2019 HOUSE POLITICAL SUBDIVISIONS

HB 1488

2019 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee
Prairie Room, State Capitol

1/31/2019
HB 1488
Job # 31963
☐ Subcommittee
☐ Conference Committee

Committee Clerk: Carmen Hickle

Explanation or reason for introduction of bill/resolution:

Relating to special assessment fund balances

Minutes: Handout 1,2,3,4,5,6,7

Chairman J. Dockter: Opened the hearing on HB 1488.

Rep B. Koppelman: Introduced the bill. (Handout #1,2). He read his testimony. If we put this in law where it is easy to find cities of all sizes would comply with the way the law requires now.

Rep. Longmuir: What about the people who pay their specials upfront? Are they being penalized because these people aren't having to pay their full assessment?

Rep B. Koppelman: I believe under current law when you consider the Attorney General's opinion they don't give refunds of those you paid early. On the flipside those who paid early don't pay the profit to the city.

Vice Chairman Pyle: What happens when cities refinance their special assessments and group multiple projects, how do we track that on which ones are paid off and which ones are not, per project?

Rep B. Koppelman: I don't have the exact answer but I do know they bundle projects into a larger bond. They know what the obligation is to the individual project, so even though it's one big bond they pay off the share of that project once they have money. That individual assessment project might be paid in full by those residents but that money might go into that cities thinking fund as determine when their master bond settled.

Vice Chairman Pyle: Are you aware of any cities continuing to collect special assessments after they have the ability to pay off the bond?

Rep B. Koppelman: I can't say historically if my city has always done it the right way. I know they are in compliance now.

Stephanie Dassinger: Deputy Director and Attorney for ND League of Cities. (Handouts #3,4,5,6) Read her testimony.

Rep K. Koppelman: Have you looked at the previous Attorney Generals opinions that were referenced?

Ms. Dassinger: I would want to take a look those from 1988.

Rep K. Koppelman: The one handed out 1998 that referred back to the older ones.

Terry Traynor: Association of Counties. An issue counties raised about this bill is counties don't use special assessments as often as cities do. Larger counties have a petition process if they want their streets paved and a special assessment is collected. The current law says the money can go to such funds as the governing body may direct. They put all or a large share of that money into a fund for those roads for maintenance. As we read this that was precluded.

Rep. Toman: Once the money is in the general fund can the county commissioners appropriate that to something else?

Mr. Traynor: Certainly.

Ken Vein: Grand Forks City Council. Referenced and read testimony #4 from Maureen Storstad.

Rep. Hatlestad: How can your special assessment have a negative balance?

Mr. Vein: If they miscalculated up front of what the cost were contingences. Then we will end up with a shortage of funds.

Shane Goettle: Read testimony # 7 from Tom Barry. Subsequent assessment is after the contracting is done. The provisions of the code referenced in this bill deal with subsequent assessments but that is not what I heard from the

testimony. I think it was the whole scope of assessments that was intended here. We need clarification on that point. If that is the intent of the bill amendments would be warranted. Subsequent assessments are a rare tool. How do you reconcile if someone paid upfront?

Rep K. Koppelman: If the city of Minot is routinely over assessing on projects is it keeping within the Attorney General's opinion that has been referenced?

Mr. Goettle: Minot is looking at this prospectively; they don't actually use assessments that much. It's looking at this as a tool that is available. They don't have any subsequent specials.

Rep K. Koppelman: So if the intent of the bill that this would apply to all special assessments and Minot is routinely over assessing on every project they assess for is that an issue based on the Attorney General's opinions?

Mr. Goettle: I think that is an issue along with the League of Cities that we have to look into. The reserve requirement would certainly be maintained until such time you have the funds to pay off the bond. You no longer need the reserve if you are paying off the bond.

Rep K. Koppelman: The intent of the bill is people are assessed for a purpose and once that purpose is fulfilled, once that obligation is paid off they should no longer be assessed.

Mr. Goettle: That is the point. I think most cities try that once the bond is paid off to take a look to see if the people have been treated equitably and fairly.

Rep K. Koppelman: You and others have questioned the fairness about pre-payment, it can be a trade off if those going in understand that is a potential several years down the road.

Mr. Goettle: If you are dealing with the subsequence specials, it's already there that the city has to have a mechanism equalizing investments. Including refunds that may result from subsequence assessments. How it does that is what we are all trying to grasp.

Rep. Hatlestad: If you paid your property tax early you get a discount and why not apply that to this situation as well?

Mr. Goettle: It strikes me that in property tax situation we do that as an incentive to get the dollars in. Property tax is due on an annual basis but special assessments you get the decision on how you are going to do it.

Chairman J. Dockter: Closed the hearing on HB 1488.

2019 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee
Prairie Room, State Capitol

HB 1488
2/14/2019
Job # 32816

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature	Carmen Hickle

Explanation or reason for introduction of bill/resolution:

Relating to special assessment fund balances

Minutes: 1

Chairman J. Dockter: Opens for committee work.

Rep B. Koppelman: (Handout #1). He explained the amendment. We showed the current law and what the Attorney General's opinion was in implementation and application on three different occasions. The amendment duplicates the same thing we are doing but puts in the sections that deal with special assessments.

Vice Chairman Pyle: I talked with the mayor of West Fargo and the city of West Fargo does do this. I don't feel the smaller cities would ever be in a position to pay off their bonds early unless they consolidated their debt into one bond.

Rep. Longmuir: I have received letters and emails from city auditors and they not in favor of this bill.

Rep. Ertelt: Made a motion to adopt amendment 19.0631.03001.

Vice Chairman Pyle: Second the motion.

Rep. Ertelt: Made a do pass as amended motion.

Rep. Toman: Second the motion.

Vote yes 7, no 6, absent 1.

Rep. Toman: Will be the carrier.

DP 2/19/19
1 of 2

19.0631.03001
Title.04000

Prepared by the Legislative Council staff for
Representative B. Koppelman
February 1, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1488

Page 1, line 1, replace "section" with "sections"

Page 1, line 1, after "40-23-21" insert ", 40-24-18, and 40-27-05"

Page 1, after line 22, insert:

"**SECTION 2. AMENDMENT.** Section 40-24-18 of the North Dakota Century Code is amended and reenacted as follows:

40-24-18. Special improvement moneys to be kept separate - Designation and numbering of funds - Diversion of moneys prohibited.

1. All special assessments and taxes levied and other revenues pledged under the provisions of this title to pay the cost of an improvement ~~shall~~ constitute a fund for the payment of such cost, including all principal of and interest on warrants and other obligations issued by the municipality to finance the improvement, and ~~shall~~may not be diverted ~~to no other~~for any other purpose. The city auditor shall hold all moneys received for any such fund as a special fund to be applied to payment for the improvement. Each ~~such~~ fund ~~shall~~must be designated by the name and number of the improvement district in or for which ~~said~~the special assessments, taxes, and revenues are collected. ~~When all principal and interest on warrants and other obligations of the fund have been fully paid, all moneys remaining in a fund may be transferred into the general fund of the municipality.~~

2. A governing body that levied assessments for an improvement shall complete an annual review of all special assessment revenues. If collections of special assessment revenues are sufficient to repay outstanding special assessment warrants, refunding improvement bonds, interfund loans, or revenue bonds that were issued to finance the improvement for which the assessments were levied, the governing body shall stop levying special assessments for the improvement.

3. After all outstanding special assessment warrants, refunding improvement bonds, interfund loans, or revenue bonds that were issued to finance an improvement are paid in full, the governing body shall direct the balance of the special fund to the general fund of the municipality.

SECTION 3. AMENDMENT. Section 40-27-05 of the North Dakota Century Code is amended and reenacted as follows:

40-27-05. Special fund for payment of bonds issued for purchase of special assessment warrants - Tax levy.

1. The governing body of a municipality which issues bonds for the purchase of special assessment warrants shall create a special fund for the payment of the principal and interest of such bonds as they become due and shall credit to such fund all special assessments collected for the payment of the

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special assessment warrants purchased. The governing body shall make a general tax levy annually on all the property in the municipality which, together with the special assessments collected, ~~shall~~must be sufficient to pay the principal and interest of the bonds when they become due. The levy imposed ~~shall~~is not ~~be~~ subject to any of the tax levy limitations imposed by section 57-15-08 or acts amendatory thereof. ~~If any money remains in the special fund after the payment of the principal of all the bonds and the interest thereon, such balance may be transferred to the general fund.~~

2. A governing body that levied assessments for an improvement shall complete an annual review of all special assessment revenues. If collections of special assessment revenues are sufficient to repay outstanding special assessment warrants, refunding improvement bonds, interfund loans, or revenue bonds that were issued to finance the improvement for which the assessments were levied, the governing body shall stop levying special assessments for the improvement.

3. After all outstanding special assessment warrants, refunding improvement bonds, interfund loans, or revenue bonds that were issued to finance an improvement are paid in full, the governing body shall direct the balance of the special fund to the general fund of the municipality."

Renumber accordingly

Date: 2-14-19
Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1488

House Political Subdivisions Committee

☐ Subcommittee

Amendment LC# or Description: 19.0631.03001 Title 04000

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. Ertelt Seconded By Rep. Pyle

Representatives	Yes	No	Representatives	Yes	No
Chairman J. Dockter:					
Vice Chairman Pyle:					
Rep. Ertelt:					
Rep. Fegley:					
Rep. Hatlestad:					
Rep. Johnson					
Rep K. Koppelman:					
Rep. Longmuir					
Rep. Magrum:					
Rep. Simons:					
Rep. Toman:					
Rep. Strinden:					
Rep. Adams:					
Rep. Guggisberg					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice vote carried

Date: 2-14-19
Roll Call Vote #: 2

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1488

House Political Subdivisions Committee

☐ Subcommittee

Amendment LC# or Description: 19.0631.03001 Title 04000

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. Ertelt Seconded By Rep. Toman

Representatives	Yes	No	Representatives	Yes	No
Chairman J. Dockter:	✓				
Vice Chairman Pyle:	✓				
Rep. Ertelt:	✓				
Rep. Fegley:	✓				
Rep. Hatlestad:		✓			
Rep. Johnson		✓			
Rep K. Koppelman:	—				
Rep. Longmuir		✓			
Rep. Magrum:		✓			
Rep. Simons:	✓				
Rep. Toman:	✓				
Rep. Strinden:	✓				
Rep. Adams:		✓			
Rep. Guggisberg		✓			

Total (Yes) 7 No 6

Absent 1

Floor Assignment Rep. Toman

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

REPORT OF STANDING COMMITTEE

HB 1488: Political Subdivisions Committee (Rep. Dockter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 6 NAYS, 1 ABSENT AND NOT VOTING). HB 1488 was placed on the Sixth order on the calendar.

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amendatory thereof. ~~If any money remains in the special fund after the payment of the principal of all the bonds and the interest thereon, such balance may be transferred to the general fund.~~

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3. After all outstanding special assessment warrants, refunding improvement bonds, interfund loans, or revenue bonds that were issued to finance an improvement are paid in full, the governing body shall direct the balance of the special fund to the general fund of the municipality."

