

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

14407

2007 HOUSE POLITICAL SUBDIVISIONS

HB 1407

# 2007 HOUSE STANDING COMMITTEE MINUTES

Bill No. HB 1407

House Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: February 1, 2007

Recorder Job Number: 2562

Committee Clerk Signature



Minutes:

**Chairman Herbel** opened the hearing on HB 1407.

**Rep. Dwight Wrangham HB 1407** enacts a new section of chapter of 40-49. This establishes procedure by which the citizens of a park district may refer ordinances passed by that park district. Cities and park districts both presently have the authority to enact ordinances, but the citizens only have a method to refer city commission ordinances, not park board ordinances. This bill will give the citizens a method of referral of park board ordinances like they presently have for city commission ordinances. After submitting this bill Park Director Steve Neu contacted me with concerns about the section of the bill that suspends the ordinance upon the filing of a referral partition. It would be a hardship if timely things like the budget would be suspended merely by the filing of the petition and then have to wait until the next election. Because of that I offer this amendment that I have passed out. (See proposed amendment #1). This amendment states that the suspensions shall not take place upon the filing of the petition if the ordinance was passed by two thirds of the board and contains a statement of urgency. Also changed the number of voting members of the park board to two-thirds.

**Rep. Donald Dietrich** Why did you bring this bill forward. Had there been problems throughout the state regarding park boards?

**Rep. Dwight Wrangham** This was brought forward because of some citizens who just felt they should have the rights for park boards the same as for other city ordinances.

**Steve Schwab:** Just a concerned citizen. I would like to have this bill go the way it originally was. It gives the voters the right to over rule and unpopular decision or project. The way the system is set up now is that unpopular projects or whatever. The only way you can refer them is a recall and the voters may not want a recall. They may say, we have nothing personal, but we don't like this decision and I think it is always good to give the voters a right to say how their money is spent.

**Marlan "Hawk" Haakenson:** ( See testimony #2)

**Rep. Kim Koppelman:** Does the park board not recognize the basic constitutional right for citizens to partition their government?

**Marlan Haakenson:** If they recognize it they sure speak against it. They sure treat the citizens that way. I am here to tell you it has happened to me over all the years even from my elected position as mayor of this city that I have been shut down by the park board.

Opposition:

**Jim Bollman: President Grand Forks Park District:** (see testimony #3).

**Rep. Lee Kaldor:** Can you give us an example of what a park board ordinance might be.

**Jim Bollman:** I can think of just one that we have passed in the recent years. That would be an ordinance to require permits for alcoholic beverages in our park.

**Rep. Lee Kaldor** What is the procedure you follow to institute an ordinance?

**Jim Bollman:** that is a hard question. Most of the things we do would come under a resolution or other forms of getting it passed. I think it would take our attorney to determine what we would put in the form of an ordinance and what we would not put in the form of an ordinance.

**Rep. Lee Kaldor** This alcohol ordinance, what procedure did you follow?

**Jim Bollman:** We had some people who wanted this in place. The park commissioners with the support of our staff put this in force as an ordinance. Had to have three public hearings.

**Rep. Lee Kaldor** Does this bill address unpopular decisions like putting a soft ball complex in an area of town where they heard people don't want it or a horseshoe pit where it is not wanted or a water park where people don't think you need them. Would like be a fair assessment of the most contentious issues?

**Jim Bollman:** Yes, we are trying to build a dog park and we are having problems finding people who want a dog park in their neighborhood. That is something that has gone on for a long time and will continue.

**Rep. Dwight Wrangham** How do you do your budget?

**Jim Bollman:** The budget is done only by resolution. Ordinances are permanent and our budget is reviewable every year. We operate on a mill levy.

**John Staley:** We do get a lot of public has allot of input. There has been nothing passed that has had broad opposition to it. I am against this bill because. In terms of the budget, with the mill levy, we do tax, but we are capped. We can not raise the mill levy. This would hurt our process of controlling our budget.

**Rep. Lee Kaldor** I don't know if you have seen the amendments that were brought forward, but it appears that the intent of the bill is to bring basically the park boards under the same constraints that all other government are under. That they are subject to a referral. The amendment looks like it gives you some protection. For example, the Spring Feast ordinance that you passed. The presence of alcohol in the parks was necessary and your park board members supported that and it was for the preservation of public peace you would be exempt from a referral by a group of citizens. Does the amendment help?

**John Staley:** My understanding is it would still go to an election. All that does is suspend the affect of the bill for a little while longer, but it would still have to go to an election. It takes so few signatures to get any of these issues on the ballot. You can get 1,000 signatures pretty easy. Now we have to go through the whole election process. The amendment doesn't solve the problem at all for me.

**Rep. Chris Griffin** In your career how many ordinances have you seen go through?

**John Staley:** We have had ordinances every year with our budget. Discussed ordinances and how easy they could stop the process for a project. It adds too much power to the minority.

**Rep. Lee Kaldor** Do you go through a bond process to bond?

**John Staley:** We have to go through allot to do the bond process.

**Rep. Lee Kaldor** Are there limits on how much you can bond for?

**John Staley:** There are limited but I am not sure. We have to go through a public process. The auditors have to approved the bonds. The money to do this has to come out of the existing budget to get the bonding done.

**Connie Hofland, Attorney from Bismarck with Zuger Kimis & Smith:** (See attached testimiony #4).

**Rep. Kim Koppelman** How are elections paid for?

**Connie Hofland:** I believe they are paid for by the park board. If it affects the city it would be paid for by the city.

