

2013 SENATE POLITICAL SUBDIVISIONS

SB 2180

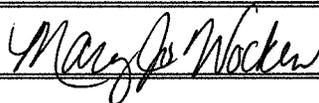
2013 SENATE STANDING COMMITTEE MINUTES

Senate Political Subdivisions Committee
Red River Room, State Capitol

SB 2180
January 24, 2013
17674

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the issuance of building permits by townships

Minutes:

You may make reference to "attached testimony."

Chairman Andrist opened the hearing on SB 2180. All senators were present.

Senator Murphy is the sponsor of this bill, but the Township Officers' will testify on the bill.

Chairman Andrist asked for those in opposition to this bill and no one stepped forward.

Larry Syverson, Township Officer from Roseville Township and Trail County. The prime sponsor of this bill, Senator Murphy, happens to be a neighboring township to mine, Viking Township. He mentioned this concern that came from a constituent that had applied for a building permit and the township never replied or acted upon that request. He asked if we had a problem with it, and Mr. Syverson replied we did not have with setting a deadline on that activity. We feel that after 60 days they should have made some response. We do not have any problem with this bill and are in support of this bill.

Senator Sorvaag: Is there anything that needs a variance to a zoning regulation when this is completely out? **Larry Syverson** replied, that is correct, it would have to comply with the existing zoning regulations.

Senator Grabinger: How did you come up with the 60 day figure in the bill? **Larry Syverson**: I will defer to Senator Murphy who is the author of the bill.

Senator Murphy, Prime sponsor of this bill. This bill came about simply because one of my constituents had some problems getting a response from a township he didn't live in, but owned land in. I served 20 years on a township handing out building permits, so I understand the process very well. This guy gave him a call and said I need to build a shed on my property out in your township and the Township Board said well I don't know, we'll see. So he applied for this permit and didn't hear back last summer. He didn't hear all fall, and then called me in November. I called the Chairman of the Township in question, who happened to be a former student of mine and asked "what's the deal". He replied yes, I know we should've gotten back to him but we didn't. Well, I replied, maybe you could do

that. He replied, we'll have to work on that. So, what you have is a frustrated guy. My constituent wanted 30 days, but knowing that we have a lot of farmers, almost exclusively farmers on township boards and often they are away for a period of time and do not meet. I approached anybody about that including the township association. If you can't hear back from somebody when you have a construction project about getting a building permit, a month is reasonable, two months is certainly reasonable. Just to hear back whether you are going to get the okay or not, or some kind of word from them is how this bill came about.

Chairman Andrist: In my part of the state, I am sure they don't even have a permit process. Our farms our bigger, they are spread out more, and in many cases there's three or four farmers living on the land. Most of the rest of them live in town. I can't imagine them ever starting a process that's a required permit which brings me to my question. Is it frequent, that this becomes an issue in a township? Do they sometimes not let you build something that you want to build that seems appropriate?

Senator Murphy replied it does happen that permits are not issued for cause. But it is very rare behavior to me that a township isn't responsible to some degree. I don't think this is going to hurt any townships. I think that is why the Township Association did want to work with me on this. If you're familiar with township officers, a lot of them are pretty laid back, and it's not a heavy responsibility for a lot of them. It gets to be that at times, but this just gets their attention. It makes sure that they function and I don't think it will hurt. They will be aware they have to get back to them or they will build it, if it meets all the codes and so forth. I think it will keep their attention.

Chairman Andrist: I am a town guy. If I applied for a building permit and couldn't get a response in 30 days, I think I would think they would be a little derelict in their duty. Is there quite a bit involved in the inspection process and the approval process? Is it mostly when it goes beyond 30 days? Is it mostly just negligence or not taking care of business?

Senator Murphy replied I think it is purely that. It is pretty lax in most townships. As you indicated and of course you live in a place with a lot dissolved townships but in even fairly active townships, for the most part rural North Dakota is not stringent. Of course the closer you get to urbanity, the more stringent they become.

