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2418

2007 SENATE HUMAN SERVICES

SB 2418

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2418

Senate Human Services Committee

Check here for Conference Committee

Hearing Date: 03-19-07

Recorder Job Number: 5258, 5261, 5293

Committee Clerk Signature

*Monica Spaulding*

Minutes:

JOB # 5258

Roll was taken and all members were present.

Senator Judy Lee, Chairman, opened the public hearing on SB 2418.

Senator Larry Robinson from District 24 introduced the bill. The Veterans' Home in Lisbon is very important. The bill is self-explanatory. Senator Robinson toured the Veterans' Home last Monday. We will soon be receiving a new wave of veterans and we need to be prepared to meet their long term needs. The staff at the Veterans' Home is great but there are concerns about the facilities especially the life safety issues.

Senator Warner asked about the life safety issues.

Senator Robinson said the issues were discovered just last fall. Without going into detail he said they involve the ventilation system. The ventilation system dates to 1950. The ductwork in the ceiling is wide open and is a fire trap. Hallways and bathrooms are narrow. For two scooters to meet in the hallway is a problem. The money to be expended – the \$160,000.00 – is earmarked to take care of the immediate concerns to buy time until they can deal with the entire structure. It is basically to meet safety codes for the short term. It will get them by until it is time to build the new facility and take this one down.

Senator Dever quoted from a letter from US Senator Kent Conrad (see attachment A) that said the VA State Home Grant Program will match 65% of the cost if our state legislature passes an appropriation that will provide 35% of the cost. He asked if the federal funding is already in place.

Senator Robinson said they don't have the check but "it's as close to being in the mail as they have ever been with the federal government." North Dakota has never questioned federal funding for this facility. We are one of four states that have not requested that support. That puts our state high on the list. Coupled with the fact that it's a safety issue moves us to #1.

Senator Heitkamp from District 26 spoke in support of the bill. He feels the time to do this is right. He also mentioned that the people that work at the Veterans' Home are professional.

Senator Lee mentioned that the community involvement in the Veterans' Home is impressive.

Representative Ralph Metcalf from District 24 said this is an important piece of legislation because it serves our veterans. He encouraged the committee members to listen carefully to the stories that would be told. The Veterans' Home is not a regular nursing home. The veterans that are there have special needs that cannot be served in a regular nursing home. We have to make sure what we do is based on the needs of the veterans.

Senator Dever asked when the existing home was built.

Senator Metcalf said the part of the home that needs work was built in the late 50's.

Senator Dever asked if it is of interest to the Historical Society.

Senator Metcalf said he doubts that it has any historical value.

Representative Phil Mueller from District 24 spoke in favor of the bill. There is a big problem with the Lisbon home. We have a rich history of supporting our veterans in North Dakota. This

bill could be looked upon as the ultimate support for the veterans.

Bill Goetz, Chief of Staff for Governor Hoeven, offered testimony on behalf of the Governor. See attachment # 1. He complimented the delayed bills committee for accommodating this bill. There are more than safety issues here; the facility is outdated. The veterans need a modern facility. He has spoken with the US Dept. of Veteran Affairs. North Dakota has not received any money from the US Dept. of Veteran Affairs in many years. This along with the fact that there are life safety issues puts North Dakota at the top of the list.

Senator Dever expressed appreciation for the leadership of our governor and specifically for his support of veterans overall during his entire administration.

Senator Heckaman asked if the \$166,000.00 would all be used in doing the necessary renovations.

Mr. Goetz responded that all of that amount would be needed to fix up the immediate priorities within the next few months. He understands that eventually part of that will be reimbursed by the US Dept. of Veterans Affairs back to North Dakota.

Senator Heckaman asked if the money needed for planning could be reimbursed by the US Dept. of Veteran Affairs.

Mr. Goetz said he wasn't sure about that.

Mark Johnson, Administrator of the North Dakota Veterans' Home, spoke about the condition assessment of the building. See attachments # 2, 2A and 2B. There are 7 air handling units, all of which bring in cold air. There is no temperate air coming in. In the winter they are bringing in air that is -20 degrees. The biennial utility bill is \$485,000.00. They know they can improve on that.

