

2013 HOUSE POLITICAL SUBDIVISIONS

HB 1156

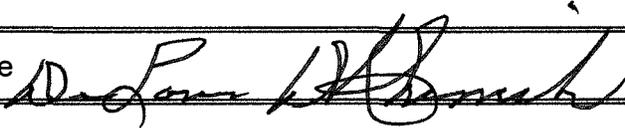
2013 HOUSE STANDING COMMITTEE MINUTES

House Political Subdivisions Committee Prairie Room, State Capitol

HB 1156
January 24, 2013
Job # 17715

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to county home rule; and to declare an emergency.

Minutes:

Testimony 1,2,3,4,5,6

Chairman N. Johnson: Opened the hearing on HB 1156.

Rep. Klemin: Introduced the bill. (See testimony #1). 01:28-5:21

Rep. M. Klein: Why the emergency clause?

Rep. Klemin: That will be explained by others. The emergency clause would allow the counties to use this process sooner than would otherwise be available. If we didn't have an emergency clause the bill would become effective August 1 and the earliest that it could be used would be for a general election in November. This would allow the charter to become effective January 1, 2014. The emergency clause would allow the process to be speeded up so it could be done earlier.

Terry Traynor, Ass't Director, ND Association of Counties: (See testimony #2). 7:02-8:30

Rep. Koppelman: Are county special elections common for other purposes?

Terry Traynor: The ability to use them is fairly common for such things as senior levies. I am not aware that it is used all that often.

Rep. Koppelman: Do you have a sense for how many people would show up for a county wide special election versus a primary or general election when there is more on the ballot?

Terry Traynor: Probably no more idea than you would have. It would have to do with the issue and the press it gets prior to the election.

Rep. Kretschmar: Are these charters quite a bit alike or is there is some reference to go and look at what a model charter is and use it?

Terry Traynor: They are alike. There is a provision in there that is supposed to be filed with the state. With the exception of Richland County, which was the first and quite a bit before the rest of them. The other ones are very similar.

Dave Shipman, Sheriff and Jail Administrator, Morton County Detention Center: (See testimony #3). 10:46-15:37

Rep. L. Meier: Last year how many inmates did you transfer?

Dave Shipman: I don't have the exact number we had, but there was probably three out of the five days we were transporting inmates outside of our facility.

Rep. L. Meier: Can you get us those numbers so we have an idea?

Dave Shipman: Sure.

Rep. Koppelman: A question about the timeline. If the emergency clause carries as Rep. Klemin testified the bill would go into effect as soon as it is passed by both houses and the governor signs it. If the bill passed, but the emergency clause did not carry it would go into effect August 1. Would that not allow you to put it on the ballot in the primary election in 2014 would be the first opportunity. Is that what you are saying?

Dave Shipman: I believe so.

Rep. Toman: Do you have the data on how many inmates are awaiting first hearing as well?

Dave Shipman: Morton and Burleigh Counties where the majority of our inmates are pretrial inmates where we are housing them. In 2012 the 2,600 inmates we booked in; 65% of them were pretrial inmates.

Rep. L. Meier: What is the cost to transfer those inmates?

Dave Shipman: Most facilities across the state charge \$65/housing plus medical costs plus medical costs plus the fuel and long distance transports when we have to go to the eastern part of the state we pay for meals while they are away.

Major Les Witkowski, Chief Deputy, Burleigh County Sheriff's Dept: (See testimony #4) 18:26-24:00

Rep. L. Meier: What is the average stay for an inmate?

Les Witkowski: It varies; I would guess 20 days.

Rep. Hatlestad: The dorm you have; can you double bunk?

Les Witkowski: We are already double bunked.

Rep. Koppelman: I have a question about the federal guidelines you referenced. You say you have a capacity of 138 beds and according to those guidelines your considered full when you have 85 % of the beds in use which are 117. Why is that?

Les Witkowski: It is because you have to segregate inmates obviously by sex and by status as far as pretrial and sentenced and you have to leave some wiggle room for that.

Rep. Kathy Hogan: Have you seen a significant increase in juvenile cases as well or is it just on the adult side?

Les Witkowski: If I had to guess it has been pretty steady here. I can't say if it has increased or decreased. It has remained about the same.

Chairman N. Johnson: So you are hoping to have a special election so that hopefully the two counties will be able to build a facility?

Les Witkowski: That is our goal. It is a tool to allow local government to take care of the needs because it is here.

Rep. J. Kelsh: Does the charter include a sales tax and if it does how much is that?

Les Witkowski: In the meetings there has been a discussion of putting a ½ cent sales tax to the vote of the people.

Rep. J. Kelsh: Is that on the same vote as the charter or would that require a different vote?

Les Witkowski: I reviewed the statue on that. I believe the process is the county commission appoints at least five people to a charter commission and those people are then tasked with the job of coming up with the charter. The commission appoints the charter commission and then they come up with the charter and then the charter goes to the vote of the people.

Jerry Woodcox, Chairman of the Burleigh County Commission: I can answer your question Rep. Kelsh. What we intend on doing is having a home rule charter and a sales tax attachment. It would be a two parts to the election and both of them would have to pass. We would first have to have the home rule charter in place and then we would have to have the ½ cent sales tax right now. We are in trouble, as you can tell and it has come in the last two years. Two things to remember about what they have told that our Burleigh County jail is up 18% in one year. We did not have a day last that we did not have people that were transported out of our facility. We anticipate that 18 % going up even more this year. We have had the four people that were from Arizona that were just arrested and brought meth in and they were booked at our facility and the bond was set at \$250,000 and you know that they are going to be there for a long time. They won't be there for a week or ten days and bailed out so they will be there for probably six months so that adds four onto our regular population. This effort has been about a year's process between Burleigh and Morton County. Our commissioners have met many times and we are trying to work together for a regional facility and we have made great progress.

We think we are doing the right thing and we are trying to save money for both counties and the taxpayers. The urgency of this bill and one of the other questions was why are we doing it now rather than going through the regular process? If we could do this and there was an emergency clause attached to it it would save the first \$400,000 which is what we pay to send out prisoners to other facilities. We anticipate we are going to do that in this year. It saved \$350,000 or \$360,000 last year and we think it will be at least \$400,000 this year. Construction costs in Bismarck and Morton County and Burleigh County and our whole area have gone up dramatically in the last two or three years. We think a \$50 million jail, which was the original estimate for a joint facility which was made about 8-9 months ago, will go up at least 5-10% each year that goes by that we do not get this facility built. That is the urgency of the bill so we can have a special election this fall if things work out and we move things up as quickly as we think. We have already worked with architects and we have a proposal coming back from them. We will pick an architect and go from there. So we have all our pieces in play. We are trying to move it up at least a year. It will save us probably \$500,000 in construction costs and \$400-\$500,000 in inmate transportation costs. That does not count inmate transportation from Morton County which we think will be about \$100,000.

Rep. L. Meier: If this bill was to pass and the special election would pass as well, when were you forecasting for the jail to be done?

Jerry Woodcox: We think if the election is passed and the voters approve it we could start this fall. We are already proceeding to getting the bids which we think that will be done about the same time; about the 1st of November we should be ready to send off our bids. Hopefully we could start construction in the spring of 2014. That would save us a full year of construction costs and we would get it built a year sooner.

Rep. Hatlestad: Does this facility include housing city prisoners if there was a need for that?

Jerry Woodcox: The city of Bismarck already houses all their prisoners with us and we contract with them and we charge them our exact costs. This would not change and we have already had inquiries from the State of North Dakota. They are going to be full by the time they are in there and they said save us 50 beds. We have also applied for a grant from the federal service, the immigration department. They have a program where they will kick in \$5 million, but we have to guarantee them 30 beds a year for 20 years. We have made a proposal to them but have not gotten the results back from that. That is a possibility. If that happens we would just reduce the cost of the facility from the taxpayers.

Rep. Kretschmar: What would be your position in your counties if you put it up to the election of voters and one county passed it and the other one did not?

Jerry Woodcox: We both intend on having the same limited charters. The only thing on our charter is the ½ cent sales tax and nothing else. We are trying to make it as simple as we possibly can. If Morton County approved it and we did not, we are back to probably going to a bonding type of situation. It will delay us a year or two and bonding is much more difficult to pass. We intend on going ahead with our facility. Burleigh County would be about a \$35 million dollar facility rather than a \$50 million, which would be a joint facility.

