

**2013 HOUSE GOVERNMENT AND VETERANS AFFAIRS**

**HB 1286**

# 2013 HOUSE STANDING COMMITTEE MINUTES

## House Government and Veterans Affairs Committee

Fort Union Room, State Capitol

HB 1286

February 7, 2013

JOB 18623

☐

Conference Committee

Committee Clerk Signature

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

Relating to voter approval of public building projects funded through a building authority or other indirect means.

### Minutes:

1,2.

00:06

Vice Chair Randy Boehning opened the hearing on HB 1286.

01:01

Chairman Jim Kasper appeared in support of this bill and handed out memo prepared by Legislative Council dated October 2011 for the interim committee of Finance and Tax committee- Attachment # 1.

Kasper read the memo to the committee because it is important piece to the legislation.

He stated that in his opinion since 1990 the Fargo School Board used the building authority to build more schools and did not have to go the vote of the people.

Kasper stated that HB 1286 is a straight forward bill, you can use the building authority, but number one you have to go to vote of the people and get 60% approval just like any other political subdivision does. And number 2 the school board of a school district has to get the approval from the Department of Public Instruction.

13:01

Steve Strege, Resident of south Fargo, testified in support and provided written testimony of HB 1286 - Attachment #2.

Chairman Jim Kasper stated that a building authority is for a nonprofit corporation additionally once a building authority is established it can only be revoked by entity that established it. The building could sit on the shelf for 17 years and then when the entity wants to exercise it they can without going to the vote of the people.

18:19

Bonnie Staiger, American Institute of Architects, testified in support on HB 1286.

25:01

Chairman Kasper asked if anyone was in opposition of HB 1286.

25:44

Chairman Kasper closed the hearing on HB 1286.

# 2013 HOUSE STANDING COMMITTEE MINUTES

## House Government and Veterans Affairs Committee Fort Union Room, State Capitol

HB 1286  
February 21, 2013  
19341

☐ Conference Committee

Committee Clerk Signature

*Carmen Hart*

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

Relating to voter approval of public building projects funded through a building authority or other indirect means.

### Minutes:

You may make reference to "attached testimony."

**Chairman Jim Kasper** HB 1286 is the building authority bill. It requires that any municipal government if they wish to build a building in the state of North Dakota certainly can use a building authority if they so desire. However, the building authority has a quirk in it that I have found disconcerting. That is a building authority can avoid the vote of the people to build a structure. In Fargo we have over \$240 million of new schools built without a single vote of the people of our city, and there is 28 places in ND have building authorities. The bill currently requires a 60% vote of the people. I would like to suggest we amend down to a 55% vote of the people.

**Vice Chair Randy Boehning** moved to amend HB 1286, Line 15 and change 60 to 55.

**Rep. Karen Rohr** seconded.

**Rep. Gail Mooney** Why would we go down to 55%? I am with you with 60%. What is good for one should be good for all.

**Chairman Jim Kasper** Otherwise, they will use building authority all the time. Great wisdom.

**Rep. Steven Zaiser** I support this concept. One of the reasons there is some opposition to the 60%, some school districts said they had troubles building schools and they needed them.

**Chairman Jim Kasper** The other side of that story is if they have trouble building schools, that means the people have said no.

**Rep. Ben Koppelman** I can speak to that having come off a school board where we had two failed bond referendums. One was about 52% and the other was about 57%. When we changed the plan, had a lot of public input, the last one passed over 70%. It was



actually more expensive than the first two. People wanted to be informed and wanted the right plan and we had to go through that process. I would resist this amendment and I agree with Rep. Mooney.

**Rep. Karen Karls** Would this be retroactive?

**Chairman Jim Kasper** No, they are grandfathered in. For new structures they would have to go to a vote of the people.

**Rep. Karen Rohr** I would like to add that we did get this testimony from Steve Strege from south Fargo, and he recommends a do pass. It boils down to transparency and government and when the voters have to pay for a project, they should have the right to vote on it.

**Chairman Jim Kasper** Should we consider withdrawing my amendment?

**Vice Chair Randy Boehning** and **Rep. Karen Rohr** withdrew their motions.

**Rep. Ben Koppelman** I would like to bring up an amendment that Bonnie Staiger with the architects association had mentioned. On Page 1, Line 9, she was suggesting that rather than saying municipality or governing body...

**Chairman Jim Kasper** I discussed that with Mr. Walstad. The definitions cover all. We are fine.

**Rep. Ben Koppelman** I only became concerned the other day when on the floor you said that legislative council defined a municipality as being a city.

**Chairman Jim Kasper** I hope I didn't say that. If I did, I misspoke. Municipality in this chapter means everything. I do have a copy of the email that I should have probably forwarded.

**Rep. Karen Rohr** acknowledged that she did get the email and forgot to bring it too.

**Chairman Jim Kasper** Rep. Boehning pointed out something interesting in the heading on line 8 it says school construction project approval. Maybe the word school ought to be changed to building construction project.

**Vice Chair Randy Boehning** moved that as an amendment proposal. I think it is the intent of the bill sponsor that he wants all building authorities to have approval of the voters.

**Rep. Jason Dockter** seconded.

**Rep. Gary Paur** You stated to remove school, but you also want to insert building?

**Chairman Jim Kasper** I think if we don't insert building, if we say voter approval of building authority or other indirect funding methods-construction project approval should work.

**Rep. Steven Zaiser** 60% is required on new schools, but in terms of cities, they usually need 50%. The state actually uses building authorities. Maybe we should talk about local units of government.

**Chairman Jim Kasper** That is what this bill does.

**Rep. Ben Koppelman** I think that you should insert building. Building authority in its traditional sense is a way of managing a structure rather than an excuse to build without authority. There are allowances within law and within the school financing to use mill levies that aren't the same as building a new school going to the people. If you said just construction project I could contend that a remodeling project such as installing new carpet or doing different things, we don't want that to go to a vote of the people.

**Chairman Jim Kasper** That makes very good sense.

**Rep. Scott Louser** On Page 1, Line 16 where it says acquisition, improvements, or construction, improvements are really defined as something that is capitalized over time and depreciated and repairs are expense that year.

**Chairman Jim Kasper** Improvement is okay?

**Rep. Scott Louser** Yes.

**Chairman Jim Kasper** The word building should be substituted for school on Line 8?

A voice vote was taken and the motion carried.

**Rep. Karen Rohr** made a motion for a Do Pass as amended.

**Rep. Gail Mooney** seconded.

A roll call vote was taken and resulted in a **DO NOT PASS AS AMENDED, 14-0**. **Rep. Ben Koppelman** is the carrier.

13.0367.01001  
Title.02000

Adopted by the Government and Veterans  
Affairs Committee  
February 21, 2013

2/21/13  
CST

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1286

Page 1, line 8, replace "**School**" with "**Building**"

Renumber accordingly

Date: 2-21-13  
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1286

House Government and Veterans Affairs Committee

☐ Check here for Conference Committee

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

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Boehning Seconded By Rohr

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper			Rep. Bill Amerman		
Vice Chairman Randy Boehning			Rep. Gail Mooney		
Rep. Jason Dockter			Rep. Marie Strinden		
Rep. Karen Karls			Rep. Steven Zaiser		
Rep. Ben Koppelman					
Rep. Vernon Laning					
Rep. Scott Louser					
Rep. Gary Paur					
Rep. Karen Rohr					
Rep. Vicky Steiner					

*Amendment to  
Change 60 to 50  
+ then later  
withdraw*

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

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

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

Date: 2-21-13  
Roll Call Vote #: 2

**2013 HOUSE STANDING COMMITTEE**  
**ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 1286**

House Government and Veterans Affairs Committee

☐ Check here for Conference Committee

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

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment  
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Boehning Seconded By Dockter

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper			Rep. Bill Amerman		
Vice Chairman Randy Boehning			Rep. Gail Mooney		
Rep. Jason Dockter			Rep. Marie Strinden		
Rep. Karen Karls			Rep. Steven Zaiser		
Rep. Ben Koppelman					
Rep. Vernon Laning					
Rep. Scott Louser					
Rep. Gary Paur					
Rep. Karen Rohr					
Rep. Vicky Steiner					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

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

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

*Motion to strike  
the line  
on line  
Word School  
8 and add the  
Word building  
voice  
vote  
taken  
motion  
Carried*

Date: 2-21-13  
Roll Call Vote #: 3

2013 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1286

House Government and Veterans Affairs Committee

☐ Check here for Conference Committee

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

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rohr Seconded By Mooney

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper	X		Rep. Bill Amerman	X	
Vice Chairman Randy Boehning	X		Rep. Gail Mooney	X	
Rep. Jason Dockter	X		Rep. Marie Strinden	X	
Rep. Karen Karls	X		Rep. Steven Zaiser	X	
Rep. Ben Koppelman	X				
Rep. Vernon Laning	X				
Rep. Scott Louser	X				
Rep. Gary Paur	X				
Rep. Karen Rohr	X				
Rep. Vicky Steiner	X				

Total (Yes) 14 No 0

Absent \_\_\_\_\_

Floor Assignment B. Koppelman

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



**REPORT OF STANDING COMMITTEE**

**HB 1286: Government and Veterans Affairs Committee (Rep. Kasper, Chairman)**  
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends  
**DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1286 was placed  
on the Sixth order on the calendar.

Page 1, line 8, replace "School" with "Building"

Renumber accordingly

**2013 SENATE INDUSTRY, BUSINESS, AND LABOR**

**HB 1286**



# 2013 SENATE STANDING COMMITTEE MINUTES

## Senate Industry, Business and Labor Committee Roosevelt Park Room, State Capitol

HB 1286  
March 18, 2013  
Job Number 20085

☐ Conference Committee

Committee Clerk Signature



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

Relating to voter approval of public building projects funded through building authority or other indirect means

### Minutes:

Testimony Attached

Representative Kasper: Introduced the bill. Handouts Attached; Voter Information, describing why a new school was needed (1), Email's to Representative Kasper (2 & 3), Internal Revenue Service, section 63-20 (4), and School Construction (5). He addressed what happened in Fargo. (:18-12:25)

### Opposition

Scott Wegner, Lawyer: Written Testimony Attached (6). ((13-30)

Terry Traynor, Assistant Director of the North Dakota Association of Counties: Written Testimony Attached (7). (30:45-31:38)

Dana Schaar, ND Recreation and Park Association: Written Testimony from Barb Erbstoesser, Executive Director of the West Fargo Park District (8) and Jim Larson, Director of Finance and Human Resources (9). ((32:45-36:26)

Mike Schwartz, North Dakota Recreation & Park District: Written Testimony Attached (10). (45-46:50)

Keith C. Magnusson, North Dakota League of Cities: Written Testimony from the City of Fargo (11). (47:20-51)

Dr. M. Douglas Johnson, Executive Director of the North Dakota Council of Educational Leaders: Written Testimony Attached (12) and Written Testimony from Mark Lemer (13). (52:48-1:04:08)

Dr. Larry Nybladh, Superintendent of Grand Forks Public Schools: In opposition. He spoke of the Grand Forks experience as it relates to HB 1286. (1:04:30-1:12)

Senate Industry, Business and Labor Committee

HB 1286

March 18, 2013

Page 2

Senator Laffen: Written Testimony from John Staley, Director of the Grand Forks Park District (14). (1:12:18-1:13:38)

Chairman Klein: Closed the hearing.

# 2013 SENATE STANDING COMMITTEE MINUTES

## Senate Industry, Business and Labor Committee

Roosevelt Park Room, State Capitol

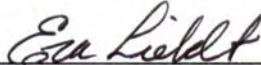
HB 1286

March 25, 2013

Job Number 20419

☐ Conference Committee

Committee Clerk Signature



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

Relating to voter approval of public building projects funded through a building authority or other indirect means

### Minutes:

Discussion

Chairman Klein: Asked Senator Laffen to speak to the bill.

Senator Laffen: Said he has several amendments for this. He will be going over the amendments when they are ready. It takes everyone out of the bill except for schools and turns it into just a school bill. It will also say that they will vote but the threshold will be lowered to fifty percent.

Senator Sorvaag: Said he didn't think the school districts had any problems with this.

Senator Murphy: Said he was glad that it will be moved from two to four. He was talking to one of his superintendents and they are putting in eight portable classrooms in one of the rural school districts, for growth. The cost will be 2.4 million.

Senator Sinner: Asked if this will only relates to building authority or if it will be every project that the school does.

Senator Laffen: Said he is writing the bill so it will be fifty percent regardless of how they would want to build a school facility. It will say if you want to use a building authority you have to have a fifty percent vote. If you want to pass a bond issue you have to have a fifty percent vote. If you want to put a permanent building fund in place you need a fifty percent vote.

Chairman Klein: Closed the meeting.

# 2013 SENATE STANDING COMMITTEE MINUTES

## Senate Industry, Business and Labor Committee

Roosevelt Park Room, State Capitol

HB 1286

March 26, 2013

Job Number 20503

☐ Conference Committee

Committee Clerk Signature



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

Relating to voter approval of public building projects funded through a building authority or other indirect means

### Minutes:

Discussion and Amendment

Chairman Klein: Asked Senator Laffen to go over his amendment.

Senator Laffen: Handed out a brochure on a school building project and described the alternatives these schools have by using a building authority, Attachment (1). He also handed out a copy of the engrossed bill with amendment changes on the bill, Attachment (2).

### Discussion

Senator Laffen: Stated that the amendment would do three things; First if you do a bond issue you will vote at fifty percent, or if you use a building authority you will vote at fifty percent, but if you had your voters approve a building fund, to build construction, you can use that to do whatever your district approved it to do.

Senator Laffen: Suggested also lowering the vote to cancel the building fund to fifty percent.

Chairman Klein: Adjourned the meeting.

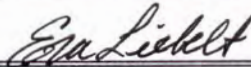
# 2013 SENATE STANDING COMMITTEE MINUTES

## Senate Industry, Business and Labor Committee Roosevelt Park Room, State Capitol

HB 1286  
March 27, 2013  
Job Number 20573

☐ Conference Committee

Committee Clerk Signature



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

Relating to voter approval of public building projects funded through a building authority or other indirect means

### Minutes:

Amendment and Vote

Chairman Klein: Opened the meeting.

Senator Laffen: Said that yesterday he handed out an amendment that probably tried to go too far. It tried to fix some other things that weren't even part of this bill and after they discussed it a bit he rethought it. What this amendment does is simplifies the fixes. It makes three changes; it takes out everybody but the schools, puts a bottom dollar of four million dollar amount it and it changes the margarine of vote from a sixty percent to a majority. Amendment Attached (1) and Amendment in bill form (2).

Chairman Klein: Said it starts with school district voter approval, so we need to go to a vote.

Senator Laffen: For building authority projects.

Chairman Klein: Said you are reducing it from sixty to a majority and only for schools.

Senator Laffen: Said only for schools. We heard a lot of other municipalities that said this is not a problem and he agrees with that.

Discussion on what this amendment will and will not do. (2:57- 10:52)

**Senator Laffen: Moved to adopt the amendment.**

**Senator Murphy: Seconded the motion.**

Discussion (11:15-14:05)

**Roll Call Vote: Yes - 7 No - 0 Absent - 0 Motioned Carried.**

**Senator Laffen: Moved a do pass on engrossed HB 1286 as amended.**

Senate Industry, Business and Labor Committee  
HB 1286  
March 27, 2013  
Page 2

**Senator Murphy: Seconded the motion.**

**Roll Call Vote: Yes - 7 No - 0 Absent - 0 Motioned Carried.**

**Floor Assignment: Senator Laffen**

March 27, 2013

  
3/27/13

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1286

Page 1, line 2, replace "public" with "school district"

Page 1, line 7, replace "**Voter**" with "**School district voter**"

Page 1, line 9, remove "municipality or governing body of a"

Page 1, line 10, replace "municipality" with "school board"

Page 1, line 11, replace "municipality" with "school district"

Page 1, line 13, after "structure" insert "at a total cost of four million dollars or more"

Page 1, line 14, replace "municipality" with "school district"

Page 1, line 15, replace "at least sixty percent" with "a majority"

Page 1, line 15, replace "municipality" with "school district"

Page 1, line 15, after "question" insert "at a regular or special school district election"

Page 1, line 17, replace "municipality" with "school district"

Page 1, line 18, after "acquisition" insert ", improvements,"

Page 1, line 18, replace "municipality" with "school district"

Page 1, line 18, remove "The"

Page 1, remove lines 19 through 21

Renumber accordingly

**2013 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1286**

Senate Industry, Business, and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 13.0367.02006

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment  
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Laffen Seconded By Senator Murphy

Senators	Yes	No	Senator	Yes	No
Chairman Klein	x		Senator Murphy	x	
Vice Chairman Laffen	x		Senator Sinner	x	
Senator Andrist	x				
Senator Sorvaag	x				
Senator Unruh	x				

Total (Yes) 7 No 0

Absent 0

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

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



**2013 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1286**

Senate Industry, Business, and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 13.0367.02006

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment  
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Laffen Seconded By Senator Murphy

Senators	Yes	No	Senator	Yes	No
Chairman Klein	x		Senator Murphy	x	
Vice Chairman Laffen	x		Senator Sinner	x	
Senator Andrist	x				
Senator Sorvaag	x				
Senator Unruh	x				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Laffen

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

**REPORT OF STANDING COMMITTEE**

**HB 1286, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).**  
Engrossed HB 1286 was placed on the Sixth order on the calendar.

Page 1, line 2, replace "public" with "school district"

Page 1, line 7, replace "**Voter**" with "**School district voter**"

Page 1, line 9, remove "municipality or governing body of a"

Page 1, line 10, replace "municipality" with "school board"

Page 1, line 11, replace "municipality" with "school district"

Page 1, line 13, after "structure" insert "at a total cost of four million dollars or more"

Page 1, line 14, replace "municipality" with "school district"

Page 1, line 15, replace "at least sixty percent" with "a majority"

Page 1, line 15, replace "municipality" with "school district"

Page 1, line 15, after "question" insert "at a regular or special school district election"

Page 1, line 17, replace "municipality" with "school district"

Page 1, line 18, after "acquisition" insert ", improvements,"

Page 1, line 18, replace "municipality" with "school district"

Page 1, line 18, remove "The"

Page 1, remove lines 19 through 21

Renumber accordingly

**2013 CONFERENCE COMMITTEE**

**HB 1286**

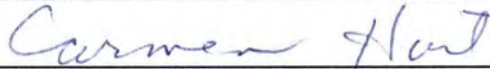
# 2013 HOUSE STANDING COMMITTEE MINUTES

## House Government and Veterans Affairs Committee Fort Union Room, State Capitol

HB 1286  
April 17, 2013  
21206

☒ Conference Committee

Committee Clerk Signature



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

Relating to voter approval of public building projects funded through a building authority or other indirect means

### Minutes:

You may make reference to "attached testimony."

**Chairman Jim Kasper** opened the conference committee on HB 1286. This bill changed a lot from what we sent over to the Senate. Let us start by having the Senate explain what they did.

**Senator Laffen** I think we had a lot more testimony than you did. We had a dozen park districts and a couple of counties show up. We heard some testimony from some park districts about how they use building authorities in a pretty good way. One example is my city of Grand Forks. They have been building all their facilities through building authorities with totally donated money. They raise all the money, and then they use the building authority as the vehicle to build the facility and they pay for it with all donated funds. They are doing a \$30 million rec center, hockey facility, and a golf course. It adds up to about \$60 million worth we never had to pay for.

**Chairman Jim Kasper** You didn't see where this bill would have restricted that?

**Senator Laffen** The park districts thought it did. They all came and wanted to continue to be able to use building authorities without a vote, and their logic was sometimes these are site specific; they have the money, the money has been donated by somebody; somebody wants the facility where they said they would donate money for it; and they don't want to have to vote on it. That was our logic for taking everybody else out but schools.

**Chairman Jim Kasper** Did you consider clarifying that if they had donated funds, they would not require a vote?

**Senator Laffen** We didn't consider that. We took out everybody except schools. We thought it would be difficult to vote on every project. We put a limit of after \$4 million. There has been some debate on our side that 60% vote ties the hands of schools, and that is why this vehicle is being used in a lot of school districts. They can't get to 60%.

**Chairman Jim Kasper** Why is that?

**Senator Laffen** It is the nature of more the rural districts. Getting to 60% is doable in the bigger cities because they are generally younger, growing, have more resources, and more people tend to vote for education. In the rural district that is consolidated and has site issues where these things might go, getting to 60% is just about impossible. That is why many of the rural districts after having voted two or three times and getting the 56%, 57%, 58% and only getting that far, then use this route to get a consolidated school built with money they already have without raising taxes. While we agreed voting is a good thing, we just wanted to have a vehicle that would allow it to not shut everything down. We thought a 50% margin would make more sense. We found the building authority is not obligated to pay back their debt. They could walk away from these leases. We thought that was differentiating enough to justify the lower vote margin.

**Chairman Jim Kasper** What about cities and counties?

**Senator Sorvaag** The cities and counties really didn't have much, because most of them are using the building authorities or any of that mechanism at this time. The understanding is it is predominantly schools and some of the larger park districts. I am a park commissioner with the Fargo park district so I will expand a little bit beyond. We do use that method and different methods, but part of the other rationale is we do use taxpayer dollars but we have a capped mill. Our mills were capped by the state quite a few years ago. That was the rationale of the 50% vote on anything that isn't a general obligation bond. The general obligation bond bonds future generations.

**Chairman Jim Kasper** The cities or the counties had no heartburn with the bill or staying in the bill? You just decided to take them out?

**Senator Sorvaag** We decided to isolate it to the schools.

**Rep. Ben Koppelman** One of my concerns in committee was whether or not allowing maybe a perceived loophole to using building authorities to get around public votes. By using a building authority you are depriving the people of that vote. It seems to be an end around and maybe a convenient one. It also seems to be a little ingenuous to those taxpayers to say on one hand you have to have a vote, but if you use this end around, you don't. Do you hear anything on that?

**Senator Laffen** That is why we agree with leaving it and requiring a 50% vote. A lot of people on our committee agree that they would like to see these projects voted on, and this bill still does that.

**Rep. Ben Koppelman** Do you believe by having a lower thresh hold that could possibly apply to other political subdivisions other than schools?

**Senator Laffen** We didn't see an outcry from the public against any other political subdivisions. We chose to leave that until it becomes a problem. We think they are using it appropriately.



**Chairman Jim Kasper** One of the things we talked about in our committee is local control and what the definition of local control is. It has been my contention for years that local control is the citizen of the city, county, state, or school district. On the other hand I have also seen over the years the building authority thinks they are local control. The people are concerned about escalating property taxes. I was given an article by Rep. Bellew that property taxes are increasing in Minot by 27%. I don't know why. I didn't read the article. Part of the impact from property taxes are the buildings. In my city since 1991 we have built \$240 million worth of schools without not a single vote of the people except the initial vote that established the building authority. The citizens of Fargo are very upset with the property tax increases. If you don't use a building authority to build a school right now, you do need a 60% vote of the people. Why would we want to allow a building authority to be used and only have a 50% of the people?

**Senator Laffen** My personal opinion is that it is local control. The property taxes that those local government units put on is their deal. They levy it, collect it, and use it. If the citizens of Fargo don't like the way the Fargo school district is doing it, they should throw the bums out. It is not our deal. It is actually a building fund in Fargo. Schools in North Dakota are allowed by vote to have a building fund, and it stays in place until voters decide to unwind it and vote it out. A lot of schools use it, but Fargo is the only school district that can build buildings with it for a second reason. Fargo has another building fund in statute that allows them without a vote to collect a second building fund. The two of them raise approximately 26 mills, and Fargo has a fairly high property valuation. The rest are limited to 11 mills. Fargo is in an unique situation. We didn't want to limit this financial tool which a lot of schools are using the right way to stop Fargo from doing what we think is a local issue.

**Chairman Jim Kasper** It is okay for the school district and citizens in Fargo to not get to vote to build new schools so long as the rest of the state has to vote?

**Senator Laffen** This bill doesn't deal with that. This doesn't stop Fargo from doing what they are doing. We are not saying it is right or wrong what Fargo is doing, but passing this isn't going to make any difference.

**Chairman Jim Kasper** Why should we be able to use a building authority and have a 50% vote when all other schools that are going to be built without a building authority need a 60%?

**Senator Laffen** The building authority allows the school district to walk away without applying any future debt to that district.

**Senator Sorvaag** The reason the Fargo school district has an additional one. They were a school district before the state was a state.

**Chairman Jim Kasper** It is statutory, not constitutional?

**Senator Sorvaag** I think it is statutory.

**Chairman Jim Kasper** It appears there is another section of the code that deals with the counties and it is impacting the Cooperstown area. They have had three or four votes to

build a new courthouse and it was turned down by the voters. There is a quirk in the law that allows the county commission to build the courthouse anyway. I would be interested in the statutory thing on the city of Fargo.

**Senator Laffen** I am pretty sure it is statutory.

**Rep. Ben Koppelman** In talking to my home school district and some of those school board members in Fargo, they indicated that the way it is done if they use a building authority to build it and there is an agreement between the school district and the school district's building authority to essentially lease it, typically those leases are for a very long period of time and seem to be legally encumbering. How would you walk away from something like that?

**Senator Sorvaag** You have to appropriate the payment every year and that is the risk that the borrower takes. That is why they use the facility as security. They are not using the tax base. The school district or the park district has to approve in their annual budget every year the payment for that lease payment. If they chose not to, the lease company would own the building. It isn't like the general obligation where every taxpayer forever is obligated until that is paid off.

**Rep. Ben Koppelman** In the logic of changing 60% to 50%, was there any discussion as to whether or not the number in here rather than being 50% should be tied to whatever it would take with the public vote?

**Senator Laffen** We think that number is too high everywhere. This is the start of our trying to get the entire thing lowered down to 50%. Our neighboring states to build new schools are at 50%. We don't mind voting, but we don't want to make it impossible.

**Chairman Jim Kasper** I drive by Lake Park and Audubon when I go to the lake in the summer time. If I recall, they had six or eight votes to build a new school over there. I thought they were at 60%. I might be wrong.

**Senator Laffen** We do a lot of schools in Minnesota. In Minnesota you need a 50% vote to build a new school if their Department of Public Instruction approves of the project. If they don't, then you need 60%.

**Chairman Jim Kasper** This bill does require that it be approved by the Department of Public Instruction.

**Senator Laffen** We added that

**Chairman Jim Kasper** We have actually created a loophole by encouraging school districts in the state of North Dakota to set up a building authority and then go out and get a vote of the people with 50% as opposed to 60%.

**Senator Laffen** We don't think we created a loophole. We think right now the loophole is already there. We are making it more restrictive. They can use the building authority right now with no vote. **The meeting was adjourned by Chairman Kasper.**

# 2013 HOUSE STANDING COMMITTEE MINUTES

## House Government and Veterans Affairs Committee

Fort Union Room, State Capitol

HB 1286  
April 18, 2013 (AM)  
21250

☒ Conference Committee

Committee Clerk Signature

*Carmen Hart*

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

Relating to voter approval of public building projects funded through a building authority or other indirect means

### Minutes:

Attachments 1-4

**Chairman Jim Kasper** opened the conference committee on HB 1286. **Attachments 1-4** were handed out. This is material about our current statues on housing authorities. Yesterday, I had a question about how could a courthouse be built in the Cooperstown area without a vote of the people after the people had voted it down three or four times.

**Senator Laffen** We haven't changed any light on this bill.

**Rep. Ben Koppelman** Other than schools which if they use a traditional bond vote with general obligation bond that takes 60%, do you know what the threshold is for other political subdivisions? For example, the city of Bismarck wanted to build a civic center. What kind of vote requirement would that be?

**Senator Laffen** I am not sure of all of the differences in that, but I do believe those kinds of city votes are normally 50%.

**Chairman Jim Kasper** I am more convinced today than yesterday that there is a huge loophole in the Senate amendments. If I were a school, I would establish my building authority immediately, and I would use the building authority to do whatever I wished with only a 50% vote.

**Senator Murphy** Times change. In rural districts we have huge amounts of consolidation that have occurred and some that needs to continue. When you do that, you can't get there. I would ask the committee to consider that. I know that you are not from a rural area, but I would hope that you would have some cognizance and perhaps some empathy in that regard.

**Chairman Jim Kasper** Is it your contention that after a consolidation is when you need the ability to build something? You are not talking about anything but a consolidation in the rural areas?



**Senator Murphy** I am just speaking about schools. It doesn't always go that way as far as I know in the fact whether people will consolidate or not is often based on a location of the school should one be approved.

**Chairman Jim Kasper** You are saying that because the various towns would want the school in their location, as an example, all the ones that aren't the location choice are going to vote against it?

**Senator Murphy** That is one of the dynamics we see time after time.

**John Walstad, Legislative Council**, appeared.

**Rep. Ben Koppelman** When not using a building authority, when using general obligation bonds such as Bismarck civic center, Burleigh County jail, etc., what are the thresholds needed to be met in those votes? I am pretty sure for a school it is 60%, but what about other political subdivisions?

**John Walstad** I think it is 60% pretty much universally. I think there might be a couple of bond election requirements where it is less than 60, but I can't think what instances they are.

**Senator Sorvaag** I think the type of financing has a lot to do with it. The Fargodome was approved on a 50% because it was the sales tax approving it. We changed our home rule charter after that so to put any sales tax on, you have to have 60% for the financing mechanism. I know with the schools we are already talking about a funding mechanism there.

**John Walstad** That is correct. As you indicated if the funding source is through sales tax under home rule, then these statutory provisions that usually apply with a property tax levy wouldn't come into play.

**Chairman Jim Kasper** On the property tax funded basis, it is generally 60%?

**John Walstad** Generally 60.

**Senator Sorvaag** On political subdivisions we are constitutionally limited on our debt amounts at 5%. Are schools the same?

**John Walstad** I think it is the same. There is a provision in the constitution for voter approval of an increased debt amount, but I think the baseline is 5 and then you can go to the voters for expansion.

**Senator Laffen** I know I can answer that because I deal with that occasionally. A school district is bound to a 5% debt limit of their assessed property value and they can go beyond.

**John Walstad** With 8%.

**Senator Laffen** They can go to 10.

**John Walstad** 10 with voter approval.

**Senator Laffen** With voter approval, and that vote is only a 50% vote.

**Chairman Jim Kasper** Speaker Devlin indicated that there is an occurrence going on in the Cooperstown area where they are building a new courthouse. They are building in spite of the fact that they went to a vote of the people and did not obtain the 60% voter approval. They found an area of the law that they can get around it, and they are going to build it anyway. Can you talk about that circumstance and how they are doing it?

**John Walstad** A lot of heat came to people in this building because of what happened there. As you indicated, there were a couple of vote options presented to the voters to fund a new courthouse. The voters said no. There is a statutory provision that allows a bond debt issuance and a property tax levy to support it without a vote for limited facilities--law enforcement facilities, jails, and courthouses were added to that list more recently than the other ones that were put in there.

**Chairman Jim Kasper** Could that be the same circumstance under the same statute down in Fargo where the county commission has built a number of additions to the jail and to the facilities for the county commission offices? There was no vote to my recollection.

**John Walstad** This statutory provision could be used for jail expansion projects. I do not think county commission offices, buildings, whatever, would be covered. It is specifically limited I think to three kinds of facilities.

**Chairman Jim Kasper** Have you seen the amended version of 1286 that the Senate did with their limiting the bill to school districts with a 50% vote?

**John Walstad** Yes.

**Chairman Jim Kasper** I look upon that as a huge loophole for the schools, because right now without a building authority they have to get 60% vote to build and approval of the Superintendent of Public Instruction. The amendments on 1286, using the building authority, you get 50% of the vote and you still have to have approval of the Superintendent of Public Instruction. Is that correct as far as you see that?

**John Walstad** You described correctly what it does. I am not sure that I would describe it as a huge loophole. It is certainly more restrictive than current law. It is not as restrictive as the House version.

**Rep. Ben Koppelman** I agree with the chairman in terms of how this is viewed. Even now without any further restriction, it is viewed by some as a much easier route to go to get the end that they want to reach. Certainly this bill in either form would restrict that further than it currently is. Do you think that there may be ways to look at this and put things on an even playing field?

**John Walstad** I think what you are saying is that any subdivision using a building authority should be subject to the same playing rules. That is what the House version did. It applied to anybody using a building authority, and there were a couple of special provisions in there that related to schools. One was the superintendent's approval for a new school building project which doesn't apply through building authority funding.

**Chairman Jim Kasper** Could we put in the statute that in order for any political entity to use a building authority, they would have to get a vote of the people at the 60% level?

**John Walstad** 60% requirement is essentially what the original bill imposed. I think it said you have to get the same vote that you would have to get if you were bonding it, because as I indicated, there are a couple of circumstances where the vote is not 60. Whatever the vote is, if you are going to bond it, that is the vote that applies if you are going to fund it through a building authority.

**Chairman Jim Kasper** Could we statutorily require to establish a building authority if they don't have one now? They would have to go to a vote of the people and get a 60% vote to even establish a building authority before they could use it.

**John Walstad** That provision could be incorporated into law, but it is not in any of the versions at this point.

**Chairman Jim Kasper** Being the building authority is sort of a federal loophole...

**John Walstad** That is where it came from.

**Chairman Jim Kasper** Being used by local political subdivisions, we could restrict them as saying no building authority unless you present it to the people and they vote that you can use it? Then if that occurs, now here is the outline on how you can use the building authority by statute.

**John Walstad** If that approach were followed, you would have to vote to establish the building authority and then on each project there would be another vote?

**Chairman Jim Kasper** No, then I am saying whatever the bill said after. You get your building authority established with a 60% vote. You can have or you can't have it. If you don't get an affirmative vote of the people, you cannot use a building authority.

**John Walstad** Anything the building authority funds doesn't require a vote?

**Chairman Jim Kasper** No, it wouldn't require a vote. Now we are at 60% compared to 50% impasse on the building authority and in this bill we are only dealing with school districts. Maybe we could consider between 60 and 50%. So the vote of the people for 60% to get the building authority. Once you have the building authority which is a separate vote, now if you are going to use a building authority, you have to go to a vote of the people to use it, but now here is your new threshold to be able to use the building authority.

**John Walstad** Whatever you come up with, I will figure out how to write it.

**Chairman Jim Kasper** We could do it? Would that be allowable being this is a federal loophole? We could still restrict it that way?

**John Walstad** Yes.

**Rep. Ben Koppelman** The 01001 version says at least 60%. I don't think it said whatever the law. This might be in a few cases more restrictive than law is in those few exceptions.

**Chairman Jim Kasper** Generally speaking, if you use a building authority because you are not required to bond for it, then the interest rate may be higher if you do bonds?

**John Walstad** I think there is a greater element of risk. I think the interest rate would have to be higher. The element of risk is, through traditional bonding, state law requires that at the time of the bond, you have to levy an irrepealable tax every year until that bond is retired. Through a building authority the building authority issues the bonds and contracts with the political subdivision for payments. The political subdivision can only bind itself to that contract for one year at a time, so there is a risk that after a year they are going to say we are not interested in paying for that anymore. Then the bondholders are stuck, and they are going to charge a little more to loan you money on that basis.

**Senator Laffen** We heard that same argument that most building authorities use a different kind of bond. They pay a little higher interest rate. The school district is not bound because of that exact information. That was part of our logic for reducing the necessary vote. I still think the real problem here is the 50% vote on all projects. If we continually require schools in North Dakota outside of the four big cities to have a 60% vote, they are simply never going to build buildings again. They have found this device to get there. My suggestion would be let's change all votes to 50% and get rid of building authorities entirely.

**Chairman Jim Kasper** You have laid out the problem. I look at it differently. The people say we don't want the project. From my perspective, the political subdivision ought to listen to that. I think it should be more than a 50% vote to spend potentially millions of dollars and have the taxpayers foot the bill in an area, and particularly the rural areas, where the people don't want it. The people are the local control. The political entities want us to believe that they are.

**Senator Sorvaag** If you leave the 60%, then you are saying a minority of the people are having the final say.

**Rep. Ben Koppelman** There were three attempts in West Fargo. The third one was the one we passed. The problem was not the stinginess of the taxpayer which some people would argue. We found out that the taxpayer wanted us to have the right plan and weren't willing to say yes until we came up with the right plan. It turns out the right plan was much more expensive than the previous two. There is a West Fargo building authority and we could have done that. We said we are not going to go to the voters and say we realize that you said no twice, but we know better than you do. You really do need these schools even though you think you don't. Therefore, we are going to use the building authority to build it.



We made that decision internally. Unfortunately, there are a lot of cases where that is not done. Using a building authority as an end around is not the way to do it.

**Senator Laffen** I still don't believe we are creating a loophole. We are taking current law and making it more restrictive. If we take away this ability and force 60% vote, we will shut down construction outside the four large cities. Barnes County North voted three times getting to 59%. In their case, they are already a consolidated school district. They are forced in three horribly old buildings with serious safety violations. They came up with the perfect plan dead smack in the middle of the district. They can't get to 60% for a lot of reasons. Some don't like the cost; some don't like the location; some don't like the plan, some don't like the busing.

**Chairman Jim Kasper** Is that the only school district having that problem?

**Senator Laffen** There are about 40 that need consolidation. There are about 10 that have come to an impasse and don't know where to go right now. Barnes County North used this to get past that impasse.

The meeting was adjourned.

# 2013 HOUSE STANDING COMMITTEE MINUTES

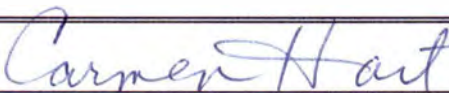
## House Government and Veterans Affairs Committee

Fort Union Room, State Capitol

HB 1286  
April 18, 2013 (PM)  
21275

☒ Conference Committee

Committee Clerk Signature



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

Relating to voter approval of public building projects funded through a building authority or other indirect means

### Minutes:

Attachment 1-2

**Chairman Jim Kasper** opened the conference committee on HB 1286. **Attachment 1** (Emails from Mike Williams, Fargo city commissioner) was read. (:55- 5:50) This city commissioner gets it and focuses on the taxpayers where I think the local control should be, not the people who are the commissioners and so on.

**Senator Sorvaag** Commissioner Williams has led multiple initiated measures in Fargo. We have a very easy initiated measure process and if his feelings are so true that this is what the citizens want more than a legislature telling the locals what to do, he is more than capable of doing an initiated measure drive to do this without action from legislative body.

**Senator Laffen** I think Mr. Williams gets this as a Fargo problem. It is not ever general fund money that the Fargo schools are using. There are from two dedicated building fund funds, and they have nothing to do with building authority. The 11 mills are statutory and could be taken out by us at the legislature. The 15 mills were put in by a 60% voter approval of the citizens of Fargo and that stays there until they vote it back out. It wasn't done for that school in 1991. It was a vote to levy a building fund for future building projects.

**Chairman Jim Kasper** I would assume he is implying that all the property taxes collected are general fund, and that is where you fund the building projects including the school building projects. I am handing out the actual brochure handed out in 1991 to sell the mill levy increase. **Attachment 2.**

**Senator Laffen** I understand somebody challenged the Fargo school district and it went to court and the court determined they are using that building fund in the right way and it is continuous.

**Chairman Jim Kasper** If you are making that suggestion, then show me the challenge.

**Senator Laffen** I thought we heard that in testimony. I will have to go back and check that.

**Rep. Ben Koppelman** I did get some more information from John Walstad. Here is his response. In Section 21-03-07 the first sentence has the general 60% vote requirement. There is another in 21-03-10.1, Subsection 3 for changes to a bond authorization. I can't find any less than 60% vote for bonding except in 21-03-04 which requires a majority vote for limited types of bond issues. I think that is where he was talking about courthouses and jails. I had asked if a political subdivision was already at their maximum for indebtedness, can they just use the building authority and sidestep that requirement. His answer was yes. They can go that other route as kind of an end around. I have some concerns with that as well.

**Senator Laffen** We don't, because they are not incurring new debt.

**Chairman Jim Kasper** Let us get practical. A school district uses the building authority to avoid certain other ways to build a school and certainly for the perspective of a lease back, it is not incurring new debt as far as the letter of the law. That school will not default once they built a new school. This is a different way to call it debt. Please read through Attachment 2, the brochure and ask yourself what type of impression do I get if I were a Fargo voter?

**Senator Sorvaag** Reading the bottom of the brochure, the fund may be used for the construction, school building improvements and for the purchase of future school sites. It says it can be used in the future.

**Rep. Ben Koppelman** Although that might be true, if I was to tell somebody I was going to purchase a future school site, that would be different than I am going to build a building.

**Senator Sorvaag** The sentence says this fund may be used only for construction, school building improvements or for the purchase of future school sites. That means it can be used for any construction, improvements, or the sites. It has the word or.

**Chairman Jim Kasper** This is for your committee's edification however you would like to use it.

**Rep. Bill Amerman** Being from a rural area, it took us three or four times to try to get a construction project in my school district. Is there a way where the bigger districts would need 60% and the rural districts would need 50%?

**Chairman Jim Kasper** I think the answer is yes, but I can't say for sure.

**Senator Laffen** I haven't thought about that too long, but I think that would be a struggle to just try to define it by population. Maybe there could be some verbiage that says by consolidated district or something whereby we are trying to encourage consolidation might have a little more appeasement to the big cities.

**Chairman Jim Kasper** Has it been your experience out in the rural areas that it is only when consolidation is being considered, and the consolidating school districts simply need a new building or buildings where they have a difficult time getting the 60% vote?

**Senator Laffen** I wouldn't say it is when they are consolidating, but I would say it is always consolidated districts.

**Chairman Jim Kasper** It has been your experience that school districts will consolidate and use the current structures and not build new to begin with and in a year or two, they come up with a plan that might work better. That is when the problem occurs?

**Senator Laffen** Almost always. To try to get consolidation to occur and build a new building at the same time causes site issues and throws the whole consolidation idea out of whack.

**Chairman Jim Kasper** Rep. Amerman just might have struck on a possible compromise that might work here.

**Rep. Bill Amerman** I live in Foreman. We consolidated in 1960 and made it Sergeant Central. To this day there are still hard feelings, because a school is one of the strongest things you want to hold on to.

**Senator Laffen** gave another example of a couple of Minnesota schools that consolidated.

**Senator Murphy** Hopefully, we can use consolidation as a trigger language, because it is less punitive.

**Chairman Jim Kasper** Could a senator and representative work with John Walstad?

**Senator Laffen** We could try and draft something, but I still am not sure we could pass that on our side. I think we got this to pass on our side because of the reduction. We had a lot of senators from the bigger cities stand up and say we really don't like this, but the idea of 50% was a tradeoff they liked.

