

2015 HOUSE POLITICAL SUBDIVISIONS

HB 1459

2015 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Prairie Room, State Capitol

HB 1459
2/13/2015
23850

- Subcommittee
 Conference Committee

Ammonia Muscha

Explanation or reason for introduction of bill/resolution:

Relating to voter approval of indirect funding methods for acquisition, improvements, or construction by or on behalf of a political subdivision of any property or structure and to require a school district to obtain approval of the superintendent of public instruction for acquisition, improvements, or construction of any property or structure financed through indirect funding methods; and to provide and effective date.

Minutes:

Testimony 1, 2, 3, 4, 5, 6, 7

Chairman Klemin: Opened hearing on HB 1459

Representative Boehning: Testimony 1

Chairman Klemin: This would require a vote any time one of these wanted to build a new structure.

Representative B: Correct. We have many new buildings coming up and some went against the wishes of the citizens of the county. There was a vote against one 3 times to not build and they are building anyways. It is tax payers' dollars and we should not be shifting authority and we should not be shifting bonds without approval of the city.

Representative Hatlestad: Does this mean if an agency built a school, leased it to a school district, the super public construction could stop the school construction?

Representative Boehning: I am not sure if he could stop it but the people need to give approval for building authorities. Fargo is redoing bond issues and this has been a big debate.

Chairman Klemin: The section that is being amended was just enacted in the last session and to require a school district voter approval of building authorities or other indirect funding methods and this is under the chapter of bonds. So I read the bill that you are changing this to apply to instead of school districts but to municipalities or governing bodies of municipalities.

Representative Boehning: Correct.

Chairman Klemin: Why would we not want to continue with this requirement for school districts?

Representative Beadle: The definition of municipality in this section of code means county, city, township, public school district, park district, recreational district, and rural fire district and the power to borrow money. School districts covered within the definition of municipality within this section of code. With constructing any building, would that apply to adding a lift station to service new neighbor hoods or if a park district wanted to put in a new gazebo?

Representative Boehning: They could do special assessments for those, which would apply to this, so it is more the bonding issues for new buildings and so forth we removed the improvements out of the language so that would clarify. With those it would be I their budget.

Representative Koppelman: This bill needs some clean up. It seems to me that section of law, the term that they are using for municipality, is generally what a political subdivision would define. It is confusing because when we think of a municipality it is a city government.

Representative Beadle: It also means any of the things I included that is able to borrow money and issue written obligations to repay out of the fund of public revenue. I think that might be a limiting factor based off the fact that it is empowered to borrow money. I don't know if we have any political subdivisions that can't borrow money?

Chairman Klemin: That is how a municipality is defined here.

Representative Vigasa: I am providing neutral testimony. (Testimony 2) These votes are relating to the building of the new court house in the Griggs's County. You see a conflict. They went ahead without the approval. They didn't have enough money so who is now responsible to get the rest?

Representative Maragos: Could a county vote in a restriction like that on its own?

Representative Vigasa: I am not sure.

Representative Kretschmar: These all required a 60% correct?

Representative Vigasa: Yes they did and they were a ways from reaching that threshold.

Representative Hatlestad: Does this bill require every structure to have vote for building authority or once you vote the building authority in it stays?

Representative Vigasa: Once a building authority is approved I would think they could move ahead with what they please.

Troy Olson: Testimony 3

Chairman Klemin: Are you a county commissioner?

Troy Olson: Yes

Chairman Klemin: You are just speaking as a citizen not as a commissioner?

Troy Olson: Yes. I didn't tell them I would be coming to testify on behalf of myself.

Representative Maragos: The lease an agreement with the building authority, what happened? Is there a monetary exchange there, and what happens to that money?

Troy Olson: This lease agreement is set up as a general obligation of the county and the lease payments actually are made right to the bank of North Dakota to repay the bonds.

Representative Maragos: Why were the commissioners so adamant about building a new court house? Was there something wrong with the old county court house that needed to be addressed, because some old buildings have to be updated, it is costly and then they become maintenance extensive? Why was it such an attractable argument?

Troy Olson: The way I see it, yes that building needed upgrading. I think what was at issue was the size of the project and the first two votes were to upgrade/update and build on to the existing court house and then the last one was to build a whole new court house. I think the problem as to why the bond issues fail would be that they were presenting options to the voters that the voters didn't like and I think the right thing to have done would be to have brought another option forward, which they chose not to do.

Representative Maragos: In my county we had the same problem. We needed more space, we had the bond, and the voters voted it down. We have the problem now of not enough jails space too. The voters finally approved the project and they ended up getting a 1/3 of the quality of the building for the same cost as the first time it would have been.

Troy Olson: I understand that it is a risk but it is still the tax payer's money.

Representative Strinden: The bill doesn't address what happens after the project is done. There is no provision for the building authority to dissolve. Could that be a problem?

Troy Olson: It could be in the future, but doesn't each new building authority need a vote?

Representative Hatlestad: Is your county making payments on the unfinished court house?

Troy Olson: Yes

Representative Hatlestad: If the building authority that exists borrowed more money to finish the court house then you still have the obligation to rent or lease it? That is not an option for you.

Troy Olson: The lease will be in place until 2033. I don't know if there is a way for the county not to continue paying that? In some people's eyes the building authority breached their contract when they didn't finish the building. We can't inhabit it. This project gets a little convoluted because part of the building is owned by the county and part is not. The emergency operation center was built with the help of a grant from the North Dakota DES. That grant is a 25% match by the county. So the county has to pay the 25% of the grant.

When we have caught up with the contractor and the building authority still has a 274,000 balance with the contractor, they are not willing to comeback and finish the EOC center or the court house until that is paid. The building authority only has 193,000 left in the bond fund. It looks to me like the county is going to have to step this up and finish it but it's hard for me to understand that when the county doesn't own the building. If more debt were incurred to do that, the county would have to pay that back over the next 20 years anyway. In a fashion I guess it doesn't matter.

Representative Kelsh: Wasn't there an issue with the old court house?

Troy Olson: There was an issue with moisture and they recommended some work be done on the courthouse so it would be more well drained. Those things have not been done. The new court house is 30 feet from the old one and we don't know what we will do with the old one because we don't have the funding to do much with it. It is also on the national historic register and retaining and maintaining the courthouse at this juncture is a covenant of the DOC grant. There are more hoops to jump through to get permission to get permission to do something with the court house. When and if we get to that point.

Representative Maragos: I am unclear on the relationship with the building authority and the county. Who owns the building authority?

Troy Olson: The previous county commissioners formed a non-profit corporation.

Representative Maragos: Who chooses the members of the building authority?

Troy Olson: They do. Some of the new county commissioners have asked to sit on that. Particularly when one of the old commissioners resigned so there were only four of them and they did not allow that, just so we could stay in the loop.

Representative Maragos: There is no mechanism to control what they are doing?

Troy Olson: We have no recourse. On March 3rd the general contractor and the building authority is supposed to meet.

Chairman Klemin: There must be some statutory provisions relating to the formation and operation of the building authorities. Are you aware of any statutory provisions relating to creation and operation of building authorities?

Troy Olson: This was formed in the incorrect fashion. It was under direction of the previous state attorney at the time.

Opposition:

Kent Costin: Testimony 4

Chairman: You seemed a little critical about what the state of North Dakota is doing with these building authority issues but this bill doesn't apply to the state only to municipalities as defined in this chapter.

Kent Costin: Yes. The purpose of this is to point out the equity in the use of tools. I am not being critical that the state is using it. I think it is being actively used because it is a good tool. I am just comparing and contrasting the right you are leaving for the state as opposed to the restrictive nature of what is being imposed upon schools and municipalities.

Representative Maragos: Can you tell me about the structure and governance of your building authority?

