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## **FISCAL NOTE STATEMENT**

Senate Bill or Resolution No. SB 2086

This bill or resolution appears to affect revenues, expenditures, or fiscal liability of counties, cities, school districts, or townships. However, no state agency has primary responsibility for compiling and maintaining the information necessary for the proper preparation of a fiscal note regarding this bill or resolution. Pursuant to Joint Rule 502, this statement meets the fiscal note requirement.

Sheila Sandness  
Senior Fiscal Analyst

**2017 SENATE POLITICAL SUBDIVISIONS**

**SB 2086**

# 2017 SENATE STANDING COMMITTEE MINUTES

## Political Subdivisions Committee Red River Room, State Capitol

SB 2086  
1/5/2017  
Job # 26612

- ☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature

*Mary Jo Wock*

### Explanation or reason for introduction of bill/resolution:

Relating to participation in city governing body meetings by residents of areas within the extraterritorial zoning jurisdiction of the city.

### Minutes:

Attachment #1 Senator Poolman,  
Attachment #2 Kay LaCoe  
Attachment #3 Bill Wocken

**Chairman Burckhard** opened the hearing on SB 2086. Senators present are Chairman Burckhard, Vice-Chairman Anderson, Senator Dotzenrod, Senator Kannianen, Senator Diane Larson, and Senator Judy Lee.

(:34-2:08) **Senator Nicole Poolman:** District 7 representing Bismarck and Lincoln, introduced SB 2086. Written attachment #1.

**Senator Larson:** Your number 2 on your testimony says that it instructs city commissions to choose a precinct for those living in an ETA, so they wouldn't go to their regular voting precinct and just be allowed to, it would be a specific precinct that they would go to for that?

**Senator Poolman:** If they aren't living in the city they don't have a city precinct to vote in. That is why from a practical standpoint they would have to be assigned one.

**Senator Lee:** I have been on a planning and zoning commission where we've had ETA as a petition which is always very helpful. I do have a question or two, and one of them is, if they need to annex extra territorial zoning area but not annex, then what members of the city, should have four voting privileges if they are not annexed into the city? I get the part of them being of non-voting representatives on the planning and zoning because the new area of impact is about sewer disposal for an example, that kind of stuff. So tell me and help me understand why, your suggesting we should go to the second step and knew if they are going to vote, why do they have to be annexed?

**Senator Poolman:** My constituents from Lincoln would say that they feel that this is happening and their complaints they are taking to the commission haven't been heard. So, they are trying to do what they can to have their complaints and concerns heard because

they don't believe just having the non-voting member on the Planning and Zoning is working. They don't think it is good enough.

**Senator Lee:** What questions other than Planning and Zoning are they not feeling are heard by the citizens?

**Senator Poolman:** I think that you will have to give that question to the constituent here.

**Senator Anderson:** Clear up for me a little bit about the extra-territorial area. I think cities can make a decision, they can go a half-mile or they can go up to two miles outside the city in their zoning, correct?

**Senator Poolman:** You are above my pay grade. I am not familiar with how they work or how they are taking in.

**Chairman Burckhard:** I think they are taken in the size of the community. I think for instance Minot has a 2mile extra-territorial.

**(5:46-10:59) Ms. Kay LaCoe:** Written testimony #2. Urged a Do Pass.)

**Senator Diane Larson:** Can you give any examples of what you wanted to see done, that you weren't allowed to, or what specific kind of things imposed on you that you didn't like?

**(11:24-13:00) Ms. Kay LaCoe:** Without keeping you here for hours, there was a zoning request and a special use request and several violated ordinances in a stones' throw from my property which began in February of 2016 that directly impacted and will impact through this year if we flood. We asked them to stop the issuance of the special use permit that is far outside of their city ordinances. We asked them to take their time to evaluate what they were doing to the cities and where the city was eventually going to go and repeatedly they bowed to the wind of one property owner over the wishes of the majority.

**Senator Larson:** I am still a little bit unclear so, you went to the city of Lincoln, and asked them to do what?

**Ms. Kay LaCoe:** We asked them to stop the rezoning of agricultural to industrial zoning on a property that is surrounded by agriculture, currently use agriculture property and rural residential. We asked them to stop the issuance of these special use permits that is far outside of their city ordinances. We asked them to take their time to evaluate what they were doing to the city and where the city was eventually going to go and repeatedly they bowed to the whims of one property owner of the majority.

**(15:00-18:00) Senator Lee:** So the city within whom you have the dispute, is Lincoln. You are outside the city limits of Lincoln and you chose to live in a rural setting, which means that you are in the county. This means you are in a rural county, in Burleigh County. So, you are governed by Burleigh County and law enforcement is provided by the Burleigh County sheriffs' department, not by the city of Lincoln sheriff's department I would think or however, so whatever rules with Lincoln and the county sheriff, where the sheriff is responsible for everything that goes on outside the city limits. The people who live in the city limits get



