

2013 HOUSE INDUSTRY, BUSINESS, AND LABOR

HB 1468

2013 HOUSE STANDING COMMITTEE MINUTES

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

HB 1468
January 28, 2013
Job 17847

Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Municipal industrial development bond projects

Minutes:

Attachments 1-2

Representative Thomas Beadle, District 27 in Fargo: Distributed attachments 1 and 2. Provides background to bill. The bill comes at the request of a developer with an office in my district who is doing residential development projects in Minot and surrounding communities which are impacted by the Bakken oil boom. HB 1468 was submitted with the goal of trying to improve the accessibility of capital for developers to utilize in order to finance developments and meet our state's housing needs. We are exploring a variety of tools to attract developers and capital to our state, and this is another tool in the tool box. Currently North Dakota is one of the only states that limits the scope of private activity bonding. This bill amends the definition section of Chapter 40-57 and allows the developers to utilize private activity bonding to include underground work, such as sewer and water lines. Cities are often unable to contract lines quickly, and this has led to a bottleneck. Some communities that remember the bust from the 1980s are unwilling to use the municipal bonding authority they have to special assess developments for fear that they will be on the hook for those bonds, should the oil growth grind to a halt. With the change in HB 1468, a developer would have the ability to utilize bonds sold on the private market to finance a development of the underground infrastructure within the development itself. This would provide another alternative in addition to conventional loans that could allow for more capital at better interest rates and longer payment periods in order to make the development's cash flow better and to help incentivize a development to take place. It would also incentivize private equity firms to get involved in North Dakota. Spoke about conferences about opportunities to invest in North Dakota.

3:11 Clarified logistics of this process and compared this plan to the special assessments currently in place and utilized in many North Dakota cities. The costs and the risks would be assessed to the developer and the lots and property owners within that development instead of the city being on the hook for it. This bill aims to take away the risk from a political subdivision.

4:54 **Representative Kasper:** Is the property owner at risk if the project is built this way? What is the risk to the owner of the house or commercial building?

5:25 **Representative Beadle:** The specials run with the property, not with the owner. The way the bonds are structured, when the bond is issued by a developer at the beginning of the development, those lots are individually assessed a certain share that is their annual payment that goes toward paying off the bond. The developer is the one at risk for anything that has not been sold or not paid back from those lots. The individual homeowner is not on the hook for anything more than paying back the specials as had been decided when they initially bought the lot.

6:26 **Representative Kasper:** Let's say we have a development in place and the city decides to do a sewage treatment plan. Can the property owners vote to say no? Or does the city go to the private folks to do it and the property owners have no say?

6:48 **Representative Beadle:** This bill is for new developments that are just starting and that the land is owned by the developer or an investment group. This bill is not for existing developments.

7:25 **Representative Sukut:** Gave example from Williston from last oil boom. Now, the developers are doing all the interior work themselves without bonding. Are we saying that this needs to be put in place so they'll be eligible for municipal bonding?

8:16 **Representative Beadle:** What this bill would do is allow a developer to issue a bond himself, backed by the developer and the land rather than backed by the city. Gave examples. What this does is it allows you to limit the burden so that instead of always dealing with the developers that are in the \$5 million to \$10 million development projects, you can now have a private equity fund coming in and buying the bond on it for developments with more units. Conventional loans would not be able to be used well because you won't have that much cash upfront to do it.

10:02 **Representative Sukut:** Without this bill, they cannot do that type of financing? This is necessary in order for the developer to approach financing in that manner?

10:18 **Representative Beadle:** As per the two attachments I passed out, written testimony from a developer in Fargo and the other from an operator of a hedge fund out of Colorado, current law is fairly unclear and, therefore, restrictive in nature. The developers cannot utilize a private activity bond to go towards underground work, but the city can do that work for them and then assess it back to them if they desired to do so. But a private developer could not operate on the private market and try to develop those bonds himself.

11:02 **Representative Frantsvog:** If a developer puts in underground work, what determines how much he can levy against those benefitting properties? What is to keep the developer from overcharging and padding the bond?

Representative Beadle: That would be decided based on how the scope and the nature of the bond are done. The assessments would have to be stated clearly ahead of time. The market itself would limit the overcharging to pad the bond. I don't know that that is allowed or would be allowed in this bill.

Representative Frantsvog: If a developer puts in a storm sewer line and it does not work, who is responsible for fixing it?

12:40 Representative Beadle: My understanding is that the developer would bear the risk. The way a lot of these operate is that once the streets are in place, then usually there is an agreement between the developer and the city so that the city would then take over the care and maintenance of the roads. Usually after the project is done, the city usually enters into an agreement so they maintain it. My guess is that the same thing would happen here. The developer would still have to go through the city permit process to make sure the development is up to code with the underground infrastructure as well. The city has eyes on it, but it's not their capital to start it off. After the development is in place, typically the city takes it over.

13:35 Representative Kreun: This would be a completely private project by the developer?

