

2015 SENATE POLITICAL SUBDIVISIONS

SB 2371

2015 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Red River Room, State Capitol

SB 2371
2/6/2015
Job Number 23391

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the authority of a City Council or Board of City Commissioners to establish administrative boards.

Minutes:

Written testimony #1 Howard Swanson

Chairman Burckhard opened the hearing for SB 2371. All senators were in attendance.

Senator Laffen introduced SB 2371. The idea is to grant cities the authority to establish and administrative board for the purpose of hearings as opposed to all of them going to municipal court. The idea to be is to make them simpler, quicker, faster, easier, less expensive.

Senator Anderson It seems like now we have quite a few of these kind of boards already established but apparently there is specific language in the law about them. This intention here is to get into General authority to establish whatever they want too, is that my understanding?

Senator Laffen That is correct. I think actually some cities have been doing this and may have been stopped by some legal action that just said it wasn't in our statute. But I believe that Mr. Swanson will explain all of that.

Howard Swanson (2:16-6:35) Written testimony #1. In direct answer to the question previously raised, most cities have used lay boards for years. Whether it's the plumbing board or electrical board or in some cases a zoning board you had individuals, lay people, most of the time with knowledge of the field that they were on the board, making decisions and those decisions included the ability to fine somebody if they violate an ordinance, withdraw a permit or revoke a permit if it had to do with licensing. This has gone on for a number of years in North Dakota.

Senator Grabinger Please allow me for a hypothetical question. An individual contractor didn't do something up to code or something, anyway, this Administrative Board that was place decides to suspend his contractors' license. What opportunity does that person have

to take that further? We don't have an appeal process so what would be the next step if they wanted to go further?

Howard Swanson Actually this bill would not alter that. That contractor then has the opportunity to appeal that decision to district court. That mechanism is already in place. So all we literally are doing is substituting Municipal Court for this board. So, in that instance if the contractor felt that the board made a decision that wasn't factually accurate, or that, they didn't have the authority to do, that is the same appeal rights that they have for Municipal Court. Slightly different process to get there, but they would end up at the same point. This bill does not eliminate any appeal rights that an individual currently has.

Senator Anderson I have worked with courts, state administrative agencies for a long time. Typically they have specific authority that is granted to them some place in the legislation that says this is what you can do. Of course we make all of our rules and our procedures are all governed under the Administrative Practices Act. I am not familiar with the city of Fargo versus small me, but exactly what happened there I don't know but can you give me a specific instance where for example does the city of Grand Forks issue contractors licenses or under your zoning authority somebody is building their house to close to the curb and the city inspector comes by and he says you have move that? I guess I've never had any problem with those people always moving that but maybe there's cases where he doesn't move it and then you have to do something else about him. Can you give me a specific instance where this has been a problem?

Howard Swanson I can and it will take multiple forms but we have had issues with a home builder who didn't have enough distance between the toilet and the wall. It was a violation of the Plumbing Code. This predated the City of Fargo case, so the city had its plumbing board act on that. At that point the house is already constructed, the bathroom is already built, the inspector's noted right away that this toilet was too close to the wall. What the board did rather than make them tear it out or do anything, there was an administrative fine imposed and it was the same fine that would've been imposed in Municipal Court. The contractor paid that fine. That would be the same course now, but instead of going to the Plumbing Board, we would have to cite him and take him into Municipal Court. We have similar instances with things like lawn grass, fences off the property line. What we're looking at here is applying this primarily to violations of codes. That Board wouldn't have any authority to adopt, that would be left to the city council. The Board would only have the authority to hear the issue and make a decision on it.

Senator Anderson My experience with the city was a long time ago the city Plumbing Board would've brought that issue to the City Commission who I think has the power to do those adjudications under the Administrative Practices Act and levy the fine. But what if the person didn't agree to it, the City Commission would have to do that, am I wrong about that?

Howard Swanson That is the confusion we have right now to be very specific with you. The Administrative Practices Act does not apply to political subdivisions. So, we can't take the benefit of that. In what the North Dakota Supreme Court has said is that there are two things: 1) a city has no authority to appoint these boards to impose a fine or make a decision 2) they took it a step further, and they said the only vehicle that a city has available to it is

to impose a fine is through Municipal Court. So there is an open question of law. Does that mean the City Commission or the City Councils no longer have the authority itself to impose that fine even if the Plumbing Board makes a recommendation, this would solve that problem?

Senator Bekkedahl I would go to an instance where in our area with housing rental costs the way they are we've had a lot of out of state interest come in and buy homes and turn them into duplexes so they can rent both levels. (Ex. Cited) The Building Inspector made a determination, our zoning made a determination, both against what was being done, and eventually it went to a Board of Appeals that the city has established of contractors, and people in the industry that sit in on the appeals of these decisions from our directors. They came back to the City Commission with the recommendation. Ultimately, the direction was no, you can't have it as a duplex, and it worked out. My question is that was a real lengthy process and you made the point that this would be quicker than Municipal Court. Would this really be quicker in most instances or am I just dealing with a instance where it wouldn't have been?

