

**2021 HOUSE POLITICAL SUBDIVISIONS**

**HB 1419**

# 2021 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee  
Room JW327B, State Capitol

HB1419  
1/29/2021  
House Political Subdivisions

**Relating to the authority of a cities and counties to levy an infrastructure fee in lieu of special assessments and special assessment fund balances**

**Chairman Dockter: (9:00)** Opened the hearing.

<b>Representatives</b>	
Representative Jason Dockter	P
Representative Brandy Pyle	P
Representative Mary Adams	P
Representative Claire Cory	P
Representative Sebastian Ertelt	A
Representative Clayton Fegley	P
Representative Patrick Hatlestad	P
Representative Mary Johnson	A
Representative Lawrence R. Klemin	P
Representative Donald Longmuir	P
Representative Dave Nehring	P
Representative Marvin E. Nelson	P
Representative Luke Simons	A
Representative Nathan Toman	P

**Discussion Topics:**

- Utility bill fees
- Citizens approval

**Chairman Dockter:** Introduced the bill.

**Keith Hunke, City Administrator City of Bismarck:** In favor, testimony #4155.

**Brian Ritter, Bismarck Mandan Chamber EDC:** In favor, testimony #3866.

**Bill Wocken, ND League of Cities:** In favor, testimony #4216.

**Dustin Gawrylow, Director North Dakota Watchdog Network:** In favor, testimony #4174, 4175.

**Jim Neubauer, City Administrator for Mandan:** In opposition, testimony #4168.

**Kate Herzog, Chief Operating Officer Downtown Business Association of Bismarck:** Neutral, testimony #4124.

**Additional written testimony:**

**Nancy Deichert**, testimony #3985. **Brent Bogar**, testimony #4114.

**Chairman Dockter: (10:08)**. Closed the hearing.

*Carmen Hickle, Committee Clerk*

House of Representatives Political Subdivisions Committee

Representative Jason Dockter, Chairman

Representative Brandy Pyle, Vice-Chairman

January 29, 2021

Chairman Dockter, Members of the House Political Subdivisions Committee:

My name is Keith Hunke and I am the City Administrator for the City of Bismarck.

I am providing written testimony on behalf of the City of Bismarck in support of House Bill 1419.

Over the course of the last several years, the City of Bismarck has been evaluating various funding options for city infrastructure including the replacement of special assessments which are currently used to pay for street maintenance projects.

In November of 2016, the Infrastructure Task Force was created and had a goal of developing sustainable, long term financial plans for street, water and sewer projects to meet the needs of our community.

In April of 2017, the Special Assessment Task Force was created and took a deep dive into the special assessment process used to fund street, water and sewer projects.

In October of 2017, the Infrastructure and Special Assessment Task Forces were combined. Task force members included representatives from the business community, apartment owners, builders, realtors, manufactured home parks, homeowners and renters.

In 2018, the combined Bismarck Infrastructure Task Force and Special Assessment Task Force presented a recommendation to pursue the development of a street utility fee. Unfortunately, it came to light that the North Dakota Century Code did not provide the City the authority to levy and collect a street utility fee for payment of street maintenance projects.

In January of 2019, House Bill 1474, which was sponsored by several of our local legislators, was introduced in the state legislature. This bill would have provided the City of Bismarck the authority to levy and collect a fee for payment of street maintenance projects. The result of this legislation was the creation of a study that was assigned to the 2019-2020 Interim Taxation committee.

Starting in July of 2019, the Interim Taxation Committee initiated its review of House Bill 1474 for study purposes and solicited comments from city representatives on the language in the bill over the course of several months. It was determined that the committee's preference was for individual legislators to introduce legislation on this topic in the future. The committee

concluded its study of special assessment revenue replacement options at its January 29, 2020 meeting.

In April of 2020, the City of Bismarck issued a request for proposals for Street Utility Fee Consultant Services. Our selected consultant AE2S Nexus has worked with city staff members from Engineering, Finance, Community Development, Public Works and Administration over the course of several months developing a framework and strategies to replace the street maintenance special assessment revenue received from residential and commercial properties with an alternative funding source such as a street utility fee.

The Bismarck City Commission received the Street Utility Framework Report at its January 12, 2021 meeting. The report provided a comprehensive analysis of various methods the City of Bismarck could use to design a street utility fee. ([link to report](#) - [link](#) ) Brent Bogar, Senior Consultant with AE2S Nexus is on-line this morning if there are any technical questions regarding the Street Utility Framework Report.

So here we are today, over four years into our journey of evaluating alternative funding options for special assessments. We feel the Street Utility Framework report will be most valuable to kick-start the re-engagement of our task force members and future conversations with the Bismarck community at-large. However, before that can happen we need enabling legislation such as HB 1419.

The changes to North Dakota Century Code defined in HB 1419 would provide the City of Bismarck the authority to levy and collect a fee for payment of street maintenance projects. The City of Bismarck is at the ready to take the next steps to fine tune its Street Utility framework with robust engagement of our community stakeholders.

On behalf of the City of Bismarck, I urge you to give HB 1419 a DO PASS recommendation.

Thank you for the opportunity to provide testimony in support of House Bill 1419. I am happy to stand for any questions the Committee may have.

Keith J. Hunke, City Administrator  
City of Bismarck  
701-355-1300  
[khunke@bismarcknd.gov](mailto:khunke@bismarcknd.gov)



**House Political Subdivisions Committee - HB 1419**

**Representative Jason Dockter, Chair**

**January 29, 2021**

Chairman Dockter, Members of the Committee:

My name is Brian Ritter and I am President of the Bismarck Mandan Chamber EDC. I am here today on behalf of our organization's approximately 1,200 members in support of HB 1419.

From 2016 – 2018, I along with several members of the Chamber EDC were active participants in the City of Bismarck's Infrastructure Task Force, Special Assessment Task Force and Joint Task Force. These groups were formed by the City in an attempt to identify alternative means of funding the City's roadway infrastructure and review the City's process for levying special assessments.

What resulted was a four-point plan that met both objectives.

1. Ask Bismarck voters to cap the existing voter-approved 25-mill property tax buydown, which they did in 2018.
2. Ask Bismarck voters to levy an additional half-cent sales tax dedicated solely to arterial roadway construction, to be sunset after 10 years and limited to a previously developed list of roadway projects. Again, Bismarck voters did so in 2018.
3. Change the development model of residential & commercial subdivisions from what it is currently where the developer pays for the underground utilities, places a deposit on the above ground utilities and then special assesses the remaining costs to the lot, to one in

which the developer pays all front-end costs and builds the cost into the lot. This can be accomplished by a change in ordinance, but has not been addressed yet.

4. Ask Bismarck voters to approve what has been termed a 'street utility fee.' This fee would appear would appear as a charge on all residential & commercial utility bills from which the revenue would be placed into a general street maintenance budget and then used by the City on projects throughout Bismarck. The fee could then replace special assessments for street maintenance projects.

Regarding this last recommendation, asking voters to approve a street utility fee, we are currently prevented from doing so by State Law. During the 2017 Legislative Session, SB 2326 was passed and prohibits political subdivisions from seeking voter approval of funding mechanisms not present in their Home Rule Charter prior to August 1, 2017.

As such, the Bismarck-Mandan Chamber EDC has made this issue the number one priority on our 2021 Legislative Agenda. More specifically, we are seeking legislation that would only allow political subdivisions the authority to ask voters whether or not to approve a street utility fee. Which is exactly what HB 1419 does.

Infrastructure funding, special assessments and the associated issues are incredibly complicated. The aforementioned four recommendations are simply our community's ideas as to how we might address those issues. I would add however that the reason the business community has been so integrally involved in this process going back almost five years now is because of the uncertainty that special assessments can present business owners.

Businesses rely on certainty, to the extent they can, to plan investments now and into the future. As so many have said to me, "Whether its good news or bad news, just give it to me so I can adapt and move on." A street utility fee can provide that certainty for businesses while providing the City with a consistent stream of revenue by which to improve the infrastructure serving that business

Thank you for the opportunity to testify today. If there are any questions from the Committee, I would be happy to attempt to address them.

Testimony in Favor of House Bill 1419  
January 29, 2021  
House Political Subdivisions Committee  
Bill Wocken on behalf of the North Dakota League of Cities

Good Morning Mr. Chairman and members of the House Political Subdivisions Committee. For the record, my name is Bill Wocken and I am testifying in favor of House Bill 1419 on behalf of the North Dakota League of Cities.

As you are aware, House Bill 1419 allows cities or counties to collect an infrastructure fee in place of special assessments levied to pay for maintenance of existing roads and infrastructure. This bill came before the Sixty-sixth Legislative Assembly but there were some unanswered questions. The Interim Taxation Committee and the City of Bismarck have made a good attempt to study those questions during the interim period.