Renumber accordingly

2019 SENATE POLITICAL SUBDIVISIONS

HB 1488

2019 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee
Red River Room, State Capitol

HB 1488
3/22/2019
Job # 34176

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Mary Jo Wocken

Explanation or reason for introduction of bill/resolution:

Relating to special assessment fund balances.

Minutes:

Written attachment #1: Rep. Ben Koppelman pgs 1-6

Chairman Burckhard opened the hearing on HB1488. All senators are present.

Representative Ben Koppelman: District 16, introduced HB1488 and asked for a do pass recommendation (**Written attachment #1**, pgs1-6.) (1:21-6:35).

Senator Anderson: Are there some specific instances we know where cities continue to collect special assessments beyond when they should have? It seems to me like the law is already in place why do we need another law to affirm what the law says?

Representative Ben Koppelman: If I can answer kind of the latter part of your question first. We tried to write out law in a way a plain person can understand it. This is what we mean. If we have to read the law and then say, I wonder if there is ever an Attorney General's opinion about this law that clarified it. That may not be what all people do when they come to the law, and they don't know what it says. So, if it takes three different times for the AG has to reaffirm the same thing, it's probably better we make it clear in law. Now for the first part of your question. Am I aware of this happening? When I started this process I worked with my city, the city of West Fargo, to ask initially I could see how the law was written and I am like, could this be a problem. They actually provided me with the Attorney General's opinion that I handed out, and said we already do it this way and to the best of our knowledge this is all how all cities are supposed to be doing it. It is pretty clear in the AG's opinion. So, I started out saying I am not here to point any fingers, I am not aware of any cities doing it wrong, but it's good that we're clear in law. Well then, a whole bunch of cities seemed to be opposed to the bill. There reasoning it was, as I alluded to earlier, is we can't stop assessing early as it would be unfair. I would contend that they don't have the authority to supercede the AG's opinion and now they operate but that was kind of the suggestion that maybe some were assessing to the end with an intentional, maybe not intentional but with the outcome being that they had larger amounts of money that were collected for special project to shift over to be used for whatever they wanted to spend it on in the general fund. I think if we want to

spend more in the general fund in a political subdivision, we need to either use our taxes that are on the full population, our sales tax, our property tax, things like that to fund the many. We shouldn't be taking a few and diverting their money to fund projects for the many. I just don't think that is what specials are intended for.

Senator Anderson: How about those cities who in a special assessment project the city says were going to take 5% or 10% of this and spread it across the whole city because somebody else might drive on those streets as well as the people who live right next to it. So, is that money that you can accrue over the years and that special assessment is that gradually pay that off, or do they wait until the end to pay off the city share that was spread over the whole city?

Representative Ben Koppelman: If I understand your question correctly, the cities make bond payments throughout the term, so, they are paying it off gradually. If you're saying that the 5% across the city and if you're saying they made the special assessment district broad, and some people only had a 5% benefit let's say and others might have had a 100% benefit, I believe they all get assessed for the total number of years in increments. So if it's a 20- year assessment, even though you had that little bit, you'd have 20 installments of that or you would have a choice to pay it off in one lump sum at the beginning. Was that your question?

Senator Anderson: Not really but I thought somebody here can answer that question.

Chairman Burckhard: Does the West Fargo finance a lot of things with special assessments?

Representative Ben Koppelman: I think the answer is probably yes. I can say that were the second highest per capita bonded city next to Williston. That has to do mostly with our large amount of growth and we have a small sales tax base. We are more of a bedroom community to Fargo, we don't have, it's kind of similar to how Mandan is to Bismarck.

Chairman Burckhard asked for those in favor of HB1488. No one came forward. He then asked for opposition testimony.

Kevin Glatt: (11:43) Burleigh County Auditor/Treasurer in Bismarck. With all due respect, to Representative Koppelman, and the notion that we shouldn't be taxing more than what we need to or for the fuel for the many, my concern is with another point that he brought up in regards to fairness. Personally if I am a part of the special assessment district and Senator Larson is also in that special assessment district, and I pay off my specials early, in the first year to avoid payment of interest and Senator Larson lets that assessment run for 10-12 years, and then all of sudden there is enough money to pay it off and she doesn't have to make the last 3 bond payments or special assessment payments I really see that as an issue of fairness. Yes, I may have saved some interest along the way, but I also lost the use of that money for all those years also where I could have used that money for something else. So, I really personally have an issue with the fairness of me paying off in this case, me paying off my specials. Somebody else letting them ride and then being forgiven the last 3 last years and paying less than I did for the same work that was done in front of houses.

Senator Anderson: When a special assessment district and you sell bonds of course, they are set up for a certain number of years. So the bonds are 30 years and presumably the special assessments are set up to be paid in the same term that the bonds are set up to be paid. So, even though you may have a balance in that fund, the bonds are not all paid off yet, because you're not going to pay them off until they mature. So, you might have some money sitting in that fund, for another 3 years before the bonds are all paid off. Is that usually the way it works at the end of a bond issue?

Mr. Kevin Glatt: Burleigh County has a limited experience with special assessments. We do have special assessments in Burleigh County, so from my experience I would agree with you in your statement but, as Representative Koppelman stated, cities have a way more bonding debt than counties do. So my experience in that regard is limited, but I would agree with what you said from my experience.

Senator Anderson: The inference that was made about the cities charging a higher interest rate than there is on the bonds in order to make a profit, is that something that happens in your experience?

Mr. Kevin Glatt: I know the law allows cities and counties to increase or add up to 1.5% to the net interest cost of a bond issue for a special assessment district.

Senator Judy Lee: This is about Title 40 which is municipality. So that reads to me as if it doesn't affect all the other entities that might effect, they have special assessments. They are water management districts, park districts, counties. You don't even need to be here because it doesn't apply to the counties. Title 40 is municipalities; I am looking at it.

Mr. Kevin Glatt: I believe that counties utilize Chapter 40 to do our special assessments.
Senator Judy Lee: Even though you're not city.
Mr. Kevin Glatt: That is my understanding.

Senator Kannianen: Regardless of what your personal feelings are in fairness, what about the Attorney General opinion. Do you have opinions about his opinions?

Mr. Kevin Glatt: I wasn't aware of the Attorney General's opinions until just now. I only heard what was discussed, so I can't form an opinion on three Attorney General's opinions that I haven't read. I am not a good listener. I am a much better reader.

Senator Kannianen: Would that be a good reason to clarify the Century Code to be in line with them so that everybody does know about it?

Mr. Kevin Glatt: I would have to say that anything that clarifies what municipalities, cities, counties do, anything that clarifies that would be a step in the right direction.

Chairman Burckhard asked for neutral testimony on HB1488.

Stephanie Dassinger, Deputy Director of the North Dakota League of Cities. (17:44-18:33) We were one of the entities that opposed HB1488 on the House side. We've taken a look at it as far as we can tell, the operation as described in the Attorney General's opinion is what

cities are doing. As far as we can tell it does codify that process. We do get a little bit nervous when sections of the code are added to the bonding sections of the code. It is a very complicated area of the law. But we have consulted the resources we have and the best we can tell this will work.

Chairman Burckhard closed the hearing on HB1488.

Committee Discussion

Senator Judy Lee: When the special assessments are assessed for a street project for example, it isn't the same to every place. I am sure many people in the committee and in the room know that. I will pay all of the costs of fixing the street in front of my house, or putting the street in the first place because it benefits me. But the people who live a block away as well as I, will pay for the arterial streets that lead to my place. So the special assessment commission determine what the benefit in property areas are and how much benefit there is for each of these projects. They also look at whether or not it might be an arterial street, that would have maybe some state and federal funding available for it as well and how all that shakes out. So, what is the proper share? So Sheyenne Street is a big street that's got all kinds of projects going on because it is a big intersection with I-94, within hearing distance of my yard. A lot of that is being paid for with state and federal money but a lot of its being paid for also by the people who live there. But the folks who live on Sheyenne Street aren't necessarily the beneficiaries big time because it means there is more traffic by their house. But it is a street that all of us use so I will have a special assessment because I use that street to get where I want to go in a hurry. So that's what the special assessment committee do. The interest rates on those bonds are little numbers. So that 1.5% that is the maximum on their I've never in all the years I was in real estate I was never really troubled by that ability of the city to do that, because there is fudge factor in there sometimes. You just never know if there is going to be coming up. But for example when the Cass County jail was built, the sales tax in that case, paid off the cost of the jail, early. The sales tax was ended. So I know that the municipalities as well as the county in our area does that. From the real estate perspective somebody who pays off their specials early and then goes to sell again in a few years is at a significant disadvantage because. Let's say Senator Anderson and I have identical houses that are next door to one another. They are both $200,000. It was $25,000 in special assessments. I know that is a modest number, I am just using round numbers. We are financially conservative people and were living in a small modest house, in our community. So there is $25,000 that's assessed to each of our properties for the benefits of water, sewer, streets, street lights, curb and gutter, sidewalks and all of that stuff that involves special assessments in the city. Senator Anderson decides he wants to pay his specials off early. He goes into the city and he writes a check for $25,000 to pay off his specials just the principal balance so that way he will avoid all that interest. However, I am going to assume the special assessments on mine, and I will talk about amortization in a second. So I am paying them annually. Each of us goes to sell in 5 years. Senator Anderson now has $225,000 invested in his house, so he's going to probably want to price his house high enough to recapture at least his investment. I on the other hand have $200,000 plus a couple of thousand dollars in annual payments with which includes principal and interest. So I can price my house lower. So, the people who ought to be looking at both of our houses, will not unless they are working with a realtor hopefully, who is telling them that those special assessments are a part of the acquisition price on that property. The acquisition price is more

important than the asking price when you're in a place that there are special assessments. But the interest rate on the specials is lower than what the mortgage rate is from the bank if somebody wants to include it in the loan. It's different if you have the cash in your pocket. So, how a property owner decides how they are going to address these specials is a big deal. The City of Fargo used to divide that $20,000 by 20 years and they would knock a $1000 a year off the principle and then with interest on the unpaid balance. Most places I think now amortize them the same way the bank would so you're paying more interest up front, and then more principle as you work your way through. So, I thought you might be interested to know how that thing all works.

Chairman Burckhard: The amortization part.
Senator Judy Lee: What they are doing now, instead of taking 1/20th over a 20- year period, off the principle, a $1000 off, which means they would pay less interest in the end. Most places have moved amortization; the League of Cities may know exactly. So that as you work through its much as the same as your home loan, you will pay more off on the principle as you get farther down on your loan. So it all ultimately shakes out. But that interest rate that is on those special assessments is not a high number because the bond is a small number. It generally is going to be less than what a mortgage rate is, so for somebody who cares about that. I thought you might be interested in how the cities usually work that.