Howard Swanson Without knowing the details of what you described I think what you're going through is a Board of Appeals based on whether the zoning uses permitted it. This really wouldn't change that process. Now let's say however, your code enforcement officer issued a fine or an order to pay a fine in that case, then your Board of Appeals potentially would have the authority to act on that as opposed to going to Municipal court. This would only effect the levying of a fine, or the revocation or suspension of a license.

Senator Bekkedahl I think now those cases come directly before the City Commission for final adjudication in our cases. I go back to the point that I am not sure it is going to be any faster and if that was the intent. Maybe in Grand Forks where you're not facing half a billion dollars in building permits annually like we are, maybe it would be faster.

Senator Anderson On the face of it I think and Senator Grabinger kind of alluded to that. In order for it to be clear here we need some references to follow the Administrative Practices Act, the Right to Appeal to the District Court and those kinds of things, unless they are already in there, but I don't see them right now.

Howard Swanson The Administrative Practices Act does not apply to cities at all. However, the Right to Appeal from a city boards' decision is a separate statute. What the case involved in Fargo was under their Home Rule authority. I've attempted to address this by giving under this Statutory Authority to all cities the right to establish an Administrative Appeals Board. So, if you were an individual that was cited or brought before that appeal board and a decision is made, you still have your full appeal rights which appear in a different statute. The draft language you have is simply an additional authority to municipalities.

Senator Anderson Can you then provide us that background information, that additional statutes that you operate under so that we can understand that better. Obviously, I don't think we're going to be able to sell this just based on this language. We are going to have to have some additional background involved.

Jason Loos (17:20-18:42) Attorney for the City of Fargo. I am also the lead prosecutor for the City of Fargo. I just wanted to say that the City of Fargo supports this bill, the decision that Mr. Swanson cited, did preclude us from continuing on having our Administrative Enforcement Board. Currently the most common thing we see is people hoarding or having junk which causes health problems. They have to go into Municipal Court, and our Municipals courts in the afternoons can take 3-4 hours. If they plead not guilty they have to come back and sit for a pre-trial and sit through another 3-4 hours, to get a trial set and this whole process takes probably 3 months. The Administrative Enforcement Board would be held with one hearing and it would be a matter of minutes and would be over with in a half an hour. So, I really think this would help with the court system as well as help our inspectors as far as not having to sit through these lengthy court proceedings.

Senator Anderson Can you explain a little bit about a Home Rule city like Fargo is affected any different under the laws and the common people who don't have that.

Jason Loos No, we attempted to do this under Home Rule and it was shot down by the Supreme Court. Mr. Swanson's bill would allow this for all cities.

Senator Judy Lee I know one of those Fargo hoarders and after Senator Fischer passed away Senator Fishers' wife asked me to get involved and I sat in one of those Municipal Court hearings. The gentleman who has the problem with the city and he and the code enforcer are big head bangers here we're back to behavioral health again. He may have autism or some other kind of circumstances caused all kinds of issues for him and it's not an easy deal. The judge was very kind to him. But he's a challenging fellow, and it's a unique circumstance and the constraints that come from a court setting make him anxious. I suspect he's not the only one for whom that might be true. So because of that it seems to me that there might be some advantages in some of these situations not to make it litigious and instead see it as an Administrative Board hearing. Do you agree?

Jason Loos Yes I do agree. We haven't had a whole lot of time to discuss this with the city officials, however, one thing we did discuss if we were to bring back this board, one thing we would like to do is have a mental health professional on the board that could possibly help with some of these issues, and possibly someone from the County Social Services. A lot of times these are mental health issues involving the hoarders.

Chairman Burckhard closed the hearing on SB 2371.

Committee Discussion

Senator Grabinger I am wondering if this should be spelled out to how these boards are created, it is pretty broad right now. I think it needs some work if you want it passed. I think that is what Senator Anderson was alluding too. If they don't make it more concrete what these boards are, what their responsibilities are, what their tasked with, I can't support it until we spell that out.

Senator Judy Lee I think that is what Senator Anderson is looking for, that background of the all the offices.

Senator Grabinger asked **Howard Swanson** Grand Forks City Attorney. I understand what you're doing and having been a council man in Jamestown for years, I can certainly see the need but I think it needs, to be spelled out what the tasks are, the responsibilities of these boards and what they can and cannot do. This here is pretty broad language and I think in order to support it we have to have something a little more concrete.

