

**2021 SENATE POLITICAL SUBDIVISIONS**

**SB 2241**

# 2021 SENATE STANDING COMMITTEE MINUTES

## Political Subdivisions Committee Sakakawea, State Capitol

SB 2241  
1/29/2021

A BILL for an Act to amend and reenact section 23-01-37 of the North Dakota Century Code, relating to review of health facility construction and renovation projects.

**Chairman Burckhard** opened the hearing on SB 2241 at 8:30 a.m.  
Senators present: Burckhard, Anderson, Lee, Larson, Oban, Kannianen, Oban.

### Discussion Topics:

- Fee comparison of NDDoH V.S. Third Party Reviews
- Flow of work
- Plan reviewers

**[8:32] Senator Jim Roers**, District 46. Introduced SB 2241.

**[8:42] Marnie Walth**, Lobbyist, Sanford Health. Introduced Cole Johnson.

**[8:42] Cole Johnson**, Senior Director, Planning and Construction, Sanford Health. Provided testimony #4193 in favor.

**[8:55] Shelly Peterson**, President, ND Long Term Care Association. Provided oral testimony in favor.

**[9:02] Melissa Hauer**, General Counsel, ND Hospital Association. Testified in favor #4123

**[9:04] Todd Medd**, Principal Architect, JLG Architects. Testified in favor #4161

**[9:25] Dave Nelson**, Director, Life Safety and Construction Division, NDDoH. Provided testimony #4206 in opposition.

**Chairman Burckhard** closed the hearing on SB 2241 at 9:42 AM.

*Patricia Lahr, Committee Clerk*

#4193

**Senate Political Subdivision Committee**  
**Senator Randy A. Burckhard, Chair**  
**Jan. 29, 2021**  
**SB 2241**

Good morning, Chairman Burckhard and members of the committee. My name is Cole Johnson and I am the senior director for Sanford Health Bismarck construction and planning. Thank you for the opportunity to speak with you this morning.

I am here today to ask for your support of SB 2241.

As you might imagine, there are numerous factors that go into planning and constructing healthcare facilities. As one of the most regulated industries in the country, we have multiple federal, state and accreditation-related standards to meet as we work to coordinate design, review, contracting and construction. Add to the mix construction projects that take place in hospital that often operates at capacity and you can imagine the intricate balancing act required to complete projects in a timely manner without unnecessarily displacing patient care.

Interestingly, one of the most difficult pieces of our planning projects is trying to project the N.D. Department of Health Safety and Construction review timeline. The lack of expected review timelines creates challenges in scheduling and estimating projects, resulting in delayed projects, increased cost and delayed access to patient care.

For that reason, we support definitive review process timelines and recommend the following:

- Clarify the phrase “make a determination,” e.g. define it as initial review comments, not final approval for the plans.
- Clarify whether or not the receipt of the check is required for the application to be complete.

We do have some concern about how aggressive the timelines are and whether they are reasonably achievable by NDDoH. Sanford recognizes and appreciates efforts by NDDoH to improve the review process and we are committed to being a good partner to help make this happen.

Sanford also supports the addition of a third-party contractor to review construction and renovation plans. Recognizing there are times when NDDoH is working through several reviews and unable to process the queue of projects waiting, having the option to hire an outside entity to expedite the review process will be an important

tool for healthcare facilities going forward. Though it was announced by NDDoH last summer that this option is available, we have not yet been provided a fee structure. Our understanding is that we will be responsible to pay both the third-party review entity as well as the State; we would encourage the State to consider low State fees given North Dakota's review rates are already higher than other states in which we work.

For comparison, please consider the following average review times and fee structures for North Dakota, South Dakota and Minnesota:

- North Dakota
  - Projects Less than \$1 Million, within 60 days of receipt of complete application.
  - Projects Over \$1 Million, no required review timeline.
  - Fees range from 1% to .25% of project cost.
- South Dakota
  - Typical Review time 2-6 weeks.
  - No Fees for review.
- Minnesota
  - Typical review time 8-10 weeks.
  - Fees range from \$30 - \$4,800.
  - DLI review and fees also required.

Finally, we wish to be on record saying we look forward to NDDoH creating its innovation waiver review process. This requirement was approved during the 2019 legislative session (SB 2317) and has been delayed with good cause, but we would encourage the Department to consider drafting waiver rules as soon as possible. The COVID-19 public health emergency has delayed many construction projects and may also cause us to, at times, rethink how best to design care delivery facilities. When hospitals are able to resume construction and renovation schedules, there may be a surge of review requests and having the innovation waiver option would be one more tool to improve the overall process.

I would be happy to answer any questions. Thank you for your time and your consideration.

Cole Johnson,  
Senior Director  
Planning and Construction Division  
Sanford Health Bismarck  
[Cole.Johnson@SanfordHealth.org](mailto:Cole.Johnson@SanfordHealth.org)  
701-323-5780



**2021 SB 2241**  
**Senate Political Subdivisions Committee**  
**Senator Randy Burckhard, Chairman**  
**January 29, 2021**

Chairman Burckhard and members of the Senate Political Subdivisions Committee, I am Melissa Hauer, General Counsel for the North Dakota Hospital Association (NDHA). I am here to testify in support of Senate Bill 2241 and ask that you give it a Do Pass recommendation.

