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2003 SENATE POLITICAL SUBDIVISIONS

SB 2284

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10/21/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2284

Senate Political Subdivisions Committee

☐ Conference Committee

Hearing Date January ³¹~~21~~, 2003

Tape Number	Side A	Side B	Meter #
1	X		0 - End
2		X	0- 330
Committee Clerk Signature <i>Shirley Long</i>			

Minutes:

CHAIRMAN COOK called the committee to order. All senators (6) present.

CHAIRMAN COOK opened the hearing on SB 2284 relating to the duty of a seller to provide notice of unpaid special assessments to the buyer of real property.

SENATOR HEITKAMP introduced SB 2284. This bill comes to the committee as a concept and hopefully a solution to a problem. There are people who have been concerned as to how this works when it comes to a city and what kind of recourse they have in regards to development, special assessments and the interest that they are charged, in regards to the transaction of changing ownership of homes. There are some real fairness issues here for the consumer. The consumers would like to express their concerns and how they would like to see the law changed in terms of helping them be safeguarded against the potential of being overcharged or being surprised when you get the special assessments

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Deanne Waller
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10/21/03
Date

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Senate Political Subdivisions Committee

Bill/Resolution Number SB 2284

Hearing Date January 31, 2003

SENATOR COOK Basically this bill does two things. Ten percent of add on fees that right now are determined by the entity that levies the special assessments. At the end of the bill a section is added that gives some rights to the buyer if he buys property and was not aware that the special assessments were unpaid.

Testimony in support of SB 2284

Dave Engebretson, Fargo, ND spoke in favor of SB 2284. He feels the cities are not competitive with the real market when it comes to charging interest rates. The other concern is the thirty five percent that is added on to the cost of the project. He feels a private engineer would do the work a lot cheaper. He thinks the cities need limits and are charging extra things that don't belong in the special assessments. Realtors need to tell the home buyer how much interest is being charged on the special assessments up front. We need help from the state legislature because the people in Fargo are not helping.

Mike Williams, Fargo, ND, Testified in support of the bill and feels no one is speaking for the home owners. Specials can be increased up to twenty five percent. The realtors need too give home owner as much information as possible when buying a home.

SENATOR COOK made a comment for Mr Williams and Mr Engebretson for their own information. Last session we put in a study resolution to study the entire process as how special assessments are levied in the state of North Dakota. Fargo is not the only ones we hear concerns about special assessments. We are well aware of challenges that are being faced with special assessments. He made a suggestion that they might like to look at SB 2368 which also looks at this issue this year.

Testimony in Opposition

Page 3
Senate Political Subdivisions Committee
Bill/Resolution Number SB 2284
Hearing Date January 31, 2003

Jerry Hjelmstad, League of Cities, testified in opposition of SB 2284 (See attached testimony)

Jean Rayl, Fargo City Commissioner, testified against SB 2284. (see attached testimony)

Jim Gilmore, Planning Director of City of Fargo, explained a couple of questions. The developers can put in all the infrastructure including the underground water. They do have to do it to city specification.

Jim Schlosser, North Dakota Bankers Association opposed SB 2284. (See attached Testimony)

John Schmisek, City of Grand Forks testified against SB 2284. (See attached Testimony)

James Horner, Lobbyist for the North Dakota Land Title Association urged a do not pass on SB 2284. (See attached testimony)

Dennis Schlenker, City of Bismarck, Testified in opposition of SB 2284. (See attached testimony)

No further testimony.

CHAIRMAN COOK closed the hearing on SB 2284

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2284

Senate Political Subdivisions Committee

☐ Conference Committee

Hearing Date February 13, 2003 (Discussion and Action)

Tape Number	Side A	Side B	Meter #
1	X		1371 - 1698
Committee Clerk Signature <i>Shirley Borg</i>			

Minutes:

CHAIRMAN COOK opened the hearing on SB 2284. All senators (6) were present.

CHAIRMAN COOK recalls that this is the bill that put a limit of ten per cent of what cities may add as fees to the total cost of construction. It also had a change at the very end of the bill which is a buyers right to rescind for failure to provide notice of unpaid special assessments. Title Insurance would not be written if that last section was to be put on and loans probably would not be given. This bill came out of Fargo to address some concerns in Fargo. There is another bill that deals with this same topic in a more agreeable manner.

SENATOR JUDY LEE moved a **DO NOT PASS** on SB 2284.

SENATOR SYVERSON seconded the motion.

Roll Call Vote: Yes 6 No 0 Absent 0

Carrier: **SENATOR COOK**

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Dan Wall
Operator's Signature

12/21/03
Date

FISCAL NOTE STATEMENT

Senate Bill or Resolution No. 2284

This bill or resolution appears to affect revenues, expenditures, or fiscal liability of counties, cities, or school districts. However, no state agency has primary responsibility for compiling and maintaining the information necessary for the proper preparation of a fiscal note regarding this bill or resolution. Pursuant to Joint Rule 502, this statement meets the fiscal note requirement.

John Walstad
Code Revisor

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10/21/03
Date

Date: 2-13-03
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB ~~2280~~ 2284

Senate Political Subdivisions Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Senator Judy Lee Seconded By Senator Syverson

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

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Cook

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

DONE
2-13-02

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Deanne Wallis
Operator's Signature

12/21/03
Date

REPORT OF STANDING COMMITTEE (410)
February 13, 2003 1:55 p.m.

