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ROLL NUMBER

DESCRIPTION

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Deanna M. Hall
Operator's Signature

10/22/03

Date

2003 SENATE POLITICAL SUBDIVISIONS

SB 2368

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Operator's Signature

10/22/03

Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2368

Senate Political Subdivisions Committee

☐ Conference Committee

Hearing Date: February 6, 2003

Tape Number	Side A	Side B	Meter #
1		X	2018 - 5216
Committee Clerk Signature <i>Shirley Long</i>			

Minutes

SENATOR GARY LEE opened the hearing on SB 2368 relating to audits of special assessments when costs exceed estimates.

SENATOR COOK introduced SB 2368. There has been an interim committee that studied the special assessments and hopefully this is a bill that might get passed and get put into law and encourage some direction and will solve some of the concerns that we find. He handed out a sheet with four statements on it. (attached) Engineers Estimate, Contractors Bid, Cost of Construction and Cost of Project.

The whole process of determining what a special assessment district is going to cost starts with the engineers estimate. The engineer is required to give an estimate of what he feels the projected cost will be. That estimate is what the taxpayers or property owners are presented with at their one and only time to protest or opt out of the special assessment district. That is the dollar figure that they see and is posted in the newspaper on two consecutive weeks. Then there is a time

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Deanna Ballinger
Operator's Signature

10/22/03
Date

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Senate Political Subdivisions Committee
Bill/Resolution Number SB 2368
Hearing Date February 6, 2003

period that would allow them to formally protest the special assessment district. If the majority of the property owners protest, the special assessment district can not go forward, but if there is not, the political subdivision has the authority to move forward with the special assessment district. The next step is to get the bid on the project. The relationship between contractors bid and the engineers estimate is the contractors bid, by code, can not be more that forty percent above the engineers estimate. As long as it is below forty percent the special assessment district can move forward. The final cost of construction includes things that they have to do during the actual process of doing the work that were not included in the estimate. So it is possible that the final cost of the construction is going to be more than the contractors bid and therefore the final cost of the project could be considerably more than what the original estimate was. What this bill does if the cost of the project is ever greater that seventy percent of the engineers estimate there is going to be an audit done. He came to that number (70%) because there is a forty percent difference allowed between the contractors bid and the engineers estimate. The actual difference between the cost of construction and cost of project found in the interim committee that that is anywhere between twenty to thirty five percent.

Connie Sprynczynatyk, ND League of Cities, testified in support of SB 2368 and was also on the interim committee for special assessments. Special assessments are financing mechanism for a localized improvement in the case of drainage, street renovation, water & sewer. It is fair that the owner of the property with the improvement have to pay for it. The other way they are used is for new development. She passed out some amendments. (see attached) They are trying to make it clear that when it is acceptable to the majority property owners in the district that we can

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Senate Political Subdivisions Committee

Bill/Resolution Number SB 2368

Hearing Date February 6, 2003

violate that seventy percent and not kick in the audit paid for by the general taxpayer. The second part is to create a reasonable way for there to be information available for future special assessments.

SENATOR COOK spoke to Section 2 of the amendments and said that it is possible for a city if they are assessing part of a town and they know that this special assessment is going to benefit something right out side of the city limits and eventually that is going to be annexed into the city that they can hold back part of that special assessment to be attached to the new part when it is annexed.

Dennis Schlenker, City of Bismarck, answered questions on special assessments. (Tape 1, Side B meter # 4501)

Jean Rayl, City Commissioner from Fargo, ND, spoke in support of SB 2368 (See attached testimony) She does support the first amendments

No testimony in opposition to SB 2368.

CHAIRMAN COOK closed the hearing on SB 2368..

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Dennis Schlenker
Operator's Signature

10/22/03

Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2368

Senate Political Subdivisions Committee

☐ Conference Committee

Hearing Date February 13, 2003 (Discussion; and Action)

Tape Number	Side A	Side B	Meter #
1		X	4457 - 5450
Committee Clerk Signature <i>Shirley Borg</i>			

Minutes:

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

CHAIRMAN COOK asked the committee if they were comfortable with the amendments.

They discussed the amendments.

SENATOR JUDY LEE moved to adopt the amendments.

SENATOR CHRISTENSON seconded the motion.

Roll call vote: Yes 6 No 0 Absent 0

SENATOR JUDY LEE moved a DO PASS as Amended.

SENATOR CHRISTENSON seconded the motion.

