2011 HOUSE FINANCE AND TAXATION

HB 1331

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1331
February 14, 2011
14480

☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

A bill relating to the restriction of the amount of an improvement which may be paid by levy of special assessments; and to provide an effective date.

Minutes:

Ch. Belter: We will open the hearing on HB 1331.

Rep. Mark Owens: Sponsor, support. This bill seeks to begin the process of eliminating a very invasive and sometimes a destructive fee associated with the state of ND commonly known as special assessments. HB 1331 seeks to limit the amount in dollars of projects within special assessment districts that can be assessed to only property owners with the special assessment to 50%. Now, we're told that they are using special assessments everywhere, and that's not true. It is a phenomenon up north and out west. We're also told that they add value to your property, and that's only partly true. But in the interest of time, I'll just use two examples of why I believe this can be dangerous. First example, we keep talking about keeping young people in the state. It has been heard in this committee just recently, that more than 50% of the people living in ND, are living in apartments or rental property situations. Part of this problem is that we make it hard to purchase a house in this state. We make it hard to become part of a community. The situation exists, whereby you have to buy the property, you buy the house that was built upon it, and while all of that can be figured into the price of the property and part of the loan to value ratio, then you have to increase your house payment by these special assessments, which really should be part of the property itself, on the new house. That house that's sitting on that piece of property couldn't exist to function as a livable home if it weren't for the aspects of what these special assessments are being charged against on that property. If that were the case, now we're talking about these young couples who want to start a family, become part of the community, and actually purchase that home and focus on what they can afford as far as the house payment, not a house payment plus special assessments. They already have to deal with a house payment plus insurance, plus property taxes. We all know how much everybody in the state loves the current property tax. We have to do it that way. Now, we have to deal with special assessments as well, or we have for quite some time. That's one example. They tell you that when you sell your land, well you get to change your cost basis and that's where you get the value back from the special assessments as part of the cost basis of what you paid. In other words, the whole time you own the house, the equity that you are building up, you're only providing back to the city or the county; you don't get to keep it, or at least part of it. The second example, we do our injustice to our elderly. After they've spent their lifetime raising a family and helping to build ND and the cities and counties that they live in, they move around from house to house as their family grows and then finally shrinks and they find that retirement home that they wish to stay in and pay it off, because their goal is to be able to afford that on their fixed income and stay there in their final days. They have it all set, and all of a sudden, after they're there, one year, five years, six years, they're hit with $40,000 in special assessments, completely wiping out, if they get any cost of living increases in their retirement, completely wiping out that cost of living that they get anywhere from three to ten years worth, they don't get to see that, to the point that then they get to realize the special assessments when they sell their house to move into a home, because they can't stay where they wanted to. Obviously, that doesn't happen to everyone, but it does happen to some. They had already paid it off and expected to live there for the rest of their life, but they can't plan for these specials, because they don't know what is coming. So this bill seeks to limit special assessments. We've had specials too long. To get rid of specials overnight, would not work in the state of ND; you can't do it. This is an elephant we have to eat one bite at a time, so we're going to have to slowly wean our way off special assessments. They are not tax deductible, if they were done citywide instead of over special assessment districts it would be a much smaller piece for everyone, and if it was done in property tax, which I know is an evil term, but there are a number of places across the United States that do this every day. They make improvements, roads, sidewalks, lighting, build new subdivisions, never a hint of special assessments; not one. These are just two examples of why I brought this bill forward. My concern, of course, is with the people of ND and not the infrastructure or the entities of government in ND.

Rep. Winrich: In your discussion of financing a house and being able to afford a house, you made reference to the fact that the special assessments are tacked on to the land value or that they add to the purchase price in that way. That's not necessarily an inherent fault of special assessments; that's due to the way the financial institutions make loans. They don't incorporate the special assessments into the property value as you suggested that they should be. This isn't going to do anything about that is it.

Rep. Owens: I did not explain that enough. It's not the financial institutions that govern that. An example is talking to a contractor who is doing some work out in Williston, because you are aware that they're having a little housing problem out West. Their comment was well, the city is willing to special assess all of the infrastructure, so why should we foot any money for it because they are willing to do it, and then they'll just charge it back to the building owners and everybody around them and we don't have to pay for it. In other parts of the country, where they don't have special assessments, a developer comes in and develops the land, the land is for all practical purposes, that lot in the subdivision will be $6000.00. That's the charge that the builder is charging for the land itself. Then they put in the improvements themselves and that becomes part of the land. The land prices then would reflect those costs, $32,500 for the lot. That's it. There are no special assessments. They are automatically included and because the land is $32,500 it becomes part of the loan. It's not viewed by the financial institutions as being something separate. Only in special assessment states do they separate that. It just drives me crazy personally, because without the infrastructure that the special assessments pays for, the house and the land is worthless as far as living ability.

Rep. Winrich: The financial institution can and sometimes does, there are contracts negotiated in this way. The financial institution can insist that the special assessments be paid off and incorporated into the value of the land. They choose not to do that.

Rep. Owens: As a matter of fact, the first few houses that I bought moving here to North Dakota I insisted that the special assessments be paid off before I would purchase it, because I believed it to be an illegal tax, nothing more than to steal equity. Yes, I do have special assessment on my current house that I'm paying, and most of it is flood now. That's only because you don't see that anywhere where there's no such thing as special assessments. They don't even attempt to do that, it's unheard of; it's considered part of the property in other parts of the country.

Rep. Winrich: Your proposal to eliminate special assessments eventually, means that somehow these infrastructure projects are going to have to be funded some other way. This legislature has demonstrated a passion for limiting the ability of local political subdivisions to raise money for such projects. We limit property taxes, we have repeatedly had proposals to limit sales tax that can be charged by local jurisdictions. A few years ago there was a bill introduced to allow local political subdivisions to shift some of their funding into an income tax that would be collected similarly to the way the sales tax is in ND. That was soundly defeated by the legislature. Where are the political subdivisions going to get funding for these projects?

Rep. Owens: You've got bonding, property tax, sales tax, city income tax; all of those along with innovative financing are options. Your question dealt with this body wishing to limit all those options. I am familiar with a state where cities can have income tax, yet only 1 city in the entire state actually uses city income tax in that case. The majority of them, that I am familiar with, I'm just talking about personal experience, where I have lived in a number of places around the United States, throughout the years, uses sales tax to fund a lot of them. They use bonding and they use city-wide property tax. While we do have some limits that this body has tried to create, just in the short time that I've been here, a number of them have been soundly defeated by the testimony of the cities and counties when they come before us. There is also a number of people who view the possibility of limiting cities and counties as a good point, but feel reluctant to do so, because we as a legislature are not limited either. It seems somewhat hypocritical to do on and not do the other. I know that's a view as well.

