

2011 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1158

# 2011 HOUSE STANDING COMMITTEE MINUTES

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

HB 1158  
January 19, 2011  
Job #13057

Conference Committee

Committee Clerk Signature	<i>May Main</i>
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**Explanation or reason for introduction of bill/resolution:** Relating to wheelchair accessibility of retail businesses that receive state or local economic development funds; and to provide for application.

## Minutes:

**Chairman Keiser:** We will open the hearing on HB 1158.

**Representative RaeAnn Kelsch,** House Representative from District 34, Mandan: I am in support of HB 1158. Some of you will look at this and say 'we had this issue last session'. It's a little bit different this time. I have a constituent in Mandan that is very passionate about this issue. There were two new businesses that were constructed in Mandan, one was a dollar store and the other was a department store. Neither of them had electronic door access for wheel chair accessibility. There were some public funds that were used for that. He became a strong advocate for making wheelchair accessible ramps and doors, especially electronic doors because it is very difficult in the winter time to get those doors open when you are in a wheelchair. He was successful in getting an initiative passed in Mandan so Mandan receive incentives, public moneys, and they have to have wheelchair accessibility. What this bill does is – if you receive a business incentive of at least \$100,000 from a state or political subdivision, which is used whole or in part for construction, not for renovations, with a population of at least 10,000. There is also some concern in small communities that this would become burdensome and may become more difficult to install these expensive doors. It's for retail portions. This committee, when the bill was kicked out last time, had put a waiver provision in there. That waiver provision is still in here. The governing body of the political subdivision can provide a waiver if the business can make a good enough case. It includes the definition of business incentives. It is not retroactive so it would not go into effect until July 31<sup>st</sup>. Any business incentives awarded after July 31<sup>st</sup> 2011.

**Representative Frantsvog:** How much is the door?

**Representative Kelsch:** I don't have that information. I know that my constituent had that that information and was planning on providing it. He is not able to be here this morning.

**Representative Frantsvog:** This is strictly for new construction, not renovation?

**Representative Kelsch:** That's correct.

**Representative Clark:** Do you remember the bill number on last year's bill?

**Representative Kelsch:** I don't. When I was up at Legislative Council, they had the bill out for me and I did not look at the bill number. We started from the way this committee had amended the bill last time before you sent it to the floor with a do not pass. You had a lot of discussion and thought a waiver was good and made some changes. That's what we based it on. I know Jennifer Clark has that bill number because she used that as a basis. I will get that to you so you have that information.

**Representative Amerman:** What will this do to the local ordinance? Will this over ride what has been passed in Mandan? How will that work?

**Representative Kelsch:** There are portions of this that would over ride what the local ordinance is. There's also some portion of the local ordinance that are not included in this bill.

**Representative Kreun:** Does Mandan subscribe to the United Building Codes? That is in the United Building codes and if they would subscribe to a consistent building code, that would already be in there.

**Representative Kelsch:** The bill, as it was introduced last time, would have been stricter than the ADA requirements and most building requirements. I don't know the answer to that question.

**Chairman Keiser:** We can try to find that answer.

**Representative Kreun:** Why is the population more applicable to 10,000 over than under? If they get \$100,000, they get \$100,000 whether the population is 10,000 or 2000.

**Representative Kelsch:** The biggest reason is that when you're in these major communities where they have large retail presence, it maybe wouldn't be as burdensome on the community and the business itself to put a limit of 10,000. We were trying to make the bill a little more palatable. Maybe this was a step in the right direction. Since you weren't here last session, we tried to base this on all of the arguments against the bill last session and make it more palatable to get passage this session.

**Representative Kreun:** From my standpoint, it should be in the building codes already. I don't believe that a population matters. An individual that is handicapped is the same handicap whether it's a 10,000 population or a 2000 population.

**Chairman Keiser:** Further Question from the committee? Is anyone else here to testify in support of HB 1058?

**David Boeck:** I am a state employee and work for the Protection and Advocacy Project. It is an independent state agency that works to protect people with disability from abuse, neglect, and exploitation and to advocate for disability related rights. I recall this bill in the 2007 session instead of the 2009 session but I could be mistaken about that. This bill is better written than the earlier version. It is narrowly drawn, specific in terms of the

\$100,000 threshold, and it's not absolute. It has this waiver provision that is very flexible. You can get a waiver if it would be structurally or economically imprudent. 'Imprudent' gives a lot of leeway for the Dept. of Commerce or for the local subdivision. The definition of 'wheelchair accessible' might be improved if we added aisles. If the aisles are narrow, it doesn't do you much good to get in the door. I agree with Representative Kreun, if the town is 10,000 or 11,000 or 9,000, it isn't going to make much difference about if you need to get into the building. \$100,000 in a small town for new construction is worth at least as much as \$100,000 in Fargo in terms of imposing the requirement. This is different than the Americans with Disabilities Act. It's different because of the \$100,000 threshold and because this doesn't apply at all to renovation.

**Representative Ruby:** How many projects that involve construction of a building get less than \$100,000 in incentives?

**David Boeck:** I don't know the answer to that.

**Chairman Keiser:** Do we know how many get more than \$100,000?

**David Boeck:** We might know but I don't. I can check on that and get a figure.

**Representative Clark:** How does the ADA address this? What do they say about this?

**David Boeck:** The ADA doesn't apply to every small operation. ADA doesn't have a waiver provision in it. If it's required under ADA, it's required. The real issue is determining how large the business is or how many employees it has in terms of coverage. I will look that up and put it in my written testimony.

**Representative Clark:** Wouldn't the Federal Law supersede anything that's written here?

**David Boeck:** It would if it conflicts. If this law provides greater accessibility than the Federal Law, this law would be permitted to apply because it would still be consistent with the Federal Law.

