15.0411.03000

FISCAL NOTE STATEMENT

Senate Bill or Resolution No. HB 1322

This bill or resolution appears to affect revenues, expenditures, or fiscal liability of counties, cities, school districts, or townships. However, no state agency has primary responsibility for compiling and maintaining the information necessary for the proper preparation of a fiscal note regarding this bill or resolution. Pursuant to Joint Rule 502, this statement meets the fiscal note requirement.

Sheila Sandness
Senior Fiscal Analyst

2015 HOUSE POLITICAL SUBDIVISIONS

HB 1322

2015 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee
Prairie Room, State Capitol

HB 1322
2/6/2015
23411

☐ Subcommittee
☐ Conference Committee

Amanda Muscha

Explanation or reason for introduction of bill/resolution:

Relating to allowable costs in improvements by special assessments; and to provide for an application.

Minutes: Testimony 1, 2, 3, 4, 5, 6, 7, 8

Chairman Klemin: Opened hearing on HB 1322

Representative Koppelman: Testimony 1

Chairman Klemin: Where are the amendments?

Representative Koppelman: I have the printed in context (testimony 1).

Representative Toman: You said you work with city leaders. Who was that?

Representative Koppelman: Both city engineers from Fargo and West Fargo and city commissioners. I have reached out to the league of cities, city engineer and the mayor.

Representative Toman: Page 6. You're saying if my city gets 100,000 bond to pave streets and special assessment and they use 90,000 of it the intent that the 10,000 will be paid back to the bond and not assessed over the property?

Representative Koppelman: The intent is that they can't assess more than the 90,000 in your scenario. It doesn't dictate where the 10 can go. The language in current law says that they may put that in their general fund but they can also keep in in a special fund and use that to pay the first interest due and things to reduce the bond over time and simply use it to repay the bond as the payments are able to be accepted. You can't immediately pay them off; you may have to hold them to be sure the bond owner gets their return investment.

Chairman Klemin: It says if you collect too much money, it may not be levied as a special assessment but must be paid from a general tax levy annually, which sounds like you will be collecting more? I am not following?

Representative Koppelman: I worked with LC with this and the suggestion was that the city was going to use the extra 10,000 for something and id they did that the 10,000 would have interest in bonds and if they used it for something else other than special assessments the principle interests would have to come from the general tax. If they keep the money they can use the 10,000 to pay back the bond. Some may be wondering how to get it back to the tax payers or how would they use it. This was the best suggestion. Some sued the excess money to fund a building department. If a city charges 5-6 administration I would say if you toll the hours they make there is no need to profit off the individual for the company. It isn't appropriate to make money off that individual when it can be given back to the tax payer one way or another. There was study done to deal with this and it seems like the cities like this.

Opposition:

Kent Costin: Testimony 2 I would ask you go through the amendments with us before they are adopted.

Chairman Klemin: We may not take action on the bill today because there are major changes and these are not written in stone yet. We won't have another hearing but we will take written comments. Continue.

Kent Costin: Testimony 2 Bonding is complex, if you say you are going to spend it on something, you are required to use it for the specific job and they have to sit there until the bond is paid. There would be compliance issues.

Representative Toman: How are you looking at this as a negative impact of revenue?

Kent Costin: We may be mixing issues. The revenue loss is the restrictive part that says we can't charge more than what we do a detailed time accounting for. Many cities use a percentage of completion of contract method to cost out these engineering services that is an industry wide standard- you can use hourly, percentage of completion, whatever method you choose locally as long as it is consistently applied. If this passes as written all we can do is directly charge the labor with no markup and on the bonding part the revenue loss is not as a result of anything that deals with bonds, the revenue loss is in what are we able to charge to defray the cost of our engineering services.

Representative Toman: Our rates are calculated like yours. We include the overhead costs and do our engineers time on a directed structure manager's time- that is what we charge out. Are you charging that time out on special assessment or giving the revenue question paying for that position because your car charging out more? Question with the percentage rather than a calculated rate.

Kent Costin: So are you asking if we are doing it this way for special assessments or are we doing it for other city projects.

Representative Toman: With the special assessment is where I am going. You have a city engineer and you pay 100,000 a year and that goes into a rate calculation and you're talking about a percentage. We recover his costs based on that rate calculation for the project so the project may be paying for more of his salary if he spends more time on the

project. Now a calculation versus a percent we are talking about the revenue question that I have. You pay for his salary out of calculation or percentage. What is the difference?

April Walker: This premise appears to be it is a sunk cost. It does allow consultant fees to be passed on. Employees time plus materials when you pay the bill to do those services. The bill suggests we can pass on extra time but not the overhead. It also says the salary is set over the year. We also have hourly people.

Representative Toman: You say those are sunk costs. We don't see them as sunk costs, why?

April Walker: We don't have a tool that says these are the resources to cover the overhead expenses. We meet the demand by collecting revenue in special assessments.

Tina Gustafson: Testimony 3

Darrell Bjerke: Testimony 4

Marine Swanson: Presenting Howard Swanson's testimony (5)

Lance Meyer: Testimony 6

Bill Wocken: Testimony 7

Blake Crosby: Testimony 8

Chairman Klemin: Closed the hearing on HB 1322

2015 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee
Prairie Room, State Capitol

HB 1322
2/12/2015
23776

☐ Subcommittee
☐ Conference Committee

Amanda Muscha

Explanation or reason for introduction of bill/resolution:

Relating to allowable costs in improvements by special assessments; and to provide for an application.

Minutes: Testimony 1, 2

Bill Wocken: Handed in testimony earlier in the day. (Testimony 1)

Chairman Klemin: Opened discussion on HB 1322. It was introduced by Ben Koppelman and he proposed amendment. I told the testifiers they could send written comments if they would like. (Testimony 2)

Representative Koppelman: It appears the amendments address a lot of the concerns.

Chairman Klemin: All the counties recommended a do not pass if amended in this manner.

Representative Koppelman: Moves to adopt the amendments

Representative Beadle: Seconds the motion

A Voice Vote Was Taken: All in favor

Motion carried

Representative Koppelman: Moved a do pass as amended

Representative Toman: Seconds the motion

Representative Koppelman: I do understand some concerns and my understanding is the idea of special assessments is the person assessing it is financing construction. The lot price is low and so what we have is a public entity financing private enterprise. A special assessment pays for the cost of the development but often times there is a markup and often times when there is an estimate there is an excess. The bottom line I don't think there is an disagreement for a special assessment on a project but I am also not sure that we

want to be making a profit on this. If there is an overreaching on this instead of pocketing the extra those who are being assessed the rest of the bond would be paid off.

Representative Kelsh: A lot of the bonds could be old. Checks and rebates were not very big.

Representative Koppelman: That was part of the original bill. The amended bill reads that it doesn't do it. The overreaching becomes a general obligation of the city.

Representative Beadle: Does anyone know if we have bills that are studying special assessments?

Representative Becker: I am reading from a letter from Howard Swanson who is the Grand Forks City Attorney and a concern he had was taken care of and that is the ambiguous provisions on page two and I see the amendments of stricken that entire page.

Chairman Klemin: There is a letter from them on the amendments. Comments on the original bill which we have now amended may not be correct anymore.

Representative Kretschmar: Is 3001 the amendment we are looking at here?

Chairman Klemin: Yes

Representative Toman: Reading the amended bull here is most concerns have been taken care of but I have more concerns if they are not tracking. How are they doing the projects?

Representative Zubke: The issues there are you have a lot of internal staff that works on the project so it gets hard for the city to track certain costs on a single project.

Representative Koppelman: We need to back up and look at purpose of special assessments, which is to pay the costs. When they create one and bond they have to make an estimate. 13.10 Should you be able to mark it up and make a profit on it? Should the entity have to make more than it will actually cost and should the tax payers pay it back?

Representative Zubke: I am not aware of a problem like that. Feels like we are trying to fix a problem not there.

Representative Koppelman: If that is the practice and it is legal then there is nothing saying they can't.

Representative Anderson: I agree with Zubke. Everyone is saying do not pass with the amendments.

Representative Beadle: I am reading through the issues and many referenced it would cause them issues. I will support because my district has new construction going on and I don't want it to charge them extra for special assessments. There is not consistency between counties.

Representative Oversen: There is still a lot of concern with the amendments. The end result is the increased cost and it doesn't fix anything.

Representative Toman: It says they can secede it if they can track it back to the project.

Representative Kretschmar: The special assessments are also used in the small counties and it seems to be less effective than in the bill. It would bring on confusion for many.

A Roll Call Vote Was Taken: Yes 3, No 11, Absent 0

Motion Failed

Representative Zubke: I move a do not pass

Representative Klein: Seconds

Representative Beadle: Should we change it to a study?

Chairman Klemin: Some of the comments I read referred to previous studies that have been completed by the legislature on special assessments.

Representative Beadle: We have passed studies but none of them went into depth.

Chairman Klemin: You can make the motion but it would seem to me a way out of a difficult decision.

Representative Beadle: A lot of people were complaining about it I think we could learn more about this.

Chairman Klemin: I am not going to accept oral language.

Representative Strinden: I would like to see a study. It has brought up all the problems of special assessments.

Representative Kelsh: If this motion passes. Would it prelude Representative Beadle's idea?

Chairman Klemin: Yes by that time we could make a no recommendation.

Representative Kretschmar: The deadline for study resolutions is February 24th.

Representative Koppelman: That is the deadline for HCR's and I think you have to let him make amendments if he wishes.

Representative Maragos: I will resist the motion so Beadle can amend.

Representative Kelsh: What will we do if this fails also?

Chairman Klemin: What we will do is depending on the result of the do not pass motion. If the motion is carried then that's it. If the motion fails then we will leave it open until tomorrow.

Representative Kretschmar: It is the 24th.

A Roll Call Vote Was Taken: Yes 7, No 7, Absent 0

Motion fails

Chairman Klemin: We will take this up tomorrow and closed discussion.

2015 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee
Prairie Room, State Capitol

HB 1322
2/13/2015
23852

☐ Subcommittee
☐ Conference Committee

Amanda Muscha

Explanation or reason for introduction of bill/resolution:

Relating to allowable costs in improvements by special assessments; and to provide an application.

Minutes: Testimony 1

Chairman Klemin: Opened discussion on HB 1322. Representative Beadle do you have the amendments?

Representative Beadle: Yes. Testimony 1. Move to amend this to a study.

Representative Anderson: Bill Wocken's testimony maybe we should add deficit revenues or access revenues?

Representative Beadle: I wouldn't be opposed but the language is broad enough to include that.

Chairman Klemin: The last sentence should be amended also to the standard language.

Representative Koppelman: We have a grammatical error too so we should change that.

Representative Toman: Second

A Voice Vote Was Taken: All in favor

Motion carries

Representative Maragos: I think we should put shall consider studying and I move that amendment.

Representative Zubke: Seconds

Representative Koppelman: The sponsor of the amendment had the reason for shall is because this has been brought up many times and not been studied so it needs to be done.

Representative Maragos: I have gotten information that it has been studied many times. In a broader context but not under special assessments.

Chairman Klemin: Shall study resolutions have never been selected to be studied anyways.

Representative Koppelman: No matter what it says they can choose.

A Voice Vote Was Taken: All in favor

Motion carries

Representative Beadle: Moved a do pass as amended

Representative Zubke: Seconds

A Roll Call Vote Was Taken: Yes 14, No 0, Absent 0

Motion carries

Representative Beadle will carry the bill

Prepared by the Legislative Council staff for
Representative B. Koppelman
February 5, 2015

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1322

Page 1, line 1, remove "40-22-01,"

Page 1, line 1, remove "40-24-18,"

Page 1, line 2, replace "40-27-05" with "40-24-19"

Page 1, remove lines 5 through 23

Page 2, remove lines 1 through 31

Page 3, remove lines 1 through 5

Page 3, line 19, remove "construction"

Page 3, line 22, remove "if the services are provided by a third party not employed by the city; and the"

Page 3, line 24, after the period insert "If the services of engineering, fiscal agent's, and attorney's fees are provided by individuals employed by the city, those costs may be included only to the extent they are trackable and unique to the project. The city may include an additional cost of up to three percent of other project costs for city administrative costs and the additional cost may exceed three percent to the extent city administrative costs are trackable and unique to the project."

Page 4, line 6, remove "construction"

Page 4, line 9, remove ", if the services are provided by a third party not employed by the city"

Page 4, line 11, after "~~that~~" insert "If the services of engineering, fiscal agent's, and attorney's fees are provided by individuals employed by the city, those costs may be included only to the extent they are trackable and unique to the project. The city may include an additional cost of up to three percent of other project costs for city administrative costs and the additional cost may exceed three percent to the extent city administrative costs are trackable and unique to the project."

Page 4, remove lines 14 through 30

Page 5, replace lines 1 through 17 with:

"**SECTION 3. AMENDMENT.** Section 40-24-19 of the North Dakota Century Code is amended and reenacted as follows:

40-24-19. Warrants and improvement bonds - Issuance - When payable - Amounts - Temporary warrants and temporary improvement bonds - Interest - Interest coupons - Negotiability - Eligibility as investments.

The municipality, at any time after making a contract for the construction of any improvement to be financed in whole or in part by assessments, under authority of any chapter of this title, or prior thereto but after the period for filing protests against the making of such improvement has expired and the protests filed, if any, have been heard and determined to be insufficient, and in anticipation of the levy and collection of such assessments and of any taxes or revenues derived from service charges pledged

to pay for such improvement, may issue warrants or improvement bonds on the fund created for such improvement. The municipality is responsible to the holders of the warrants or improvement bonds for the proper advertisement and award of a contract or contracts or provision by other means for the completion of the improvement; for the acquisition of all land, easements, licenses, and permits required for such completion; and for the valid and final levy of special assessments upon all properties within the improvement district to be benefited by the improvement, in an aggregate principal amount equal to the total cost of the improvement as finally ascertained, less the portions thereof, if any, determined to be paid from taxes, service charges, and any other source. If the warrants or improvement bonds issued by the municipality plus any other source of revenue pledged to repayment exceed the total cost of the improvement as finally ascertained, the excess amount may not be levied as special assessments but must be paid by the municipality from a general tax levy annually against all of the taxable property in the municipality. The issuance of the warrants or improvement bonds constitutes a representation and covenant binding upon the municipality that the aggregate benefits to be derived from the making of the improvement by the properties to be assessed therefor are not less than the aggregate amount of the special assessments so required to be levied. The warrants or improvement bonds shall be issued and shall mature in such amounts as in the judgment of the governing body will be provided for, at or before the maturity dates specified, by the taxes and assessments to be levied and spread and the revenues pledged therefor. In lieu of issuing definitive warrants or improvement bonds on any such fund, the governing body may by resolution authorize the issuance and sale of temporary warrants or temporary improvement bonds maturing in not to exceed three years from the date of issue of the first such warrant or temporary improvement bonds, to be repaid with interest from the proceeds of definitive warrants or improvement bonds maturing as hereinabove required, which the governing body shall issue and sell at or before the maturing date of said temporary warrants or temporary improvement bonds, in the amount required, with moneys theretofore received in such fund, to pay the total cost of the improvement and all temporary warrants or temporary improvement bonds theretofore issued on the fund, with interest then accrued thereon. The warrants or temporary improvement bonds must bear interest at a rate or rates and must be sold at a price, not less than ninety-eight percent of par, resulting in an average net interest cost not to exceed twelve percent per annum payable annually or semiannually, except that there is no interest rate ceiling on an issue sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. The definitive warrants or improvement bonds may bear interest at a rate or rates higher or lower than those borne by the temporary warrants or temporary improvement bonds, as determined by the governing body in effecting the sale thereof. In the sale of temporary warrants or temporary improvement bonds, the municipality may by resolution of the governing body agree to issue to the holder or holders thereof definitive warrants or improvement bonds upon specified terms as to interest, maturity, redemption provisions, and all other pertinent details, in the event that the municipality is unable to sell definitive warrants or improvement bonds to others upon more favorable terms. Coupons representing the interest for each year or lesser period may be attached to the warrants, whether definitive or temporary, or improvement bonds or temporary improvement bonds. All such warrants or bonds shall be negotiable within the meaning of and for all the purposes specified in title 41, and, to the same extent as general obligation bonds of the issuing municipality, are valid investments of the funds of any guardian, trustee, and other fiduciary of any kind or nature, any bank or other financial institution, any charitable, educational, or eleemosynary institution, and any public corporation or official, municipality, school district, or other political subdivision,

including bond sinking funds, special improvement funds, municipal utility funds, and funds of the state of North Dakota and its instrumentalities and agencies."