**Chairman Jim Kasper** You can make the argument that we are going to keep the 60% the same as it currently is if you don't use the building authority in the big cities and help where the help is really needed.

**Rep. Ben Koppelman** I asked John Walstad about the history of the 60%. When you vote on a special assessment if you are in a district, it is the people that own the land that are going to be paying those special assessments that vote yes or no. When you do a bond referendum, people vote that don't directly own property. Not everybody is going to have the same reflected effect of paying those property taxes directly. I think that was sort of to protect so that there was a balance between those that own and those that rent also when you are talking about long term debt against those that own the property. Mr. Walstad mentioned that might be a reason past wisdom was a super majority.

**Chairman Jim Kasper** Let us see if we can get this information by Monday.



**Senator Laffen** My school district wouldn't favor this idea.

**Chairman Jim Kasper** We still don't know where the idea might end up.

The meeting was adjourned.

# 2013 HOUSE STANDING COMMITTEE MINUTES

## House Government and Veterans Affairs Committee

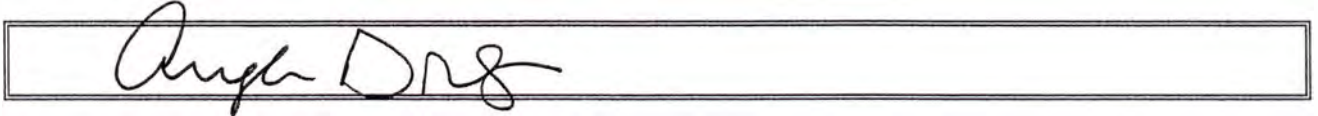
Fort Union Room, State Capitol

HB 1286

April 19, 2013

Job 21307

☒ Conference Committee



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

Relating to voter approval of public building projects funded through a building authority or other indirect means

### Minutes:

**Chairman Jim Kasper** opened the conference committee on HB 1286.

**Sen. Laffen:** The Fargo school district asked for the AG's opinion to keep that building fund in place. They are sending me that. The letter from Rep. Zaiser is a pretty good explanation of what Fargo is doing. This bill does nothing to penalize Fargo, and does a lot to penalize everybody else. We're not interested in trying to divide it between big city and small city.

**Rep. Ben Koppelman:** I did visit with Mr. Walstad from Legislative Council on some of the discussions we had about consolidated versus non-consolidated school districts.

**John Walstad, LC:** We were discussing whether there would be any legal objection. I don't see any grounds for that. The state has encouraged consolidation. There are special provisions in law relating to consolidated or consolidating districts.

**Sen. Laffen:** If we determined that we wanted to continue to encourage consolidation and we decided for a GO bond for a consolidated school, a 50% vote, it's the same opinion?

**John Walstad:** I think the result would be the same. That percentage vote requirement could be lowered in those situations. It is not a constitutional requirement; it's set by statute. I don't see why it couldn't be reduced.

**Sen. Laffen:** Our opinion is that we don't have any testimony that building authority is the issue here. We are not interested in limiting the use of building authorities when it's not going to solve what we think is the bigger issue.

**Chairman Kasper:** On the creation of a building authority, can a political subdivision write up a building authority and create one? Or would they need to go to the people?

**Sen. Laffen:** I don't think they have to go to a vote to do that.

**Chairman Kasper:** If that's the case, then what was the big deal about the Fargo situation creating building authority by a vote of the people?

**Sen. Laffen:** I don't think that was a big issue. I think it was the building fund. They are separate; building authority more of a leasing instrument and building fund is a savings account. That is what Fargo is using. That is our objection to this bill; it's not solving what we think is the problem.

**Chairman Kasper:** What it is solving?

**Sen. Laffen:** It is not solving anything.

**Rep. Koppelman:** When the building authority discussion happened in Fargo, I don't think it was a matter of being able to build schools. The real philosophical question was should we have a mechanism in law that allows us to circumvent the traditional way of doing things?

**Sen. Laffen:** I have never run into anybody who has any problem with the way any other school district in the state is building buildings other than Fargo. Grand Forks uses building authorities and I haven't heard of a problem in doing that. It is my belief that if there is, they should go to the school board and vote them out. It's a device that's currently in state law that I don't think has a problem with the way it's being used. Building funds is a different deal from what I hear in Fargo. I think that issue is limited to Fargo.

**Chairman Kasper:** On the creation of a building fund, a political subdivision can create a building fund without a vote of the people? Explain how a building fund is created.

**Sen. Laffen:** Building funds do need a vote of the people.

**Chairman Kasper:** I'm asking John.

**John Walstad:** That's correct. There's a 60% vote requirement to establish a building fund for a school district. It is allowed by statute to be up to 10 mills, but if presented to the voters at a lower number, that's the limit. There is an approval requirement there, with the exception of the one building fund in Fargo that is statutory.

**Chairman Kasper:** How is a building authority created?

**John Walstad:** It has to be created privately. The AG's opinion said that a political subdivision can't create it. It has to be a nonprofit, private corporation. As a result, what has happened in almost every case is the members of the governing body are the directors of that building authority private corporation and establish it that way.

**Chairman Kasper:** Now we have the building authority created and the use of the building authority by the schools. They now build a building without the vote of the people simply because of the fact that they have the building authority, correct?

**John Walstad:** It can be done. What they do need to make it work is a revenue source for the lease payments. That's where the building fund money comes into play.

**Chairman Kasper:** If they do not have a building fund that's adequate?

**John Walstad:** General fund money if there is an adequate amount. I think in most cases that is probably not feasible.

**Chairman Kasper:** Are they able to increase property taxes across the board to make the lease payments to the building authority?

**John Walstad:** There is no special levy authority for that. It has to be money that the school district can access within statutory levy limits. Fargo has that property tax revenue source to use to make the lease payments.

**Chairman Kasper:** If a building authority is used, in current law we don't need a vote to do anything as long as you have a source to pay the fund?

**John Walstad:** Correct.

**Chairman Kasper:** What does this bill do that is different?

**John Walstad:** This bill would require voter approval to go into a contract with the building authority for the funding, construction, and leasing of a building.

**Chairman Kasper:** So in current law you don't need to do this? You can create a building authority without the vote of the people and pay it?

**John Walstad:** Correct.

**Chairman Kasper:** This bill says that if you're going to use a building authority, you have to get a vote of the people. Based upon the intent of what I'm hearing the Senate say, is that they're trying to find ways for the consolidated school districts to grow and expand. What this does is create a loophole because right now it takes a 60% vote to build a building if you don't have a building authority.

**John Walstad:** I wouldn't describe it as a loophole. Current law, there is no voter approval required to do it if you have a building fund and voter approval may have been required to do that.

**Chairman Kasper:** Then why would any school district want to do this?

**John Walstad:** Why would they favor the change in the bill? I would say school districts wouldn't favor the bill because it imposes a vote requirement they don't currently have.

**Chairman Kasper:** So if the intent of the Senate is to make it easier for consolidated school districts to build buildings, this doesn't accomplish their objective at all. It makes it more difficult.

**John Walstad:** As compared to the original bill that would have required a 60% vote, this version with a majority vote and a \$4M threshold, schools would look upon more favorably than the 60% vote applying to every project.

**Chairman Kasper:** Except if you use a building authority, you don't need a vote of the people to build a school.

**John Walstad:** Current law; if you have the revenue source to make the lease payments.

**Chairman Kasper:** This has nothing to do with the revenue source. This has to do with the requirement to have a building authority and use it; you need a majority vote of the people to do it. This doesn't discuss whether the revenue is there or not?

**John Walstad:** No.

**Chairman Kasper:** I don't see what the bill accomplishes. What does this bill accomplish?

**Rep. Koppelman:** I noticed they changed municipality to school district. It is probably a larger change to the bill than the percentage. Really what we're talking about here is: may we lease space or not? With the building authority, we allow a school board, park board to be the same board as the building authority. It's the same governing body operating on both boards. Also, the buildings are very specifically purposed, giving the impression that it is a very long-term commitment.

**Chairman Kasper:** That is an issue that is not addressed in the bill. Why would anybody want to have this legislation passed? If the goal is help consolidated schools build easier, why would the Senate want the bill at all?

**Sen. Laffen:** It wasn't our goal to take this goal and make it easier for schools. It was our goal to take this bill and make it not impossible for schools. Right now they don't need a vote at all. We still think this is making it harder for schools, saying there needs to be a vote. Schools won't like this.

**Chairman Kasper** adjourned the meeting.



# 2013 HOUSE STANDING COMMITTEE MINUTES

## House Government and Veterans Affairs Committee Fort Union Room, State Capitol

HB 1286  
April 22, 2013  
21387

☒ Conference Committee

Committee Clerk Signature

*Carmen Hart*

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

Relating to voter approval of public building projects funded through a building authority or other indirect means

### Minutes:

Attachments 1-2

**Chairman Jim Kasper** opened the conference committee on HB 1286.

**Senator Laffen** handed out **Attachment 1**. He moved amendment 13.0367.02013 and moved the Senate recede from its amendments as printed on Page 1170 of House Journal and Page 951 of the Senate Journal and engrossed HB 1286 be amended as per this amendment.

**Senator Sorvaag** seconded.

**Senator Laffen** handed out **Attachment 2** which is the colored version of the bill because the LC office wasn't sure they would have the amendment ready. You thought the Senate version created a loophole. This amendment tries to close that loophole by doing three things. It lowers the voting requirement for a general obligation bond issue to 50%. It lowers the ability to rescind a building fund to 50%. It lowers the ability to create a building fund to 50%.

**Chairman Jim Kasper** This deals only with school districts?

**Senator Laffen** Yes.

**Chairman Jim Kasper** You are still dealing with \$4 million or greater?

**Senator Laffen** Correct.

**Chairman Jim Kasper** I see you have regular or special election in there.

**Senator Laffen** We could debate whether you should change it to just a regular school district election. I am not certain how often that happens. We were concerned about the length of time sometimes to do things.

**Chairman Jim Kasper** On the top of Page 2, the elector approval does not apply to an agreement under which all payments by the school district for use of the property or structure would be drawn from the school district building funds. Now you have another exemption.

**Senator Laffen** The thought there is that is already voted on.

**Chairman Jim Kasper** Do you remember what you voted on in 1991? I mean in general.

**Senator Laffen** Our thought is that is the way that building fund is set up. The intent is to create an ongoing fund.

**Rep. Ben Koppelman** If you want to sell general obligation bonds, you get a 60% vote of the people, and that can be done at a special primary or general election. For example, West Fargo has a 10 mill building fund. Let us say they banked that money and brought in for two or three years and had enough and they wanted to build an elementary school without any voter approval, can they currently do that without voter approval if they have enough in the bank in the building fund?

**Senator Laffen** I am not sure. I think there are ways they can do that. I know they could form a building authority and do that, because that would be revenue they had.

**Rep. Ben Koppelman** As long as they don't sell the general obligation bonds? That is where the 60% trigger comes?

**Senator Laffen** I am not sure if that is even the trigger. For example, my community is planning on building a new elementary school and they are using their building fund. There is not going to be a vote and they are not using a building authority. There are ways.

**Senator Sorvaag** Note the one change that was added in Section 3. Today to rescind that building fund if the people want to initiate it, they still take the 60%. That is why we changed that a majority too so everything is on a fair playing field.

**Chairman Jim Kasper** This really deals with Fargo. Correct?

**Senator Sorvaag** No, others are going to have to vote on their building funds.

**Chairman Jim Kasper** I mean on the building fund dollars. Fargo has the 11 mills extra.

**Senator Sorvaag** We have the 15 extra. That is the one we are the only one on. The others can go up to 12. Fargo is using 11.4. The 15 in statue stands alone for Fargo.

**Chairman Jim Kasper** This bill would require that to get rid ...

**Senator Sorvaag** We would have to discuss that. It was looking more at that one put in 1991. Today, even if an initiated measure, you would need 60% vote to rescind any building fund. It is lowering the standard to rescind it to the standard that we are asking to be put in at the same place, so majority would rule no matter what.



**Rep. Ben Koppelman** Senator Laffen talked about 11 mills at one point. John Walstad mentioned 10 mills. Section 3, Page 2, starting with Line 26 it says not to exceed 20 mills. What is the real cap?

**Senator Laffen** I will try to explain even though I might not have all the details right. For all the school districts except Fargo, there is this one ability to create a building fund and I believe it is up to 20 mills. That is the one that this section would say that you can also rescind. The other one that Fargo has is in the century code. I don't believe this would be able to rescind that because it was never voted on. I believe this would say the statewide one that everybody can use could be discontinued with a 50% vote. The other one Fargo has in code would, I believe, have to be taken out of code by us. I am not sure of that.

**Rep. Ben Koppelman** Was Fargo's 1991 vote was to get the building fund that everyone has too?

**Senator Laffen** Correct.

A roll call vote was taken and the vote was 3-3. Motion fails.

**Rep. Ben Koppelman** I did attempt to dig further into the concept of consolidated school districts having a different threshold. Jerry Coleman from the Department of Public Instruction wasn't able to research that for me at this point. He did tell me that if we are going to put a date certain, there was a time when a lot of consolidation was forced because the legislature said you can't consolidate if a district is inactive. He seemed to think it was permissible to use a building authority for schools except for consolidates. They have to have a majority. One other thing that was brought up was to say that the building authority membership cannot be the same people as the sister political subdivision that they serve.

**Senator Sorvaag** I am looking at the Attorney General's opinion handed out in an earlier session. It states the 15 mills is the one Fargo has only. The 11.4 was what was put on in 91. I thought I read somewhere the cap was 12, but we will have to research that.

**Chairman Jim Kasper** We sent you a bill that required a 60% vote for building authorities of all political subdivisions. Now we are down to a 50% vote of school districts for everything. We are getting further away of the intent of the House bill we sent you. The taxpayers of our state foot the bill. The elected county commissioners and other commissioners and the school board, the city, and the park are servants. They are elected by the people but the people pay the bill. I would hope that we could begin to think about the impact on the people who foot the bill, who are screaming about property tax increases. Headlines in the Minot paper last week stated that property taxes increased 27% there. We all know that is not a function of the valuations going up. It is functions of entities not paying attention because valuations increasing mean mill levies should be decreasing to avoid a 27% increase in property taxes. The meeting was adjourned.

# 2013 HOUSE STANDING COMMITTEE MINUTES

## House Government and Veterans Affairs Committee Fort Union Room, State Capitol

HB 1286  
April 24, 2013  
21478

☒ Conference Committee

Committee Clerk Signature



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

Relating to voter approval of public building projects funded through a building authority or other indirect means

### Minutes:

Attachments 1-4

**Chairman Jim Kasper** opened the conference committee on HB 1286. He handed out **Attachments 1 and 2.** (Amendment and colored version of the bill)

**Rep. Ben Koppelman** He went over Attachment 2. (1:15-3:29)

**Senator Laffen** We had a pretty good debate on public, private partnerships, and we killed that bill. Why would that be brought back in now?

**Rep. Ben Koppelman** I don't think that this is an intent to bring in something new. This was something the legislative council--in writing this language, there is apparently some things that are already going on that was approved in the past in an ongoing nature--wanted to make it clear that this particular language wasn't designed to make or prohibit that. However, I don't believe this is necessarily saying that anything new can happen on a public, private partnership either. It was supposed to stay relatively neutral in that sense.

**Chairman Jim Kasper** That is exactly right. As we walk through the bill, keep in mind this deals with all political entities not simply the school districts. We are dealing with cities, counties, park boards, and school districts.

**Rep. Ben Koppelman** continued going over Attachment 2, Section 2. (4:48-8:00)

**Senator Laffen** If there is an existing one already, they would have to add more members to the board because they are not going to use it anymore? But they have an existing building authority already formed? This would ask them to add more members? They could just keep it as is?

**Rep. Ben Koppelman** If it is an existing building authority and you are not doing any new projects, just managing things you built five years ago, none of this law requires any change of membership of the building authority. Continuing on with Section 4. (8:33-13:15)

**Senator Sorvaag** A bill that deals with building authorities, you have chosen now to amend in property tax caps that were in previous bills that have already been turned down by our chamber. That whole Section 4 really has nothing to do with building authorities. That is property tax caps. Correct?

**Rep. Ben Koppelman** I don't believe that Section 4 caps anything. I believe what it does is says how much you can spend without a vote of the people. If it were capped, it would say may not exceed 3%, for example.

**Senator Sorvaag** It does say by not more than 3% on Line 17, Page 7.

**Rep. Ben Koppelman** It does say that but you have to read the rest of it in context and on Page 8, Line 14-15, it allows for an increase above that with a vote of the people. It is a limitation on how fast a city can grow without voter approval.

**Senator Sorvaag** That is what the rest of us know as a cap and that was what was in the other bill. You are capping it without a vote.

**Senator Laffen** There is a lot in here. If I could have the indulgence of the committee, I would like to run this by a bunch of people who would this affect including the Department of Public Instruction.

**Chairman Jim Kasper** You would like not to meet until tomorrow?

**Senator Laffen** I happen to be on tomorrow, but I could get it all done tomorrow. Would it be possible to meet on Friday?

**Chairman Jim Kasper** What type of feedback can you give me today?

**Senator Laffen** I will start visiting and I will give you feedback as we go along.

**Chairman Jim Kasper** Give me some feedback today. I won't schedule anything for a while. Depending upon your feedback, I may set a meeting tomorrow. I may not.

**Rep. Ben Koppelman** I would like to request this of the committee. It would be constructive to get feedback on the various sections of this bill.

**Senator Laffen** I would like to walk through an example of why I think the current use of building authorities helps us keep property taxes low. **Attachment 3.** (17:10-18:12)

**Chairman Jim Kasper** This is a picture of a building being used with kids?

**Senator Laffen** Correct.

**Chairman Jim Kasper** I find it preposterous that the people who are in charge of that building would allow it to continue.

**Senator Laffen** I am shocked at what I see out there. I agree. Continuing on (18:37-20:26)

**Rep. Ben Koppelman** What period of time would this \$17 million be spent?

**Senator Laffen** Over the next five years.

**Chairman Jim Kasper** Doing nothing means repair.

**Senator Laffen** It means not replacing any buildings. They have to repair to that tune of money over ten years. Continuing on (20:44- 23:47) That is just an example of why I believe a building authority used right in fact can save property tax and aid education.

**Chairman Jim Kasper** According to the amendments we just presented, they would have built their new school on vote #2.

**Senator Laffen** You are correct on vote #2. If we raise to 60%, then we don't have a tool to get them anything.

**Rep. Ben Koppelman** Looking at the do nothing list, even if the district still wanted to do the do nothing list, there is only one project on that list that would have required a vote on the do nothing list. As I understand the language we presented, it gives a \$2 million window for an individual project.

**Senator Laffen** I really don't see the fact that you would have to vote on remodeling projects to be all that difficult. The problem is it would be hard to get out of this three building situation if they can't ever pass with those things.

**Chairman Jim Kasper** You will recall we did have discussion about considering some type of an exemption for rural areas which we haven't seen anything from the Senate on that. It would be interesting if you would do a study like this for any of the major cities in North Dakota to see the result of an actual building in a major city and how the cost either increased or decreased from wherever they even thought it might be.

**Senator Laffen** Building facilities have a really wide variety of what they can do either up or down, the way they are designed, the way they consolidate, but most of these school districts are like this and fairly common in their size and scale in what they save. I can find you an example of great savings and I can find you one where it didn't work at all. It is hard to be consistent.

**Chairman Jim Kasper** Take the amendments in front of you from the perspective of an effort to move something forward. Don't get caught up in any one area of the amendments. This is something for discussion. We obviously know that there is going to be considerable discussion before we get to the final point. If we are going to make a major change from a 60% vote to a 55% vote across the board, that is a major change in public policy which could potentially increase the cost of political subdivisions doing their business and obviously impacting property taxes. The last amendment I believe is germane to the bill based upon the amendments that we are considering. The meeting is adjourned.

**Attachment 4** was handed out by the chair at the beginning of the session and stated it was an interesting read.



# 2013 HOUSE STANDING COMMITTEE MINUTES

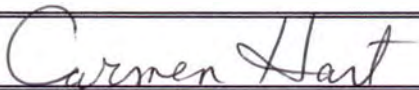
## House Government and Veterans Affairs Committee

Fort Union Room, State Capitol

HB 1286  
April 24, 2013 (PM)  
21497

☒ Conference Committee

Committee Clerk Signature



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

Relating to voter approval of public building projects funded through a building authority or other indirect means

### Minutes:

You may make reference to "attached testimony."

**Chairman Jim Kasper** opened the conference committee on HB 1286. We had an amendment proposal this morning and the Senate has had a chance to review. Any comments from the senators?

**Senator Sorvaag** I move that the Senate recede from its amendments and further amend with amendment 13.0367.02014.

**Senator Laffen** seconded.

**Chairman Jim Kasper** I would like a little explanation on the motion.

**Senator Sorvaag** We have looked at it and have decided that if the committee so desires, we will take it to the Senate floor and see what the body thinks of it.

**Chairman Jim Kasper** I am curious what you think of it?

**Senator Sorvaag** I have made the motion to move it forward to the Senate floor.

**Rep. Ben Koppelman** Did you get any results from the people you were going to check with as far as their concerns about various types?

**Senator Laffen** We did run it by some people. They are intrigued by trying to get to a better level of voting. They are not sure they all agree with this idea yet.

**Rep. Ben Koppelman** Was that something that you thought they needed a little more time to comb over before we move this forward one way or the other? It seems at least that there might be some merit to the rest of the sections. I was wondering what the intent was or if you have any interest in any part of this amendment?

**Senator Laffen** Personally, I have problems with parts of it. We have been here for a long time and we are ready to try your amendment.

A roll call vote was taken for **SENATE RECEDE FROM SENATE AMENDMENTS AND AMEND AS FOLLOWS WITH AMENDMENT 13.0367.02014, 4-2. Motion fails.**

**Rep. Ben Koppelman** I would like to research some of these amendments further and request that we have another meeting.

**Chairman Jim Kasper** It sounds good to me. The meeting was adjourned.



# 2013 HOUSE STANDING COMMITTEE MINUTES

## House Government and Veterans Affairs Committee

Fort Union Room, State Capitol

HB 1286

April 26, 2013 (AM)

21535

☒ Conference Committee

Committee Clerk Signature

*Carmen Hart*

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

Relating to voter approval of public building projects funded through a building authority or other indirect means

### Minutes:

Attachments 1-3

**Chairman Jim Kasper** opened the conference committee on HB 1286.

**Rep. Ben Koppelman** went over the amendment. **Attachment 1** (13.0367.02016 amendment) and **Attachment 2** (colored version of the bill). This amendment is similar to the previous one with a few key changes. The changes primarily take the threshold when you have to go to a vote of the people from \$2 million to \$4 million. The percentage is the same as what was in the previous proposed amendment which was 55% vote of the people. The very last section of the bill from the previous amendment which was discussed by some as a cap or a limitation on growth without a vote of the people is completely gone off the bill.

**Senator Laffen** This amendment also different from the Senate version would bring back in other municipalities, and it also brings in some language extending this beyond just building authorities to all funding sources. The original bill just dealt with building authorities. This now goes to a vote regardless of the funding source. This would bring in this repealer which would be new. Would it be possible to have someone describe the repealer?

**Rep. Ben Koppelman** handed out **Attachment 3** (copy of some of the code) to the committee members. You recall when John Walstad talked to us a couple of meetings ago, he brought up about courthouses, correction facilities, and law enforcement facilities. The nature of these amendments was that if we were going to do this and have something lower than a 60% vote, say 55%, that would apply to all types of votes down to 55 instead of 60. We would encompass all types of long term projects where there is going to be a long term expense to maintain. It is more than just repaying the bonds. In some projects where you do general obligation bonds you have to currently get 60% of the vote. In other projects where you sell bonds that are general obligation, then the citizens are still responsible for those projects, those buildings, in a long term scenario and then they have no vote. We have a huge extreme from 0 to 60%, and so we are trying to get some consistency across the board.

**Senator Laffen** We would like to take some time and go through this. I would like to visit with some of the leadership over on my side.

**Chairman Jim Kasper** If you look at these amendments and if there are other ideas that you have besides how the amendment looks, we might reach some common ground. I would like to have some feedback. Up to this point we don't like what you are doing; we don't like what you are proposing, and that is it. Take our Senate amendments or leave it. We are getting close to that point by the way. We are close to walking away. If you have other ideas that you would want us to consider besides the bill that the Senate passed to try to come to some compromise and some consensus, next time we get together I would like to hear them. If we don't, we may end up with nothing which is possibly where we are heading. Our leadership is putting the pressure on us on the policy committees to get these conference committees done. If your only alternative is the bill you passed us, then I want to hear it.

**Rep. Ben Koppelman** I look at this as an opportunity to try to get some consistency out of law. That is the spirit in which some of the work has been done. It is not to try to stick a stick in each other's eye and say we are up one on the Senate and vice versa. It is just trying to find some reasonable ground that would be a good template moving forward.

The meeting was adjourned.

# 2013 HOUSE STANDING COMMITTEE MINUTES

## House Government and Veterans Affairs Committee

Fort Union Room, State Capitol

HB 1286

April 26, 2013 (PM)

21553

☒ Conference Committee

Committee Clerk Signature

*Carmen Hart*

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

Relating to voter approval of public building projects funded through a building authority or other indirect means

### Minutes:

You may make reference to "attached testimony."

**Chairman Jim Kasper** opened the conference committee on HB 1286. It is my goal that this is our last meeting. The House had a proposed amendment this morning. The Senate wanted to think about it, and I asked if you had ideas besides the amendment that we certainly like to discuss them. Do we have any thoughts from the Senate?

**Senator Laffen** We looked them over. There are some good things in there and some bad things in there. I am not sure the bad things are all that bad. We still like our version. We discussed with our leadership, and our leadership likes our version, and we would prefer to first have you vote that up or down on your side.

**Chairman Jim Kasper** If we would have wanted to do that, we wouldn't have had the conference committee in the first place. We would have just taken it to the floor. The goal was to find some area that we could agree on besides the bill you sent us. If that is your final statement, then we will have to proceed. I just want to explore any opportunities that might be there to reach some other common ground besides the bill you sent us.

**Senator Laffen** There are some good things in the bill as it stands, and we are willing to try that on our side--the amendment that you gave us this morning. I will move that the Senate recede from its amendments as printed on 1170 of the House Journal and Page 951 of the Senate Journal and engrossed HB 1286 be amended to 13.0367.02016.

**Senator Sorvaag** seconded.

**Rep. Ben Koppelman** I think this is a good compromise or I wouldn't have suggested it. If the Senators would share any thoughts they had about some of those high and low points they mentioned, it might be worthwhile information for us to know.

**Senator Laffen** If I keep amending, I end up back where we were on the Senate version. I like 50%. I like it being only schools, but that is what we proposed initially.

House Government and Veterans Affairs Committee

HB 1286

April 26, 2013

Page 2

A roll call vote was taken and resulted in **SENATE RECEDE FROM SENATE AMENDMENTS AND BE AMENDED TO 13.0367.02016, 6-0.**

The conference is adjourned.

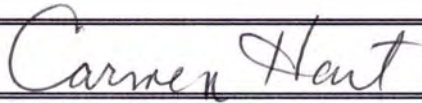
# 2013 HOUSE STANDING COMMITTEE MINUTES

## House Government and Veterans Affairs Committee Fort Union Room, State Capitol

HB 1286  
April 29, 2013  
21615

☒ Conference Committee

Committee Clerk Signature



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

Relating to voter approval of public building projects funded through a building authority or other indirect means

### Minutes:

You may make reference to "attached testimony."

**Chairman Jim Kasper** Rep. Amerman just arrived. The House didn't like our bill. It was rejected on a verification vote. The discussion on the floor was about 55% should have been 60%, and it wasn't. Therefore, it was rejected. We are back down here to see if we can come to any new ideas.

**Senator Laffen** We would recommend you have to figure out what you can pass there and get it over to us.

**Chairman Jim Kasper** I know what I can pass--60%. We amend the bill to 60% exactly the way it was except put 60% where it had 55%.

**Senator Laffen** We will try whatever you want to bring on our side.

**Rep. Ben Koppelman** I would move the amendments 13.0367.02016 with one change and that change would be that the references to 55% be eliminated and 60% be in their place.

**Chairman Jim Kasper** It would still be the Senate recedes from the Senate amendments and we further amend.

**Rep. Ben Koppelman** That would be my motion. In a quick scan Page 1, Line 19, of the colored version where the word 60 is struck and 55 replaces it, we would just eliminate 55 and 60 would be un struck.

**Chairman Jim Kasper** There might be a couple of other spots like Page 2, Line 23.

**Senator Laffen** seconded. What I think that would actually do is it would remove all that section that referred to general obligation bonds, because it is at 60 now.

**Chairman Jim Kasper** We should talk to John Walstad to be sure we get the amendment in proper form. We will visit with him and before we present it, maybe have one more meeting so that you can have eyes on it. Would you prefer that?

**Senator Laffen** I don't know that we need to. We pretty much understand what that is doing.

**Rep. Ben Koppelman** If the person that seconded it would oblige me, as part of that motion simply eliminate Section 2 of the bill which would leave us with Sections 1 and 3 surviving and in Section 1, Page 1, Line 19, the overstrike from 60 be removed and the 55% notation eliminated.

**Senator Laffen** Yes I would second that.

**Senator Sorvaag** I need to read through this for a minute.

**Chairman Jim Kasper** Section 2 deals with issuing of bonds that require a 60% vote right now.

**Senator Sorvaag** I understand. I just want to glance through the bill. I am satisfied.

**Chairman Jim Kasper** I am assuming that the Senate members will be overjoyed to take this to the Senate floor if we pass it on the House floor?

**Senator Laffen** It is getting tougher on our side, but we are willing to try.

A roll call vote was taken and resulted in **SENATE RECEDE FROM SENATE AMENDMENTS AND BE AMENDED TO 13.0367.02016, 6-0.**

The conference committee adjourned.



# 2013 HOUSE STANDING COMMITTEE MINUTES

House Government and Veterans Affairs Committee  
Fort Union Room, State Capitol

HB 1286  
April 30, 2013  
21633

☒ Conference Committee

Committee Clerk Signature

*Carmen Hart*

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

Relating to voter approval of public building projects funded through a building authority or other indirect means

## Minutes:

You may make reference to "attached testimony."

**Chairman Jim Kasper** I would like to reconsider the action taken yesterday. I would like a motion to do so, and then get this on the table and then discuss why.

**Rep. Ben Koppelman** moved that they reconsider their actions on HB 1286.

**Rep. Amerman** seconded.

**Chairman Jim Kasper** It is my intent that we get something out of this bill. What we passed yesterday I don't think is going to pass based upon what is going on in the Senate lately. My goal is to try to come to some type of agreement today to get a bill out of here that would be agreeable to all six, so that is the purpose of the reconsideration.

A roll call vote was taken on the reconsideration and resulted in **3-3. MOTION FAILS.**

The meeting was adjourned.



# 2013 HOUSE STANDING COMMITTEE MINUTES

House Government and Veterans Affairs Committee  
Fort Union Room, State Capitol

HB 1286  
May 1, 2013  
21659

☒ Conference Committee

Committee Clerk Signature

*Carmen Hart*

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

Relating to voter approval of public building projects funded through a building authority or other indirect means

## Minutes:

You may make reference to "attached testimony."

Chairman Jim Kasper called the conference committee on HB 1286. Rep. Boehning was substituting for Rep. Amerman. We are going to ask the Senate one more time to allow us to reconsider our action. My intent will be if you allow us to reconsider, we will accede to the Senate amendments and that will be the end of it.

**Senator Laffen** I will so move.

**Chairman Jim Kasper** We have a motion by Senator Laffen that the committee reconsider our action of the last meeting.

**Vice Chair Randy Boehning** seconded.

A roll call vote was taken to reconsider actions, 5-1. Motion prevails.

**Rep. Ben Koppelman** moved that the House accede to Senate amendments, Page 1170 of the House Journal and Page 951 of the Senate Journal, and the engrossed HB 1286 be sent back to the House floor.

**Senator Sorvaag** seconded. I just want to make sure. We are talking about version 3000.

**Chairman Jim Kasper** The one that you sent us is the one we are acceding to that amendment, so we would have before our chamber for final consideration what you sent us in the exact form that you sent us.

**Senator Sorvaag** That is version 3000.

A roll vote was taken and resulted in the **HOUSE ACCEDES TO SENATE AMENDMENTS, 6-0.**

**Chairman Jim Kasper** thanked the committee for their indulgence and apologized for putting everyone through the areas they had gone through. It has been a little difficult sometimes and sometimes that happens. I appreciate your effort. We will bring the bill up on our side and see what happens. The meeting was adjourned.

VR  
4/24/13  
145

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1286

That the Senate recede from its amendments as printed on page 1170 of the House Journal and page 951 of the Senate Journal and that Engrossed House Bill No. 1286 be amended as follows:

Page 1, line 1, after "21-03-06.1" insert "and a new section to chapter 48-05"

Page 1, line 3, after "means" insert "and the governing body of a building authority; to amend and reenact section 21-03-07 of the North Dakota Century Code, relating to voter approval of bond issues; and to repeal section 57-15-59 of the North Dakota Century Code, relating to county or city authority to enter lease agreements for court, corrections, and law enforcement facilities"

Page 1, line 7, replace "indirect" with "**building project**"

Page 1, line 13, after "structure" insert "at a total cost of four million dollars or more"

Page 1, line 15, replace "sixty" with "fifty-five"

Page 1, line 18, after the underscored period insert "A municipality or governing body of a municipality, regardless of the funding source, may not enter an agreement after June 30, 2013, in connection with acquisition, improvement, or construction of any property or structure at a total cost of four million dollars or more to be used by the municipality unless the agreement has been approved by a vote of at least fifty-five percent of the qualified electors of the municipality voting on the question, except for a public-private partnership agreement or agreement to implement a project under a bond issue approved by the electors under section 21-03-07."

Page 2, after line 6, insert:

**"SECTION 2. AMENDMENT.** Section 21-03-07 of the North Dakota Century Code is amended and reenacted as follows:

**21-03-07. Election required - Exceptions.**

No municipality, and no governing board thereof, may issue bonds without being first authorized to do so by a vote equal to ~~sixty~~fifty-five percent or more of all the qualified voters of such municipality voting upon the question of such issue except:

1. As otherwise provided in section 21-03-04.
2. The governing body may issue bonds of the municipality for the purpose and within the limitations specified by subdivision e of subsection 1 of section 21-03-06, subdivision g of subsection 2 of section 21-03-06, and subsections 4.1 and 7 of section 21-03-06 without an election.
3. The governing body of any municipality may issue bonds of the municipality for the purpose of providing funds to meet its share of the cost of any federal aid highway project undertaken under an agreement entered into by the governing body with the United States government, the director of the department of transportation, the board of county commissioners, or

any of them, including the cost of any construction, improvement, financing, planning, and acquisition of right of way of a bridge eligible for federal matching funds, federal aid highway routed through the municipality and of any bridges and controlled access facilities thereon and any necessary additional width or capacity of the bridge or roadway thereof greater than that required for federal or state bridge or highway purposes, and of any necessary relaying of utility mains and conduits, curbs and gutters, and the installation of utility service connections and streetlights. The portion of the total cost of the project to be paid by the municipality under the agreement, including all items of cost incurred directly by the municipality and all amounts to be paid by it for work done or contracted for by other parties to the agreement, may not exceed a sum equal to thirty percent of the total cost, including engineering and other incidental costs, of all construction and reconstruction work to be done plus fifty percent of the total cost of all right of way to be acquired in connection therewith. The initial resolution authorizing issuance of bonds under this subsection must be published in the official newspaper of the municipality. Within sixty days after publication, an owner of taxable property within the municipality may file with the auditor or chief fiscal officer of the municipality a written protest against adoption of the resolution. A protest must describe the property that is the subject of the protest. If the governing body finds protests have been signed by the owners of taxable property having an assessed valuation equal to five percent or more of the assessed valuation of all taxable property in the municipality, as most recently finally equalized, all further proceedings under the initial resolution are barred. Nothing herein may be deemed to prevent any municipality from appropriating funds for or financing out of taxes, special assessments, or utility revenues any work incidental to any such project, in the manner and to the extent otherwise permitted by law, and the cost of any work so financed may not be included in computing the portion of the project cost payable by the municipality, within the meaning of this subsection, unless the work is actually called for by the agreement between the municipality and the other governmental agencies involved.

4. The governing body of any city may also by resolution adopted by a two-thirds vote authorize and issue general obligation bonds of the city for the purpose of providing funds to pay the cost of any improvement of the types stated below, to the extent that the governing body determines that such cost should be paid by the city and should not be assessed upon property specially benefited thereby; provided that the initial resolution authorizing such bonds must be published in the official newspaper, and any owner of taxable property within the city may, within sixty days after such publication, file with the city auditor a protest against the adoption of the resolution. If the governing body finds such protests to have been signed by the owners of taxable property having an assessed valuation equal to five percent or more of the assessed valuation of all taxable property within the city, as theretofore last finally equalized, all further proceedings under such initial resolution are barred. This procedure is authorized for the financing of the following types of improvements:
  - a. Any street improvement, as defined in subsection 2 of section 40-22-01, to be made in or upon any federal or state highway or any other street designated by ordinance as an arterial street.

- b. The construction of a bridge, culvert, overpass, or underpass at the intersection of any street with a stream, watercourse, drain, or railway, and the acquisition of any land or easement required for that purpose.
- c. Any improvement incidental to the carrying out of an urban renewal project, the issuance of bonds for which is authorized by subsection 4 of section 40-58-13.

Nothing herein may be deemed to prevent any municipality from appropriating funds for or financing out of taxes, special assessments, or utility revenues any work incidental to any such improvement, in the manner and to the extent otherwise permitted by law.

- 5. The governing body of any city may also by resolution adopted by a two-thirds vote dedicate the mill levies as authorized by sections 57-15-42 and 57-15-44 and may authorize and issue general obligation bonds to be paid by these dedicated levies for the purpose of providing funds for the purchase, construction, reconstruction, or repair of public buildings or fire stations; provided, that the initial resolution authorizing the mill levy dedication and general obligation bonds must be published in the official newspaper, and any owner of taxable property within the city may, within sixty days after publication, file with the city auditor a protest against the adoption of the resolution. Protests must be in writing and must describe the property which is the subject of the protest. If the governing body finds such protests to have been signed by the owners of taxable property having an assessed valuation equal to five percent or more of the assessed valuation of all taxable property within the city, as theretofore last finally equalized, all further proceedings under the initial resolution are barred.
- 6. The governing body of any county may also by resolution adopted by a two-thirds vote dedicate the tax levies as authorized by sections 57-15-06.6 and 57-15-06.9 and may authorize and issue general obligation bonds to be paid by these dedicated levies for the purpose of providing funds for the purchase, construction, reconstruction, or repair of regional or county correction centers, or parks and recreational facilities; provided, that the initial resolution authorizing the tax levy dedication and general obligation bonds must be published in the official newspaper, and any owner of taxable property within the county may, within sixty days after publication, file with the county auditor a protest against the adoption of the resolution. Protests must be in writing and must describe the property which is the subject of the protest. If the governing body finds such protests to have been signed by the owners of taxable property having an assessed valuation equal to five percent or more of the assessed valuation of all taxable property within the county, as theretofore last finally equalized, all further proceedings under the initial resolution are barred.
- 7. The governing body of any public school district may also by resolution adopted by a two-thirds vote dedicate the tax levies as authorized by section 15.1-09-47, 15.1-09-49, or 57-15-16 and may authorize and issue general obligation bonds to be paid by these dedicated levies for the purpose of providing funds for the purchase, construction, reconstruction, or repair of public school buildings or for the construction or improvement of a project under section 15.1-36-02 or 15.1-36-03. The initial resolution



authorizing the tax levy dedication and general obligation bonds must be published in the official newspaper of the school district, and any owner of taxable property within the school district may, within sixty days after publication, file with the business manager of the school district a protest against the adoption of the resolution. Protests must be in writing and must describe the property that is the subject of the protest. If the governing body finds the protests to have been signed by the owners of taxable property having an assessed valuation equal to five percent or more of the assessed valuation of all taxable property within the school district, as theretofore last finally equalized, all further proceedings under the initial resolution are barred.

8. The governing body of any city having a population of twenty-five thousand persons or more may use the provisions of subsection 3 to provide funds to participate in the cost of any construction, improvement, financing, and planning of any bypass routes, interchanges, or other intersection improvements on a federal or state highway system which is situated in whole or in part outside of the corporate limits of the city; provided, that the governing body thereof shall determine by resolution that the undertaking of such work is in the best interest of the city for the purpose of providing access and relieving congestion or improving traffic flow on municipal streets.
9. The governing body of a municipality or other political subdivision, located at least in part within a county that is included within a disaster or emergency executive order or proclamation of the governor under chapter 37-17.1, may by resolution adopted by a two-thirds vote authorize and issue general obligation bonds of the political subdivision without an election for the purpose of providing funds to pay costs associated with the emergency condition. The political subdivision may dedicate and levy taxes for retirement of bonds under this subsection and such levies are not subject to limitations as otherwise provided by law.
10. The governing board of any county, city, public school district, park district, or township may by resolution adopted by a two-thirds vote dedicate the tax levy authorized by section 57-15-41 and authorize and issue general obligation bonds to be paid by the dedicated levy for the purpose of providing funds to prepay outstanding special assessments made in accordance with the provisions of title 40 against property owned by the county, city, public school district, park district, or township.

**SECTION 3.** A new section to chapter 48-05 of the North Dakota Century Code is created and enacted as follows:

**Building authority governing body - Contract conflict of interest.**

The governing body of a building authority established after June 30, 2013, may not include any officer, employee, or member of the governing body of a political subdivision that contracts with the building authority.

The governing body of a building authority may not enter a contract after June 30, 2013, relating to a public improvement with an entity of which a member of the governing body of the building authority is an owner, officer, or employee.



**SECTION 4. REPEAL.** Section 57-15-59 of the North Dakota Century Code is repealed."

Renumber accordingly

April 29, 2013

VK  
4/29/13

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1286

That the Senate recede from its amendments as printed on page 1170 of the House Journal and page 951 of the Senate Journal and that Engrossed House Bill No. 1286 be amended as follows:

Page 1, line 1, after "21-03-06.1" insert "and a new section to chapter 48-05"

Page 1, line 3, after "means" insert "and the governing body of a building authority; and to repeal section 57-15-59 of the North Dakota Century Code, relating to the authority of counties and cities to enter certain leases"

Page 1, line 7, replace "indirect" with "building project"

Page 1, line 13, after "structure" insert "at a total cost of four million dollars or more"

Page 1, line 15, replace "fifty-five" with "sixty"

Page 1, line 18, after the underscored period insert "A municipality or governing body of a municipality, regardless of the funding source, may not enter an agreement after June 30, 2013, in connection with acquisition, improvement, or construction of any property or structure at a total cost of four million dollars or more to be used by the municipality unless the agreement has been approved by a vote of at least sixty percent of the qualified electors of the municipality voting on the question, except for a public-private partnership agreement or agreement to implement a project under a bond issue approved by the electors under section 21-03-07."