Rep. Winrich: I think we agree on something.

Rep. Kelsch: Are you talking about developer impact fees for newly developed subdivisions, and then what happens in a case where it's an established neighborhood and they are improving the street in front of your house, adding street lights, putting in new curbs and gutter, sewer and water. The whole city would absorb those costs or the whole subdivision, or the political subdivision.

Rep. Owens: The difference between new development and an existing neighborhood obviously is that it would be absorbed into the property in a new subdivision but what do you do about the remaining subdivisions. That's where I talked about if it cost you $65/year to pay off this special for your special assessments district, as a city-wide property tax, where it's tax deductible then, it's going to be much smaller. That's just one option. You've got sales tax to pay it off, you have bonding to pay it off. I'm not suggesting that I limited the innovation the cities and counties can come up with. They certainly have the ability to go look to see how other locations are doing this, where special assessments don't exist and there are plenty of them around the United States.

Rep. Kelsch: One proposal that I've seen floating around in recent years is that the developer in a new project will absorb the cost in putting in the improvements and then pass it along in the property as you talked about. But there's been some resistance to that because developers don't want to have to pay those costs upfront, and on the other side of that, the cities and local political subdivisions are saying that we don't want to act as a bank, because essentially what we're doing is putting in those improvements and then at some later point, collecting those costs through the special assessment process. I'm just asking what the solution is because there is going to push back on both sides.

Rep. Owens: What you just said was in the new subdivision that they didn't want to put them in. Why would they want to pay for them if you're going to make the rest of us pay for them. I agree, if I'm the contractor and I can make this person pay for it in the future rather than me, I'm going to use his bank account rather than mine. I'm saying that's unfair. Explain to me when they repaved my road, they can guarantee that that special assessment district are the only people that use that road. I used to live on Belmont in Grand Forks. When the flood came, a lot of traffic shifted from the main thoroughfare, which is old US 81, Washington St., to Belmont because there were fewer red lights, less traffic, etc. That was, until all the traffic switched. They repaved the road, luckily they just did a top, and didn't charge us for some reason, because it was block grants from the flood. If they come in and do all that, and they turn around and charged a special assessment district, you can't convince that only the special assessment district uses that road. Everybody in the city, at one time or another, has driven on that road. This theory that only a certain area, in a special assessment district uses or benefits from the improvements. That's not logical and unsound. You're right, the city does not want to foot the bill. I'll even add another element to your argument. The city is also concerned that they will get stuck with it if a developer does part of it and the city has to do another part, and then it never develops for some reason, that subdivision. Well, you're elected at the city and county level to manage everything; so manage it, don't let the development grow so much that you outgrow the growth of the city. Manage the process, #1; #2 have the developers for the new subdivisions do what they do in other parts of the country. They foot the bill until they sell the property, that's when they get it back.

Rep. Streyle: In the subdivision I live in Minot, there are very few assessments in Minot. The developer built the roads, they did everything like you said in your example earlier. I thought that worked great, because my lot was whatever price, I got to borrow the money on it, write the interest off. I have no special assessments, so I like scenario. I am assuming that this is all commercial, apartments, residential etc in this proposal. Would you be in favor of stepping this in residential and then move down the line, pull the residential out first and then go to the commercial, etc. or do you want it all at once; trying to remove special assessments.

Rep. Owens: All my examples have been residential. That may make it just a little bit sweeter as far as being able to start the process if we did restrict it to just residential property. When I mean residential, obviously apartments would be considered commercial, they wouldn't be included in my mind anyway. I assume you're referring to owner occupied residential. I personally would have no problem to restricting it to that, to start off like I said. This would be a huge change overnight for the state, so we would have to do it in bits and pieces, you can't do it all at once. One thing that I did leave out was, in answer to Rep. Kelsch's question earlier, it's my understanding all around the state, and some political subdivisions are requiring the contractor to do 20%, 25% or even 50% in some cases already for new subdivisions. This is actually happening in one or two. Again, that's just residential, as you said.

Ch. Belter: Thank you. Further testimony in support of HB 1331. Testimony in opposition to HB 1331.

Jerry Hjelmstad, ND League of Cities: Opposed (see attached 1).

Ch. Belter: If we were to pass this bill, then if we wanted to allow the cities to use more than the 20% that was carried under general taxation, we would need to change that portion, or if passed it up to 50%, that still would not change the tax portion of the code. We'd have to change that portion of the code dealing with the tax.

Jerry Hjelmstad: If they were going to pay for it through general taxation, that would have to be changed.

Rep. Zaiser: Would this impact some of the smaller communities, maybe communities that don't have, would be at risk to develop a subdivision because of all the upfront costs that the developer would have to incur.

Jerry Hjelmstad: I would think for new developments it would definitely discourage developers from developing in areas where they weren't sure they could sell all those lots. I think the even bigger impact on the smaller communities would be in the existing neighborhoods where they would have to have the residents pay upfront the costs because the cities just would not have the funds available to pay 50% of those costs.

Rep. Zaiser: Fargo has been building more affordable subdivisions where they have more modest housing, less wide streets, etc. because some of these people just don't have the upfront cost to pay in a lump sum, additional costs for the building and lot. Would this be a deterrent for developing those kinds of lots and for the individuals to be able to purchase those lots in your areas?

Jerry Hjelmstad: I think any time you require 50% of the cost be covered by the city, it's going to be a deterrent if they have to find that from some other source.

Rep. Weiler: In your testimony, you state that by law, in NDCC, only 20% of the special assessment project can be paid out of general taxation. How many cities pay 20% of a special assessment project out of general taxation, or is it all spread out over the district.

Jerry Hjelmstad: I think the more common practice is to spread out 100% of the cost, except for those communities that do require the developer to pay some of the costs upfront.

Rep. Weiler: So, the law already allows you to pay 20% of a project out of general taxation, but nobody does that, is that correct. There's one way we could begin to wean ourselves off this already, and that's just by using something that's already in current law.

Jerry Hjelmstad: I don't know that nobody does it, I know that 100% is a common practice in a lot of communities.

