

2023 HOUSE FINANCE AND TAXATION

HB 1438

2023 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Room JW327E, State Capitol

HB 1438
1/24/2023

A bill relating to a property tax exemption for buildings and land belonging to institutions of public charity.

Chairman Headland opened the hearing at 10:30AM.

Members present: Chairman Headland, Vice Chairman Hagert, Representative Anderson, Representative Bosch, Representative Dockter, Representative Fisher, Representative Grueneich, Representative Hatlestad, Representative Motschenbacher, Representative Steiner, Representative Toman, and Representative Ista. **Members absent:** Representative Olson, Representative Finley-DeVille.

Discussion Topics:

- Trinity Health hospital system
- Community benefit standards
- Exemption for undeveloped land of charitable institutions

Representative Bellew introduced the bill in support (#15576).

Bill Wocken, North Dakota League of Cities, testified in opposition (#16285).

Linda Svihovec, North Dakota Association of Counties, verbally testified in opposition.

Paul Fracassi, Cass County, testified in opposition to include a proposed amendment (#15443).

Additional written testimony:

John Kutch, President and CEO of Trinity Health, testimony in support #17398.

Nick Lee, City of West Fargo, testimony in opposition #16156.

Chairman Headland closed the hearing at 10:47AM.

Mary Brucker, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Room JW327E, State Capitol

HB 1438
1/24/2023

A bill relating to a property tax exemption for buildings and land belonging to institutions of public charity.

Chairman Headland opened the meeting at 3:01PM.

Members present: Chairman Headland, Vice Chairman Hagert, Representative Anderson, Representative Bosch, Representative Dockter, Representative Fisher, Representative Grueneich, Representative Hatlestad, Representative Motschenbacher, Representative Olson, Representative Toman, and Representative Ista. **Members absent:** Representative Steiner and Representative Finley-DeVille.

Discussion Topics:

- Committee vote

Representative Dockter moved a **Do Not Pass**.

Representative Motschenbacher seconded the motion.

Roll call vote:

Representatives	Vote
Representative Craig Headland	Y
Representative Jared Hagert	Y
Representative Dick Anderson	Y
Representative Glenn Bosch	Y
Representative Jason Dockter	Y
Representative Lisa Finley-DeVille	AB
Representative Jay Fisher	Y
Representative Jim Grueneich	Y
Representative Patrick Hatlestad	Y
Representative Zachary Ista	N
Representative Mike Motschenbacher	Y
Representative Jeremy Olson	Y
Representative Vicky Steiner	AB
Representative Nathan Toman	N

Motion carried 10-2-2

Representative Bosch is the bill carrier.

Chairman Headland adjourned at 3:02PM.

Mary Brucker, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1438: Finance and Taxation Committee (Rep. Headland, Chairman) recommends **DO NOT PASS** (10 YEAS, 2 NAYS, 2 ABSENT AND NOT VOTING). HB 1438 was placed on the Eleventh order on the calendar.

2023 SENATE FINANCE AND TAXATION

HB 1438

2023 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1438
3/1/2023

Relating to a property tax exemption for buildings and land belonging to institutions of public charity

1:01 PM Chairman Kannianen opens hearing.

Senator Present: **Kannianen, Weber, Patten, Rummel, Piepkorn, Magrum.**

Discussion Topics:

- Trinity hospital
- Hospital construction project
- Construction phase exemption

1:00 PM Representative Bellew introduced bill. #21348

1:12 PM Bill Wocken, ND League of Cities, in opposition. #21590

1:14 PM Linda Svihovec, ND Association of counties, introduced Paul Fracassi.

1:17 PM Paul Fracassi, Director of Equalization for Cass County Government, in opposition. #21423

1:22 PM Donald Flaherty Director of Equalization for Dickey County Government, in opposition. #21434

1:29 PM Charles Dendy, ND legal counsel, answered questions verbally.

Additional written testimony:

Nick Lee #21376

Bernie Dardis #21521

Josh Wolsky #21528

1:30 PM Chairman Kannianen adjourns hearing.

Nathan Liesen, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1438
3/1/2023

Relating to a property tax exemption for buildings and land belonging to institutions of public charity

2:01 PM Chairman Kannianen opens hearing.

Senator Present: **Kannianen, Weber, Patten, Rummel, Piepkorn.** Senator Magrum is absent.

Discussion Topics:

- 50-acre limit
- Potential amendments

2:08 PM Chairman Kannianen adjourned meeting.

Nathan Liesen, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1438
3/14/2023

relating to a property tax exemption for buildings and land belonging to institutions of public charity; and to provide an effective date.
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2:38 PM Chairman Kannianen opens meeting.

Senator Present: **Kannianen, Patten, Rummel, Piepkorn.** Senators Magrum and Weber are absent.

Discussion Topics:

- Proposed Amendment
- Money
- Past Projects

2:51 PM Senator Piepkorn moved Amendment LC 23.0575.01002 #26561

2:51 PM Senator Patten seconded.

Roll call vote.

Senators	Vote
Senator Jordan Kannianen	Y
Senator Mark F. Weber	AB
Senator Jeffery J. Magrum	AB
Senator Dale Patten	Y
Senator Merrill Piepkorn	Y
Senator Dean Rummel	Y

Passed 4-0-2

2:52 PM Senator Piepkorn moved Do Not Pass as Amended.

2:53 PM Motion died.

2:53 PM Senator Rummel moved Do Pass as Amended.

2:53 PM Senator Patten seconded.

Roll call vote.

Senators	Vote
Senator Jordan Kannianen	Y
Senator Mark F. Weber	AB
Senator Jeffery J. Magrum	AB
Senator Dale Patten	Y
Senator Merrill Piepkorn	N
Senator Dean Rummel	Y

Passed 3-1-2

Senator Patten will carry the bill.

2:53 PM Chairman Kannianen closed the meeting.

Committee reconsidered HB 1438 on March 21, 2023 at 2:04 PM.

Nathan Liesen, Committee Clerk

DR
121
3-14-23

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1438

Page 1, line 14, replace "an institution of public charity" with "a public hospital or nursing home licensed pursuant to section 23-16-01 under the control of a religious or charitable institution"

Page 1, line 15, replace "institution" with "public hospital or nursing home"

Page 1, line 17, replace "institution" with "public hospital or nursing home"

Page 1, line 18, replace "institution" with "public hospital or nursing home"

Page 1, line 20, remove "an institution"

Page 1, line 21, replace "of public charity" with "a public hospital or nursing home licensed pursuant to section 23-16-01 under the control of a religious or charitable institution"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1438: Finance and Taxation Committee (Sen. Kannianen, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (3 YEAS, 1 NAY, 2 ABSENT AND NOT VOTING). HB 1438 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Page 1, line 14, replace "an institution of public charity" with "a public hospital or nursing home licensed pursuant to section 23-16-01 under the control of a religious or charitable institution"

Page 1, line 15, replace "institution" with "public hospital or nursing home"

Page 1, line 17, replace "institution" with "public hospital or nursing home"

Page 1, line 18, replace "institution" with "public hospital or nursing home"

Page 1, line 20, remove "an institution"

Page 1, line 21, replace "of public charity" with "a public hospital or nursing home licensed pursuant to section 23-16-01 under the control of a religious or charitable institution"

Renumber accordingly

2023 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1438
3/21/2023

relating to a property tax exemption for buildings and land belonging to institutions of public charity; and to provide an effective date.
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2:04 PM Chairman Kannianen opens meeting.

