

2017 HOUSE FINANCE AND TAXATION

HB 1351

2017 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1351
1/25/2017
27368

- Subcommittee
 Conference Committee

Committee Clerk Signature

May Buckner

Explanation or reason for introduction of bill/resolution:

A bill relating to approval of special assessment projects by elected governing bodies.

Minutes:

No attachments

Chairman Headland: Opened hearing on HB 1351.

Representative Maragos: Introduced bill. No tax or special assessment can be implemented without a governing body voting on it. My intention is to have our state policy be that no tax or special assessment can be levied or implemented without a dually elected governing body to vote on it. I firmly believe that anytime there is a situation like this somebody that gets voted into office has to be accountable.

Chairman Headland: Does anyone have any questions?

Representative Steiner: Do you have an example of an elected governing body of any municipality? Are there municipalities now that would suddenly not make decisions now that have been making decisions?

Representative Maragos: I don't have an answer to that question. I don't know that it would affect too many jurisdictions. I think county water boards may levy or special assess without going to a vote of the county commission. If there is a group that is not dually elected there has to be a governing authority for that group in order for them to exist. If they implement a tax or a special assessment, it has to go to the governing body that really gives them life.

Representative B. Koppelman: There is a certain ditch that has been discussed in my end of the state. They refer to it as the diversion authority that governs that. I don't believe it's a joint power agreement. Would this be required to go back to those political subdivisions that were elected that formed that joint power agreement to approve a special assessment?

Representative Maragos: I believe under this bill they would have to go to a dually elected governing authority to approve their decision.

Representative Ertelt: In chapter 40 regarding the municipalities definition it says it shall not include any other political subdivision.

Representative Maragos: Thank you for that clarification.

Chairman Headland: Are there any further questions? Is there support for HB 1351? Is there any opposition? Seeing none we will close the hearing.

Opened for discussion.

Representative Steiner: It didn't seem like we had a full understanding of all the ramifications of this. I wish the sponsor of the bill had more complete knowledge of what would be happening with it. I don't feel I understand exactly what would be happening with it.

Representative B. Koppelman: I don't know what this bill does. I don't believe any city can delegate their taxing authority to a subcommittee. I think this might be a pointless bill. I don't know what we would be achieving if we passed the bill.

Representative Ertelt: I don't know that there is any prohibition on a municipality's governing board from delegating assessing authority. The addition of the language wouldn't hurt anything in that regard. Simply clarifying that it must be the elected governing body of a municipality is a good thing.

Representative Olson: Quoted parts of the code, 40-23.1-04, for levying assessments. The governing body is already approving these levies.

Chairman Headland: The part of the bill is 40-23.1? In 40-22 it may be right that the governing body already does make the decision. It makes it a little clearer maybe.

Representative Olson: I'm looking at 40-22.1 which says a report is required regarding the work that is being proposed as an improvement and the governing body must be approved by a resolution of the governing body municipality, the plans.

Dee Wald: You may want to look at 40-06 which talks about governing body, municipalities, and the general provisions. Maybe there is some helpful information in that.

Chairman Headland: It speaks to any report of any committee. I don't see anything that is addressed in here either.

Representative Hogan: Do you see any unanticipated negative consequences of this change?

Dee Wald, General Counsel for Office of State Tax Commissioner: There are places in that chapter where it says a governing body, and then in another section it may say a municipality may do something or the governing body of a municipality, so because it uses governing body sometimes and municipality sometimes it must mean something but I'm just not sure what it means.

Representative Hogan: I think we want the governing body to look at it so I think the intent might be good.

Chairman Headland: Do we need a little time to dig into this?

Representative Steiner: Could Legislative Council tell us if this is redundant, if it's already covered, or if it's even doing anything?

Chairman Headland: We will dig into it a little more.

2017 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1351
1/30/2017
27611

- Subcommittee
 Conference Committee

Committee Clerk Signature

Mary Brucher

Explanation or reason for introduction of bill/resolution:

A bill relating to approval of special assessment projects by elected governing bodies.