There are four bathrooms for women and none of them meet ADA requirements. Due to crowding and floor plan, the people standing in the line to get medication overhear the people who are getting their money out. They have a humidity issue in the med room that even

causes some meds to stick together in humid conditions. The dining facility design is institutional. Eighty veterans plus staff all eat in one dining area. The parallel bars are in the same area as the receiving area. Of the 127 residents 80 have mental health issues. This is not a typical nursing home. They need a lot of individual care. With all of the mental health issues it is hard to put them together in a room. In the new building they are going to have over 90% of the rooms as private rooms. The cost of doing the proposed remodeling came to 23 million dollars so they proposed a new building for the skilled care and the basic care.

Senator Lee asked if any part the current facility would be preserved.

Mark said the whole building would be demolished. The sunroom can be salvaged and probably put in the courtyard.

Senator Lee commented how clean and tidy everything is kept on the campus. It speaks very well for the staff.

Senator Dever asked if the demolition was included in the cost. He also asked how this cost compares to the cost of a standard nursing home facility.

Mark said the cost of the demolition is included in those numbers. The cost – because it is a federal facility it needs to meet VA requirements as well as state guidelines. The VA has different requirements so this will cost more than a typical nursing home.

Brad Maasjo who is a veteran of the Viet Nam War and serves on the governing board of the Veterans' Home testified in support of SB 2418. See attachment # 3. In 1893 the veterans' home was built and it served as a hospital in the early 1900's. In 1949 it was rebuilt as a nursing home. In 1980 an addition was constructed to increase the size of the basic care area.

In 1991 a skilled care unit was added. The work done in 1980 and in 1991 were bond issues

so the last time they have come before the legislature was in 1949.

On the sixth page of attachment #3 the acronym OIF stands for Operation Iraqi Freedom.

VISN stands for Veterans Integrated Service Network. VISN 23 is the Upper Midwestern VA Region which includes the medical centers in Fargo, Minneapolis and Sioux Falls. The number of newly enrolled veterans far exceeded the expectations at the onset of the present conflict.

There are actuarial projections available 35 years out. The projections for the period 10 years from now until 20 years from now reflect that North Dakota is expected to have slightly higher enrollment even though nationwide enrollment is expected to be slightly lower. The rate of those surviving on the battlefield is 90% so there are more survivors and they require very complicated care. These veterans will be staying in our health care facilities longer.

The picture on page 9 is of Corporal Kenny Jeffers who suffered an IED explosion in Iraq. He was given up for dead on the operating table but he survived. He lost both legs and has a titanium plate in his skull. In this picture he is being fitted for new legs and his comment on this day to the doctors was, "I can't wait for you guys to get finished because I am the same person that I always was." The picture on page 10 is of Sgt. Brian Saaristo. When his doctors asked him if he was ready for his new legs, he said he was ready to go for a run and asked his doctors if they were ready to run. Page 11 shows the impact on families. The veteran said he couldn't believe his wife waited for him and married him after what happened to him. After she announced her intentions to marry him the community built them a home and created a job for the veteran. The community said this is what communities do.

There is bi-partisan support for this legislation. On page 13 it mentions 121 beds. The federal government caps each state at a certain number of beds beyond which they can't reimburse.

They don't limit the number of beds a state can have but there is a limit on the number they will reimburse. The governing board feels all 150 beds need to be replaced. See attachment # 4.

The audit that was done revealed if the facility were operating with 150 beds it would pay for itself in the first biennium and be a profit maker after that.

CFR 38, referred to on page 14, is the federal statute that currently limits North Dakota to be reimbursed for 121 beds. The governing board of the veterans' home is advocating for an increase in the number of beds that statute allows North Dakota to be reimbursed for. The governing board is also working at getting a veterans' home approved for another location in the western part of North Dakota.

Demographers have discovered a phenomenon has existed since 1973 with less populated, more rural states with less powerful economies experiencing higher volunteer rates into the military. Those states are bearing the burden of the war disproportionately in this era of an all volunteer force. Vermont, North Dakota, South Dakota, Alaska, Wyoming and some of the states in the Deep South have been affected by this phenomenon. It makes it even more important to get the number changed in CFR 38.