We definitely have to do something. I am sure Morton County feels they have to do something too. We have a commitment from our commissioners and we are going to go ahead and build a jail no matter what. We would love to have a joint facility.

Rep. Klemin: If we add a ½ cent sales tax how long do you think it would take to pay off the jail?

Jerry Woodcox: We think it would take us 5 years to pay it off.

Rep. Klemin: The alternative through bonding that would have to be paid back through a property tax increase? How long would it take to pay it off through a property tax increase?

Jerry Woodcox: Bonding normally takes 20 years. We don't want to obligate Burleigh County to a 20 year bond. We are in good financial shape. We have no bonds and no debt and we want to try and keep it that way.

Rep. Maragos: At the current rate of increase in occupancy when do you think your new facility will be out dated?

Jerry Woodcox: Williston when they built theirs they thought it would last for twenty years and it was full in five. Fargo had the same type of thing. Fargo wasn't affected by the energy development like we are being now. They paid for it in five years; they filled theirs up in 7 or 8 years and had another election and they have added on already. We would like to see it last 20-30 years. The design that we have tentatively picked is a pod system with a central location with central administration and we can add on pods like spokes of a wheel so if ten years from now we need to add on we would add on another wing that would handle another 100-150 prisoners.

Rep. Beadle: Has Burleigh County attempted to pass a home rule charter before?

Jerry Woodcox: We did in 1992 and it has quite a few complicated things on there and it was turned down. It had nothing to do with building a jail at that time.

Bruce Striden, Chairman of the Morton County Commission: Burleigh and Morton County both find themselves in a very difficult position regarding detention. Our population and economic activity has grown in this area and I think as all of you know as your population increases so does the number of sulfa's who will come along with that growth. We are seeing great increases in the number of prisoners we have. In the past we had the ability to handle our overflow by using our neighboring facilities in other counties. Right now we are finding they are also experiencing growth and very busy so our ability to house prisoners away from our own facility is being much more difficult and expensive particularly in terms of the time and distance. We are left with an immediate need to bring on some additional detention facilities and this is why we requested this bill be introduced. Construction costs are the second issue. The Bismarck and Mandan districts just passed substantial bond issues for the construction of schools. Those costs are going to be applied to the property tax payers for many years to come. As we looked at this situation and discussed it with both of our commission on both sides we felt the chances of us being able to get a bond issue passed with a 60% approval vote for either of the counties was

slim to none. There is a wide gap in who the public views funding for education versus funding for incarceration. No one likes paying for the bad behavior of some of their fellow citizens. We felt we were left with only one option for being able to fund the jail and that was to obtain a home rule charter and to be able to put a ½ cent sales tax included in that home rule charter to pay for the facility. Once the facility is paid for that ½ cent sales tax would be removed.

Doug Schonert, Burleigh County Commissioner: (See testimony #5). 44:51 - 47:21

I am also a realtor and visiting with clients and the public and other realtor people are stressed out with real estate taxes. They were promised over the years that the legislature was going to help reduce that and I think the legislature in the last couple of session you had done that and the taxes in our county went down about 18% for the last biennium. People forget that and now they are looking for a reduction in real estate taxes and if we had to come back and say we want to increase them that would be a hard pill to swallow and I don't know if we could pass that. People are more willing to go for a sales tax that could be paid off in 5 years or so.

Brian Bitner, Burleigh County Commissioner: In most cases I am opposed to any increase in taxes at all. This would be a situation that is new for me that I would support and increase in taxes for Burleigh County. I am a Class A general contractor her in Bismarck and I can tell you a company like mine would probably be paying more of the lion's share of sales tax increases. When we order materials it usually comes in on semis so I am sure it would impact me more than it would impact me on property taxes. I don't want increases in property taxes in Burleigh County if there is anything we can do about it. Burleigh County social services are a significant issue along with our jail issues. We would like the legislature to take the social services issue off the hands of Burleigh County. There is no local control on the cost of social services. All of that is federal and state mandates. Discussed issues with the social services program. I think the crime increase is an increase in the severity of crime. That is contributing to longer stays and less likely that we can just release those folks. I don't think we can expand the electronic monitoring more than we have. I think a sales tax is the fairest way to fund a jail here in Burleigh County.

Rep. J. Kelsh: Do you have some idea of the percentage of taxable sales are from people that don't live in the county?

Brian Bitner: No I don't.

Opposition:

Mark Armstrong, Burleigh County Commissioner: (See testimony #6). 54:50-57:05

Rep. Koppelman: Do you have any sense in how wide spread your sentiments might be among county commissioners? Do you know how other counties feel?

Mark Armstrong: We have the ability to home rule charter at any time. This is about moving that election out of June to November. That is the sole purpose of the bill.

Rep. Koppelman: Do you think others share your reservations about that or do you think in general county commissioners are fairly supportive of this idea?

Mark Armstrong: There was no question put to other county commissioners involving in this so I would have no way of knowing that.

Rep. J. Kelsh: Would you share your idea that would allow the jail to be built almost immediately?

Mark Armstrong: We have the ability to levy 10 mills for a new jail. We have for the last six years been able to do that. At no point have we moved it from the one mill; which raises about \$300,000 this year to the 10 mills that would have raised \$3 million this year and subsequent years. We have the ability to tax the property tax payers ten times what we are charging now for the sole purpose of jail construction. That vote went down to defeat in our budget bill last August when we had that discussion. I think that is the fair way to go. If we want to do the home rule charter and the sales tax as a replacement to that the voters would have a clear choice in that. If the need is now we have the ability now to tap the property tax fund and get the construction and the architecture and what that facility should look like and where it should be.

Rep. J. Kelsh: Do you feel it is alright to put more burdens on the property tax payers?

Mark Armstrong: I think we need to step up and get the process moving and put that on the property tax payer. Then let's go through the home rule charter process. There are four votes that need to take place on both sides of the river. This moves it. We need a bigger lockup facility and it would be good if we shared it with somebody. I support that and I think we need to move faster than this iffy process. I don't think it is a good idea to move elections out of June and November fundamentally. I am opposed to that.

Rep. L. Meier: Have your commission thought out doing a survey with the public?

Mark Armstrong: No we have not done the approach that Morton County did where they put it on the November ballot as a sort of sense of the community. They by 5,000 votes said lets cooperate with Burleigh County in what they do. We also have to talk about the city as well because Burleigh County doesn't generate a lot of prisoners or lockups. They are coming from the US Marshall, FBI, the City of Bismarck and we pay for that. In other states like Montana the highway patrol picks somebody up they pay for the incarceration into the county to pick up. If the highway patrol picks up here the county pays for it. We are stock with that bill.

Rep. Koppelman: The need is for a lockup versus a longer term detention and that is what your consultants said. Could you elaborate on the difference between the two and what the consultant actually found?

Mark Armstrong: The consultant's report was through and one of the things it showed and you heard from Sheriff Shipman; they are getting about 65%-70% of their inmates as pretrial or pre court appearance. We had at one point only one locked up prisoner in our facility. It is not to say they are not serving their sentences elsewhere, but the need right

now is for a lockup facility. You hear the average day in the Morton County facility is 20 days and I think that is the same for our facility. Most of them are drug crimes as well and if they don't have the ability to post the bond; their family doesn't have the ability to post the bond; so they are just going to wait it out until their day in court. So if we build a lockup facility where do we build? We still have to transfer them back to the courtrooms for a lot of this. It is going to create some other problems. What do you do with the jail downtown? Do you keep it open with 117 beds or do you scale that back? There are a lot of complications with this in my opinion.

Rep. Koppelman: What is the definition of a lock up facility versus a longer term detention?

Mark Armstrong: Different communities handle this differently. We are in the process of spending some money for an architectural firm to look at what a facility might look like in pods and how you could add onto it later.

Rep. Beadle: How did commissioner Pause vote on the idea to bring this bill forward?

Mark Armstrong: Commissioner Pause was supportive of the idea that we need to move as quickly as possible and he was in support of the general bond and he was in support of that concept as I recall.

Rep. J. Kelsh: You want to move it quickly with the mill levy, but you are willing to stay with the home rule and the sales tax to finish the project.

Mark Armstrong: Yes we can move quickly by putting some money on the table now and it is a burden to the property tax payers next year. Then have the election in June 2014 and appoint a home rule commission and then decide. Then we could move the 10 mills back to 1 mill and replace that with the sales tax.

Rep. L. Meier: If everything passed and the jail were built what would be the increase in ongoing costs such as FTE's.