Module No: SR-28-2601
Carrier: Cook
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2284: Political Subdivisions Committee (Sen. Cook, Chairman) recommends DO NOT PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2284 was placed on the Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-28-2601

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10/21/03
Date

2003 TESTIMONY

SB 2284

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Deanna D. Waller
Operator's Signature

10/21/03
Date

To: Senate Political Subdivisions Committee
From: North Dakota League of Cities
Date: January 31, 2003
Re: Senate Bill No. 2284

Mr. Chairman and members of the Senate Political Subdivisions Committee, my name is Jerry Hjelmstad and I am here on behalf of the North Dakota League of Cities in opposition to Senate Bill 2284.

This bill sets a limitation on the "additional costs" associated with a special assessment project of ten percent of the construction costs under the contract. Cities now add these additional costs, which include such things as engineering costs, attorneys' fees, and publication costs into the project cost spread by the special assessment commission. Other cities, based on years of experience with various types of projects, add in a fixed percentage to cover these costs.

Using either actual costs or estimated costs, this percentage is often well over the ten percent limitation. Small cities without full-time staff may end up exceeding that limitation in contracting for engineering services alone. Preventing a city from being able to recover these costs through special assessments would put a severe limitation on the ability of cities to complete these types of projects.

A couple of weeks ago, this committee held a hearing on Senate Bill No. 2053 which requires the engineer's report for a special assessment project to provide "a separate statement of all other items of estimated cost" not included under the estimated cost of the work for which proposals are advertised. This bill has passed the Senate. This separate statement will give the public information about the costs referred to in Senate Bill 2284. They will not be "hidden costs". They will be part of the required engineer's report.

Additionally, Senate Bill 2284 reduces the special assessment interest rate that cities may charge from one and one-half percentage points to only one-half of one percentage point above the average net annual interest on bonds for the payment of which they are pledged. This leaves very little margin since not all certified special assessments are paid in full every year.

We ask that you continue to give cities the flexibility needed to provide for the improvements and development brought about through special assessments and give a "do not pass" recommendation to Senate Bill 2284.

City of Fargo Testimony on Legislative Bill 2284
Senator D. Cook, Chair
Political Subdivision Committee
January 29, 2003

My name is Jean Rayl, City Commissioner, representing the City of Fargo. The City of Fargo along with several other Cities have previously testified on September 25, 2002 to the Legislative Council's Taxation Committee on bills introduced to remove or reduce fees charged to special assessment districts. The entire special assessment process is currently being evaluated by a special task force appointed by the Mayor, which I chair to evaluate issues that have emerged in this area.

Special assessments are the financing tool of choice for essential infrastructure projects, especially in North Dakota. Benefits relating to this method of financing include utilization of lower interest rate tax exempt financing, and the ability of a variety of developers to participate in the development process. The use of special assessment financing is a pro-development approach that does not hinder local development.

The provisions of this bill reducing allowable costs and long term financing rates will jeopardize the ability of Cities to use special assessment financing, as it will shift the actual costs directly related to development and those who directly benefit from projects to the general property tax base. If this bill draft is passed as presented, Cities will have only two choices, (1) quit using special assessment financing because of the limited cost recovery available under the bill, or (2) continue to use special assessment financing and raise general property taxes for the shortfall created by this bill. Developers in Fargo have suggested to our task force that they have done development projects on their own and the overall costs is out about the same as if the City did the work. As a result, our development community relies on the City to provide this service. If our cost structure

City of Fargo Testimony on Legislative Bill 2284
Senator D. Cook, Chair
Political Subdivision Committee
January 29, 2003

was unreasonable, then we believe that developers would complete more projects on their own, without City assistance in the development process.

The 10% cap on other project costs does not compensate Cities for their actual costs related project administration and interim financing. We have previously provided a composite history of projects in Fargo, as did other Cities, and our cost structure is significantly higher than what is allowed for in the bill. The two largest cost components besides actual construction costs are engineering & administrative costs (12%), and internal financing of projects (7.5%). Total other project costs in excess of actual construction costs were 22% for all cost categories for projects completed in 2001. Why are we cutting out essential cost components for projects? Why should the general tax base pay for the financing costs of a special assessment district project? Taxpayers who have lived in communities and have already paid off their special assessments on their property will be paying higher property taxes if we have to shift from charging fees to property taxes. This creates an undue burden on existing taxpayers, and a windfall to taxpayers in new developments. Taxpayers in new developments should pay their own share of the project costs, a practice that is long standing in our community.

The reduction of the special assessment add on financing rate from 1.5% to .5% further restricts the ability of Cities to promote development as the add on rate provides a financial "cushion" in cases where special assessment deferral agreements are an important tool in making the development plans work. Bond rating agencies also evaluate our overall financial strength and ability to meet our debt service requirements.

City of Fargo Testimony on Legislative Bill 2284
Senator D. Cook, Chair
Political Subdivision Committee
January 29, 2003

The add on provides a cushion in the event that larger than normal assessment delinquencies occur in a community. While these events have not happened in the recent past, they have occurred historically in Communities across the State. The ability of the City to access the bond market is directly related to our ability to pay the debt as due. We feel that a reduction in the markup will remove the financial cushion that allows us to maintain a strong bond rating.

The special assessment task force has been working for the past several months with realtors, developers, and City officials. Our work is to evaluate all details relating to the overall cost of special assessments. The overall cost of special assessments to an individual taxpayer is based upon a variety of factors that are related not only to costs, but the application of how projects are designed, quality standards, assessment procedures, and funding models that are adopted at the local level. We feel that there are local opportunities to improve communications with taxpayers and evaluate how we can control the costs of assessments. The City of Fargo does not support SB 2284 because of its negative financial impact it has on our community and on Cities across the State and would urge a do not pass action on this proposed bill.