Kent Costin: It was as a result as the project I testified about. We had our existing city hall, we were running out of space, and we needed more room. Existing in the century code is a chapter that allowed the procedure to happen. You designate and form a non-profit corporation in the state of North Dakota; you designate people to serve on the building authority. (In Fargo they did name themselves) It is an independent entity that operates separately and they are the authority that borrows the funds under the provisions of the North Dakota century code.

Representative Maragos: If a commissioner changes it changes the building authority for the city?

Kent Costin: Yes.

Representative Koppelman: Do you see anything lacking in state law currently regarding the accountability of building authorities?

Kent Costin: The issue with regard to the ability is what was sighted earlier. It is the size and the nature of that transaction. If you're talking about Fargo doing a 5 million dollar renovation of city hall, we don't believe that there is any reason to reach out to the citizens and say would you please give us 60% voter approval to do this project it is needed and we have the money, but we are going to borrow the money to do it. In the case of a smaller community where there may be limited capacity to pay those bonds, I think it is a huge issue. That's where all the noise you hear about is. It is when someone rises and says this needs to be done; we are pushing the envelope here with regard to fiscal prudence I can see that simply handing it off to an authority doesn't close up the hole.

Representative Kretschmar: Your building authority is under the city commissioner and they can do what they want with it?

Kent Costin: Yes. They can even appoint whoever they choose to be on the building authority.

Representative Kelsh: When you did the city hall, you went with a building authority, they borrowed the money, they built it, and normally there is a lease back (they build it and lease it back to the city). Is that what happened there? Because the city doesn't really own that do they?

Kent Costin: You are exactly right. The building authority owns the building that was financed with the proceeds for the money they borrowed. The city, or the municipality, is the entity that must appropriate the funds in their annual budgets to pay that lease of the use of that facility until those bonds are dissolved or paid off. So in 20 years the whole structure just ends and I would assume that the asset would get transferred over back to

the city because there is no more debt or maybe there is nothing to be said that the building authority couldn't continue to hold title.

Chairman Klemin: The way the bill is proposed to be amended it takes out the work improvements. That changes the existing law too and your city hall project was a remodeling and expansion project, you wouldn't consider that that to be a new project? That was an improvement of an existing facility?

Kent Costin: Yes, we would not need approval then. With regard to acquisition that happens sometimes too. In Fargo we bought an old CVS building down on 13th avenue. We bought that property because it was run down, vacant, and we wanted to use it for municipal purpose. So we acquired that property which under this bill would require more approval and then we improve and are in the process of improving it right now to the tune of about 9 million dollars so all in we are going to have 12 million dollar investment in this facility but this bill cuts it in half. The question we would ask the voters perhaps is can we borrow money to buy the place and then if the improvements aren't said of that authority then we could move to fix it up to whatever standard we want.

Representative Hatlestad: Did the building authority borrow the money to buy this building then and renovate it and they will lease it back to the county?

Kent Costin: We actually paid cash for the building out of our cash reserves. It was a budgeted item within the general fund.

Chairman: This would not apply to that situation at all?

Kent Costin: No. The point I want to make is each circumstance will be unique depending on what your community needs are. You may have to acquire a building, renovate an existing one, or you may have to build a new one. We would ask that, that would be evaluated.

Representative Koppelman: Why are building authorities necessary?

Kent Costin: They became populate in the 80's and they were a way to circumvent voter approval. In the case of a state you have a limitation on debt and so do cities. There is a limitation on debt but the needs continue. The question is how we make this happen and provide a funding source.

Blake Crosby: Testimony 5

Representative Zubke: Did they issue tax exempt bonds to finance that courthouse?

Blake Crosby: I was only curious about what happened and was doing some work there but I can't answer that question.

Representative Zubke: It looks as they typically issue a tax exempt bond and the bond holders are the ones that get left because that political subdivision does not have to continue to lease that courthouse or make those lease payments. The bond holders subsequently become responsible and they have no recourse against that political subdivision.

Representative Strinden: If the elected officials of a political subdivision appoint someone to be on a building authority they don't have the power to remove them and appoint someone else in their place?

Blake Crosby: If they have the power to appoint they have the power to remove.

Representative Strinden: Now there is a new elected county commission. Could the reappoint the building authority?

Blake Crosby: My guess is if they could they already would have.

Dana Jahner: Testimony 6

Barb Erbstoesser: Testimony 7

Representative Kelsh: The 45,000 square foot community recreational center, the money for the term of the bond is there on a yearly basis. So you won't raise the property taxes of the people.

Dana: If we will bond this for so many years and we set up an amortization schedule and we look at land dedications and user fees we generate from the building and we predetermine how we will pay for that and it is right along the planning process of the whole building.

Representative Beadle: Do the user fees associated with the facilities cover the operational expenses associated with the facilities? I understand the process of the building authority itself doesn't directly increase property taxes but if you increase the amount of buildings and square footages and space that you are having to staff and maintain and handle, how does that impact the operational budget as a whole the park district and then could that indirectly lead to property tax revenues?

Barb: We have seen substantial growth in our programs and activities and it seems that we have opened the doors and people flood in. We offer programs from people 18 months old. The revenue from the programs off set the operational and maintenance fees for the most part and those are things we also take into consideration as well. We know if we are adding these facilities we will have greater demand for more employees and it is a balancing act.

Representative Zubke: You say the mill don't raise property taxes but who assess the recreational mills and isn't that onto those property holders?

Barb: Back in the late 80's we levied for 16 mills for a general fund and we have five other mills for recreation. Those recreation mills are designated for projects and things like that but they also cover small improvements that we are not necessarily bonding for or using the building authority on.

Representative Koppelman: You talked about the many ways the building authority financed the projects. If the bill were passed you said there would be no other way to fund the project other than general obligation election. Is there something in the bill that would not allow some of these other things like user fees, donations, and so on?

Barb: Expanding on the project we wouldn't be able to look so far ahead like we have or do some of the larger projects. We are diligent about that. Not everything fits into the building authority.

Chairman Klemin: Doesn't the bill allow you to do these projects with voter approval?

Barb: Yes but it would put on delay. Time is of the essence.

Representative Anderson: If you go to the voters to ask for the project do the voters anticipate that you are using their property taxes and you aren't?

Barb: That could be a concern.

John Martinsen: The problem everyone talks about is very unique. School boards are already supposed to get voter approval. I have a concern about the language on page 2 line 4. This is a bill that should be killed.

Representative Hatlestad: If you created a building authority to build a school and DPI says no, you can't do it?

John Martinsen: Correct

Representative Koppelman: It seems to me that there is a long list of the agreements there are talking about on the language you are concerned about it.

John Martinsen: I would agree.

Chairman Klemin: We will hold this bill until next week and am closing the hearing on HB 1459

2015 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee

Prairie Room, State Capitol

HB 1459

2/19/2015

24150

Subcommittee

Conference Committee

Amanda Musche

Explanation or reason for introduction of bill/resolution:

Relating to voter approval of indirect funding methods for acquisition, improvements, or construction by or on behalf of a political subdivision of any property or structure and to require a school district to obtain approval of the superintendent of public instruction for acquisition, improvements, or construction of any property or structure financed through indirect funding methods; and to provide an effective date.

Minutes:

Testimony 1 and 2

Chairman Klemin: Opened discussion on HB 1459. I have asked John to explain building authorities.