Minutes:

Attachment 1

Chairman Headland: Distributed Representative Maragos' proposed amendments 17.0815.01001. See attachment #1. This bill didn't do anything he really wanted it to do. The only thing the bill would do is preclude in the case of a time when they had to replace somebody on a city commission it would not allow that appointed commissioner to vote until he went through an election. Representative Maragos wanted to make sure any vote to add a special assessment or a tax levy would have to be done by an elected position.

Representative B. Koppelman: It is even germane to the bill if it's a whole different chapter of law? He's going from chapter 40 to chapter 57 in the bill.

Chairman Headland: I think it is. Counsel helped him with this amendment. This is what he was attempting to do to the bill even though the bill didn't accomplish it.

Vice Chairman Dockter: I spoke with Representative Maragos and what he was trying to do with the bill, this did the opposite. I think it is germane even though it's a separate chapter. He understands that we needed these amendments and they will accomplish what he was trying to do with this bill.

Representative Hogan: Is there a situation where a non-elected body can level a special assessment?

Dee Wald, General Counsel for the Office of State Tax Commissioner: I don't think so. All the taxing jurisdictions we vote on have to have it be an elected official.

Chairman Headland: Water boards are appointed by the county commissioners.

Representative Hogan: Is this targeted at water boards then?

Chairman Headland: In my conversation with Representative Maragos he specifically pointed to water boards.

Representative Hogan: The water board would need to make the recommendation to the elected body of the county.

Chairman Headland: They would have to vote.

Representative Hogan: So that is the legislative intent.

Dee Wald: That's what this does.

Chairman Headland: Are there any other questions for Dee? If not, what do you want to do?

Vice Chairman Dockter: **MADE A MOTION TO ADOPT THE AMENDMENT 17.0815.01001**

Representative Hogan: **SECONDED**

Chairman Headland: Any discussion?

Representative B. Koppelman: I'm going to resist moving the amendment because I still have questions as to whether it's appropriate to jump into a chapter that deals with taxation from the chapter that deals with municipal government.

Chairman Headland: Anything further?

ROLL CALL VOTE: 12 YES 2 NO 0 ABSENT

MOTION CARRIED TO ADOPT AMENDMENT

Representative Hogan: **MADE A MOTION FOR A DO PASS AS AMENDED**

Representative Hatlestad: **SECONDED**

Chairman Headland: Is there any discussion?

Representative Toman: Last session we dealt with this for taxation so this would just be adding special assessments into that.

Chairman Headland: Any other discussion?

Representative Ertelt: Dee, on the last sentence on this amendment regarding voting requirements with respect to special assessments, not all of these members are elected so does it default to those who are appointing these members?

Dee Wald: The default would be up. Somebody would have to vote on the special assessments and I think that is the intent.

Chairman Headland: Somebody that is elected.

Dee Wald: Yes, somebody that is elected.

Chairman Headland: Any other questions?

ROLL CALL VOTE FOR DO PASS AS AMENDED: 13 YES 1 NO 0 ABSENT

MOTION CARRIED

Representative Hogan will carry this bill.

1/30/17 DA

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1351

Page 1, line 1, replace "40-22-01" with "57-15-01"

Page 1, remove lines 5 through 24

Page 2, replace lines 1 through 17 with:

"SECTION 1. AMENDMENT. Section 57-15-01 of the North Dakota Century Code is amended and reenacted as follows:

57-15-01. Levy in specific amounts - Exceptions.

With the exception of ~~special assessment taxes and such~~ general taxes as may be definitely fixed by law, all state, county, city, township, and school district, water, and park district taxes and special assessments must be levied or voted in specific amounts of money. Voting requirements under this section with respect to special assessments levied must be satisfied by a majority vote of the elected members of the governing body of the county, city, township, or school, water, or park district."

