

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2322

2001 SENATE JUDICIARY

SB 2322

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2322

Senate Judiciary Committee

Conference Committee

Hearing Date February 7th, 2001

Tape Number	Side A	Side B	Meter #
1	x		0-31.7
Committee Clerk Signature			

Minutes: **Senator Traynor** opened the hearing on SB 2322: A BILL FOR AN ACT TO CREATE AND ENACT A NEW SECTION TO CHAPTER 15-10 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO THE MITIGATION OF DAMAGES BY THE PRESIDENT OF AN INSTITUTION OF HIGHER EDUCATION.

Senator Mathern, representing district 11 Fargo. (testimony attached)

Senator Trenbeath, doesn't the University have an ability to negotiate through the contract?

Senator Mathern, I was not sure. There was a question of whether they had that ability. That would be an allocation of funds. I drafted the bill so we could clarify this.

Senator Traynor, your bill only addresses a privately financed project. If it is a public project there is a bond, so if a person quit, another contractor would come in. Have you seen this contract?

Senator Mathern, no.

Senator Traynor, the committee should see what is in the contract. I recall in 1999 we had an issue regarding the Barnes and Noble bookstore, but I don't know if the hockey arena was mentioned.

Senator Mathern, I think there was something regarding the arena in the '99 session.

Senator Watne, do you think this is only to college buildings? What about public buildings?

Senator Mathern, who knows what another university this may help. I didn't want it so broad, so that this bill would get out of control. If you want to expand it, I wouldn't have a problem.

Senator Dever, when did the title from this contribution go from Mr. Engelstad to UND? Do we need to clarify that?

Senator Mathern, that is a complicated issue. It is an ownership process. This building is operating under Mr. Engelstad.

Senator Lyson, would we need a bill if the contract was made proper?

Senator Mathern, I would think not.

Senator Watne, can you force someone to give you a gift?

Representitive Lonny Wnrich, representing district 18, testifies in support of SB 2322 .

This issue came up two weeks ago in a Legislative Forum. I think this publicity has had a very negative effect on the University of North Dakota's students and faculty. This bill supports the president and the university. My recollection of the last legislation was a concern that this gift would then lead to a state demand to upkeep the building. So the law was authorized for Mr. Engelstad to build on state property. That is why this contract is so unusual.

Senator Traynor, the title is still on the land.

Senator Dever, this bill has alot of implications. What about the Aerospace programs and its private donors?

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Senate Judiciary Committee

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Rep. Winrich, I don't know if that would be a problem.

Senator Dever, I know there are building up there built with private money.

Senator Watne, when I look at the first sentence, "if for any reason construction ceases on a building or a facility on land owned by the state ." What happens if a storm destroys the building? Who then pays for it?

Senator Mathern, I think that would be addressed.

Senator Watne, I think this bill should be specific.

Senator Mathern, I have no problem with that.

Pat Seaworth, General Counsel For the ND University System. (testimony attached along with documents committee requested) Explains contracts written by Mr. Engelstad and UND.

Senator Traynor, you stated in your testimony that the board of higher education has authority to address the matter addressed in SB 2322, is that by statute or lease?

Pat Seaworth, by state a statute.

Senator Nelson, what legs does he have to stand on with this?

Senator Traynor closed the hearing on SB 2322.

SENATOR TRENBEATH MOTIONED TO DO NOT PASS, SECONDED BY SENATOR

WATNE. VOTE INDICATED 6 YEAS, 0 NAYS AND 0 ABSENT AND NOT VOTING.

SENATOR TRENBEATH VOLUNTEERED TO CARRY THE BILL.

Tape #2

memo # 19.5-21.9

Date: 2/12/01
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2322

Senate Judiciary Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Trenbeath Seconded By Watne

Senators	Yes	No	Senators	Yes	No
Traynor, J. Chairman	X		Bercier, D.	X	X
Watne, D. Vice Chairman	X		Nelson, C.	X	
Dever, D.	X				
Lyson, S.	X				
Trenbeath, T.	X				

Total (Yes) _____ No _____

Absent _____

Floor Assignment Trenbeath

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

REPORT OF STANDING COMMITTEE (410)
February 12, 2001 4:48 p.m.

Module No: SR-25-3134
Carrier: Trenbeath
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

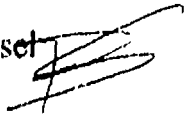
SB 2322: Judiciary Committee (Sen. Traynor, Chairman) recommends DO NOT PASS
(6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2322 was placed on the
Eleventh order on the calendar.

2001 TESTIMONY

SB 2322

NORTH DAKOTA UNIVERSITY SYSTEM
MEMORANDUM
February 7, 2001

TO: Senator John T. "Jack" Traynor, Chairman
Senate Judiciary Committee

FROM: Pat Seaworth, General Counsel
ND University System 

RE: SB 2322 - UND Winter Sports Facility

I have attached copies of the following documents you requested during the hearing on SB 2322:

- 1999 N.D. Laws, Ch. 159 (SB 2220). This legislation authorized the state board of higher education to "enter into an agreement with the university of North Dakota foundation or other entity" and to "do all things necessary and proper . . . to facilitate the construction with private sector dollars of a winter sports facility" at UND;
- April 3, 2000 Memorandum from W. Jeremy Davis to SBHE, which summarizes elements of the arrangements for the winter sports facility and the legal documents related to those arrangements;
- March 30, 2000 Memorandum from Pat Seaworth to SBHE, recommending board approval of a lease agreement between the board and UND and Arena Construction, Inc.;
- March 29, 2000 letter to President Kupchella from Ralph Engelstad;
- March 29, 2000 Lease Agreement. Note the following language in section 4.1:

