

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1426

2005 HOUSE POLITICAL SUBDIVISIONS

HB 1426

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1426

House Political Subdivisions Committee

Conference Committee

Hearing Date February 10, 2005

| Tape Number | Side A | Side B | Meter # |
|---|--------|--------|------------|
| 2 | x | | 8.5 to end |
| 2 | | x | 0.7 to 7.5 |
| Committee Clerk Signature <i>Lauren B. Fink</i> | | | |

Minutes: **Rep. Devlin, Chairman** opened the hearing on HB 1426, A Bill for an Act to amend and reenact section 40-01-09.1 of the North Dakota Century Code, relating to publication of city government proceedings.

Rep. Blair Thoreson representing District 44 and prime sponsor on HB 1426 appeared to introduce the bill and to support it. There are two parts to the bill --- first the governing body would be required to publish the costs or the estimated cost of publishing the minutes and the second part --- is to make it possible that individual's check amounts may not need to be published. In both cases the issue whether to or not to publish due to costs and/or whether to publish the individual check amounts (often salaries) would be put to the vote of the people.

A copy of his prepared remarks is attached.

Discussion covered not only costs but whether the information is a matter of public record anyway; citizens right to know; Secretary of state's statement regarding surplus "wordage" on the

ballot; some lack of interest; individual's right to privacy; etc. There was reference also to the state wide initiative.

As part of the testimony the committee had letters from the cities of Fargo and Dickinson.

The letters did support the bill.

Connie Sprynczynatyk (18.2) representing the North Dakota league of Cities spoke in support of the bill. They had a legislative committee representing cities from all across the state so there is wide spread support. She added the letter from the city of **Williston.**

Testimony in opposition to HB 1426.

Jill Denning Gackle (31.5) She is general manager for 11 North Dakota Newspaper, a company called BHG Inc. A copy of her prepared remarks is attached.

Roger Bailey Executive Director of the North Dakota Newspaper Association appeared and spoke against the bill. A copy of his prepared remarks are attached.

Jack McDonald lobbyist for the North Dakota Broadcasters and North Dakota Newspaper Association furnished copies of the Attorney General's opinion. Note. There were not enough copies for all those present and we do not have one for the record.

Al Jaeger, spoke not to support the bill nor to debate the merits of publishing the minutes but to state concern's about the ballot change in section one and several sections of the bill. A copy of his prepared remarks is attached.

Mr. Jaeger's testimony and the discussion continued to the end of the tape.

Tape 2 side B to about (7.5) End of testimony.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1426 b

House Political Subdivisions Committee

Conference Committee

Hearing Date February 11, 2005

| Tape Number | Side A | Side B | Meter # |
|--|--------|--------|--------------|
| 2 | x | | 48.6 to 52.1 |
| | | | |
| | | | |
| Committee Clerk Signature <i>Laura B. Zide</i> | | | |

Minutes: **Rep. Devlin, Chairman** in work session opened the hearing on HB 1426 for action.

Rep. Herbal, Vice Chairman moved amendments to HB 1426. **Rep. N. Johnson** seconded the motion. The amendments were adopted on a voice vote unanimously.

Rep. Herbal, Vice Chairman a 'Do Not Pass as Amended' motion for HB 1426. **Rep.**

Ekstrom seconded the motion. On a roll call vote the motion carried **11 ayes 1 nay 0 absent.**

Rep. Devlin was designated to carry HB 1426 on the floor. End of record (52.1)

House Amendments to HB 1426 - Political Subdivisions Committee 02/14/2005

Page 1, line 11, replace "indicating" with "stating that", replace "to" with "of", and after "body" insert "is at taxpayer expense"

Page 1, line 17, remove "either" and remove ", or the"

Page 1, remove lines 18 through 20

Page 1, line 21, remove "available in printed form upon request"

Renumber accordingly

Date: February 11, 2005
 Roll Call Vote:

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1426

House POLITICAL SUBDIVISIONS Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DN P as amended