Rep. Headland: When did special assessments become a common practice, that cities special assessed vs. having contractors pay the upfront costs and then add it to the value of the property.

Jerry Hjelmstad: I think that's been in place for a long time in ND, a common practice to assess the cost of projects.

Rep. Headland: I'm sitting here wondering why would any contractor pay the special assessment themselves and pay for that infrastructure to be put in if the city is willing to assess it.

Jerry Hjelmstad: A good point, in some cases cities do require the developer to pay part of the upfront cost, depending on the management of the development in that particular community; but if they don't feel it's necessary because the lots are selling, etc. they want to make it easier for the developer to finance those projects and encourage development.

Rep. Headland: I'm having a hard time understanding why a contractor in order to make money, which is what they do, wouldn't be willing, if the law they had to pay a portion of that themselves and have that value added to the property, how that would slow down development. When I look at the sponsors of this bill, I would think it would have to be a good bill.

Rep. Froseth: I can see this working like in a housing development area, but a lot of special assessments are the biggest portion of them are levied for street/water/sewer improvement projects; organized special assessment district and use that as a bonding requirement to secure the financing for the project. So if this passed, how do you secure the funding upfront to be able to put in a new street improvement district. I can see it working on a housing area, but not necessarily on a street for water/sewer improvement district.

Jerry Hjelmstad: I think that's the major problem; if you don't have a developer that could pay part of those upfront costs, you're going to be in a situation where the city won't be able to pay the upfront costs and there wouldn't be any way to finance the project.

Rep. Weiler: This is done in other states. It's proof there that developers do end up paying for the entire cost upfront. As Rep. Streyle they do that in Minot. I'm having a hard time thinking that we're not going to have development in certain areas because we aren't going to be find developers to take care of this. That's not really a question just a comment. It's done in other states, I don't understand why it wouldn't work here.

Jerry Hjelmstad: For development, when a developer is involved it could possibly work if the financing is available for that developer. You would limit the number of developers that would be able to upfront the cost. For existing neighborhoods to keep their infrastructure in good condition, where there isn't a developer involved, you could have some problems with having to upfront the cost.

Ch. Belter: Getting back to the 20% rule, I didn't look it up in the NDCC, is it 20% of a project, or 20% of all special assessments in a city.

Jerry Hjelmstad: I believe it would be 20% for each project, but in a larger city, of course, you might have multiple projects that are going on in different stages, some are 10 years long, some are 15 years long and so forth. Overall, it could be a problem with the city's debt limit, because it does count against their overall debt limit when the city does finance part of it through general taxation.

Ch. Belter: But the Code specifically says a special project.

Jerry Hjelmstad: That section 40-24-10, it says that any municipality, at the option of its governing body, may provide for the payment by general taxation of all taxable property in the municipality of not more than 1/5 of the cost of any improvement financed by the special assessment method. Each project up to 20%.

Rep. Owens: I have a question about the rural area, about smaller towns being able to do this. Your statement was that a builder may not want to come in and pay for the entire infrastructure in an area where they're not sure they can sell all the property. Of course, the opposite to that statement is, is that it's okay for the citizens to pay for an area that may never develop because a builder wanted to develop an area but didn't want to foot the bill. Do I understand what you said correctly?

Jerry Hjelmstad: I think if the governing body has any doubt about the ability to sell those lots, they would require the developer to pay more upfront for their development costs.

Rep. Winrich: The 20% that can be spread over the property tax in the entire municipality. Is that correct.

Jerry Hjelmstad: Right, that would be spread over the entire community, and I think that is why some cities would be reluctant to do that with a new development because the other property tax owners would be subsidizing the new development.

Rep. Winrich: If I understood Rep. Owens's ideas correctly when he was presenting the bill, his aim was to sort the costs of these projects onto the value of that land rather than create a special assessment. If that's going to be accomplished, then the assessment of that particular parcel will increase. We've seen repeated attempts to kind of divorce property tax increases from increases in assessments. I don't see how this can work.

Jerry Hjelmstad: I don't have a comment on that.

Rep. Headland: When I read NDCC 40-24-10, you had mentioned that you wouldn't be able to special assess and pass the cost on for infrastructure such as sewer and water, but it looks to me like that is exempt. It says, improvement financed by levying a special assessment other than the opening and widening of streets, or laying of sewer and water connections from the main to the curb line. So this really wouldn't apply, as I see it. Am I reading that correctly.

Jerry Hjelmstad: I'm not sure what you're driving at there.

Rep. Headland: The 20% tax.

Jerry Hjelmstad: The 20% would be the maximum that the city would be able to fund on a project. There are some limitations to that, but 20% would the maximum that they would be able to fund.

Rep. Headland: On all projects except widening of streets, and lying of sewer and water connections from the main to the curb.

Ch. Belter: That's the way I'd read it.

Jerry Hjelmstad: My understanding is on a new development, the city would not be able to pay 20% for new streets. That would be an exception to the 20%. So it would be the maximum of 20%; but in some cases they couldn't even pay 20%.

Ch. Belter: I think you are probably correct when you're talking about new development, but the way it reads to me, if assessments other than opening and widening of streets. I guess I would need some interpretation there, what's considered opening. Is that opening as in a new development or opening old developments.

Jerry Hjelmstad: That section is a little bit confusing, but it does provide further on in that section, that it would count against the city's overall debt limitations, so with a number of special improvement projects in a community, that could impact their debt limitation.

Rep. Weiler: I think that the answer as to how this would work, is when you special assess a new property in the city of Bismarck, a new development, and they get assessed special assessments when they move into the house, they are paying the mortgage payment, the property taxes, and paying special assessments. In a lot of these cases, it's $20,000 on the special assessments and those are spread over the period of roughly 10 years. So that's $2,000 a year added on to your monthly payment, which is approximately $180/month. If you have this $20,000 of specials that are added to the value of the property, then you're paying for that over a 30 year period, and the value of your home goes up $20,000, so you are paying a little bit more in property taxes, but not anywhere near $180 more a month. I think that's where the numbers work out here, why it's a huge benefit to spread this out over 30 years and the value of the land.

Ch. Belter: I would like to add that it's tax deductible if it's on your taxes vs. specials which is huge.

Rep. Meyer: Are any of the special assessments tax deductible anywhere.

Ch. Belter: No they are not. Thank you. Further testimony in opposition.