Page 2, after line 6, insert:

"**SECTION 2.** A new section to chapter 48-05 of the North Dakota Century Code is created and enacted as follows:

**Building authority governing body - Contract conflict of interest.**

The governing body of a building authority established after June 30, 2013, may not include any officer, employee, or member of the governing body of a political subdivision that contracts with the building authority.

The governing body of a building authority may not enter a contract after June 30, 2013, relating to a public improvement with an entity of which a member of the governing body of the building authority is an owner, officer, or employee.

**SECTION 3. REPEAL.** Section 57-15-59 of the North Dakota Century Code is repealed."

Renumber accordingly

## 2013 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: House Government and Veterans Affairs

Bill/Resolution No. 1286 as (re) engrossed

Date: \_\_\_\_\_

Roll Call Vote #: \_\_\_\_\_

- Action Taken**
- ☐ HOUSE accede to Senate amendments
  - ☐ HOUSE accede to Senate amendments and further amend
  - ☐ SENATE recede from Senate amendments
  - ☐ SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) --

- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the calendar

Motion Made by: \_\_\_\_\_ Seconded by: \_\_\_\_\_

Representatives				Yes	No		Senators				Yes	No
Rep. Kasper	X	X	X				Senator Laffen	X	X	X		
Rep. B. Koppelman	X	X	X				Senator Sorvaag	X	X	X		
Rep. Amerman	X	X	X				Senator Murphy	X	X	X		

Vote Count Yes: \_\_\_\_\_ No: \_\_\_\_\_ Absent: \_\_\_\_\_

House Carrier \_\_\_\_\_ Senate Carrier \_\_\_\_\_

LC Number \_\_\_\_\_ of amendment

LC Number \_\_\_\_\_ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

# 2013 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: House Government and Veterans Affairs

Bill/Resolution No. 1286 as (re) engrossed

Date: 4-22-13

Roll Call Vote #: \_\_\_\_\_

## Action Taken

- ☐ HOUSE accede to Senate amendments  
☐ HOUSE accede to Senate amendments and further amend  
☐ SENATE recede from Senate amendments  
☒ SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) --

- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the calendar

Motion Made by: Laffen Seconded by: Sorvaag

Representatives	4-19-13	4-22-13	Yes	No		Senators	4-19-13	4-22-13	Yes	No
Rep. Kasper	X	X		X		Senator Laffen	X	X	X	
Rep. B. Koppelman	X	X		X		Senator Sorvaag	X	X	X	
Rep. Amerman	X	X		X		Senator Murphy	X	X	X	

Vote Count Yes: 3 No: 3 Absent: 0

House Carrier \_\_\_\_\_ Senate Carrier \_\_\_\_\_

LC Number 13.0367 . 02013 of amendment

LC Number \_\_\_\_\_ . \_\_\_\_\_ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

*Motion fails*

# 2013 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: House Government and Veterans Affairs

Bill/Resolution No. 1286 as (re) engrossed

Date: 4-24-13

Roll Call Vote #: \_\_\_\_\_

- Action Taken**
- ☐ HOUSE accede to Senate amendments
  - ☐ HOUSE accede to Senate amendments and further amend
  - ☐ SENATE recede from Senate amendments
  - ☒ SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) --

- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the calendar

Motion Made by: Sorvaag Seconded by: Laffen

Representatives				Yes	No		Senators				Yes	No
Rep. Kasper	X	X			X		Senator Laffen	X	X		X	
Rep. B. Koppelman	X	X			X		Senator Sorvaag	X	X		X	
Rep. Amerman	X	X		X			Senator Murphy	X	X		X	

Vote Count Yes: 4 No: 2 Absent: 0

House Carrier \_\_\_\_\_ Senate Carrier \_\_\_\_\_

LC Number 13,0367 . 02014 of amendment

LC Number \_\_\_\_\_ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

*Motion fails*



# 2013 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: House Government and Veterans Affairs

Bill/Resolution No. 1286 as (re) engrossed

Date: 4-26-13

Roll Call Vote #: \_\_\_\_\_

## Action Taken

- ☐ HOUSE accede to Senate amendments  
☐ HOUSE accede to Senate amendments and further amend  
☐ SENATE recede from Senate amendments  
☒ SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) 1176 ..

- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) 1286 was placed on the Seventh order of business on the calendar

Motion Made by: Laffen Seconded by: Sorvaag

Representatives				Yes	No		Senators				Yes	No
Rep. Kasper	X	X	X	X			Senator Laffen	X	X	X	X	
Rep. B. Koppelman	X	X	X	X			Senator Sorvaag	X	X	X	X	
Rep. Amerman	X	X	X	X			Senator Murphy	X	X	X	X	

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier Kasper Senate Carrier Laffen

LC Number 13.0367 . 02016 of amendment

LC Number \_\_\_\_\_ . \_\_\_\_\_ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment



# 2013 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: House Government & Veterans Affairs

Bill/Resolution No. 1286 as (re) engrossed

Date: 4-29-13

Roll Call Vote #: \_\_\_\_\_

## Action Taken

- ☐ HOUSE accede to Senate amendments  
☐ HOUSE accede to Senate amendments and further amend  
☐ SENATE recede from Senate amendments  
☒ SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) 1170 -

- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) 1286 was placed on the Seventh order of business on the calendar

Motion Made by: B. Koppelman Seconded by: Laffen

Representatives				Yes	No	Senators				Yes	No
Rep. Kasper	X			X		Senator Laffen	X			X	
Rep. B. Koppelman	X			X		Senator Sorvaag	X			X	
Rep. Amerman	X			X		Senator Murphy	X			X	

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier Kasper Senate Carrier Laffen

LC Number 13.0367 . 02016 of amendment

LC Number \_\_\_\_\_ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

Refers to 55% 60% in their place. Eliminate Section 2

# 2013 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: House Government & Veterans Affairs

Bill/Resolution No. 1286 as (re) engrossed

Date: 4-30-13

Roll Call Vote #: \_\_\_\_\_

## Action Taken

- ☐ HOUSE accede to Senate amendments  
☐ HOUSE accede to Senate amendments and further amend  
☐ SENATE recede from Senate amendments  
☐ SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) --

- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the calendar

Motion Made by: B. Koppelman Seconded by: Amerman

Representatives				Yes	No	Senators				Yes	No
<u>Rep. Kasper</u>	<u>X</u>			<u>X</u>		<u>Senator Laffer</u>	<u>X</u>				<u>X</u>
<u>Rep. B. Koppelman</u>	<u>X</u>			<u>X</u>		<u>Senator Souza</u>	<u>X</u>				<u>X</u>
<u>Rep. Amerman</u>	<u>X</u>			<u>X</u>		<u>Senator Murphy</u>	<u>X</u>				<u>X</u>

Vote Count Yes: 3 No: 3 Absent: 0

House Carrier \_\_\_\_\_ Senate Carrier \_\_\_\_\_

LC Number \_\_\_\_\_ . Motion of amendment

LC Number \_\_\_\_\_ . fails of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

*Reconsider  
actions  
from  
4-29-13*

# 2013 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: House Government & Veterans Affairs

Bill/Resolution No. 1286 as (re) engrossed

Date: 5-1-13

Roll Call Vote #: 1

## Action Taken

- ☐ HOUSE accede to Senate amendments  
☐ HOUSE accede to Senate amendments and further amend  
☐ SENATE recede from Senate amendments  
☐ SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) --

- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the calendar

Motion Made by: Laffen Seconded by: Boehning

Representatives				Yes	No	Senators				Yes	No
Rep. Kasper	X			X		Senator Laffen	X			X	
Rep. B. Koppelman	X			X		Senator Loraug	X			X	
Rep. Amerman	X			X		Senator Murphy	X				X
<del>Boehning</del>											
Boehning 5-1											

Vote Count Yes: 5 No: 1 Absent: 0

House Carrier \_\_\_\_\_ Senate Carrier \_\_\_\_\_

LC Number \_\_\_\_\_ of amendment

LC Number \_\_\_\_\_ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

*Reconsider  
actions from the  
previous meeting.*

# 2013 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: House Government & Veterans Affairs

Bill/Resolution No. 1286 as (re) engrossed

Date: 5-1-13

Roll Call Vote #: 2

## Action Taken

- ☒ HOUSE accede to Senate amendments  
☐ HOUSE accede to Senate amendments and further amend  
☐ SENATE recede from Senate amendments  
☐ SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) 1170 -

- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) 1286 was placed on the Seventh order of business on the calendar

Motion Made by: B. Koppelman Seconded by: Louwaag

Representatives				Yes	No	Senators				Yes	No
<u>Rep. Kasper</u>				X		<u>Senator Laffer</u>				X	
<u>Rep. B. Koppelman</u>				X		<u>Senator Louwaag</u>				X	
<u>Rep. Amerman</u>				X		<u>Senator Murphy</u>				X	
<u>(Boehning 5-1-13)</u>											

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier Kasper Senate Carrier Laffer

LC Number \_\_\_\_\_ of amendment

LC Number \_\_\_\_\_ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

**REPORT OF CONFERENCE COMMITTEE**

**HB 1286, as engrossed:** Your conference committee (Sens. Laffen, Sorvaag, Murphy and Reps. Kasper, B. Koppelman, Amerman) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ page 1170, adopt amendments as follows, and place HB 1286 on the Seventh order:

That the Senate recede from its amendments as printed on page 1170 of the House Journal and page 951 of the Senate Journal and that Engrossed House Bill No. 1286 be amended as follows:

Page 1, line 1, after "21-03-06.1" insert "and a new section to chapter 48-05"

Page 1, line 3, after "means" insert "and the governing body of a building authority; to amend and reenact section 21-03-07 of the North Dakota Century Code, relating to voter approval of bond issues; and to repeal section 57-15-59 of the North Dakota Century Code, relating to county or city authority to enter lease agreements for court, corrections, and law enforcement facilities"

Page 1, line 7, replace "indirect" with "**building project**"

Page 1, line 13, after "structure" insert "at a total cost of four million dollars or more"

Page 1, line 15, replace "sixty" with "fifty-five"

Page 1, line 18, after the underscored period insert "A municipality or governing body of a municipality regardless of the funding source, may not enter an agreement after June 30, 2013, in connection with acquisition, improvement, or construction of any property or structure at a total cost of four million dollars or more to be used by the municipality unless the agreement has been approved by a vote of at least fifty-five percent of the qualified electors of the municipality voting on the question, except for a public-private partnership agreement or agreement to implement a project under a bond issue approved by the electors under section 21-03-07."

Page 2, after line 6, insert:

**"SECTION 2. AMENDMENT.** Section 21-03-07 of the North Dakota Century Code is amended and reenacted as follows:

**21-03-07. Election required - Exceptions.**

No municipality, and no governing board thereof, may issue bonds without being first authorized to do so by a vote equal to ~~sixty~~fifty-five percent or more of all the qualified voters of such municipality voting upon the question of such issue except:

1. As otherwise provided in section 21-03-04.
2. The governing body may issue bonds of the municipality for the purpose and within the limitations specified by subdivision e of subsection 1 of section 21-03-06, subdivision g of subsection 2 of section 21-03-06, and subsections 4.1 and 7 of section 21-03-06 without an election.
3. The governing body of any municipality may issue bonds of the municipality for the purpose of providing funds to meet its share of the cost of any federal aid highway project undertaken under an agreement entered into by the governing body with the United States government, the director of the department of transportation, the board of county commissioners, or any of them, including the cost of any construction, improvement, financing, planning, and acquisition of right of way of a bridge eligible for federal matching funds, federal aid highway routed through the municipality and of any bridges and controlled access



facilities thereon and any necessary additional width or capacity of the bridge or roadway thereof greater than that required for federal or state bridge or highway purposes, and of any necessary relaying of utility mains and conduits, curbs and gutters, and the installation of utility service connections and streetlights. The portion of the total cost of the project to be paid by the municipality under the agreement, including all items of cost incurred directly by the municipality and all amounts to be paid by it for work done or contracted for by other parties to the agreement, may not exceed a sum equal to thirty percent of the total cost, including engineering and other incidental costs, of all construction and reconstruction work to be done plus fifty percent of the total cost of all right of way to be acquired in connection therewith. The initial resolution authorizing issuance of bonds under this subsection must be published in the official newspaper of the municipality. Within sixty days after publication, an owner of taxable property within the municipality may file with the auditor or chief fiscal officer of the municipality a written protest against adoption of the resolution. A protest must describe the property that is the subject of the protest. If the governing body finds protests have been signed by the owners of taxable property having an assessed valuation equal to five percent or more of the assessed valuation of all taxable property in the municipality, as most recently finally equalized, all further proceedings under the initial resolution are barred. Nothing herein may be deemed to prevent any municipality from appropriating funds for or financing out of taxes, special assessments, or utility revenues any work incidental to any such project, in the manner and to the extent otherwise permitted by law, and the cost of any work so financed may not be included in computing the portion of the project cost payable by the municipality, within the meaning of this subsection, unless the work is actually called for by the agreement between the municipality and the other governmental agencies involved.

4. The governing body of any city may also by resolution adopted by a two-thirds vote authorize and issue general obligation bonds of the city for the purpose of providing funds to pay the cost of any improvement of the types stated below, to the extent that the governing body determines that such cost should be paid by the city and should not be assessed upon property specially benefited thereby; provided that the initial resolution authorizing such bonds must be published in the official newspaper, and any owner of taxable property within the city may, within sixty days after such publication, file with the city auditor a protest against the adoption of the resolution. If the governing body finds such protests to have been signed by the owners of taxable property having an assessed valuation equal to five percent or more of the assessed valuation of all taxable property within the city, as theretofore last finally equalized, all further proceedings under such initial resolution are barred. This procedure is authorized for the financing of the following types of improvements:
  - a. Any street improvement, as defined in subsection 2 of section 40-22-01, to be made in or upon any federal or state highway or any other street designated by ordinance as an arterial street.
  - b. The construction of a bridge, culvert, overpass, or underpass at the intersection of any street with a stream, watercourse, drain, or railway, and the acquisition of any land or easement required for that purpose.
  - c. Any improvement incidental to the carrying out of an urban renewal project, the issuance of bonds for which is authorized by subsection 4 of section 40-58-13.



Nothing herein may be deemed to prevent any municipality from appropriating funds for or financing out of taxes, special assessments, or utility revenues any work incidental to any such improvement, in the manner and to the extent otherwise permitted by law.

5. The governing body of any city may also by resolution adopted by a two-thirds vote dedicate the mill levies as authorized by sections 57-15-42 and 57-15-44 and may authorize and issue general obligation bonds to be paid by these dedicated levies for the purpose of providing funds for the purchase, construction, reconstruction, or repair of public buildings or fire stations; provided, that the initial resolution authorizing the mill levy dedication and general obligation bonds must be published in the official newspaper, and any owner of taxable property within the city may, within sixty days after publication, file with the city auditor a protest against the adoption of the resolution. Protests must be in writing and must describe the property which is the subject of the protest. If the governing body finds such protests to have been signed by the owners of taxable property having an assessed valuation equal to five percent or more of the assessed valuation of all taxable property within the city, as theretofore last finally equalized, all further proceedings under the initial resolution are barred.
6. The governing body of any county may also by resolution adopted by a two-thirds vote dedicate the tax levies as authorized by sections 57-15-06.6 and 57-15-06.9 and may authorize and issue general obligation bonds to be paid by these dedicated levies for the purpose of providing funds for the purchase, construction, reconstruction, or repair of regional or county correction centers, or parks and recreational facilities; provided, that the initial resolution authorizing the tax levy dedication and general obligation bonds must be published in the official newspaper, and any owner of taxable property within the county may, within sixty days after publication, file with the county auditor a protest against the adoption of the resolution. Protests must be in writing and must describe the property which is the subject of the protest. If the governing body finds such protests to have been signed by the owners of taxable property having an assessed valuation equal to five percent or more of the assessed valuation of all taxable property within the county, as theretofore last finally equalized, all further proceedings under the initial resolution are barred.
7. The governing body of any public school district may also by resolution adopted by a two-thirds vote dedicate the tax levies as authorized by section 15.1-09-47, 15.1-09-49, or 57-15-16 and may authorize and issue general obligation bonds to be paid by these dedicated levies for the purpose of providing funds for the purchase, construction, reconstruction, or repair of public school buildings or for the construction or improvement of a project under section 15.1-36-02 or 15.1-36-03. The initial resolution authorizing the tax levy dedication and general obligation bonds must be published in the official newspaper of the school district, and any owner of taxable property within the school district may, within sixty days after publication, file with the business manager of the school district a protest against the adoption of the resolution. Protests must be in writing and must describe the property that is the subject of the protest. If the governing body finds the protests to have been signed by the owners of taxable property having an assessed valuation equal to five percent or more of the assessed valuation of all taxable property within the school district, as theretofore last finally equalized, all further proceedings under the initial resolution are barred.
8. The governing body of any city having a population of twenty-five thousand persons or more may use the provisions of subsection 3 to

provide funds to participate in the cost of any construction, improvement, financing, and planning of any bypass routes, interchanges, or other intersection improvements on a federal or state highway system which is situated in whole or in part outside of the corporate limits of the city; provided, that the governing body thereof shall determine by resolution that the undertaking of such work is in the best interest of the city for the purpose of providing access and relieving congestion or improving traffic flow on municipal streets.

9. The governing body of a municipality or other political subdivision, located at least in part within a county that is included within a disaster or emergency executive order or proclamation of the governor under chapter 37-17.1, may by resolution adopted by a two-thirds vote authorize and issue general obligation bonds of the political subdivision without an election for the purpose of providing funds to pay costs associated with the emergency condition. The political subdivision may dedicate and levy taxes for retirement of bonds under this subsection and such levies are not subject to limitations as otherwise provided by law.
10. The governing board of any county, city, public school district, park district, or township may by resolution adopted by a two-thirds vote dedicate the tax levy authorized by section 57-15-41 and authorize and issue general obligation bonds to be paid by the dedicated levy for the purpose of providing funds to prepay outstanding special assessments made in accordance with the provisions of title 40 against property owned by the county, city, public school district, park district, or township.

**SECTION 3.** A new section to chapter 48-05 of the North Dakota Century Code is created and enacted as follows:

**Building authority governing body - Contract conflict of interest.**

The governing body of a building authority established after June 30, 2013, may not include any officer, employee, or member of the governing body of a political subdivision that contracts with the building authority.

The governing body of a building authority may not enter a contract after June 30, 2013, relating to a public improvement with an entity of which a member of the governing body of the building authority is an owner, officer, or employee.

**SECTION 4. REPEAL.** Section 57-15-59 of the North Dakota Century Code is repealed."

Renumber accordingly

Engrossed HB 1286 was placed on the Seventh order of business on the calendar.

**REPORT OF CONFERENCE COMMITTEE**

**HB 1286, as engrossed:** Your conference committee (Sens. Laffen, Sorvaag, Murphy and Reps. Kasper, B. Koppelman, Boehning) recommends that the **HOUSE ACCEDE** to the Senate amendments as printed on HJ page 1170 and place HB 1286 on the Seventh order.

Engrossed HB 1286 was placed on the Seventh order of business on the calendar.

**2013 TESTIMONY**

**HB 1286**

## BUILDING AUTHORITY FINANCING OF PUBLIC BUILDINGS FOR POLITICAL SUBDIVISION USE

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

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

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

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

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

### USE OF BUILDING AUTHORITIES

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

- City of Devils Lake Building Authority.
- Cass County Building Authority.
- Fargo School District Building Authority.
- Law Enforcement Center Building Authority.
- Minot School District Building Authority.
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- Grand Forks County Building Authority.
- Griggs County Central School District Building Authority.
- City of Fargo Building Authority.
- Central Cass Public School District Building Authority.
- Kindred Public School District Building Authority.
- Northern Cass Public School District Building Authority.



Attachment 2

Good morning Mr Chmn and committee members.

My name is Steve Strege. I am a resident of south Fargo and I'm here on my own behalf as a North Dakota voter and taxpayer to urge a Do Pass on HB 1286.

It boils down to transparency in government. When the voters have to pay for a project they should have the right to vote on it.

That has been the overall intent of state law. The governmental unit should not be able to skirt the ballot by using another entity or process.

Representative Kasper cited what has gone on in Fargo. I'm one who is paying for that. But I was denied a vote on those recent projects.

If projects have merit then those who want them must sell the idea with the voters/taxpayers, not make an end run on the approval process.

I urge a Do Pass.

Thank you.





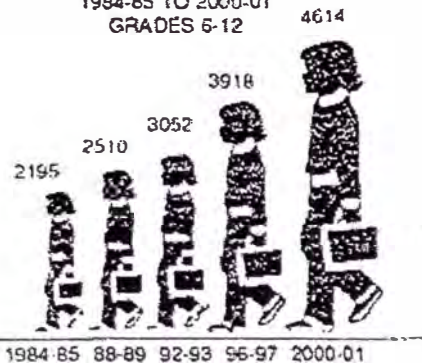
## WHY IS A NEW SCHOOL NEEDED?

Fargo is a growing city. By the year 2000, the city's population is expected to reach 80,000. This represents a thirteen percent increase in a ten-year period.

Fargo public school enrollment has already increased by 1,541 students during the past five years. This equates to an average annual gain of 308 students. Predictions indicate that enrollment will rise by an additional 1,500 students over the next five years.

Students in grades 6-12 in south Fargo will number more than 3,400 by 1994-95. Without a new school, Agassiz Junior High and South High would each need to house about 1,700 students. This is well above their capacities. Such overcrowding creates a poor environment for learning.

**SOUTH FARGO ENROLLMENT  
HISTORY AND PROJECTION  
1984-85 TO 2000-01  
GRADES 6-12**



## WHAT IS THE NEW SCHOOL PLAN?

The new school, to be opened in the fall of 1994, will reduce enrollments at both Agassiz and South by moving one grade from each building to a new school for 8th and 9th graders. South High will then house grades 10, 11 and 12. Agassiz will serve grades 6 and 7. Land has been purchased in the area of 40th Avenue and 18th Street South for the new school.

## WHAT WILL THE NEW SCHOOL COST?

The new school will cost about \$12,200,000 including equipment. Based on a bond consultant's projection, the School Board will need to levy approximately 11.4 mills over a 20-year period to repay the bonds used to build the school.

## WHAT QUESTION WILL BE ON THE BALLOT?

Your ballot will read, "Shall Fargo Public School District #1 issue up to 11.4 mills for school building funds pursuant to Section 57-15-16 of the North Dakota Century Code?"

☐ Yes ☐ No



## WILL A "YES" VOTE AUTHORIZE CONSTRUCTION OF THE NEW SCHOOL?

It is the first step. If a "Yes" vote is secured, the School Board will continue the process required to construct the new school. The School Board will need to publish its intent to dedicate 11.4 mills of the building construction authority toward construction of the new school. A protest period must elapse prior to the sale of bonds for the project.

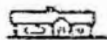
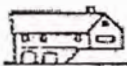

A fifteen-member Citizen Information Committee unanimously advised the School Board to secure voter approval for the 11.4 mill authority.

## WHAT IS A BUILDING CONSTRUCTION LEVY?

State law permits school districts to levy up to 20 mills, with voter approval, for a Building Construction Fund. The fund may be used only for construction, school building improvements or for the purchase of future school sites. A "Yes" vote will authorize the School Board to levy only up to 11.4 mills for these purposes.

## HOW WILL CONSTRUCTION OF THE NEW SCHOOL AFFECT PROPERTY TAXES?

The tax increase will depend on the value of your property and the assessed value of the district. The 11.4 mills needed to finance the new school would increase annual taxes as follows:

TYPE OF PROPERTY:			
PROPERTY'S VALUE:	Residential \$50,000	Residential \$100,000	Commercial \$150,000
TAX INCREASE:	\$25.65	\$51.30	\$85.50

## POLLING PLACES 7:00 a.m. - 7:00 p.m.

- |                                |                       |
|--------------------------------|-----------------------|
| 1. Lincoln                     | 2120 9th St. S.       |
| 2. Metropolitan Baptist Church | 2612 25th St. S.      |
| 3. Centennial School           | 4201 25th St. S.      |
| 4. Riverview Place             | 5300 12th St. S.      |
| 5. Lewis and Clark School      | 1729 16th St. S.      |
| 6. North Dakota Job Service    | 1350 32nd St. S.      |
| 7. Clara Barton School         | 1417 6th St. S.       |
| 8. Bethany Homes               | 201 S. University Dr. |
| 9. Fargo High Rise             | 101 2nd St. S.        |
| 10. Madison School             | 1040 29th St. N.      |
| 11. Fargo Public Library       | 102 3rd St. N.        |
| 12. Rosewood on Broadway       | 1351 Broadway         |
| 13. New Horizons Manor         | 2525 Broadway         |
| 14. Longfellow School          | 20 29th Ave. NE       |

Each qualified elector residing within those areas which have been attached by order of the Board of County Commissioners to the school district under the jurisdiction of the Board of Education of the City of Fargo may vote at any of the polling places designated above, which is conveniently accessible to that elector.

## MESSAGE TO THE VOTERS

Fargo public schools are crowded. It is imperative that construction begin soon to provide adequate space for our growing student population. Quality education has been a major factor in the economic and general strength of our community. Our award-winning school district relies on an excellent faculty and a public committed to education. Our future depends directly on the investment we make today in our young people. No greater responsibility exists than equipping our youth to meet the challenges ahead. Adequate facilities are vital in meeting that responsibility. Education is the key to our children's future and to ours.

## CITIZEN INFORMATION COMMITTEE

Laura Carney, Co-Chairman  
Steve Swiontek, Co-Chairman

Dave Anderson	Russ Freeman	Gary Secor
Julie Barner	Bruce Furness	Debbie Tight
Mike Bullinger	James Garvey	Ene Vogel
Deb Dillon	Tom Hansen	Carl Wall
	Terry Lunde	



Fargo Public Schools  
1104 2nd Avenue South  
Fargo, ND 58103

## VOTER INFORMATION

## SCHOOL CONSTRUCTION AUTHORITY

**DECEMBER 3, 1991**



**Subject:** FW: HB 1398

**From:** "Kasper, Jim M." <jkasper@nd.gov>

**Date:** Thu, 12 Mar 2009 16:53:54 -0500

**To:** Steve Strege <sstrege@ndgda.org>

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**From:** Walstad, John M.

**Sent:** Wednesday, February 04, 2009 1:47 PM

**To:** Kasper, Jim M.

**Subject:** HB 1398

Use of the term. "municipality" in HB 1398 includes all of the subdivisions listed in the definition for that chapter.... A copy is below:

**21-03-01. Definitions.** In this chapter, unless the context or subject matter otherwise requires:

1. "Governing body" means a board of county commissioners, city council, board of city commissioners, school board of any school district, and the similarly constituted and acting board of any other municipality enumerated in subsection 3.
2. "Initial resolution" means any resolution or ordinance adopted pursuant to section 21-03-09, by which a proceeding is instituted for the purpose of authorizing a municipality to borrow money and issue bonds.
3. "Municipality" means a county, city, township, public school district, park district, recreation service district, or rural fire protection district empowered to borrow money and issue written obligations to repay the same out of public funds or revenue.
4. "Population of a municipality" means its population according to the last officially published United States or state census, whichever was taken latest.
5. "Recorded" means copied at length in the record book required by section 21-03-17.
6. "Value of taxable property" or "the assessed valuation" of a municipality means the assessed value of all taxable property in such municipality as determined pursuant to chapter 57-02



**Jim Kasper**

**Subject:** Kasper, Jim M.  
FW: Building authority info--INFORMATION FOR BUILDING AUTHORITY BILL HB 1286--IN  
IBL COMMITTEE MONDAY, MARCH 18, 2013--FROM REP. JIM KASPER--3/15/13

**Attachments:** 13.9140.01000.pdf

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**From:** Walstad, John M.  
**Sent:** Friday, March 15, 2013 8:53 AM  
**To:** Kasper, Jim M.  
**Cc:** Laffen, Lonnie J.  
**Subject:** Building authority info

Rep. Kasper

You asked for some information as follow-up to a conversation you had with Sen. Laffen regarding the bill you introduced on building authority use.

Sen. Laffen mentioned that schools must have voter approval for property tax levy for a building fund. That is correct. NDCC section 57-15-16 (copy attached below) requires 60% voter approval to establish a school district building fund with up to 20 mills of levy authority. This is a one-time vote requirement that, if approved by the voters, remains in place indefinitely.

It is not a vote required for individual buildings, like the bond approval elections school districts hold for a single school building project. Review of DPI data indicates just a handful of school districts are not levying for a building fund, so voter approval has been obtained for the great majority, but at less than 20 mills in most cases.

The critical need before a building fund may be used is a supporting revenue stream in the form of property tax levy authority. The building fund levy would be the most likely source for school districts but it would not have to be the source....any revenue available to a school district may be used.

Many school districts have a building fund levy and a separate sinking fund levy for bonds authorized by the voters for individual projects.

You asked for a copy of the memorandum prepared for the interim Taxation Committee on building authorities. A copy is attached. The memo contains a summary of IRS revenue ruling 63-20, which authorized use of building authorities back in 1963.

I hope this answers the questions you raised. Let me know if more information would be helpful.

John Walstad  
Code Revisor  
North Dakota Legislative Council  
600 E. Boulevard Avenue  
Bismarck, ND 58505

#### **57-15-16. Tax levy for building fund in school districts.**

1. The governing body of any school district shall levy taxes annually for a school building fund, not in excess of twenty mills, which levy is in addition to and not restricted by the levy limitations prescribed by law, when authorized to do so by sixty percent of the qualified electors voting upon the question at a regular or special election in any school district.

The governing body of the school district may create the building fund by appropriating and setting up in its budget for an amount not in excess of twenty percent of the current annual appropriation for all other purposes combined, exclusive of appropriations to pay interest and principal of the bonded debt, and not in excess of the limitations prescribed by law. If a portion or all of the proceeds of the levy have been allocated by contract to the payment of rentals upon contracts with the state board of public school education as administrator of the state school construction fund, the levy must be made annually by the governing body of the school district until the full amount of all such obligations is fully paid. Any portion of a levy for a school building fund which has not been allocated by contract with the state board of public school education must be allocated by the governing body pursuant to section 57-15-17. Upon the completion of all payments to the state school construction fund, or upon payment and cancellation or defeasance of the bonds, the levy may be discontinued at the discretion of the governing body of the school district, or upon petition of twenty percent of the qualified electors who voted in the last school election, the question of discontinuance of the levy must be submitted to the qualified electors of the school district at any regular or special election and, upon a favorable vote of sixty percent of the qualified electors voting, the levy must be discontinued. Any school district, executing a contract or lease with the state board of public school education or issuing general obligation bonds, which contract or lease or bond issue requires the maintenance of the levy provided in this section, shall immediately file a certified copy of the contract, lease, or bond issue with the county auditor or auditors of the county or counties in which the school district is located. The county auditor or auditors shall register the contract, lease, or bond issue in the bond register in substantially the manner provided in section 21-03-23. Upon the filing of the contract, lease, or bond issue with the county auditor or auditors, the school district may not discontinue the levy and the levy must automatically be included in the tax levy of the school district from year to year by the county auditor or auditors until a sufficient sum of money has been collected to pay to the state treasurer for the retirement of all obligations of the school district with the state board of public school education or to pay to the custodian of the bond sinking fund all amounts due or to become due on the bonds.

2. The school board of any school district, in levying taxes for a school building fund as provided for in subsection 1, shall specify on the ballot the number of mills to be levied and may in its discretion submit a specific plan for which such fund shall be used. The plan shall designate the general area intended to be served by use of such fund. The area intended to be served shall be described in the plan but need not be described in the building fund ballot. After approval of the levy and the plan no change shall be made in the purpose of expenditure of the building fund except that upon a favorable vote of sixty percent of the qualified electors residing in any specific area intended to be served, material changes may be made in such plan as it affects such area to the extent such changes do not conflict with contractual obligations incurred.

The provisions of this section and of subsection 1 of section 57-15-17 in regard to the purpose for which the building fund may be expended shall not apply to expenditures for major repairs.

## **BUILDING AUTHORITY FINANCING OF PUBLIC BUILDINGS FOR POLITICAL SUBDIVISION USE**

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

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

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

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

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### **USE OF BUILDING AUTHORITIES**

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

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Internal Revenue Service  
Revenue Ruling

TaxLinks.com sm

*interest on  
bonds of BA  
not exempt*

Rev. Rul. 63-20

1963-1 C.B. 24

IRS Headnote

Obligations issued by a nonprofit corporation formed under the general nonprofit corporation law of a state for the purpose of stimulating industrial development within a political subdivision of the state will be considered issued 'on behalf of' the political subdivision, for the purposes of section 1.103-1 of the Income Tax Regulations, provided each of the following requirements is met: (1) the corporation must engage in activities which are essentially public in nature; (2) the corporation must be one which is not organized for profit (except to the extent of retiring indebtedness); (3) the corporate income must not inure to any private person; (4) the state or a political subdivision thereof must have a beneficial interest in the corporation while the indebtedness remains outstanding and it must obtain full legal title to the property of the corporation with respect to which the indebtedness was incurred upon retirement of such indebtedness; and (5) the corporation must have been approved by the state or a political subdivision thereof, either of which must also have approved the specific obligations issued by the corporation. Interest received from such obligations is excludable from gross income under the provisions of section 103(a)(1) of the Internal Revenue Code of 1954.

Revenue Ruling 54-296, C.B. 1954-2, 59; Revenue Ruling 57-187, C.B. 1957-1, 65; Revenue Ruling 59-41, C.B. 1959-1, 13; and Revenue Ruling 60-248, C.B. 1960-2, 35, distinguished.

Full Text

Rev. Rul. 63-20 /1/

Advice has been requested whether interest received on bonds issued by a nonprofit industrial development corporation organized under the general nonprofit corporation law of a state is excludable from gross income under section 103(a)(1) of the Internal Revenue Code of 1954.

The S corporation was incorporated as a membership corporation under the general nonprofit corporation law of a state. The corporation was organized for the general purpose of stimulating industrial development within P county. The articles of incorporation authorize the S corporation to purchase, lease and sell industrial sites and buildings and to build industrial facilities for lease or sale to new or expanding businesses within P county. The S corporation does not contemplate pecuniary gain to its members, who consist of representatives of the local chambers of commerce and other private business groups in P county, the county commissioners and officials of participating municipalities. The S corporation will have perpetual existence. The articles of incorporation further provide that upon retirement of any outstanding corporate indebtedness, or upon dissolution of the corporation, the official interest of any property owned by the S corporation will be solely in P county.

Funds for the operating expenses of the corporation are provided by P county, local chambers of commerce and manufacturing associations and the department of commerce of the state involved.

The S corporation purchased land in P county and erected and equipped a factory thereon which it leased to an industrial firm for a period of 2 x years under a lease agreement. The S corporation financed this project through the issuance of its interest bearing revenue bonds. The total rental to be paid by the industrial firm under the lease agreement is an amount sufficient to pay the principal of and interest on the bonds.

The indenture of trust, under which the bonds were issued, provides that the S corporation will deliver to the indenture trustee a deed of title to the land and factory, which the trustee will hold until the bonds are fully retired. In the event of a default by the S corporation in the payment of the principal and interest on the bonds, the trustee has the power to sell the property and use the proceeds to pay the bondholders.

The Internal Revenue Service holds that obligations of a nonprofit corporation organized pursuant to the general nonprofit corporation law of a state will be considered issued 'on behalf of' the state or a political subdivision thereof for the purposes of section 1.103-1 of the Income Tax Regulations, provided each of the following requirements is met: (1) the corporation must engage in activities which are essentially public in nature; (2) the corporation must be one which is not organized for profit (except to the extent of retiring indebtedness); (3) the corporate income must not inure to any private person; (4) the state or a political subdivision thereof must have a beneficial interest in the corporation while the indebtedness remains outstanding and it must obtain full legal title to the property of the corporation with respect to which the indebtedness was incurred upon the retirement of such indebtedness; and (5) the corporation must have been approved by the state or a political subdivision thereof, either of which must also have approved the specific obligations issued by the corporation.

In the instant case, P county does not have a beneficial interest in the S corporation during the period the revenue bonds will be outstanding; nor will the county necessarily acquire full legal title to the land and factory upon retirement of the bonds. The articles of incorporation provide only that, upon retirement of any corporate indebtedness, or upon dissolution of the corporation, P county will have a beneficial interest in the assets of the S corporation. Therefore, there will not necessarily be a vesting of full legal title to the land and factory in P county.

Furthermore, while the fact that P county and its participating municipalities are represented among the membership of the S corporation and contribute money to its operations indicates governmental authorization of the corporation and approval of its general objectives, such activities alone are not deemed to constitute approval of the specific bonds issued by the S corporation.

Under the circumstances in the instant case, it is held that the revenue bonds issued by the S corporation are not issued 'on behalf of' a political subdivision within the meaning of section 1.103-1 of the regulations. Therefore, the interest received on the bonds will be includible in the gross income of the bondholders under the provisions of section 61(a)(4) of the Code.

Revenue Ruling 54-296, C.B. 1954-2, 59, and Revenue Ruling 59-41, C.B. 1959-1, 13, are distinguishable from the instant case. In both of those rulings, the political subdivision involved had a beneficial interest in the nonprofit corporation prior to the retirement of the indebtedness.

In Revenue Ruling 54-296, a municipality leased to a nonprofit corporation a municipally-owned building in exchange for all its stock. The corporation proposed to issue bonds to finance improvements to the building and it was held that interest on the bonds would be excludable from gross income under section 103 of the Code. The beneficial interest of the municipality consisted in its ownership of all the stock of the corporation and its right under the lease at any time to acquire the improvements by discharging the corporation's indebtedness. Moreover, the municipality retained title to the building

4

which it leased to the corporation.

In Revenue Ruling 59-41, it was held that the bonds of a nonprofit corporation organized under general state law at the request of a municipality to operate the local water system would be issued on behalf of the municipality for purposes of section 103. The municipality which had the right pursuant to law to purchase the water system, waived such right and entered into a contract with the corporation ratifying and approving the purchase of the system by the corporation. The beneficial interest of the municipality consisted in its right under the contract at any time to purchase the water system for an amount equal to the indebtedness then outstanding with interest.

Also, in each of those rulings the political subdivision involved was to become absolute owner of the property in question upon retirement of the corporate indebtedness.

Revenue Ruling 57-187, C.B. 1957-1, 65, and Revenue Ruling 60-248, C.B. 1960-2, 35, are also distinguishable from the instant case. They hold that interest on bonds issued by a public corporation or corporate governmental agency organized pursuant to a special state statute providing for the creation of such corporations for the particular purpose specified therein and authorizing such corporations to issue bonds to enable them to carry out the specified purpose, is excludable from gross income under section 103 of the Code. In the instant case the corporation in question is not a public corporation or corporate governmental agency organized under such a special state statute; it is a private corporation organized under the general nonprofit law of the state.

The conclusion reached in the instant case is not inconsistent with Revenue Ruling 54-106, C.B. 1954-1, 8, which states that bonds issued by or on behalf of a municipality for the purpose of financing the acquisition or construction of municipally-owned industrial plants for lease to private industry constitute obligations of a political subdivision of a state within the meaning of section 22(b)(4) of the 1939 Code (section 103 of the 1954 Code). That Revenue Ruling did not consider the question what constitutes issuance of bonds 'on behalf of' a political subdivision, which is the issue in the instant case.

/1/ Also released as Technical Information Release 442, dated Jan. 11, 1963.



## CHAPTER 15.1-36 SCHOOL CONSTRUCTION

### 15.1-36-01. School construction projects - Approval.

1. Notwithstanding the powers and duties of school boards provided by law, the superintendent of public instruction shall approve the construction, purchase, repair, improvement, modernization, or renovation of any public school building or facility before commencement of the project if the cost of the project, as estimated by the school board, is in excess of one hundred thousand dollars.
2. The superintendent of public instruction may not approve a project unless the school district proposing the project:
  - a. Demonstrates the need for the project and the educational utility of the project or demonstrates potential utilization of the project by a future reorganized school district;
  - b. In the case of new construction or a renovation affecting more than fifty percent of an existing structure's square footage, demonstrates that circumstances within the district are likely to result in a stable or increasing student population; and
  - c. Demonstrates the capacity to pay for the project under rules adopted by the superintendent of public instruction pursuant to chapter 28-32.
3. a. If the superintendent of public instruction denies the project, the school board may appeal the superintendent's decision to the state board of public school education. In considering the appeal, the state board shall review:
  - (1) The need for the project;
  - (2) The educational utility of the project;
  - (3) The potential use of the project by a future reorganized school district;
  - (4) The capacity of the district to pay for the project; and
  - (5) Any other objective factors relative to the appeal.
- b. The decision of the state board is final.
4. This section is applicable to any construction, purchase, repair, improvement, renovation, or modernization, even if the school board pays for the project in whole or in part with moneys received on account of the leasing of lands acquired by the United States for flood control, navigation, and allied purposes in accordance with 33 U.S.C. 701c-3 or in accordance with moneys received under the American Recovery and Reinvestment Act of 2009.
5. For purposes of this chapter, "facility" includes a public school parking lot, public school athletic complex, or any other improvement to real property owned by the school district.

### 15.1-36-02. School construction projects - Loans.

1. The board of university and school lands may authorize the use of moneys in the coal development trust fund established pursuant to section 21 of article X of the Constitution of North Dakota and subsection 1 of section 57-62-02 to provide school construction loans, as described in this chapter. The outstanding principal balance of loans under this chapter may not exceed fifty million dollars. The board may adopt policies and rules governing school construction loans.
2. In order to be eligible for a loan under this section, the board of a school district shall:
  - a. Propose a construction project with a cost of at least one million dollars and an expected utilization of at least thirty years;
  - b. Obtain the approval of the superintendent of public instruction for the construction project under section 15.1-36-01; and
  - c. Submit to the superintendent of public instruction an application containing all information deemed necessary by the superintendent, including potential alternative sources or methods of financing the construction project.
3. The superintendent of public instruction shall give priority to any district that meets the requirements for receipt of an equity payment under section 15.1-27-11.