SB 2284
Testimony of Jim Schlosser
North Dakota Bankers Association

The North Dakota Bankers Association opposes SB 2284 as section 5 of the bill on lines 22-28, page 3 has unintended consequences which would impede or prevent financing for buyers of real property.

Section 5 allows the buyer to rescind the purchase of real property within 90 days from the date of purchase, and if there are unpaid special assessments against the property and the seller did not provide the buyer with written notice of the amount of the unpaid special assessments. Lenders have informed me that in a majority of the real property transactions in which loans are made, unpaid special assessments remain on the property.

Borrowers normally obtain a loan and lock in an interest rate for 60 days. A loan will not be closed (date of purchase) by the lender without title insurance or an attorney's opinion. If the buyer has an option to rescind the purchase of real property within 90 days, lenders fear that the title insurance policy or title opinion would contain exceptions stating it cannot be certified that a seller has provided written notice of the exact amount of unpaid special assessments to the buyer. Obviously, the loan could not be sold on the secondary market and the funds could not be released until the issue is resolved, resulting in the borrower having to reapply for a loan after the 90-day period and the process would begin once again.

Page 1 of 2

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In many new subdivisions, all of the specials have not been certified and a seller may not be aware of the exact amount of the unpaid special assessments, although special assessments will have to be paid by the current or future owner of the real property. In some cases, the lender or title insurance company/attorney will be unable to determine whether the information contained in a written notice given to the buyer on the amount of unpaid special assessments is correct. If this is the case, the lender cannot proceed with the closing of the loan because if an error in the amount of the unpaid special assessments notice allows the buyer the option to rescind the purchase of the property within 90 days. If the purchase is rescinded, it is the same as if the purchaser never owned the property, and the mortgage would not be a valid lien on the real property.

While the sponsor of the bill did not intend that the legislation restrict the ability of lenders to make loans, the language in section 5 would create sufficient uncertainty to prevent loans from being made on real property unless title insurance companies and lawyers would be willing to issue policies or opinions which would assume liability in case the real property is rescinded by a buyer.

(Legis SB 2284 Hearing)

Page 2 of 2

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10/21/03
Date

BEFORE THE FIFTY-EIGHTH LEGISLATIVE ASSEMBLY
OF THE STATE OF NORTH DAKOTA

Testimony in Opposition to Senate Bill 2284

Presented by the City of Grand Forks, North Dakota

John Schmieske

This testimony is submitted on behalf of the City of Grand Forks in opposition to Senate Bill 2284.

Senate Bill 2284 proposes three changes to the process of special assessments. First, it attempts to establish some form of limitation in the amount that can be special assessed. Second, it reduces the amount of interest that can be charged on unpaid special assessments. Third, it establishes a right for purchasers to rescind the purchase of real property if they are not advised of the existence of unpaid special assessments.

10% Limitation

The Bill has language creating some form of limitation. However, the language of the Bill is ambiguous as to exactly what is being limited. The proposed amendment refers to "estimated construction cost." However, this phrase, as it is proposed for use in §40-23-05, does not contain a definition nor does it reference any other provision of the NORTH DAKOTA CENTURY CODE. Section 40-23-05 presently allows for special assessment of a project based upon an estimated cost of construction. The present provisions are generally believed to be used to allow a city to special assess a project that is substantially but not entirely complete. It also has authority to assess additional authorized work. However, §40-23-05 does not relate to what is referred to as the "engineer's estimate" that accompanies an engineer's report at the early stages of a special assessment project.

The City of Grand Forks is uncertain as to what the intent of this limitation is. Is it intended to restrict the ability of a city to impose special assessments when a project is less than 90% complete? Is it the intent of the amendment to try to limit the amount of additional work that may be undertaken in the project by no more than 10%? If the intent is to limit changes in the scope of the project to no more than 10%, then the provisions of Senate Bill 2284 are in direct conflict with N.D.C.C. §40-22-36 which specifically allows for a municipality to order additional work by the contractor provided that the total price payable to the contractor for the additional work does not exceed 20% of the amount estimated by the

engineer to be payable for that character of work under the original contract. This would produce an obvious conflict between the 20% authorized in NORTH DAKOTA CENTURY CODE §40-22-36 and the 10% contained in Senate Bill 2284.

Others have read the Bill and have interpreted the intent to cap all costs, including the additional work, engineering, fiscal agents' fees, attorneys' fees, authorization and financing fees, publication fees, printing fees, etc. to 10% of the "engineer's estimate." If this reading is accurate, the arbitrary 10% limitation of all costs may preclude cities from recovering their actual costs of the project. In other words, it is likely that the costs associated with the special assessments would exceed the 10% allowance. This would have an obvious negative fiscal impact upon the municipality and would also adversely affect growth and development.

If the 10% limitation is intended to apply only to the inclusion of additional work, concerns apart from the apparent inconsistency with N.D.C.C. §40-22-36 arises. A landowner that is unable to fund all municipal improvements will often seek City special assessments for the installation of streets, storm water, sanitary sewer, or water. In some instances the developer may start out with a portion of the land to be developed and, due to the receipt of favorable bids or the sale of additional lots, will actually seek to increase the area to be developed and the extent of utilities to be installed. This change in the scope of the project would not be permitted under Senate Bill 2284 even though the developer is the one seeking the additional work and additional special assessments. The overall effect would be to actually increase the cost of development, thereby negatively impacting the overall cost of housing.