Kent Costin, Director of Finance for City of Fargo: Opposed (see attached 2).

Ch. Belter: Your comment that the federal government will pick up 35% of the interest cost, as the Vice President would say, that is a huge deal; but we, as tax payers, are going to have to pick up that huge deal. What is the city of Fargo do, there has been an awful lot of publicity on the South 25th St with the new school. What percentage did the city pick up vs. the property owners, or how did that work out.

Kent Costin: We did get a lot of press about that project. That is obviously driving development into a barren piece of property. The school was down a mile or more. The school district is in charge of school operations and they sited and located in that area. With regard to properties near that, certainly the roadway to get from current urban expansion to the school district, we put a roadway in and under our financing policy for specials; arterial streets are designed obviously larger than a regular residential street. Under our special assessment policy, we charged the homeowners for the equivalent of a normal street. Sales taxes are used to supplement the over-sizing of that street, so that the property owners do not bear the entire cost of that. So if a regular street is 35 ft. and the street is multi-lane concrete road, it is likely 50-60 ft. the difference between that, I don't know the exact percentage because it all works through formula. A significant part of that is done with sales tax.

Ch. Belter: So what percentage would you say of that total project was picked up by the general taxpayer vs. the property owners that were assessed.

Kent Costin: You probably stumped me with regard to the detail. Imagine, a 30 ft of a 50-60 ft project, I'd be willing to bet it was about 50-60% was probably borne by this special assessment and the other portion would be from city funds via sales tax. That's an estimate, I don't have the exact figures. I wanted to add that as you drive these arterials through properties that have never been assessed before, there are often times rural type developments that have been annexed into the city over time. They typically have two acre lots, which is double the size of a traditional lot. In Fargo's case, we deal with that by policy, instead of charging them for their two lots, we charge them an equivalent of 110 ft. which is slightly larger than your typical 75 ft. lot. We do recognize that they were there first, they have a septic system in that's going to fail eventually. But the logic for assessing a little bit more is when that septic system fails, they will hook into the city's sewer system and then essentially that lot, if you will, could be split or subdivided into another building lot and they could sell it off if they choose, or they can keep it, it's their decision. I think that's part of the philosophy of why we do it that way. It used to be 135 ft. and there was a bit of gnashing of teeth during that school project and we changed it from 135 ft down to 110 ft. to not charge as much for specials.

Rep. Headland: You mentioned that the passage of this bill may inhibit contractors from moving forward with the development because of financing purposes. You also mentioned that you have, through bonding, a more friendly interest rate that the city can give. Is there anything that precludes a city from working with the contractor, in some financial agreement to help finance the special assessments through bonding.

Kent Costin: I don't believe that there is any prohibition of doing that. It's just been a long-standing practice that the city control the entire process, largely because of the desire to maintain consistency in the types of infrastructure being put in and the quality as well.

Rep. Headland: I think you understand and it appears to me that special assessments work well for the city, but obviously there is a lot of feeling amongst the people that buy the property that they don't very well. So we're trying to find some way to work through that. I think that is the purpose of this bill.

Kent Costin: I do appreciate that. Again, we've looked at it at length at the local level and have had these exact same discussions and dialog and I want to clarify a couple of things that came up. When it says that the developer has to put in all this cash, up to 50%, you have to dig into the detail a little bit because in some cases they're not putting up any cash. They are getting a letter of credit from their bank, so if they have enough creditworthiness, they will get a financial instrument that will allow us to draw against the letter of credit. I think in other parts of the state, they are actually requiring that you might have to make a cash deposit. I think the communities in the eastern side of the state are using the letter of credit model almost exclusively. So it is developer-friendly which in turn incents development. Again, the builder will price that into the price of the lot, and in the end the taxpayer is going to pay; either the special or the house. It's an awkward dance to try to move away from special assessments. We had this discussion much like Rep. Owens and just chose to kind of let it be, and that was back in 2004 and we've testified on this issue back as far as 1994 as well.

Ch. Belter: Because of special assessments and the developer not having to put up the cash to pay 50%, if we wanted to make some changes. Are we artificially raising the price of land because they don't have to put as much into it, because it's getting financed through these special assessments, and if the contractor knew that he was going to have to come up with more cash in order to make his development, might that not hold down the value that they are paying for this property in the development project because they are taking away the risk.

Kent Costin: It seems like they would be taking on a lot more risk and that would be one issue. I agree that somebody has to determine the price of the lot. There certainly going to price that in there. If your question is did the special assessments actually allow the builder to run off with a little extra cash because the assessment comes two years later. I don't know the answer to that.

Ch. Belter: You're right he takes on more risk. If had to put down more cash, he would be taking on more risk. But because he's going to take on more risk, maybe the developer wouldn't be so quick to pay as much for property, because residential or commercial property, they are paying big bucks for that ground. I am thinking that if they knew that they had to bear a portion of the cost, the developers, through competitiveness, that the property values might not get so carried.

Rep. Winrich: Does the 20% limitation on the funding of special assessment projects through general taxation apply to any funding that's taken out of the utility fees that you talked about or can they be used for more than that.

Kent Costin: I believe the 20% is just referring to the amount of taxes that can be used to be put into a project to lower the overall cost. It would really have nothing to do with the impact upon utility fees, although it would have the same detrimental effect if you shifted the costs onto the utility which simply raised their water and sewer bills.

Rep. Wrangham: Are special assessments a profit center for the city.

Kent Costin: I would say that there is a component of cost recovery in that.

Rep. Wrangham: A cost recovery, is it a profit center.

Kent Costin: We've dealt with that issue in the past too. We do charge an administrative fee, an engineering fee, so to the extent that that accumulates, that helps us to defray our costs. Depending on the volume of projects, there is an ebb and flow in the amount of projects that we do. If we do more projects, we get more administrative and engineering fees; if we do less, it's less. It is what it is.

Rep. Wrangham: What I'm hearing is that it may cover more costs, but it's not a profit center. I understood you to say earlier that eliminating special assessments would basically have a negative effect on the budget. If you didn't do the work, didn't collect the money, it would be even, I don't see where it would be a negative effect on the budget.

Kent Costin: I don't know that I commented on the impact on the budget, it was our ability to simply construct much of anything, because our one-legged stool, which is special assessment financing would be chopped in half. We would simply have half the amount of revenue to work with, which would overflow, and would reach into other areas for other resources, which would be property taxes, sales taxes or utilities. All of those have a negative effect upon our taxpayers, especially in light of the legislative desire to continue to lower governmental costs to taxpayers.