Mark Armstrong: What the consultant report told us was if you build a \$50 million jail figure 30-50% costs ongoing for the next twenty years. Those are things we need to understand going forward and who is going to pay for it. Eventually the cost is passed on to the city because they get charged whatever it costs us to run the facility for them.

Neutral: None

Hearing closed.

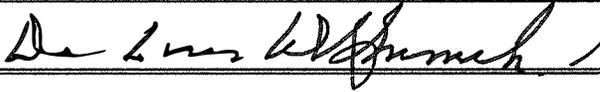
2013 HOUSE STANDING COMMITTEE MINUTES

House Political Subdivisions Committee Prairie Room, State Capitol

HB 1156
January 25, 2013
Job # 17749

Conference Committee

Committee Clerk Signature



Minutes:

Chairman N. Johnson reopened the hearing on HB 1156. It was brought to us because Morton and Burleigh County wanted to have an election probably for a jail.

Rep. Klemin: I think we were all sent an email by the other Burleigh County commissioners that they did not agree with Commissioner Armstrong about his idea of using general obligation bonds to start the construction of a jail and then what do you do later if the sales tax didn't work out then you have obligated the county to a \$50 million jail using general obligation bonds without ever taking a vote on it. If we didn't allow a special election they are still going to do it; it is just going to extend the time about a year and cost another \$1 million to the tax payers of this area. If they can save some money by moving forward a little faster it is going to be up to the voters in Burleigh and Morton County whether they agree.

Rep. J. Kelsh: I did talk to Mr. Strinden from Morton County. He said they do not have the same authority over there to put on a mill levy that would raise a significant amount of dollars. If that sales tax didn't pass in Burleigh County they would have to put on more mills to operate the jail so he did not think that was right. I think the more we can stay away from putting costs on the property the better off we are. The people have an opportunity to vote on this and we know sometimes special elections they don't participate like they should, but there is the opportunity there is they want to participate.

Rep. Koppelman: The situation Rep. J. Kelsh you said in Morton County; they did not have the ability to add mills? Is it because they are full and have already assessed all the mills?

Rep. J. Kelsh: I did not ask him if they were up against their limits. He did say we do not have the ability to put on 10 mills. Then they would have to wait until the next primary election to do it and that would delay the project.

Rep. Toman: Yes they have their mills levied so they can't levy anymore and that is why they chose to do a straw poll during their election. They want a jail.

Rep. Kathy Hogan: Some special elections have had very large turnouts in Fargo so I don't think to assume that just because it is a special election it will impact the turnout is a valid reason not to pass this.

Rep. Toman: I think Morton doesn't want to be held responsible for raising taxes on their populace. They don't want to get voted out either.

Rep. J. Kelsh: They figure by the time the new state penitentiary is built it will be full and they will be planning on an addition to it. So it has gotten to be a real problem as was pointed out here for Burleigh and Morton counties. They have to have someplace to put these folks.

Chairman N. Johnson: It was pointed out to me that they allow cities and school boards to have special elections but not counties at this point.

Rep. Toman: I know we need a jail, but I don't know if they have done their due diligence on this and it just creep up on them and they have to do something.

Do Pass Motion Made by Rep. Maragos: Seconded by Rep. Looyen:

Vote: 11 Yes 3 No 1 Absent Carrier: Rep. Kretschmar:

Closed.

Date: 1-25-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1156

House Political Subdivisions 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. Maragos Seconded By Rep. Looysten

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson	✓		Rep. Ben Hanson		✓
Vice Chairman Patrick Hatlestad	✓		Rep. Kathy Hogan	✓	
Rep. Thomas Beadle	✓		Rep. Jerry Kelsh	✓	
Rep. Matthew Klein	-		Rep. Naomi Muscha	✓	
Rep. Lawrence Klemin	✓				
Rep Kim Koppelman	✓				
Rep. William Kretschmar	✓				
Rep. Alex Looysten	✓				
Rep. Andrew Maragos	✓				
Rep. Lisa Meier		✓			
Rep. Nathan Toman		✓			

Total (Yes) 11 No 3

Absent 1

Floor Assignment Rep. Kretschmar

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

REPORT OF STANDING COMMITTEE

HB 1156: Political Subdivisions Committee (Rep. N. Johnson, Chairman) recommends **DO PASS** (11 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING). HB 1156 was placed on the Eleventh order on the calendar.

2013 SENATE POLITICAL SUBDIVISIONS

HB 1156

2013 SENATE STANDING COMMITTEE MINUTES

Senate Political Subdivisions Committee Red River Room, State Capitol

HB 1156
March 7, 2013
19565

Conference Committee

Committee Clerk Signature	
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Explanation or reason for introduction of bill/resolution:

Relating to county home rule and to declare an emergency

Minutes:

You may make reference to "attached testimony."

Chairman Andrist opened the hearing on HB 1156. All senators were present.

Rep. Klemm District 47. Support of HB 1156 and introduced by the Burleigh county Commission and the Morton County Commission and relates to the procedure for adopting home rule charter. Written testimony #1. (:22- 4:01)

Senator Howard Anderson Are there any figures on the comparative number of voters at a primary or general election and a special election?

Rep. Klemm I don't have any numbers like that, but I think it can vary considerably depending upon the issue. The special election of course would have to be, in this particular situation there is a lot of preparatory that is going to take place. The county has to have a Home Rule Charter committee appointed and then there has to be a hearing held on the Home Rule Charter that is being proposed, then that charter has to be published in the newspaper and that all happens before the election. That is regardless of whether it's a special election, or a primary election, or general election. So the voters have a lot of notice of what's happening and would have the ability to come to vote regardless of what day the election is on. Whether special elections have a greater or lesser outcome, or number of votes I just don't have any data on that.

Senator Howard Anderson you say now that the next time this vote could be held would be in June of 2014. So, what we're talking about here is compressing that time period considerably. There must have been some reason why the Legislature decided then the city or county or what-ever needed that period of time to mull things over or what is your opinion about that?

Rep. Klemm replied I don't know that I have an answer to why the counties have not had a special election alternative in the County Home Rule law. Maybe it has just never come up before. The cities already have that process allowed to them for city home rule charters so that really just places the counties and the cities on the same standing.

Terry Traynor Association of Counties (6:59-8:42) Support the bill. Written testimony # 2.

Vice Chairman Ronald Sorvaag So they need a vote to become chartered? They are not chartered now, specific then and then turn around and have another vote for their sales tax, how does all this work?

Terry Traynor replied in most cases the counties proceeded in two votes. It could be done in one vote, the charter authorizes a particular thing right in the charter and you can do it in one election. Of course, as Rep. Klemin pointed out, first of all it has to commissioned action to create a charter committee; they meet in a public hearing; publish what it is in the paper. Now the charter could include right in there, but most situations they pass a charter, with the authority to levy sales tax with a subsequent vote. Most recently who has done that was in Williams County where they did it for their jail. They actually had the two measures on the ballot at the same time. Obviously the sales tax if that passed alone without the charter it wouldn't been effective. They needed the charter and they needed the vote and that's the way they did it. That is the most common way.

Senator John Grabinger I don't have a problem with the special election. But, I am questioning like Senator Anderson regarding the 60 days. My understanding of it was the reason you put it off for the next January or July was basically you're given 6 months to get everything else in order when you go to a Home Rule system because there is a lot of other ramifications to that. Am I right in that? Second of all, do you think this can be done in 60 days?

Terry Traynor replied the 60 days is after the vote is taken after the plan has been developed and published and everything, so basic the leg work is done before the election. Now, once the election takes place, there might be some implementation issues that you need to resolve as you go forward but I guess I don't know what would prohibit it from happening in 60 days. Once it happens in a situation where there working with sales tax, they have to enter into an agreement with the State Tax Department for the implementation of collection of the sales tax; those sorts of things. But sometimes the actual collection of sales tax is even further down based on that agreement that is established. I guess I don't see where there is a real constraint that 60 days would have. If there was something particular to that county's home rule charter, I would assume that when they wrote the charter they would make the effective date further out rather than 60 days because 60 days or the effective date whichever is less.