Page 5, line 18, after "for" insert "and applies to"

Renumber accordingly

15.0411.03002
Title.04000

Adopted by the Political Subdivisions Committee
February 13, 2015

AH
2-13-15

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1322

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study of special assessments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - SPECIAL ASSESSMENTS. During the 2015-16 interim, the legislative management shall consider studying the use of special assessments by political subdivisions. The study must include how special assessment and improvement districts across the state are determined and created, how administrative costs are calculated in determining project costs, how project costs are distributed among affected property owners, and how excess revenues and fees collected by the special assessment and improvement districts are handled. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fifth legislative assembly."

Renumber accordingly

Date: 2/12/2015
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1322

House **Political Subdivisions** Committee

☐ Subcommittee ☐ Conference Committee

Amendment LC# or Description: Koppelman amendments 15.0411.03001

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Koppelman Seconded By Beadle

Representative	Yes	No	Representative	Yes	No
Chairman Lawrence R. Klemin			Rep. Pamela Anderson		
Vice Chair Patrick R. Hatlestad			Rep. Jerry Kelsh		
Rep. Thomas Beadle			Rep. Kylie Oversen		
Rep. Rich S. Becker			Rep. Marie Strinden		
Rep. Matthew M. Klein					
Rep. Kim Koppelman					
Rep. William E. Kretschmar					
Rep. Andrew G. Maragos					
Rep. Nathan Toman					
Rep. Denton Zubke					

voice vote
motion carries

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Date: 2/12/2015
Roll Call Vote #: 2

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1322

House **Political Subdivisions** Committee

☐ Subcommittee ☐ Conference Committee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Koppelman Seconded By Toman

Representative	Yes	No	Representative	Yes	No
Chairman Lawrence R. Klemin		X	Rep. Pamela Anderson		X
Vice Chair Patrick R. Hatlestad		X	Rep. Jerry Kelsh		X
Rep. Thomas Beadle	X		Rep. Kylie Oversen		X
Rep. Rich S. Becker		X	Rep. Marie Strinden		X
Rep. Matthew M. Klein		X			
Rep. Kim Koppelman	X				
Rep. William E. Kretschmar		X			
Rep. Andrew G. Maragos		X			
Rep. Nathan Toman	X				
Rep. Denton Zubke		X			

Total (Yes) 3 No 11

Absent _____

Floor Assignment _____

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

motion fails

Date: 2/12/2015
Roll Call Vote #: 3

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1322

House **Political Subdivisions** Committee

☐ Subcommittee ☐ Conference Committee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☐ Do Pass ☒ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Zubke Seconded By Kleine

Representative	Yes	No	Representative	Yes	No
Chairman Lawrence R. Klemin	X		Rep. Pamela Anderson	X	
Vice Chair Patrick R. Hatlestad		X	Rep. Jerry Kelsh		X
Rep. Thomas Beadle		X	Rep. Kylie Oversen	X	
Rep. Rich S. Becker	X		Rep. Marie Strinden		X
Rep. Matthew M. Klein	X				
Rep. Kim Koppelman		X			
Rep. William E. Kretschmar	X				
Rep. Andrew G. Maragos		X			
Rep. Nathan Toman		X			
Rep. Denton Zubke	X				

Total (Yes) 7 No 7

Absent _____

Floor Assignment _____

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

motion fails

Date: 2/13/2015
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1322

House **Political Subdivisions** Committee

☐ Subcommittee ☐ Conference Committee

Amendment LC# or Description: Beadle amendment attachment 1 2/13/2015

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
Other Actions: ☐ Reconsider ☐

Motion Made By Beadle Seconded By Toman

Representative	Yes	No	Representative	Yes	No
Chairman Lawrence R. Klemin			Rep. Pamela Anderson		
Vice Chair Patrick R. Hatlestad			Rep. Jerry Kelsh		
Rep. Thomas Beadle			Rep. Kylie Oversen		
Rep. Rich S. Becker			Rep. Marie Strinden		
Rep. Matthew M. Klein					
Rep. Kim Koppelman					
Rep. William E. Kretschmar					
Rep. Andrew G. Maragos					
Rep. Nathan Toman					
Rep. Denton Zubke					

voice vote motion carries

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Date: 2/13/2015
Roll Call Vote #: 2

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1322

House **Political Subdivisions** Committee

☐ Subcommittee ☐ Conference Committee

Amendment LC# or Description: Maragos amendment

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Maragos Seconded By Zubke

Representative	Yes	No	Representative	Yes	No
Chairman Lawrence R. Klemin			Rep. Pamela Anderson		
Vice Chair Patrick R. Hatlestad			Rep. Jerry Kelsh		
Rep. Thomas Beadle			Rep. Kylie Oversen		
Rep. Rich S. Becker			Rep. Marie Strinden		
Rep. Matthew M. Klein					
Rep. Kim Koppelman					
Rep. William E. Kretschmar					
Rep. Andrew G. Maragos					
Rep. Nathan Toman					
Rep. Denton Zubke					
Voice vote motion carried					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

"insert shall consider studying"

Date: 2/13/2015
Roll Call Vote #: 3

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1322

House **Political Subdivisions** Committee

☐ Subcommittee ☐ Conference Committee

Amendment LC# or Description: 15.0411.03002

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
Other Actions: ☐ Reconsider ☐

Motion Made By Beadle Seconded By Zubke

Representative	Yes	No	Representative	Yes	No
Chairman Lawrence R. Klemin	X		Rep. Pamela Anderson	X	
Vice Chair Patrick R. Hatlestad	X		Rep. Jerry Kelsh	X	
Rep. Thomas Beadle	X		Rep. Kylie Oversen	X	
Rep. Rich S. Becker	X		Rep. Marie Strinden	X	
Rep. Matthew M. Klein	X				
Rep. Kim Koppelman	X				
Rep. William E. Kretschmar	X				
Rep. Andrew G. Maragos	X				
Rep. Nathan Toman	X				
Rep. Denton Zubke	X				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Beadle

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

motion carries

REPORT OF STANDING COMMITTEE

HB 1322: Political Subdivisions Committee (Rep. Klemin, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1322 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study of special assessments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - SPECIAL ASSESSMENTS. During the 2015-16 interim, the legislative management shall consider studying the use of special assessments by political subdivisions. The study must include how special assessment and improvement districts across the state are determined and created, how administrative costs are calculated in determining project costs, how project costs are distributed among affected property owners, and how excess revenues and fees collected by the special assessment and improvement districts are handled. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fifth legislative assembly."

Renumber accordingly

2015 SENATE POLITICAL SUBDIVISIONS

HB 1322

2015 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee
Red River Room, State Capitol

HB 1322
3/20/2015
Job Number 25190

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature	

Explanation or reason for introduction of bill/resolution:

A Bill for an Act to provide for a legislative management study of special assessments

Minutes:

Written testimony # 1 Rep. Ben Koppelman
Written testimony # 2 Blake Crosby
Written testimony # 3 Bill Wocken

Chairman Burckhard opened up for committee for a hearing on HB 1322. All senators were present.

Rep. Ben Koppelman (:53-7:52) A study what came from a bill, that was seeking to provide transparency and proper procedure when it comes to administrating special assessments revenue source. (Written testimony # 1) Referenced his testimony from the 1st half (1b) (1c) 3001 version of the bill which was what I based the testimony on . It was the original bill with one amendment to deal with some concerns that had arisen between the time of introducing the bill and the time of which we had the hearing.

Senator Judy Lee So these are the amendments Rep. Koppelman that you proposed in the House or these are some that your bringing to just us today that have a February 5, date?

Rep. Koppelman The February 5 date is the date of when we had the hearing in the House.

Senator Judy Lee The amendments are these the ones you presented to the House committee?

Rep. Koppelman yes. They were attached to the bill, but then the bill was re-amended into a study following that. The answer to your question is yes on both counts because this be could something that you could consider for amendments as well. That's' where I am going to get to my next point. As you know the House Political Subs Committee amended this bill into a study, a I would request that you amend this bill to version 15.0411.03001, but then into addition to that leave in or add the study that they put on there also. I believe the study in the bill in this amended for member requesting would do two different things. The study is going to look at the special assessments process that has not been addressed in code

and not been really looked at in quite a long time according to John Walstad at Council as far as he could find. The whole structure of special assessment whether its good or not good and how their divvied up and all that is what the study would deal with. The amendments before you what they would make sure is that if a city uses for administrative expense, in house engineers or in house planners of any sort that those expenses are tracked much like a building contractor who does commercial work. We are asking cities to calculate the time of engineers. I think what's happening now is some cities are using just a broad percentage is their doing it in house. There costs are quite a bit less when you figure salary time and overhead than what you're billing because they are billing similar to what they think an outside engineering firm would bill. But outside engineering firms are for profit. So, although the cities are right when they say there could be an economy here, a savings for taxpayers but the savings have to be passed on. They should not have that profit margin that a private company does build into that. That margin of money is not actually directly spent on their employees then they are redirecting to build other structures.

The other piece that this amended to it would say that when you do an estimate for projects, and that included some contingency fees and things like that, well most of the time you don't use those contingency fees up and you might actually spend less.

Senator Bekkedahl Would you concede the fact that at least under the current system excepting those who are not in a special district, everybody who is in a special assessment district or is at least is treated the same under this legislation? In other words, if somebody is over paying they are over paying at this point.

Rep. Koppelman That could be true. I think this was demonstrated by a conversation I had with one of the cities that is in my district. They told me that they charge a flat fee. On a large special assessment project where you're doing a large brand new residential development, the costs are probably more like 10%. On a really, really small repaving project when they are just putting a top layer on an old neighborhood, they are paying probably 20%. There logic is saying if we charge 15 and it's in the middle, then it is just an easy calculating number way to pay for everything. The problem is the big projects are subsidizing the small projects in terms of engineering. I believe the same is true for administration.

Senator Bekkedahl Do you have any statistical data showing what your city takes in excess special assessment piece every year that transfers to the General Fund for general use, do you have any numbers like that? I know you have a lot of special assessments so is that part of this. I am just trying to figure out if you can quantify that?

Rep. Koppelman I do not have any numbers for year over year, because I think the process in our city is the excess funds that come in from the administration. Engineering is not an issue for us because we use a third party. So that is actual cost so that probably wouldn't effect West Fargo much, but on the administration side, the additional monies that bring in for administration they put them into a holding account and then they take the excess money that is the contingency funds that aren't spent and put that into a holding account and then its transferred into the general fund when they decide a project to do with it. They also use a portion of that I believe to cover at least temporarily short term assessments. I don't know if it would a consistent year over year in West Fargo, but I can

tell you that in a press conference our city administrator had said we built an entire new police station with extra money from special assessment projects over the last 15 years.

Senator Bekkedahl They have in a special assessment district, we use 3 party engineers as well because we don't have enough to do it ourselves. We have one engineer with $5 Million dollars in construction last year, so it's a lot to manage, just on the permit side. Then we have $200 Million dollars in city projects, so everything is outside engineers. We use 15% which is the number you reported, and administratively when the project is first initiated, and you go through the public hearing process, you have an estimated construction cost, you have an estimated assessment then to the property owners in the area and then as the project goes to completion at some point when the project is completely finished all the costs are paid out, you get to a final number of the exact assessment. I believe that's what we have for an assessment is whatever that final number is. I think what you're saying is that there may be excess costs back to the city as you close these out that the funds are going into general fund and that's the area you would like to see those funds dispersed back to each individual property owner. Is that what you're saying in this bill?

Rep. Koppelman Actually no, that sounds a little bit more like what the original, original bill was prior to this version. That was where we had some problems with administration to track down people some years down the road. There are basically two processes that I've heard are done with special assessments. A big city and a small city process but use specials. The small cities typically go, come up with construction estimate, then go and sell bonds for that amount. So they've already sold their entire amount of bonds and then when they build their project out and they get done, they may again hold that in a holding fund or put it in the general fund, but ultimately then they divvy out what they sell bonds for not what the project actually costs. That is a scenario this would fix that. What the bill says in that scenario is that any leftover money, doesn't say you have to give it back to the homeowners, it doesn't say you have to pay the bonds back earlier, it says whatever you use that for, a general fund purpose well then that's fine in the bill, but then you would just use general fund dollars to pay that portion of the bonds back. Not assess that to a limited group of special assessment properties. I think in the small towns that could be where that is becoming a problem because they are assessing based on the bonds they sold, not based on actual cost. (Ex. Cited 13.29) This applies to the smaller towns.

Chairman Burckhard Do you think this situation is unique to your city or do you think it's pretty common amongst many cities?

Rep. Koppelman I think that based on who testified against it in the first half it probably applies to many cities because just about every metropolitan city in the state was here.

Don Dappert Jr. (14:42-18:57) Builder and developer from the Fargo, West Fargo area. I would like to acknowledge that I have used special assessments for developments and projects that we've done. When this bill was first brought up and discussed it certainly brought some light to it, but at the same time we don't want to have any unintended consequences. The special assessment tool that we have and afforded in North Dakota is very unique and very privileged amongst many of my peers across the country. What we've seen over the years is as a developer and a builder having to be kind of that 4th person,

even our realtors that represent us just to have them explain the cost of these specials. We feel that well some cities are a little more transparent than other cities are less transparent. It's very easy to give someone a spreadsheet that shows how many feet of sewer pipe or water pipe, curb, gutter everything else but then when you see all the other administrative costs the soft costs, how do we explain that in and do that? Over the course of time when that has gone through it's become more and more contentious because obviously the cost of construction and improvements and everything else has gone up so has the cost for new development and for new housing. We also have to be very sensitive to the home ownership and affordable housing and not only just the big houses but really our workforce housing. I testified in some of the committee before about workforce housing and how we can try and still keep that affordable for our home ownership rate. So what we're trying to ask, to do is support this bill as a study so that we can take a look at that to see just because a thought percentage that was alluded to before with the dollars exponentially getting larger is the dollars generated even exponentially more in excess of what maybe is often needed to be subsidizing or covering expenses of that. Well I would certainly expect a city department to be revenue neutral. I certainly would not expect it to be a revenue source of income. So, in doing so, as it was mentioned earlier with some of those 3rd party engineering firms that's' certainly not a consideration. But it's more so some of the larger cities that maybe have some in house stuff. Can we pass some of those savings on in the economies of scale, that while an engineer can multi task and oversee multiple millions of dollars, worth of expenses of projects, is it really just that they are having to cover in those expenses in those fees and or those special assessments how they get in there? So, it certainly is an issue that while we are sensitive too, we would like to have a little bit of ability to have some more transparency and to be able to have the accountability for the cities as to where those dollars go, so I can at least for my customers and my home owners that I had the fiduciary responsibility to make sure that I was kind of overseeing. Often times if the specials are higher in one development, while it almost always points back to what did that developer do, why is it more expensive there? Two, just with that new subdivision NAHB is performed and provided studies on housing pays for itself. While we are still going forward in creating more jobs and opportunity and housing for each city, those people that are in that improvement district and not only paying for that, but they may be paying for a trunk line that is going to serve more capacity or an arterial road. We are trying to get a handle on some these costs that seem to spiraling out of control.

Chairman Burckhard NAHB is an acronym for what?
Don Dappert Jr. National Association of Home Builders.

Senator Judy Lee A couple of questions, one is frankly in 35 years in the real estate business I have never had any trouble explaining that there might be an administrative fee in there because most people if you explain how it works they are okay with that? So it's harder to explain to somebody from out of state the fact that we have special assessments at all. Because in most places that cost is done, the cost of those is done by the developer in the first place. So are you saying that you rather have it be something that you as a builder and the developer would have as part of the cost? After the housing bust in the early 1980's with lots that didn't get developed and specials weren't being paid I know that at least West Fargo, I am not sure about Fargo although I did at one time know, raised the bond requirement to I think about 40% of the cost of the improvement, so that they weren't going to be left holding the bag quite as badly. So, this question has to do with whether or

not you would rather see the cost of the improvements, water, sewer, street lights, sidewalks all that stuff be a part of the original purchase price of the home and skip the specials rather than having special assessments?