Rep. Wrangham: Maybe I misunderstood. There's another problem, I think this is something that bugs me a lot. I just don't understand why government entities and cities seem to be the ones that are especially good at this, seem to feel a strong necessity to grow faster and larger than the economy or the demand of the free market dictates. If, at some time, maybe not today, but why is that mentality there.

Kent Costin: I would be happy to put you in contact with our city leaders with regard to that. I'm the one that keeps track of the assessments, not necessarily the politics of growth.

Rep. Streyle: going back to my example, in our new development in Minot. There are going to be roughly 600 new homes. The city just said that whatever the minimum specs are, developer you do it, it's a huge benefit to be able to write that interest off on that additional, instead of the special assessments. When the costs are built into the purchase price, you know what the costs for everything are. You can borrow the money against it, write the interest off and then would you support using this model in new developments only or not at all.

Kent Costin: I think as it is right now, it gives the property owner some choice in the matter, if you will. If they want to borrow the money, and they are able to borrow the money, they can pay off all of those specials and then amortize it into their loan. Then it would be tax deductable. I don't believe that people often choose to do that, in some cases, depending on the roll out of the infrastructure, they may not know how much these specials are going to be, because there is a delay, oftentimes they sell homes before they are constructed and they may even close financing before that. It is a bit awkward for the taxpayer. It always has been. But leaving that choice to the taxpayer would seem like a good option. I'm not saying it can't work or wouldn't work; but the two concerns that the city of Fargo has expressed in the past, is quality of workmanship, inspection of the infrastructure to make sure that we get quality infrastructure put in, so we don't have to come back in and tear it out and redo it over that period. Again, the control over what the developer charges the property owner. That's free market, he can set it at whatever he wants and I think we have some concern about that. They certainly can't price themselves out of the market and never sell the lots. But if they all decide that they are going to raise the prices 20% and if they are all together on that decision, then it's going to be inflationary.

Rep. Zaiser: If we went with this new bill, perhaps that could price some of the homes out of the market for some people, because instead of paying that special assessment over a period of years, that price would be put into the cost of the home, would that be the case in some of our lower income, affordable housing neighborhoods, like the Ide Neighborhood, for instance.

Kent Costin: I'm not sure of the nature of your question specifically, but in the end they are going to pay one way or the other. The mechanics, if they are paying specials, is part of their escrow in their monthly payment or if they are paying the bank as the primary loan, it's going to be same amount. Lowering the special assessments by 50% would certainly have a positive impact on the total amount, but again, maybe we will only one lane of a two lane road; we're going to run out of money and we're not going to be able to construct the facility.

Rep. Kelsch: There was a statement made earlier that some lenders can choose whether to include specials in the mortgage, and if that's the case, and the lender chooses not to include specials in the mortgage, how does the city recover those special assessment costs.

Kent Costin: Are you talking about just the mechanics of collecting the money or when they are initially levied.

Rep. Kelsch: If the special assessments aren't included in a mortgage and therefore, not being deposited in an escrow account and paid to the city at the end of the year, or whenever they're due, how does the city collect the special assessments if they're not being deposited in an escrow fund? Can the property owner elect not to pay those special assessments if they so choose.

Kent Costin: I believe in all instances the property owner is responsible to pay their specials. They do have the option, 10 days prior to completion of the assessment, to choose to pay these assessments in full and never amortize them. If you get a bill for $15,000 for your share of the specials, and you say I don't want to let this to run out because I don't want to pay the interest, he can come in and in that 10 day period pay us. That comes directly to us. If it is a loan financed on their home, I believe they are required to include that, depending on the loan ratios, so then that money is collected by the county on the tax statement and then remitted to us. There was quite a bit of discussion with regard to this 20% factor with using property taxes as the way to buy down these specials. I do agree if the cities started to do that, it would have a positive impact, but I would have concerns about our ability because in Fargo, for example, we are getting to issue bonds. We have $25 million worth of projects. So let's say with simple math you did, 20% of that in property taxes that would be $5 million we'd need to defray the cost of specials. Our current property tax levy right now is 58 mils, and we generate about $14 million for our general taxation to run our city. If you chose to go down the path or exercising the right to use that 20% that's already in state law, we're looking at a $5 million hit to our budget. This would have a budget impact and then you would be talking about police, fire and all the other necessary services that our tax levies are primarily used for. It's a problem really seeking a new revenue source. So if we could grow another leg on our stool, we'd be happy because we are sitting on the stool with one leg right now, and that's special assessments.

Rep. Weiler: If we pass this law, wouldn't the cities automatically, if they are unable to collect 50% of the special assessment project, aren't they going to just automatically require the developer to pick up the other 50%. I think your concern about losing 50% of the money is not really valid, because the developer is going to pick up the other 50%. Now that's just a comment. Under ND law, on the 20% rule, could you explain to me what was happening with the 25th St project in Fargo? You had said that 50-60% was picked up by the special assessment and the other 40-50% would be picked up through sales tax. Isn't that general taxation. If only 20% of the special assessment can be paid out of general taxation, how were they able to pay 40-50% of that project through general taxation?

Kent Costin: General taxation in our opinion, in how we've interpreted that, would be in lowering property taxes. It says general taxation; nobody's ever asked that question. That's a good question. Our voters operate under home rule charter authority right now, and we have authorized sales taxes locally for infrastructure. So it would be my opinion that would give us legal ability to redirect those sales taxes to that project.

Rep. Headland: You had mentioned that the property taxpayer if they so choose can go and get a loan and pay off their special assessments. I'm wondering if there is interest built into the special assessment already and if they're going to do that, then do you allow them to deduct that interest over that period of special assessment, or are they essentially paying interest twice.

Kent Costin: The specials are levied and there is a component of interest during the life of the construction period. You can call it capitalized interest. As soon as that is levied, we go into that 10 day period like I mentioned to pay off their entire assessment. If they choose not to do that, it goes into a 25 year amortization because we extend it longer than what came up in previous testimony. Fargo's goes out to 25 years. Every year we bill 1/25th of that assessment to the county, and there is an interest component on there. So if they wanted to freeze the impact of paying interest forever, they can just come into our office and pay the special right at the front counter to pay the whole thing. So they do have some say in the matter. If they do it upfront with their loan, or even if they do it three years from now, because they've settled in a new job and income is going up and they just decide they don't want to pay the interest, they can come in to the office and write a check right over the counter. I don't believe it is deductable.

