2009 HOUSE EDUCATION

HB 1079

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1079**

House Education Committee

☐ Check here for Conference Committee

Hearing Date: **January 13, 2009**

Recorder Job Number: 6879

Committee Clerk Signature

Minutes:

Chairman Kelsch opened the hearing of HB 1079.

Laura Glatt, North Dakota University System introduced the bill and provided information on the bill. **(Attachment 1)**

Representative Karls: How does the BSC aquatic center fit in this?

Glatt: My understanding is that is not a BSC project; it is a community project. The board does not have any authority over the approval or construction of that project.

Representative Mueller: Can you define the 20%? Is it the original bid? The bid as it comes in later? The end cost of the project? Would the 20% be federal money?

Glatt: Let me give an example. The Legislature authorizes a project that would cost $1 million. This project ends at $1.2 million, twenty percent more, if that funding for that additional 20% came from federal, private, or gift monies. Essentially, it is non-state, non-institutional dollars.

Representative Mueller: Have you visited with our appropriations people about this concept and do they have a thought about it?

Glatt: This has not. You are the first committee, but we have kept in contact with Representative Klein on this bill because this is an issue that they dealt with in the Minot area, especially the Minot Research Center. There are some legislators who during the interim

have been involved in trying to help through this process because it has been particularly challenging.

Chairman Kelsch: This bill would not be referred to Appropriations because there is no fiscal impact and there is no appropriation in the bill.

Representative Wall: Is there something in current law that stops doing that? There's a big overrun and federal or private funds come in.

Glatt: The current statute is in Section 2 of the bill that essentially says that we cannot significantly change or expand a public improvement beyond what is approved by the Legislative Assembly unless it has been approved by the budget section or the Legislature if we are within so many months of the session. That has been interpreted to mean that either we can't change the scope of the project but beyond that we cannot exceed those dollar amounts. Once those projects are specifically authorized in legislation at a set dollar amount, we can't exceed those amounts.

Representative Kelsh: It says "institutional improvement is not significantly . . ." How do you define "significantly."

Glatt: That is a question we struggled with quite a bit. The intent would be we are not adding a significant amount of square footage and we are aware of increasing operating cost and maintenance. If there were a significant increase in size that would warrant an increase in operating costs, we would consider that to be significant. Or, the intended use or purpose of a construction project changes. If we told you we were going to use a project for predominately classroom space and now we find we could still do the project within dollar amount but instead of using it for classroom space we were going to use it for new athletic space. It is a re-purpose of the space. If there are those types of things where we believe the Legislature understood one thing and we're headed in a different direction or there is an impact on

ongoing cost, we would consider that to be significant and bring that back to the legislative process. You are right in there is no clear definition of "significant." It doesn't talk about a dollar amount or any clear criteria to interpret that section.

Representative Hunskor: You referenced BSC Schafer Hall with the 47% increase. I heard you say that they may not fit in to this bill, but they would qualify for the first 20%.

Glatt: Perhaps I misspoke earlier, BSC being a public institution would fall under the provision of this bill. Specifically, the Aquatic Center they are building on the campus would not because it is not a state funded project. If BSC had any other projects on their campus that they came to the Legislature for authorization and you set those appropriations, they would fall under the provisions of this bill.

The other thing I noticed on this bill and we need to go back and visit with Legal Counsel, the one thing that is not specifically noted. On page 2, line 4, it talks about if the funding is available from federal grants, gifts or other private funds. One area not covered there that we may want to come back with a request, is to at least include auxiliaries. That includes residence halls and dining hall food services which are self-funded with student charges. We have a number of instances where campuses are extending or remodeling residence halls or their dining centers where we experience the same challenges. We need to visit with LC to see if we need to include some language that might permit the same kind of thing on facilities that are 100% student funded.

Representative Rust: I want to get back to Representative Hunskor's question: the BSC Schafer Hall remodeling. It was 47% over. Does that mean it would not fall under the provisions of this bill or does that mean they get 20% more but not the other 27%??

Glatt: If you pass this amendment, the Board could not authorize an additional 47% expenditure, they would have to come back to either the budget section or the Legislative

Assembly. If, however, in the BSC case, when the bids came in it was 18%, since it was below that 20%, then the Board can authorize that. We wouldn't break the additional costs into increments to expend the first 20% and then come to the Legislature for rest because certainly you don't develop construction projects in increments. You need the whole amount.

Representative Rust: Just to make sure I'm clear; one couldn't say we can go 20% above that and now we have to scramble to find the 27%.

Glatt: Typically when you get the bids in, you have a comprehensive construction budget. At that point you know if it's 18% or 47%. I can't see us going out for a bid and get 18% now let's go out and do another one and figure out how to deal with the difference. You would have all the bids for your final construction project.

