

2009 HOUSE POLITICAL SUBDIVISIONS

HB 1376

# 2009 HOUSE STANDING COMMITTEE MINUTES

## Bill No. HB 1376

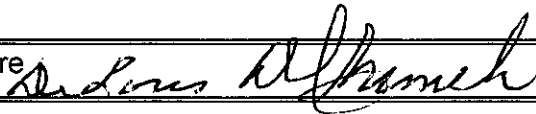
### House Political Subdivisions Committee

☐ Check here for Conference Committee

Hearing Date: February 12, 2009

Recorder Job Number: 9335

Committee Clerk Signature



Minutes:

**Vice Chairman Headland** opened hearing on HB 1376.

**Chairman Wrangham:** this bill provides the citizens the opportunity to refer ordinances or decisions made by our park boards. Those of you who were here two years ago remember we had this bill then. We had extensive testimony from the city association of parks and recreations and also the Bismarck Park Board. Mr. Steve Neu from the legal firm saying that this is already possible through state law. I feel at that time that testimony made it sound like this bill was not necessary. Following that hearing we did subsequently get on February 7<sup>th</sup> a clarification from Mr. Neu saying that was in error. It has been the attorney general decision stating park board ordinances or decisions were not referable.

**Mike O'Brien: Commissioner, Bismarck Board of Park Commissioners:** (see testimony #1) I am not here representing the Bismarck Park Board. I would like to ask you folks here to change the language on paragraph 1 where it says ordinance to decision. I think that will have teeth in what this bill is trying to do. I am human so I am going to make some mistakes. I think if we make a mistake on behalf of the citizens, then I think those citizens have a right to be heard on that issue. Here is why I would like to have you consider passing this legislation. What could happen if a group of about 100 people wanted the Park Board to build them an

arena? There are two ways they can achieve that goal. One is to convince the 3 members on the current board that the park would get on board with their project and vote to approve the project. So all you need to do is get three members elected to the park board that liked the project and then go ahead and pass the ordinance to build the aquatic arena and it is not referable by the citizens of that particular city. You might hear today that if the citizens don't like the decisions of the park board members they have the right to recall that commissioner at the next election. The problem is they will still be stuck paying for that project. I ask that you support this bill with the amendment I suggested and give the citizens the right to vote.

**Rep. Conrad:** Can a park board member be recalled?

**Mike O'Brien:** I believe they can be recalled.

**Rep. Conrad:** do you know of any park boards that have had problems like you have had in Bismarck?

**Mike O'Brien:** I believe Fargo is going through the same process right now. Were there previous problems, I am not sure. I think it is a bad precedence for park services or any government entity to go the funding route those folks did to circumvent voters. I am concerned about the funding route that these folks did. Most projects have a fiscal note attached to them. I think if a majority of citizens wanted to support that they should have vote to do that?

**Rep. Conrad:** should hiring decisions of staff be referable?

**Mike O'Brien:** I don't think so. Perhaps the language should be changed. I don't want to micro manage the park director. Basically it is for fiscal requests.

**Rep. Koppelman:** We have had some testimony in the past about issues of different political subdivisions etc. If we pass a law the people of ND can refer that; we are a referral state. Your point is it is not true of Park Boards and that kind of stuff? Is that right?

**Mike O'Brien:** that is correct.

**Rep. Kretschmar:** does the Bismarck Park District have a number of ordinances now?

**Mike O'Brien:** Obviously we have some ordinances. I am newly elected but I would say that the majority of things that we actually pass are budgets or decisions that we make; not necessarily ordinances.

**Lynn Bergman, Taxpayer of Bismarck:** (see testimony #2). The answer to your question is no, Bismarck is not the only place in ND that has a problem with this. The information we are passing around right now is information on the United Plains Center .Here is the problem I have with Fargo on what is going on with that facility. I worked for 18 years as a public servant for four different municipalities in three states. When you work as an employee you are directed by the board members of the city commission or park district you work under. They are trying to restrict such public employees from the Fargo school district, Fargo Park District.

These folks are directed by the boards to become a member of this nonprofit board that builds a \$25 million facility for junior high. I don't like a facility to be done by a nonprofit corporation where the only deep pockets available are the Fargo School District. It did fail in the past 14-15 years. The Fargo School district is going to be held to paying off the loans without any votes from the public. How does that relate to this bill? I believe that if this bill was put in place the park district would not have had people be members of that nonprofit corporation.

**Robert Harms: Bismarck, ND:** You will be hearing lots of bills regarding taxes. This bill before you is a step in the direction of addressing funding and projects. The reason I think this makes sense, I thought you would have some information this morning about Park District role and property taxes. We have done some work in Bismarck and I will make sure the committee gets that. Park Districts are the fastest growing political subdivision in ND in terms of their growth in property taxes. They are faster than school districts or any other political subdivision. This morning in the Bismarck Tribune there was an article that tells the Bismarck-

Mandan Park district decided to buy a \$2.2 million water park. This bill would be sure those kind of decisions would be referred to voters.