Howard Swanson I can certainly look at that. The intent was to eliminate anything that was criminal in nature and still have that go. The majority of the non-criminal would be code violations. I certainly can take a look and see if the committee has any suggestions as to how to limit it. What we are attempting to do is limit to the only authority they would have for adjudicating in the offense would be imposition of fines that are currently restricted by state law or the suspension of license or a revocation of a license.

Senator Judy Lee I understand where Senator Grabinger is headed there. I think it's also important that we not make it so restrictive that the cities can't do the things that might be unique to their communities with this non-criminal administrative process. As far as establishing rules, there are criteria for that too. I would for the cities as much as there is for the state and how you would set up policy in your community. Here we go. We approve this bill and it passes, and the city of Grand Forks wants to set up this board or Administrative Commission or whatever. Are there sections of statute that say that political subdivisions all have to things under certain Administrative Rule process, or do cities not have the same kinds of guidance about how that process goes? I know you don't have to come to the Administrative Rules committee, but how do develop it as that kind of part of what you're talking about as well?

Howard Swanson The only violations that could be acted upon are ordinance violations. This grants no rule making authority to this board at all. So we're not looking at expanding by rules; it is purely enforcement of an existing ordinance, so that would be up to the city commission or city council within whatever authority they may have, whether it is a Home Rule, to determine ordinances are going to be passed and what violations would be enforceable.

Senator Anderson Sometimes in order to make this clear to everybody we have to put in things that sometimes that are not necessary. That statement you have about these would only apply to city ordinances would be helpful. Also, put the reference to the appeals statute would be...it doesn't have to spell out what it says in the appeals statute, but the reference to it would be helpful so that anybody looking at it and says now the city can do anything they want. Well it kind of sets the guidelines for us.

Howard Swanson I think those are very good suggestions. When you closed the hearing Mr. Lewis and I were discussing exactly the reference to the statutory provision for appeals. That was one of the things I was going to provide back to the committee.

Senator Grabinger One of my other fears is you have a board for example and you brought up the planning commission. None of those are elected people on our planning commission in Jamestown. Do we give them the authority to levy fines, suspensions and stuff that could cost people? I struggle with that. To me we are elected to make those decisions and the trust is put in us, but an appointed board I am concerned about them

having the authority to levy fines and stuff like that when they are not elected officials. Can you comment on that?

Howard Swanson That obviously presents great philosophical debate on how you do that. I could go through Title 40 and identify numerous locations where authority is delegated to non-elected officials. This would be everything from a Director of a Health Department to a Chief of Police. The intent here and in some cases a Municipal Court judge could be serving without an election for a period of time, but Municipal court judge is an elected official so you do have that recourse. Most of these boards would have to be confirmed or appointed by either the Mayor or City Council or City Commission. One of the concerns would be could you alter this and have all the appeals go to a City Council or a City Commission. Sometimes they are not as well equipped to deal with some of the details or the particular issues. What I really saw here was things like the plumbing board, electrical board, where you might have a technical issue and with all due respect to most of the city council members of Grand Forks, I don't think I want them to approach any of them with an electrical question or a plumbing question. But, that was kind of the concept I had. I understand the concern and that would attention. The authority that they would have is fairly limited as a non-criminal offense. The appeal rights I think are still important. If it were an alternative if you will, would be that a decision by the Administrative Board could be appealed to the Governing Board, and then to District Court, adds another step in there but that also would be potentially a fallback position.

Senator Bekkedahl This is an empowerment legislation to allow the establishment of these Administrative Boards. Does it then require the cities to bring forward specific ordinances dealing with how they set up their own administrative work?

Howard Swanson Yes it would.

Chairman Burckhard Mr. Swanson this doesn't affect a City Manager type of government any differently than it does. Minot is the only city with a City Manager form of government.

Howard Swanson I think you are correct. Any cities have city administrators but they don't have the same legal authority as a City Manager. The city of Minot if they chose to set up an Administrative Board, the City Council there could do so. But it would have to be by ordinance establishing the scope of their authority, and things of that nature.

Senator Bekkedahl I sense this is more permissive than anything.

Senator Judy Lee, I like it actually.

2015 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee
Red River Room, State Capitol

SB 2371
2/12/2015
Job Number 23769

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the authority of a City Council or Board of City Commissioners to establish administrative boards

Minutes:

Testimony # 1

Chairman Burckhard opened the committee for discussion of SB 2371. All senators were present.

Senator Anderson I saw or heard of an amendment (written testimony # 1) to this one that was supposed to resolve the issues about the referral of these issues to administrative court. I saw something in an email. But I don't see it here.

Senator Judy Lee On the proposed amended version: page 1, line 8 would remove with and after committee insert for the limited purpose of adjudicating violations of non-criminal and codes.