**Steven Neu, Director of Parks & Recreation in Bismarck:** (see attached testimony #5).

**Rep. Lawrence Klemin** There is a mill levy for the parks district.

**Steven Neu:** Yes there is a section 7 that covers the statutory limitations that the park districts have and what are available taxes are and what the limitations are in state law.

**Rep. Lawrence Klemin** I see you have a proposed levy for special assessments done?

**Steven Neu:** There are two ways. The special assessments assets to us by the cities as any other property owner, or if the park district chooses to create its own special assessment district to do its parking lots and road improvements, those are done by a resolution. I see it as not an ordinance because it is not a permanency. The bonds would be paid off over a period of time and so it is for a set period of time so it would be a resolution.

**Connie Sprynczynatyk:** One thing I would offer you about initiative and referendum. That is not a power granted to the citizens in any form of city government except a commission city and a modern counsel city. How many of those do we have? There are 29 commissioned city so if you are a city organized under the commission form your citizens have the right to initiate and refer an ordinance and there are clear provisions of how to do that. I think there are two or three organized under the modern counsel form. It doesn't really look much different if you look at the two chapters in state law. I will tell you in 40-12 it is clear that imitative is available to the citizens organized under a commission or a modern counsel seat. Yes, there are units of government that are not subject to initiative and referendum How do they get that? If a city adopted a home rule charter with that provision in it. A counsel city can then have imitative and referendum. Have some of them done that, yes they have. Today we have 357 cities and if you back 30-31 out all the rest are counsel. Some are home rule and some may not.

**Rep.Dwight Wrangham** Can a the park board impose taxes by a resolution? Do you agree with that.

**Connie Sprynczynatyk:** I would suggest that would be a question that would be asked of an attorney that has municipal experience. Chapter 49 lays out powers clearly and there is a reference on special assessments in there.

Hearing closed.

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill No. HB 1407

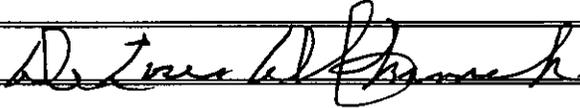
House Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: February 1, 2007

Recorder Job Number: 2611

Committee Clerk Signature



Minutes:

Chairman Herbel reopened the hearing on HB 1407.

Discussion:

**Rep. Dwight Wrangham** It was interesting that the Chairman of the park board did not know the procedure for the public hearing.

**Rep. Chris Griffin** Their ordinances are so outdated and I don't know if it would affect their policies. Seems like they have temporary ones passed.

**Rep. Kim Koppelman** A question for the sponsor. Was it your intent to have anything they do basically reviewed. Sounds like they do alot of their work through resolutions so if the citizens would object to what they are doing. I did not realize the power of resolutions.

Was just a general discussion.

# 2007 HOUSE STANDING COMMITTEE MINUTES

Bill No. HB 1407

House Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: February 9, 2007

Recorder Job Number: 3316

Committee Clerk Signature



Minutes:

Chairman Herbel reopened the hearing on HB 1407.

Rep. Dwight Wrangham explained the amendment. It is a practice to pass their budget by ordinance and the question was how could that work as it would cause an undo hardship had it done the same as the city commission ordinances.

Rep. Dwight Wrangham moved the amendment. Seconded By Rep. Chris Griffin

Discussion:

Rep. Kim Koppelman It seems to me we had testimony that park boards pass very few ordinances and they do most of their work by resolutions and if that is true will this bill have much impact.

Rep. Dwight Wrangham that may be something someone wants to address, but I am not sure.

Voice vote carried.

Chairman Herbel we now have HB 1407 as amended. What is your wishes.

Rep. Lee Kaldor

**Do Not Pass As Amended Motion Made By Rep. Lawrence Klemin Seconded By Rep.**

**Donald Dietrich**

Discussion:

**Rep. Lawrence Klemin** Certainly the intend of this bill is good, but I believe that it is not necessary because this issue is already adequately covered under our rules. Basically the park commissioners and its officers and the park districts are governed for allot of different things including any of the stuff that is in Chapter 40-49.

**Rep.Dwight Wrangham:** Mayor Haakenson had given this testimony out and the Bismarck park board gave me a copy of this opinion and that they had not known that the attorney generals office had been rendered It was their opinion that ND law does not contain any legislative reservations concerning concerning Nicholas Spathe in 1987. I think this a reasonable bill. I would like to move this forward to the senate and if there are any changes or things like that it could be done there. I would ask you oppose this do not pass.

**Vote:           9       Yes   3       No    2       Absent       Carrier:   Rep. Louis  
Pinkerton**

**Hearing closed.**

#1

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1407

Page 1, line 13, replace "An" with "Unless the ordinance protested against was passed by at least a two-thirds vote of the members of the board of park commissioners for the immediate preservation of the public peace, health, and safety and contains a statement of its urgency, an"

Page 1, line 24, after the underscored period insert "If the referred ordinance was not suspended by the filing of the referendum petition, the ordinance becomes void if the ordinance is disapproved by a majority vote of the qualified electors voting on the question."

