

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2033 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2102

2001 SENATE POLITICAL SUBDIVISIONS

SB 2102

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2102

Senate Political Subdivisions Committee

Conference Committee

Hearing Date January 18, 2001

Tape Number	Side A	Side B	Meter #
1	x		0,0-10.5
Committee Clerk Signature <i>Mary Jo Wacker</i>			

Minutes: Senator Cook called the hearing on SB2102; relating to the use of certain structures as a nuisance. Roll call was taken with 7 members present and 1 absent.

SENATOR LYSON spoke in favor of this bill. This bill is a simple bill an ordinance in all of the large communities within the state of ND, but it really is based on is to try to have people live in a neighborhood and not disturb their neighbors to the point they cannot function very well in their community or in their neighborhood. One of the reasons for a bill like this to come into the state government is because we have so many subdivisions now, that are being built outside of the larger communities. Before we had those there probably was not a question on a bill like this because a farmstead was far enough apart we had so many subdivisions now that are close, and what's really happening and the reason for the bill to come forward today is we've got an awful lot of people going into the subdivisions and renting or buying cheaper homes and they are into the drug scene and meth labs are getting very prominent in these areas. There is just nothing that law enforcement can do, and were getting calls about parties at home that have 40-50 cars around

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Senate Political Subdivisions Committee

Bill/Resolution Number SB2102

Hearing Date January 18, 2001

it and noisy and we don't have no law to take care of these things, and this the reason for a disorderly house where we can charge the leasee or the owner or whoever is in there to try and clean the situation out and try to clean up the subdivision that is a problem. SENATOR FLAKOLL, just a quick question, in so far when they are declared a public nuisance, what are usually the ramifications of that? SENATOR LYSON, and I don't know exactly, cause I haven't researched, maybe John Olson can tell you this, but I think it is a Class A misdemeanor. SENATOR CHRISTENSON, when you say immediate neighborhood, do you think that needs further defining? SENATOR LYSON, well, if you read the bill, it would be anything that would annoy a neighbor, so when I say an immediate neighborhood. Subdivisions could be within a city however, it could be, a farmstead that is part of a mile from a neighbor, that's doing the same thing that is creating a disturbance for that neighbor, could end up with the same thing. SENATOR CHRISTENSON, you are saying this would be in judgment of the neighbor whether or not this was a nuisance and a disturbance, so it would be up to the neighbor to take the action to make a complaint or whatever? SENATOR LYSON, that's true, it would have to be a complaint, it can't be something that law enforcement would just normally go and do, normally it would be a complaint from a neighbor. SENATOR LEE, does public nuisance have a meaning in the law that, what is the definition of annoy is kind of troubling to me? SENATOR LYSON, I don't think that is what this is for, I think that's a covenant problem. SENATOR LEE, I'm just wondering about this definition of public nuisance. JOHN OLSON, NDSA/NDPOA, spoke in favor of this bill. Peace officers includes a wide range of law enforcement in ND, sheriffs, police, highway patrol, Game and Fish, and a variety of other law enforcement entities in the state. I don't think I can add anything to what Senator Lyson has said as to why the bill is needed. Major municipalities have ordinances following similar or exactly like this across the state. So what the