Such administrative boards or committees shall have the authority to impose administrative (cross off administrative) fines and on line 9, issuing and after revocation, insert of permits or licenses when authorized by ordinance. Decisions by such administrative boards or committees shall be subject to appeal to District Court as provided by NDCC28-34-01. Do you want to hear how the whole thing reads?

So it would say: Establishment of Administrative Boards under 30, to establish administrative boards or committee for the limited purpose of adjudicating violation of non-criminal city ordinances and codes. Such administrative boards or committees shall have the authority to impose fines and other non-criminal penalties including issuing orders of suspension or revocation of permits or licenses when authorized by ordinance. Decisions by such Administrative Boards or committees shall be subject to appeal to District Court as provided by NDCC 28-34-01.

Senator Anderson moved that amendment
Senator Bekkedahl 2nd

Chairman Burckhard Are we all fairly clear on all the verbage, all the words that are a part of that amendment?

Senator Bekkedahl I think it is appropriate that it goes to District Court in the appeal, but we currently have some Administrative Boards already established in ordinance in my community that the appeals court is the City Commission. Is this going to be an issue because of that? Are we not consistent for a purpose here or is it not even an issue that we're not consistent?

Senator Judy Lee I had thought about what Senator Bekkedahl is mentioning during the hearing as well and I wonder if it would really mess things up. Maybe Femi can help us figure this out. If we said to the city commission or council or whatever, because zoning ordinance things that goes to the City Commission first, and I don't want everything necessarily to have to go to District Court because that is kind of kicking it up there.

Senator Bekkedahl District Court in my community is for any issue that is Administrative is 2 years out on any hearing. That is not a corrective remedy.

Senator Grabinger We are trying to get more judges up there and they can't get it done.

Senator Judy Lee Can we say city governing body or what is the right phrase that we can use there?

Senator Grabinger Maybe in the larger cities it is a bigger problem. I just haven't seen the problem in my community. It seems to me like we're kind of taking away the responsibility of those elected officials that are supposed to look over this stuff and I am just reluctant to want to agree to something like this. He did have a compelling argument in the bigger city but not in my community. (Tape stopped for about 1 minute- these came from my notes)

Senator Anderson If we include Senator Dotzenrod appeals to the City Council, will that satisfy your concern?

Senator Grabinger What about Municipal Court?

Senator Bekkedahl The issue is the governing body, don't throw it away?

Senator Judy Lee Should we just eliminate the District Court as an option and just say by local ordinance?

Senator Bekkedahl I would go for that.

Senator Judy Lee I would be more comfortable with that myself having been on a zoning board for a long time.

Senator Bekkedahl He is an attorney so that is his realm and I think that is why he put it in there.

Senator Judy Lee If he wants it in court he could go to the House.

Chairman Burckhard Let's read that one more time where it says "decisions by such Administrative Boards or committees shall be subject to appeal as provided by local ordinances."

Senator Judy Lee suggested to the committee that Femi could have that amendment written up for the committee to see on Friday.

Senator Anderson I will modify my motion if the second will agree with it.
Senator Bekkedahl Agreed on the modified motion.

Chairman Burckhard We will be back tomorrow to see the amendment, and we won't take action on it tomorrow until we see it.

Senator Judy Lee We had a motion.

Chairman Burckhard We had a motion and 2nd, and further discussion on that amendment.

Roll Call vote 6 Yea 0 No, 0 Absent

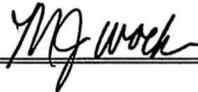
2015 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Red River Room, State Capitol

SB 2371
2/13/2015
Job Number 23812

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the authority of a City Council or Board of City Commissioners to establish administrative boards

Minutes:

"Click to enter attachment information."

Chairman Burckhard opened the committee for further discussion on SB 2371. All senators were present.

Senator Grabinger I would move the amendment.

Chairman Burckhard shall we read that paragraph 30, just so we know what is in it?

Senator Anderson the amendment the way it is written now, says 'the administrative boards or committees shall impose fines or non-criminal penalties'. I wonder if we shouldn't say 'may'?

Senator Judy Lee yes. May I read my writing from yesterday to see if somebody would proof it based on what.

" to establish administrative boards or committees for the limited purpose of adjudicating violations of non-criminal city ordinances and codes. That is administrative boards or committees shall have the authority to impose fines or other non-criminal penalties including issuing orders of suspension, revocation of permits or licenses when authorized by local ordinance". Decisions by such administrative boards or committees shall be subject to appeal as is provided by local ordinances.

Senator Anderson the last sentence we changed to, by administrative ordinances.

Senator Judy Lee " shall " was authorized by the committee, so all we have to do is "shall have the authority" on line 3 of the amendment then, isn't it?

Senator Grabinger I will remove my motion for the amendment to allow us to make this change.