The City of Grand Forks believes that the intent and effect of Senate Bill 2284 needs to be clearly identified and explained so as to avoid any ambiguity or conflicting interpretations.

Reduction of Interest Rate

The second change under Senate Bill 2284 that will negatively affect municipalities is the reduction of the interest rate that can be charged upon unpaid special assessments. Present law (NORTH DAKOTA CENTURY CODE §40-24-02) provides for a 1½% margin above the average net annual interest rate. However, the provisions of Senate Bill 2284 reduce that by one whole point, to one-half of 1% above the average net annual interest rate. Obviously, this change would have direct negative implications to the costs of the administration of the special assessments and the ability of the City to defray such costs. The effect would be to transfer the costs of special assessments from those benefitting from the improvement to the general fund. In other words, people that are not benefitted by the project have the potential

of incurring some of the administrative costs for the project. The other negative implication of the reduction in interest rate is to reduce the amount of funds available to pay the bond in the event of a default in any property owner's payment of special assessments. Interest on special assessments is reported in the financial documents submitted for bond authorization. Such interest dollars contribute to the city's overall revenues on the project so as to provide additional financial assurances that the municipality can retire the bonds even if there are delinquencies or late payments of the special assessments by property owners. The reduction in such interest will equate to more risk, which in turn may result in a higher bond rate which in turn simply costs everyone more money.

Rescission Rights

The third change under Senate Bill 2284 is to provide a rescission right to purchasers of real property if they are not advised of the existence of unpaid special assessments. The City takes no particular position with respect to this portion of Senate Bill 2284. However, as a matter of technical assistance, we note that the language does not require that the unpaid special assessments are to be determined and reported as of the date of the sale of the real property nor does it draw a distinction between unpaid certified special assessments versus special assessments that have not yet been certified for collection. In the latter case, a seller of real property may be aware that their property is within a special assessment district, but, depending upon the timing of the sale, would not have received notice of the actual certified special assessment against their parcel. This may occur some time after the date of the sale but within the 90 day rescission period established under Senate Bill 2284.

Conclusion

In summary, the City of Grand Forks does not find Senate Bill 2284 to be beneficial to municipalities. Further, the City of Grand Forks does not find Senate Bill 2284 to be beneficial to property owners or developers. We urge that Senate Bill 2284 be given a "do not pass" recommendation. Thank you.

SENATE POLITICAL SUBDIVISION. SENATE BILL NO. 2284.

Testimony of James Horner, Lobbyist for the North Dakota Land Title Association.

The North Dakota Land Title Association is comprised of the abstracters, title insurance agents and closing agents in the State of North Dakota

We are opposed to this bill due to the last portion, being lines 24 through 28, which cause severe hardships and problems in real estate transactions.. This would pertain to the 90 day period in which a buyer could rescind a transaction after a purchase has been completed.

I do not want to take up a great deal of your time and the best way that I can show you the problems is to explain what is done in a real estate closing. Much of this is going to be very basic, but all of this is what has to be reversed if a buyer does have a legal right to rescind a transaction.

First, as a closing company, we calculate all of the numbers for the buyer and seller based upon title work that was done, based upon the real estate contract, and based upon the fact that normally the buyer is involved with financing to purchase the property or house. We have to find the bottom line for the buyer. We need to add all fees associated therein, add them to the sales price so we know the gross amount due from the buyer. Then we give the buyer all of their credits in the transaction. This would amount to earnest money paid, money received from the lender who is bring that amount to the table, and tax prorations which would be deducted from the seller. The net would then give us how much is due from the buyer for the purchase.

Then we need to calculate how much money the seller is to receive.

We deduct from the sales price the following: Taxes and pay them to the county. Costs

and pay them to the necessary parties. We need to payoff the sellers mortgage on the property and see that the mortgage is satisfied. We also pay all of the realtors commissions after everything is signed. We pay all costs associated with the transaction which we see from the title report and from the sales contract, and then give the seller their proceeds.

Now, if the buyer decides to rescind during the 90 day period, how do we reverse all of the above. How do we get the moneys back so that it can be reversed. The buyer has a mortgage on the property for which the funds have been spent, and the seller has all funds after paying the sellers costs and mortgages. How are we going to go to the county and get the money back for taxes that were paid. How are these going to be reversed. They say that nothing is impossible, but this would be as close to impossible as anything.

Because of the right to rescind, we would have to do the closing, take all signatures, collect all of the money that is needed in the transaction, and then hold everything for the 90 day period to expire. This would not work also for many reasons. The buyers mortgage is not funded and therefore it cannot be used because the lock of the mortgage expires, and now a new mortgage is needed. What about all of the sellers payoffs on their mortgage? Who is going to be responsible for them during the 90 day period.

And then we have the fact that there are taxes to hold now makes them delinquent, changes the amount needed for payment so new calculations need to be made. This does not take into consideration that there is the problem of not having anything recorded for 90 days. How can you do a closing to protect all parties, and then undo the closing because a party has a right to rescind.

As to the amount of the special assessments. How many sellers know the exact amount.

There are different types. Certified special assessments, and levied special assessments, and also pending special assessments. There is a great deal of margin for error on the part of the seller which would allow a party to rescind. Also, any buyer can call the city where the property is located and get the amounts from the city. These amounts are not private, and by getting them from the city, the chance of error would not be likely. I already did get carried away, and I do urge a do not pass vote on this bill, unless it is amended to delete the portion which deals with the right to rescind.

