

2009 SENATE POLITICAL SUBDIVISIONS

SB 2382

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2382

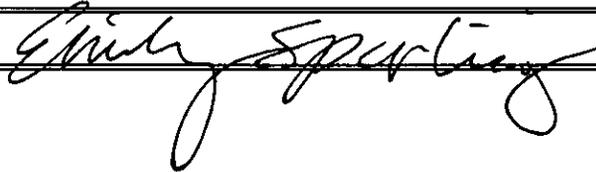
Senate Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: 02/05/2009

Recorder Job Number: 8807

Committee Clerk Signature



Minutes:

**Chairman Andrist** Opened the hearing on SB 2382

**Senator Dwight Cook** District #34. Introduced the bill. It is a simple bill but it is controversial. I introduced it for two reasons. The first is that I was on the interim intergovernmental relations committee; we had a little issue with extra territorial zoning which brought up this issue of landfills. The second reason is that we need to have a good discussion on how landfills are cited. Gave an example of a controversial landfill issue that helped launch this bill. We want to provide a venue to discuss landfill issues and create a balance of power.

**Chairman Andrist** If this bill arose from a particular incident; can you give us more detail?

**Senator Cook** This happened in Grand Forks, Rye Township. The city needs a new regional landfill; they found a seller that was in Rye Township. They were able to change the zoning to cite the landfill and followed the law. Unfortunately some of the neighbors do not want this landfill in their neighborhood; they feel like they had no say.

**Chairman Andrist** How does the bill change that process?

**Senator Cook** Right now when you site a landfill the county has to weigh in, you have to change the zone and then go through the permit process. Prior to the permit the health

department has to look over the site. The county commissioners by their own majority can cite

the landfill or they can go to the voters of their county. Grand Forks County elected not to bring it to their constituency. The problem in Grand Forks was the 60 day limit for bringing it to a vote. The question before you is 1) Is that process right? Maybe you could require a vote by the people. 2) Should it be the township that decides over the county? The bill is allowing it to go to the township level, not just the county.

**Senator Bakke** So the township would have the final say and override the county on the decision?

**Senator Cook** I believe the way this bill is written, it would go to the township.

**Senator Lee** Observed that we are a republic and not a democracy. I don't know that every issue needs to go to a vote. My real question is that if we have a regional landfill need, why would the township where it is located have the only say?

**Senator Cook** That is the one hundred dollar question that you will have to wrestle with. I think this is something you will have to discuss.

**Senator Olafson** Has this been a problem in other areas of the state? Is it an ongoing problem that we need to address?

**Senator Cook** I think the real problem here is a change that we made in the ET zoning. I want to separate the issue of landfills from the issue of ET zoning. We have to find a good process for citing landfills. We will always have trash and so we need to have a landfill solution.

**Senator Lee** What part of the ET zoning changed the landfill process?

**Senator Cook** I think the biggest problem was that there was control taken away during the zoning change. We would still have a problem though if we hadn't made an ET change.

**Senator Anderson** I do not know of a popular landfill yet they are necessary and vital for public health. My question is what about old landfills that want to expand? Would that be considered new?

**Senator Cook** My guess is that it would be considered new.

**Ken Yantes** Executive Secretary of ND Township Officers Association. Spoke in support of 2382. Just because I weigh 450 pounds, doesn't mean I should get to throw my weight around.

**Senator Dotzenrod** Do any township want landfills?

**Yantes** There was a vote in Rye Township against the landfill but I also know there are some townships that are interested in landfills.

**Chairman Andrist** What might be the benefit to a township if they cited a landfill in their area?

**Yantes** The officers I spoke with indicated that there might be some monetary reimbursement for the township.

**Beau Bateman** Township Officer Granite Township. I am speaking on behalf of Rye County and townships in general. When the city of Grand Forks lost their suit against Turtle River for a landfill they began examining the 4 mile ET zoning. Gave an example of the landfill issue from the township's perspective, they felt that they had been tricked by the ET zone rules. In North Carolina they have more people in the largest city than the whole state of ND. They have a 3 mile ET zone. You cannot do anything in the ET zone that you would not also allow in the city. We feel that bringing this to the state level is a better idea because the state then has the resources to find the best possible site for a landfill.