4. If an eligible school district's imputed taxable valuation per student is less than eighty percent of the state average imputed valuation per student, the district is entitled to receive:
  - a. A school construction loan equal to the lesser of twelve million dollars or eighty percent of the actual project cost;
  - b. An interest rate discount equal to at least one hundred but not more than two hundred fifty basis points below the prevailing tax-free bond rates; and
  - c. A term of repayment that may extend up to twenty years.
5. If an eligible school district's imputed taxable valuation per student is equal to at least eighty percent but less than ninety percent of the state average imputed taxable valuation per student, the district is entitled to receive:
  - a. A school construction loan equal to the lesser of ten million dollars or seventy percent of the actual project cost;
  - b. An interest rate buydown equal to at least one hundred but not more than two hundred fifty basis points below the prevailing tax-free bond rates; and
  - c. A term of repayment that may extend up to twenty years.
6. If an eligible school district's imputed taxable valuation per student is equal to at least ninety percent of the state average imputed taxable valuation per student, the district is entitled to receive:
  - a. A school construction loan equal to the lesser of four million dollars or thirty percent of the actual project cost;
  - b. An interest rate discount equal to at least one hundred but not more than two hundred fifty basis points below the prevailing tax-free bond rates; and
  - c. A term of repayment that may extend up to twenty years.
7. The board of a school district may submit its loan application to the superintendent of public instruction before or after receiving authorization of a bond issue in accordance with chapter 21-03. If the vote to authorize a bond issue precedes the application for a loan, the application must be acted upon by the superintendent expeditiously but no later than one hundred eighty days from the date it is received by the superintendent.
8. The superintendent of public instruction shall consider each loan application in the order it received approval under section 15.1-36-01.
9. If the superintendent of public instruction approves the loan, the superintendent may determine the loan amount, the term of the loan, and the interest rate, in accordance with the requirements of this section.
10. The superintendent of public instruction may adopt rules governing school construction loans.
11. For purposes of this section, a construction project means the purchase, lease, erection, or improvement of any structure or facility by a school board, provided the acquisition or activity is within a school board's authority.

**15.1-36-02.1. School construction projects - Reorganized districts - Interest subsidy.**

1. If under chapter 15.1-12 two or more school districts prepare a reorganization plan, agree in that plan to pursue a construction project, and obtain the approval of the superintendent of public instruction in accordance with this chapter, the newly reorganized district is eligible to receive up to three hundred basis points of interest rate buydown on the lesser of:
  - a. Thirteen million five hundred thousand dollars; or
  - b. A percentage of the total project cost determined by:
    - (1) Allowing five percent for each school district that participated in the reorganization;
    - (2) Allowing five percent for each one hundred-square-mile [259-square-kilometer] increment that is added to the square miles [kilometers] of the geographically largest district participating in the reorganization;



**HB 1286**  
**Senate Industry, Business and Labor Committee**  
**March 18, 2013**

Mr. Chairman and members of the Committee:

My name is Scott Wegner. I am a member of the law firm of Arntson Stewart Wegner PC with offices in Bismarck & Fargo. We serve as bond counsel to state agencies & pol. subdivisions.

- IRS Revenue Ruling 63-20 (1963), allows nonprofit corporations of a state to issue tax-exempt bonds on behalf of a state or political subdivision. The basic requirements are:

- (a) the corporation is organized under the general nonprofit corporation law of ND
- (b) purposes & activities of corporation are those permitted by ND nonprofit corp law
- (c) articles of incorp. provide that corporate income will not inure to any private person
- (d) pol. subd. has exclusive possession and use of the property financed with the bonds
- (e) pol. subd. must obtain full legal title to property financed upon payment of bonds

- In a 63-20 financing, the nonprofit corporation issues bonds, and the government bids and improves or constructs a facility, with the facility leased to the government pursuant to a lease/lease-back arrangement. The annual lease payment by the government equals the annual debt service payment on the bonds. The lease payment is subject to annual appropriation and as such does not count against constitutional debt limits.

- The annual lease payment comes from existing legislatively or federally authorized sources. A government may not levy new taxes to make the lease payment. In contrast, general obligation bonds require approval by a vote of 60% and specifically authorize a new excess mill levy against all taxable property to pay principal and interest on the bonds.

- Lease financing allows political subdivisions to use revenue sources other than property taxes, such as oil tax revenues and U.S. Dept. of Education impact aid. Lease financing also helps political subdivisions that are otherwise restricted by the constitutional debt limit. For example, Watford City's debt limit is approximately \$3,000,000. The city's infrastructure needs are \$100,000,000 to \$200,000,000.

- In 2008, the ND Attorney General determined that a nonprofit corporation building authority may issue bonds on behalf of a school district. N.D.A.G. 2008-L-05.

- NDCC Chapter 48-02.1 (*Infrastructure Development by Private Operators*), NDCC Chapter 54-40.3 (*Joint Powers Agreements*), NDCC 48-05-11 (*Guaranteed Energy Savings Contracts*) NDCC general powers, and 501(c)(3) charitable organization financings have all been used to improve or construct property for lease to political subdivisions. Such financings do not rely on Rev. Rul. 63-20, yet have the same end result.

- 63-20 transactions should be considered in the context of all financing options available to political subdivisions, such as general obligation, limited tax, sales tax, special assessment, revenue, lease, and contract.

Scott Wegner, Arntson Stewart Wegner PC  
 (701) 255-1008 / [swegner@aswbondlaw.com](mailto:swegner@aswbondlaw.com)

**Testimony To  
SENATE INDUSTRY, BUSINESS, & LABOR COMMITTEE  
Prepared March 18, 2013 by  
Terry Traynor, Assistant Director  
North Dakota Association of Counties**

**REGARDING ENGROSSED HOUSE BILL No. 1286**

Mr. Chairman and members of the Committee; the legislative committee of our Association asked that I communicate our opposition to HB1286.

While the lease-purchase form of financing of public buildings has historically been little-used by counties, the trend toward consolidation and multi-use structures argues against its limitation.

In the past, counties have discussed, and developed, with city governments and state agencies such facilities as law enforcement complexes and other multi-use structures. While I am unaware of the individual financing tools used, HB1286 appears to raise barriers and complexities for multi-agency lease-purchase arrangements.

Similarly, our border counties are looking increasing toward multi-jurisdictional collaborations with local governments of other states. The successful development of a joint dispatch center across state lines in Fargo is just one such example.

Additionally, our Association has always opposed citizen approval provisions that establish the will of the minority as supreme.

Mr. Chairman and committee members, county government urges you to return a "do not pass" recommendation on House Bill 1286.

**Testimony of Barb Erbstoesser, Executive Director  
West Fargo Park District, West Fargo, ND  
Senate Industry, Business & Labor Committee  
Opposition of HB 1286  
Monday, March 18, 2013**

Mr. Chairman and Members of the Committee, my name is Barb Erbstoesser, and I am executive director of the West Fargo Park District, West Fargo, ND. I grew up in the rural farming areas of West Fargo and have been employed in a variety of positions with the West Fargo Parks for the past 25 years. The past 13 years I have served as the director. The population of West Fargo just now reaches over 27,000. As you are probably aware, the past decade we have been challenged with the largest portion of this significant growth.

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

We have utilized Building Authorities extensively at WF Parks over the past 25 years. We have purchased park property, constructed the Veterans Memorial Arena which includes 3 major additions and capital other improvements. The pay back on these authorities have been through recreation mills (as appropriate, case by case), cash-in-lieu funds (from land dedication), user fees, donations/sponsorships and pledges from individuals, organizations, businesses etc. Very limited funding has come from general taxes for re-payment. If this bill passes the delays on projects during an already short construction season would be even greater. Our low mill limitation already holds us to a low amount on sizeable projects. Repayment of the funding is all a part of project planning process so securing the funds has never been an issue and if it is the project does not get off the ground.

In 2013, we are planning to replace our 57 year old swimming pool through the Building Authority process. This facility has been highly supported in the community. Originally we were looking at replacing it with a different feature however the public generated a petition to rebuild it. Public support has been very strong for the projects that have moved forward with the Building Authority process in the community of West Fargo. If this law passes instead of using a building authority, a park district would just have a normal General Obligation election and raise taxes, since both would require an election. The end result is the facility does not get built because it fails to pass, or it passes and the residents of the district have their taxes raised to pay for it.

The West Fargo Park District encourages a do not pass recommendation on HB 1286. Thank you.



**Testimony of Jim Larson, Director of Finance & Human Resources  
Fargo Park District  
To Senate Industry, Business & Labor Committee  
In Opposition to HB 1286  
Monday, March 18, 2013**

Chairman Klein and Members of the Committee, my name is Jim Larson, and I am director of finance and human resources for the Fargo Park District. We are opposed to House Bill 1286.

House Bill 1286 requires a 60% vote for the use of debt in connection with acquisition, improvements, or construction of any property or structure to be used by the municipality. If the Park District is to issue General Obligation bonds, it does require a 60% vote. General Obligation bonds are to be paid back through taxes or other resources of the political subdivision. The risk to the bond holder is minimal because it is the responsibility of the taxpayer in the end to make sure the bonds are paid, thus a vote is prudent. When revenue bonds are issued by the building authority or other entity, the risk to the taxpayer is significantly reduced. The financial institution issuing the lease takes the majority of the risk should there be non-performance by the Park District. The asset being leased through the building authority is owned by the Park District regardless of payments being made. When a revenue lease is issued by the building authority, the financial institution providing the bonds has a high responsibility to make sure the political subdivision is capable of making the revenue lease payments.

The building authority has been an efficient financial tool allowing Park Districts to undertake facility improvements in a timely manner. If a Park District uses a building authority to acquire or improve an asset, it does not provide any additional mill levy authority but only uses existing financial resources of the Park District. A Park District receives financial resources from various resources. For example, in 2011 the Fargo Park District received

**Park Board**

Barb Johnson, Commissioner  
Joel Vettel, Commissioner  
Ron Sorvaag, Commissioner  
Mary Johnson, Commissioner  
Joe Deutsch, Commissioner  
Chris Kennelly, Clerk

**Administration**

Roger Gress,  
Executive Director

Jim Larson,  
Director of Finance/Human  
Resources

Dave Leker,  
Director of Parks

Clay Whittlesey,  
Director of Recreation

Carolyn Boutain,  
Director of Cultural Activities

Kevin Boe,  
General Manager Courts Plus  
Fitness Center

Brian Arett,  
Director Fargo Senior Services

Amy Rasmussen,  
Administrative Assistant





36% of its operating revenues from non-tax sources. The professional staff of the financial institution will scrutinize a Park District's ability to make the revenue lease payments at a very high level. If they don't see the Park District's ability to make the lease payments within their current level of authority, they probably will not provide the revenue lease.

The building authority has been a functional financial tool allowing Park Districts to provide recreation and leisure services through facilities to the youth and adult citizens of their community. We have elected officials who scrutinize financial obligations of this type who are qualified to represent the voters as to approving or not approving a lease.

The Fargo Park District is opposed to HB 1286 and urges the committee to recommend a do not pass on this bill. I would be happy to answer any questions. Thank you.





**Testimony of Mike Schwartz**  
**North Dakota Recreation & Park Association**  
**Senate Industry, Business & Labor Committee**  
**In Opposition to HB 1286**  
**March 18, 2013**

Mr. Chairman and Members of the Committee, I am Mike Schwartz, president of the Board of Park Commissioners for the Bismarck Parks and Recreation District. I am here on behalf of the North Dakota Recreation & Park Association (NDRPA), which represents more than 500 members across the state and works to advance parks and recreation for an enhanced quality of life in North Dakota. We are opposed to House Bill 1286.

North Dakota's park districts build and maintain parks and recreation facilities through a variety of fund sources, including property taxes, state aid distribution fund payments, and user fees. Increasingly important to meet rising demands for high-quality recreation facilities are sponsorships, donations, and grants from individuals, businesses, and community organizations. This is especially true given the existing mill levy limitations for park districts (capped at taxable year 2000 levels unless increased by a vote of the people) and the need to keep user fees reasonable to ensure public recreation facilities are accessible and affordable.

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

We urge a do not pass recommendation on HB 1286. Thank you.

**Senate Industry, Business and Labor Committee**

**Testimony on HB 1286 – Building Authority Debt Financing**

**March 18, 2013**

Honorable Chair Klein and members of the Senate Industry, Business and Labor Committee:

The following testimony has been prepared by the City of Fargo and is presented on their behalf.

Municipalities and other political subdivisions within the State have ongoing capital funding needs just like the State of North Dakota. HB 1286 makes it more difficult for political subs to use Building Authority debt financings but does not do the same for the State of North Dakota.

In a recent review of a Standard & Poor's credit review report of the State's Public Finance Authority it was reported that the State of North Dakota uses Building Authority debt because it has a very restricted ability to issue General Obligation debt. It further explains the State of North Dakota can and does use Building Authority debt financing, however this type of debt issuance is limited to 10% of the sales taxes resources used to pay for the debt. This process merely limits the amount of Building Authority debt that can be issued to a reasonable amount to prevent over obligating the State.

The City of Fargo has not been an active issuer of Building Authority debt but we do understand the need to have this of financing available. Growing Cities have ongoing capital needs should be able to issue reasonable amounts of long term debt to finance projects our capital needs without voter approval for each transaction.

We do not feel that this type of debt financing is being abused and believe that having the flexibility that this this financing tool provides an effective and efficient way to borrow money. Tightly restricting Building Authority debt financings is limiting a very useful tool. Municipal financings and budget management strategies are not always easy to understand, however, they are typically done when they make sense and do not put an excessive financing burden on our political subdivisions. City officials are cognizant of the need to manage debt in a prudent and reasonable manner.

In lieu of mandatory voter approval process to use Building Authority debt we believe that a cap on the amount of this debt type, much like that of the State of North Dakota has in place makes more sense. Imposing a cap would be one method of prohibiting an entity from over use of the Building Authority debt.

We urge Committee members to consider amending HB 1286 to insert a cap on Building Authority debt versus a mandatory voter approval process. This change would put us at parity with the State of North Dakota's rules to manage Building Authority debt obligations. In its present form the Fargo City Commission urges a DO NOT PASS vote since it may restrict a valuable capital financing tool widely used by both the State of North Dakota and its political subdivisions.

Thank you for allowing us to submit this testimony.

**Testimony on HB1286**  
**By**  
**Dr. M. Douglas Johnson, Executive Director—NDCEL**

Chairman Klein, members of the Senate Industry, Business, and Labor Committee my name is Doug Johnson, executive director of the North Dakota Council of Educational Leaders (NDCEL) and I am here to testify in opposition to HB1286. There are several reasons why our association opposes this bill.

First, HB 1286, as passed by the House, would eliminate the opportunity for school districts and political subdivisions to use non-profit Building Authorities to finance future building projects without 60% voter approval. Many school districts in North Dakota have used or could be using this financing option to finance building projects. This is especially true for school districts which are experiencing rapid enrollments of students due to the state's exceptional economic climate.

Second, it has become more challenging for school districts in our state to fund building projects and infrastructure improvements – especially when addressing the upgrading of older buildings and the building of new ones to meet the increasing number of students now coming to our North Dakota schools. Recent legislative sessions have eliminated sales tax as a funding option for school district facilities. Further, while some districts have been successful at passing bond levies for new facilities it has become increasingly difficult for school districts, especially small ones, to obtain the super majority 60% voter approval required for issuance of general obligation bonds. In addition, some school districts and not just in the western part of the state, also have an issue with constitutional debt limits which restricts debt capacity. As a result these school districts may not be able to issue a sufficient amount of bonds, within their debt limit constraints, to construct or renovate school facilities or provide infrastructure improvements without a lease revenue financing option.

Third, many school districts in western ND that need to expand and renovate their school facilities to accommodate growing enrollments have very limited options by statute on how they can borrow. Districts that are not able to get a bond referendum which requires 60% voter approval, lease revenue bonds issued through a building authority may be the only option they have available to provide these needed school facilities to meet the rapid enrollments of students they are current experiencing.

Finally, it is our belief that many legislators may not realize that using a building authority to issue lease revenue bonds does not give the school districts the authority to levy any new taxes to make the lease payments. Further, they may not know that school districts must make the lease payments from existing resources, which include the general fund, building fund or special fund levies or other revenue sources such as oil impact funds granted to them by the legislature. In addition, many school district's financial advisors and bond counselors believe that this proposed legislation may have a very real impact on our school districts ability to attain the necessary facility and infrastructure projects that are much needed for many of our schools. The passage of HB1286 could also, in their opinion, have a negative economic impact on our school district communities across North Dakota.

It is our hope that your committee would seriously reconsider the action of the House on HB1286 and keeping the building authority financing option available to our school districts as it currently exists in North Dakota Century Code and that your committee gives HB1286 a Do Not Pass recommendation. Chairman Klein, members of the Senate Industry, Business, and Labor Committee, this concludes my testimony and I would be glad to answer any questions that members of the committee may have.

**Testimony on HB 1286**  
**Presented to the Senate Industry, Business and Labor Committee**  
**By Mark Lemer, Business Manager, West Fargo Schools**

1 Chairman Klein and members of the Senate Industry, Business and Labor Committee, my  
2 name is Mark Lemer. I am the business manager for the West Fargo School District and my  
3 testimony is in opposition to the provisions included in HB 1286.

4 In 2004, the West Fargo School District opened the Cheney Middle School, which was  
5 designed to house 1,500 students in grades 6-8. That replaced our existing middle school which  
6 had a capacity for only 800 students. As a result, we had a school building that no longer could  
7 serve its original purpose.

8 At the same time, the West Fargo Public Library was looking to relocate, as their space  
9 at the West Fargo City Hall was inadequate and was needed for the expanding city offices. We  
also had a need for a HeadStart location and space for a community childcare facility through  
11 the YMCA.

12 As a community, we were able to envision how the existing middle school could be  
13 retrofitted to meet the needs of the library, HeadStart, childcare and a host of other uses.  
14 However, the building needed to be updated and modified to meet the unique needs of each of  
15 these entities. To accomplish these modifications, the school district created a building  
16 authority to issue bonds to fund the capital improvements necessary to outfit each space for its  
17 intended purpose. The bonds were sold as Lease Revenue Bonds and were backed by the rents  
18 that each entity would pay. The school district did not need to pass a referendum to make  
19 these improvements, as each entity was paying for its space.

20 While this is a somewhat unique circumstance, it is an example of the flexibility that  
21 currently exists in the law with regard to building authorities. Without that legal avenue, we



1        would have had a building that may have sat empty instead of becoming an anchor for services  
2        within our community and school district.

3                I would urge you to consider the ramifications of HB 1286 and request that you consider  
4        a Do Not Pass recommendation on this bill.

5                I apologize for not being available to answer questions in person. However, if there are  
6        questions from the committee, I can be reached by e-mail at [lemer@west-fargo.k12.nd.us](mailto:lemer@west-fargo.k12.nd.us) or by  
7        telephone at 701-499-1004. Thank you for your consideration.

# Grand Forks Parks & Recreation FOUNDATION

March 18, 2013

Senator Jerry Klein, Chairman  
Industry, Business and Labor  
North Dakota Senate

RE: HB 1286

Dear Senator Klein:

With all due respect, we strongly oppose HB 1286 because it would significantly burden the new and growing use of philanthropy process that is enabling our agency to build public facilities without increasing taxes.

Our foundation had grown 104% in sustain donors over the last two years. We have been able to successfully build and operate a golf course, a health and fitness facility, ball parks and ice rinks without raising taxes. This has happened because donors generously provide funding for these facilities out of their own good will; motivated to give back to their local community rather than pay taxes to the federal government.

Reaching and communicating with donors in order to attract their interest is a very specified process that works well, if done correctly. There is a right way, and many wrong ways. (As a graduate of the University of Nebraska school of fundraising management and the CFRE school of the Association of Fundraising Professionals I will be happy to provide more detail testimony, if invited.)

Our success is made possible through the use our foundation as a necessary tool in the process. Should HB1286 be enacted, the process of working with donors will be hampered to such an extent that the philanthropic process will be rendered inept.

I urge the committee to not "throw the baby out with the bath water" on this bill and vote to kill HB 1286.

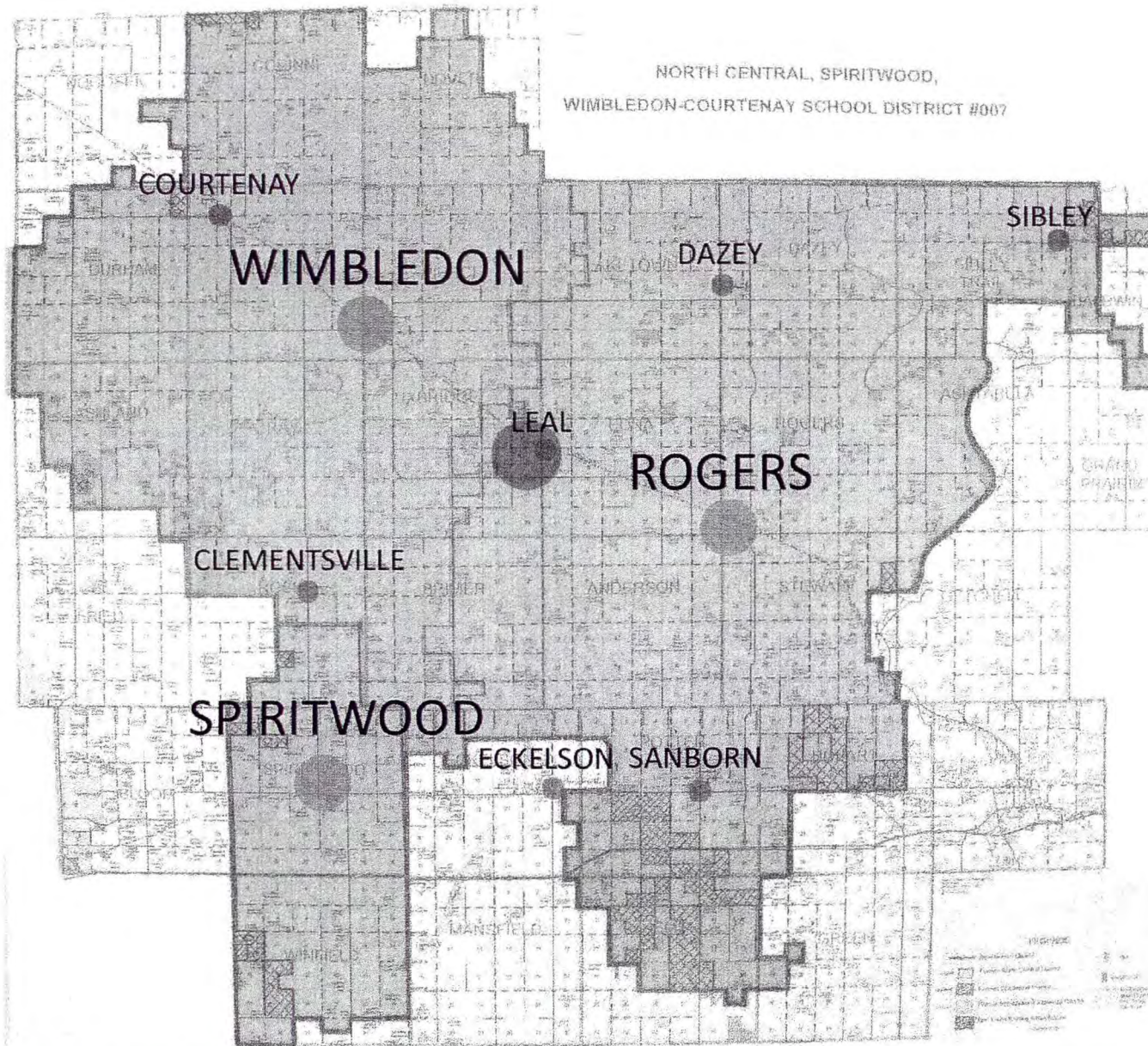
Thank you for your consideration.

Sincerely,

John Staley, Director  
GRAND FORKS PARK DISTRICT  
GRAND FORKS PARKS AND RECREATION FOUNDATION







**BARNES COUNTY NORTH**  
ROGERS, WIMBLEDON, SPIRITWOOD, ND

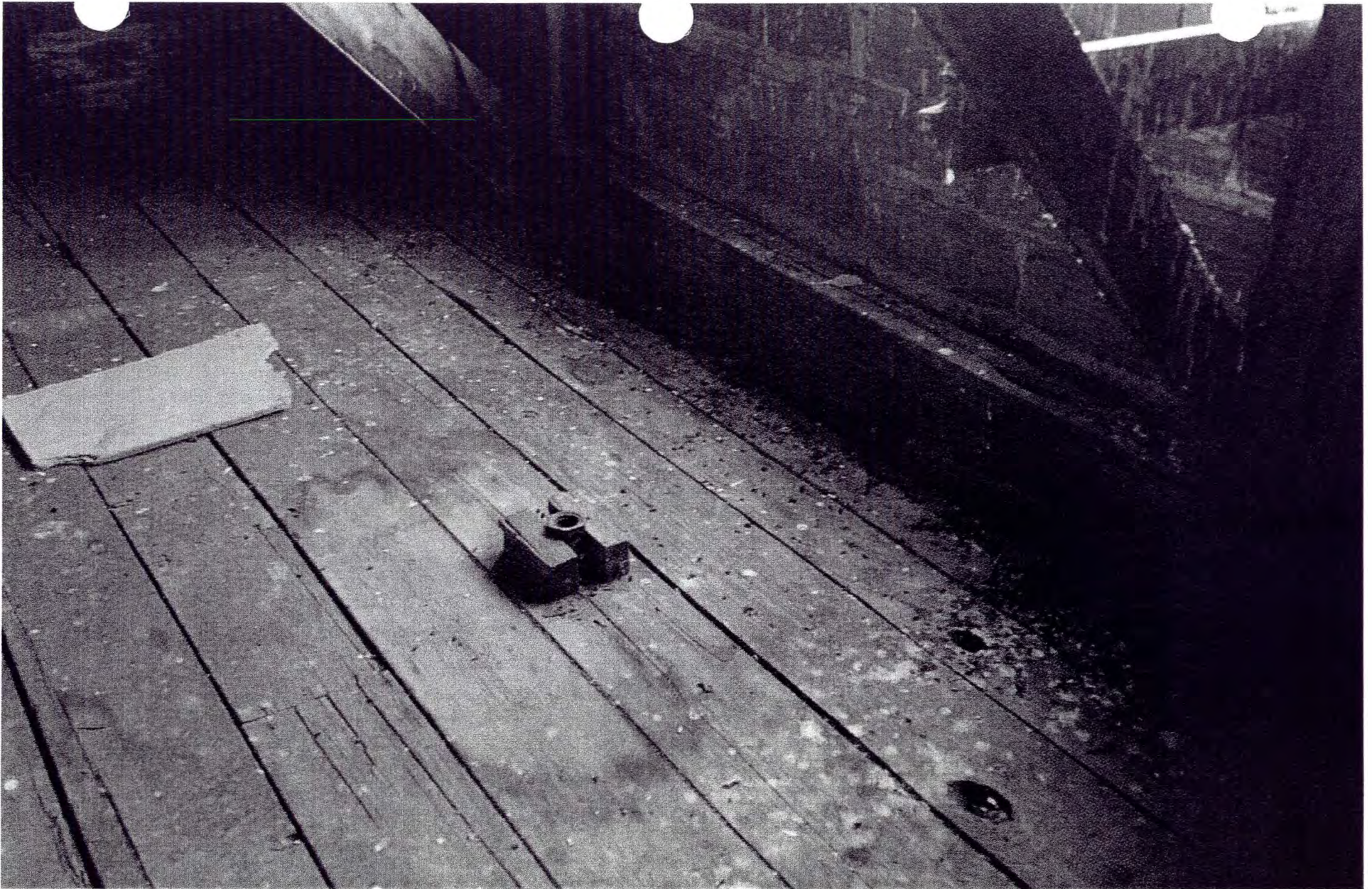
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**BARNES COUNTY NORTH**  
ROGERS, WIMBLEDON, SPIRITWOOD, ND





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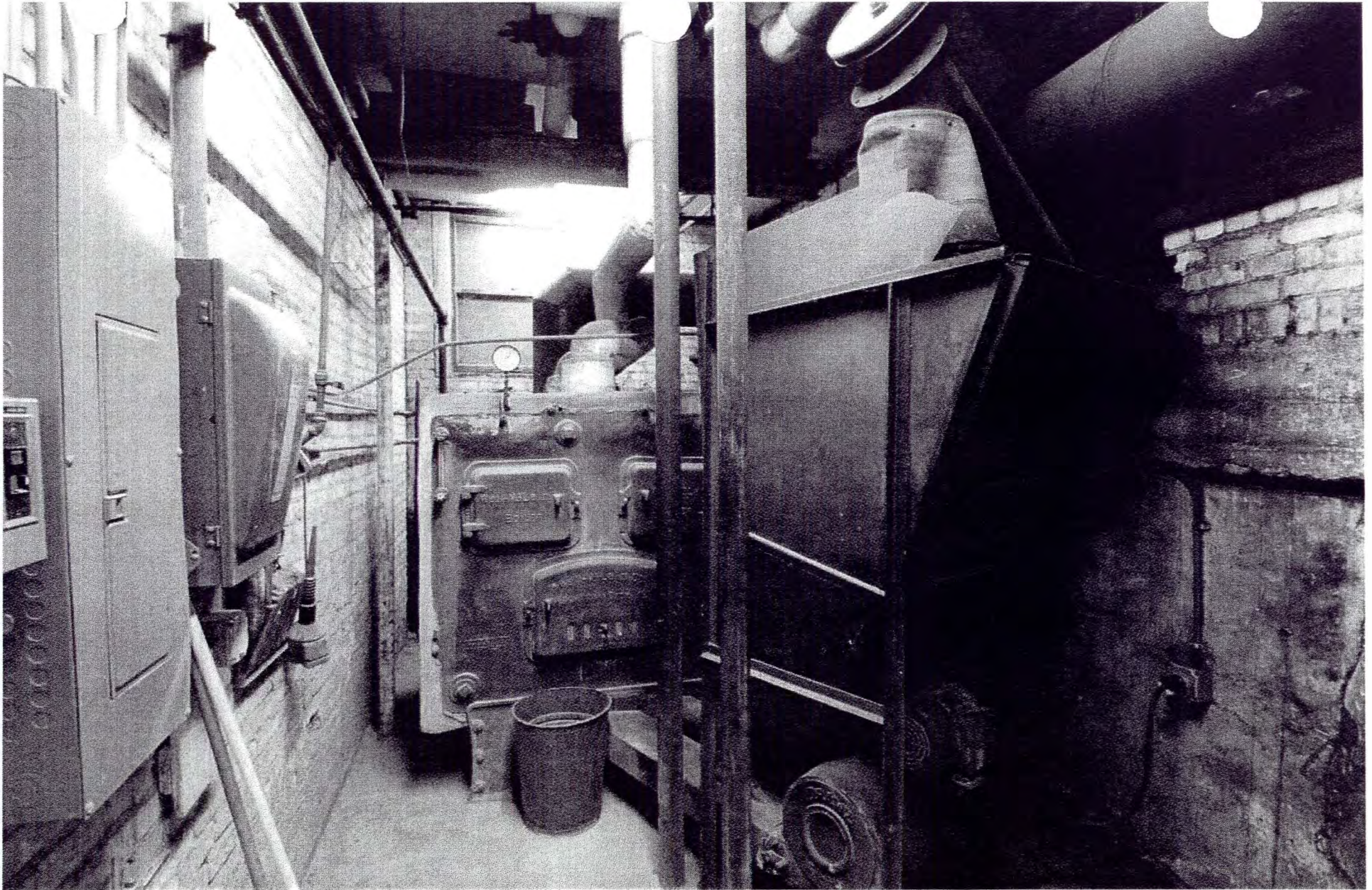




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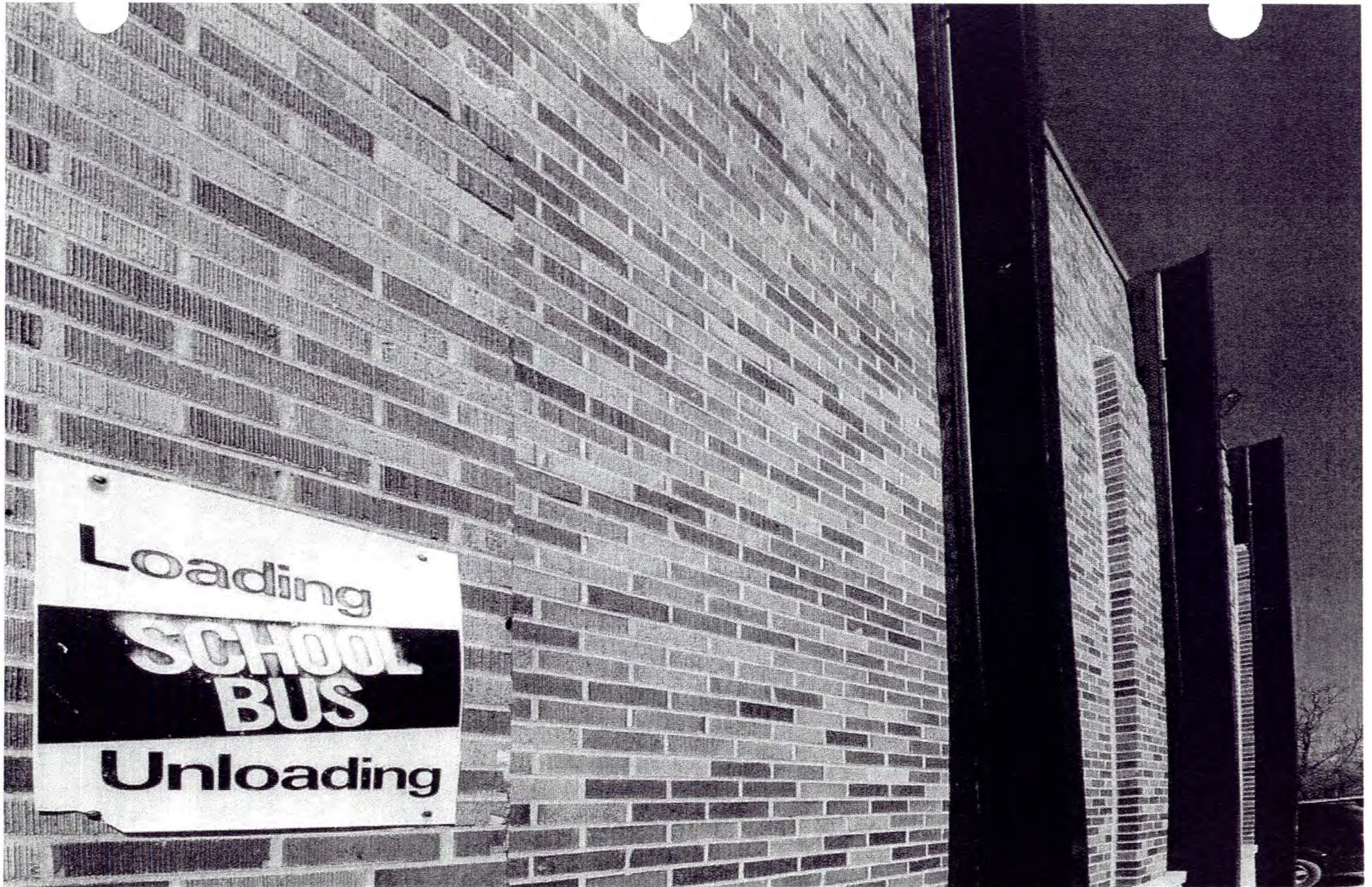




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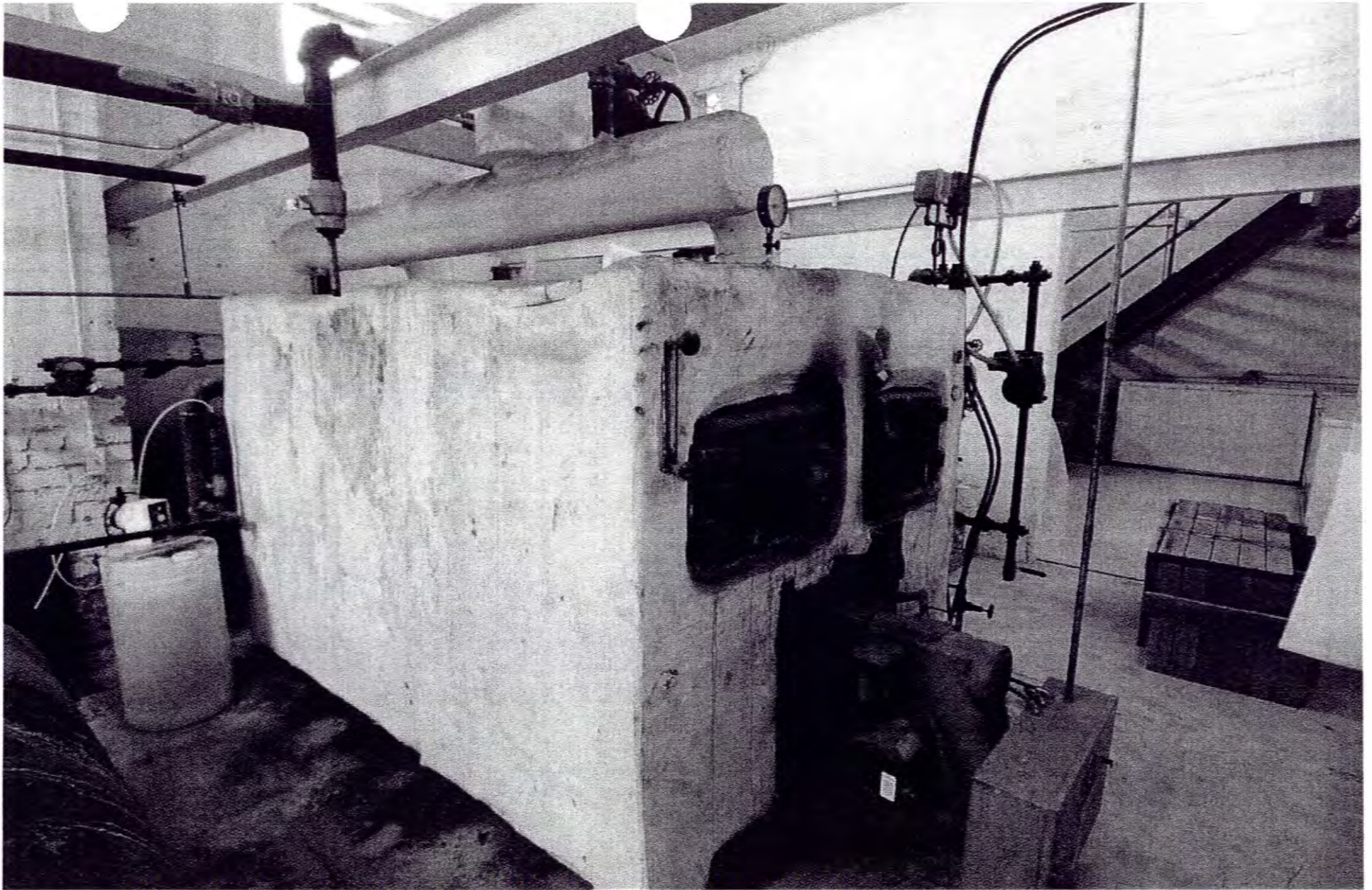




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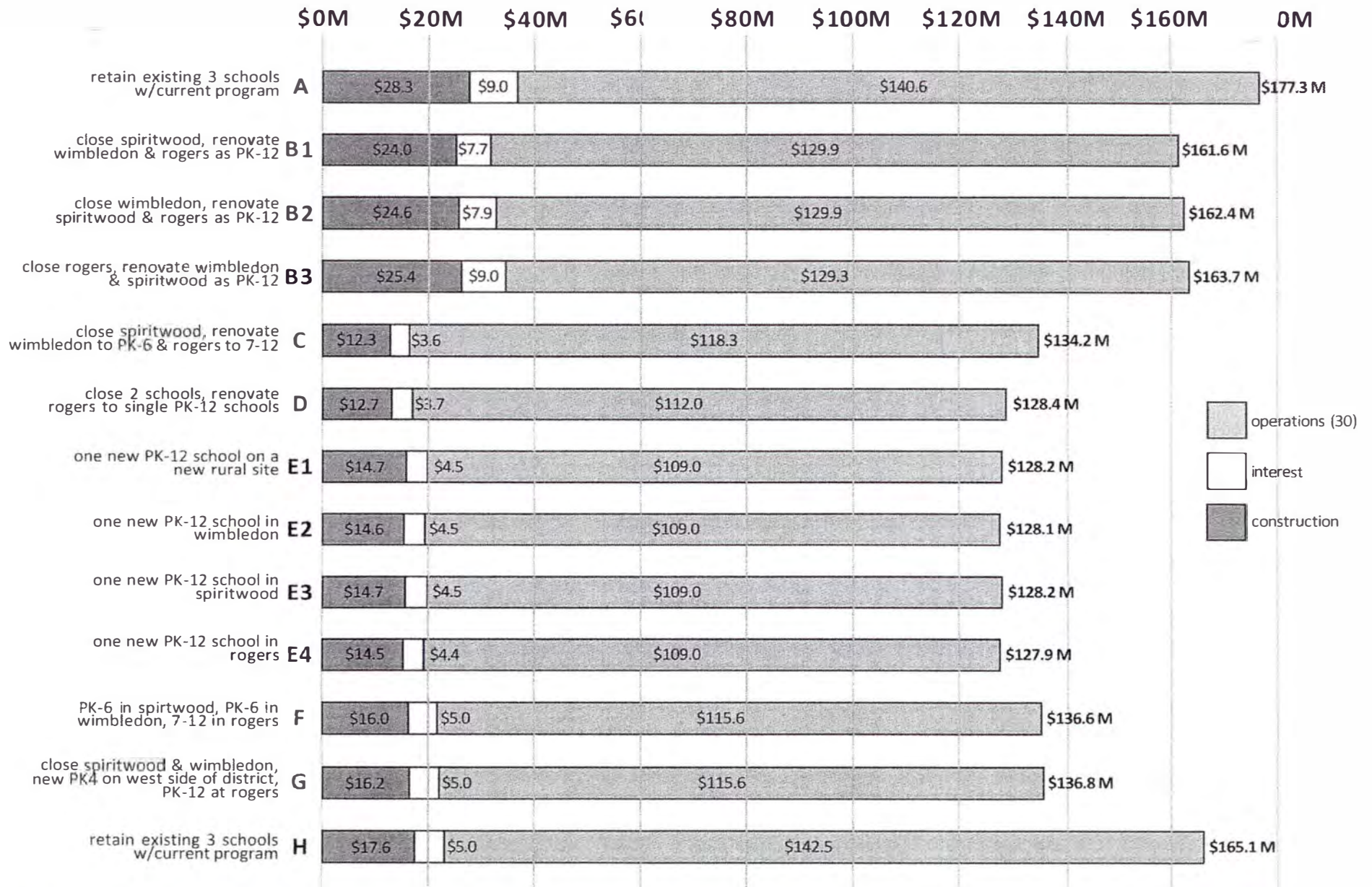
# OPTION H: Do Nothing

