

2011 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1384

# 2011 HOUSE STANDING COMMITTEE MINUTES

## House Industry, Business and Labor Committee Peace Garden Room, State Capitol

HB 1384  
January 25, 2011  
13358

☐ Conference Committee

Committee Clerk Signature

*Ellen L. Tang*

### Explanation or reason for introduction of bill/resolution:

Relating to joint powers entities and commerce authorities; relating to conversion of joint powers entities to commerce authorities and additional powers of commerce authorities; and to declare an emergency

### Minutes:

**Chairman Keiser:** Opens the hearing on HB 1384.

**Bob Skarphol:** The passage of the commerce authority took place back in 2003 and was designed to provide political subdivisions with the ability to hold property that was out of the ordinary. We were in the process of negotiating with the malt company and we were in the need of the capability to provide water to the malt company. Since that time it's hasn't been utilized. We in NW North Dakota have water issues to get resolved. The larger picture is the water proposal that is out there and it's been heard in Natural Resources, as a part of that, there was a reorganization process that took place. One of our local water entities, R & T water system was a Ray & Tioga system that had Stanley as a customer. Stanley contribution to this whole region has been vastly elevated. I pushed Stanley into this R & T group as a full pledge partner. Ray & Tioga, both city commission voted on this, they approved making Stanley a full pledged partner and this legislation. As a result of that decision because that entity, R & T was a joint powers agreement and their attorney decided to try to utilize the commerce authority as the new entity for R & T to use as their structure. They will maintain their independence under the western area water authority and work under an umbrella organization. There is a need to reorganize and need to make some minor changes to this particular section of the law to allow for joint powers entities to move to commerce authority.

**John Petrik~Attorney with Vogel Law Firm in Bismarck:** (See attached testimony).

**Representative Frantsvog:** When the city of Ray bonds for whatever, it's back by the city. Under this bill who will back those bonds?

**John Petrik:** The R & T Commerce Authority.

**Representative Frantsvog:** So, if they default, who does the bond holder go to?

**John Petrik:** The bond holder would presumably repossess the plant & lines of the R & T Water Supply.

**Representative Frantsvog:** There is no taxing authority?

**John Petrik:** Under the current commerce authority the legislation didn't propose the change, the commerce authority eligible up to a 4 mill levy. R & T is not requesting any property tax levy. There is under the existing commerce authority legislation the ability to access up to 4 mills.

**Representative Ruby:** How long has commerce authority in law and how many do we have in the state?

**John Petrik:** My understanding is that to date there are no commerce authorities.

**Representative Ruby:** I'm aware of a cooperative company that converted to a water district and they didn't need the law to change that. Can't you dissolved your current structure and form an authority?

**John Petrik:** We looked at the issues and the way water districts are, R & T has been owned and funded by the cities of Ray & Tioga. The water is sold from R & T to the city of Ray, Tioga & Stanley. They have their own distribution lines and charge their residents directly. A water district is more like a cooperative. Each person that participates in a water district has voting power. It just didn't fit within our structure.

**Chairman Keiser:** Is it the condemnation authority?

**John Petrik:** I don't remember. It just didn't fit our structure because we are not a co-op. We were buying the water and disbursing it to the members.

**Representative Ruby:** Why do you need a bill to dissolve from what you are doing now to form a commerce authority when there is already the ability to be a commerce authority?

**John Petrik:** We need the condemnation authority; we need to be able to bond independently. There is additional work that we need to get done and money right away. We want to make it clear that we could convert a joint powers entity into a commerce authority. Under our existing joint powers agreement, it says that if we dissolve we have to distribute assets to the entities.

**Representative Frantsvog:** Commerce is distributing the water, is someone selling the water to this authority?

**John Petrik:** R & T, currently under the city of Ray, it has aquifers. We will be buying some of our water from this western water supply and I'm not sure how that's going to work.

**Representative Frantsvog:** Will this authority have any say in what the water rates will be?

**John Petrik:** We have contracts with all the cities that will be served and we sell the water to the cities and the cities sell rates at their city level.

**Representative Kreun:** Have you looked into how those will integrate because part of that western area water supply project is to make sure that we supply the water to the north. This appears to be connected to that project?