**Chairman Keiser:** There is nothing in this bill that's inconsistent with the Federal law but there are elements of this bill that are different than the Federal Law, specifically the \$100,000 threshold and the 10,000 population. Those are not used in ADA at all. I know that ADA does have some thresholds it uses relative to these kinds of doors being required. You will find that and provide that to the committee?

**David Boeck:** The term 'wheelchair accessible' could be improved to say 'accessible to individuals who use wheelchairs'. That would be a better term.

**Chairman Keiser:** What line is that on.

**David Boeck:** It appears several places in the bill. Page 1, line 12; page 1, line 19; page 2, line 39. It would be better to say 'accessible to individuals who use wheelchairs'.

**Chairman Keiser:** Any more testimony in support of HB 1158? Anyone here to testify in opposition of HB 1158?

**Veronica Zietz,** Executive Director of the ARC of Bismarck: (See attached testimony #1)

**Chairman Keiser:** Any questions from committee members for Veronica? You came up in opposition to the bill but you really are in support of the concept that we provide accessibility. Your opposition isn't to the \$100,000 or it should be to any . . . .

**Veronica Zietz:** I love the concept. I think it's necessary in order for businesses to make accessibility improvements. It's a great to have public entities be able to provide incentives, it's an awesome idea. The bill in current form could come into conflict with ADA in certain circumstances. The \$100,000 rule and the 10,000 population should be addressed. I'd also consider the following section: Section 2 that says 'waivers may be considered when structurally and economically imprudent'. I would suggest that that just remains 'structurally imprudent' to line up with ADA and remove the 'economically imprudent'. I think that David was right when he said that there is a lot of flexibility in there and I wonder if that could get people into trouble when they were making these changes. I would also make the recommendation that we look at the definition of accessibility and also change that. I think it would provide consistency with State and Federal Law.

**Chairman Keiser:** Any further questions from committee members? We will reopen the portion of our hearing for folks in support of the bill.

**Francis Herauf:** (See attached testimony #2 in support).

**Chairman Keiser:** Any questions for Francis? Is there anyone else who wants to testify in support of HB 1158? Is there anyone else who wants to testify in opposition to HB1158? Is there anyone to testify in a neutral position on HB1158? Seeing none – we will close the hearing on HB1158. What are the wishes of the committee on this?

**Representative N Johnson:** I would move the amendment to change the language from 'wheelchair accessible' to 'accessible to individuals who use wheelchairs' on page 1-line 12, page 1-line 19, and page 2-line 3.

**Representative Frantsvog:** Second.

**Chairman Keiser:** Motion by Representative Johnson, seconded by Representative Frantsvog. Further discussion on that motion? We'll take a voice vote.

**Voice vote taken and carried.**

**Chairman Keiser:** Are there any further amendments?

**Representative Kreun:** I would like to make an amendment to withdraw the population request of 10,000 people.

**Representative Kasper:** Second

**Chairman Keiser:** Further discussion? A retail space is a public space and if there is a retail space, let's make it accessible to anybody who goes there. I don't oppose this amendment. Further discussion? We'll take a voice vote on the additional amendment to strike the language on the limitation of communities of 10,000 people or more.

**Voice vote taken and carries.**

**Chairman Keiser:** Are there any further amendments to the bill? We now have HB1158 as amended with two amendments. What are the wishes of the committee?

**Representative Kreun:** I would move as a do pass as amended.

**Representative Frantsvog:** Second.

**Chairman Keiser:** Further discussion on HB 1158 as amended? I'll ask the clerk to take the roll on a do pass as amended on HB 1158.

**Yes 10 No 2 Absent 2 Do Pass as Amended Carrier: Representative Frantsvog**

Date: Jan 19-2011

Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1158

House House Industry, Business and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment

Motion Made By Rep N. Johnson Seconded By Rep Frantsvog

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Representative Amerman		
Vice Chairman Kasper			Representative Boe		
Representative Clark			Representative Gruchalla		
Representative Frantsvog			Representative M Nelson		
Representative N Johnson					
Representative Kreun					
Representative Nathe					
Representative Ruby					
Representative Sukut					
Representative Vigesaa					

voice vote

Total Yes \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

wheel chair language

Date: Jan 19-2011

Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1158

House House Industry, Business and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment

Motion Made By Kreun Seconded By Kasper

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Representative Amerman		
Vice Chairman Kasper			Representative Boe		
Representative Clark		*	Representative Gruchalla		
Representative Frantsvog			Representative M Nelson		
Representative N Johnson					
Representative Kreun					
Representative Nathe					
Representative Ruby					
Representative Sukut					
Representative Vigesaa					

voice vote - motion ea

Total Yes \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

Pop relative 10,000

January 19, 2011

VR  
1/19/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1158

Page 1, line 10, remove "in a city with a population of at least ten thousand"

Page 1, line 12, replace "wheelchair-accessible" with "accessible to individuals who use  
wheelchairs"

Renumber accordingly

Date: Jan 19-2011

Roll Call Vote # 3

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1158

House House Industry, Business and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number 11.0427.01001

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment

Motion Made By Rep Kreun Seconded By Rep Frantsvog

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	7		Representative Amerman	✓	
Vice Chairman Kasper	7		Representative Boe	Ab	
Representative Clark		7	Representative Gruchalla	✓	
Representative Frantsvog	7		Representative M Nelson	Ab	
Representative N Johnson	7				
Representative Kreun	7				
Representative Nathe	7				
Representative Ruby	7				
Representative Sukut	7				
Representative Vigesaa		7			

Total Yes 10 No 2

Absent 2

Floor Assignment Rep Frantsvog

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

strict econ

**REPORT OF STANDING COMMITTEE**

**HB 1158: Industry, Business and Labor Committee (Rep. Keiser, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 2 NAYS, 2 ABSENT AND NOT VOTING). HB 1158 was placed on the Sixth order on the calendar.