Chairman Andrist Terry is there any reasons why home rule is used other than for establishing your sales tax? **Terry Traynor** replied the very first county that did that did it for the purposes for restructuring their county government. They changed the functions of the auditor, treasurer, tax director, and how those offices were managed. That is one of the other reasons for doing it. The other one is to enact ordinances to take greater control of your criminal procedures there. Certainly the Supreme Court has sort of pared that back a little bit, but that is one of the other areas. Cass County in addition to levying money for their jail, which was later on passed their home rule charter to consolidate their levies; right now under statutory law counties have 64 different levies and essentially what they have done is collapsed those down into a larger general fund and a social service fund. So it's

much easier to budget, it's easier to manage their budget because they can move funds to where the needs are. That was one of the primary purposes that they used it for.

Chairman Andrist Back in the 1990's we passed county tool kit legislation. What is the difference between what that that authorizes and what home rule authorizes?

Terry Traynor replied the body of legislation that was passed and it was called the tool chest, is more directed towards the restructuring issues, the consolidation and re-designation of county offices. Since that was put in place I think we've had something like 30 counties that have used a portion of that to restructure that. We've seen 85 elected offices consolidated across the state with that. But that is primarily the purposes there is to provide for a more streamlined and modern form of government I guess. The difference in the process is there the commission can implement it subject to referral rather than the home rule process which takes an affirmative action of the voters at the front end.

Pat Heinert Burleigh County Sheriff (15:57-19:41) In support of HB 1156. Written testimony # 3.

Chairman Andrist Pat, you have increased your daily count from 68 to 155 over 13 year period here. What's the reason for that, and it's not unique. This is happening all over isn't it? Are our laws becoming more pervasive or are people becoming more lawless?

Pat Heinert replied I can contribute it to several reasons. The first reason is we do have more felonies in the state of North Dakota than we did in 1999. More crimes are being considered felonies. The second reason we have much more population growth especially in the larger areas of the state. Our population in Burleigh County since 1999 has more than doubled at this point in time. There are several laws where mandatory arrests are now part of our structure. We do have more law enforcement officers on the streets of North Dakota than we had in the past. I believe those law enforcement officers are more highly trained than they were in the past; so they recognize the factors in making an arrest. Somewhere along the way, some of the mandatory arrests have increased the numbers of inmates; the mandatory sentences have increased the numbers. But a lot of those things that have happened have all been also very positive for the state of North Dakota in fighting crime in North Dakota.

Chairman Andrist is the proposal we were told in testimony that both Burleigh and Morton County are interested in this, is there a plan to build a joint jail or are there separate jail plans?

Pat Heinert currently we have had a study done in Burleigh and Morton County that both counties combined on. We brought in an outside agency to do a study to look at our needs. Today, actually I have the same group in my facility right now doing an analysis of space needs for Burleigh County. They are in my understanding going to sign a contract with Morton County to look at the additional spacing needs Morton County would need in a combined center. But they are also going to look at it as an option for Morton County to consider a purchase of a property next to their current jail for an expansion there. Morton County will determine which would be best for them on their side of the river to decide if

they would combine with Burleigh County on our side of the river or stay on their side of the river.

Chairman Andrist The issue is being studied but no decision has been made. **Pat Heinert** replied there is no final decision for Morton County; I believe the Burleigh County commission has passed a resolution saying that we will move forward with a new facility.

Brian Bittner Burleigh County Commissioner (23:07-24:14) I am simply here today to testify in support of this bill. I want you to know that as a commissioner I am very reluctant to raise any sort of taxes in Burleigh County. We work really hard to not have new taxes. Unfortunately, the situation has become such that I have no choice but to support some sort of tax to pay for our jail. As a commissioner I don't want that on property taxes in Burleigh County. I believe because of growth in North Dakota the sales tax is related to growth and would help pay for the jail. That is why I am in support of it, sales tax versus property tax. In Burleigh County, I believe the Century Code gives us the ability to call a special election to put a jail construction proposal on property taxes. I am not willing to do that. So that is why we're seeking this so that we can pay for our jail on sales tax.

Doug Schonert, Burleigh County Commissioner (24:37- 26:09) in support of this bill. I think the one thing I want to bring forward in some of the questions already being asked was about the lower turnout for special elections. I think that does happen from time to time. You probably noticed it in some school elections, but, I guess I am not concerned about that because if we do a good job of informing our citizens and our public that they will vote in favor of our home rule charter and our sales tax issue to support the jail because they are flat against any increase in real estate taxes. As you all know, that is a cuss word around here and I think Senator Lee knows this as a realtor. This is a real issue, and we could put it to a vote of the people to increase the real estate taxes but then you have to have a 60% vote for one thing. I don't think they would go for it. They would welcome a sales tax to promote the jail.

Susan Beehler resident of Mandan (26:36- 33:54) spoke in opposition to this bill because it has been brought before you specifically for one government entity to address a funding issue. It is specifically for Burleigh/Morton County. I would like the Legislature to look at their role in this problem. We have unprecedented growth in Morton County and Burleigh County and that has led I believe to the added space that we need. We have state government that is flush in cash due to the growth but yet on the local levels we have no way to address that local growth without raising property taxes. The Legislature controls what taxes a local entity can levy.

Chairman Andrist I hope you understand that all this committee can empower to do is to look at this bill. **Susan Beehler** replied, correct and I would like this bill to be defeated or that you come up with a better option for funding because the funding issue is real. **Chairman Andrist** I think you made your point pretty well. I get that you're opposed to the bill and why your opposed to it. We obviously can't deal with all those other side issues. **Susan Beehler** replied as legislators you can amend bills and you can deal with the issue. You can put that in another bill that is coming before you or you can take and change this bill and totally change it to allow that Burleigh County and Morton County could tap into

some of the state resources by taking and just rewording it. I know that you have that power to do that.

Mark Armstrong Burleigh County Commissioner in opposition to HB 1156 as it is written. Written testimony # 4. (35:15- 37:42).

Senator Judy Lee First of all, your currently a commissioner right? **Mark Armstrong** replied yes that's correct. **Senator Judy Lee** asked does your commission audit a policy that once a position has been taken by the full body that individual commissioners would not oppose that as a commissioner but rather only as an individual, if at all? **Mark Armstrong** replied no, we have no policy like that. **Senator Judy Lee** I am very surprised. I think it would be inappropriate to suggest, Mr. Armstrong that with the school, there was some kind of plot involved. Our school elections are in April in many places and so that's when school elections are held. I think that it would be, I don't think there is any way to prove that there was some sort of insidious plot involved in planning an election of that sort. I guess I am not suggesting that apparently the majority of the Burleigh County Commissioners were trying to do this in order to have less turn over. There would still be a vote on the tax even if there were home rule. I was in a home rule county, it works great! We paid for our jail with a sales tax which works great too, because not all crime is committed by people in Cass County and not all dollars payed in the sales tax are paid by residents of the county and it was a limited time; a certain number of years during which it was projected that the tax would be needed and then that sales tax would sunset at the time when the cost of the jail project was over and if there was anything further that needed to be done there had to be an additional election. There was a great deal of public interest in that and it was supported. I am just surprised there is that kind of resistance to the idea. How do you propose to pay for this obviously necessary new jail if you're not going to seek some benefits and we all know it costs more later than it does sooner? If you're not going to allow the county to at least propose to the voters, the possibility of home rule which could be a benefit to you as a commissioner in many ways, it would seem to me from our experience, and see then what the voters decide to do after that decision has been made by the voters with a potential for a sales tax for the jail.

Mark Armstrong replied a couple of things. First of all, I will let you decide on the tactics that the school used. The fact was they were offered a chance to be on the June ballot and they declined. They were offered to be on the November ballot and they declined. They choose September 18 as the day for the election. They sent out 6 fliers to those of us who have school aged children home, to remind us of the election and the importance of passing the bond without quite stepping over the legal requirement they don't out and out support it from the school district standpoint. They also on the day of the election, held open houses at all the schools and invited the parents to come in that day for popcorn and reminded them it was election day as well; and how important it was to get these schools built and passed the \$90 Million dollar bond measure. I think the Soviet Union would've been proud of those tactics in getting people to vote that way.

Senator Judy Lee That was quite unnecessary. **Mark Armstrong** I am not opposed at all to a sales tax going forward and having an election in June or November. That's not the point of my testimony, but what I would say to you is this. We had an opportunity to start this jail up back in August with a property tax. We were allowed to charge 10 mills, that's

the maximum for jail maintenance and construction. We decided as a commission with me voting against it plus another commissioner voting against it as well that we were going to have a 1 mill property tax, not a 10 mill. I think if we were concerned about building a jail quickly we could've done that very quickly with a property tax and got the ball rolling with the idea that we would replace it with a sales tax at some point in the future. I think that would've been the proper course to do it. I was outvoted on that as you know. I think it would've been a better course of action. We would've had the money to go forward. So, that's my response.