**John Petrik:** Yes, R & T is named as one the members to that project.

**Representative Kreun:** If will integrate with that project and they do have more need for water, they have the ability to buy water from the western area water supply project and then distribute to their customers as well.

**John Petrik:** That's my understanding.

**Representative Kreun:** I think that works very well.

**Vice Chairman Kasper:** Will the authority have the ability to sell water to the oil companies?

**John Petrik:** I don't see why not

**Vice Chairman Kasper:** There could be an outside source of revenue to pay bonds off and then where does the excess money go that is generated?

**John Petrik:** I'm not sure. I'm assuming that they will lower the bill to the cities.

**Vice Chairman Kasper:** Is there any way this entity could interfere with the NW area water supply entity that is working independently to stop their growth because you have power of emanate domain. If you got into an argument with them, how would you resolve those type of things?

**John Petrik:** We are one of 5 members in that legislation. We would be bound by the bylaws or contracts that are required of that entity.

**Representative M Nelson:** What happens to the bonds to the city of Ray and they are paid thru the water revenues, is that correct?

**John Petrik:** That's correct.

**Representative M Nelson:** Now you are splitting the water off into a separate political subdivision, are the bond holders fine with that, what guarantees them payment?

**John Petrik:** I talked to the bond board council, part of the hope that we are going to refinance that under the name of R & T water supply so as to free up this bonding for the city of ray. He didn't think they would have any problems with that but didn't approached them directly.

**Representative Kreun:** The money, when it gets to the point of paying off the bonds, it does not preclude anything for the operation of maintenance costs, does it?

**Chairman Keiser:** The condemnation process described in this legislation, the 30 days and all the parts of it, are all those entire provisions standard for condemnation?

**John Petrik:** No, absolutely not. I picked that out of the western area water project language but a majority is pretty much word for word from the current legislation on water resource districts and perhaps other entities as well.

**Chairman Keiser:** Anyone else here in support, in opposition, neutral HB 1384. Closes the hearing on HB 1384.

**Chairman Keiser:** What are the wishes of the committee?

**Vice Chairman Kasper:** Move for a Do Pass on HB 1384.

**Representative M Nelson:** I request a hold.

**Chairman Keiser:** We have a request for a hold and we will hold it.

John Petrik:

# 2011 HOUSE STANDING COMMITTEE MINUTES

## House Industry, Business and Labor Committee Peace Garden Room, State Capitol

HB 1384  
February 2, 2011  
13904

☐ Conference Committee

Committee Clerk Signature

*Ellen Letang*

### Explanation or reason for introduction of bill/resolution:

Relating to joint powers entities and commerce authorities; relating to conversion of joint powers entities to commerce authorities and additional powers of commerce authorities; and to declare an emergency.

### Committee Work Session Minutes:

Chairman Keiser: Opens the work session on HB 1384.

**Representative Kreun:** They need this for expansion and for bonding purposes to eventually hook up to the Western area water supply in conjunction and to enhance & increase their water supply.

**Representative Kreun:** Moves a Do Pass.

**Representative Sukut:** Second.

**Representative M Nelson:** I asked to hold up this bill and my concern is not so much with the way the R & T water district but the fact that we are creating a new power that extends to all joint powers. We have a lot of these entities in the state and we have joint power agreements all over my area in water. I'm going to oppose a do pass is that we create a political subdivision, it has emanate domain and it has taxing authority.

**Representative Sukut:** That district covers more than Ray & Tioga, it covers down to Watford City, the whole northwest district. It's basically what we are doing is allowing Crosby to do what it takes to do to make it work. The balk is going to be covered with the sale of water to the cities and they will still have to determine what the water rates will be. That's what this water authority is going to help determine what the water rates are going to be. A lot has to do with the selling of water, the frack jobs. This is crucial and it's a win win situation for the area.

**Representative M Nelson:** Your are talking about the western water, this R & T is going into that, this is not the whole western area, The city of Ray has bonds for this water, they want us to make it easier for them to get the bonds of Ray so the city has the ability to grow.