## Necessary Projects

2012	Replace Wimbledon 1928 addition <ul style="list-style-type: none"><li>• Tear down original 1928 building - 18,800 SF @ \$10/SF</li><li>• New Addition to replace lost space including new science- 30,000 SF @ \$150/SF</li></ul>	\$188,000 \$4,500,000
2012	Remove Asbestos and tanks (to facilitate demolition and addition)	\$100,000
2013	Upgrade Computer, Electrical and other Wiring Systems - 70,700 s.f. @ \$10.00	\$707,000
2014	Life Safety Renovations at all 3 schools, Fire Sprinkler, Fire Rated Corridor System, Stairs	\$650,000
2014	Replace Roofing - 45,000 s.f. @ \$6.50	\$295,000
2015	Replace Spiritwood 1914 addition <ul style="list-style-type: none"><li>• Tear down original 1914 building - 8,000 SF @ \$10/SF</li><li>• New Addition to replace lost space including new science - 40,000 SF @ \$150/SF</li></ul>	\$80,000 \$6,000,000
2016	New HVAC System at all 3 schools, 70,700 s.f. @ \$20.00	\$1,414,000
2017	Replace Finishes at both Schools - 70,700 s.f. @ \$15.00	\$1,060,500
2018	ADA, Parking, Locker Rooms, Toilet Rooms, Signage, Door Hardware, Band/Gym Risers	\$500,000
2019	Site Safety, Parking and Bus Loading	\$700,000
2020	Replace Lighting - 70,700 s.f. @ \$15.00	\$1,060,500
2021	Replace Windows	\$250,000
2022	Add Security System	\$150,000
TOTAL		<b><u>\$17,655,000</u></b>

**BARNES COUNTY NORTH**  
ROGERS, WIMBLEDON, SPIRITWOOD, ND





# BARNES COUNTY NORTH ROGERS, WIMBLEDON, SPIRITWOOD, ND

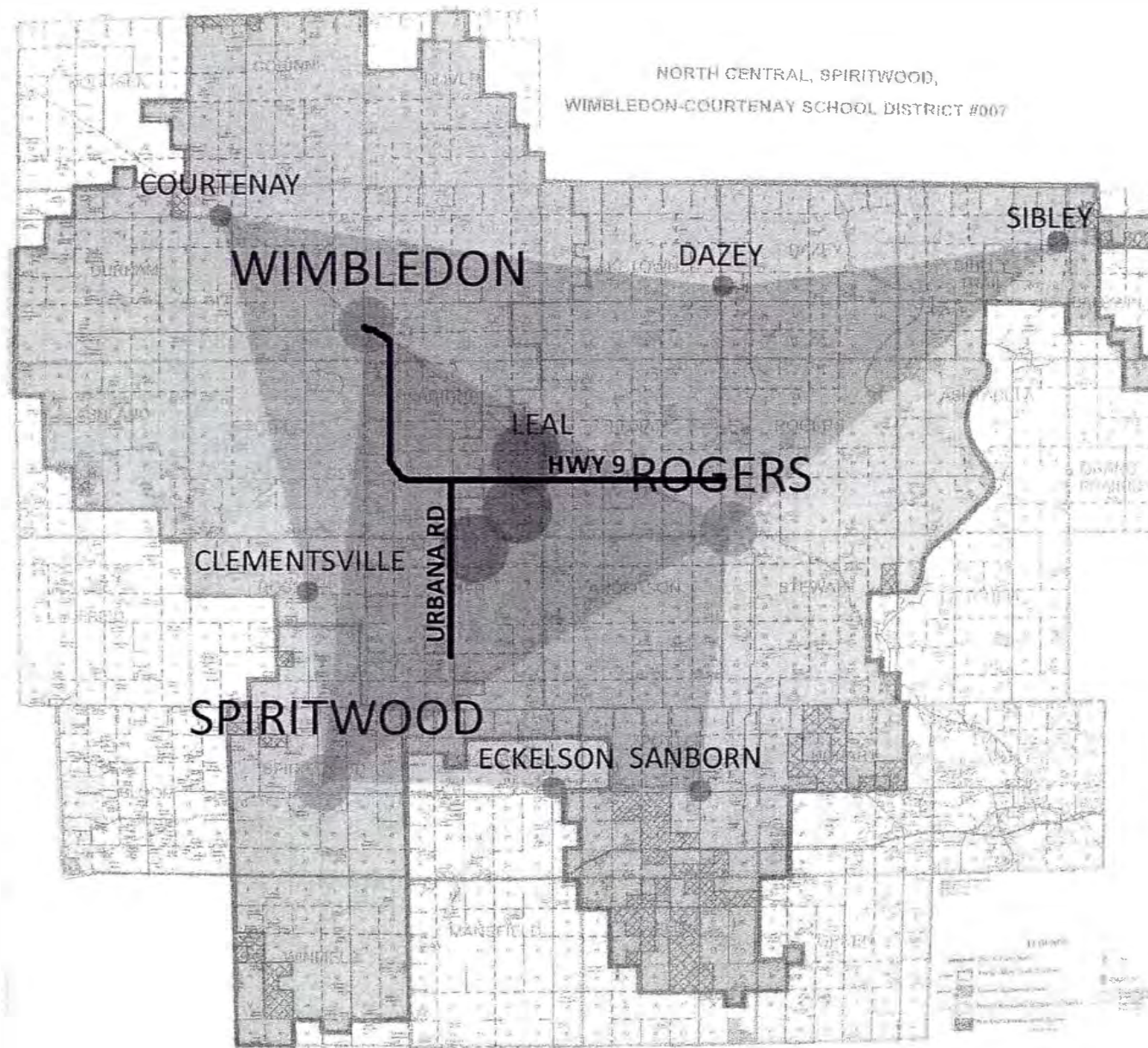


# NEW PK-12 SCHOOL ON ONE SITE

- Solves all facility deficiencies
- Can be built with no new taxes
  - Yearly operating budget is reduced by \$1.1M
  - Yearly debt service for new building is \$600K (30 years) or \$900K (20 years)
- Over 30 years the district will save:
  - \$50M over today's current method of operations (assuming necessary repairs)
  - Savings will increase with inflation (study assumes 0% inflation)
- Improves the quality of education
  - Most studies suggest new schools increase learning by 20%
    - Better indoor air quality
    - Better acoustics
    - Better lighting
- Additional benefits
  - Safety
  - Accessibility
  - Staff Retention

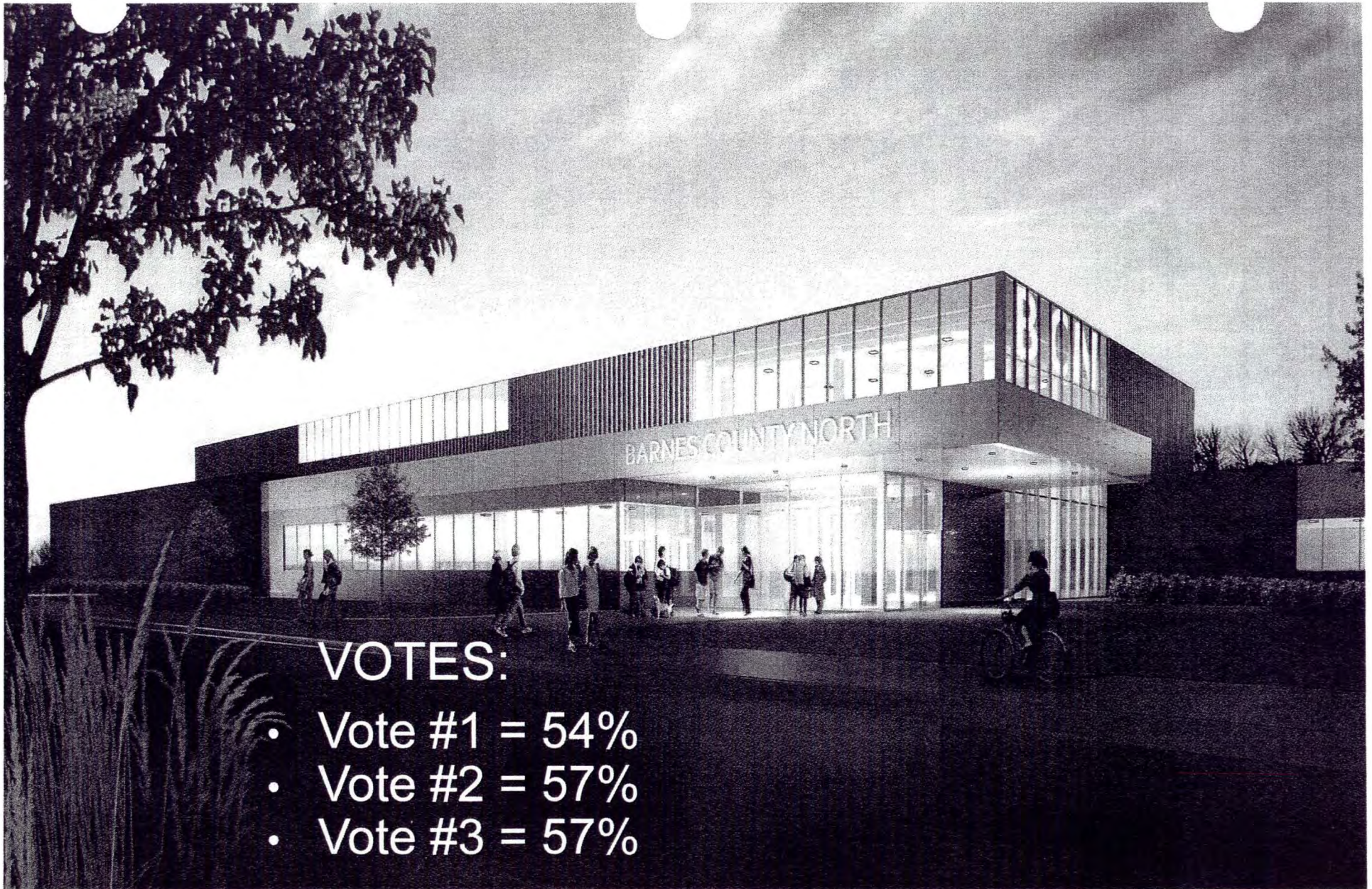
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**BARNES COUNTY NORTH**  
ROGERS, WIMBLEDON, SPIRITWOOD, ND





## VOTES:

- Vote #1 = 54%
- Vote #2 = 57%
- Vote #3 = 57%

BARNES COUNTY NORTH  
ROGERS, WIMBLEDON, SPIRITWOOD, ND

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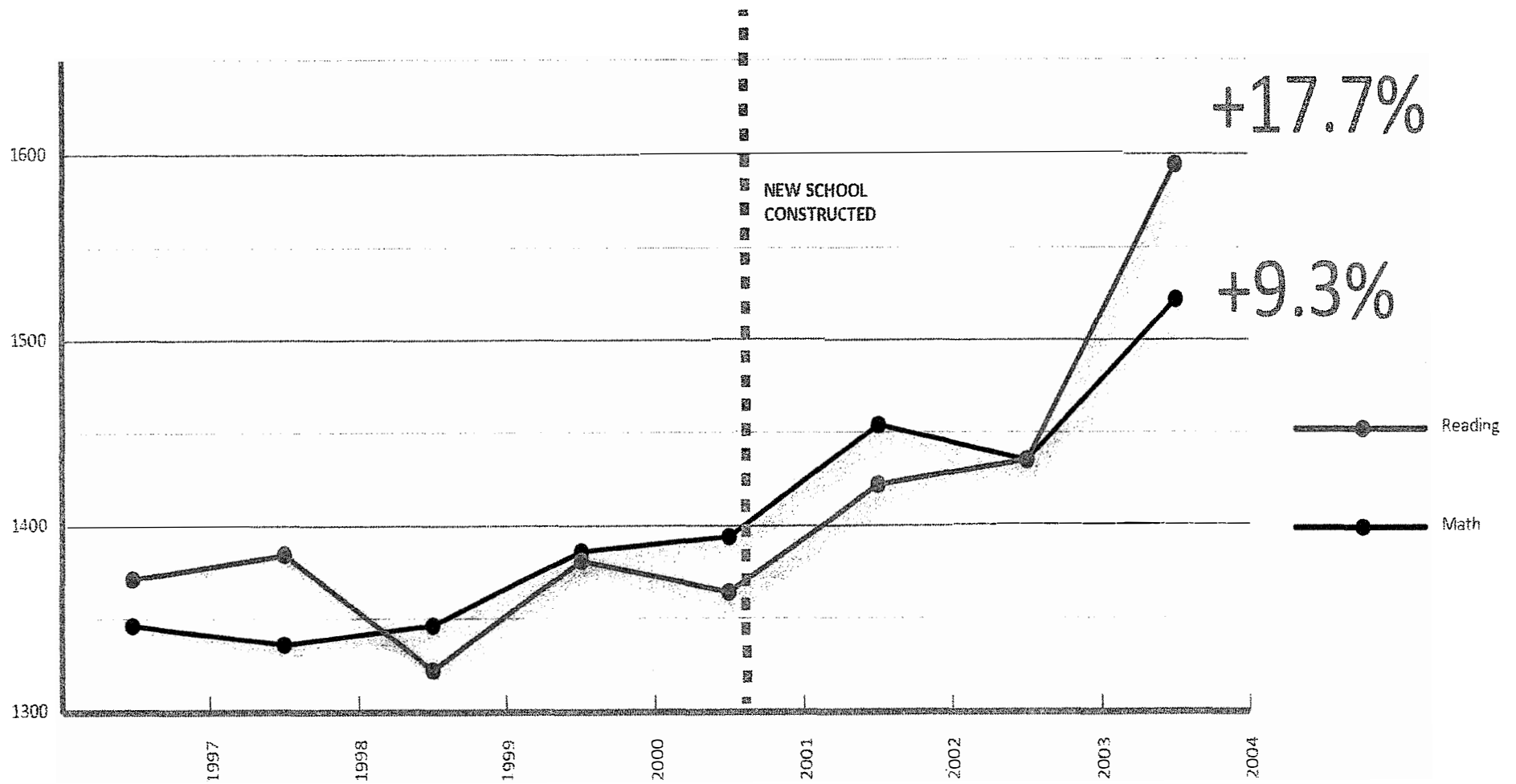




**BARNES COUNTY NORTH**  
ROGERS, WIMBLEDON, SPIRITWOOD, ND



# WIN-E-MAC 3RD GRADE TEST SCORES



**BARNES COUNTY NORTH**  
ROGERS, WIMBLEDON, SPIRITWOOD, ND

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Sixty-third  
Legislative Assembly  
of North Dakota

ENGROSSED HOUSE BILL NO. 1286

Introduced by

Representatives Kasper, Beadle, Brabandt, Dosch, Headland, Ruby, Streyle, Thoreson

Senators Burckhard, Campbell, Klein, Wardner

A BILL for an Act to create and enact section 21-03-06.1 of the North Dakota Century Code, relating to voter approval of public school district building projects funded through a building authority or other indirect means; and to amend and reenact section 57-15-16 of the North Dakota Century Code, relating to the vote required for approval of a school district building fund levy.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** Section 21-03-06.1 of the North Dakota Century Code is created and enacted as follows:

**21-03-06.1. ~~Voter~~ School district voter approval of building authority or other indirect funding methods - Building construction project approval.**

1. Notwithstanding any other provision of law, a municipality or governing body of a municipality school board may not enter an agreement pursuant to internal revenue service revenue ruling 63-20 under which payments of any kind would be required by the municipality school district to any building authority or other entity that incurs indebtedness or other obligation in connection with acquisition, improvements, or construction of any property or structure at a total cost of four million dollars or more to be used by the municipality school district unless the agreement has been approved by a vote of at least sixty percent a majority of the qualified electors of the municipality school district voting on the question at a regular or special school district election if the agreement is for acquisition, improvements, or construction of any property or structure for which an election would be required if the municipality school district undertook the acquisition, improvements, or construction project through issuance of bonds of the municipality school district. The governing body of a city or county may not supersede this subsection under home rule authority. This subsection



- 1 does not apply to buildings to be used primarily for fire protection, police, or  
2 emergency medical services. The qualified elector approval requirements of this  
3 subsection do not apply to an agreement under which all payments by the school  
4 district for use of the property or structure would be drawn from the school district  
5 building fund, which has been approved by the qualified electors of the school district.
- 6 2. The school board of a school district may not enter an agreement pursuant to internal  
7 revenue service revenue ruling 63-20 under which payments of any kind would be  
8 required by the school district to any building authority or other entity that incurs  
9 indebtedness or other obligation regarding construction, purchase, repair,  
10 improvement, modernization, or renovation of any building or facility to be used by the  
11 school district without approval by the superintendent of public instruction in the  
12 manner provided in section 15.1-36-01, if the approval by the superintendent of public  
13 instruction would be required for the project under section 15.1-36-01 if the school  
14 district undertook the project itself.

15 **SECTION 2. AMENDMENT.** Section 57-15-16 of the North Dakota Century Code is  
16 amended and reenacted as follows:

17 **57-15-16. Tax levy for building fund in school districts.**

- 18 1. The governing body of any school district shall levy taxes annually for a school  
19 building fund, not in excess of twenty mills, which levy is in addition to and not  
20 restricted by the levy limitations prescribed by law, when authorized to do so by ~~sixty~~  
21 ~~percenta~~ majority of the qualified electors voting upon the question at a regular or  
22 special election ~~in any of the~~ school district. The governing body of the school district  
23 may create the building fund by appropriating and setting up in its budget for an  
24 amount not in excess of twenty percent of the current annual appropriation for all other  
25 purposes combined, exclusive of appropriations to pay interest and principal of the  
26 bonded debt, and not in excess of the limitations prescribed by law. If a portion or all of  
27 the proceeds of the levy have been allocated by contract to the payment of rentals  
28 upon contracts with the state board of public school education as administrator of the  
29 state school construction fund, the levy must be made annually by the governing body  
30 of the school district until the full amount of all such obligations is fully paid. Any  
31 portion of a levy for a school building fund which has not been allocated by contract



with the state board of public school education must be allocated by the governing body pursuant to section 57-15-17. Upon the completion of all payments to the state school construction fund, or upon payment and cancellation or defeasance of the bonds, the levy may be discontinued at the discretion of the governing body of the school district, or upon petition of twenty percent of the qualified electors who voted in the last school election, the question of discontinuance of the levy must be submitted to the qualified electors of the school district at any regular or special election and, upon a favorable vote of ~~sixty percent~~ a majority of the qualified electors voting, the levy must be discontinued. Any school district, executing a contract or lease with the state board of public school education or issuing general obligation bonds, which contract or lease or bond issue requires the maintenance of the levy provided in this section, shall immediately file a certified copy of the contract, lease, or bond issue with the county auditor or auditors of the county or counties in which the school district is located. The county auditor or auditors shall register the contract, lease, or bond issue in the bond register in substantially the manner provided in section 21-03-23. Upon the filing of the contract, lease, or bond issue with the county auditor or auditors, the school district may not discontinue the levy and the levy must automatically be included in the tax levy of the school district from year to year by the county auditor or auditors until a sufficient sum of money has been collected to pay to the state treasurer for the retirement of all obligations of the school district with the state board of public school education or to pay to the custodian of the bond sinking fund all amounts due or to become due on the bonds.

2. The school board of any school district, in levying taxes for a school building fund as provided for in subsection 1, shall specify on the ballot the number of mills to be levied and may in its discretion submit a specific plan for which such fund shall be used. The plan shall designate the general area intended to be served by use of such fund. The area intended to be served shall be described in the plan but need not be described in the building fund ballot. After approval of the levy and the plan no change shall be made in the purpose of expenditure of the building fund except that upon a favorable vote of sixty percent of the qualified electors residing in any specific area intended to be served, material changes may be made in such plan as it affects such area to the

Sixty-third  
Legislative Assembly

- 1 extent such changes do not conflict with contractual obligations incurred. The
- 2 provisions of this section and of subsection 1 of section 57-15-17 in regard to the
- 3 purpose for which the building fund may be expended shall not apply to expenditures
- 4 for major repairs.



March 27, 2013

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1286

Page 1, line 2, replace "public" with "school district"

Page 1, line 7, replace "**Voter**" with "**School district voter**"

Page 1, line 9, remove "municipality or governing body of a"

Page 1, line 10, replace "municipality" with "school board"

Page 1, line 11, replace "municipality" with "school district"

Page 1, line 13, after "structure" insert "at a total cost of four million dollars or more"

Page 1, line 14, replace "municipality" with "school district"

Page 1, line 15, replace "at least sixty percent" with "a majority"

Page 1, line 15, replace "municipality" with "school district"

Page 1, line 15, after "question" insert "at a regular or special school district election"

Page 1, line 17, replace "municipality" with "school district"

Page 1, line 18, after "acquisition" insert ", improvements,"

Page 1, line 18, replace "municipality" with "school district"

Page 1, line 18, remove "The"

Page 1, remove lines 19 through 21

Renumber accordingly



Sixty-third  
Legislative Assembly  
of North Dakota

ENGROSSED HOUSE BILL NO. 1286

Introduced by

Representatives Kasper, Beadle, Brabandt, Dosch, Headland, Ruby, Streyle, Thoreson

Senators Burckhard, Campbell, Klein, Wardner

1 A BILL for an Act to create and enact section 21-03-06.1 of the North Dakota Century Code,  
2 relating to voter approval of ~~public~~school district building projects funded through a building  
3 authority or other indirect means.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** Section 21-03-06.1 of the North Dakota Century Code is created and enacted  
6 as follows:

7 **21-03-06.1. ~~Voter~~School district voter approval of building authority or other indirect**  
8 **funding methods - Building construction project approval.**

9 1. Notwithstanding any other provision of law, a ~~municipality or governing body of a~~  
10 ~~municipality~~school board may not enter an agreement pursuant to internal revenue  
11 service revenue ruling 63-20 under which payments of any kind would be required by  
12 the ~~municipality~~school district to any building authority or other entity that incurs  
13 indebtedness or other obligation in connection with acquisition, improvements, or  
14 construction of any property or structure at a total cost of four million dollars or more to  
15 be used by the ~~municipality~~school district unless the agreement has been approved by  
16 a vote of ~~at least sixty percent~~ majority of the qualified electors of the  
17 ~~municipality~~school district voting on the question at a regular or special school district  
18 election if the agreement is for acquisition, improvements, or construction of any  
19 property or structure for which an election would be required if the ~~municipality~~school  
20 district undertook the acquisition, improvements, or construction project through  
21 issuance of bonds of the ~~municipality~~school district. ~~The governing body of a city or~~  
22 ~~county may not supersede this subsection under home rule authority. This subsection~~  
23 ~~does not apply to buildings to be used primarily for fire protection, police, or~~  
24 ~~emergency medical services.~~

- 1        2. The school board of a school district may not enter an agreement pursuant to internal  
2        revenue service revenue ruling 63-20 under which payments of any kind would be  
3        required by the school district to any building authority or other entity that incurs  
4        indebtedness or other obligation regarding construction, purchase, repair,  
5        improvement, modernization, or renovation of any building or facility to be used by the  
6        school district without approval by the superintendent of public instruction in the  
7        manner provided in section 15.1-36-01, if the approval by the superintendent of public  
8        instruction would be required for the project under section 15.1-36-01 if the school  
9        district undertook the project itself.

Attachment  
12286 4-18-  
Conference**BUILDING AUTHORITY FINANCING OF  
PUBLIC BUILDINGS FOR POLITICAL SUBDIVISION USE**

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

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

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

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

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

**USE OF BUILDING AUTHORITIES**

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

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

Heidi



[Skip to main content](#)

Attachment 2  
1286 4-18-13  
FHWA Office of Innovative Program

Industry Events Calendar | Contact Us | Glossary | Site

Expertise. Research. Cons

ABOUT THE CENTER SERVICES TRANSPORTATION FUNDING & FINANCING PROJECTS RESOURCES & LINKS CENTER

## Transportation Funding & Financing

Transportation Funding & Financing » Legislation & Regulations » State and Local » Non-Profit 63-20 Corporations

Legislation & Regulations

- State and Local
- Enabling Legislation for Federal Programs
- Other State and Local Enabling Legislation
- PPP Enabling Legislation
- Other Road Legislation
- Non-Profit 63-20 Corporations
- Papers

## Non-Profit 63-20 Corporations

In order to meet their financing needs, state and local governments can issue tax exempt toll revenue bonds through either established conduit issuers or creation of not-for-profit corporations pursuant to Internal Revenue Service (IRS) Revenue Ruling 63-20. While governments normally prefer to utilize an established entity for conduit issues, IRS Revenue Ruling 63-20 provides a viable alternative and has been used to finance a number of major projects around the country.

A non-profit corporation is a private, non-stock corporation that may be formed under the nonprofit corporation act of a state. The formation does not require special legislation, nor does it require a referendum in the local or sponsoring jurisdiction. Non-profits may be formed for any lawful purpose other than for pecuniary profit, including, without limitation, any charitable, benevolent, educational, civic, or scientific purpose. Non-Profits are regulated by the State Attorney General, act, by state tax authorities for compliance with the requirements relating to their state income tax exemption, and by the Internal Revenue Service for compliance with the requirements relating to their Federal income tax exemption and the issuance of tax-exempt debt.

The following summary of IRS Section 63-20 Ruling establishes the conditions which corporations must meet in order to be considered "non-profit" organizations.

### A. 63-20 Rev. ruling

- Entities issuing bonds on behalf of a State or local government. If an entity fails to satisfy the requirements necessary to be treated as a political subdivision, it may still issue tax-exempt obligations if in so doing it is deemed to be acting on behalf of a state or local governmental unit. See Rev. Rul. 77-164; Philadelphia National Bank v. United States, 666 F.2d 834 (3rd Cir.)
- Qualifying issuers
  - Constituted Authorities: Entities specifically authorized by state law to issue bonds on behalf of political subdivisions of a state. In Rev. Rul. 57-187, industrial development boards were authorized by state law for incorporation in municipalities to promote industry and develop trade. Criteria
    - the issuance of bonds must be authorized by a specific state statute;
    - the bond issuance must have a public purpose (which includes promotion of trade, industry and economic development);
    - the governing body of the authority must be controlled by the political subdivision;
    - the authority must have the power to acquire, lease, and sell property and issue bonds in furtherance of its purposes;
    - earnings cannot inure to the benefit of private persons; and
    - upon dissolution, title to all bond-financed property must revert to the political subdivision.

- b. 63-20 Corporations. The so-called "63-20 corporations" are corporations formed under general state nonprofit corporation law the obligations of which are treated as issued on behalf of a political subdivision. Such corporations typically would not otherwise be "constituted authorities". Criteria
  - i. the corporation must engage in activities which are essentially public in nature;
  - ii. the corporation must be one which is not organized for profit (except to the extent of retiring indebtedness);
  - iii. the corporate income must not inure to and private person;
  - iv. the state or a political subdivision thereof must have a beneficial interest in the corporation while the indebtedness remains outstanding and it must obtain full legal title to the property of the corporation with respect to which the indebtedness was incurred upon the retirement of such indebtedness; and,
  - v. the corporation must have been approved by the state or a political subdivision thereof, either of which must also have approved the specific obligations issued by the corporation. Requirement that the sponsoring political subdivision have a beneficial interest in the 63-20 corporation while its bonds are outstanding and that it obtain full legal title to the 63-20 corporation's property upon retirement.
  - vi. the [sponsoring governmental] unit may not agree or otherwise be obligated to convey a fee interest in the property to any person who was a user of the property to any person who was a user of the property or a related person...within 90 days after the unit defeases the obligations...;
  - vii. a reasonable estimate of a fair market value of the property on the latest maturity date of the obligations...is equal to at least 20 percent of the original cost of the property financed by the obligations ...., and viii. a reasonable estimate of the remaining useful life of the property on the latest maturity date of the obligations... is the longer of one year or 20 percent of the originally estimated useful life of the property financed by the obligations."
3. Limits on use of 63/20 In *Philadelphia National Bank v. United States*, 666 F.2d 834 (ed Cir. 1981), the court interpreted Reg. section 1.103-1(b) with respect to entities issuing bonds on behalf of political subdivisions. The issue was whether loans made to Temple University by a private bank, which were obtained to defray operating expenses while the university awaited legislative appropriations, were obligations issued on behalf of the State of Pennsylvania. The court cited *White's Estate*, 144 R.2d 1019 (2nd Cir. 1944), cert. denied. 32 U.S. 729 (1945), for the proposition that entities issuing bonds on behalf of political subdivisions must be acting as alter egos of the political subdivisions, and held that Temple University was not a "constituted authority." It was not acting as an alter ego of Pennsylvania because there was "no identity of interest, contrivance or intent" between the University and the State.

Attachment 3  
1286 4-18-13  
Conference

**LETTER OPINION  
2008-L-05**

April 23, 2008

The Honorable Steven L. Zaiser  
State Representative  
802 7th Street South  
Fargo, ND 58103-2706

Dear Representative Zaiser:

Thank you for your letter raising several questions about financing the construction of a new high school by the Fargo Public School District ("District") and its power to form a building authority. For the reasons indicated below, it is my opinion that the District has the authority to finance construction of a new high school from the combined building fund tax levies provided in N.D.C.C. §§ 15.1-09-47, 15.1-09-49, and 57-15-16. It is my further opinion that a public school district, as a political subdivision, lacks the power to form a non-profit corporation building authority, although one or more individuals, age 18 or over, may do so. It is my further opinion that a non-profit corporation building authority as a separate legal entity is not generally subject to the same limitations on building and construction as a school district, and that the non-profit corporation building authority may issue bonds as part of a three-step transaction with a non-appropriation mechanism with the District.

**ANALYSIS**

You question the current financing practices and spending authority of the District, particularly as they relate to financing the construction of a new high school in the district. At the outset it should be noted that there are a number of provisions in state law that pertain solely to the District.<sup>1</sup> These special provisions are in addition to the powers and authority of other public school districts in the state. For example, the governing body of any school district in the state has authority to levy taxes for a school building fund not in excess of 20 mills, if authorized to do so by 60% of the qualified electors voting on the question at any regular or special election.<sup>2</sup> The District's governing body may levy an

---

<sup>1</sup> The District is referred to as the board of education of the city of Fargo a number of times in state law. See, e.g., N.D.C.C. §§ 15.1-09-47 through 15.1-09-52. Some of the special provisions that apply only to the District include broader powers with respect to raising revenue and dealing with real property and buildings. Id. See also N.D.C.C. § 21-03-07(7).

<sup>2</sup> N.D.C.C. § 57-15-16. See also N.D.C.C. § 21-03-07(7).



LETTER OPINION 2008-L-05

April 23, 2008

Page 2

additional building fund levy of 15 mills.<sup>3</sup> The District took advantage of the latter authority and established a building fund tax levy of 15 mills a number of years ago.<sup>4</sup> The proceeds of the additional 15-mill tax levy under N.D.C.C. §§ 15.1-09-47 and 15.1-09-49 may be used for the purpose of purchasing or improving sites for schools, or building, purchasing, enlarging, improving, or repairing schools and their appurtenances.<sup>5</sup>

In addition to the 15 mills levied under N.D.C.C. §§ 15.1-09-47 and 15.1-09-49, the District also utilized the more generally available building fund levy under N.D.C.C. § 57-15-16 in the amount of 11.4 mills for the school building fund.<sup>6</sup> Under state law, the proceeds raised by the 11.4-mill building fund levy may be used generally for the “erection of new school buildings or facilities.”<sup>7</sup>

Thus, the two building fund levies available to the District in the total amount of 26.4 mills may be used to finance construction of any new schools, not just the middle school construction financed in Fargo in 1991. The District is using these combined levies of 26.4 mills to fund construction of the new high school.<sup>8</sup> Although you indicate that your question may also be applicable to other schools in this state, it would be unwise to attempt to generalize what other school districts may or may not do based on what the District may or may not do because of the District’s broad powers.

Your first specific question concerns whether the District may use its general funds or general fund reserve to finance a new high school. According to information supplied by the District on its website entitled “Next High School Q&A,” as well as information from the District contained in its official statements for the two bond issues to be used to finance the construction of the new high school building, “[n]o General Fund or operational fund resources will be used to build the building.”<sup>9</sup> Thus, in this instance, it is unnecessary to

---

<sup>3</sup> See N.D.C.C. §§ 15.1-09-47 and 15.1-09-49.

<sup>4</sup> See N.D.A.G. Letter to Koppang (June 7, 1988); the 15-mill building fund levy was authorized by then N.D.C.C. §§ 15-51-11 and 15-51-13, the predecessors to current N.D.C.C. §§ 15.1-09-47 and 15.1-09-49.

<sup>5</sup> N.D.C.C. §§ 15.1-09-47 and 15.1-09-49.

<sup>6</sup> This 11.4-mill levy was authorized by a special election held on December 3, 1991, as provided for in N.D.C.C. § 57-15-16, and as reflected in the legal notice dated December 10, 1991, attached to your letter.

<sup>7</sup> N.D.C.C. § 57-15-17(1)(b)(1).

<sup>8</sup> See note 9.

<sup>9</sup> [www.fargo.k12.nd.us](http://www.fargo.k12.nd.us) (select “Parents”; select “Fargo’s Next High School”; select “High School Funding Q & A”). See also Official Statement, \$10,000,000 Limited Tax School Building Bonds, Series 2007, Fargo Public School District No. 1 at p. 3, and Official Statement, \$33,000,000 Limited Tax School Building Bonds, Series 2008, Fargo Public School District No. 1 at p. 3. (“The Obligations are special obligations of the District payable from the School Building Fund Levy, which may be levied upon all taxable property located in the District at the rate of 26.4-mills.”)

determine whether general funds may be so used since the District is not financing the construction of a new high school from general funds or general fund reserves.

You next ask whether the 11.4-mill building fund levy may be used to finance construction of a new high school. As indicated above, the 11.4-mill building fund levy was instituted by the District in 1991 under the authority of N.D.C.C. § 57-15-16 and the vote of the electors in the school district at that time. Once in place, the levy continues unless specifically discontinued "at the discretion of the governing body of the school district, or upon petition of twenty percent of the qualified electors who voted in the last school election . . . and, upon a favorable vote of sixty percent of the qualified electors voting, . . . ." <sup>10</sup> Also as indicated above, state law provides that the building fund may be used for the "erection of new school buildings or facilities." <sup>11</sup> Consequently, the 11.4-mill building fund levy, once established, may be used to finance the erection of any new school building or facility, including a new high school, until discontinued. <sup>12</sup>

As noted above, construction of the new high school is being financed both with the 11.4 mills levied under N.D.C.C. § 57-15-16 and the 15 mills levied under N.D.C.C. §§ 15.1-09-47 and 15.1-09-49. Thus, based on the foregoing, it is my opinion that the District has the authority to finance construction of a new high school from the combined building fund tax levies provided in N.D.C.C. §§ 15.1-09-47, 15.1-09-49, and 57-15-16. <sup>13</sup>

The remaining questions you ask relate to the use of a building authority by the District. The financing of the new high school by the District does not involve a building authority structure. <sup>14</sup> Even though a building authority is not being utilized in this current financing, you indicated to a member of my staff that you wished to have this office address your remaining questions regarding the use of a building authority.

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<sup>10</sup> N.D.C.C. § 57-15-16(1). Of course, the levy may only be discontinued after payment of any obligations payable from the levy. Id.

<sup>11</sup> N.D.C.C. § 57-15-17(1)(b)(1).

<sup>12</sup> The purpose of the 11.4-mill levy was to provide money for the school building fund, not to just specifically fund the construction of the middle school in 1991.

<sup>13</sup> See note 1.

<sup>14</sup> See generally Official Statement, \$10,000,000 Limited Tax School Building Bonds, Series 2007, Fargo Public School District No. 1, and Official Statement, \$33,000,000 Limited Tax School Building Bonds, Series 2008, Fargo Public School District No. 1.

You ask whether the District has the authority to form a building authority.<sup>15</sup> School districts are political subdivisions created by the state.<sup>16</sup> "A political subdivision may not form a corporation in the absence of statutory authority."<sup>17</sup> "Before a political subdivision may act it must have specific authority to act in that subject area. 'In defining a [political subdivision's] powers, the rule of strict construction applies and any doubt as to the existence or the extent of the powers must be resolved against the [political subdivision].'"<sup>18</sup>

"The incorporation of a separate nonprofit or for-profit corporation is not merely a manner and means of exercising powers, but is instead a power in and of itself to create a separate entity which has an independent identity. . . . [Former North Dakota non-profit corporation law] neither specifically grants nor necessarily implies the authority of a political subdivision to incorporate a non-profit corporation."<sup>19</sup>

As noted above, building authorities are generally formed as non-profit corporations. Under North Dakota non-profit corporation law, only "[o]ne or more individuals age eighteen or more may act as incorporators of a corporation."<sup>20</sup> Based on the foregoing, it is my opinion that a public school district, as a political subdivision, does not generally have the power to form a non-profit corporation building authority, although one or more individuals, age 18 or over, may do so. And in this specific instance, the Fargo School District Building Authority ("Authority") was evidently incorporated by three individuals, not by the public school district.<sup>21</sup>

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<sup>15</sup> Building authorities are generally formed as non-profit corporations. Typically, a building authority will sell bonds, acquire property, construct a building, and lease the building to a political subdivision. The lease payments made to the building authority are then used to pay debt service on the building authority's bonds. If certain federal tax law requirements are met, the bonds issued by a non-profit building authority may be issued on a federally tax-exempt basis. See Rev. Rul. 63-20, 1963-1 C.B. 24. Assuming all lease payments are made as scheduled, there are often provisions allowing for the facility to be sold to or acquired by the political subdivision when the bonds are paid off and the lease expires. See also Articles of Incorporation, North Dakota Nonprofit Corporation, Fargo School District Building Authority.

<sup>16</sup> Bismarck Public School District #1 v. State of North Dakota, 511 N.W.2d 247, 251 (N.D. 1994); Azure v. Belcourt Public School District, 681 N.W.2d 816, 818 (N.D. 2004).

<sup>17</sup> N.D.A.G. 2007-L-17.

<sup>18</sup> N.D.A.G. 97-F-07 (quoting Roeders v. City of Washburn, 298 N.W.2d 779, 782 (N.D. 1980)).

<sup>19</sup> N.D.A.G. 97-F-07. See also 1996 Op. Att'y Gen. No. 101-96 (Mo. A.G.) (port authority as political subdivision can neither own nor organize non-profit corporation).

<sup>20</sup> N.D.C.C. § 10-33-05. See also N.D.C.C. § 10-33-29, requiring that directors of a non-profit corporation also be individuals.

<sup>21</sup> See Articles of Incorporation, North Dakota Nonprofit Corporation, Fargo School District Building Authority.



You next ask<sup>22</sup> whether a building authority is subject to the “same legal limitations on building and construction of new schools as the school board itself.”<sup>23</sup> In N.D.A.G. 97-F-07, it was noted that

A corporation is looked upon as a separate legal entity from the individuals or corporations which incorporated the new corporation. Family Center Drug Store, Inc. v. North Dakota St. Bd. of Pharm., 181 N.W.2d 738, 745 (N.D. 1970). “A corporation is not in fact or in reality a person, but is created by statute and the law treats it as though it were a person by the process of fiction, or by regarding it as an artificial person distinct and separate from its individual stockholders.” Airvator, Inc. v. Turtle Mountain Mfg. Co., 329 N.W.2d 596, 602 (N.D. 1983).<sup>24</sup>

The Authority is listed in the records of the Secretary of State’s office as a non-profit corporation incorporated on May 18, 1988.<sup>25</sup> The Authority was organized to construct and improve school buildings or fixtures and to lease the facilities to the District.<sup>26</sup> Non-profit corporations have a number of powers provided by law, including the authority to: “purchase, lease, or otherwise acquire, own, hold, improve, and use and otherwise deal in and with real or personal property, or any interest in property, wherever situated”; “sell, convey, mortgage, create a security interest in, lease, exchange, transfer, or otherwise dispose of all or any part of its real or personal property, or any interest in property, wherever situated”; and “take and hold real and personal property . . . as security for the payment of money loaned, advanced, or invested.”<sup>27</sup>

The Authority is currently leasing several facilities to the District.<sup>28</sup> The District’s obligation to pay rent is subject to annual appropriation by the school board.<sup>29</sup> If the District fails to make an appropriation to pay the rent due, possession and rights to the buildings would revert to the Authority and the bond trustee who may re-lease the facilities or foreclose any

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<sup>22</sup> You premised your final questions on whether “the Fargo School Board does have the authority to form a building authority.” Even though I have determined that it does not have that authority, I presumed you wanted your last two questions addressed.

<sup>23</sup> You do not specify what “legal limitations” to which you are referring. See, e.g., N.D.C.C. § 15.1-36-01; N.D.C.C. ch. 48-01.2. Consequently, my response is somewhat general.

<sup>24</sup> N.D.A.G. 97-F-07.

<sup>25</sup> See Articles of Incorporation, North Dakota Nonprofit Corporation, Fargo School District Building Authority.

<sup>26</sup> Id.

<sup>27</sup> N.D.C.C. § 10-33-21(4), (5), and (9).

<sup>28</sup> See note 14; id. at 16.

<sup>29</sup> Id.

mortgage.<sup>30</sup> It is my opinion that a properly incorporated non-profit corporation building authority, as a separate and distinct legal entity that acquires real property and constructs or improves buildings for lease to a school district, is not generally subject to the same limitations as a school district for the building and construction of new schools.

Finally, you ask whether a building authority may legally issue bonds to be repaid by the District's general fund or reserves or revenues from the 11.4-mill levy. As noted above, a non-profit corporation has a number of powers to deal with its property; additionally it may "make contracts and incur liabilities, borrow money, issue its securities, and secure any of its obligations by mortgage of or creation of a security interest in all or any of its property, franchises, and income."<sup>31</sup> Thus, under state law, a non-profit corporation has the authority to borrow money and issue its bonds.