additional police and fire protection from city public departments but the rural fire department that comes to the rural area don't get because you've chosen not to live in the city limits, you don't get the city services that the people in the city of Lincoln pay for. The people who live in Lincoln have municipal water and sewer systems, whereas you might be hooked up to a rural water system or whatever. Small communities some time ago got support for putting in sewer systems that were acceptable but rural properties requirements are different. So what is expected of you in your rural setting is different from what has to be done in the city of Lincoln even if you are in an ETA area. You don't have to hook up the city sewer and water, you can have rural water with your own septic system, correct? So you are also not paying taxes to the city of Lincoln because you're not in the city of Lincoln. Yet, just to make sure that I am clear on all of this, you are suggesting that it fair that you should be able to vote in a city election, you should be able to participate as a full citizen in Lincoln, except you would be a non-voting member of these boards. You should be able to vote for city elections even though you're not a resident of the city of Lincoln, you are not paying for participating in the benefits there are of living in the city boundaries of this incorporated city of Lincoln. So, help me figure out why I understand your frustration with the situation. We are talking about one city being ticked off at somebody else, but, in this bill, we're asking for practical rural full benefits of being a resident of the city of Lincoln but you're not really paying your share of being in the city of Lincoln. So can you just help me rectify this, I mean potentially is there some other kind of option that might enhance this? When you say they bow down that is an opinion supposedly so let's look on facts here. The purpose of that rezoning was adopted by the city commission. This is a democracy, they have an ability to rule, its' done for elected officials who make decisions that are supposed to decide for the best interests of the people who are being served. This is what we are trying to do too, including you, we want to serve you well too. I want to see improved communications between city and rural issues around the community of Lincoln, including the school boundaries that have been listed by the Supreme Court. I understand what are your challenges and I am sympathetic, but I am having a hard time seeing why we should get all the privileges city residency when you're not paying the full partnership costs of being a city resident.

**(19:58 ends response) Kay LaCoe:** It is probably best answered with as I understand it city annexation or the city extra-territorial area is with the intent that eventually the city's boundaries will grow and the intent that eventually the city's boundaries will grow and encompass those living in the extra-territory area. That is my future. My child attends school much like many other ETA and cities around the state. We have a vested interest in how that city progresses, we frequent and do pay, not property taxes, but sales taxes thanks to the recent passage of the Home Rule Charter. So we do have a financial vested interest in the city and a personal vested interest in the future of the city, and how the city goes about managing as you reference, police, fire, water and sewer. All it does is impact how we will continue to live our lives in that area. So while I understand and I share your concern with the getting full rights without having the same financial investment that of a city of Lincoln members, we still have a very vested interest because in a few short months, or several years that will become our city as well.

**(22:17) Senator Lee:** ET zoning when they are looking at going into extra-territorial area is not necessarily primarily because a city is going to expand around the area. It is important



that water systems, particularly sewer systems. So the city through ET zoning, wanted to make sure that somebody who is in really close proximity because it wouldn't be right if they could zone 10 miles out. (example cited ends at 22:17)

**Senator Kannianen:** Two questions, one I am wondering about your experience with Burleigh County with the commissioners and their response?

**(22:37-23:16) Ms. Kay LaCoe:** My experience with Burleigh County has been overly positive. I have been a resident of Burleigh county for 36 years and I have only spoken with one county representative regarding this, and at risk of putting words in that commissioner's mouth, I have taken away the idea that this incentive is something that the county commissioner would support. However, I don't want to put words in that commissioner's mouth.

**Senator Kannianen:** As far as making this type of decision is it more for the county commission to take up or have you not been to a meeting for them to hear the proposal or to explain all this them for them to take up?

**(23:43-24:09) Ms. Kay LaCoe:** It is definitely not something I have thought of. I guess I would answer to that is I would much rather have to be able to get away from ETA. I am not prepared to even apotheosize about how the county controls the play into ETA government.

**Senator Kannianen:** You mentioned that there are other examples of this, but could you provide us with, as far as from border to border, there are other examples that can be heard?

**(24:53-25:48 examples) Ms. Kay LaCoe:** It would all be anecdotal. Again, in reference to Senator Lee that most of this is conjecture and rhetorical because again we are not living in a democracy we are living in a republic. People's opinions come into play, but I would be very willing to supply other examples.

**Senator Kannianen:** My thoughts are I am wondering if the county isn't the better recourse. The county government is the better recourse to go with all this instead of on the state level.

**Senator Dotzenrod:** Just a concern, if you don't pay taxes to the city, then, but you want to go in to vote in the city election, it seems like that sets up kind of a problem. You're having a say in policy to have an outcome of decisions made by the city, but you're not supporting the city with any taxes. Doesn't that seem like sort of representation without taxation?

**Ms. Kay LaCoe:** I wholeheartedly disagree. Respectfully we are getting representation.

**Senator Dotzenrod:** If the bill passed what you're requesting is a chance to be able to be able to be represented, to have your vote matter. If we pass this, you will have representation without taxation. Am I correct?

**Ms. Kay LaCoe:** I believe that if the citizens of the ETA were able to vote for members that sit on a city council, that it is our right to express our voting rights. It is no different if our vote for someone and they don't get into office. That would be like saying that my voice is not being represented. That's what not we are going for here. What we are going for is the right to be



represented when they are making judgments in impacts on our land. I do see where the struggle is, I do see that the taxation thing is an issue. But we still are being not represented.