Senator Present: **Kannianen, Patten, Rummel, Piepkorn, Magrum, and Weber.**

Discussion Topics:

- Tax date
- Committee action

2:11 PM Charles Dendy, legal counsel for the Tax Department, verbally answered questions.

2:15 PM Senator Rummel moved a Do Pass

2:16 PM Senator Magrum seconded.

Senators	Vote
Senator Jordan Kannianen	Y
Senator Mark F. Weber	Y
Senator Jeffery J. Magrum	Y
Senator Dale Patten	Y
Senator Merrill Piepkorn	Y
Senator Dean Rummel	Y

Motion passed 6-0-0

2:16 PM Senator Kannianen will carry.

2:17 PM Chairman Kannianen closed the meeting.

Nathan Liesen, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1438, as amended: Finance and Taxation Committee (Sen. Kannianen, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1438, as amended, was placed on the Fourteenth order on the calendar. This bill does not affect workforce development.

TESTIMONY

HB 1438



Equalization Department

Box 2806
211 Ninth Street South
Fargo, ND 58103

Telephone: 701-241-5616
Fax: 701-241-5729
assessor@casscountynd.gov

Testimony prepared for:

House Finance & Taxation

Prepared: Monday, January 23, 2023

Paul Fracassi, Director of Equalization

Cass County Government

RE: House Bill No. 1438

Chairman Headland and Committee Members;

Thank you for the opportunity to submit written testimony in opposition to House Bill No. 1438.

Unintended Consequences

Property belonging to institutions of public charity, including public hospitals and nursing homes, currently receive an exemption of their building and land valuation if they meet the state's two-part test: (1) charitable organization and (2) devoted to a charitable purpose (ownership and use). Vacant land is typically not exempt, but this bill would allow the vacant land to be exempt after acquisition, and it further exempts the building and land throughout the construction of the facility.

The "use" portion of the two-part test applies specifically after a building is occupied. This is the point in time that our office can review and determine if the use test is satisfied. Exempting the land after acquisition and during construction removes the "use" portion that is associated with the building. This could potentially open the door for any LLC with a 501(c)(3) to become developers of exempt land, an expense which would shift the burden to other taxpayers.

Amendment

I feel the following amendments could help remedy the unintended consequences of this bill:

"An application applying for a tax exemption under this subsection shall include a clearly stated purpose articulating the plan for future use."

"If, at any point, it becomes evident the applicant has abandoned, modified, or developed the land in a manner inconsistent with its stated purpose, the land shall be subject to all property taxes, including back taxes, from the time the property was initially acquired."

Thank you again for the opportunity to provide written testimony regarding House Bill No. 1438.

Sincerely,

Paul Fracassi

Paul Fracassi
Cass County Government, Director of Equalization

HB 1438 Testimony

Mr. Chairman, members of the House Finance and Tax Committee, my name is Rep. Larry Bellew, District 38 Republican from Minot. I am here to support passage of HB 1438.

In the North Dakota Constitution, Article X, Section 5, states “to the extent immunity from taxation has not been waived by an act the legislative assembly, and property used exclusively for schools, religious, cemetery, charitable or other public purposes shall be exempt from taxation.”

NDCC 57-02-08 states that all property described in this section to the extent herein limited shall be exempt from taxation: I would like to bring to your attention section 6 which exempts all property belonging to schools. Going back to the Constitution, we can see that schools and charitable purposes are in the same sentence. Hospitals are considered are a charitable purpose. If schools are exempt, then I feel that hospitals should also be exempt to be consistent with our Constitution.

I am sure that only gov't entities will be against this bill. Their testimony probably will state that if the property tax was reduced for hospitals during the construction period, then the other taxpayers in the taxing areas would have to

make up the difference. Not once was there a mention to reduce gov't spending. And because of the law as it currently is, the local political subs received an enormous infusion of new tax dollars. I wonder how they spent this money. Also, they did not mention when a surplus of taxes is collected because of new projects like Trinity, there is no rebate to the local property owners. Trinity Hospital is building a new hospital in Minot. Their property taxes for the last six years are 2017- \$49,825.46; 2018 -\$56,474.82; 2019 - \$235,361.86; 2020 - \$684,063.78; 2021-\$1,297,731.87; 2022- \$2,705,774.30 for a total of \$5,029,232.09. I was told they had to pay these exorbitant taxes because they are not occupying the new hospital. Once they open for business, they will become a non-profit and no longer pay property taxes. This does not make sense to me because I maintain that Trinity Hospital is a non-profit now and should not have pay property taxes during construction. Six years of taxes amount to \$5,029,232.09. This amount is new taxes while they are building their hospital. Not one of our political subs offered a property tax reduction, even though they received, a massive infusion of new funds.

As I stated earlier, because schools and charitable purposes are in the same line in the Constitution, I feel that hospitals should also be exempt from property taxes as it states in the bill. I urge a do pass on this bill.



Testimony on HB 1438
Presented to the Finance and Tax Committee
Prepared by Nick R. Lee, West Fargo City Assessor
1/23/23

1 Thank you for the opportunity to share what I see as challenges to the
2 administration, and possible unforeseen side effects, of HB 1438.

3 The proposed HB 1438 essentially alters the two-part test used to determine
4 eligibility for charitable exemptions. It appears to me that HB 1438 is trying to make the
5 charitable exemption similar to the religious exemption, in that it allows for exempting
6 land in preparation for the construction of a future structure. As previously mentioned,
7 we have a two-part test for both of these type of exemptions: 1) Ownership 2) Use.
8 However, the religious exemption amendment did not break the two-part test and HB
9 1438 does break the use test for charitable exemptions.

10 In the case of the religious exemption the two part test wasn't broken as the
11 exemption in NDCC 57-02-08(9)(c) specifies "for the purpose of a future church
12 building." You would reasonably expect a new church building to pass any use test for
13 a religious exemption, due to the substantial cost and uniqueness of the structure of a
14 typical church.

15 Conversely, in regards to the charitable exemption and the amendments
16 proposed in HB 1438, it requires exemption for "purpose of a future building." An
17 undefined building alone does not by itself meet the use test, and we could come to
18 find never meets the use test after completion. We cannot assume just any building
19 built by a qualifying 501(c)(3) would meet the use test, as there have been multiple
20 North Dakota Supreme Court cases arguing the validity of the use by fully qualifying
21 501(c)(3) organizations.

22 As written, these amendments require us to exempt land based on the intent of
23 a potential building that might never qualify for exemption when complete. Breaking
24 the longstanding two-part test, which has been proven to safeguard our local
25 jurisdictions from being taken advantage of by unintended misuse for decades, is a risky
26 endeavor and necessitates the maximum amount of consideration.