John Walstad: (Testimony 1) It is something you don't hear about a lot but it is used often in our state. It is an alternative financing method. Building authorities are a recent development. There was a revenue ruling that said bonds issued by a building authority are exempt from federal income tax. Without that building authorities would be pointless. It makes the bonds attractive to investors in the same manner as the traditional bond issued by whomever. I don't think there is an appreciable difference in the rate of interest. Building authority bonds would be a higher rate of interest because there is more risk to the investors because a levy to pay the bond is levied for 20 or 30 years into the future. The levies are all made instantly and irrevocably. A building authority doesn't have that guarantee. The traditional method is the building authority issues the bonds, builds a structure, leases it back to the entity, and that is not necessarily guaranteed for 30 years. It is a year by year renewal of the lease agreement. You don't save any money with the building authority. Not to put down building authorities but the only feature of building authorities that makes them attractive is no election. Voters aren't involved in the process. The building authority has to be formed as a non-profit corporation. The entity cannot form it. There is an attorney general opinion that is referenced here that the subdivision can't form the building authority directly, but in reality what happens is the members of the governing body end up being the board of directors of the building authority: it is the same people but not them as a governing body it is them as individuals. In the memo there is a listing which was made a few years back. It has probably grown but I put it there because as legislators I thought you might want to know if you have one in your back yard. It appears primarily that it is school districts that become involved but it could be anyone. We have

had legislation on this topic in recent sessions, and after 3 attempts to put restrictions in place legislation was enacted after last session that does require voter approval of a building authority arrangement in some circumstances.

Chairman Klemin: This statute that is being amended in the bill was enacted in 2013. Is there another one besides this?

John Walstad: No that is the only one relating to building authorities now. You have probably heard about the Grigg's county issues and that situation is not a building authority. They had to set one up but we have a statutory provision that is specific (57.15.59) and was used in Grigg's County. That one is limited to a build lease arrangement for a court facility, jail, and law enforcement. It would be put there mainly for court facilities. It has been there for many years and it was not on my radar until the Grigg's county situation came up. It is one that rarely comes up but in the Grigg's county situation that is what was used.

Chairman Klemin: Is there a separate statutory authority for the creation of these building authorities that can issue these bonds?

John Walstad: No. It is just a non-profit corporation, so there is authority to set up non-profit corporations and they can do so and specify that their purpose is to issue bonds and build a building and lease it to a political subdivision. All of that is allowed under corporate formation laws.

Chairman Klemin: In the constitution and in the statute on bonding there are limitations on the amount of bonds that can be issued based on the tax evaluation of cities or counties. These building authorities are not subject to those limitations?

John Walstad: No they are not. It is not considered debt of the political subdivision and the reason being as I mentioned that lease arrangement can be canceled at any time. It is an annual expenditure from available revenue.

Chairman Klemin: Have there been any previous studies?

John Walstad: There has not been a study specifically on use of building authorities. As you see this memo was prepared for the interim tax committee but it wasn't a specific study on that. It was a topic that arose and I prepared some information and that was about it.

Representative Maragos: Is the state of ND a political subdivision under that description?

John Walstad: No the state is not a political subdivision, but the state could probably do something like this under that authority and those bonds would be.

Chairman Klemin: There is a separate chapter in the statute on the state building authority called the ND building authority.

John Walstad: True enough.

Representative Zubke: You said Grigg's County could cancel the lease agreement so the remedy there is they cancel the lease and they are no longer obligated to use that court

house then, right? Those bond holders are the ones that end up with the responsibility for that.

John Walstad: That is when the lawyers show up to sort it out. I am not sure what the resolution would be.

Representative Kelsh: You brought up the 60% for bond votes. Why did it end up there?

John Walstad: I am not sure. I think it has something to do with farming. That in a lot of taxing districts the majority of the tax base is farm land but the majority of the voters are non-farmers. There are different vote percentages required for different kinds of bond issues.

Representative Anderson: You think this is a good idea?

John Walstad: I don't know how to answer that. There have been bills considered and every time committees don't know how to deal with it. I think you see the issue here. There may not be a lot of data to be gathered but the question is is this a good thing to be used or do we want to force everyone into the voter both to decide.

Representative Anderson: One of the arguments to keep it came from a West Fargo Park District person that they are going to build a big sports recreational building and the user fees will take care of it. The perception is if you take that to the voters they will pay for it and they really aren't. That seemed to me a good use of a building authority, but should we build schools with a building authority? I don't think so.

John Walstad: The question started coming across my radar when a school district in Fargo started building new schools and people couldn't remember voting on it.

Representative Koppelman: In the event that there would be an issue where the entity would say to a building authority 'we changed our mind, we cancel our lease'. Then the bond holders are on the hook but what about the citizens? Is there any obligation of the city or is the security of that bond strictly the property or real-estate that has been built?

John Walstad: I am not sure. It is not the same as a bond issue where mayor or president of the governing body has signed the papers saying we are in and the law says that levy is permanent every year until paid and it is irrevocable and the constitution says so as well. That is a good lock which doesn't exist in this situation. I haven't looked around the country to see if entities have backed out often but I would guess there are some court cases on it.

Representative Zubke: I am in favor of the study. I would not agree with doing anything that would disrupt the building authority process because it looks to me that it serves the entities very well most of the time.

Chairman Klemin: We have some options here and there is a proposed amendment to turn it into a study (testimony 2).

Representative Zubke: I motion to adopt the Klemin amendments

Representative Kelsh: Second

A Voice Vote Was Taken: Motion carries

Representative Hatlestad: Move a do pass as amended

Representative Koppelman: Second

A Roll Call Vote Was Taken: Yes 13, No 0, Absent 1

Motion carries

Chairman Klemin: This will be placed on the consent calendar also and be part of the motions.

Representative Klemin will carry the bill

AKS
2-19-15

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1459

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 use of a building authority or other methods to finance public building projects as an alternative to political subdivision bonding.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - BUILDING AUTHORITIES AND OTHER FINANCING METHODS. During the 2015-16 interim, the legislative management shall consider studying use of a building authority or other methods to finance public building projects as an alternative to political subdivision bonding. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-fifth legislative assembly."

Renumber accordingly

Date: 2/19/2015
 Roll Call Vote #: 1

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1459**

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 Kelsh

| 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 | | | | | |
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motion carries
 voice vote

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

becomes a study

Date: 2/19/2015
 Roll Call Vote #: 2

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1459**

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 consent calendar

Motion Made By Hatlestad Seconded By Koppelman

| 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 | | |
| 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 | | | | |
| | | | | | |
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Total (Yes) 13 No 0

Absent 1 (Strinden)

Floor Assignment Klemin

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

Motion carries

REPORT OF STANDING COMMITTEE

HB 1459: Political Subdivisions Committee (Rep. Klemin, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE PLACED ON THE CONSENT CALENDAR** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1459 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 use of a building authority or other methods to finance public building projects as an alternative to political subdivision bonding.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - BUILDING AUTHORITIES AND OTHER FINANCING METHODS. During the 2015-16 interim, the legislative management shall consider studying use of a building authority or other methods to finance public building projects as an alternative to political subdivision bonding. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-fifth legislative assembly."

Renumber accordingly

2015 SENATE POLITICAL SUBDIVISIONS

HB 1459

2015 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Red River Room, State Capitol

HB 1459
3/26/2015
Job Number 25456

- 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 use of a building authority or other methods to finance public building projects as an alternative to political subdivision bonding

Minutes:

Written testimony # 1 Rep. Vigessa
Written testimony # 2 Blake Crosby

Chairman Burckhard opened the hearing on HB 1459. Senator Judy Lee was not in attendance.

Rep. Randy Boehning sponsor of this bill. We brought the bill forward basically because we have a lot of building authorities out there and basically there is no, governance over them. We would really like to a state, as to how we can govern these because once somebody gets appointed to a building authority you can't get them off of there. There not elected by the people, they are spending money that another governing body is appropriating and the then the other governing body, who appropriates the money doesn't have authority over the building authority. If this got turned into a study in the House which I have no problem with and I think we really need to take a look at building authorities and how they are set up in the state. Most of the building authorities are the same people that are on the city councils, or city commissions or park boards. We really need to take a look at these building authorities and study them and hopefully address some issues in the future.

Senator Anderson Maybe I am reading this wrong, but mostly of what I see here is the changing of a school board to a municipality and governing body.