Renumber accordingly

Date: 1-30-17
 Roll Call Vote #: 1

**2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1351**

House Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: 17.0815.01001

- 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. Dockter Seconded By Rep. Hogan

Representatives	Yes	No	Representatives	Yes	No
Chairman Headland	✓		Representative Hogan	✓	
Vice Chairman Dockter	✓		Representative Mitskog	✓	
Representative Ertelt	✓				
Representative Grueneich	✓				
Representative Hatlestad	✓				
Representative Howe	✓				
Representative Koppelman		✓			
Representative Olson	✓				
Representative Schobinger	✓				
Representative Steiner		✓			
Representative Toman	✓				
Representative Trottier	✓				

Total (Yes) 12 No 2

Absent 0

Floor Assignment Ⓟ

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

Date: 1-30-17
 Roll Call Vote #: 2

**2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1351**

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. Hogan Seconded By Rep. Hatlestad

Representatives	Yes	No	Representatives	Yes	No
Chairman Headland	✓		Representative Hogan	✓	
Vice Chairman Dockter	✓		Representative Mitskog	✓	
Representative Ertelt	✓				
Representative Grueneich	✓				
Representative Hatlestad	✓				
Representative Howe	✓				
Representative Koppelman	✓				
Representative Olson	✓				
Representative Schobinger	✓				
Representative Steiner		✓			
Representative Toman	✓				
Representative Trottier	✓				

Total (Yes) 13 No 1

Absent 0

Floor Assignment Rep. Hogan

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

REPORT OF STANDING COMMITTEE

HB 1351: Finance and Taxation Committee (Rep. Headland, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). HB 1351 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "40-22-01" with "57-15-01"

Page 1, remove lines 5 through 24

Page 2, replace lines 1 through 17 with:

"SECTION 1. AMENDMENT. Section 57-15-01 of the North Dakota Century Code is amended and reenacted as follows:

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Renumber accordingly

2017 SENATE FINANCE AND TAXATION

HB 1351

2017 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

House Bill 1351
3/8/2017
Job # 28857

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 57-15-01 of the North Dakota Century Code, relating to approval of special assessment projects by elected governing bodies; and to provide an effective date.

Minutes:

Attachments: n/a

All Senators present.

Chairman Cook: Opened the public hearing on HB 1351.

Representative Maragos: Introduced HB 1351. Initially when I put this bill in I thought it was a very simple idea but as you always learn in this process nothing is as simple as it seems. My initial intent was to establish a blanket state policy that no tax increase or special assessment can be levied or implemented without the vote of the duly elected governing body. This is what ended up after some amendments in House finance and tax. I leave it to you to see if the bill does what I hoped it would do to establish a blanket policy in that regard with any increase in taxes or special assessments either levied or implemented have to be voted on the duly elected governing body which established control over that tax or special assessment. I was hoping it was a very simple statement of policy for the state.

Chairman Cook: Can you define a tax increase? Is a tax increase when a mill levy goes up for example for property taxes or is it a tax increase when the taxes and dollars go up?

Representative Maragos: I think any time there is an increase, and I assume an increase in the mill levy has to be voted on by the county.

Chairman Cook: When they pass their budget they're going to be voting on it.

Representative Maragos: So it would constitute a vote by a duly elected body. The voters always have someone they can go to that has stood for election and will have to stand for election again. If they have a grievance or problem and would like a remedy or satisfaction.

Chairman Cook: One of the problems we have always had is that elected people would say that we cut your taxes by two mills, when in fact because the property values went up, the taxes go up in dollars.

Representative Maragos: While that is a reality, I don't know that would be covered under this bill. But there are entities that are not elected that are given the authority to raise either a tax or levy a special assessment that a governing body puts that group in place. If the governing body can say well we didn't vote on that, this group did it. Even though they were appointed by the governing body. That is what I'm getting at. The core of what I was getting at is no tax or special assessment can be implemented or levied without duly elected governing authority voting on it.

Chairman Cook: What would you say if you said we fixed that last session?

Representative Maragos: Than I suggest you kill this bill. That would be reasonable and rational.