There being no further testimony, Chairman Kelsch closed the hearing of HB 1079.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1079

House Education Committee

☐ Check here for Conference Committee

Hearing Date: January 13, 2009

Recorder Job Number: 6937

Committee Clerk Signature	Jan Kruindle

Minutes:

Chairman Kelsch opened discussion of HB 1079. This bill would give authority to allow the additional spending of 20%. While I understand these are private and not state dollars. Ultimately the state is responsible for the upkeep of those buildings once they are completed. I have some problems with this. Probably the biggest problem is that we spent a whole interim talking about what needed to be changed for the university system and what proposals we could move forward in the session. This never came up once. I did talk to Representative Klein about this. He said this is not what he intended nor what he asked for. I guess I would like a little feedback from the Committee members. This puts a lot of responsibility back to the Board of Education. It makes me a little bit nervous to give them that authority.

Vice Chairman Meier: My thoughts on the bill are costs are actually skyrocketing. You have a building project and you start five months later and your prices are going up. That's not happening. Costs of building are actually going some so I don't know if this bill is really necessary right now.

Representative Rust: I still tend to worry about games that get played. Are games being played here.

Chairman Kelsch: I think you brought up a good point this morning—if it was 47% over are they going to approve that first 20% over and then extra 27% would go to the budget section.

I know it has been a problem in two situations. Both of those were Minot issues. I don't know if there have been issues in any of the other issues. It's amazing to me that no one else stood up and said how important this was to them or made any statements.

Representative Johnson: (unintelligible—contractor bid problems and competitive cost factors.

Representative Mueller: A couple of things come to mind about it, on the surface there are a lot of things that are good about proposal in what Representative Johnson just referenced. The university system in most cases is woefully behind in building projects and more so in deferred maintenance. I'm not sure how this plays in to it, but I suppose it would. To give them some flexibility does make some sense. On the other hand, the university system is only one part of our state and I can see every other agency coming around with a similar kind of bill. I don't know what to do.

Representative Kelsh: I feel there is some need for the bill. But 20% can add up to millions of dollars. Two or five percent. I don't know where all these funds come from. Is there anything in here to prevent them from raising student funds and using them for some of these.

Representative Mock: That was another issue would concern me. During Laura's testimony she said "including auxiliaries" for available funds. We are going to hear throughout the session about rising costs and one area is student fees. That's something we have very little say over. Opening this up and allowing for this to come from student fees we are looking at a situation where higher education are going to continue to go up.

Representative Kelsch: Another thing that bothers me is that they could not define "significantly." We need that defined in a dollar parameter.

Representative Heller: Only two of the examples that were given would qualify for the "under 20%." The rest would have to come back for approval anyway.

Chairman Kelsch: I was going to give Laura the opportunity to bring in her amendment. Representative Klein has some concerns about what it entails.

Representative Klein: This bills came about because of the delay time between the legislature approving a project, hiring an architect, and the bid comes in above our cap and there is not much they can do about it. The problem I see with this bill is that it takes from the Legislature some of the criteria and gives it to the Board and that's not what I intended. This would significantly change the method of construction. This could increase the project tremendously and that's not what I intended. I would suggest giving this the deep six.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1079**

House Education Committee

☐ Check here for Conference Committee

Hearing Date: **January 20, 2009**

Recorder Job Number: 7364

Committee Clerk Signature Jan Prindle

Minutes:

Chairman Kelsch opened discussion of HB 1079. This bill allows the Board of Higher Education basically to expand an additional 20% over what has been approved by the Legislature for building projects circumventing the Legislative budget process. T It gives them new authority.

Representative Karls: I move a **Do not Pass.**

Representative Schatz: I **Second**

Representative Kelsh: I forgot who said this was his idea but this went way beyond it.

Chairman Kelsch: It was Representative Klein. Representative Wall and I served on the Interim Higher Ed Committee and we talked about: what were the issues, what were the budget issues. We looked at a new formula for the campuses, tuition, all kinds of ways that we could make the University system better, working together more collaboratively with the Board of Higher Education and not once did this issue come up. Representative Klein said he mentioned it to Laura (Glatt) and made some comments about allowing for perhaps 2%, 3% or even 10% overages. I think that whatever we allow it for, I can tell you that if a contractor gives you an original bid and the Board of Higher Education has the authority to approve up to a 20% overage and they want that project, I just believe the contractor will up it that percentage and the Board will approve it.

Representative Kelsh: I was going to recommend an amendment of a smaller amount—maybe 2% - 5%. It's too late now. If the vote gets turned down, I would propose that amendment.

Representative Mock: Reference the sheet that Laura Glatt handed us, on the back it has six examples of projects and the increases in the cost. Note that the lowest of all of those was 14%. So even if you made an amendment to lower it to even 10%, it would do no good.

Chairman Kelsch: And as you noted before, who is going to pick up this increase. Is that going to fall on the backs of the students again?

Representative Mock: It was Laura Glatt who said they wanted an amendment to add auxiliaries to the list. That would mean student fees could be allocated for these projects. That is a concern. We could be adding student fees many of which don't go through a vote of the general population. This could just be another way of adding a tax on students for new building projects. I would be very much opposed to that amendment and I am, quite frankly, opposed to the bill.