**Representative Ruby:** I think Representative M Nelson is wrong. I remember the testimony and it included the city of Stanley. It will be connected the lines that run from Crosby to Columbus. It is what Representative Sukut said, it's the whole northwest corner.

**Chairman Keiser:** I going to support it but Representative M Nelson is right. We are allowing two or more entities that have the joint powers agreement to convert to a commerce authority and they have the power. It is essential for this water project to do it. Can it create problems in the future, probably? We haven't put a lot of restrictions on it.

**Representative Ruby:** I'm on the rural water, they decided it worked better as a water district, they can do the bonding and there are some similarities.

**Representative Kreun:** This section provides that these entities create the commerce authority for the right eminent domain. Representative M Nelson is correct in that. They are expanding into counties; if laws do pass, they have the opportunity to join. They need the bonding capacity but it provides the opportunity. This kills two birds with one stone.

**Chairman Keiser:** This is a companion bill to HB 1206, the western water area; it has 180 million dollars that the state is standing behind. They need each other to make it go.

**Chairman Keiser:** Further discussion?

**Roll call was taken for a Do Pass on HB 1384 with 10 yeas, 3 nays, 1 absent with Representative Kreun as the carrier.**

Date: Feb 2, 2011

Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1384

House House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

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

Motion Made By Rep Kreun Seconded By Rep Sukut

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Amerman		✓
Vice Chairman Kasper	✓		Representative Boe	✓	
Representative Clark	✓		Representative Gruchalla		✓
Representative Frantsvog	✓		Representative M Nelson		✓
Representative N Johnson	✓				
Representative Kreun	✓				
Representative Nathe	✓				
Representative Ruby	✓				
Representative Sukut	✓				
Representative Vigesaa	✓				

Total Yes 10 No 3

Absent 1

Floor Assignment Rep Kreun

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



**REPORT OF STANDING COMMITTEE**

**HB 1384: Industry, Business and Labor Committee (Rep. Keiser, Chairman)**  
recommends **DO PASS** (10 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING).  
HB 1384 was placed on the Eleventh order on the calendar.

2011 SENATE GOVERNMENT AND VETERANS AFFAIRS

HB 1384

## 2011 SENATE STANDING COMMITTEE MINUTES

### Senate Government and Veteran's Affairs Committee Missouri River Room, State Capitol

HB 1384  
March 25, 2011  
16013

☐ Conference Committee

Committee Clerk Signature

*Kate Oliver*

#### Explanation or reason for introduction of bill/resolution:

Relating to obstructions and traffic safety hazards on section line roads.

#### Minutes:

*Testimony attached*

**Senator John Andrist:** District 2. Ray is a small city that has a lot of water. In the smaller communities around the area have not been as lucky, they have conceived the idea that they can share their water.

**Senator Cook:** Do you think unelected officials should have the power of eminent domain?

**Senator John Andrist:** This is not what I came talk about that; there would be better people who can speak to that effect. Anything you can do to help R&T would be helping the people of Western North Dakota.

**Senator Cook:** Should we be giving unelected officials eminent domain.

**Senator John Andrist:** I don't want to portray myself as an expert on this bill; I just looked over it last night for the first time.

**John Petrik:** Attorney with Vogel Law Firm, counsel for R&T Water Supply. See attached testimony #1.

**Senator Cook:** What is the challenge to re writing the joint powers agreement to allow the city of Stanley to come in?

**John Petrik:** It doesn't allow for condemnation rights.

**Senator Cook:** So it has to do with bonding dollars more than it doesn't reach your end desired result.

There was no further testimony in support, opposition or a neutral position on HB 1384. The committee closed the public hearing on HB 1384.

# 2011 SENATE STANDING COMMITTEE MINUTES

## Senate Government and Veteran's Affairs Committee Missouri River Room, State Capitol

HB 1384  
March 31, 2011  
16210

☐ Conference Committee

Committee Clerk Signature

*Katie Oliver*

### Explanation or reason for introduction of bill/resolution:

Relating to obstructions and traffic safety hazards on section lines.

### Minutes:

*No testimony attached*

Chairman Dever opened the committee to discussion on HB 1384; John Walstad was on hand to answer the committee's questions.