Renumber accordingly



Date: 2-9-07  
Roll Call Vote #: 2

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1407

House Political Subdivisions Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Not Pass As Amended

Motion Made By Rep. Klemin Seconded By Rep. Dietrich

| Representatives               | Yes | No | Representatives      | Yes | No |
|-------------------------------|-----|----|----------------------|-----|----|
| Rep. Gil Herbel-Chairman      | ✓   |    | Rep. Kari Conrad     | ✓   |    |
| Rep. Dwight Wrangham-V. Chair |     | ✓  | Rep. Chris Griffin   | ✓   |    |
| Rep. Donald Dietrich          | ✓   |    | Rep. Lee Kaldor      |     | ✓  |
| Rep. Patrick Hatlestad        | ✓   |    | Rep. Louis Pinkerton | ✓   |    |
| Rep. Nancy Johnson            | ✓   |    | Rep. Steve Zaiser    | ✓   |    |
| Rep. Lawrence Klemin          | ✓   |    |                      |     |    |
| Rep. Kim Koppelman            |     | ✓  |                      |     |    |
| Rep. William Kretschmar       | ✓   |    |                      |     |    |
| Rep. Vonnie Pietsch           | ✓   |    |                      |     |    |
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Total (Yes) 9 No 3

Absent 2

Floor Assignment Rep. Pinkerton

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

**REPORT OF STANDING COMMITTEE**

**HB 1407: Political Subdivisions Committee (Rep. Herbel, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO NOT PASS (9 YEAS, 3 NAYS, 2 ABSENT AND NOT VOTING). HB 1407 was placed on the Sixth order on the calendar.**

Page 1, line 13, replace "An" with "Unless the ordinance protested against was passed by at least a two-thirds vote of the members of the board of park commissioners for the immediate preservation of the public peace, health, and safety and contains a statement of its urgency, an"

Page 1, line 24, after the underscored period insert "If the referred ordinance was not suspended by the filing of the referendum petition, the ordinance becomes void if the ordinance is disapproved by a majority vote of the qualified electors voting on the question."

Renumber accordingly

2007 TESTIMONY

HB 1407

2/5/07

TO: REPRESENTATIVE WRANBAM  
FROM: MARLAN "HAWK" HAARSENSON  
RE: HOUSE BILL 1407

MY VERBAL TESTIMONY TO YOU IS TRUE. I WAS LITERALLY LAUGHED OUT OF THE PARK DIST. MEETING IN 1982, BEING TOLD CITIZENS CANNOT PETITION PARK DISTRICTS IN N.DAK. IT IS AN EXAMPLE OF THEIR ARROGANT ATTITUDE, THAT THEIR DECISIONS ARE UNTOUCHABLE. THE BISM. PARK DIST. HAS A POLICY(?) THAT YOU CANNOT SPEAK AT THEIR MEETINGS, ALLEN ABOUT ITEMS ON THEIR AGENDA. YOU ARE REQUIRED TO GET PERMISSION FROM THEIR DIRECTOR, STEVE NELL. WHEN I WENT TO THEIR MTD. IN LATE '06 I WAS TOLD I DIDN'T HAVE PRIOR OK TO SPEAK, BUT SINCE I WAS CO. COMM. & IT WAS AN AGENDA ITEM, THEY WOULD LET ME. THE "UNTOUCHABLE" PARK DIST. IS MAKING IT ALMOST IMPOSSIBLE FOR CITIZEN INPUT.

REGARDING THE PARK DIST. TESTIMONY, THAT BASED ON CENTURY CODE 40-12 & 40-49-18, THE CITIZENS CAN ALREADY PETITION THE DIST. THAT IS NOT TRUE! PLEASE READ THE ATTACHED ATTORNEY GENERAL LETTER. IT STATES "N. DAK. LAW DOES NOT CONTAIN ANY LEGISLATIVE RESERVATION BY THE PEOPLE OF THE POWER TO INITIATE OR REFER PARK DIST. ORDINANCES."

PLEASE AMEND THIS BILL TO INCLUDE THE CITIZEN'S RIGHT TO INITIATE AND REFER ALL ACTIONS BY PARK DISTRICTS, JUST AS WE NOW CAN CITY GOVERNMENT. (COMMON MODERN COUNCIL FORM). THIS WOULD CLOSE THE LOOPHOLE THE DIST. TESTIMONY POINTED OUT, THAT THEIR BUDGETS ARE DONE BY RESOLUTION. THIS WILL RESTORE THE CHECK & BALANCE THAT THE CITIZENS OF THE UNITED STATES HAVE, WITH ALL ELECTED BODIES I KNOW OF, EXCEPT FOR N.D. PARK DISTRICTS.

*Marlan "Hawk" Haarsenson* (MARLAN "HAWK" HAARSENSON)  
FORMER BISMARCK CITY COMMISSIONER, BISMARCK MAYOR, CO. COMMISSIONER  
Now -

N.D.A.G. Letter to Sorenson (April 22, 1987)

April 22, 1987

Honorable William Sorenson  
State Representative  
206 Estevan Drive  
Bismarck, ND 58501

Dear Representative Sorenson:

We have received your request of this office to determine whether citizens have the right to initiate or refer park district ordinances.

North Dakota law as, found at N.D.C.C. § 40-12-01, provides for the initiative and referendum to apply only to municipal ordinances of those cities operating under the commission and modern council systems of government except those cities adopting the eleven member form of council government. No mention is made of the power of initiative and referendum applying to ordinances of park districts. Furthermore, N.D.C.C. Ch. 40-49 which concerns parks and park districts does not make any provision as to initiative and referendum powers applying to ordinances of the park district.

There is one statute which may arguably incorporate the municipal power of initiative and referendum to certain park districts depending upon the form of government under which the respective city operates. N.D.C.C. § 40-49-18 states as follows:

40-49-18. GENERAL CODE PROVISIONS TO GOVERN PARK DISTRICTS. Except as otherwise provided in this chapter, the board of park commissioners and its officers and the park district shall be governed, in the issuing of warrants and certificates of indebtedness and in the levying of any tax or special assessment, or in carrying out, enforcing, or making effective any of the powers granted in this chapter, by the provisions of the laws of this state applicable to municipalities of the kind in which the park district is established.