bill provides is for a law to be enforced in the subdivisions or out in the counties where they are no states statutes or municipal ordinances that extend it. The bill really defines what the public nuisance is going to be in this instance, however, there is another definition of public nuisance in the General Statutes, provisions relating to nuisances, 42:01:06 defines a public nuisance as one which at the same time affects an entire community or neighborhood, or any considerable number of persons although the extent of the annoyance or damage inflicted upon the individuals maybe unequal. Seems to how it is defined in 21:02 blends in with the definition of 42:01:06. Another question was asked about the remedies, as Senator Lyson stated. The chapter does provide for a penalty for maintaining a public nuisance in 42:01:15, that provides that it is a Class A misdemeanor. It says every person who maintains or commits a public nuisance the punishment for which is not otherwise prescribed or who willfully omits to perform any legal duty relating to the removal to the public nuisance, is guilty of a Class A misdemeanor. There are other remedies in the chapter. If the law enforcement fails to act, a private person has a right to petition, I think the court in order to have that nuisance abated, a person injured by a private nuisance may abate it also by removing or if necessary destroying the thing which constitutes the nuisance, but the person shall not commit a breach of the peace or do unnecessary injury while exercising this right. Other general remedies against the public nuisance, an indictment, filing information , which I don't think apply anymore cause those are terms normally used in conjunction with a felony. Bringing criminal action against a judge, which in this case, that private person who is offended would probably go through the ordinary procedure of going to the sheriffs dept., complaining, sheriffs dept. may investigate, then go on to the State's Attorney to have a complaint issued or go directly to the States Attorney. SENATOR MATHERN, John what's the fine or whatever for a Class A Misdemeanor? JOHN OLSON, up to one year, and

\$1000 or has it been raised to \$2000, monetary maximum of one or two thousand dollars.

SENATOR FLAKOLL, With respect, now this not only covers a little more urban areas, but also farms? JOHN OLSON, it would cover farms, but I think you still have to tie that to, an affect it is having on people. SENATOR FLAKOLL, with that in mind, what if, for instance, the encroachment growing on people, city growing out to the farm, and the farm has a feedlot with lots of odor, does this fall in to that area too? JOHN OLSON, this may not address that, I think your getting into a zoning problem where those kinds of uses would be grandfathered/ grand mothered in, maybe to the existence of that use. I think in this bill, they are really getting at the breach of the peace type situations, wild parties, maybe the house is being used for distributing alcohol, all kinds of things that really relate to people staying up at night. TERRY TRAYNOR, Assistant Director of the Association of Counties, association of counties has taken a position to support the sheriffs and deputies and the states' attorneys on this bill. We do so support it.

SENATOR COOK, closed the hearing on SB2102.

SENATOR LEE moved to Do Pass SB2102, Senator Watne 2nd.

Discussion was held among the senators. Senator Christenson stated she certainly understands the intent of the bill, however, I guess I have to express that the word "decency" has a little bit of a red flag for me, its slightly morally judgmental. I assume that the legal definition of this has much more broad and less majorative. I won't make any formal protests but I just want to put that on the table, as an issue.

DO PASS ON SB2102 7 Yeas, 1 Absent.

Carrier: SENATOR LYSON

Date: January 18, 2001
Roll Call Vote #:

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB. 2102

Senate Political Subdivisions Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Senator Lee Seconded By Senator Watne

Senators	Yes	No	Senators	Yes	No
Senator Cook	✓		Senator Christenson	✓	
Senator Lyson	✓		Senator Mathern	✓	
Senator Flakoll	✓		Senator Polovitz	A	
Senator Lee	✓				
Senator Watne	✓				

Total (Yes) 7 No _____

Absent 1

Floor Assignment Senator Lyson

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

REPORT OF STANDING COMMITTEE (410)
January 18, 2001 11:35 a.m.

Module No: SR-08-1196
Carrier: Lyson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

**SB 2102: Political Subdivisions Committee (Sen. Cook, Chairman) recommends DO
PASS (7 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2102 was placed on the
Eleventh order on the calendar.**

2001 HOUSE POLITICAL SUBDIVISIONS

SB 2102

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2102

House Political Subdivisions Committee

Conference Committee

Hearing Date 3-08-01

Tape Number	Side A	Side B	Meter #
1	xx		1--1740
1		xx	1740--2700
Committee Clerk Signature <i>Ann Dever</i>			

Minutes: Chair Froseth opened the hearing on SB2102 relating to the use of certain structures as a nuisance.

Sen. Stan Lyson, Dist. 1 : prime sponsor and support this bill. This bill is a duplicate of a city ordinance throughout the state of ND. Most of the big ones. In small communities outside the cities, law enforcement is having trouble controlling disturbances. They don't have laws to address the noise complaints, etc. This bill will help law enforcement deal with some of the problems.