Chairman Burckhard I think we need to get the updated one in front of us. **Rep. Boehning** it should be the 2000 version, it should be .02000.

Senator Anderson Now that answers all of my questions.

Senator Bekkedahl In Williston I don't know that we have any building authorities or ever have had any building authorities so it is pretty foreign to me. I kind of know what's been happening and you explained it pretty well in the beginning but, do you see that it's either

happening more often and it should be looked at now, or do you see it as more an issue of abuse is occurring that it needs to be studied for?

Rep. Boehning I don't know if we're seeing a lot more abuses, I think it being used a lot. I know in the valley they get used a lot especially in the eastern part of the state. I don't know in Bismarck if they use them a lot here, but even though my home town Hankinson, of about 1000 people, and they are using building authorities to do some stuff with the school district. Why they do it. I think there is financing differences with them. The authorities give them the power to tax and that is one of the concerns I have with building authorities as they'll have the power of the purse. These people are put on the boards without a vote of the people. Basically it is a an appointed position and sometimes they may be on the city commission and most of them would probably be on the building authority but then when you change city commissioners, these guys would probably still be on the building authority. In my opinion, there is no accountability on them.

Senator Bekkedahl Would airport authorities actually have legislative authority as building authorities as well then, so are airports involved in this as well?

Rep. Boehning There are so many and I don't know if that would be in the old language because this board the governing body when you look at the old law, the airport authorities are probably be a municipal. It would probably fall in that, but that might be governed by a different part of this statute I am not sure.

Senator Anderson I thought I saw that there was a bill that came through from the House side, that said, that any non-elected body that was offering to levy taxes would have to have approval of the elected body that appointed them.

Rep. Boehning That could have been one of my bills. I think we killed it in the House. It was a 93 page bill and I think we need to have accountability. That is why this got turned into a study. There is a lot of issues out there so we need to take a look at this.

Senator Grabinger I am just wondering. This has been kind of a hot topic for a lot of years. Has this been studied before or is this the first time this has been asked for, do you know?

Rep. Boehning I am not sure. I don't know if it ever has been studied. I don't think I've studied it since I've been out here for the last 6 sessions. I really don't think it has been addressed.

Rep. Don Vigessa I am in favor of HB 1459 and I would certainly urge the committee to give it a do pass recommendation. As the bill was introduced as Rep. Boehning indicated it was going to ask that when a building authority would be formed that it would be by the vote of the people. I just want to weigh in on this particular bill because of a situation that we've had in Griggs County concerning a building authority. When chatting with Rep. Klemin and they were researching the bill that was originally introduced they found that there was very little in our code concerning building authorities. So they were kind of investigating the bill and seeing how they could work with it and they found so little in code, concerning this funding authority that they thought we better study this and that is why I would agree that it should be looked it. (Explanation in Griggs County 8:57-13:58) I would

support giving this a do pass and in our particular case and you will find throughout the state that there have been citizens disappointed that building authorities have been formed when the voters said no to a project. (#1)

Chairman Burckhard So, out of curiosity, what was the price of the new courthouse? Do you have any idea?

Rep. Vigessa That is getting to be so long ago, I can't remember what the total project was. The total project was going to come from a federal grant for emergency operation center; that was \$1 Million dollars approximately. That was a little bit of the impetus of why the previous commissioners wanted to move forward because they had a time frame in which they would like to use that grant as part of the funding. The voters kept saying no, but they moved forward anyway.

Senator Bekkedahl I appreciate that explanation because what I've seen in the press was limited and you gave a great concise explanation of that and it looks to me that you're the poster child for this study. But my question is and just so I understand it better, you talked about the previous commission and it relates a little bit to this, but you talked about the previous commission setting up the building authority after 3 failed bonding vote attempts. Were those bonding vote attempts for renovation of the older court house or were they for building a new courthouse?

Rep. Vigessa The first two were renovations of the previous courthouse. The 3rd vote and I can't recall whether or not that was moving forward with the new one. I believe it was, but the 3rd vote was to build a new courthouse in conjunction with using the million dollars from the federal funding to do the emergency operations center in conjunction with a new courthouse. I believe the 3rd vote was for a new facility.

Senator Bekkedahl The reason I asked that question is because to some degree having been a local official for all these years, I can understand the frustration of the local elected board when you attempt to move forward with something that is necessary because of health issues with your employees that keeps getting turned down so to some degree I can kind of see what they did. Maybe it partially driven by desperation at the time and this was the mechanism that they could use to actually make it happen. I am not condoning what they did, but I really can have a better understanding of that now that you've explained it.

Rep. Vigessa That is exactly correct. There were not only under the pressure to do something for the people that work in the courthouse, but also the fact of not being able to access the million dollars that is a pretty significant part of the project and when you have that kind of money that is available to build a state of the art emergency operations center in conjunction with your courthouse its very appealing. I imagine they just didn't want to lose that opportunity but at the same time, they did not listen to the citizens that had turned them down three times and they saw that the building authority then on the advice of probably their state's attorney said you know you've got an option here if you want to move forward you can use a building authority and that is what they did.

Chairman Burckhard It was kind of a tough crowd when they throw out all five at the same time.

Rep. Vigessa Mr. Chairman I do have the totals here the votes and the dates. Would you like to have that entered into the record? It doesn't have any heading on it, or whatever, but you can see the percentages, the amount of votes, the amount of project etc.

Chairman Burckhard Maybe write the bill number on the paper so we know which bill it goes with.

Senator Dotzenrod What is going to happen to the old building? It costs money to tear it down.

Rep. Vigessa I really can't answer it because that is still an issue. It is on the National Historical Register, and I understand that those buildings can be destroyed. I think that is an option that can be done. That's going to be another battle because we have a large segment of our population that would like to see it restored to the point where it can be kept as a monument to our county because it is a fantastic building, but the cost as you can well imagine to demolish that size of a building is going to be very significant and needs to be paid for by the taxpayers.

Senator Grabinger the cost to refurbish one of them like in Stutsman County with our 1887 is extreme too.

Blake Crosby, Executive Director of the North Dakota League of Cities. Written testimony # 2. (19:28-25:06) There was a memo prepared for the taxation committee in Oct. 2011 there are 28 building authorities registered with the Secretary of State as of Oct. 2011. Many of those are school districts and as I am sure you're all aware school districts cannot construct a new building without consent of the head of the Department of Public Construction. Does the Griggs County situation warrant a study given the fact that were dealing with a IRS ruling and that if it is an anomaly as far as building authorities go, we've not had this problem before and it was kind of serendipitous that it would happen unfortunately in Griggs County, I am not so convinced that it would rise to the level to needing a study. We can't correct the Griggs County situation, that train has left the station. When you are in a smaller county, and I am from Rolette County, you have a limited pool of persons to run as county commissioners or to run for any office. So it's not going to be uncommon for county commissioner who are in good stead with all their taxpayers if they want to form a building authority, the citizens are going to say well, you guys are already elected county officials just go ahead and become a building authority. I don't think we are going to change any of those dynamics. I am not sure a study is going to indicate that we would be able to change those dynamics.

Chairman Burckhard I know there are some famous building authorities in Fargo from what I understand too isn't there? Didn't they build a high school that way? Didn't Fargo Davies build with the building authority?

Blake Crosby I believe there was but there were some corrections made to that.

Senator Anderson Just the other day I asked the city auditor of the City of Turtle Lake who has established the housing authority with the idea that they could build some housing. We've been discussing a piece of land that was available and I said why doesn't the city buy

that? His comment was that was up to the Housing Authority now, and my sense was that now the Housing Authority has been established they have the authority to purchase the land, sell the bonds, build the building and the city felt like they were out of it. Is that true?

Blake Crosby I am not familiar with that Housing Authority situation and I apologize for that. I've dealt with a building authority side of it for the most part. I don't know the answer to that.