Rep. Streyle: What is the interest rate you charge?

Kent Costin: We charge 1% over the bond rate. So in the case of the Build America bonds we issued, I think they were issued at about 3.25%. We add 1% in for delinquencies and potential for weak economies where people can't afford to pay, because we are always obligated to pay those bond payments. So it's bond rate plus one. State law currently allows you to do the bond rate plus 1.5. We arbitrarily chose not to do that because of the cost analysis back in 2004, we said that our delinquencies aren't that big of a problem, we are going to lower that from 1.5% down to 1% because we think it's a more reasonable figure.

Ch. Belter: What did the bond rate run prior to this new federal program?

Kent Costin: The bond rates, typically in a normal market environment are issued on a tax exempt basis somewhere between 4.5 and 5.5 under normal market. Obviously the Build America bond was an incentivized feature of the recovery act and it allowed us to do that. There were legal arguments about what interest rate we should use. We chose the lowest possible rate for the taxpayer which was the Build America bond rate, on the assumption that the federal government was actually going to pay us our 35% over the life of the bonds. We had a lot of discussion about that. They have since shut down that program.

Rep. Owens: I have six problems with your testimony. In the interest of time, I am going to make one statement and ask you one question. You stated that it's hard to estimate the cost of new development, if you sell the house and the land upfront, yet my first house, personally, was built in a state where - what are special assessments; nobody has ever heard of those. It was no problem doing the contract and paying for everything because they knew how much infrastructure was put into that lot. In your testimony you stated that it would shift the cost away from those who directly benefit, and will reallocate costs to those that don't benefit. So if you're building a road, it's really a two-part question. How do you determine who doesn't benefit and do you put something special in the driver's license saying they can't drive down that road because they didn't pay for the special assessments.

Kent Costin: My testimony was trying to explain the difference between assessing the cost directly and using general taxation. Clearly if you use general taxation you are charging everybody. If you are using special assessments, you're focusing on the people that are within the development. Yes, there are times when people drive on roads that they have not paid for and vice versa. We have a map of the city of Fargo. It is about as large as if you hung it from the wall and it goes all the way to the floor, because Fargo is quite long. It looks like the pixels on a very large screen monitor. Each of those pixels represents a special assessment district that has been done as the city has grown. Again, it's a long established practice; everybody pays for at least some piece of the infrastructure. You can argue all you want about whether you use it or you don't, but in the end, in this state, that's become a widely accepted method of doing it. I agree with you, everybody embraces special assessments.

Rep. Owens: In this state.

Rep. Streyle: Up until recently, your average interest rate is 5-6% and the current market is much lower than that for a 30 year, isn't that hurting the homeowner a little bit, you charge them more interest than if they wouldn't have this special assessment; if they would have had it with the property. I work at a bank and you're essentially competing against the bank. We have public vs. private, which I have a problem with as well.

Kent Costin: The current interest environment is abnormally low. The fact that we add a 1% for delinquency factor, much like your loan reserve in the banking industry. We think it's a good rate; it's the best we've ever offered. I don't know what mortgage interest rates are right now. If they are 3.5 or 4%, so it might be a push. In a normal environment, we typically would be low.

Rep. Hatlestad: What percentage of the specials do the contractors need to come up with upfront?

Kent Costin: Under our policy, we require a 50% letter of credit coverage. That means that they have to have a bank issued letter of credit that allows us to draw up to 50% of the project costs. Let's say they did a $2 million development, they need to go to the bank and get a $1 million letter of credit, which I think they can do for a really low standby fee, so it's not a lot of money out of their pocket. We do not require a cash infusion into the project. We require coverage through these financial instruments, to make us protected in the event that the special assessments aren't ultimately paid.

Rusten Roteliuk, City Engineer for City of Minot: Opposed (see attached #3).

Rep. Owens: Am I reading this correctly, it basically says that if you pass this bill then the elected officials of Minot and the hired employees for the special assessments will just lie and create an estimate, double the cost to ensure that they cover it. Is that what the paragraph actually says?

Rusten Roteliuk: That is not the intent. What it is saying is that if a developer wants to special assess, we may have difficulties, and it was an exaggerated example, in estimating the costs of a project. We were concerned about that; we'd rather work on the actual cost after the project is done.

Rep. Owens: It seems like to me, if it was the developer that you were concerned about, it would actually work the other way around. They would estimate it at half the cost so that they would only have to put in a quarter of the cost rather than half the cost in order to do it. That's why I thought you were talking about government officials, because if it was the contractor they would go in the other direction as opposed to expanding it, they would underestimate, because then they could limit their 50% exposure.

Rusten Roteliuk: We would work with the developer and we would have to look at those costs and make sure that they are reasonable. In the case of Minot, we would look at those.

Rep. Owens: That's what I was looking for.

Ch. Belter: Thank you. Further testimony in opposition to HB 1331. Is there anyone from the Tax Department that could answer our questions?

A person from audience said they will get back to the committee after talking with Marcie.

Ch. Belter: Okay, we will get clarification. We will close the hearing.

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1331
February 15, 2011
#14549

☐ Conference Committee

Committee Clerk Signature	DPenrose

Explanation or reason for introduction of bill/resolution:

A bill relating to restriction of the amount of an improvement which may be paid by levy of special assessments; and to provide an effective date.

Ch. Belter: We will take a look at HB 1331. What are the committee's wishes in regard to HB 1331?

Rep. Owens: Distributed amendments and reviewed (see attached 1). While I believe that the way the bill is written is fine and is completely capable of doing what is done in many other states in the country, as a first step toward relieving the citizens of this ugly reality of special assessments. Nevertheless, in the interest to make sure that everything has been vetted properly, the amendment delays the bill for two years and adds a study during the interim to fully investigate the alternatives for special assessments.

Rep. Grande: Are we going to address the issue found in Chapter 40-24-10 and go to the 50% instead of 20%. Is that what the study will address?

Ch. Belter: Yes.

Rep. Zaiser: How many states don't use special assessments at all? Do you have a listing of those states? Why do we want to hurry up and pass the bill because it has a delayed enforcement, if we're going to do a study in the meantime? After the study, we can pass the bill if we thought it would warrant passing. It doesn't make sense to do a study with a delayed enforcement.