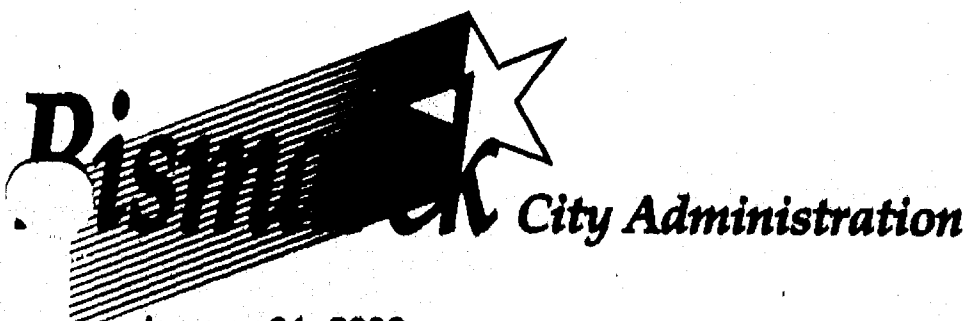
Thank You.

James Horner, Lobbyist for North Dakota Land Title Association,.

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Deanna Waller
Operator's Signature

12/21/03
Date



January 31, 2003

Mr. Chairman and Members of the Committee:

My name is Dennis Schlenker and I am representing the City of Bismarck. I am here this morning in opposition to the amendments in Senate Bill 2284. The 10% as proposed to cover additional costs in 40-23-05, 40-23-07 and 40-23.1-04 is not reasonable.

We have no control over fixed costs that are not part of the construction costs, such as: purchasing right-of-way, storm sewer drainage ways, holding ponds and easements where dollars can be large. Publications of required notices, funded interest, and the cost of issuance of bonds run from 6% to 7.50%. At this point, we still have the cost of plans, specs and supervision by engineering; administer special assessment districts; and involvement of fiscal and data processing.

These costs, if not paid by persons benefitting from the improvements, must be paid and the only choice that is available would be through property taxes, and the taxpayer should not have to bear that cost or we must eliminate special assessments altogether. This is the decision this committee must make.

Lowering the percentage point on the annual interest rate as proposed in 40-24-02 could provide a shortfall that the taxpayer would be responsible for. Prepayments received generally cannot be invested at the same rate as the rate paid on bonds. Again, someone has to pay the shortfall.

Last but not least, I am unsure of the notice of unpaid specials cited in Section 5: Does this apply to delinquent special assessments, special assessments not yet assessed, or future projects to be constructed.

With that I ask that Senate Bill 2284 not be approved.

Deanna Waller
Operator's Signature

10/21/03
Date



POST OFFICE BOX 1808
WILLISTON, NORTH DAKOTA 58808-1808
PHONE (701) 577-8100
FAX (701) 577-8880
TDD (800) 368-8888
(State Relay)

CITY OF **Williston** NORTH DAKOTA

January 30, 2003

Senate Political Subdivisions Committee
State Capitol
Bismarck ND 58505

Dear Committee Members:

The City of Williston continues to work for growth and development. An important tool to facilitate growth and development is the ability to assess property for improvements which benefit that property. We believe that the proposed changes in Senate Bill No. 2284 will impede that process.

The amendment to Section 40-23-05 limits the amount which can be certified for the costs of engineering, fiscal agents and attorneys to ten percent of the estimated construction cost. If a city contracts with a private firm for engineering services for a project, the fees average twenty percent. We calculate in-house engineering costs to be comparable. The City of Williston is presently paying in excess of twenty percent for engineering fees to a private firm for a new water treatment plant and transmission line. If this improvement were to be paid by means of special assessments instead of rate increases, how would the remaining ten percent for engineering and other required services be financed?

Another item of concern is the amendment to Section 40-24-02 which limits the interest on special assessments to one-half of one percent above the average net annual interest rate. Unfortunately, certified special assessments are not paid in full every year, and the existing one and one-half percent is needed to help alleviate that shortfall.

We believe that these two amendments would require cities to finance a portion of the cost of improvements through other methods which would involve payment by those not receiving the benefit of the improvement. We strongly urge that you give a "DO NOT PASS" recommendation to this bill.

Sincerely,

E. Ward Koezer, President
Board of City Commissioners

Operator's Signature

10/21/03
Date

Freedom of information vital for reporting news

A graduate student dropped by the other day to interview me for a project he was doing. Wrapping up, he leaned over and asked the "smoking gun" question:

He wanted to know one thing. The Forum did in the past year that challenged the government's status quo.

I couldn't help but think he'd formed a conclusion, with the answer being: "Not much."

After I rattled off several examples, and after he left, I started thinking that he knew more about our behind-the-scenes work to get information than most of our regular readers.

You may not know that within the last year, we've challenged the cities of Fargo and Moorhead, the Fargodome Authority, the Fargo Park Board, Clay and Cass counties, the Barnesville, Minn., School District, the Fargo Police Department and both the states of North Dakota and Minnesota to either open their meetings or their records and, sometimes, both.

Oftentimes, we don't report much on this. When we do, the information is usually given no more than a few paragraphs; it isn't treated as headline news.

The feeling here is that to report the news to you, we have to take the steps necessary to get the news. We file "freedom of information" requests because it is part of the reporting process. It's our job and readers should expect we're doing it.