Motion Made By Rep Herbel Seconded By Ekstrom

| Representatives | Yes | No | Representatives | Yes | No |
|----------------------------|-----|----|-----------------|-----|----|
| Rep. Devlin, Chairman | ✓ | | Rep. Ekstrom | ✓ | |
| Rep. Herbel, Vice Chairman | ✓ | | Rep. Kaldor | ✓ | |
| Rep. Dietrich | ✓ | | Rep. Zaiser | ✓ | |
| Rep. Johnson | | ✓ | | | |
| Rep. Koppelman | ✓ | | | | |
| Rep. Kretschmar | ✓ | | | | |
| Rep. Maragos | ✓ | | | | |
| Rep. Pietsch | ✓ | | | | |
| Rep. Wrangham | ✓ | | | | |
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| | | | | | |
| | | | | | |

Total (Yes) 11 No 1

Absent 0

Floor Assignment Rep. - Devlin

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

REPORT OF STANDING COMMITTEE

HB 1426: Political Subdivisions Committee (Rep. Devlin, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO NOT PASS** (11 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1426 was placed on the Sixth order on the calendar.

Page 1, line 11, replace "indicating" with "stating that", replace "to" with "of", and after "body" insert "is at taxpayer expense"

Page 1, line 17, remove "either" and remove ", or the"

Page 1, remove lines 18 through 20

Page 1, line 21, remove "available in printed form upon request"

Renumber accordingly

2005 TESTIMONY

HB 1426

Testimony on HB 1426
House Political Subdivisions Committee
Rep. William Devlin, Chairman
Thursday, February 10, 2005
By
Rep. Blair Thoreson
District 44

Chairman Devlin and Members of the House Political Subdivisions Committee: I am Rep. Blair Thoreson from District 44 in Fargo. I have introduced HB 1426, which allows governing bodies to place a statement of the cost of publishing minutes of government proceedings on the ballot when the question of whether or not to publish is presented to the voters. Previously, certain governing bodies were adopting this practice. However, a December 2002 Attorney General's opinion ended this practice, when Attorney General Stenehjem ruled that the current language in the Century Code did not allow for such statements.

Section One of HB 1426 addresses this issue by placing new language into Section 40-01-09.1 of the Century Code stating that "*The governing body may place a statement on the ballot indicating the cost of publishing the minutes to the governing body.*" By including this language, governing bodies may (but are not obligated to) show estimated costs to the voters. In the June 2004 Primary Election, the voters of North Dakota approved a constitutional amendment giving the Legislature authority to set up a method to estimate the potential cost of ballot initiatives and to publicize its budget forecasts. Seventy percent of the voters approved this amendment. This shows a very strong indication that voters want to know the cost involved in various measures. (As an example: If I asked the committee members if they wanted a new car, most likely your answer would be "yes". That answer could easily change to "no" if the cost of the new car was included in the question.) By passage of HB 1426, voters will be given the opportunity to see the cost of publication of government proceedings, if the governing body chooses to do so.

The second portion of the bill deals with the requirement of publication of individual checks. This section is patterned after HB 1236 dealing with the School Board minutes, which passed the House 55 - 35 on January 25. That bill allows posting of the itemized list of obligations approved for payment on an internet web site designated by the City for a period of at least twelve months.

Both sections of the bill are important to citizens. Neither is meant to keep information from the public. In fact, the city of Fargo (for example) currently posts its minutes on the city website, keeps printed copies of the minutes at City Hall for distribution to the public, and will mail copies of the minutes to any citizen requesting them. These are simply more cost-effective ways of gaining access to this information. In addition, the citizen would still be able to receive the information in the newspaper, if they vote to do so. Under current law, cities are required to ask this of the electorate every four years. This will not change under HB 1426. The only change will be to give the voters a more complete picture of what the costs will be for the publication.

I ask the committee to give a "DO PASS" recommendation to HB 1426, and give taxpayers more information as to how their dollars are spent.



Mayor Bruce W. Furness
200 3rd Street North
Fargo, North Dakota 58102
Phone (701) 241-1310
Fax (701) 476-4136

February 8, 2005

Representative William Devlin, Chair
Political Subdivision Committee
State Capitol
600 East Boulevard
Bismarck, ND 58505-0360

Dear Representative Devlin:

I am writing in support of HB 1426 which allows the governing body of a city to place a statement on the quadrennial ballot indicating the cost of publishing the minutes of that body.

