

1999 SENATE POLITICAL SUBDIVISIONS

SB 2397


1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2397

Senate Political Subdivisions Committee

Conference Committee

Hearing Date February 5, 1999

| Tape Number | Side A | Side B | Meter # |
|--|--------|--------|-------------|
| 1 | | x | 3339 to end |
| 2 | x | | 0 to 600 |
| Committee Clerk Signature  | | | |

Minutes:

SENATOR LEE: open hearing on SB2397

SENATOR SCHOBINGER: introduction of SB2397

SENATOR WATNE: private property rights and the understanding of this bill, consult with the government for all zoning regulations under this bill and a economic impact

SENATOR SCHOBINGER: create uniformity among counties for the zoning

SENATOR WATNE: current zoning laws are not uniform

SENATOR SCHOBINGER: not throughout the state

BRIAN KRAMER: support for this bill, government is responsible to the state and response to

SENATOR WATNE: question: agriculture is under these same rules.

SENATOR NELSON: define state agencies, does this or does this not include higher ed.

BRIAN KRAMER: not certain

SENATOR KELSH: fiscal note for this bill and the economic impact to the agricultural industry and how to rectify this situation

BRIAN KRAMER: have not seen fiscal note, regulation requires money and bill looks at alternative ways of saving money to keep the costs down

MIKE MULLEN: dept. of health is neutral to this position: see testimony

SENATOR LEE: questions

LYLE WITHAM: see testimony regarding the 1995 legislative law and the bill applies to environmental impact of a Minnesota study. Law regulation with regards to this study

SENATOR LEE: questions

CONNIE SPRYSNATICE: written words from the mayor of Fargo and this bill, see testimony, already part of the process, every regulation with this zoning would be considered an unfunded mandate. Subsection G and the expiration of this bill at the end of three years

SENATOR LEE: any questions

SENATOR KELSH: all lands in state required to be zoned

CONNIE SPRYSNATICE: all township zones are required to be zoned, refer these questions to the experts

CARL HAWKENSTED: opposed to SB2397 because of economic development and because the bill is so broad. Stream lining government

SENATOR LYSON: state ordinances verse city ordinances

CARL HAWKENSTED: state gives the opportunity to a township for zoning authority but the township may surrender this authority to the County to enact the regulations and what the state does

DISCUSSION WITH ATTORNEY GENERAL HEITCAMP

MARK JOHNSON: opposed to the current bill, needs to be amended for snow removal and the destruction of private property

SENATOR LEE: any questions

BLAIN NORDWELL: policies and actions, dept. of human services and licensing and setting rates and the requirement of these actions. Economic impact of this and removal of license from the bill.

DALE EBERLY: neutral position on this bill and it's defining a state agency and loan policies for the states and extra costs associated with this.

BRIAN HOIME: let department of economic development do this, will be done twice, expiration date of the bill and the conflict with previous law. creating a statewide zoning authority. presumability clause at the end of three years.

SENATOR LEE: any further comment on SB2387

MOTION: close the hearing

MOTION: do not pass by SENATOR NELSON:

MOTION: seconded by SENATOR KELSH:

BILL TO BE CARRIED ON THE FLOOR BY SENATOR LEE:

FISCAL NOTE

FEB 3 - 1999

(Return original and 10 copies)

Bill/Resolution No.: SB 2397 Amendment to: _____

Requested by Legislative Council Date of Request: 1-27-99

- 1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts.

Narrative:

The fiscal impact to the state will be based on the clarification of several issues related to the act. To begin to assist in support of the implementation, Economic Development & Finance has estimated \$161,800 will need to be added to the agency budget in the form of salary/wage support for staff and operating expenses. (See attached narrative.) Other public sector costs inherent in complying with this act have not been determined.

