2011 HOUSE JUDICIARY

HB 1351

2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1351
January 25 , 2011
13394

☐ Conference Committee

Committee Clerk Signature JPenrose

Minutes:

Chairman DeKrey: We will open the hearing on HB 1351.

Rep. Dahl: Sponsor, support, explained the bill. Basically, the way the state statutes and case law reads now, there is a section in our criminal code that's been interpreted by the courts to say that municipalities cannot supersede state law, especially with regard to criminal penalties. When it comes to a DUI on a snowmobile, there are different sanctions then you would find under many municipal codes. For example, if you just look at the text of your bill, it talks about the first offense being an infraction of a DUI on a snowmobile. The way the state law is written, your second offense is also an infraction. Under state law, they do have some minimum fines. For example, in the city of Grand Forks, if you were in the municipal limits, our motor vehicle DUI section is broad enough to incorporate snowmobiles, but because the state statute has a specific way to dispense with these offenses, at least my interpretation is that the city would not be able to pursue a DUI, a class B misdemeanor, for a snowmobile, within municipal limits. They would have to prosecute it under the state code. The difference being on a first offense, it's an infraction. A first offense in a municipality would be a class B misdemeanor. That's where subsection 2 comes in. It gives specific authority to cities, that if somebody is driving a snowmobile and has a BAC of .08, then they can be prosecuted under the municipal code as a class B misdemeanor.

Chairman DeKrey: So the bill that we passed out of Natural Resources Committee on a DUI on a snowmobile, does that fix this same problem.

Rep. Dahl: No, because that bill talks about state land, or basically being anywhere other than a municipality. This only deals with municipalities. I think the policy behind this is that when you are in a city, you have a higher rate of contact with people, with other vehicles and it's a little bit different situation than if you're just snowmobiling out in the country.

Rep. Delmore: Does that penalty of a class B misdemeanor apply to the first offense as well as the others. As I'm reading it, they could put a class B misdemeanor on your first offense, if the city chose that.

Rep. Dahl: Yes, on a first offense, if you're driving on 42nd Ave or even on the greenway in Grand Forks and your BAC is .08 and they have probable, reasonable suspicion to pull you and they find that you're subsequently intoxicated, instead of an infraction, you would be able to be prosecuted under that class B misdemeanor framework.

Rep. Delmore: Then, if they did that for the first offense, that would remain instead of the infraction for the offenses, first, second, whatever.

Rep. Dahl: That's correct. That does bring up an interesting question about the city's have authority to prosecute the first two offenses with regard to a DUI within 5 years. After the 3rd offense, that goes to the State to prosecute. That brings up another question about, I'm assuming that you would just go back to what the state statute says here about a 3rd offense, which makes it a little inconsistent, but that, at that point, would not be the city's jurisdiction any longer.

Rep. Delmore: Do you have any information on how they catch these people. Do we have snowmobile police out, and then about how many people a year might be affected by this bill.

Rep. Dahl: The ND Dept of Parks and Recreation deals with DUI's on snowmobiles, and they do talk about enforcement, they have that information and I can certainly get any specific information necessary, but yes, this would definitely take that out of their jurisdiction and it would have to be a city officer who sees this person driving on the streets or I think they do have trail enforcement on the greenway. I will get that information for you.

Chairman DeKrey: I remember the fight we had last session where the City of Fargo wanted to charge their fines higher than what state law allowed and they had three district judges said they couldn't do it, and they did it anyway and so they brought a bill forward, is the nose of the camel under the tent.

Rep. Dahl: I don't think that's Rep. Owen's intention and it's not mine. It's just a matter of policy that if you have a motor vehicle, running around through a city, that you should be able to prosecute them as they would be in a car. Unlike that situation, this has never been litigated.

Chairman DeKrey: Thank you.

Rep. Curt Kreun: I am on the Grand Forks City Council and I also chair the Safety and Service Commission, which involves some of this particular activity. Sponsor, support. Part of the reason that this came to light was our levy system. The

community, the state, the federal government has invested some $400 million dollars between Grand Forks and East Grand Forks. Without this enforcement capability, we do not have a good ability to deter snowmobiles on our levy system within our community. In answer to Rep. Delmore's question, we do have police officers that are on constant patrol with our snowmobiles. In the spring and the fall, we have specially designed four-wheelers that we go through and monitor these levy systems with. We have bike patrols that go through the greenway itself, and so we're trying to monitor this to keep the damage off of this system. We just had FEMA come in this past summer and inspect all of our dike systems for deterioration and encroachment; they were wondering how, they didn't ask specifically, but the question was raised, how you enforce this with trespassing. We do have signs up that are needed as well. But we do need a deterrent that will keep them off of that and protect that system. That is just my particular portion of this bill that I would recommend passage on.

Chairman DeKrey: It's not legal to ride your snowmobile on the greenway in Grand Forks.

Rep. Kreun: That's correct. But without a long standing deterrent, or a stiffer deterrent, it doesn't seem to make a whole lot of difference.