**(29:04) Senator Larson:** I live in an ET zone. I live outside of Bismarck in Burleigh county. I get to vote in the Bismarck city elections yet in the Bismarck Planning Department I need to get my building permit from. But I also gain some benefits, examples given **(31:37)**. I don't know if you have felt any benefits being close to the city. I understand honestly about having a non-voting member on city commission just to give input. That totally makes sense to me. Every one of us is asking in a different way to try to understand why you think that is okay to vote for the city commission. I do vote for the county commissioners. I don't understand the voting portion of that.

**(32:20-32:35) Ms. Kay LaCoe:** To address your first point, I can tell you from being in close proximity to Bismarck than Lincoln, I found far more benefits to being closer with a different city. At this point in my opinion, there is absolutely no benefits that I receive from the City of Lincoln. I guess all I can do to address and try and answer the same question you are all asking, is that every decision that the city council makes regarding planning and zoning, directly impacts my family and my neighbors and every ET resident right here and right now. Every decision that the city considers about sewage, and infrastructure, and taxes and everything else that goes along with the city council stands to directly impact ETA residents now and into the future.

**Senator Anderson:** About whether I would support letting you vote in the city for all elections. Now I might be willing to support letting you having a voting member on the Planning and Zoning Commission. I also realize they only make recommendations to the city commission, they don't decide what's going on. I might support that, but I doubt if I would support letting you vote in the city as a whole. Would you have a comment about if you had a voting member on the Planning and Zoning commission?

**(35:00) Senator Judy Lee:** In the first place I respectfully disagree with paying taxes to the city of Lincoln, because you're not paying property taxes to the city of Lincoln. But if you are so concerned about all of that, why don't you go and be annexed to the city of Lincoln. You could be an enrolled residential zoning area instead of being annexed.

**Ms. Kay LaCoe:** The second part of your statement I wholeheartedly agree in making it very clear. As to the annexation and this is off my knowledge and research, but it isn't easy to be annexed into the city because as I understand it you have to be able to get city infrastructure to your property. We live almost 5 miles from the city of Lincoln. The city of Lincoln's infrastructure along with many other examples of cities out there, there infrastructure development goes out so far. It would cost us millions of dollars in order to provide for that infrastructure we never wanted.

**Chairman Burckhard:** I think we have to ponder the slippery slope creating representation without taxation. Every extra-territorial zone will come into to say, it complicates it that way too. It's not as simple as addressing or renewing your request, but it is something that we have to take very seriously.

**(37:20-44:00) Mr. Brian Bittner:** Burleigh County Commissioner. In respect to questions concerning city police. It is very unlikely that city police would be operating outside city limits.



This particular problem that this citizen is talking about, is one of the problems in Burleigh County. It is not the biggest complaint that I from the county commissioners, it is similar to the Boston Tea Party our country was founded. I am almost neutral on this bill. I have thought a lot about it, it is important to me that if a government entity exercises jurisdiction over you, then you should have some way of exercising your citizen responsibility at the same. I happen to be the commissioner that is on the city Planning commission as well as the Burleigh county Planning Commission and I am also one of the Burleigh county commissioner I am involved in appointing those other members. We concurrently have 4 seats on the City Planning Commission and that is an eleven board. So even if Burleigh County had a position that was contrary to the city's position, I can't imagine what that would be because city and county ordinances are nearly mirror, as they very little differences in their decisions. That is an advisory board and it goes no further. So a citizen can come to me, and in respect to your question, Burleigh county has no authority in Lincoln Zoning area. They currently don't have the ability to override, we have no input. In the case where she is talking about, the words that I hear in Burleigh County is in that case the property owner were friends of the mayor. I believe I got that opinion from the article in the paper, not just scuttlebutt. So, that is a situation where the mayor was going to favor somebody and that is what I heard. Burleigh county got a bunch of calls on that, because everybody knows I am involved in the Planning and Zoning. The Planning Commission whether it is city or county is simply there to report, period. Although it may sound like representation, the citizens are asking for some kind of meaningful involvement because right now the decisions on the city level impacts Burleigh County citizens.

**Senator Anderson:** Can you explain to me their authority for extra-territorial zoning based on the city size? You mentioned 5 miles, that seemed like a long way.

**Mr. Brian Bittner,** Burleigh County Commissioner: There is a 4- mile extra-territorial jurisdiction. Essentially the city of Bismarck keeps to that. It is 2- mile sole jurisdiction, and a 2-4 mile under the statute there is joint jurisdiction. So, I am not sure what part of the city it would help. We have an agreement where Burleigh county has a full jurisdiction in 2-4. Of course that only applies in the townships where we having zoning jurisdiction. It doesn't apply to the entire county. The townships where we are the unorganized townships is where we have the jurisdiction.

**(45:35-46:23) Mr. Loren West:** I live NE of Bismarck and I've only lived there 10 years and like Senator Larson I don't have a problem because when we moved in, things were in place. A neighbor across the road whose been there for 45 years some of his stuff is grandfathered in and he doesn't have to change it, but if he wants to change things, he is having a lot of problems. The problem started when they started extra-territorial zoning. I would love to see that four miles rolled back. It is about taxation without representation.