Senator Bekkedahl I could give a little answer to that. The control still exists with the City Commission and that they appoint the Housing Authority members. That is the only time that I can see.

Senator Anderson Wouldn't they also appoint the Griggs County building authority?

Senator Bekkedahl They did that's what I believe that was what Rep. Vigessa said that they appointed themselves as a building authority, the commission that was ousted correct?

Blake Crosby Keep in mind that they appointed themselves to form a non-profit corporation that provided them that federal corporation protection.

Senator Bekkedahl I think what Rep. Vigessa was getting to on the building study was you have a situation where a commission appointed themselves as a building authority, gave themselves that authority, by that process, they were taken out of office, a new commission comes in, once the building authority already existed with the powers under the past commission, I don't think the new commission had any mechanism to remove them because they were never appointed by that commission.

Blake Crosby keeping in mind that they were formed under the Federal 501 so they were a federal 501c, 4C6 whatever they were. So they were formed under a different umbrella. They were sheltered from being removed because they would have to just dissolve the corporation.

Chairman Burckhard closed the hearing on HB 1459.

Senator Bekkedahl I would be prepared to move on this but I would like to get any comments or insights from Senator Lee on this having a situation where she is someone who may have used these at some point. I would like to hear here perspective.

2015 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Red River Room, State Capitol

HB 1459
3/26/2015
Job Number 25482

- 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 use of a building authority or other methods to finance public building projects as an alternative to political subdivision bonding

Minutes:

"Click to enter attachment information."

Chairman Burckhard opened the committee for a discussion on HB 1459.

Senator Bekkedahl Shouldn't this be a discussion that this should be looked at even though the League of Cities opposed it or am I thinking of the airport authority Senator Dotzenrod.

Senator Dotzenrod I really think it was the Airport Authority that we talked about that in tax quite a bit.

Senator Grabinger This one is like Federal law oversees.

Senator Dotzenrod I know the League of Cities had some misgivings but it said a building authority evidently enabled by federal law. But don't we have in our state laws some rights to have laws on our state that say to place some limitations on them or to ask them to put some measures in front of the people for a vote or some other ways to say that if they have a project that...maybe I am wrong. Senator Bekkedahl really knows what's, goes on in city government and I don't on this one.

Senator Bekkedahl I remember now that what I was looking for in the committee discussion this morning was input from Senator Lee and she wasn't here for that discussion. Again, this is not a foreign concept to me as I've read a lot of literature about it, but we just have never used these out west the way they've been used in the valley. Anybody that can give more information about that I would appreciate for my informed decision.

Chairman Burckhard I wonder if Home Rule cities come into play here?

Senator Dotzenrod Senator Lee in West Fargo there, would probably be able to contribute a lot of discussion if she were here. I don't know if we can put this off for a while. Building authorities I think in the Fargo, West Fargo system have really gotten some attention. She would probably be able to enlighten us on it.

Chairman Burckhard I think Fargo Davies was built with a building authority. The committee stopped the discussion on HB 1459.

2015 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee
Red River Room, State Capitol

HB 1459
3/27/2015
Job Number 25540

- 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 use of a building authority or other methods to finance public building projects as an alternative to political subdivision bonding

Minutes:

Written testimony # 1 Mark Lemer email to Sen. Judy Lee

Chairman Burckhard opened the committee for discussion on HB 1459. All senators were present.

Senator Judy Lee came up with a handout that all the committee should have in front of them from Mr. Mark Lemer. (#1)

Senator Judy Lee The deal is I believe that there is a whole lot of sponsors on the original one. It is quite possible the 3rd sponsor had more to do with this than the first sponsor. Anyway, there are several places that use building authorities and I asked both Fargo and West Fargo for information and I just got the one from West Fargo first. But it's the same deal all around. What happens is that the voters approve the establishment of a building authority. Then that building authority as Mr. Lemer explains that in most of the districts the school board serves the Board of Directors but not always. You can see different kinds of building authorities that he talks about. He tells about the West Fargo one, but the bottom line is a building authority has the authority to build as long as it fits into the budget within their local financing ability. We limited them in 2013, because to anything over \$4 Million there has to be a vote. Hardly anything can be done for \$4 Million anymore as we know on a building project. Both Fargo and West Fargo, voters have been very supportive of school construction. So, that is really not been a terrible issue but it simplifies the process as far as the time involved and sometimes that is critical when you got several other students waltzing in the door. So anyway in an earlier conversation with Mr. Lemer he said on one hand I don't know what to say for a recommendation. Because I said what do you think? He said on one hand if a study brought about a really good evaluation of a program so that maybe some of the things the flexibility that was available before might be restored; or at least considered for restoration, I would support it he said. My concern is if you open it up it's only going to get worse. There are a couple of reps that hate building authority and they are ticked off at Fargo the school board. I've never heard it in West Fargo ever, but there

are a few loud voices in Fargo who are very opposed to the building authority and they have continued to side to nibble it away. There has been plenty public discourse at school board meetings that they have some kind of big crowds when their talking about building projects and all. Where is it going to go, there is more fighting actually about boundary switch they just pulled. So, anyway the bottom line for those two districts and that's all I can talk to you about. The building authority has worked well if they are able to do it within their own general funds-their local ability to raise money- and it fits into their budget and it's a project that has moved forward. I guess because it works we'll have to talk about what we want to do. School districts are not the only ones who might be able to use this but that is where it is used in my home area.

Chairman Burckhard So, in the Fargo Davies situation, they have a 15 mills per building authority is that true and they didn't need to go to the voters.

Senator Judy Lee The building authority was voted on by the voters in the first place, the board didn't make it up. The voters approved establishing a building authority with that kind of capability. So as long as they are within that capability they are able to move forward. But, it's a situation in which I don't think anybody want under the table quiet secret things going on, obviously, that is not it, but as you well know our those buildings are extremely public and I think school board members are safe because that is closest to the people. A person is mad because their kid doesn't get to play basketball and that calls the school board member. We get plenty, they get a lot of that kind of contact. So there is a lot of interaction between citizens and school board members. But that is how it works, the voters have approved establishing a building authority, they have a limited amount of funds that they can raise for that project as long as they are operating within that, and that's the way it works. We have to decide I guess if we want to open it up for changes to that or not. That's where the committee discussion starts I guess.

Senator Grabinger That \$4 million dollars in the changes in the law is that state law or is that local?

Senator Judy Lee it is local. **Senator Grabinger** So we took this up last session. **Senator Judy Lee** Yes there was a big todo because of people who were ticked off and we've got to have Davies High School.

Senator Bekkedahl This whole issue really came to light aggressively when Bismarck Park District had a public vote on some improvements which including buildings. One was the Aquatic Center at BSC. It was turned down twice in public votes and the park district using this provision which was Federal IRS ruling provision, not even state code at the time, used this to go and build the aquatic center when the public said no to it twice. That is where this thing became really aggressive politically and within the state. So you legislatively had to deal with it, I think it's gone through multiple configurations. The last session you put the \$4 Million dollar threshold in, I personally am very comfortable that how it's working now is taking into consideration and allowed the public doubts and provides great benefits. I don't have any problem with killing this bill because I think you make it worse instead of better.

Chairman Burckhard I like that idea.

Senator Anderson This business didn't obviously work very well in Griggs County Courthouse. There was no vote to establish the building authority and my understanding is there was no revenue to pay the building authority off unless they intended to lease it to the county commission. Maybe that was how they were going to pay it off. It didn't work out very well and in that case the voters changed the people, the building authority was always there, and the bottom line is they were stuck. Now, I don't know if they had said, okay we'll forget about then what would happen to the building authority. I guess I don't understand that quite, and that building would've just sat there and would have to rent it to somebody else or what, I don't know.