Senator Diane Larson: We are in my neighborhood in the process of a flood protection project and we have established a special assessment district to help accomplish that. Now it seems to me that whether I pay off mine early. If I pay my special assessment to get that done, off early then it's off my thing to do. If somebody else at the end of the project it's paid off three years early well that's fine, they still had to pay every year. I don't care, I don't feel it is unfair. I feel what would be unfair is for the cost of the project to have been completed, and people are still being taxed for it. When this is how much the project is going to cost so were assessing everybody to do that project. When the project is paid for that should be the end. If somebody says well you know if its paid off early, these guys may not have to pay until the end. Let that be part of the information. If you pay off early this might happen, if you don't pay off early, this might happen, but to me, it's more unfair to keep charging for a project that is already paid for.

Chairman Burckhard: Is it a county special assessment district that you set up?
Senator Judy Lee: Are you in the city limits? Senator Diane Larson: No we are in the county.
Senator Judy Lee: The county voted to set up the special assessment district. You can't as a neighborhood do that. It has to a political unit.

Senator Anderson: It seems to me like you know the argument about who pays off earlier or not, that individual makes a conscious decision maybe they typically put their money in CD's at the bank at 1.2% and the interest rate on the specials might be 3.75%. The other guy thinks well I invest my money in a mutual fund or the stock market, so I am going to make over a period of time 7or 8%, so I am better off paying it off slowly and taking my $20,000 and putting it in the stock market. Then I will make more. But that is a decision everybody makes based on their needs. I don't really care whether the person pays off early or not. I think it is their choice based on the opportunity costs of keeping the money and investing it or how they would do that. I don't think that is a big issue, but it does appear to me then in this bill, because of the different stories that we've heard, apparently is not clear enough.

Some cities who originally opposed it, thought that they should continue the payments and I guess I agree a little bit with the Auditor Glatt, in that the guy who pays off early has been disadvantaged because now he doesn't have the other guys continue to pay. I think that is a decision that person makes, and we shouldn't worry about them if they paid it off early.

Chairman Burckhard: What do you want to do with this?

Senator Judy Lee: It seems to me that is one of those but we really really need a thing that is already in the law. Hearing from Ms. Dassinger from the League of Cities, all cities understand and it is in municipal code. So**, I would move a do not pass.**

Senator Dotzenrod: 2nd, do not pass motion from Senator J. Lee

Discussion:
Senator Dotzenrod: I guess from my experiences with the way these projects work, I had assumed that this was how things were done. I was involved in a project 30 years ago, it was a water management district and it was a significant project at that time, probably $600,000. It was financed by taxes on farmland, not the $4.00 limit that exists in current law for a maintenance but the larger amount to do the project. We paid over a number of years and we expected a 15- year project and we were told later on that we finished it early so you were 3 years ahead of schedule so we didn't have to pay after the 12th year. Of course I asked why and they said, well we were doing the project we found a low interest rates had dropped and we were able to get refinanced, lower interest rate on the loan so, everybody with the project just ended up getting paid off quicker. The project was supposed to be 15 years and it went to 12 years, and the assessment stopped and people quit paying after the 12th year. From my experience I had sort of assumed now. I wasn't in municipal code or in a municipal project. But these were assessments that were done through the county, water management district. My experience was and I assumed that is how these things work. I am a little puzzled why payments would continue on after a project is all paid off. It doesn't seem like to me this is how you would want to do things. I looked at this and thought well, it kind of matches to my way of thinking, the way things are and the way they should be. So, I didn't really see any downside in it. Maybe they don't work that way. Maybe there are places where they don't work like in my experience. Where they work where people keep paying specials even after the project is paid for, which to me I don't think that is something is quite right.

Senator Judy Lee: I would like some examples of situations in which this has happened because I want to know what really is going on. The other thing is with Sheyenne Diversion for example our project is paid for, but we all understand that we have a special assessment continuing for maintenance only because of the kind of soil we have in our area. The walls of the levy, the ditch deteriorates and so I am happy to pay my special assessment for maintenance cause its way less than what the flood insurance would be if I was foolish enough to build in there without diversion. That is going to go up again, if we don't get this diversion done as it's being scheduled now.

Senator Dotzenrod: I am thinking the project I was describing got paid off and we no longer have to pay, but we are continuing to pay a maintenance fee on that project. Do we have examples, either the bill sponsor or anyone here have examples where project, the capital

portion of the project was continued to be paid after the project was paid off, is that a thing that is happening? I am not aware of that.

Senator Anderson: I think that Auditor Glatt explained that that is the way Burleigh County has been doing it is to continue until the end of the special assessment was originally set. Now, apparently there were some other cities that were doing that because they thought it was unfair if they chopped it off early when people had prepaid. So, there must have been some that were doing it. Now, I agree that that probably wasn't legal under law, but none-the-less they were doing it. So, nobody complained I guess so they just do it that way.

Senator Dotzenrod: Can I assume that if those payments continued they ended up in the city's general fund?

Senator Kreun: District 42. Would you like an explanation how we did our flood protection project for special assessment? (34:25-38:19) Having been on the city council and working with that project all the way from 2010- until its completion special assessments and taxes were the financing method of our levee system. Through the tax portion we added 13 mils on to our tax portion, that everybody paid, and also then the utilization of special assessments which everybody paid in the whole community. But in Senator Lee's scenario that I just heard, you're going to have a long process and some of the people that move in later may or may not pay and that was one of our concerns. So we set a future special assessment is what it boiled down to, nobody paid any more than what the original cost was, but is we bring in people in to the city that was protected by the levee system we felt it wasn't fair that they didn't pay anything even though the levee system was paid off. So what we did is we used future special assessments and they will then start when they are brought into the city. They will start for that 20-year period or however long it was. So then they will pay the same amount as the next door neighbor over the period of time for the levee system. Now the system is will be paid for by then, so what we did is set up a maintenance fee so that and indicated it Senator Lee was saying, so that levee system takes a lot of maintenance. We also put on your water and light bill, we put a $4.00 month on the water and light bill also to pay that maintenance fee. So it was a future special assessment but nobody paid or continued to pay after it was paid off. I get a little bit nervous if we're just going to say you can't use special assessments for future payment. But it has to designated as a specific use for that money. I don't think they should be where they pay special assessments and then put into the general fund. That's' not what special assessment really are used for. So that was one of the things that we dealt with as a city council, as how do we maintain that levee system after its built. That was a portion of it where we put that money from the future specials bringing that property in and paying their fair share plus the maintenance fees on our water. We don't have light bills. I was concerned when I saw that they wanted to eliminate a special assessment ordinance at that point in time, as soon as its paid off. Now we also reduced our mil levies as we refinanced and did that. As that was paid off, and actually got paid off sooner than what we anticipated so we took the mils off so they weren't paying any extra either going into the general fund for the levee system. That is a specific item that we had as a huge item in our community and that's how we dealt with the paying of the special assessments for the levee system and the maintenance on it.

Senator Anderson: What we are talking about here is the special assessment that paid off the original project okay. Now the future special assessments you talked about obviously a

property was in that area when you originally put up the special assessments, whether it had a house on it or not they would've paid the same special assessments, right?

Senator Kreun: That's the issue. They are outside the city limits and if its farm land they pay.

Senator Anderson: Your putting special assessments outside the city limits.

Senator Kreun: No,

Senator Anderson: So my point is, it was in the city.

Senator Judy Lee: No.

Senator Anderson: So the futures are only for those areas that were added to the city later.

Senator Kreun: Correct.

Senator Anderson: That's what I wanted to get clear.

Senator Diane Larson: It seems to me that if we're talking about continuing to assess for something that is already done, because there is other things like maintenance and so on, then somebody that attends college and they've paid their tuition should continue to pay some more tuition just for maintenance of the university. It seems about that logical to me.

Senator Anderson: I don't think that is the issue and that's why I am trying to get here. You know there is a difference between the maintenance fee or the 4 mils that Senator Dotzenrod was talking about, to maintain the levee; than the special assessment to build it in the first place. The same is true in Grand Forks when you built the levees you had a special assessment. The maintenance fees are not called special assessments that is something different that is a levee that is put on there. What I was trying to get at was if these future things and of course the future one. (Ex, cited. 40:16). If I had a development that previously farmland, and it wasn't in the city, but it was in a flood protected area, so I moved into that flood protection area because I asked to be annexed to the city, and your special assessment was one from being paid off, I would help pay that special assessment but my obligation would end when it was paid off in one year. Is that how it works?

Senator Kreun: No. That's the difference.

Senator Judy Lee: I think what's important to note is something as big as Grand Forks' project and Sheyenne Diversion the one that has been paid off that protects West Fargo from the Sheyenne River, is not just a city project. That is a Water Management District that is levying a special assessment which is why I have a problem with the fact that we are in the municipal code and we're not talking about other stuff. I don't want to screw up everything else. The three sections I am looking at our all in the municipal title. They are all in the city.

Senator Dotzenrod: They are all in Chapter 40 which the counties are not in here and the townships either.

Senator Judy Lee: The Water Management District is what we're looking at and the city is the biggest part of it in Grand Forks', in the Sheyenne Diversion Project is a lot of rural property. Some of the hardest working people are establishing that Sheyenne Diversion Project which took 20 years were farmers. All of that area that is in the protected area a lot of it was farms, but now certainly in West Fargo and in Grand Forks we have areas that will be developed. So what we are really talking is somebody who is building a new home and we do exactly the same thing. Somebody moves in to an area that is a part already of the special assessment district for the Sheyenne Diversion Project which is both inside the city and outside the city. More than one township. But if somebody moves in or wants to build a house there, there is a provision for them because now there is something to protect. Before it was farmland which water wasn't a problem plus it was outside the city limits.

Senator Kreun: It was outside the city limits. **Senator Judy Lee**: But in the Water Management District which is what levees the specials for Sheyenne Diversion which is slightly different than yours, but the point is these aren't all just a city district.

Senator Kreun: In answer to Senators Anderson and Larson's questions. The person we bring in that was outside the city limits, but the levee was built to protect part of that land. We have no right to special assess until that comes into the city limits. What we did is we held those special assessments open so that when that property is brought into the city, the people that move into that portion paid that same amount as the person that originally paid off starting 20 years earlier. So they all wind up paying the fair share in equal amount. Nobody pays more and nobody pays less. They all get charged the same at the same rate, the same interest rate, everything, goes along and we made sure that the only difference is because the levee is paid off we can't, the bonds are paid off but we held the special assessment open. The only difference is we take that money and put that towards the maintenance in a fund that is strictly maintenance for that levee system. That is the only difference. We are spending the and the reason to keep the special assessment open is so that it's fair to the person who is brought into the city later and pays the same amount as the person that was in there. That's why we did that. That's why I got a little bit nervous when you say you have to cut that special assessment off immediately when the bond is payed off. Otherwise we're going to have to go through and figure out another way and we felt this was the fairest way to do it, because then everybody pays exactly the same. It was 17cents a square foot, for commercial was the special assessment, and then it was effected front footage so when that piece of property is brought in and their effected front footage is figured out and that's how that amount was figured for the levee system and the same percentage will be given to them for the interest and then they get to pay it off, they don't pay the interest whatever just like everybody else. That's one of the things I got a little nervous about. We tried to be fair for the people that are there and for the people coming in.