Chairman Andrist It's your position Mark that the county could've gone forward with a property tax and then come back next June or November to ask people to convert it to a sales tax. **Mark Armstrong** replied correct.

Chairman Andrist closed the hearing on HB 1156.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Political Subdivisions Committee Red River Room, State Capitol

HB 1156
March 14, 2013
19928

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to county home rule; and to declare an emergency.

Minutes:

You may make reference to "attached testimony."

Chairman Andrist revisited HB 1156. All senators were present.

The opposition testimony was from Mr. Armstrong who thought all elections should at the primary or general election level to encourage voter turnout. Do you have any cause for continuing this bill or would you like to act on it?

Senator Judy Lee Are you going to accept a motion? **Chairman Andrist** Yes, I will.

Senator Judy Lee moved do pass
2nd Senator Ron Sorvaag
Role call votes 6 yea, 0 No, 0 Absent
Carrier Senator Anderson

Date: 3-14-13
 Roll Call Vote #: 1

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1156**

Senate Political Subdivisions 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 Sen. Judy Lee Seconded By Sen. Ron Sorvaag

Senators	Yes	No	Senator	Yes	No
Chairman John Andrist	✓		Senator Jim Dotzenrod	✓	
Vice- Chairman Ronald Sorvaag	✓		Senator John Grabinger	✓	
Senator Judy Lee	✓				
Senator Howard Anderson, Jr.	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Dr. Anderson

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

REPORT OF STANDING COMMITTEE

HB 1156, as engrossed: Political Subdivisions Committee (Sen. Andrist, Chairman)
recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed HB 1156 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

HB 1156

#1

TESTIMONY OF REP. LAWRENCE R. KLEMIN
HOUSE POLITICAL SUBDIVISIONS COMMITTEE
HOUSE BILL NO. 1156
JANUARY 24, 2013

Madame Chairman and members of the House Political Subdivisions Committee. I am Lawrence R. Klemin, Representative from District 47 in Bismarck. I am here today to testify in support of House Bill 1156.

HB 1156 was introduced at the request of the Burleigh County Commission and the Morton County Commission and relates to the procedure for adopting a county home rule charter. Under existing law in Chapter 11-09.1, a county can appoint a charter commission to draft a county home rule charter. The charter commission must hold at least one public hearing on the proposed charter to receive comments from the public. The proposed charter must then be submitted to the county commission for approval. The county commission must publish the proposed charter in the newspaper. The proposed charter is then submitted to the voters for ratification at a primary or general election. If a majority of the voters approve the charter, it is ratified and becomes law. If the vote was at a primary election in June, it becomes effective on July 1 (about 3 weeks later). If the vote was at a general election in November, it becomes effective on January 1 (about 7 weeks later).

At this time, the vote can only be taken at a primary election or a general election. The purpose of Section 1 of HB 1156 is to provide enabling legislation to allow a vote on a home rule charter to be decided at a special election. Section 2 of HB 1156 changes the effective date of the charter to provide for a more uniform effective date, which is either the date specified in the charter or 60 days after the election, whichever is later, rather than on January 1 or July 1 as under current law. Section 3 of HB 1156 revises the effective date for multicounty home rule charters, consistent with Section 2 of the bill. Section 4 of the bill contains an emergency clause so that the bill would become effective when the bill is signed by the Governor and filed with the Secretary of State.

Nothing in this bill requires the vote to be conducted at a special election. This is simply enabling legislation to allow a special election as an option. A county commission would still have to decide which election date to use, the primary election date, the general election date, or a special election date. This is nothing new in the law. Cities and school districts already have the ability to call for a special election. This simply gives counties the same option.

There are others here who will explain why this bill is important to Burleigh County and Morton County. I encourage this committee to give favorable consideration to HB 1156.

#2

Testimony to the
House Political Subdivisions Committee
Prepared January 24, 2013 by
Terry Traynor, Assistant Director
North Dakota Association of Counties

Regarding: HB1156 – County Home Rule Charter Amendments

Madam Chair and Committee Members, I am Terry Traynor, the Assistant Director of the North Dakota Association of Counties and I am here to communicate the support of counties statewide for House Bill 1156. The ability for the citizens of a county to restructure their local government, provide options for their government's fiscal affairs, and to enact ordinances for the orderly growth and management of their county is greatly enhanced by the home rule authority provided in Chapter 11-09.1.

Eight counties have used this authority to establish home rule charter commissions that ultimately led to their voters' adoption of the charter recommended. Those eight are listed on the following page.

Cities too, have this authority; however there are currently 124 cities that have enacted home rule charters. The city home rule statutes differ from those addressing the county in a very important way. As you can see from the highlighted portion of the attached section of the City home rule chapter (40-05.1), a city may put the issue to their voters at a special election as well as a statewide primary or general election. This enables a city to get this important issue before the voters in a much timelier manner, and our members believe that it is appropriate and beneficial to make this change for counties.

We also believe the proposed change to the effective date of a county charter is needed to clarify the section and facilitate the use of a special election for county home rule adoption.

Madam Chair and committee members, county officials statewide urge a Do Pass recommendation on House Bill 1156.

CITY HOME RULE

40-05.1-04. Submission of charter to electors. At least sixty days, but no more than two years, after submission of the charter to the governing body of the city, the proposed charter must be submitted to a vote of the qualified electors of the city at a regular or special city election, or at any statewide election that is held within that time, or at a special city election held concurrently with any statewide election. If the proposed charter has been submitted to a vote of the qualified electors of the city, the governing body of the city may call a special election to resubmit the proposed charter to a vote of the qualified electors of the city, and the special election must take place at least sixty days after the call for the special election. The governing body may amend the proposed charter prior to its resubmission to the electors.

**County Home Rule Charters
In Chronological Order of Adoption
As of January 1, 2013**

Walsh County
(1986)

Charter does not permit levy consolidation – would require voter approved amendment. Sales tax levied for emergency medical services.

Richland County
(1990)

Charter does not permit levy consolidation – citizen committee is currently looking at recommendations to amend, including this issue.

Cass County
(1994)

Charter included a provision to permit a consolidated general fund of 75 mills. Sales tax levied for flood control. Sales tax previously levied for jail.

Stutsman County
(2000)

Charter does not permit levy consolidation – would require voter approved amendment. Sales tax not levied

Ward County
(2001)

Charter grants commissioners the authority to consolidate levies by ordinance – subject to citizen referral. Commissioners have not, as yet, used this authority. Sales tax not levied

Steele County
(2005)

Charter does not permit levy consolidation – would require voter approved amendment. Sales tax levied for road maintenance.

Williams County
(2006)

Charter does not permit levy consolidation – would require voter approved amendment. Sales tax levied for jail construction.

Hettinger County
(2012)

Charter does not permit levy consolidation – would require voter approved amendment. Sales tax levied



MORTON COUNTY SHERIFF'S DEPARTMENT

Sheriff Dave Shipman

**205 First Avenue NW
MANDAN, NORTH DAKOTA 58554
701.667.3330 • Fax 701.667.3463
Jail 701.667.3318 • Fax 701.667.3216**



January 24, 2013

Testimony in support of HB 1156

TO: House Political Subdivision Committee Representatives: Johnson, Hatlestad, Beadle, Hanson, Hogan, Kelsh, Klein, Klemin, Koppelman, Kretschmar, Looyesen, Maragos, Meier, Muscha, Toman

My name is Dave Shipman, Sheriff and Jail Administrator for the Morton County Detention Center located in Mandan. I am here this morning to testify in support of House Bill 1156.

I would like to provide a brief history of our facility and some inmate population statistics for our center since our facility opened in 1986.

The Morton County Detention Center was opened in 1986, with a bed capacity of 31 inmates. Our facility is an adult only, housing male and female inmates.

In the mid to late 2000's, our detention center began to notice a steady increase of our inmate population. In 2009, we added four (4) double bunks to our facility, and began utilizing temporary beds in our dorm setting cell block, increasing our bed space to 38. This last month, we

added three (3) additional double bunks. Our capacity is now at 41 beds.

In the year 2000, our average daily inmate population was 25.8 inmates per day. Our average daily population has been steadily increasing. For 2012, our average daily population has increased to 44.8 inmates per day.