Senator Bekkedahl- removed his 2nd.

Senator Judy Lee Did we further amend, because we had approved the amendment? We approved the amendment yesterday, so we can further amend today that is fine, so that would have been Senator Grabinger's motion then? Yesterday it was moved by Senator Anderson and 2nd by Senator Bekkedahl.

Senator Dotzenrod I also am wondering if in that process of trying to cut the words down, did they also, where we say near the end 'issuing orders and suspension or revocation of permits and licenses'. Yesterday we added when authorized by ordinances. Did they want that dropped off in that too? Femi replied it was already referred to in the ordinances in code.

Senator Dotzenrod we are removing the word shall. Chairman Burckhard we are taking that out and putting in "may". Replacing shall with may.

Senator Grabinger so moved the amendment
Senator Bekkedahl 2nd

Senator Dotzenrod the amendment we are going to adopt is completely word for word with this written piece of paper except for the changing shall to may. **Chairman Burckhard** correct.

Roll call vote: 6 Yea, 0 No, 0 Absent

Chairman Burckhard asked for a motion

Senator Bekkedahl moved a do pass recommendation on SB 2371 as amended
Senator Grabinger 2nd
Roll call vote 6 Yea, 0 No, 0 Absent
Carrier: Senator Burckhard

February 13, 2015

2/13/15
JMR

PROPOSED AMENDMENTS TO SENATE BILL NO. 2371

Page 1, line 8, replace "with the authority to" with "for the limited purpose of adjudicating a violation of a noncriminal city ordinance or noncriminal city code. The administrative board or committee may"

Page 1, line 8, remove "administrative"

Page 1, line 9, after "including" insert "issuing"

Page 1, line 9, replace "or" with "and"

Page 1, line 9, after "revocation" insert "of a permit or license. A decision by the administrative board or committee is subject to appeal as provided by ordinance"

Renumber accordingly

Date: 2.12.15
Roll Call Vote: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2371

Senate Political Subdivisions Committee

Subcommittee

Amendment LC# or Description: Administrative Boards amendment

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

Other Actions: Reconsider _____

Motion Made By Sp. Anderson Seconded By Sen. Bekkedahl

Senators	Yes	No	Senators	Yes	No
Chairman Burckhard	X				
Senator Anderson	X		Senator Dotzenrod	X	
Senator Bekkedahl	X		Senator Grabinger	X	
Senator Judy Lee	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

**2015 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2371**

Senate Political Subdivisions _____ Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Senator Bekkedahl Seconded By Senator Grabinger

Senators	Yes	No	Senators	Yes	No
Chairman Burckhard	x				
Senator Anderson	x		Senator Dotzenrod	x	
Senator Bekkedahl	x		Senator Grabinger	x	
Senator Judy Lee	x				

Total (Yes) 4 No 0

Absent 0

Floor Assignment Senator Burckhard

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

REPORT OF STANDING COMMITTEE

SB 2371: Political Subdivisions Committee (Sen. Burckhard, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2371 was placed on the Sixth order on the calendar.

Page 1, line 8, replace "with the authority to" with "for the limited purpose of adjudicating a violation of a noncriminal city ordinance or noncriminal city code. The administrative board or committee may"

Page 1, line 8, remove "administrative"

Page 1, line 9, after "including" insert "issuing"

Page 1, line 9, replace "or" with "and"

Page 1, line 9, after "revocation" insert "of a permit or license. A decision by the administrative board or committee is subject to appeal as provided by ordinance"

Renumber accordingly

2015 HOUSE POLITICAL SUBDIVISIONS

SB 2371

2015 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Prairie Room, State Capitol

SB 2371
3/13/2015
24798

- Subcommittee
 Conference Committee

Amanda Muscha

Explanation or reason for introduction of bill/resolution:

Relating to the authority of a city council or board of commissioners to establish administrative boards

Minutes:

Testimony 1

Chairman Klemin: Opened hearing on SB 2371

Senator Laffen: We introduced this bill to create an administrative hearing level for cities to dedicate planning and zoning issues so they don't have to go through the court system. Many do this now but it is not in law. It would save money

Representative Maragos: Are you aware of anyone who has objected in those proceedings and went to a higher authority and appealed? This is already taking place and you want it codified?

Senator Laffen: I don't know if there has been a case like that.

Chairman Klemin: There would be that there may be some administrative boards that have been established but I would guess they don't impose fines; they may recommend something to the city council or commission.

Senator Laffen: Yes

Representative Koppelman: At the end it says a decision by the administrative board or committee is subject to appeal as provided by the ordinance. What if there is no ordinance providing a method for appeal?

Senator Laffen: That would be a good question for the Grand Forks city attorney.

Howard Swanson: Testimony 1

Representative Koppelman: What if they don't have an ordinance that would allow for an appeal?