Roll Call Vote: Yes 6 No 0 Absent 0

Carrier: **SENATOR COOK**

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Dennis Hall
Operator's Signature

10/22/03

Date

FISCAL NOTE STATEMENT

Senate Bill or Resolution No. 2368

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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Operator's Signature

10/22/03
Date

30753.0101
Title.0200

Adopted by the Political Subdivisions
Committee

February 13, 2003

OK
2-14-03

PROPOSED AMENDMENTS TO SENATE BILL NO. 2368

Page 1, line 1, replace "a" with "two" and replace "section" with "sections"

Page 1, line 2, after "estimates" insert "and future assessments on annexed property"

Page 1, line 17, after the period insert "The audit report is not required if the costs of an improvement exceed the costs of the work as contained in the engineer's estimate by seventy percent or more because of a petition to enlarge the district under section 40-22-09 or a request for additional work within the district by the owners of a majority of the area of the property in the district."

Page 1, after line 18, insert:

"SECTION 2. A new section to chapter 40-23 of the North Dakota Century Code is created and enacted as follows:

Future assessments on annexed property. The special assessment commission shall prepare and file with the city auditor a list of estimated future assessments on property located outside the corporate limits of the city at the time of contracting for an improvement but which the special assessment commission determines is potentially benefited by the improvement and likely to be annexed to the city."

Renumber accordingly

Page No. 1

30753.0101

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Deanna Hallmark
Operator's Signature

10/22/03

Date

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

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2368 Amendments

Senate Political Subdivisions Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 30753.0101

Action Taken Adopt Amendments

Motion Made By Senator Judy Lee Seconded By Sen. Christenson

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	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

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Deanna Wallis
Operator's Signature

10/22/03

Date

Date:
Roll Call Vote #: 2

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2868 Do Pass

Senate Political Subdivisions Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 30753.0101

Action Taken Do Pass as Amended

Motion Made By Senator Judy Lee Seconded By Senator Christenson

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	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Cook

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

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Deanna Hall 10/22/03
Operator's Signature Date

REPORT OF STANDING COMMITTEE (410)
February 17, 2003 1:27 p.m.

Module No: SR-30-2921
Carrier: Cook
Insert LC: 30753.0101 Title: .0200

REPORT OF STANDING COMMITTEE

SB 2368: Political Subdivisions Committee (Sen. Cook, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2368 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "a" with "two" and replace "section" with "sections"

Page 1, line 2, after "estimates" insert "and future assessments on annexed property"

Page 1, line 17, after the period insert "The audit report is not required if the costs of an improvement exceed the costs of the work as contained in the engineer's estimate by seventy percent or more because of a petition to enlarge the district under section 40-22-09 or a request for additional work within the district by the owners of a majority of the area of the property in the district."

Page 1, after line 18, insert:

"SECTION 2. A new section to chapter 40-23 of the North Dakota Century Code is created and enacted as follows:

Future assessments on annexed property. The special assessment commission shall prepare and file with the city auditor a list of estimated future assessments on property located outside the corporate limits of the city at the time of contracting for an improvement but which the special assessment commission determines is potentially benefited by the improvement and likely to be annexed to the city."

Renumber accordingly

2003 HOUSE POLITICAL SUBDIVISIONS

SB 2368

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10/22/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2368

House Political Subdivisions Committee

☐ Conference Committee

Hearing Date: March 20, 2003

Tape Number	Side A	Side B	Meter #
1	X		43.4-53.1
1		X	4.0-22.1
Committee Clerk Signature <i>Mickie Schmidt</i> 4-14-03			

Minutes:

TAPE 1; SIDE A:

(43.4) CHAIRMAN GLEN FROSETH: We will open the hearing on SB 2368.

(43.5) SEN. DWIGHT COOK: (Testimony in support) (See attachment #1) This bill deals with special assessments. Over the past few years I've been involved in many discussions regarding special assessments. The difference at looking at special assessments and thinking that they are wonderful or terrible really depends upon how you look at them. If you look at them as what they are meant to be, and that is a very important financing tool, you're going to find a lot of merits in special assessments. And that is what they are intended to be. Sometimes they get looked at as a tax, which alternately is what they are also, something that somebody has to pay. The common denominator whether you look at it as a financing tool or a tax, it's money, and that's what this bill addresses is an accounting for that money. It simply puts not into place a certain condition. I've handed out a simple piece of paper with four terms on it that are very