There are five new Community Based Outreach Clinics (CBOC's) in North Dakota. They are operated by the Veterans' Administration. Each is at least two hours travel time apart from each other and from the Medical Center in Fargo. They are located in Williston, Dickinson, Bismarck, Jamestown and Grafton. Lisbon would be another ideal location. This would facilitate the medical care for the residents of the Veterans' Home who now have to travel to Fargo. Many of them are elderly people who are not feeling well and the trip is a hardship especially in bad weather.

Senator Dever asked why the number of beds has been reduced.

Mr. Maasjo said the number of beds has never been reduced but the federal government is limited to doing the matching funds on only 121 beds. Because of that limit, that is the number that evolved into this bill.

Senator Dever asked about the Senate amending it and giving that as an option.

Mr. Maasjo said for \$2.6 million they can build the new building including the additional 29 beds. The cost per bed at that rate is about \$50,000.00 or \$60,000.00. This is cheaper per unit than the initial buy but that final \$2.6 million would not be reimbursed at the 65% rate back to the state. They can amortize it over time and if they get those extra beds they will generate revenue of about a million dollars per biennium.

Senator Dever asked what the rationale is at the federal level.

Mr. Maasjo said the capping limit of 121 was from a chart that was developed in the 1950's and 1960's. At that time there was a draft and there were several large states that had a great deal of influence over the creation of the chart. Some of the larger states had already built several institutions so they grandfathered themselves into the chart.

Senator Warner asked why this bill concerning the additional 29 beds was being run through the Human Services Committee. He also mentioned the criteria for entering a Veterans' Home in the state. He asked if there might be some legal issues with running this bill through Human Services. Would there be trouble with taking Human Service dollars? If you take money that is meant for poverty of anyone and instead spend it on a select group, in this case veterans, could there be problems.

Mr. Maasjo said he would have Mark help him answer that question. They essentially are not adding 29 beds. The point to remember here is that they currently have and operate 150 beds. They don't fill them all because of space and diagnosis limitations. They have 150 and the VA reimbursement program is an existing program. It is not something that would be new but it is a way to help amortize the ones that the feds can't do a grant on.

Mark Johnson, Administrator of the North Dakota Veterans' Home, said when you look at reimbursement on the beds they are reimbursed through indirect, other direct, direct and

property. With that there is a federal FMAP at 68%. They would have the ability to generate those dollars through amortization and depreciation of the building to pay for that skilled care if they do it all at the same time.

Senator Lee asked if they would be under any obligation to serve people other than veterans if part of the financing is through that means. Can you continue to only serve veterans with that portion being separately funded?

Mr. Johnson said they have done revenue bonds in the past and they have never been obligated to go to that... *(I couldn't hear the tape)* Their criteria are serving the veterans and ... *(I couldn't hear the tape.)* His understanding is because they are a state institution and they are a veterans' facility that they would not be obligated to do that.

Senator Lee said because it is already federally established that would not be an issue but she wanted to make sure of that.

Senator Heckaman mentioned that the new plan is only for a 121 bed facility. She asked if a plan existed for a 150 bed facility.

Mr. Johnson stated that the plan is for a 150 bed facility. The federal construction grant will pay for 65% of replacement for 121 beds. That would displace 29 veterans. The other aspect to consider is that they will generate close to \$1 million which will be a relief from the general fund. Their goal is to take the pressure off the general fund. They do not plan to ask for the \$4 million. They plan to ask for \$3 million or possibly less.

Senator Lee asked if the CBOC is in the plan.

Mark said they are right now meeting with the VA... *(I couldn't hear the tape)*

Senator Heckaman asked if the bill does not include the funding for the extra 29 beds.

Mark said that is correct.

Senator Lee said they would have to amend it to use that additional VA's funding formula for that. Senator Lee commended the governing board for the excellent progress they have made. DuWayne Ternes who serves on the governing board and used to be a general contractor testified in support of the bill. He said the problems with the facility are even worse than what the pictures show. He did a walk through for his assessment and saw many liability issues if something would happen. He served on the UBC building codes for the state of North Dakota for many years.

