

2009 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1453

# 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1453

**House Industry, Business and Labor Committee**

Check here for Conference Committee

**Hearing Date:** January 28, 2009

**Recorder Job Number:** 8013

Committee Clerk Signature

*Ellen Letang*

**Chairman Keiser: Opened the hearing on HB 1453 relating to wheelchair accessibility of businesses that receive state or local economic development funds & provide for application.**

RaeAnn Kelsch~Representative from District 34, Mandan. Introduces HB 1453.

Chairman Keiser: On the waiver portion, the department of commerce or governing body of the political subdivision may grant the waiver, who granted.

Kelsch: We left it a little vague because we were not exactly sure. You could be receiving grant monies from the department of commerce. The director or his designee would be making those waivers. Political subdivision it would be the city or county commissioner or they may have a governing board.

Todd Porter~Representative from District 34, Mandan. I ask for you to understand that the actual public cash dollars going into a building project, that they were built. There was public, hard, and incentive dollars that went to these and they put some restrictions.

Representative Ruby: Doesn't ADA require dollar amount to improve a building and gives an incentive is required to be upgraded? What is the difference?

Porter: There are set requirements but there is a piece in there that has no requirements.

Barb Miller~Speaking for Francis Herauf, who is present. See testimony attachment.

David Boeck~State Employee and lawyer for the Protection & Advocacy Project.

Representative Clark: How is the ADA law deficient?

Boeck: It is covered but the problem is its being ignored.

Representative Clark: Were the two instances in Mandan, did they ignore the ADA?

Deb (?)~Attorney in Mandan. These two businesses are in the renaissance and pay no taxed but received a substantial amount of tax payer's money.

Chairman Keiser: You are a state employee, are you in the human services department?

Boeck: No. ADA is independent of all state agencies. We have to enforce things that the department of human services is involved in.

Chairman Keiser: Was there any discussion on a fiscal note.

Boeck: I'm not aware of anything.

Chairman Keiser: This would apply to new and renovation construction?

Boeck: Yes.

Chairman Keiser: It applies to a \$100,000 threshold for construction, not for funding.

Boeck: I think that's correct.

Chairman Keiser: There is kind of a bail out provision, that if it's too expensive, they don't do it, even if you meet the \$100,000 construction. Seem to be an awful big loop hole.

Boeck: It is a loop hole but I see that the way, part of the 100,000 is used for construction, then this law applies.

Chairman Keiser: But the loop hole is if the city gives them \$20,000 and the door costs \$20,000, they don't have to do it.

Boeck: Under this law, that's correct.

Chairman Keiser: Do you know on average how much it costs, an electric versus non electric door?

Herauf: It's \$15,000.

Vice Chairman Kasper: If ADA already requires this to occur, why do we need this bill?

Boeck: People are not paying attention to this.

Vice Chairman Kasper: Have you or any of your staff made an effort to go to building code inspectors around the state to alert them to the fact that it appears that does not comply with ADA?

Boeck: I have not. Building inspectors are reluctant to enforce federal law that's not incorporated into the building.

Vice Chairman Kasper: Does the federal ADA law require all state municipalities to abide by the law?

Boeck: They still have to abide by the ADA law.

Representative Clark: Are you sure that building codes don't even reference the ADA requirements? I'm surprised that that's true.

Boeck: I don't look through the building codes.

Chairman Keiser: A building codes are a local issue, but state building codes adopted federal codes for state wide code, that still allows political sub divisions under local control to increase or decrease the building code, based on the special provisions. Those are entirely different from than ADA standards.

Royce Schultze~Executive Director of the Dakota Center for Independent Living. I would like to clear up the ADA. ADA is not required for private businesses. As it states now, for any exterior doors, they just have to be reasonable manageable, it does not require electric doors. There are too many laws and codes to follow and don't know which one to follow.

Chairman Keiser: You said that your group goes around does assessments? Have you looked at entities that received in excess of \$100,000 & whether they have electric doors?

Schultze: No, right now there is very few businesses that have electric doors.

Deb (?): (The whole testimony is somewhat inaudible.) We have drafted a petition and we had less than a week. If they don't want to comply, don't use taxpayer money. People with limited mobility are taxpayers and this is a very wrong thing to do.

Chairman Keiser: In Mandan, any dollar amount?

Deb (?): It just said public "funding".

Chairman Keiser: So in Mandan, if they receive one dollar, they have to ask a variance?

Deb (?): In ADA statue, it very clear, very straight forward, and easy to understand what you do and do not have to do.