Many of us have experienced the unwelcome mailing from the city saying your street needs to have a mill and overlay and the cost will be considerable. You may concede that this repair is needed but the realities of paying for the work are a bit overwhelming. The bill is usually quite high, interest is charged on the unpaid balance, it comes at the same time as the property tax statement and it's Christmas time!

Bismarck has been looking at alternatives to special assessment charges for several years with a citizen's committee and the infrastructure fee concept was the most favored solution. It allows a citizen to pay the cost of their street maintenance on a manageable and predictable basis that can be more budget friendly.

We believe that if a city and its citizens are willing to try this new approach to infrastructure improvements no one will be hurt and everyone may potentially benefit. The North Dakota League of Cities supports the idea of an additional option to address special assessments and it respectfully requests a DO PASS recommendation for House Bill 1419.

## Bismarck Special Assessment Task Force – Decision Overview

The Task Force agreed to provide an update to the Board of City Commissioners and to recommend the following to the Board of City Commissioners:

- No special assessments for new construction or development
- Formation of a monthly street maintenance fee to eliminate special assessments for street maintenance projects on local and arterial streets.
- An additional sales tax, not to exceed  $\frac{3}{4}$  percent, for the construction of expanded arterial roadways identified by the Infrastructure Task Force
- Revamp storm water program to no longer hold projects in abeyance
- Cap the Sales Tax 25-mill property tax buy-down at 2018 levels
- 5-year “check-in” to determine the effectiveness of the proposed changes - 10-year “sunset” to reconsider the impacts of the proposed changes

It was noted that a landowner petitioning for improvements on their property as part of the upkeep of the driveway or sidewalk could be considered differently than street maintenance. The general consensus of the Task Force members was to eliminate special assessments for these situations and work with local banks to develop an alternative lending source through private banks instead of the City of Bismarck or provide the option for property owners to pay for the work in-full. It was noted that banks have other programs to help with home improvement loans and there may be an opportunity to consider other options for homeowners in-lieu of the City of Bismarck functioning as a bank.

### Homebuilders Association Support

Shannon Reichenberg shared the results of the Bismarck-Mandan Home Builders Association’s (BMHBA) online survey. The survey generated 99 responses. The survey results are appended to these minutes as Exhibit 2. Mr. Reichenberg indicated the overall responses were supportive of eliminating special assessments and the BMHBA’s executive committee was supportive of the concepts proposed by the Task Force. Mr. Reichenberg stated that the BMHBA would be actively engaged in education and support to eliminate special assessments for new construction, provided the City Commission is also supportive of eliminating special assessments for new construction and development. Eliminating special assessments for new construction may require changes to existing City policies (i.e. would need to install street lighting upon original build-out of subdivision and not wait until 50% is developed as per current City policy).

### SB 2326 Problems Discovered

Discussion was held regarding Senate Bill 2326, the law that limits a city’s ability to collect taxes to property tax and sales tax only. Mr. Hunke shared with the group that he had met with Senator Laffen from Grand Forks and was told that the Bill was in response to concerns with communities struggling to remain competitive with fuel prices and the potential to create a “gas war” in communities where a similar tax does not exist. Mr. Hunke stated that Senator Laffen encouraged cities to develop language to support the tools needed to fund and sustain street maintenance and infrastructure. Mr. Ritter added that in his conversations with Senator Cook from Mandan, he too echoed Senator Laffen’s comments and also encouraged communities to develop a coalition of communities and approach the Greater North Dakota Chamber to help build support and consensus. Mr. Hunke noted that City staff will work with the City Attorney to help develop supportive language necessary to enable changes with State law. Mr. Hunke also stated that City staff will work with the North Dakota League of Cities to ensure a collective voice is carried forward. The general consensus of those present was to support the creation of a statewide coalition, to engage the North Dakota League of Cities for support and to identify State leaders willing to carry the draft bill language forward during the 2019 session.

**HB 1419 – Testimony by Dustin Gawrylow (Lobbyist #266) North Dakota Watchdog Network**

From April 2017 to August 2018, I served as an appointed member of the Bismarck Special Assessment Task Force, and the subsequent Infrastructure and Special Assessment Joint Task Force.

I've attached the summary sheet that I have used as a guide to talking about the Task Forces work, starting in October 2018 when myself and Bismarck City Administrator Keith Hunke spoke to the Fargo Special Assessment Task Force.

HB 1419 is intended to allow cities like Bismarck to find new and creative ways to fix their own financing models for infrastructure, and reduce burdens on taxpayers.

This issue at the state level, as the 2019 version of this bill showed, gets bogged down in the details.

It is my belief that in the name of Local Control, the legislature should grant every political subdivision the leeway to develop new financing models and sell those models to their own voters via Home Rule Charter Amendments. The Bismarck Special Assessment Task Force was the first step in that process, but hit a wall when it was discovered that a 2017 bill prevented such things from happening.

Recently, the City of Bismarck commissioned a Market Study with AE2S to figure out how to create a new financing structure. And to be honest, I'm not real happen with a lot of the conclusions myself because the study apparently did not take much of the Task Force's work into account. I have made this displeasure very clear to city commissioners and city staff as we've all had a very good working relationship on this issue.

For instance, the study looked at things like "Commercial Trip Generation" which to me sounds like a euphemism for a mileage tax – which is something I will never support.

I also agree with much of the Bismarck Downtowners' concerns, which they will tell you about

However, I do not believe these objections should sideline the whole project. Clearly we have more work to do before we have a tax reform ready for prime time to sell to voters. But I urge you to find a way to enable Bismarck to come up with a plan that can help them help themselves.

Because at the end of the day, this helps get the legislature out of the property tax business.

I urge a DO PASS on HB 1419 in some format.



## *City of Mandan Administration*

### **House Political Subdivisions Committee**

#### **HB 1419**

#### **Representative Jason Dockter, Chair**

**January 29, 2021**

Chairman Dockter, Members of the Committee:

My name is Jim Neubauer and I am the City Administrator for Mandan North Dakota. I am here today regarding House Bill 1419.

Special assessments are certainly not popular among property owners and finding alternative funding methods is a worthy endeavor. At the end of the day, the cost of projects will remain the same; the only difference is how the funding is generated. Special assessments are a common way in North Dakota to raise the required amount of money to fund infrastructure projects and assign those costs (benefits) to properties in a fair and equitable manner. The cost of special assessments are generally spread over a period of years related to the life of the improvement. For example, asphalt street construction projects may be spread over 15 years and concrete streets over a 20-year-period.

The City of Mandan enjoys many benefits of being a part of a larger metro area with Bismarck. However, along with those benefits also come challenges. Comparisons are often made on why Bismarck does this and why Mandan doesn't. Or Mandan does this and why doesn't Bismarck? We recognize we are one metro area, but we have significantly different pocketbooks. In reviewing the "Street Utility Framework Report" prepared for the City of Bismarck, I find that Bismarck is able to buy down or subsidize its street maintenance costs utilizing sales tax by roughly 40%. We know a portion of the sales tax collected by Bismarck is attributable to Mandan residents. The best way to demonstrate that is Mandan's taxable sales per capita is roughly \$10,000 and Bismarck's is \$20,000. The 2021 budget for the City of Mandan relies on 89% of the sales tax revenue being applied to property tax buy down, the balance for infrastructure, economic development and municipal debt reduction. There are simply very few dollars from our sales tax collections available to be used for infrastructure subsidies.

We are pleased to report that the "City" portion of our property tax along with our utility fees are currently competitive, generally in the middle among the state's largest cities, and in 2021 actually a bit lower than Bismarck's. A street utility fee, if approved, that is also subsidized by sales tax would simply widen the gap when comparisons are made between our cities, and put Mandan and other cities and counties that have low sales tax collection per capita at a competitive disadvantage when vying for new residents and businesses.

It is for that reason that we would ask for a do not pass on HB 1419.



House Political Subdivisions  
Chairperson and Committee Members

#### HB 1419 Concerns

The Downtown Business Association of Bismarck represents over 200 members with 9,000 employees in North Dakota's second largest employment district.

Our Board of Directors have been closely watching the City of Bismarck and their Special Assessment Task Force and study. We have quite a few concerns regarding HB 1419. This bill would allow cities to replace a special assessment with a street utility fee. It would give cities new authority to create a city-wide fee, however:

- There is no official property owner protest option in this fee-system as there are in current similar special assessments. Going from required protest periods to none all at once is likely to cause concern for property owners.
- The matrix of factors the city could use to assess the fee are dependent on how up to date their records are or generalized systems like trip-generator which can be unreliable and not based on true use.
- ITE Trip Generator used by the City of Bismarck's consultant, is a model that should not be used in a Downtown or any mixed-use neighborhood and may only apply to single-use commercial areas if at all. *(Alternative 5- Tiered Fixed Fee)*
- The factors used by the City of Bismarck's consultant as an example of a possible fee-- shows 300% increases in monthly fees over average for Downtown commercial office and multi-family apartment units. *(Alternative 5- Tiered Fixed Fee)*
- The City of Bismarck's study example also included existing specials being added to the fee, regardless if a property owner had paid theirs off. *(Alternative 5- Tiered Fixed Fee)*

While HB 1419 allows cities to access a new fee tool, the details around property owner input, lack of sophisticated data sets, and guardrails to ensure this fee would be applied thoughtfully are scant at this point. It's our recommendation that this committee consider these concerns as possible amendments to this bill to protect property owner's rights.