We support the changes proposed in the bill to help further streamline the review process of health facilities construction and renovation projects by the North Dakota Department of Health. As you may remember, the legislature passed 2019 Senate Bill no. 2317 which made changes to the construction and review process and required an interim study which was conducted by the Health Care Committee. The changes were the result of difficulty some health facilities had in securing reviews of their construction and review projects in a timely manner. The bill required that the Department make a determination on a construction or renovation project of no more than one million dollars within 60 days of receipt of a complete application and gave the Department the ability to approve a request for a waiver of a state law or rule relating to an innovative construction or renovation project if the lack of compliance would not adversely affect health or safety.

I want to acknowledge the work of the legislature to provide additional resources and flexibilities to the Department to deal with an increasing workload in this area. I also want to acknowledge the work that the Department has done to try to improve the process, including contracting with outside firms to perform the construction and renovation reviews and working closely with hospitals. We always feel that there is an open door to communicate about projects or questions that we may have, and we want that collaboration to continue.

The bill before you today will distinguish between large and small construction projects and provide review timelines for each. A determination on a health facility construction or renovation project of no more than five million dollars would need to be completed within 28 days, and of more than five million dollars within 56 days, of receipt of a complete application. The bill will also allow the Department, when conducting a life safety survey for a health construction or renovation project, to contract with a third party to conduct the survey.

Hospitals support this effort to continue improvement of the construction and renovation review process. We will continue to work closely with the Department to improve the process and work out concerns regarding delays in project approvals. We think the bill strikes a good balance between ensuring that we have safe and compliant health facilities as well as timely construction and renovation plan reviews.

In summary, we support the bill as noted and ask that you give it a Do Pass recommendation.

I would be happy to respond to any questions you may have. Thank you.

Respectfully Submitted,

Melissa Hauer, General Counsel/VP  
North Dakota Hospital Association



JLGmed

RE: North Dakota Senate Committee Hearing on SB 2241  
January 29, 2021

#4161

Thank you, Chairman Burckhard and the members of the Committee. I appreciate the opportunity to provide testimony related to Senate Bill 2241 and offer insight into the process of the state Department of Health health care facility review process and implementation from the perspective of the healthcare architect and design team. I am Todd Medd, director of the Healthcare Practice Studio for JLG Architects. JLG is a 150 person architecture firm founded in North Dakota 32 years ago and has grown to 12 offices across the Midwest. As leader of our healthcare studio, JLGmed, I work closely with our clients and lead large teams of architects, medical planners, and engineers to design, document and administer construction on healthcare projects for some of the state's largest health systems. Our projects range from small clinic fit ups and renovations to the design of some of the largest medical centers in our state and region, including work for Sanford Health, Altru Health System, the Anne Carlsen Center, CHI, the VA, and many others. Thank you for the opportunity to come before you today to share thoughts on SB 2241.

North Dakota health care leaders have expressed great interest in expediting the state's review process. Delayed review and approval processes negatively impact health care leaders' ability to manage capital and human resource investments and can delay access to care. I would like to open by acknowledging and commending the work that is done by the State Department of Health Division of Life Safety and Construction. We work very closely with the team to help ensure the health, safety and welfare of the citizens of North Dakota. We always feel that this is an open door to communicate about upcoming projects or questions that we may have regarding specific code related issues. We see the department as a partner in healthcare design and construction and have created a dialogue over the last number of years to find ways to help streamline the process and think outside of the box in innovative ways to help drive forward healthcare in our state. As part of that process, JLG, the office of the Governor, and the NDDoH Division of Life Safety and Construction have been communicating to look at process improvement on both the side of the design teams and health systems as well as the department. I am excited about the engagement of the Legislature, as well, so that we can help move the process forward in a proactive way. Because of this collaboration and this forum that is being created with the engagement of the state legislative bodies, we are very excited by the steps that are being taken and the future

opportunity for process improvement that will help revolutionize healthcare and healthcare design in our state, especially while we are in the midst of a pandemic finding ways to create more efficiency for our healthcare entities in the state is paramount.

### **Design and Review Process Overview**

I am not sure how familiar this committee is with the process that is currently in place, but I felt it was prudent to create some context about how we execute a project review with the North Dakota Department of Health. This process typically starts at the beginning of the design of a project with a meeting with the NDDoH team to give them a heads up on the project, the scale, scope and schedule. The department will only review projects that fall under their jurisdiction, these projects include hospitals, nursing facilities, surgical centers, etc. and includes projects that range from small change of use projects and renovations in existing hospitals all the way to new hospitals and nursing homes. Projects like clinics and other outpatient facilities that are not required to comply with the Facility Guidelines Institute Guidelines for Design and Construction (FGI) and the National Fire Protection Association Life Safety Code (NFPA) are not reviewed at the state level and are rather handled only by the local authority having jurisdiction in the community that the facility is planned.