Representative Beadle: Yes. A private developer owns the land. While the development is being developed and the project is being built, the roads would be private. After the project is completed, they usually have an agreement with the city where the city would take over those roads and maintain them. That's the way a lot of developments are happening right now in Williston, for example, where the city is not special assessing the roads. The developer is building the roads, and then the city is taking over the roads after its has been completed. The only difference that this bill does is it provides a different line of capital to go to the creation of the roads. Gave examples of different situations. Typically, the city does take over ownership after the project is completed.

15:15 Representative Kreun: Gave example.

Representative Beadle: That is correct.

10:12 Representative Kreun: Question on liability

Representative Beadle: This bill merely affects the financing. Gave examples. In a city that does not do any special assessing, this gives the developer the ability to issue a bond for up to the entire amount. The developer does not have the ability to do it otherwise.

Representative Frantsvog: If the developer is going to develop two hundred lots and sells one hundred fifty and then carries the unsold for a year, who is paying the debt on those fifty lots?

Representative Beadle: The developer, the owner of the land, is.

17:58 Chairman Keiser: The traditional model is that the developer would request platting and a permit to develop their project. They would be responsible for building houses and doing everything else. The infrastructure would all come under a special assessment. The political subdivision would wait a period of time before putting in lights and paving the roads. The water and sewer would be there at the beginning and would typically be built into the price of the lot. We'd have a subdivision that the political

subdivision is on the hook for. If there is a default and something changes, the political subdivision becomes the owner of the undeveloped lots in that subdivision. In this case, if we get to the point where we're putting the infrastructure up front and the developer is covering the debt for the water and sewer which must be put in up front, and then the developer goes bankrupt, the bondholders become liable for the lots which have not been sold. Do the bondholders have to pay right away on the houses or lots which have not been sold? If there is a default, does the bondholder have to pay off at that point or do they carry out the terms of the bond and then make a payment at the end of the bond period?

20:50 **Representative Beadle:** My understanding would be that if the developer defaults on the bond, the bondholder would assume responsibility of the property because the land is held as collateral on the bond. They would get the unsold lots. For those lots which had been sold and which had a specials allotment on them, the owners of those lots would pay those specials regularly or in accordance with the life of the bond. My understanding is that it would not be paid off immediately because all the work has been paid up front. It's private money involved on it, so it would be up to the backer or bondholder in the equity.

21:55 **Chairman Keiser:** So they get the property. What if they decide the property is not worth much and they decide to walk?

Representative Beadle: My assumption would be that they would try to liquidate the property in order to get back as much as they could.

22:04 **Chairman Keiser:** If we take everything they can from the liquidation but there is still money owed on the project, who pays that?

Representative Beadle: The amount of money owed would be owed to the bondholder, the equity.

Chairman Keiser: What if the bondholder walks? Gave example to elaborate on question.

Representative Beadle: I don't know the answer to that. I would assume that if the person who is holding the debt, if the person who made the investment and bought the bond to begin with walks, I don't know who would be saying that money is still owed.

23:45 **Representative Kreun:** You mentioned the special assessments. Are those going back to the owner of the property? How do they get paid, and who are the payments made to?

Representative Beadle: My understanding is that when the developer sets up the bond issuance to pay for it, the individual lots are then assessed certain amount which they pay off over a period of time, similar to the city. I guess that would be disclosed upfront. It might depend on what entity is holding that equity.

24:34 **Representative Kreun:** So then they would be paying back either to the bond company and/or the developer?

Representative Beadle: I believe that would be correct.

Representative Kasper: There could be a third option. The bondholder and the developer could both go away. There is one remaining income stream from the remaining property owners who have been specially assessed. It seems to me that would be an opportune time for someone to come in and pay a few cents on the dollar to buy out an income stream so that the people who have assessed properties would still be paying their assessed valuation. At that point in time, they may be able to make a deal with the new owner. Is that a possibility?

Representative Beadle: If the person who is person who is saying that money is still owed in order to pay off the bond walk so that no one is asking for the remaining debt to be paid off, I feel there would be opportunity for a developer or individual to come in, purchase the remaining lots and the remaining liability and then restructure something with the existing landowners.

26:15 **Chairman Keiser:** Do you know what the rate of interest is on this type of bond?

Representative Beadle: I do not.

Support:

Opposition:

Neutral:

Hearing closed.

Chairman Keiser: We will hold this bill.

2013 HOUSE STANDING COMMITTEE MINUTES

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

HB 1468
February 5, 2013, afternoon
Job 18324, starting at minute 45:16
Recoding contains committee action on various bills

Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Municipal industrial development bond projects

Minutes:

Attachment 1

45:30 **Representative Beadle:** Provided review of the bill.

46:38 **Chairman Keiser:** So it would be revenue bond in form? And the revenues would be coming off of the lots?

Representative Beadle: Correct. The revenue would be coming off of the lots in the development that are of the development that are done where the developer put in the infrastructure work.

46:54 We held this bill because we wanted to be sure that the cities were not obligated to be on the hook should the developer go belly up. Also, what would be the contingency down the line in need be. I spent lengthy conversations with Legislative Council. We bounced back and forth a couple possible amendments. Ultimately, Mr. Bjornson advised me that he did not think any amendments were necessary but rather directed me to look at the other sections within this. In order to ensure the cities are not on the hook, that is already covered in the liability statute, 40-57-15. For the contingency to take it over, the simplest way to address that is 40-57-19 that says that should all else fail, the city does have the authority that they can it over should they want to.