Your question, however, also concerns whether the District may make payments to the Authority from its general funds and reserves or from the 11.4-mill levy. As indicated above, the District is leasing several projects from the Authority. According to the District, "[t]he lease payments of the District will be paid primarily from the General Fund of the District although the general fund levy is not pledged to the payment of the Bonds. . . . The District's obligation to pay rent is subject to annual appropriation by the School Board. There is no assurance that all such appropriations will be made."<sup>32</sup> Thus, it appears the District is not utilizing reserves or the 11.4-mill levy to make its lease payments, but rather it is making the lease payments from its general fund.

Under the law, the District "may levy taxes, as necessary for any of the following purposes: a. To purchase, exchange, lease, or improve sites for schools. b. To build, purchase, lease, enlarge, alter, improve, and repair schools and their appurtenances."<sup>33</sup> Further, "[t]he tax for purchasing, leasing, or improving sites and the building, purchasing, leasing, . . . of schools may not exceed in any one year fifteen mills on the dollar valuation of the

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<sup>30</sup> See, e.g., Official Statement, \$23,000,000 Lease Revenue Bonds, Series 2000, Fargo School District Building Authority at p. 2.

<sup>31</sup> N.D.C.C. § 10-33-21(7). See also the purposes of the Authority set out in its Articles of Incorporation: "1. To lease land and construct improvements thereon for a lease to Board of Education of the City of Fargo for school district purposes; 2. To become indebted and to execute and deliver Bonds to accomplish such acquisition and construction."

<sup>32</sup> See Official Statement, \$23,000,000 Lease Revenue Bonds, Series 2000, Fargo School District Building Authority at p. 2. See also Official Statement, \$2,150,000 First Mortgage Revenue Refunding Bonds, Series 2004, Fargo School District Building Authority at p. 2; Official Statement, \$23,005,000 First Mortgage Revenue Refunding Bonds, Series 2005, Fargo School District Building Authority at pp. 2 and 4; and Official Statement, \$3,600,000 Lease Revenue Bonds of 2006, Fargo School District Building Authority at p. 2.

<sup>33</sup> N.D.C.C. § 15.1-09-47(1).

taxable property of the city.”<sup>34</sup> In addition to the powers granted to other school boards by law, the District has the express authority to “lease houses or rooms for school purposes, lease lots or sites for schools, and fence real property” and to “build, enlarge, alter, improve, and repair schools . . . owned or leased for school purposes.”<sup>35</sup> Thus, under the law, the District has the authority to lease school facilities and also to levy a building fund tax for such purpose up to 15 mills.

While the District could have chosen to finance the projects constructed by the Authority through the issuance of general obligation bonds under N.D.C.C. ch. 21-03,<sup>36</sup> there are other means of financing school construction and improvements. In 1988,<sup>37</sup> the North Dakota Supreme Court, in analyzing a three-step sale-leaseback-purchase financing transaction by a city similar to the use of a building authority,<sup>38</sup> noted that the general powers of a city do not necessarily provide the exclusive method for borrowing money.<sup>39</sup> The court noted that in addition to general obligation borrowing authority under N.D.C.C. title 21, cities also have the authority to convey, sell, or dispose of municipal property, construct public buildings, and specifically authorize a municipal governing body to acquire real property by lease or purchase.<sup>40</sup>

The financing plan in Haugland involved the improvement of a civic center, library, and a water main, the transfer of city properties to a trustee, and the subsequent leaseback of the improved property with annual lease payments sufficient to pay principal and interest on bonds issued by the trustee. The leaseback to the city was subject to cancellation under a non-appropriation clause similar to that employed in the present situation. Revenues from several city taxes were expected to be sufficient to make the annual payments but, as with the present situation, the city did not pledge these tax revenues.<sup>41</sup> The court concluded that “the three-step sale-leaseback-purchase transaction employed by the City to fund the construction of improvements to its civic center, library and a watermain, with a nonappropriation mechanism to make clear that its general taxing

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<sup>34</sup> N.D.C.C. § 15.1-09-49; see also Anderson v. City of Fargo, 186 N.W. 378, 380 (N.D. 1922) (board of education of the city of Fargo as a body corporate is exclusively charged with control and management of all the school property and has full and complete dominion over it).

<sup>35</sup> N.D.C.C. § 15.1-09-50(2) and (3).

<sup>36</sup> See N.D.C.C. §§ 15.1-36-04, 21-03-06(4), and 21-03-07(7).

<sup>37</sup> Haugland v. City of Bismarck, 429 N.W.2d 449 (N.D. 1988).

<sup>38</sup> A building authority financing also generally is a three-step transaction, except that it may be a lease-leaseback-purchase transaction or a sale-leaseback-purchase transaction. See note 15.

<sup>39</sup> Haugland at 453.

<sup>40</sup> Id.

<sup>41</sup> Id. at 450-51.



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April 23, 2008

Page 8

powers are not obligated, was a reasonable exercise of the general powers granted [to the city].<sup>42</sup>

Similarly, in the present case, N.D.C.C. ch. 21-03 is not the exclusive method for financing a project. Like the city in Haugland, the District has the authority to convey, sell, and dispose of school property.<sup>43</sup> In addition, it has the authority to construct school buildings.<sup>44</sup> The District also has the authority to acquire real property by lease or purchase.<sup>45</sup> Thus, it is my further opinion that, like the city in Haugland, the Authority's three-step transaction with a non-appropriation mechanism was a reasonable exercise of the general powers granted to the District, and use of the non-pledged general fund money to make lease payments is lawful.

Sincerely,

Wayne Stenehjem  
Attorney General

jjf/pg

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.<sup>46</sup>

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<sup>42</sup> Id. at 454.

<sup>43</sup> N.D.C.C. §§ 15.1-09-52, 15.1-09-33(3), (4), (5), and (6), and 15.1-09-50(2) and (3).

<sup>44</sup> N.D.C.C. §§ 15.1-09-47(1), 15.1-09-33(4), and 15.1-09-50(3).

<sup>45</sup> N.D.C.C. §§ 15.1-09-47(1), 15.1-09-33(4) and (6), and 15.1-09-50(2) and (3).

<sup>46</sup> See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).

**15.1-09-46. School district census.**  
Repealed by S.L. 2007, ch. 163, § 57.

Attachment 4  
1286 Conference  
4-18-13

**15.1-09-47. Board of education of city of Fargo - Taxing authority.**

1. The board of education of the city of Fargo may levy taxes, as necessary for any of the following purposes:
  - a. To purchase, exchange, lease, or improve sites for schools.
  - b. To build, purchase, lease, enlarge, alter, improve, and repair schools and their appurtenances.
  - c. To procure, exchange, improve, and repair school apparatus, books, furniture, and appendages, but not the furnishing of textbooks to any student whose parent is unable to furnish the same.
  - d. To provide fuel.
  - e. To defray the contingent expenses of the board, including the compensation of employees.
  - f. To pay teacher salaries after the application of public moneys, which may by law be appropriated and provided for that purpose.
2. The question of authorizing or discontinuing the unlimited taxing authority of the board of education of the city of Fargo must be submitted to the qualified electors of the Fargo school district at the next regular election upon resolution of the board of education or upon filing with the board a petition containing the signatures of qualified electors of the district equal in number to twenty percent of the individuals enumerated in the most recent school district census. However, if the electors approve a discontinuation of the unlimited taxing authority, their approval of the discontinuation may not affect the tax levy effective for the calendar year in which the election is held. In addition, the minimum levy may not be less than the levy that was in force at the time of the election. The board may increase its levy in accordance with section 57-15-01. If the district experiences growing enrollment, the board may increase the levy by an amount equal to the amount levied the preceding year per student times the number of additional students enrolled during the new year.

**15.1-09-48. Board of education of city of Fargo - Tax collection.**

The board of education of the city of Fargo has the power to levy taxes within the boundaries of the Fargo public school district and to cause such taxes to be collected in the same manner as other city taxes. The board of education shall cause the rate for each purpose to be certified by the business manager to the city auditor in time to be added to the annual tax list of the city. It is the duty of the city auditor to calculate and extend upon the annual assessment roll and tax list any tax levied by the board of education. The tax must be collected as other city taxes are collected. If the city council fails to levy any tax for city purposes or fails to cause an assessment roll or tax list to be made, the board of education may cause an assessment roll and tax list to be made and submit the roll to the city auditor with a warrant for the collection of the tax. The board of education may cause the tax to be collected in the same manner as other city taxes are collected or as otherwise provided by resolution of the board.

**15.1-09-49. Board of education of city of Fargo - Taxes for buildings.**

The amount to be raised for teacher salaries and contingent expenses must be such only as together with the public money coming to the city from any source is sufficient to establish and maintain efficient and proper schools for students in the city. The tax for purchasing, leasing, or improving sites and the building, purchasing, leasing, enlarging, altering, and repairing of schools may not exceed in any one year fifteen mills on the dollar valuation of the taxable property of the city. The board of education may borrow, and when necessary shall borrow, in anticipation of the amount of the taxes to be raised, levied, and collected.

**15.1-09-50. Board of education of city of Fargo - Powers.**

In addition to the powers granted to all school boards by section 15.1-09-33, the board of education of the city of Fargo has the power and duty:

1. To organize, establish, and maintain schools within the boundaries of the Fargo public school district; to change and discontinue the schools; and to liquidate the assets of the discontinued schools, as authorized by the state board of public school education.
2. To lease houses or rooms for school purposes, lease lots or sites for schools, and fence real property.
3. To build, enlarge, alter, improve, and repair schools and appurtenances upon lots or sites now owned or leased for school purposes.
4. To provide, sell, exchange, improve, and repair school apparatus, books for indigent students, and appendages.
5. To provide fuel and other supplies for the schools.
6. To have the custody and safekeeping of the schools, books, furniture, and appurtenances and to see that local ordinances regarding schools are observed.
7. To compensate teachers out of the money appropriated and provided by law for the support of the public schools within the boundaries of the district so far as the same is sufficient, and to pay any remainder due from the money raised as authorized by this chapter.
8. To have the control and management of the public schools within the boundaries of the district and from time to time to adopt rules for their good order, prosperity, and utility.
9. To prepare and report to the mayor and the city council ordinances and regulations necessary for the protection, safekeeping, and care of the schools, lots, sites, and appurtenances and all the property belonging to the city, connected with and appertaining to the schools, and to suggest proper penalties for the violation of ordinances and regulations.

**15.1-09-51. Board of education of city of Fargo - School property.**

1. The title to all schools, sites, lots, furniture, books, apparatus, and appurtenances, belonging to the city, and used for school purposes, under the control of the board of education are vested in the city of Fargo for the use of the schools. While used for or appropriated to school purposes, the same may not be:
  - a. Levied upon or sold by virtue of any warrant, execution, or other process;
  - b. Subject to any judgment or lien; or
  - c. Subject to taxation for any purpose.
2. The city in its corporate capacity is competent to accept and dispose of any real or personal estate transferred to it by gift, grant, bequest, or devise, for the use of the public schools of the city, whether the property is transferred to the city or to any person for the use of the schools.

**15.1-09-52. Board of education of city of Fargo - Ownership of real property.**

Whenever any real property is purchased by the board, the transfer or grant and conveyance of the property must be taken to the "city of Fargo for the use of the schools" and whenever any sale is made by the board, it must be so resolved and placed upon the records of the board. The conveyance must be executed, in the name of the city of Fargo, by the president of the board and attested to by the business manager. The president and the business manager may execute conveyances upon a sale or exchange, with or without full covenants or warranty, on behalf of the city.

**15.1-09-53. School district employees' group health plans.**

In contracting for a school district employees' group health plan, the board of a school district shall meet the bidding requirements of section 15.1-09-34. No contract for a school district employees' health plan may be of a duration greater than six years.



Attachment 1  
4-18-13 pm

1286 Conference

**Kasper, Jim M.**

**From:** Kasper, Jim M.  
**Sent:** Tuesday, April 16, 2013 11:25 PM  
**To:** Kasper, Jim M.  
**Subject:** FW: Does the addition of 1991 FPS 11.4 building fund expire?  
**Attachments:** 1286 school bond BA vote.pdf

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**From:** Mike Williams [gofargo@msn.com]  
**Sent:** Thursday, April 11, 2013 10:55 AM  
**To:** Kasper, Jim M.  
**Subject:** Does the addition of 1991 FPS 11.4 building fund expire?

Representative Kasper,  
I'm hoping the conference committee will require voter approval for all BA funding for schools before they use general funds for leases of new bricks and mortar.

The NDCC provides 15 mills for all schools for a building fund separate from their general fund for voter approval for building projects. The FPS has 26.4 mills since 1991

An important question is this: Is there any statutory/legal limit on the length of an additional mill levy for the 11.4 mills voters approved for a Middle School not to exceed 12 million in 1991 according to the vote resolution? It would be great if you could visit with Legislative Council and ask them about this? Would an AG opinion help?

It's been 22 years since the last public vote for a new school in Fargo.  
The NDCC provides 15 mills for all schools for a building fund.

Fargo Public schools current mill value \$268,000  
Fargo School general fund mill levy  $191.18 \times \$268k = \$51,236,240$   
FPS Building fund levy  $26.35 \times \$268k = \$7,075,200$

(Last FPS public vote was 1991 for 11.4 mills not to exceed \$12,000,000 on Discovery school vote, 6 other schools built since using combination of Building funds and general funds using a Building Authority without a public vote)

West Fargo schools current mill value  $\$187,000 \times 110 = \$20,570,000$   
West Fargo schools current mill levy 110  
WF PS Building fund levy  $82.2 \times \$187k = \$15,184,400$   
(Approved with recent votes with 60% voter approval)

Thank you for your kind consideration, Mike Williams  
701-426-6172

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From: [gofargo@msn.com](mailto:gofargo@msn.com)  
To: [jkasper@nd.gov](mailto:jkasper@nd.gov)

Subject: FW: HB 1286 item  
Date: Wed, 3 Apr 2013 05:12:43 -0500

Dear Representative Kasper,

Speaking as a long term Fargo citizen, I thank you for your support of long term property tax relief for North Dakotans and your strong support for excellent public education and your good work to date on HB 1286.

I see in the latest rendition of HB 1286 that there is language that schools would only need a public vote on using general funds for buildings through a BA over \$4 million. Hopefully this can be corrected in conference?

The Fargo Schools currently have a Building Fund levy 26.4 mills valued at over \$268,000 per mill = \$7,075,200 million annually allowed for buildings and repairs.

To protect the teachers and classroom materials and for the best chance to leverage the state education dollars to achieve the 2015 goal of 110 mills in the general fund, I don't believe schools should be allowed to use a BA using any general fund dollars for buildings without a vote.

The \$4 million language may have carried over when municipalities were still included to allow some flexibility for public safety?

The goal of State aid for education is property tax relief and it's working. Home owners in Fargo School District were paying 2.2% of the value of their property now thanks to millions in increased state education funding that rate is 1.7% of value. The Fargo School District has a current general fund mill levy of 191.18 down from a high of 295.46 in 2002.

The issue is, how do citizens in the FPS have a say to continue to reduce their schools general fund mill levy to reduce from 191.18 to match that state goal of 110 mills by 2015 if they are able to use \$4,000,000 a year for Building Authority out of their general fund without a vote?

You can see by the charts below that requiring Building Fund voter approval for new schools keeps the general fund levy low and ensures voters determine how much and where schools are built in their districts.

City of Fargo current mill value \$346,000  
Fargo mill levy 58.5 stayed within .5 mills for 7 years. 62 mill cap

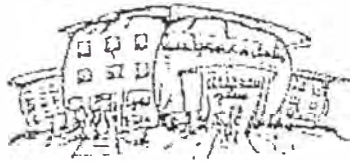
Fargo Public schools current mill value \$268,000  
Fargo School general fund mill levy  $191.18 \times \$268k = \$51,236,240$   
FPS Building fund levy  $26.35 \times \$268k = \$7,075,200$

(Last FPS public vote was 1991 for 11.4 mills not to exceed \$12,000,000 on Discovery school vote, 6 other schools built since using combination of Building funds and general funds using a Building Authority without a public vote)

West Fargo schools current mill value  $\$187,000 \times 110 = \$20,570,000$   
West Fargo schools current mill levy 110  
WF PS Building fund levy  $82.2 \times \$187k = \$15,184,400$   
(Approved with recent votes with 60% voter approval)

Thank you for your kind consideration, Mike Williams  
701-426-6172

Attachment 2  
4-18-13 PM  
1286 Conference



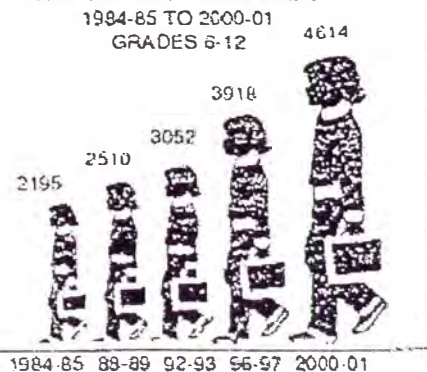
## WHY IS A NEW SCHOOL NEEDED?

Fargo is a growing city. By the year 2000, the city's population is expected to reach 80,000. This represents a thirteen percent increase in a ten-year period.

Fargo public school enrollment has already increased by 1,541 students during the past five years. This equates to an average annual gain of 308 students. Predictions indicate that enrollment will rise by an additional 1,500 students over the next five years.

Students in grades 6-12 in south Fargo will number more than 3,400 by 1994-95. Without a new school, Agassiz Junior High and South High would each need to house about 1,700 students. This is well above their capacities. Such overcrowding creates a poor environment for learning.

SOUTH FARGO ENROLLMENT  
HISTORY AND PROJECTION



## WHAT IS THE NEW SCHOOL PLAN?

The new school, to be opened in the fall of 1994, will reduce enrollments at both Agassiz and South by moving one grade from each building to a new school for 8th and 9th graders. South High will then house grades 10, 11 and 12. Agassiz will serve grades 6 and 7. Land has been purchased in the area of 40th Avenue and 19th Street South for the new school.

## WHAT WILL THE NEW SCHOOL COST?

The new school will cost about \$12,200,000 including equipment. Based on a bond consultant's projection, the School Board will need to levy approximately 11.4 mills over a 20-year period to repay the bonds used to build the school.

## WHAT QUESTION WILL BE ON THE BALLOT?

Your ballot will read, "Shall Fargo Public School District #1 issue up to 11.4 mills for school building funds pursuant to Section 57-15-16 of the North Dakota Century Code?"

☐ Yes ☐ No



## WILL A "YES" VOTE AUTHORIZE CONSTRUCTION OF THE NEW SCHOOL?

It is the first step. If a "Yes" vote is secured, the School Board will continue the process required to construct the new school. The School Board will need to publish its intent to dedicate 11.4 mills of the building construction authority toward construction of the new school. A protest period must elapse prior to the sale of bonds for the project.

A fifteen-member Citizen Information Committee unanimously advised the School Board to secure voter approval for the 11.4 mill authority.

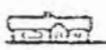
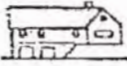

## WHAT IS A BUILDING CONSTRUCTION LEVY?

State law permits school districts to levy up to 20 mills, with voter approval, for a Building Construction Fund. The fund may be used only for construction, school building improvements or for the purchase of future school sites. A "Yes" vote will authorize the School Board to levy only up to 11.4 mills for these purposes.



## HOW WILL CONSTRUCTION OF THE NEW SCHOOL AFFECT PROPERTY TAXES?

The tax increase will depend on the value of your property and the assessed value of the district. The 11.4 mills needed to finance the new school would increase annual taxes as follows:

TYPE OF PROPERTY:			
PROPERTY'S VALUE:	Residential \$50,000	Residential \$100,000	Commercial \$150,000
TAX INCREASE:	\$25.65	\$51.30	\$85.50

## POLLING PLACES 7:00 a.m. - 7:00 p.m.

- |                                |                       |
|--------------------------------|-----------------------|
| 1. Lincoln                     | 2120 9th St. S.       |
| 2. Metropolitan Baptist Church | 2612 25th St. S.      |
| 3. Centennial School           | 4201 25th St. S.      |
| 4. Riverview Place             | 5300 12th St. S.      |
| 5. Lewis and Clark School      | 1729 16th St. S.      |
| 6. North Dakota Job Service    | 1350 32nd St. S.      |
| 7. Clara Barton School         | 1417 8th St. S.       |
| 8. Bethany Homes               | 201 S. University Dr. |
| 9. Fargo High Rise             | 101 2nd St. S.        |
| 10. Madison School             | 1040 29th St. N.      |
| 11. Fargo Public Library       | 102 3rd St. N.        |
| 12. Rosewood on Broadway       | 1351 Broadway         |
| 13. New Horizons Manor         | 2525 Broadway         |
| 14. Longfellow School          | 20 29th Ave. NE       |

Each qualified elector residing within those areas which have been attached by order of the Board of County Commissioners to the school district under the jurisdiction of the Board of Education of the City of Fargo may vote at any of the polling places designated above, which is conveniently accessible to that elector.

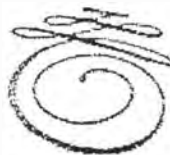
## MESSAGE TO THE VOTERS

Fargo public schools are crowded. It is imperative that construction begin soon to provide adequate space for our growing student population. Quality education has been a major factor in the economic and general strength of our community. Our award-winning school district relies on an excellent faculty and a public committed to education. Our future depends directly on the investment we make today in our young people. No greater responsibility exists than equipping our youth to meet the challenges ahead. Adequate facilities are vital in meeting that responsibility. Education is the key to our children's future and to ours.

## CITIZEN INFORMATION COMMITTEE

Laura Carney, Co-Chairman  
Steve Swiontek, Co-Chairman

Dave Anderson	Russ Freeman	Gary Secor
Julie Barner	Bruce Furness	Debbie Tight
Mike Bullinger	James Garvey	Ene Vogel
Deb Dillon	Tom Hansen	Carl Wall
	Terry Lundie	



Fargo Public Schools  
1104 2nd Avenue South  
Fargo, ND 58103

## VOTER INFORMATION

## SCHOOL CONSTRUCTION AUTHORITY

**DECEMBER 3, 1991**



March 22, 2013

Attachment 1

4-22-13

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1286

That the Senate recede from its amendments as printed on page 1170 of the House Journal and page 951 of the Senate Journal and that Engrossed House Bill No. 1286 be amended as follows:

Page 1, line 1, after "21-03-06.1" insert "and a new subsection to section 21-03-07"

Page 1, line 2, replace "public" with "school district"

Page 1, line 3, after "means" insert "and the vote required for approval of bonded indebtedness for school building acquisition, improvements, or construction; and to amend and reenact section 57-15-16 of the North Dakota Century Code, relating to the vote required for approval of a school district building fund levy"

Page 1, line 7, replace "**Voter**" with "**School district voter**"

Page 1, line 9, remove "municipality or governing body of a"

Page 1, line 10, replace "municipality" with "school board"

Page 1, line 11, replace "municipality" with "school district"

Page 1, line 13, after "structure" insert "at a total cost of four million dollars or more"

Page 1, line 14, replace "municipality" with "school district"

Page 1, line 15, replace "at least sixty percent" with "a majority"

Page 1, line 15, replace "municipality" with "school district"

Page 1, line 15, after "question" insert "at a regular or special school district election"

Page 1, line 17, replace "municipality" with "school district"

Page 1, line 18, after "acquisition" insert ", improvements,"

Page 1, line 18, replace "municipality" with "school district"

Page 1, line 18, remove "The"

Page 1, replace lines 19 through 21 with "The qualified elector approval requirements of this subsection do not apply to an agreement under which all payments by the school district for use of the property or structure would be drawn from the school district building fund, which has been approved by the qualified electors of the school district."

Page 2, after line 6, insert:

**"SECTION 2.** A new subsection to section 21-03-07 of the North Dakota Century Code is created and enacted as follows:

The school board of a public school district may issue bonds of the school district to purchase, erect, enlarge, improve, and equip a school building if the issuance of the bonds for that purpose has been approved by a majority vote of the qualified electors of the school district voting on the question at a regular or special school district election.

**SECTION 3. AMENDMENT.** Section 57-15-16 of the North Dakota Century Code is amended and reenacted as follows:

**57-15-16. Tax levy for building fund in school districts.**

1. The governing body of any school district shall levy taxes annually for a school building fund, not in excess of twenty mills, which levy is in addition to and not restricted by the levy limitations prescribed by law, when authorized to do so by ~~sixty-percentage~~ majority of the qualified electors voting upon the question at a regular or special election ~~in any of the~~ school district. The governing body of the school district may create the building fund by appropriating and setting up in its budget for an amount not in excess of twenty percent of the current annual appropriation for all other purposes combined, exclusive of appropriations to pay interest and principal of the bonded debt, and not in excess of the limitations prescribed by law. If a portion or all of the proceeds of the levy have been allocated by contract to the payment of rentals upon contracts with the state board of public school education as administrator of the state school construction fund, the levy must be made annually by the governing body of the school district until the full amount of all such obligations is fully paid. Any portion of a levy for a school building fund which has not been allocated by contract with the state board of public school education must be allocated by the governing body pursuant to section 57-15-17. Upon the completion of all payments to the state school construction fund, or upon payment and cancellation or defeasance of the bonds, the levy may be discontinued at the discretion of the governing body of the school district, or upon petition of twenty percent of the qualified electors who voted in the last school election, the question of discontinuance of the levy must be submitted to the qualified electors of the school district at any regular or special election and, upon a favorable vote of ~~sixty-percentage~~ majority of the qualified electors voting, the levy must be discontinued. Any school district, executing a contract or lease with the state board of public school education or issuing general obligation bonds, which contract or lease or bond issue requires the maintenance of the levy provided in this section, shall immediately file a certified copy of the contract, lease, or bond issue with the county auditor or auditors of the county or counties in which the school district is located. The county auditor or auditors shall register the contract, lease, or bond issue in the bond register in substantially the manner provided in section 21-03-23. Upon the filing of the contract, lease, or bond issue with the county auditor or auditors, the school district may not discontinue the levy and the levy must automatically be included in the tax levy of the school district from year to year by the county auditor or auditors until a sufficient sum of money has been collected to pay to the state treasurer for the retirement of all obligations of the school district with the state board of public school education or to pay to the custodian of the bond sinking fund all amounts due or to become due on the bonds.
2. The school board of any school district, in levying taxes for a school building fund as provided for in subsection 1, shall specify on the ballot the number of mills to be levied and may in its discretion submit a specific plan for which such fund shall be used. The plan shall designate the general area intended to be served by use of such fund. The area intended to be served shall be described in the plan but need not be described in the building fund ballot. After approval of the levy and the plan no change shall



be made in the purpose of expenditure of the building fund except that upon a favorable vote of sixty percent of the qualified electors residing in any specific area intended to be served, material changes may be made in such plan as it affects such area to the extent such changes do not conflict with contractual obligations incurred. The provisions of this section and of subsection 1 of section 57-15-17 in regard to the purpose for which the building fund may be expended shall not apply to expenditures for major repairs."

Renumber accordingly

Sixty-third  
Legislative Assembly  
of North Dakota

ENGROSSED HOUSE BILL NO. 1286

4-22-13

Introduced by

Representatives Kasper, Beadle, Brabandt, Dosch, Headland, Ruby, Streyle, Thoreson

Senators Burckhard, Campbell, Klein, Wardner

1 A BILL for an Act to create and enact section 21-03-06.1 ~~and a new subsection to section~~  
2 ~~21-03-07~~ of the North Dakota Century Code, relating to voter approval of ~~public school district~~  
3 building projects funded through a building authority or other indirect means ~~and the vote~~  
4 ~~required for approval of bonded indebtedness for school building acquisition, improvements, or~~  
5 ~~construction; and to amend and reenact section 57-15-16 of the North Dakota Century Code,~~  
6 ~~relating to the vote required for approval of a school district building fund levy.~~

7 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

8 SECTION 1. Section 21-03-06.1 of the North Dakota Century Code is created and enacted  
9 as follows:

10 **21-03-06.1. ~~Voter~~School district voter approval of building authority or other indirect**  
11 **funding methods - Building construction project approval.**

12 1. Notwithstanding any other provision of law, a municipality or governing body of a  
13 municipality school board may not enter an agreement pursuant to internal revenue  
14 service revenue ruling 63-20 under which payments of any kind would be required by  
15 the municipality school district to any building authority or other entity that incurs  
16 indebtedness or other obligation in connection with acquisition, improvements, or  
17 construction of any property or structure at a total cost of four million dollars or more to  
18 be used by the municipality school district unless the agreement has been approved by  
19 a vote of at least sixty percents majority of the qualified electors of the  
20 municipality school district voting on the question at a regular or special school district  
21 election if the agreement is for acquisition, improvements, or construction of any  
22 property or structure for which an election would be required if the municipality school  
23 district undertook the acquisition, improvements, or construction project through  
24 issuance of bonds of the municipality school district. The governing body of a city or

~~county may not supersede this subsection under home rule authority. This subsection does not apply to buildings to be used primarily for fire protection, police, or emergency medical services. The qualified elector approval requirements of this subsection do not apply to an agreement under which all payments by the school district for use of the property or structure would be drawn from the school district building fund, which has been approved by the qualified electors of the school district.~~

2. ~~The school board of a school district may not enter an agreement pursuant to internal revenue service revenue ruling 63-20 under which payments of any kind would be required by the school district to any building authority or other entity that incurs indebtedness or other obligation regarding construction, purchase, repair, improvement, modernization, or renovation of any building or facility to be used by the school district without approval by the superintendent of public instruction in the manner provided in section 15.1-36-01, if the approval by the superintendent of public instruction would be required for the project under section 15.1-36-01 if the school district undertook the project itself.~~

**SECTION 2.** A new subsection to section 21-03-07 of the North Dakota Century Code is created and enacted as follows:

~~The school board of a public school district may issue bonds of the school district to purchase, erect, enlarge, improve, and equip a school building if the issuance of the bonds for that purpose has been approved by a majority vote of the qualified electors of the school district voting on the question at a regular or special school district election.~~

**SECTION 3. AMENDMENT.** Section 57-15-16 of the North Dakota Century Code is amended and reenacted as follows:

**57-15-16. Tax levy for building fund in school districts.**

1. The governing body of any school district shall levy taxes annually for a school building fund, not in excess of twenty mills, which levy is in addition to and not restricted by the levy limitations prescribed by law, when authorized to do so by ~~sixty percent~~ a majority of the qualified electors voting upon the question at a regular or special election ~~in any of the~~ school district. The governing body of the school district may create the building fund by appropriating and setting up in its budget for an



1 amount not in excess of twenty percent of the current annual appropriation for all other  
2 purposes combined, exclusive of appropriations to pay interest and principal of the  
3 bonded debt, and not in excess of the limitations prescribed by law. If a portion or all of  
4 the proceeds of the levy have been allocated by contract to the payment of rentals  
5 upon contracts with the state board of public school education as administrator of the  
6 state school construction fund, the levy must be made annually by the governing body  
7 of the school district until the full amount of all such obligations is fully paid. Any  
8 portion of a levy for a school building fund which has not been allocated by contract  
9 with the state board of public school education must be allocated by the governing  
10 body pursuant to section 57-15-17. Upon the completion of all payments to the state  
11 school construction fund, or upon payment and cancellation or defeasance of the  
12 bonds, the levy may be discontinued at the discretion of the governing body of the  
13 school district, or upon petition of twenty percent of the qualified electors who voted in  
14 the last school election, the question of discontinuance of the levy must be submitted  
15 to the qualified electors of the school district at any regular or special election and,  
16 upon a favorable vote of ~~sixty percent~~ majority of the qualified electors voting, the  
17 levy must be discontinued. Any school district, executing a contract or lease with the  
18 state board of public school education or issuing general obligation bonds, which  
19 contract or lease or bond issue requires the maintenance of the levy provided in this  
20 section, shall immediately file a certified copy of the contract, lease, or bond issue with  
21 the county auditor or auditors of the county or counties in which the school district is  
22 located. The county auditor or auditors shall register the contract, lease, or bond issue  
23 in the bond register in substantially the manner provided in section 21-03-23. Upon the  
24 filing of the contract, lease, or bond issue with the county auditor or auditors, the  
25 school district may not discontinue the levy and the levy must automatically be  
26 included in the tax levy of the school district from year to year by the county auditor or  
27 auditors until a sufficient sum of money has been collected to pay to the state  
28 treasurer for the retirement of all obligations of the school district with the state board  
29 of public school education or to pay to the custodian of the bond sinking fund all  
30 amounts due or to become due on the bonds.

1        2. The school board of any school district, in levying taxes for a school building fund as  
2        provided for in subsection 1, shall specify on the ballot the number of mills to be levied  
3        and may in its discretion submit a specific plan for which such fund shall be used. The  
4        plan shall designate the general area intended to be served by use of such fund. The  
5        area intended to be served shall be described in the plan but need not be described in  
6        the building fund ballot. After approval of the levy and the plan no change shall be  
7        made in the purpose of expenditure of the building fund except that upon a favorable  
8        vote of sixty percent of the qualified electors residing in any specific area intended to  
9        be served, material changes may be made in such plan as it affects such area to the  
10       extent such changes do not conflict with contractual obligations incurred. The  
11       provisions of this section and of subsection 1 of section 57-15-17 in regard to the  
12       purpose for which the building fund may be expended shall not apply to expenditures  
13       for major repairs.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1286

That the Senate recede from its amendments as printed on page 1170 of the House Journal and page 951 of the Senate Journal and that Engrossed House Bill No. 1286 be amended as follows:

Page 1, line 1, after "21-03-06.1" insert ", a new section to chapter 48-05, and section 57-15-01.2"

Page 1, line 3, after "means" insert ", the governing body of a building authority, and levy limitations of political subdivisions; to amend and reenact section 21-03-07 of the North Dakota Century Code, relating to voter approval of bond issues; and to repeal section 57-15-59 of the North Dakota Century Code, relating to county or city authority to enter lease agreements for court, corrections, and law enforcement facilities"

Page 1, line 7, replace "indirect" with "building project"

Page 1, line 13, after "structure" insert "at a total cost of two million dollars or more"

Page 1, line 15, replace "sixty" with "fifty-five"

Page 1, line 18, after the underscored period insert "A municipality or governing body of a municipality, regardless of the funding source, may not enter an agreement after June 30, 2013, in connection with acquisition, improvements, or construction of any property or structure at a total cost of two million dollars or more to be used by the municipality unless the agreement has been approved by a vote of at least fifty-five percent of the qualified electors of the municipality voting on the question, except for a public-private partnership agreement or agreement to implement a project under a bond issue approved by the electors under section 21-03-07."

Page 2, after line 6, insert:

**"SECTION 2. AMENDMENT.** Section 21-03-07 of the North Dakota Century Code is amended and reenacted as follows:

**21-03-07. Election required - Exceptions.**

No municipality, and no governing board thereof, may issue bonds without being first authorized to do so by a vote equal to fifty-five percent or more of all the qualified voters of such municipality voting upon the question of such issue except:

1. As otherwise provided in section 21-03-04.
2. The governing body may issue bonds of the municipality for the purpose and within the limitations specified by subdivision e of subsection 1 of section 21-03-06, subdivision g of subsection 2 of section 21-03-06, and subsections 4.1 and 7 of section 21-03-06 without an election.
3. The governing body of any municipality may issue bonds of the municipality for the purpose of providing funds to meet its share of the cost of any federal aid highway project undertaken under an agreement entered into by the governing body with the United States government, the director



of the department of transportation, the board of county commissioners, or any of them, including the cost of any construction, improvement, financing, planning, and acquisition of right of way of a bridge eligible for federal matching funds, federal aid highway routed through the municipality and of any bridges and controlled access facilities thereon and any necessary additional width or capacity of the bridge or roadway thereof greater than that required for federal or state bridge or highway purposes, and of any necessary relaying of utility mains and conduits, curbs and gutters, and the installation of utility service connections and streetlights. The portion of the total cost of the project to be paid by the municipality under the agreement, including all items of cost incurred directly by the municipality and all amounts to be paid by it for work done or contracted for by other parties to the agreement, may not exceed a sum equal to thirty percent of the total cost, including engineering and other incidental costs, of all construction and reconstruction work to be done plus fifty percent of the total cost of all right of way to be acquired in connection therewith. The initial resolution authorizing issuance of bonds under this subsection must be published in the official newspaper of the municipality. Within sixty days after publication, an owner of taxable property within the municipality may file with the auditor or chief fiscal officer of the municipality a written protest against adoption of the resolution. A protest must describe the property that is the subject of the protest. If the governing body finds protests have been signed by the owners of taxable property having an assessed valuation equal to five percent or more of the assessed valuation of all taxable property in the municipality, as most recently finally equalized, all further proceedings under the initial resolution are barred. Nothing herein may be deemed to prevent any municipality from appropriating funds for or financing out of taxes, special assessments, or utility revenues any work incidental to any such project, in the manner and to the extent otherwise permitted by law, and the cost of any work so financed may not be included in computing the portion of the project cost payable by the municipality, within the meaning of this subsection, unless the work is actually called for by the agreement between the municipality and the other governmental agencies involved.

4. The governing body of any city may also by resolution adopted by a two-thirds vote authorize and issue general obligation bonds of the city for the purpose of providing funds to pay the cost of any improvement of the types stated below, to the extent that the governing body determines that such cost should be paid by the city and should not be assessed upon property specially benefited thereby; provided that the initial resolution authorizing such bonds must be published in the official newspaper, and any owner of taxable property within the city may, within sixty days after such publication, file with the city auditor a protest against the adoption of the resolution. If the governing body finds such protests to have been signed by the owners of taxable property having an assessed valuation equal to five percent or more of the assessed valuation of all taxable property within the city, as theretofore last finally equalized, all further proceedings under such initial resolution are barred. This procedure is authorized for the financing of the following types of improvements:
  - a. Any street improvement, as defined in subsection 2 of section 40-22-01, to be made in or upon any federal or state highway or any other street designated by ordinance as an arterial street.

- b. The construction of a bridge, culvert, overpass, or underpass at the intersection of any street with a stream, watercourse, drain, or railway, and the acquisition of any land or easement required for that purpose.
- c. Any improvement incidental to the carrying out of an urban renewal project, the issuance of bonds for which is authorized by subsection 4 of section 40-58-13.

Nothing herein may be deemed to prevent any municipality from appropriating funds for or financing out of taxes, special assessments, or utility revenues any work incidental to any such improvement, in the manner and to the extent otherwise permitted by law.

- 5. The governing body of any city may also by resolution adopted by a two-thirds vote dedicate the mill levies as authorized by sections 57-15-42 and 57-15-44 and may authorize and issue general obligation bonds to be paid by these dedicated levies for the purpose of providing funds for the purchase, construction, reconstruction, or repair of public buildings or fire stations; provided, that the initial resolution authorizing the mill levy dedication and general obligation bonds must be published in the official newspaper, and any owner of taxable property within the city may, within sixty days after publication, file with the city auditor a protest against the adoption of the resolution. Protests must be in writing and must describe the property which is the subject of the protest. If the governing body finds such protests to have been signed by the owners of taxable property having an assessed valuation equal to five percent or more of the assessed valuation of all taxable property within the city, as theretofore last finally equalized, all further proceedings under the initial resolution are barred.
- 6. The governing body of any county may also by resolution adopted by a two-thirds vote dedicate the tax levies as authorized by sections 57-15-06.6 and 57-15-06.9 and may authorize and issue general obligation bonds to be paid by these dedicated levies for the purpose of providing funds for the purchase, construction, reconstruction, or repair of regional or county correction centers, or parks and recreational facilities; provided, that the initial resolution authorizing the tax levy dedication and general obligation bonds must be published in the official newspaper, and any owner of taxable property within the county may, within sixty days after publication, file with the county auditor a protest against the adoption of the resolution. Protests must be in writing and must describe the property which is the subject of the protest. If the governing body finds such protests to have been signed by the owners of taxable property having an assessed valuation equal to five percent or more of the assessed valuation of all taxable property within the county, as theretofore last finally equalized, all further proceedings under the initial resolution are barred.
- 7. The governing body of any public school district may also by resolution adopted by a two-thirds vote dedicate the tax levies as authorized by section 15.1-09-47, 15.1-09-49, or 57-15-16 and may authorize and issue general obligation bonds to be paid by these dedicated levies for the purpose of providing funds for the purchase, construction, reconstruction, or repair of public school buildings or for the construction or improvement of a project under section 15.1-36-02 or 15.1-36-03. The initial resolution

authorizing the tax levy dedication and general obligation bonds must be published in the official newspaper of the school district, and any owner of taxable property within the school district may, within sixty days after publication, file with the business manager of the school district a protest against the adoption of the resolution. Protests must be in writing and must describe the property that is the subject of the protest. If the governing body finds the protests to have been signed by the owners of taxable property having an assessed valuation equal to five percent or more of the assessed valuation of all taxable property within the school district, as theretofore last finally equalized, all further proceedings under the initial resolution are barred.

8. The governing body of any city having a population of twenty-five thousand persons or more may use the provisions of subsection 3 to provide funds to participate in the cost of any construction, improvement, financing, and planning of any bypass routes, interchanges, or other intersection improvements on a federal or state highway system which is situated in whole or in part outside of the corporate limits of the city; provided, that the governing body thereof shall determine by resolution that the undertaking of such work is in the best interest of the city for the purpose of providing access and relieving congestion or improving traffic flow on municipal streets.
9. The governing body of a municipality or other political subdivision, located at least in part within a county that is included within a disaster or emergency executive order or proclamation of the governor under chapter 37-17.1, may by resolution adopted by a two-thirds vote authorize and issue general obligation bonds of the political subdivision without an election for the purpose of providing funds to pay costs associated with the emergency condition. The political subdivision may dedicate and levy taxes for retirement of bonds under this subsection and such levies are not subject to limitations as otherwise provided by law.
10. The governing board of any county, city, public school district, park district, or township may by resolution adopted by a two-thirds vote dedicate the tax levy authorized by section 57-15-41 and authorize and issue general obligation bonds to be paid by the dedicated levy for the purpose of providing funds to prepay outstanding special assessments made in accordance with the provisions of title 40 against property owned by the county, city, public school district, park district, or township.

**SECTION 3.** A new section to chapter 48-05 of the North Dakota Century Code is created and enacted as follows:

**Building authority governing body - Contract conflict of interest.**

The governing body of a building authority established after June 30, 2013, may not include any officer, employee, or member of the governing body a political subdivision that contracts with the building authority.

The governing body of a building authority may not enter a contract after June 30, 2013, relating to a public improvement with an entity of which a member of the governing body of the building authority is an owner, officer, or employee.