Howard: It would go to a district court under chapter 28 administer of appeals.

Representative Koppelman: Isn't that a costly procedure? You talked about the convenience of doing this without a lot of cost and I don't think a municipal is a very inconvenient or costly process for most. Now you're say they can set up a board of anyone look at a grievance or violation of an ordinance and judicate it, and unless they provide at some other means now that person who is aggrieved has to go to district court, hire a lawyer, spend money. Couldn't this have a reverse effect?

Howard: There may be that occasion where it would occur but most likely not. Currently if you are sighted in a municipal court, unless you remove it to district court, you have no appeal at all from the municipal court. This actually gives the property owner the authority. Depending on the issue, not all of them are going to warrant the additional appeal rights. This gives more rights to the property owners. As far as having lay people on the board- if it is a plumbing issue I would rather have a board of plumbers discussing the plumbing violation rather than having a lawyer and municipal judge. The plumbers obviously have more knowledge on the subject.

Representative Koppelman: Would you have a different board for each issue?

Howard: That is how it works right now. Most will and they already exist. Where we probably don't see municipalities is a general review board that can address things like a barking dog or long grass issue.

Representative Koppelman: Do you see this as a blurring of lines between the judicial function and the administrative? Or the legislative function if it is a commission or council making this appointment?

Howard: I don't. It happens in all the time and in your state agencies where they have the authority to make judicative decisions. There is nothing wrong with having lay people make those decisions. That would be to suggest that the ND legislature would have to have professional legislatures.

Representative Koppelman: We are elected.

Howard: And that is why they included the specific provision that that appeal can go to the governing board.

Representative Koppelman: You're saying it is ok to fine to have boards dealing with specifics and they have the authority to fine people and that's not depriving them of their due process that is required constitutionally to deprive people of life, liberty, and property? It's fine to say we will get this group of people to judicate your case because it's this and we appoint this board to do this. You don't see any issues with that?

Howard: No. As long as the property has notice and opportunity to appear and present evidence the due process requirements are met.

Chairman Klemin: There is another section of law that deals with appeals from committees or counties. Do you recall it?

Howard: It is in chapter 28. It is appeals from political subdivisions and they define within that section boards of this nature as making a final decision from which an appeal can be taken.

Chairman Klemin: What would be, instead of saying it as provided by ordinance as it does in this bill, Representative Koppelman's point is well taken- what if you don't have an ordinance and so forth? It would seem the appeal should go to the governing body of the municipality whether city council or authoritative city commissioners.

Howard: The amendments I sent to the senate, I had incorporated a reference to the chapter 28 provision as far as including a specific appeal right to a city commission or city council as a governing board, I think that is appropriate. I don't think that it was disclosed by the discussion or amendments by the senate.

Chairman Klemin: In that then we wouldn't have to have an ordinance. That is where the appeal would go from the board to the entity that created the board.

Howard: I agree.

Representative Anderson: In your experience is this pretty effective?

Howard: We see people with the same issue in the municipal court over and over. At some point the municipal court can't do anything more. The intent of having lay people may be able to cut through some of those layers of communication as possibility to get the issues resolved that don't lend itself the available in municipal court. The states that do allow it do it effectively and the issues of problems and concerns haven't existed. The ND Supreme Court didn't render its opinion they only said there was no provision for it at the time.

Representative Maragos: Would you like to take up the bill chairman?

Chairman Klemin: I have an amendment I think we should consider on line 12. I guess the amendment I am thinking is instead of having the appeal go as provided by ordinance that the appeal would be instead to a city council or the board of city commissioners.

Representative Maragos: Governing authority

Chairman Klemin: I don't think we need to do that. Maybe it should say the governing authority of the municipality because we are dealing with powers of municipalities. On line 12 to subject to appeal to the governing body of the municipality-

Representative Maragos: I would move that amendment

Representative Zubke: Second

A Voice Vote Was Taken: Motion carries

Representative Hatlestad: Do pass as amended

Representative Zubke: Second

Representative Beadle: I think I found the section that was referenced. Chapter 28-34-01 (Local Governing Body Decision Appeal)

Chairman Klemin: They have the appeal the district court.

Representative Beadle: Correct

Chairman Klemin: So that stands whether we say it in the bill or not.

Representative Beadle: Correct

Representative Hatlestad: Listening to what Representative Beadle said, then this administrative board, to the city commission, to the court would be the procedure.