- 2. State fiscal effect in dollar amounts:

| | 1997-99 Biennium | | 1999-2001 Biennium | | 2001-03 Biennium | |
|---------------|------------------|---------------|--------------------|---------------|------------------|---------------|
| | General Fund | Special Funds | General Fund | Special Funds | General Fund | Special Funds |
| Revenues: | N.A. | N.A. | N.A. | N.A. | N.A. | N.A. |
| Expenditures: | N.A. | N.A. | N.A. | N.A. | N.A. | N.A. |

- 3. What, if any, is the effect of this measure on the appropriation for your agency or department:

- a. For rest of 1997-99 biennium: Not available
- b. For the 1999-2001 biennium: Estimate \$161,800 (see narrative)
- c. For the 2001-03 biennium: Based on compliance issues by public sector

- 4. County, City, and School District fiscal effect in dollar amounts:

| 1997-99 Biennium | | | 1999-2001 Biennium | | | 2001-03 Biennium | | |
|------------------|--------|------------------|--------------------|--------|------------------|------------------|--------|------------------|
| Counties | Cities | School Districts | Counties | Cities | School Districts | Counties | Cities | School Districts |

Unknown for all of above.

If additional space is needed, attach a supplemental sheet.

Signed Randy Schwartz

Typed Name Randy Schwartz

Department Economic Development & Finance

Phone Number 328-5314

Date Prepared: 1-2-99

Additional Narrative to Fiscal Note

Bill Resolution No: SB 2397

Section One

To more accurately assess the fiscal impact of this act, it would be beneficial for the legislature to clarify:

- (1) What are the expectations of all of the agencies and political subdivisions to comply with this act? Is this act targeted to certain agencies – only those that may impact the use of private property? What happens if there is non-compliance with this act? Is proposed legislation – regardless of source – subject to this act? If so – who will bear costs for economic impact analysis?
- (2) What is the timeline for the implementation of the act?
- (3) Who will economic development and finance consult with to assist in the appropriate implementation?

The act, as stated, has very broad implications to state agencies and political subdivisions. Too often, discussion surrounding the development and implementation of policies, rules and laws only focuses on what the fiscal impact may be in terms of state and/or local revenues and expenditures (example – the fiscal note form). On appearance, this act seeks to broaden the development and implementation of policies, rules and laws to identify what impacts these public policy issues have on the state's economic viability.

It is an issue that the department of economic development and finance has been concerned about for some time. In addition to affects of public policy on the economy, we have also been very concerned about identifying the return on public sector investment in economic development projects. The agency has studied a number of models can be used to assess policy impacts and economic development. The agency has had discussions with other state agencies (i.e. OMB, Tax Department, Job Service, Bank of North Dakota) about using impact models.

Not all models are designed to do the same thing. Arthur Andersen has developed a fiscal impact model that assesses the return on public sector investment in economic development projects. It provides information on new revenues, new jobs, new business growth but also identifies any associated costs of development (i.e. housing, transportation, education), for state and local government (including counties, cities, schools).

On the other hand there are sophisticated models designed to do economic forecasting and simulation such as Regional Economic Models, Inc. (REMI), which can be used in economic development, forecasting/planning, transportation, environmental policies, energy and natural resource management and public policy planning. REMI could also utilize the general fund/economic forecasting information currently contracted by the state (OMB) from WEFA.

These commercial models range in price from several thousand dollars (Arthur Andersen) to tens of thousands of dollars (REMI). Some states with significant economic planning and public policy analysis efforts have developed custom models.

In the reorganization of the agency, a research position (yet to be filled) has been identified that would track competitor activity, compile best practices and conduct some policy analysis to benefit decision makers. That research effort would interface with another agency research effort including state, regional and community assessment. As a result, beginning work on impact analysis would be in reach – should the agency continue forward as proposed in it's budget to the Governor. However the Governor's proposed budget reduced salaries \$122,449 and transferred 25% of agency operating expenses to a grant line to support external service providers.

If the Governor's budget for the agency's is revised to accommodate developing the capacities at the agency to assist with the implementation of this act, we estimate the state fiscal impact to be \$161,800 for the biennium. That is assuming a relative light workload to begin with in the implementation of this act and that the agency can complete it's reorganization over the next several months. This amount would allow the agency to begin the work outlined in the act by reinstating salary/wages needed to support one research specialist IV, (\$95,000), an intern (\$16,800) and related operating expenses (\$50,000).