48:42 **Representative Frantsvog:** In the event of a default, who bears the responsibility?

Representative Beadle: With all the bonding issues, the bond itself and the actual debt run with the land itself. When the bond is initially put out, it is assessed on a percentage basis to every individual lot that is being directly affected. So all lot owners, when purchasing the lot, assume the debt of their percentage of the bond. Since the developer is the issuing party, they should be the ones responsible for it. The way it is written, they would be the issuer of the bond. But what this says is that if there is default by all parties, then the city may elect to take it over. Otherwise it runs with the land.

49:49 **Representative Kreun:** I would assume that if the developer did default and they went to the bonding company, then the negotiations would take place with whomever. That could be the city. Also, is that the \$270 million that's a pass through through the state to have that?

Representative Beadle: Where are you seeing the \$270 million?

Representative Kreun: I thought the state had...I'm not sure where I got that.

Representative Beadle: With this bill, the direct impacts of this bill change nothing in terms of money or anything associated with any of the bonds. All this bill does is add underground work to it.

Representative Kreun: Is there any money that the state of North Dakota could bond for? They have money that can be used for bonding purposes. Would this qualify for that?

Representative Beadle: That very well could be true.

51:23 **Representative Frantsvog:** In the event of a default, nonpayment of taxes would ultimately have the property go back to the county. If there is debt on it, then a political subdivision is going to bear the responsibility.

Representative Beadle: I'd assume that would be if the individual lot owner ends up defaulting. The intention and practical application of this is for a developer to develop a residential development into separate lots. The city has the infrastructure up to the lot line for where the development starts. This merely lets the developer utilize the stuff for the development within that site. All of the individual lots sold to separate end users are going to bear responsibility for the debt and taxation that will be assessed on to those lots going forward. Or the debt placed onto those lots as a roads and infrastructure to its place. Those end users would be assuming that debt. If every end user would end up defaulting, then that is where Section 40-57-19 gives the municipality the ability to assume that debt.

53:05 **Representative Frantsvog:** My concern is for the debt on parcels which have not been developed. Until the developer sells those parcels, he has to pay those debts. If he defaults, ultimately the land will go back to the county. Is it virtually impossible that a political subdivision does not bear that responsibility because it seems that they ultimately will be the ones who are going to end up with those parcels and the debt.

Chairman Keiser: It turns out that Representative Beadle and John from Legislative Council are spot on. According to that section, there is no liability to the political subdivision.

54:43 The best bond you can issue in North Dakota is one that has the state of North Dakota's name and good faith behind it. That means we are liable. You'll get the best interest rate, the best everything on that bond. When you go down from that, the state of North Dakota, as in the Pipeline Authority, can also issue revenue bonds that are not in the name and good faith of North Dakota. They are issued based on the projected revenue of the project and have nothing to do with the liability of the state of North Dakota. Cities can

do the same thing. Cities can issue revenue bonds with the city's good name and faith in it. Frequently they might put some equity behind it to improve their rate. Example.

57:17 Chairman Keiser: Read from and elaborated on attachment 1, Section 40-57-15 from the Century Code. We can do that, but they're not marketable unless those lots get developed. We can pass this. When you go to market, I want to be there when you try to get the bond market to accept this revenue bond. Bonds are useless until the bond market accepts them.

59:23 Representative Kreun: If this bond would go to sale, it would likely be a pass through bond without the good faith of the city. If the bond is sold and there is default by the developer, that would go back to the bond holders, and it would be their problem.

Chairman Keiser: We could get an amendment that says that a political subdivision, if it's a good deal for them....

Representative Beadle: That's what covered in 40-57-19.

Representative Kreun: If the state or the city wants to be a part of this risk and put some of their good faith behind it, you may get a better bond rating. But then if there is a default, then the city becomes part of the system to pay for it.

Chairman Keiser: Intuitively, the city would never do it. If a city had wanted to participate, they would have been at the front end.

Representative Kreun: Example of Altru Hospital

Chairman Keiser: But it's a revenue bond. This is saying that giving the developer authority to issue bonds without the city guaranteeing it to do infrastructure things...

Representative Kreun: You'd have to be a big operation to get that kind of bond.

Representative Beadle: The genesis for this bill is a developer and banker who contacted me before bill deadline to run this by me. Where they were running into an issue was with venture capital hedge funds out Colorado that liked to back developments but they utilize bonding like this.

Representative Frantsvog: The answer I've been looking for is in the second paragraph of 40-57-15. As your people are putting the project together, that's where the responsibility lies, not on the political subdivision or other owners of the property.

Representative Beadle: There are no amendments because Jennifer Clark and John Bjornson recommended this on its merits because they thought 40-57-15 and 40-57-19 provided the assurance that would be necessary.

Motion on a do pass made by Representative Vigasaa and seconded by Representative Beadle.

1:03:28 **Chairman Keiser:** I do think that in areas of super growth, there will very well could be some venture fund capitalists looking at this and recognizing the possibility of a better rate of return. It's really innovative.

Representative Beadle: If the market decides the bond is not worth, then this will never happen.