Senator Anderson: It seems to me that is this passes, then somebody is going to have to do a legal opinion on Grand Forks to determine whether that can be open or not after the bond is paid off because it looks like to me if this passes, the city of Grand Forks would have to end the special assessments for that particular special assessment district.

Senator Diane Larson: Well there is a reason why I am not the Finance and Tax committee. Because it has to be real simple for me to figure this stuff out. But it seems to me that in fairness, somebody that is brought into the city, they should be able to say, I am buying this

property or being brought into this city now, I am not fighting the annexation because I know that I am going to be protected. They are already knowing this is paid off in a year and so I am buying with this knowledge. If I buy a home with the knowledge that the specials are already paid, I know that advantage when I buy a home. Just like if your buying some property and you haven't paid on it but you know that the project is going to be finished being paid for in a year, then you know that when you buy that property. So it seems to me that the person that was there paying all those years before they sold their property has done that as an investment into their property. If they are being annexed they know then, okay I am not going to dispute the annexation because I know that I will be having this only one more year of specials to pay on that and then, if you need a separate maintenance fee its seems the more honest way to do that is to say, we are going to have a maintenance fee, to pay for that assessment.

Senator Judy Lee: Did you have public input into this project when you were discussing it? Can you tell us just briefly, what kind of discussion and why the bid and was there input from people who were all going to be affected by this in determining what the most fair process is?

Senator Kreun: There were hundreds and hours and months of how to put this together. As we went through the process, we offered many different alternatives to the public. I can't even explain how many people and how many offers we made. We probably spent $200,000 to $300,000 lining this up. Where is the levee going to go, what's its going cost, whose is going to pay for it, in the different areas in the different scenarios? So that it was fairest opportunity for everybody and in reference to Senator Larson's question that property that they're building on now, before it was just land, now it's got a home on it and they are being protected by that levee. You hinted about fighting it. A lot of people want to come in for that protection. So, it's a benefit as well. But anyway, back to the question you asked. Yes, there was thousands of people over a period of about 4 years before we even got to that point to put input; give us the input, how we wanted to do it and go through the process.

Senator Judy Lee: would you think that this might be too simple of a solution to a question that doesn't seem to be a problem because we haven't heard of any cities in which it is being done. If there is, people could just refer that city to the attorney's opinion, rather than having a statute? So in the end, would this perhaps be more restrictive, the unintended consequences of this good thought might be too restrictive for other elected officials to be able to address the unique concerns of their own communities?

Senator Kreun: We needed the flexibility at that point in time to come up with a solution again. This solution may not work for another community and it may not be right for them. But as we went through the process it worked out very well for us. We don't have any complaints. We brought in property, they understand it and they know it ahead of time. Like yesterday I couldn't believe the realtors wouldn't know that. They understand why their being assessed this special assessment for the levee system because now it protects that $300,000 home that they purchased or are building. They are well aware of it and we have not again had any real push back when people understand and realize why we're doing what we're doing. We've have this in place, we put it in after the dike was pretty close to being finished and that was in 2010. So it's been 9-10 years already this future special assessment. It's no different with underground work in the regular, it's the future special assessments as

well. You put in a street and the city pays for it, so when the developer comes along he puts up his bond and he pays for that portion or he charges it to the home owner and that is a special assessment depending on how you want to work it. I am just saying that is kind of the way it works. This was very special to us and it took a long time and I wouldn't want to take that opportunity away from another community that has a large project that may need that kind of funding.

Senator Dotzenrod: It sounds to me that in Grand Forks it is as long as their potential properties that can be brought in to the protected area, at some point in the future, that the capital construction costs special assessment never goes away.

Senator Kreun: The actual bond is paid off. So what we've done in fairness to the people that are brought in, that are now having their property and their homes protected, get charged the same amount if the road was right here, and this future, and this is existing, this is paid off. The bonds are paid off, we held those open, so that when this comes in, their charged the same front footage rate along with the same interest rate as this individual because you are protecting both my home now and their home that was in the future. The only difference is we take that money and we don't put it in the general fund, we put it in a maintenance fund for that levee system.

Senator Dotzenrod: Maybe we're just having a little difference in how we label things. Maybe this special assessment to my view, we just be available to be used and can continue for on into the future forever. But, it's probably not going to be labeled a special assessment anymore. You give it a different name. You say it is a future cost for benefits that go with the property. You won't call it a special assessment but will essentially will function and will be the same identical cost to the home owner as the initial special assessment. Is that right?

Senator Kreun: That is basically what we are doing, you just got to call it a different name. The reason that we left it open is so that we can prove whatever else paid, their front footage cost, their interest rate, and so it very comparable to the person right across the street that paid them off. They are all being charged the same.

Senator Dotzenrod: What is the name you use? You're not going to call it? You really can't call it a special assessment anymore. Will you call it a maintenance fee or buy into the system? You must have a different name for it.

Senator Kreun: We call them future special assessments.

Representative Ben Koppelman: To show how real this is, the Director of Finance of one of our largest cities in the state, sent tips to the floor of the House after the testimony committee identifying the AG's opinions of which I provided him after the email. He's like oh, but let me read what he said. He said this bill attempts to stop levying special assessments prior to the property paying their fair share of the original assessment which is contrary to the spirit of the current assessment laws. He added an attachment that goes into detail on how his concern is more that goes into who pays off early, and that sort of thing. But, if you look at the sections that in this deal, which the intent of this bill is for cities, that's why it is in Section 40. But each time it has language like ' For payment of any outstanding improvement warrants, refunding improvement bonds, general obligation bonds, or revenue bonds', issued

to finance the improvement. None of the sections reference future special assessments. None of the section reference anything to do with maintenance, because I don't believe that is the intent of the chapter. Maybe that is exactly why we need this because maybe there are situations where they want to keep the special assessments open indefinitely and if money comes in after all the debt has been paid then per law, if they don't follow the AG's opinion, they can move it to the general fund and then they can move it to whatever fund they want to, maybe a future maintenance fund. But I don't think that is the intent of special assessments to ever be used for future maintenance that projects that Senator Lee referenced. The Sheyenne Diversion, to the extent that if they were to special us, for the Red River Diversion ultimately, the cost of the maintenance on both of those two projects are going to be a property tax mil levy ultimately and they currently are. That I believe if you study code, that's where the maintenance is supposed to come from, not from any open ended special assessments.

Senator Judy Lee: I would like to know Senator Burckhard and Representative Koppelman who the major city person is who. What city is that from?

Representative Ben Koppelman: This is Mr. Kent Kostin, from the city of Fargo. So even the largest city in the state was not aware of these attorney general opinions that everybody is supposed to know about.

Senator Judy Lee: When you brought to his attention did he say never mind I am not going to do what you want? I can't imagine if somebody has this brought to their attention that they wouldn't respond appropriately.

Representative Ben Koppelman: I absolutely agree with you. But here's the problem. If this is done the wrong way against the attorney generals opinions 50 times in the state and a bunch of tax payers are over charged for their specials, and one or two figure it out in their own city and object, maybe it gets fixed twice. If we make the law clear it gets fixed for all the times unless they are going to blatantly not follow the law.

Chairman Burckhard: Do you remember what the motion was? It was a do not pass motion moved by Senator Judy Lee and 2nd by Senator Dotzenrod. Are we ready to take the vote?

Senator Dotzenrod: I almost feel like I need to try to figure out if. I understand capital costs, specials, and I understand maintenance costs or fees. What I don't understand if this sort of third category where you sort of clearly buy into a project that is already paid for. I don't even know where that authority comes from, but it must be that once you have complied with the law and have a special assessment on the books, that you can continue that under the authority that was there originally.

Senator Judy Lee: I think there is a resolution for an interim study on special assessment. If I remember correctly. It seems to me rather than being so rigid about this. It seems like a simple issue at the beginning, and we've spent a lot of time talking about something that looks like a simple issue. I would like to suggest that we might rather than moving forward here, when I haven't seen any evidence that a city being told that there in violation has arbitrarily said we're going to do it anyway. I would like to see this be a part of the subject that is in that special assessment discussion and that can be managed with that. So maybe

before we move to far, Alex can find out what that special assessment study is about. Because it is a big deal now.

Chairman Burckhard: do you want to undo your motion?

Senator Anderson: I'll move we table the vote on this bill until the resolution of Senator Lee's question.

Senator Dotzenrod: 2nd that tabled motion.

Chairman Burckhard: All in favor say Aye. A voice vote was taken, motion passes.

Chairman Burckhard closed the hearing on HB1488.

2019 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee
Red River Room, State Capitol

HB 1488
3/28/2019
Job # 34342

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Mary Jo Wocken

Explanation or reason for introduction of bill/resolution:

Relating to special assessment fund balances.

Minutes:

Chairman Burckhard opened the committee for discussion on HB1488. Chairman Burckhard, Senators Anderson, J. Lee, D. Larson, J. Kannianen was present. Senator Dotzenrod was absent.

Chairman Burckhard: There was a motion for a do not pass from Senator J. Lee, 2nd by Senator Dotzenrod. Later on it was moved to table that motion until further notice.

Senator Diane Larson: Can the political subdivision continue to charge money for projects that is already paid for?

Chairman Burckhard: Special assessment fund balances I believe is the title.

Senator Anderson: For further discussion, on the motion is now in order, right? We've taken it off the table.

Chairman Burckhard: That is correct, absolutely.

Senator Anderson: One of the things that I see in here is that we are requiring an annual review. I just asked Mr. Wocken about that and he can step to the podium to answer the question. But he says with a city like Bismarck might have 30 or 40 of these open at any one time. Since we are requiring it in the law, they may look at things every year, but that requires them then to make some kind of record in the minutes or something else so they can show later if somebody asks if they did that. I hate to add more burdens on what they are already doing if we can avoid that. Now, I am going to support the do not pass on this one.

Senator Kannianen: I don't know if I see it as that big of an annual review. I am not sure how big of a burden that would be when you're just looking at a balance of whether it is simply a matter of whether or not the bond is paid off or not. Basically all we're looking at. So, just the fact that from my understanding is that these three attorneys' general opinions are

basically clarifying that we have to clarify the law, and have testimony that a lot of people don't know about the existence of these opinions. They are just going off of an ambiguous Century Code and so for that reason I support the bill just to put or clarify in Century Code what has been stated by three separate attorney general opinions over the last three decades.

Chairman Burckhard: I was handed a plethora of pages yesterday from Rep. Ben Koppelman and I am trying to figure out what I've got.