**Senator Cook:** Mr. Chairman if you look at your testimony, the first statement that is made at the bottom is that they need the powers of a political subdivision as joint powers they do not have the right of condemnation but the political subdivisions that they represent do have the power of condemnation. Also, towards the end they indicated that they do not have the independent bonding capacity and they said that the political subdivision were at their 5% constitutional max which was what they figured they needed to create their own political subdivisions so that they could start at 0 again. I think that their real concern is the burden that it places as they move into another political subdivisions territory of expanding the joint powers agreement. This would just make it simpler for them and give them a shortcut to their desired end result. First off I asked the questions and I am in no way a fan or would be supportive of giving non elected people the right of eminent domain. But I do want to speak on the bonding issue and I really question how they might be at their 5% constitutional limit.

**John Walstad:** Legislative Council. Not for or against, not a preacher either but what Senator Cook said is gospel.

**Senator Cook:** This 5% constitutional limit on debt is very misunderstood.

**John Walstad:** I have gathered the information but I have not been able to type it up

**Chairman Dever:** I am curious if R&T water supply would be solvent who would be responsible for that?

**Senator Cook:** Operating now on a joint powers agreement with other subdivisions. I assume that the Political Subdivisions, given their authority would be responsible for the debt.

**John Walstad:** I would not even venture a guess as to who would be responsible for the debt if it became solvent.

**Chairman Dever:** Another way of stating that question is they creature of the state?

**Senator Cook:** I think that might apply to school districts not political subdivisions.

**Chairman Dever:** The reason I ask is that if that is the case

**Senator Berry:** Joint powers agreement. What is conferred to them? It sounds that by doing this they are taking out a second mortgage.

**Vice Chairman Sorvaag:** This would all be revenue bonds; it shouldn't have anything to do with that. If you generate revenue it would be a revenue bond.

**Senator Cook:** Revenue bonds mean something that someone will pay that bill.

A motion for a do not pass was made by Senator Cook with a second by Senator Berry, there was no further discussion, roll was taken, the motion passed 7-0 with Senator Cook carrying the bill to the floor.

Date: 3/31/11  
Roll Call Vote # 4

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1384

Senate GVA 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 Cook Seconded By Berry

Senators	Yes	No	Senators	Yes	No
Chairman Dever	X		Senator Marcellais	X	
Vice Chairman Sorvaag	X		Senator Nelson	X	
Senator Barry	X				
Senator Cook	X				
Senator Schaible	X				

Total (Yes) 7 No 0

Absent \_\_\_\_\_

Floor Assignment Cook

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

**REPORT OF STANDING COMMITTEE**

**HB 1384: Government and Veterans Affairs Committee (Sen. Dever, Chairman)**  
recommends **DO NOT PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).  
HB 1384 was placed on the Fourteenth order on the calendar.

**2011 TESTIMONY**

**HB 1384**



### TESTIMONY IN SUPPORT OF HOUSE BILL 1384

Good morning, Chairman Keiser and members of the House IBL Committee. My name is John Petrik. I am an attorney with the Vogel Law Firm in Bismarck. I represent R & T Water Supply. I appear in support of HB 1384.

R & T Water Supply is a joint powers entity formed by the City of Ray, the City of Tioga, and Williams County Water Management District in 1978. The original purpose of R&T was to build a water treatment plant to serve these towns and possibly some rural customers.

Since 1978, R & T has expanded significantly. R & T is currently providing water to, and has lines running north to the City of Wildrose, and, for several years, has been serving the city of Stanley to the East. R& T also expects in the near future to serve the city of Crosby, and to provide water to and hook into the lines of BDW Water (Burke-Divide-Williams) which serves several other small communities.

As this committee knows, the water needs in this area of the state have expanded exponentially. Because of the expanded demand for its services, its expanded functions in attempting to meet that demand, and its greater service territory, R&T has significantly outgrown its status as a joint powers entity.

R & T needs to have the powers of a political subdivision. As a joint powers entity, R & T does not have the right to condemnation. It does not have independent bonding capacity. Although it can contract to provide services to other entities, other political subdivisions cannot participate in the governance of R & T without amending the joint powers agreement.