Roll call on motion to do pass. Motion carries.

Yes = 12

No = 0

Absent = 3

Carrier: Representative Beadle

Date: 2-5-2013
 Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1468**

House Industry, Business, and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Vigesaa Seconded By Beadle

Representatives	Yes	No	Representatives	Yes	No
Chairman George Keiser	✓		Rep. Bill Amerman	✓	
Vice Chairman Gary Sukut	✓		Rep. Joshua Boschee	✓	
Rep. Thomas Beadle	✓		Rep. Edmund Gruchalla	✓	
Rep. Rick Becker	✓		Rep. Marvin Nelson		ab
Rep. Robert Frantsvog	✓				
Rep. Nancy Johnson	✓				
Rep. Jim Kasper		ab			
Rep. Curtiss Kreun	✓				
Rep. Scott Louser		ab			
Rep. Dan Ruby	✓				
Rep. Don Vigesaa	✓				

Total Yes 12 No 0

Absent 3

Floor Assignment Beadle

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

REPORT OF STANDING COMMITTEE

HB 1468: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO PASS** (12 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING).
HB 1468 was placed on the Eleventh order on the calendar.

2013 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1468

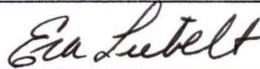
2013 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee Roosevelt Park Room, State Capitol

HB 1468
March 11, 2013
Job Number 19672

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to authorized municipal industrial development bond projects

Minutes:

Testimony Attached

Chairman Klein: Called the hearing to order.

Representative Beadle: Written testimony and testimony from constituents, attachment (1).
(:10-5:33)

Senator Sorvaag: Asked if the purpose of wanting to do this was cheaper interest rates. That is the primary reason?

Representative Beadle: Said absolutely and one of the other additional benefits of it is less cash up front. The cash could then be better utilized in the rest of the project. If you are going through conventional financing method you are often going to have to come up with 25 to 35 percent down payment upfront, which makes it cost prohibitive especially if you go into a community like Williston that doesn't special assess anything. If you want to do a development on a hundred acres of land where you might have the potential of two hundred and fifty residential units as a developer you would have to pay cash upfront to pay for every single foot of street curb and gutter underground into that development prior to any of these lots being able to be built on. That is why we haven't had a lot of developers taking a bite out of Williston in the last few years with exception of a few major ones coming out of the Denver area.

Senator Sorvaag: Said it is being used for above ground structure, is there any out east?

Representative Beadle: Said he believes there has been.

Senator Murphy: Asked if curb and gutter could be considered to be below ground because so much of it is and how would it impact city assessing?

Representative Beadle: Said within most cities, like the city of Fargo, it really would have next to no effect because the city is willing to bond it on their own and to special assess it back into those lots. The cost for the sewer, water, curb, gutter, street, everything is going

to be impacted on the lots one way or another. It will either be in the upfront lot price or it will be spread out over special assessments.

Senator Laffen: Said special assessments currently take a development like this and the people who buy the lots pay them back but the risk is on the city, so if there is a default the city ends up paying back that. In this example the same sort of assessment would occur but the risk is taken away from the city and just falls to the people who are now living in that subdivision. In terms of that it seems this would be better for the citizens of North Dakota.

Representative Beadle: Said what Senator Laffen is saying is absolutely correct. (9:45-10:30)

Discussion continued (10:31-14:16)

Connie Sprynczynatyk, Executive Director of the North Dakota League of Cities: In support and see no problems with the bill. It offers another tool for another portion.

Discussion on bonding (14:56-19:13)

Representative Beadle: Said regarding the line of credit or reserve fund is often required for a lot of the bond issuances so it is built in one way or another. Typically that is the way the bond issuer will utilize it to help mitigate some risk that would be involved with it. In regards to the other question he said he doesn't believe they would have tax exemptions.

Chairman Klein: Closed the hearing.

Committee Discussion (20:36-24:00)

Senator Laffen moved a do pass

Senator Sinner Seconded the motion

Roll Call Vote: Yes - 7 No - 0 Absent - 0

Floor Assignment: Senator Laffen

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1468**

Senate Industry, Business, and Labor 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 Senator Laffen Seconded By Senator Sinner

Senators	Yes	No	Senator	Yes	No
Chairman Klein	x		Senator Murphy	x	
Vice Chairman Laffen	x		Senator Sinner	x	
Senator Andrist	x				
Senator Sorvaag	x				
Senator Unruh	x				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Laffen

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

REPORT OF STANDING COMMITTEE

HB 1468: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1468 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

HB 1468

① 1468

Thomas Beadle

From: Jim Bullis <Jim@bullislaw.com>
Sent: Monday, January 28, 2013 1:42 PM
To: 'Thomas Beadle'
Subject: Proposed Amendment - Private Activity Bonds

1-28-2013

Thomas,

I am in receipt of the proposed HB 1468 regarding changes to NDCC 4-57-02. As you may know, I have developed over 3,000 residential lots in Fargo, West Fargo and Minot over the last 15 years. Additionally, I represent a number of other developers in the state. It has been very difficult to obtain financing for new housing developments in North Dakota in the last few years. With the challenging economic conditions that banks have experienced, it is much harder for them to lend money on speculative projects such as new developments. This has affected the number and size of developments in the last few years, and, I believe, made it more difficult to provide affordable housing.