Page 1, line 10, remove "in a city with a population of at least ten thousand"

Page 1, line 12, replace "wheelchair-accessible" with "accessible to individuals who use wheelchairs"

Renumber accordingly

2011 SENATE POLITICAL SUBDIVISIONS

HB 1158

# 2011 SENATE STANDING COMMITTEE MINUTES

Senate Political Subdivisions Committee  
Red River Room, State Capitol

HB 1158  
March 7, 2011  
14939

Conference Committee

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

Relating to wheelchair accessibility of retail businesses that receive state or local economic development funds.

## Minutes:

You may make reference to "attached testimony."
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**Chairman Andrist:** opened the committee hearing on HB 1158, relating to wheelchair accessibility of retail businesses that receive state or local economic development funds.

**Veronica Zietz:** Director of the ARC of Bismarck. See written testimony.

**Chairman Andrist:** You do like the bill? You just don't think it goes far as far as it should? It sounded from your testimony that you really didn't like it. **Veronica Zietz:** I completely support the intent of the bill. I believe the accessibility in public areas is very important. I would like to see this bill go through, but I would just suggest that the committee look at a few of these concerns, which kind of restrict and could be considered in conflict in the ADA. If you didn't want to remove the economically and prudent part, or the hundred thousand waiver, another, suggestion would be to put something in there along the lines of no waiver granted to somebody receiving a business incentive can waive somebody from abiding by the federal standards in the ADA. **Chairman Andrist:** But if we chose to not adopt the amendments, would the bill still get your support or would you be on the opposition testimony. I am trying to find out where you are in this bill? **Veronica Zietz:** I think this is a good bill, but I think we could make it even better. **Chairman Andrist:** So your amendments would make it better but you still like the bill. **Veronica Zietz:** Correct.

**V. Chair Laffen:** As I understand the ADA, if you make the improvements to a building, and retail space is included in that, you would have to be accessible. Is that not correct? **Veronica Zietz:** That is correct. I think that if somebody was looking at this section of law and is not aware of the federal standards, they may think if they get a waiver granted from a government subdivision, they no longer, if its economically imprudent, they don't have to abide by the ADA. Having this in law the way it's written, is going to cause some concern and some conflict about what the rules really are? **V. Chair Laffen:** So, help me understand what we're accomplishing here; federal regulations already say that a retail establishment, if it's being remodeled has to come up to date with current ADA regulations. **Chairman Andrist:** Did you present amendments to the House committee? **Veronica**

**Zietz:** I did raise my concerns with the House committee. Only one amendment was selected and that was a waiver for cities receiving money that had populations of less than 10,000 and that was taken out because it was decided that regardless of a cities population that they should have to make these changes as well.

**Representative Rae Ann Kelsch:** District 34; Prime sponsor and in support of HB 1158. This provides that retail businesses who receive incentive of at least \$100,000 from the state or political subdivision; that they need to be accessible to individuals who use wheelchairs. The requirement is only for new construction and only for the public use portion of the retail building. As you can see down on the bottom the bill on page 1, line 21 it talks about what a business incentive is and top of page 2, it talks about the wheelchair accessible which includes electronic doors, ramps and ramp curbing. Now, a business can request a complete or partial waiver from the requirements if making the business accessible to individuals who use wheelchairs and it would be structurally or economically imprudent. The reason this bill is written the way it is, is that last session you didn't have an opportunity to have this bill make it over to the Senate. During the last session, we had this bill in House IBL, and the way it was written was probably a lot more strict, more stringent and quite frankly the House IBL found it to have a lot more concerns than they felt could be fixed. But they did come up with some suggestions as to make it better. Unfortunately the bill failed and so as I drafted the bill this session and I took into account the concerns that the House IBL had and redrafted in putting their concerns into the bill. We did have a community population limit in there that had been a discussion item during the last legislative session and IBL in House took that restriction out per Veronica's suggestion. They chose not to amend the bill any further with her recommendations on the House side. We are looking at the electronic doors as the difficulties for someone in a wheelchair to open the doors. If you're going to receive state dollars or public dollars, then you should do the best you can possibly can to make sure those buildings are completely accessible to everyone. Mandan has a wheelchair accessibility ordinance. From that process we've learned some lessons and that is where this bill has come from. **Chairman Andrist:** You're familiar with Veronica's testimony and her proposal for amendments? And you say that same amendment was rejected by the House? Would it be your judgment, that amendment would not be acceptable to the House? **Representative Kelsch:** It is purely speculative on my part. I sometimes think that if one chamber has discussed those amendments or at least had them presented and they are presented again on the other side, potentially there can be a conflict at that point. I think if there are amendments that are introduced, because of something that came up over crossover and something new, sometimes those are more amenable, but I can't speculate as to what the IBL committee would do, but they only considered the one amendment.

**Senator Olafson:** What is the definition of business incentives? That is a pretty broad definition. Couldn't that conceivable include a building in a Renaissance Zone, or a building financed by the Bank of North Dakota PACE loan; it could be a pretty broad definition would it not? **Representative Kelsch:** It is a broader definition, but it took into account, what public monies can potentially can be used for building. It is for new construction. I think that when you look at a \$100,000 that you're receiving of public money, I think that is a pretty good amount. Now does it cover the whole building? Certainly not, but it is a pretty big amount to be coming from our constituents. **Chairman Andrist:** Would a loan from the Bank of North Dakota be a business incentive? **Representative Kelsch:** I don't believe

that a loan from the Bank of North Dakota is because that's a loan. I don't consider that an incentive. I think it's when you look at, for example if you have a one cent sales tax in your community and you give that out as incentives or used as a growth fund, and use those monies to grow your community. I think that is more what incentive dollars are. **Senator Olafson:** On line 22, it specifically mentions "loan". **Representative Kelsch:** What I believe that to being is if you have like CDBG or those types of loans that you take out that are tax dollars that you repay, I think that is more that it relates too than going to the Bank of North and receiving a loan. I could be wrong, I am not lawyer.