Chairman Klemin: Yes

A Roll Call Vote Was Taken: Yes 11, No 2, Absent 1 (Strinden)

Motion carries

Representative Oversen will carry the bill

March 13, 2015

JS
3-13-15

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2371

Page 1, line 9, replace "The" with "An"

Page 1, line 11, replace "the" with "an"

Page 1, line 12, replace "as provided by ordinance" with "to the governing body of the
municipality"

Renumber accordingly

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2371**

House Political Subdivisions Committee

Subcommittee Conference Committee

Amendment LC# or Description: Klemin amendment

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Other Actions: Reconsider _____

Motion Made By maragos Seconded By Zubke

Representative	Yes	No	Representative	Yes	No
Chairman Lawrence R. Klemin			Rep. Pamela Anderson		
Vice Chair Patrick R. Hatlestad			Rep. Jerry Kelsh		
Rep. Thomas Beadle			Rep. Kylie Oversen		
Rep. Rich S. Becker			Rep. Marie Strinden		
Rep. Matthew M. Klein					
Rep. Kim Koppelman					
Rep. William E. Kretschmar					
Rep. Andrew G. Maragos					
Rep. Nathan Toman					
Rep. Denton Zubke					

*voice vote
 motion carries*

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Date: 3/13/2015
 Roll Call Vote #: 2

2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2371

House Political Subdivisions Committee

Subcommittee Conference Committee

Amendment LC# or Description: 15.1020.02001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations

Other Actions: Reconsider _____

Motion Made By Hatlestad Seconded By Zubke

Representative	Yes	No	Representative	Yes	No
Chairman Lawrence R. Klemin	X		Rep. Pamela Anderson	X	
Vice Chair Patrick R. Hatlestad	X		Rep. Jerry Kelsh	X	
Rep. Thomas Beadle	X		Rep. Kylie Oversen	X	
Rep. Rich S. Becker	X		Rep. Marie Strinden		
Rep. Matthew M. Klein	X				
Rep. Kim Koppelman		X			
Rep. William E. Kretschmar	X				
Rep. Andrew G. Maragos	X				
Rep. Nathan Toman		X			
Rep. Denton Zubke	X				

Total (Yes) 11 No 2

Absent 1 (Strinden)

Floor Assignment Oversen

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

motion carried

REPORT OF STANDING COMMITTEE

SB 2371, as engrossed: Political Subdivisions Committee (Rep. Klemin, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2371 was placed on the Sixth order on the calendar.

Page 1, line 9, replace "The" with "An"

Page 1, line 11, replace "the" with "an"

Page 1, line 12, replace "as provided by ordinance" with "to the governing body of the municipality"

Renumber accordingly

2015 TESTIMONY

SB 2371

SB 2371
2.6.15
#1

**BEFORE THE 64TH LEGISLATIVE ASSEMBLY
FOR THE STATE OF NORTH DAKOTA
SENATE BILL 2371
SENATE POLITICAL SUBDIVISION COMMITTEE**

My name is Howard Swanson and I appear before this Committee to offer testimony in support of Senate Bill 2371. I am an attorney from Grand Forks with more than 30 years of experience in municipal law. I hold the designation as a Fellow from the International Municipal Lawyers Association.

Purpose of SB 2371

The intent of Senate Bill 2371 is to grant cities the authority to establish administrative boards for the purposes of adjudicating alleged noncriminal ordinance violations. The North Dakota Supreme Court held in *City of Fargo v. Malme*, 2007 ND 137, 737 N.W.2d 390 that there was no legislative authorization for a city to establish an administrative enforcement board to adjudicate noncriminal zoning violations. The Court went on to hold that such noncriminal city code violations may only be adjudicated through a proceeding in municipal court or, upon appeal, in district court.

Fargo established an administrative board consisting of lay members to consider alleged violations of certain noncriminal municipal code violations rather than enforcing the violations through municipal court. As a result of the Supreme Court's decision in this case, cities cannot utilize the more informal adjudication model of administrative boards. Senate Bill 2371 would expressly grant cities the authority to establish administrative boards for the purposes of adjudicating noncriminal ordinance violations and, where appropriate, impose fines, suspend licenses or permits, or revoke licenses or permits.

Administrative boards are routinely used by municipalities throughout the United States for processing many types of noncriminal ordinance violations including zoning, building codes, housing codes, long grass and weeds, licensing, etc. The administrative adjudication is considered to be a more informal resolution of an ordinance violation than judicial proceedings.

Advantages of adjudication through administrative boards.

There are numerous advantages to allowing a city to utilize administrative boards for alleged ordinance violations rather than proceeding in a more formal judicial approach in municipal court. Those advantages include:

- use of board members with more knowledge or experience in a particular field or subject
- the use of lay people in making decisions in local government matters
- administrative boards are often less intimidating to the public to participate in
- less formal process than municipal court
- formalized rules do not apply such as rules of evidence, rules of criminal procedure, etc.
- lawyers not necessary

SB2371
2.6.15
1.0

- no judicial involvement
- no judicial record
- quicker and less expensive adjudication
- maintains appeal rights to district court

What SB2371 does not do.