I believe this amendment is a good idea for the following reasons:

1. Underground utilities are much more expensive now than they have been at any time in the past. Cities are requiring additional storm water capacity and the EPA is demanding higher water clarity standards. This comes at a cost - one that is usually passed on to the homeowner one way or another. Your proposed amendment would allow developers access to another source of capital to help with these added costs, through private activity bonds.
2. The interest rate charged on private activity bonds is much less than the cost of borrowing from municipalities or banks. This lower cost of borrowing will result in lower costs to the purchasers of the individual lots.
3. Unlike grants and tax abatements, allowing developers to use private activity bonds for underground improvements does not cost the State any money.

Let me know if I can be of further assistance.

James R. Bullis

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(2) 1468
1-28-2013

1/28/2013

Submitted to the House Industry Business and Labor Committee

Email text submitted On Behalf of Rick Mandell

Dear Representative Beadle:

This has my contact information below and links to a seminar I moderated last week at the National Association of Homebuilders convention on Private Equity for Homebuilders.

<http://www.buildersshow.com/Search/SpecialEvent.aspx?id=15153&fromGSA=1>

I am hosting a meet the money kind of hour for the time slot immediately following the panel discussion at NAHB that is described here:

<http://www.buildersshow.com/Search/isesProgram.aspx?id=15899&fromGSA=1>

My belief is that what capital needs to invest broadly in ND is certainty of execution. A law which is discretionarily applied or where the law needs to be stretched to perhaps apply to infrastructure finance doesn't seem to provide enough surety of execution to allow a developer to get competitively priced tax exempt financing for infrastructure. My understanding is that all infrastructure finance in ND has to have the full faith and credit of the jurisdiction within which the project is located applied to the bonds. So, each time bonds need to be financed, eg for each phase of a masterplan, you are subject to the political winds of the day.

Why would anyone rely on such a scheme to finance a masterplan community? The amount of capital flowing to ND in the past, before the oil boom, has been adequate for the growth characteristics of an agrarian society. Now, with population increases abounding and likely to increase in a durable way, there is little desire for capital to go there without a regular mechanism to attract it to the State because ND is the only State which requires the full faith and credit described above and the market demand is limited to one focus - oil. If the price of oil drops dramatically or the Administration sharpens the rules on fracking, ND's economy will sputter and perhaps die. Real estate investment by institutional capital is a patient process that requires long term thinking, investment characteristics and execution possibilities. Durable, reliable markets have been the cornerstone of big dollar development. Its why the redevelopment of Stapleton in Denver has produced 1000 houses a year for the last 8 years. Stapleton could not have been done without Special District financing as no one would have enough money for the infrastructure and the housing.....

While it is hard to know the exact number, the Bakken needs as many as 10,000 houses now. It may need another 10-30,000 houses over the next 15 years as the drilling population is supplanted by the maintenance population taking into consideration the

multiplier effect. There were perhaps 1500 starts in the first six months of last year statewide.

The equity required to build the current needed stock is far beyond the capacity of ND's current builders and developers. If developers need to rely on their own equity for the houses and the infrastructure, building masterplans with a sense of place rather than 5 acres at a time so that they can roll their own limited equity from small parcel to small parcel, will be few and far between.

Besides KKR in Williston and the related investments of the oil industry, there has been no institutional real estate capital invested to date in ND. It is reflected by the membership of the Urban Land Institute where there are 24,880 members in the US however, there are zero developer members in ND where there are only 3 members all of which are public sector members.

Finding developers to execute competent business plans with capital behind them, finding capital for take out financing of multifamily rental and many other risks make ND an inhospitable environment to attract talent and money. Real estate development capital has many other places with vibrant economies to invest in. Perhaps the law in ND needs to affirmatively attract capital by incentivizing it's reason to choose to invest in ND rather than any of the top 100 markets which it is more likely to move to where the market demand is not so frail and just limited to one (albeit importantly strategic) leg of the economy.

Thanks,

Rick

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the project or that may be outstanding when the bonds thus subordinated are issued and delivered.

2. Nothing in this chapter, except as provided in section 40-57-19, authorizes any municipality to do anything or for any purpose that would result in the creation or incurring of a debt or indebtedness or the issuance of any instrument that would constitute a bond or debt within the meaning of any provisions, limitation, or restriction of the Constitution of North Dakota relating to the creation or incurring of a debt or indebtedness or the issuance of an instrument constituting a bond or debt.

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40-57-15. Liability of municipality for bonds - Taxing power prohibited - Bond not a lien.

Revenue bonds issued under this chapter shall not be payable from nor charged upon any funds other than the revenue pledged to the payment thereof, nor shall the municipality issuing the same be subject to any liability thereon. No holder or holders of any such bonds shall ever have the right to compel any exercise of the taxing power of the municipality to pay any such bonds or the interest thereon, nor to enforce payment thereon against any property of the municipality except those projects, or portions thereof, mortgaged or otherwise encumbered under the provisions and for the purpose of this chapter. Such bonds shall not constitute a charge, lien, nor encumbrance, legal or equitable, upon any property of the municipality, except those projects, or portions thereof, mortgaged or otherwise encumbered under the provisions and for the purposes of this chapter.