A handwritten signature in black ink, appearing to read "Kate Herzog".

Kate Herzog, COO  
Chief Operating Officer  
Downtowners Bismarck



HB 1419  
House Political Sub Committee  
Friday, January 29, 2021

Chair Dockter and Members of the Committee:

The Bismarck Mandan Board of Realtors® supports HB1419 providing municipalities the option to implement an infrastructure fee in lieu of special assessments.

Representatives of our association participated in many meetings and discussions about special assessments and the hardships that can be created when property owners (residential and commercial) receive notice that a special assessment has been issued; and, as a result, their monthly escrow payments will be increased – sometimes substantially. For the majority of property owners, these assessments are typically not planned in the owners' budgets. Think about the particular impact on first-time home buyers and on small businesses.

On the other hand, with an infrastructure/utility fee, a lesser amount is paid on a regular basis and would provide home and business owners with a known amount each month by which to fund infrastructure updates related to their properties. No surprises. No major increases to monthly escrow payments due to special assessments.

We realize the municipalities would need citizen approval in order to implement such a fee; and, we support the opportunity for that option to be in place.

Thank you for your consideration and support.

Bismarck Mandan Board of Realtors®

Nancy Deichert, CEO, 701.471.2093  
Joy Nelson, President, 701.202.8795



HB 1419

House Political Sub Committee

Friday, January 29, 2021

Chair Dockter and Members of the Committee:

I am available as support and assist in answering any questions for the City of Bismarck as it relates to the framework that was developed for a potential utility fee.

# 2021 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee  
Room JW327B, State Capitol

HB1419  
2/19/21  
House Political Subdivisions

**Relating to the authority of a cities and counties to levy an infrastructure fee in lieu of special assessments and special assessment fund balances**

**Chairman Dockter: (9:00)** Opened the hearing.

<b>Representatives</b>	
Representative Jason Dockter	P
Representative Brandy Pyle	P
Representative Mary Adams	P
Representative Claire Cory	P
Representative Sebastian Ertelt	P
Representative Clayton Fegley	P
Representative Patrick Hatlestad	P
Representative Mary Johnson	P
Representative Lawrence R. Klemin	P
Representative Donald Longmuir	P
Representative Dave Nehring	P
Representative Marvin E. Nelson	P
Representative Luke Simons	P
Representative Nathan Toman	P

**Discussion Topics:**

- Amendment

**Brent Bogar,** Explained the amendments and answered questions. Amendment includes the money collected under this subdivision may not be used for any purposes other than infrastructure maintenance costs. As well as removing a new subsection. Testimony #6929,6930.

**Rep. Adams:** Made a motion to move amendments.

**Rep. Johnson:** Second the motion.

Voice vote carried.

**Rep. Adams:** Made a do pass as amended.

**Rep. Johnson:** Second the motion.

<b>Representatives</b>	<b>Vote</b>
Representative Jason Dockter	Y
Representative Brandy Pyle	Y
Representative Mary Adams	Y
Representative Claire Cory	Y
Representative Sebastian Ertelt	N
Representative Clayton Fegley	Y
Representative Patrick Hatlestad	Y
Representative Mary Johnson	Y
Representative Lawrence R. Klemin	Y
Representative Donald Longmuir	Y
Representative Dave Nehring	Y
Representative Marvin E. Nelson	Y
Representative Luke Simons	N
Representative Nathan Toman	N

11-3-0 carried.

**Rep. Adams:** Will carry the bill.

**Chairman Dockter: (9:57).** Closed the hearing.

*Carmen Hickle, Committee Clerk*

February 19, 2021

DP 2/19/21  
1 of 1

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1419

Page 1, line 1, remove "a new subsection to section 40-05-01 and"

Page 1, line 2, remove "county or"

Page 2, line 8, replace "in lieu of" with ". The fee must replace a"

Page 2, line 8, replace "assessments" with "assessment"

Page 2, line 9, remove "residential and commercial"

Page 2, line 10, after the underscored period insert "The money collected under this subsection may not be used for any purpose other than infrastructure maintenance costs."

Page 5, remove lines 20 through 30

Page 6, remove lines 1 through 3

Page 6, line 25, replace "in lieu of" with ". The fee must replace a"

Page 6, line 25, replace "assessments" with "assessment"

Page 6, line 26, remove "residential and commercial"

Page 6, line 27, after the underscored period insert "The money collected under this subsection may not be used for any purpose other than infrastructure maintenance costs."

Page 10, line 5, replace "in lieu of" with ". The fee must replace a"

Page 10, line 5, replace "assessments" with "assessment"

Page 10, line 5, remove "residential and commercial"

Page 10, line 7, after the underscored period insert "The money collected under this subsection may not be used for any purpose other than infrastructure maintenance costs."

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**HB 1419: Political Subdivisions Committee (Rep. Dockter, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1419 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "a new subsection to section 40-05-01 and"

Page 1, line 2, remove "county or"

Page 2, line 8, replace "in lieu of" with ". The fee must replace a"

Page 2, line 8, replace "assessments" with "assessment"

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Page 10, line 5, remove "residential and commercial"

Page 10, line 7, after the underscored period insert "The money collected under this subsection may not be used for any purpose other than infrastructure maintenance costs."

Re-number accordingly

21.0739.03001  
Title.

Prepared by the Legislative Council staff for  
Representative Dockter  
February 18, 2021

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1419

Page 1, line 1, remove "a new subsection to section 40-05-01 and"

Page 1, line 2, remove "county or"

Page 2, line 8, replace "Levy" with "To levy"

Page 2, line 8, replace "in lieu of" with ". The fee must replace a"

Page 2, line 8, replace "assessments" with "assessment"

Page 2, line 9, replace "residential and commercial" with "taxable"

Page 2, line 10, after the underscored period insert "The money collected under this subsection may not be used for any purpose other than infrastructure maintenance costs."

Page 5, remove lines 20 through 30

Page 6, remove lines 1 through 3

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Page 10, line 5, replace "residential and commercial" with "taxable"

Page 10, line 7, after the underscored period insert "The money collected under this subsection may not be used for any purpose other than infrastructure maintenance costs."

Renumber accordingly

21.0739.03001

Sixty-seventh  
Legislative Assembly  
of North Dakota

**HOUSE BILL NO. 1419**

Introduced by

Representatives Dockter, Bosch, Heinert, Klemin, Meier, Nathe

Senators Dever, Poolman

1 A BILL for an Act to create and enact ~~a new subsection to section 40-05-01 and~~ a new section  
2 to chapter 40-22 of the North Dakota Century Code, relating to the authority of a ~~county or~~ city  
3 to levy an infrastructure fee in lieu of special assessments; and to amend and reenact sections  
4 11-09.1-05, 11-11-55.1, 40-05.1-06, 40-12-02, and 40-23-21 of the North Dakota Century Code,  
5 relating to the authority of cities and counties to levy an infrastructure fee in lieu of special  
6 assessments and special assessment fund balances.

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

8 **SECTION 1. AMENDMENT.** Section 11-09.1-05 of the North Dakota Century Code is  
9 amended and reenacted as follows:

**10 11-09.1-05. Powers.**

11 After the filing with the secretary of state of a charter approved in reasonable conformity  
12 with this chapter, the county and its citizens may, if included in the charter and implemented  
13 through ordinances:

- 14 1. Acquire, hold, operate, and dispose of property within or without the county limits, and,  
15 subject to chapter 32-15, exercise the right of eminent domain for those purposes.
- 16 2. Control its finances and fiscal affairs; appropriate money for its purposes, and make  
17 payments of its debts and expenses; contract debts, borrow money, issue bonds,  
18 warrants, and other evidences of indebtedness; establish charges for any county or  
19 other services to the extent authorized by state law; and establish debt limitations.
- 20 3. ~~To levy~~Levy and collect property taxes and special assessments for benefits  
21 conferred, for its public and proprietary functions, activities, operations, undertakings,  
22 and improvements, and establish mill levy limitations. Notwithstanding any authority  
23 granted under this chapter, all property must be assessed in a uniform manner as  
24 prescribed by the state board of equalization and the state supervisor of assessments

1 and all taxable property must be taxed by the county at the same rate unless  
2 otherwise provided by law. A charter or ordinance or act of a governing body of a  
3 home rule county may not supersede any state law that determines what property or  
4 acts are subject to, or exempt from, ad valorem taxes. A charter or ordinance or act of  
5 the governing body of a home rule county may not supersede section 11-11-55.1  
6 relating to the sixty percent petition requirement for improvements and of section  
7 40-22-18 relating to the barring proceeding for improvement projects.