Chairman Andrist: Right now, there is no limit in how long they can take?

Senator Murphy replied no, it just would frustrate their constituents which of course they don't want to do, I wouldn't think.

Chairman Andrist: So this is probably going to have a very rare application? **Senator Murphy:** That would be my perception.

Senator Anderson: In number 2, it says that if they don't take action a permit becomes approved if it meets all applicable zoning regulations. I wonder who is responsible for determining then, that they do meet all applicable zoning regulation if the township won't look at it.

Senator Murphy replied it does fall to that local government and in this case the township. It was in their purview to make sure that those types of violations do not occur, to protect environment and their citizens. That's why I think if this goes out in the township newsletter should this bill come to be a law they are going to have to pay attention to this one.

Senator Grabinger: I've actually seen this happen where we couldn't get a permit within a reasonable amount of time. Living in a township near a city development probably occurs a whole lot more than further out. I go back to that 60 day time period. Did you receive a whole lot of opposition to going to a 30 day or even a 45 day rather than a 60 day? I am concerned with that because I think with construction processes and the need to hire somebody to build and set a time table, sometimes in the spring, if you have to wait that long you're beyond the ability to get anybody to do the construction work that you possibly wanted. Did you hear anything on it?

Senator Murphy replied if you got something that is urgent you might want to get a head of it more than 30 days. But no, no one said anything to me about it. My concern out in the townships with the 60 day, and the reason I make it 60, arbitrarily on my part was because I understand that a lot of these people are away. But, I would think most or nearly all townships would be very responsive in general.

Ken Yantes: Executive Secretary North Dakota Township Officers Association. I stand before you in support of this bill. I just think that 60 days is plenty of time for us to react and I think we should react much sooner in the process. I believe this sets a deadline that if you don't do it, it will be done for you.

Chairman Andrist: I take it from your testimony Ken that Senator Grabinger was wondering what if we shorten that time even more to 30 or 45 days? Is your sense that would draw more resistance or is this really pretty much of a non-issue in most instances?

Ken Yantes replied I believe that you exactly hit this on the head. I don't think that there is that many who will have a problem. I do think we should have some type of deadline.

Chairman Andrist closed the hearing on SB 2180.

Senator Judy Lee I move do pass
2nd Senator Anderson
Roll call vote: 6 Yea, 0 No, 0 Absent
Carrier: Senator Sorvaag

Committee discussion followed. (14:25- 19:24)

REPORT OF STANDING COMMITTEE

SB 2180: Political Subdivisions Committee (Sen. Andrist, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2180 was placed on the Eleventh order on the calendar.

2013 HOUSE POLITICAL SUBDIVISIONS

SB 2180

2013 HOUSE STANDING COMMITTEE MINUTES

House Political Subdivisions Committee
Prairie Room, State Capitol

SB 2180
March 8, 2013
Job # 19646

Conference Committee

Committee Clerk Signature 

Explanation or reason for introduction of bill/resolution:

Relating to the issuance of building permits by townships.

Minutes:

Chairman N. Johnson: opened the hearing on SB 2180.

Senator Murphy: Introduced the bill. This is a simple bill. There was a situation in another county on some land of a constituent of mine. This gentleman wanted to build a shed in another county in another township and when he applied for a building permit but the township did not get back to him. This bill is a wakeup call and gives them a little bit of a hammer or leverage to people that are asking for some action on building permits. Tell us yes or no and you have 60 days to respond. This bill demands the township at least pay attention and act on these requests.

Rep. Klemin: Some townships particularly those located near larger cities have their regular process for issuing building permits etc. You have 60 days in here. Would there be any reason why this would supersede any local provision that they have for getting it out sooner than that?

Senator Murphy: No. It does not preclude any action being done sooner.

Rep. Klemin: On Subsection 2 where it is deemed approved and they failed to take response within 60 days. Is this a situation also for the township to say well we don't have to do anything because 60 days it will be deemed approved?

Senator Murphy: This part of the bill is the gentle hammer to get them to do something.