Now, in at least one case, I'm not so sure this relative silence makes sense.

That's because the city of Fargo is threatening our ability to bring you the news.

Mayor Bruce Furness and city leaders are making a mistake with their attitudes toward the work of the Special Assessment Task Force.

This is somewhat surprising since reporters find the mayor generally easy to deal with on nearly any issue.

However, in the past few months, Fargo developed a

strategy which, if allowed to go unchecked, could lock its citizens out of the decision-making process in virtually any significant city matter.

Earlier this year, Furness appointed the Task Force, with the goal of making "specials" levied against property owners more predictable and cheaper.

Documents handed out at the Sept. 11 planning commission meeting show Furness named himself, and commissioners Jean Rayl and John Cosgriff to the Task Force, along with members of the city's staff and planning commission, real estate developers and brokers.

In November, when Fargo City Hall reporter Mary Jo Almquist started asking questions about the work of the Task Force, she had trouble getting information.

She then filed an open records/open meeting request.

The North Dakota Open Records Law is clear that when Furness and two commissioners meet they form a quorum of the City Commission. When a quorum is present those are public meetings. It was our position Task Force meetings were public.

The city didn't dispute that.

Instead, Furness said the documents handed out on Sept. 11 were incorrect - that he was not a member of the Task Force and had not attended any of its meetings.

Because of this error, he said the Task Force meetings are closed meetings, since with two from the City Commission on the task force, a quorum is not present.

For the last several weeks we've tried to open the Task Force meetings without luck.

Our attorney, Steven A. Johnson, has been in contact with Fargo's city attorney. In a Dec. 18 letter, Johnson quoted sections of the Open Meetings Law, pointing out "all meetings of the governing body of a public entity are required to be open unless otherwise specifically permitted by law."

In his letter to Fargo City Attorney Garylle Stewart, Johnson wrote that a "governing body ... also includes any group of persons, regardless of membership, acting collectively pursuant to authority delegated to that governing body."

Furness says that he, alone, appointed the Task Force and

that the appointments weren't approved by the Commission.

In a letter to Almquist, also written Dec. 18, Furness addressed her earlier, written request that the Task Force meetings be public.

"I have been asked to respond, as this was a group appointed by myself as Mayor. This has not been before the City Commission and the Task Force has not been officially appointed by the City Commission. ...

"... Apparently the Task Force feels the information sessions are more productive as presently conducted. ..."

Wouldn't most politicians consider all meetings "more productive" if their hand-picked representatives met secretly in someone's living room or some back office in City Hall?

Imagine the consequences if this approach to government continued.

Say the city wanted to locate a waste incinerator within the city limits. Why not have the mayor appoint a Task Force to decide, in secret, where it should be built?

How about a dog pound? A home for rehabilitating sex offenders? A city tax on personal income? High-voltage power lines?

How about the president of the school board doing the same thing; same with the county commission where you live?

Why not appoint a task force of people with vested interests on any issue and have them make recommendations for the mayors and city commissions to rubber stamp, while city residents are purposely kept in the dark during the decision-making process?

As Johnson wrote in his letter to Stewart, former Gov. Art Link, by executive order, appointed an advisory committee to help him select judicial candidates.

In 1979, the attorney general concluded those meetings were open meetings.

The Forum is on written record with the city that we should be notified and allowed to attend all future Task Force meetings and that we be provided with the dates and minutes of all past meetings.

Here's hoping Fargo admits it is making a mistake conducting secret meetings, and that it will let the sun shine in.

Stewart can be reached at stewart@fargo.com

in a zipped satin bag sitting in the basement. It is an homage to either my silence or her sensitivity, or to the imperfect melding of giving and receiving.

I think of this Royal Worcester disaster every year after Christmas, when all the ribbons are recycled and the paper trashed and the presents triaged into hits and misses. When all the thanks have been offered in all the living rooms, the small, awkward calculations begin.

Which "misses" can be returned without hurt feelings? Which will be brought out for visitation rights? Which will do time in the bottom drawer or back of the linen closet? Which will be sentenced to the garage, the graveyard of presents past and yard sales future?

I have a friend who calls it Christmas bullimia, an unsavory image, but I know what she means. The shopping binge is followed by a shopping purge. The pre-Christmas line at the checkout counter is replaced by the post-Christmas line at the return counter.

While she is standing on one line returning a present given to her, someone is in another line, returning a present she gave. Of this, she is sure.

We all carry stories into the holidays. The fantasy of the perfect gift that unwraps to reveal a seamless match between giver and receiver. Just what I wanted.

Somewhere in childhood, we learned not to disappoint our elders with our own disappointment. We learned to be grateful for things we wanted and to feel some smarmy ingratitude for the things we didn't.

This grew into the polite excuses - I love it but it's the wrong size - and the little white lies - why, yes, we make ice cream all the time. It keeps us company in adulthood, through the itchy sweater and the china in the basement.

It's not that every present is a misfit or that every gift comes fully loaded with expectations and unwrapped with disappointment. But I suspect that everyone has struggled with how and whether to balance honesty and kindness.

I know some folks who try to dodge the minefield. This year, it seems nearly half the gifts given were certificates. More than one family e-mailed lists of exactly what each member wanted, down to the style number. In many offices, the Secret Santa was given an assignment.

They think of it as an insurance plan, a guarantee for a mistake-proof Christmas. But even a "sure thing" can be a mismatch transforming a gift into a transaction - rather like an impersonal electronic transfer from one person's account to another.

