

bill emanates from several recent lower court decisions who have been applying, as many of us believe, incorrectly the decision in Boyer vs. Grady. Boyer vs. Grady is a bill interpreting or rather a case interpreting the initiative and referendum powers by statute of cities and villages. In 1972 only urgent ordinances were exempt from referendum and referendum is, you will recall, that procedure by which people may petition for an election to take off from statute books an ordinance that has been passed by city council. In 1972 the Supreme Court of Nebraska ruled on Hoover vs. Carpenter that there was the distinction between the administrative and legislative actions by municipalities as they applied to the referendum. So, as a response to that decision in Hoover, in 1974 the Legislature laid out four types of ordinances which could not be attacked by referendum and they were urgent or emergency ordinances; ordinances of furtherance or those ordinances which carry out previously set policy, in other words, the time to attack the policy is when it is created, not down the line when subordinate and secondary decisions are being made; capital project ordinances or those related to building or maintenance of public works; and lastly, rate setting ordinances for such things as municipally owned utilities. In 1978 the Supreme Court ruled without regard to that statute in Boyer vs. Grady that there was no limitation on referendum in terms of the time that voters could use the referendum and that they could do by initiative anything they could do by referendum. That is as far as the Boyer vs. Grady decision goes. You may do by initiative anything that you may do by referendum and apparently, vice versa. Initiative you will recall is that petition mechanism that creates an election to write a law or to put something on the books. Historically we have always believed that initiative is where you put something on the books, referendum is where you take something off the books. After Boyer vs. Grady the Supreme Court said the two are the same. Lower courts, in interpreting the implication of Boyer now say the exemptions that are only written in the referendum section do not imply to initiatives and, therefore, if you use the initiative mechanism you may petition through that form for an election to take off the books rates for utilities, emergency ordinances, ordinances of furtherance or capital projects. What is the implication of that? The implication is that any capital construction may at any time be attacked by a petition and an election of the public. The net result there is to call into question all of the bondings and all of the general underpinnings of financial obligations that a city makes in furtherance of those capital projects. You may have an ordinance. You may have a bond. That bond may be signed. Three years down