There are a variety of reasons for the increase in number of inmates that are being housed. Reasons include the population growth of Morton County and the surrounding area, increased crime rates, especially for violent crimes, legislative changes requiring arrest for certain crimes and the implementation of minimum mandatory sentencing, and additional law enforcement officers being added to local departments who are taking more enforcement action to maintain safety in our communities.

When our facility is full, we are tasked with transporting our inmates to other detention centers across North Dakota. Four to five years ago, it was relatively easy to find bed space in other facilities. McLean County, Mercer County, Burleigh County and Stark County were facilities we utilized for our overcrowded jail population. We have also utilized the Bismarck Transition Center, however, we are selective as to which inmates can be housed at the Transition Center as they are a “prison to community” facility and is not a locked facility.



Today, finding bed space for our overcrowded inmate population is becoming increasingly difficult. The Morton County Detention Center is not the only facility that is in need of additional jail space. Burleigh

County, and most oil impacted counties with detention centers are having overcrowding issues. We find ourselves having to transport inmates to Cass and Grand Forks County.

There are alternatives to incarceration that our facility has utilized to lessen the burden on our overcrowded jail population. We do utilize the 24/7 Sobriety Program and the electronic home monitoring program is becoming more frequent. In the last 2 years, the number of inmates released from custody on an electronic monitoring bracelet has more than doubled.

There is pending legislation that addresses mandatory jail sentences for alcohol related driving offenses. If the proposed mandatory jail sentence becomes law, the law will put a burden on our ever increasing jail population.

In August 2012, Morton and Burleigh County Commissioners received the findings from a combined jail study that was complete for our detention centers. This study looked at the jail population from both counties for the last 10 plus years. In this joint study, we asked the consultant to provide anticipated bed space needed for our facilities for the next 25 years. Morton County is projected to need a 100 bed facility by the year 2025 and a 123 bed facility by the year 2035. These projections were "base" projections, or without the oil boom impact for our area.

The North Dakota State Penitentiary is scheduled to open their newly constructed facility in the spring of 2013. Currently the ND State



House Bill 1156

Page 4

Penitentiary is using County Detention centers across North Dakota to assist with overcrowding on the state level. When the State Penitentiary opens their new facility, state inmates that are being housed in the facilities Morton and Burleigh County utilize for our overcrowding will, provide temporary relief for Burleigh and Morton County to again, utilize facilities located closer to Mandan and Bismarck. However, the opening of the ND State Penitentiary will not benefit local detention centers with overcrowding.



The passage of House Bill 1156, with the emergency clause attached, would allow an earlier Home Rule Charter vote by the citizens of Morton and Burleigh Counties, and if passed by voters in both counties, would enable construction to begin seven to 12 months earlier than if we would be required to wait until the first election in June of 2014.

#24

HOUSE BILL 1156
HOUSE POLITICAL SUBDIVISIONS COMMITTEE

January 24, 2013

Major Les Witkowski
Chief Deputy, Burleigh County Sheriff's Department

This testimony is in support of House Bill 1156 which amends sections of title 11-09.1 relating to county home rule.

The Burleigh County Sheriff's Department Detention Center, as well as the Morton County Detention Center, are experiencing overcrowding conditions. This issue initiated a study to determine the best course of action to alleviate these overcrowding conditions.

On January 15, 2013 Sheriff Pat Heinert presented information regarding the current status of the Burleigh County Detention Center to a combined meeting of the Burleigh and Morton County Commissions. The following summary is of that information presented by Sheriff Heinert:

2012	5529 inmates booked	(4238 male and 1291 female)
2011	4919 inmates booked	(3636 male and 1283 female)

The female inmate population essentially remained the same however the male inmate population increased by about 600.

2012	56,563 inmate nights
2011	47,936 inmate nights

This represents an increase of 8,627 inmate nights or an 18% increase.

2012 Estimated costs of \$349,00.00 to house inmates outside of the Burleigh County Detention Center.

A \$10.00 per night transportation cost was added to the per night housing cost which amounts to \$46,250.00.

\$65.00 per night housing cost times 4400 nights amounts to \$286,000.00.

\$75.00 per night housing cost times 225 nights amounts to \$16,875.00.

House Bill 1156
House Political Subdivisions Committee
January 24, 2013
Major Les Witkowski – Burleigh County Sheriff's Department

The Burleigh County Detention Center has a capacity of 138 beds however according to federal guidelines detention centers are considered full when 85% of the available beds are in use. The Burleigh County Detention Center is considered full when 117 beds are utilized. Since 2005 the Burleigh County Detention Center has been operating at full capacity.

Highest inmate count during 2012 was on October 1, 2012 at 182 and the lowest inmate count was on December 28, 2012 at 127.

Sentenced versus pre-trial status – on November 27, 2012 there were 152 inmates in custody of this number 151 were pre-trial status. There was only one sentenced inmate in custody.

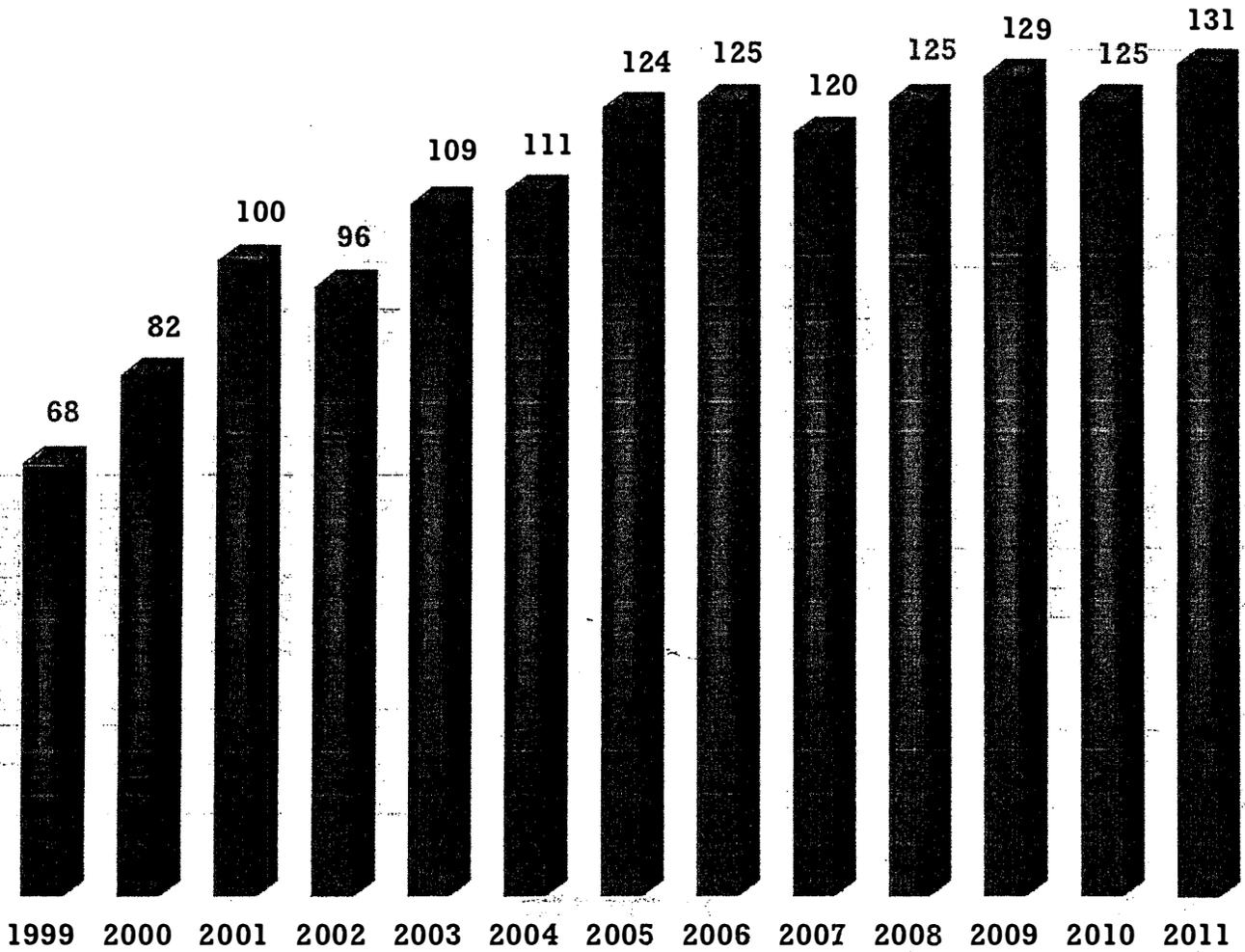
Burleigh County had inmates housed in other facilities every day in 2012.