Rep. Ekstrom : This looks straight forward until you get to the word "decency", as in "disturbing the decency". Can you give an example?

Sen. Lyson : I would have to get out the code and read you what nuisance means. From my own experience, some people were running around naked and yelling at neighbors.

Rep. Niemeier : (319) Doesn't the local law enforcement have jurisdiction in the subdivisions?

Sen. Lyson : The local city doesn't. Some cities don't have any police departments any more.

Chair Froseth : I think some small towns contract with the county sheriffs. Some don't have even part-time police officers. Some are going by the century code instead of city ordinances.

Scott Busching, Williams County Sheriff : (420) here to support SB2102. Our subdivisions are expanding. Some people who like to party are avoiding the consequences by moving out of the city. We need to have jurisdiction to deal with the complaints by neighbors. When neighbors complain about noise in the subdivision, all we can do is go to the door and hope they listen to our request, because we don't have any county ordinances. We need this bill as a tool.

Rep. Herbel : (540) Under what conditions can you go into a house?

Scott : Have to have probable cause. Takes quite a legal procedure. In an emergency call we can go in. It takes a couple of hours to get a warrant.

Rep. Herbel : How often does this happen that you would use this bill?

Scott : Once a weekend.

Vice-Chair Severson : If we have a city ordinance, why do we need a state ordinance? Can't the county come up with something.

Scott : The county can't pass ordinances like the state. Code has to be passed on the state level.

Rep. Grosz : What's the penalty?

Scott : Class B misdemeanor, I think..

Rep. Delmore : (759) Do you see this being enforced?

Scott : Yes, but it will be used more as a tool. We would like to contact the people, who had the loud party or whatever, the next day, and try to resolve the complaint, and make sure they know there is a law and penalty. If it a rental, then the tenant and owner need to know there is a law and penalty.

John Olson, ND State's Attorney/ND Police Officers Assoc. : testified in support of SB2102.

The city ordinance doesn't apply in the county and won't step beyond that line. The crime would be a class A misdemeanor. That's one year in jail max. and \$2000 fine. You could have civil remedies in addition to criminal count.

Chair Froseth : (1058) Does the city ordinance take precedence over county.

John : State law does apply to cities as well. But normally we defer to cities to enforce their own ordinances.

Rep. Ekstrom : Could this be amended to include maintenance property to take care of junk yard type properties?

John : That is in the public health law.

Rep. Herbel : What is "immediate neighborhood"? You are talking in the rural area.

John : That was asked in the senate, too. That might hold some difficulty. This is to prevent harassment to other people.

Rep. Delmore : (1290) Do you think this bill will increase costs to counties?

John : Maybe. I don't see it though. This is a good tool for them.

Vice-Chair Severson : Do I have the right to know who complained about me to the police?

John : It's public record. I suppose you could call anonymous.

Chair Froseth : Any more testimony for or against? Hearing none, SB2102 is closed.

Tape 1, Side B (1740-2700) Chair Froseth : Let's discuss SB2102.

Rep. Maragos : I think it might be wise to amend this with a sunset clause and see how it works for 2 years. Make sure there is no abuse of it.

Vice-Chair Severson : I would like the word "subdivision" behind the word building, to be included on line 7.

Rep. Ekstrom : I'm not happy with the decency part. I feel if we put the "subdivisions" in we might be limiting.

Rep. Disrud : On the decency thing, I don't have a problem. Think about urinating in public, etc. at parties. They don't care. That to me is a decency issue.

Chair Froseth : On problem we see are the meth labs. What if they are out there.

Rep. Maragos : That needs probable cause. I don't think this bill addresses that. Sunset is the best and see what happens in 2 years. If they move outside of the sub, then what.

Rep. Eckre : If you move into the county, you choose to do that. They moved out in the county. That's just the way it is.