**(46: 41) Mr. Doug Schonert** Burleigh County commissioner. One of the biggest issues I had in all the years I've served is someone who planned to live in an extra-territorial area. I have some suggestions I would like to make is that at first Bismarck had 2- mile extra-territorial jurisdiction. Of course that affected a lot fewer people so, we had a lot less calls. Then as the city started growing, in the late 1990's sometime, I think the city of Fargo had an issue and they wanted to expand to 4- mile jurisdiction, so they came to the legislature and got that through. So the cities over a certain population now have the authority to extend it out to 4-miles. That really threw a wrench into things because all the reasons you've heard people didn't like it. They didn't have representation. As time goes on, as Mr. Bittner has expressed,



we've come to some agreement with this but I would like to suggest that we have a joint committee between the city planner and zoning and the county planning and zoning and have equal say on that so that we can represent these people in that cities jurisdiction, whatever it may be. I think Lincoln is a mile, and the city of Bismarck varies 2-4 miles. But I think that could eliminate a lot of problems if we could have joint power or equal power to make some of these decisions. (Example cited 49:20) I would see a conclusion to this, and would like to sit down with you and come up with some good recommendations that we could come up with.

**Chairman Burckhard:** It sounds like you are proposing an amendment to the proposed bill. Is that what I am hearing.

**Mr. Doug Schonert:** I would think that we could come up with some kind of amendment to work with that if you would want to have us work this out.

**Chairman Burckhard:** I don't know what to say except we might have to figure that out with some of the bill sponsors.

**Senator Judy Lee:** Could Mr. Traynor or Mr. Crosby representing counties and cities could some recommendations and working with the city and county commissioners into whether or not that might be a viable option because time is short.

**(52:52- 58:34) Mr. Bill Wocken** League of Cities: Written testimony #3. Opposition to SB 2086. Senator Anderson had a question about the jurisdiction for extra-territorial zoning. Under Century Code 40-47-01.1 cities of under 5,000 have one- mile extra-territorial jurisdiction available, cities to 5,000 to 25,000 have two- mile jurisdiction, and cities over 25,000 have a four- mile jurisdiction. Along with that jurisdiction I think your second question was how many people extraterritorial members are involved in the Planning Commission? If you have a one-mile jurisdiction my recollection is you have one member, the two-mile jurisdiction you have two members, and the four-mile jurisdiction you have three members. So, in the case of Bismarck there are three extraterritorial members that city on the city Planning Commission because of the extraterritorial jurisdiction in the city of Bismarck. In addition to the statutory required members those extraterritorial members Bismarck has choose its Planning Commission protocol so that we include a county commissioner on the Bismarck Planning commission, and that's not required by state law. It is something that we have done because of the nature of the area which we are governing and also in Bismarck there is a representative of the township that is involved with a particular zoning change. That township representative does not vote on all issues only on the ones regarding the township. So I think there are some different variations out there.

**Senator Dotzenrod:** Toward the end of your testimony, you said that current law allows a city and adjacent county some divide the extra-territorial error in any configuration. As in Bismarck and Burleigh County has there been any initiative in that regard have the two bodies that they, the counties zoning and city zoning have they ever had a joint meeting? Have they ever sat down and tried to see if they could divide out this and carve this up in a way it would be different than statutes require? Is there any history there?

**Mr. Bill Wocken,** that is exactly what we have done. The statute that requires the joint jurisdiction and the appeal is rather a cumbersome process. It takes the property owner quite a while to navigate through that process as you expect with several boards being involved. So

we have split up the jurisdiction based on what the county and city could agree as a separate agreement where areas of sole jurisdiction.

**Chairman Burckhard** closed the hearing on SB 2086.



# 2017 SENATE STANDING COMMITTEE MINUTES

## Political Subdivisions Committee Red River Room, State Capitol

SB 2086  
1/6/2017  
Job # 26629

- ☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

Relating to participation in city governing body meetings by residents of area within the extraterritorial zoning jurisdiction of the city.

### Minutes:

Committee discussion on SB 2086

**Chairman Burckhard** opened the committee for discussion on SB 2086. All senators were present. This is where Senator Poolman introduced for the rural resident and extraterritorial zoning issues and the taxation without representation or representation without taxation.

**Senator Anderson:** As I said before I am not willing to give extraterritorial people a vote in the city. However, if we want to try and fix this problem overall, then we need to do almost a new bill or big overhaul of this bill in order to redo the extraterritorial laws and say for example there is a requirement that in the zoning they meet with the county and have a 50/50 vote for example. If you did that that would solve problem for these people because their county commissioners' then would have a yes or no vote on that issue. The point would be if we want to take that on as something we want to redo. This bill here I could easily just to kill this one because I don't think we are in favor of letting them vote in the city.

**Senator Judy Lee:** Bill Wocken told us that they already have members meeting sites for the larger cities on the planning and zoning commissions right now, so that is not immediate but making it mandatory or perhaps its' now just optional.

**Senator Anderson:** In talking to the county commissioners here, they don't have a majority vote so what their saying is they get to participate in recommend things but the Planning and Zoning commission that they for example they won't have a majority vote there, and it goes on to the City Commission, where this is just a recommendation in the first place so, the City Commission can do something entirely different than the Planning and Zoning Commission. Even if they all agreed that it wasn't a good idea the city commission could still do it, so now Bill Wocken talked about some instances where he thought there was a 50/50 deal. I want to hear more from him about how that works because I didn't talk to Brian Bittner about that and he didn't feel like there was that instance was true. Ask Bill for more specifics about that.