Senator Judy Lee: I do recall Senator Kreun talking about some concerns that he had about this as well. I think another thing that had been brought up was that I mentioned that we paid off he special assessments and now there is a maintenance fee, and that they would have to change the name of the maintenance fee even though the people who, if it says special assessments. I guess I think that we're a solution in search of a problem. I don't think that fits that. We didn't have a whole bunch of people storming the balustrade. I support a that DNP motion.

Senator Diane Larson: I bounced this off my husband because to me I was absolutely 100% behind this bill and felt that it is almost thievery to continue to take money from people after the debt has been paid. He put to me this way. We have two daughters. Say both of them end up with a problem, and they each need to borrow $1000 from us. We don't have it either, so we go to the bank ourselves and borrow the $2000, and tell the daughters that they are going to have to pay the interest. We give them each $2000 but then we have some money and we start paying on the debt too. The one daughter gets her money and pays it off right away and doesn't have to pay the interest. So then does that mean that just because the money is getting paid off to the bank and so we no longer owe money to the bank, because our second daughter has paid for quite a while, but hasn't paid back her $1000. Does that mean then that she doesn't have to pay $1000 when our other daughter did? So when he put it to me in terms like that kind of fairness, it did give me more pause, but I still can't justify it. I am still in favor of the bill, but that analogy because I thought how can they say that is fair? If its paid it is paid.

Chairman Burckhard: Sounds like a parable to me.

Senator Kannianen: I think the difference there is what we are talking about as if the project somehow comes in either under budget or certain fees are lower than we thought, I think that where over the course of time, that then the bond could perhaps be paid off quicker than. Because when they assess, or create these districts. I mean you create those original districts and the bonds and the payments off of the projected costs of the project. Of course that can vary a little bit here and there. So then I think that is different from the parable, just because of I guess that parable would be if the $2000 ended up being less than $2000 and its paid off quicker. Then maybe that is different.

Senator Judy Lee: I don't recall anybody commenting on how often this has happened. I know of local examples in which it, if it's there please refresh my memory about the 72 times in the state of North Dakota or its twice. I remember us discussing the fact that when the Cass County jail project was completed, that the county immediately stopped that assessment. So I guess I am kind of wondering how often this happens and is it just a hair

up somebodies nose about one incident or is it really a critical issue all over the place. The other thing is if I were lending money to a family member because this is the way I have done it, I get a note and its signed and its legal. When it's paid off it is marked paid.

Senator Anderson: It seems to me that as a result of the court opinions the law is clear now. I guess I am not in favor of passing another law to clarify what we already know. We just get more and more laws on the books when we do that. It might be that some people don't know about it but people who feel like they need to regress to that all they have to do is call is their attention to the fact that what's the proper way to do it is. So I don't think it is necessary.

Senator Diane Larson: I do remember Senator Kreun saying they do this all the time. They just go until the end of it. I believe that Bismarck as well said that this is what they always do. They wait until the full assessment from each person is paid. The other part of that though, is this is Attorney General's opinions that are reconfirming this way back from 1988. One was from earlier than that, and so, even though this has been on the books, this is not the way the cities are doing it.

Senator Kannianen: As I said before, I am in favor of the bill just to clarify. I think it is appropriate to have it clarified in Century Code because there are. The auditor we had before us he had never heard of these opinions before so I think it's good to put it in code if that is the law and once it's been clarified it's good to put it in code so everybody does understand what the law is.

Senator Judy Lee: I think it is important to point out that Senator Kreun opposed the bill. He did not favor the bill.

Senator Diane Larson: replied, right.

Chairman Burckhard: As I recall the neutral testimony came from the League of Cities is that correct?

Stephanie Dassinger, Deputy Director, ND League of Cities. I guess I would be open answering questions. I don't know that I have input that I necessarily want to interject.

Senator Anderson: As representative from the League of Cities, maybe you can answer the question about how many times you see this done, or some do it either way or are they making up their own mind unless somebody sues them about the attorney general's opinion or how do see it with the league now?

Stephanie Dassinger: When we asked about this my understanding is the instruction from the bond council is when they do this is you review your special assessment accounts and you pay it off when you have the amount to pay the debt associated with the cost. Then you stop collecting on the assessment. As a practical matter, I don't think this happens all that often. The way this works is you have your engineering estimate, and then once the cost come in for the project then we access based on the cost as it exists. Where you end up either above or below is going to based, on how many pay early on those assessments because we, you have to make an educated guess on how often that is going to happen and that's going to effect the amount of interest. So, I don't think we are generally talking about a

large amount of money, but they do occasionally come in at above and occasionally come in below just on who pays early.

Senator Anderson: Since you brought that up, about the interest and who pays and so forth, my guess is that when the city invests the money that they got paid right away, they do not get as much on that investment as the people are paying for interest on their special assessments. Would that generally be true? They are using buying CD's or something else in the city and probably there not even getting the same return that the people are paying. Is that correct?

Stephanie Dassinger: When we get an early payment it goes into that special assessment fund to make our yearly bond payment. So it would be sitting in a bank account getting whatever a savings account generally would get on interest.

Chairman Burckhard: So as I recall in the case of Grand Forks they had a special assessment that dealt with future expenses or maintenance of a flood project. Is that true, is that part of the dilemma here? Is there many of those where it doesn't have a fixed cost, that they are collecting for?

Stephanie Dassinger: The way I understand the process is there is a provision in the code that allows you to what's called future special assessments so you draw your boundary and that may include property outside of the city. So as the city we don't have the authority to assess those special assessments on that property that was benefited until that property comes into the city. So as I understand the situation in Grand Forks they drew there boundary, they identified the properties that were benefited by the flood protection, they started collecting on the current special assessment for the property inside the city, and then they held open the special assessments for those properties that were benefited by the flood protection and then the city essentially loans the money from the city coffers that the city residents had paid to pay that portion of the residents outside the city, until such time as they come into the city and then they pay for the benefits that they received.

Senator J. Lee: I mentioned, Sheyenne Diversion because I live in diversion protected house. That's different because it's not just the city, it's the whole area that from Horace to Harwood, with West Fargo in between that is protected by Sheyenne Diversion project. You couldn't build where I built, before Sheyenne Diversion went in. So, we were maybe the two years into the neighborhood being built up when we built our house. But there is a whole bunch of development south of the interstate that was field and that is now thousands of people living there. The way that formula looked that up was that growth would be anticipated and that the assessment is based on what the ag value was initially, which is it what it would have been negligible but then as somebody built a house and went out there they would then assume part of that cost, because now they are in a benefited property. This is not identical to Grand Forks' but very similar because its' more than just a city, but also there is also a benefit to that undeveloped property. That is where the future special assessment part comes in, so it's kind of hard to subdivide this thing. That is the whole point, I think. I guess we know maybe the League of Cities can help educate and counties and townships whatever, can help educate to make sure people understand this. But I've been involved with those kinds of issues for a very long time, and I just don't recall anybody being unhappy with the way the pay-off went. It's complex, even more complicated when it's an area like it is a diversion or a

flood project because its more than one political subdivision. I think there is a responsibility of those who, like we were, who came into an area that was bare land and now we should pay because our house will be protected.

Ms. Stephanie Dassinger: I am not all that familiar with how they set those up so I am hesitant to speak to that specific projects. I will tell you that the bonding process is very complicated and I am certainly not an expert in that. So, if a city is doing bonding they have their city attorney involved, and they have somebody who specializes a bond council so I think there is three of them in the state of North Dakota. So they are getting counseled by the people that are experts in that area. Those people certainly knew that this existed. So I guess I can't explain the reactions back from the cities, and my own reaction is better than that.

Senator D. Larson: You know I was just remembering now to the one of the other things that Senator Kreun had said, is that when they redraw the line and somebody else comes into that area that is protected, they have to pay future specials to be able to be in there. Again, that doesn't really make sense in my brain, because now like I said there is a reason I am not, on Finance and Tax and Appropriations. But, as I am trying to understand this better, like right now, our neighborhood is in the process of putting a levee all the way in front of our house and down the bank and up and around for flood protection to protect all of south Bismarck. This is to kind of close the loop. My neighbors and I, we are having to pay a higher amount for that flood protection because we are the front line getting the best protection. Now some other people that are back a-ways, but still out in that area have to pay a lesser amount to be part of that assessment district. But to me, it doesn't make sense as I already agree that I will pay this part for the special assessment to have flood protection. So to be having people having to continue to pay, beyond that I don't understand why you would do that. Once the levee is in place. I can understand that at some later time, then you say we are going to be having a continuing assessment for maintaining the levee and that type of thing. But to continue to pay the assessment on building it, when those people that voted to be in that assessment district agreed to pay that cost, I don't understand spreading that cost out in later times and over more people once its paid off. It seems whether we pay it off early or not, when it's paid off it should just be paid off. That is what it cost to build it.

Senator Anderson: To try and explain that a little bit. It depends on whether you and your neighbors are all in the city.

Senator D. Larson: No we are not. We are in the county. We are in the ETA.

Senator Anderson: So then the county is doing this project, not the city.

Senator D. Larson: No, it's the Burleigh County Water Resource District.

Senator Anderson: So in that case they would have the authority to tax or assess all the people in the district. What we're talking about in Grand Forks situation is the city is the one who sponsored the flood protection levee, and it extended beyond the city into some rural areas that are not under the cities authority right now as far as their taxing ability. So what they are saying is when those eventually come into the city, and as to come into the city, then they pay their fair share of that assessment. That goes into the maintenance fund. But it still

an assessment because they benefited exactly the same as you when you were in the city, you see. Because they got the same flood protection, it is just that the city could not assess them when it was built.

Senator D. Larson: But pay their fair share of what outstanding debt?

Senator Anderson: It was their fair share of the cost of the project. There is no outstanding debt anymore. It has probably been paid off. But their fair share of the cost of the project because it was protecting them as well but the city had no way to recover that from them.

Chairman Burckhard: As we left this discussion last week there was a do not pass motion moved by Senator J. Lee, 2nd by Senator Dotzenrod. Then we decided to table the do not pass motion until further notice. How do we undo the table part and then make a motion?

Senator Anderson: According to the rules, you can, if we assumed it was tabled until our next meeting, then it comes off the table automatically. If it tabled indefinitely then, we would need a motion to move it off the table. So, that it your call.

Chairman Burckhard: I think it's because we got interrupted and ran out of time. So, I think we still have the motion before us.

Senator Anderson: I move that we take the motion off the table and move forward.
Senator Judy Lee: 2nd the motion.
Chairman Burckhard: All in favor say aye, all responded aye.

Chairman Burckhard: We have moved. Does the do not pass motion continue? Senato**r** Dotzenrod is not available today and he moved the 2nd**.**

Senator Anderson: If you want to play around with the rules of procedure then, and you think you're done with discussion, I will move the previous question which means we move to the vote immediately. We need a 2nd and a 2/3 majority to end debate and move right to the vote.

Chairman Burckhard: I think we can just call for the roll vote. **We have a do not pass motion, that was moved by Senator J. Lee and 2nd by Senator Dotzenrod.**
Roll call vote: motion passes 4/2. I also put in here that Senator J. Lee will carry the bill.