Senate Bill 2371 does not expand any jurisdiction or authority to create new offenses. Nor does the Bill grant a municipality the authority to impose higher fines than currently allowed under state law. The Bill will not eliminate any appeal rights.

Request for Do Pass Recommendation.

The use of an administrative board for the adjudication of noncriminal municipal ordinance violations is advantageous for both the public and the political subdivision. The passage of Senate Bill 2371 would provide convenience, informality, efficiency and economies that do not exist when ordinance violations need to be adjudicated in a court setting. I am respectfully requesting that this Committee pass this Bill to the Senate floor with a do pass recommendation.


Howard D. Swanson
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Grand Forks, ND 58208-2909
Telephone No. 701-772-3407
hswanson@swlawltd.com

SB 2371
2.12.15
administrative
boards
Amendment
#1

SB 2371

A BILL for an Act to create and enact subsection 30 to section 40-05-02 of the North Dakota Century Code, relating to the authority of a city council or board of city commissioners to establish administrative boards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Subsection 30 to section 40-05-02 of the North Dakota Century Code is created and enacted as follows:

30. Establishment of administrative boards. To establish administrative boards or committees for the limited purpose of adjudicating violations of noncriminal city ordinances and codes. The administrative boards or committees shall impose fines or other noncriminal penalties, including issuing orders of suspension and revocation of permits or licenses. Decisions by the administrative board or committee shall be subject to appeal as provided by ordinance.



SB 2371
3/13/2015
1.1

CITY OF GRAND FORKS

P.O. BOX 12909
GRAND FORKS, NORTH DAKOTA 58208-2909

OFFICE OF CITY ATTORNEY

**BEFORE THE 64TH LEGISLATIVE ASSEMBLY
FOR THE STATE OF NORTH DAKOTA
SENATE BILL 2371
HOUSE POLITICAL SUBDIVISIONS COMMITTEE**

My name is Howard Swanson and I appear before this Committee to offer testimony in support of Senate Bill 2371. I am the Grand Forks City Attorney and have more than 30 years of experience in municipal law.

Purpose of SB 2371

The intent of Senate Bill 2371 is to grant cities the authority to establish administrative boards for the purposes of adjudicating alleged noncriminal ordinance violations. The North Dakota Supreme Court held in *City of Fargo v. Malme*, 2007 ND 137, 737 N.W.2d 390 that there was no legislative authorization for a city to establish an administrative enforcement board to adjudicate noncriminal zoning violations. The Court went on to hold that such noncriminal city code violations may only be adjudicated through a proceeding in municipal court or, upon appeal, in district court. Fargo established an administrative board consisting of lay members to consider alleged violations of certain noncriminal municipal code violations rather than enforcing the violations through municipal court. As a result of the Supreme Court's decision in this case, cities cannot utilize the more informal adjudication model of administrative boards. Senate Bill 2371 would expressly grant cities the authority to establish administrative boards for the purposes of adjudicating noncriminal ordinance violations and, where appropriate, impose fines, suspend licenses or permits, or revoke licenses or permits.

Administrative boards are routinely used by municipalities throughout the United States for processing many types of noncriminal ordinance violations including zoning, building codes, housing codes, long grass and weeds, licensing, etc. The administrative adjudication is considered to be a more informal resolution of an ordinance violation than judicial proceedings.

Advantages of adjudication through administrative boards.

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- formalized rules do not apply such as rules of evidence, rules of criminal procedure, etc.
- lawyers not necessary
- no judicial involvement
- no judicial record
- quicker and less expensive adjudication
- maintains appeal rights to district court

What SB2371 does not do.

Senate Bill 2371 does not expand any jurisdiction or authority to create new offenses. Nor does the Bill grant a municipality the authority to impose higher fines than currently allowed under state law. The Bill will not eliminate any appeal rights. This Bill does not grant the administrative board with any authority to adopt new ordinances or codes or establish new penalties or fines. The board can only act in such a manner as authorized by the governing body in adjudicating violations.

Senate Approval.

The Senate unanimously passed Senate Bill 2371 with amendments made by the Senate Political Subdivision Committee. There was very strong support for the Bill in the Senate because of the numerous advantages of allowing administrative boards to adjudicate noncriminal code violations rather than requiring adjudication in a formal court hearing or trial.

Request for Do Pass Recommendation.

The use of an administrative board for the adjudication of noncriminal municipal ordinance violations is advantageous for both the public and the political subdivision. The passage of Senate Bill 2371 would provide convenience, informality, efficiency and economies that do not exist currently when ordinance violations need to be adjudicated in a trial court setting. I am respectfully requesting that this Committee pass this Bill to the House floor with a do pass recommendation.

Howard D. Swanson, City Attorney
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