**Senator Judy Lee:** Why should the county commission have a majority of the people on the city planning and zoning board?

**Senator Anderson:** I wasn't saying they should have a majority, but as Bill indicated there was some instances when they had an equal vote so it would be a 50/50 vote.

**Senator Dotzenrod:** I got the impression from the comments that Commissioner Bittner made when Ms. LaCoe talked to us, she talked that all this was industrial except one place and that was there's. So, I can see where that could set up a situation that people wouldn't be happy with. Going industrial could bring big changes in their area. She went on and on about how it wasn't right, but didn't really give us much information. I think this really was all about zoning. That's what this was about.

**Senator Judy Lee:** This committee rewrote all the extraterritorial voting and annexation statutes at that time. I think Senator Herb Erlacher worked with attorneys and city and county zoning people, part of the fight was about school districts. Fargo, crossed West Fargo and wanted to annex a noncontiguous area of the west side of the Horace road and so there was a big fuss (6:11-7:25) Mediator process reached with an Administrator Law Judge.

**Senator Dotzenrod:** Is that law in statute? If you can't get the sides to fix it, then it goes into a mediation process.

**Senator Larson:** The only thing is it only seems to me that this was kind of alone specific problem. That there was a mayors' friend that was really determining how the zoning would go to everybody else's detriment. And so if that is the situation, that brought this about I don't know that would be changed as far as we need to defend.

**Senator Judy Lee:** She never told us what the issue was, maybe they wanted it to be their ground in front the audience and they wanted to build a restaurant.

**Senator Larson:** We all tried to get her to speak a little more specific, what exactly is the problem?

**Senator Judy Lee:** It was no hog farm or she would have said it.

**Chairman Burckhard:** Enough discussion on these two topics.

**Senator Judy Lee:** Can we send a message to Blake Crosby asking him to clarify about tax or the non-tax.

**Senator Kannianen-** She never approached the county commission. The county commission has no authority to overturn a city decision. What I was getting at was whether the counties have authority to do something like this, as far as to mandate a non-voting member on the board. So when looking at ETA's the second half ETA is where the county come in and work out an agreement. As it was explained it didn't have to be half and half. There is some line where inside of that the city has full control and outside of that the county can have full control, or they can share or something? Is that the way it works? I am seeking clarification on that?



**Chairman Burckhard:** I don't know if I know.

**Senator Anderson:** the message we heard were the small city of 2500 or less can go out a mile. A city between 2500 and 25,000 can go out 2 miles. The bigger one about 25,000 or more can go out 4 miles. If they want too they have full control over the zoning in those areas. Now in Burleigh County they made an agreement between 2 and 4 miles that the county can do the zoning there. But otherwise it sounds like the city has full authority and whatever they say goes.

**Senator Kannianen:** She references there within the 10 yards of the border each way, so obviously in this case they decided the city controlled the full ETA and there was no county involvement?

**Chairman Burckhard:** Apparently.

**Senator Anderson:** You know we heard very little from this city of Lincoln. We didn't hear from their city administrator or their auditor or anything else. We really got no direct information from Lincoln about what's going on here. All the stories were told by her and actually Commissioner Brian Bittner serves on the Planning and Zoning Commission for Bismarck and is involved in the County Commission appointing whoever serves on the one for Lincoln. But we didn't hear from that end of it so that could have been somebody outside the County Commission who is being appointed to serve on there. We didn't hear anything about that. I don't know what's going on there with Lincoln.

**Senator Kannianen:** Does the county have the authority, since it is a Lincoln issue, she referenced she could get some anecdotal comments on where it's happening from border to border in her testimony, but who knows. Just the idea that along with Senator Anderson we wouldn't be in favor of allowing them to vote in a city election but in just the first part of a non-voting member appointed to the city commission is that something the county can have the authority to mandate with us not having to work at nothing at the legislative level?

**Chairman Burckhard:** I don't think we can fix everything. They have to do something out there.

**Senator Judy Lee:** We can't have everybody appointed to an elected board so we can't mandate that the county commission appoint an individual to serve on an elected for the commission. I don't approve of somebody being on an elected council or city commission because that is not a good idea. We've always had ET zoning people on the Planning and Zoning Board to represent north and south of town. The only thing we didn't talk about is that the county has jurisdiction in that mile and accepted area of the incorporated township and some are. So, with more than the city and the county here. We got regular townships and corporate and unincorporated townships and if we listed every incorporated township the county will be in control. So, I reiterate that is that I challenge that we can't fix them all because everyone's situation is so different. We have to trust the people who live in that area that will enable them to be able to be to do what they can appointing people to zoning boards and things of that sort. But I think we've got to be really careful not to tie the hands of local political subdivisions to figure out the solutions to their own problems. If we are committed to

mediate then we must something as simple as that I guess. But we have to put a set a structure in place then that its broke on into what we already got in statute. But we also have the townships as players which we have to be careful about just talking about this in the county.

**Senator Anderson:** My understanding from reading the papers in Bismarck, that Lincoln has had a lot of problems with their governments over the years. City commissions have been in and out, it is a very difficult situation there. It is probably one of the poorest examples of instance where we should try to solve a problem that they created in my opinion.