Rep. Owens: No, I have not yet found out exactly the number and that would be revealed in the study. I just know that in all the places I've lived across the United States during my military career, I never encountered specials until I landed in South Dakota. Then I moved from South Dakota, because it was too warm, to North Dakota and by the way that's where I got my southern accent. I personally believe that it is over 50% of the states do not use special assessments, but I don't have hard numbers at this time.

Ch. Belter: From my perspective, the reason I was going to support the passage of the bill with the delayed date implementation. I feel that there is something inherently not correct with our special assessment procedures, and I think if this bill passes, then it kind of puts teeth into the importance of the study, that the legislature has said that we're going to implement this bill and if something comes up in our study that finds out differently, then all those issues can be resolved during the interim. I think it sets the stage for a serious look at the issue.

Rep. Zaiser: It is also likely that we are going to pass the study then and do it. Whereas sometimes we have elected not to do studies.

Rep. Owens: I move the Owens amendment, .01002.

Rep. Grande: Second the motion.

Ch. Belter: We will take a voice vote. Motion carried. We now have the bill before us as amended. What are the committee's wishes?

Rep. Owens: I move a Do Pass as amended.

Rep. Streyle: Second the motion.

Ch. Belter: Any discussion.

Rep. Zaiser: Despite understanding your logic for the reason you wanted to have a delayed enforcement or enactment, to me, the current procedure seems to be working quite well, and I think to totally abandon the special assessment process, as witnessed by the cities that utilize it as a tool that they have to basically develop their communities, I just think it would be inappropriate to eliminate that tool. I am going to oppose the motion.

Ch. Belter: The clerk will call the roll.

10 YES 4 NO 0 ABSENT DO PASS AS AMENDED

CARRIER: Rep. Owens

11.0503.01002
Title.02000

Prepared by the Legislative Council staff for Representative Owens
February 14, 2011

Y'
2/15/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1331

Page 1, line 3, after the semicolon insert "to provide for a legislative management study;"

Page 3, after line 25, insert:

> "**SECTION 5. LEGISLATIVE MANAGEMENT STUDY - SPECIAL ASSESSMENTS.** During the 2011-12 interim, the legislative management shall consider studying use of special assessments for public improvements, use and administration of special assessments across the state, and alternative funding mechanisms available. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly."

Page 3, line 27, replace "2011" with "2013"

Renumber accordingly

Date: 2/15/11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1331

House Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number ______

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☑ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Owens Seconded By Rep. Grande

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter			Scot Kelsh		
Vice Chair. Craig Headland			Shirley Meyer		
Glen Froseth			Lonny B. Winrich		
Bette Grande			Steven L. Zaiser		
Patrick Hatlestad					
Mark S. Owens					
Roscoe Streyle					
Wayne Trottier					
Dave Weiler					
Dwight Wrangham					

Total (Yes) ______ No ______

Absent ______

Floor Assignment ______

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

Voice Vote: Motion Carried

Date: 2/15/11
Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1331

House Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 11.0513.01002 .02000

Action Taken: ☑ Do Pass ☐ Do Not Pass ☑ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Owens Seconded By Rep. Streyle

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter	✓		Scot Kelsh		✓
Vice Chair. Craig Headland	✓		Shirley Meyer		✓
Glen Froseth	✓		Lonny B. Winrich		✓
Bette Grande	✓		Steven L. Zaiser		✓
Patrick Hatlestad	✓				
Mark S. Owens	✓				
Roscoe Streyle	✓				
Wayne Trottier	✓				
Dave Weiler	✓				
Dwight Wrangham	✓				

Total (Yes) 10 No 4

Absent 0

Floor Assignment Rep. Owens

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

REPORT OF STANDING COMMITTEE

HB 1331: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). HB 1331 was placed on the Sixth order on the calendar.

Page 1, line 3, after the semicolon insert "to provide for a legislative management study;"

Page 3, after line 25, insert:

"**SECTION 5. LEGISLATIVE MANAGEMENT STUDY - SPECIAL ASSESSMENTS.** During the 2011-12 interim, the legislative management shall consider studying use of special assessments for public improvements, use and administration of special assessments across the state, and alternative funding mechanisms available. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly."

Page 3, line 27, replace "2011" with "2013"

Renumber accordingly

2011 TESTIMONY

HB 1331

#1

To: House Finance and Taxation Committee
From: Jerry Hjelmstad, North Dakota League of Cities
Date: February 14, 2011
Re: House Bill 1331

Special assessments are commonly used in North Dakota in a couple of ways. One is where a developer requests a city to put water/sewer lines and streets into a new subdivision. Typically, 100% of the cost is specially assessed against only the property in that subdivision. Under HB 1331, only 50% of the projects costs could be paid through special assessments.

There are two ways the other 50% could be paid. One is that the developer pays that cost up front and raises the price of the lots to cover the cost. Some cities do require the developer to pay part of this cost, but this does limit the number of developers who will be able to afford this up front cost. Also, the lots will likely be more expensive since the infrastructure costs will be built in rather than being spread over a period of years.

The only other way to cover 50% of the costs is for the city to come up with the other 50%. By law (NDCC 40-24-10), only 20% of a special assessment project can be paid out of general taxation. The other sources would be extra revenues in other unrestricted funds, something that most cities do not have. Even if these funds were available, the people in the rest of the town would be subsidizing development in the new area.

The other major category of special assessment projects is where a city needs to reconstruct or do major repairs on existing water/sewer lines and streets. In this situation there is no developer, so that option to get 50% of the costs is not available. The residents of the district would either have to pay up front for 50% of the project or the city would have to come up with 50% of the costs. The result is that many of these projects may not happen and infrastructure would continue to decay.

Unfortunately, as costs of constructing infrastructure keep going up, special assessment costs also increase. However, a method of assessing costs to properties that are benefited by a project and allowing those costs to be spread out over a period of years is important for maintaining essential infrastructure.

We ask for a "do not pass" recommendation on House Bill 1331.

#2 p. 1

House Finance and Taxation Committee
Honorable Chairman Wes Belter
Testimony on HB 1331 from City of Fargo
February 14, 2011

Honorable Chairman Belter and members of the House Finance and Taxation Committee, my name is Kent Costin, Director of Finance for the City of Fargo. Thank you for the opportunity to provide testimony on this bill.