27 I can understand the intention is to relieve the burden of property taxes on
28 qualifying charities that plan to build a structure in the future, but the bill as written
29 opens up local jurisdictions to possible serious unintended consequences.

30 First, as written, an organization could submit multiple applications on multiple
31 properties. A single application cannot be on a tract bigger than 50 acres. However,
32 there is no limit to the acreage owned and exempted by any one entity; all with
33 nothing but the “promise” it will be built on within 10 years. Technically this could lead to
34 a limitless amount of pieces of property being taken off the tax rolls for up to 10 years.
35 This could have a significant fiscal impact to the local jurisdiction.

36 I also call into question the appropriateness of making up to 50 acres exempt for
37 a potential building site. In my 15 years as an Assessor, I have never seen a charity use
38 even close to 50 acres for their building or campus. In our community of over 13,000
39 parcels, there are 20 non-government owned parcels that are equal to or over 20
40 acres. These parcels are large industrial lots and development tracts. I will also add that
41 the religious exemption limits the amount of land for a potential church to just 20 acres. I
42 question why we would want to exceed what we are already allowing for a similar
43 property type.

44 Second, anyone who could obtain a 501(c)(3) could in theory purchase land,
45 hold it tax free, and sell pieces incrementally over the years. Historically, in our area,
46 land held for a few years and then sold, has been sold at a profit. As written, there is
47 nothing addressing the selling of pieces, or the entirety, of a parcel within the 10-year
48 window. Without a penalty or tax claw back on tracts sold, this bill would allow a
49 charitable organization to compete with typical land developers while maintaining an



50 unfair advantage. I have concerns that by allowing an exemption on such a large tract
51 of land, this bill is incentivizing speculative development on at least part of the property.

52 Finally, as a City Assessor I typically have the benefit of being able to see how a
53 property is built and used prior to valuation or classification and respond accordingly. A
54 change like the one this bill proposes binds us to a very ambiguous set of rules and
55 requires exemption based on the possibility of what could happen in the future, all the
56 while not allowing the local jurisdiction safeguards against unscrupulous use.

Testimony in Opposition to House Bill 1438
January 24, 2023
House Finance and Taxation Committee
Bill Wocken on behalf of the North Dakota League of Cities

Good morning, Mr. Chairman and members of the House Finance and Taxation Committee. For the record, my name is Bill Wocken, appearing on behalf of the North Dakota League of Cities in opposition to House Bill 1438.

This bill proposes to allow the existing property tax exemption on structures belonging to institutions of public charity and the land they physically occupy to be enlarged to also exempt up to 50 acres of undeveloped land belonging to these institutions.

The League of Cities has argued against additional exemptions to the property tax on many occasions. Allowing further exemptions reduces the tax base and requires others who do pay the tax to pay a larger share. When an exemption of 50 acres of land per institution of public charity is considered, each exemption is a very costly reduction in the tax base. Multiple exemptions are likely in larger cities.

Please keep in mind that the acreage involved in these exemptions is normally in a developed or developing area of a city, since utility and roadway infrastructure will be needed to develop the parcel. This land normally carries a substantial market value, making this exemption request a very costly one.

For these reasons the North Dakota League of Cities opposes this bill and respectfully requests a Do Not Pass recommendation from the committee. I will be happy to answer any questions you may have of me.



January 26, 2023

State of North Dakota
House of Finance and Tax Committee
North Dakota State Capitol
600 East Boulevard Ave
Bismarck, ND 58505

Chairman Headland and members of the House Finance and Tax Committee:

Trinity Health supports HB 1438 - Property, tax exemption for buildings and land belongings to institutions of public charity.

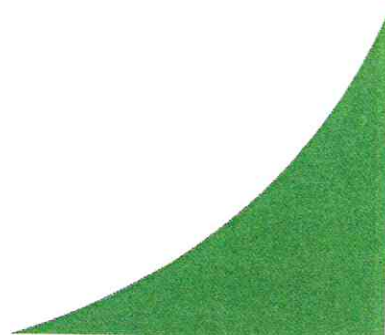
Trinity Health is a charitable hospital system meeting the general requirements for tax exemption under internal revenue code section 501(c)(3) for more than 100 years.

Trinity Health is organized and operated for the charitable purpose of promoting health to the communities of north central and north western North Dakota.

Trinity Health is a qualified hospital system as described in section 501(c)(3) and continues to meet the community benefit standards. Examples of the community benefit standards demonstrated by Trinity Health include, but are not limited to:

It's ability to provide benefits to all classes of persons to benefit the communities it serves.

- Operating to serve a public rather than a private interest.
- Operating an emergency room open to all, regardless of ability to pay.
- Maintaining a board of directors drawn from the community.
- Using surplus funds to improve facilities, equipment, and patient care.
- Using surplus funds to advance, medical training, education, and research.



In 2018, Trinity Health broke ground on its \$520M healthcare campus in medical district to meet the growing and advancing needs of the patient populations served by Trinity Health. Since breaking ground in 2018, Trinity Health has incurred significant expense and a financial burden of property tax on its state-of-the-art healthcare campus and medical district buildings and land. Outlined below are the property taxes paid on this most important and very needed project.

2019 - \$223,594

2020 - \$649,861

2021 - \$1,232,845

2022 - \$2,583,209

Total property taxes paid 2018 through 2022: \$4,689,509

Estimated property tax 2023: up to \$7 million.

Trinity Health asks for your support for HB1438 and is positioned to answer any questions that you may have.

Sincerely,

John M. Kutch
President & CEO

HB 1438 Testimony

Mr. Chairman, members of the Senate Finance and Tax Committee, my name is Rep. Larry Bellew, District 38 Republican from Minot. I am here to support passage of HB 1438.

In the North Dakota Constitution, Article X, Section 5, states “to the extent immunity from taxation has not been waived by an act the legislative assembly, and property **used** exclusively for schools, religious, cemetery, charitable or other public purposes shall be exempt from taxation.”

NDCC 57-02-08 states that all property described in this section to the extent herein limited shall be exempt from taxation: I would like to bring to your attention section 6 which exempts all property belonging to schools. Going back to the Constitution, we can see that schools and charitable purposes are in the same sentence. Hospitals are considered are a charitable purpose. If schools are exempt, then I feel that hospitals should also be exempt to be consistent with our Constitution.

While tax collectors apparently have no interest in attempting to tax school land, not only land upon which school buildings sit, but also land school districts purchase for potential future expansion, or vacant school property, they for some

unexplained reason, seem eager to tax as much hospital property as they think they might be able to somehow find authority to tax. Sadly, the way our current law is written has led to their interpretation that they have the authority to what the Constitution forbids. It is time for us to clear that up. HB 1438 clarifies this point and makes it clear that both our statues and our Constitution say and mean the same thing.