(Senator Dotzenrod in the presence of Chairman Burckhard and the committee clerk voted yea for a do not pass on HB1488. This was done on 3/29/2019.)

Carrier: Senator J. Lee

Date: 3.22.2019
Roll Call Vote #: 1

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1488

Senate Political Subdivisions 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 Senator Judy Lee Seconded By Senator Dotzenrod

Senators	Yes	No	Senators	Yes	No
Chair Randy Burkhard			Sen. Jim Dotzenrod		
Vice chair Howard Anderson					
Sen. Diane Larson					
Sen. Judy Lee					
Sen. Jordan Kannianen					

Committee decided to hold the vote open

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Date: 3.22.2019
Roll Call Vote #: 2

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1488

Senate Political Subdivisions 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 ☑ Table vote

Motion Made By Senator Anderson Seconded By Senator Dotzenrod

Senators	Yes	No	Senators	Yes	No
Chair Randy Burkhard			Sen. Jim Dotzenrod		
Vice chair Howard Anderson					
Sen. Diane Larson					
Sen. Judy Lee					
Sen. Jordan Kannianen					

motion to table voted on at next meeting
Voice vote
motion passes

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Date: 3.28.2019
Roll Call Vote #: 1

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1488

Senate Political Subdivisions 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 ☑ take the motion off the table

Motion Made By Senator Anderson Seconded By Sen. Judy Lee

Senators	Yes	No	Senators	Yes	No
Chair Randy Burkhard			Sen. Jim Dotzenrod		
Vice chair Howard Anderson					
Sen. Diane Larson					
Sen. Judy Lee					
Sen. Jordan Kannianen					

Voice vote carried motion

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Date: 3.28.2019
Roll Call Vote #: 2

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1488

Senate Political Subdivisions 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 Senator Judy Lee Seconded By Senator Dotzenrod

Senators	Yes	No	Senators	Yes	No
Chair Randy Burkhard	X		Sen. Jim Dotzenrod 3/20/2019	X	
Vice chair Howard Anderson	X				
Sen. Diane Larson		X			
Sen. Judy Lee	X				
Sen. Jordan Kannianen		X			

Total (Yes) 4 No 2

Absent 0

Floor Assignment Senator Judy Lee

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

REPORT OF STANDING COMMITTEE

HB 1488, as engrossed: Political Subdivisions Committee (Sen. Burckhard, Chairman) recommends **DO NOT PASS** (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1488 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

HB 1488

#1 HB1488
1-31-19
B Koppelman
pl.

HB 1488

Mr. Chairman and Members of the Political Subdivisions Committee, thank you for the opportunity to introduce HB 1488 to your committee. This bill codifies the practice of paying off special assessment bonds and stop assessing once adequate funds have been collected. It would require annual review of all special assessment revenue to ensure that citizens are not assessed more than is necessary to accomplish the goals of each individual project. Although current law does not specifically require this practice, it is required based on a 1976 AG opinion that states "if sufficient money is collected on a special assessment project in less time than the assessment period, the city must stop levying assessment for the remaining years".
This opinion was also reaffirmed by subsequent by an AG opinion in 1988 which stated "a special assessment levy must be terminated if the obligation is satisfied by the municipality from other resources". Both of these AG opinions are referenced in a the attached 1996 AG opinion that was responding to a slightly different issue. It seems possible that if a municipality was not to research AG opinions, that they might read the law in a different way and thus might over tax their citizens.

When a special assessment district is created by a municipality for a specified project, a project account is created. If the project is not objected to, the project often proceeds using engineering estimates of cost which often include contingency funds. Bonds may be sold at this point in the amount of the engineers estimate. The bond proceeds are then deposited into the project account. Once the project is completed and all expenses have been paid, it is not uncommon for there to be contingency funds left over, and these funds are left in the project account. Annual property assessments begin thereafter which usually include a "profit" on the interest rate charged by the municipality of 1-2% more than the interest rate of the bonds that were sold. These annual assessment proceeds are deposited in the project account. Finally, there are some that pay their special assessments off early in a lump sum which is deposited in the project account. Annually the municipality pays the bond payments from this project account. The combination of these activities often results in the municipality having sufficient

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1-31-19
p2.

funds to pay off the bonds several years early, which is why it is important for the municipality to annually review the special assessment accounts which safeguards against taxpayers being over assessed. If this process is followed, it will result in having less than 2% of the project total remaining, and this money will be transferred to the general fund of the municipality in order to close out the project account. However, if this process is not followed, it could result in a much larger amount being left over in the project account, and thus upon the transfer of those funds to the general fund, would result in special assessment taxes on a few being used for general fund expenditures for the entire municipality.

Mr. Chairman and committee members, thank you again for your time and I would request a Do-Pass recommendation.

#2

HB1488
1-31-19

LETTER OPINION
96-L-243

December 20, 1996

Mr. John A. Juelson
Hillsboro City Attorney
PO Box 220
Hillsboro, ND 58045-0220

Dear Mr. Juelson:

Thank you for your letter asking whether the city of Hillsboro is obligated to refund to certain property owners any of the surplus remaining in special assessment funds for a street improvement district and a sewer improvement district after the city has paid off the debt obligations financing the improvements and prior to the final maturity of the debt obligations.

You indicated that the city issued two series of improvement bonds in 1984 to finance certain street and sewer improvements. You also indicated that both projects were assessed on the basis that special assessments would be levied through the year 1999 to pay for the improvement bonds. However, because of certain prepayments of special assessments, two refundings of the bonds and interest earnings, the city generated sufficient additional funds together with the 1995 special assessment to redeem the bonds and it ceased certifying special assessments for the improvement districts in the 1995 tax year. The payments received by the city in 1996 based on the 1995 tax year assessments allowed the city to pay off the bonds and resulted in a surplus in both special assessment funds.

Although you indicated that the city has taken certain preliminary actions to refund portions of the surplus to certain of the affected property owners, you also stated that the surplus funds have actually been transferred to the city's general fund in apparent conformity with N.D.C.C. § 40-24-18. That statute provides as follows:

> All special assessments and taxes levied and other revenues pledged under the provisions of this title to pay the cost of an improvement shall constitute a fund for the payment of such cost, including all principal of and interest on warrants and other obligations issued by the

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HB 1488
1-31-19

> municipality to finance the improvement, and shall be diverted to no other purpose. The city auditor shall hold all moneys received for any such fund as a special fund to be applied to payment for the improvement. Each such fund shall be designated by the name and number of the improvement district in or for which said special assessments, taxes, and revenues are collected. When all principal and interest on warrants and other obligations of the fund have been fully paid, all moneys remaining in a fund may be transferred into the general fund of the municipality.

(Emphasis supplied.) See also 1985 N.D. Op. Att'y Gen. 93 ("Thus, in cases involving refunding improvement bonds, a city may transfer excess special assessment fund moneys to the general fund of the municipality" citing N.D.C.C. § 40-27-05).

"Statutes sometimes provide for the distribution of surplus money in [a] special assessment fund." 14 Eugene McQuillen, Municipal Corporations § 38.337 (3rd rev. ed. 1987). N.D.C.C. § 40-24-18 is such a statute.

Further:

> The legislature may authorize refunding of moneys paid for public improvements. Statutes and ordinances in the various jurisdictions provide for a refund or rebate of assessments levied and collected for public improvements, under specified conditions, provided the claim is made within the time prescribed by law; but the whole question is governed by the terms of the statute involved. However, statutes providing for a refund do not confer "vested rights."

14 McQuillen, Municipal Corporations at § 38.336 (3rd rev. ed. 1987); see also 70A Am.Jur.2d Special or Local Assessments §§ 227-230 (1987). N.D.C.C. § 40-24-18 does not explicitly provide for a refund, nor have you referred to any statute which would authorize the city to issue refunds.

You did, however, make reference to an opinion issued by Attorney General Allen I. Olson which indicated that in some circumstances there may be an obligation to refund a portion of certain special assessment levies, particularly where such levies continued after the object of the assessments has been satisfied. See 1976 N.D. Op. Att'y Gen. 19. See also 1979 N.D. Op. Att'y Gen. 289 ("The payments

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1-31-19
P.3

to which your letter refers [from assessments erroneously continued to another year] are simply erroneously collected taxes and as such, we do not believe they are subjected to the provisions permitting the transfer of monies remaining in special funds to be transferred to the general fund.").

However, the 1976 opinion also indicates that state constitutional provisions which might compel refunds to property owners in certain circumstances would probably not come into play unless a political subdivision was "continuing to levy for a year or years after the basic object of the tax has already been satisfied." 1976 N.D. Op. Att'y Gen. 19. This opinion also determined that "if sufficient money is collected on a special assessment project in less time than the assessment period, the City must stop levying assessment for the remaining years." Id. Similarly, Attorney General Nicholas J. Spaeth opined that "a special assessment levy must be terminated if the obligation is satisfied by the municipality from other resources." See Letter from Attorney General Nicholas J. Spaeth to John R. Gregg (April 20, 1988).

It does not appear from your letter that the city continued to levy special assessments after the basic object of the tax had been satisfied, i.e., that the city did not continue to certify special assessments for the two improvement districts beyond the tax year in which the city had generated sufficient amounts to pay the refunding improvement bonds in full.

Consequently, it is my opinion that under the facts and circumstances presented here, the city of Hillsboro is not obligated to refund any of the surplus monies contained in the improvement funds after the payment of the refunding improvement bonds. My opinion would be different if the city had continued to levy special assessments beyond the year in which it had generated sufficient funds on hand together with any investment earnings sufficient to pay any applicable debt instruments financing the improvements. See 1976 N.D. Op. Att'y Gen. 19 ("[I]f it can be determined by the City that the money on hand for that Special Assessment Project plus interest earned from investing that money will be sufficient to pay the balance of the Special Assessment Warrants to come due over the next few years, the City must stop levying assessments at that time and pay the warrants as they come due with the money on hand plus the interest to be earned from investing that money.").

Because the city has already properly exercised its discretion to transfer the subject surplus funds to the city general fund, any discussion of refunds is now moot.

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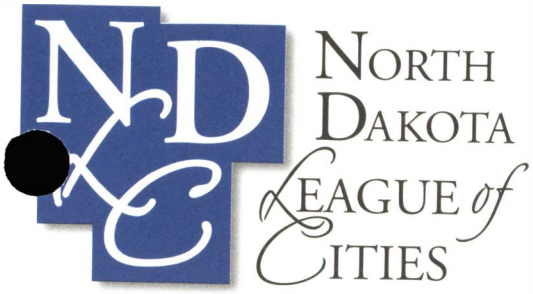
1-31-19
p.4

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

jjf/pg



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January 30, 2019

House Political Subdivisions Committee

HB 1488

Chairman Dockter and members of the committee, my name is Stephanie Dassinger and I am the deputy director and attorney for the North Dakota League of Cities. I appear before you today to express the League's opposition of HB 1488.