Each bond under this chapter shall recite in substance that the bond, including interest thereon, is payable solely from the revenue pledged to the payment thereof, except that such bond may be secured by a mortgage or other encumbrance on the project, or portion thereof, as authorized in this chapter, and that the bond does not constitute a debt of the municipality within the meaning of any constitutional or statutory limitation.

40-57-16. Remedies of bondholders in general.

Subject to any contractual limitations binding upon the holders of any issue of revenue bonds, or a trustee therefor, including the restriction of the exercise of any remedy to a specified proportion or percentage of such holders, any holder of bonds, or any trustee therefor, for the equal benefit and protection of all bondholders similarly situated may:

1. By mandamus or other suit, action, or proceeding at law or in equity, enforce its rights against the municipality and its governing body and any of its officers, agents, and employees and may require and compel such municipality or such governing body or any such officers, agents, or employees to perform and carry out its and their duties and obligations under this chapter and its and their covenants and agreements with bondholders.
2. By action or suit in equity, require the municipality and the governing body thereof to account as if they were the trustees of an express trust.
3. By action or suit in equity, enjoin any acts or things which may be unlawful or in violation of the rights of the bondholders.
4. Bring suit upon the bonds.
5. Foreclose any mortgage or lien given under the authority of this chapter, and cause the property standing as security to be sold under any proceedings permitted by law.

No right or remedy conferred by this chapter upon any bondholder, or upon any trustee therefor, is intended to be exclusive of any other right or remedy, but each such right or remedy is cumulative and in addition to every other right or remedy and may be exercised without exhausting and without regard to any other remedy conferred by this chapter, or by any other law in this state.

40-57-17. Exemptions from taxation.

Repealed by S.L. 1975, ch. 387, § 6.

3/11/2013

Chairman Klein and members of the Senate Industry, Business and Labor committee,

For the record, my name is Thomas Beadle, Representative from District 27 in Fargo.

HB 1468 comes at the request of a North Dakota developer with offices in my district who is doing residential development projects in Minot and surrounding communities. In working on one of their latest projects, they were informed by their banker that current ND statute prohibits them from using a private activity bond to fund water/sewer/storm underground systems as they had funded in other states. They are currently able to fund projects such as lift stations, but municipalities have stated a hesitancy to allowing a bond to be issued for underground services. They have this hesitancy not because statute says that they aren't allowed to finance these projects with a PAB, but because statute mentions other projects that can be financed, but is silent on underground work. HB 1468 was submitted with the goal of trying to improve the accessibility of capital for developers to utilize in order to finance developments and meet our state's housing needs. As you are all aware, housing shortage is one of the single largest problems affecting our state. We are exploring a large variety of tools to attract developers and capital into our state, and this bill aims to add another tool to the toolbox.

Currently, North Dakota is one of the only states in the nation that limits the scope of Private Activity Bonding. HB 1468 amends the definition section of Chapter 40-57, the Municipal Industrial Development Act, and allows for developers to utilize Private Activity bonding to include underground work such as sewer and water lines. In my experience, the single largest factor slowing down new construction in oil country is the lack of speedy access to sewer and water. Cities are often unable to construct lines quickly and this has led to a bottleneck of some developments that are waiting to get started. Additionally, some communities that are still remembering the bust of the 80's are unwilling to use their municipal bonding authority to special assess developments for fear that they will be on the hook for those bonds should the oil growth grind to a halt. With the change in 1468, a developer would have the ability to utilize bonds sold on the private market to finance the development of underground infrastructure in a development. This could provide another alternative to conventional loans, which could allow for more capital at better interest rates and longer payment periods in order to make the development cash flow better and to incentivize private equity firms to get involved in North Dakota and bring cash to the state. Tom Rolfstad, the head of the Williston Economic Development Foundation has been traveling the country speaking at conferences entitled: "Opportunities in the Bakken; Investing

in North Dakota" and repeatedly offers the same advice to developers, "Bring Cash". This bill should help that cash flow to our state.

To clarify the logistics of the process, I'd like to compare this to special assessments that are currently in place in many North Dakota cities. Current law allows a city to issue a bond in order to pay for underground infrastructure, which they then assess to the benefiting lots accordingly in order to pay back that bond. If this bond isn't being paid back by the lots, then the city is on the hook to cover the debt. This bill would allow a similar thing to happen, but while the city may issue the bond, it will be a non-secure bond so that the city will not be assuming the risk, the developer would. The bond would be based off of the credit of the developer, and they can utilize the land in the development as collateral, and they would assess the lots inside of the development accordingly, in order to pay back the bond. The developer would be the true issuer of the bond and would assume the risk, and the developer has the responsibility for paying back the bond, not the municipality. Should the lots be sold off already, chapter 40-57-15 provides some protection so that if the developer is not involved anymore, then the bond becomes backed by a mortgage or other encumbrance on the project as stated in any purchase or sale agreements. These bonds would then be sold on the private market to private equity companies and other investors, who would gain interest on the bond. In the house committee, we discussed at length about ensuring that the city doesn't become on the hook for any default. I met with John Bjornson on a few occasions and he assured me that with the provisions in 40-57-15 the city is protected, and that should they wish to assume the bond at some point, they have that flexibility thanks to chapter 40-57-19. As a result, we didn't amend the bill at all.