This ability would be consistent with legislators wanting to know the fiscal impact of pending legislation. This ability would be consistent with last June's Primary Election, in which the voters approved a constitutional amendment giving the legislature authority to establish a method of estimating potential cost of ballot initiatives. This ability would be consistent with current HB 1222 which provides for determining the estimated fiscal impact of an initiated measure.

We are not opposed to providing minutes to those who want to read them. In fact, we place our City Commission minutes on the City of Fargo Web site and provide free copies to anyone who asks. The real issue is the cost effectiveness of assuring citizens have access to minutes.

Publishing in the newspaper is more costly than any other method and utilized, I suspect, by relatively few people.

This bill lets the people make the choice on method of delivery depending on the estimated cost of publication.

I urge your positive consideration of HB 1426.

Sincerely,

A handwritten signature in cursive script that reads "Bruce W. Furness".

Bruce W. Furness
Mayor

BWF:sf
ffhb1426



**Testimony by Greg Sund
In Support of HB 1426**

Chairman Devlin and members of the House Political Subdivisions Committee, for the record my name is Greg Sund. I am the Dickinson City Administrator. I am testifying in support of HB 1426 with one amendment.

As required by the law addressed in this bill, in 1996, the city of Dickinson placed a question on the ballot asking if voters would like minutes of city commission meetings published in the official newspaper. At the time, the City decided that incorporating the cost of publication in the ballot question was the best way to provide voters with a complete picture of the question being asked. After that election, it was determined that cities could not include the cost of publication a minutes publication ballot question.

The city of Dickinson continues to believe that voters need pertinent information when making a decision. Since the cost of publication can be determined fairly easily, we support including this information in the ballot question. By including the estimated cost of publication in the ballot question, the city is providing voters with a fiscal note of the outcome of approving the ballot question. We ask the committee to again permit cities to provide voters with complete information on this matter.

Secondly, I encourage the committee to consider amending the bill to strike the words "if the governing body elects to publish an annual salary schedule for each employee" on line 22 of page 1 of the bill. Since city of Dickinson voters approved publication of the minutes in 2000, the annual publication of employee salaries has drawn considerable objection for our employees. Employee groups have complained, and we concur, that there is little public interest in publication of salaries. By striking the words above, the publication of salaries would not be required. This is currently a requirement for cities that must publish their minutes, but not for other local governments, such as school districts.

I encourage the committee to amend this bill as proposed above and approve a "do pass" recommendation.



POST OFFICE BOX 1306
WILLISTON, NORTH DAKOTA 58802-1306
PHONE (701) 577-8100
FAX (701) 577-8880
TDD (800) 366-6888
(State Relay)

CITY OF *Williston* NORTH DAKOTA

February 7, 2005

House Political Subdivisions Committee
State Capitol
Bismarck ND 58505

RE: HB 1426

Dear Committee Members:

The Board of City Commissioners of the City of Williston supports HB1426, which allows the governing board of a city to place the cost of publishing minutes on the ballot question. Our most recent publication of the minutes for one meeting will cost the City of Williston taxpayers over \$500. We feel that it is reasonable to make the voters aware of the cost. We also support giving cities the flexibility of posting their obligations on an internet web site in lieu of publishing them with the minutes.

We urge a "DO PASS" recommendation for HB 1426.

Sincerely,

E. Ward Koeser
President
Board of City Commissioners
City of Williston

EWK:sks

Good morning, Chairman Devlin and members of this committee. I'm Jill Denning Gackle. I'm the general manager for 11 newspapers in North Dakota for a company called BHG Inc.

I'd like to begin by complimenting this committee for being involved in legislation to cut costs. In private business, it seems like every time we turn around we're trying to cut costs. It's commendable to see those in the government trying to do the same.

However, I'm not quite sure how the cutting of bills from the minutes saves the cities money. In fact I think it will cost our cities more in the long run. Please allow me to explain.