**SECTION 4.** Section 57-15-01.2 of the North Dakota Century Code is created and enacted as follows:

**57-15-01.2. Limitation on levies by taxing districts.**

1. Notwithstanding that a taxing district may have unused or excess levy authority under any other provision of law, this section limits that authority. This section may not be interpreted as authority to increase any levy limitation otherwise provided by law and may be applied only to limit any unused or excess levy authority that a taxing district may otherwise be entitled to use. Property taxes levied in dollars by a taxing district may not exceed the amount the taxing district levied in dollars in the preceding taxable year by more than three percent, except:
  - a. When a taxable improvement to property has been made or property has been added to the taxing district which was not taxable in the previous taxable year, the amount levied in dollars in the previous taxable year by the taxing district must be adjusted to reflect the taxes that would have been imposed against the additional taxable valuation attributable to the improvements or additional property.
  - b. When a property tax exemption existed in the previous taxable year which has been reduced or no longer exists, the amount levied in dollars in the previous taxable year by the taxing district must be adjusted to reflect the taxes that would have been imposed against the portion of the taxable valuation of the property which is no longer exempt.
  - c. When temporary mill levy increases authorized by the electors of the taxing district or mill levies authorized by state law existed in the previous taxable year but are no longer applicable or have been reduced, the amount levied in dollars in the previous taxable year by the taxing district must be adjusted to reflect the expired temporary mill levy increases and the reduced or eliminated mill levies authorized by state law before the percentage increase allowable under this subsection is applied.
2. The limitation on the total amount levied by a taxing district under subsection 1 does not apply to:
  - a. New or increased mill levies authorized by state law or the electors of the taxing district which did not exist in the previous taxable year.
  - b. Any irrepealable tax to pay bonded indebtedness levied under section 16 of article X of the Constitution of North Dakota.
3. The mill rate applied to property or improvements to property that was not taxed in the previous taxable year may not exceed the mill rate determined by law for the current taxable year for property that was taxed in the previous taxable year.
4. Application of the percentage increase limitation under this section may be suspended upon approval of the dollar amount and percentage of the tax levy increase by fifty-five percent or more of the qualified electors of the taxing district voting on the question at a regular or special election of the taxing district. This section may not be superseded under city or county

home rule authority. Suspension of the percentage increase limitation under this subsection may be approved by electors for not more than one taxable year at a time.

**SECTION 5. REPEAL.** Section 57-15-59 of the North Dakota Century Code is repealed."

Renumber accordingly

13.0367.02014

## FIRST ENGROSSMENT

Sixty-third  
Legislative Assembly  
of North Dakota

## ENGROSSED HOUSE BILL NO. 1286

Introduced by

Representatives Kasper, Beadle, Brabandt, Dosch, Headland, Ruby, Streyle, Thoreson

Senators Burckhard, Campbell, Klein, Wardner

1 A BILL for an Act to create and enact section 21-03-06.1, a new section to chapter 48-05, and  
2 section 57-15-01.2 of the North Dakota Century Code, relating to voter approval of public  
3 building projects funded through a building authority or other indirect means, the governing  
4 body of a building authority, and levy limitations of political subdivisions; to amend and reenact  
5 section 21-03-07 of the North Dakota Century Code, relating to voter approval of bond issues;  
6 and to repeal section 57-15-59 of the North Dakota Century Code, relating to county or city  
7 authority to enter lease agreements for court, corrections, and law enforcement facilities.

8 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

9 SECTION 1. Section 21-03-06.1 of the North Dakota Century Code is created and enacted  
10 as follows:

11 21-03-06.1. Voter approval of building authority or other indirect building project  
12 funding methods - Building construction project approval.

13 1. Notwithstanding any other provision of law, a municipality or governing body of a  
14 municipality may not enter an agreement pursuant to internal revenue service revenue  
15 ruling 63-20 under which payments of any kind would be required by the municipality  
16 to any building authority or other entity that incurs indebtedness or other obligation in  
17 connection with acquisition, improvements, or construction of any property or structure  
18 at a total cost of two million dollars or more to be used by the municipality unless the  
19 agreement has been approved by a vote of at least sixty-five percent of the  
20 qualified electors of the municipality voting on the question if the agreement is for  
21 acquisition, improvements, or construction of any property or structure for which an  
22 election would be required if the municipality undertook the acquisition or construction  
23 project through issuance of bonds of the municipality. A municipality or governing body  
24 of a municipality, regardless of the funding source, may not enter an agreement after



1 June 30, 2013, in connection with acquisition, improvements, or construction of any  
2 property or structure at a total cost of two million dollars or more to be used by the  
3 municipality unless the agreement has been approved by a vote of at least fifty-five  
4 percent of the qualified electors of the municipality voting on the question, except for a  
5 public-private partnership agreement or agreement to implement a project under a  
6 bond issue approved by the electors under section 21-03-07. The governing body of a  
7 city or county may not supersede this subsection under home rule authority. This  
8 subsection does not apply to buildings to be used primarily for fire protection, police, or  
9 emergency medical services.

- 10 2. The school board of a school district may not enter an agreement pursuant to internal  
11 revenue service revenue ruling 63-20 under which payments of any kind would be  
12 required by the school district to any building authority or other entity that incurs  
13 indebtedness or other obligation regarding construction, purchase, repair,  
14 improvement, modernization, or renovation of any building or facility to be used by the  
15 school district without approval by the superintendent of public instruction in the  
16 manner provided in section 15.1-36-01, if the approval by the superintendent of public  
17 instruction would be required for the project under section 15.1-36-01 if the school  
18 district undertook the project itself.

19 **SECTION 2. AMENDMENT.** Section 21-03-07 of the North Dakota Century Code is  
20 amended and reenacted as follows:

21 **21-03-07. Election required - Exceptions.**

22 No municipality, and no governing board thereof, may issue bonds without being first  
23 authorized to do so by a vote equal to sixtyfifty-five percent or more of all the qualified voters of  
24 such municipality voting upon the question of such issue except:

- 25 1. As otherwise provided in section 21-03-04.  
26 2. The governing body may issue bonds of the municipality for the purpose and within  
27 the limitations specified by subdivision e of subsection 1 of section 21-03-06,  
28 subdivision g of subsection 2 of section 21-03-06, and subsections 4.1 and 7 of  
29 section 21-03-06 without an election.  
30 3. The governing body of any municipality may issue bonds of the municipality for the  
31 purpose of providing funds to meet its share of the cost of any federal aid highway

1 project undertaken under an agreement entered into by the governing body with the  
2 United States government, the director of the department of transportation, the board  
3 of county commissioners, or any of them, including the cost of any construction,  
4 improvement, financing, planning, and acquisition of right of way of a bridge eligible for  
5 federal matching funds, federal aid highway routed through the municipality and of any  
6 bridges and controlled access facilities thereon and any necessary additional width or  
7 capacity of the bridge or roadway thereof greater than that required for federal or state  
8 bridge or highway purposes, and of any necessary relaying of utility mains and  
9 conduits, curbs and gutters, and the installation of utility service connections and  
10 streetlights. The portion of the total cost of the project to be paid by the municipality  
11 under the agreement, including all items of cost incurred directly by the municipality  
12 and all amounts to be paid by it for work done or contracted for by other parties to the  
13 agreement, may not exceed a sum equal to thirty percent of the total cost, including  
14 engineering and other incidental costs, of all construction and reconstruction work to  
15 be done plus fifty percent of the total cost of all right of way to be acquired in  
16 connection therewith. The initial resolution authorizing issuance of bonds under this  
17 subsection must be published in the official newspaper of the municipality. Within sixty  
18 days after publication, an owner of taxable property within the municipality may file  
19 with the auditor or chief fiscal officer of the municipality a written protest against  
20 adoption of the resolution. A protest must describe the property that is the subject of  
21 the protest. If the governing body finds protests have been signed by the owners of  
22 taxable property having an assessed valuation equal to five percent or more of the  
23 assessed valuation of all taxable property in the municipality, as most recently finally  
24 equalized, all further proceedings under the initial resolution are barred. Nothing  
25 herein may be deemed to prevent any municipality from appropriating funds for or  
26 financing out of taxes, special assessments, or utility revenues any work incidental to  
27 any such project, in the manner and to the extent otherwise permitted by law, and the  
28 cost of any work so financed may not be included in computing the portion of the  
29 project cost payable by the municipality, within the meaning of this subsection, unless  
30 the work is actually called for by the agreement between the municipality and the other  
31 governmental agencies involved.

- 1       4. The governing body of any city may also by resolution adopted by a two-thirds vote  
2 authorize and issue general obligation bonds of the city for the purpose of providing  
3 funds to pay the cost of any improvement of the types stated below, to the extent that  
4 the governing body determines that such cost should be paid by the city and should  
5 not be assessed upon property specially benefited thereby; provided that the initial  
6 resolution authorizing such bonds must be published in the official newspaper, and  
7 any owner of taxable property within the city may, within sixty days after such  
8 publication, file with the city auditor a protest against the adoption of the resolution. If  
9 the governing body finds such protests to have been signed by the owners of taxable  
10 property having an assessed valuation equal to five percent or more of the assessed  
11 valuation of all taxable property within the city, as theretofore last finally equalized, all  
12 further proceedings under such initial resolution are barred. This procedure is  
13 authorized for the financing of the following types of improvements:
- 14       a. Any street improvement, as defined in subsection 2 of section 40-22-01, to be  
15       made in or upon any federal or state highway or any other street designated by  
16       ordinance as an arterial street;
  - 17       b. The construction of a bridge, culvert, overpass, or underpass at the intersection  
18       of any street with a stream, watercourse, drain, or railway, and the acquisition of  
19       any land or easement required for that purpose.
  - 20       c. Any improvement incidental to the carrying out of an urban renewal project, the  
21       issuance of bonds for which is authorized by subsection 4 of section 40-58-13.
- 22       Nothing herein may be deemed to prevent any municipality from appropriating funds  
23       for or financing out of taxes, special assessments, or utility revenues any work  
24       incidental to any such improvement, in the manner and to the extent otherwise  
25       permitted by law.
- 26       5. The governing body of any city may also by resolution adopted by a two-thirds vote  
27       dedicate the mill levies as authorized by sections 57-15-42 and 57-15-44 and may  
28       authorize and issue general obligation bonds to be paid by these dedicated levies for  
29       the purpose of providing funds for the purchase, construction, reconstruction, or repair  
30       of public buildings or fire stations; provided, that the initial resolution authorizing the  
31       mill levy dedication and general obligation bonds must be published in the official



1 newspaper, and any owner of taxable property within the city may, within sixty days  
2 after publication, file with the city auditor a protest against the adoption of the  
3 resolution. Protests must be in writing and must describe the property which is the  
4 subject of the protest. If the governing body finds such protests to have been signed  
5 by the owners of taxable property having an assessed valuation equal to five percent  
6 or more of the assessed valuation of all taxable property within the city, as theretofore  
7 last finally equalized, all further proceedings under the initial resolution are barred.

8 6. The governing body of any county may also by resolution adopted by a two-thirds vote  
9 dedicate the tax levies as authorized by sections 57-15-06.6 and 57-15-06.9 and may  
10 authorize and issue general obligation bonds to be paid by these dedicated levies for  
11 the purpose of providing funds for the purchase, construction, reconstruction, or repair  
12 of regional or county correction centers, or parks and recreational facilities; provided,  
13 that the initial resolution authorizing the tax levy dedication and general obligation  
14 bonds must be published in the official newspaper, and any owner of taxable property  
15 within the county may, within sixty days after publication, file with the county auditor a  
16 protest against the adoption of the resolution. Protests must be in writing and must  
17 describe the property which is the subject of the protest. If the governing body finds  
18 such protests to have been signed by the owners of taxable property having an  
19 assessed valuation equal to five percent or more of the assessed valuation of all  
20 taxable property within the county, as theretofore last finally equalized, all further  
21 proceedings under the initial resolution are barred.

22 7. The governing body of any public school district may also by resolution adopted by a  
23 two-thirds vote dedicate the tax levies as authorized by section 15.1-09-47,  
24 15.1-09-49, or 57-15-16 and may authorize and issue general obligation bonds to be  
25 paid by these dedicated levies for the purpose of providing funds for the purchase,  
26 construction, reconstruction, or repair of public school buildings or for the construction  
27 or improvement of a project under section 15.1-36-02 or 15.1-36-03. The initial  
28 resolution authorizing the tax levy dedication and general obligation bonds must be  
29 published in the official newspaper of the school district, and any owner of taxable  
30 property within the school district may, within sixty days after publication, file with the  
31 business manager of the school district a protest against the adoption of the

1 resolution. Protests must be in writing and must describe the property that is the  
2 subject of the protest. If the governing body finds the protests to have been signed by  
3 the owners of taxable property having an assessed valuation equal to five percent or  
4 more of the assessed valuation of all taxable property within the school district, as  
5 theretofore last finally equalized, all further proceedings under the initial resolution are  
6 barred.

7 8. The governing body of any city having a population of twenty-five thousand persons or  
8 more may use the provisions of subsection 3 to provide funds to participate in the cost  
9 of any construction, improvement, financing, and planning of any bypass routes,  
10 interchanges, or other intersection improvements on a federal or state highway system  
11 which is situated in whole or in part outside of the corporate limits of the city; provided,  
12 that the governing body thereof shall determine by resolution that the undertaking of  
13 such work is in the best interest of the city for the purpose of providing access and  
14 relieving congestion or improving traffic flow on municipal streets.

15 9. The governing body of a municipality or other political subdivision, located at least in  
16 part within a county that is included within a disaster or emergency executive order or  
17 proclamation of the governor under chapter 37-17.1, may by resolution adopted by a  
18 two-thirds vote authorize and issue general obligation bonds of the political subdivision  
19 without an election for the purpose of providing funds to pay costs associated with the  
20 emergency condition. The political subdivision may dedicate and levy taxes for  
21 retirement of bonds under this subsection and such levies are not subject to limitations  
22 as otherwise provided by law.

23 10. The governing board of any county, city, public school district, park district, or township  
24 may by resolution adopted by a two-thirds vote dedicate the tax levy authorized by  
25 section 57-15-41 and authorize and issue general obligation bonds to be paid by the  
26 dedicated levy for the purpose of providing funds to prepay outstanding special  
27 assessments made in accordance with the provisions of title 40 against property  
28 owned by the county, city, public school district, park district, or township.

29 **SECTION 3.** A new section to chapter 48-05 of the North Dakota Century Code is created  
30 and enacted as follows:

1 **Building authority governing body - Contract conflict of interest.**

2 The governing body of a building authority established after June 30, 2013, may not include  
3 any officer, employee, or member of the governing body of a political subdivision that contracts  
4 with the building authority.

5 The governing body of a building authority may not enter a contract after June 30, 2013,  
6 relating to a public improvement with an entity of which a member of the governing body of the  
7 building authority is an owner, officer, or employee.

8 **SECTION 4.** Section 57-15-01.2 of the North Dakota Century Code is created and enacted  
9 as follows:

10 **57-15-01.2. Limitation on levies by taxing districts.**

11 1. Notwithstanding that a taxing district may have unused or excess levy authority under  
12 any other provision of law, this section limits that authority. This section may not be  
13 interpreted as authority to increase any levy limitation otherwise provided by law and  
14 may be applied only to limit any unused or excess levy authority that a taxing district  
15 may otherwise be entitled to use. Property taxes levied in dollars by a taxing district  
16 may not exceed the amount the taxing district levied in dollars in the preceding taxable  
17 year by more than three percent, except:

18 a. When a taxable improvement to property has been made or property has been  
19 added to the taxing district which was not taxable in the previous taxable year,  
20 the amount levied in dollars in the previous taxable year by the taxing district  
21 must be adjusted to reflect the taxes that would have been imposed against the  
22 additional taxable valuation attributable to the improvements or additional  
23 property.

24 b. When a property tax exemption existed in the previous taxable year which has  
25 been reduced or no longer exists, the amount levied in dollars in the previous  
26 taxable year by the taxing district must be adjusted to reflect the taxes that would  
27 have been imposed against the portion of the taxable valuation of the property  
28 which is no longer exempt.

29 c. When temporary mill levy increases authorized by the electors of the taxing  
30 district or mill levies authorized by state law existed in the previous taxable year  
31 but are no longer applicable or have been reduced, the amount levied in dollars



1       in the previous taxable year by the taxing district must be adjusted to reflect the  
2       expired temporary mill levy increases and the reduced or eliminated mill levies  
3       authorized by state law before the percentage increase allowable under this  
4       subsection is applied.

5       2. The limitation on the total amount levied by a taxing district under subsection 1 does  
6       not apply to:

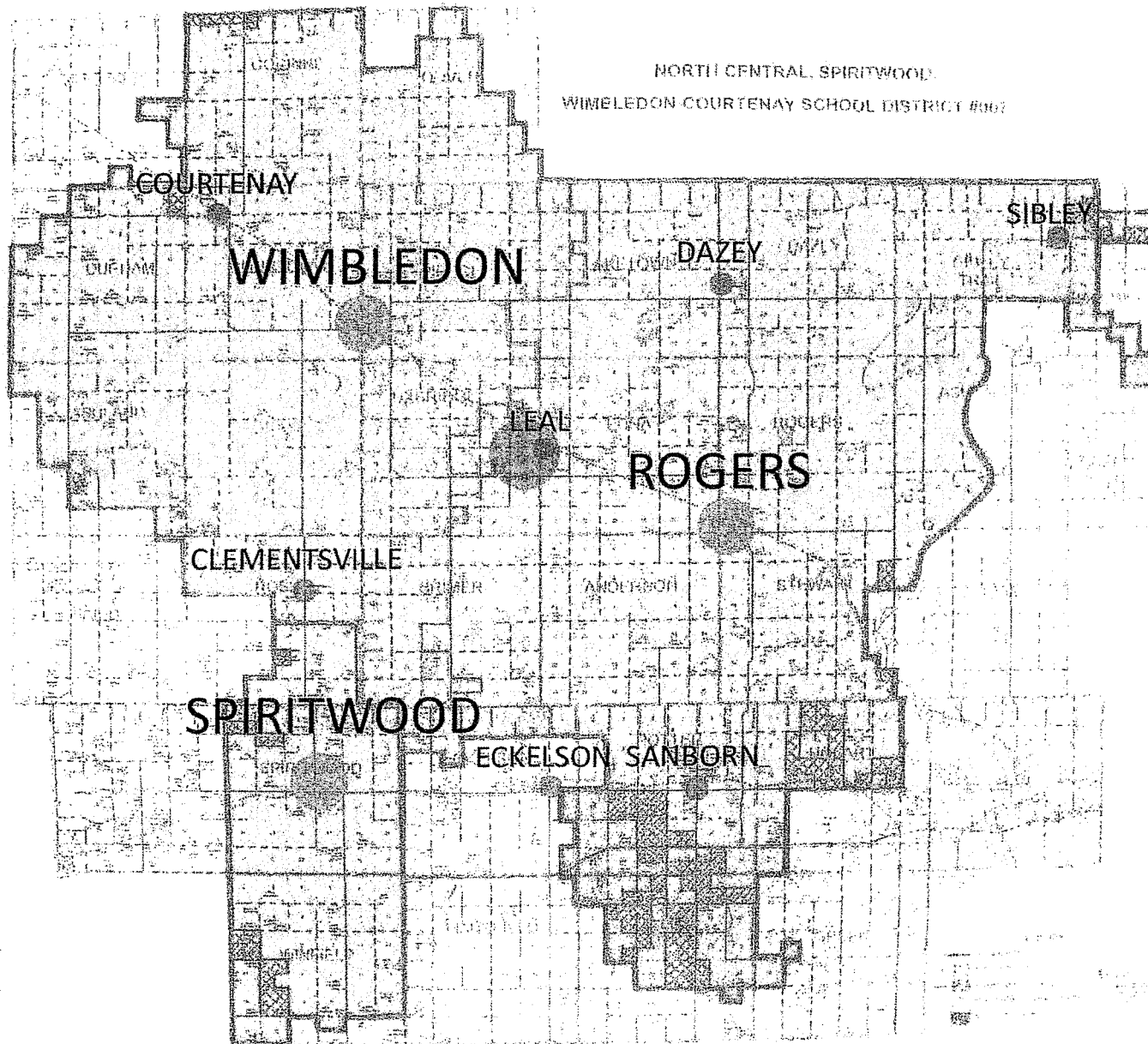
7       a. New or increased mill levies authorized by state law or the electors of the taxing  
8       district which did not exist in the previous taxable year.

9       b. Any irrepealable tax to pay bonded indebtedness levied under section 16 of  
10       article X of the Constitution of North Dakota.

11       3. The mill rate applied to property or improvements to property that was not taxed in the  
12       previous taxable year may not exceed the mill rate determined by law for the current  
13       taxable year for property that was taxed in the previous taxable year.

14       4. Application of the percentage increase limitation under this section may be suspended  
15       upon approval of the dollar amount and percentage of the tax levy increase by fifty-five  
16       percent or more of the qualified electors of the taxing district voting on the question at  
17       a regular or special election of the taxing district. This section may not be superseded  
18       under city or county home rule authority. Suspension of the percentage increase  
19       limitation under this subsection may be approved by electors for not more than one  
20       taxable year at a time.

21       **SECTION 5. REPEAL.** Section 57-15-59 of the North Dakota Century Code is repealed.



**BARNES COUNTY NORTH**  
ROGERS, WIMBLEDON, SPIRITWOOD, ND

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Attach ment 2  
4-24-13  
1286





**BARNES COUNTY NORTH**  
ROGERS, WIMBLEDON, SPIRITWOOD, ND





BARNES COUNTY NORTH  
ROGERS, WIMBLEDON, SPIRITWOOD, ND

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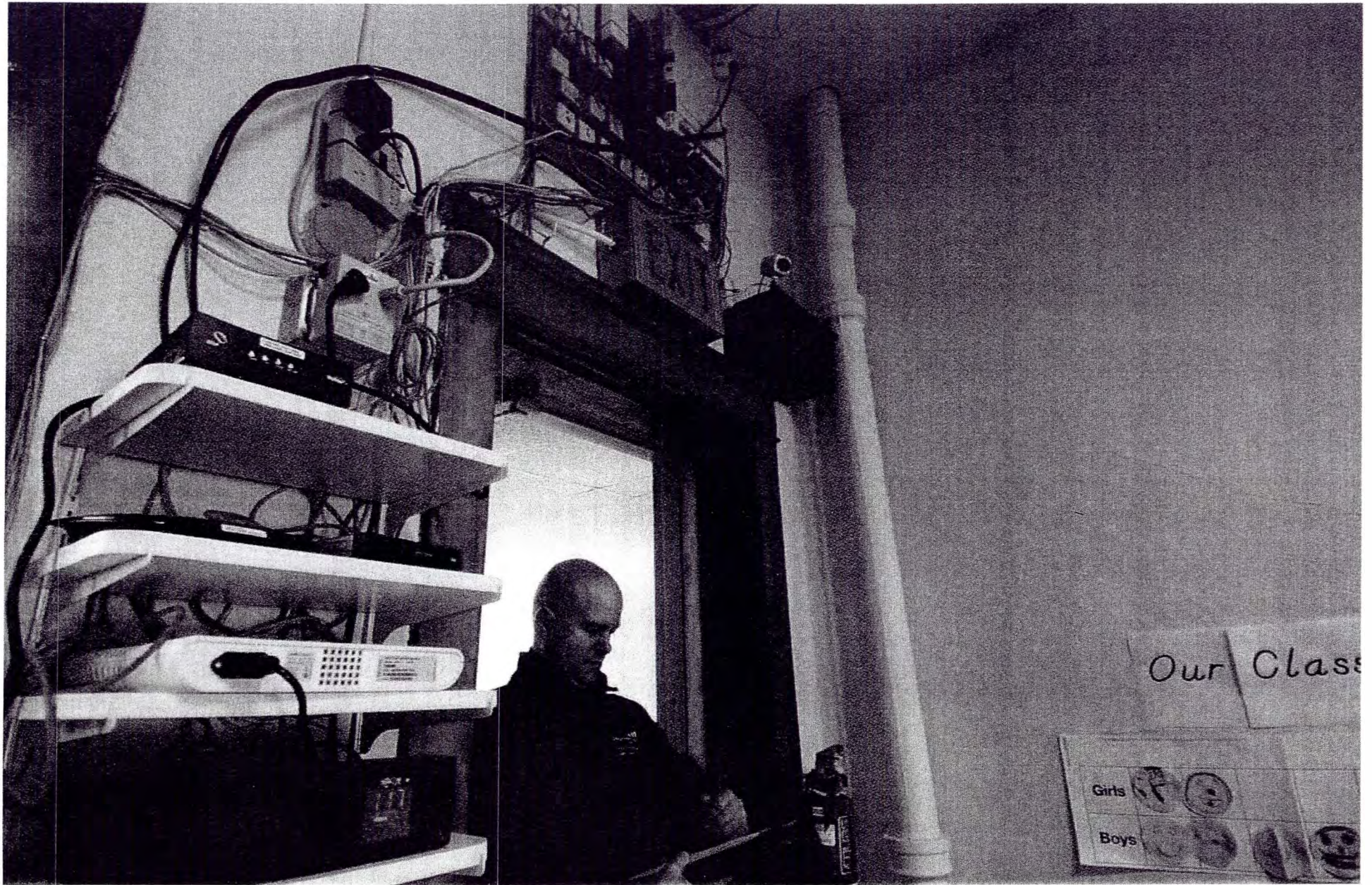




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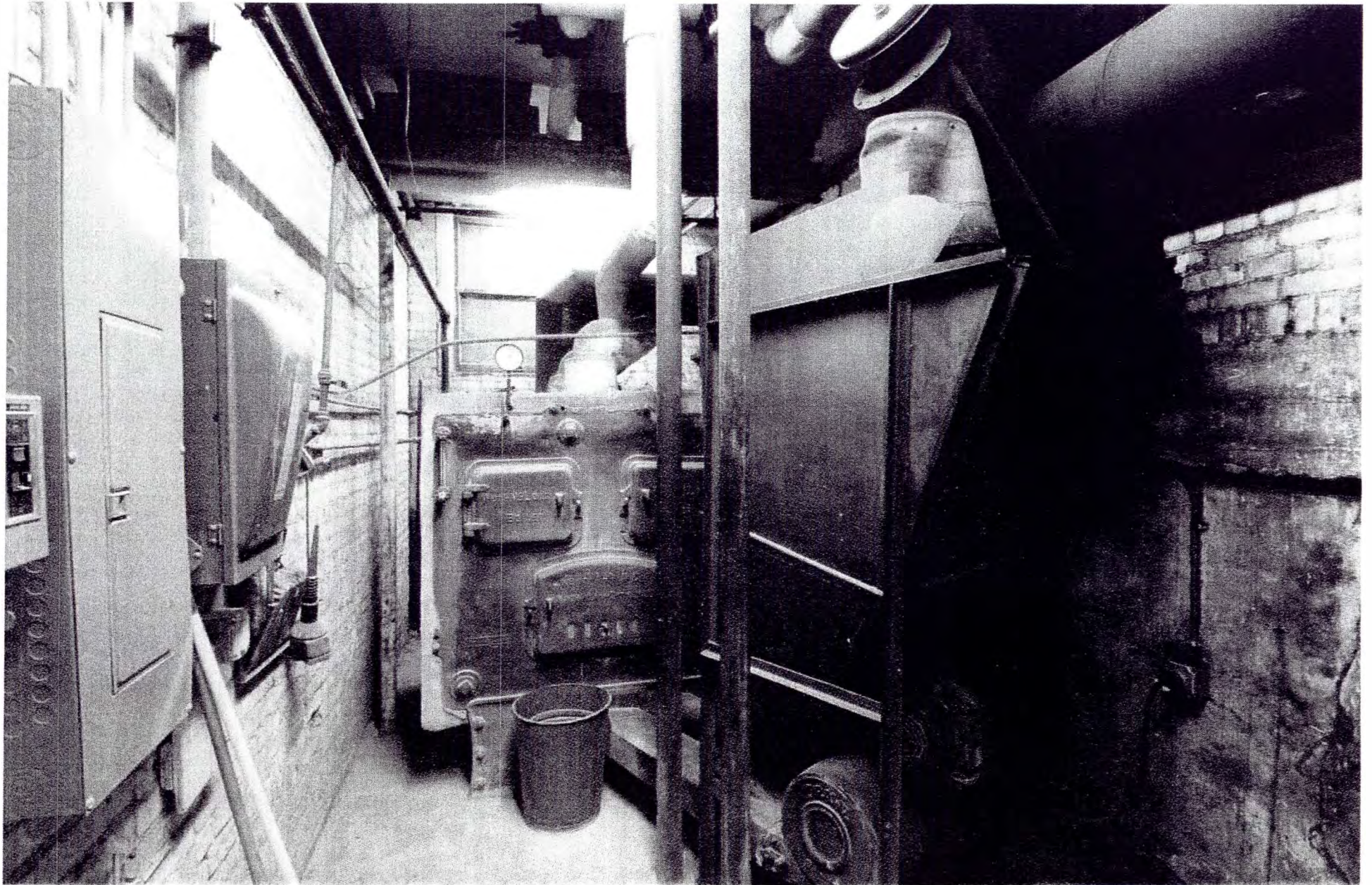




BARNES COUNTY NORTH  
ROGERS, WIMBLEDON, SPIRITWOOD, ND



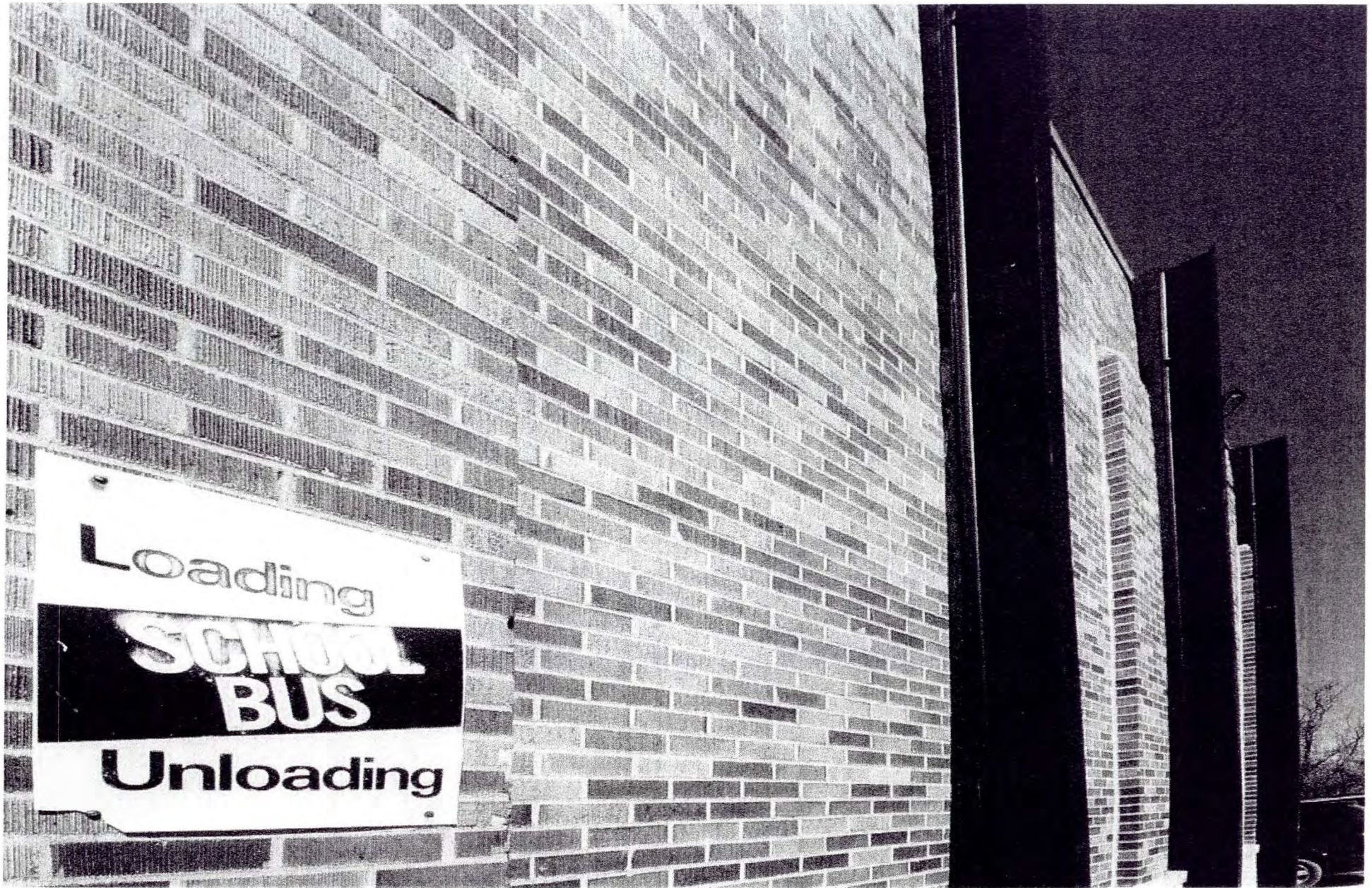




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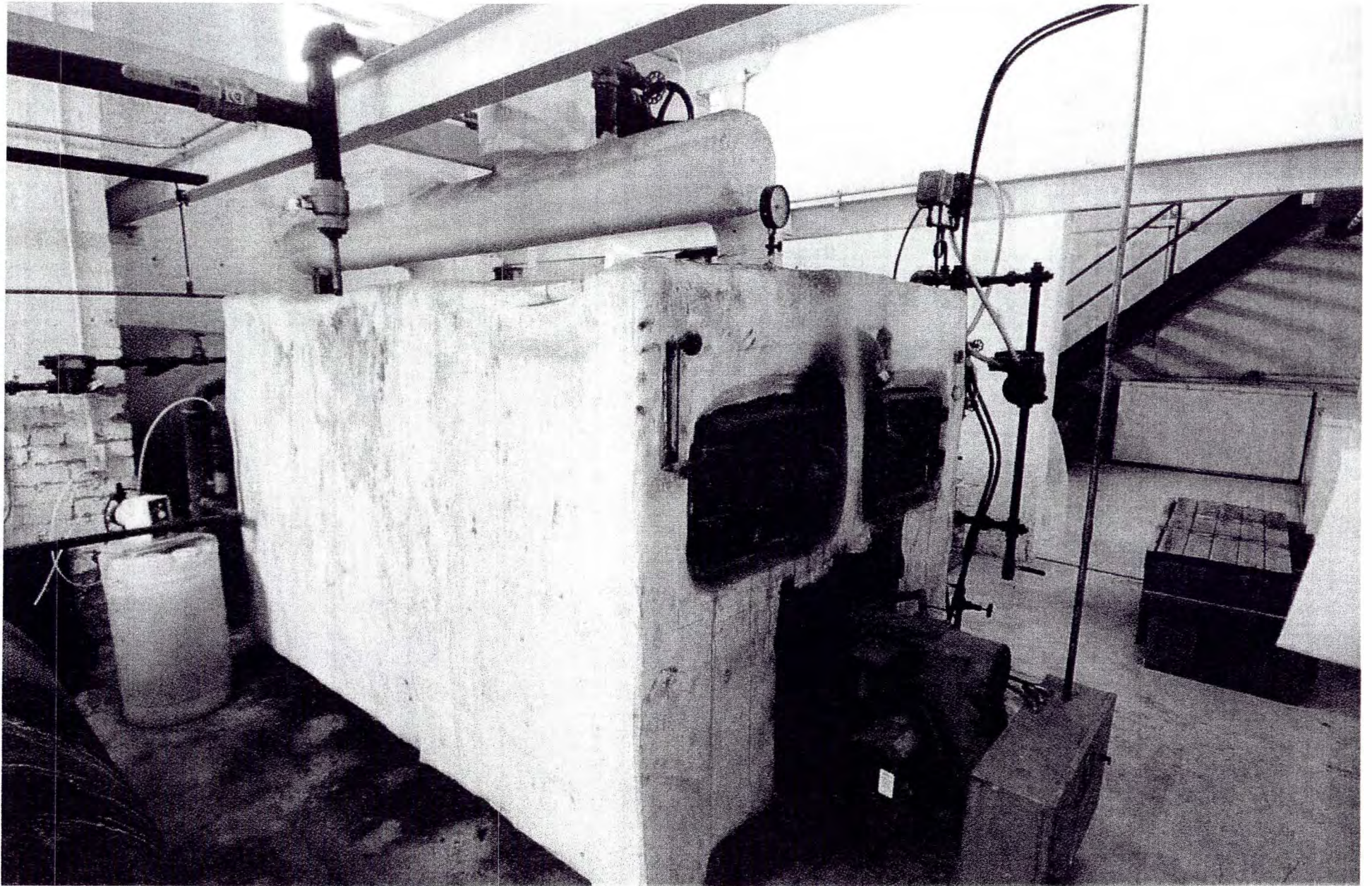




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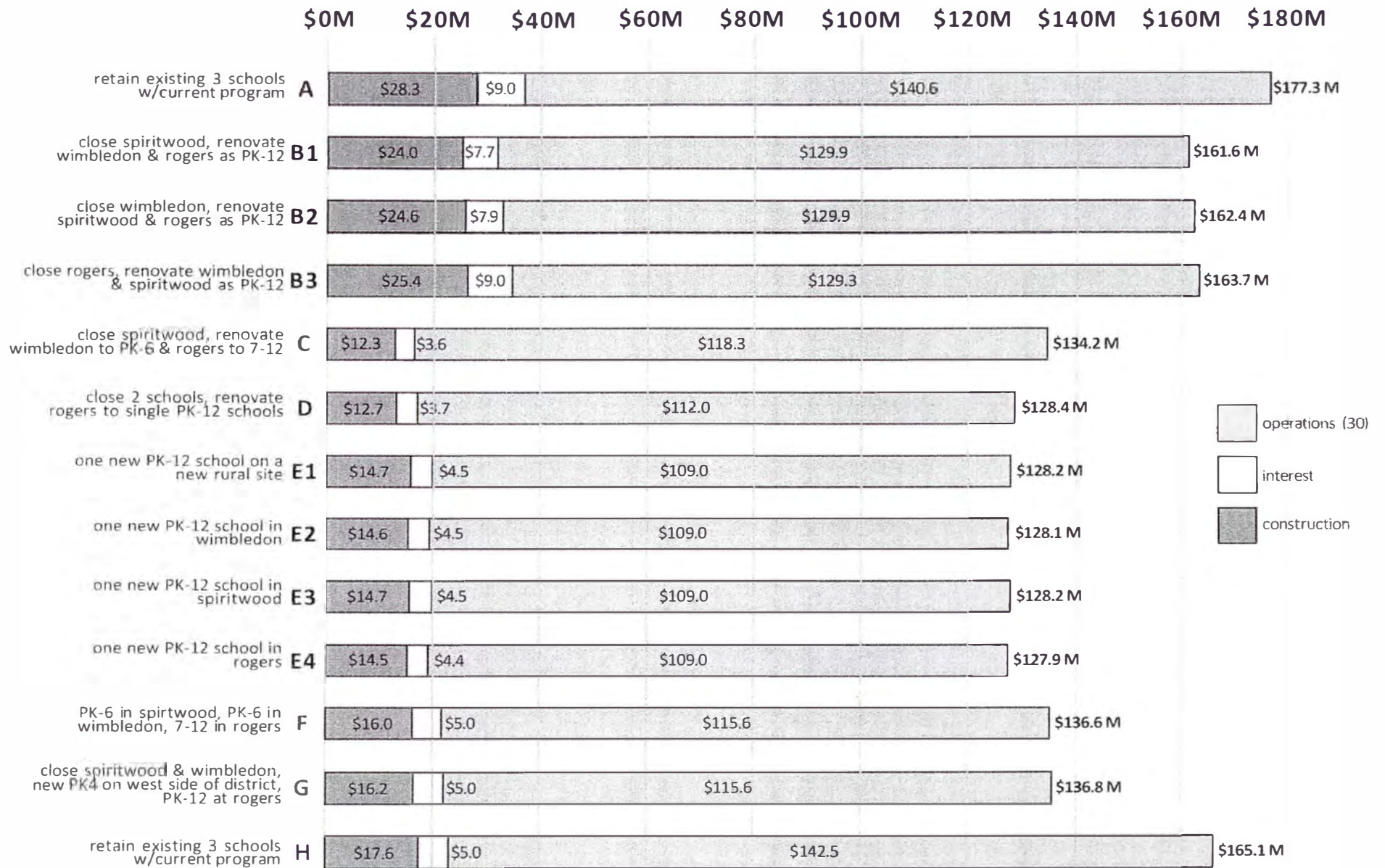




# OPTION H: Do Nothing

## Necessary Projects

2012	Replace Wimbledon 1928 addition <ul style="list-style-type: none"><li>• Tear down original 1928 building - 18,800 SF @ \$10/SF</li><li>• New Addition to replace lost space including new science- 30,000 SF @ \$150/SF</li></ul>	\$188,000 \$4,500,000
2012	Remove Asbestos and tanks (to facilitate demolition and addition)	\$100,000
2013	Upgrade Computer, Electrical and other Wiring Systems - 70,700 s.f. @ \$10.00	\$707,000
2014	Life Safety Renovations at all 3 schools, Fire Sprinkler, Fire Rated Corridor System, Stairs	\$650,000
2014	Replace Roofing - 45,000 s.f. @ \$6.50	\$295,000
2015	Replace Spiritwood 1914 addition <ul style="list-style-type: none"><li>• Tear down original 1914 building - 8,000 SF @ \$10/SF</li><li>• New Addition to replace lost space including new science - 40,000 SF @ \$150/SF</li></ul>	\$80,000 \$6,000,000
2016	New HVAC System at all 3 schools, 70,700 s.f. @ \$20.00	\$1,414,000
2017	Replace Finishes at both Schools - 70,700 s.f. @ \$15.00	\$1,060,500
2018	ADA, Parking, Locker Rooms, Toilet Rooms, Signage, Door Hardware, Band/Gym Risers	\$500,000
2019	Site Safety, Parking and Bus Loading	\$700,000
2020	Replace Lighting - 70,700 s.f. @ \$15.00	\$1,060,500
2021	Replace Windows	\$250,000
2022	Add Security System	\$150,000
TOTAL		<u>\$17,655,000</u>