Senator Lee said she heard him saying you can't put lipstick on a pig.

Norris Braaten, Chairman of the Governing Board, introduced the members of the board. He testified in favor of the bill.

Opposition: -

Neutral: - Senator Warner asked for an opinion from Shelly Peterson on how the 29 beds would affect the moratorium.

Shelly Peterson with North Dakota Long Term Care Association said the Veterans' Home had 150 beds. For the moratorium they can keep all 150 beds. If they choose not to put those beds into service they will eventually lose those beds. They need to probably license them if they want to keep them and include them in the construction project. North Dakota Long Term Care Association is supportive of the 150. See attachment # 5.

Senator Warner asked "so funding 29 of the beds through Human Services rather than through Veterans has no effect on the moratorium or on the licensure?"

Shelly: "none." From her understanding that is correct. It's just a money issue, coming up with the money.

Senator Dever asked if the construction project doesn't include those 29 beds, could they sell those beds?

Shelly said they could if they chose to. If they don't license them they would have 48 months to put those beds into service so they could hold onto those beds and either license them within the four year period or they could sell them to another community. Eventually you have to put them into service or sell them or they evaporate from the system. If they move into the new facility and only license the 121 beds they will have four years to put the additional 29 into service.

Chairman Judy Lee closed the public hearing on SB 2418.

JOB # 5261

Chairman Judy Lee opened discussion on SB 2418.

Shelly Peterson with North Dakota Long Term Care Association had listened to a discussion Barb Fischer from the Department of Human Services was having. Barb had indicated that it would be an allowable match in the *(I couldn't hear the tape)* budget to get the 35-65 as long as it was within the construction building limits. In SB 2012 there is a proposed increase in those limits so they would be able to get reimbursement up to those limits. She is not sure where they are on the limit issue.

Senator Lee said Senator Warner had asked whether they would have to open the home to non-veterans if it was done as proposed.

Shelly said she didn't think they would have to. They have been receiving federal funds through the Department of Human Services for many years and they have never had to do that.

Senator Warner mentioned there had been talk of revenue bonds and that there was money coming in the future from Human Services. He asked if they are talking about a one-time match coming through Human Services.

Shelly said someone from OMB would be better equipped to answer that. She is not sure where their revenue comes from. Other than through general funds they still have to appropriate the funds.

Senator Warner: "I guess I was concerned if they built the 29 beds and could only occupy 20 of them." ... *(I couldn't hear the tape)*

Shelly said any *(I couldn't hear the tape)* that is under 90% occupancy has a penalty. The Veterans' Home would be subject to that same limitation. She said she doesn't think they have ever had a penalty due to an occupancy issue. They have never fallen below 90%. If they don't fall below they should be able to... *(I couldn't hear the tape)*.

Senator Lee said they would have the same number of beds that they have now.

Senator Warner asked if these 29 beds would be considered separately.

Shelly said they wouldn't. It will be considered one group of 150 not a group of 121 and a group of 29.

Shelly distributed a demographics listing of the North Dakota Veterans' Home Basic Care. See attachment # 6.

There was discussion about the condition of the home and the possibility of changing the name.

JOB # 5293

Chairman Judy Lee opened discussion on SB 2418. She presented the proposed amendments to the bill which would add on the bonding for the additional 29 beds.

Barb Fischer, Assistant Director of Medical Services for the Department of Human Services, was on hand to answer questions that might arise.

Senator Warner asked if Medicaid money is used are they going to be required to take people who are not veterans.

Barb said if Medicaid money is used they could not discriminate against anyone. They would be required to take anyone but veterans would have preference.

Senator Lee asked if the federal government could possible do an override for the Veterans' Home.

Barb said no, if Medicaid money is used you cannot discriminate.

Mark Johnson, Administrator of the North Dakota Veterans' Home, stood for questions.

Senator Lee asked what would happen if someone from Lisbon wanted to become a resident of the Veterans' Home but they were not a veteran.

Mark said the admissions criteria are standard in the industry. The VA doesn't take anyone outside of the veteran population.

Senator Lee stated they just wanted to make sure they would not create a conflict.