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10/22/03
Date

Page 2

House Political Subdivisions Committee

Bill/Resolution Number SB 2368

Hearing Date: March 20, 2003

important in the special assessment process and I just want to take you through these four terms. They all deal with money and how they relate to each other. **Engineers Estimate:** When a political subdivision determines that there is a need for a special assessment, they take a look at the cost of that special assessment and they come up with the engineer's estimate. They then determine who is going to be benefited by it, which is the special assessment district and property owners in that district get to see the engineers estimate. That is the first dollar amount that the tax payors get to see and that is when taxpayers get the opportunity to protest out of special assessment district based on the engineers estimate. If not more than 50% top out, then the political special assessment projects. **Contractors Bid:** As the city moves forward, the next step is to get a bid on the project. In the relationship between engineers estimate and contractors bid is the bid cannot be more than 40% of the engineers estimate. If it comes to more than 40% of the estimate, the political sub is not allowed to move forward with special assessment district without starting over again. The last two terms, the Cost of Construction and Cost of Project, there's a bill in this session that distinguishes between the two terms. **Cost of Construction:** is the total cost that the contractor was basically paid to do the project, to do the work. **Cost of Project:** is the cost of construction plus all the add on fees. The add on fees that take the cost of the construction up to the cost of project, will be anywhere from 10 to 15 % and up as high as 35%. In others we see about 25%. So, what you have here on the bill before you would require an audit if the cost of the project was ever 70% more than the engineers estimate. We have 40% built in right now between the contractors bid and the engineers estimate and then there is some flexibility for the add on costs, the extra work that was determined that had to be done. The audit would address these few special assessment projects that seem to cause a lot of concern amongst

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10/22/03
Date

Page 3
House Political Subdivisions Committee
Bill/Resolution Number SB 2368
Hearing Date: March 20, 2003

the taxpayers. This has happened. Once the final bill comes in that the taxpayer has to pay and it's two to three times higher than what he was led to believe at the beginning when the engineers estimate was put in place. The Senate amended this bill starting on line 17, you'll see where this audit report is exemption to the 70% audit requirement. The district under section 40-22-09 is a request to the additional work in the district by the owners or majority of owners. In other words a lot of municipalities use this for a tool for financing new infrastructure construction. So if you have one developer out there and he is the sole property owner, they'd like to create a special assessment district and then all of a sudden the homes that are going to be built there start moving where he wants to expand it. He himself as the owner is going to be paying for those special assessments is in control and would allow them to expand it which would of course increase it over 70% and so it would not require the audit in that situation, and that was requested by the League of Cities. In section 2, future assessments provides a mechanism where any assessments that could be made in the future are going to be recorded somewhere so somebody knows what they're going to be. There are situations when a special assessment district is put together that they recognize that there's property outside of the city that will benefit from this special assessment. Because they're outside the city, they cannot special assess them, so what the political sub will do is set those special assessments aside and then when that property is annexed into the city, they can... (53.1)

TAPE 1: SIDE B:

(4.0) SEN. DWIGHT COOK: This simply puts in place the mechanism where they would know that that special assessment could possibly come. Special assessments can be a complicated issue.

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10/22/03

Date

Page 4

House Political Subdivisions Committee

Bill/Resolution Number SB 2368

Hearing Date: March 20, 2003

(6.6) REP. BYRON CLARK: (Testimony in support) I work at the Homelender in Fargo and special assessments seem to be a rather large issue with homeowners. There are issues that affect the cost of construction. Some of the problems that we see with special assessments at the time of the purchase of home in a new construction area, homeowners may or may not know what the special assessments are and once the special assessments are levied on a project, all of a sudden they don't qualify for the loan anymore because the ratio is just too high. This is a good opportunity.

(11.1) CONNIE SPRYNCZYNATYK: ND LEAGUE OF CITIES: (Testimony in support)

There was a very extensive discussion of special assessment districts in the Interim process. The reason someone would want a special assessment is it is a way to pay for a public improvement.

There are not many choices of how you pay for public improvements. You're going to have water, sewer, sidewalks and street lights and those sorts of amenities in a community where people seem to want to live. There are two reasons to use special assessments: One could be for rehab, and that's usually the most difficult situation to predict because of add on costs. The other reason you do special assessments is new construction. A city does not have to offer the developer the opportunity for the city to help pay for those public projects. A city could require that the developers pay 100% of the costs of the new development.

(18.2) DENNIS SCHLINKER: CITY OF BISMARCK: (Testimony in support) In regards

to creating a district; we created a year ago approximately \$3 million dollars worth of specials.

During the creating of the district, calling for the public hearing, we had no one period. And this constituted roughly about ten different districts to go on and state that there was more protesting at the end of the hearing of the special assessment cost.

Page 5

House Political Subdivisions Committee

Bill/Resolution Number SB 2368

Hearing Date: March 20, 2003

(19.1) REP. WILLIAM KRETSCHMAR: About how many people are covered by the special assessments?

(19.2) DENNIS SCHLINKER: I looked that information up, it was approximately 3,500 different properties.

(20.4) CONNIE SPRYNCHYNATYK: Sen. Cook referred to the second section of the bill.

There was discussion in the committee about how you make sure that people know that there's assessments pending. If there's an improvement that says property buyers and the property that's actually in the city, so specials are then pending on that land that will be annexed into the city.

We could not come up with a mechanism that said absolutely that we can guarantee you that anybody who buys a lot in this development, that they are going to know about the special assessments. This was the best that we could do.

(21.8) CHAIRMAN GLEN FROSETH: Any further testimony in support? Opposition?