**Chairman Andrist** We probably couldn't find a township that would consent to a landfill so then we would have to find another mechanism such as the state that has more resources?

**Bateman** There were some farmers that wanted to sell their land but the township overruled them. Your question is if we escalate it?

**Chairman Andrist** It is my sense that if we pass this bill we simply cannot build a landfill in Grand Forks County because the township doesn't want it.

**Bateman** I think the bill actually gives you the opportunity to find the right site. By escalation, you benefit everyone. We can find the best site for everyone.

**Chairman Andrist** If we have a local township election though, it is going to be the final determinate. Would that ideal site be approved by that township?

**Bateman** If an appropriate site is selected, it would be tough to override as the state and authorities have fully vetted the location.

**Chairman Andrist** I am hearing that there are other bills in the process that are trying to address this problem too?

**Bateman** The other bill has no supporters yet, it looks for some sort of resolution but the language is a bit loose. There are two bills on the house and senate side that are addressing the issue of loss of vote in ET zones.

**Senatr Olafson** Do you have any information on what sort of incentives go along with citing a landfill?

**Bateman** The one example was that the two farmers selling their land would pay all of the city's taxes forever. The city of Grand Forks attempted to take the land in Turtle River; I'm not sure what they offered. I think if you offer the city ownership of the facility, not just a payment, it might be more amenable.

**Senator Olafson** So what you are saying is that there have been some nice financial incentives offered but they were not enough?

**Bateman** I wouldn't you the modifier "nice" but they were offered some incentives. Spoke about his experience paying for trash removal.

**Senator Lee** Two questions, you alluded to a township that might be more appropriate for a landfill, where does that county get a say?

**Bateman** The Township would be Nelson County. There was a landfill site that was privately run, I think they have the same rights as we had in Rye County.

**Senator Lee** What I am saying is, if the origin of the request is from Grand Forks and is primarily for their benefit but is located in Nelson County, who has the ultimate say? Should there not be regional input into the process? My other question deals with transportation costs. You will be hauling long distances bringing significant costs.

**Bateman** People are going to pay regardless; it is an inelastic economic curve. I agree that we need a regional discussion. With increased transportation costs we are all going to pay more, we have to decide what it is worth to you and your family. It is hard to put a price on an environmentally sound location when it protects the health of the community. Operating the laws within a republic is expensive.

**Senator Lee** You mentioned that the state would step in to help find the best site, where does the township fit into that process? Do they still vote even if the state decides it is the best location? Will we then have a small group deciding the fate of many?

**Bateman** This bill starts us on a path that leads us in a more positive direction. Discussed the example of Rye County again. I do not see this as creating a new problem.

**Senator Lee** My concern is that if we pass this bill, which is very specific to the Grand Forks situation, a state can pick a site and then be held hostage by a township's vote

**Bateman** I think you are assuming that a township will be unreasonable.

**Senator Lee** I don't think they are being unreasonable, I would not a landfill in my backyard.

**Bateman** I think if the state came to the township, they would accept their decision.

**Jerry Hjelmstad** ND League of Cities. Spoke in opposition to 2382. It is my understanding that there are only 13 solid waste landfills serving the entire state and eventually new landfills will be needed. This bill would make an already difficult process nearly impossible. Current law

already allows counties to call special elections on the landfill issue. I think we all agree that we need landfills; we ask that you not approve this bill.

**Chairman Andrist** Does the permitting process bring in the state health department and environmentalists?

**Hjelmstad** Yes.

**Senator Anderson** Did you say that counties in ND have the option to put landfill sites on the ballot?

**Hjelmstad** Yes, once the permit is applied for the county commission is notified and they have the option of calling a special election.

**Senator Anderson** Is there anything you feel should be added to the bill?

**Hjelmstad** I think this bill takes this down to a level that makes it almost impossible to site a landfill.

**Scott Radig** Director of the Division of Waste Management for the ND Department of Health. Spoke in opposition to 2382. See attachment #1.

**Senator Bakke** What role does the health department have in citing landfills?

**Radig** The health department does not choose the location up front but they are involved after the prescreening process.