Senator Warner said the feds will fund 121 beds and the additional beds will be funded by Medicaid which forbids you from discriminating. He still feels that at some point the VA will end up having to accept someone in one of those 29 beds.

Senator Lee said they are funded by Medicaid now so nothing will be different.

Mark said they take Medicaid and private pay and insurance and Medicare. If it goes back to what the requirements are from the VA it is very stringent.

Senator Dever asked how close the other nursing homes in the area are.

Mark said they are 20 miles away, 1 mile away and 13 miles away.

Senator Erbele asked if there is always a waiting period or if there are sometimes openings.

Mark said right now there are 14 on a waiting list. On the skilled side there are 6-8 people on the waiting list. Due to the deficiency they received they backed off on their admissions. They

were at 132 residents, now they are at 125. During the renovations it may be necessary to temporarily move residents.

Senator Erbele asked if they anticipate being at or close to capacity once the renovations are done.

Mark is confident they will be at capacity. If they are able to get a CBOC (an outreach clinic from the VA) it's going to become a real marketing force for them. They will become an outreach clinic in the southeast corner of North Dakota. People from the surrounding area could come to see the doctor. They already have a pharmacy on site. They are looking forward to what is ahead.

Senator Heckaman asked where the closest clinic in South Dakota is and asked if the Veterans' Home accepts South Dakota residents in the home.

Mark said he didn't know where the closest clinic in South Dakota is and he doesn't know if there is some type of a waiver for accepting residents of other states. Their vision includes North Dakota, South Dakota, Minnesota and Montana.

There was a discussion about the location of different VA facilities. For some veterans' services the veterans just go to the closest facility.

Mark said in Montana there is one in Glendive and one in Miles City. The nursing home is in Glendive and the hospital is in Miles City.

Senator Pomeroy asked how closely related to a veteran someone had to be to be treated at a VA facility.

Mark said the clinic will only serve the veteran. Even a veterans' spouse who is living in the home will be billed by the physician if they are seen by the VA physician.

Barb Fischer added that the Veterans' Home right now does have Medicaid and hasn't had any problems to her knowledge. They are going to get some financing for those additional beds and that will affect the rates that they charge. There shouldn't be any issues of discrimination from the standpoint of Medicaid.

Senator Warner moved to amend SB 2418 with amendment 70881.0101.

Senator Erbele seconded the motion.

Senator Dever asked for clarification. "We are talking about \$6.4 million of general funds to be used as a 35% match with 65% federal money. Twelve point something million dollars for a 120 bed facility with 2.575 million dollars of bonding to be paid for through revenue generated by the facility."

Senator Warner said that 2.5 is additional.

Senator Dever and Senator Lee said it was for the additional 29 beds so it will equal the number of beds they currently have.

Senator Dever asked if there was a possibility that the feds might increase the amount that they would contribute and North Dakota could just bump the amount of general fund dollars.

There was discussion about how to pursue that possibility. Usually it is hard to put pressure on the federal government.

Senator Dever said the total cost to replace the facility is 20 to 25 million dollars.

Senator Warner said the construction may not begin until 2008.

Barb read from attachment # 4. The first bullet says, "The Federal government allows us to have as many beds as we want or need; however, until the Federal law is changed, they can only provide 65% matching funds for up to 121. " So there is a very compelling case to get the 121 limit raised. Senator Conrad's staff is working on this issue.

There was discussion about if we willingly fund it the feds will not pick up any more of the bill so we should pursue that option first.

Senator Dever suggested \$800,000.00 pending federal action to increase the capacity.

Senator Lee is concerned they cannot move forward in a timely fashion with the whole project if they don't know if they have the funding.

Senator Dever said by this amendment the committee can bond for whatever they want. The feds aren't going to take an interest in paying for people who are in service to the federal government.

Senator Heckaman said she would leave it as it is because if the money would come it doesn't have to be used for ...

Senator Dever said he doesn't have any trouble supporting the amendment the way it is and leaving it up to Appropriations Committee to decide.

Senator Lee said she doesn't disagree at all that it is the feds responsibility but she doesn't feel we have the influence to hold them to it. She feels we shouldn't leave the Veterans' Home people hanging.