I am sure that only gov't entities will be against this bill (political subs). Their testimony probably will state that if the property tax was reduced for hospitals during the construction period, then the other taxpayers in the taxing areas would have to make up the difference. This is not true, because the taxes are new dollars. Not once was there a mention to reduce gov't spending. And because of the interpretation of the current law as it, the local political subs received an enormous infusion of new tax dollars. I wonder how they spent this money. Also, they did not mention when a surplus of taxes is collected because of new projects like Trinity, there is no rebate to the local property owners, why? Trinity Hospital is building a new hospital in Minot. Their property taxes for the last six years are 2017- \$49,825.46; 2018 -\$56,474.82; 2019 - \$235,361.86; 2020 - \$684,063.78; 2021-\$1,297,731.87; 2022- \$2,705,774.30 for a total of \$5,029,232.09. I was told they had to pay these exorbitant taxes because they

are not occupying the new hospital. Once they open for business, they will become a non-profit and no longer pay property taxes. This does not make sense to me because I maintain that Trinity Hospital is a non-profit now and should not have pay property taxes during construction. Six years of taxes amount to \$5,029,232.09. This amount is new taxes while they are building their hospital. And the property assessment increased each year during construction. Not one of our political subs offered a property tax reduction, even though they received, a massive infusion of new funds.

As I stated earlier, because schools and charitable purposes are in the same line in the Constitution, I feel that hospitals should also be exempt from property taxes as it states in the bill. I urge a do pass on this bill.

Mr. Chairman, Members of the Senate Finance and Tax Committee, I don't believe, as a legislator, that I've ever seen a clearer opportunity to uphold our oath of office or to "right a wrong" in our government. Our responsibility, now, is to end this practice, once and for all, to make it crystal clear that the North Dakota Legislature upholds the Constitution, as we've each sworn to do. Please pass HB 1438. Thank you.



Testimony on HB 1438
Presented to the Senate Finance and Taxation Committee
Prepared by Nick R. Lee, West Fargo City Assessor
Tuesday, Feb. 28, 2023

1 Mr. Chairman and members of the Senate Finance and Taxation Committee:

2 I would like to take this opportunity to submit my opposition to House Bill 1438. This
3 bill essentially creates an exemption from taxes on 50 acres of vacant land for any
4 organization that has a 501(c)(3) and claims they plan to build a building. It would
5 exempt the land for up to 10 years until they start construction. There is no penalty for
6 selling a portion, or all, of this tax-free land at any time before 10 years and no limit on
7 how many times you can buy land prior to building anything.

8 A similar type of exemption passed last session for religious organizations. Religious
9 organizations generally receive different treatment from other property owners as they
10 hold a unique status in American society in recognition of their rights guaranteed by the
11 First Amendment of the Constitution of the United States. Giving religious organizations a
12 unique exemption due to these facts, even if the exemption was very broad, was
13 rational. At least we would have a reasonable expectation a religious organization would
14 construct a "church building" on the vacant land they own.

15 General charities, while sometimes affiliated with religious organizations, serve a
16 wide variety of purposes. In North Dakota alone there are 7,818 organizations listed on
17 the IRS Tax Exempt Organization Search (<https://apps.irs.gov/app/eos/>.) Not only do the
18 buildings required for these purposes vary greatly, but the uses of these buildings as well.
19 On four occasions, the ND Supreme Court heard cases involving fully qualified 501(c)(3)
20 organizations, and if their building qualified for charitable exemption. Three out of four
21 times the resulting rulings found that they did not meet the criteria for exemption. Giving
22 a broad exemption to a large group of potential applicants, with no firm expectation
23 that the potential building will qualify for exemption, is a bad idea.

24 The bill author in his testimony clearly wants this to apply to hospitals. An easy
25 solution would be to specify public hospitals exclusively. This way the legislature can put
26 their trust into public hospitals the same way they put their trust in religious organizations
27 not to bend the rules unscrupulously. Extending that trust to the much larger world of
28 general charities through this bill makes for a greater risk of organizations misusing this very
29 broad exemption.



Equalization Department

Box 2806
211 Ninth Street South
Fargo, ND 58103

Telephone: 701-241-5616
Fax: 701-241-5729
assessor@casscountynd.gov

Testimony prepared for:

Senate Finance & Taxation

Prepared: Tuesday, February 28, 2023

Paul Fracassi, Director of Equalization

Cass County Government

RE: House Bill No. 1438

Chairman Kannianen and Committee Members;

Thank you for the opportunity to submit written testimony in opposition to House Bill No. 1438.

Unintended Consequences

Property belonging to institutions of public charity, including public hospitals and nursing homes, currently receive an exemption of their building and land valuation if they meet the state's two-part test: (1) charitable organization and (2) devoted to a charitable purpose (ownership and use). Vacant land is typically not exempt, but this bill would allow the vacant land to be exempt after acquisition, and it further exempts the building and land throughout the construction of the facility.

The "use" portion of the two-part test applies specifically after a building is occupied. This is the point in time that our office can review and determine if the use test is satisfied. Exempting the land after acquisition and during construction removes the "use" portion that is associated with the building. This could potentially open the door for any LLC with a 501(c)(3) to become developers of exempt land, an expense which would shift the burden to other taxpayers.

Amendment

I was able to listen to Rep. Bellew's testimony in the house and it was clear the bill is intended to assist with the tax burden placed on public hospitals during construction. I feel there is a simple solution to remedy the bill in a way that will assist Rep. Bellew's concerns and avoid any unintended consequences.

On Page 1, line 14: ~~strikeout the words "institution of public charity" and replace it with the words, "Public Hospitals and Nursing Homes licensed pursuant to section 23-16-01 under the control of religious or charitable institutions."~~

By adopting this amendment, it clearly states how the exemption should be facilitated and avoids any grey area.

Thank you again for the opportunity to provide written testimony regarding House Bill No. 1438.

Sincerely,

Paul Fracassi

Paul Fracassi
Cass County Government, Director of Equalization

OFFICE OF TAX EQUALIZATION

P. O. Box 393

Ellendale ND 58436

Phone: (701) 349-8319

E-mail: dflaherty@nd.gov

February 28, 2023

2023 Senate Finance and Taxation Committee
 Honorable Senator Jordan Kannianen, Chairman
 North Dakota State Capitol

Dear Senator Kannianen and Members of the Senate Finance and Taxation Committee:

My name is Don Flaherty and I am the Director of Tax Equalization for Dickey County. I am testifying today in opposition to HB 1438 and to offer an amendment. The changes being proposed to subsection 8 of section 57-02-08 in HB 1438 are very similar to the changes made in subsection 9 of the same section in the 2021 session. While I believe it is important for an institution of public charity to be able to plan for the future so as to be of better service to their community, I believe the language used in the proposed change is contrary to the intent the bill sponsor and legislature wish to convey. The language used to provide an exemption for future use (page 1, lines 14-18) is very similar to the language that was adopted by the legislature for the future development of churches. This language has been interpreted to mean that land purchased for future development is exempt for up to 10 years so long as it is undeveloped. It is the addition of the definition of "undeveloped land" (page 1, lines 18-21) that changes this interpretation and as a result can extend this exemption to the entire time that this property is owned by the institution of public charity.

According to the bill, "undeveloped land" includes land undergoing construction or containing improvements . . . before the building is completed and suitable for use. The exemption on the undeveloped land will expire ten years after the taxable year in which the property was acquired only if construction improvements have not commenced. If improvements have commenced during the ten-year period, then because of the wording used in lines 14-18 and the definition of "undeveloped land", the expiration clause is made moot and is no longer in effect. As such, the property would remain exempt regardless of whether the construction is completed or not so long as it is owned by the institution of public charity.