Arguably, in cities where the power of initiative and referendum are available, the park district may also be subject to this power "in carrying out, enforcing, or making effective any of the powers granted" to the park district.

The power to initiate or refer ordinances, however, is not a power of a governing body of the political subdivision involved. Instead, it is a reservation of power by the people to place within themselves the legislative powers concurrent with those of the governing body.

The effect of such amendments [providing the power to initiate and refer], and of statutory provisions for initiative and referendum, is generally to place legislative powers in the Legislature but to reserve to the electorate the concurrent right to propose laws and constitutional amendments and to approve or reject legislative enactments.

42 Am. Jur.2d Initiative and Referendum, §1 at p. 650 (1969).

The provision found at N.D.C.C. § 40-49-18 requiring the board of park commissioners and its officers to be governed by the laws applicable to municipalities in carrying out or enforcing any of its powers cannot be construed as a reservation by the people of the power to initiate or to refer legislative enactments of the park district. Instead, N.D.C.C. § 40-49-18 requires park district authority to be implemented in a manner similar to the manner in which city authority is implemented. A clear statement by the people of any reservation of legislative power as is found in N.D. Const. Art. III, §1 and N.D.C.C. § 40-12-01, cannot be found within the laws governing park districts.

Thus, it is my conclusion that North Dakota law does not contain any legislative reservation by the people of the power to initiate or refer park district ordinances.

Sincerely,

Nicholas J. Spaeth

ja

February 2, 2007

# 3

TO: Representative Gil Herbel, Chair  
House Political Subdivision Committee

From: James Bollman, President  
John Staley, Director  
Grand Forks Park District

Sub: Further Testimony on HB 1407

Dear Chairman Herbel and Members of the Committee:

Thank you for the opportunity to present verbal testimony yesterday (February 1) on HB 1407. With your permission we would like to present further written testimony in this communiqué. Since this is the first time that the North Dakota Recreation and Park community has addressed the referral process (HB1407) on a statewide basis where each community does some things differently and since our time to prepare has been short, some of our technical information presented yesterday was a bit confusing. Therefore we would like to take this opportunity to clarify some of our points.

We oppose HB 1407 because there are already checks in place that prevent the hypothetical fears proponents for the bill cite from taking place. In short, Park Districts are not able to pass and implement large projects funded with tax dollars that are unpopular in their communities as the proponents hypothetically fear. Park District powers in state law are so limited that they could not provide the money to pay off bonds of the hypothetical unpopular projects without some measure for funding going to the electorate. For this reason, never has there been a widely unpopular Park District project implemented in any community in the state of North Dakota as the proponents have hypothesized. In addition, it is our understanding that Park Districts do not have the power to call elections anyway as the bill assumes.

In recent years there have been three large community projects proposed in three different communities that have failed community approval. A water park project in Grand Forks, a renaissance project in Fargo and a capital development project in Bismarck. All three failed to get community consent at the ballot box and were not implemented.

Therefore, the present system of checks and balances on Park Districts works where HB 1407 is unnecessary to satisfy the concerns of the proponents.

Yet, we feel from our experience that HB1407 would add unforeseeable problems for Park Boards such as creating difficulties balancing the wants of interest groups. As we testified yesterday, HB 1407 would create a process where disgruntled eccentric interest groups could block popular community wide projects or programs. In balancing their budgets Boards have to prioritize the wants of interest groups. There are groups who do not want to take no for answer and are motivated enough to take advantage of a referendum, should it be allowed, and conduct confusing community campaigns in an attempt to get their wishes. This would sacrifice the interest of the majority.

In summary, the system of checks and balances in place works and to add more state level legislation to control Park Districts has the potential of controlling spending more difficult.

# 4

TESTIMONY IN OPPOSITION TO HOUSE BILL 1407

Good morning Chairman Herbel and members of the House Political Subdivisions Committee.

My name is Connie Hofland, an attorney from Bismarck, with Zuger Kirmis & Smith. We are counsel for the Bismarck Parks and Recreation District.

HB 1407 proposes to establish a new section of the parks and park district chapter of the North Dakota Century Code concerning petitions to refer ordinances.

Park districts have limited powers. The attached seven pages is the entire parks and park district chapter. The powers of a park district are provided at 40-49-12.

The park district cannot call an election. As provided in the bill, the election on any referendum would have to be conducted by the city and it is unclear how the expenses of the election would be paid.

We believe this additional section is not necessary. Section 40-49-18 provides that general code provisions, applicable to municipalities of the kind in which the park district is established, govern park districts. Therefore, chapter 40-12 on initiative and referendum for cities, appears to provide a mechanism for referral

of park district ordinances. In fact, the language of 40-12-08, 40-12-19, 40-12-11, and 40-12-12 appears to the source of the language of this bill.

In summary, this bill is not necessary because of the limited powers of the park district and because of the referendum mechanism that already exists.

**CHAPTER 40-49  
PARKS AND PARK DISTRICTS**

**40-49-01. Municipalities may acquire real estate for parks or public grounds by gift or devise - Extension of police power.** A municipality may receive by gift or devise, real estate within its corporate limits, or within five miles [8.05 kilometers] thereof, for use as parks or public grounds. Such real estate shall be vested in the municipality upon the conditions imposed by the donors, and upon the acceptance of the gift or the devise by the executive officer and governing body of the municipality, the jurisdiction of the governing body shall be extended over such real estate. The governing body may enact bylaws, rules, and ordinances for the protection and preservation of any real estate acquired as provided in this section, and may provide suitable penalties for the violation of any such bylaws, rules, or ordinances. The police powers of the municipality shall be extended at once over any real estate acquired in the manner provided in this section.