1. **The cost is not the issue.** Of 23 cities that publish their minutes and bills in our 11 newspapers, the cost ran an average of \$52.62 for the most recent month published. The highest paid monthly cost was \$127.11 in New Town and the lowest was \$21.66. The average cost for those 23 cities to publish the bills portion of the minutes was \$11.78. That's a small price to pay to keep an eye on the city's spending. The newspaper remains the most accessible vehicle possible to get that information to the public – at an affordable price.

2. **Publishing the bills is good business.** It makes good sense to allow the public to be a watchdog on city spending. Our cities are run by volunteers who sometimes receive a small stipend for their efforts. They're human – they buy out of town when the same product is available in town, they buy from relatives and friends and they are busy people who aren't scrutinizing the spending as carefully as possible. Publishing the minutes and bills assures accountability.

3. **Newspapers take publishing of minutes very seriously.** We are entrusted with an important job. We've been publishing legal notices for a century so by now we know what we're doing. And we're paid to get it right.

If this bill were passed, the bills would be posted on an "internet web site designated by the city." Really? Where's that – could you post them on the local supper club's web site? Or maybe on the school's web site that's maintained a few times a year. And who's going to make sure they're posted on the web site? And who's going to make sure they are posted accurately, easily found and who's going to pay for the web site? And if the person responsible for posting them forgets or doesn't have time, is there a fine or penalty?

In my town, our city auditor is already too busy. It wouldn't be a good idea to give this additional duty to her. We don't even have the Internet in our city hall, so how would the minutes be posted?

4. **The reason we don't have Internet at the city hall is because a lot of people still aren't doing business that way.** People still drop off their water bill at city hall to save a stamp. We just got an answering machine on the one telephone line coming into city hall, but that doesn't always work because someone forgets to turn it on.

5. **We do what we can.** Sometimes we are asked, "Well, if you think it's so important, than why don't you just publish it?" It's all economics. Of the 11 newspapers we publish, 6 papers struggle to go larger than 12 tabloid size pages. Some are 8 pages a week. That's small. It's small because those pages have to be supported by advertising. If we don't have many businesses in those communities, we don't have much advertising and thus we have small papers. We don't have trouble finding news and information of interest – we have trouble finding the advertising to support the pages to print the news.

Also, we just can't afford the staff to cover every aspect of every city and school in our region. Of the 23 cities I mentioned, we are only able to cover nine of those cities in person. The minutes – and the bills – are the only way to let the public know what's going on and how taxpayer dollars are spent.

Portions of this bill may have some validity ... some day. It's not today. Please do the right thing by voting DO NOT PASS on HB 1426.

February 10, 2005

HOUSE POLITICAL SUBDIVISIONS COMMITTEE
HB 1426

Representative Devlin and members of the committee:

I'm Roger Bailey, executive director of the North Dakota Newspaper Association. The members of our association are the 10 daily and 79 weekly newspapers in North Dakota. Until a short time ago, I was the owner of one of the 79 weekly newspapers in the state.

The newspapers of North Dakota are opposed to HB 1426 because the newspapers feel that passage of the bill opens up a myriad of problems regarding ballot wording and would limit public access to very important information regarding the operations of a very public entity.

Allowing cities to include on the ballot the cost of printing proceedings had been an occasional problem until the Attorney General ruled that ballot electioneering does not conform to state law. NDNA found that when some government agencies did employ ballot electioneering – stating the costs of publication on the ballot – that the figures were sometimes grossly exaggerated. Rather than citing costs of just printing the proceedings, some government agencies printed their entire public notice costs which included bid notices, zoning notices and other official notices required by law.

Our question: Who would certify the numbers as being accurate?

If cities are allowed to engage in ballot electioneering, to be fair, individual candidates, too, would need to be allowed to electioneer on the ballot. For example, candidate John Doe would then be allowed to make a statement after his name on the ballot, such as, "The candidate for lower taxes," or "The candidate who favors a half-cent reduction in the city sales tax."

Separating that portion of city proceedings – the bills paid each month – from the other business handled by city government is eliminating a very important part of the proceedings. My personal experience indicates that the “bills portion” of the proceedings is much better read and more important to the taxpayers than the minutes portion of the proceedings.