**Rep. Kretschmar:** Do you know how many mills the Bismarck Park district levies?

**Robert Harms:** I don't off hand. I know the maximum is 220 or 170.

Opposition:

**John Staley, Grand Forks Park District:** We have a lot of cities in ND and I will give you consequences of the bill. I have heard three cities cited; yet there are a lot of other communities doing good things and they are all inclined to do what they can in their communities to get recreation centers, ball parks, golf courses etc. They work together to do this stuff. Are the park boards sensitive to their citizens? I can tell you that the park board I work for is very sensitive. Four years in the role my park board has dropped the mills. We were at 45 mills and we are down to 39 now. I know some examples in other states where communities have initiated creative projects and a lot of donations involved. I think these decisions overall are responsive to the people. I can see some people using this kind of thing to stop the project.

**Rep. Koppelman:** You said you believe your park district is sensitive to the voters. If that is true, what would you have to fear from the bill?

John Staley: You can have a small number and put it on the ballot and you could get a minority. There is always going to be someone that doesn't like something. I can see taking time for an election and holding up the project. Election cost \$17,000.

**Rep. Koppelman:** I don't see this bill as trying to punish park districts. I see one, if the testimony we heard is accurate, it simply puts them in the same category as other political subdivisions in the state. So if all other measurers can be referred, why should the park board be unique?

**John Staley:** I am concerned about projects being tied up with just a few people when it is what the majority of people really want the project done. You don't know where this bill is going to go.

**Rep. Koppelman:** Your concern is some special interest would come in and fool the voters and get them to do something that they shouldn't do?

**Chairman Wrangham:** If we have special interested groups that may be able to delay a project, are you aware of any kinds of special interest groups have actually put projects on the fast lane?

**John Staley:** No.

**Rep. Conrad:** Discussed Minot Park Board and all their projects and issues that they have to work with. If this were to be referred; if you refer each project you would refer the budget because the budget is one motion for the park board. So the whole budget would be referred or part of it?

**John Staley:** In our community our annual budget is in the ordinance. We have been doing that since 1907 and that is the way our county auditor asked us to do it. This is an ordinance so they could refer it.

**Rep. Jerry Kelsh:** You mentioned there is a cap on the mills. What is that cap?

**John Staley:** It is 12 mills in the general; about 1980 for these formulas; and we have 3.5 in our recreation program; 5 in our forester program; 12 in our general fund; 5 on our capitol levy. The only discretionary is our special assessments.

**Rep. Kilichowski:** Are these caps set by statue or by the state? They said that they have 170-200?

**John Stanley:** They were set by funds and by the state legislature.

**Steve Neu: Director of Bismarck Park District:** Ordinances are put in place if they are usually time bound and usually have a penalty or some kind of enforcement that is required. Such things are open container or glass containers in parks and loitering. We don't even have to have ordinance in the state of ND. Our enforcement goes back to the city and Burleigh County Sheriff's department. We do not have law enforcement. We do have a lot of things that go back to the cities like enforcement. We have ordinances that I did not bring for the whole park district. So we do have a lot of things that go back to the city. Mostly it is on meetings, personnel, operating vehicles in parks, hours of the park. We have ordinances that were adopted in 1927 when the park district was enacted. Presenting of the petition within 10 days after it would enact an ordinance without due process and posting an ordinance and notification of the public hearing so there is not a lot of time for public comment. What decisions would be allowed to be referred? Does that also include a decision the board did not decide to do? The process would then decide the distributor to go back to the city auditor or the referral the city auditor would have to verify all the names and addresses to make sure they are in compliance with the statute. Then certify them for an election; then it comes back to the park board to decide if they want to proceed with the project on the referral process and bond issue; then call an election. A special election is costly or do we wait until the next general election which would delay projects. Went over mill cap for the district and the distribution.

**Chairman Wrangham:** If you were in favor of this bill and helping us with the wording we heard decisions are not a good work; an ordinance or resolution, would that be more proper language for the bill.

**Steve Neu:** Ordinances is not the issue; special elections and timing and process is with going to the city auditor.

**Chairman Wrangham:** Reference to 10 days you thought was too short. That would be to hurry it up so that projects weren't drug out. You would not necessarily want that time frame extended?

**Steve Neu:** 10 days put a lot of pressure on everyone.

**Rep. Koppelman:** Was the decision in Bismarck an ordinance when that decision was made?

**Steve Neu:** No it was not; it was a discussion with discussion and public input.

**Rep. Koppelman:** So even if this bill had passed this would not have prevented that. You said you were here last year and your basic opposition was that it was unneeded because of what the bill does.