Average daily population in 2012 was 155, average daily population in 2011 was 131.

DENTENTION CENTER INMATE POPULATION

Total Housed Inmates	4,919
Adult Male	3,636
Adult Female	1,283
Detention Center Daily Capacity	138
Average Daily Count	131

Inmate Daily Population



#5

Testimony to the
House Political Subdivisions Committee
Prepared January 24, 2013 by
Doug Schonert, Burleigh County Commissioner

Regarding: HB1156 – County Home Rule Charter Amendments

Madam Chair and Committee Members, I am Doug Schonert, Burleigh County Commissioner. I am here today to ask for your support for House Bill 1156.

Because of the unprecedented growth over the past couple of years, Burleigh County's law enforcement and social services have been under extreme pressure. I am concerned that public safety is an issue that we can no longer defer. For some time, the Commission has been considering the need to expand the detention center because of the pressures of Burleigh County's growth impacting public safety. We have been conservative, perhaps too conservative, in our approach in postponing this expansion. We have been using good behavior for early release, work release and electronic monitoring to delay any increase in property taxes to fund the detention center expansion. We have utilized these means to the max and it has now become urgent that we proceed with building a new facility.

As you are aware, real estate tax is a sticky issue, and sometimes rightfully so. Burleigh and Morton Counties have held several joint committee and commission meetings discussing other options. We have found that the most prudent resolution to the detention center funding crisis is a 5 to 7 year sales tax assessment. I also believe the people would consider this to be the most sensible and acceptable way to proceed.

Cities and school boards have the authority to put specific issues to voters at a *special election* as well as a *statewide primary or general election*. *This makes it possible*

for these entities to timely put very important issues before the voters. Counties lack this authority.

House Bill 1156 gives Counties the authority to establish a home rule charter that will allow it call a special election to address urgent issues such as establishing a sales tax to fund detention center expansion.

Madam Chair and committee members, I urge a Do Pass recommendation on House Bill 1156.

#6

Written testimony for House Bill 1156

By Mark Armstrong, Burleigh County Commissioner

I am opposed to HB 1156. I think the law is fine just the way it is...in fact I think all elections ought to take place either in June or November; there is no reason to have a sneaky election any other time of the year.

We all know most people do not even bother to vote, even when we make it easier for them to vote. Instead of one way to vote, we have vote by mail, vote by email, vote by mail and vote early, just not often and all kinds of poll locations. In North Dakota we remain the only state without voter registration.

What we see when you put elections outside of November and June, is turnout plummets. In fact in the city of Bismarck's recent \$90 million bond for new schools in September, 2012 around 20 percent voted. The measure needed 60% approval, but 80% of people did not vote. Why? Maybe because they had just voted in the primary, and knew they had another election to vote for in November. That works out to 3 elections in 5 months for a variety of measures and candidates.

The reason why our Burleigh County Commission wants to move up the election as quickly as possible is not to increase voter turnout when we decide to enact a new sales tax, it is quite the opposite. A lower turnout means you have a better chance of winning a bond vote, or enacting a new sales tax. You can target your voter customers, as the schools did so well back in September.

I oppose this bill and oppose any election not held in either June or November. Twice a year is enough for voters and unless there is a real emergency, as declared by the Governor, then there is no emergency to rush elections or enact new taxes or laws on people.

Thank you.

#1

TESTIMONY OF REP. LAWRENCE R. KLEMIN
SENATE POLITICAL SUBDIVISIONS COMMITTEE
HOUSE BILL NO. 1156
MARCH 7, 2013

Mr. Chairman and members of the Senate Political Subdivisions Committee. I am Lawrence R. Klemin, Representative from District 47 in Bismarck. I am here today to testify in support of House Bill 1156.

HB 1156 was introduced at the request of the Burleigh County Commission and the Morton County Commission and relates to the procedure for adopting a county home rule charter. Under existing law in Chapter 11-09.1, a county can appoint a charter commission to draft a county home rule charter. The charter commission must hold at least one public hearing on the proposed charter to receive comments from the public. The proposed charter must then be submitted to the county commission for approval. The county commission must publish the proposed charter in the newspaper. The proposed charter is then submitted to the voters for ratification at a primary or general election. If a majority of the voters approve the charter, it is ratified and becomes law. If the vote is at a primary election in June, it becomes effective on July 1 (about 3 weeks later). If the vote is at a general election in November, it becomes effective on January 1 (about 7 weeks later).

At this time, the vote can only be taken at a primary election or a general election. The purpose of Section 1 of HB 1156 is to provide **enabling legislation** to allow a vote on a home rule charter to be decided at a special election. Section 2 of HB 1156 changes the effective date of the charter to provide for a more uniform effective date, which is either the date specified in the charter or 60 days after the election, whichever is later, rather than only on January 1 or July 1 as under current law. Section 3 of HB 1156 revises the effective date for multicounty home rule charters, consistent with Section 2 of the bill.

Nothing in this bill requires the vote to be conducted at a special election. This is simply enabling legislation to allow a special election as an option. A county commission would still have to decide which election date to use, the primary election date, the general election date, or a special election date. This is nothing new in the law. Cities and school districts already have the ability to call for a special election. This simply gives counties the same option.

The reason that the Burleigh and Morton County Commissions requested this bill is because they are currently considering the construction of a multicounty jail to serve both counties to be financed by a county sales tax. The only way that a county can levy a sales tax is through a vote of the people ratifying a home rule

charter that specifically provides for a sales tax. The estimated cost of the jail at this time is over \$50 million. The cost is expected to increase over time. The longer it takes to approve the home rule charter, the higher the construction cost.

Under the current home rule charter law, the vote could not be taken until the primary election in June, 2014, at the earliest. If the vote could be taken at a special election, the charter could be approved sooner, saving an estimated \$5 million or more in jail construction costs. The objective is to get the jail built as soon as possible and to save the taxpayers money in the process.

There are others here who will explain why this bill is important to Burleigh County and Morton County and why a new jail is needed. I encourage this committee to give favorable consideration to HB 1156.

Testimony to the
Senate Political Subdivisions Committee
Prepared March 7, 2013 by
Terry Traynor, Assistant Director
North Dakota Association of Counties

Regarding: HB1156 – County Home Rule Charter Amendments

Mr. Chairman and Committee Members, I am Terry Traynor, the Assistant Director of the North Dakota Association of Counties and I am here to communicate the support of counties statewide for House Bill 1156. The ability for the citizens of a county to restructure their local government, provide options for their government’s fiscal affairs, and to enact ordinances for the orderly growth and management of their county is greatly enhanced by the home rule authority provided in Chapter 11-09.1.

Eight counties have used this authority to establish home rule charter commissions that ultimately led to their voters’ adoption of the charter recommended. Those eight are listed on the following page.

Cities too, have this authority; however there are currently 124 cities that have enacted home rule charters. The city home rule statutes differ from those addressing the county in a very important way. As you can see from the highlighted portion of the attached section of the City home rule chapter (40-05.1), a city may put the issue to their voters at a special election as well as a statewide primary or general election. This enables a city to get this important issue before the voters in a much timelier manner, and our members believe that it is appropriate and beneficial to make this change for counties.

We also believe the proposed change to the effective date of a county charter is needed to clarify the section and facilitate the use of a special election for county home rule adoption.

Mr. Chairman and committee members, county officials statewide urge a Do Pass recommendation on House Bill 1156.

CITY HOME RULE

40-05.1-04. Submission of charter to electors. At least sixty days, but no more than two years, after submission of the charter to the governing body of the city, the proposed charter must be submitted to a vote of the qualified electors of the city at a regular or special city election, or at any statewide election that is held within that time, or at a special city election held concurrently with any statewide election. If the proposed charter has been submitted to a vote of the qualified electors of the city, the governing body of the city may call a special election to resubmit the proposed charter to a vote of the qualified electors of the city, and the special election must take place at least sixty days after the call for the special election. The governing body may amend the proposed charter prior to its resubmission to the electors.