8 4. ~~To levy~~Levy~~To levy and collect an infrastructure fee in lieu of. The fee must replace a~~  
9 ~~general special assessments~~assessment on all ~~residential and commercial~~taxable  
10 property for payment of infrastructure maintenance costs through a utility bill issued by  
11 the county. The money collected under this subsection may not be used for any  
12 purpose other than infrastructure maintenance costs. If a home rule county levies an  
13 infrastructure fee, the home rule county also may levy and collect green field special  
14 assessments. As used in this subsection:

15 a. "General special assessments" means special assessments levied for the  
16 purpose of maintaining existing roads and infrastructure and special  
17 assessments levied for the construction or repair of arterial roads and  
18 infrastructure that provide a benefit to the entire community.

19 b. "Green field special assessments" means special assessments levied for  
20 infrastructure costs associated with the development of agricultural or  
21 undeveloped property.

22 5. Levy and collect sales and use taxes, farm machinery gross receipts taxes, alcoholic  
23 beverage gross receipts taxes, a county lodging tax, and a county restaurant tax.

24 Sales and use taxes and gross receipts taxes levied under this chapter:

25 a. Must conform in all respects with regard to the taxable or exempt status of items  
26 under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2 and may not be imposed  
27 at multiple rates with the exception of sales of manufactured homes or mobile  
28 homes.

29 b. May not be newly imposed or changed except to be effective on the first day of a  
30 calendar quarterly period after a minimum of ninety days' notice to the tax  
31 commissioner or, for purchases from printed catalogs, on the first day of a

- 1 calendar quarter after a minimum of one hundred twenty days' notice to the  
2 seller.
- 3 c. May not be limited to apply to less than the full value of the transaction or item as  
4 determined for state sales and use tax, except for farm machinery gross receipts  
5 tax purposes.
- 6 d. Must be subject to collection by the tax commissioner under an agreement under  
7 section 57-01-02.1, with the exception of a county lodging or county restaurant  
8 tax, and must be administered by the tax commissioner in accordance with the  
9 relevant provisions of chapter 57-39.2, including reporting and paying  
10 requirements, correction of errors, payment of refunds, and application of penalty  
11 and interest.

12 After December 31, 2005, any portion of a charter or any portion of an ordinance or  
13 act of a governing body of a home rule county passed pursuant to a charter which  
14 does not conform to the requirements of this subsection is invalid to the extent that it  
15 does not conform. The invalidity of a portion of a charter or ordinance or act of a  
16 governing body of a home rule county because it does not conform to this subsection  
17 does not affect the validity of any other portion of the charter or ordinance or act of a  
18 governing body of a home rule county or the eligibility for a refund under section  
19 57-01-02.1. Any taxes imposed under this chapter on farm machinery, farm irrigation  
20 equipment, and farm machinery repair parts used exclusively for agricultural purposes,  
21 or on alcoholic beverages, which were in effect on December 31, 2005, become gross  
22 receipts taxes after December 31, 2005. Ordinances enacted after August 1, 2017,  
23 may not allow for the collection and levy of any tax not otherwise specified under this  
24 section.

25 ~~5-6.~~ Provide for county elected and appointed officers and employees, their selection,  
26 powers, duties, qualifications, and compensation, and the terms of county appointed  
27 officers and employees. However, after adoption of a home rule charter, a county  
28 elected office may not be eliminated or combined with another office except upon  
29 approval of a majority of the electors of the county voting upon the question at a  
30 primary or general election or pursuant to the county officer combination, separation,  
31 or redesignation procedures of chapter 11-10.2. A home rule charter may not diminish

1 the term of office for which a current county officer was elected, redesignate that  
2 elected office during that term as appointed, or reduce the salary of the office for that  
3 term. This subsection does not authorize a county to redesignate the elected offices of  
4 sheriff and state's attorney as appointed, except as provided in section 11-10-02.3.

5 ~~6-7.~~ Provide for all matters pertaining to county elections, except as to qualifications of  
6 electors.

7 ~~7-8.~~ Provide for the adoption, amendment, repeal, initiative, referral, enforcement, and civil  
8 and criminal penalties for violation of ordinances, resolutions, and regulations to carry  
9 out its governmental and proprietary powers and to provide for public health, safety,  
10 morals, and welfare. However, this subsection does not confer any authority to  
11 regulate any industry or activity which is regulated by state law or by rules adopted by  
12 a state agency.

13 ~~8-9.~~ Lay out or vacate public grounds, and provide through its governing body for the  
14 construction, use, operation, designation, and regulation of a county road system.

15 ~~9-10.~~ Provide for zoning, planning, and subdivision of public or private property within the  
16 county limits but outside the zoning authority of any city or organized township.

17 ~~10-11.~~ Exercise in the conduct of its affairs all powers usually exercised by a corporation.

18 ~~11-12.~~ Contract with and receive grants from any other governmental entity or agency, with  
19 respect to any local, state, or federal program, project, or works.

20 The people of all counties coming within this chapter have the full right of  
21 self-government in all matters within the powers enumerated in this chapter. The statutes of this  
22 state, so far as applicable, continue to apply to counties, except as superseded by the charters  
23 of the counties or by ordinances passed pursuant to the charters.

24 **SECTION 2. AMENDMENT.** Section 11-11-55.1 of the North Dakota Century Code is  
25 amended and reenacted as follows:

26 **11-11-55.1. Petition or resolution for improvements - Levy of special assessments -**  
27 **Levy of infrastructure fee.**

28 1. The board of county commissioners of any county, by resolution or upon receipt of a  
29 petition of sixty percent of the landowners in a defined area, outside of the limits of any  
30 incorporated city, may install the petitioned improvements as benefit the defined area,

1 provide for the financing of the improvements, and levy special assessments for the  
2 payment of all or part of the improvements within the defined area.

3 2. The board of county commissioners, by resolution or upon petition of sixty percent of  
4 the qualified electors who voted in the last general election in a defined area, may levy  
5 and collect an infrastructure fee in lieu of general special assessments on all  
6 residential and commercial county utility bills for payment of infrastructure  
7 maintenance costs. If a home rule county levies an infrastructure fee, the home rule  
8 county also may levy and collect green field special assessments.

9 3. In providing for the improvements, the county shall have the authority granted to  
10 municipalities in chapters 40-22, 40-23, 40-23.1, 40-24, 40-25, 40-26, 40-27, and  
11 40-28, and the county shall comply with the provisions of those chapters in making the  
12 improvements. Whenever action is required of city officials in those chapters, the  
13 comparable county officials shall take the action.

14 4. As used in this section:

15 a. "General special assessments" means special assessments levied for the  
16 purpose of maintaining existing roads and infrastructure and special  
17 assessments levied for the construction or repair of arterial roads and  
18 infrastructure that provide a benefit to the entire community.

19 b. "Green field special assessments" means special assessments levied for  
20 infrastructure costs associated with the development of agricultural or  
21 undeveloped property.

22 ~~SECTION 3. A new subsection to section 40-05-01 of the North Dakota Century Code is~~  
23 ~~created and enacted as follows:~~

24 ~~Levy and collect an infrastructure fee in lieu of general special assessments on all~~  
25 ~~residential and commercial property for payment of infrastructure maintenance costs~~  
26 ~~through a utility bill issued by a municipality. If a municipality levies an infrastructure~~  
27 ~~fee, the municipality also may levy and collect green field special assessments.~~

28 ~~As used in this section:~~

29 ~~a. "General special assessments" means special assessments levied for the~~  
30 ~~purpose of maintaining existing roads and infrastructure and special~~

~~assessments levied for the construction or repair of arterial roads and  
infrastructure that provide a benefit to the entire community.~~

~~b. "Green field special assessments" means special assessments levied for  
infrastructure costs associated with the development of agricultural or  
undeveloped property.~~

**SECTION 3. AMENDMENT.** Section 40-05.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**40-05.1-06. Powers.**

From and after the filing with the secretary of state of a charter framed and approved in reasonable conformity with the provisions of this chapter, such city, and the citizens thereof, shall, if included in the charter and implemented through ordinances, have the following powers set out in this chapter:

1. To acquire, hold, operate, and dispose of property within or without the corporate limits, and, subject to chapter 32-15, exercise the right of eminent domain for such purposes.
2. To control its finances and fiscal affairs; to appropriate money for its purposes, and make payment of its debts and expenses; to contract debts, borrow money, issue bonds, warrants, and other evidences of indebtedness; to establish charges for any city or other services; and to establish debt limitations.
3. To levy and collect property taxes and special assessments for benefits conferred, for its public and proprietary functions, activities, operations, undertakings, and improvements, and establish mill levy limitations. Notwithstanding any authority granted under this chapter, all property must be assessed in a uniform manner as prescribed by the state board of equalization and the state supervisor of assessments and all taxable property must be taxed by the city at the same rate unless otherwise provided by law.
4. To levy and collect an infrastructure fee ~~in lieu of~~. The fee must replace a general special ~~assessments~~assessment on all ~~residential and commercial~~taxable property for payment of infrastructure maintenance costs through a utility bill issued by a municipality. The money collected under this subsection may not be used for any purpose other than infrastructure maintenance costs. If a home rule city levies an

1           infrastructure fee, the home rule city also may levy and collect green field special  
2           assessments. As used in this subsection:

3           a. "General special assessments" means special assessments levied for the  
4           purpose of maintaining existing roads and infrastructure and special  
5           assessments levied for the construction or repair of arterial roads and  
6           infrastructure that provide a benefit to the entire community.