Rep. Maragos : **I move to amend and put in a sunset of July 31, 2003 and insert subdivisions in line 7.**

Rep. Delmore : **I second.**

VOICE VOTE: ALL YES.

Rep. Herbel : **I move a DO PASS AS AMENDED.**

Rep. Ekstrom : **I second.**

VOTE: 12 YES and 1 NO with 2 absent. PASSED AS AMENDED. Vice-Chair Severson will carry the bill.

10164.0201
Title.0300

Adopted by the Political Subdivisions
Committee

March 8, 2001

VR
3/8/01

HOUSE AMENDMENTS to SB2102 HOUSE POL SUBS. 3-09-01

Page 1, line 2, after "nuisance" insert "; and to provide an expiration date"

Page 1, line 7, after "building" insert "within a subdivision"

Page 1, after line 9, Insert:

"SECTION 2. EXPIRATION DATE. This Act is effective through July 31, 2003,
and after that date is ineffective."

Renumber accordingly

Date: 3-8
Roll Call Vote #:

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2102

House POLITICAL SUBDIVISIONS Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended

Motion Made By Rep. Herbel Seconded By Rep. Ekstrom

Representatives	Yes	No	Representatives	Yes	No
Chairman Glen Froseth			Rep. Wayne W. Tieman		
Vice-Chair Dale C. Severson					
Rep. Lois Delmore					
Rep. Rachael Disrud					
Rep. Bruce Eckre					
Rep. Mary Ekstrom					
Rep. April Fairfield					
Rep. Michael Grosz					
Rep. Jane Gunter					
Rep. Gil Herbel					
Rep. Nancy Johnson					
Rep. William E. Kretschmar					
Rep. Carol A. Niemeier					
Rep. Andrew G. Maragos					

Total (Yes) 12 No 1

Absent 2 ab

Floor Assignment Vice Chair Severson

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

REPORT OF STANDING COMMITTEE

SB 2102: Political Subdivisions Committee (Rep. Froseth, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 1 NAY, 2 ABSENT AND NOT VOTING). SB 2102 was placed on the Sixth order on the calendar.

Page 1, line 2, after "nuisance" insert "; and to provide an expiration date"

Page 1, line 7, after "building" insert "within a subdivision"

Page 1, after line 9, insert:

"SECTION 2. EXPIRATION DATE. This Act is effective through July 31, 2003, and after that date is ineffective."

Renumber accordingly

2001 SENATE POLITICAL SUBDIVISIONS

CONFERENCE COMMITTEE

SB 2102

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2102

Senate Political Subdivisions Committee

Conference Committee

Hearing Date March 23, 2001

Tape Number	Side A	Side B	Meter #
1	X		0.0-11.6
Committee Clerk Signature <i>Mary Jo Wocken</i>			

Minutes:

Senator Lyson, Chair of the Conference Committee opened the Conference committee. All the senators and representatives were present.

SENATOR LYSON: Before we start I guess, because I am Chairman of the Committee I would like to take the privilege of explaining the bill on our side, or from my perspective so that you can get that and then we can go through and see what everybody has the same, so we're on the same page and we know where we are at and we can go from there. When this bill was put in of course it was put in to try alleviate some of the problems that are being created right now in the rural areas in subdivisions that are established by counties outside of the metropolitan areas and also for farmers and or the small communities that no longer have police departments and are relying on the sheriff's departments to police their areas. One of the reasons that we want those in this bill, is these small communities cannot afford to go back and redo an ordinance, or redo their ordinance books and if they start making one ordinance, jumping from one ordinance to the

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Senate Political Subdivisions Committee