Legal Counsel Dee Wald submitted a diagram (see attached) in her testimony to the House Finance and Taxation Committee on HB 1439. Since the language in HB 1439 is similar to HB 1438, I believe that diagram is applicable to this bill as well. In the diagram, we see the perceived effect of the bill based on the definition of undeveloped land, but this diagram does not consider the termination of the ten-year expiration because construction has commenced. If it is the intent of the legislature to adopt conditions that would fit this diagram, then I would like to offer the following amendment:

On page 1, line 18 strike out the word "commenced" and replace it with the words "been completed".

I believe this change will correct this bill so that it will only provide the exemption for the ten-year period as intended and therefore, I would encourage you to make this adjustment to HB 1438.

Respectfully Submitted,

Donald W. Flaherty
 Dickey County Director of Tax Equalization

NDCC 57-02-08(9)

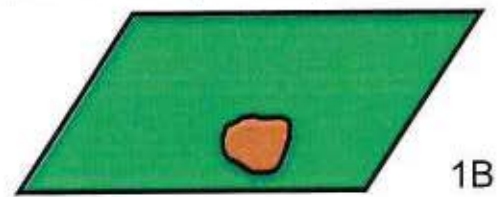
Prior to 2021 Session

Land for Future Church
NOT EXEMPT
Tax on \$10K (land)



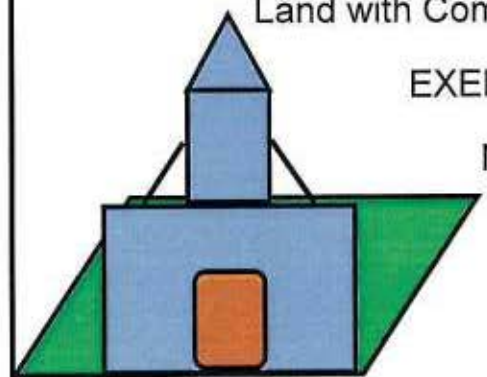
1A

Improved Land for Future Church
NOT EXEMPT
Tax on \$10K plus improvements



1B

Land with Completed Church
EXEMPT
No Tax



1C

HB 1471 (2021)

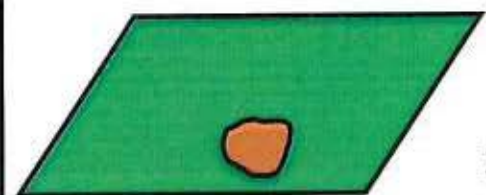
*Impact was to Box 2A

Up to 20 Acres for Future Church
EXEMPT for up to 10 years
No Tax



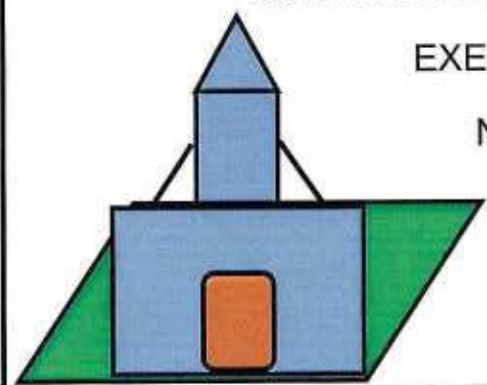
2A

Up to 20 Acres for Future Church After Development Begins
NOT EXEMPT
Tax on \$10K plus improvements



2B

Land with Completed Church
EXEMPT
No Tax



2C

HB 1439 (2023)

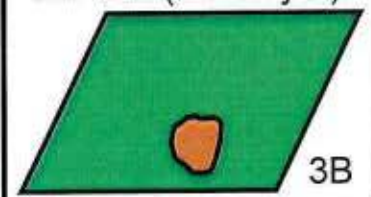
*Impact is to Box 3B

Up to 20 Acres for Future Church
EXEMPT for up to 10 years
No Tax



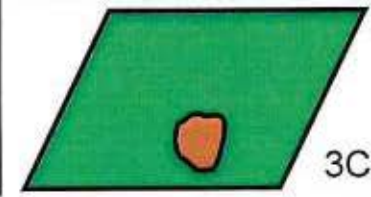
3A

Up to 20 Acres for Future Church After Development Begins
EXEMPT for up to 10 years
No Tax (for 10 yrs)



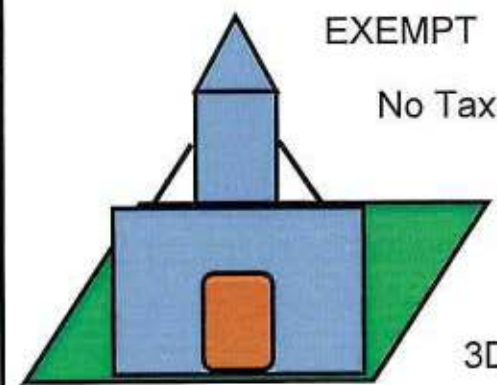
3B

Up to 20 Acres for Future Church After Development Begins
NOT EXEMPT for years 11 through Completion
Tax on \$10K plus imp.

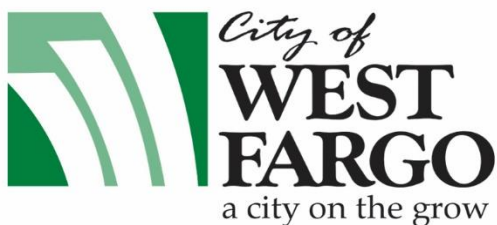


3C

Land with Completed Church
EXEMPT
No Tax



3D



Testimony on HB 1438
Presented to the Senate Finance and Taxation Committee
Prepared by Bernie Dardis, West Fargo Commission President
Tuesday, Feb. 28, 2023

1 Mr. Chairman and members of the Senate Finance and Taxation Committee:
 2 I would like to take this opportunity to submit my opposition to House Bill 1438.
 3 Property tax exemptions can be a very useful tool to provide relief to certain
 4 organizations who feel burdened by their responsibility. However, these changes pose a
 5 few issues. Broadening the timing of the exemption to after acquisition through
 6 construction allows any public charity to enjoy the exemption while holding onto
 7 undeveloped land and then sell it for any use. Expanding to 50 acres reduces the tax
 8 base for all taxing entities and shifts public charities responsibility to other taxpayers.

9 Paul Fracassi, Cass County Government Director of Equalization, summarized
 10 these concerns well with his testimony that *“this could potentially open the door for any*
 11 *LLC with a 501(c)(3) to become developers of exempt land, an expense which would*
 12 *shift the burden to other taxpayers.”*

13 Based on the testimony for those in support of this bill, it appears the bill is meant
 14 to assist public hospitals and nursing homes. Please consider amending this bill to better
 15 address this specific need to ensure it does not have unintended consequences that
 16 burden other taxpayers.