Representative N Johnson: This is coming to us because the city of Mandan did pass a petition, but building people are not complying with this. Now we are trying to do a state wide thing so they have to comply?

Deb (?): In my opinion, there was an ordinance passed. The city does not wish to comply with the ordinance. They are putting road blocks in our way to try and get business to comply with the ordinance with these two businesses. However, Mr. Herauf and a number of people have been working on this for a number of years and this is just perhaps the point that it got to.

Herauf: The mayor of Mandan told me that they would go along only if legislature passes.

Anyone here to testify in opposition of HB 1453?

Jeb Oehlke~North Dakota Chamber of Commerce. We want to encourage caution and consideration of this bill.

Anyone here to testify in the neutral position on HB 1453.

Chairman Keiser: Closes the hearing on HB 1453.

# 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1453

## House Industry, Business and Labor Committee

Check here for Conference Committee

**Hearing Date:** February 2, 2009

**Recorder Job Number:** 8417

Committee Clerk Signature

*Ellen Letang*

**Chairman Keiser:** Opened the committee work session on HB 1453.

Chairman Keiser: For incentives greater than \$100,000 for construction of the building, the public must be wheelchair accessible. If the cost of the incentive is prohibited, given the amount of money given and the entity can request a waiver, includes electronic door, plus a ramp and curbing. They said the door was \$1,200. The ramp and curbing can be more.

Representative Ruby: If I remember right, ramping and curbing is already under the ADA, but this applies and put in something different which was the electronic door. The law wasn't being followed and so apparently people aren't enforcing it. My question is what happens if we put this into law, who's going to enforce it and what happens if it's ignored?

Chairman Keiser: They have a city ordinance passed on a referral in Mandan; the Mandan City commission is not enforcing it.

Representative Clark: I'm of the opinion that this is already covered by ADA and if you ignore ADA, you do it at your own peril. Anyone could bring a suit under that Federal Law. Am I wrong in this interpretation?

Chairman Keiser: I'm not an expert on ADA.

Representative Gruchalla: Are clearly known that electric doors are covered under ADA.

Representative Ruby: That's what I remember from testimony.

Chairman Keiser: My notes say they aren't.

Representative Ruby: I don't understand. Talks about his shop being built.

Chairman Keiser: Representative Gruchalla is absolutely right, my note say that ADA does not require electric doors. It requires reasonable manageable access by definition.

Representative Clark: So this is above and beyond ADA.

Representative N Johnson: Wasn't there an amendment put forward on line 15 & "incentive" instead of "waiver".

Representative N Johnson: I move the amendment.

Representative Nottestad: Second.

Voice vote with all aye's and 0 nay's.

Vice Chairman Kasper: I move a Do Not Pass as Amended.

Representative Ruby: Second.

Representative N Johnson: I'm struggling with the accessibility. If the city of Mandan voted to do this and the city is not doing it, shouldn't that be a Mandan decision?

Chairman Keiser: If you are receiving a \$100,000 incentive, you are a pretty big project. I can't believe they are not making those doors appropriately accessible. I don't know that. It wouldn't be unusual for the bill carrier to drive over there and look. Why don't we hold it and ask Representative Clark to do a site visit.

Vice Chairman Kasper: I withdraw the motion.

Chairman Keiser: Second.

# 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1453

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: February 4, 2009

Recorder Job Number: 8659

Committee Clerk Signature *Ellen LeTang*

**Chairman Keiser:** Opened the committee work session on HB 1453.

**Representative Clark:** What this bill says that if there is any public money in the construction of the building and they don't comply with ADA or with this law, they don't get the money.

They can choose to ignore ADA if they want to but they still do it at their peril. Some

handicapped person could bring suit against under the ADA law which is Federal.

**Representative Gruchalla:** Do we know for sure that ADA requires electric doors.

**Representative Clark:** On a private business.

**Representative Ruby:** I have a problem with, since Mandan has an ordinance and they are not enforcing it that their stipulation is to make it a state law and then they will. I have a problem for that being the reason to make it a state law.

**Vice Chairman Kasper:** Move a Do Not Pass as Amended.

**Representative Ruby:** Second.

**Chairman Keiser:** Further discussion.

Voting rolling was taken on HB 1453 for a Do Not Pass as Amendment with 10 aye's, 2 nay's, 1 absent and Representative Clark as the carrier.