Senator Dotzenrod Do building authorities have a taxing district boundary that is you can have a county building authority like in Griggs County; you can have a West Fargo School District building authority so the boundaries may not conform to a city boundary. Maybe some people in the city are paying and some like in West Fargo, is paying because the school district must include the entirety of the city; but you could have people that don't live in West Fargo or outside of the city but they are in the West Fargo School District. Evidently they have under certain conditions they can have a mill levy authority the way it appears but I don't know if it sounded like in Griggs County they don't. It looks like from this that they don't in West Fargo either. They have authority and their not using it. It looks like they do have a taxing district; that appears to be a part of the way that they work.

Senator Judy Lee they have used this as I mentioned the 3 schools and the bigger because they did it all. I mean we had an election also so that was very much a part of that. But it is established and it is there. The Griggs County thing and I understand they got everything figured out but its' been a lot of pain involved. Now that couldn't happen because of what was tightened up. The voters have to establish a building authority. Well a building authority can build building if it's under \$4 Million dollars if they have the resources in their funding stream.

Chairman Burckhard Do we have a motion of a do not pass - no we don't.

Senator Judy Lee I move a do not pass on HB 1459.

2nd **Senator Bekkedahl**

Committee Discussion

Senator Dotzenrod This kind of reminds me of a study we had on special assessments that is yes you could study it, but most of what is there is a matter of record. I guess I 've kind of come to the same conclusion as on the special assessments. There may not be any downside to studying it, but on the other hand anybody who doesn't like what's going on in building authorities can come and offer up a change. It's federal law so we're kind of stuck with but evidently the states can do things as the \$4 Million provision that was added so I guess I am fine with a do not pass.

Roll call vote

6 Yea, 0 No, 0 Absent

Carrier: **Senator Dotzenrod**

REPORT OF STANDING COMMITTEE

HB 1459, as engrossed: Political Subdivisions Committee (Sen. Burckhard, Chairman)
recommends **DO NOT PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed HB 1459 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

HB 1459

HB 1459
2/13/2015 1.1

15.0972.01001
Title.

Prepared by the Legislative Council staff for
Representative Boehning
February 2, 2015

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1459

Page 1, line 2, remove ", improvements,"

Page 1, line 4, remove the comma

Page 1, line 5, remove "improvements,"

Page 1, line 11, remove "improvements."

Page 1, line 12, remove "improvements."

Page 1, line 18, overstrike the comma

Page 1, line 19, overstrike "improvements,"

Page 1, line 23, overstrike the comma

Page 1, line 24, overstrike "improvements,"

Page 2, line 1, overstrike ", improvements,"

Page 2, line 6, overstrike the first comma and insert immediately thereafter "or"

Page 2, line 6, overstrike the second comma

Page 2, line 7, overstrike "repair, improvement, modernization, or renovation"

Renumber accordingly

| Date | Amount | No | Yes | % No | Total |
|--------------------------|-------------|-------|-------|---------|-------|
| <u>September 9, 2011</u> | \$4,700,000 | 358 | 196 | 65 | 554 |
| <u>June 12, 2012</u> | \$3,100,000 | 542 | 423 | 56 | 965 |
| <u>November 6, 2012</u> | \$1,970,000 | 661 | 639 | 51 | 1,300 |
| Total | \$9,770,000 | 1,561 | 1,258 | 55 | 2,819 |
| Average | \$3,256,667 | 520 | 419 | 55 | 939 |

Good morning, thank you for allowing me to say a few words in support of HB1459. My name is Troy Olson and I am testifying as a citizen of Griggs County.

As you may be aware, the Griggs County commission formed a Building Authority in 2013 solely as a means to finance a new courthouse in Cooperstown. There had been three ballot initiatives prior to the commission settling on utilizing a building authority to finance this project, all of which had failed to gain 50% support from the voters, let alone the 60% required to issue general obligation bonds.

Due to considerable resistance from the general public for this project and a general dislike for this funding method, the project seemed to get put on the fast track by those involved. As a result, the project was poorly planned, underfunded and is to this day not completed. The county has an unfinished building sitting on Griggs County Property which the building authority claims the County is monetarily responsible to finish and then lease it for the next twenty years at which time the county would take ownership.

Even though I feel that the real culprit has been Chapter 57-15-59 of the century code which allows the lease finance option when an elected body is unable to present a project to their constituency that the voters consider a good value to the taxpayers, this is a step in the right direction. I would like to see the threshold to create a building authority be set at 60% vote of the people instead of 50% so that the preferred public financing method doesn't migrate in the direction of building authorities because the bar is lower than using traditional financing methods.

As is too often the case, the unintended consequences of allowing public officials to act in conflict with those who are responsible for fulfilling the fiscal responsibilities of those decisions is not sound governance.

HB 1459
2/13/2015

4.1

**House Political Subdivision Committee
Legislative Testimony on HB 1459
City of Fargo
February 10, 2015**

Chairman Klemin and members of the House Political Subdivision Committee, I am Kent Costin the Director of Finance of the City of Fargo. Thank you for allowing us to share our testimony with you regarding HB 1459 and the restrictions it places on North Dakota Cities.

The impact of this bill is to restrict Building Authority type debt and increase voter approval for all acquisitions, improvements and construction of any property or structure if general obligation debt is used to finance these improvements. While this may seem like prudent governing policy, using a Building Authority financing structure is an important tool to consider as capital financing decisions are made.

We do not believe that this is the most effective way of controlling municipal financing because there are already methods in place to control the amount of debt issued that link the community's ability to pay the debt issued. Pursuant to the North Dakota Constitution Article 15, municipalities can issue general obligation debt for up to 5% of their overall assessed value with a voter approval process in place to increase this limit by 3%. This process establishes an upper level of debt that can be issued without impairing our ability to make our bond payments. We think that connecting a City's asset base to our bonding capacity makes sense and that decisions about various municipal projects can be made at the local level. An election requirement for each and every capital endeavor that we pursue for the benefit of our citizenry is a burden and simply slows down the capital financing process.

Each municipality has a different ability to fund their capital projects depending upon what budget strategies they deploy. A balanced approach between operating and capital funding is essential for the long term sustainability for any community. Fargo has used this balanced approach for many years and it has worked effectively. We have tended to utilize paying cash from our existing resources but have used a Building Authority type debt structure just once in the past 25 years. This was for a City Hall remodeling and expansion project that cost about \$5 million. This debt was retired earlier than the twenty year term initially used.

We testified on HB 1286 during the last legislative session and I reviewed our testimony for that hearing. Ironically, we identified that the State of North Dakota's Public Finance Authority is reported as a

Department that uses a Building Authority financing because it has a very restricted ability to issue General Obligation debt. The authority to issue this type of debt is tied to the revenue stream used to repay the debt. This bill restricts municipality's use of Building Authority debt financing while at the same time preserves the State's ability to continue using this type of non-restricted debt. Does this seem like a dual standard being imposed upon all North Dakota municipalities? Let's take a look at projects funded by the State of North Dakota using the Building Authority structure. Exhibit A of this testimony has been extracted from audited financial statements of the North Dakota Building Authority. Six bond issues totaling \$86.7 million have been sold in the last ten years that funded about thirty State projects. Most of these projects were for building renovations, internal systems, wellness centers, veteran's homes, and other higher education renovation projects. Ironically, debt restrictions for the State of North Dakota's debt issuances are much more restrictive than the amount issued in the State of North Dakota Building Authority. Currently, the Constitution (Article X -Section 13) prohibits the State from issuing debt for more than \$10 million. This restriction has been circumvented by using the State Building Authority instead of State backed debt issues.