17 Sincerely,

18
 19 Bernie Dardis,
 20 West Fargo Commission President
 21 bernie.dardis@westfargond.gov

House Bill 1438

Submitted Testimony

Josh Wolsky, Minot Citizen

IN OPPOSITION

Senators:

My name is Josh Wolsky. I had intended to be in Bismarck for this hearing in person today; the weather dictated otherwise. I submit this testimony representing no one but myself and what I believe are the best interests of Minot and North Dakota. Thank you for the opportunity to share my thoughts on HB 1438.

I stand firmly against this bill. And while I understand the good intentions and rationale behind it, the consequences for both Minot and the state scare me.

In that position, I will structure my opposition around three concerns. First, the effects on market economy land prices that come from lowering costs for non-profit organizations. Second, the impacts non-profit tax exemptions are already having on Minot that will be extended and worsened by this bill. Third, the danger of rewriting state law based on what may be an outlier situation and the experience of a distressed non-profit entity.

So, let's begin with a rhetorical question. If you did not have to pay property taxes — which is to say ownership would carry no costs, how many of you would buy land as an investment if you had the resources to do so?

The answer is all of you. Why? Because it would be the smart thing to do. Land is a good investment because, as they say, we're not making any more of it.

It's a well-understood economic principle — scarcity, or limited supply, pushes the cost of things up. Anybody who bought eggs over the past few months understands supply, demand, and prices.

If passed, this law will slowly start to reshape our land supply, demand, and market prices. Why? Because non-profits are led by smart people. They'll recognize that owning land is a good investment.

Now, more non-profits investing in land ownership is just one outcome the principles of economics would predict. But we all know laws are not made in a vacuum. They are introduced into a dynamic environment where other laws and outside forces impact the outcomes.

So I invite you to consider how another recent law change reshaping North Dakota — the not-long-ago-passed legalization of e-Tab machines in gaming sites - will interplay with HB 1438. In a commentary published in January on Inforum.com, journalist Rob Port called attention to the considerable revenue growth many non-profits are experiencing from charitable gaming. Here's a quick review. In 2022, the ND Association for the Disabled had \$86.8 million gross revenue, Minot Hockey Boosters had \$41.7 million, Bismarck Hockey Boosters had \$27.4 million, Minot Junior Golf had \$26.6 million — these are just a few examples pulled from the article.

So, first, we have non-profits across the state with lots of new income from e-Tab gaming. Second, we have a new incentive for non-profits to park their income in low-risk, high-return, tax-free land ownership.

What will happen? Again, the principles of economics tell us that the price of land will increase. More non-profits will begin participating in land speculation and acquisitions because this bill will eliminate land ownership costs.

The outcome will be a double-edged sword that cuts the private sector twice. It will cut them first when they have to pay higher prices for land because they're competing against cash-laden non-profits with lower ownership costs. And it will cut a second time when they pay property taxes because assessed values are informed by sale prices. If sale prices go up, so do assessments. And with less land on the tax rolls, who will make up the difference? Everyone who doesn't qualify for an exemption.

And here's the part that scares me the most. These changes won't happen fast. They'll take place slowly. They'll take place so slowly that by the time we recognize that something is broken, we'll have forgotten what caused it. And in the odd chance we do remember the cause, we'll have to take something away from non-profits to fix it. How politically popular is that likely to be on that future day?

Now to my second concern. As we reshape our land markets and prices, we're going to reshape the physical construct of our communities, too. I do not believe the outcomes will be positive. As a resource and example, I've included an overhead view of downtown Minot (attached at the end) and all the land one single non-profit — Trinity Health -- owns and operates on.

On all this land – nearly 18 acres, Trinity currently does not pay property taxes. Why? Because the law already protects non-profits from paying taxes — so long as they meet the low threshold of using their real estate to serve their non-profit purpose. As you can see, that threshold is met with parking lots on several parcels unattached to their operations.

Let's note the location, too. These parcels are on or near one of the busiest intersections — Broadway and Burdick Expressway — in all of North Dakota. You know what they say about the value of real estate, right? Location, location, location. As you can see, much of the real estate in Minot's best and busiest location is currently held property-tax-free.

How much are the citizens of Minot losing in property tax revenue on their most valuable real estate because Trinity's current use is meeting the threshold of serving a non-profit purpose? The answer is we don't know. We don't know what this property might have become if the law — in its current form — hadn't incentivized Trinity to acquire land, demolish buildings, and convert them to parking.

And as you are all likely aware, Trinity is on the eve of moving to a new campus in Southwest Minot. Construction on the project started nearly five years ago, and the move-in date is scheduled for later this spring.

It's an exciting milestone for Trinity and Minot, but it does come with a few questions and concerns. Namely, what happens to their downtown real estate when they move to the new hospital? One of the few incentives to push Trinity to act is the fact that — under the current law — they're going to presumably lose their non-taxable status on at least some of these parcels. That means the cost of ownership won't be free; there will be a financial incentive to push the real estate into some new future. Hopefully, for the taxpayers and citizens of Minot, that new future use would be a tax-bearing or community-enhancing use. In the best-case scenario, it would deliver both.

This bill destroys the one small incentive Trinity has to act on their real estate. And who will pay for it? Minot taxpayers will pay for it.

We'll pay for it when we fix the streets and plow the snow in front of their tax-free land investment. We'll pay for it in lost time and tax revenue while Trinity speculates on the future or waits for the best deal for them. And if we're in a hurry to see our downtown improve, we'll pay for it while we're held over the barrel and forced to put up public dollars to realize a new future.

This law removes the one small piece of leverage we the public have in seeing acres and acres of land in our downtown redeveloped into more productive uses.

And to my last concern, this bill seems to have been born from the fact Trinity Health has been paying taxes on their undeveloped and under-construction hospital for the duration of their construction project. The bill's sponsor Representative Bellew points out in submitted testimony that those taxes add up to more than \$5 million over the past five years.

That's true — because that is the practice called for by the current interpretation of the law. And while that has led to considerable taxes paid, it should be noted that other hospitals have been built in North Dakota, and concerns on this issue did not arise. It should also be noted that the number is high because of the manner in which the construction project has been delivered.

The new Trinity Hospital construction project is on its third general contractor and construction management firm. The hospital was originally said cost \$370 million and take a little over two years to complete. We're now approaching 5 years and more than \$500 million. The taxes paid by Trinity are not the result of unjust practices by political subdivisions; they're the result of a construction project that has not gone well.

It should also be noted that we, the public, have borne significant costs from Trinity's desire to relocate out of downtown Minot.

We, the public, built the road and infrastructure serving this portion of Minot at no small cost. There is one very recent special assessment put in the area for a traffic light, but other than that, the infrastructure costs in this area have been borne by the public, not Trinity or other land developers.

We, the public, chose to begin the process of relocating our landfill in part due to the concerns Trinity brought, suggesting that the birds attracted by the landfill would create dangers for helicopter life flights. The expense of relocating our landfill will fall to the public and ratepayers and cost tens of millions of dollars.

More recently, Trinity, through their foundation, requested a \$3 million MAGIC Fund Grant to support the project's construction. The MAGIC Fund is Minot's economic development fund; our local elected leaders did not judge this as a wise investment of public dollars. However, they did offer support through a loan of the same amount with favorable terms. Trinity did not accept the loan.