**40-49-02. Cities may take advantage of chapter - Vote required - How taken.** Any incorporated city by a two-thirds vote of its governing body, at a regular meeting of such governing body, may take advantage of the provisions of this chapter. The vote of the governing body on such question shall be taken by yeas and nays.

**40-49-03. Ordinance required to create park districts - Territory embraced to be park district.** Any municipality desiring to take advantage of this chapter shall do so by an ordinance regularly adopted expressing such intent or desire. The territory embraced in the municipality or within any park which may be acquired under the provisions of this chapter shall be a park district of the state of North Dakota.

**40-49-04. Designation of park district - General powers - "Park" defined.** A park district shall be known as "park district of the city of \_\_\_\_\_". The park district shall have a seal and perpetual succession, and may:

1. Sue and be sued.
2. Contract and be contracted with.
3. Acquire by purchase, gift, devise, or otherwise, and hold, own, possess, and maintain real and personal property in trust for use as parks, boulevards, and ways.
4. Exercise all the powers designated in this chapter.

"Park", as used in this chapter, and in other statutes relating to park districts, unless from the context a contrary intent plainly appears, includes, but without limitation thereto, public grounds used or acquired for use as airfields, parade grounds, public recreation areas, playgrounds and athletic fields, memorial or cemetery grounds, and sites or areas devoted to use and accommodation of the public as distinguished from use for purposes of municipal administration.

**40-49-05. Board of park commissioners in city - Terms.**

1. The powers of a park district in a city must be exercised by a board of park commissioners consisting of five or three members, as determined by the governing body of the city in creating the park district or pursuant to sections 40-49-07.1 and 40-49-07.2. Except as provided in subsection 2, each commissioner shall hold office for a term of four years and until a successor is elected and qualified. The term of office of a commissioner begins two weeks after the regular biennial city election at which the commissioner is elected.
2. Members of a newly created five-member board shall hold office as follows:
  - a. Three members until two weeks after the next regular biennial city election.

- b. Two members until two years from the time mentioned in subdivision a.
3. Members of boards of park commissioners which existed before July 1, 1987, shall hold office on the staggered basis in effect on June 30, 1986.
4. Members of a newly created three-member board shall hold office as follows:
  - a. Two members until two weeks after the next regular biennial city election.
  - b. One member until two years after the next regular biennial city election.

**40-49-06. Board of park commissioners in villages - Term - Term on first board.**  
Repealed by S.L. 1967, ch. 323, § 285.

**40-49-07. Election and qualification of members of board of park commissioners.**  
The members of the board of park commissioners shall possess the qualifications of electors of the city and must be elected by the qualified electors of the park district. The members of the first board may be elected at any regular city election or at a special election called for that purpose by the governing body of the city. Thereafter, members of the board must be elected at the regular city elections. Such members shall qualify within two weeks after their election by taking and filing with the city auditor the oath prescribed for civil officers. The board of park commissioners may enter into an agreement with the governing body of the city concerning sharing of election personnel, printing of election materials, and apportioning of election expenses.

**40-49-07.1. Change in number of park commissioners - Election.**

1. The number of park commissioners may be increased from three to five, or decreased from five to three, pursuant to this section.
2. The process for increasing or decreasing the number of park commissioners may be initiated:
  - a. By resolution approved by a majority vote of the board of park commissioners and submitted to the governing body of the city; or
  - b. By a petition signed by ten percent or more of the total number of qualified electors of the city park district voting for governor at the most recent gubernatorial election and submitted to the governing body of the city.
3. The governing body of the city shall submit the question of increasing or decreasing the number of park commissioners to the electors of the park district at any regular city election or primary or general election as specified in the resolution or petition submitted pursuant to subsection 2. The question requires an affirmative vote of a majority of those voting on the question for passage.
4. If an increase in the number of park commissioners is approved by the electors, the two additional park commissioners must be elected at the next regular city election or as specified in the resolution or petition pursuant to subsection 2. One of the additional commissioners shall hold office for a term of four years, and the other commissioner for a term of two years and until a successor is elected and qualified, unless other terms are specified in the resolution or petition pursuant to subsection 2.
5. If a decrease in the number of park commissioners is approved by the electors, the existing board members shall continue in office until the time when the terms of office of two members of the board expire simultaneously. At that time, those two offices are abolished. A different procedure for abolition of the two offices may be specified in the resolution or petition pursuant to subsection 2.

**40-49-07.2. Dissolution of city park district - Election.**

1. A city park district may be dissolved pursuant to a plan adopted pursuant to this section. A proposal for dissolving a city park district may be initiated:
  - a. By resolution incorporating a dissolution plan, approved by a majority vote of the board of park commissioners and submitted to the governing body of the city; or
  - b. By a petition incorporating a dissolution plan, signed by twenty-five percent or more of the total number of qualified electors of the city park district voting at the last regular city election and submitted to the governing body of the city.
2. The governing body of the city shall submit the question of dissolution to the electors of the park district at any regular city election or primary or general election as specified in the resolution or petition submitted pursuant to subsection 1. The plan incorporated in the resolution or petition is effective and becomes operative according to its terms if a majority of the qualified electors voting on the question approves the plan.
3. A plan for dissolving a city park district may specify:
  - a. The disposition and maintenance of land and other property acquired by the board of park commissioners of the dissolved park district;
  - b. The manner for payment of any current indebtedness, evidences of indebtedness in anticipation of user fee revenues, bonded indebtedness, and other obligations of the dissolved park district;
  - c. The disposition of any outstanding special assessments or other anticipated revenues;
  - d. The transition in implementing the plan, including elements that consider the reasonable expectations of current officeholders and personnel such as delayed effective dates for implementation; and
  - e. Other considerations and provisions that are consistent with state law.
4. The governing body of the city shall cause the complete text, or a fair and accurate summary, of the plan to be published in the official newspaper of the city, not less than two weeks nor more than thirty days, before the date of the election. The governing body may, prior to the election, hold public hearings and community forums and use other suitable means to disseminate information, receive suggestions and comments, and encourage public discussion of the purpose and provisions of the plan.

