

2023 SENATE FINANCE AND TAXATION

SB 2144

2023 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

SB 2144
1/10/2023

A Bill Relating to ballots in school district bond elections; and relating to future maintenance and repair expenditures for school districts.
--

9:43 AM **Chairman Kannianen** opened the hearing. **Senators Kannianen, Weber, Magrum, Rummel, Piepkorn and Patton** were present.

Discussion Topics:

- Voter transparency
- Bond issue
- Section 1 Repair and maintenance
- Section 2 Bond measure and funds for repair
- Section 3 Use of bond funds
- Section 4 Creating a new ballot
- Section 5 Taxation/excess levy
- Section 6 Building fund
- How proposals are brought to the public
- Construction costs and availability
- Facilities plan for public
- Supplemental fund raising
- Separate ballot issues

9:44 AM **Senator Weber** introduced the bill.

9:48 AM **Dustin Richard, Attorney, Legislative Council**, explained the bill in a neutral capacity.

9:54 AM **Dr Aimee Copas, ND Council of Educational Leaders**, testified in opposition. See attachment #12713.

10:17 AM **Amy De Kok, General Counsel, ND School Boards Association**, testified in opposition. See attachment #12748.

10:28 AM **Scott Wegner, Arntson Stewart Wegner PC Law Firm**, testified in opposition. See attachment #12664.

10:33 AM **Donnell Presky, Executive Director of NDACo**, testified in opposition.

10:33 AM **Erica White, Burleigh County Election Manager**, testified in opposition.

10:36 AM **Chairman Kannianen** closed the hearing.

Danielle Butler, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

SB 2144
1/23/2023

Relating to future maintenance and repair expenditures for school districts.
--

11:18 AM Chairman Kannianen opens meeting.

Senators Present: **Kannianen, Weber, Patten, Rummel, Piepkorn, Magrum**

Discussion Topics:

- Tax Payer transparency
- Bond funds

11:24 AM Senator Weber moved a Do Pass.

11:24 AM Senator Piepkorn seconded.

Senators	Vote
Senator Jordan Kannianen	N
Senator Mark F. Weber	Y
Senator Jeffery J. Magrum	N
Senator Dale Patten	N
Senator Merrill Piepkorn	N
Senator Dean Rummel	N

Motion failed pass 1-5-0

11:25 AM Senator Patten motioned a Do Not Pass.

11:26 AM Senator Rummel Seconded.

Senators	Vote
Senator Jordan Kannianen	Y
Senator Mark F. Weber	N
Senator Jeffery J. Magrum	Y
Senator Dale Patten	Y
Senator Merrill Piepkorn	Y
Senator Dean Rummel	Y

Motion Passed 5-1-0

11:27 AM Senator Rummel will carry.

11:28 Chairman Kannianen adjourns meeting.
Nathan Liesen, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2144: Finance and Taxation Committee (Sen. Kannianen, Chairman) recommends **DO NOT PASS** (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2144 was placed on the Eleventh order on the calendar. This bill does not affect workforce development.

TESTIMONY

SB 2144

SB 2144
Senate Finance and Taxation Committee
January 10, 2023

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. We serve as bond counsel to school districts.

SB 2144 deals with school district general obligation bonds:

A. General Obligation Bonds (N.D.C.C. Chapter 21-03)

- 1927
- requires voter approval (60% super majority)
- voters approval dollar amount of bonds
- unlimited excess mill levy authorized to pay bond debt service
- bonds have up to 20-year term
- amount of bonds subject to debt limit (5% of assessed value, 10% with voter appr)
- authorized for seven types of political subdivisions

B. SB 2144 Concerns

- school districts do not bond for routine repair and maintenance
- bond money is not set aside for future repairs and maintenance
- state and federal law contemplate expenditure of bond proceeds in 3 years
(N.D.C.C. § 21-03-38.1, addressing bond funds not used within 3 years)
- school building fund levy is used for repairs and maintenance (up to 20 mills)
(N.D.C.C. §§ 57-15-16, -17)
- does not work financially to bond for money that will not be used for years – cannot invest the bond money for more than the interest rate on the bonds, so will lose money
- Section 4: ballot form – confusing

I request a Do Not Pass recommendation.

Scott Wegner
Arntson Stewart Wegner PC
Bismarck and Fargo
(701) 255.1008 / swegner@aswbondlaw.com



1 SB 2144

2 Testimony in Opposition

3 Chairman Kannianen and members of Senate Finance and Taxation Committee for the record my
 4 name is Dr. Aimee Copas – I serve as the executive director for the North Dakota Council of
 5 Educational Leaders (NDCEL) representing our school administrators, directors, and school
 6 leaders. We come to you today to provide feedback regarding the challenges that this bill brings
 7 to school districts and to the communities that they serve. First to consider, we are the only
 8 political subdivision that has taxation caps and limits in our taxation authority AND we are the
 9 only political subdivision that requires a very difficult 60% vote of the people to be able to bond
 10 for a building. Each other political subdivision must only achieve 50%+1. This was a protection
 11 put in place to protect taxpayer, but please understand, it is very, very difficult to achieve and in
 12 some communities bond referendums to repair or replace very old buildings fail again and again
 13 due to that 60% threshold.