**Senator Dotzenrod:** In testimony that Bill Wocken gave he has a statement in here that says "present law allows for a city and its adjacent count to subdivide the extraterritorial area into any configuration the two bodies can agree upon". So even though Commissioner Bittner said they have an authority there if its' true, with this sentence in present law does allow a county and an adjacent city extra-territorial area to be able to get together and work out something. It does seem to me that if the request that was being made my Ms. LaCoe seemed to make sense and be reasonable there would have been some solution to this, I think because there would've been ways to make it work. I think we have created a division of law that allows them to work through their problems with adjoining districts to get something worked out. If they can't do that, state law can only go so far the way it appears.

**Chairman Burckhard:** It says Bismarck and Burleigh County have accomplished this with relative ease.

**Senator Judy Lee:** Do I ask Terry Traynor from the Association of Counties and Blake and Bill from the League of Cities if they have any information about other areas of the state in which this has been an issue? We are dealing with one constituent, in one place with a very colorful history, I'm just not ready to go there. I don't think they have used the tools they've already got available.

**Chairman Burckhard:** I will, a good suggestion. We will close the discussion.



# 2017 SENATE STANDING COMMITTEE MINUTES

## Political Subdivisions Committee Red River Room, State Capitol

SB 2086  
1/6/2017  
Job # 26645

- ☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

Relating to participation in city governing body meetings by residents of area within the extraterritorial zoning jurisdiction of the city

### Minutes:

**Chairman Burckhard** reconvened the committee to discuss SB 2086. All senators were present.

**Chairman Burckhard:** As you recall yesterday, SB 2086 attempts to give residents living in a extraterritorial zone a voice. We had much discussion and debate on this bill. It has to do with intergovernmental relationships and that we cannot legislate for this.

**Senator Dotzenrod:** I agree with you that so much of government is intergovernmental relations is what you mentioned. So much involved in local government is keeping up the public infrastructure, roads, public safety, fire district, things that local governments do. This to me is kind of question of zoning. I was going to ask Senator Poolman, if she really understood what's going on here. I don't think we really ever got that.

**Chairman Burckhard:** I think there has been a lot of turnover in the city offices of Lincoln, there is a lack of continuity there and communication. I don't know what we would do to legislate for this. We can't do "representation without taxation" either.

**Senator Dotzenrod:** That's the real problem with the bill.

**Senator Kannianen:** I guess my thought if anything the biggest issue here would just be the ETA's as far as how far to go out of town. If this problem were to be solved I guess the biggest and easiest thing to do would be to shrink down the allowable ETA and allowable distance. For us to legislate anything, I don't know if there is anything because you might not like the fact that a mayor does something like a favor for a buddy but unfortunately that is what elections are for and that can happen.

**Senator Anderson:** I would like to ask Mr. Wocken to clarify some of the statements he made the other day about the equal representation in some issues. Is that okay with you?



The other day you said something about during the appeals process of whatever, now, there is one, two or three and I think in your case, 4, extraterritorial individuals that serve on your Planning and Zoning commission. Now we never did hear what happens over in Lincoln, but in your case you said something about there was appeal process where the county and the city had equal representation. Can you explain that a little more to us?

**Mr. Wocken**, ND League of Cities The statute says that if you are a city of under 5,000 you have one- mile jurisdiction and you have one person sitting on the planning commission to represent extraterritorial area; two people for up to 25,000, and three people for 25,000 and up. So in Bismarck's case there is a four- mile jurisdiction and we have 3 people sitting on the Planning Commission. In addition to those three people the city has decided that they would have a county commissioner sitting on the planning commission so that is a fourth member, and the city has decided to have a township from an affective township that they are an independent township. We have several around Bismarck who would also sit on that planning commission. So there can be up to five people representing an extraterritorial but the first three of those are required by state law. I am trying to guess that Lincoln is probably the under 5000 so they probably have one mile and one person that has to sit on the planning commission. The Planning commission always makes a recommendation to the city commission or council, which ever and so it always go in the form of a recommendation. I speak for how other entities deal with those recommendations, but in Bismarck the recommendation of the Planning Commission is read at the commission meeting and the commission pays a lot of attention to that particular recommendation. I can't speak for the other areas. I was a little unsure when the issue came up yesterday but the mayor said if that was what the "mayor said" or the "council said" because Lincoln operates with a council or commission as well. A mayor doesn't have any more power than any other member of the commission, so it takes a majority of the members to grant anything. So I am not sure if this was an unofficial conversation or an official I guess I was unsure. Did that answer your question Senator Anderson?

**Senator Anderson:** Well it seems to me you said something about equal representation during that appeals process or something? Is that not true?