The fable of the perfect gift is at heart the fable of the perfect relationship. When the national swapfest is over, we still have the delicate daily dance of connections and misconnections. We live the rest of the year with the desire to give "just what I wanted" and to want just what another person has to give. As a seamless match.



LOU
ZIEGLER
Forum Editor



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Operator's Signature

Date

It was suggested that many developers don't want to provide the money to do that. Stoner said the city will discourage this because they want the money coming in from specials.

Carlson said the entire policy should be addressed. A cap should not be implemented because the cities will then automatically charge as much as the cap allows. He doesn't think developers will want to take on the process of billing for infrastructure.

Clapham said the engineering costs are real, which is around 10 percent, but much of it is superfluous. Private developers would save about 20 percent of the current charges for specials. He mentioned that when he started Charleswood, he asked West Fargo if he could take care of specials himself. The city said they would charge an 8 percent fee to review engineering plans.

Gunkelman said maybe developers today have enough money to fund specials whereas in the past they would not have been able to do it. He said it could just be an educational process.

There was discussion about the city mismanaging funds and the fact that inaccurate calculations resulting higher specials have resulted in people distrusting their government. The group talked about billing and making sure that assessments are given in writing. In the end, specials cannot be higher than the written amount.

Stoner pointed out that the city currently doesn't charge fees for hooking up water and gas. That could happen if we specials are taken away. He said the city will get its money other ways. Cities don't have to justify these types of hook up fees; it is happening all over the country.

Cook said the group should not fear what the city will do in retaliation; taxpayers are the boss.

Gunkelman asked what the process would be to educate those in older areas of town on the need to spread specials further. He asked how the city is supposed to go back to tell those people that specials have been wrongly put on new developments. He thinks that most people don't mind paying their fair share as long as it is justified.

Gunkelman asked about the home rule exclusion and if that could interfere with Cook's legislation. He said the exclusion can be taken away on the state level.

Carlson talked about the proposed cap not working. He said city government will be talking to legislators. Not everyone thinks like the building industry does. He said the bottom line is that votes are needed to pass the change which should be realistic.

Stoner commented that growth has driven the city; when growth goes down, taxes will go up.

Clapham said there are a lot of studies that say growth costs cities money. Stoner said that can be proven wrong just by looking at the dying cities around the F-M area.

Cook said they will be working on legislation June 18 and he needs to hear from the industry. His committee is open to suggestions.

Ryland and Bob Kochmann said they are behind Cook and said this process needs to be shaken up. They agreed that even if this is the wrong approach, something should be done.

The legislators were thanked for coming and the committee moved on to a few items of new business.

Appointments to City of Fargo's short-term Task Force (specials)

Bryce Johnson said she needs to appointments to Fargo's short-term task force for special assessments. She said Al Carlson, Steve Stoner and John Lyngstad have been appointed already.

Motion: Gunkelman made a motion that Ryland and Johnson be appointments from the association. Clapham seconded. All members present voted aye and the motion was declared carried.

MINUTES
Joint Meeting
Public Issues Committee/
Homeownership Task Force
Tuesday, May 21, 2002
1A Conference Room - 11:30pm

DRAFT

Mike
Martins Way

Melissa
Schmalenberger
235-6623

HBA

Attendees: Jeff Baker, Mike Bannach, Al Carlson, Bruce Clapham, Byron Clark, Harry Covell, Ron Dick, Bob Footitt, Jr., Judy Gehrke, John Gunkelman, Dave Jorgensen, Bob Kochmann, Ken Krajsa, Steve Lumde, Stan Ryland, Andrea Sather, Kelly Savelkoul, Steve Stoner, Jane Volk, Bryce Johnson, Krista Mund

Guests: Senator Dwight Cook, Senator Tom Fischer

The Public Issues Committee and Homeownership Task Force had a joint meeting in May since Senator Dwight Cook and Senator Tom Fischer could attend on this date. Cook wanted to talk to those on the Homeownership Task Force about their ideas on the area's special assessments. He is proposing legislation that would change the way cities can administer specials.

Public Issues Chairman Bob Kochmann called the meeting to order at 11:35. He opened the discussion on why specials are a problem in the F-M area. Bruce Clapham said a number of factors influence specials including natural inflation and dynamics in the marketplace, but there are other things like cities changing specifications and design standards changing quite quickly. He said the incredibly rapid increase in specials is the main concern.

Cook went over language in the North Dakota Century Code regarding special assessments. Basically, in his opinion, it says that cities can handle them any way they wish. Cook is seeing a "profit center" in some cities that is funded by specials. A letter has gone out to the largest cities in the state to respond to the legislative council. They need the information back from cities by June 18 for the next Tax Committee meeting. Jamestown and Minot have replied to the letter and both cities' specials are at 20 percent. Cook has heard from Fargo that its specials are around 35 percent. He thinks the state needs to find a fair percentage that would cover what the cities need.

John Gunkelman commented that money raised by specials is definitely needed by the cities, but they need to look at how the burden is distributed.

Cook said he is still gathering facts to find a way the city and states can work together.

Steve Stoner said specials happened during Lindgren's term and that older neighborhoods are not willing to spread costs evenly - and more voters live in older neighborhoods. Another thought he has is that part of the problem is the bidding process of companies doing work that is special assessed.

Cook is proposing to put a cap on what the cities can charge for specials. He'd like to rewrite the current law. He said one option may be to allow cities an alternative voted on by taxpayers.

There was some discussion about specials coming in higher than estimated when the project is completed. Cook thinks things should be changed so that this cannot happen.