**Senator Bakke** What role does the township play in that process?

**Radig** Currently, the site selected must be zoned for a landfill for it to be considered.

**Senator Bakke** It has to go through the county, not the township?

**Radig** That would depend on whether or not the township is incorporated.

**Senator Olafson** Would an election comprised of all the regions affected by the landfill be popular?

**Radig** Popular? Maybe not but with the current system giving the county power to call an election, has worked so far. We do feel that putting that decision to such a small number of people could be problematic.

**Senator Lee** If Grand Forks theoretically chooses to put a landfill in Nelson County, does Grand Forks get to vote on it?

**Radig** The way the law is written, the county that the landfill would be located in would have the option of voting.

**Senator Olafson** Do you think better incentive would help get a landfill properly sited?

**Radig** I am an engineer, not an economist, I would hate to speculate.

**Chairman Andrist** Your testimony seems to highlight what might be an underlying fear for all of us, that this bill would make it impossible to get a landfill.

**Radig** That is a distinct possibility.

**Senator Dotzenrod** Do we still have solid waste districts?

**Radig** We no longer have solid waste districts.

**Senator Dotzenrod** So, there are no requirements for solid waste districts anymore.

**Radig** No.

**Senator Dotzenrod** When you issue a permit; do they have an expiration date?

**Radig** A permit has a maximum duration of ten years before it must be renewed.

**Senator Dotzenrod** Who renews the permit?

**Radig** My department.

**Senator Bakke** What do we do with old landfills?

**Radig** We try to repurpose them; the dog park in Bismarck is an old dump. There are requirements for dealing with old landfills.

**Senator Bakke** Who pays to repurpose the landfill?

**Radig** Whoever owns the landfill.

Discussion about old landfills that have been repurposed.

**Alan Walter** Director of Public Works for the City of Mandan. Spoke in opposition to 2382.

Detailed what has been done with many old landfills in Mandan.

**Curt Kreun** City Council Member in Grand Forks. Spoke in opposition to 2382. See attachment #2. Spoke about the Turtle River case.

**Chairman Andrist** How far is this site from Grand Forks and is it a rural area?

**Kreun** It is about 3 miles away in a low density area. We encapsulate every drop of water coming of the site. Spoke about the considerations relating to water in landfills.

**Senator Bakke** Someone mentioned that there was a township near Grand Forks that would take the landfill, did you ever hear from them?

**Kreun** We sent out lots of letters but not one township or county wanted deal with us.

**Jeff Heintz** Director of Public Works, City of Bismarck. Spoke in opposition to 2382. He is in charge of the Bismarck landfill. He spoke about new landfill technology and how they are run. This bill is too restrictive, landfills are a regional issue.

**Senator Bakke** You said that this bill is not the way to do this, what would be your solution for townships?

**Heintz** I think the whole region needs to be served like Senators Lee and Olafson suggested.

**There was no neutral testimony.**

**Chairman Andrist** Closed the hearing on SB 2382.

**Senator Anderson** Discussed his opinion on the bill and how we must look out for the health of the public through the use of safe landfills.

**Job #8819**

**Chairman Andrist** Reopened the discussion on SB 2382.

**Chairman Andrist** I see this bill as trying to outlaw landfills. I am a very strong local control person but I cannot visualize a township welcoming a landfill.

**Senator Olafson** I spoke with Ken Yantes and he was having a conversation with Senator Cook about options.

**Chairman Andrist** They haven't come to me and asked for more time.

**Senator Lee** Senator Cook has some strong feelings about ET but I don't think he is going to fall on the sword this one. This is sort of a punitive bill. This was a communication issue even though we honor the needs of the township.

**Chairman Andrist** Some wars cannot be won and I read Senator Cook the same way as Senator Lee.

Discussion about visiting landfills.

**Senator Olafson** I am surprised that there is so much fighting in Grand Forks.

**Senator Bakke** I think the city council has been more than accommodating. I can't support this bill.

**Senator Anderson** We've spent over a year and a half on this. Discussed ET zoning and the "dump" mentality. This bill is too restrictive and too narrow.