These projects are the very type of projects that HB 1459 bill could restrict for municipalities. It is obvious that the State of North Dakota thinks this is an effective way to fund renovations. We agree with this logic and think that retaining the right to issue Building Authority debt is serving a useful purpose when applied on a prudent basis. A vote on each and every borrowing transaction will become a frequent and wasteful process. We believe that the restrictions currently in NDCC 20-03-06 are too impractical and restrictive and that may be contributing to the overall use of Building Authority debt by the State of North Dakota and it's political subdivisions. The State of North Dakota's constitutional limits for the issuance of debt seem overly restrictive as well in light of the needs for additional infrastructure financing and the State's AAA bond rating. It would appear that the State of North Dakota might be paying higher interest costs by continuing to use Building Authority Debt. Perhaps this something that needs to be studied in future legislative sessions?

We urge all Committee members to vote DO NOT pass on HB 1459. Let's keep all of our financial tools in the governmental tool kit! Thank you for the opportunity to be heard. I would be happy to answer any questions that you may have on our testimony.

NOTES TO FINANCIAL STATEMENTS
(In Thousands)

Listing of Projects

| <u>Issue</u> | <u>Size</u> | <u>Agency</u> | <u>Project Description</u> |
|--------------|-------------|--|--|
| 2005A | 37,955,000 | University System University System University System University System University System Historical Society Department of Corrections Department of Corrections OMB Attorney General Parks and Recreation | DSU - Murphy Hall Renovation MSU Bottineau - Thatcher Hall Addition and Renovation NDSU - Electrical Distribution NDSU - Hazardous Material Handling and Storage Facility UND - Energy Conservation Projects Heritage Center Collections Expansion James River ET Building Improvements James River Program and Building Code Improvements State Capital Complex Fire Suppression System Crime Laboratory Renovation and Addition Turtle River State Park Office Building Construction |
| 2006A | 10,460,000 | University System University System University System Department of Corrections Department of Corrections | MSU - Moore Hall Renovation NDSU - Butte Gym Remodeling NDSU - Animal Facility YCC Gym Renovation YCC Pine Cottage Remodel |
| 2006B | 11,930,000 | University System University System | WSC - Health and Wellness Center MSU - Old Main Renovation |
| 2010A | 2,355,000 | Veteran's Home | New Facility |
| 2010B | 4,910,000 | Veteran's Home Job Service Health Department | New Facility Bismarck Service Office Laboratory Addition |
| 2012A | 19,055,000 | University System University System University System University System University System University System Health Department Department of Corrections | DSU - Murphy Hall Phase I Addition UND - Abbott Hall Renovation BSC - Science and Mathematics Center NDSU - Emission Control Renovations on Power Plant DSU - Klinefelter Hall Renovations Mayville Steamline Replacement Phase II VaCSU - Graichen Gym Elevator and Emergency Exits Morgue and Storage Annex James River Food Service and Laundry Renovations |

HB 1459
2/13/2015
5.1

February 13, 2015

HOUSE POLITICAL SUBDIVISIONS COMMITTEE
HB 1459

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. We also include in our membership the North Dakota Recreation and Park Association and at the end of last year we had 101 member Park Districts.

Over the past 2 years the North Dakota Department of Commerce has worked very hard on encouraging folks, especially young families, to "Find the Good Life" in North Dakota. There is a recognition that a good job is just not enough and that is where parks and recreation facilities come into play. They are infrastructure we know families look for when making a decision on where to live. Building authorities allow the creation of that infrastructure by using funds other than property taxes. Disallowing building authorities would create an impact on property taxes, something else the State has worked very hard on controlling.

Building authorities work and they work well in the public interest.

On behalf of the North Dakota League of Cities, I recommend a Do-Not-Pass on HB 1459.

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

1459 2/13/2015 (6.1)

NDRPA



North Dakota Recreation & Park Association • *advancing parks and recreation for quality of life in North Dakota*

**Testimony of Dana Schaar Jahner, Executive Director
North Dakota Recreation & Park Association
To House Political Subdivisions Committee
In Opposition to HB 1459
Friday, February 13, 2015**

Mr. Chairman and Members of the Committee, my name is Dana Schaar Jahner, and I am executive director of the North Dakota Recreation & Park Association (NDRPA). NDRPA represents more than 600 members across the state, including park board members and park district staff, and works to advance parks and recreation for an enhanced quality of life in North Dakota. I am here on behalf of NDRPA in opposition to House Bill 1459.

North Dakota's park districts build and maintain parks and recreation facilities through a variety of fund sources, including property taxes, state aid distribution fund payments, and user fees. Increasingly important to meet rising demands for high-quality recreation facilities are sponsorships, donations, and grants from individuals, businesses, and community organizations, particularly given the existing mill levy limitations for park districts and the need to keep user fees reasonable to ensure public recreation facilities are accessible and affordable.

With the state's strong economy and growing population, local park districts need access to a variety of funding mechanisms, including building authorities or other entities that incur indebtedness or other obligation. Providing safe, affordable, and accessible recreation facilities for our citizens and visitors is essential to maintaining North Dakota's commitment to a high quality of life. Now is not the time to tie the hands of park districts by limiting opportunities to use funds other than property taxes to finance community recreation facilities.

We urge a do not pass recommendation on HB 1459. Thank you.

**Testimony of Barb Erbstoesser, Executive Director
West Fargo Park District, West Fargo, ND
To House Political Subdivisions
In Opposition of HB 1459
Friday, February 13, 2015**

Mr. Chairman and Members of the Committee, my name is Barb Erbstoesser, and I am executive director of the West Fargo Park District, West Fargo, ND. I grew up in the rural farming areas of West Fargo, North Dakota. I have been employed in a variety of positions with the West Fargo Parks for the past 27 years. The past 15 years I have served as the director. The population of West Fargo just now reaches more than 32,000. As you are probably aware, the past decade we have been challenged with the largest portion of this significant growth.

When a Building Authority bond is issued there is no new source of money generated, that is, NO NEW property taxes or assessments levied. The reason for voter approval of bond issues is to approve a raise in taxes. Building Authorities DO NOT an increase in taxes. The Building Authority process allows our Park District to use existing revenues, but to pledge those revenues over the period of the bond issue. Under the definition of debt in the North Dakota Constitution, a political subdivision cannot pledge those existing revenues for over the current budget year (except for pure revenue bond). For example, if under a Park District's current mill levy it can set aside enough funds to build a project by pledging 10 years of those revenues, they can do so under a Building Authority. Otherwise they would have to set aside those excess funds for 10 years to save up the money to build the project. Obviously, that means 10 years without the facility and with inflation a higher cost to build the facility.

We have utilized Building Authorities extensively at West Fargo Park District over the past 27 years. We have purchased park property, constructed the Veterans Memorial Arena which includes 3 major additions and just recently the Veterans Memorial Outdoor Swimming Pool. The pay back on these authorities have been through recreation mills (as appropriate, case by case), cash-in-lieu funds (from land dedication), user fees, donations/sponsorships and pledges from individuals, organizations, businesses etc. Very limited funding has come from general taxes for re-payment. If this bill passes the delays on projects during an already short construction season would be even greater. Our low mill limitation already holds us to a low amount on sizeable projects. Repayment of the funding is all a part of project planning process so securing the funds has never been an issue and if it is the project does not get off the ground.

In 2015, the West Fargo Park District is planning to build a 45,000 square foot community recreation center through the Building Authority process. This facility is highly anticipated by our growing Park District. The facility will offer a walking track, programming for the community from early youth to seniors, two basketball courts, a flex gym for youth activities, the ability to convert to four volleyball courts, meeting rooms and Park District central offices. Our staff and elected commissioners have worked very hard with to identify the needs of our growing community. Our elected officials are the bridge to the taxpaying public, they listen to the needs of their constituents and respond carefully.

Public support has been very strong for the projects that have moved forward with the Building Authority process in the community of West Fargo. If this law passes, instead of using a Building Authority, a Park District would have no option other than a General Obligation election to raise taxes. The end result is the facility does not get built because it fails to pass, or it passes and the residents of the District will have their taxes increased to pay for it.

The West Fargo Park District encourages a do not pass recommendation on HB 1459. Thank you.