**Mr. Wocken:** Sorry I missed that part. State law two sessions ago, we went through extraterritorial zoning in great detail which ended up in conference committee. The upshot of that was the representation question. In that conference committee the conference committee adopted what we hammered out through a number of negotiations that would take the outside of the jurisdiction so if Lincoln has a one- mile jurisdiction, the outside ½ mile would be a joint jurisdiction. The inside ½ mile would be the city of Lincoln still governed by themselves. In the joint jurisdiction area both, in this case, the city of Lincoln and the county would have the ability to look at those rules and to decide how a dispute should be handled. So a zoning change was turned down for example, and it got appealed that joint jurisdiction area would have a representative from the city of Lincoln and from the county and they would get together and decide how that was best addressed. It took the agreement of that group in order to have something go forward. We did have one time when Burleigh and Bismarck went through the appeal process and that was done basically to see if it worked because it was very simple like a special use permit. The process did work. Burleigh initiated it and they were very happy with the results and also was the city of Bismarck. After that we realized it was a very cumbersome process, so we split up the jurisdiction to say that Bismarck is going



to have jurisdiction over these sections of land and Burleigh County is going to have jurisdiction over these sections, so going forward we don't have a joint jurisdiction anymore because in lieu of that we went to a map division where we separated out which sections were going to be governed by whom. Both options are available in that statute that was changed I think two sessions ago.

**Senator Anderson:** Obviously we heard very little from the city of Lincoln here, in the conversation so we really don't know whether they have a similar procedure to Bismarck or not. Thank you for that clarification.

**Senator Judy Lee:** I appreciate Mr. Wockens' clarifications as well. But the whole point is that the political subdivisions work out themselves. How are they going to do this and I just think it is so arrogant for us to think that we are going to sit here in this building and tell everybody in those local political subdivisions rigidly how they have to solve this. Are we going to be adults? Sometimes we are not, no matter where we are. What concerned me about the testimony yesterday and she very articulately presented the information but several of us inquired about what this change was from agricultural to industrial was and there are hundreds if not thousands of those kinds of changes in the state of North Dakota. We never heard a word. I also absolutely was going to mention and I am glad that Mr. Wocken did that the mayor is only one vote. So to say that the mayor changed it, no he didn't change it any more than any one of us change what we vote on here. I just am very reluctant to intrude. When visiting with Senator Poolman, she did this for a constituent, not because she has great ownership about this bill, so and that shouldn't be a primary for us. We have to give this proper reading. This is not something she originated herself, but that individual asked her for it.

**Senator Dotzenrod:** I think the purpose of the hearing is to get the information out. It is to let the people give us a whole set of facts to deal with. The problem I have with this is I don't feel I have enough information, I don't really understand the problem and to go ahead and to try act on a bill in a positive way to try something to change state law with this little understanding or information I just feel that I don't have enough, not enough facts here to be able to make a decision.

**Chairman Burckhard:** What do you want to do with this?

**Senator Judy Lee:** I move a **Do Not Pass** on SB 2086

**Senator Jim Dotzenrod** 2<sup>nd</sup>

Vote: 6 Do Not Pass, 0 , 0 not absent

**Carrier:** Senator Randy Burckhard

Date: 1-6-17  
Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2086

Senate Political Subdivisions Committee

☐ Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation: ☐ Adopt Amendment  
☐ Do Pass ☒ Do Not Pass ☐ Without Committee Recommendation  
☐ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Sen. Judy Lee Seconded By Sen. Dotzenrod

| Senators                      | Yes | No | Senators              | Yes | No |
|-------------------------------|-----|----|-----------------------|-----|----|
| Chairman Randy Burckhard      | ✓   |    | Senator Jim Dotzenrod | ✓   |    |
| Vice-Chairman Howard Anderson | ✓   |    |                       |     |    |
| Senator Jordan Kannianen      | ✓   |    |                       |     |    |
| Senator Diane Larson          | ✓   |    |                       |     |    |
| Senator Judy Lee              | ✓   |    |                       |     |    |
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Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Burckhard

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

**REPORT OF STANDING COMMITTEE**

**SB 2086: Political Subdivisions Committee (Sen. Burckhard, Chairman)** recommends  
**DO NOT PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2086 was  
placed on the Eleventh order on the calendar.

**2017 TESTIMONY**

**SB 2086**



Testimony on SB 2086  
Nicole Poolman  
District 7

Good morning, Chairman Burckhard and members of the committee, my name is Nicole Poolman, District 7, representing Bismarck and Lincoln.

SB 2086 is an attempt to give residents living in an extraterritorial zone a voice. Currently, when a city takes on an ETA, those residents have no ability to vote for city commission, even though that commission makes decisions directly impacting these residents. Many cities allow one representative from the ETA to serve on their planning and zoning commission as a nonvoting member, but that is where their influence ends.

Some of my constituents living in the ETA near Lincoln approached me with their concerns, and you will hear from one of them today. They believe, and I agree with them, that if they could vote in the local election, city leaders would be more likely to consider their opinions and concerns regarding the development of the ETA. If a city wants to expand, it should have to answer to those who now are impacted by that expansion.

The bill itself does two things:

1. It requires cities to appoint a non-voting member who lives in the ETA to their city commission.
2. It allows residents of the ETA to vote in city elections. Section two of the bill instructs city commissions to choose a precinct for those living in the ETA to vote.

These people simply want representation in their local government. At the very least, they want the ability to vote for those who best consider their interests. We hope you will help give these residents a voice.

Mr. Chairman and members of the committee –

My name is Kay LaCoe and I live in the extraterritorial area of Lincoln, ND. I am here today to urge a “DO PASS” recommendation on Senate Bill 2086.