As a member of the public, I was grateful for the decision of our City Council. It's a matter of easily discoverable public documents that Trinity is in a distressed financial position. Their credit rating and outlook were both recently downgraded by S&P Global Ratings. Their rating was downgraded from BBB- to BB+; their outlook was revised from 'stable' to 'negative.' The report is attached for your review.

Senators, I know all of Minot's legislators. I know many on Trinity's Executive team. And while I don't agree with them on every issue, I know they're good people who are serving Trinity, Minot, and our state with their best judgment and intentions.

And while I know this bill was brought in the spirit of those good intentions, I also believe this is a blind spot for us in Minot. Trinity is a hometown business; health care is important, and we want to do everything possible to support their important role and success. But I'm concerned — on this issue in Minot — we've lost sight of the forest for the sake of a single tree. Rewriting our state law to try and save it won't be good for Minot, and it won't be good for North Dakota.

I strongly encourage you to recommend a DO NOT PASS on this House Bill 1438.
Thank you for the opportunity to provide this testimony.

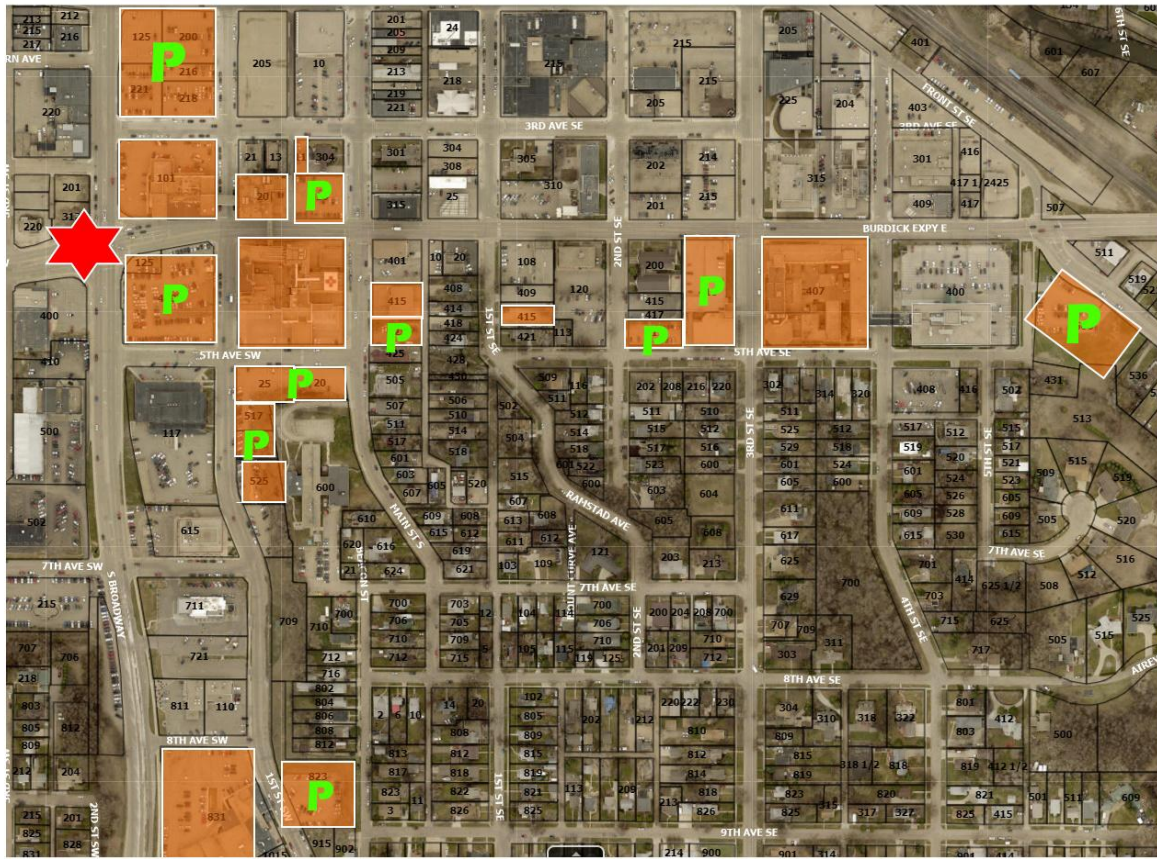
Respectfully Submitted,

Josh Wolsky, Minot Citizen

Attachments:

Minot Downtown Overhead View

S&P Ratings: U.S. Not-For-Profit Health Care Rating Actions, August 2022



 Trinity Tax Free Real Estate in Downtown Minot (~ 18 Acres)  Parking  Broadway & Burdick Expressway

COMMENTS — 19 Sep, 2022 | 18:08 — United States of America

U.S. Not-For-Profit Health Care Rating Actions, August 2022



Primary Credit Analyst: **John Magers**
Secondary Contacts: **Cynthia S Keller, Suzie R Desai, Blake C Fundingsland**
Sector: **U.S. Public Finance, Health Care, Not For Profit**
Tags: **Americas**

[View Analyst Contact Information](#)

S&P Global Ratings affirmed 23 ratings without revising the outlooks, took eight rating actions, and revised six outlooks without changing the ratings in the U.S. not-for-profit health care sector in August 2022. We also placed ProMedica Healthcare Obligated Group on CreditWatch with negative implications in addition to lowering the rating and revised the outlook on Princeton Community Hospital in West Virginia from negative to developing. There was one new sale in August. The 14 rating and outlook actions consist of the following:

- Seven downgrades, on six stand-alone hospitals and one system;
- One upgrade, on one standalone hospital;
- Five unfavorable outlook revisions on one standalone hospital, three systems, and one long-term care provider (all to negative from stable); and
- One favorable outlook revision on one standalone hospital (from stable to positive).

The table below summarizes S&P Global Ratings' monthly bond rating actions for U.S. not-for-profit health care providers in August. We based the credit rating affirmations and rating actions on several factors within enterprise and financial profiles, including business position, utilization, financial performance, debt levels, bond-issuance activity, physician relationships, and the external regulatory and reimbursement environment. This also incorporates our stable sector view but we are incorporating the changing dynamics of the sector including the increased inflationary pressures, economic developments, and investment market volatility.