If this bill passes, many people would no longer have access to this information. In a survey conducted by Newton Marketing and Research, published in 2003, almost 30 percent of North Dakota households reported they don't have Internet access at home or at work. HB 1426 would effectively eliminate 30 percent of the taxpayers from knowing where the city's money is being spent.

Lack of access to the Internet would be especially troublesome to the elderly, the poor and minorities. In the same Newton survey, 57 percent of persons over the age of 55 said they did not have access to the Internet.

The respondents were also asked if state and local government should be required to print public notices in the newspaper. 75 percent said “yes” and only 7.8% said “no.”

In the June 2004 municipal elections in North Dakota, in 137 cities in which voters were asked whether they wanted city proceedings published in the newspaper, 23,685 voters said “yes” and only 2,727 voters said “no.”

We think the people of North Dakota have spoken clearly.

We think there's a compelling reason to keep public notices in newspapers. There might be a time when the Internet replaces us – but clearly, based on the numbers of people who now have Internet access – the time is NOT NOW.

The North Dakota League of Cities currently lists 122 cities as having sites on the Internet. The North Dakota Blue Book of 2005 lists 361 cities in North Dakota – so approximately two-thirds of the cities in the state do not have web sites.

We found that many of the web sites listed on the League of Cities index are not official websites of cities but more frequently are websites of Chambers of Commerce and tourism promotion agencies. Some have lists of city officials but only a small number contain information of an official nature from city government.

This again brings up the question regarding the wording in HB 1426 which indicates that the cities may post the bills on a "website designated by the city." That could mean that the bills could be posted just about anywhere.

The people know now where to find public notices – in the newspaper. They don't have to hunt for them.

We request that the committee give a "DO NOT PASS" recommendation to HB 1426.

Thank You.

ALVIN A. JAEGER
SECRETARY OF STATE

HOME PAGE www.state.nd.us/sec



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SECRETARY OF STATE

STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

February 10, 2005

TO: Representative Devlin, Chairman,
and Members of the House Political Subdivisions Committee

FR: Al Jaeger, Secretary of State

RE: HB 1426 – Statement on Ballot

The intent of my testimony is not to debate the merits of publishing the minutes of city proceedings or if other alternatives would be better. However, as the state's chief election officer, I am concerned about the proposed change in Section 1, lines 10 and 11, and how it would relate to the integrity of the ballot.

To me, the ballot should not contain any extraneous text that may improperly influence or which might be considered argumentative or prejudicial.

For example, in N.D.C.C. § 16.1-06-09 there are specific guidelines as to how the wording for a measure should appear on a ballot. In part, the section states: "the secretary of state in consultation with the attorney general shall cause to be printed a short, concise summary, which must fairly represent the substance of the constitutional amendment or initiated or referred measure."

According to N.D.C.C. § 40-01-09.1, the issue to be placed before the voters every four years is whether or not the minutes of city proceedings should be published in the city's official newspaper. Since it is impossible to determine the cost of publication beforehand for four years into the future, any reference to the cost of publication would be based on an estimate. That could open questions as to the accuracy of the estimate and whether it was intended to influence the outcome of the vote.

In my opinion, the potentially argumentative issue of the publication cost on the ballot goes beyond the guidelines in N.D.C.C. § 16.1-06-09. That is, the statement on the ballot should "fairly represent" the matter before the voters. In this case, it is whether the minutes should be published.

Therefore, I believe the issues related to the publication costs and alternatives should be debated and discussed "outside" of the polling location and not on the ballot by those persons either in favor of or opposed to the matter before the voters.

For the committee's further information, I have attached a copy of an Attorney General's opinion dated December 24, 2002, which is about extraneous language appearing on the ballot.

LETTER OPINION
2002-L-73

December 24, 2002

Honorable John Andrist
State Senator
PO Box E
Crosby, ND 58730-0660

Dear Senator Andrist:

Thank you for your letter concerning extraneous or surplus language appearing on some city and school district election ballots. You indicate that some cities and school districts include estimates of publishing costs on ballots containing the question of whether these political subdivisions should publish the minutes or proceedings of their governing bodies in their official newspapers. You ask about the propriety of including these cost estimates on the ballots.