**40-49-08. Organization of board of park commissioners - City auditor to act as treasurer of board or board to appoint clerk.** Two weeks after their election, the members of the board of park commissioners shall organize the board by selecting a president and a vice president. The city auditor shall be ex officio treasurer of the park district or the board may appoint a clerk and such other employees as shall be deemed needed for the efficient conduct of the district's business and shall fix their compensation. The clerk shall take the oath prescribed for civil officers and shall obtain such bond as may be required by the board.

**40-49-09. Vacancies - How filled - Removal of residence creates vacancy.** Vacancies on the board of park commissioners shall be filled by the board until the next regular election of members thereof at which time such vacancies shall be filled by election for the unexpired term. The removal of his residence from the park district by a member of the board shall create a vacancy thereon.

**40-49-10. Members of board of park commissioners may receive compensation - Interest in contracts restricted.** The members of the board of park commissioners are entitled to receive compensation for their services in the amount approved by the board in the park district annual budget. A park board member may not be directly or indirectly interested in any contract requiring the expenditure of park district funds unless the contract has been approved by two-thirds of the park board. Before the contract is approved, a motion must be made and approved that the service or property is not readily available elsewhere at equal cost. Regardless of this section, any park board, by resolution duly adopted, may contract with park board members for minor supplies or incidental expenses.

**40-49-11. Regular and special meetings of the board of park commissioners - Procedure.** The board of park commissioners shall hold a regular meeting at least once each month at a time and place to be designated by ordinance and such special meetings as it may deem necessary. A special meeting may be called at any time by the president, or any two members of the board to consider matters specified in the call of such meeting. Written notice of any special meeting shall be given to each member of the board prior to such meeting. The board may adopt such rules of procedure as it deems necessary.

**40-49-12. Powers of the board of park commissioners.** A board of park commissioners may:

1. Acquire by purchase, gift, devise, condemnation, or otherwise, land anywhere within this state, or outside this state if located adjacent to a boundary of this state and of the park district, for parks, boulevards, and ways. The board shall have the sole and exclusive authority to maintain, govern, and improve the land, and to provide for the erection of structures thereon. Such parks, boulevards, and ways shall be considered for purposes of taxation and for all other purposes as being within the territorial limits of the municipality. Where the board has acquired the legal title in fee to such lands, it may sell and convey the same. A conveyance shall be executed by the president and clerk of the board upon a resolution approved by not less than two-thirds of the members thereof.
2. Lay out, open, grade, curb, pave, and otherwise improve any path, way, or street, in, through, or around the parks, and construct, erect, build, maintain, manage, and govern any and all buildings, pavilions, play and pleasure grounds or fields, and such other improvements of a like character as may be deemed necessary.
3. Pass all ordinances necessary and requisite to carry into effect the powers granted to a board of park commissioners, with such penalties as the board may deem proper. No such penalty, however, shall exceed five hundred dollars.
4. Levy special assessments on all property especially benefited by the purchase, opening, establishment, and improvement of such parks or boulevards and of ways or streets about the same.
5. Employ such engineers, surveyors, clerks, and other employees, including a police force, as may be necessary, define and prescribe their respective duties, and fix and pay their compensation.
6. Issue negotiable bonds of the park district as provided in title 21.
7. Levy taxes upon all the property within the district for the purpose of maintaining and improving parks, boulevards, and ways, and to defray the expenses of the district. The proceeds of the taxes shall be available also for use in payment for any land purchased during the year or previously, or for improvements previously made for park purposes.

8. Establish building lines for all property fronting on any park, boulevard, or way under the direction and control of the board, and control the subdivision and platting of property within four hundred feet [121.92 meters] thereof.
9. Borrow money to defray the expenses of the year, subject to the limitations contained in title 21, in anticipation of taxes already levied, and issue therefor the warrants or other obligations of the district.
10. Connect any park or parks owned or controlled by it with any other park or parks, and for that purpose, it may select and take charge of any connecting street or streets or parts thereof; and the board shall have the sole and exclusive charge and control of any street or streets taken for such purpose.
11. Plant, set out, maintain, protect, and care for, shade trees in any of the public streets or highways of the park district. The board may specify and regulate the kinds of trees that shall be planted in any such street or highway, the size and location of such trees, and the methods to be used in the planting and cultivation thereof and may pass such ordinances as may be necessary for the protection and control of such trees.
12. Plat and lay out such portions of park property as are not needed for the accommodation of the general public, and lease and demise lots or portions thereof for residential or concession purposes. The board may prescribe by ordinances the use that may be made of such leaseholds and the character of structures that may be placed thereon and may regulate generally the use and enjoyment thereof by the lessees or their successors.
13. Levy taxes upon all the property within the district, within the general fund levy authority of section 57-15-12, for the purpose of funding a comprehensive health care program for district employees.