Don Dappert Jr. No, while seeing that it is an effective tool I am not suggesting we do away with special assessments or I even chose to go down privately. While we have privately improved some neighborhoods and recognize some of those costs, because we are able to do it for less than the administration fee. Overall is just the matter of how we can control and have some of the input. Often times as a developer having to put up 50% of the estimated costs of it in both West Fargo and Fargo and Horace, and surrounding areas, we feel, I feel as if we necessarily are giving up some control. I am simply asking that I would prefer to even have more involvement and more of a partnership when working with those municipalities. Can we value engineers , widths of the road, sidewalks, boulevards all these things that lead to some of the costs while the administration in that extra fee over and above is probably more rampant when someone reads an article or hears that its maybe 30%? Well in some cases it is 30%, but I don't have any problem to be able to justify it, while some of it is engineering, some of it is administrative, some is interim interest, and all those other things and so what we're trying to do is in some cases on a pro-rated cost basis because that would have been really at 8% instead of an arbitrary using numbers of the 15%. Can we really get to a more of a cost for service or fee for service rather than just say an arbitrary number that kind of seems to work, but, only in a case when an equally number are above the line and equal number are below the line? Often times with the bigger projects now because we're doing larger improvement districts it seems like that we're generating just so much excess of dollars that maybe what is actually needed for those full services.

Senator Judy Lee The other thing is that special assessments don't just apply to city streets and so forth, but to water districts and there's a huge component there. So are you looking at having this include the maintenance for the Sheyenne Diversion, the many different kinds of projects that are also involved with special assessments? I mean there has got to be somebody who oversees this? I am not fighting you on this, I want you to get that, but this is probably the support for the study rather than going back to some of the detail because this is fairly complex and one of the things that actually Fargo did several years ago, and we will use $20,000 for a special assessment number. If they divided it over 20 years, they didn't amortize it they said $1000 each year will be paid plus principal, and interest on the unpaid principal. They have changed it so it's now amortized so there is a higher interest coming in at the beginning obviously. Those kinds of things actually affect the cost to the buyer more on an annual basis than the amount originally assessed. I am not quite sure we should ask the state to say that they have to divide the principle among the years over which the project is stretched for payment because that I think is micromanaging other elected officials. But that is a cost component in this as well. My main concern is and this question is how you see projects such as water management districts whether it's a small one or a great big one, being impacted or affected by the special assessment discussion we're having here too?

Don Gappert Jr. So I guess your first point is, as far as a service goes I think the general consensus would be is were simply asking for that cost of that service to be allocated to that improvement district. Not arbitrary and again using the 15% but it seems to me the kind

of default from the excel spread sheet rather in some cases if it has to be 18% then I am simply saying it needs to be associated to that improvement district for what the benefit for those people that are getting there. Some cases again, on the economy of scale, to go do it, where it's maybe a service where it is an ongoing maintenance thing with very little engineering going in to it. The study could certainly be looked at and be addressed because it is something as to how to address that. As you're probably aware to in West Fargo, how it used to be kind of upfront loaded where it is only zoned at 15% year and was very aggressive and so we had a number of home owners that would bring in specials into their mortgage and spread that out. Now we were successful with working closely with West Fargo on a number years ago where its' over a 20 year and its' more amortized. While there is some interest up there but it is still then then not so heavily weighted up front. In other areas where you mentioned too, where specials are put in ahead of time by the developer and paid there, the cost of doing that while there are some economies on both scales being addressed too, but then its' kind of that is still the cost of that financing and cost of the money to go in and do that.

Blake Crosby Executive Director North Dakota League of Cities (28:04-33:58) Written testimony # 2. Rep. Koppelman brought forth the amendments and we wouldn't be opposed to that. Those amendments, some of them are just not feasible, and some of them are impractical, and quite frankly they are cookie cutter. This is not a situation where I think we should be looking at a cookie cutter sort of situation. I do not think that special assessments need to be a band aid of legislative study. Yes North Dakota does do them a bit differently, but the process has withstood all legal challenges. There is nothing underhanded, cloaked in secrecy about the process, it's spelled out in Century Code and it seems to work quite well. Now however if the legislature in some point in time, should get wind or of any abuse or any illegality, the North Dakota League of Cities, could gather the interested parties together, that are representative associations, and provide the information that would be needed to address that. Without involving hearings, legislators and city officials travel and creating a bunch of controversy pitting one group against another group. Whether you like or dislike the process, the process works and it's worked well for a long time and it works well for the taxpayer who is the ultimate recipient of that improvement district benefit. On behalf of the League of Cities, I would respectively request a do not pass on HB 1322 including the potential amendments that Rep. Koppelman has suggested.

Senator Grabinger I am Chairman of the Special Assessments committee in Jamestown and I know in our city we have a process locally if somebody has a problem with a special assessment district that has been put together. Don't all other cities that do special assessment have a special assessments committee and a process for the person who has a complaint or question, the cost that they can bring that forward?

Blake Crosby I don't know that for certain, but I would assume that because they are an elected body, and that they do have access to a city attorney, that one of the things they would be especially sensitive to is due process. So there would have to be some method of addressing citizens' concerns.

Senator Judy Lee All of these requires a public hearing. Everybody has the opportunity to come to the public hearing everybody who is in a special assessment district receives

notice of the public hearing. I am pretty sure that hasn't changed, so the opportunity to participate in this discussion is already there in every case as far as I know. It is real easy to ignore the letter and not to go to the hearing and I get that part; but as an adult consumer I think I have the responsibility to pay attention to what it is going to be. The input is there or do you do think there are cities that aren't doing it, they have to because they have to have a public hearing?

Blake Crosby Your absolutely correct. They have to have a public hearing. As you indicated whether or not they show up, somehow I don't think that gets to be our problem. One of things we know that we can't legislate is voter concern. So, if they don't show up then I am not sure they should get a chance to complain a whole lot.

Senator Anderson Sometimes I like to put myself in the other person's shoes so that I can understand the issue better. My perception here is that a developer for example is going to put up 1000 apartment units on the edge of Fargo or West Fargo. There is nobody living there except the developer who purchased the property. So then the city sets up this to special assess the costs of adding that development to their city and my perception is that they feel like the city might be taking advantage of this developer who seems to have money and then adding a few costs that the developer doesn't maybe think are directly related to his project. Would you see that that is the issue here?

Blake Crosby No, I would not see that as being the issue because the developer typically is not putting up 100%, the city has some skin in the game. It could be 30%, 35% or 40%, but the city also has some skin in the game monetarily from the potential of bonding plus the city is looking at that growth, as part of their city master plan. So, as they look at how infrastructure needs to run over x period of years, the city has been forward funding some of that under the assumption that in this zone, there is going to be apartment complex condos or townhouses, so with all due respect, my answer to that I believe would have to be no. One clarification, again, I think that as Don said, they do have the ability to get information that they can use as a developer as developer from some entities, and they seem to have trouble getting from other entities, cities I'll say. Again to me that's not legislative problem, that is a relationship problem. I don't think legislatively we can fix something like that. I think that has to be dealt with on the adult level between the city and the developers.

Senator Bekkedahl I come from a city that doesn't special assess just for developers. They upfront all those costs which is extremely difficult. We were in the situation of paying back $30 million dollars as specials when they left town at one point in the oil bust. So that is our history. But getting to more specifics Blake with you, two things come to my mind. # 1 is it even possible to quantifying the degree or level of the issue. I don't think it is an issue in my community and may be it is and I just don't understand it. Our projects because of the construction intensity out there and the construction season are now going two seasons just to completion. There are wrapping up the next season so now it's a 3 years into it, the accounts are staying open with the bond funding for 3-5 years. Typically what happens with us if there is anything left in that fund and I've watched it for 2 years, unchanged I ask the auditor when we're going to close that account. Closing that account means it goes to the general fund. I don't know that at least in our situation our officers are doing it to use the money for anything else, intentionally because he doesn't even close the accounts until I

ask him about it. So I would suggest that maybe like you say there are intermittent issues are not wide spread. But the question I have is, is it even possible for you as the League of Cities to attempt to quantify this issue on a city by city basis, at least the large communities? I will try to do it my community, I don't know if you guys even want to tackle that and say what is the amount of special assessments your averting to general fund on an annual basis? I just don't have any quantification of that general scale. The second question is could this be an issue that the League of Cities at their annual conference have some kind of a best practices discussion amongst the cities talking about how do you do, how do I do this, as were all following the same the law in statute, but there are incongruences in how we handle those situations? Could you have a best practices discussion and maybe we could all come to do this better?

Blake Crosby I think it would be a great idea for a couple of reasons. Number one, I think it would be an interesting conversation amongst those that have boots on the ground and secondly, we have 70% of our vendors are probably engineering, architect consulting type firms so there already there anyway. So they might as well step into the fray and get some information because I would guess that most of them do business all across the state so they might want to know why there might be a little variations between city A and city B. As far as the amount of bonding that goes on out there, I am looking at some testimony that was presented by the City of Fargo and 2014 issues in Fargo were $89 Million, West Fargo was $30 Million, Williston $145 Million, Bismarck $26 Million and Grand Forks $10 Million for a total of $300 Million in those larger cities. So those are the special assessment bonds for those 5 cities. $ 300 Million is certainly a fair amount of money but it's not as if we're talking $2 or $3 Billion running around out there.

Senator Bekkedahl I was looking at what is the amount that is being returned to the general funds from these over the years? Some quantification of the scales is all I am looking for, because I sense that is part of the issue here.

Blake Crosby I think we could probably easily gather that. But again I would suggest that us gathering that data does not constitute necessarily the need for a legislative study. We could certainly gather the data, put it on our website; put it in one of our magazines. There has been some discussion on this through our listserv, and my recollection keeping in mind that I have a great memory but it's really short, but it was not a lot of money.

Bill Wocken, City Administrator City of Bismarck, (44:40-53:34) Written testimony # 3. I am not sure the passage of 1322 in its resulting study is a positive thing. I think there is a distinct possibility that a study could actually increase the biggest continuing cost of the district that it would be the interest rate charged by the market. It's not an easy issue, but I felt I needed to explain some of the ins and outs from the cities perspective.

Senator Bekkedahl Understanding of your testimony, it was great by the way, as you explained it very well for all of us, myself included. Would there be any merit understanding some cities can carry the cost of these until the projects are completed and then bond them out? You're able to do that in Bismarck, Fargo, and some other cities. Would there be any merit to having instead of putting the excess funds directly into the general fund, having another funding entity on your books called a Special Assessment Servicing Fund? Where the excess fund from any district gives you the funding pool to do what you're doing

already with the inter-funding as well? Would that have any merit? If it did, I am not suggesting that we mandate that as a state, but maybe a tool cities could do independently already is that correct?

Bill Wocken I think that is an excellent approach and that is basically what we do. Although the special assessments proceeds that come in from the payments from the property owners' go into a fund. The first priority in that fund is obviously is paying off the debt. At the time that the bonds are retired in seven to 15 years, typically, depending upon the type of special assessment that is issued, then we will take the balance of those funds and if there not needed to fund a deficiency in another project we would hold them in that special assessment fund. As you point out, there is a considerable amount of money that we front end in these projects, interest during the time of the construction, likes of that , that fund could be used to pay.

Chairman Burckhard closed the hearing on HB 1322.

2015 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee
Red River Room, State Capitol

HB 1322
3/20/2015
Job Number 25203

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature	

Explanation or reason for introduction of bill/resolution:

A Bill for an Act to provide for a legislative management study of special assessments

Minutes:

"Click to enter attachment information."

Chairman Burckhard asked the committee for discussion of HB 1322. All senators were present.

Senator John Grabinger I will a comment then I will provide a motion if there is no objection. We have a process here and I think Senator Bekkedahl raised a great suggestion to the League of Cities to take a look at this on their end and that's really I think where it needs to go. I think for us to study this and legislate here is not appropriate. Therefore, I will move a **do not pass on HB 1322**.

2nd **Senator Anderson**

Committee discussion

Senator Dotzenrod Just a thought and comment, I don't suppose you could argue that there's a down side to the study but it seems unnecessary. It seemed like if someone has an idea, a proposal there we're always open to that proposal. But this just seems like were at something that is fairly set and then going to have a study on it, I don't really understand really how were going to make it work. I think we always have to reserve the right to be open to some ideas that could improve the process, but I think it is pretty well as we are using this system pretty well all along here.

Chairman Burckhard asked for a roll call vote:
6-0-0 on a do not pass
Carrier: Senator Grabinger

Date: 3.20.15
Roll Call Vote: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1322

Senate Political Subdivisions Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation:
☐ Adopt Amendment
☐ Do Pass ☑ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Senator Grabinger Seconded By Senator Anderson

Senators	Yes	No	Senators	Yes	No
Chairman Burckhard	X				
Senator Anderson	X		Senator Dotzenrod	X	
Senator Bekkedahl	X		Senator Grabinger	X	
Senator Judy Lee	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

REPORT OF STANDING COMMITTEE

HB 1322, as engrossed: Political Subdivisions Committee (Sen. Burckhard, Chairman) recommends **DO NOT PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1322 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

HB 1322

1.1 1322 2/6/2015

2/5/15

Mr. Chairman and Members of the Political Subdivisions Committee, My name is Rep. Ben Koppelman, and I represent District 16 in West Fargo. I am here to testify in favor of HB 1322.

I introduced this bill on behalf of a constituent who was concerned about the rapidly rising costs of special assessments and the lack of transparency and accountability of the amount that is charged by a municipality to defray in-house employee expenses. He also suspected that the amounts charged by the city exceeded the actual costs incurred by the city for those employees and thus became a de-facto tax revenue source. Since special assessments are only charged to a confined area of the city, he felt it would be inappropriate to use excess monies collected to fund general fund expenditures for the entire city.

Following the request to investigate how this process works, I inquired with the engineering departments of the respective cities in my district and learned the specifics as to how the special assessment process works. I was concerned to learn that some cities use a percentage "mark-up" of the costs of construction to offset employee time regardless if that "mark-up" exceeds the actual cost the city incurred for that project. I reviewed the applicable sections of the century code and

came to the conclusion that more clarity may be needed to make sure the spirit or intent of the section is followed.

Following the introduction of this bill, I reached out to city leaders to understand their concerns about the wording and the implementation of this bill. Following that feedback, I requested amendments that hopefully will achieve the goals of this bill without unintended consequences and with reasonable implementation expectations.

The bottom line goal of this bill is to ensure that only costs that provided special, unique, and direct benefits to the special assessment district are assessed to the properties in that district. Any expenses that are for the benefit of the entire municipality should be funded with traditional revenue sources such as property tax, sales tax, hospitality tax, city water and garbage fees etc. that all residents pay, and not by a limited group who has been special assessed.

Mr. Chairman and Members of the Committee, this concludes my testimony, and I will be happy to stand for questions.

$100,000 ESTIMATED PROJECT

Bonds Sold in the amount of $100,000

$70,000 estimated all 3rd Party costs: Paving sewer/water, dirt work, advertising, bond sale fees etc.

$8,400 12 % contingency

$78,400

$21,168 27% mark-up for admin., in house engineers, employees, const. interest etc.

$99,568

(74,000) actual 3rd Party costs

(3,920) construction interest & other 3rd party fees from 27% mark-up

$21,648 Remaining after construction

$4,400 unused contingency funds

$17,248 remaining of 27% mark-up w/o tracking to actual cost

1.4

15.0411.03001
Title.

Prepared by the Legislative Council staff for
Representative B. Koppelman
February 5, 2015

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1322

Page 1, line 1, remove "40-22-01,"

Page 1, line 1, remove "40-24-18,"

Page 1, line 2, replace "40-27-05" with "40-24-19"

Page 1, remove lines 5 through 23

Page 2, remove lines 1 through 31

Page 3, remove lines 1 through 5

Page 3, line 19, remove "construction"

Page 3, line 22, remove "if the services are provided by a third party not employed by the city; and the"

Page 3, line 24, after the period insert "If the services of engineering, fiscal agent's, and attorney's fees are provided by individuals employed by the city, those costs may be included only to the extent they are trackable and unique to the project. The city may include an additional cost of up to three percent of other project costs for city administrative costs and the additional cost may exceed three percent to the extent city administrative costs are trackable and unique to the project."

Page 4, line 6, remove "construction"

Page 4, line 9, remove ", if the services are provided by a third party not employed by the city"

Page 4, line 11, after "~~that~~" insert "If the services of engineering, fiscal agent's, and attorney's fees are provided by individuals employed by the city, those costs may be included only to the extent they are trackable and unique to the project. The city may include an additional cost of up to three percent of other project costs for city administrative costs and the additional cost may exceed three percent to the extent city administrative costs are trackable and unique to the project."