Section 15.1-09-31, N.D.C.C., provides, in part:

Every two years, at the time of a school district's annual election of board members, the electors of the district shall determine whether a record of the board proceedings must be published in the official newspaper of the district.

Similarly, N.D.C.C. § 40-01-09.1 provides that every four years:

[A]ll cities in North Dakota, regardless of their form of government, must put on the ballot the question of whether the minutes of its governing body shall be published in its official newspaper. .

You included with your letter sample ballots that have been published in newspapers showing that together with the question of publication of minutes, ballot language had been added estimating annual publication costs.

As you also noted, the school districts' practice of including the cost of publishing minutes was addressed in prior correspondence issued by this office. See Letter to

Leon Johnson (May 11, 1967). The letter discussed an initiated measure which was a predecessor provision to N.D.C.C. § 15.1-09-31. See 1999 N.D. Op. Att'y Gen. L-112. The 1967 letter concluded that the "Measure makes no provision for including the cost of publishing the minutes on the ballot and we do not believe it is proper to include same on the ballot." Likewise, the current versions of N.D.C.C. §§ 15.1-09-31 and 40-01-09.1 make no provision for including the cost of publishing the minutes.

The North Dakota Supreme Court has not addressed this issue; however, according to one authority, "[t]he appearance on the ballot of words of surplusage which could not mislead the voters will not require the invalidation of a local election. . . . The test is whether surplusage 'would tend to confuse or misinform a voter so as to affect his free choice.'" 6 Sandra M. Stevenson, Antieau on Local Government Law § 86.16[3] (2d ed. 2002). In addition, the use of language that is "in the nature of a persuasive argument in favor of or against the issue . . ." is prohibited. State ex rel. Bailey v. Celebrezze, 426 N.E.2d 493, 495 (Ohio 1981), quoting Beck v. City of Cincinnati, 124 N.E.2d 120, 121 (Ohio 1955). See also 42 Am. Jur. 2d Initiative and Referendum § 21 (the summary of an initiated measure generally must be clear, concise, and a true and impartial statement as to the intent of the proposed law; not an argument, nor likely to create prejudice for or against the measure.).

While publishing good faith estimated publication costs would not necessarily confuse or misinform a voter to such a degree that it would call into question the results of an election, such statements are clearly surplusage that is not authorized by either N.D.C.C. §§ 15.1-09-31 or 40-01-09.1. Furthermore, to the extent that such estimated costs of publishing are included in the ballot language in order to influence the voters to vote against publication because of the costs involved, the additional language would be argumentative or prejudicial. While presumably the school district or city officials who placed the estimated costs of publication on the ballots you enclosed would assert that they were only trying to fully inform the voters on the ballot measure and not trying to improperly influence them, many of the voters are likewise taxpayers who may be less inclined to vote for publication if reminded in the voting booth of the estimated costs involved.¹ As the court in Beck noted:

¹ Whether including cost estimates constitutes a violation of North Dakota's electioneering statute, N.D.C.C. § 16.1-10-06, would require a determination by the trier of fact in a case as to whether the persons responsible for the surplus ballot language were "asking, soliciting, or in any manner trying to induce or persuade, any voter on an election day to vote or refrain from voting for . . . any measure submitted to the people . . ." within the meaning of that statute. Such determinations of fact are beyond the scope of an Attorney General's opinion.

LETTER OPINION 2002-L-73
December 24, 2002
Page 3

If argumentation, promises, misrepresentations or coercive statements should be permitted on the face of the ballot, one could not predict the limits of such practice and the confusion which may ensue. Certainly if the proponent of such issue be permitted to introduce such material, the opponent should have the same privilege.

Beck v. City of Cincinnati, 124 N.E.2d at 121.

Consequently, it is my opinion that N.D.C.C. §§ 15.1-09-31 and 40-01-09.1 do not permit the inclusion of surplusage such as the estimated costs of publication on the ballot and that it is improper for a city or a school district to include them.

Sincerely,

Wayne Stenehjem
Attorney General

jjf/pg