Several months ago I approached my Senator, Nicole Poolman, to help bring attention to and hopefully assist in resolving an issue that not only greatly impacts me but many like me across the state. It is also an issue that I believe is one of the greatest injustices I have encountered in local and state government. I asked Senator Poolman to bring before the North Dakota Legislature a bill that would rectify the quintessential modern-day example of taxation without representation.

I believe this bill is a step in the right direction, but feel it still falls short. This bill still does not provide ETA residents an opportunity to run for or be elected as a public servant to the city they are governed by, but it does hint at finally recognizing the rights of ETA residents and that is why I urge a “DO PASS” recommendation.

In the past, many have gone before me and have fought for this basic right of freedom as it pertains to municipal governing. I do not know the details of the history behind why such a basic and important right has been denied. I am not an expert on the political process that has kept such a bill from gaining passage in both chambers. But I do know the details, the history and am an expert on how the lack of such an important piece of legislation has negatively impacted me, my family and my neighbors, not to mention many other North Dakota residents.

My husband and I picked the perfect piece of rural residential property to build on and start a family just five miles from the nearest Walmart and less than five miles from the City of Lincoln, 12 years ago. Among the reasons why it was perfect was because we desired to live outside of the city limits and WANTED to be residents of Burleigh County. A big bonus was that it was just one mile



from where I'd lived with my parents for the previous 10 years – same county, same township, same governing body.

It was perfect, up until just a couple of years ago when the city exercised its *authority* to extend its extraterritorial area. When the lines were drawn, mind you without any option for us living in the area, my parents' and my property were a mere 10 yards short of escaping the ETA net and we found ourselves entangled in a web of injustices and ordinances from of a municipal government that we could not vote for, did not represent our interests and one that we had no option to become a public servant for.

There are many examples of unfair treatment of ETA citizens after being swallowed into the web of a city's ETA, but what my family, neighbors and I have had to endure in the past year is a prime example of why this committee must recommend a "DO PASS". What has happened to us is not the exception; examples like ours can be heard from boarder to boarder.

For the better part of nine months, more than two dozen ETA residents stood before city elected and appointed officials at no fewer than a dozen city council, planning and zoning and special meetings to ask the city to ensure the safety, productivity and economic viability of agriculture and residential zoned ETA land in their jurisdiction. Repeatedly, elected city officials, at open meetings, told ETA residents that if we wanted to have a voice then we could run for office or that if we wanted our opinions to matter then request annexation into the city.

As ETA residents WE CAN'T run for office. As ETA residents WE CAN'T vote. As ETA residents we CAN'T just wave a magic wand and be annexed in and I can promise you that we don't want to be annexed in, especially after how we have been treated.

As a result, city government creates, alters or imposes planning and zoning ordinances that directly impact the lives and livelihoods of ETA residents and we have absolutely no representation, recourse or reprieve.

Next up, opponents will likely question and inflate the financial impact. I would like to ask them, "What's the current going rate of freedom?"

Kay LaCoe  
1910 80<sup>th</sup> St SE  
Bismarck, ND 58504  
701-400-6757



Testimony in Opposition to Senate Bill 2086  
January 5, 2017  
Senate Political Subdivisions Committee  
Bill Wocken on behalf of the North Dakota League of Cities

Good Morning Mr. Chairman and members of the Senate Political Subdivisions Committee. For the record, my name is Bill Wocken, appearing on behalf of the North Dakota League of Cities in opposition to Senate Bill 2086.

In my reading, this bill seems to say that if a city elects to exercise any extraterritorial zoning jurisdiction it needs to place a non-voting resident of the extraterritorial area on the governing body of the city. It also allows extraterritorial area residents to vote in all city elections.

The League of Cities has several concerns with this bill. The advice offered by the extraterritorial member is not limited to land use decisions, it includes all manner of items considered by the city's governing body. We fail to see the logic in this approach. City governing body meetings are currently open to the public and seldom, if ever, is input offered by persons in attendance at meetings limited to only city residents. The information to be gained from the proposed extraterritorial representative is already available without a structural change in the governing body.

The granting of electoral status to extraterritorial residents is also of concern. People on the fringe of the city are often confused about where the city limits and county jurisdiction meet. This point changes with every annexation proceeding. Having county

SB 2086  
1-5-17  
Attachment #3.1  
Dici Wicker

residents vote in all city elections would only confuse the issue further. It would likely force at least a separate ballot and perhaps a separate voting precinct for extraterritorial residents. We see wholesale confusion entering the election process that already suffers from the woes of voter non-participation. Extraterritorial residents would actually have more input into city affairs than city residents with this bill since they will have their own representative added to the governing body.

State law governing the way in which extraterritorial zoning decisions are reached has changed several times to give extraterritorial residents more voice. Voting representatives of the county and the extraterritorial area have been added to the statutory Planning and Zoning Commission makeup. Today, extraterritorial zoning decisions in the outer half of the extraterritorial area can be appealed to a board consisting of city and county commissioners. The final decision needs to be approved by both the city and county governing bodies. I am aware of only one instance in which this appeal process was invoked. Present law also allows for a city and its adjacent county to subdivide the extraterritorial area into any configuration the two bodies can agree upon. Bismarck and Burleigh County have accomplished this with relative ease.

In summary, we believe Senate Bill 2086 creates some undesirable outcomes with no positive results. We urge you to give it a Do Not Pass recommendation.