Once the project design and documentation phases are complete, which is a process that can take anywhere from 8 weeks for a small project to nearly a year or more for a large hospital, the set of contract documents, including all drawings and specifications, is submitted to the State Department of Health for review, and the project is put into the cue to await the review period starting. The length of time that it takes to complete a review is dependent on the scale and complexity of the project as well as the length of the drawing review cue. As you are aware, the department is now complying with the stipulation of the previous SB 2317 which requires review of small projects under \$1 million to be reviewed within 60 days. In our experience, the review period for medium sized projects to the large hospital project will be between 8 months and a year. This is where our clients struggle the most, as we work with our teams to build a schedule, we need to accommodate a lengthy review period that directly impacts the length of time it takes to build a new facility, not only costing the health system revenue but also delaying the patients access to a new or renovated facility. In addition, these delays while the project is being reviewed have financial implications for our clients, we are seeing escalation of construction costs to be in the range of 2-4% annually, meaning that a yearlong review process could cost a client building a \$100M facility between \$2 and 4M in additional construction cost. We have seen that the



NDDoH Division of Life Safety and Construction has been able to comply with SB 2317 and have been reviewing small projects per that directive of 60 days, which has been helpful. What I am not privy to, however, is if that change has caused some operational challenges to the Division of Life Safety and Construction that could impact review times of the medium and large-scale projects as they have to change their focus to jump into these smaller projects as they are submitted.

Once the initial review period is completed, the design team responds to all comments and questions that the NDDoH Division of Life Safety and Construction has on the project. The number of questions or clarifications can range from as few as 2 or 3 on small and less complex projects and can be as many as hundreds of comments on large projects. The challenge with building codes, much like laws, is in the interpretation of the intent and execution of the code language. Most items are often related to how we interpret code as we complete the design of the facility compared to how the plan review team interprets the code, however we work through these items and not only respond to each comment and question but update drawings accordingly. We will then resubmit the drawings after this secondary process. Once all items are finalized, a permit will be issued and construction on that scope of work can commence. As construction work progresses, JLG and our design team as well as our client representatives along with their project contractor work closely with the NDDOH field inspectors at the site of construction to verify that what is built complies with the construction documents and the intent of the code. It is a very collaborative process during construction.

## **Case Studies**

I feel that part of the frustration on the part of design teams and health systems is that we have seen this process be executed more efficiently in other states. For instance, in Minnesota design teams are seeing on average an 8-10-week turnaround for large healthcare project reviews. In addition, they have come to expect conversations and meetings to prepare them for the review during the design phase and they seek a collaborative approach to dealing with code interpretation and finding ways to meet the intent of the code through innovative means. In South Dakota the average review period on all projects is between 4 to 6 weeks, again, much of the efficiency is found in a couple of strategies, one is the number of meetings during the design phase that the design team will have with the plans reviewer as well as a dispersed model of having inspectors more strategically situated around the state for easy access for architects, engineers as well as health systems. We have not seen that South Dakota has an RFP process to outsource to outside vendors.

Regarding this, it is our understanding that in Colorado, they tend to RFP many of the large projects, allowing them to have a much smaller department while still being able to deal with large projects as they come into the state for review.

### **Thoughts on SB 2241**

Specifically related to SB 2241, this bill aims to create more defined and more aggressive time frames for project reviews. The bill proposes reducing the current 60 day limit for smaller projects to 28 days and increasing the scale of the projects to \$5 million construction cost and it adds a 56 day limit for review period for all other larger projects. While I feel that these time frames are aggressive, I support creating more rapid and defined review periods. I would request though that the committee investigate clarifying the requirements of this review period; as I noted above, the review is usually a multistep process that includes an initial review and one or more subsequent submittals that address comments from the NDDOH. In order to create clarity, it would be important to define this multi-phase process of review in the bill. As you have heard based on case studies from other states, the timeframe for review proposed is aggressive but seems to be in line with other states and similar jurisdictions. The clarity that such limits would create for clients would allow for much more accurate capital and project planning as well as overall capital outlays for projects. I also strongly support the use of innovation waivers that allow for deviating from the code when it does not impact health and safety of occupants, especially as we come out of a long pandemic that will cause many design and healthcare delivery innovations and changes. This process will allow healthcare providers to be more nimble in their delivery of care as changing codes is a very slow process that can take many years.

### **What is working and opportunities going forward**

As mentioned previously, I believe that the key to better communication, shorter review times, and better alignment between design team and the NDDoH Division of Life Safety and Construction is the ability to continue to have an open dialogue and communication with the State Department of Health. In fact, we have discussed with the NDDoH looking into a process where there are opportunities during the design phases where the team sits together and does a page turn, thus allowing the reviewers much more insight into the project, why we have interpreted code language a certain way, and allows for much greater understanding of the design and context prior to their official review. This collaborative approach would allow the NDDoH team to better understand the project earlier as well as raise concerns during design so that the design team can implement changes into the drawings during the design phase prior to the official review, thereby streamlining the review process.