Senator Laffen: Can you think of some examples. I am on our special assessment commission and our council does vote on our rulings and I'm trying to think who these groups are?

Representative Maragos: Without casting dispersions the one that comes to mind most frequently is the water board. They are appointed by the county and they are given the authority to special assist. There is a process, of course, my understanding is that they have to get over 50% of the land ownership. Nevertheless, when that happens, the assessment will take place without the duly elected governing body giving it's blessing to it. What I am saying is, if they do that, they should send it up to the governing body that appointed them and it should pass with the people who are elected.

Senator Laffen: I think that makes sense, I'm just surprised that doesn't already exist and the county commission wouldn't have to actually vote to approve their recommendation of the water commission.

Representative Maragos: According to your chairman I think it already does and it seems to me that in testimony I have heard that is not a blanket policy.

Chairman Cook: We passed a bill last session that required every non-elected board to be inspected by an elected board but you are raising another question about special assessments so we will look into that.

Representative Maragos: You understand perfectly what's going on here. The different ion between what I'm saying and what we're trying to accomplish here.

Senator Dotzenrod: I see you have added the one-word water and when I saw this it appeared to me that we were talking about water. In my county and those next to me, the water management board have all imposed the maximum that's allowed by law in North Dakota, which is \$4 an acre. I think on every piece of land I farm is in some different water district and it's a uniform policy that our water management board has taken across the

county. There are 44 different taxing districts water drains. And everyone is paying, these were done 6 years ago. If it is a special assessment, that may not be the way it works. Most people who are paying the tax are pretty happy to being all the rights and privileges.

Representative Maragos: I couldn't agree with you more. I just wanted a blanket state policy that says, no tax or special assessment could be levied or implemented without the vote of a duly elected authority. I don't know if that is uniform in every county, I just had some comments made to me and I thought if that was a question than we need to establish a blanket policy where that can never exist, no matter what good it does. Water districts are necessary but this has to do with our general policy as a state.

Senator Dotzenrod: Special assessments are set up where there is a vote. Or they will set up a protest process where you can come in and have your property taken off. If after the deadline they have that 51% and I think if you have the tax payers who own the property than it should go ahead regardless of the governing board.

Representative Maragos: My only response is that even if 51% vote for it, what is the harm of making it go to a duly elected governing body because the 49% who are opposed to it could go to the county. And they will say the water board did that. To me, there is a little bit of an accountability breach.

Senator Laffen: Assuming that this isn't already covered you have a list than of all the taxing entities it would cover. Do we need to include airports? Do we run a danger of creating a list that may or may not include someone?

Representative Maragos: You bring up a good question. If an airport does it, who establishes the airport authority? Before they do, it goes back to the authority.

Chairman Cook: Closed the hearing on HB 1351.

Committee Discussion: The committee discussed how they were going to investigate special assessments and the different boards and programs that levy or assess.


2017 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

House Bill 1351
3/8/2017
Job # 28910

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 57-15-01 of the North Dakota Century Code, relating to approval of special assessment projects by elected governing bodies; and to provide an effective date.

Minutes:

Attachments: #1

All Senators present.

Chairman Cook: Opened the public hearing on HB 1351.

Senator Unruh: Provided the committee with an email from Samantha Kramer, Legislative Council (**Attachment #1**)

Senator Laffen: If I understand part 2 about this water resource is a nonelected group. They can special assess and do that project if less than 50% of the votes were filed. Which means there wasn't a vote on the project. There was simply a protest and they didn't get enough protesters. There was never a vote on the project by the public.

Vice Chairman Bekkedahl: Technically, the public involved in that district has a right to vote by the protest opportunity. So that's their weigh-in. All though you're current and it's not a total vote for everybody for the district. Just offers ones that object, to put forth an objection. Which is technically their vote on the issue.

Senator Laffen: Their vote could be not voting.

Chairman Cook: I would say the election here is by the people effected not the governing body.