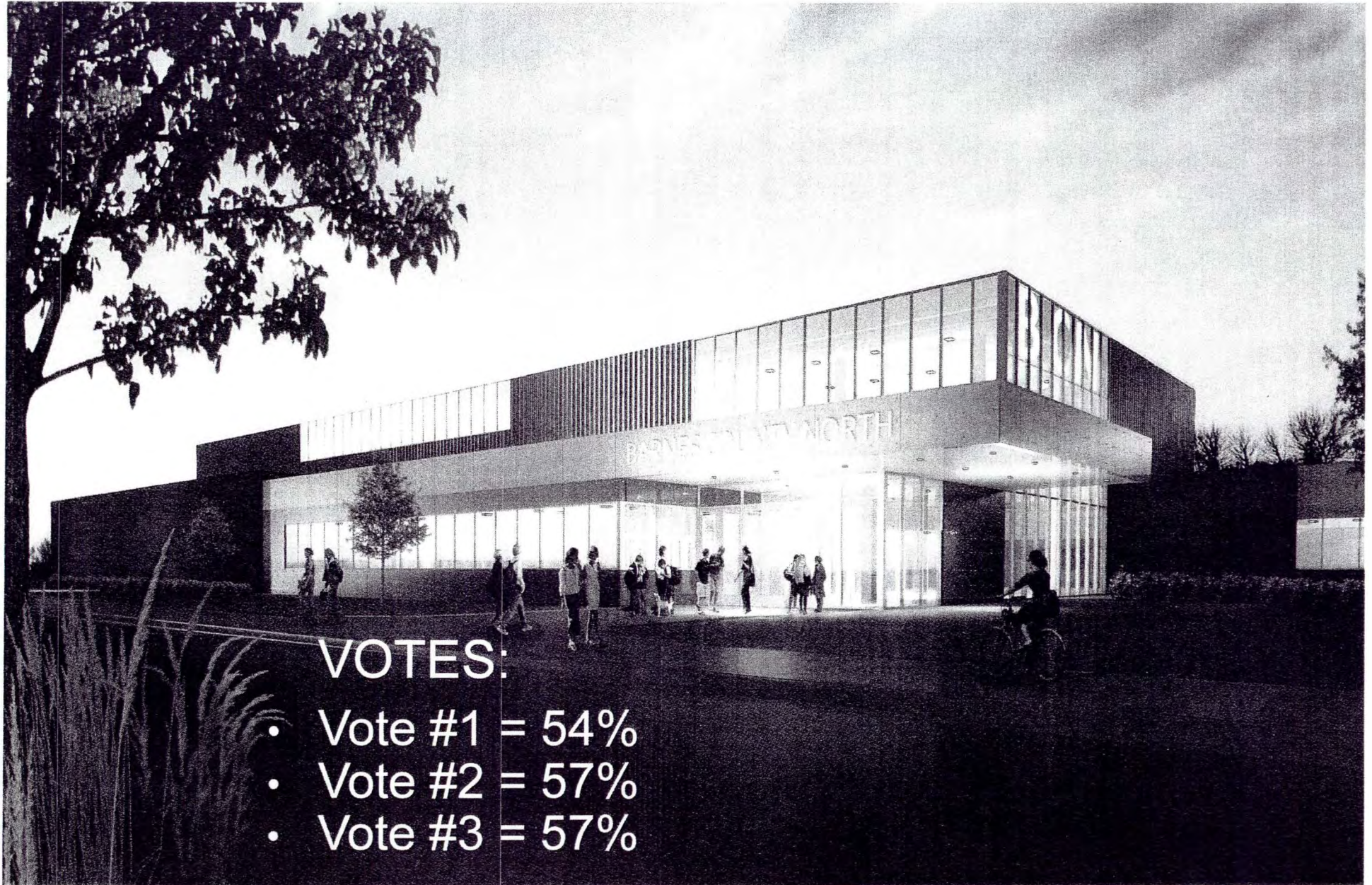


# BARNES COUNTY NORTH

## ROGERS, WIMBLEDON, SPIRITWOOD, ND







**BARNES COUNTY NORTH**  
ROGERS, WIMBLEDON, SPIRITWOOD, ND



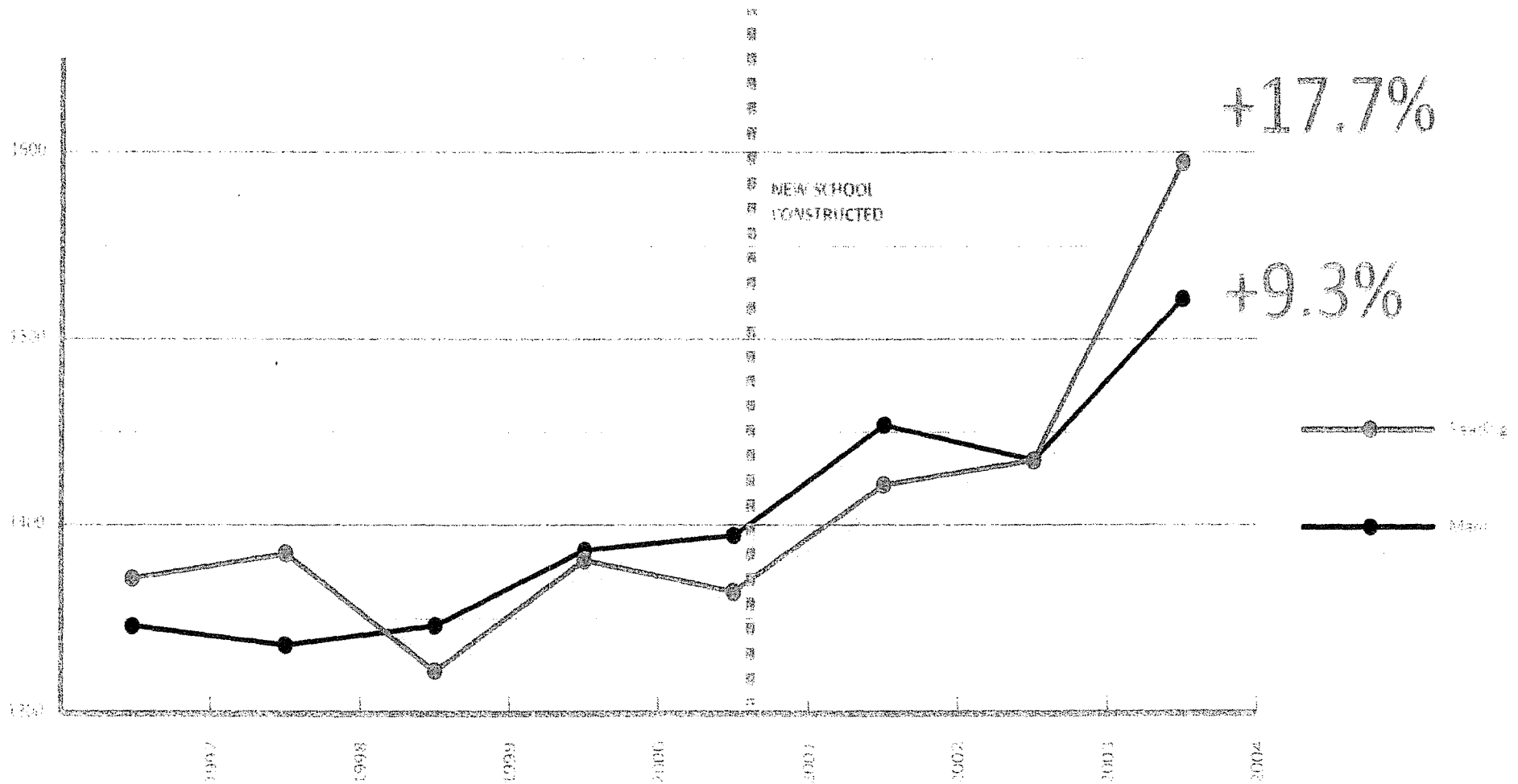




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# WIN-E-MAC 3RD GRADE TEST SCORES



**BARNES COUNTY NORTH**  
ROGERS, WIMBLEDON, SPIRITWOOD, ND

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## Sunday, April 21, 2013 Annual Wimbledon Masonic Baked Potato Lunch for Scholarships

Serving 10 am to 1 pm  
Wimbledon American Legion Hall

All proceeds go to local scholarships and are matched by the ND Masonic Foundation. Event sponsored by Wimbledon Masonic Lodge #71. The North Dakota Masonic Foundation will provide matching funds.



*Come One, Come All!*  
BCN Dollars for Scholars  
**Annual Fun Carnival**  
**Friday, April 12 at BCN West**  
**6 pm – 8:30 pm**

Lots of games, food, a silent auction,  
& PRIZES!  
This will be a fun-filled event for all ages.

We are in need of silent auction and cake walk items.  
If you would like to donate an item for the silent auction,  
please bring it to Geri Haugen or Stacy Schaffer by April 11.  
If you are bringing a cake walk item,  
please bring it to the stage the night of the carnival.  
Thank you for your donations and kind support!

### More Events on the Calendar

**Monday, April 29:** BCN West Junior High will perform  
"Epic Adventures in a Rinky-Dink Art Museum" at 7:30 pm

**Tuesday, May 14:** BCN West "Movie Theme" Pops Concert

### Barnes County North School Board Elections will be held June 4th, 2013

In accordance with Century Code 15.1-09-08, notice is hereby given that three positions for school board members will be open for the regular election in Barnes County North School District #007. Each position is for a three year term.

Any individuals seeking election to the board shall prepare and sign a statement of interest and submit this document to the office of the business manager, located at the Spiritwood campus, no later than 4:00 p.m. Friday April 19, 2013. You may contact the business manager at 252-0193 to request forms or get information.

/s/ Karen Gumke  
Business Manager  
Barnes County North School Dist #007

**Election Workers Needed:** We are looking for people who are willing to work as judges and clerks for the school board election on Tuesday, June 4<sup>th</sup>. Pay is minimum wage plus mileage and meal. If interested, please contact Karen at the Business Office: 701-252-0193 or email at karen.gumke@sendit.nodak.edu



### National Archery in the Schools Program

**Congratulations to John Schoeler and Melonie Lee for both placing 2nd at this weekends NASP shoot in Medina!**

John Schoeler is in the junior high boys division and shot a 282 out of 300! He tied a shooter from Medina and they had a shoot off.

Melonie Lee shot in the elementary girls division and shot a 235 out of 300, in her first completion!

The elementary team came in 4th place with a total of 1535 points.

Shooters at this event were Jordan Carlson, Arik Christianson, Brandon Platz, Max Fehr, Allen Contreras, Nathan Puhr, Kael Gröbel, Peter Bryn, Shaylae Muncy, Hailey Schaefer, Kiel Koebornick, Courtney Schuldhelsz, Justin Manson, Courtne Fick, Dylan Koebornick, Braden Platz, Jaycee Rudolph, John Schoeler and Melonie Lee. *Submitted by Couch Wagner*

## The Bison Blog

Items of interest from Barnes County North  
Wimbledon-Courtenay Campus West Campus



### New Superintendent Chosen



Mark Lindahl of Cando was the last of 13 candidates interviewed by the BCN School Board, but he was the candidate who received their unanimous vote to hire. Mr. Lindahl has accepted the job, and will begin on July 1, 2013 as Mr. Doug Jacobson retires.

Mr. Lindahl hails from Walhalla ND, and has been at Cando ND (now known as North Star School Dist. #10 after their consolidation) for 20 years.

Mr. Lindahl is a graduate of UND. He has been in education for 34 years, as teacher, principal, superintendent, and basketball coach. He and his wife Mary have three grown sons.

Josh Johnson, Wimbledon-Courtenay principal during the 2007-08 and 2008-09 school years, has accepted an offer to be superintendent at Oakes ND, beginning July 1. He is currently principal at Central Middle School in his hometown of Devils Lake ND.

Johnson's wife Tristan is an occupational therapist. They have three children; seven year-old Jayden, five year-old Rylyn, and two month-old Piper.

NewsDakota.com, March 20 2013

**New high school classes added with restructuring:** West Campus Principal Joan Klein's April newsletter posting noted that there would be new subjects available next fall in the high school. These include a new science class, calculus, Spanish, and German.

### Teachers affected by Reduction in Force contract nonrenewals

Eight of the nine positions cut are teachers from the West Campus. The principals from both the East and West campus were involved in all assessments of the reduction-in-force process. The years as part of the Barnes County North staff (or its predecessor districts) include time through the end of this school year.

Mrs. Lauren Sako – West Campus Science Teacher ( 2 )  
Mrs. Carrie Braaten – West Campus Math Teacher ( 9 )  
Ms. Cynthia McGuire, M. Ed. – West Campus Third Grade Teacher ( 9 )  
Mrs. Robin Newton – West Campus Second Grade Teacher ( 6 )  
Mr. Kurt Wagner – West Campus Physical Education & Health Teacher ( 22 )  
Mrs. Anita Tulp – West Campus Library Media Specialist and English Teacher ( 3 )  
Mrs. Dianne Koll – West Campus English Teacher ( 26 )  
Mrs. Alicia Bollingberg – West Campus Music Teacher ( 1 )

There are two staff members who will have a part of their contract reduced: Mrs. Dianne Graff will have the Title I Coordinator portion of her contract reduced and Miss Tresa Didier will have 20% of her contract reduced.

In additional staff changes, East Campus Math Teacher Mr. Alvin Schumacher is retiring after 41 years teaching at North Central / BCN East.

The criteria as explained by Principal Christianson in his March letter to district patrons are again included below for reference:

### Criteria for Teacher Evaluation, Reduction in Force Explained

*by Principal Daren Christianson, excerpted from the March BCN Newsletter*

The process approved to determine which teachers will retain employment is four parts. A possible forty points of the overall score is determined through the specific evaluation of teachers through the concentration of their skills in twelve independent indicators. This was the job of the principals to evaluate teachers in this manner and then to meet with the teachers and justify the scores that were assessed. Another possible twenty points of the teachers overall score is determined by their implementation of technology into their curriculum as determined by specific indicators on that document. Another possible twenty points of the score is determined by a document that outlines specific value to the district such as special certifications, willingness to advise special activities, coach, and even willingness to drive bus. In short, value was given to those who provide things that our children need and benefit from. The final twenty points are awarded by determining the number of years of contracted employment as a teacher.

"Sports do not build character. They reveal it."

Heywood Hale Brown, American sportswriter and commentator

Kasper, Jim M.

Attachment 4  
1286 4-24-13

**From:** North Dakota Watchdog <dgawrylow=watchingnd.com@mail133.wdc02.mcdlv.net> on behalf of North Dakota Watchdog <dgawrylow@watchingnd.com>  
**Sent:** Wednesday, April 24, 2013 9:45 AM  
**To:** Kasper, Jim M.  
**Subject:** Local Governments Move Property Tax Goalposts On Legislature

Local government continues to work against legislative efforts on property taxes. When will the legislature figure it out?

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## **Local Governments Move Property Goalposts On Legislature**

***Locals Continue to Play "Valuation Game" – Scoffing at Legislative Efforts to Reduce Property Taxes***

As the legislature battles with itself over how to provide property tax relief, local governments are showing once again that they are the ones really in control.

Out of Williston comes a story about how residential property values will climb 15-35% on local residents.

As the article states: *"But Gooch-Egge cautioned that the increase in property values does not automatically mean that taxes will be higher for people living in the city, with tax decisions made by the city commission."*

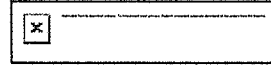
This is true, but it is dependent upon local government reducing the mill level by as much as values went up.

How likely is it that local government will reduce their mill levies by 15-35%? The answer is: "Not very likely."

Perhaps it is getting to be time to once again treat local property tax as a local issue - after all, local governments do not seem to be all that grateful for the state attempts so far.

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**Dustin Gawrylow**



**Managing Director,  
ND Watchdog Network**

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PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1286

That the Senate recede from its amendments as printed on page 1170 of the House Journal and page 951 of the Senate Journal and that Engrossed House Bill No. 1286 be amended as follows:

Page 1, line 1, after "21-03-06.1" insert "and a new section to chapter 48-05"

Page 1, line 3, after "means" insert "and the governing body of a building authority; to amend and reenact section 21-03-07 of the North Dakota Century Code, relating to voter approval of bond issues; and to repeal section 57-15-59 of the North Dakota Century Code, relating to county or city authority to enter lease agreements for court, corrections, and law enforcement facilities"

Page 1, line 7, replace "indirect" with "building project"

Page 1, line 13, after "structure" insert "at a total cost of four million dollars or more"

Page 1, line 15, replace "sixty" with "fifty-five"

Page 1, line 18, after the underscored period insert "A municipality or governing body of a municipality, regardless of the funding source, may not enter an agreement after June 30, 2013, in connection with acquisition, improvement, or construction of any property or structure at a total cost of four million dollars or more to be used by the municipality unless the agreement has been approved by a vote of at least fifty-five percent of the qualified electors of the municipality voting on the question, except for a public-private partnership agreement or agreement to implement a project under a bond issue approved by the electors under section 21-03-07."

Page 2, after line 6, insert:

**"SECTION 2. AMENDMENT.** Section 21-03-07 of the North Dakota Century Code is amended and reenacted as follows:

**21-03-07. Election required - Exceptions.**

No municipality, and no governing board thereof, may issue bonds without being first authorized to do so by a vote equal to sixtyfifty-five percent or more of all the qualified voters of such municipality voting upon the question of such issue except:

1. As otherwise provided in section 21-03-04.
2. The governing body may issue bonds of the municipality for the purpose and within the limitations specified by subdivision e of subsection 1 of section 21-03-06, subdivision g of subsection 2 of section 21-03-06, and subsections 4.1 and 7 of section 21-03-06 without an election.
3. The governing body of any municipality may issue bonds of the municipality for the purpose of providing funds to meet its share of the cost of any federal aid highway project undertaken under an agreement entered into by the governing body with the United States government, the director of the department of transportation, the board of county commissioners, or

any of them, including the cost of any construction, improvement, financing, planning, and acquisition of right of way of a bridge eligible for federal matching funds, federal aid highway routed through the municipality and of any bridges and controlled access facilities thereon and any necessary additional width or capacity of the bridge or roadway thereof greater than that required for federal or state bridge or highway purposes, and of any necessary relaying of utility mains and conduits, curbs and gutters, and the installation of utility service connections and streetlights. The portion of the total cost of the project to be paid by the municipality under the agreement, including all items of cost incurred directly by the municipality and all amounts to be paid by it for work done or contracted for by other parties to the agreement, may not exceed a sum equal to thirty percent of the total cost, including engineering and other incidental costs, of all construction and reconstruction work to be done plus fifty percent of the total cost of all right of way to be acquired in connection therewith. The initial resolution authorizing issuance of bonds under this subsection must be published in the official newspaper of the municipality. Within sixty days after publication, an owner of taxable property within the municipality may file with the auditor or chief fiscal officer of the municipality a written protest against adoption of the resolution. A protest must describe the property that is the subject of the protest. If the governing body finds protests have been signed by the owners of taxable property having an assessed valuation equal to five percent or more of the assessed valuation of all taxable property in the municipality, as most recently finally equalized, all further proceedings under the initial resolution are barred. Nothing herein may be deemed to prevent any municipality from appropriating funds for or financing out of taxes, special assessments, or utility revenues any work incidental to any such project, in the manner and to the extent otherwise permitted by law, and the cost of any work so financed may not be included in computing the portion of the project cost payable by the municipality, within the meaning of this subsection, unless the work is actually called for by the agreement between the municipality and the other governmental agencies involved.

4. The governing body of any city may also by resolution adopted by a two-thirds vote authorize and issue general obligation bonds of the city for the purpose of providing funds to pay the cost of any improvement of the types stated below, to the extent that the governing body determines that such cost should be paid by the city and should not be assessed upon property specially benefited thereby; provided that the initial resolution authorizing such bonds must be published in the official newspaper, and any owner of taxable property within the city may, within sixty days after such publication, file with the city auditor a protest against the adoption of the resolution. If the governing body finds such protests to have been signed by the owners of taxable property having an assessed valuation equal to five percent or more of the assessed valuation of all taxable property within the city, as theretofore last finally equalized, all further proceedings under such initial resolution are barred. This procedure is authorized for the financing of the following types of improvements:
  - a. Any street improvement, as defined in subsection 2 of section 40-22-01, to be made in or upon any federal or state highway or any other street designated by ordinance as an arterial street.

- b. The construction of a bridge, culvert, overpass, or underpass at the intersection of any street with a stream, watercourse, drain, or railway, and the acquisition of any land or easement required for that purpose.
- c. Any improvement incidental to the carrying out of an urban renewal project, the issuance of bonds for which is authorized by subsection 4 of section 40-58-13.

Nothing herein may be deemed to prevent any municipality from appropriating funds for or financing out of taxes, special assessments, or utility revenues any work incidental to any such improvement, in the manner and to the extent otherwise permitted by law.

- 5. The governing body of any city may also by resolution adopted by a two-thirds vote dedicate the mill levies as authorized by sections 57-15-42 and 57-15-44 and may authorize and issue general obligation bonds to be paid by these dedicated levies for the purpose of providing funds for the purchase, construction, reconstruction, or repair of public buildings or fire stations; provided, that the initial resolution authorizing the mill levy dedication and general obligation bonds must be published in the official newspaper, and any owner of taxable property within the city may, within sixty days after publication, file with the city auditor a protest against the adoption of the resolution. Protests must be in writing and must describe the property which is the subject of the protest. If the governing body finds such protests to have been signed by the owners of taxable property having an assessed valuation equal to five percent or more of the assessed valuation of all taxable property within the city, as theretofore last finally equalized, all further proceedings under the initial resolution are barred.
- 6. The governing body of any county may also by resolution adopted by a two-thirds vote dedicate the tax levies as authorized by sections 57-15-06.6 and 57-15-06.9 and may authorize and issue general obligation bonds to be paid by these dedicated levies for the purpose of providing funds for the purchase, construction, reconstruction, or repair of regional or county correction centers, or parks and recreational facilities; provided, that the initial resolution authorizing the tax levy dedication and general obligation bonds must be published in the official newspaper, and any owner of taxable property within the county may, within sixty days after publication, file with the county auditor a protest against the adoption of the resolution. Protests must be in writing and must describe the property which is the subject of the protest. If the governing body finds such protests to have been signed by the owners of taxable property having an assessed valuation equal to five percent or more of the assessed valuation of all taxable property within the county, as theretofore last finally equalized, all further proceedings under the initial resolution are barred.
- 7. The governing body of any public school district may also by resolution adopted by a two-thirds vote dedicate the tax levies as authorized by section 15.1-09-47, 15.1-09-49, or 57-15-16 and may authorize and issue general obligation bonds to be paid by these dedicated levies for the purpose of providing funds for the purchase, construction, reconstruction, or repair of public school buildings or for the construction or improvement of a project under section 15.1-36-02 or 15.1-36-03. The initial resolution



authorizing the tax levy dedication and general obligation bonds must be published in the official newspaper of the school district, and any owner of taxable property within the school district may, within sixty days after publication, file with the business manager of the school district a protest against the adoption of the resolution. Protests must be in writing and must describe the property that is the subject of the protest. If the governing body finds the protests to have been signed by the owners of taxable property having an assessed valuation equal to five percent or more of the assessed valuation of all taxable property within the school district, as theretofore last finally equalized, all further proceedings under the initial resolution are barred.

8. The governing body of any city having a population of twenty-five thousand persons or more may use the provisions of subsection 3 to provide funds to participate in the cost of any construction, improvement, financing, and planning of any bypass routes, interchanges, or other intersection improvements on a federal or state highway system which is situated in whole or in part outside of the corporate limits of the city; provided, that the governing body thereof shall determine by resolution that the undertaking of such work is in the best interest of the city for the purpose of providing access and relieving congestion or improving traffic flow on municipal streets.
9. The governing body of a municipality or other political subdivision, located at least in part within a county that is included within a disaster or emergency executive order or proclamation of the governor under chapter 37-17.1, may by resolution adopted by a two-thirds vote authorize and issue general obligation bonds of the political subdivision without an election for the purpose of providing funds to pay costs associated with the emergency condition. The political subdivision may dedicate and levy taxes for retirement of bonds under this subsection and such levies are not subject to limitations as otherwise provided by law.
10. The governing board of any county, city, public school district, park district, or township may by resolution adopted by a two-thirds vote dedicate the tax levy authorized by section 57-15-41 and authorize and issue general obligation bonds to be paid by the dedicated levy for the purpose of providing funds to prepay outstanding special assessments made in accordance with the provisions of title 40 against property owned by the county, city, public school district, park district, or township.

**SECTION 3.** A new section to chapter 48-05 of the North Dakota Century Code is created and enacted as follows:

**Building authority governing body - Contract conflict of interest.**

The governing body of a building authority established after June 30, 2013, may not include any officer, employee, or member of the governing body of a political subdivision that contracts with the building authority.

The governing body of a building authority may not enter a contract after June 30, 2013, relating to a public improvement with an entity of which a member of the governing body of the building authority is an owner, officer, or employee.

**SECTION 4. REPEAL.** Section 57-15-59 of the North Dakota Century Code is repealed."

Renumber accordingly

Sixty-third  
Legislative Assembly  
of North Dakota

## ENGROSSED HOUSE BILL NO. 1286

Introduced by

Representatives Kasper, Beadle, Brabandt, Dosch, Headland, Ruby, Streyle, Thoreson

Senators Burckhard, Campbell, Klein, Wardner

1 A BILL for an Act to create and enact section 21-03-06.1 and a new section to chapter 48-05 of  
2 the North Dakota Century Code, relating to voter approval of public building projects funded  
3 through a building authority or other indirect means and the governing body of a building  
4 authority; to amend and reenact section 21-03-07 of the North Dakota Century Code, relating to  
5 voter approval of bond issues; and to repeal section 57-15-59 of the North Dakota Century  
6 Code, relating to county or city authority to enter lease agreements for court, corrections, and  
7 law enforcement facilities.

8 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

9 **SECTION 1.** Section 21-03-06.1 of the North Dakota Century Code is created and enacted  
10 as follows:

11 **21-03-06.1. Voter approval of building authority or other indirect building project**  
12 **funding methods - Building construction project approval.**

- 13 1. Notwithstanding any other provision of law, a municipality or governing body of a  
14 municipality may not enter an agreement pursuant to internal revenue service revenue  
15 ruling 63-20 under which payments of any kind would be required by the municipality  
16 to any building authority or other entity that incurs indebtedness or other obligation in  
17 connection with acquisition, improvements, or construction of any property or structure  
18 at a total cost of four million dollars or more to be used by the municipality unless the  
19 agreement has been approved by a vote of at least sixty-five percent of the  
20 qualified electors of the municipality voting on the question if the agreement is for  
21 acquisition, improvements, or construction of any property or structure for which an  
22 election would be required if the municipality undertook the acquisition or construction  
23 project through issuance of bonds of the municipality. A municipality or governing body  
24 of a municipality, regardless of the funding source, may not enter an agreement after



June 30, 2013, in connection with acquisition, improvement, or construction of any property or structure at a total cost of four million dollars or more to be used by the municipality unless the agreement has been approved by a vote of at least fifty-five percent of the qualified electors of the municipality voting on the question, except for a public-private partnership agreement or agreement to implement a project under a bond issue approved by the electors under section 21-03-07. The governing body of a city or county may not supersede this subsection under home rule authority. This subsection does not apply to buildings to be used primarily for fire protection, police, or emergency medical services.

2. The school board of a school district may not enter an agreement pursuant to internal revenue service revenue ruling 63-20 under which payments of any kind would be required by the school district to any building authority or other entity that incurs indebtedness or other obligation regarding construction, purchase, repair, improvement, modernization, or renovation of any building or facility to be used by the school district without approval by the superintendent of public instruction in the manner provided in section 15.1-36-01, if the approval by the superintendent of public instruction would be required for the project under section 15.1-36-01 if the school district undertook the project itself.

**SECTION 2. AMENDMENT.** Section 21-03-07 of the North Dakota Century Code is amended and reenacted as follows:

**21-03-07. Election required - Exceptions.**

No municipality, and no governing board thereof, may issue bonds without being first authorized to do so by a vote equal to ~~sixty~~fifty-five percent or more of all the qualified voters of such municipality voting upon the question of such issue except:

1. As otherwise provided in section 21-03-04.
2. The governing body may issue bonds of the municipality for the purpose and within the limitations specified by subdivision e of subsection 1 of section 21-03-06, subdivision g of subsection 2 of section 21-03-06, and subsections 4.1 and 7 of section 21-03-06 without an election.
3. The governing body of any municipality may issue bonds of the municipality for the purpose of providing funds to meet its share of the cost of any federal aid highway



project undertaken under an agreement entered into by the governing body with the United States government, the director of the department of transportation, the board of county commissioners, or any of them, including the cost of any construction, improvement, financing, planning, and acquisition of right of way of a bridge eligible for federal matching funds, federal aid highway routed through the municipality and of any bridges and controlled access facilities thereon and any necessary additional width or capacity of the bridge or roadway thereof greater than that required for federal or state bridge or highway purposes, and of any necessary relaying of utility mains and conduits, curbs and gutters, and the installation of utility service connections and streetlights. The portion of the total cost of the project to be paid by the municipality under the agreement, including all items of cost incurred directly by the municipality and all amounts to be paid by it for work done or contracted for by other parties to the agreement, may not exceed a sum equal to thirty percent of the total cost, including engineering and other incidental costs, of all construction and reconstruction work to be done plus fifty percent of the total cost of all right of way to be acquired in connection therewith. The initial resolution authorizing issuance of bonds under this subsection must be published in the official newspaper of the municipality. Within sixty days after publication, an owner of taxable property within the municipality may file with the auditor or chief fiscal officer of the municipality a written protest against adoption of the resolution. A protest must describe the property that is the subject of the protest. If the governing body finds protests have been signed by the owners of taxable property having an assessed valuation equal to five percent or more of the assessed valuation of all taxable property in the municipality, as most recently finally equalized, all further proceedings under the initial resolution are barred. Nothing herein may be deemed to prevent any municipality from appropriating funds for or financing out of taxes, special assessments, or utility revenues any work incidental to any such project, in the manner and to the extent otherwise permitted by law, and the cost of any work so financed may not be included in computing the portion of the project cost payable by the municipality, within the meaning of this subsection, unless the work is actually called for by the agreement between the municipality and the other governmental agencies involved.



1       4. The governing body of any city may also by resolution adopted by a two-thirds vote  
2       authorize and issue general obligation bonds of the city for the purpose of providing  
3       funds to pay the cost of any improvement of the types stated below, to the extent that  
4       the governing body determines that such cost should be paid by the city and should  
5       not be assessed upon property specially benefited thereby; provided that the initial  
6       resolution authorizing such bonds must be published in the official newspaper, and  
7       any owner of taxable property within the city may, within sixty days after such  
8       publication, file with the city auditor a protest against the adoption of the resolution. If  
9       the governing body finds such protests to have been signed by the owners of taxable  
10      property having an assessed valuation equal to five percent or more of the assessed  
11      valuation of all taxable property within the city, as theretofore last finally equalized, all  
12      further proceedings under such initial resolution are barred. This procedure is  
13      authorized for the financing of the following types of improvements:

- 14      a. Any street improvement, as defined in subsection 2 of section 40-22-01, to be  
15      made in or upon any federal or state highway or any other street designated by  
16      ordinance as an arterial street.
- 17      b. The construction of a bridge, culvert, overpass, or underpass at the intersection  
18      of any street with a stream, watercourse, drain, or railway, and the acquisition of  
19      any land or easement required for that purpose.
- 20      c. Any improvement incidental to the carrying out of an urban renewal project, the  
21      issuance of bonds for which is authorized by subsection 4 of section 40-58-13.

22      Nothing herein may be deemed to prevent any municipality from appropriating funds  
23      for or financing out of taxes, special assessments, or utility revenues any work  
24      incidental to any such improvement, in the manner and to the extent otherwise  
25      permitted by law.

26      5. The governing body of any city may also by resolution adopted by a two-thirds vote  
27      dedicate the mill levies as authorized by sections 57-15-42 and 57-15-44 and may  
28      authorize and issue general obligation bonds to be paid by these dedicated levies for  
29      the purpose of providing funds for the purchase, construction, reconstruction, or repair  
30      of public buildings or fire stations; provided, that the initial resolution authorizing the  
31      mill levy dedication and general obligation bonds must be published in the official



1 newspaper, and any owner of taxable property within the city may, within sixty days  
2 after publication, file with the city auditor a protest against the adoption of the  
3 resolution. Protests must be in writing and must describe the property which is the  
4 subject of the protest. If the governing body finds such protests to have been signed  
5 by the owners of taxable property having an assessed valuation equal to five percent  
6 or more of the assessed valuation of all taxable property within the city, as theretofore  
7 last finally equalized, all further proceedings under the initial resolution are barred.

8 6. The governing body of any county may also by resolution adopted by a two-thirds vote  
9 dedicate the tax levies as authorized by sections 57-15-06.6 and 57-15-06.9 and may  
10 authorize and issue general obligation bonds to be paid by these dedicated levies for  
11 the purpose of providing funds for the purchase, construction, reconstruction, or repair  
12 of regional or county correction centers, or parks and recreational facilities; provided,  
13 that the initial resolution authorizing the tax levy dedication and general obligation  
14 bonds must be published in the official newspaper, and any owner of taxable property  
15 within the county may, within sixty days after publication, file with the county auditor a  
16 protest against the adoption of the resolution. Protests must be in writing and must  
17 describe the property which is the subject of the protest. If the governing body finds  
18 such protests to have been signed by the owners of taxable property having an  
19 assessed valuation equal to five percent or more of the assessed valuation of all  
20 taxable property within the county, as theretofore last finally equalized, all further  
21 proceedings under the initial resolution are barred.

22 7. The governing body of any public school district may also by resolution adopted by a  
23 two-thirds vote dedicate the tax levies as authorized by section 15.1-09-47,  
24 15.1-09-49, or 57-15-16 and may authorize and issue general obligation bonds to be  
25 paid by these dedicated levies for the purpose of providing funds for the purchase,  
26 construction, reconstruction, or repair of public school buildings or for the construction  
27 or improvement of a project under section 15.1-36-02 or 15.1-36-03. The initial  
28 resolution authorizing the tax levy dedication and general obligation bonds must be  
29 published in the official newspaper of the school district, and any owner of taxable  
30 property within the school district may, within sixty days after publication, file with the  
31 business manager of the school district a protest against the adoption of the



1 resolution. Protests must be in writing and must describe the property that is the  
2 subject of the protest. If the governing body finds the protests to have been signed by  
3 the owners of taxable property having an assessed valuation equal to five percent or  
4 more of the assessed valuation of all taxable property within the school district, as  
5 theretofore last finally equalized, all further proceedings under the initial resolution are  
6 barred.

7 8. The governing body of any city having a population of twenty-five thousand persons or  
8 more may use the provisions of subsection 3 to provide funds to participate in the cost  
9 of any construction, improvement, financing, and planning of any bypass routes,  
10 interchanges, or other intersection improvements on a federal or state highway system  
11 which is situated in whole or in part outside of the corporate limits of the city; provided,  
12 that the governing body thereof shall determine by resolution that the undertaking of  
13 such work is in the best interest of the city for the purpose of providing access and  
14 relieving congestion or improving traffic flow on municipal streets.

15 9. The governing body of a municipality or other political subdivision, located at least in  
16 part within a county that is included within a disaster or emergency executive order or  
17 proclamation of the governor under chapter 37-17.1, may by resolution adopted by a  
18 two-thirds vote authorize and issue general obligation bonds of the political subdivision  
19 without an election for the purpose of providing funds to pay costs associated with the  
20 emergency condition. The political subdivision may dedicate and levy taxes for  
21 retirement of bonds under this subsection and such levies are not subject to limitations  
22 as otherwise provided by law.

23 10. The governing board of any county, city, public school district, park district, or township  
24 may by resolution adopted by a two-thirds vote dedicate the tax levy authorized by  
25 section 57-15-41 and authorize and issue general obligation bonds to be paid by the  
26 dedicated levy for the purpose of providing funds to prepay outstanding special  
27 assessments made in accordance with the provisions of title 40 against property  
28 owned by the county, city, public school district, park district, or township.

29 **SECTION 3.** A new section to chapter 48-05 of the North Dakota Century Code is created  
30 and enacted as follows:

**Building authority governing body - Contract conflict of interest.**

The governing body of a building authority established after June 30, 2013, may not include any officer, employee, or member of the governing body of a political subdivision that contracts with the building authority.

The governing body of a building authority may not enter a contract after June 30, 2013, relating to a public improvement with an entity of which a member of the governing body of the building authority is an owner, officer, or employee.

**SECTION 4. REPEAL.** Section 57-15-59 of the North Dakota Century Code is repealed.



the governing body to do so. The levy authorized by this section may not be increased to a levy of more than one mill under the authority of this section unless approved by a vote of a majority of the qualified electors of the county or city voting on the question. The governing body shall put the issue before the qualified electors either on its own motion or when a petition in writing, signed by qualified electors of the county or city equal in number to at least ten percent of the total vote cast in the county or city for the office of governor of the state at the last general election, is presented to the governing body.

4. The officers or employees of a nonprofit corporation under contract with the board of county commissioners or the governing body of the city, in regard to the manner in which the funds shall be expended and the services are to be provided, are authorized to receive, and shall be eligible for, bonding coverage through the state bonding fund.
5. The state treasurer shall provide matching funds as provided in this subsection for counties for senior citizen services and programs funded as required by this section. The grants must be made on or before March first of each year to each eligible county. A county receiving a grant under this section which has not levied a tax under this section shall transfer the amount received to a city within the county which has levied a tax under this section. A grant may not be made to any county that has not filed with the state treasurer a written report verifying that grant funds received in the previous year under this subsection have been budgeted for the same purposes permitted for the expenditure of proceeds of a tax levied under this section. The written report must be received by the state treasurer on or before February first of each year following a year in which the reporting county received grant funds under this subsection. A matching fund grant must be provided from the senior citizen services and programs fund to each eligible county equal to three-fourths of the amount levied in dollars in the county under this section for the taxable year, but the matching fund grant applies only to a levy of up to one mill under this section.

**57-15-57. Levy for county welfare.**

The board of county commissioners, when authorized by sixty percent of the qualified electors voting on the question in a regular election or special election called by the county commissioners, may levy an annual tax not exceeding the limitation in subsection 26 of section 57-15-06.7 for county welfare purposes. The proceeds of this levy must be used solely and exclusively for county welfare purposes, as determined by the county social service board. The levy may be discontinued at the discretion of the county commissioners or, upon petition of five percent of the qualified electors of such county, the question of discontinuance of the levy must be submitted to the qualified electors of the county at any regular or special election and, upon a favorable vote of sixty percent of the qualified electors voting, the levy must be discontinued.

**57-15-58. Penalty for unlawful withdrawal from fund.**

Every officer participating in the unlawful withdrawal from any fund established by this chapter is guilty of a class A misdemeanor.

**57-15-59. Counties' and cities' authority to enter leases for court, corrections, and law enforcement facilities and dedicate mill levies.**

Notwithstanding any other provision of law, counties and cities, including home rule counties and cities, may upon a two-thirds vote of the governing body enter into leases for court facilities, corrections centers, jails, and other law enforcement facilities for a term of one year or more but not exceeding twenty years. At the time of entering into such a lease, the governing body shall dedicate the necessary annual mill levies to fund the lease payments, and such dedicated mill levies are irrevocable for the length of the lease. The governing body may levy and dedicate a levy of up to ten mills for such purposes, and this levy is in addition to any mill levy limitations established by law or by a home rule charter. If a governing body enters into a lease with annual payments from revenue from a levy under this section, payments due under the lease are a general obligation of the county or city and backed by the full faith and credit of the county or

city. A certified copy of the lease and resolution dedicating a levy under this section must be filed with the county auditor, who shall annually levy the mills set forth in the resolution for the entire term of the lease, unless the governing body provides the county auditor with a certified copy of a resolution providing that the county or city has funds available for all or part of the next year's lease payment and that no part or only a portion of the mills originally dedicated to the lease payment need to be levied for that year.

**57-15-60. Authorization of tax levy for programs and activities for handicapped persons - Elections to authorize or remove the levy - Handicapped person programs and activities.**

1. The board of county commissioners of any county may levy a tax, or if no levy is made by the board of county commissioners, the governing body of any city in the county may levy a tax, in addition to all levies now authorized by law, for the purpose of establishing or maintaining programs and activities for handicapped persons, including recreational and other leisure-time activities and informational, health, welfare, transportation, counseling, and referral services. If the tax authorized by this section is levied by the board of county commissioners, any existing levy under this section by a city in the county is void for subsequent taxable years. The removal of the levy is not subject to the requirements of subsection 3. This tax may not exceed the limitation in subsection 33 of section 57-15-06.7 and subsection 29 of section 57-15-10. The proceeds of the tax must be kept in a separate fund and used exclusively for the public purposes provided for in this section. This levy is in addition to any moneys expended by the board of county commissioners pursuant to section 11-11-65 or by the governing body of any city or park district pursuant to section 40-05-20.
2. The levy authorized by this section may be used to fund an intergovernmental program under a joint powers agreement pursuant to chapter 54-40 but may not be used to defray any expenses of any organization or agency until the organization or agency is incorporated under the laws of this state as a nonprofit corporation and has contracted with the board of county commissioners or the governing body of the city or park district in regard to the manner in which the funds will be expended and the services will be provided. An organization or agency that receives funds under this section must be reviewed or approved annually by the board of county commissioners or the governing body of the city or park district to determine its eligibility to receive funds under this section.
3. The levy authorized by this section may be imposed or removed only by a vote of a majority of the qualified electors voting on the question in an election in the county, city, or park district. The governing body shall put the issue before the qualified electors either on its own motion or when a petition in writing, signed by qualified electors of the county or city equal in number to at least ten percent of the total vote cast in the county or city for the office of governor of the state at the last general election, is presented to that governing body. A park district may levy a tax annually within the general fund levy authority of section 57-15-12 for the purpose of establishing or maintaining programs and activities for handicapped persons.

**57-15-61. Economic growth districts.**

In counties that are part of a joint job development authority, an economic growth district may be established by resolution approved by the board of county commissioners of each county that will be part of the economic growth district. The resolution approved by each board of county commissioners must specify which of the counties in the economic growth district will have the responsibility to administer the economic growth increment pool, unless the boards of county commissioners otherwise agree in writing to different terms and conditions.

1. Upon establishment of an economic growth district, the auditor of each county in the economic growth district shall compute and certify the taxable value of each lot or parcel of commercial property, as defined in section 57-02-01, in that county as most recently assessed and equalized. In each subsequent year, the county auditor of each county in an economic growth district shall compute and certify the amount by which