Recently, we have seen value in implementing such practices as the posting of the Project Status Summary online, as this allows the team and client to not only plan for project review times, but also to understand where our project stands in the cue. As noted above, we find great value in the process of having an Innovation Waiver. This really has gotten our end user clinician clients excited as it allows them to deliver care in a way that meets the intent of code while building in some options for how they innovate based on changing best practices that are not always reflected in the code language. As we all know, this is not always a straightforward process, but investigating how other states and municipalities have done this can help us all create a process that is more streamlined but also has the necessary oversight of this complex review task. Finally, I wanted to commend the department for having the onsite inspection process in place on these large projects, our team has truly seen the value of having a member of the team working with us and the contractor in the field to identify concerns or issues as the building is being constructed that we can change or adjust before the project gets too far along to do so in an economical manner.

## **Conclusion**

I would like to thank Chairman Burckhard and the members of the Committee for this opportunity to engage in this very important dialogue. I am excited about the continued dialogue in how we can work together with the state to continue to improve this process. I support this bill with the notes and comments previously mentioned. In the end, we are all teammates in a process aimed at delivering quality projects that improve access and quality of healthcare to our communities in North Dakota that absolutely comply with our primary obligation as an architect and design professional which is to ensure the health, safety, and welfare of the occupants of our buildings. Thank you, and I would be open to answering any questions that you may have today.

**Senate Bill 2241**  
**Political Subdivisions**  
**January 29, 2021, 8:30 a.m.**

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Good morning, Chairman Burckhard and members of the Political Subdivisions Committee. My name is Dave Nelson and I serve as Director of the Life Safety and Construction (LSC) Division of the North Dakota Department of Health (NDDoH). I am here to provide testimony in opposition of Senate Bill No. 2241. The bill establishes deadlines for the review of health facility construction and renovation projects.

In 2019, the North Dakota State Legislature passed a law requiring the NDDoH to complete review of health facility construction or renovation projects costing less than one million dollars within sixty days of the receipt of a complete application. Prior to implementing this new requirement, the NDDoH reviewed plans on a first-come, first-served basis. The 2019 small project prioritization requirement forced larger projects to be delayed while smaller projects were completed. Passage of this bill would cause further delays of large projects because it expands the number of prioritized small projects to those with costs less than five million dollars.

The LSC Division became fully staffed on October 5, 2020. Since that time, projects received that were less than five million dollars have waited for review an average of 32 days. Completion of plan review for these projects has ranged from nine to 38 days. The LSC Division has no control over when plans are submitted, the number of projects submitted or their scope. Our goal is to complete high quality, timely reviews. Implementation of required deadlines that ignore the quantity and scope of projects, but mandate a specific completion time, will result in rushed, error-prone reviews.

During the 2019 – 2021 biennium, in effort to provide options for providers, the NDDoH developed the ability for licensed providers to utilize third-party plan reviewers instead of the NDDoH. A list of state-approved contractors has been created and medical facility operators were notified of this service. The current arrangement requires the licensed provider to contract directly with the third-party plan reviewer. To date, no third-party reviewers have been utilized.

While the option to utilize third-party reviewers is included in SB 2241, this provision is already in place and an available option.

Medical facilities are complex and have very specific requirements. In many cases, patients and residents occupying these buildings are not ambulatory. Unlike many other structures designed to provide rapid exit from the building during times of danger, medical facilities must have floor plans, building assemblies and fire protection systems designed to protect non-ambulatory residents and patients in place while they wait for assistance with their exit. In most cases, medical facilities can not be rapidly evacuated. Medical facility plans need thorough review prior to construction. They need to be expertly inspected during construction to assure these standards are met. The time and effort the LSC Division spends in conducting high-quality plan reviews and inspections minimizes costly changes and delays in opening facilities and enhances life safety for all who occupy these facilities.

The NDDoH is concerned that the passage of this bill will have unintended consequences that will adversely affect the health and safety of the patients, residents and staff occupying medical facilities. For these reasons, we ask you to oppose the passage of Senate Bill No. 2241. This concludes my testimony. I am happy to answer any questions you may have.

# 2021 SENATE STANDING COMMITTEE MINUTES

## Political Subdivisions Committee Sakakawea, State Capitol

SB 2241  
2/4/2021

Relating to review of health facility construction and renovation projects.
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**Chairman Burckhard** opened the committee work on SB 2241 at 8:30 a.m.  
Senators present: **Burckhard, Anderson, Lee, Larson, Oban, Kannianen, Oban.**

### Discussion Topics:

- Need more information from the Dept of Health

**Senator Oban** stated that she and **Senator Kannianen** would like to meet with the Dept. of Health about contracting with a third party.

**Senator Burckhard** stated they'll recess until they have more information.

**Senator Burckhard** adjourned the hearing at 2:56 PM.

*Rose Laning for Patricia Lahr, Committee Clerk*

# 2021 SENATE STANDING COMMITTEE MINUTES

## Political Subdivisions Committee Sakakawea, State Capitol

SB 2241  
2/11/2021

A BILL for an Act to amend and reenact section 23-01-37 of the North Dakota Century Code, relating to review of health facility construction and renovation projects.