Senator Dotzenrod: A neighbor contacted me and they needed to get enough land for water resource. We contacted the landowners and got signatures and eventually we got over 50% and we had to have with us at the time, the dollar amount of the project and the total each taxpayer would have to pay if it was approve. We eventually got the 51% and the project got

done. As far as any votes took place, we were following organized and set up in statute. Once you get to 51% I don't know if the governing board has any choice.

Vice Chairman Bekkedahl: I agree with Senator Dotzenrod. My understanding is if you pass this on to a higher authority, which if it's a water board would be a county commission I'm assuming. You would be giving a veto power to an elected board or what's occurring in statute. The authority given to that water district board in statute. That has to be reconciled if you do anything above that.

Chairman Cook: Read to the committee Section 61-16.1 from the North Dakota Century Code.

Senator Laffen: What about a water board that creates a district for a project whereby one landowner or one government agency controls enough land in the boundary to control the vote? Thereby, the vote is a dissenting vote, but they can't win because there is not enough dissenting vote by property. Now you have a water board, that wasn't elected creating a project that cannot be voted on

Chairman Cook: Are you suggesting that we find a solution to that problem?

Senator Laffen: It looks for a solution to say water boards raise it up to a higher authority to get approval.

Chairman Cook: I don't think the bill has much purpose.

Senator Dotzenrod: There are 44 separate taxing districts and I have never heard that there were some complaints about there being something underhanded done because the 51% rule is pretty clear at that point. It looks like he is taking a principled position here but I would rather identify some problem going on here and I don't think it fits.

Senator Unruh move a do not pass on Engrossed HB 1351.

Senator Laffen seconded.

Roll Call Vote was taken: 6 ayes, 0 nays, 0 absent.

Motion passed.

Senator Dotzenrod will carry the bill.

Date: 3/8

Roll Call Vote #: 1

2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 1351

Senate 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 Sen. Unruh Seconded By Laffen

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook	✓		Senator Jim Dotzenrod	✓	
Vice Chair Brad Bekkedahl	✓				
Senator Lonnie J. Laffen	✓				
Senator Jessica Unruh	✓				
Senator Scott Meyer	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Dotzenrod

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

REPORT OF STANDING COMMITTEE

HB 1351, as engrossed: Finance and Taxation Committee (Sen. Cook, Chairman)
recommends **DO NOT PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed HB 1351 was placed on the Fourteenth order on the calendar.

2017 TESTIMONY

HB 1351

17.0815.01001
Title.

Prepared by the Legislative Council staff for
Representative Maragos
January 26, 2017

#1
1-30-17
HB 1351

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1351

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Renumber accordingly

NDLA, Intern 06 - Pelton, Brady

From: Unruh, Jessica K.
Sent: Wednesday, March 08, 2017 2:25 PM
To: NDLA, Intern 06 - Pelton, Brady
Subject: Fwd: Water Resource Districts/ Airport Authorities

Sent from my iPad

Begin forwarded message:

From: "Kramer, Samantha E." <sekramer@nd.gov>
Date: March 8, 2017 at 2:23:07 PM CST
To: "Unruh, Jessica K." <jkunruh@nd.gov>
Subject: **Water Resource Districts/ Airport Authorities**

Hi Senator Unruh,

Emily asked that I respond to your question relating to water resource districts and airport authorities.

Subsection 9 of section 2-06-10, which governs airport authorities, requires bonds to be approved by a majority vote of the governing body of each municipality involved or by a majority of the qualified electors of the municipalities voting on the question. Chapter 2-06 does not specifically mention special assessments.

Chapter 61-16.1 provides the procedure for water resource districts to implement a special assessment. Sections 61-16.1-16 through 61-16.1-24 provide the process which allows the water resource district board to implement a special assessment. Section 61-16.1-19 specifies if the number votes of the affected landowners in a water resource district that are filed against the proposed project is less than fifty percent of the total votes filed, the board shall issue an order establishing the proposed project and may proceed.

I trust this answers you question, please let me know if I can be of further assistance.

Samantha

Samantha E. Kramer
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