7           b. "Green field special assessments" means special assessments levied for  
8           infrastructure costs associated with the development of agricultural or  
9           undeveloped property.

10        5. To levy and collect excises, fees, charges, franchise and license taxes, sales and use  
11        taxes, farm machinery gross receipts taxes, alcoholic beverage gross receipts taxes, a  
12        city lodging tax, and a city restaurant tax. For purposes of this section, any taxes  
13        imposed under this section on farm machinery, farm irrigation equipment, and farm  
14        machinery repair parts used exclusively for agricultural purposes, or on alcoholic  
15        beverages, which were in effect on December 31, 2005, become gross receipts taxes  
16        after December 31, 2005. After December 31, 2005, any portion of a charter or any  
17        portion of an ordinance passed pursuant to a charter which does not conform to the  
18        requirements of this section is invalid to the extent it does not conform. The invalidity  
19        of a portion of a charter or ordinance because it does not conform with this subsection  
20        does not affect the validity of any other portion of the charter or ordinance of the  
21        eligibility for a refund under section 57-01-02.1. Ordinances enacted after August 1,  
22        2017, may not allow for the collection and levy of any tax not otherwise specified  
23        under this section. Sales and use taxes and gross receipts taxes levied under this  
24        section:

25        a. Must conform in all respects with regard to the taxable or exempt status of items  
26        under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2 and may not be imposed  
27        at multiple rates with the exception of sales of manufactured homes or mobile  
28        homes.

29        b. May not be newly imposed or changed except to be effective on the first day of a  
30        calendar quarterly period after a minimum of ninety days' notice to the tax  
31        commissioner or, for purchases from printed catalogs, on the first day of a

- 1 calendar quarter after a minimum of one hundred twenty days' notice to the  
2 seller.
- 3 c. May not be limited to apply to less than the full value of the transaction or item as  
4 determined for state sales and use tax purposes, except for farm machinery  
5 gross receipts tax.
- 6 d. Must be subject to collection by the tax commissioner under an agreement under  
7 section 57-01-02.1, with the exception of a city lodging or city restaurant tax, and  
8 must be administered by the tax commissioner in accordance with the relevant  
9 provisions of chapter 57-39.2, including reporting and paying requirements,  
10 correction of errors, payment of refunds, and application of penalty and interest.
- 11 ~~5-6.~~ To fix the fees, number, terms, conditions, duration, and manner of issuing and  
12 revoking licenses in the exercise of its governmental police powers.
- 13 ~~6-7.~~ To provide for city officers, agencies, and employees, their selection, terms, powers,  
14 duties, qualifications, and compensation. To provide for change, selection, or creation  
15 of its form and structure of government, including its governing body, executive officer,  
16 and city officers.
- 17 ~~7-8.~~ To provide for city courts, their jurisdiction and powers over ordinance violations,  
18 duties, administration, and the selection, qualifications, and compensation of their  
19 officers; however, the right of appeal from judgment of such courts shall not be in any  
20 way affected.
- 21 ~~8-9.~~ To provide for all matters pertaining to city elections, except as to qualifications of  
22 electors.
- 23 ~~9-10.~~ To provide for the adoption, amendment, and repeal of ordinances, resolutions, and  
24 regulations to carry out its governmental and proprietary powers and to provide for  
25 public health, safety, morals, and welfare, and penalties for a violation thereof.
- 26 ~~10-11.~~ To lay out or vacate streets, alleys, and public grounds, and to provide for the use,  
27 operation, and regulation thereof.
- 28 ~~11-12.~~ To define offenses against private persons and property and the public health, safety,  
29 morals, and welfare, and provide penalties for violations thereof.

- 1 ~~12-13.~~ To engage in any utility, business, or enterprise permitted by the constitution or not  
2 prohibited by statute or to grant and regulate franchises therefor to a private person,  
3 firm, corporation, or limited liability company.
- 4 ~~13-14.~~ To provide for zoning, planning, and subdivision of public or private property within the  
5 city limits. To provide for such zoning, planning, and subdivision of public or private  
6 property outside the city limits as may be permitted by state law.
- 7 ~~14-15.~~ To exercise in the conduct of its affairs all powers usually exercised by a corporation.
- 8 ~~15-16.~~ To fix the boundary limits of said city and the annexation and deannexation of territory  
9 adjacent to said city except that such power shall be subject to, and shall conform with  
10 the state law made and provided.
- 11 ~~16-17.~~ To contract with and receive grants from any other governmental entity or agency, with  
12 respect to any local, state, or federal program, project, or works.

13 It is the intention of this chapter to grant and confirm to the people of all cities coming within  
14 its provisions the full right of self-government in both local and city matters within the powers  
15 enumerated herein. The statutes of the state of North Dakota, so far as applicable, shall  
16 continue to apply to home rule cities, except insofar as superseded by the charters of such  
17 cities or by ordinance passed pursuant to such charters.

18 **SECTION 4. AMENDMENT.** Section 40-12-02 of the North Dakota Century Code is  
19 amended and reenacted as follows:

20 **40-12-02. Submission of proposed ordinance by petition - Filed with city auditor -**  
21 **Request in petition.**

- 22 1. Any proposed ordinance may be submitted to the governing body of the municipality  
23 by a petition signed by qualified electors thereof equal in number to fifteen percent of  
24 the votes cast for all candidates for the executive officer at the preceding regular  
25 municipal election. The petition must be filed in the city auditor's office and must  
26 contain a request that the ordinance set out in the petition be submitted to a vote of  
27 the qualified electors of the city if it is not passed by the governing body of the  
28 municipality.
- 29 2. Notwithstanding subsection 1, a proposed ordinance for the purpose of levying an  
30 infrastructure fee under section 6 of this Act may be submitted to the governing body  
31 of the municipality by a petition signed by sixty percent of the qualified electors who

1 voted in the preceding municipal election. The petition must be filed in the city  
2 auditor's office and submitted to a vote of the qualified electors of the city at the next  
3 municipal election.

4 **SECTION 5.** A new section to chapter 40-22 of the North Dakota Century Code is created  
5 and enacted as follows:

6 **Power of municipality to defray expense of improvements - Infrastructure fee.**

7 1. Notwithstanding section 40-22-01, a municipality may levy and collect an infrastructure  
8 fee ~~in lieu of~~. The fee must replace a general special ~~assessments~~assessment on all  
9 ~~residential and commercial~~taxable property for payment of infrastructure maintenance  
10 costs through a utility bill issued by a municipality. The money collected under this  
11 subsection may not be used for any purpose other than infrastructure maintenance  
12 costs. If a municipality levies an infrastructure fee, the municipality also may levy and  
13 collect green field special assessments.

14 2. As used in this section:

15 a. "General special assessments" means special assessments levied for the  
16 purpose of maintaining existing roads and infrastructure and special  
17 assessments levied for the construction or repair of arterial roads and  
18 infrastructure that provide a benefit to the entire community.

19 b. "Green field special assessments" means special assessments levied for  
20 infrastructure costs associated with the development of agricultural or  
21 undeveloped property.

22 **SECTION 6. AMENDMENT.** Section 40-23-21 of the North Dakota Century Code is  
23 amended and reenacted as follows:

24 **40-23-21. Use of collections of subsequent assessments.**

25 1. All collections of special assessments levied pursuant to sections 40-23-17 through  
26 40-23-21 shall be credited as received to the special fund maintained by the  
27 municipality for the payment of any outstanding special improvement warrants,  
28 refunding improvement bonds, general obligation bonds, or revenue bonds which were  
29 issued to finance the improvement for which the assessments were levied, or, if no  
30 such obligations are outstanding, to such fund as the governing body may direct.

1        2. If a governing body of a municipality levied and collected an infrastructure fee under  
2        section 5 of this Act, the funds generated by the fee must be used for the payment of  
3        any outstanding special improvement warrants, refunding improvement bonds, general  
4        obligation bonds, or revenue bonds issued to finance the improvement. The governing  
5        body of a municipality may not use funds generated by an infrastructure fee imposed  
6        after the effective date of this Act for the payment of any outstanding special  
7        improvement warrants, refunding improvement bonds, general obligation bonds, or  
8        revenue bonds, issued before the effective date of this Act for the purpose of financing  
9        green field special assessments, as defined in section 40-05-01.