Page 4, remove lines 14 through 30

Page 5, replace lines 1 through 17 with:

"**SECTION 3. AMENDMENT.** Section 40-24-19 of the North Dakota Century Code is amended and reenacted as follows:

40-24-19. Warrants and improvement bonds - Issuance - When payable - Amounts - Temporary warrants and temporary improvement bonds - Interest - Interest coupons - Negotiability - Eligibility as investments.

The municipality, at any time after making a contract for the construction of any improvement to be financed in whole or in part by assessments, under authority of any chapter of this title, or prior thereto but after the period for filing protests against the making of such improvement has expired and the protests filed, if any, have been heard and determined to be insufficient, and in anticipation of the levy and collection of such assessments and of any taxes or revenues derived from service charges pledged

1.5

to pay for such improvement, may issue warrants or improvement bonds on the fund created for such improvement. The municipality is responsible to the holders of the warrants or improvement bonds for the proper advertisement and award of a contract or contracts or provision by other means for the completion of the improvement; for the acquisition of all land, easements, licenses, and permits required for such completion; and for the valid and final levy of special assessments upon all properties within the improvement district to be benefited by the improvement, in an aggregate principal amount equal to the total cost of the improvement as finally ascertained, less the portions thereof, if any, determined to be paid from taxes, service charges, and any other source. If the warrants or improvement bonds issued by the municipality plus any other source of revenue pledged to repayment exceed the total cost of the improvement as finally ascertained, the excess amount may not be levied as special assessments but must be paid by the municipality from a general tax levy annually against all of the taxable property in the municipality. The issuance of the warrants or improvement bonds constitutes a representation and covenant binding upon the municipality that the aggregate benefits to be derived from the making of the improvement by the properties to be assessed therefor are not less than the aggregate amount of the special assessments so required to be levied. The warrants or improvement bonds shall be issued and shall mature in such amounts as in the judgment of the governing body will be provided for, at or before the maturity dates specified, by the taxes and assessments to be levied and spread and the revenues pledged therefor. In lieu of issuing definitive warrants or improvement bonds on any such fund, the governing body may by resolution authorize the issuance and sale of temporary warrants or temporary improvement bonds maturing in not to exceed three years from the date of issue of the first such warrant or temporary improvement bonds, to be repaid with interest from the proceeds of definitive warrants or improvement bonds maturing as hereinabove required, which the governing body shall issue and sell at or before the maturing date of said temporary warrants or temporary improvement bonds, in the amount required, with moneys theretofore received in such fund, to pay the total cost of the improvement and all temporary warrants or temporary improvement bonds theretofore issued on the fund, with interest then accrued thereon. The warrants or temporary improvement bonds must bear interest at a rate or rates and must be sold at a price, not less than ninety-eight percent of par, resulting in an average net interest cost not to exceed twelve percent per annum payable annually or semiannually, except that there is no interest rate ceiling on an issue sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. The definitive warrants or improvement bonds may bear interest at a rate or rates higher or lower than those borne by the temporary warrants or temporary improvement bonds, as determined by the governing body in effecting the sale thereof. In the sale of temporary warrants or temporary improvement bonds, the municipality may by resolution of the governing body agree to issue to the holder or holders thereof definitive warrants or improvement bonds upon specified terms as to interest, maturity, redemption provisions, and all other pertinent details, in the event that the municipality is unable to sell definitive warrants or improvement bonds to others upon more favorable terms. Coupons representing the interest for each year or lesser period may be attached to the warrants, whether definitive or temporary, or improvement bonds or temporary improvement bonds. All such warrants or bonds shall be negotiable within the meaning of and for all the purposes specified in title 41, and, to the same extent as general obligation bonds of the issuing municipality, are valid investments of the funds of any guardian, trustee, and other fiduciary of any kind or nature, any bank or other financial institution, any charitable, educational, or eleemosynary institution, and any public corporation or official, municipality, school district, or other political subdivision,

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including bond sinking funds, special improvement funds, municipal utility funds, and funds of the state of North Dakota and its instrumentalities and agencies."

Page 5, line 18, after "for" insert "and applies to"

Renumber accordingly

1.7

15.0411.03001

Sixty-fourth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1322

Introduced by

Representatives B. Koppelman, Belter, Dockter, Headland, Louser, Owens, Rohr, Streyle, Toman

Senators Larsen, Luick, Unruh

A BILL for an Act to amend and reenact sections ~~40-22-01,~~ 40-23-05, 40-23.1-04, ~~40-24-18,~~ and ~~40-27-05~~40-24-19 of the North Dakota Century Code, relating to allowable costs in improvements by special assessments; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

~~**SECTION 1. AMENDMENT.** Section 40-22-01 of the North Dakota Century Code is amended and reenacted as follows:~~

~~**40-22-01. Power of municipalities to defray expense of improvements~~~~capital projects~~ ~~by special assessments.**~~

~~Any municipality, upon complying with the provisions of this chapter, may defray the expense of any or all of the following types of improvements~~~~capital projects~~ ~~by special assessments:~~

~~1. The construction of a water supply system, or a sewerage system, or both, or any part thereof, or any improvement thereto or extension or replacement thereof~~~~of a system~~~~, including the construction and erection of wells, intakes, pumping stations, settling basins, filtration plants, standpipes, water towers, reservoirs, water mains, sanitary and storm sewer mains and outlets, facilities for the treatment and disposal of sewage and other municipal, industrial, and domestic wastes, and all other appurtenances, contrivances, and structures used or useful for a complete water supply and sewerage system. Expenses for general maintenance or operation of a water supply and sewerage system may not be defrayed by special assessments.~~

~~2. The improvement~~~~construction~~ ~~of the municipal street system and any part thereof, including any one or more of the processes of acquisition, opening, widening, grading, graveling, paving, repaving, surfacing with tar, asphalt, bituminous, or other~~

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appropriate material, or resurfacing, or resealing, and repairing of any street, highway, avenue, alley, or public place within the municipality, and the construction and reconstruction of overhead pedestrian bridges, pedestrian tunnels, storm sewers, curbs and gutters, sidewalks, and service connections for water and other utilities, and the installation, operation, and maintenance of streetlights and all types of decorative streetlighting, including but not restricted to Christmas streetlighting decorations. Expenses for general maintenance or operation of a municipal street system or any other project authorized under this subsection may not be defrayed by special assessments.

3. The improvement of boulevards and other public places by the planting of trees, the construction of grass plots and the sowing of grass seed therein, and the maintenance and preservation of such improvements by the watering of such trees and grass, the cutting of such grass, and the trimming of such trees, or otherwise in any manner which may appear necessary and proper to the governing body of the municipality. Expenses for general maintenance or operation of a project authorized under this subsection may not be defrayed by special assessments.

4. The acquiring of the necessary land and easements and the construction of the necessary works, within and without the municipality, for flood protection of properties within the municipality. Expenses for general maintenance or operation of a project authorized under this subsection may not be defrayed by special assessments.

5. The acquiring or leasing of the necessary property and easements and the construction of parking lots, ramps, garages, and other facilities for motor vehicles. Expenses for general maintenance or operation of a project authorized under this subsection may not be defrayed by special assessments.

In planning an improvement project of a type specified in any one of the foregoing subsections, the governing body may not include in such plans any and all items of work and materials which in its judgment are necessary or reasonably incidental to the completion of an improvement project of such typeor any fees not specifically authorized by law. Only costs actually incurred may be included in the cost of a project. The governing body may not include in the cost of a project any work performed by an employee of the municipality unless that cost is unique to the project and is separately tracked to demonstrate that it is. The governing body may only include

~~engineering and architect fees for third party architects and engineers. If the architect or engineer is an employee of the municipality, no additional costs may be included unless that cost is unique to the project and is separately tracked to demonstrate that it is. A charter or ordinance or act of the governing body of a city or county under home rule authority may not supersede the limitations of this section.~~

SECTION 1. AMENDMENT. Section 40-23-05 of the North Dakota Century Code is amended and reenacted as follows:

40-23-05. Notice to special assessment commission.

At any time after the contract and bond for any work for which a special assessment is required have been executed and approved by the governing body of the municipality and the total cost of such work shall have been estimated as nearly as practicable, the governing body may direct assessments to be levied for the payment of all or any part of such cost, and the city auditor shall notify the chairman of the special assessment commission and shall certify to the chairman the items of the total cost thereof so far as the same have been ascertained. The chairman immediately shall call a meeting of the commission, which shall proceed as expeditiously as possible to make and return the special assessment as provided in this chapter. The total cost of the improvement which may be certified to the assessment commission ~~shall~~may include the estimated construction cost under the terms of the contract~~,~~; a reasonable allowance as determined by the governing body for cost of extra ~~construction~~ work which may be authorized under the plans and specifications~~,~~; engineering, fiscal agent's and attorney's fees for any services in connection with the authorization and financing of the improvement, ~~if the services are provided by a third party not employed by the city; and the~~ cost of publication of required notices and printing of improvement warrants~~, and all expenses incurred in the making of the improvement and levy of assessments therefor~~. If the services of engineering, fiscal agent's, and attorney's fees are provided by individuals employed by the city, those costs may be included only to the extent they are trackable and unique to the project. The city may include an additional cost of up to three percent of other project costs for city administrative costs and the additional cost may exceed three percent to the extent city administrative costs are trackable and unique to the project. If any error is made in estimating the cost, the governing body may direct a supplemental assessment to be made as provided in section 40-26-02.

SECTION 2. AMENDMENT. Section 40-23.1-04 of the North Dakota Century Code is amended and reenacted as follows:

40-23.1-04. Levy of assessments - Items included in cost of improvement.

At any time after the contract and bond for any work for which a special assessment is required have been executed and approved by the governing body of the municipality and the total cost of such work shall have been estimated as nearly as practicable, the governing body may direct assessments to be levied for the payment of all or any part of such cost, and the city auditor shall ascertain and return, as provided in this chapter, the total assessment against each separate lot, tract, or parcel of land in the improvement district. The total cost of the improvement shall include the estimated construction cost under the terms of the contract; a reasonable allowance as determined by the governing body for cost of extra ~~construction~~ work which may be authorized under the plans and specifications; engineering, fiscal agent's, and attorney's fees for any services in connection with the authorization and financing of the improvement~~, if the services are provided by a third party not employed by the city~~; and the cost of publication of required notices and printing of improvement warrants~~; and all expenses incurred in the making of the improvement and levy of assessment therefor~~. ~~In the event that~~ If the services of engineering, fiscal agent's, and attorney's fees are provided by individuals employed by the city, those costs may be included only to the extent they are trackable and unique to the project. The city may include an additional cost of up to three percent of other project costs for city administrative costs and the additional cost may exceed three percent to the extent city administrative costs are trackable and unique to the project. If any error is made in estimating the cost, the governing body may direct a supplemental assessment to be made as provided in section 40-26-02.

~~**SECTION 4. AMENDMENT.** Section 40-24-18 of the North Dakota Century Code is amended and reenacted as follows:~~

~~**40-24-18. Special improvement moneys to be kept separate - Designation and numbering of funds - Diversion of moneys prohibited.**~~

~~All special assessments and taxes levied and other revenues pledged under the provisions of this title to pay the cost of an improvement shall constitute a fund for the payment of such cost, including all principal of and interest on warrants and other obligations issued by the municipality to finance the improvement, and shall be diverted to no other purpose. The city~~

1 ~~auditor shall hold all moneys received for any such fund as a special fund to be applied to~~
2 ~~payment for the improvement. Each such fund shall be designated by the name and number of~~
3 ~~the improvement district in or for which said special assessments, taxes, and revenues are~~
4 ~~collected. When all principal and interest on warrants and other obligations of the fund have~~
5 ~~been fully paid, all moneys remaining~~if less than one thousand dollars remains ~~in a fund may~~it
6 must ~~be transferred into the general fund of the municipality. If one thousand dollars or more~~
7 remains in the special fund after the payment of the principal of all the warrants and other
8 obligations and the interest thereon, the balance must be returned to the owners of the property
9 against which assessments were levied, on a pro rata basis.
10 ~~**SECTION 5. AMENDMENT.** Section 40-27-05 of the North Dakota Century Code is~~
11 ~~amended and reenacted as follows:~~
12 ~~**40-27-05. Special fund for payment of bonds issued for purchase of special**~~
13 ~~**assessment warrants - Tax levy.**~~
14 ~~The governing body of a municipality which issues bonds for the purchase of special~~
15 ~~assessment warrants shall create a special fund for the payment of the principal and interest of~~
16 ~~such bonds as they become due and shall credit to such fund all special assessments collected~~
17 ~~for the payment of the special assessment warrants purchased. The governing body shall make~~
18 ~~a general tax levy annually on all the property in the municipality which, together with the~~
19 ~~special assessments collected, shall be sufficient to pay the principal and interest of the bonds~~
20 ~~when they become due. The levy imposed shall not be subject to any of the tax levy limitations~~
21 ~~imposed by section 57-15-08 or acts amendatory thereof. If any money~~less than one thousand
22 dollars ~~remains in the special fund after the payment of the principal of all the bonds and the~~
23 ~~interest thereon, such balance may~~must ~~be transferred to the general fund. If one thousand~~
24 ~~dollars or more remains in the special fund after the payment of the~~ principal ~~of all the bonds~~
25 ~~and the interest thereon, such balance must be returned to the owners of the property against~~
26 ~~which assessments were levied, on a pro rata basis.~~
27 **SECTION 3. AMENDMENT.** Section 40-24-19 of the North Dakota Century Code is
28 amended and reenacted as follows:

40-24-19. Warrants and improvement bonds - Issuance - When payable - Amounts - Temporary warrants and temporary improvement bonds - Interest - Interest coupons - Negotiability - Eligibility as investments.

The municipality, at any time after making a contract for the construction of any improvement to be financed in whole or in part by assessments, under authority of any chapter of this title, or prior thereto but after the period for filing protests against the making of such improvement has expired and the protests filed, if any, have been heard and determined to be insufficient, and in anticipation of the levy and collection of such assessments and of any taxes or revenues derived from service charges pledged to pay for such improvement, may issue warrants or improvement bonds on the fund created for such improvement. The municipality is responsible to the holders of the warrants or improvement bonds for the proper advertisement and award of a contract or contracts or provision by other means for the completion of the improvement; for the acquisition of all land, easements, licenses, and permits required for such completion; and for the valid and final levy of special assessments upon all properties within the improvement district to be benefited by the improvement, in an aggregate principal amount equal to the total cost of the improvement as finally ascertained, less the portions thereof, if any, determined to be paid from taxes, service charges, and any other source. If the warrants or improvement bonds issued by the municipality plus any other source of revenue pledged to repayment exceed the total cost of the improvement as finally ascertained, the excess amount may not be levied as special assessments but must be paid by the municipality from a general tax levy annually against all of the taxable property in the municipality. The issuance of the warrants or improvement bonds constitutes a representation and covenant binding upon the municipality that the aggregate benefits to be derived from the making of the improvement by the properties to be assessed therefor are not less than the aggregate amount of the special assessments so required to be levied. The warrants or improvement bonds shall be issued and shall mature in such amounts as in the judgment of the governing body will be provided for, at or before the maturity dates specified, by the taxes and assessments to be levied and spread and the revenues pledged therefor. In lieu of issuing definitive warrants or improvement bonds on any such fund, the governing body may by resolution authorize the issuance and sale of temporary warrants or temporary improvement bonds maturing in not to exceed three years from the date of issue of the first such warrant or temporary improvement bonds, to be repaid

with interest from the proceeds of definitive warrants or improvement bonds maturing as hereinabove required, which the governing body shall issue and sell at or before the maturing date of said temporary warrants or temporary improvement bonds, in the amount required, with moneys theretofore received in such fund, to pay the total cost of the improvement and all temporary warrants or temporary improvement bonds theretofore issued on the fund, with interest then accrued thereon. The warrants or temporary improvement bonds must bear interest at a rate or rates and must be sold at a price, not less than ninety-eight percent of par, resulting in an average net interest cost not to exceed twelve percent per annum payable annually or semiannually, except that there is no interest rate ceiling on an issue sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. The definitive warrants or improvement bonds may bear interest at a rate or rates higher or lower than those borne by the temporary warrants or temporary improvement bonds, as determined by the governing body in effecting the sale thereof. In the sale of temporary warrants or temporary improvement bonds, the municipality may by resolution of the governing body agree to issue to the holder or holders thereof definitive warrants or improvement bonds upon specified terms as to interest, maturity, redemption provisions, and all other pertinent details, in the event that the municipality is unable to sell definitive warrants or improvement bonds to others upon more favorable terms. Coupons representing the interest for each year or lesser period may be attached to the warrants, whether definitive or temporary, or improvement bonds or temporary improvement bonds. All such warrants or bonds shall be negotiable within the meaning of and for all the purposes specified in title 41, and, to the same extent as general obligation bonds of the issuing municipality, are valid investments of the funds of any guardian, trustee, and other fiduciary of any kind or nature, any bank or other financial institution, any charitable, educational, or eleemosynary institution, and any public corporation or official, municipality, school district, or other political subdivision, including bond sinking funds, special improvement funds, municipal utility funds, and funds of the state of North Dakota and its instrumentalities and agencies.