**V. Chair Laffen:** What does this bill do that is different from federal ADA? As I understand federal American with Disabilities Act (ADA) it would already require the ramp, the accessibility portion to be able to enter into a building. Federal ADA does not require an electronic door opener. It simply states, that there is a certain amount of pressure that a door has to have to open, so would it be your understanding what this bill is really accomplishing is the electronic door device that is not currently required by ADA. **Representative Kelsch:** That would be correct.

**Senator Judy Lee:** Was there any discussion concerning remodeling as well? **Representative Kelsch:** The remodeling part was part of the bill during the last session. That is why we went with new construction this time because there was a great deal of concern over remodeling. Francis will come up and say that any public dollars whether it is for remodeling or for new construction should be done that way. We felt than to minimize resistance, and to hopefully get something into statute, we felt this was better than avenue to take. **Senator Judy Lee:** Do you have any idea of what it costs by and large, to put in an electronic door opener? **Representative Kelsch:** Francis says its \$2000.

**Francis Herauf:** See written testimony. I amend that all new construction should have electric doors. I want this passed, and it's for everybody not just for me. **Senator Andrist:** One of the issues we're going to have to sort out, is we could do everything with this bill that you and Veronica want, and end up with nothing too. One of our challenges is to figure out, how to get something through and maybe get more later; maybe the committee will decide to do everything you would like to have us do, but the risk we have is that it wouldn't be accepted in the other body.

**Senator Judy Lee:** Senator Cook asked me to ask you about the post office because he was supportive of this effort as well. He encouraged me to ask about that. **Francis Herauf:** Our post office didn't want to put electric doors until the Office of Postmaster and Senator Cook would pay for it, but the postmaster said we don't want to maintain it. There is nothing to maintain about a door, electric doors.

**Senator Dotzenrod:** The bill doesn't say anything about electric door, but your testimony has been that we should have electric doors. **Francis Herauf:** Yes, that is the reason I am bringing this up. **Senator Dotzenrod:** On line 11, where it says, building must be accessible to individuals who use wheelchairs. Does that imply the electric doors? That is what the implication is that, we're supposed to read in there, meaning electric doors. **Francis Herauf:** And ramps. **Senator Dotzenrod:** We don't really seem to have a problem, with the ramps. **Francis Herauf:** Usually, when you have electric doors you can wheel in. **Senator Dotzenrod:** Is it true that not all electric doors are equal? There are some electric

doors that are difficult to make work if the electric door folds out. You would have a problem hitting the button and getting out of the way, ideally the doors that slide. **Francis Herauf:** Yes on some buildings have electric doors where when you push the button, you have to back up, but that is not a problem because you can back up. But when pulling a door and trying to hold it with you foot pedal that is your problem right there. Example cited.

**Senator Dotzenrod:** A lot of us assumed when the Federal government passed the ADA act, that some of these concerns you have were taken of; but they really are not. **Francis Herauf:**

What did President Bush pass? Nobody knows. Nobody can answer my questions.

**Senator Dotzenrod:** I am going to assume that this problem that you're relating to us is going on in all 50 states. **Francis Herauf:**

Not all 50 states, because I have talked to people from Boston, Iowa, Miami who have shared information with him. He asks why we are so far behind.

**Senator Dotzenrod:** I am just wondering if in those states, they've got laws and the legislatures in those states someone brought it to their attention. Maybe North Dakota is just a little behind with the other states.

Anyone else in support of this bill, opposition, neutral testimony for this bill.

Committee hearing closed on HB 1158.

# 2011 SENATE STANDING COMMITTEE MINUTES

Senate Political Subdivisions Committee  
Red River Room, State Capitol

HB 1158  
March 10, 2011  
15228

Conference Committee

Committee Clerk Signature

*MJ. Woods*

## Explanation or reason for introduction of bill/resolution:

Relating to wheelchair accessibility of retail business that receives state or local economic development funds.

## Minutes:

You may make reference to "attached testimony."

**Chairman Andrist** opened the Committee Discussion on HB 1158.

**Senator Laffen** shared some background information with the committee about the Federal law and ADA, enacted in 1991. It's the bible for all of the disability issues. It is unbelievably detailed of disability. This law is what we go by when we design buildings, along with the other; the state has a building code which tells what is going to be enacted. Those two make up how we design a building. The state building code references this one, so its' fresh and we're tied to this not only by federal regulations but by state law. Our state building code doesn't make any reference to handicapped accessible issues. It references this as our reference. This code doesn't have any provisions currently so we can't enforce the power assisted door operators. There is really three parts to this bill: 1) the power assisted door operator 2) handicapped ramps 3) incentive. So the issues are in the current law where it says that all exterior doors have to be able to pull open with 5 pounds of force. Five pounds is really, really light. In our windy climate, if you really expect your door closer down to five pounds, the wind will suck your door open. Most buildings have a positive pressure so they don't suck in negative cold air. The doors tend to open. We in North Dakota, pretty much crank them up to about 10 pounds which is against the code. Now keep in mind, the way these two codes are enforced, one is a federal law and so if you break this, there is only a penalty if somebody can sue you. It is the only way you can enforce this one. The state building code is enforced by not getting a permit. It is hard to do state building code issues wrong because you don't get your building permit. It is easy for this one to slip by, because the only recourse is to sue someone. People don't sue people for having their door cranked up a little bit too tight. That's how the two current laws work.

So this bill is really about power assisted door operators. I would suggest we have to take out any references, to ramps and ramp curbs. We just don't want to get into that at all. It is so well defined in the federal guidelines. There aren't even curbs on these ramps, technically. That language just needs to go away.