There was a lot of discuss regarding the budget process between Rep. Zaiser and Steve Neu.

No neutral.

Hearing closed.



# 2009 HOUSE STANDING COMMITTEE MINUTES

## Bill No. HB 1376

### House Political Subdivisions Committee

☐ Check here for Conference Committee

Hearing Date: February 16, 2009

Recorder Job Number: 9591

Committee Clerk Signature

Minutes:

**Chairman Wrangham** reopened the hearing on HB 1376. I think there was another bill in that was going to require all subdivisions to do their budgets by ordinance. I have been told that that bill failed. If they do them by resolution then this would not have an effect. They thought in the committee that all political subdivisions did their budgets by ordinances. Obviously they don't. I would ask the committee that we either look at this as adding the words an ordinance or resolution that has been adopted by the park commission maybe referred. If we don't add resolution then I don't see any sense moving the bill forward.

**Rep. Koppelman:** We could clarify the meaning of ordinance for this purpose if you want or we could talk about decisions, but talked about the fact that that might be too broad.

**Chairman Wrangham:** We could leave in ordinance and take it down the road someplace that will be decided that all budgets should be done by ballot or something.

**Do Not Pass Motion Made By Rep. Conrad: Seconded By Rep. Nancy Johnson**

**Chairman Wrangham:** I am going to oppose the do not pass in hopes that we can move this bill forward.

**Rep. Klemin:** First of all it requires the Board of Park Commissioners to reconsider their ordinances if there is a referral. Technically that doesn't happen; it is either referred to the

voter or they don't. You go back to the board and they get another chance to think about it and if they don't reconsider it; it is not entirely repealed. Revised doesn't count and then it have to be submitted to a vote and the testimony I heard was that the Park District can't call elections. There is a procedural problem here.

**Rep. Koppelman:** I thought what it was saying was that if there is a referred measure the board could take that into account and undo what it did. If they can't call an election it would be when the next election would be.

**Vote: 10 Yes 3 No 0 Absent Carrier: Rep. Conrad**

Hearing closed.

Date: 2/16  
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1376

House Political Subdivisions

Committee

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Legislative Council Amendment Number

Action Taken

DO PASS

DO NOT PASS

AS AMENDED

Motion Made By

Rep. Conrad

Seconded By

Rep. Johnson

Representatives	Yes	No	Representatives	Yes	No
Rep. Dwight Wrangham, Chairman		✓	Rep. Kari Conrad	✓	
Rep. Craig Headland, Vice Chairman		✓	Rep. Jerry Kelsh	✓	
Rep. Patrick Hatlestad	✓		Rep. Robert Kilichowski	✓	
Rep. Nancy Johnson	✓		Rep. Corey Mock	✓	
Rep. Lawrence Klemin	✓		Rep. Steve Zaiser	✓	
Rep. Kim Koppelman		✓			
Rep. William Kretschmar	✓				
Rep. Vonnie Pietsch	✓				

Total (Yes) 10 No 3

Absent 0

Carrier: Rep Conrad

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

**REPORT OF STANDING COMMITTEE**

**HB 1376: Political Subdivisions Committee (Rep. Wrangham, Chairman)** recommends **DO NOT PASS** (10 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1376 was placed on the Eleventh order on the calendar.

2009 TESTIMONY

HB 1376

Mr. Chairman

Members of this Distiguished Committee

My name is Mike O'Brien and I'm a small business man here in Bismarck. One of the other hats that I wear is Commissioner on the Board of Parks in Bismarck. I'm here testifying in support of House Bill 1376. As an elected official I'm no different than you folks in that I'm human and sometimes I'm going to make mistakes. If we, as elected officials, misread the will of the citizen on an issue, then I think they deserve an opportunity to refer that issue.

Here is the reason you need to pass this legislation:

Example: Let's say you have a local La Cross Club with less than 100 members, who would like your Park District to build them a 15 million dollar indoor La Cross Arena. There are two ways they can achieve that goal. One would be to convince three members of the current park board to get on board with their project and vote to approve the project. Now if that's not possible then all they need to do is get three people elected to the Park Board and vote in favor of the project. Even if the citizens are angry and vote them out of office they will still be stuck with paying for the project because that action by the board is not referable.

You probably are going to hear some testimony here today that if the citizens don't like what the park board is doing then they have the right to recall the commissioner or they can simply vote them out of office, at the next election.

Two reasons why I don't like the way the law is today

Reason #1

From the citizen's stand point if the park board passed a multimillion dollar capital improvement project that its citizens did not want. The only recourse they have is to vote the commissioners out of office. But the problem is they will still have to pay for that project because as it stands now you cannot refer a decision made by the park board.