SECTION 4. APPLICATION. This Act is effective for and applies to special assessment district projects initiated by approval of an engineer's report after December 31, 2014.

2.1 1322 2/6/2015

House Political Subdivision Committee

Legislative Testimony on HB 1322 by City of Fargo

February 6, 2015

Chairman Klemin and members of the House Political Subdivision Committee, I am Kent Costin the Director of Finance from the City of Fargo. April Walker, our City Engineer, and Dan Eberhardt, our Special Assessment Coordinator are here as well if you have specific questions about our special assessment process. We are here to voice our concerns about the negative impacts of HB 1322 and ask for a DO NOT pass vote.

You will hear from several North Dakota Cities today about various provisions of this bill that are difficult to administer, would have a negative impact on our base revenues and would provide a minimal impact upon the average taxpayer's special assessment burden.

We are very concerned about the direct challenge of our Home Rule Charter authority as suggested in Section 1 of this bill. How a City determines various special assessment funding polices will vary widely from City to City depending upon market demand for infrastructure, their local economy, and other sources of revenue. While policies will vary from community to community, the special assessment laws currently on the books in Section 40-22 through 40-27 provide a structural framework for how special assessments should be administered. This process is working fine and is the backbone of our core infrastructure delivery system for many rapidly growing Cities. Fargo follows State law for administering special assessments and I am not aware of other Cities using their Home Rule Authority in this process.

Fargo has followed these assessment laws for its entire history going back as far as 100 years. The provisions of these laws provides for a fair and equitable method of distributing costs to individual taxpayers. Longevity, consistency and uniformity are established principals integrated into our policies and procedures. We have been challenged in Court numerous times by taxpayers and other parties of interest and the final result is always the same. We are not gouging anyone! The administration of our special assessments complies with State Laws and the net result is an equitable distribution of project benefit which is the primary goal of the entire special assessment process. Also, voters in Fargo have approved sales taxes dedicated infrastructure and this is helping reduce or eliminate special assessments on large scale infrastructure projects.

We have never lost a lawsuit about special assessments and several cases that were appealed to the State Supreme Court have accused us of inappropriately charging engineering and

2.2

administrative fees. This bill seems to be making the same accusations. We think this is unfounded.

Fargo experienced a new challenge this past construction season. The amount of work and demands for infrastructure outstripped our ability to provide engineering design and construction management necessary for our projects. We were forced to reach out to private engineering firms for their assistance to help us service the demand in Fargo. These firms use a much different business model in how they charge for their services and do not save the taxpayer any money. We reviewed a few outsourced engineering contracts and learned that they charged and average of 14% for their engineering services while Fargo's assessment policy if done by City workers charges 11%.

Our fees for services are an important part of our revenue base that help us to diversity our revenues. Giving the work to someone will simply decrease our fee revenue and place a higher burden on our tax levies or State financial assistance. Also, it is important to put the fee discussion into proper perspective in that our engineering fees account for about 6% of our overall General Fund revenue.

Assessment laws currently in place provide a better ways and means to manage this complex process and provide a much better result to the taxpayer than what is being proposed in HB 1322.

Thank you for the opportunity to speak at this hearing.

We respectfully recommend a DO NOT pass vote on this bill and would be happy to answer any questions about our testimony.

3.1 1322 2/6/2015

HOUSE BILL 1322
CITY OF WEST FARGO TESTIMONY

Mr. Chairman and members of the committee my name is Tina Gustafson, I am the Finance Director for the City of West Fargo. I am here today in opposition to House Bill 1322. The restrictions and additional requirements to be put in place with this bill will not only hamper growth in our communities but strain our departments trying to find ways to refund debt service fund dollars.

The City of West Fargo has been very fortunate to have had great growth over the last decade. The population has gone from 14,900 in 2000 Census to over 31,000 today. With this demand for growth has been the need for infrastructure. Special assessments are currently the fairest way to allocate the cost of improvement districts to those benefited. Having Cities fund special assessment districts assists homeowners by not forcing them front the total cost of improvements in the purchase price of the lot or home.

Currently the City of West Fargo, on an annual basis, creates and bonds at least 20 special assessment districts per year. These districts include thousands of new individual assessments annually. The current system allows the City officials to determine what would be a" district cost" and would not be. To have the state take over the regulation of what is an expense of a district takes the local control of the people away and places it with the state. This seems contradictory to what is being asked for by the people of the elected officials.

Current century code allows any dollars remaining in a debt service fund, after all payments have been made, to go into the general fund. This allows local governments to determine how they wish to utilize any funds left over. To allocate any amount over $1,000 back to district payers is not realistic for a number of reasons. Here is an example to explain. In the City of West Fargo from 2005 to 2014 debt service funds closed had funds from 19 different bond issues, some of which contained several other issues due to refunding to save dollars. Of those 19 plus issues there were at least 144 special assessment districts with starting years from 1988 to 2003. Each of those districts had anywhere from hundreds to thousands of parcels involved. So in this case you would split remaining funds over $1,000 to somewhere between 14,000 to 200,000 plus parcels. Also from the time districts are formed, specials spread and paid, many parcels will split into sometimes hundreds of other parcels creating additional splitting of the original special assessment. Bonds are refunded and combined with additional new districts creating additional confusion. Owners will change numerous times, some owners will pay off specials early other will not. To track all these items back to who should be refunded would be impossible.

The City of West Fargo encourages the committee to make a **do not pass** recommendation.

4.1 1322 2/6/2015

February 5, 2015

Chairman Klemin and members of the committee, we would like to submit the following information in opposition of HB1322.

This bill is for an act to amend and reenact sections 40-22-01, 40-23-05, 40-23.01, and 40-27-05 of the NDCC relating to allowable costs in street improvement by special assessment and to provide for application.

The City of Beulah is opposed to this bill. Restricting the use of Special Assessments as set forth in this bill would severely hamper Beulah from maintaining our infrastructure.

We have been forced to use special assessments to refurbish (maintain) our streets, curb and gutter several times over in the past 30 years. Cities of our size do not accumulate 2 million dollars in our account as was needed the last time we brought our street up to date.

We do carry out a spring crack sealing and some maintenance each year. This does not prevent the wear and tear over a 15 year period that requires a complete update. Also after a 10 – 15 year bond issue, it would in many cases be almost impossible to find the old owner of record for a refund of any leftover fund.

If the intent of this bill is to help our citizens it will have the opposite effect.

Thank you for your attention and please give this bill a do not pass.

Yours truly,

Darrell Bjerke

Darrell Bjerke
Mayor – City of Beulah

5.1 HB 1322 2/6/2015

CITY OF GRAND FORKS

P.O. BOX 12909
GRAND FORKS, NORTH DAKOTA 58208-2909

OFFICE OF CITY ATTORNEY

BEFORE THE 64TH LEGISLATIVE ASSEMBLY
FOR THE STATE OF NORTH DAKOTA
HOUSE BILL 1322
HOUSE POLITICAL SUBDIVISION COMMITTEE

My name is Howard Swanson. I am the Grand Forks City Attorney and I have more than 30 years of experience in municipal law. In the course of my practice I have acquired substantial experience with special assessments. I am unable to attend your hearing as I am appearing before another Legislative Committee. However, I offer this written testimony in opposition to House Bill 1322.

House Bill 1322 suffers from a number of deficiencies and, if adopted, would create a number of practical and legal issues.

Undefined Terms.

One of the first deficiencies in the Bill is that there is no definition for "general maintenance" or "operation". The Bill fails to distinguish between a capital improvement or a maintenance expense. For example, a flood control levee can be anticipated to suffer deterioration over time. Certain activities, including repairs or reconstruction, are required to occur over time but would not typically be considered maintenance. Is the repair of damage to a flood control levee after exposure to high water be considered "general maintenance"? Is the repair of damage to a flood control levee caused by muskrats, gophers or other burrowing animals "general maintenance"? Is the replacement of wastewater or lift station pumps due to obsolescence considered "general maintenance"? Would a mill and overlay project or a seal coat project be considered "general maintenance" or would that be an improvement that can be paid by special assessments? Without the inclusion of clear definitions, cities and the public will be placed in a position of having to interpret or guess as to the application of the Bill. In turn, disputes regarding what "general maintenance" or "operation" mean will likely result in litigation requiring judicial determination. Litigation of this nature is not in the best interests of the municipalities or its taxpayers.

Ambiguous Provisions.

The language which appears in lines 25-29 on page 2 of the Bill is difficult to understand: "In planning an improvement project of a type specified in any one of the foregoing subsections, the governing body may not include in such plans any items of work or materials or any fees not specifically authorized by law." I am not aware of any statutory provision which would specifically authorize an item of "work or materials" in an improvement project. Furthermore, I am uncertain as to what "fees" are being addressed in this language. The approval of engineering plans and

specifications by a governing body does not normally contain the inclusion or adoption of any fees. Thus, the sentence, as restructured by the Bill, creates confusion and uncertainty.

Increased Costs and Administrative Burdens.

The provisions in Section 1 of the Bill limit engineering and architectural fees from being included within the assessment to only those situations in which such fees are paid to a third party architect or engineer or if the city can separately track and demonstrate costs incurred by city employed engineers or architects. Significant effort would be required by a municipality to separately track, demonstrate and record costs directly incurred as a result of the project for design, plan preparation and/or project inspection by city employees to comply with the proposed provisions.

Further, the proposed changes create more difficulty and costs than may be reasonably anticipated. The proposed amendments will likely create unintended consequences with significant costs being born by the city and its taxpayers. The fiscal effect would be to transfer costs from benefitting properties within the improvement district to the general fund to be paid by the nonbenefitting taxpayers. This is particularly true with regard to that portion of the proposed statutory amendments which would require a refund to "owners of the property" after the retirement of any special assessment obligations, if the balance in the fund is more than $1,000.00. The Bill is not clear as to what "owners of the property" are entitled to a refund. Who exactly is to be considered "owners of the property". Many of the properties will likely be sold or otherwise conveyed during the course of a 20 year special assessment. Thus, is it the property owner that owned the property at the time of the initial levy of the special assessment that is entitled to the refund? Is it the owner of the property at the time of the termination of the special assessments that is entitled to the refund? How about owners of the property in the interim? Who is entitled to a refund if the special assessments are prepaid by a prior owner, contractor or developer? The language of the Bill does not identify which of the potential owners may be entitled to the refund. Furthermore, it is not uncommon to have owners experience divorce or death. In those cases, which of the divorced owners is entitled to the refund? In the case of the death of a former owner, who would be entitled to such a refund? In the situation of a pending sale or under a contract for deed is the vendor or vendee entitled to the refund? In the case of a foreclosure is the mortgagor or mortgagee entitled to the refund? All of these scenarios are real examples of how difficult it would be for municipal staff to attempt to determine who is entitled to a refund. The difficulty in determining who may be entitled to a refund will add more time and cost to be bore by the city. Such addition time and cost would likely substantially outweigh very modest refunds to be paid to "owners of the property".

The Bill additionally requires that any refunds to "owners of the property" are to be issued "on a pro rata basis". This term is not, however, defined in the Bill. Pro rata simply means that the funds would be distributed on a proportional basis based upon some factor. Yet, the Bill does not define what factor is to be used or what is intended by the term. Is "pro rata" based upon the number of properties within the special assessment district? Does it mean that the refunds would be calculated based upon the assessments that were paid for the various individual lots within the district? Without further explanation, direction or definition contained within the Bill, the determination of who is entitled to a refund and in what amount will consume substantial effort and resulting in unrecoverable costs on the part of the city.

Request for Do Not Pass Recommendation

Because of the lack of certainty and clarity in the intent and application of the legislation; and based upon the unreasonable burdens and costs that far outweigh any perspective benefit, I am respectfully requesting this Committee give House Bill 1322 a do not pass recommendation.

OFFICE OF THE CITY ATTORNEY

Howard D. Swanson
City Attorney
hswanson@swlawltd.com

6.1 HB 1322 2/6/2015

Testimony to the House Political Subdivisions Committee
Chairman Lawrence R. Klemin
Prepared by Lance Meyer, P.E., City Engineer
City of Minot
Lance.Meyer@minotnd.org

HOUSE BILL NO. 1322

Mr. Chairman, my name is Lance Meyer. I am the City Engineer for the City of Minot and I am speaking in opposition to House Bill 1322 regarding the amendment of sections related to special assessments.

The City of Minot currently uses special assessments for some construction projects. The City does plan to continue to use special assessments in the future as a method to finance construction projects. The currently enacted special assessment statues provide a clear path of what can be included in a special assessment projects and how those costs are levied against property. House Bill 1322 does introduce ambiguity in which projects can be assessed and how left over funds have to be returned to the property owner.

House Bill 1322 appears to be directed at removing expenses for general maintenance or operation from being assessed. Line 19-20 page 1 states: "Expenses for general maintenance or operation of a water supply and sewerage system may not be defrayed by special assessments." Other sections within the statute dealing with other types of improvements have the same language. The Bill as proposed currently lacks any definition of what operation and maintenance includes. It will be difficult to determine if some projects have the ability to be special assessed.

House Bill 1322 would eliminate the ability for a city to collect any fees to defray the cost of in house engineering. The City of Minot does have an in house engineering department that on occasion performs engineering services for assessment districts. An engineering fee is charged to pay for these in house services which is typically twelve percent (12 %) of a project's

construction cost. The fee offsets general fund expenditures the city would incur to hire in house engineers to perform design and inspection services. By not being able to collect this fee, taxes would have to be levied throughout the City of Minot on those properties not benefitting by the improvements. The City of Minot would be forced to hire third party engineering consultants for all special assessment projects to be compliant with the proposed Bill or raise general fund expenditures to pay for additional staffing required to perform the services.

The proposed amendments to Section 40-23 would also add a burden to city staff when funds in excess of one thousand dollars ($1,000.00) are remaining in the project's fund. The proposed Bill would require those funds be returned to the owner of the property against which assessments were levied on a pro rata basis. In most cases, the owners of property which the assessments were levied will not be the same. It may be 20 years in the future when some of the bonds are repaid and the ownership of the property will have changed several times. It is unclear how the original property owners would be located to return the remaining funds. It is anticipated that significant staff time would be needed to locate these individuals to return these funds.

For the reasons stated in this testimony, the City of Minot encourages a Do Not Pass on House Bill 1322.

7.1 HB 1322 2/6/2015

House Bill 1322
House Political Subdivisions Committee
February 6, 2015

Mr. Chairman and Members of the House Political Subdivisions Committee:

My name is Bill Wocken. I am City Administrator for the City of Bismarck. I am appearing this morning in opposition to House Bill 1322 with the knowledge and approval of the Bismarck City Commission.

House Bill 1322 is a measure that seeks to limit some expenses charged to special assessment districts for municipal improvements. It also sets a new standard for the dispersal of resources in the fund dedicated to bond payments. The City of Bismarck has issues with many parts of the bill.

Section 1 of the bill changes the title and identifiers in this section of the Century Code. It begins to call "improvements" "capital projects". This is of concern to the city and to bond counsel as it introduces an undefined new term into the chapter. This often results in legal and financial complications as bonds are sold. We request that the term "improvements" be retained.

Section 1 refers to "general maintenance or operation" expenses. The term "general maintenance" is not defined anywhere with respect to this bill leaving open to interpretation what costs may or may not be included in a bond sale. This may seem unduly detailed but it is the kind of detail that will trigger a bond attorney to issue an opinion that will cloud the sale of bonds and cause an increase in rate, if the bonds are allowed for sale at all. To illustrate, it is unclear if a chip seal that normally has a 15 to 17 year life a general maintenance expenditure since it is preventative work that extends the life of the street surface.

Section 1 also excludes work done by city employees from being included in project costs unless it is unique to the project and separately tracked. Many cities, including Bismarck, charge a fee for project design and construction observation. That will force engineering and finance staff to identify all their time, not only the project time, and to create a time record. Will this time record need to be audited? What will bond counsel

require so that they can certify the costs comply with state law? To be safe, the city should hire a third party engineer at a higher cost than for a staff engineer to work on these projects. How will that save any money on improvement projects?