The power assisted door operators are typically about \$3,000, we heard \$2,000. If you have to retroactively fit against it, and somebody then came and said this was state law you need to go back and put this in, you probably will double that cost. The other issue that I am not quite sure how to address is this idea about incentives. It says you get a \$100,000 of incentives. I don't know of any incentives that specifically go out to private retail establishments. So I am not sure even if you passed this law that it would ever go into effect because \$100,000 grant is extremely rare in our building industry. You could pass this and it would really do nothing. There are though a whole bunch of incentives that I know would qualify under that the way it is written. We'll need more time to talk about that. For example, there are historic tax credits, and so that isn't an incentive, its' not cash it is a tax credit to my income tax. I am not sure if that is an incentive. There are low income housing tax credits, so there is a whole list of things you have to define if there are incentives or not.

It says to portion that to the retail piece of the property. That would be difficult to define as it is by square feet, mechanical room, whole building, part of that retail space. We could figure out a way to do it. Lastly, this is really a building code issue. Currently we don't have anything in state law that says how you should do this, design a building. All of those things are in our state building codes and this entity has never told our state building or code officials that I know of, what they should put in their code. It would be hard for the construction and design industry to start having to look into state law and state codes and this one. If this is a good idea, and there is only one good idea and that is doing a power assisted door operator on our exterior doors for retail establishments. I am struggling more with what's the incentives that kick in that this says, and where does it go. Is it really going into state law or should it be in our state building code, and then on top of that, our state building code officials should never have to decide what in monetary value the incentives are before it goes into their code. **Chairman Andrist:** We are opening up a whole can of worms. **Senator Laffen:** It would be really awkward.

**Senator Olafson:** I have the greatest respect for the background of Senator Laffen, but I think I disagree with your assessment of what the bill might do. You say, its' rare for a business to get a grant for a private business to get a grant from the state, but, you remember my question during the hearing on the bill, it says, guarantee of payment, or it says direct cash transfer loan reduction or deferral of any tax or any fee so I could envision a business getting a Bank of North Dakota loan which would then kick this into effect. Or a business that is in a Renaissance zone. I think that could kick this into gear. That is my concern. There is a very broad definition here. He referenced the definition here in the bill under business incentive. This causes concern for me.

**Senator Andrist:** I can't believe a business loan is not an incentive. **Senator Olafson:** But it is under the definition of the bill. **Senator Andrist:** Yes, we can't leave that in whatever we do.

**Senator Olafson:** But that is my concern, this definition of business incentive. Any state assistance or tax incentive I think would kick this into gear. The other thing, apparently there is something in code why we have two doors with electric operators which might explain why we're over budget. **Senator Laffen** If your project is over budget they never include those destined areas, by code you don't have to have them. Most retail

establishments put these on. Wal-Mart and Kmart all have non power assisted doors but they have power operated doors. There are about \$10,000-\$15,000 cost. Most of those agencies like the co-convenience of getting paid and most retail establishments do this on their own. We put them on virtually on every public building. We do now because they are for the disabled people. My struggle with it is mandating it under rules I don't know how to enforce. I don't have a problem with mandating, I just don't know where to put it, and how to tell people, and what the incentives are or the kind of money.

**Senator Judy Lee:** I agree and understand what Senator Laffen is talking about. Apparently, they tried to do it differently last time and it was killed, because of the mandate, but I think its nuts to tie it to incentives, however, we loan for, Renaissance Zones. I get the logistically nightmare of trying to divide out retail a space and all of that, either its right to do, or it's not right to do. That's the point I think that would sell better.

**Senator Olafson:** The gentleman who came in and testified from Mandan, his complaint was about the post office as one of the examples he brought up. There are two things that need to be noted about that 1) that is a federal building 2) this bill applies to businesses, not to government buildings. I don't see anything in here relating to government buildings. This is about retail businesses and the title of the bill relating to wheelchair accessibility of retail businesses that receive state or local economic development funds.

**Senator Andrist:** I think maybe at this point I would like to suspend discussion. There might be several things we want to look at. I always have a problem with the one size fits all.

# 2011 SENATE STANDING COMMITTEE MINUTES

Senate Political Subdivisions Committee  
Red River Room, State Capitol

HB 1158  
March 22, 2011  
15583

Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to wheelchair accessibility of retail businesses that receive state or local economic development funds.

## Minutes:

You may make reference to "attached testimony."

**Chairman Andrist** opened the Committee Work on HB1158.

**Senator Laffen:** This is a worthy issue. My two problems are how to really make it manageable in the construction industry. Senator Judy Lee and I visited briefly with Senator Cook yesterday wondering where we were at on the bill. Another possible idea came to light and that would be, in the State Building Code, not in law. Nobody who builds buildings knows to look in law for building code issues, so the ideal place if you decide to like this is to be in the state building code. We actually have a section in the state building code that says you have to follow ADA for all of these type buildings and there are a couple of exceptions of additional things that are state wants. That would be the right place. I don't know if we have the right as, there is a fairly lengthy process of developing the state building code. These people would technically be better going to the state building code and just having them put it there. I don't know if we have the ability to tell the State building Code that we want a piece put in their code or not. That would be one possibility for us to change this law that says the state building code will do this. It would be much easier to implement if it we there. Second to that, I think this is a great idea but I have a problem mandating that retail businesses should do this and the state doesn't have to do it. I would be inclined to just kill this bill and work on it in more detail later.

**Chairman Andrist:** My thought was what the law today would say that when you receive these incentives, then the building code would not super-cede it. I don't know if that's true or not. **Senator Laffen:** Explain that again. **Chairman Andrist:** I miss-stated that. The law just addresses what happens in the absence of a building code provision. **Senator Laffen:** This law does. **Chairman Andrist:** That is what it would do. It really belongs in the building code. I too am inclined to agree with you that the bill ought to be killed.