Rep. Klemin: Most of the time when you get a building permit there is some documentation that says you have a building permit. So when the inspector or whoever comes around make sure that you are doing things appropriately they want to see your building permit. What kind of documentation is a person going to have if it is deemed approved and there is nothing done by the township to show an actual building permit?

Senator Murphy: What happens is in a lot of townships it is a pretty laid back situation. What this bill does is asked them to pay attention and get this done in a timely manner.

Rep. Klemin: In some circumstances there would be situation where a party submits an application and the authority says we never got that. Do you have to have it served by a certified mail or something to make sure they don't say later that we never received it so you are noncompliant?

Senator Murphy: What happens here it is a simple piece of paper. In my duties as a township clerk when they come and want the permit I give it to them and show them how to fill it out. Sometimes they pay \$10 or \$20 that it takes right there on the spot and then if they want the thing done they better get it back to me and I take it to my supervisors at the township board and they approve or deny it. That is all there is to it.

Rep. Koppelman: Is there zoning in all townships in North Dakota?

Senator Murphy: All townships have some zoning powers. They are exercised if there is a problem.

Rep. Koppelman: If you are dealing with a specific center and trying to solve a problem, but are there townships where there might be zoning in existence or some fall back zoning on the county level or something else, but they really don't enforce it; they don't issue building permits. Is that common in North Dakota if they want to build a shed they just built a shed?

Senator Murphy: If I understand the question, if there isn't zoning I am not sure I can answer the question.

Rep. Koppelman: You indicated a filing fee. The cancelled check will be an indication that the application was received without certification.

Senator Murphy: Yes I don't think that is an issue here.

Rep. J. Kelsh: Did you consider a fine? Wouldn't it be better that there was a fine rather than just returning the building permit?

Senator Murphy: If this would become law, if the township doesn't act within 60 days the permit is considered granted.

Rep. J. Kelsh: If it is considered granted there is a piece of paper that goes with that. What happens if you don't have this piece of paper?

Senator Murphy: My presumption is that it triggers assessment for tax purposes so what is going to happen is they are going to build this building and if it ever did come down to this I don't think a township would pay attention so they have control of their township. If the building is up; then it was due to inaction by the township the taxes will still come down.

Rep. Ben Hanson: What kind of penalty would you put in place?

Senator Murphy: The Township has given up their control, which they don't want to do.

Rep. Ben Hanson: In a situation where they do not get back in 60 days that person is allowed to build or not build as they see fit?

Senator Murphy: They granted the permit.

Rep. A. Maragos: If the township issues the building permit who has the responsibility to make sure the requirements are met? How does the process go beyond the township officers allowing a building to be built?

Senator Murphy: A lot of townships in North Dakota are very laid back. In Minneapolis they are very strict. In rural North Dakota you can get a permit for a house and I don't know if it is ever going to be inspected except by electrical inspector in many cases. It is very loose in many cases. We don't have anything like that. It is going to have to adapt to zoning. That is not the issue of this bill.

Rep. A. Maragos: In this situation someone goes ahead and files the application and they don't get the piece of paper and they go ahead and build and all of a sudden something happens and the suits start flying what is the responsibility of the township board? Can they be sued if something happens to the builder of the property and somebody comes against them and said this is wrong? I am not sure how the whole process stays within a defined policy?

Senator Murphy: I do believe that the issues you are talking about are totally out of the realm of this bill; however the township permit is granted I would imagine that the township wants to pay attention to what is being built. As far as litigation goes I have not been involved in that.

Rep. A. Maragos: This bill may set up the unintended consequence. Without a permit or piece of paper under current law that building can't be built. This bill is going to allow the building to be built without the township approval and probably sets up some situations where if things don't go right then responsibility has to be applied or allocated or directed?

Senator Murphy: The situation as I see it is; first of all I don't see the township letting this happen. If they did the house would still be bound by the building codes or the local government.