Sections 4 and 5 require all bond repayment fees over $1,000 per district to be dispersed to all improvement property owners on a pro rata basis. The costs to disperse checks to each befitted property can easily cost more than the refund amount. For example, in 2014 the city made 11,788 assessments. If the fund balance were $1,000 the average refund would be $0.084. Mailing cost would be a minimum of $0.86. Also, over the term of the bonds (10 to 15 years normally) the property owners may change many times. Who will pay for the costs of tracking these changes? We are concerned they may fall to be a property tax expense.

House Bill 1322 makes many adjustments in the special assessment process that affect the marketability of special assessment bonds and warrants. At present we enjoy a golden interest rate and market acceptance of our bonds. Financial markets do not normally tolerate changes well and we are concerned that any actions that will upset the financial or legal review of these bonds will potentially raise the assessed costs of these projects. We urge a "Do Not Pass" recommendation on House Bill 1322.

8.1 HB 1322 2/6/2015

House Bill 1322 –

Allowable Costs by Special Assessment

House Political Subdivision Committee

February 6, 2015

Chairman Klemin, Vice Chairman Hatlestad, and Committee Members

My name is Monte Erhardt. I am the current city auditor for the City of Hazen and a member of the ND Municipal Finance Officers Association.

We all are concerned about property taxes and special assessments which are utilized to meet the needs of our communities and to help our communities grow in a safe manner that brings all residents an improved quality of life. We appreciate the work of the legislature to address these property tax concerns, especially with regard to funding of our education system. While these steps have been a great help to our school systems they have done less to meet the needs and growing costs that cities face now and will face in the future. Local elected community leaders work very hard to be good stewards of the funds entrusted to them. We have seen property values increase dramatically in all areas of the state and our local leaders have taken this into consideration when reviewing prospective projects and annual budgets. But, as you know, these rising values have also had an effect on costs that we are seeing and have greatly impacted the costs of maintenance and construction of municipal infrastructure.

With regard to the bill, I have concerns with some of the language included in the bill, as introduced. We can all agree that special assessments are not intended to fund general maintenance and operations of various municipal services or infrastructure however, I believe, that these items need to be clearly defined to reduce the likelihood of any misinterpretation of what comprises general operation or maintenance.

Another area of concern with the language introduced in this bill is the requirement to refund, on a pro-rata basis, any amount, in excess of one thousand dollars that is remaining in the fund after payment of principle of the warrants or bonds. Many of these types of capital projects are assessed over a period of ten to twenty years. The first of my concerns with this language is;

who is the refund to be issued to? Over the course of the assessment a property may have been transferred from one owner to another several times. Are we being asked to maintain data on a property owner who paid a majority of the special assessment, and has transferred the property and is no longer a resident of the city? Or are we to issue the refund to the present title holder, who may not have paid any portion of the special assessment or a very limited portion of the assessment?

The second of my concerns relating to the limit of one thousand dollars has to do with the actual refund to be issued. We recently did a major repair and overlay of Main Street and several other streets, within the city at a cost in excess of two million, five hundred thousand dollars, a portion of which was assessed city wide. If at the end of the assessment we have one thousand one dollars remaining in the fund, under this bill we would be required to send a check in the amount of sixty-seven cents to each property owner. And I agree that some property owners hold title to more than one parcel within the city so their share may be slightly greater but this is still a concern for me. As I stated earlier, our local elected leaders do a very good job of approaching capital projects in a fiscally sound manner utilizing professional services to ensure the estimated costs and actual costs are closely scrutinized and kept under control. I do not believe any municipality purposely assesses costs of a capital project with intent to have a large amount of funds left after payment of the principle and interest of any such project.

I thank you for the opportunity to share my concerns with you and I appreciate the work you continue to do for all the citizens of our state. After all is said and done, our actions have a far reaching effect on just about everyone in our state and our communities, which all our local civic leaders take very seriously.

8.3

February 6, 2015

HOUSE POLITICAL SUBDIVISIONS COMMITTEE
HB 1322

CHAIRMAN KLEMIN AND MEMBERS OF THE COMMITTEE

For the record my name is Blake Crosby. I am the Executive Director of the North Dakota League of Cities representing the 357 cities across the State.

The North Dakota League of Cities respectfully asks for a Do-Not-Pass on HB 1322 and for the record submits written testimony from Dickinson, Williston and Hazen. In addition, the League has heard from Killdeer, Mandan, Bottineau, Rolla, South Heart, Valley City, Garrison, and Lincoln in opposition to the bill.

THANK YOU FOR YOUR TIME AND CONSIDERATION. I will try to answer any questions.

8.4

CITY OF DICKINSON

99 2ND STREET EAST • DICKINSON, ND 58601
701.456.7744 www.dickinsongov.com fax 701.456.7723

- Administration
- City Attorney
  - Human Resources
- Community Development
  - Building Department
  - Building and Sites
  - Cemetery
  - Code Enforcement
  - Forestry
  - Planning
- Engineering
- Finance
  - Assessing
  - Information Technology
  - Utility Billing
- Fire Department
  701-456-7625
  www.dickinsonfire.com
- Library
  701-456-7700
  www.dickinsonlibrary.org
- Municipal Court
- Museum
  701-456-6225
  www.dickinsonmuseumcenter.org
- Police Department
  701-456-7759
  www.facebook.com/DickinsonPD
  www.dickinsonpd.com
- Public Works
  - Street and Fleet
  - Solid Waste
  - Water Utilities

Date: February 2, 2015 Bill #: HB1322

Chairman Klemin and committee members:

My name is Shawn Kessel and I am the City Administrator in Dickinson, ND. I am submitting written testimony on behalf of the City of Dickinson against House Bill #1322 related to allowable expenses in special assessment districts.

Although there are some aspects of the bill that are noteworthy and supportable, other portions of the bill outweigh these benefits. Our main concerns revolve around the refunding of excess funds to property owners, limitations placed on engineering and administration fees, and the ban on the use of special assessment districts for maintenance projects (i.e. mill and overlays).

I am more than happy to expound and provide examples of the reasons for not supporting the bill if you desire. I may be contacted at (701) 456-7739 or Shawn.Kessel@Dickinsongov.com.

In conclusion, the city of Dickinson opposes House bill #1322.

Thank you for the opportunity to present our remarks.

Shawn Kessel
City Administrator – City of Dickinson

8.5

City of WILLISTON

P.O. Box 1306
Williston ND 58802-1306
PHONE: 701-577-8100
FAX: 701-577-8880
TDD State Relay: 711

NORTH DAKOTA

Chairman Klemin and committee members:

The City of Williston stands in opposition to HB 1322 as written. Requiring cities to refund for any amounts over $1,000 is an administrative problem. It is a problem right now with scores of people coming and going moving in and out of addresses requiring us to cut in and out just on utility accounts; but an assessment is over a 20 year time line and so to require us to refund current owners when a prior owner may have made payments does not seem to us to be in the best interest of the city as a whole. We prefer the current requirement that once all bonds are paid that excess funds are returned to the General Fund thus benefiting the entire community.

We also have difficulty in supporting a bill that limits our ability to do a maintenance assessment or as worded in bill "EXPENSES FOR GENERAL MAINENANCE MAY NOT BE DEFRAYED BY SPECIAL ASSESSMENTS". We have for years done a seal coat district that was paid with ½ city funds and ½ special assessed. As we read this bill this will not be allowed thus taking an important financing tool away from us. This assessment is subject to a protest hearing and so all of the tax payers in these districts are given the opportunity to oppose this district at a public hearing. We have as a general practice even sent letters to all in district to make sure they are aware that this is being proposed.

Please do not make this process more difficult and take tools that we have used for years away from us. We again ask that you oppose HB 1322.

Sincerely yours;

Howard Klug
President Williston City Commission

HB 1322
2/12/2015
1.1

February 11, 2015

HOUSE POLITICAL SUBDIVISIONS COMMITTEE
HB 1322 as amended

CHAIRMAN KLEMIN AND MEMBERS OF THE COMMITTEE:

My name is Blake Crosby and I am the Executive Director of the North Dakota League of Cities. On behalf of the League, I respectfully ask for a Do-Not-Pass on HB in its original form and as amended.

Regarding language in 40-23.1-04 on page 4 of the amended bill; we are particularly concerned about the legal challenges that may arise from lack of definition of "trackable and unique" and we believe the 3% threshold is arbitrary. Those two areas would be of particular concern to smaller cities that have limited staff and/or outsource those activities.

The language in 40-24-19, lines 17-21 on page 6, is confusing. Does it mean if the city issues bonds that end up over the cost, that the excess is paid for by general tax? If so, this goes back to testimony on how difficult it would be to determine who should receive a refund and in what amount. Smaller cities are not able to front the cost of a special improvement. They issue bonds based on an estimate and they should not be penalized if the final cost is less than the bond issuance.

Again, the North Dakota League of Cities respectfully requests a Do-Not-Pass.

Thank you for your time and consideration.

1.2

House Bill 1322
Representative Lawrence Klemin, Chair
House Political Subdivisions Committee
February 11, 2015

Chairman Klemin and Members of the House Political Subdivisions Committee:

The extensive nature of the amendments proposed to House Bill 1322 leave us uncertain as to the full effect of the amendment on the original bill.

Section 1 of the amended bill as proposed in the sponsor's amendment retains language that prohibits changes to the costs of a project for provision of city services in excess of 3% of the cost of the improvement unless those charges are "distinct" and "trackable". This provision was problematic to the city when we first testified on the bill and it is still an issue for us, primarily in the provision of engineering services. The cleanest way for us to address this issue would be to hire outside engineering services that will carry a higher cost than staff resources, thereby adding to project costs. If we use internal resources we open the question about who tracks the expenses and how. Do they need to be certified or audited so that they can be included in the costs covered by the bond? Whatever is decided will also need to be clear to bond counsel who must issue an opinion on the legality of the expenses charged to the project in order for the bonds to be saleable.

The City of Bismarck levies special assessments costs for the improvements in each district, collects those special assessments and holds them in a segregated fund until all the bonds for a district are paid. We do not finance other improvements with the proceeds from a district. The new language the sponsor offered as an amendment to NDCC 40-24-19 is very confusing. It seems to propose that general property taxes would need to be levied city-wide to pay any costs of the improvement not covered by the bonds issued for the project. The effect of that language is unclear to us. It needs to be clearly understood by the city and by bond counsel as well. We are all somewhat confused by it at this point.

House Bill 1322 is improved by the amendments offered by the sponsor but it is still of concern to us and the amendments offered by the sponsor have not remedied all those concerns. Please give this bill a "Do Not Pass" recommendation.

1.3

House Political Subdivision Committee

Legislative Testimony Relating to HB 1322 Amendments

City of Fargo

February 12, 2015

Chairman Klemin and members of the House Political Subdivision Committee, the City of Fargo is providing additional written testimony as a follow up to the amendments presented to HB 1322.

Many Cities both large and small testified about how this bill negatively impacts our ability to fund our infrastructure and how some of the provisions suggested in the bill are simply not feasible nor are they practical to implement. Cities strive to be as efficient and as fair as possible in the levying of special assessments. We feel strongly that existing laws and long established policies and practices in this area provide the best methodology to administer taxpayer special assessments.

Fargo would also like to share our experience with taxpayer disputes. During our interim hearings with our Special Assessment Commission and subsequent final public hearings by the City Commission we seldom have comments or protests about the amount of special assessments levied. This simply has not been an issue for us. We typically levy new special assessments for about 25 – 30 projects per year and our public rebuttal has been noticeably absent. In light of the lack of taxpayer discontent we feel that leaving the laws as current written is the best option for everyone. This entire process has been evaluated and reevaluated many times both by the Legislature and by our local governments and affirmed by the court system. Why try to fix a problem that is not broken and nobody is complaining about?

Fargo and other Cities testified on HB 1443 regarding our use of long term special assessment bonds and the need for low cost financing. Market demand for infrastructure and new housing developments is soaring all across the State of North Dakota. It is counterintuitive to restrict our special assessment process at a time when the market is demanding more from Cities. Special assessments provide the backing that allows us to market our bonds on a continuous basis to meet this demand.

We would appreciate your support of a DO NOT pass vote on HB 1322.

1.4

Excerpts from Fargo testimony on HB1443 relating to special assessment financing utilization:

"To put State-wide utilization of debt financing into context, we are providing a table of municipal debt issued for special assessment bonds for larger North Dakota cities. This helps you understand the need for capital financing and the relative amounts currently being used across the State."

City	Debt Issued 2010-2013	2014 Issues
Fargo	$176 million	$89 million
West Fargo	146 million	30 million
Williston	122 million	145 million
Bismarck	63 million	26 million
Grand Forks	26 million	10 million
Totals	**$533 million**	**$300 million**

"It is also important to know that we are seeing a stronger increase in the demand for new housing subdivisions as our local and State-wide economy continues to grow. The costs of the infrastructure for these sub-developments are repaid by special assessments."

1.5

City of Grand Forks

255 North Fourth Street • P.O. Box 5200 • Grand Forks, ND 58206-5200

(701) 746-2620
Fax: (701) 787-3740

TESTIMONY ON PROPOSED AMENDMENTS TO HOUSE BILL 1322

House Political Subdivisions Committee

Maureen Storstad, Finance Director
City of Grand Forks, ND

February 12, 2015

Mr. Chairman and members of the committee, my name is Maureen Storstad, and I am the Finance Director for the City of Grand Forks. I want to thank you for the opportunity to provide testimony on the proposed amendments to HB 1322. I am writing this testimony in opposition of House Bill 1322 and its proposed amendments.

Upon review, the majority of the bill has been deleted in its amended form. The remaining language due to the amendments causes confusion as to its intent. Specifically, there appears to be conflicting language in lines 17 through 21 on page 6 of the amended version. This language causes confusion as to what the intent is. Also, the 3% fee restriction is a concern. It would be an administrative burden to track all that is required to be able to pass the fee on. There are also costs that we incur administratively after the bond is sold and costs have already been special assessed. These costs would still need to be funded, shifting the burden to those not directly benefitting from the applicable project.

Because of the lack of certainty and clarity as to the intent, as well as concerns regarding the fees associated, I am respectfully requesting this Committee give House Bill 1322 and its amendments a do not pass recommendation.

1.6

City of Minot

Engineering Department

Testimony to the House Political Subdivisions Committee
Chairman Lawrence R. Klemin
Prepared by Lance Meyer, P.E., City Engineer
City of Minot
Lance.Meyer@minotnd.org

HOUSE BILL NO. 1322

Mr. Chairman, my name is Lance Meyer. I am the City Engineer for the City of Minot and I am writing in opposition to House Bill 1322 and the proposed amendments related to special assessments.

The amendments that have been submitted by Rep. Ben Koppelman have removed the modifications to NDCC 40-22 from the original bill which dealt with what types of improvements can be special assessed. The City of Minot is opposed to any changes to the current section 40-22 as the law is clear on what improvements can be assessed.

The City of Minot is opposed to the amendments and the original bill that would modify sections of 40-23.05 and 40-23.1-04. The proposed changes would require staff employed by the City to track all time worked on an assessment district in order for that time to be assessable. The City of Minot does not track any employee's time for any project. We do not have the capability from a technology standpoint to do this. Also, almost all of the employees that work with special assessments are salaried employees which would make this task more difficult.

For the reasons stated in this testimony, the City of Minot encourages a Do Not Pass on House Bill 1322 and the related amendments.

1.7

www.westfargond.gov

HOUSE BILL 1322 AMENDMENTS
CITY OF WEST FARGO

Upon review of the proposed amendments to HB 1322, the City of West Fargo recommends a **DO NOT PASS** for HB 1322. Below are concerns that arise in addition to those we have already presented in both verbal and written testimony at your hearing on February 6, 2015.

40-23.1-40: (page 4) This language is better; however, we are concerned about the language "trackable and unique to the project." Many project related costs can be tracked, however, the City of West Fargo (much like a lot of larger communities) issues a single bond to reimburse the city for multiple improvement districts and distributes the cost of bond issuance across each of the districts. The issuance of a single bond saves the taxpayers money by reducing issuance costs, however, based upon the language I could envision someone objecting that the cost of issuing a single bond is not unique to one of many districts included within the district. With no clear definition of the scope regarding the definition of "trackable and unique to the project" we could end up with litigation regarding what costs are unique.