**40-49-13. Ordinances - Powers exercised by - Readings - Adopting - Approving - Publication - Enacting clause.** The powers of the board of park commissioners shall be exercised by ordinance unless otherwise provided in this chapter. All ordinances shall be read twice, and at least eight days shall intervene between the readings. Ordinances shall be adopted by a yea and nay vote, shall be approved by the president, shall be published once in the official newspaper of the municipality, and shall go into effect within three days after the publication thereof. The enacting clause of all ordinances shall be: "Be it enacted by the board of park commissioners of the park district of the city of \_\_\_\_\_".

**40-49-14. When yea and nay vote taken - Letting contracts - Debt limit - Bills, claims, and demands against board.** Yea and nay votes must be taken on all propositions involving the expenditure of money, levying of taxes, or the issuance of bonds or certificates of indebtedness. Approval of an expenditure of money must be recorded in the record of the board's proceedings and this shall be sufficient to indicate approval without requiring the members to sign or initial the voucher or order for payment. Except as provided in chapters 48-01.1 and 48-02, all contracts exceeding ten thousand dollars must be let to the lowest responsible bidder after advertisement in the official newspaper of the municipality once each week for two successive weeks. The board may reject any or all bids. All contracts must be in writing and must be signed by the president of the board or a designated representative and unless so executed, they shall be void. The debt of a park district may not exceed one percent of the taxable property within the district according to the last preceding assessment. No bill, claim, account, or demand against the district may be audited, allowed, or paid until a full, written, itemized statement has been filed with the governing body or unless otherwise authorized by the governing body pursuant to contract or other action. The governing body, in its discretion, may require the filing of any additional information which it may deem necessary to the proper understanding and audit of any claim or account and it may require the filing of a sworn statement in such form as it may prescribe or as noted below:

CERTIFICATE

I do hereby certify that the within bill, claim, account, or demand is just and true; that the money therein charged was actually paid for the purposes therein stated; that the services therein charged were actually rendered and of the value therein charged; and that no part of such bill, claim, account, or demand has been paid; and that the goods therein charged were actually delivered and were of the value charged.

Sign here \_\_\_\_\_

\_\_\_\_\_  
If signed for a firm or company,  
show authority on this line.

**40-49-15. Purchase of land by city park district on installment contract - Conditions and limitations.** After declaring by resolution duly passed that an emergency exists in that it is desirable and necessary that additional lands, as described in the resolution, be acquired for park purposes, the board of park commissioners of any city may enter into a contract or contracts for the purchase of such additional land for park purposes and for the payment of the purchase price therefor in annual installments. The power to enter into such contract shall be subject to the following limitations and conditions:

1. All moneys to be paid annually under any such contract shall be available and paid only from revenues to be derived from the authorized tax levy of the park district.
2. Contracts which at any time shall create aggregate future obligations of the park district in an amount in excess of one-fifth of one percent of the value of all taxable property within the park district may not be entered into under the provisions of this section.
3. The total amount contracted to become payable within any year by any park board shall not exceed twenty percent of the authorized tax revenue of the park district for the year in which any such contract is made.

**40-49-16. City engineer is ex officio engineer and surveyor for board of park commissioners.** The city engineer of any city included within a park district shall be ex officio engineer and surveyor for the board of park commissioners and shall render to the board such services as it may require.

**40-49-17. Jurisdiction to determine actions involving violations of ordinances of board of park commissioners.** Full and exclusive jurisdiction to try and determine all claims for relief involving violations of rules or ordinances enacted by the board of park commissioners is vested in the municipal judge. The procedure, including the right of appeal, is the same as in actions involving offenses against city ordinances.

**40-49-18. General code provisions to govern park districts.** Except as otherwise provided in this chapter, the board of park commissioners and its officers and the park district shall be governed, in the issuing of warrants and certificates of indebtedness and in the levying of any tax or special assessment, or in carrying out, enforcing, or making effective any of the powers granted in this chapter, by the provisions of the laws of this state applicable to municipalities of the kind in which the park district is established.

**40-49-19. Dissolution of village park district - Petition for election - Notice of election - Order of dissolution.** Repealed by S.L. 1967, ch. 323, § 285.

**40-49-20. Park districts may adopt civil service systems.** The board of park commissioners of a park district in any city which has adopted a civil service system pursuant to the provisions of chapter 40-44, may, with the consent of the governing body of such city, provide that the employees of such park district shall be subject to the provisions of said chapter 40-44; provided, that appointments to positions of employment within such park district shall be made by the board of park commissioners of the district.

**40-49-21. Park districts may provide for employees' pensions.** A board of park commissioners may provide for employees' pensions pursuant to an authorized city pension plan with the consent of the city governing body and the consent of not less than a majority of the city employees covered by the city pension plan. In addition, a board of park commissioners may provide for employer pensions pursuant to chapter 54-52 or under a program approved by the internal revenue service. Payments made by employees or taxes levied by the park district must be paid into the employees' pension fund. If a board of park commissioners wishes to leave an existing city pension plan, the board, upon the request of the pension fund governing body, shall fund an actuarial study of the financial impacts to the pension fund. Any losses or costs to the fund by the park district leaving the pension plan are the responsibility of the park district. A park district may not leave the city's pension plan without the approval of the pension fund governing body.

**40-49-22. Tax levy for park district employees' pension fund.** A park district adopting the provisions of section 40-49-21 may levy a tax not exceeding the limitation in subsection 1 of section 57-15-12.2. The proceeds of the tax levy must be placed in the employees' pension fund.