Larry Syverson, President of ND Township officers Assoc. I wish to speak in favor of this bill. As it written with the 60 day deadline we see no problem with this bill.

Rep. Klemin: I have a concern that a typical applicant does not know about this law and it seems to me that it might be appropriate to have an additional subsection on this bill that would provide notice to the applicant that there is such a thing as this section and given written notice of such.

Larry Syverson: I believe very quickly the builders will be aware of this requirement.

Rep. Klemin: I am not so sure they do know what is required.

Larry Syverson: I think someone that is going to have a four month wait for an answer is willing to look into a solution and discover this provision.

Rep. Koppelman: How does it typically work in rural North Dakota townships?

Larry Syverson: It varies greatly. My county, Trail County has zoning authority and exercises it. Some have quite a bit of building going on and do a lot with permits and others don't do any.

Rep. Koppelman: When a building permit is issued in a typical township and there is zoning in the county or township level, if they do offer building permits and they require people get one is that process policed at all?

Larry Syverson: Yes it is a laid back procedure. The main concern are that you are not violating the setback; putting it too close to the road, and you are not going to infringe on your neighbors.

Rep. Koppelman: We subscribe to the international building code with some exceptions and technically everyone is bound by that. The concern was raised if this bill would pass and the township was given a building permit where they are not even acting or familiar with the situation; would that create liability. Discussed a law suit between the city and a purchaser of a home where the building codes were not met. A building inspector does not have the legal obligation to insure that everything on the building code is followed and is not liable if that does not happen; they just have a general obligation to the public to oversee and do the best they can. Are you aware of cases where they have been any liability issues with townships?

Larry Syverson: I did see the lawsuit in Fargo so I added a disclaimer on our permits that we are in no way guaranteeing the safety of this deal. It does not violate our ordinances when we grant this permit. Whatever townships do we try to advise them that you are going to be viewed as a guarantee of the quality that we have to look out for?

Rep. Hatlestad: If someone in your township was building in your township would you know it? Is it possible that someone could build in your township and you would not know that construction was going on?

Larry Syverson: Yes things do happen without our knowledge. That is why when I am doing my tax assessing I make the rounds around to every taxable property and take a picture of the property each year to document what is going on.

Rep. Hatlestad: You obviously have an application for a permit with maybe some sticky notes on them. Do you see this as a problem?

Larry Syverson: I don't see that as a large problem. I don't know that every township would know that there was a requirement to do that. It could take time for that to filter down.

Rep. Hatlestad: Couldn't you do that through you emails or mailings. Doesn't every township belong to your organization? Does every township have their own building permits or do some of them turn that responsibility over to county and whatever the county does the township accepts.

Larry Syverson: Some counties do building permits. Williams does have a county wide planning and zoning. Trail does nothing with planning and zoning. We do provide a sample building permit and application in our handbook that we provide to the member officers.

Rep. A. Maragos: How many unorganized townships are there in the state?

Larry Syverson: 1800 townships in the state and about 1300 are organized.

Rep. A. Maragos: Do you have any idea how many townships are owned by one person?

Larry Syverson: No I have no data on that. I am sure there are several townships that have very few landowners in them.

Rep. A. Maragos: When the township issues a permit do they do it in the application the applicant has to send in the plans of what he plans to build? A drawing of the building and who inspects to make sure the egress and setbacks are all being adhered to out in the township? Do you know?

Larry Syverson: I could bring you our sample permit and application. I don't have it with me now.

Rep. A. Maragos: If you were the township officer assigned would you have to go out and inspect to make sure that he is following the rules or who would do that?

Larry Syverson: There again is a lot of variance. Some townships are very active in going out and checking and others will just look at the map and say they are far enough back from the road and let it go at that.

Rep. Kretschmar: Approximately what percent of townships in North Dakota have zoning and building ordinance and what does the township need to do to set up zoning in their township?