**County Home Rule Charters
In Chronological Order of Adoption
As of January 1, 2013**

Walsh County (1986)	Charter does not permit levy consolidation – would require voter approved amendment. Sales tax levied for emergency medical services.
Richland County (1990)	Charter does not permit levy consolidation – citizen committee is currently looking at recommendations to amend, including this issue.
Cass County (1994)	Charter included a provision to permit a consolidated general fund of 75 mills. Sales tax levied for flood control. Sales tax previously levied for jail.
Stutsman County (2000)	Charter does not permit levy consolidation – would require voter approved amendment. Sales tax not levied
Ward County (2001)	Charter grants commissioners the authority to consolidate levies by ordinance – subject to citizen referral. Commissioners have not, as yet, used this authority. Sales tax not levied
Steele County (2005)	Charter does not permit levy consolidation – would require voter approved amendment. Sales tax levied for road maintenance.
Williams County (2006)	Charter does not permit levy consolidation – would require voter approved amendment. Sales tax levied for jail construction.
Hettinger County (2012)	Charter does not permit levy consolidation – would require voter approved amendment. Sales tax not levied

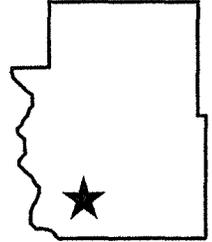


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#3

BURLEIGH COUNTY SHERIFF'S DEPT.

PAT HEINERT, SHERIFF



TELEPHONE 701-222-6651
FAX 701-221-6899

TO: North Dakota Senate, Political Subdivisions Committee
Chair Andrist

DATE: March 7, 2013

FROM: Pat Heinert

RE: HB 1156

Good Morning:

I am here today in support of HB 1156, allowing Counties to hold special elections on Home Rule Charters.

In Burleigh County we are in dire need of a new jail facility. If this bill would pass it would allow Burleigh County and possible Morton County to hold a special election for the purpose of establishing a home rule charter. The main reason for this is to ask our communities to support a county wide sales tax for the purpose to build a new jail facility.

In Burleigh County during 2012 we exploded with an increase of an average of 24 inmates per day. This was on top of an already expanding daily population over the past few years. This trend seems to be continuing into 2013 as we have already in two months had one thousand fifty inmate nights spent outside of our facility.

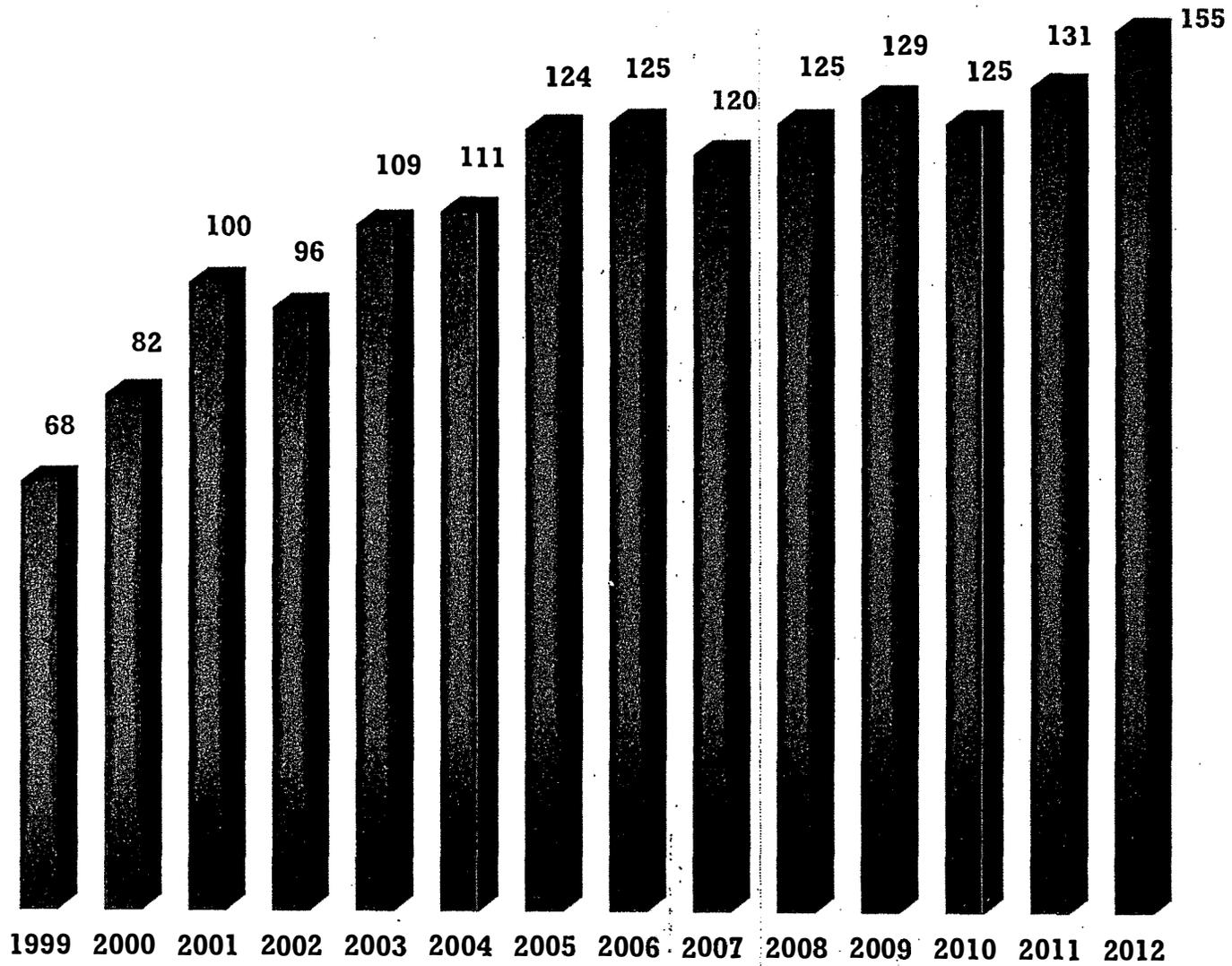
Our 2012 Statistics are:

1. 5,529 total inmates
2. 2012 daily average = 155
3. 47,939 total inmate nights
4. 4,738 inmate nights outside of our facility (1050 in January and February 2013)
5. Burleigh County expended approximately \$ 349,000 to house inmates outside of our facility
6. Highest daily total in 2012 was 182
7. Burleigh County housed an inmate in another facility every night of the year in 2012

I am also providing a graph identifying the daily average number of inmates that Burleigh County has held since 1999, as you can see for the past few years we have been increasing in average daily population, but 2012 was huge, thus forcing our hand in Burleigh County to take immediate action.

Thank you for allowing me the opportunity to present today, I will stand for any questions.

Inmate Daily Population



#4

Written testimony for House Bill 1156
By Mark Armstrong, Burleigh County Commissioner

March 7, 2013

I am opposed to HB 1156. I think the law is fine just the way it is...in fact I think all elections ought to take place either in June or November in even numbered years, as it once was in North Dakota; there is no reason to have a "sneaky" election any other time of the year.

This past November, according to the Secretary of State's Office, there was a 68 percent turnout in the county I represent, Burleigh County. Some counties saw turnout rates as high as 86 percent. In the June primary election, five months earlier turnout rates statewide were less than 33 percent.

What we see when you put elections outside of November and June, is turnout plummets. In fact in the city of Bismarck's recent \$90 million bond for new schools in September 2012 less than 20 percent voted. The measure needed 60% approval, but more than 80% of people did not vote. Why? Maybe because they had just voted in the primary, and knew they had another election to vote for in November. That works out to 3 elections in five months for a variety of measures and candidates. Schools and cities now have the power to hold these "special elections" whenever they want, outside of June and November.

The reason why our Burleigh County Commission wants to move up the sales tax election as quickly as possible is not to increase voter participation. It is quite the opposite. The purpose is to decrease voter participation by targeting your voters and making sure you win. A lower turnout means you have a better chance of winning a bond vote, or enacting a new sales tax. You can target your voter customers, as the schools did so well back in September.

I oppose this bill and oppose any election not held in either June or November. Twice a year is enough for voters and unless there is a real emergency, as declared by the Governor, then there is no emergency to rush elections or enact new taxes or laws on people.

I would propose you amend this bill to force all elections in North Dakota to take place in either June or November in even-numbered years. Further, if a political sub-division wishes to hold an election outside of June or November in even-numbered years, then instead of a 60 percent approval, as is the case with school bonds, there must be a 50 percent turnout for the election to count. Thank you.