R & T looked at a couple of options to address these concerns. One would have been to create special legislation converting R & T to a political subdivision. R & T decided it would be simpler if R & T attempted to fit within an existing statutory entity, that being a commerce authority under NDCC Chapter 11-37. Thus, the purpose of HB 1384 is to amend NDCC Chapter 11-37, regarding commerce authorities, to fit R & T within commerce authority status, and to allow R & T the authority or powers that it needs to continue as a viable and crucial entity serving the vital water needs of a large and diverse region in western North Dakota. Additionally, the probable continued expansion of R & T by bringing in or serving additional political subdivisions is already addressed by the current NDCC Section 11-37-03, .

I will address the various sections of the Bill.

Sections 1, 2 and 3 of HB 1384 create the ability of an existing joint powers entity such as R & T to convert to a commerce authority.

Sections 4 and 5 deal with the powers of condemnation. N.D.C.C. Section 11-37-06 currently provides that the entities creating the commerce authority can condemn or exercise the right of eminent domain on behalf of a commerce authority. That does not work for R & T Water Supply. R & T has now extended its lines into Divide County and Mountrail County, and the territory it is currently serving is well outside the jurisdiction of its member entities, Ray, Tioga, and Williams County. Thus the current statute which gives the city of Ray or Tioga the power to condemn would be of no use, if R & T needed the condemnation power to install a line into rural Mountrail County or Divide County.

So instead, the Bill moves the condemnation power from the underlying entities that are parties to the commerce authority directly to the commerce authority. Thus R & T, upon

conversion to a commerce authority, will have direct condemnation power. Additionally R&T's bond counsel has advised that even though NDCC Chapter 11-37 designates a commerce authority as a political subdivision, that for tax-exempt bonding purposes, the IRS would not recognize a commerce authority as a political subdivision eligible for tax-exempt bonds without having a direct power of condemnation or similar police powers.


Another problem that has arisen is that as R & T Water Supply has become larger and had greater capital needs, it has basically depleted the bonding capacity of the city of Ray. By converting to a commerce authority, R & T would have its own independent bonding authority.

Section 6 of the bill addresses the ability of the commerce authority to refinance existing obligations of the participating political subdivisions as long as such existing obligations were incurred by the participating subdivisions for the benefit of the converted joint powers entity. In other words, those bonds that were issued by the city of Ray that were for the benefit of R & T Water Supply and their water treatment plant lines, etc., could be refinanced directly by the new R & T Water Supply commerce authority so as to free up additional monies for the city of Ray. The city of Ray, like so many towns in the oil patch, needs additional and upgraded infrastructure. Because the city of Ray has bonded prior improvements for R & T, it has little available bonding capacity to serve its own infrastructure needs.

Finally, the city of Stanley wants to become a member of R & T, and the cities of Ray and Tioga have agreed that Stanley will become a member. However, instead of reworking the joint powers agreement to add Stanley as a member, it makes more sense administratively to establish R & T as a commerce authority first, and then add the city of

Stanley. Since the parties are eager to add the city of Stanley, which has been buying water from R & T for several years, an emergency clause has been included as Section 7 to the bill.

We ask the committee to give HB 1384 a "do pass" recommendation. Thank you for your attention and I will try to answer any questions.



---

John J. Petrik

1077326.1

## TESTIMONY IN SUPPORT OF HOUSE BILL 1384

Good morning, Chairman Dever and members of the Senate Government and Veteran Affairs Committee. My name is John Petrik. I am an attorney with the Vogel Law Firm in Bismarck. I represent R & T Water Supply. I appear in support of HB 1384.

R & T Water Supply is a joint powers entity formed by the City of Ray, the City of Tioga, and Williams County Water Management District in 1978. The original purpose of R&T was to build a water treatment plant to serve these towns and possibly some rural customers.

Since 1978, R & T has expanded significantly. R & T is currently providing water to, and has lines running north to the City of Wildrose, and, for several years, has been serving the city of Stanley to the East. R& T also expects in the near future to serve the city of Crosby, and to provide water to and hook into the lines of BDW Water (Burke-Divide-Williams) which serves several other small communities.