Larry Syverson: It is a process. First you have to develop a Comprehensive Plan and then draw up an ordinance and there are city and public meetings that have to be set up. There is some conflict in some of the counties where the county has taken over the responsibility because the townships never did and now the townships want to do it and the counties aren't letting go so there are some issues. There are townships that don't like the control that is done at the county level and they would rather have more local control.

Opposition: None

Neutral: None

Hearing closed.

Discussion:

Rep. Klemin: I would like to have the opportunity to prepare an amendment.

Rep. J. Kelsh: I don't think a lot of townships are zoned around where some of the larger cities are and they are concerned about feedlots coming in and I think it is true if a township zones the county can't overrule it. The township can make it more stringent than the state if they want. In our area there are very few of them that are zoned.

Chairman N. Johnson: The Township would have to vote to have more stringent regulations?

Rep. J. Kelsh: The Southeast Regional Council out of Jamestown provided that service to it and it wasn't cheap so a lot of townships didn't do it because of that. Townships are pretty loose and they are not taxed so there is no concern about it.

Chairman N. Johnson: Decided to hold the bill for Rep. Klemin to prepare an amendment.

2013 HOUSE STANDING COMMITTEE MINUTES

House Political Subdivisions Committee Prairie Room, State Capitol

SB 2180
March 21, 2013
Job # 20296

Conference Committee

Committee Clerk Signature



Minutes:

Proposed amendment #1

Chairman N. Johnson opened the meeting on SB 2180.

Rep. Klemin: This is the bill relating to building permits by townships. There was a concern at the hearing about people knowing what is happening on the application and how long it is taking etc. (See proposed amendment #1) The amendment says it must include a notation of the date of receipt and a statement that the application will be deemed approved within 60 days pursuant to this section. A copy of the completed application with the date of receipt must be provided to the applicant at the time the application is received. Larry Syverson was acceptable to this amendment to the bill. That is all this amendment does.

Motion made to move the amendment by Rep. Klemin: Seconded by Rep. Kathy Hogan:

Rep. Hatlestad: Does the second sentence, the application will be deemed approved within 60 days. Are you guaranteeing them that the application will be approved in 60 days? It does not say you have 60 days to act so I would get the impression if I had submitted an application and at the end of 60 days I was approved.

Rep. Klemin: That is what one and two says.

Rep. Hatlestad: But it doesn't say they can act and deny it earlier?

Rep. Klemin: This is something that is consistent with Subsections 1 & 2 in the bill and is for the benefit of the applicant to know that if he doesn't get an approval within 60 days it is deemed approved.

Rep. Hatlestad: I understand if I have the whole bill in front of me. If I have nothing but the application do I get the impression that I have automatic approval?

Rep. Klemin: Maybe we need some additional language on it? It should maybe say it would be deemed approved within 60 days pursuant to this section?

Rep. Koppelman: I think the amendment calls for a statement to be added to these receipts that it calls for. We are dealing with townships and some of them don't do building

permits so they are going to look to the law and see what does it make us do and I think what Rep. Hatlestad is driving at is rather than referring to some section of the Section of the Century Code; which most application will not have a copy, if we were to simply add after the word application after line 2 of your amendment, if not otherwise acted upon, and then it would read each application must include a notation of the date of the receipt and a statement that the application, if not otherwise acted upon, will be deemed approved within 60 days pursuant to this section.

Rep. Klemin: I would take that as a friendly amendment to this.

Rep. Kretschmar: That would be fine with me too.

Chairman N. Johnson: Checked to be sure the intern was getting that.

Rep. J. Kelsh: Are we sure 60 days is the right amount of time? That is a long time. He was worried about construction season. Maybe we should look at 30 days?

Rep. Koppelman: I would defer to you with your experience at the township level. Will it hurry them up?

Rep. J. Kelsh: I think the townships that are going to be involved in this probably are fairly well organized. My township doesn't have anything like that. I don't think 30 days would be out of line?

Rep. Klemin: that is not the purpose of this amendment. The 60 days is in here because that is what was used on line 9 so I guess we would have to change line 9 also.