**Chairman Burckhard** opened Committee Work on SB 2241 at 2:30 PM  
Senators present: Burckhard, Anderson, Lee, Larson, Oban, Kannianen, Oban.

### Discussion Topics:

- Fee comparison
- Third Party Reviews
- Staff levels needed for plan reviewers

**[3:18] Senator Oban** motion to ADOPT the Amendment [LC 21.0876.02002]

**[3:25] Senator Heitkamp** seconded the motion

**[3:25]** Vote Passed 7-0-0

Vote to Amend SB 2241	Vote
Senator Randy A. Burckhard	Y
Senator Howard C. Anderson, Jr.	Y
Senator Jason G. Heitkamp	Y
Senator Jordan Kannianen	Y
Senator Diane Larson	Y
Senator Judy Lee	Y
Senator Erin Oban	Y

**[3:26] Senator Anderson** Moved a DO PASS AS AMENDED

**[3:26] Senator Oban** Seconded

**[3:26]** Vote Passed 7-0-0

**[3:26] Senator Oban** Carried the Bill

DO PASS AS AMENDED Vote on SB 2241	Vote
Senator Randy A. Burckhard	Y
Senator Howard C. Anderson, Jr.	Y
Senator Jason G. Heitkamp	Y
Senator Jordan Kannianen	Y
Senator Diane Larson	Y
Senator Judy Lee	Y
Senator Erin Oban	Y

**[3:27]** Meeting Adjourned

*Patricia Lahr, Committee Clerk*



February 9, 2021

SK  
2/11  
182

PROPOSED AMENDMENTS TO SENATE BILL NO. 2241

Page 1, line 2, after "projects" insert "; and to provide a continuing appropriation"

Page 1, line 7, after "**waivers**" insert "**- Continuing appropriation**"

Page 1, line 11, after the period insert:

"a."

Page 1, line 11, after the underscored comma insert "if"

Page 1, line 11, remove "may"

Page 1, line 12, replace "contract with" with "uses"

Page 1, line 12, after "plans" insert ", the licensed provider shall negotiate and approve the price of the review services, the department shall contract with the third party, and the licensed provider shall pay the department for the review services."

- b. The department shall deposit in the department's operating account any payments received from a licensed provider under subdivision a. There is appropriated to the department on a continuing basis any funds deposited under subdivision a for the purpose of paying a third-party reviewer"

Page 1, line 17, overstrike the first "a" and insert immediately thereafter "an initial"

Page 1, line 18, replace the underscored semicolon with an underscored colon

Page 1, line 19, remove the overstrike over "one"

Page 1, line 19, remove "five"

Page 1, line 20, remove "and"

Page 1, line 21, replace "five" with "one"

Page 1, line 21, after "dollars" insert "but no more than four million dollars"

Page 1, line 21, replace "fifty-six" with "forty-two"

Page 1, line 22, after "application" insert "; and

- c. More than four million dollars within fifty-six days of receipt of a complete application"

Page 2, line 1, after "4." insert "Following an initial determination under subsection 3, the state department of health shall make any followup determination on a construction, renovation, or construction and renovation project within fourteen days of receipt of the licensed provider's response to the initial determination."

5."

Page 2, line 4, overstrike "5." and insert immediately thereafter "6."



Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**SB 2241: Political Subdivisions Committee (Sen. Burckhard, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2241 was placed on the Sixth order on the calendar.

Page 1, line 2, after "projects" insert "; and to provide a continuing appropriation"

Page 1, line 7, after "**waivers**" insert "**- Continuing appropriation**"

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Page 2, line 4, overstrike "5." and insert immediately thereafter "6."

Renumber accordingly

**2021 HOUSE HUMAN SERVICES**

**SB 2241**

# 2021 HOUSE STANDING COMMITTEE MINUTES

## Human Services Committee Pioneer Room, State Capitol

SB 2241  
3/10/2021 220 PM

Relating to review of health facility construction and renovation projects; and to provide a continuing appropriation

**Chairman Weisz** opened the committee hearing at 2:20 p.m.

Representatives	Attendance
Representative Robin Weisz	P
Representative Karen M. Rohr	P
Representative Mike Beltz	P
Representative Chuck Damschen	P
Representative Bill Devlin	P
Representative Gretchen Dobervich	P
Representative Clayton Fegley	P
Representative Dwight Kiefert	P
Representative Todd Porter	P
Representative Matthew Ruby	P
Representative Mary Schneider	P
Representative Kathy Skroch	P
Representative Bill Tveit	P
Representative Greg Westlind	P

### Discussion Topics:

- Definitive review process timelines
- Third-party contractor
- Innovation waiver review process

**Sen. Jim Roers, District 46 (2:20)** introduced the bill.

**Dave Nelson, Director Life Safety and Construction (2:29)** testified in favor and submitted testimony #10560.

**Marnie Walth, Director Strategic Planning & Public Policy Sanford Health (2:34)** introduced Cole Johnson, Construction Executive Director Sanford Health

**Cole Johnson, Construction Executive Director Sanford Health (2:34)** testified in favor and submitted testimony #8590.