Rep. Delmore: This would only affect if they were DUI's. You're saying that a majority of the people ignoring the signs would be that.

Rep. Kreun: This is the DUI portion of it. We would like to educate younger people. Usually the older people are the ones that are involved and have this situation, they should know better. This is not to infringe on young people who are learning and hopefully we can deter them through a conversation or through their parents. This is a part of what we are requiring, what we request of this committee.

Rep. Delmore: You also alluded to four-wheelers. Would it be your intention to expand this to other vehicles beyond snowmobiles.

Rep. Kreun: I believe our other laws will enforce motor vehicles on that particular issue. I think what is lacking is the snowmobile portion.

Rep. Steiner: How much damage does a snowmobile do to the greenway.

Rep. Kreun: It depends on the time of the year, of course. But in early fall, when there isn't much snow and in the late spring when it is melting, a great deal of damage is incurred. They get in and create trails, they also have spikes on their tracks, and they dig up the grass. They actually damage the integrity of the dike itself. The dike itself is not as big and strong as you may think. We monitor it for gophers, etc. We monitor grass seeding and make sure that the root system is deep enough so that it holds the integrity, and so when the water comes up, it doesn't erode away. It is very crucial. We have a difficult time with a lot of residents wanting

to build on the greenway or on the easements. We are very protective of that particular part of our infrastructure, and this is just one more part of it.

Rep. Boehning: What's the penalty for riding a snowmobile or a 4-wheeler currently if you get caught in this area.

Rep. Kreun: I don't know that amount.

Rep. Boehning: Would there be a way that you can get that information to us.

Rep. Klemin: There is a penalty section in section 39-24-11, has to do with penalties for violating section 39-24-09, so if you look on line 9 of this bill, it says on a conviction of violation of subdivision c, subsection 5 of section 39-24-09. Section 39-24-09 has quite a few different subsections in it. Section 39-24-11 has got the penalties and it goes through here saying penalty for violation of subsection 12 is $100, violation of subdivision b or g of 5 is a class B misdemeanor. A violation of subdivision c is guilty of an infraction or class B misdemeanor as determined by 39-24.1-07, which is what this bill is amending. If a person violates subsection 11 of 09 is guilty of a class B misdemeanor, any person who violates any other provision of 39-24-09 must be assessed a fee of $20. So it sounds like it will be the $20 fine to me.

Rep. Kreun: Visiting with our police chief, those are some of the indications that the fine was not indicative of the infraction. They've gone to more education than they have into the deterrent aspect and this gives us more of a deterrent.

Chairman DeKrey: Thank you. Further testimony in support of HB 1351. Testimony in opposition to HB 1351. We will close the hearing.

2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1351
February 8, 2011
14180

☐ Conference Committee

Committee Clerk Signature *DKenrose*

Minutes:

Chairman DeKrey: We will take a look at HB 1351. This is the bill that has the penalty for operating a snowmobile while intoxicated. This is the issue that we had last session, whether you are going to allow cities to have their fines higher than the State does.

Rep. Boehning: I move a Do Not Pass.

Rep. Koppelman: Seconded. This is an interesting discussion, especially for those of you that are newer to this committee. It's not exactly the same bill, but we went through an issue on the Judiciary Committee last session on fines. The issue came to light because the City of Fargo had been sued because they had very high traffic fines as compared to what was in State law. All of a sudden that concerned them, so they came and introduced a bill that said, as a homerule city they could have whatever fine they wanted. This committee clearly was of a mood not to do that. The bill was in jeopardy of failing. One weekend I was asked to meet with all the local law enforcement people from Fargo, West Fargo and Cass County. Rep. Dahl was on the committee at the time. We crafted an amendment that said that a home rule charter city could have fines 1.5 x the statutory amount. The Fargo contingent was here one day visiting the legislature and I talked with him and informed them that there was an amendment on the bill. They told me at that time to kill the bill. They informed me that they were going to court, and when I asked if they were sure, they said they were, kill the bill. They lost in court and it wasn't long after that, I was at a meeting where legislators from the area were invited, and the Mayor of Fargo was standing up and chastising the legislature for not passing a bill, to give cities the authority to have a higher fine. We've been down this road before. I think this is an old issue reappearing again.

Chairman DeKrey: The clerk will take the vote.

8 YES 4 NO 2 ABSENT **DO NOT PASS** **CARRIER: Rep. Boehning**

Date: 2/8/11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1351

House JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☑ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Boehning Seconded By Rep Koppelman

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore		✓
Rep. Klemin	✓		Rep. Guggisberg		✓
Rep. Beadle	✓		Rep. Hogan		
Rep. Boehning	✓		Rep. Onstad		✓
Rep. Brabandt	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar					
Rep. Maragos		✓			
Rep. Steiner	✓				

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

REPORT OF STANDING COMMITTEE

HB 1351: Judiciary Committee (Rep. DeKrey, Chairman) recommends **DO NOT PASS** (8 YEAS, 4 NAYS, 2 ABSENT AND NOT VOTING). HB 1351 was placed on the Eleventh order on the calendar.