**40-49-23. Land transfers or abandonment.** Any municipality or park district may abandon and discontinue as a park or recreational area, any land acquired by any municipality or park district for park and recreational purposes under the provisions of section 11-27-08, and any municipality or park district may sell, convey, or transfer any such lands free from any restrictions as to their use for park and recreational purposes.

**40-49-24. Park district authorized to collect user fees and issue evidences of indebtedness in anticipation of user fee revenues.**

1. A board of park commissioners may prescribe and collect user fees for facilities or activities furnished by the park district and in anticipation of the collection of such revenues may issue evidences of indebtedness for the purpose of acquiring, constructing, improving, and equipping parks and park and recreational buildings and facilities, and for the purpose of acquiring land for those purposes.
2. Evidences of indebtedness issued under this section are payable, as to principal and interest, solely from all or part of the revenues referred to in this section and pledged for such payment.
3. Notwithstanding any other provision of law, evidences of indebtedness issued under this section are fully negotiable, do not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and together with interest thereon and income therefrom, are not subject to taxation by the state of North Dakota or any political subdivision of the state.
4. Evidences of indebtedness issued under this section must be authorized by resolution of the board of park commissioners and, notwithstanding any other provision of law, may be issued and sold in such manner and amounts, at such times, in such form, and upon such terms, bearing interest at such rate or rates, as may be determined in the resolution.



January 30, 2007

To: Representative Gil Herbel, Chair  
House Political Subdivisions Committee

From: Steven M. Neu  
Director of Parks and Recreation  
Bismarck Parks and Recreation District

Subject: HB 1407

Chairman Herbel and Members of the House Political Subdivisions Committee,

I stand before you today to address HB 1407 as the Director of Parks and Recreation for the Bismarck Park District and here to not support HB 1407 even if amended.

HB 1407, is trying to get at something. I say something because there is no clearly given reason to introduce this legislation or what problem it is trying to fix for park districts. HB 1407 is a new section proposed to NDCC 40-49, the operating section for park districts in North Dakota. I feel that there is no need for such a section if there is not a stated reason or identified problem that it is proposing to fix. I also feel there is already a way to refer a park district ordinance if it is necessary.

In the case of the Bismarck Park District, and over the past 20 years as the director, there has been very little utilization of the ordinance process and procedure to establish a regulation or a type of law with permanence by the park board. We have over the years used the ordinance process and assigned an ordinance title and number to our budget but that has been by practice going farther back than 20 years in Bismarck. Using the ordinance process for our budget was a practice and not required, according to NDCC 40-40, titled, Municipal Budget Law.

Over the past 20 years the Bismarck Park District has been involved in only two other ordinances that the board fully developed and approved as required. One was a companion ordinance with the City of Bismarck on the joint employee pension program and changes made to an existing ordinance. The second was a change to the all ready established dog lease ordinance in Bismarck as a change requested by the Park Board of the City of Bismarck to authorize an off leach area for our dog park. We have over time been consulted on ordinances being developed by the city when they relate or impact activity on or in parks such as motorized transportation devices on sidewalks and trails.

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Park districts are very careful of developing ordinances as enforcement policy or laws in areas that they have little if any jurisdiction, oversight, enforcement or that another body of local, state or federal law already covers. It is common practice to recognize city ordinances, state and federal laws in our contracts, agreements and operations of the district by us or with others. If you were to review the current City of Bismarck Ordinances you would find a chapter of Park Ordinances. These are also the current Park District ordinances. This has been done to be consistent in administration, application and enforcement.

We look at ordinances and the use of an ordinance for developing a local law or a regulation of a permanent nature with enforcement, implementation responsibility and in some cases a penalty. Ordinances are also used to adopt, carry out and adhere to processes granted by other entities as well (weeds, health, safety, uniform codes, and rules). Ordinances should not be confused with operating or program policies. The ordinance process also has specific procedures and requirements for implementation, public notice, adoption and change. These are found in NDCC 40-11 titled Ordinances. Park districts look to the ordinances of the city as the major body of local rules under which we operate and that our general operating comes from the provisions of section NDCC 40-49 titled Parks and Park Districts. We also have provisions of operating if not specific in 40-49 in NDCC 40-05 titled Powers of Municipalities as defined in Section 40-49-18 referencing governance of park districts by the provisions of laws of the state applicable to municipalities of the kind in which the park district is established.

HB 1407 provides nothing new to the governance of a park district that is not already provided for in the NDCC. HB 1407 is repetitive of NDCC 40-12, Initiative and Referendum and section 08 titled Petition to Refer Ordinance – Suspension of Ordinance – Requirements of Petition which HB 1407 is attempting to copy with the proposed amendments and requiring compliance with sections 40-12-03, 40-12-04 and 40-12-05.

Significant differences are however noticed in HB 1407 compared to current statutes and in our mind not clear. The required signatures for a petition in HB 1407 are to be 10 % rather than the 15% required in present NDCC. HB 1407 does not address who the petition is filed to other than when the petition is filed. There is no reference in HB 1407 on the duty of the governing body of the municipality, which in the case of an election would be the city commission of Bismarck, for timing of an election and who is responsible to pay for the election. I feel that there is also unanswered process in HB1407 and clarity in responsibility and accountability for an election. Park Districts have no authority to call an election.

Chairman Herbel and members of the committee, I believe that present statutes provide the opportunity to petition and refer a park district ordinance if desired by the citizens of the park district within a city. And, if moved forward the modern council and commission cities will have to be involved in a referral election. I ask your consideration of a do not pass.

Thank You.