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Adopted by the Industry, Business and Labor  
Committee

February 4, 2009

*VR*  
*2/5/09*

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1453

Page 1, line 15, replace "waiver" with "incentive"

Renumber accordingly

Date: Feb 2 - 2009

Roll Call Vote # 1

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**

BILL/RESOLUTION NO. 1453

House House, Business & Labor Committee

Check here for Conference Committee

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

Action Taken  Do Pass  Do Not Pass  As Amended

Motion Made By \_\_\_\_\_ Seconded By \_\_\_\_\_

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	}		Representative Amerman	}	
Vice Chairman Kasper		Representative Boe			
Representative Clark		Representative Gruchalla			
Representative N Johnson		Representative Schneider			
Representative Nottestad		Representative Thorpe			
Representative Ruby					
Representative Sukut					
Representative Vigesaa					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

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

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

*all aye's no nays 1*

Date: Feb 4 - 2009  
Roll Call Vote # 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1453

House House, Business & Labor Committee

Check here for Conference Committee

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

Action Taken  Do Pass  Do Not Pass  As Amended

Motion Made By Kasper Seconded By Ruby

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	7		Representative Amerman		7
Vice Chairman Kasper	7		Representative Boe		
Representative Clark	7		Representative Gruchalla	7	
Representative N Johnson	7		Representative Schneider	7	
Representative Nottestad	7		Representative Thorpe		7
Representative Ruby	7				
Representative Sukut	7				
Representative Vigesaa	7				

Total (Yes) 10 No 2

Absent 1

Floor Assignment Clark

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

**REPORT OF STANDING COMMITTEE**

HB 1453: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (10 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HB 1453 was placed on the Sixth order on the calendar.

Page 1, line 15, replace "waiver" with "incentive"

Renumber accordingly

2009 TESTIMONY

HB 1453



Chairman Kessler and Committee Members,

My name is Francis Herauf of Mandan. I'm here today to testify concerning the absolute need of electric doors for accessibility. I was able to get an ordinance passed by the voters of Mandan with overwhelming support for electric doors. Don't you think it is time for a change to get these doors put in? Why stop with Federal buildings? Why not expand this regulation to the state and cities? Mandan's results prove there is support for this.



For me, as well as for others with walkers, canes and wheelchairs, manual doors are not an entrance but an obstacle. Doors are also a problem for those with painful arthritis, crutches or braces. Or, just for moment, imagine yourself trying to leave a store with a fully loaded shopping cart or an armload of packages, and several small children in tow. Without an electric door, how are you going to handle it? Electric doors are not only convenient for customers, they benefit the business. Employees appreciate not having to constantly monitor the door or drop what they are doing to open it. Delivery people can get their cases and packages in more quickly and easily.

With our veterans returning home, some with physical disabilities and in need of assistance, are we sending a negative message that North Dakota doesn't want them to enter our businesses? It's time to be proactive and upgrade new or renovated businesses to the higher standards the ADA intended.

Thank you.



House Industry, Business and Labor Committee  
Sixty-First Legislative Assembly of North Dakota  
House Bill No. 1453  
January 27, 2009

Good morning, Chairman Keiser and Members of the House Industry, Business and Labor Committee. I am David Boeck, a State employee and lawyer for the Protection & Advocacy Project. The Protection & Advocacy Project is an independent state agency that acts to protect people with disabilities from abuse, neglect, and exploitation, and advocates for the disability-related rights of people with disabilities.

Seventeen years after the Americans with Disabilities Act became effective, the nation and the state have become lax with implementing our commitment to welcoming people with disabilities to participate fully in ordinary activities of community life. Far too many businesses and community facilities remain inaccessible to people with mobility impairments.

House Bill 1453 would help put North Dakota back on track. The Bill ties state and local tax dollars to reducing disability-based discrimination. The people of Mandan and the Bill sponsors have been innovative in affirmatively welcoming people with disabilities into fuller participation in community life.

The Bill's \$100,000 threshold marks a very modest undertaking. Application of the proposed law would point out the existing requirements of the Americans with Disabilities Act and the North Dakota Human Rights Act.

The use of tax-funded business incentives would place new emphasis on existing legal obligations. On the other hand, it would be very distasteful to see tax funds support businesses that are not physically accessible to all taxpayers.

This bill would alert government entities that grant tax-funded business incentives, and businesses that seek public financial support, of the obligation to incorporate accessibility measures into construction projects.

Businesses would be reminded and would become acutely aware of these obligations. As some of us see our parents and colleagues physically compromised by aging, we become more appreciative of physical accessibility. The percentage of people with mobility impairments is growing as the baby boomers age. Young people with disabilities can accomplish much more than previously imagined. No one could seriously argue that all people with disabilities should just stay home.

There is a typographical error on page 1, line 15. "Waiver" should be "incentive."

Thank you for the opportunity to testify in favor of this legislation. Please let me know if you have questions.