Reason #2

From the commissioners stand point if we should misread the will of the people should we then have to lose our job as commissioners over one mistake? It would be much better to correct the mistake.

No other political sub division has this much power. As a park commissioner I don't need this much power nor do I deserve it. We are a government of the people and for the people. I ask that you support HB 1376 and give the citizens of North Dakota what is rightfully theirs. The right to vote.

## **Testimony of Lynn Bergman, taxpayer on HB 1398**

### ***Municipal Industrial Development Act (MIDA) revenue bonds***

In 1990, \$2.75 million in MIDA bonds issued for the purchase and redevelopment of the Black Building at 118 Broadway in Fargo were declared in default, prompting an investigation by North Dakota's securities commissioner. Bondholders said they thought the investment was solid because the city lent its name to the bonds.

### ***The "Ralph" and the "Betty"***

The Ralph Engelstad Arena and Betty Engelstad Sioux Center in Grand Forks (Opened in October 2001 and August 2004) were designed by Icon Architectural Group and constructed with \$111+ Million in private donations.

### ***The "UP Center"***

Phase I of Fargo's Urban Plains Center and Tournament Facility (Opened in fall 2008), also designed by Icon Architectural Group, was constructed by the non-profit Metro Sports Foundation with \$25 Million borrowed from local banks at 7% interest.

Groundbreaking for the UP Center was held on June 27, 2007. A local bank committed \$2 Million in financing to the project in August 2007. The MSF receives tax-exempt status from the IRS in December 2007. Complete financing was not in place until April, 2008, 10 months after groundbreaking and only 6 months prior to its first event on October 30<sup>th</sup>, 2008. University of North Dakota hockey coach Dean Blais was hired by the MSF for a reported five year contract at \$1 Million.

Fundraising began in October 2008 for Phase II of the UP Center with hopes that construction on the \$12 million project can begin in late 2009. The Metro Sports Foundation, hired Fargo fundraising firm GivingPoint to seek private funding for the arena's second construction phase. Phase II, the project's "tournament" facility, will be four ice sheets totaling 130,000 square feet to be utilized by youth hockey in the Fargo area. Phase II construction will begin when \$6 million in private donations are secured.

### ***Developer Ace Brandt***

Fargo area developer Ace Brandt announced plans to build a \$34 Million hockey arena in southwest Fargo on March 22, 2007 on 15 acres just north of 32nd Avenue South at about 51st Street in Urban Plains by Brandt, a 328-acre development. The main users of the UP Center are be Fargo youth hockey, Fargo Public Schools, Fargo Shanley hockey, and the Fargo Force USHL junior hockey team. Brandt owns the USHL franchise, having

paid a \$750,000 USHL membership fee and expects to have a \$1 million operating budget, which is the average for USHL teams. The 15-acre plot of land for the facility will be donated by Brandt.

### ***The UP Center / Ralph Connection***

The compressor that regulates the UP Center's single ice sheet is larger than the compressor that runs two sheets of ice at the Ralph Engelstad Arena, said General Manager Lance Johnson, the former Director of Event Services at the Ralph. Todd Berning, Metro Sports Foundation President, was formerly the General Manager of the Ralph Engelstad Arena. Sommer Lockhart, Marketing Director for the UP Center, held the position of Marketing Manager during her last three years at the Ralph. Johnson, Berning, and Lockhart likely received significant salary increases to leave the Ralph for the UP Center.

### ***My Questions:***

1. How long will Ace Brandt's "Fargo Force" USHL franchise remain in Fargo?
2. Who will repay the loans for \$25 Million facility if Ace Brandt's franchise fails?
3. Why wouldn't the banks seek repayment of the loans by Fargo Public Schools (deepest pockets), the Fargo Park District, and private Fargo Shanley High School in the event of the demise of the Fargo Force franchise?
4. Why is the Metro Sports Foundation paying the USHL coach's salary? Did Ace Brandt actually pay the \$750,000 franchise fee or did MSF pay it for him?
5. How much extra did the design and construction management of the facility cost because the architectural and engineering services were not publicly bid?
6. How much extra did the facility cost to construct because the construction was not publicly bid?
7. How much more will the facility cost to operate because of the salaries of its staff recruited away from the Ralph Engelstad Arena?
8. How much more interest will be paid over the term of the loan(s) because the project was started before all financing was in place?
9. Why was the Bank of North Dakota interested in funding the project?
10. Why did the state allow the mechanisms of the DONATED Ralph Engelstad Arena to be used for a BANK FINANCED quasi-public non-profit project?

### ***Summary:***

I urge the enactment of legislation that will eliminate the possibility of the public entities becoming involved in any further projects such as the UP Center without a public vote indicating 60% approval. If the public is subject any undue risk we must vote to accept it.