**Shelly Peterson, North Dakota Long Term Care Association (2:39)** testified in favor.

**Todd Medd, Healthcare Practice Studio Leader & Principal Architect (2:42)** testified in favor and submitted testimony #8565.

House Human Services Committee

SB 2241

3/10/2021 2:20 PM

Page 2

**Melissa Hauer, General Counsel/VP North Dakota Hospital Association (2:49)** testified in favor and submitted testimony #8569.

**Chairman Weisz** adjourned at 2:50 p.m.

*Tamara Krause, Committee Clerk*

Good morning, Chairman Weisz and members of the Human Services Committee. My name is Dave Nelson and I serve as Director of the Life Safety and Construction (LSC) Division of the North Dakota Department of Health (NDDoH). I am here to provide testimony in support of Senate Bill No. 2241. This bill establishes timelines for the review of health facility construction and renovation projects based on the cost of the project. Because third-party reviewers can be utilized when workload exceeds the capacity of our existing staff, we believe we can achieve the review time frames required in the bill.

Since the beginning of the biennium, sixty-one (61) projects with a budget less than one-million dollars have been submitted and approved for construction by LSC. We have met the required 60 day review time for all submissions. The average time from receipt of a complete application to the first determination letter was twenty-seven (27) working days. Fifteen (15) of these projects exceeded thirty (30) working days. The maximum review period was forty-four (44) working days.

Maintaining full staffing has been challenging. Full staffing was achieved on October 5, 2020 with four (4) full-time equivalent (FTE) plan reviewers.

During the 2019 – 2021 biennium, in effort to provide options for providers, the NDDoH developed the ability for licensed providers to utilize third-party plan reviewers instead of the NDDoH. A list of state-approved contractors has been created and medical facility operators were notified of this service. The current arrangement requires the licensed provider to contract directly with the third-party plan reviewer. That option has been available since August, 2020. To date, no third-party reviewers have been utilized. The provision in this new bill allows LSC the flexibility to continue to engage a third-party reviewer if our work load or the scope of projects being reviewed does not permit us to meet the specified timelines. A continuing appropriation has been added to the legislation to allow for the Department to pass through payment from the health care facility to the third party entity.

This concludes my testimony. I am happy to answer any questions you may have.

#8590

**House Human Services Committee**  
**Representative Robin Weisz, Chair**  
**Mar. 10, 2021**  
**SB 2241**

Good afternoon, Chairman Weisz and members of the committee. My name is Cole Johnson and I am the senior director for Sanford Health Bismarck construction and planning. Thank you for the opportunity to speak with you this morning.

I am here today to ask for your support of SB 2241.

As you might imagine, there are numerous factors that go into planning and constructing healthcare facilities. As one of the most regulated industries in the country, we have multiple federal, state and accreditation-related standards to meet as we work to coordinate design, review, contracting and construction. Add to the mix construction projects that take place in hospital that often operates at capacity and you can imagine the intricate balancing act required to complete projects in a timely manner without unnecessarily displacing patient care.

Interestingly, one of the most difficult pieces of our planning projects is trying to project the N.D. Department of Health Safety and Construction review timeline. The lack of expected review timelines creates challenges in scheduling and estimating projects, resulting in delayed projects, increased cost and delayed access to patient care.

For that reason, we support definitive review process timelines.

Sanford also supports the addition of a third-party contractor to review construction and renovation plans. Recognizing there are times when NDDoH is working through several reviews and unable to process the queue of projects waiting, having the option to hire an outside entity to expedite the review process will be an important tool for healthcare facilities going forward.

For comparison, please consider the following average review times and fee structures for North Dakota, South Dakota and Minnesota:

- North Dakota
  - Projects Less than \$1 Million, within 60 days of receipt of complete application.
  - Projects Over \$1 Million, no required review timeline.

- Fees range from 1% to .25% of project cost.
- South Dakota
  - Typical Review time 2-6 weeks.
  - No Fees for review.
- Minnesota
  - Typical review time 8-10 weeks.
  - Fees range from \$30 - \$4,800.
  - DLI review and fees also required.

Finally, we wish to be on record saying we look forward to NDDoH creating its innovation waiver review process. This requirement was approved during the 2019 legislative session (SB 2317) and has been delayed with good cause, but we would encourage the Department to consider drafting waiver rules as soon as possible. The COVID-19 public health emergency has delayed many construction projects and may also cause us to, at times, rethink how best to design care delivery facilities. When hospitals are able to resume construction and renovation schedules, there may be a surge of review requests and having the innovation waiver option would be one more tool to improve the overall process.

I would be happy to answer any questions. Thank you for your time and your consideration.