40-24-19: (page no. 5). First off, we object to the amendment as being out of order and not germane. Second, the proposed language appears to be in conflict with the sentence that follows it. Cities issue special assessment bonds that are paid out of warrants that are equal to the value of the amount being specially assessed to the district. Special Assessment Bonds are not general obligations of the city (meaning a city wide tax levy, unless a deficiency occurs). The amendment would create a bond that is mixed G.O and special assessments. Generally a G.O. bond requires an election, unless there is a specific exception. See N.D.C.C. § 21-03-07. I think that what the amendment is trying to provide is that if there are project costs above and beyond allowable project costs, the city cannot special assess those costs. Such an amendment would not be appropriately placed within the section on warrants and improvement bonds.

The City of West Fargo requests the committee make a **do not pass** recommendation.

800 4th Avenue East • Suite 1 • West Fargo, ND 58078 • 701.433.5300 • FAX: 701.433.5319

1.8

February 11 , 2015
Testimony of:
April E. Walker P.E., C.F.M.
City of Fargo, City Engineer
Regarding House Bill 1322

Chairman Klemin and members of the House Political Subcommittee, I would like to thank you for the opportunity to testify in opposition to HB 1322. We urge this committee to support a do not pass vote.

This Bill seeks to limit the ability of political subdivisions that use special assessments to recover resources expended in the development and installation of projects by in house staff.

The premise appears to be that this labor and effort is a sunk cost for a city and that it should be budgeted in advance through other methods and is therefore not recoverable. This is a gross oversimplification. The bill does allow consultant fees to be passed directly to the assessment district.

What the bill fails to recognize is that the hourly fees established by the engineering firms have profit and overhead built into them. This bill prohibits the City from recovering similar overhead expenses.

When you compare City designed and inspected projects that include a percent markup to consultant designed and inspected projects with an hourly rate, it is clear that the City provides the service with a marked savings to the assessed property.

On average consultant fees equate to approximately 14% of the total construction cost. The same service provided by the City would average 11% for a new development and 4.5% on a reconstruction or rehabilitation.

This method of estimating costs that are a direct result of the project is appropriate and should be allowed to continue.

Each year the City puts together a capital improvement plan that is funded by various sources. How these funding packages are formulated is governed by an infrastructure funding policy. Under this policy new development projects are 100% assessed, and in general projects that are classified as rehabilitation or replacement are funded from multiple sources with the overriding intent being to try to generate 50% of the total cost through special assessments. In reality, because the policy seeks to provide fairness from year to year and neighborhood to neighborhood, the assessment caps have not kept pace with actual project costs, thus resulting in the cost share being shifted with a larger burden falling to the non assessed funding sources.

On the assessed portions of rehabilitation and reconstruction projects there is a percentage fee attached that seeks to recover costs of the city. So this portion of a portion, actually works out to be around 4% of the total construction cost. The ability to generate these R&R projects in a given year is limited by the non assessed funding sources. New development however, is executed on the basis of requests by developers and the City does not know in advance which developers are going to request infrastructure nor to what extent the request will be, and therefore cannot foresee the workload in a manner that would allow us to budget appropriately for unscheduled demand. Keep in mind that budgeting occurs a minimum of 6 months in advance of the budget year commencing. To budget appropriately one would have to predict what developers would be executing plats and requesting infrastructure a construction season in advance.

The engineering department has a staff of 58 full time equivalents. In addition we add seasonal employees each year to assist with construction. The number of seasonal employees varies depending on the size of the capital improvement plan and any additional unscheduled developments that are requested. So as you can see, employees are a mix of salaried positions and hourly positions. It is not uncommon for employees of both classes to average between 55-60 hours a week during the construction season. As you can imagine an employee that is doing construction inspection cannot be sent home regardless of the number of hours of overtime they are faced with, until the contractor has shut down operations for the day. Including this variable demand cost in the cost of the

projects that generate the demand is appropriate, and once again using a percentage to estimate costs is a reasonable approach that should be allowed to continue.

An additional percentage of 6% of the construction cost is used to estimate the costs of Administrating the Special Assessment District. These expenses include the cost of the special assessment commission which is necessary to spread the benefit, it includes the functions of the special assessment staff who perform benefit calculations, track project expenses, and levy the assessments with approval from the governing body. They also include the tracking of special assessment agreements for the term of the specials allocation, the execution of parcel changes on an annual basis to address the splits and combines that have been performed through platting or other means, and the legal defense of the allocation of the benefit. It further includes the staff time for the certification of the project to the county for collection, and the costs of bonding and bond counsel.

I understand that the committee also received information from the bill supporter regarding other percentages that he believed were applied to special assessments. It is important to note that these percentages in excess of those described above (11%(0r 4.5%) engineering +6% assessment administration) are not part of the district that is actually spread. They are estimates used by the City for the purposes of the Engineer's report because we carry the construction financing and bond at the completion of the work. To be sure that we encumber an appropriate amount of money to support the project through construction we use estimates of the miscellaneous expenses and the construction carrying costs. Prior to the certification of the improvement district actual expenses are tallied and replace the percentage estimates.

HB 1322
2/12/2015
2.1

House Bill 1322
Representative Lawrence Klemin, Chair
House Political Subdivisions Committee
February 11, 2015

Chairman Klemin and Members of the House Political Subdivisions Committee:

The extensive nature of the amendments proposed to House Bill 1322 leave us uncertain as to the full effect of the amendment on the original bill.

Section 1 of the amended bill as proposed in the sponsor's amendment retains language that prohibits changes to the costs of a project for provision of city services in excess of 3% of the cost of the improvement unless those charges are "distinct" and "trackable". This provision was problematic to the city when we first testified on the bill and it is still an issue for us, primarily in the provision of engineering services. The cleanest way for us to address this issue would be to hire outside engineering services that will carry a higher cost than staff resources, thereby adding to project costs. If we use internal resources we open the question about who tracks the expenses and how. Do they need to be certified or audited so that they can be included in the costs covered by the bond? Whatever is decided will also need to be clear to bond counsel who must issue an opinion on the legality of the expenses charged to the project in order for the bonds to be saleable.

The City of Bismarck levies special assessments costs for the improvements in each district, collects those special assessments and holds them in a segregated fund until all the bonds for a district are paid. We do not finance other improvements with the proceeds from a district. The new language the sponsor offered as an amendment to NDCC 40-24-19 is very confusing. It seems to propose that general property taxes would need to be levied city-wide to pay any costs of the improvement not covered by the bonds issued for the project. The effect of that language is unclear to us. It needs to be clearly understood by the city and by bond counsel as well. We are all somewhat confused by it at this point.

House Bill 1322 is improved by the amendments offered by the sponsor but it is still of concern to us and the amendments offered by the sponsor have not remedied all those concerns. Please give this bill a "Do Not Pass" recommendation.

N Walker
for City of Bismarck

HB 1322
2/13/2015
1.1

NDLA, Intern 08 - Vaagen, Tessa

From: Beadle, Thomas R.
Sent: Friday, February 13, 2015 9:13 AM
To: NDLA, Intern 08 - Vaagen, Tessa
Subject: Fwd: Special Assessments study

:

This is what I'm thinking for text:

Legislative Management shall study the use of special assessments by political subdivisions. The study shall include how special assessment and improvement districts across the state are determined and created, how administrative costs are calculated in determining project costs, how project costs are distributed amongst affected property owners and how excess revenues and fees collected by the special assessment and improvement districts are handled. Legislative management shall report its findings to the 65th Legislative Assembly.

Thoughts?

Thomas R. Beadle
ND House of Representatives
District 27 - Fargo
Committees:Industry, Business and Labor (IBL) & Political Subdivisions
Cell: 701.235.2348
Email: tbeadle@nd.gov

H.B.1322
3.20.15
#1

2/5/15

Mr. Chairman and Members of the Political Subdivisions Committee, My name is Rep. Ben Koppelman, and I represent District 16 in West Fargo. I am here to testify in favor of HB 1322.

I introduced this bill on behalf of a constituent who was concerned about the rapidly rising costs of special assessments and the lack of transparency and accountability of the amount that is charged by a municipality to defray in-house employee expenses. He also suspected that the amounts charged by the city exceeded the actual costs incurred by the city for those employees and thus became a de-facto tax revenue source. Since special assessments are only charged to a confined area of the city, ~~he felt~~ it would be inappropriate to use excess monies collected to fund general fund expenditures for the entire city. The House Political Subs committee amended this bill into a study. I would request that ~~we~~ you amend this bill back to version 15.0411.03001 and add the study to that amendment.

H.B. 1322
3-20.15
1#6

2/5/15

Mr. Chairman and Members of the Political Subdivisions Committee, My name is Rep. Ben Koppelman, and I represent District 16 in West Fargo. I am here to testify in favor of HB 1322.

I introduced this bill on behalf of a constituent who was concerned about the rapidly rising costs of special assessments and the lack of transparency and accountability of the amount that is charged by a municipality to defray in-house employee expenses. He also suspected that the amounts charged by the city exceeded the actual costs incurred by the city for those employees and thus became a de-facto tax revenue source. Since special assessments are only charged to a confined area of the city, he felt it would be inappropriate to use excess monies collected to fund general fund expenditures for the entire city.

Following the request to investigate how this process works, I inquired with the engineering departments of the respective cities in my district and learned the specifics as to how the special assessment process works. I was concerned to learn that some cities use a percentage "mark-up" of the costs of construction to offset employee time regardless if that "mark-up" exceeds the actual cost the city incurred for that project. I reviewed the applicable sections of the century code and

came to the conclusion that more clarity may be needed to make sure the spirit or intent of the section is followed.

Following the introduction of this bill, I reached out to city leaders to understand their concerns about the wording and the implementation of this bill. Following that feedback, I requested amendments that hopefully will achieve the goals of this bill without unintended consequences and with reasonable implementation expectations.

The bottom line goal of this bill is to ensure that only costs that provided special, unique, and direct benefits to the special assessment district are assessed to the properties in that district. Any expenses that are for the benefit of the entire municipality should be funded with traditional revenue sources such as property tax, sales tax, hospitality tax, city water and garbage fees etc. that all residents pay, and not by a limited group who has been special assessed.

Mr. Chairman and Members of the Committee, this concludes my testimony, and I will be happy to stand for questions.

H. B 1322
3.20.15
#1c

15.0411.03001
Title.

Prepared by the Legislative Council staff for
Representative B. Koppelman
February 5, 2015

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1322

Page 1, line 1, remove "40-22-01,"

Page 1, line 1, remove "40-24-18,"

Page 1, line 2, replace "40-27-05" with "40-24-19"

Page 1, remove lines 5 through 23

Page 2, remove lines 1 through 31

Page 3, remove lines 1 through 5

Page 3, line 19, remove "construction"

Page 3, line 22, remove "if the services are provided by a third party not employed by the city; and the"

Page 3, line 24, after the period insert "If the services of engineering, fiscal agent's, and attorney's fees are provided by individuals employed by the city, those costs may be included only to the extent they are trackable and unique to the project. The city may include an additional cost of up to three percent of other project costs for city administrative costs and the additional cost may exceed three percent to the extent city administrative costs are trackable and unique to the project."

Page 4, line 6, remove "construction"

Page 4, line 9, remove ", if the services are provided by a third party not employed by the city"

Page 4, line 11, after "~~that~~" insert "If the services of engineering, fiscal agent's, and attorney's fees are provided by individuals employed by the city, those costs may be included only to the extent they are trackable and unique to the project. The city may include an additional cost of up to three percent of other project costs for city administrative costs and the additional cost may exceed three percent to the extent city administrative costs are trackable and unique to the project."

Page 4, remove lines 14 through 30

Page 5, replace lines 1 through 17 with:

"**SECTION 3. AMENDMENT.** Section 40-24-19 of the North Dakota Century Code is amended and reenacted as follows:

40-24-19. Warrants and improvement bonds - Issuance - When payable - Amounts - Temporary warrants and temporary improvement bonds - Interest - Interest coupons - Negotiability - Eligibility as investments.

The municipality, at any time after making a contract for the construction of any improvement to be financed in whole or in part by assessments, under authority of any chapter of this title, or prior thereto but after the period for filing protests against the making of such improvement has expired and the protests filed, if any, have been heard and determined to be insufficient, and in anticipation of the levy and collection of such assessments and of any taxes or revenues derived from service charges pledged

to pay for such improvement, may issue warrants or improvement bonds on the fund created for such improvement. The municipality is responsible to the holders of the warrants or improvement bonds for the proper advertisement and award of a contract or contracts or provision by other means for the completion of the improvement; for the acquisition of all land, easements, licenses, and permits required for such completion; and for the valid and final levy of special assessments upon all properties within the improvement district to be benefited by the improvement, in an aggregate principal amount equal to the total cost of the improvement as finally ascertained, less the portions thereof, if any, determined to be paid from taxes, service charges, and any other source. If the warrants or improvement bonds issued by the municipality plus any other source of revenue pledged to repayment exceed the total cost of the improvement as finally ascertained, the excess amount may not be levied as special assessments but must be paid by the municipality from a general tax levy annually against all of the taxable property in the municipality. The issuance of the warrants or improvement bonds constitutes a representation and covenant binding upon the municipality that the aggregate benefits to be derived from the making of the improvement by the properties to be assessed therefor are not less than the aggregate amount of the special assessments so required to be levied. The warrants or improvement bonds shall be issued and shall mature in such amounts as in the judgment of the governing body will be provided for, at or before the maturity dates specified, by the taxes and assessments to be levied and spread and the revenues pledged therefor. In lieu of issuing definitive warrants or improvement bonds on any such fund, the governing body may by resolution authorize the issuance and sale of temporary warrants or temporary improvement bonds maturing in not to exceed three years from the date of issue of the first such warrant or temporary improvement bonds, to be repaid with interest from the proceeds of definitive warrants or improvement bonds maturing as hereinabove required, which the governing body shall issue and sell at or before the maturing date of said temporary warrants or temporary improvement bonds, in the amount required, with moneys theretofore received in such fund, to pay the total cost of the improvement and all temporary warrants or temporary improvement bonds theretofore issued on the fund, with interest then accrued thereon. The warrants or temporary improvement bonds must bear interest at a rate or rates and must be sold at a price, not less than ninety-eight percent of par, resulting in an average net interest cost not to exceed twelve percent per annum payable annually or semiannually, except that there is no interest rate ceiling on an issue sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. The definitive warrants or improvement bonds may bear interest at a rate or rates higher or lower than those borne by the temporary warrants or temporary improvement bonds, as determined by the governing body in effecting the sale thereof. In the sale of temporary warrants or temporary improvement bonds, the municipality may by resolution of the governing body agree to issue to the holder or holders thereof definitive warrants or improvement bonds upon specified terms as to interest, maturity, redemption provisions, and all other pertinent details, in the event that the municipality is unable to sell definitive warrants or improvement bonds to others upon more favorable terms. Coupons representing the interest for each year or lesser period may be attached to the warrants, whether definitive or temporary, or improvement bonds or temporary improvement bonds. All such warrants or bonds shall be negotiable within the meaning of and for all the purposes specified in title 41, and, to the same extent as general obligation bonds of the issuing municipality, are valid investments of the funds of any guardian, trustee, and other fiduciary of any kind or nature, any bank or other financial institution, any charitable, educational, or eleemosynary institution, and any public corporation or official, municipality, school district, or other political subdivision,

including bond sinking funds, special improvement funds, municipal utility funds, and funds of the state of North Dakota and its instrumentalities and agencies."