Tenant shall, once construction has been commenced, diligently and conscientiously pursue the construction of the winter sports facility to completion. Tenant agrees that the construction contract, financing agreements, and other documents shall be so drafted so that in the event of a default and after failure to cure a default within the prescribed time, UND shall have the right to pursue the construction project to completion according to the Plans and Specifications, on the above-mentioned default

State Capitol - 600 E. Boulevard Ave. Dept. 215, Bismarck, North Dakota 58505-0230 - (701) 328-2960
Fax (701) 328-2961 - E-mail NDUS_office@ndus.nodak.edu - Web www.ndus.nodak.edu

Senator Traynor
February 7, 2001
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of Tenant or Tenant's agent or contractor, at Tenant's sole expense. UND shall be specifically subrogated to all of the rights of Tenant in this regard, including the right to draw funding under Tenant's Loan Commitment with Sports Lenders, Inc. to complete costs of the Improvements (as defined below), but UND shall not be deemed to assume the obligation of Tenant for repayment of such funds.

- March 28, 2000 Personal Guarantee of Ralph Engelstad;
- March 28, 2000 Loan Commitment;
- Management Agreement between Arena Construction, Inc. and Ralph Engelstad Engelstad Arena, Inc.; and
- N.D. Const. Art VIII, § 6(6), relating to constitutional authority of SBHE, and NDCC §§ 15-10-11 and 15-10-12.1, relating to general powers of the SBHE and acceptance of buildings and campus improvements.

Please don't hesitate to contact me if you would like anything else.

PS

cc: Committee members
Chancellor Isaak

CHAPTER 159**SENATE BILL NO. 2220**

(Senators W. Stenehjem, Holtnberg, St. Aubyn)
(Representatives Delmore, Kliniske, Poolman)

UND WINTER SPORTS FACILITY AUTHORIZATION

AN ACT to authorize construction of a winter sports facility at the university of North Dakota; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Lease of land - Construction of arena - Authority. The state board of higher education may negotiate the terms of and enter into an agreement with the university of North Dakota foundation or other entity for the lease of approximately thirty-two acres [12.95 hectares] of land, which was originally gifted to the university of North Dakota, and may do all things necessary and proper to approve the terms of the lease, the plans and design, the title of the building and parking area, and to facilitate the construction with private sector dollars of a winter sports facility at the university of North Dakota, and to provide for its subsequent operation and management.

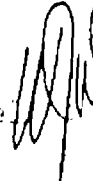
SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 29, 1999
Filed March 29, 1999

OFFICE OF GENERAL COUNSEL
P.O. BOX 8196
GRAND FORKS NORTH DAKOTA 58202-8196
(701) 777-6345
FAX (701) 777-6398

MEMORANDUM

To: ND State Board of Higher Education

From: W. Jeremy Davis, UND General Counsel 

Date: April 3, 2000

Subject: Summary of arena elements and documents

This document is a confidential and privileged communication.
It is an internal document for the purpose of rendering legal advice.

This memorandum is a summary of certain elements of the construction, ownership and management of the winter sports facility currently under construction on the UND campus ("Bronson" property), and of the documents necessary to effect that project.

Construction: Arena Construction, Inc. (ACI), is the construction company building the arena. [Lease]

Source of construction funds: ACI obtains funding from a loan established by a Loan Commitment from Sports Lenders, Inc. (SLI), which is providing up to \$56,000,000 at 9% interest in construction loan to ACI. [Loan Commitment]

Guarantee: The Loan Commitment has been personally guaranteed by Ralph Engelstad so that should ACI default in the construction of the arena, the University assumes the rights under that Loan Commitment but not the obligation to repay the loan. [Guarantee]

State land leased for the facility: The land upon which the arena is being built is being leased by ACI from the University of North Dakota and the ND State Board of Higher Education. [Lease]

Ownership of facility: ACI will own the arena until UND receives a gift from Ralph Engelstad with which to purchase it from ACI. [Lease]

Management of facility: Until UND takes assumes ownership, ACI as facility owner will be contracting with Ralph Engelstad Arena, Inc. (REA) to provide the management of the arena and its operations. [Management Agreement]

UND use of facility: UND will enter into an agreement with REA to play hockey in the arena and otherwise utilize the arena for all aspects of the UND ice hockey program. This last agreement will provide compensation to UND intended to be equal to or in excess of the net income ordinarily derived from the UND hockey program. [Hockey Agreement—not yet drafted]

The five documents relating to the above are:

I: Loan Commitment between Sports Lenders, Inc. and Arena Construction, Inc. UND is not a party.

II: Personal Guarantee of Ralph Engelstad guaranteeing continued provision of funding for construction of the arena. UND is not a party.

III: Lease Agreement between Arena Construction, Inc. and UND/ND State Board of Higher Education. UND and the Board are parties.

IV: Management Agreement between Arena Construction, Inc. and Ralph Engelstad Arena, Inc., the arena Manager. The term of this management agreement coincides with the lease term. UND "consents and agrees to" this agreement by signing it. UND is not a party.

V. Hockey Agreement between Ralph Engelstad Arena, Inc and UND permitting UND to play hockey, occupy offices and schedule ice time in the arena, and to provide compensation to UND equal to or in excess of the revenues heretofore derived from the hockey program when housed in the old Engelstad Arena. UND is a party.