**2021 SENATE POLITICAL SUBDIVISIONS**

**HB 1419**

# 2021 SENATE STANDING COMMITTEE MINUTES

## Political Subdivisions Committee Sakakawea, State Capitol

HB 1419  
3/26/2021  
9:30 AM

A BILL for an Act to create and enact a new section to chapter 40-22 of the North Dakota Century Code, relating to the authority of a city to levy an infrastructure fee in lieu of special assessments; and to amend and reenact sections 11-09.1-05, 11-11-55.1, 40-05.1-06, 40-12-02, and 40-23-21 of the North Dakota Century Code, relating to the authority of cities and counties to levy an infrastructure fee in lieu of special assessments and special assessment fund balances.

**Chairman Burckhard** opened the hearing on HB 1419 at 9:30 a.m.  
Members present: Burckhard, Anderson, Lee, Larson, Kannianen, Oban, Heitkamp.

### Discussion Topics:

- City budget goals
- Replacing V.S. Reducing
- Street utility tax
- Property tax increase
- Flexibility of political subdivisions

**[9:31] Representative Jason Dockter, District 7.** Introduced HB 1419.

**[9:42] Keith Hunke, City Administrator, City of Bismarck.** Testified in favor #10622.

**[9:56] Steve Bakken, Mayor, City of Bismarck.** Testified in favor #10788.

**[10:02] Brian Ritter, President, Bismarck Mandan EDC.** Testified in favor #10495.

**[10:04] Bill Wocken, ND League of Cities.** Testified in favor #10706.

**[10:09] Dustin Gawrylow, Managing Director, ND Watchdog Network.** Provided testimony #10821 in favor.

**[10:15] Jim Neubauer, City Administrator, City of Mandan.** Testified in opposition #10765.

**[10:21] Katie JHerzog, Chief Operating Officer, Downtowners Bismarck.** Provided testimony #10801 in opposition.

**[10:28] Brent Boger, Senior Consultant, AE2S Nexus.** Provided clarification to the committee on the Street Utility Framework Report.

**Additional written testimony: (3)**

**Todd Feland, City Administrator, City of Grand Forks.** Written testimony #10755 in favor.

**Bernie Dardis, President, Board of Commissioners City of West Fargo.** Written neutral testimony #10809.

**Dawn Reinhardt, Bismarck Resident.** Written testimony #10321 in opposition.

**Chairman Burckhard** closed the hearing on HB 1419 at 10:29 a.m.

*Patricia Lahr, Committee Clerk*

Senate Political Subdivisions Committee

Senator Randy Burckhard, Chairman

Senator Howard Anderson, Vice-Chairman

March 26, 2021

Chairman Burckhard, Members of the Senate Political Subdivisions Committee:

My name is Keith Hunke and I am the City Administrator for the City of Bismarck.

I am providing written testimony on behalf of the City of Bismarck in support of House Bill 1419.

Over the course of the last several years, the City of Bismarck has been evaluating various funding options for city infrastructure including the replacement of special assessments which are currently used to pay for street maintenance projects.

In November of 2016, the Infrastructure Task Force was created and had a goal of developing sustainable, long term financial plans for street, water and sewer projects to meet the needs of our community.

In April of 2017, the Special Assessment Task Force was created and took a deep dive into the special assessment process used to fund street, water and sewer projects.

In October of 2017, the Infrastructure and Special Assessment Task Forces were combined. Task force members included representatives from the business community, apartment owners, builders, realtors, manufactured home parks, homeowners and renters.

In 2018, the combined Bismarck Infrastructure Task Force and Special Assessment Task Force presented a recommendation to pursue the development of a street utility fee. Unfortunately, it came to light that the North Dakota Century Code did not provide the City the authority to levy and collect a street utility fee for payment of street maintenance projects.

In January of 2019, House Bill 1474, which was sponsored by several of our local legislators, was introduced in the state legislature. This bill would have provided the City of Bismarck the authority to levy and collect a fee for payment of street maintenance projects. The result of this legislation was the creation of a study that was assigned to the 2019-2020 Interim Taxation committee.

Starting in July of 2019, the Interim Taxation Committee initiated its review of House Bill 1474 for study purposes and solicited comments from city representatives on the language in the bill over the course of several months. It was determined that the committee's preference was for individual legislators to introduce legislation on this topic in the future. The committee

concluded its study of special assessment revenue replacement options at its January 29, 2020 meeting.

In April of 2020, the City of Bismarck issued a request for proposals for Street Utility Fee Consultant Services. Our selected consultant AE2S Nexus has worked with city staff members from Engineering, Finance, Community Development, Public Works and Administration over the course of several months developing a framework and strategies to replace the street maintenance special assessment revenue received from residential and commercial properties with an alternative funding source such as a street utility fee.

The Bismarck City Commission received the Street Utility Framework Report at its January 12, 2021 meeting. The report provided a comprehensive analysis of various methods the City of Bismarck could use to design a street utility fee. ([link to report](#) - [link](#) ) Brent Bogar, Senior Consultant with AE2S Nexus is on-line this morning if there are any technical questions regarding the Street Utility Framework Report.

So here we are today, over four years into our journey of evaluating alternative funding options for special assessments. We feel the Street Utility Framework report will be most valuable to kick-start the re-engagement of our task force members and future conversations with the Bismarck community at-large. However, before that can happen we need enabling legislation such as HB 1419.

The changes to North Dakota Century Code defined in HB 1419 would provide the City of Bismarck the authority to levy and collect a fee for payment of street maintenance projects. The City of Bismarck is at the ready to take the next steps to fine tune its Street Utility framework with robust engagement of our community stakeholders.

On behalf of the City of Bismarck, I urge you to give HB 1419 a DO PASS recommendation.

Thank you for the opportunity to provide testimony in support of House Bill 1419. I am happy to stand for any questions the Committee may have.

Keith J. Hunke, City Administrator  
City of Bismarck  
701-355-1300  
[khunke@bismarcknd.gov](mailto:khunke@bismarcknd.gov)

Senator Randy Burckhard, Chairman

Senator Howard Anderson, Vice-Chairman

March 26, 2021

Chairman Burckhard, Members of the Senate Political Subdivisions Committee:

My name is Steve Bakken and I am the Mayor of the City of Bismarck. I am providing testimony on behalf of the City of Bismarck in support of House Bill 1419.

Over the course of the last several years, the City of Bismarck has been evaluating various funding options for city infrastructure including the replacement of special assessments which are currently used to pay for street maintenance projects. Community stakeholders representing the business community, apartment owners, builders, realtors, manufactured home parks, homeowners and renters have all been involved.

In April of 2020, the City of Bismarck issued a request for proposals for Street Utility Fee Consultant Services. Our selected consultant AE2S Nexus has worked with city staff members over the course of several months developing a framework and strategies to replace the street maintenance special assessment revenue received from residential and commercial properties with an alternative funding source such as a street utility fee. The Bismarck City Commission received the Street Utility Framework Report at its January 12, 2021 meeting. The report provided a comprehensive analysis of various methods the City of Bismarck could use to design a street utility fee.

Versions of HB 1419 have been considered by the Legislature in the past. The current version of HB 1419 provides the necessary authority for Bismarck to move forward and re-engage our community stakeholders in discussions of the details of the framework needed to establish a street utility fee for Bismarck. You may hear from others today who may express opposition to HB 1419. They may express concerns about the details of the Street Utility Framework Report or situations that the report did not address. Please keep in mind the street utility framework is one example of how to implement an infrastructure fee for street maintenance in Bismarck. Necessary engagement of our community stakeholders will occur after the enabling legislation found in HB 1419 is approved by the Legislature.

The changes to North Dakota Century Code defined in HB 1419 will provide the City of Bismarck the authority to levy and collect a fee for payment of street maintenance projects. The City of Bismarck is at the ready to take the next steps to fine tune its Street Utility framework with robust engagement of our community stakeholders.

On behalf of the City of Bismarck, I urge you to give HB 1419 a DO PASS recommendation.

Thank you for the opportunity to provide testimony in support of House Bill 1419. I am happy to stand for any questions the Committee may have.

Steve Bakken, Mayor  
City of Bismarck  
701-355-1300  
sbakken@bismarcknd.gov



**Senate Political Subdivisions Committee - HB 1419**

**Senator Randy Burckhard, Chair**

**March 26, 2021**

Chairman Burckhard, Members of the Committee:

My name is Brian Ritter and I am President of the Bismarck Mandan Chamber EDC. I am here today on behalf of our organization's approximately 1,200 members in support of HB 1419.

From 2016 – 2018, I along with several members of the Chamber EDC were active participants in the City of Bismarck's Infrastructure Task Force, Special Assessment Task Force and Joint Task Force. These groups were formed by the City in an attempt to identify alternative means of funding the City's roadway infrastructure and review the City's process for levying special assessments.

What resulted was a four-point plan that met both objectives.

