

PREVIOUS INTERIM COMMITTEE STUDIES OF SPECIAL ASSESSMENTS

This memorandum was requested to provide a summary of recent interim committee studies regarding special assessments, including any bill drafts considered by the interim committees. Special assessments were most recently studied by the 2001-02 interim Taxation Committee and the 2011-12 interim Taxation Committee.

2001-02 INTERIM TAXATION COMMITTEE

The 2001-02 interim Taxation Committee was directed to study all aspects of improvements by special assessment pursuant to Section 2 of 2001 House Bill No. 1206. The committee reviewed background information pertaining to special assessments and received testimony from city representatives regarding citywide special assessments and special assessment projects, fees, and practices. The committee also received information from a representative of the University of North Dakota regarding the application of flood control special assessments to private commercial enterprises operating on university land. The committee considered five bill drafts during the interim, two of which were recommended to the Legislative Management for introduction during the 2003 legislative session.

Committee members expressed concern regarding whether adequate notice of special assessment projects was being provided to property owners because the law did not require property owners to be informed of estimated special assessment costs at the time property owners had an opportunity to protest the project. Committee members also expressed concern regarding a law that required newspaper publication of notice of special assessment projects but did not require notice to be provided to affected property owners by mail. The committee considered and received testimony relating to a bill draft [\[30039.0100\]](#) that would have required inclusion of estimated assessments against property in the resolution of necessity for a special assessment project. Representatives of the North Dakota League of Cities opposed the bill draft, saying the requirement would add substantial costs to special assessment projects and actual costs of projects generally are not known until the completion of a project. The committee made no recommendation with respect to the bill draft.

Committee members expressed concern that citywide special assessment projects did not require voter approval. The committee considered and received testimony on a bill draft [\[30034.0100\]](#) that would have required voter approval of special assessment improvements in a city of 5,000 or more population if the improvement district contains 75 percent or more of the area of property within the city. The bill draft would have required voter approval after the opportunity to protest a project has passed and before the project is let for bids. Representatives of the North Dakota League of Cities said there may be some problems with the bill draft approach, including the fact that park districts may impose special assessments for certain projects and must do so on a citywide basis, but do not have authority to call an election. The committee made no recommendation with respect to the bill draft.

Committee members expressed concern regarding the amount of expenses that may be added to special assessment improvement projects. The committee considered a bill draft [\[30088.0100\]](#) that would have provided that expenses added to a special assessment improvement project may not exceed the actual expenses for engineering and attorney's fees, publication, and other administrative expenses. City officials reviewed the fees added to construction costs in special assessment projects. The committee learned estimated fees are added to special assessment projects and although fees vary on individual projects, estimated fees prove to be quite accurate over time. City officials opposed the bill draft on the grounds that actual costs and fees on projects may not be known until long after the assessments are spread against property and in some cases it may never be possible to determine actual costs and fees. It was suggested the determination of special assessment costs and fees is a local issue that should be left to local decisionmakers. The committee made no recommendation with respect to the bill draft.

The committee reviewed city flood control special assessments applied in Grand Forks. The committee learned state property in Grand Forks was exempt from flood control special assessments under North Dakota Century Code Section 40-23-22.1 in recognition of state financial assistance for flood control provided to Grand Forks. Grand Forks city officials requested authority to impose city flood control special assessments against private commercial structures on state land and University of North Dakota officials stated they would not object to this approach if it was carefully structured to not impact existing facilities. The committee recommended a bill draft [\[30035.0200\]](#), which was introduced as 2003 Senate Bill No. 2052, to allow imposition of city flood control special assessments against private commercial structures on state land. The bill served to allow flood control special assessments against a hotel and another commercial venture to be located on University of North Dakota property. The bill did not allow assessments against a structure if the net profit was dedicated to the state institution, which was intended to exempt the Engelstad Arena at the University of North Dakota from assessments. [Senate Bill No. 2052](#), as amended, was enacted by the 58th Legislative Assembly.

The committee also recommended a bill draft [\[30182.0100\]](#), which was introduced as 2003 Senate Bill No. 2053, to provide for uniform use of phrases in special assessment provisions relating to "probable cost of the work" and "probable cost of the improvement." The bill provided cost of the work refers to construction costs. The cost of the improvement refers to all special assessment project costs, including cost of the work plus costs of extra work, fees, publication, and other associated expenses. [Senate Bill No. 2053](#) was enacted by the 58th Legislative Assembly.

2011-12 INTERIM TAXATION COMMITTEE

The 2011-12 interim Taxation Committee was directed to study the use of special assessments for public improvements, the imposition and relative rate of special assessments against agricultural property, the use and administration of special assessments across the state, and alternative funding mechanisms available and possible processes and procedures that would facilitate a transition to any recommended alternative funding mechanisms pursuant to Section 2 of 2011 Senate Bill No. 2356 and Section 3 of 2011 House Bill No. 1322. The committee received background information pertaining to special assessments and reviewed two bills introduced during the 2011 legislative session.

The committee reviewed [2011 House Bill No. 1220](#), which would have changed the basis for a successful protest to bar a special assessment project from owners of a majority of the area of property in the district to a requirement of protest by owners of property that will be subject to a majority of the proposed costs of the project. The bill failed to pass.

The committee also reviewed [2011 House Bill No. 1322](#), which was enacted by the 62nd Legislative Assembly. The committee learned several legislators received complaints from owners of agricultural property located within city boundaries. Complaints tended to arise from situations in which agricultural property within an improvement district was assessed benefits based on its market value increase or on a square-footage basis. The committee learned a special assessment commission might consider the improvement as increasing the value of the property for commercial or residential development, even if the owner has no intention of using the property for a purpose other than farming. House Bill No. 1322 provided that a decision of the special assessment commission regarding special assessments imposed on agricultural property is not entitled to deference by the court in an action challenging the determination of benefits. The court is to consider the determination of benefits and special assessments imposed for agricultural property de novo.

The committee reviewed the advantages of financing improvements using special assessments rather than improvements being financed by property developers. The committee learned the advantages of financing improvements using special assessments included direct control of specifications and execution of the project, accelerated completion of improvements, transfer of funding of projects to the private sector to preserve debt capacity and property tax authority of the jurisdiction, better quality and improved uniformity of public improvements, and allowing new growth to pay its own cost of infrastructure development. For developers, special taxing districts avoided tying up developers' equity and time in infrastructure development; avoided possible recourse against the developers during the 20 or 30 years the indebtedness is outstanding; reduced borrowing costs because bonds are tax-exempt; and allowed for higher returns to the developers or lower sales prices for property, or both. For property buyers, special taxing districts provided the advantages of construction of improvements under control of the city, faster completion of public improvements, higher quality and improved uniformity of public improvements, and reduced combined costs of property ownership. The committee also reviewed alternatives to traditional funding through special taxing districts, which have been developed in other states.

The North Dakota Association of Builders supported the use of special assessments as an important tool for cities and property developers. The association noted special assessments allow growth to occur in times when banks will not finance property development. The committee learned cities may require property developers to put up an initial funding commitment or promissory note before initiating a development project through special assessments. In times of rapid economic growth, special assessment financing of infrastructure development assists property developers in meeting increased needs for development of residential and commercial property.

The committee did not receive testimony in opposition to the use of special assessments. Dissatisfaction expressed to individual legislators by property owners tended to be related to the assessment of benefits against individual properties, the size of the assessment district for certain projects, and other issues related to the discretion of local governing bodies.

The committee did not review any bill drafts or make any recommendations to the Legislative Management as a result of its study of special assessments.