Bill/Resolution Number Conference Committee, SB2102

Hearing Date March 23, 2001

other the courts really get disgusted with them. The other thing they can't afford to hire a municipal judges, so that is the reason we just as soon go with the county. Now in reading the House amendments that was put on talking now about subdivisions. I know that some of the questions are that this may affect a farmer and his occupation and the noise that he may make and doing his business. The code in court decisions are very specific and there their as an established business they are not a nuisance. When I was reading this I found the very interesting thing, that one of the cases was Jerry Harmon Motors vs. Farmers Union Grain Terminal Association in Williston and I worked that case as a nuisance thing when I was Assistant Chief there. Jerry Harmon lost the case because the Farmers Union elevator was there and established there for many years when they started his dealership and the courts held that that is there. The court went further to say even in common law, way back, that's affective situation. If its an established thing like a farmstead or something out there, its not going to be that. Now the other reason that I am opposed to putting the subdivisions in there is that were leaving the farmer unprotected out there, under this thing. Let me try to explain my reasoning for this. I drew a little picture for the committee. What I am looking at a farmstead here, a farmer who has lived there for years and years and this farm north of this farmstead is vacant. And somebody goes out to the land/vacant homestead and rents this farmstead here. Someone rents this vacant homestead and has parties every weekend, cars coming and going and two or three hundred kids out there raising Cain. Under the way the nuisance law is now, there is very little we can do for that farmer. Under this law, he would be guilty of an unruly house and we could take care of that in that situation for that farmer. On the other hand, this is the farmstead that's vacant, another farmer moves in here, and does farm work and establishes his farm there and starts to do his cleaning and n, this farmer, even though it may annoy him, has nothing to say about it because it

is a established farmstead, under the law. So it protects in both ways. That's the things that I am concerned, and I am concerned about the small communities. (Ex. Give 3.6-4.0) REP. DEL

MORE: Senator, I guess one of the questions we had was when city ordinances, and that whether this would be limited. Would city ordinance take priority over this whatever? SENATOR

LYSON: Good question. You've got to understand that the state law has preference over a city ordinance. However, in a city like Grand Forks, Fargo, Minot, Williston, Bismarek or wherever, there are not going to. They are going to allow the city ordinance to take place. Cities always have the ordinances in place, but the small communities don't. REP. HERBEL: I guess, Rep.

Syverson and I had talked about this earlier to in the situation within an expanding areas like the Fargo/West Fargo area. A lot of those guys were out in the country three, four, five miles twenty five years ago and now all of a sudden, the city has built around them and Rep. Syverson brought out an example this guy runs his grain dryer all night and somebody has built up all around him.

These people would call in and say that he has to shut that down, that's covered. SENATOR

LYSON: That's already covered in state law. By court decision, actually.

SENATOR FLAKOLL: I think that was one of the things that we actually talked about in our discussion, deliberation and testimony was our concern about the influx into farming areas, or into farms, whether it be noise or even smells. These homes of individuals are still protected and this would not change their rights. I mean, I think this is more. It still can still continue to protect the livelihood of people, its just more so designed for people that get out of hand in their more private lives. SENATOR LYSON: If I could go a little bit further in some of the court decisions here. If its a farm with a feedlot and they allow for their negligence to allow their sewage, if you will, from their business, to run down the ditch and so on to the other place, he creates a nuisance

Because he has the obligation to keep that stuff in place. But that is already there, that is already in law, that they have to do that now so this wouldn't affect that. REP. SEVERSON: I don't believe we have a problem with removing the word "subdivision" because, that was the testimony that we heard on our side, that we really need for our subdivisions and it made sense. Last session however, we did have a Grand Forks issue where the subdivision was trying to get the farmer to quit combining after ten o'clock at night. All those issues. SENATOR LYSON: I can tell you he didn't get it done. REP. SEVERSON: Well, those are the things that we're in fact to stop at that point. That was a concern that we had. I believe that the House side doesn't have a problem with removing, but I would like to ask you if you would allow or consider leaving the sunset so it can be revisited to make sure that it is doing what we intend it to do. SENATOR LYSON: I guess, I'll let everyone else speak after I do, but I see no purpose in it, because in two years, if we had a problem, bring a bill and get rid of it. Why put a sunset in there? Why make it, if we do a sunset we have to revisit it. If we don't have a problem, why revisit it? REP. SEVERSON: We may not know where all that problem is until we revisit it. SENATOR LYSON: Well, if there is a problem, I think we would know it. I can this to you, that these things have been in effect in the cities for years. REP. SEVERSON: I understand that. But the concern that I have though is that we, because we are making it law, that maybe people out there who would think that it is law now that its not going to be a problem and they can't fight the system and so on and so forth. It may take ten years for those people to come forward, and say no you legislators can do this if it is sunsetted, in two years, or even four years. It would give us an opportunity to revisit to see if its been done, and if there are problems. And that is all that I am looking at, I really believe in and I live in a rural area, I have to protect those people out there as well. That is the only concern I had. SENATOR CHRISTENSON: There is something about sun