1. Ask Bismarck voters to cap the existing voter-approved 25-mill property tax buydown, which they did in 2018.
2. Ask Bismarck voters to levy an additional half-cent sales tax dedicated solely to arterial roadway construction, to be sunset after 10 years and limited to a previously developed list of roadway projects. Again, Bismarck voters did so in 2018.
3. Change the development model of residential & commercial subdivisions from what it is currently where the developer pays for the underground utilities, places a deposit on the above ground utilities and then special assesses the remaining costs to the lot, to one in

which the developer pays all front-end costs and builds the cost into the lot. This can be accomplished by a change in ordinance, but has not been addressed yet.

4. Ask Bismarck voters to approve what has been termed a 'street utility fee.' This fee would appear would appear as a charge on all residential & commercial utility bills from which the revenue would be placed into a general street maintenance budget and then used by the City on projects throughout Bismarck. The fee could then replace special assessments for street maintenance projects.

Regarding this last recommendation, asking voters to approve a street utility fee, we are currently prevented from doing so by State Law. During the 2017 Legislative Session, SB 2326 was passed and prohibits political subdivisions from seeking voter approval of funding mechanisms not present in their Home Rule Charter prior to August 1, 2017.

As such, the Bismarck-Mandan Chamber EDC has made this issue the number one priority on our 2021 Legislative Agenda. More specifically, we are seeking legislation that would only allow political subdivisions the authority to ask voters whether or not to approve a street utility fee. Which is exactly what HB 1419 does.

Infrastructure funding, special assessments and the associated issues are incredibly complicated. The aforementioned four recommendations are simply our community's ideas as to how we might address those issues. I would add however that the reason the business community has been so integrally involved in this process going back almost five years now is because of the uncertainty that special assessments can present business owners.

Businesses rely on certainty, to the extent they can, to plan investments now and into the future. As so many have said to me, "Whether its good news or bad news, just give it to me so I can adapt and move on." A street utility fee can provide that certainty for businesses while providing the City with a consistent stream of revenue by which to improve the infrastructure serving that business

Thank you for the opportunity to testify today. I would respectfully ask for a DO PASS recommendation from the Committee and if there are any questions, I would be happy to try and address them.

Testimony in Favor of House Bill 1419  
March 26, 2021  
Senate Political Subdivisions Committee  
Bill Wocken on behalf of the North Dakota League of Cities

Good Morning Mr. Chairman and members of the Senate Political Subdivisions Committee. For the record, my name is Bill Wocken and I am testifying in favor of House Bill 1419 on behalf of the North Dakota League of Cities.

As you are aware, House Bill 1419 allows cities or counties to collect an infrastructure fee in place of special assessments levied to pay for maintenance of existing roads and infrastructure. This bill came before the Sixty-sixth Legislative Assembly but there were some unanswered questions. The Interim Taxation Committee and the City of Bismarck have made a good attempt to study those questions during the interim period.

Many of us have experienced the unwelcome mailing from the city saying your street needs to have a mill and overlay and the cost will be considerable. You may concede that this repair is needed but the realities of paying for the work are a bit overwhelming. The bill is usually quite high, interest is charged on the unpaid balance, it comes at the same time as the property tax statement and it's Christmas time!

Bismarck has been looking at alternatives to special assessment charges for several years with a citizen's committee and the infrastructure fee concept was the most favored solution. It allows a citizen to pay the cost of their street maintenance on a manageable and predictable basis that can be more budget friendly.

We believe that if a city and its citizens are willing to try this new approach to infrastructure improvements no one will be hurt and everyone may potentially benefit. The North Dakota League of Cities supports the idea of an additional option to address special assessments and it respectfully requests a DO PASS recommendation for House Bill 1419.

**HB 1419 – Testimony by Dustin Gawrylow (Lobbyist #266) North Dakota Watchdog Network*****Concerns with current version of bill:***

Unless I am missing something, as currently written the new powers only apply to county commissions, even though county commission is struck in the title language in the last passed version by the House. This may be a clerical typo if I am reading it correctly.

***Testimony from House Version, generally still applies:***

From April 2017 to August 2018, I served as an appointed member of the Bismarck Special Assessment Task Force, and the subsequent Infrastructure and Special Assessment Joint Task Force.

I've attached the summary sheet that I have used as a guide to talking about the Task Forces work, starting in October 2018 when myself and Bismarck City Administrator Keith Hunke spoke to the Fargo Special Assessment Task Force.

HB 1419 is intended to allow cities like Bismarck to find new and creative ways to fix their own financing models for infrastructure, and reduce burdens on taxpayers.

This issue at the state level, as the 2019 version of this bill showed, gets bogged down in the details.

It is my belief that in the name of Local Control, the legislature should grant every political subdivision the leeway to develop new financing models and sell those models to their own voters via Home Rule Charter Amendments. The Bismarck Special Assessment Task Force was the first step in that process, but hit a wall when it was discovered that a 2017 bill prevented such things from happening.

Recently, the City of Bismarck commissioned a Market Study with AE2S to figure out how to create a new financing structure. And to be honest, I'm not real happy with a lot of the conclusions myself because the study apparently did not take much of the Task Force's work into account. I have made this displeasure very clear to city commissioners and city staff as we've all had a very good working relationship on this issue.

For instance, the study looked at things like "Commercial Trip Generation" which to me sounds like a euphemism for a mileage tax – which is something I will never support.

I also agree with much of the Bismarck Downtowners' concerns, which they will tell you about

However, I do not believe these objections should sideline the whole project. Clearly we have more work to do before we have a tax reform ready for prime time to sell to voters. But I urge you to find a way to enable Bismarck to come up with a plan that can help them help themselves.

Because at the end of the day, this helps get the legislature out of the property tax business.

I urge a DO PASS on HB 1419 in some format.



## City of Mandan Administration

### Senate Political Subdivisions Committee

#### HB 1419

Senator Randy Burckhard, Chair

March 26, 2021

Chairman Burckhard, Members of the Committee:

My name is Jim Neubauer and I am the City Administrator for Mandan North Dakota. I am here today regarding House Bill 1419.

Special assessments are certainly not popular among property owners and finding alternative funding methods is a worthy endeavor. At the end of the day, the cost of projects will remain the same; the only difference is how the funding is generated. Special assessments are a common way in North Dakota to raise the required amount of money to fund infrastructure projects and assign those costs (benefits) to properties in a fair and equitable manner. The cost of special assessments are generally spread over a period of years related to the life of the improvement. For example, asphalt street construction projects may be spread over 15 years and concrete streets over a 20-year-period.

The City of Mandan enjoys many benefits of being a part of a larger metro area with Bismarck. However, along with those benefits also come challenges. Comparisons are often made on why Bismarck does this and why Mandan doesn't. Or Mandan does this and why doesn't Bismarck? We recognize we are one metro area, but we have significantly different pocketbooks. In reviewing the "Street Utility Framework Report" prepared for the City of Bismarck, I find that Bismarck is able to buy down or subsidize its street maintenance costs utilizing sales tax by roughly 40%. We know a portion of the sales tax collected by Bismarck is attributable to Mandan residents. The best way to demonstrate that is Mandan's taxable sales per capita is roughly \$10,000 and Bismarck's is \$20,000. The 2021 budget for the City of Mandan relies on 89% of the sales tax revenue being applied to property tax buy down, the balance for infrastructure, economic development and municipal debt reduction. There are simply very few dollars from our sales tax collections available to be used for infrastructure subsidies.

We are pleased to report that the "City" portion of our property tax along with our utility fees are currently competitive, generally in the middle among the state's largest cities, and in 2021 actually a bit lower than Bismarck's. A street utility fee, if approved, that is also subsidized by sales tax would simply widen the gap when comparisons are made between our cities, and put Mandan and other cities and counties that have low sales tax collection per capita at a competitive disadvantage when vying for new residents and businesses.

It is for that reason that we would ask for a do not pass on HB 1419.



Senate Political Subdivisions  
Chairperson and Committee Members

HB 1419 Opposition

The Downtown Business Association of Bismarck represents over 200 members with 9,000 employees in North Dakota's second largest employment district. Our Board of Directors have been closely watching the City of Bismarck and their Special Assessment Task Force and study. We have quite a few concerns regarding HB 1419. The legislature asked the City of Bismarck to bring a fee matrix after this effort failed in the past. This bill would allow cities to replace a special assessment with a street utility fee. It would give cities new authority to create a city-wide fee, however:

- The matrix of factors the city could use to assess the fee are dependent on how up to date their records are or generalized systems like trip-generator which can be unreliable and not based on true use.
- ITE Trip Generator used by the City of Bismarck's consultant, is a model that should not be used in a Downtown or any mixed-use neighborhood and may only apply to single-use commercial areas if at all. (*Alternative 5- Tiered Fixed Fee*)
- The factors used by the City of Bismarck's consultant as an example of a possible fee-- shows 300% increases in monthly fees over average for Downtown commercial office and multi-family apartment units. (*Alternative 5- Tiered Fixed Fee*)
- There was no consideration of walkable neighborhoods in the fee system provided
- There is no official property owner protest option in this fee-system as there are in current similar special assessments. Going from required protest periods to none all at once is likely to cause concern for property owners.
- Small Downtown businesses could be tiered with large big-box store that generate far more car traffic, Downtown storefronts paying 35x more per trip than a big box store

While HB 1419 allows cities to access a new fee tool, the details around: property owner input, lack of sophisticated data sets, and guardrails to ensure this fee would be applied equitably are not present. We recommend a Do Not Pass as the bill stands today.