**Senator Lee** I move **Do Not Pass**.

**Senator Bakke** Second.

The Clerk called the role on the motion **Do Not Pass. Yes: 6, No: 0, Absent: 0.**

**Senator Anderson will carry the bill.**



**REPORT OF STANDING COMMITTEE (410)**  
February 5, 2009 4:26 p.m.

**Module No: SR-23-1846**  
**Carrier: Anderson**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2382: Political Subdivisions Committee (Sen. Andrist, Chairman) recommends DO NOT PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2382 was placed on the Eleventh order on the calendar.**

2009 TESTIMONY

SB 2382

**Testimony**  
**Senate Bill 2382**  
**Senate Political Subdivision Committee**  
**February 5, 2009; 9:30 a.m.**  
**North Dakota Department of Health**

Good morning, Chairman Andrist and members of the Political Subdivision Committee. My name is Scott Radig, and I am director of the Division of Waste Management for the North Dakota Department of Health. I am here today to testify in opposition to Senate Bill 2382.

The current system of waste management in North Dakota evolved from a statewide planning effort by communities, counties and businesses in the early 1990s. At one point in time, many communities operated and maintained dump grounds for their citizens and surrounding neighbors. However, due to the complexity and expense of designing, operating, monitoring and closing landfills in an environmentally protective manner, the state actively evaluated and reduced the number of landfills from a high of 111 permitted municipal solid waste landfills in the 1980s to the current number of 13 regional or multicounty landfills. That will drop to 12 facilities when the Grand Forks landfill closes this summer. The last new regional landfill to be successfully sited was 20 years ago, in 1989. In addition, communities and counties experience difficulties in locating smaller inert waste landfills for management of demolition waste from dangerous buildings, debris from disasters and emergencies, and waste materials from economic activities and development.

Today's landfill is a highly technical facility serving not just a single city but usually several counties and, in some cases, counties of adjacent states. Some communities haul their trash more than 100 miles. Longer hauling distances increase costs, which can be a detriment to economic development and can lead to increased illegal dumping. Reduction in the number of landfills or the failure to add capacity to facilities as they are filled to capacity will shorten the life span of other facilities in the state as waste is concentrated to fewer facilities. These landfills are needed to ensure the protection of public health and the environment in the state of North Dakota.

Landfills, in some form or another, are and will continue to be a necessity in our society. Even with innovative recycling or energy conversion methods, there always will be something left over that cannot be used beneficially.

Senate Bill 2382 would place the decision for a necessary regional public utility at the discretion of a small number of people without considering the greater public benefit and need for the facility. If this bill passes as currently written, it is possible that no new landfills would be built and no expansions would occur in the state. The investigation and design of a landfill is extremely expensive, and the risk would be great that the time, effort and money expended would be for nothing.

The Department of Health respects local political zoning authorities, the job that they do and the challenges they face. However, in cases where an election regarding a regional landfill is deemed warranted and necessary, then it would seem fairer to ensure that everyone in the state who would be served by the facility be allowed to vote.

This concludes my testimony. I am happy to answer any questions you may have.

**TESTIMONY ON SENATE BILL 2382**

**Senate Political Subdivisions Committee**

**Curt Kreun  
City of Grand Forks, ND**

**February 5, 2009**

Mr. Chairman and members of the Committee, my name is Curt Kreun and I am City Council Member of the City of Grand Forks (City). I want to thank you for the opportunity to testify on Senate Bill 2382 and to voice opposition to Senate Bill 2382.

Solid waste landfills are regional facilities in North Dakota thus any vote should at least be at the County level. Important regional facilities should not be voted on by only a small minority of the region. The common good of a region should be maintained.

The minority is protected via North Dakota Department of Health (NDDH) regulations. In addition, the City has passed a "Good Neighbor" Policy Guide in our solid waste landfill siting process in Grand Forks County, Rye Township 13. The "Good Neighbor" Policy Guide is meant to mitigate and provide proactive solutions regarding the solid waste landfill siting, construction, and operation.

Regional solid waste landfill facilities are similar to other infrastructure that provides for the common good, yet is regulated to mitigate undue harm onto individuals. The City respectfully asks for your opposition to Senate Bill 2382 for the stated reasons.