Senator Warner said the federal government will not change their "bed quota" based on the Veterans' Home in Lisbon, they will base it on the needs of veterans in the country as a whole. There was discussion about what could be done to continue to seek federal support for this. Kristin Lunneborg, Accounting Manager at the North Dakota Veterans' Home, said Senator Conrad's and Senator Dorgan's offices are working at changing that 121 bed reimbursement limit. There is a chance they will get it changed. If the feds up that bed limit within 4 years they will come back and reimburse the state for the 65%. No matter what the legislature decides to do they are still going to work to get that limit changed at the federal level.

(Motion made at bottom of page 13.)

Roll Call Vote: Yes 6 No 0 Absent 0

Senator Dever said he sees no need for the emergency clause.

Senator Warner made a motion to pass the SB 2418 as amended and rerefer it to the

Appropriations Committee.

The motion was seconded by Senator Erbele.

Roll Call Vote: Yes 6 No 0 Absent 0

Carrier: J. Lee

Date: 3-19-07

Roll Call Vote #: 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2418

Senate HUMAN SERVICES Committee

Check here for Conference Committee

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

Action Taken Amend to expand to 150 beds.

Motion Made By Sen. Warner Seconded By Sen. Erbele

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee, Chairman	✓		Senator Joan Heckaman	✓	
Senator Robert Erbele, V. Chair 2	✓		Senator Jim Pomeroy	✓	
Senator Dick Dever	✓		Senator John M. Warner 1	✓	

Total (Yes) 6 No 0

Absent 0

Floor Assignment \_\_\_\_\_

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



**REPORT OF STANDING COMMITTEE**

**SB 2418: Human Services Committee (Sen. J. Lee, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS and BE REREFERRED to the Appropriations Committee (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2418 was placed on the Sixth order on the calendar.**

Page 1, line 2, after "facility" insert "; and to provide for the issuance of revenue bonds"

Page 1, after line 13, insert:

**"SECTION 2. APPROPRIATION - VETERANS' HOME CONSTRUCTION PROJECT - ADDITIONAL BED CAPACITY - BOND ISSUANCE AUTHORIZATION.**

The industrial commission, acting as the North Dakota building authority, shall arrange through the issuance of evidences of indebtedness under chapter 54-17.2 for the biennium beginning July 1, 2007, and ending June 30, 2009, for costs associated with expanding the veterans' home construction project from the 121-bed capacity facility, as provided for in section 1 of this Act, to a 150-bed facility. The proceeds of the evidences of indebtedness and other available funds in the amount of \$2,575,152 are appropriated to the veterans' home for this project. Non-general fund sources must be used for the retirement of the evidences of indebtedness for the costs associated with this project."

Renumber accordingly

**STATEMENT OF PURPOSE OF AMENDMENT:**

This amendment authorizes the issuance of revenue bonds in order for the Veterans' Home to expand the Veterans' Home building project to a 150-bed facility.

2007 SENATE APPROPRIATIONS

SB 2418

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2418

Senate Appropriations Committee

Check here for Conference Committee

Hearing Date: 03-22-07

Recorder Job Number: 5463

Committee Clerk Signature



Minutes:

Chairman Holmberg opened the hearing on the construction of a new Veteran's Home which is a delayed bill, SB 2418.

Senator Robinson, District 24, Valley City, the sponsor of the bill discussed SB 2418. He discussed the process of introducing the bill and discussed visiting the existing home. He thanked all publicly for supporting the delayed bill.

Representative Ralph Metcalf, District 24, representing the Veteran's Home, Lisbon and Valley City, indicating he has looked at the amendments made by the Senate and they look good to him. He stated he has worked on this for several months and everything is proceeding down the right road. He sees advances in every paper out of here.

Senator Judy Lee, District 13, Fargo, presented a moment of explanation from the Human Services Committee regarding the amendment and why it raises the number of beds from 121 to 150 and why it is important. She indicated it would be more expensive to construct at a later time, it would be a bigger challenge to construct later because of the moratorium in ND.

Senator Holmberg indicated one other item of note. During the process of looking at the bill there is one wording issue that needs refinement. After the hearing today today Karlene will present an amendment identical to what was passed except with the right words.