Cole Johnson,  
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Planning and Construction Division  
Sanford Health Bismarck  
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**JLGmed**

RE: North Dakota House Human Services Committee Hearing on SB 2241

March 10, 2021

Thank you, Chairman Weisz and the members of the Committee. I appreciate the opportunity to provide testimony related to Senate Bill 2241 and offer insight into the process of the state Department of Health facility review process and implementation from the perspective of the healthcare architect. I am Todd Medd, director of the Healthcare Practice Studio for JLG Architects. JLG is a 150 person architecture firm founded in North Dakota 32 years ago and has grown to 12 offices across the Midwest. As leader of our healthcare studio, JLGmed, I work closely with our clients and lead teams of architects, medical planners, and engineers to design, document and administer construction on healthcare projects for some of the state's largest health systems. Our projects range from small clinic fit ups and renovations to the design of some of the largest medical centers in our region, including work for Sanford Health, Altru Health System, the Anne Carlsen Center, and many others. Thank you for the opportunity to come before you today.

North Dakota health care leaders have expressed great interest in expediting the state's review process. Delayed review and approval processes impact health care leaders' ability to manage capital and human resource investments and can delay access to care. I would like to open by acknowledging and commending the work that is done by the State Department of Health Division of Life Safety and Construction. We work very closely with the team to help ensure the health, safety and welfare of the citizens of North Dakota. We feel that there is an open door to communicate about upcoming projects or questions that we may have regarding specific code related issues. We see the department as a partner in healthcare design and construction and have created a dialogue over the years to find ways to help streamline the process and think outside of the box in innovative ways to help drive forward healthcare in our state. Because of the engagement of the state legislative bodies, we are very excited by the steps that are being taken and the future opportunity for process improvement that will help revolutionize healthcare and healthcare design in our state, especially while in the midst of a pandemic, finding ways to create more efficiency for our healthcare entities in the state is imperative.

## Design and Review Process Overview

I feel that it was prudent to create some brief context about how we have traditionally executed a project review with the North Dakota Department of Health. This process typically starts at the beginning of the design of a project with a meeting with the NDDoH team to give them a heads up on the project, the scale, scope and schedule. The department will only review projects that fall under their jurisdiction, these projects include hospitals, nursing facilities, etc. and includes projects that range from small change of use projects and renovations in existing hospitals all the way to new hospitals and nursing homes that are required to comply with the Facility Guidelines Institute Guidelines for Design and Construction (FGI) and the National Fire Protection Association Life Safety Code (NFPA) per the Century Code.

Once the project design and documentation phases are complete, which is a process between our team and the health system that takes anywhere from 8 weeks for a small project to nearly a year or more for a large hospital, the set of contract documents, including all drawings and specifications, is submitted to the State Department of Health for review. The length of time that it takes to complete a review is dependent on the scale and complexity of the project as well as the length of the drawing review queue but has been as long as 8 months to a year. Once the initial review period is completed, the design team responds to all comments and questions that the NDDoH Division of Life Safety and Construction has on the project. The number of questions or clarifications can range from just a few on less complex projects while there can be hundreds of comments on large projects. The design team will work through these items and not only respond to each comment and question but update drawings accordingly. We will then resubmit the drawings after this secondary process. Once all items are finalized, a permit will be issued and construction on that scope of work can commence. As construction work progresses, JLG and our design team as well as our client representatives along with their project contractor work closely with the NDDOH field inspectors at the site of construction to verify that what is built complies with the construction documents and the intent of the code. It is a very collaborative process during construction.

## SB 2241

Specifically related to SB 2241, this bill aims to create more defined and aggressive time frames for project reviews that will bring review times and processes much more in line with our neighboring states. The bill proposes reducing the current 60 day limit for smaller projects under a million dollars to 28 days. For projects that are between one million dollars and four million dollars, projects will be reviewed within 42 days and for projects over four million dollars within 56 days. I support creating more rapid and defined review periods. The timeframe for review proposed is aggressive but is much more in line

with other states and similar jurisdictions. The clarity that such limits would create for clients would allow for much more accurate capital and project planning for projects.

### **What is working and opportunities going forward**

As mentioned previously, I believe that the key to better communication, shorter review times, and better alignment between design team and the NDDoH Division of Life Safety and Construction is the ability to continue to have an open dialogue and communication with the State Department of Health. In fact, we have discussed with the NDDoH looking into a process where there are opportunities during the design phases where the team sits together and does a page turn, thus allowing the reviewers much more insight into the project, why we have interpreted code language a certain way, and allows for much greater understanding of the design and context prior to their official review. This collaborative approach would allow the NDDoH team to better understand the project earlier as well as raise concerns during design so that the design team can implement changes into the drawings during the design phase prior to the official review, thereby streamlining the review process.

As noted above, we find great value in the process of having an Innovation Waiver. This really has gotten our end user clinician clients excited as it allows them to deliver care in a way that meets the intent of code while building in some options for how they innovate based on changing best practices that are not always reflected in the code language. As we all know, this is not always a straightforward process, but investigating how other states and municipalities have done this can help us all create a process that is more streamlined but also has the necessary oversight of this complex review task. Finally, I wanted to commend the department for having the onsite inspection process in place on these large projects, our team has truly seen the value of having a member of the team working with us and the contractor in the field to identify concerns or issues as the building is being constructed that we can change or adjust before the project gets too far along to do so in an economical manner.