Seeing none, we will close the hearing on SB 2368. **(22.1)**

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Dennis Schlinker
Operator's Signature

10/22/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2368a

House Political Subdivisions Committee

☐ Conference Committee

Hearing Date: March 20, 2003

Tape Number	Side A	Side B	Meter #
1		X	38.4-46.2
Committee Clerk Signature <i>Nickie Schmidt</i> 4-14-03			

Minutes:

TAPE 1: SIDE B:

(38.4) CHAIRMAN GLEN FROSETH: Let's look at SB 2368 again.

(38.8) REP. RON IVERSON: I MOVE A DO PASS.

(39.0) REP. MARY EKSTROM: I SECOND IT.

(39.2) REP. ALON WIELAND: I have dealt with special assessments for over 40 years.

We're only one of two or three states in the United States that use special assessments. Most states do not. I think 70% is a high number. When they talk about an audit, I thought it would be an explanation of why the costs would exceed that.

(43.6) REP. MIKE GROSZ: In support.

(45.3) CHAIRMAN GLEN FROSETH: Discussion? Seeing none, I will have the clerk take the Roll Call Vote: 12-y; 0-n; 2-absent; Carrier: Rep. Iverson. (46.5)

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10/22/03
Date

Date: 3-20-03

Roll Call Vote #: 2

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2368

House "POLITICAL SUBDIVISION" Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS

Motion Made By Rep. Iverson Seconded By Rep. Ekstrom

Representatives	Yes	No	Representatives	Yes	No
Chairman Glen Froseth	✓				
Vice-Chairman Nancy Johnson	✓				
Mike Grosz	✓				
Gil Herbel	✓				
Ron Iverson	✓				
William E. Kretschmar	✓				
Andrew Maragos	✓				
Dale Severson	0				
Alon Wieland	✓				
Bruce Eckre	0				
Mary Ekstrom	✓				
Carol A. Niemeier	✓				
Sally M. Sandvig	✓				
Vonnie Pletsch	✓				

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep. Iverson

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

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10/22/03
Date

REPORT OF STANDING COMMITTEE (410)
March 21, 2003 9:06 a.m.

Module No: HR-51-5394
Carrier: Iverson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
SB 2368, as engrossed: Political Subdivisions Committee (Rep. Froese, Chairman)
recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING).
Engrossed SB 2368 was placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-51-5394

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2003 TESTIMONY

SB 2368

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10/22/03

Date

Submitted to: Senate Political Subdivisions Committee
Submitted by: North Dakota League of Cities
Date: February 6, 2003

PROPOSED AMENDMENTS TO SENATE BILL NO. 2368

Page 1, line 1, replace "a new section" with "two new sections"

Page 1, line 2, after "estimates" insert ", to assessments on annexed property"

Page 1, line 17, after the period insert "The audit report is not required if the costs of an improvement exceed the costs of the work as contained in the engineer's estimate by seventy percent or more because of a petition to enlarge the district pursuant to section 40-22-09 or a request for additional work within the district by the owners of a majority of the area of the property in the district."

Page 1, after line 18, insert:

"SECTION 2. A new section to chapter 40-23 of the North Dakota Century Code is created and enacted as follows:

Future assessments on annexed property. The special assessment commission shall prepare and file with the city auditor a list of estimated future assessments on property located outside the corporate limits of the city at the time of contracting for an

improvement but which the special assessment commission
determines is potentially benefited by the improvement and likely to
be annexed to the city."

Renumber accordingly

TESTIMONY

Supporting SB 2368

My name is Jean Rayl, City Commissioner from Fargo. I am here today representing the City of Fargo and its support of Senate Bill 2368. This support, however, is done with a request to modify the language of the bill.

Fargo's experience with development projects that use special assessment funding suggest that the original engineers estimates for a designated assessment district do have change orders made to them during the course of construction. For example, a project bid in the spring for placement of sewer pipes, curb, gutters and streets may be undertaken during the summer. Once into a project the developer seeking the initial improvements may seek an extension of the infrastructure into other parts of a platted development because the sale of lots has exceed expectations. The city engineering department bid projects on a unit price [costs per linear foot of pipe, or cubic yard of concrete], therefore they can extend a contract for additional work requested by the developer without re-bidding the project. Thus, time is saved in the delivery of the improvements. Sometimes this added work will exceed the original estimate by 70%.

If language could be included to allow for petitioned change orders by developers or land owners that would exceed the 70% but not trigger an audit, the City of Fargo could live with this bill. Without this language such change orders would have to be denied and the city would have no other choice but to bid a second contract that would delay installation of infrastructure and slow down development.

Your consideration of this modification is appreciated, as well as your support of this bill.
Thank you.

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10/22/03
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#81 *Sen. Dwight Cook* 3-20-03 #2368

Engineers Estimate

Contractors Bid

Cost of Construction

Cost of Project

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