BUILDING AUTHORITY FINANCING OF PUBLIC BUILDINGS FOR POLITICAL SUBDIVISION USE

If a political subdivision has decided to build a public building and the construction cost cannot be covered by existing funds, the question becomes whether to incur indebtedness through voter approval and issuance of bonds of the political subdivision or find an alternative means of financing the project. An alternative method of financing public building construction which has been used in North Dakota is establishment of a building authority.

Use of a building authority to construct a public building is similar in many respects to financing through a bond issue of the political subdivision, but differs in several significant respects. To be viable, bonds issued by the building authority must be eligible for the federal income tax exemption for bondholders to make the bonds attractive to purchasers. To qualify for the federal income tax exemption status, a building authority must be established as a nonprofit corporation and under Internal Revenue Service Ruling 63-20:

1. The corporation must engage in activities that are essentially public in nature;
2. The corporation must be one that is not organized for profit;
3. The corporate income must not inure to any private person;
4. The state or a political subdivision must have a beneficial interest in the corporation while the indebtedness remains outstanding and, when the indebtedness is retired, the state or political subdivision must obtain full legal title to the property of the corporation for which the indebtedness was incurred; and
5. The corporation must have been approved by the state or a political subdivision, either of which must also have approved the specific obligations issued by the corporation.

A political subdivision lacks the power to form a nonprofit corporation building authority (see Attorney General Letter Opinion 2008-L-05). Individuals, including employees or elected officials of the political subdivision, may form a nonprofit corporation building authority. The building authority issues tax-exempt bonds for construction of a building to be leased to the political subdivision. The political subdivision makes lease payments from the building fund or other sources of the political subdivision. If lease rental payments are budgeted from available funds of the political subdivision, no indebtedness is incurred in the constitutional sense. However, because the revenue and appropriations of the political subdivision are an annual decision (school boards are limited to one-year leases by North Dakota Century Code Section 15.1-09-33(7)) and not an indebtedness backed by the property within the political subdivision, the bondholders run the risk of the political subdivision not appropriating funds to pay the lease rentals. The bondholders have no recourse against the political subdivision in the event of default.

One aspect of building authority financing of public buildings that has drawn criticism from some taxpayers is that use of a building authority avoids the requirement of voter approval, while bonding for construction of a public building generally requires 60 percent voter approval under Section 21-03-07. In addition, in the case of school buildings, construction of a new school building must be approved by the Superintendent of Public Instruction under Section 15.1-36-01, but that does not apply if a school building is to be constructed by a building authority.

USE OF BUILDING AUTHORITIES

The committee requested information on the extent of use of building authorities. There is no central source of information on building authority bonding of projects or leasing arrangements. The Secretary of State has the following 28 building authorities registered as corporations:

- City of Devils Lake Building Authority.
- Cass County Building Authority.
- Fargo School District Building Authority.
- Law Enforcement Center Building Authority.
- Minot School District Building Authority.
- Rugby Building Authority.
- West Fargo Park District Building Authority.
- Dickinson Recreation Building Authority.
- Grand Forks Public School District Building Authority.
- Glenburn Building Authority.
- South Heart Golf Course Building Authority.
- Morton County Building Authority.
- Devils Lake Public School District Building Authority.
- Enderlin Building Authority.
- Hankinson Public School District Building Authority.
- Nedrose School District Building Authority.
- Fort Yates Public School District Building Authority.
- Berthold School District Building Authority.
- Napoleon Public School District Building Authority.
- West Fargo Public School District Building Authority.
- Bismarck Park District Building Authority.
- South Prairie School District Building Authority.
- Grand Forks County Building Authority.
- Griggs County Central School District Building Authority.
- City of Fargo Building Authority.
- Central Cass Public School District Building Authority.
- Kindred Public School District Building Authority.
- Northern Cass Public School District Building Authority.

February 19, 2015

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1459

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 use of a building authority or other methods to finance public building projects as an alternative to political subdivision bonding.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - BUILDING AUTHORITIES AND OTHER FINANCING METHODS. During the 2015-16 interim, the legislative management shall consider studying use of a building authority or other methods to finance public building projects as an alternative to political subdivision bonding. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-fifth legislative assembly."

Renumber accordingly

XI.B. 1459
3-26-15
#1

| Date | Amount | No | Yes | % No | Total |
|--------------------------|-------------|-------|-------|---------|-------|
| <u>September 9, 2011</u> | \$4,700,000 | 358 | 196 | 65 | 554 |
| <u>June 12, 2012</u> | \$3,100,000 | 542 | 423 | 56 | 965 |
| <u>November 6, 2012</u> | \$1,970,000 | 661 | 639 | 51 | 1,300 |
| Total | \$9,770,000 | 1,561 | 1,258 | 55 | 2,819 |
| Average | \$3,256,667 | 520 | 419 | 55 | 939 |

N.B. 1459
3.26.15
#2

- came out of Griggs County and the situation was not really one about a building authority.
- County Commissioners were going to finance a new courthouse one way or another
- there is a statutory provision (57.15.59) allowing authority to enter into leases for court, corrections, and law enforcement facilities with a 2/3 vote.
- 3 ballot initiatives failed
- so they latched on to building authority concept before they were voted out.
- IRS Revenue Ruling 63-20 allowing bonds issued by a BA as exempt from federal income tax.
- State uses a BA. PFA uses it because they have restricted ability to issue GO debt.
- BA have been an important tool for communities and the State. They control the amount of debt by linking it to the ability to pay the debt. Not that commonly used.
- authority to issue debt tied to revenue stream used to repay the debt.

03/26/15
Senate Pol Sub
HB 1459

- school districts
- 2011
28 BAs

R Blake Crosby
ND League of Cities

L.B. 1459
3.27.15
#1

Lee, Judy E.

From: Lemer, Mark <LEMER@west-fargo.k12.nd.us>
Sent: Friday, March 27, 2015 7:47 AM
: Lee, Judy E.
Subject: RE: 1459

Senator Lee:

A building authority is a separate legal entity under IRS regulations. It has bylaws, Articles of Incorporation, and a Board of Directors.

For most school districts, the School Board serves as the Board of Directors. However, multiple entities could actually come together to create a building authority, including multiple municipalities, non-profit organizations or even private entities. In that case, the Board of Directors could represent multiple entities.

The building authority has the ability to sell debt to raise capital for construction. However, since they don't have the ability to tax to raise funds, they use a revenue leases as the basis for financing the debt.

Here is an example from West Fargo Schools:

In 2004, we opened the Cheney Middle School, which left the former middle school building vacant. The building needed some updating and the district was looking for creative ways to use the space.

We found entities that wanted to rent space from us (the West Fargo Public Library, HeadStart, YMCA daycare, AppleTree preschool, etc). In addition, the school district planned to use some of the space for the Community High School and Early Childhood Special Education. Each of these entities, including the school district, agreed to rent space.

The school district created the West Fargo Schools Building Authority, which then issued lease agreements to all of the tenants and used those leases to provide backing for debt that was subsequently issued to renovate and remodel the old middle school into the Lodoen Community Center.

Since the rents were the basis for repaying the debt, there was no public vote, nor was there a separate Debt Service levy created. The building authority set aside a portion of the rent for the debt service payments.

Under the 2013 changes to the law with regard to Building Authorities, if we were to do this again today, we would be required to have a public vote since the cost of the project exceeded \$4,000,000.

I hope that provides some basic information that you can share. If you have specific questions, don't hesitate to call me at 701-499-1004 (desk) or 701-367-6255 (cell).

Mark Lemer
Business Manager
West Fargo Schools
207 Main Ave W | West Fargo ND 58078
P: 701-499-1004 | F: 701-356-2009

From: Lee, Judy E. [mailto:jlee@nd.gov]
Sent: Friday, March 27, 2015 7:12 AM
: Lemer, Mark
Subject: Re: 1459