setting a law that seems almost frivolous to make it law or its law. The problem is not going to sunset in two years if it is there. So, my sense is, the same thing, we can revisit the law if the necessity arises. But to sunset it, it seems perhaps another word besides frivolous, but that's the one that comes to mind. REP. HERBEL: Senator Lyson, I guess my concern was with the political subdivisions and the fact that I didn't know that there was a situation in there and that this may create a problem because of the people around. That was why I agreed with Representative Severson on that perhaps it needed to be revisited down the line. But, that part of it has been addressed so, I guess I don't feel quite as strongly about the sunset part of it. But I really did before that, that needed to be addressed. SENATOR LYSON: I could give you some statistics if you would like on that to be helpful. SENATOR FLAKOLL: A question about the law and sunsets and the like. When somebody gets sun setted, it is automatically brought before us again? Or is just expire and go off into nether, nether land, cause do I have any concern that if everything works well and we don't even think about the issue anymore cause it seems to have worked out that we'll forget to pull the sunset off ever? I don't, I know people are complaining where sure as heck going to look at this again. SENATOR LYSON: The sunset dies. The bill is dead. SENATOR FLAKOLL: Is there a so called tickler, Mr. Chairman that automatically pops every sunset up? REP. DELMORE: I've had a bill sunsetted. It was in my first session. Senator Lyson would have to reintroduce the bill if he wanted us this continue. It doesn't automatically pick up those sunsetted things and kick it out and say if you want it to continue you've got to do it. That is one of the problems with sunseting a bill. REP. SEVERSON: I didn't realize that. REP. DELMORE: I guess Mr. Chairman, in fairness to you I think that this is an issue you care about and you will be monitoring it, and I would assume that if your finding huge problems with

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Senate Political Subdivisions Committee

Bill/Resolution Number Conference Committee, SB2102

Hearing Date March 23, 2001

it, you would be willing to follow up on that as well. SENATOR LYSON: I certainly would.

REP. SEVERSON: If you don't, I'll be there.

REPRESENTATIVE SEVERSON: Mr. Chairman and members of the committee, I move that the House Recede from the amendments on the subdivision and the expiration date and that we go with the bill as presented.

REPRESENTATIVE DELMORE- 2nd.

Roll call vote: 6 Yeas, 0 No, 0 Absent

Date: 3/23/01

Roll Call Vote #:

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. S.B. 2102

Senate Political Subdivisions Committee

Subcommittee on _____

or

Conference Committee

Legislative Council Amendment Number _____

Action Taken Recede from Amendments from Subdivisions + the expiration date

Motion Made By Rep. Severson Seconded By Rep. Belmont

Senators	Yes	No	Senators	Yes	No
<u>Senator Lypson</u>	✓				
<u>Senator Kattell</u>	✓				
<u>Senator Christensen</u>	✓				
<u>Representative D. Severson</u>	✓				
<u>Representative Lois Belmont</u>	✓				
<u>Representative Gil Herbel</u>	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Lypson

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

Insert LC: .

REPORT OF CONFERENCE COMMITTEE

SB 2102: Your conference committee (Sens. Lyson, Flakoll, Christenson and Reps. Severson, Delmore, Herbel) recommends that the **HOUSE RECEDE** from the House amendments on SJ page 805 and place SB 2102 on the Seventh order.