A handwritten signature in black ink, appearing to read "Kate Herzog", is written over a light blue horizontal line.

Kate Herzog, COO  
Chief Operating Officer  
Downtowners Bismarck

255 N. 4th St.  
PO Box 5200  
Grand Forks, ND 58206-5200



City of Grand Forks  
(701) 746-4636

## **TESTIMONY ON HOUSE BILL 1419**

### **Senate Political Subdivisions Committee**

**March 26, 2021**

**Todd Feland, City Administrator, City of Grand Forks, ND**

Chairman Burckhard and members of the Senate Political Subdivisions Committee, my name is Todd Feland and I am the City Administrator for the City of Grand Forks. I want to thank you for the opportunity to provide testimony and express our support for HB 1419.

This bill allows a political subdivision to collect an infrastructure fee in lieu of special assessments.

As you are well aware the needed infrastructure cost of maintenance projects to some of our critical infrastructure is getting more challenging. Having another "tool in the toolbox" to help fund some of these critical projects would be a benefit for local government.

This bill also provides local political subdivisions the choice of using an infrastructure fee or special assessments. We feel this is a very important part of the bill because each local community deals with its own challenges with funding projects. Some communities may feel that special assessments work best for them while others may feel an infrastructure fee is the best funding option.

The City of Grand Forks asks for a DO PASS for HB 1419.



## HB 1419 City of West Fargo Testimony

**Provided by Bernie L. Dardis – President, Board of Commissioners**

HB 1419 is a proposed bill relating to the authority of a city to levy an infrastructure fee in lieu of special assessments. The City of West Fargo would like to go on record as being **Neutral** to the bill as it pertains to Section 40-05.1-06 and 40-12-02 as written for the following reasons:

The City recognizes the heavy burden of special assessments to property owners. The costs of improvements continue to rise and the City experiences unique circumstances to each road which can affect cost and timing of construction. Although the need for improvements and maintenance continue, the sources of revenue to pay for these needs have been limited and can at times be inconsistent. For those reasons, the City of West Fargo would like to offer the following amendments:

- On lines 12 through 14 page 6, replace the sentence as follows “*The fee must replace a general special assessment on all property for payment of infrastructure maintenance costs through a utility bill issued by a municipality.*” with the following sentence (addition underlined): “*The fee must reduce or replace a general special assessment on all property for payment of infrastructure maintenance costs through a utility bill issued by a municipality.*”
- On lines 22 and 23 page 9, replace the sentence as follows “*The fee must replace a general special assessment on all property for payment of infrastructure maintenance costs through a utility bill issued by a municipality*” with the following sentence (addition underlined): “*The fee must reduce or replace a general special assessment on all property for payment of infrastructure maintenance costs through a utility bill issued by a municipality.*”

Maintaining the ability of choice present in the bill is important for the City’s residents. We encourage the Committee to maintain this ability in the final bill.

The City appreciates your efforts and stands available to assist in any future discussions on the topic.

March 22, 2021

Dear Political Subdivisions Committee:

I am writing in opposition of HB 1419 relating to the authority of cities and counties to levy an infrastructure fee in lieu of special assessments.

While the intent of this bill to solve an evolving annual issue is unique, it does have a severe impact on those properties whom had specials assessed against their properties over the years and have paid them off. For example, take a property that is over 30 years old, having been assessed at least twice, and now the special assessments are paid off. The majority of homeowners in newer homes, 2007-present, initially had charges between \$25-40 thousand dollars passed on by the developer and then assessed by the City of Bismarck.

HB 1419, in its present format, punishes older existing properties whom have paid off those special assessments over the years by rolling in newer outstanding debt issued for infrastructure improvement. If you look at properties in NW or NE Bismarck, you will find specials remaining to be \$30 thousand dollars each. If you roll these debt obligations into the pool, these same owners would only pay \$5000 over the next ten years instead of the initial assessment of perhaps \$40 thousand. What a bargain for them!

Section 7- Paragraph 40-23-21. Use of collections of subsequent assessments.

It appears that it does not prohibit the city from using funds acquired to pay off **NEW** home construction assessments.

I would like to see the bill text changed so that any properties with an outstanding balance cannot be placed into this revolving pool until their assessments are paid in full. That would be equitable and would serve as a foundational piece of legislation. If this cannot be done, then I ask that the committee to reject the bill in its entirety.

Thank You

Darwin Reinhardt

Bismarck, ND

# 2021 SENATE STANDING COMMITTEE MINUTES

## Political Subdivisions Committee Sakakawea, State Capitol

HB 1419  
3/26/2021 11:15 am

A BILL for an Act to create and enact a new section to chapter 40-22 of the North Dakota Century Code, relating to the authority of a city to levy an infrastructure fee in lieu of special assessments; and to amend and reenact sections 11-09.1-05, 11-11-55.1, 40-05.1-06, 40-12-02, and 40-23-21 of the North Dakota Century Code, relating to the authority of cities and counties to levy an infrastructure fee in lieu of special assessments and special assessment fund balances.

**Chairman Burckhard** opened the discussion on HB 1419 at 11:15 a.m. Members present: Burckhard, Anderson, Lee, Larson, Kannianen, Oban, Heitkamp.

### Discussion Topics:

- Utility tax for infrastructure
- Cities V.S. County
- Signatures required for petitions

**Senator Larson** moves **DO PASS**.  
**No second.**

[11:21] **Keith Honke, City Administrator, City of Bismarck.** Provided clarification to the committee on the differences between county and city petition and vote.

**Additional written testimony:** N/A

**Chairman Burckhard** closed the discussion on HB1419 at 11:25 am.

*Patricia Lahr, Committee Clerk*

# 2021 SENATE STANDING COMMITTEE MINUTES

## Political Subdivisions Committee Sakakawea, State Capitol

HB 1419  
4/1/2021

A BILL for an Act to create and enact a new section to chapter 40-22 of the North Dakota Century Code, relating to the authority of a city to levy an infrastructure fee in lieu of special assessments; and to amend and reenact sections 11-09.1-05, 11-11-55.1, 40-05.1-06, 40-12-02, and 40-23-21 of the North Dakota Century Code, relating to the authority of cities and counties to levy an infrastructure fee in lieu of special assessments and special assessment fund balances.

**Chairman Burckhard** opened the discussion on HB 1419 at 11:20 a.m.

Members present: Burckhard, Anderson, Lee, Larson, Kannianen, Oban, Heitkamp.

### Discussion Topics:

- Proposed amendment
- Majority vote

**[11:21] Senator Erin Oban, District 35.** Provided the committee with proposed amendment 21.0739.04001 (testimony #11291).

**Senator Oban** moves to **ADOPT AMENDMENT 21.0739.04001**

**Senator Anderson** seconded.

The motion passed 7-0-0

Senators	Vote
Senator Randy A. Burckhard	Y
Senator Howard C. Anderson, Jr.	Y
Senator Jason G. Heitkamp	Y
Senator Jordan Kannianen	Y
Senator Diane Larson	Y
Senator Judy Lee	Y
Senator Erin Oban	Y

**Senator Oban** moves to **DO PASS, AS AMENDED.**

**Senator Lee** seconded.

The motion passed 7-0-0

**Senator Oban** will carry HB 1419.

Senators	Vote
Senator Randy A. Burckhard	Y
Senator Howard C. Anderson, Jr.	Y
Senator Jason G. Heitkamp	Y
Senator Jordan Kannianen	Y
Senator Diane Larson	Y
Senator Judy Lee	Y
Senator Erin Oban	Y

**Additional written testimony:** N/A

**Chairman Burckhard** closed the discussion on HB 1419 at 11:30 a.m.

*Patricia Lahr, Committee Clerk*

March 26, 2021

CS  
4/1  
10/1

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1419

Page 1, line 4, remove "40-12-02,"

Page 9, remove lines 1 through 17

Page 10, line 14, replace "5" with "4"

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**HB 1419, as engrossed: Political Subdivisions Committee (Sen. Burckhard, Chairman)**  
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends  
**DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1419  
was placed on the Sixth order on the calendar.

Page 1, line 4, remove "40-12-02,"

Page 9, remove lines 1 through 17

Page 10, line 14, replace "5" with "4"

Renumber accordingly

21.0739.04001  
Title.

Prepared by the Legislative Council staff for  
Senator Oban

March 26, 2021

#11291

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1419

Page 1, line 4, remove "40-12-02,"

Page 9, remove lines 1 through 17

Page 10, line 14, replace "5" with "4"

Renumber accordingly