As this committee knows, the water needs in this area of the state have expanded exponentially. Because of the expanded demand for its services, its expanded functions in attempting to meet that demand, and its greater service territory, R&T has significantly outgrown its status as a joint powers entity.

R & T needs to have the powers of a political subdivision. As a joint powers entity, R & T does not have the right to condemnation. It does not have independent bonding capacity. Although it can contract to provide services to other entities, other political subdivisions cannot participate in the governance of R & T without amending the joint powers agreement.

R & T looked at a couple of options to address these concerns. One would have been to create special legislation converting R & T to a political subdivision. R & T decided it would be simpler if R & T attempted to fit within an existing statutory entity, that being a commerce authority under NDCC Chapter 11-37. Thus, the purpose of HB 1384 is to amend NDCC Chapter 11-37, regarding commerce authorities, to fit R & T within commerce authority status, and to allow R & T the authority or powers that it needs to continue as a viable and crucial entity serving the vital water needs of a large and diverse region in western North Dakota. Additionally, the probable continued expansion of R & T by bringing in or serving additional political subdivisions is already addressed by the current NDCC Section 11-37-03, .

I will address the various sections of the Bill.

Sections 1, 2 and 3 of HB 1384 create the ability of an existing joint powers entity such as R & T to convert to a commerce authority.

Sections 4 and 5 deal with the powers of condemnation. N.D.C.C. Section 11-37-06 currently provides that the entities creating the commerce authority can condemn or exercise the right of eminent domain on behalf of a commerce authority. That does not work for R & T Water Supply. R & T has now extended its lines into Divide County and Mountrail County, and the territory it is currently serving is well outside the jurisdiction of its member entities, Ray, Tioga, and Williams County. Thus the current statute which gives the city of Ray or Tioga the power to condemn would be of no use, if R & T needed the condemnation power to install a line into rural Mountrail County or Divide County.

So instead, the Bill moves the condemnation power from the underlying entities that are parties to the commerce authority directly to the commerce authority. Thus R & T, upon

conversion to a commerce authority, will have direct condemnation power. Additionally R&T's bond counsel has advised that even though NDCC Chapter 11-37 designates a commerce authority as a political subdivision, that for tax-exempt bonding purposes, the IRS would not recognize a commerce authority as a political subdivision eligible for tax-exempt bonds without having a direct power of condemnation or similar police powers.

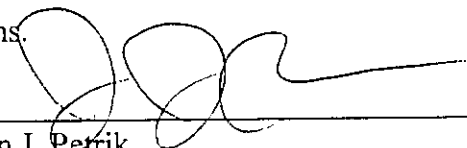
Another problem that has arisen is that as R & T Water Supply has become larger and had greater capital needs, it has basically depleted the bonding capacity of the city of Ray. By converting to a commerce authority, R & T would have its own independent bonding authority.

Section 6 of the bill addresses the ability of the commerce authority to refinance existing obligations of the participating political subdivisions as long as such existing obligations were incurred by the participating subdivisions for the benefit of the converted joint powers entity. In other words, those bonds that were issued by the city of Ray that were for the benefit of R & T Water Supply and their water treatment plant lines, etc., could be refinanced directly by the new R & T Water Supply commerce authority so as to free up additional monies for the city of Ray. The city of Ray, like so many towns in the oil patch, needs additional and upgraded infrastructure. Because the city of Ray has bonded prior improvements for R & T, it has little available bonding capacity to serve its own infrastructure needs.

Finally, the city of Stanley wants to become a member of R & T, and the cities of Ray and Tioga have agreed that Stanley will become a member. However, instead of reworking the joint powers agreement to add Stanley as a member, it makes more sense administratively to establish R & T as a commerce authority first, and then add the city of

Stanley. Since the parties are eager to add the city of Stanley, which has been buying water from R & T for several years, an emergency clause has been included as Section 7 to the bill.

We ask the committee to give HB 1384 a "do pass" recommendation. Thank you for your attention and I will try to answer any questions.



---

John J. Petrik

1077326.1