Page 5, line 18, after "for" insert "and applies to"

Renumber accordingly

1d

Sixty-fourth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1322

Introduced by

Representatives B. Koppelman, Belter, Dockter, Headland, Louser, Owens, Rohr, Streyle, Toman

Senators Larsen, Luick, Unruh

A BILL for an Act to amend and reenact sections ~~40-22-01,~~ 40-23-05, 40-23.1-04, ~~40-24-18,~~ and ~~40-27-05~~40-24-19 of the North Dakota Century Code, relating to allowable costs in improvements by special assessments; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

~~**SECTION 1. AMENDMENT.** Section 40-22-01 of the North Dakota Century Code is amended and reenacted as follows:~~

~~**40-22-01. Power of municipalities to defray expense of improvements~~~~capital projects~~ ~~by special assessments.**~~

~~Any municipality, upon complying with the provisions of this chapter, may defray the expense of any or all of the following types of improvements~~~~capital projects~~ ~~by special assessments:~~

~~1. The construction of a water supply system, or a sewerage system, or both, or any part thereof, or any improvement thereto or extension or replacement thereof~~~~of a system~~~~, including the construction and erection of wells, intakes, pumping stations, settling basins, filtration plants, standpipes, water towers, reservoirs, water mains, sanitary and storm sewer mains and outlets, facilities for the treatment and disposal of sewage and other municipal, industrial, and domestic wastes, and all other appurtenances, contrivances, and structures used or useful for a complete water supply and sewerage system. Expenses for general maintenance or operation of a water supply and sewerage system may not be defrayed by special assessments.~~

~~2. The improvement~~~~construction~~ ~~of the municipal street system and any part thereof, including any one or more of the processes of acquisition, opening, widening, grading, graveling, paving, repaving, surfacing with tar, asphalt, bituminous, or other~~

~~appropriate material, or resurfacing, or resealing, and repairing of any street, highway, avenue, alley, or public place within the municipality, and the construction and reconstruction of overhead pedestrian bridges, pedestrian tunnels, storm sewers, curbs and gutters, sidewalks, and service connections for water and other utilities, and the installation, operation, and maintenance of streetlights and all types of decorative streetlighting, including but not restricted to Christmas streetlighting decorations. Expenses for general maintenance or operation of a municipal street system or any other project authorized under this subsection may not be defrayed by special assessments.~~

~~3. The improvement of boulevards and other public places by the planting of trees, the construction of grass plots and the sowing of grass seed therein, and the maintenance and preservation of such improvements by the watering of such trees and grass, the cutting of such grass, and the trimming of such trees, or otherwise in any manner which may appear necessary and proper to the governing body of the municipality. Expenses for general maintenance or operation of a project authorized under this subsection may not be defrayed by special assessments.~~

~~4. The acquiring of the necessary land and easements and the construction of the necessary works, within and without the municipality, for flood protection of properties within the municipality. Expenses for general maintenance or operation of a project authorized under this subsection may not be defrayed by special assessments.~~

~~5. The acquiring or leasing of the necessary property and easements and the construction of parking lots, ramps, garages, and other facilities for motor vehicles. Expenses for general maintenance or operation of a project authorized under this subsection may not be defrayed by special assessments.~~

~~In planning an improvement project of a type specified in any one of the foregoing subsections, the governing body may not include in such plans any and all items of work and materials which in its judgment are necessary or reasonably incidental to the completion of an improvement project of such typeor any fees not specifically authorized by law. Only costs actually incurred may be included in the cost of a project. The governing body may not include in the cost of a project any work performed by an employee of the municipality unless that cost is unique to the project and is separately tracked to demonstrate that it is. The governing body may only include~~

~~engineering and architect fees for third party architects and engineers. If the architect or engineer is an employee of the municipality, no additional costs may be included unless that cost is unique to the project and is separately tracked to demonstrate that it is. A charter or ordinance or act of the governing body of a city or county under home rule authority may not supersede the limitations of this section.~~

SECTION 1. AMENDMENT. Section 40-23-05 of the North Dakota Century Code is amended and reenacted as follows:

40-23-05. Notice to special assessment commission.

At any time after the contract and bond for any work for which a special assessment is required have been executed and approved by the governing body of the municipality and the total cost of such work shall have been estimated as nearly as practicable, the governing body may direct assessments to be levied for the payment of all or any part of such cost, and the city auditor shall notify the chairman of the special assessment commission and shall certify to the chairman the items of the total cost thereof so far as the same have been ascertained. The chairman immediately shall call a meeting of the commission, which shall proceed as expeditiously as possible to make and return the special assessment as provided in this chapter. The total cost of the improvement which may be certified to the assessment commission ~~shall~~may include the estimated construction cost under the terms of the contract~~,~~; a reasonable allowance as determined by the governing body for cost of extra ~~construction~~ work which may be authorized under the plans and specifications~~,~~; engineering, fiscal agent's and attorney's fees for any services in connection with the authorization and financing of the improvement, ~~if the services are provided by a third party not employed by the city; and the~~ cost of publication of required notices and printing of improvement warrants~~, and all expenses incurred in the making of the improvement and levy of assessments therefor~~. If the services of engineering, fiscal agent's, and attorney's fees are provided by individuals employed by the city, those costs may be included only to the extent they are trackable and unique to the project. The city may include an additional cost of up to three percent of other project costs for city administrative costs and the additional cost may exceed three percent to the extent city administrative costs are trackable and unique to the project. If any error is made in estimating the cost, the governing body may direct a supplemental assessment to be made as provided in section 40-26-02.

SECTION 2. AMENDMENT. Section 40-23.1-04 of the North Dakota Century Code is amended and reenacted as follows:

40-23.1-04. Levy of assessments - Items included in cost of improvement.

At any time after the contract and bond for any work for which a special assessment is required have been executed and approved by the governing body of the municipality and the total cost of such work shall have been estimated as nearly as practicable, the governing body may direct assessments to be levied for the payment of all or any part of such cost, and the city auditor shall ascertain and return, as provided in this chapter, the total assessment against each separate lot, tract, or parcel of land in the improvement district. The total cost of the improvement shall include the estimated construction cost under the terms of the contract; a reasonable allowance as determined by the governing body for cost of extra ~~construction~~ work which may be authorized under the plans and specifications; engineering, fiscal agent's, and attorney's fees for any services in connection with the authorization and financing of the improvement~~, if the services are provided by a third party not employed by the city~~; and the cost of publication of required notices and printing of improvement warrants~~; and all expenses incurred in the making of the improvement and levy of assessment therefor~~. ~~In the event that~~ If the services of engineering, fiscal agent's, and attorney's fees are provided by individuals employed by the city, those costs may be included only to the extent they are trackable and unique to the project. The city may include an additional cost of up to three percent of other project costs for city administrative costs and the additional cost may exceed three percent to the extent city administrative costs are trackable and unique to the project. If any error is made in estimating the cost, the governing body may direct a supplemental assessment to be made as provided in section 40-26-02.

~~**SECTION 4. AMENDMENT.** Section 40-24-18 of the North Dakota Century Code is amended and reenacted as follows:~~

~~**40-24-18. Special improvement moneys to be kept separate - Designation and numbering of funds - Diversion of moneys prohibited.**~~

~~All special assessments and taxes levied and other revenues pledged under the provisions of this title to pay the cost of an improvement shall constitute a fund for the payment of such cost, including all principal of and interest on warrants and other obligations issued by the municipality to finance the improvement, and shall be diverted to no other purpose. The city~~

~~auditor shall hold all moneys received for any such fund as a special fund to be applied to payment for the improvement. Each such fund shall be designated by the name and number of the improvement district in or for which said special assessments, taxes, and revenues are collected. When all principal and interest on warrants and other obligations of the fund have been fully paid, all moneys remaining~~~~if less than one thousand dollars remains~~ ~~in a fund may~~~~it must~~ ~~be transferred into the general fund of the municipality.~~ ~~If one thousand dollars or more remains in the special fund after the payment of the principal of all the warrants and other obligations and the interest thereon, the balance must be returned to the owners of the property against which assessments were levied, on a pro rata basis.~~

~~**SECTION 5. AMENDMENT.** Section 40-27-05 of the North Dakota Century Code is amended and reenacted as follows:~~

~~**40-27-05. Special fund for payment of bonds issued for purchase of special assessment warrants - Tax levy.**~~

~~The governing body of a municipality which issues bonds for the purchase of special assessment warrants shall create a special fund for the payment of the principal and interest of such bonds as they become due and shall credit to such fund all special assessments collected for the payment of the special assessment warrants purchased. The governing body shall make a general tax levy annually on all the property in the municipality which, together with the special assessments collected, shall be sufficient to pay the principal and interest of the bonds when they become due. The levy imposed shall not be subject to any of the tax levy limitations imposed by section 57-15-08 or acts amendatory thereof. If any money~~~~less than one thousand dollars~~ ~~remains in the special fund after the payment of the principal of all the bonds and the interest thereon, such balance may~~~~must~~ ~~be transferred to the general fund.~~ ~~If one thousand dollars or more remains in the special fund after the payment of the principal of all the bonds and the interest thereon, such balance must be returned to the owners of the property against which assessments were levied, on a pro rata basis.~~

SECTION 3. AMENDMENT. Section 40-24-19 of the North Dakota Century Code is amended and reenacted as follows:

40-24-19. Warrants and improvement bonds - Issuance - When payable - Amounts - Temporary warrants and temporary improvement bonds - Interest - Interest coupons - Negotiability - Eligibility as investments.

The municipality, at any time after making a contract for the construction of any improvement to be financed in whole or in part by assessments, under authority of any chapter of this title, or prior thereto but after the period for filing protests against the making of such improvement has expired and the protests filed, if any, have been heard and determined to be insufficient, and in anticipation of the levy and collection of such assessments and of any taxes or revenues derived from service charges pledged to pay for such improvement, may issue warrants or improvement bonds on the fund created for such improvement. The municipality is responsible to the holders of the warrants or improvement bonds for the proper advertisement and award of a contract or contracts or provision by other means for the completion of the improvement; for the acquisition of all land, easements, licenses, and permits required for such completion; and for the valid and final levy of special assessments upon all properties within the improvement district to be benefited by the improvement, in an aggregate principal amount equal to the total cost of the improvement as finally ascertained, less the portions thereof, if any, determined to be paid from taxes, service charges, and any other source. If the warrants or improvement bonds issued by the municipality plus any other source of revenue pledged to repayment exceed the total cost of the improvement as finally ascertained, the excess amount may not be levied as special assessments but must be paid by the municipality from a general tax levy annually against all of the taxable property in the municipality. The issuance of the warrants or improvement bonds constitutes a representation and covenant binding upon the municipality that the aggregate benefits to be derived from the making of the improvement by the properties to be assessed therefor are not less than the aggregate amount of the special assessments so required to be levied. The warrants or improvement bonds shall be issued and shall mature in such amounts as in the judgment of the governing body will be provided for, at or before the maturity dates specified, by the taxes and assessments to be levied and spread and the revenues pledged therefor. In lieu of issuing definitive warrants or improvement bonds on any such fund, the governing body may by resolution authorize the issuance and sale of temporary warrants or temporary improvement bonds maturing in not to exceed three years from the date of issue of the first such warrant or temporary improvement bonds, to be repaid

with interest from the proceeds of definitive warrants or improvement bonds maturing as hereinabove required, which the governing body shall issue and sell at or before the maturing date of said temporary warrants or temporary improvement bonds, in the amount required, with moneys theretofore received in such fund, to pay the total cost of the improvement and all temporary warrants or temporary improvement bonds theretofore issued on the fund, with interest then accrued thereon. The warrants or temporary improvement bonds must bear interest at a rate or rates and must be sold at a price, not less than ninety-eight percent of par, resulting in an average net interest cost not to exceed twelve percent per annum payable annually or semiannually, except that there is no interest rate ceiling on an issue sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. The definitive warrants or improvement bonds may bear interest at a rate or rates higher or lower than those borne by the temporary warrants or temporary improvement bonds, as determined by the governing body in effecting the sale thereof. In the sale of temporary warrants or temporary improvement bonds, the municipality may by resolution of the governing body agree to issue to the holder or holders thereof definitive warrants or improvement bonds upon specified terms as to interest, maturity, redemption provisions, and all other pertinent details, in the event that the municipality is unable to sell definitive warrants or improvement bonds to others upon more favorable terms. Coupons representing the interest for each year or lesser period may be attached to the warrants, whether definitive or temporary, or improvement bonds or temporary improvement bonds. All such warrants or bonds shall be negotiable within the meaning of and for all the purposes specified in title 41, and, to the same extent as general obligation bonds of the issuing municipality, are valid investments of the funds of any guardian, trustee, and other fiduciary of any kind or nature, any bank or other financial institution, any charitable, educational, or eleemosynary institution, and any public corporation or official, municipality, school district, or other political subdivision, including bond sinking funds, special improvement funds, municipal utility funds, and funds of the state of North Dakota and its instrumentalities and agencies.

SECTION 4. APPLICATION. This Act is effective for and applies to special assessment district projects initiated by approval of an engineer's report after December 31, 2014.

H.B. 1322
3.20.15
#2

March 20, 2015

SENATE POLITICAL SUBDIVISIONS COMMITTEE
HB 1322

CHAIRMAN BURCKHARD AND MEMBERS OF THE COMMITTEE:

For the record my name is Blake Crosby. I am the Executive Director of the North Dakota League of Cities representing the 357 cities across the State.

A little history of this bill if I may: After its introduction I asked Mr. Jim Brownlee, West Fargo City Administrator, to visit with the bill sponsor to see if they could agree to some amendments or changes that might make the bill less onerous. Unfortunately, retaining the premise of the original bill did not allow for any less negative impact no matter the changes made. However, the sponsor did ask Legislative Council for a rewrite so the bill was nearly "hoghoused" and presented to House Political Subdivisions where it was given a do-not-pass but ultimately moved to a study.

Special assessments do not need to be studied. Yes, North Dakota does them a bit differently but the process has withstood all legal challenges. There is nothing underhanded, nefarious, cloaked-in-secrecy about the process. It is spelled out in NDCC and works as governed.

If the Legislature should at some point in time get wind of some illegality or abuse, the North Dakota League of Cities could easily gather the data without involving hearings, legislator and city official travel, and creating a bunch of controversy. Whether you like or dislike the process...it works and works well for the taxpayer who is the ultimate recipient of the improvement district benefit.

On behalf of the North Dakota League of Cities, I respectfully request a Do-Not-Pass on engrossed HB 1322.

THANK YOU FOR YOUR TIME AND CONSIDERATION. I will try to answer any questions.

H.B. 1322
3.20.15
#3

Engrossed House Bill 1322
Senate Political Subdivisions Committee
March 20, 2015

Good morning Mr. Chairman and Members of the Senate Political Subdivisions Committee. My name is Bill Wocken. I am City Administrator for the City of Bismarck. The city was opposed to House Bill 1322 in its original form due to conflicts with the established special assessment process. The City Commission has not specially considered this study.

Special assessment projects are a frequent occurrence in our city as continuing growth pushes the need for new developments and the infrastructure they occasion. The process is governed by North Dakota Century Code Chapter 40-23 and it seems to operate efficiently. Is everyone happy? No. that is almost impossible when one is sending out bills for improvements. However, a strong effort is made to answer questions and to address problems as they are identified. Very few appeals are lodged with the City Commission.

The Century Code requires the city to propose the infrastructure improvement to be financed, estimate its cost and determine those who will benefit from the improvement. Once this is done the properties determined to be benefitted are notified of the improvement and their potential costs. The property owners have an opportunity to protest the improvement before it is approved by the City Commission. The city appoints a Special Assessment Commission (NDCC 40-23-01) and asks it to look at the authorized improvement after it is complete and the assessments are published in the newspaper to determine a "just proportion" of the costs of the improvement to be assessed against each benefitting ownership (NDCC 40-23-07). The Special Assessment Commission needs to hold a public hearing on the proposed assessments and, after making any adjustments deemed reasonable, confirm an assessment list.

This list goes to the Board of City Commissioners for their consideration at public hearing (NDCC 40-23-15) at which time any aggrieved person has the right to appeal their assessment. After the City Commission takes action to confirm the special assessments with any changes they may wish to see, court action is still available to any aggrieved party. The process is very public and multiple groups consider all proposed assessments.

I look at the process and the millions of dollars of special assessments moved through this process each year (Bismarck alone assessed $24,725,000 in new assessments in 2014) and I wonder what should be studied. The bill calls for the study to investigate how a district is created, what costs are allocated to the district and what happens to any excess revenue. I think that information can be quickly obtained from the North Dakota League of Cities. I am concerned that we will be studying things like the equity of the assessments, additional public hearings and multiple exceptions; items that have a potential to disrupt a well-established process.

The net result of the special assessment process is the sale of bonds by the municipality at tax exempt rates to finance infrastructure improvements. I would hesitate to do anything that might get the financial markets excited about potential process changes. That usually shows up in increased interest rates on the bonds which the people in the district pay. Bismarck last sold special assessment bonds at 1.59% interest for a 7 year term.

Unless there are other items to consider I am not sure that a study will be helpful and I do worry that a study may destabilize the excellent market relationship we enjoy today. I think local government can continue to use existing NDCC 40-23 to issue special assessment bonds and to pay them with minimum costs to the taxpayers. Our local elected officials understand their responsibility for a fair process and the taxpayers' need for transparency and to this point special assessments have not caused undue concern.

Committee members, I am not sure passage of House Bill 1322 and its resulting study is a positive thing and I do think it has a distinct possibility that a study could actually increase the biggest continuing cost of a district, the interest rate charged by the markets.

Bill Wooten