**Senator Olafson:** Senator Laffen would state law super-cede state building code? **Senator Laffen:** I would expect it would. Yes, technically we could do this and they would be required. The problem is going to be is just the implementation. The designers out there

currently don't look to the state law in any form for how to design a building and when to put pieces in they look to the State Building Code. **Chairman Andrist:** The other point is if it looks better and we want to please some people we could pass it even though its' liable not to have any application. **Senator Judy Lee:** Part of my concern is I think this is a really good idea and everybody ought to do it. But as Senator Laffen just said the state and federal buildings don't meet criteria and we're asking some retail business to do it. But if we decide that we're going to do something to add to the building code, which in my view I agree that is the right place for it, because that's where people look. We haven't had a hearing on that and it would be a really big deal. I think an amendment like, a change the building code needs to have the input of contractors, home builders, realtors, and building officials from the political subdivisions who supervise all this stuff. I mean it is a really big deal to accept a new building code to make changes. If we had a bill in here that said we were going to do it in the whole thing, it would've been two hearings. If we make that change now as an amendment there will have been no hearing. I think we're going to get a lot of flak about that. I think it is a wonderful intention and I want people to do it. Maybe we could just work at educating Chambers of Commerce through the business associations to encourage this kind of thing, voluntary things don't always work. Some things happen because of public and market pressures. Even though I would like to make it go right now, I think we need to figure out a better way to do this and I have a concern about not having hearings on something that will be changing the building code just with an amendment.

**Senator Olafson:** I am also troubled by the definition of business incentive in this bill. It is so broad, because if you look at it, it says, Bank of North Dakota loan for example would trigger this. Deferral of any tax or any fee, so I would assume a building in a Renaissance Zone would trigger this. Any type of deferral of property taxes would trigger this, the way I read it. **Chairman Andrist:** If I was to support this bill, and the committee is inclined to pass the bill, I couldn't vote for it unless we just made it business. Instead of the definition, just a direct cash transfer I think. All the others have problems to me.

**Senator Dotzenrod:** I think the way the building code works is that after the legislative session is over, they go through what the legislature has done and they look at those things that have changed that may require them to update. I think they an on-going process that they meet regularly and upgrade. I was kind of surprised after hearing this bill that there was no one here like Dorrine Redman, the people that do the buildings. Quite often they are in on very small things. Example cited. This to me looks like it would be quite a bit more of a problem than something like that. The way the bill is written it only applies going forward to any future grants or loans. It does have to be over \$100,000. I myself had assumed that anyone who is operating with government money had to comply with the requirement to make everything wheelchair accessible. I didn't know that you could with the Federal ADA in place that you could be getting some sort of government help that exceeds \$100,000 on a building and then not have it. Of course it doesn't say necessarily that it's the business help is for a building. I mean it could be for something that is not related to the building; if it's an incentive to help a business out it may have nothing to do with the building. There are a lot of parts to a business other than a building. There are a lot of things that go on, but maybe I don't understand how the ADA works. I just sort of assumed that any new construction that was out there was accessible to the public and used by the public, that there would be wheelchair accessibility. Evidently that is not the case.

**Senator Laffen:** All of these building would have to meet the Federal ADA but the federal ADA doesn't require these automatic closers. Never requires them ever. The case here is that the gentleman wants the power assisted door operator in this specific instance. The federal ADA doesn't require them, ever. It is a good idea but the operators are nice, but the federal ADA only says that the door has to be able opened with a slight pressure of 5 pounds of pull. At 5 pounds of pull in ND the winds sucks the door right open. Almost everybody in North Dakota has our doors ratcheted down to about 10. I would guess that the doors on the west side of the capital are more in the 25 range, I mean they really pull hard. So that is part of the issue that is unique to our climate that makes this a reasonable thing to consider.

**Senator Dotzenrod:** Independent of the pounds required on the door, like when you come in the Capitol on the West end there is a single door and on this side of the handle there is a button to push. So if you're in a wheelchair you could push that, you wouldn't be standing in the way of the door. If you had double doors that open it might be hard sometimes to push the button and not be in the way with the wheelchair. In that case, on that door you could set the pressure fairly tight. You wouldn't have to have 5 pounds that could really be a hard pull. But if you got that button there then the door opens and if you're in a wheelchair you go in. **Senator Laffen:** In the case of the capital door here, we do have a power assisted door operator. That's what this is bill wants to add. And in the case of the space a wheelchair needs to sit in order for a door to open is 25 pages in the federal ADA law of how you can design a door swing, etc.

**Senator Dotzenrod:** One of the things that I was wondering about. It does seem that people are getting public money and they are using it for construction that affects their doorways. You would expect them to incorporate some sort of accessibility of people in wheelchairs.

**Senator Laffen:** I would prefer this bill to come out and simply say that all new construction and public buildings have to have this device then the state building code would just add it into their code somehow. But that at least seems to me to be fair. To single out retail over everybody else seems wrong. **Chairman Andrist:** If you were going to do that, there again you're kind of bordering on a bill without a hearing. But, I guess I would like some definition so we make sure we don't make some unintended consequence of a building that is service building that the public really isn't going to be likely to use or something like that.

**Senator Olafson:** To amend the bill, to the point where I think it would be acceptable, at least to me and in my opinion I think you would need to have a public hearing. We would be doing something very different than what is in here which would affect many more people.

