairman Headland and Members of the Committee, my name is Randy Bina. I am executive director of Bismarck Parks and Recreation District and also a past president of the North Dakota Recreation & Park Association (NDRPA). NDRPA represents more than 600 members across the state, including park board members and park district staff, and works to advance parks and recreation for an enhanced quality of life in North Dakota. I would like to speak on behalf of our members in opposition to House Bill 1341.

As we understand the bill, the language essentially makes all special assessment improvement districts city-wide assessments. In order to create an improvement district that applies to a smaller area, the governing body must make "a finding by clear and convincing evidence that the benefit of the project is confined to a smaller area." The difficulty with this exception is the interpretation of "clear and convincing evidence" and who makes this determination.

Neighborhood parks in new developments are an example of a type of project for which special assessment improvement districts are established, and we are concerned this bill would make it difficult to proceed with these types of projects with this financing method.

NDRPA encourages a do not pass recommendation on HB 1341. Thank you.

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House Bill 1341

House Finance and Taxation Committee

January 21, 2015

Mr. Chairman and Committee members,

My name is Bill Wocken. I am the City Administrator for the City of Bismarck. I am testifying in opposition to House Bill 1341.

This bill sets up a presumption that all special assessment projects will be assessed against the entire municipality unless "clear and convincing evidence" is provided to localize the benefit of the project.

I have two concerns with this bill. The first is the terminology on Page 1, line 14 that sets a standard of "clear and convincing evidence" before a special assessment district can be assessed against a localized area. This standard, as you have heard from others testifying on this bill, is a very high standard that would be costly and labor intensive to attain. It is a standard more rigid than the normal standard for a court case. I am opposed to making this requirement apply to all districts that are not city-wide.

The second concern I have is the supposition that all districts should be city-wide in assessment. I do not know what argument I could use to convince a city taxpayer who has an established residence that they should pay for infrastructure in a newer area of the city. If we follow the logic of assessing special assessments against the full city we will have the same effect as if we raised property taxes to cover these expenses. That is a discussion I would prefer not to have with my citizens.

I would request a Do Not Pass recommendation for HB 1341. Thank you.