Tom Fischer said that administrative engineering fees are the biggest problem. He suggested that actual costs be listed in the plans and specs - and through the bid process those numbers shouldn't change. He said much of this money, probably 20 percent, is going to projects like Centennial Hall renovation and Cass Public Health. He said people don't like hidden taxes. City officials should tell them they need money to run the city. He talked about improvement to Drain 27. Voters were not asked about this by the city, the city just does them. He wondered if some of those improvements are really necessary. He thinks the people should be asked.

Carlson said Jean Rayl has been asked and she said she doesn't know how much money from special assessments is going into general fund. Stoner said they all know but don't want to change it because they are elected and don't want to lose voters. Someone suggested developing land differently where infrastructure charges are billed through the developer.

Motion: Ken Kraja made a motion to appoint Clapham if another position is open since Johnson will not be offering input, just taking notes. Gunkelman seconded. All members present voted aye and the motion was declared carried.

Appointments to City of Fargo's Signage Ordinance Task Force

Motion: Kraja made a motion to appoint Rob Lyngstad and Johnson. Gunkelman seconded. All members present voted aye and the motion was declared carried.

Backfill issue: City of Fargo and possibly others

Gunkelman reported that this has been resolved. He has worked out a compromise with the city and the Board of Appeals accepted it on Thursday. Inspections Administrator Ron Strand said it is final and concrete crews will need to be informed. The HBA will send it to builders and concrete members.

Gunkelman asked if the HBA can send this type of information to nonmembers to show what we've done. Johnson said yes, but we would change the information and approach somewhat. Staff will work on it.

Sidewalk ordinance amendment: City of Moorhead

Johnson said she and Wayne Welle attended the City Council meeting where they talked about changing Moorhead's ordinance to parallel Fargo's in that sidewalks would be required on both sides of all city streets. It is going to a second reading by the Council. This change would even require sidewalks in cul-de-sacs. She said that, in the past, this was left up to the developers and planners contingent on traffic. She thought a lot of Council members favored that, but they supported the proposed change anyway. Johnson is sending a report to Council members from NAHB saying that, on an \$80,000 house, an added \$1,000 disqualifies 50 buyers. In Fargo it would disqualify 350 people. There are no reports that confirm this as a legitimate safety issue.

Highback curbs: City of West Fargo

Clapham reported that the West Fargo City Commission adopted a new standard suggested by the public works director requiring highback curbs. He said it won't affect specials, but it will affect the cost of building a house. He thinks they will change it back - he and some others are working behind the scenes. Clapham said the city is trying to keep delivery trucks on the pavement. That is their only valid argument, but it won't accomplish their goal. Another argument is that it will help with storage of water, but Clapham disagrees. The HBA should leave it alone for now.

PAC Rodeo

Johnson and Krista Mund are working on the PAC fundraiser. The committee will need to meet on June 13 to talk about the games, other ideas and suggestions and sponsorship calls.

Next Meeting: Thursday, June 13 at 11:30 a.m.

Martens Way payment deferred

By Mary Jo Almquist

The Forum - 10/30/2002

Martens Way residents will not have to pay for a 1997 utility project for at least another year.

But for property owners in this subdivision, another year of deferment is only a temporary fix to a problem that's been brewing for years.

In a meeting Tuesday night with Fargo officials, Martens Way representatives said they should not have to pay for the city's mistake.

"We have to foot the entire bill, and we're the ones with the clean hands," Martens Way resident Drew Wrigley said.

The city should have assessed the subdivision in December 1999 for the utility project that occurred two years earlier near University Drive and 58th Avenue South, the same time Martens Way was annexed into the city.

The special assessments were to be deferred until 1999 because the city can't assess a development not within the city limits. At that time, however, none of the current homeowners were established in the new development.

Due to a city error discovered only recently, however, the deferment was not lifted when the land was annexed.

Now the people who live in Martens Way have been told they will have to pay for the assessments even though the mistake was made before they lived there.

Residents say they were not informed of the pending special assessment prior to purchasing the lot and should not have to pay for something that occurred when the land was not in their hands.

"The developer had this property when the mistake was in play," Wrigley said.

It is city policy that assessments go to the property, not the property owner, said city engineer Mark Bittner.

At this point, however, the assessments must be paid, whether by residents, the developer or the city, Fargo Mayor Bruce Furness said.

Martens Way residents will consider an offer to allow payment of the special over a 25-year time period, instead of the traditional 18 years.

That would figure out to about \$6 per month for 25 years or \$75 per year. The homeowners' total bill for this project is about \$900 per lot. The project cost about \$75,000.

"It's really not a huge amount of money," said John Cosgriff, Fargo City Commissioner.

"Of course, that's easy for me to say because I'm not paying for it."

The Martens Way representatives will take the information back to others in the subdivision.

"It's not always an issue of can we afford it, but should we have to pay for this," Wrigley said.

The meeting Tuesday primarily addressed the issue of the 1997 improvement project, but residents also say they were given bad information regarding how much their total special assessment costs would be.

Most were told they would pay \$18,000, even though their bill is now about \$24,000. No solutions have been proposed for this problem so far, since no one can decide why the wrong information was given out and by whom.

"There seems to be different information out there," Bittner said. "That's why when you're asking (for assessment costs), it's important to know what you're asking for and who you are asking."

Readers can reach Forum reporter Mary Jo Almquist at (701) 241-5531

Doranne Waller
Operator's Signature

10/21/03
Date