### **Conclusion**

I would like to thank you, Chairman, and the members of the Committee for this opportunity to engage in this very important dialogue. I am excited about the continued dialogue in how we can work together with the state to continue to improve this process. I support this bill with the comments previously mentioned. We are all teammates in a process aimed at delivering quality projects that improve access and quality of healthcare to our communities in North Dakota. Thank you.



**2021 SB 2241**  
**House Human Services Committee**  
**Representative Robin Weisz, Chairman**  
**March 10, 2021**

Chairman Weisz and members of the House Human Services Committee, I am Melissa Hauer, General Counsel for the North Dakota Hospital Association (NDHA). I testify in support of Engrossed Senate Bill 2241 and ask that you give it a Do Pass recommendation.

NDHA supports the changes proposed in the bill to help further streamline the review process of health facilities construction and renovation projects by the North Dakota Department of Health. As you may remember, the legislature passed 2019 Senate Bill no. 2317 which made changes to the construction and review process and required an interim study, which was conducted by the Health Care Committee. The changes were made because of the difficulty some health facilities had in securing reviews of their construction and review projects in a timely manner. That bill required the Department to make a determination on a construction or renovation project of no more than one million dollars within 60 days of receipt of a complete application and gave the Department the ability to approve a request for a waiver of a state law or rule relating to an innovative construction or renovation project if the lack of compliance would not adversely affect health or safety.

I want to acknowledge the work of the legislature to provide additional resources and flexibilities to the Department to deal with an increasing workload in this area. I also want to acknowledge the work that the Department has done to try to improve the process, including contracting with outside firms to perform the construction and renovation reviews and working closely with hospitals. We always feel that there is an open door to communicate about projects or questions that we may have, and we want that collaboration to continue.

The bill before you today will build on the work done last session to improve the process. It distinguishes between large and small construction projects and provide review timelines for each. An initial determination by the Department on a health facility construction or renovation project of no more than one million dollars would need to be completed within 28 days, and of more than one million but no more than four million dollars within 42 days, and of more than four million dollars within 56 days, of receipt of a complete application. The bill provides that, following that initial determination, the Department must make any follow up determination on the project within 14 days of receipt of the licensed provider's response to the initial determination.

The bill also allows the option for the licensed provider to have a third party review the construction and renovation plans. The licensed provider will be required to negotiate and approve the price for those review services. The Department would then contract with the third party and the licensed provider would pay the Department for the review services.

Hospitals support this effort to continue improvement of the construction and renovation review process. We will continue to work closely with the Department to improve the process and work out concerns regarding delays in project approvals. We think the bill strikes a good balance between ensuring that we have safe and compliant health facilities as well as timely construction and renovation plan reviews.

In summary, we support the bill as noted and ask that you give it a Do Pass recommendation.

I would be happy to respond to any questions you may have. Thank you.

Respectfully Submitted,

Melissa Hauer, General Counsel/VP  
North Dakota Hospital Association

# 2021 HOUSE STANDING COMMITTEE MINUTES

## Human Services Committee Pioneer Room, State Capitol

SB 2241  
3/10/2021 3:32 PM

Relating to review of health facility construction and renovation projects; and to provide a continuing appropriation

**Chairman Weisz** opened the committee meeting 3:32 p.m.

Representatives	Attendance
Representative Robin Weisz	P
Representative Karen M. Rohr	P
Representative Mike Beltz	P
Representative Chuck Damschen	P
Representative Bill Devlin	P
Representative Gretchen Dobervich	A
Representative Clayton Fegley	P
Representative Dwight Kiefert	P
Representative Todd Porter	P
Representative Matthew Ruby	A
Representative Mary Schneider	P
Representative Kathy Skroch	P
Representative Bill Tveit	P
Representative Greg Westlind	P

### Discussion Topics:

- Full staff
- Third party aspect
- Timelines

**Rep. Karen Rohr (3:33)** moved **Do Pass**

**Rep. Kathy Skroch (3:33)** second

Representatives	Vote
Representative Robin Weisz	Y
Representative Karen M. Rohr	Y
Representative Mike Beltz	Y
Representative Chuck Damschen	Y
Representative Bill Devlin	Y
Representative Gretchen Dobervich	A
Representative Clayton Fegley	Y
Representative Dwight Kiefert	Y
Representative Todd Porter	Y
Representative Matthew Ruby	A
Representative Mary Schneider	Y

Representative Kathy Skroch	Y
Representative Bill Tveit	Y
Representative Greg Westlind	Y

**Motion Carried Do Pass 12-0-2**

**Bill Carrier:** Rep. Bill Devlin

**Chairman Weisz** adjourned at 3:37 p.m.

*Tamara Krause, Committee Clerk*

**REPORT OF STANDING COMMITTEE**

**SB 2241**, as engrossed: **Human Services Committee (Rep. Weisz, Chairman)**  
recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING).  
Engrossed SB 2241 was placed on the Fourteenth order on the calendar.