The intention of this bill is simple, to open up another avenue for capital to flow to our state and allow developments to take place in a quick and efficient manner. This bill aims to take risk away from the political subdivisions, as they would not be issuing the bonds, but rather the developer would. If the market dictates that people wouldn't want to buy bonds for this type of work, then this segment of 40-57 would not be utilized. However, if the demand is there, this gives the option to proceed with financing.

Mr. Chairman and members of the committee, this bill is another tool in the toolbox to address the demands facing our state, and I ask for you to open up the doors so that private industry can work together to solve the issues we face.

Thank you and I stand for any questions.

January 28, 2013

HB 1468- Testimony

As a first time developer on land which I has been in the family for over 100 years, the most difficult portion of the project has been the cost of infrastructure (roads, water and sewer), the ability to finance the infrastructure and the resulting dramatic increase in the cost of the end product, single family housing lots and housing units.

Specifically, since the cost of the infrastructure is borne on the upfront by the developer this cost is immediately passed along to builder or home buyer. This process is entirely different than the eastern part of the state where the cities and counties will special assess the cost of infrastructure. We are not asking of the cities and counties to take on that burden, we are asking for the ability to utilize private activity bonds in a similar manner as other states.

With the proposed changes, developers would be able in one example to obtain financing from a non traditional source (traditional source being cash or bank financing), this allows for the retention of traditional financing to finance housing and or the remainder of the project.

In addition, the use of private activity bonds allow for the payment over a period of time instead the need for immediate payment for the cost of the infrastructure. In this manner the ultimate homeowner can pay for the infra structure over time as well, lowering their upfront cost of purchase. For example in Minot, the infra structure is included in the home cost. So on a purchase price of \$275,000, this may include \$70,000 of improvements. Whereas in Fargo the cost of the home maybe \$225,000 with \$50,000 in specials, the Fargo home is more easily financed.

The impact of this bill is cost is more affordable housing in that the ultimate cost is lower, more supply will be brought on line as more development is available, with no cost or risk to the city or municipality.

Sincerely,

Kent A. Busek

Stonebridge Farms of Minot

Thomas Beadle

From: Jim Bullis <Jim@bullislaw.com>
Sent: Monday, January 28, 2013 1:42 PM
To: 'Thomas Beadle'
Subject: Proposed Amendment - Private Activity Bonds

Thomas,

I am in receipt of the proposed HB 1468 regarding changes to NDCC 4-57-02. As you may know, I have developed over 3,000 residential lots in Fargo, West Fargo and Minot over the last 15 years. Additionally, I represent a number of other developers in the state. It has been very difficult to obtain financing for new housing developments in North Dakota in the last few years. With the challenging economic conditions that banks have experienced, it is much harder for them to lend money on speculative projects such as new developments. This has affected the number and size of developments in the last few years, and, I believe, made it more difficult to provide affordable housing.

I believe this amendment is a good idea for the following reasons:

1. Underground utilities are much more expensive now than they have been at any time in the past. Cities are requiring additional storm water capacity and the EPA is demanding higher water clarity standards. This comes at a cost - one that is usually passed on to the homeowner one way or another. Your proposed amendment would allow developers access to another source of capital to help with these added costs, through private activity bonds.
2. The interest rate charged on private activity bonds is much less than the cost of borrowing from municipalities or banks. This lower cost of borrowing will result in lower costs to the purchasers of the individual lots.
3. Unlike grants and tax abatements, allowing developers to use private activity bonds for underground improvements does not cost the State any money.

Let me know if I can be of further assistance.

James R. Bullis

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1/28/2013

Submitted to the House Industry Business and Labor Committee

Email text submitted On Behalf of Rick Mandell

Dear Representative Beadle:

This has my contact information below and links to a seminar I moderated last week at the National Association of Homebuilders convention on Private Equity for Homebuilders.

<http://www.buildersshow.com/Search/SpecialEvent.aspx?id=15153&fromGSA=1>

I am hosting a meet the money kind of hour for the time slot immediately following the panel discussion at NAHB that is described here:

<http://www.buildersshow.com/Search/isesProgram.aspx?id=15899&fromGSA=1>

My belief is that what capital needs to invest broadly in ND is certainty of execution. A law which is discretionarily applied or where the law needs to be stretched to perhaps apply to infrastructure finance doesn't seem to provide enough surety of execution to allow a developer to get competitively priced tax exempt financing for infrastructure. My understanding is that all infrastructure finance in ND has to have the full faith and credit of the jurisdiction within which the project is located applied to the bonds. So, each time bonds need to be financed, eg for each phase of a masterplan, you are subject to the political winds of the day.