**Chairman Andrist:** So, do you want to propose an action on the bill?

**Senator Olafson: Moved Do Not Pass**

**Senator Laffen- 2<sup>nd</sup>**

**Chairman Andrist:** Further Discussion

**Senator Dotzenrod:** I think that Senator Laffen, in the committee discussion made a point that I really have to agree with. If people setting policy for the state and the way we do

business and our public buildings are going to do something like this, they should first set the policy for the public buildings. Then worry about how we think the private businesses ought to do their business. Because, it would be kind of hypocritical to say that we're going to set a standard that private businesses are going to have to comply with when we would not, impose that same requirement on the state or on public buildings. I think that would really be a wrong approach. I don't really see how we could do that. It seems to me we either have the choices we have, to do not pass the bill, or to try to find some way to have it confined itself strictly to buildings. I think you could at some point in the future have a goal ten or twenty years out. At some point you want to have a society where you have accessibility more and more common for people in wheelchairs. But if you're going to do that, you really have to start at public buildings to be included and mandated before you went on to private. **Chairman Andrist:** Senator Laffen and I were talking about it. I think we're in agreement that we're just in the earliest stage of what is going to be accepted as a new standard one way to the other in construction, whether or not we pass laws relative to it.

**Senator Judy Lee:** We have way too many study resolutions in this legislative session. But is there any merit to hog housing it to become a study on the possibility of including this to all public buildings? I hate to ignore it and yet otherwise kill the bill is the thing. I will vote against it, but it just occurs to me as we're talking that everybody kind of agrees that we're a long way from including it in the place that it needs to be. **Senator Andrist:** My experience I think would suggest that it wouldn't rise very high on the radar screen as being a study when the Legislative Management decides which study to conduct. We are the Legislative Council; upstairs is the Legislative Management. **Senator Judy Lee:** No staff is Legislative Council, we're Legislative Management.

**Senator Laffen:** If we just kill it, that's another possibility. I would meet with Representative Kelsch and just explain why we think this is a great idea, but here are the technical issues that we'd like to work on and bring this back again next time as another bill on a bigger scale. **Chairman Andrist:** I think that would be a good thing to do. But whether or not, I think we should just kill the bill and then explain to why we did it.

**Senator Dotzenrod:** In terms of thinking about the policies that would have to be there for public buildings. Is there a public building person? Do we have a state building official that has some responsibility to say when a state building is built that it has to comply with certain things that maybe because they are public buildings, may some higher bar to clear that if it was just a store or private business. Is there a separate building code for state buildings? **Senator Laffen:** There is, in Section 54. And we also have a state architect. **Senator Dotzenrod:** That's not something that is here in the capital building? Is he here? **Senator Laffen:** He is on the 4<sup>th</sup> floor, the State Architect, and he technically is in charge of all state facilities. He is one person and it's hard for him to do a lot, mostly his job has been relegated to large scale planning processes for the campuses and the Capitol Commission and those things because he doesn't have any staff. He does try to oversee all state building projects but it's on a pretty thin ability. **Senator Dotzenrod:** Do we have provisions of the law that separates out and imposes higher or different standards on state public buildings than the code that applies to commercial buildings? **Senator Laffen:** You know we passed the law. It was open protocol interoperability. It suggested that when you purchase your digital thermostat systems you have to have this open system. Somewhere

we have some rules about how we manage and build our buildings in the state. It was a bill that says this is how we will design and detail our states buildings. I think they are in Section 54. **Senator Dotzenrod:** It does appear this could be a project that could consume quite a bit of research to figure out because it is a subject I know that the five of us are not familiar enough with ADA. We are getting into questions about how the state building code works. You would almost have to get a person that's a bureau or from one of the agencies to be able to tell us how that works. **Chairman Andrist:** There is a state plumbing code; building codes, electrical codes, and some of them are sometimes codes don't allow enough flexibility. **Senator Dotzenrod:** When thinking back to the hearing that we had on this I think the biggest impression I had, was we've had the ADA for a number of years and I am surprised that we were still in this difficulty and I had assumed that after 10-20 years went by that we would have a lot of progress and not see these kind of difficulties. **Senator Laffen:** We are a little bit unique that the ADA solved this problem by saying you have to this kind of space around a door, so you have to be able to get to it and be able to open the door with your hand with minimal amount of effort. The problem with North Dakota is we're so windy that doesn't work and so nobody enforces the ADA to suggest that you have to ratchet those things down. The problem with ADA is its' law so the only way to enforce it is to sue somebody. It is not a code. **Chairman Andrist:** But it is another example where one size fits all doesn't work. **Senator Laffen:** So there is really nothing wrong with the idea, it is actually fairly unique. North Dakota could be the first state to say we need these door openers because of our climate. But I don't know how to make it work in this form yet.

Chairman Andrist: Motion for a Do Not Pass

Roll Call Vote: 4 Yeas 1 No 0 Absent

Carrier: Senator Laffen



**REPORT OF STANDING COMMITTEE**

**HB 1158, as engrossed: Political Subdivisions Committee (Sen. Andrist, Chairman)**  
recommends **DO NOT PASS** (4 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING).  
Engrossed HB 1158 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

HB 1158



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# 1

**Testimony House Bill 1158  
Industry, Business and Labor Committee  
January 19, 2011**

Good morning Chairman Keiser and members of Industry, Business and Labor Committee. My name is Veronica Zietz (#99); I am the Executive Director at The Arc of Bismarck and I'm here today representing both The Arc of Bismarck and The Arc of Cass County. The Arc is an organization that advocates for people with disabilities to foster full inclusion in the community.

The Arc opposes House Bill 1158. While we believe the intent of this bill, to provide business incentives for accessible buildings is positive, several areas of the bill are a cause for concern. Section 1.1 provides for accessibility exceptions for businesses receiving less than \$100,000 and businesses located in cities with small populations. Additionally, Section 1.2 provides businesses the opportunity to be completely waived from making public areas accessible, if it is considered to be economically imprudent. I believe this is in direct conflict with the Americans with Disabilities Act (ADA), Title III, Public Accommodations and Services Operated by Private Entities. This federal law covers discrimination in business such as restaurants, lodging facilities and retail establishments to name a few.