14 There are two primary concerns: one is that it incentivizes bad behavior or erodes trust and it asks
 15 for projections that are unreasonable to be assumed to be accurate. First, the way the bill is
 16 currently structured either requires districts to include money in a referendum vote for deferred
 17 maintenance or makes district look like a poor planner if they do not include funding in the
 18 proposal. When districts are able to levy up to 20 mills for their voter approved building fund,
 19 there is no reason they should include dollars in a referendum vote that could take 15 years for
 20 those approved dollars to be spent. Adding dollars to a bond issuance for deferred maintenance
 21 will both force taxpayers to pay interest on money that could be raised in interest-free ways; it also
 22 reduces the purchasing power of taxpayers as inflation reduces purchasing power over time. For
 23 districts that that elect to use other funding sources for deferred maintenance, the inclusion of a
 24 zero for planned deferred maintenance on the official ballot creates the perception that the district
 25 is not responsibly planning and may erode trust in the community when in reality district leadership
 26 is saving taxpayers money by using other funding sources that do not require the paying of interest.

*NDCEL is the strongest unifying voice representing and supporting administrators and educational leaders in pursuit of quality education
 for all students in North Dakota.*

Executive Director: Aimee Copas-----Assistant Director: Russ Ziegler



1 Second, this bill takes a very difficult task and makes even more difficult. To attempt to project
2 maintenance on a building that may very well be 10-15 years down the road is not only difficult,
3 but also not likely accurate at all. In our unstable economy we can't even predict those costs
4 accurately months down the road much less years. It also falsely inflates the cost of the build
5 making passage of the referendum far more difficult and could lead voters to expect more when
6 they see the price tag of the referendum.

7 In North Dakota, most of our communities have building funds that are authorized by the
8 legislature for just this purpose. There are, however some districts who do not have voter approved
9 building funds. There may be another option to address the issue that the bill sponsors are trying
10 to address. That would be that if there is not a voter approved building fund, a part of the bond
11 referendum vote would also be an inclusion of a voter approved building fund to ensure the
12 management of future maintenance and repairs. Legislators could also explore additional
13 requirements in the school building construction application that DPI must approve before a vote
14 happens to ensure there is a proven and planned method for addressing deferred maintenance.



SB 2144
Testimony of Amy De Kok
Senate Finance & Taxation Committee
January 10, 2023

Chairman Kannianen and members of the committee, my name is Amy De Kok. I am General Counsel for the North Dakota School Boards Association. NDSBA represents all North Dakota public school districts and their boards. NDSBA stands in opposition to SB 2144 in its current form.

NDSBA and its members support the spirit and policy behind SB 2144 – to provide transparency to voters and district taxpayers when it comes to the costs associated with the issuance of bonds and maintenance of school facilities over time. NDSBA, however, has some concerns with SB 2144.

In Section 2 of the bill, a school board must determine and state in the initial resolution, the total funds allocated for future repair and maintenance of school buildings the purpose for which the bonds are issued. NDSBA is concerned about the ability of a school board to estimate the costs of future repairs and maintenance. These items will likely be incredibly difficult to predict with any real accuracy. This is especially true with future repairs, which are largely unforeseeable. Requiring districts to include future repairs and maintenance in the amount of bonds to be issued will likely have the impact of just unnecessarily increasing the estimated costs of building projects on the front end.

In addition, the committee should be aware that any district planning to undertake a building project that costs more than \$150,000 must already obtain the approval from the Department of Public Instruction under current law (NDCC 15.1-36-01). If the project costs more than \$350,000, the district must submit a detailed facility plan to DPI in conjunction with this approval process, and demonstrate the district's ability to pay for the project. In this regard, the facility plan must address and demonstrate:

- The availability and manner of financing the construction has been thoroughly evaluated;
- Trend data on general fund revenues, expenditures, and fund balances;
- Trend data on tax levies;
- Trend data on taxable valuation per student;
- Current bonded indebtedness, debt retirement schedules, and total capital expenditures of the district;
- Current sources of district revenue;
- The operating budget of the district can satisfactorily meet the projected operating cost of the proposed building or facility; and
- Any other information deemed advisable by the superintendent.

These requirements, among others, are outlined in NDAC chapter 67-09-01.

It is my understanding that the bill sponsors are concerned with districts seeking voter approval for the issuance of bonds to undertake a substantial building project without adequately planning for the operating costs of the facility over time. This is a valid concern, but I believe most boards are acting responsibly and do properly plan for future operating costs before pursuing a large building project. A possible alternative is to require that boards have an adequately funded building fund in place before they may pursue voter approval to issue bonds for this purpose.

For these reasons, NDSBA urges a Do Not Pass recommendation on SB 2144 in its current form, and I would be happy to stand for any questions. Thank you for your time.