The City of Fargo opposes this bill because it severely restricts the use of special assessments as a capital financing tool. Special assessments are currently our largest single revenue source used to finance growth related infrastructure projects in our community. Specials provide predictable and sustainable revenues that are used as a source of repayment for municipal bonds issued to finance improvements. They have been a core part of our budget resources for years and allow us to expand our City and allocate these costs to those who benefit from these improvements. This is true for many other large and small cities across the State of North Dakota using special assessments as a primary means of financing City infrastructure.

This bill caps the special assessment to 50% of the project cost. While it is prudent to consider ways of keeping special assessment costs as low as possible cutting 50% of our largest revenue source would have a very detrimental impact on continuation of our growth and the health of our local construction and housing industry. This would be a move in the wrong direction at a time when construction and housing industries have slowed from past levels due to a weakened National economy.

To understand the magnitude of this issue and the impact it has on Cities like Fargo and others you simply need to do some balance sheet analysis to understand the ongoing need for capital financing. Fargo's total reported assets are approximately $700 million. Of that total $580 million or 83% of our total assets are investments in capital assets, largely infrastructure such as roadway improvements, underground water distributions, sewer collection, street lights, and

#2 p.2

traffic signals. Special assessments provide all or a part of the resources needed to pay back the project costs incurred for the required infrastructure and will vary from each community based upon their ability to make up front contributions to the project costs. Fargo's growth typically produces special assessment levies of about 15 – 20 million per year with a mix of new developments and ongoing reconstruction projects.

Arbitrarily restricting special assessments to 50% of projects costs would leave a handful of choices for local leaders. These would simply shift the remaining costs to other taxpayer sources. Sales tax and property tax increases would be a logical solution, however this financing strategy provides limited ability to fund projects the size we typically need for our community to grow. Fargo is already using sales tax resources to help pay for infrastructure and all of our existing sales tax capacity is pledged for that purpose. Raising utility fees is another option for at least the underground projects such as water, sewer and storm sewers; however, our fee structure currently in place does not fund a significant part of these improvements because special assessments have been a long standing method to finance projects. If the projects are necessary to provide new residential and commercial developments someone has to pay for the costs. A good comparison of the impact of this bill would be someone building a house with the ability to borrow only 50% of the house cost. They would have a lower mortgage payment, but would likely not be able to build the home they desire, or would have to wait a significant amount of time to save up the other 50% needed to complete the project.

Local leaders have the ability to lower the cost of special assessments by adopting special assessment funding policies that use other city resources where logical and available. We are already doing this in Fargo by using sales taxes, property taxes, and utility fees to help pay for a portion of project costs. It is important to remember that special assessments are levied against the property owners who benefit from the new development and that shifting away from this process would create more inequities since other revenues would come from people who have already paid for their special assessments. This bill would shift cost away from those who directly benefit and will reallocate costs to those that don't benefit, which seems quite

#2 p.3

illogical. State Laws have contemplated an equitable distribution of benefits and special assessments accomplish that objective. Courts have ruled in favor of this process for many years as an equitable method of distributing project costs to property owners.

The City has also evaluated moving away from special assessments as a means of financing project costs. Doing so would shift the responsibility for financing infrastructure to private developers as is done in other states, but again, it simply shifts these costs to the property owner into the cost of the lots purchased by homeowners. If the current special assessments financing process was curtailed and costs shifted to private developers they would be forced to simply add these costs to the cost of property just as we are doing with special assessments.

Under our current methods property owners are benefitting from low interest rates as a result of tax exempt bond financing. We questioned the ability of private developers to obtain financing as affordable as our municipal bonds. This prediction actually materialized during the banking crisis over the last two years when corporate credit essentially evaporated overnight. During this time the City of Fargo continued to build infrastructure and was able to obtain low cost financing through tax exempt bonds. The Federal Government even encouraged the use of tax exempt financing through the issuance of "Build America Bonds" which were authorized as part of the Recovery Act. Under this program local governments could issue tax exempt bonds for infrastructure and the Federal government will pay 35% of the interest costs during the life of the bonds. Our taxpayers would not have benefitted from this program if the City's practice was to rely on the creditworthiness of the local development community.

It is very important that Cities continue using special assessment financing for infrastructure projects and we ask that our ability to do so not be diminished by approving this bill.

We urge a DO NOT PASS recommendation and would be happy to answer any questions about the use of special assessments.

#3 p. 1

Testimony to the House Finance & Taxation Committee
Chairman Wes Belter
Prepared by Cindy K. Hemphill, Finance Director
and Rusten Roteliuk, City Engineer
City of Minot
Cindy.hemphill@minotnd.org
Rusten.roteliuk@minotnd.org

HOUSE BILL NO. 1331

Mr. Chairman, my name is Cindy Hemphill and I serve as the City Auditor and Finance Director for the City of Minot. I am representing the City of Minot to encourage a DO NOT PASS on House Bill 1331.

Special assessment districts are interesting projects. Projects may be for new development, it may be based on a neighborhood petitioned project, or it may be a rehabilitation project that is not developer driven. Based on House Bill No. 1331 we see the following three scenarios playing out.

If the project were new development, the developer would have more upfront costs versus the city. In our opinion, it is highly unlikely developers will be willing to take on more upfront risk.

If the project were a neighborhood petitioned project, the neighborhood would have to upfront the costs for the project. Again, it is highly unlikely a neighborhood could become organized well enough to provide 50 percent of the costs upfront.

If the project were a rehabilitation project and the City had to come up with 50 percent of the costs upfront, why would the City ever create a special assessment district? The 50 percent the City would need to front would have to come from property taxes versus those properties benefiting from the improvement.

#3 p. 2

Other concerns we have with this bill is the 50 percent is based on estimated construction cost. In theory (if taken literally), one could double the cost of the project estimate so you would be covered when it is bid. For example estimate the cost at $1,000,000 but actual costs are $500,000. Therefore, you are able to special assess $500,000.

Another concern is there does not seem to be a clear understanding on what "reasonable allowance, for cost of "extra" work means. Does that mean extra work after the design is done?

Special assessments aid every community in their ability to complete projects without the full burden being placed on all taxpayers. Cities have the ability to write policy and pass ordinances, which may govern how special assessment districts are handled in their communities. The City of Minot believes this bill will strongly discourage the use of special assessment districts.

Again, we encourage a DO NOT PASS ON House Bill 1331.