August 2022 Not-For-Profit Health Care Ratings Actions

Hospitals	State	Rating	Outlook	Action	Description
AnMed Health System and Affiliates	SC	A+	Stable	Rating maintained	Credit quality consistent with existing rating
Bexar County Hospital District	TX	AA	Stable	Rating maintained	Credit quality consistent with existing rating

Boston Medical Center	MA	BBB	Positive	Rating maintained; outlook revised from stable	Strengthened balance sheet, coupled with projections that operating margins will stabilize during the outlook period
Children's Hospital Los Angeles	CA	BBB+	Negative	Rating maintained; outlook revised from stable	Elevated operating losses coupled with lighter balance sheet metrics and potential capital spending
Comanche County Memorial Hospital	OK	BB+	Stable	Rating maintained	Credit quality consistent with existing rating
Good Shepherd Group	PA	BBB+	Negative	Rating lowered from A-; previous outlook negative	Ongoing operating losses and weakening debt metrics
Grand River Hosp Dist	CO	BB+	Negative	Rating maintained	Credit quality consistent with existing rating
Grand View Hospital	PA	BB	Stable	Rating lowered from BB+; previous outlook stable	Magnitude of unaudited operating losses in 2022 expected to continue in 2023 along with higher debt-related metrics

Halifax Hospital Medical Center Obligated Group	FL	A-	Stable	Rating maintained	Credit quality consistent with existing rating
Holy Redeemer Health System	PA	BB+	Stable	Rating lowered from BBB-; previous outlook negative	Persistent operating losses that have accelerated and limited balance- sheet growth
Jackson Hospital and Clinic	AL	BB	Negative	Rating lowered from BBB-; previous outlook negative	Unexpected, significant, and persistent operating losses and diminished unrestricted reserves
Jennie Stuart Medical Center	KY	BBB-	Stable	Rating maintained	Credit quality consistent with existing rating
Lake Regional Health System	MO	BBB+	Stable	Rating maintained	Credit quality consistent with existing rating
Lawrence Mem Hosp	KS	A-	Stable	Rating lowered from A; previous outlook stable	Expected continued decline in days' cash on hand and weaker operating performance
MetroHealth System	OH	BBB	Stable	Rating raised from BBB-; previous outlook positive	Sustained positive financial profile metrics and near completion of its new hospital

Nicholas H. Noyes Memorial Hospital (Livingston Health System)	NY	BB-	Stable	Rating maintained	Credit quality consistent with existing rating
Oroville Hosp	CA	B+	Negative	Rating maintained	Credit quality consistent with existing rating
Phoenix Children's Hospital	AZ	A+	Stable	Rating maintained	Credit quality consistent with existing rating
Princeton Community Hospital	WV	BBB	Developing	Rating maintained; outlook revised from negative	Upside potential from PCH's definitive agreement to be acquired by West Virginia University Health System
Scotland Memorial Hospital	NC	A-	Stable	Rating maintained	Credit quality consistent with existing rating
Sky Lakes Medical Center	OR	A-	Stable	Rating maintained	Credit quality consistent with existing rating
SouthEast Alaska Regional Health Consortium	AK	A-	Stable	Rating maintained	Credit quality consistent with existing rating
SoutheastHEALTH	MO	BBB-	Stable	Rating maintained	Credit quality consistent with existing rating

Trinity Health	ND	BB+	Negative	Rating lowered from BBB-; outlook revised from stable	Expected near-term decline of unrestricted reserves leading to very thin days' cash on hand and cash to long-term debt
UAB Health System	AL	AA-	Stable	Rating maintained	Credit quality consistent with existing rating
University Health System, Inc.	TN	BBB	Stable	Rating maintained	Credit quality consistent with existing rating
Yuma Regional Medical Center	AZ	A	Stable	Rating maintained	Credit quality consistent with existing rating
Health Systems					
Bon Secours Health System Inc.	MD	A+	Positive	New sale; rating maintained	Credit quality consistent with existing rating
CHRISTUS Health	TX	A+	Negative	Rating maintained; outlook revised from stable	Diminished unrestricted reserves and a weaker overall financial profile
Dartmouth-Hitchcock Obligated Group	NH	A	Stable	Rating maintained	Credit quality consistent with existing rating

Methodist Le Bonheur Healthcare and Affiliates	TN	AA-	Negative	Rating maintained; outlook revised from stable	Trend of weakening year to date operating performance and expectations of continued strain on unrestricted reserves
Northeast Georgia Health System	GA	A	Stable	Rating maintained	Credit quality consistent with existing rating
ProMedica Healthcare Obligated Group	OH	BB	Not meaningful	Rating lowered from BBB-; Rating placed on CreditWatch negative	Operating losses spurred by labor cost pressures, particularly in the skilled nursing side of the business.
Texas Health Resources	TX	AA	Stable	Rating maintained	Credit quality consistent with existing rating
Tufts Medicine	MA	BBB+	Negative	Rating maintained; outlook revised from stable	Heightened and unexpected operating losses in 2022
Long term care and human service providers					
Henry County Health Care Authority	AL	BB+	Negative	Rating maintained; outlook revised from stable	Multiyear trend of weak operating performance
Noland Health Services	AL	A	Stable	Rating maintained	Credit quality consistent with existing rating

Westhills Village

Retirement

SD

A+

Stable

Rating
maintainedCredit quality
consistent with
existing rating

Community

This report does not constitute a rating action.

Primary Credit Analyst:	John Magers, New York + 1 (212) 438 1151; john.magers@spglobal.com
Secondary Contacts:	Cynthia S Keller, Augusta + 1 (212) 438 2035; cynthia.keller@spglobal.com
	Suzie R Desai, Chicago + 1 (312) 233 7046; suzie.desai@spglobal.com
	Blake C Fundingsland, Centennial + 1 (303) 721 4703; blake.fundingsland@spglobal.com

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Testimony in Opposition to House Bill 1438
March 1, 2023
Senate Finance and Taxation Committee
Bill Wocken on behalf of the North Dakota League of Cities

Good afternoon, Mr. Chairman and members of the Senate Finance and Taxation Committee. For the record, my name is Bill Wocken, appearing on behalf of the North Dakota League of Cities in opposition to House Bill 1438.

This bill proposes to allow the existing property tax exemption on structures belonging to institutions of public charity and the land they physically occupy to be enlarged to also exempt up to 50 acres of undeveloped land belonging to these institutions.

The League of Cities has argued against additional exemptions to the property tax on many occasions. Allowing further exemptions reduces the tax base and requires others who do pay the tax to pay a larger share. Many of those who will pay more are single family homeowners. When an exemption of 50 acres of land per institution of public charity is considered, each exemption is a very costly reduction in the tax base. Multiple exemptions are likely in larger cities.

Please keep in mind that the acreage involved in these exemptions is normally in a developed or developing area of a city, since utility and roadway infrastructure will be needed to develop the parcel. This land normally carries a substantial market value, making this exemption request a very costly one, especially to single family homeowners. If the tax base is eroded by exemptions of this type, either the tax rate will need to be increased or the amount of revenue generated by that tax will decrease. In local government that normally translates into an increase in the mill levy.

For these reasons the North Dakota League of Cities opposes this bill and respectfully requests a Do Not Pass recommendation from the committee. I will be happy to answer any questions you may have of me.

23.0575.01002
Title.

Prepared by the Legislative Council staff for
the Senate Finance and Taxation Committee
March 10, 2023

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1438

Page 1, line 14, replace "an institution of public charity" with "a public hospital or nursing home licensed pursuant to section 23-16-01 under the control of a religious or charitable institution"

Page 1, line 15, replace "institution" with "public hospital or nursing home"

Page 1, line 17, replace "institution" with "public hospital or nursing home"

Page 1, line 18, replace "institution" with "public hospital or nursing home"

Page 1, line 20, remove "an institution"

Page 1, line 21, replace "of public charity" with "a public hospital or nursing home licensed pursuant to section 23-16-01 under the control of a religious or charitable institution"

Renumber accordingly