Rep. Beadle: During the hearing we did discuss that with Senator Murphy and also with Mr. Syverson from the townships. Senator Murphy stated that his township meets once a month so the 60 days was necessary so they would not have to call in extra meetings in order to approve it. Mr. Syverson said they support this because of the 60 days was very workable for them.

Chairman N. Johnson: We have a motion to approve the amendment presented by Rep. Klemin with the addition of as otherwise acted upon. Is that acceptable?

Rep. Klemin: that is acceptable and I am being called to Senate GVA to testify so put me down as a yes on the amendment and yes on the DO Pass of the bill.

Voice vote carried.

Do Pass As Amended Motion Made by Rep. Kathy Hogan: Seconded by Rep. Beadle:

Vote: 13 Yes 0 No 2 Absent Carrier: Rep. Ben Hanson

Closed.

March 26, 2013

3/26/13
CSC

PROPOSED AMENDMENTS TO SENATE BILL NO. 2180

Page 1, after line 17, insert:

"3. A township's building permit application form must include a statement that if the building or structure for which the permit is requested meets all applicable zoning regulations and the board of township supervisors or other appropriate official fails to respond within sixty days of receiving the application, the application is deemed approved. Upon receipt of a building permit application, a township shall note on the application the date of receipt and shall provide a copy of the submitted application to the applicant with the date of receipt noted."

Renumber accordingly

Date: 3-21-13
Roll Call Vote #: _____

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2180

House Political Subdivisions Committee _____

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment

Rerefer to Appropriations Reconsider

Motion Made By Rep. L. Klemin Seconded By Rep. Hogan

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson			Rep. Ben Hanson		
Vice Chairman Patrick Hatlestad			Rep. Kathy Hogan		
Rep. Thomas Beadle			Rep. Jerry Kelsh		
Rep. Matthew Klein			Rep. Naomi Muscha		
Rep. Lawrence Klemin					
Rep. Kim Koppelman					
Rep. William Kretschmar					
Rep. Alex Looyen					
Rep. Andrew Maragos					
Rep. Lisa Meier					
Rep. Nathan Toman					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent: (proposed - see attach. #1)

Voice
Vote
Carried

Date: 3-21-13
 Roll Call Vote #: 2

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2180**

House Political Subdivisions Committee _____

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. K. Hogan Seconded By Rep. T. Beadle

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson	✓		Rep. Ben Hanson	✓	
Vice Chairman Patrick Hatlestad	✓		Rep. Kathy Hogan	✓	
Rep. Thomas Beadle	✓		Rep. Jerry Kelsh	✓	
Rep. Matthew Klein	—		Rep. Naomi Muscha	✓	
Rep. Lawrence Klemin	✓				
Rep. Kim Koppelman	✓				
Rep. William Kretschmar	✓				
Rep. Alex Looyen	✓				
Rep. Andrew Maragos	—				
Rep. Lisa Meier	✓				
Rep. Nathan Toman	✓				

Total (Yes) 13 No 0

Absent 2

Floor Assignment Rep. B. Hanson

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

REPORT OF STANDING COMMITTEE

SB 2180: Political Subdivisions Committee (Rep. N. Johnson, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2180 was placed on the Sixth order on the calendar.

Page 1, after line 17, insert:

"3. A township's building permit application form must include a statement that if the building or structure for which the permit is requested meets all applicable zoning regulations and the board of township supervisors or other appropriate official fails to respond within sixty days of receiving the application, the application is deemed approved. Upon receipt of a building permit application, a township shall note on the application the date of receipt and shall provide a copy of the submitted application to the applicant with the date of receipt noted."

Renumber accordingly

2013 TESTIMONY

SB 2180

By L. Klemm

1

PROPOSED AMENDMENTS TO SB 2180

After line 17 insert:

3. Each permit application must include a notation of the date of receipt and a statement that the application will be deemed approved within sixty days pursuant to this section. A copy of the completed application with the date of receipt must be provided to the applicant at the time the application is received.

if not otherwise acted on,