Discrimination is prohibited by the ADA and says that "No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations by any person who owns, leases (or leases to), or operates a place of public accommodation." Violations of the ADA based on discrimination often end in lawsuits, so I believe this bill will make businesses that choose to waive accessibility accommodations when receiving incentives unjustly vulnerable.

Additionally, providing accessibility exceptions to businesses receiving incentives is also against the ADA, which defines rules for new construction and alterations in public accommodations and commercial facilities. Essentially all construction or alterations conducted after the enactment of the ADA (7/26/1990) must be accessible with minimal exceptions; exceptions basically include the installation of elevators and construction where accessibility is structurally impractical.

Finally, in Section 1.3b the term "wheelchair-accessible" is defined. In accordance with federal law this should be changed to the word accessible and utilize the federal definition, which is "Accessible describes a site, building, facility, or portion thereof that complies with the ADA Standards for Accessible Design."

I believe the passage of this bill is truly inconsistent with the ADA and will not only limit the ability of people with disabilities to patronize businesses, but also make businesses susceptible to serious legal ramifications due to violations of the Americans with Disabilities Act. I urge the committee to oppose this bill in current form. Thank you for your time and attention.

## Testimony in Support of HB 1138

Hello, my name is Francis Herauf, from Mandan.

In the words of Martin Luther King, Jr, "I have a dream!" I look for a day when North Dakotans who are kept out of public buildings can go in freely. It is not right that handicapped people are unable to go to any store they want without fighting doors. It's been over twenty years since the Americans With Disabilities Act passed, but this law has not taken care of the problem. Mandan passed a law for electric doors but it only applies to businesses who get city funds. Even the Mandan post office doesn't have electric doors, and doesn't plan to get them. I've talked to people in other states who have laws requiring electric doors. Why are we so far behind? A law requiring electric doors would help our disabled veterans, the elderly, and anyone whose hands are full. Stores who have put in electric doors say they don't know how they got by without them. Businesses get tax relief to help with the expense when they put in disability equipment, and they would have customers who couldn't shop there before. This is a law that would benefit the entire state.

#1



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**House Bill 1158**  
**Political Subdivisions Committee**  
**March 4, 2011**

Good morning Chairman Andrist and members of Political Subdivisions Committee. My name is Veronica Zietz (#99); I am the Executive Director at The Arc of Bismarck and I'm here today representing both The Arc of Bismarck and The Arc of Cass County. The Arc is an organization that advocates for people with disabilities to foster empowerment and full inclusion in the community.

The Arc supports the concept of House Bill 1158 and its intentions to enhance accessibility in public establishments. However, I do have concerns with some language in the bill, which could be considered inconsistent with federal law. Section 1.1 provides accessibility waivers for businesses receiving less than \$100,000. Additionally, Section 1.2 provides businesses the opportunity to be completely waived from making public areas accessible, if it is considered to be economically imprudent. I believe this is in direct conflict with the Americans with Disabilities Act (ADA), Title III, Public Accommodations and Services Operated by Private Entities. This federal law covers discrimination in business such as restaurants, lodging facilities and retail establishments to name a few.

Discrimination is prohibited by the ADA and says that "No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations by any person who owns, leases (or leases to), or operates a place of public accommodation." Violations of the ADA based on discrimination often end in lawsuits. I believe this bill will make businesses that receive incentives and choose to waive accessibility accommodations unjustly vulnerable to legal action, while limiting access for people with disabilities who want to utilize services.

Additionally, providing accessibility waivers to businesses receiving incentives will give businesses a false sense of security and may encourage them to violate the ADA, which defines rules for new construction and alterations in public accommodations and commercial facilities. Essentially all construction or alterations conducted after the enactment of the ADA (7/26/1990) must be accessible with minimal exceptions; exceptions basically include the installation of elevators and construction where accessibility is structurally impractical.

I believe the passage of this bill in current form is inconsistent with the ADA and will not only limit the ability of people with disabilities to patronize businesses, but also make businesses susceptible to serious legal ramifications due to violations of the Americans with Disabilities Act. I would like to ask the committee to seriously consider The Arc's concerns and I would also like to offer the following amendments. In Section 1.1 lines 8-9 delete the phrase "with a value of at least one hundred thousand dollars" and in Section 2.2 line 19 remove the phrase "or economically". These changes would bring this bill in line with the ADA and limit the likelihood of unnecessary legal action, while enhancing access for people with disabilities.

While The Arc believes the intent of this bill, to provide business incentives for accessible buildings is positive, several areas of the bill are a cause for concern. I urge the committee to consider the amendments I have suggested. Thank you for your time and attention.

Hello, I'm Francis Herauf of Mandan.

I have used a wheelchair since 1973 when I was a passenger in a car accident. In the words of Martin Luther King, Jr., "I have a dream." It's time for freedom for all disabled people and anyone who has to fight with doors. We feel like we're locked out and can't go where we want. No one asked to be in this situation and you never know when you or a loved one might need a wheelchair. What would the public do if grocery stores took out their electric doors? They would know how we feel.

It's been twenty years since the Disability Act has passed. Look at all the buildings that have been built or remodeled since then. Only a few have electric doors. Many have not improved their accessibility. This bill should be revised to include all new construction and remodeling. An electric door is a benefit to many, including the elderly, people with small children or using a stroller, and delivery people. It's a way to honor our disabled veterans. They fought for us—they shouldn't have to fight doors. Businesses who have added electric doors help consumers who couldn't shop there before, and they can get tax credit to help with the expense. I've talked to people all over the United States, including Boston and Iowa, and they ask why we're so far behind. Voters in Mandan approved an electric door law. Let's expand it to the whole state. We're not in the '60's anymore. We've entered a new century. It's time to make this change. Thank you.