The bill requires a city that is paying for an improvement though the collection of special assessments to do a yearly evaluation of special assessment revenues. If the amount of money collected amounts to enough to pay off the debt, the city is required to pay off the debt and stop collecting special assessments that are still due and owing.

This procedure has the potential to create an inequity between property owners in an improvement district. When a special assessment is assessed on a property, the owner has the option to pay off the assessment in full or to pay for the assessment in installments. Under the bill as written, if individuals still owed their portion of the assessments at the time the debt is paid off for the improvement, that debt would be forgiven. In other words, those individuals who paid their special assessments through a lump sum payment would bear a larger financial burden for the improvement than those owners who paid in installments.

As such, the League urges the committee to vote DO NOT PASS on HB 1488.

Phone: (701) 223-3518 • ND Toll Free: (800) 472-2692
410 E Front Ave • Bismarck, ND 58504-5641 • www.ndlc.org

HB 1488

Michael R. Brown
Mayor

#4

1-31-19

City of Grand Forks

255 North Fourth Street • P.O. Box 5200 • Grand Forks, ND 58206-5200
(701) 746-2607
Fax: (701) 787-3773

TESTIMONY ON HOUSE BILL 1488
House Political Subdivisions Committee
January 31, 2019

Maureen Storstad, Finance Director
City of Grand Forks, ND

Mr. Chairman and members of the committee, my name is Maureen Storstad, and I am the Finance Director for the City of Grand Forks and also serve as its City Auditor. I want to thank you for the opportunity to provide testimony and express my concern and opposition to this legislation and what is, perhaps, its unintended consequence.

Currently, it is our practice that any callable bonds that are outstanding are annually reviewed for possible prepayments and interest savings. If bonds are callable, if prepayments have been received, and if there is a balance sufficient to pay down the bonds, we have done so. Any cash in the fund remains in the bond fund until the debt is satisfied. Upon retirement of the special assessment debt, any remaining balance is transferred to the General Fund Loan & Stabilization Fund. Likewise, if the bond fund is deficient, cash is transferred from the General Fund Loan & Stabilization Fund to satisfy the remaining debt. We see this as good practice, as we strive for maximum interest savings and best use of prepayments. There is an equal spread of any remaining balance for all taxpayers, creating equity. The use of these funds have been primarily for one-time capital needs in the General Fund, which would have otherwise been paid through property tax. This helps to keep all resident's property tax down.

The unintended consequence of this bill, as proposed, would create an inequity among those that pay special assessments and would discourage prepayments. Many residents live under the philosophy of "I never pay interest" and are very proud of this. These residents pay their special assessments in full as a prepayment rather than making annual payments, and therefore, paying interest. Other residents pay these special assessments annually through their property tax billing, paying down principal over time. As the HB1488 is proposed, if revenues are sufficient to prepay outstanding special assessment bonds that were issued to

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finance the improvement for which the assessment was levied, the governing body shall stop levying special assessments for the improvement. This creates an inequity, as it creates a situation in which some neighbors will pay more than others for the same benefit received. Those that have prepaid would be penalized, as they may end up paying more.

Special assessment practice also includes the setting of future assessment districts within a benefitting area. In these cases, the City of Grand Forks carries this debt load and makes the bond payments over the term of the bond. When the district becomes annexed into the city, those that reside in the area that was in the future assessment district then pay a special assessment for the benefit that the area received. The City of Grand Forks then recoups the funds that were drawn upon to pay the debt. There are times when the bond is paid in full (through payments made by the city) at the time the future assessment area is annexed into the city, which triggers the property to be special assessed based on this previously set future assessment district. The city is paid back through these special assessments that were due from the property. It is my understanding that this proposed legislation would require the city to stop the special assessments once the bond is paid in full. This creates an inequity, as those in the benefitted area would not equitably pay for the benefit received. One side of the road, for instance, will pay their fair share of special assessments, while the other side (future assessment area) may not. Rather, all other taxpayers would bear the cost as the city would not be able to recoup its funds once the bond has matured. It may also slow development. I see this happening, as those that look to develop may wait to do so, knowing that they may not be subject to special assessments if they choose to hold off the development.

It is for these reasons the passage of House Bill 1488 is not in the best interests of the City of Grand Forks nor any other North Dakota political subdivision. Thank you for your time and consideration. I respectfully ask for a DO NOT PASS on House Bill 1488.

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1-31-19

House Political Subdivisions Hearing Testimony

HB 1488 Relating to Special Assessment Fund Balances

January 31, 2019

Chairman Dockter and members of the House Political Subdivision Committee, thank you for the opportunity to comment on HB 1488 relating to special assessment fund balances.

My name is Kent Costin, Director of Finance for the City of Fargo. We stand in opposition to this bill because it creates an inequity between those taxpayers that pay their assessments in full vs. those taxpayers that chose to amortize them over the life of the bond issue.

The reasons for our opposition is quite basic. The heart and soul of existing special assessment laws in NDCC 40-22 through 40-24 is to treat all taxpayers in a fair and equitable manner applied on a consistent basis when establishing and administering the special assessment process. Under current laws, benefits conferred to a property owner by a special assessment should be paid off through full maturity because this is the only process to ensure that each taxpayer pays for 100% of their initial assessment.

A simple example is provided to illustrate the inequality created by this bill:

Taxpayer A is assessed $15,000 for an infrastructure project funded by special assessments. Taxpayer A chooses to manage this obligation by making payment in full within ten days of being assessed. Logical reasons for doing so would be to avoid long-term interest charges and a desire to have a specials free property. This taxpayer has fulfilled the obligation and paid 100% of their assessment amount using this method.

Taxpayer B is assessed the same $15,000. Taxpayer B chooses to amortize their obligation over the life of the bond issue that typically run from 15 – 25 years depending upon local bonding practices. This

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taxpayer enjoys the opportunity to make an annual payment vs. disbursing a large lump sum cash payment and has elected to pay their installments until their initial assessment obligation is paid in full. This option allows taxpayers several advantages including transferring assessment balances when their property is sold and not having to increase their mortgage when purchasing a new home to pay off the special assessments.

HB 1488 destroys the equity that is inherent in current special assessments laws by discontinuing special assessment billings when the debt service funds have enough money on hand to pay off all bonded or other obligations. Continuing in this example, let's assume that we issue 25 year bonds and determine in year 21 that funds have accumulated in the debt service fund and the bonds are paid in full four years early. If this bill passes, then Taxpayer B will have only paid for 84% of their initial assessment. This is significantly less than from Taxpayer A who paid in full. HB 1488 creates and inequity between taxpayers. We believe that all taxpayers should pay 100% of their assessed amount regardless of the payment method used.

Under current laws, taxpayers have the ability to manage their special assessment obligations using a variety of methods. It is important that they pay for the benefit they receive from the special assessments levied.

The City of Fargo supports a DO NOT PASS vote on this bill due to the inequality that it creates amongst taxpayers using different methods of paying off their special assessments.

HB 1488 #6
1-31-19

Blake Crosby

From: Allyn Sveen <allyn@stanleynd.us>
Thursday, January 31, 2019 8:17 AM
To: jddockter@nd.gov; bpyle@nd.gov; mkadams@nd.gov; sertelt@nd.gov; cfegley@nd.gov; Ron Guggisberg; phatlestad@nd.gov; marycjohnson@nd.gov; kkoppelman@nd.gov; Longmuir, Donald; jmagrum@nd.gov; lsimons@nd.gov; mstrinden@nd.gov; nptoman@nd.gov
Cc: bertanderson@nd.gov; tbjones@nd.gov; Shane Goettle; Gary Weisenberger; Blake Crosby
Subject: HB #1488

Dear Chairman Dockter and Honorable Members of the Political Subdivisions Committee:

I am respectfully requesting you to support a **"DO NOT PASS"** on House Bill #1488 relating to special assessment fund balances.

The problem with HB #1488 is that it is does not address a very important factor, the owners that paid their special assessments in full and have no outstanding installments. Is it fair to forgive special assessments to those individuals that have outstanding payments when there are owners that have paid in full? The special assessment benefitted both equally.

Special assessment improvement warrants or bonds used to finance the initial improvement are based off the cost of the improvement and thus the benefit to the owner did not change. Many improvement districts have been refinanced due to lower interest rates resulting in additional revenues to the assessment district.

During shortfalls in bond and/or loan payments, transfers may occur from the general fund of the city to make those payments. If this is the case, this also should be given consideration. In more catastrophic cases, developers "disappear" leaving the entire city with the burden of paying for the outstanding specials in the improvement district.

In closing, any excess dollars, if any, in a special assessment district are still used for the benefit of the taxpayers in one way or another.

Again, your support for a **"DO NOT PASS"** on House Bill #1488 is greatly appreciated.

Sincerely,

Ms. Allyn Sveen, City Auditor
City of Stanley
208 South Main
PO Box 249
Stanley, ND 58784
701-628-2225
701-628-2232 fax

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1-31-19
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House Political Subdivisions Committee
Chairman Jason Dockter

January 31, 2019

By: Tom Barry
City Manager, City of Minot
tom.barry@minotnd.org
701-857-4750

HB 1488

Chairman Dockter and Members of the House Political Subdivisions Committee, my name is Tom Barry and I am the City Manager for the City of Minot. On behalf of the City of Minot, thank you for the opportunity to submit this testimony in opposition to HB 1488. I want to make four points:

1. NDCC 40-23-21 is titled "*Use of collections of subsequent assessments*." The language in the bill refers to special assessments levied pursuant to sections 40-23-17 through 40-23-21, which are all subsequent assessments. This type of assessment is fairly rare and if the intent is to limit only these assessments it is less of a concern to the City of Minot. We would appreciate clarification on this point.
2. NDCC 40-23-19 allows for subsequent assessments for property that was outside the corporate limits at the time of the improvement and later annexed to the municipality. NDCC 40-23-20 provides the mechanism to "equalize" the assessments, including refunds, that may result from these subsequent assessments. Under Section 2 of the proposed bill, the ability to collect dollars as a result of subsequent assessments may be limited and could potentially cause inequities between similar situated and benefiting properties.

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3. The requirement to transfer any remaining funds to the general fund can create some unexpected consequences as well. For example, Minot City Ordinance requires a 1/12th reserve be maintained in all funds. Typically this is accomplished by leaving excess funds and/or penalties collected in the fund to build a balance. In addition, bond issuers often require a coverage ratio be maintained in the fund ensure payment of the bonds. Again, this is typically accomplished by accumulating "excess" dollars in the fund from various bond issues. By requiring the governing body to transfer the remaining funds to the general fund it could create the necessity to transfer funds from the general fund back to the debt service fund to create the required coverage ratios and/or statutory reserves.

4. The governing body needs to have the flexibility to finance these projects in the most efficient and equitable manner possible taking into consideration the uncertainty of which property owners will pay up front, which ones will finance over the entire term, properties that will pay off the special assessment early, and those that will be delinquent and may not be collected in a timely fashion.