Why would anyone rely on such a scheme to finance a masterplan community? The amount of capital flowing to ND in the past, before the oil boom, has been adequate for the growth characteristics of an agrarian society. Now, with population increases abounding and likely to increase in a durable way, there is little desire for capital to go there without a regular mechanism to attract it to the State because ND is the only State which requires the full faith and credit described above and the market demand is limited to one focus - oil. If the price of oil drops dramatically or the Administration sharpens the rules on fracking, ND's economy will sputter and perhaps die. Real estate investment by institutional capital is a patient process that requires long term thinking, investment characteristics and execution possibilities. Durable, reliable markets have been the cornerstone of big dollar development. Its why the redevelopment of Stapleton in Denver has produced 1000 houses a year for the last 8 years. Stapleton could not have been done without Special District financing as no one would have enough money for the infrastructure and the housing.....

While it is hard to know the exact number, the Bakken needs as many as 10,000 houses now. It may need another 10-30,000 houses over the next 15 years as the drilling population is supplanted by the maintenance population taking into consideration the

multiplier effect. There were perhaps 1500 starts in the first six months of last year statewide.

The equity required to build the current needed stock is far beyond the capacity of ND's current builders and developers. If developers need to rely on their own equity for the houses and the infrastructure, building masterplans with a sense of place rather than 5 acres at a time so that they can roll their own limited equity from small parcel to small parcel, will be few and far between.

Besides KKR in Williston and the related investments of the oil industry, there has been no institutional real estate capital invested to date in ND. It is reflected by the membership of the Urban Land Institute where there are 24,880 members in the US however, there are zero developer members in ND where there are only 3 members all of which are public sector members.

Finding developers to execute competent business plans with capital behind them, finding capital for take out financing of multifamily rental and many other risks make ND an inhospitable environment to attract talent and money. Real estate development capital has many other places with vibrant economies to invest in. Perhaps the law in ND needs to affirmatively attract capital by incentivizing it's reason to choose to invest in ND rather than any of the top 100 markets which it is more likely to move to where the market demand is not so frail and just limited to one (albeit importantly strategic) leg of the economy.

Thanks,

Rick

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Beadle, Thomas R.

From: Brian.Osowski@amkoadvisors.com
Sent: Friday, January 25, 2013 5:19 PM
To: Beadle, Thomas R.
CC: Patrick Chaffee (PChaffee@BellBanks.com)
Subject: HB1468 PAB

Representative Beadle,

I am sending you this email in regards to proposed House Bill No. 1468. I was forwarded a copy of it from Patrick Chaffee. First of all, I compliment you on looking at ways promote financing for much needed infrastructure around the state. This infrastructure is an essential part to these developments. As you are likely aware, municipalities have pushed more of the infrastructure costs on to the developers. I definitely agree with this approach as it is harder and harder for municipalities to want to take on that much debt to fund much of the growth we are seeing in the state.

I hope you don't mind that I have one suggestion that might help make the proposed bill more effective. The current proposed bill would allow a developer to use tax-exempt financing to help finance the infrastructure. The limitation, however, is that this type of financing (bond) would be considered non-bank qualified. What this means is that the traditional banks that would finance a project like this would typically not want to purchase a non-banked qualified tax-exempt bond because they do not receive the tax benefit like they normally would with a bank-qualified tax-exempt bond. In most situations, banks would typically rather just finance the project under traditional terms.

My suggestion is that the State already has a program in place today that helps with these non-bank qualified bonds under its Industrial Development Bond Program. The following statement is from the ND Public Finance Authority's website:

Industrial Development Bond Program

Under its Industrial Development Bond Program (IDB), the Authority makes loans to manufacturers that qualify as small issue manufacturers. Qualified small issue manufacturers are defined within the Internal Revenue Code as "Any facility which is used in the manufacturing or production of tangible personal property including the process resulting in a change in the condition of such property." Within that definition, the qualifying organizations must also meet a capital spending requirement. By policy, the Authority is limited to \$2,000,000 per project and \$20,000,000 cumulative for the Program.

The interest rates paid by a qualifying manufacturer are market rates which are set through a competitive bid process when the Authority issues and sells its program bonds to fund the loan. The interest rates paid by the Authority on its program bonds are the same rates the manufacturer will pay on its loan to the Authority. For manufacturers that qualify, the IDB provides an opportunity to finance fixed assets (buildings and equipment) with tax-exempt long-term fixed rates.

The IDB has been assigned a rating of "A+" by Standard & Poors Rating Group.

My suggestion is to expand the definition of the Industrial Development Bond Program or create another Bond Program under the same guidelines that would allow for these development loans as well. It is my understanding that this program is rarely used. With the rating of A+ by Standard & Poors, the market that will purchase the bonds opens up to a wider range of options. It will allow more opportunities and options available to accomplish your goal.

The Federal Government allocates to the state a Private Activity Bond Cap every year in an amount in excess of \$275 million. This allocation in North Dakota rarely if ever gets used.

Again, this is just a suggestion on my part as I have always felt that the Industrial Development Bond Program is a program that is not utilized due to the projects and size. I mention size as at \$2.0 million the PACE program through ND becomes a more effective program when small manufactures are looking financing.

Please give me a call if you have any questions and I would be more than happy to answer them.

I hope you don't my two cents worth. Again, congratulations on your proposed legislation. I not only believe it is a useful approach, but also believe that my suggestion stated above can make it even more effective.

Brian D. Osowski
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