(Discussion concerning the proposed amendment presented by Laura Glatt.)

The question was called by Representative Hanson.

Motion to Do Not Pass: Yes: 14, No: 0, Absent: 0

Representative Karls will carry the bill.

Date: 1-20-09
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1079

House Education Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken ☐ Do Pass ☑ Do Not Pass ☐ Amended

Motion Made By Rep Karls Seconded By Rep Schatz

Representatives	Yes	No	Representatives	Yes	No
Chairman RaeAnn Kelsch	✓		Rep. Lyle Hanson	✓	
Vice Chairman Lisa Meier	✓		Rep. Bob Hunskor	✓	
Rep. Brenda Heller	✓		Rep. Jerry Kelsh	✓	
Rep. Dennis Johnson	✓		Rep. Corey Mock	✓	
Rep. Karen Karls	✓		Rep. Phillip Mueller	✓	
Rep. Mike Schatz	✓		Rep. Lee Myxter	✓	
Rep. John D. Wall	✓				
Rep. David Rust	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep Karls

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

REPORT OF STANDING COMMITTEE

HB 1079: Education Committee (Rep. R. Kelsch, Chairman) recommends **DO NOT PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1079 was placed on the Eleventh order on the calendar.

2009 TESTIMONY

HB 1079

Attachment 1

Testimony on HB1079 - House Education on January 13, 2009
Laura Glatt, North Dakota University System

HB1079, introduced at the request of the State Board of Higher Education (SBHE), would permit the SBHE to authorize the additional expenditure on capital projects of up to twenty percent of the authorized project cost, if the additional amount is funded from federal, grant, gift or private funds. Those projects exceeding twenty percent or more of the legislative authorization would still require interim Budget Section or legislative approval.

It is difficult to anticipate upcoming projects and their related costs, up to two years in advance of legislative approval and two, three or, in some cases, four years in advance of the actual construction. The following table outlines the most recent process and timeline for legislative consideration:

Campuses develop campus master plans and project proposals	April 2007-April 2008
Submitted for SBHE evaluation and approval for legislative approval	May 2008
Final budget request submitted to OMB	July 2008
Legislature considers projects as part of the appropriation bill	January2009-April 2009
Construction period (with emergency clause)	May 2009-June 2011

Early project cost estimates are either based on architectural/engineering estimates or the campuses best estimate based on other recent work. In many cases, architects/engineers are not engaged until a project is authorized. Campuses attempt to avoid architect/engineer costs, in the event a project is not authorized or funded. Projects are not bid, and hard costs are generally not available until immediately prior to construction or after the project has been authorized.

Over the past eight years, construction prices have increased considerably. Since 2004, there were many years with double-digit increases in construction material costs, whereas the CPI has continued to rise at a 2.5-5.6% annual rate (*Bureau of Labor Statistics*). The extended timeframe from project request to construction, coupled with rapidly increasing and unpredictable costs, has resulted in several project cost changes in recent years.

Additionally, further delaying construction due to approval requirements can increase the overall cost of the project as prices continue to rapidly increase. Generally, when projects are bid, contractors will honor bid prices, at best, for up to one month from bid date. More often

than not in tight construction markets, they will only hold bids for seven days. If not accepted within that period, projects must be re-bid, creating a significant risk of higher bids and delayed completion. Contractors will not hold bid prices pending a Budget Section meeting which might be two to three months from the bid date. Also, campuses attempt to bid projects during key times of the year to gain best pricing and also, to complete projects during a timeframe that creates the least amount of interruption on campus. For example, campuses must be a in position to start classroom or resident hall remodeling right after the close of the spring term, allowing work over the summer months, and hopefully, completion before students return to campus in the fall. One cannot adhere to these project schedules if approvals must be timed around Budget Section meetings every three to four months.

Below are some examples of projects that required Budget Section approval, under the current law, some of which would have benefited from the 20% provision:

Building Name	Change in Project Amount	Source of Funds for Additional Amount	Percentage Increase in Project Cost
UND Center of Excellence in Neuroscience	$3,353,462 to $4,103,462	Federal and local funds	22%
NDSU Ceres Hall Remodeling	$1.8 to $2.2 million	Auxiliary funds	22%
Dickinson Research Center	$351,000 to $450,000	Local revenue	28%
BSC Schafer Hall 1st Floor remodeling	$543,000 to $800,000	Local Funds	47%
WSC Petroleum Safety and Technology Center	$700,000 to $810,000	Local and private funds	16%
NDSU Hazardous Material Handling Storage Facility	$3.5 to $4.0 million	State and local funds	14%

For the UND Center of Excellence in Neuroscience facility, additional federal funding of $750,000 became available for an addition to the original $3.3 million project. However, in most cases, the cost increase is not related to an increase in square footage, only an increase in bid prices, thereby not impacting ongoing operating costs.

I would appreciate your support of the proposed amendment and would be happy to answer any questions you might have. Thank you.