It is for these reasons that the City of Minot opposes HB 1488 and would ask for a Do Not Pass on the bill in its present form.

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Title.

Prepared by the Legislative Council staff for
Representative B. Koppelman
February 1, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1488

Page 1, line 1, replace "section" with "sections"

Page 1, line 1, after "40-23-21" insert ", 40-24-18, and 40-27-05"

Page 1, after line 22, insert:

"**SECTION 2. AMENDMENT.** Section 40-24-18 of the North Dakota Century Code is amended and reenacted as follows:

40-24-18. Special improvement moneys to be kept separate - Designation and numbering of funds - Diversion of moneys prohibited.

1. All special assessments and taxes levied and other revenues pledged under the provisions of this title to pay the cost of an improvement ~~shall~~ constitute a fund for the payment of such cost, including all principal of and interest on warrants and other obligations issued by the municipality to finance the improvement, and ~~shall~~may not be diverted ~~to no other~~for any other purpose. The city auditor shall hold all moneys received for any such fund as a special fund to be applied to payment for the improvement. Each ~~such~~ fund ~~shall~~must be designated by the name and number of the improvement district in or for which ~~said~~the special assessments, taxes, and revenues are collected. ~~When all principal and interest on warrants and other obligations of the fund have been fully paid, all moneys remaining in a fund may be transferred into the general fund of the municipality.~~

2. A governing body that levied assessments for an improvement must complete an annual review of all special assessment revenues. If collections of special assessment revenues are sufficient to repay outstanding special assessment warrants, refunding improvement bonds, interfund loans, or revenue bonds that were issued to finance the improvement for which the assessments were levied, the governing body shall stop levying special assessments for the improvement.

3. After all outstanding special assessment warrants, refunding improvement bonds, interfund loans, or revenue bonds that were issued to finance an improvement are paid in full, the governing body shall direct the balance of the special fund to the general fund of the municipality.

SECTION 3. AMENDMENT. Section 40-27-05 of the North Dakota Century Code is amended and reenacted as follows:

40-27-05. Special fund for payment of bonds issued for purchase of special assessment warrants - Tax levy.

1. The governing body of a municipality which issues bonds for the purchase of special assessment warrants shall create a special fund for the payment of the principal and interest of such bonds as they become due and shall credit to such fund all special assessments collected for the payment of the

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special assessment warrants purchased. The governing body shall make a general tax levy annually on all the property in the municipality which, together with the special assessments collected, ~~shall~~must be sufficient to pay the principal and interest of the bonds when they become due. The levy imposed ~~shall~~is not ~~be~~ subject to any of the tax levy limitations imposed by section 57-15-08 or acts amendatory thereof. ~~If any money remains in the special fund after the payment of the principal of all the bonds and the interest thereon, such balance may be transferred to the general fund.~~

2. A governing body that levied assessments for an improvement must complete an annual review of all special assessment revenues. If collections of special assessment revenues are sufficient to repay outstanding special assessment warrants, refunding improvement bonds, interfund loans, or revenue bonds that were issued to finance the improvement for which the assessments were levied, the governing body shall stop levying special assessments for the improvement.

3. After all outstanding special assessment warrants, refunding improvement bonds, interfund loans, or revenue bonds that were issued to finance an improvement are paid in full, the governing body shall direct the balance of the special fund to the general fund of the municipality."

Renumber accordingly

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Mr. Chairman and Members of the Political Subdivisions Committee, thank you for the opportunity to introduce HB 1488 to your committee. My name is Rep. Ben Koppelman, and I represent District 16 in West Fargo.

This bill codifies the practice of paying off special assessment bonds and stop assessing once adequate funds have been collected. It would require annual review of all special assessment revenue to ensure that citizens are not assessed more than is necessary to accomplish the goals of each individual project. Although some may say that law does not clearly require this practice, it is clearly required based on a 1976 AG opinion that states "if sufficient money is collected on a special assessment project in less time than the assessment period, the city must stop levying assessment for the remaining years". This opinion was also reaffirmed by subsequent by an AG opinion in 1988 which stated "a special assessment levy must be terminated if the obligation is satisfied by the municipality from other resources". Both of these AG opinions are referenced in a the attached 1996 AG opinion that was responding to a slightly different issue. It seems possible that if a municipality was not to research AG opinions, that they might read the law in a different way and thus might over tax their citizens.

For example, when a special assessment district is created by a municipality for a specified project, a project account is created. If the project is not objected to, the project often proceeds using engineering estimates of cost which often include contingency funds. Bonds may be sold at this point in the amount of the engineers estimate. The bond proceeds are then deposited into the project account. Once the project is completed and all expenses have been paid, it is not uncommon for there to be contingency funds left over, and these funds are left in the project account. Annual property assessments begin thereafter which usually include a "profit" on the interest rate charged by the municipality of 1-2% more than the interest rate of the bonds that were sold. These annual assessment proceeds are deposited in the project account. Finally, there are some that pay their special assessments off early in a lump sum and

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those funds are also deposited in the project account. Annually the municipality pays the bond payments from this project account. The combination of these activities often results in the municipality having sufficient funds to pay off the bonds several years early, which is why it is important for the municipality to annually review the special assessment accounts which safeguards against taxpayers being over assessed. If this process is followed, it will result in having less than 2% of the project total remaining, and this money will be transferred to the general fund of the municipality in order to close out the project account. However, if this process is not followed, it could result in a much larger amount being left over in the project account, and thus upon the transfer of those funds to the general fund, would result in special assessment taxes on a few being used for general fund expenditures for the entire municipality.

Mr. Chairman and committee members, thank you again for your time and I would request a Do-Pass recommendation.

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LETTER OPINION
96-L-243

December 20, 1996

Mr. John A. Juelson
Hillsboro City Attorney
PO Box 220
Hillsboro, ND 58045-0220

Dear Mr. Juelson:

Thank you for your letter asking whether the city of Hillsboro is obligated to refund to certain property owners any of the surplus remaining in special assessment funds for a street improvement district and a sewer improvement district after the city has paid off the debt obligations financing the improvements and prior to the final maturity of the debt obligations.

You indicated that the city issued two series of improvement bonds in 1984 to finance certain street and sewer improvements. You also indicated that both projects were assessed on the basis that special assessments would be levied through the year 1999 to pay for the improvement bonds. However, because of certain prepayments of special assessments, two refundings of the bonds and interest earnings, the city generated sufficient additional funds together with the 1995 special assessment to redeem the bonds and it ceased certifying special assessments for the improvement districts in the 1995 tax year. The payments received by the city in 1996 based on the 1995 tax year assessments allowed the city to pay off the bonds and resulted in a surplus in both special assessment funds.

Although you indicated that the city has taken certain preliminary actions to refund portions of the surplus to certain of the affected property owners, you also stated that the surplus funds have actually been transferred to the city's general fund in apparent conformity with N.D.C.C. § 40-24-18. That statute provides as follows:

> All special assessments and taxes levied and other revenues pledged under the provisions of this title to pay the cost of an improvement shall constitute a fund for the payment of such cost, including all principal of and interest on warrants and other obligations issued by the

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> municipality to finance the improvement, and shall be diverted to no other purpose. The city auditor shall hold all moneys received for any such fund as a special fund to be applied to payment for the improvement. Each such fund shall be designated by the name and number of the improvement district in or for which said special assessments, taxes, and revenues are collected. When all principal and interest on warrants and other obligations of the fund have been fully paid, all moneys remaining in a fund may be transferred into the general fund of the municipality.

(Emphasis supplied.) See also 1985 N.D. Op. Att'y Gen. 93 ("Thus, in cases involving refunding improvement bonds, a city may transfer excess special assessment fund moneys to the general fund of the municipality" citing N.D.C.C. § 40-27-05).

"Statutes sometimes provide for the distribution of surplus money in [a] special assessment fund." 14 Eugene McQuillen, Municipal Corporations § 38.337 (3rd rev. ed. 1987). N.D.C.C. § 40-24-18 is such a statute.

Further:

> The legislature may authorize refunding of moneys paid for public improvements. Statutes and ordinances in the various jurisdictions provide for a refund or rebate of assessments levied and collected for public improvements, under specified conditions, provided the claim is made within the time prescribed by law; but the whole question is governed by the terms of the statute involved. However, statutes providing for a refund do not confer "vested rights."

14 McQuillen, Municipal Corporations at § 38.336 (3rd rev. ed. 1987); see also 70A Am.Jur.2d Special or Local Assessments §§ 227-230 (1987). N.D.C.C. § 40-24-18 does not explicitly provide for a refund, nor have you referred to any statute which would authorize the city to issue refunds.

You did, however, make reference to an opinion issued by Attorney General Allen I. Olson which indicated that in some circumstances there may be an obligation to refund a portion of certain special assessment levies, particularly where such levies continued after the object of the assessments has been satisfied. See 1976 N.D. Op. Att'y Gen. 19. See also 1979 N.D. Op. Att'y Gen. 289 ("The payments

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to which your letter refers [from assessments erroneously continued to another year] are simply erroneously collected taxes and as such, we do not believe they are subjected to the provisions permitting the transfer of monies remaining in special funds to be transferred to the general fund.").

However, the 1976 opinion also indicates that state constitutional provisions which might compel refunds to property owners in certain circumstances would probably not come into play unless a political subdivision was "continuing to levy for a year or years after the basic object of the tax has already been satisfied." 1976 N.D. Op. Att'y Gen. 19. This opinion also determined that "if sufficient money is collected on a special assessment project in less time than the assessment period, the City must stop levying assessment for the remaining years." Id. Similarly, Attorney General Nicholas J. Spaeth opined that "a special assessment levy must be terminated if the obligation is satisfied by the municipality from other resources." See Letter from Attorney General Nicholas J. Spaeth to John R. Gregg (April 20, 1988).

It does not appear from your letter that the city continued to levy special assessments after the basic object of the tax had been satisfied, i.e., that the city did not continue to certify special assessments for the two improvement districts beyond the tax year in which the city had generated sufficient amounts to pay the refunding improvement bonds in full.

Consequently, it is my opinion that under the facts and circumstances presented here, the city of Hillsboro is not obligated to refund any of the surplus monies contained in the improvement funds after the payment of the refunding improvement bonds. My opinion would be different if the city had continued to levy special assessments beyond the year in which it had generated sufficient funds on hand together with any investment earnings sufficient to pay any applicable debt instruments financing the improvements. See 1976 N.D. Op. Att'y Gen. 19 ("[I]f it can be determined by the City that the money on hand for that Special Assessment Project plus interest earned from investing that money will be sufficient to pay the balance of the Special Assessment Warrants to come due over the next few years, the City must stop levying assessments at that time and pay the warrants as they come due with the money on hand plus the interest to be earned from investing that money.").

Because the city has already properly exercised its discretion to transfer the subject surplus funds to the city general fund, any discussion of refunds is now moot.

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Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

jjf/pg