REPORT OF STANDING COMMITTEE (410)
February 5, 1999 1:30 p.m.

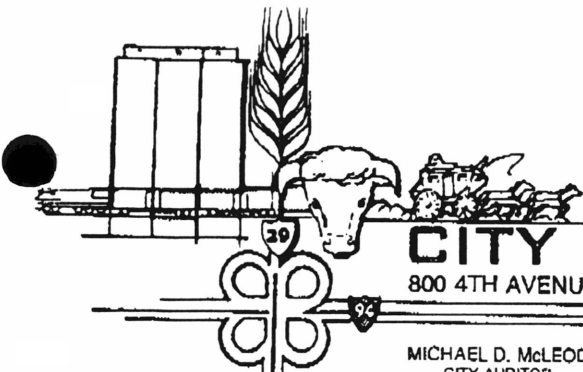
Module No: SR-24-2072
Carrier: Lee
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2397: Political Subdivisions Committee (Sen. Lee, Chairman) recommends DO NOT PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2397 was placed on the Eleventh order on the calendar.

1999 TESTIMONY

SB 2397



Connie Spitz

CITY OF WEST FARGO
800 4TH AVENUE EAST • WEST FARGO, NORTH DAKOTA 58078

MICHAEL D. McLEOD
CITY AUDITOR
282-3843

LARRY M. WEIL
PLANNING DIRECTOR
282-3837

WANDA WILCOX
CITY ASSESSOR
282-3836

TESTIMONY ON SB 2397

By: Mayor David Stedman
City of West Fargo, North Dakota

It is difficult to determine the full impact and cost that this takings bill would have on cities, counties and townships, as the bill is not specific on the areas of application. It appears that there would be a tremendous impact on local political subdivisions' involvement with transportation, land use, public facility and economic development issues. The legislation could be viewed as an unfunded State mandate on political subdivisions. There should be a fiscal note attached to this bill which estimates the cost to local governments.

The people of North Dakota have already determined that property rights should be protected through the adoptions of the State Constitution as well as provisions within the North Dakota Century Code. NDCC Sections 40-47 and 40-48 recognize the need for cities, counties and townships to be granted police powers to regulate the development of lands for the general health and welfare of the people living in these areas. Governments, businesses, and residential property owners have all come to depend upon land use regulations to protect their investments. Zoning in municipalities filters out incompatible land uses which has a positive effect on property values. Zoning has been established in North Dakota for a long time and has been a well-accepted method of protecting the rights of property owners. Without the ability to zone, property owners would have no protection from harmful developments on neighboring properties. The well-being of a neighbor or the entire community could easily be jeopardized without the ability to zone. The same statutes that provide for the ability to regulate development already provide for adequate notice to be given to affected parties.

The legislation proposed creates additional procedures to protect property rights and economic development when existing laws and procedures already protect these interests adequately. It is our belief that the proposed legislation would create increased bureaucracy on local and state government levels, would add substantial time and cost to property owners' and developers' projects, as well as to taxpayers to pay for additional staff to carry out the provisions of the law, would impede residential and commercial development, would stifle local and state economic development goals, and would undermine the quality of development seen in political subdivisions throughout the State. We would urge the State Legislature to defeat this bill.



OFFICE OF THE MAYOR
Bruce W. Furness

February 4, 1999

Connie Spry.

Senator Judy Lee, Chairman
Senate Political Subdivisions Committee
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Senator Lee and Committee Members,

I am writing to oppose Senate Bill 2397 which your committee will be considering. The hearing is scheduled for February 5, 1999.

This bill requires the preparation of an Economic Impact Report for every law that might impose economic conditions on property owners. This would essentially require cities to undertake extensive report writing and paperwork every time a Fire Code, Health Code, Building Code, or Zoning Ordinance were amended. The bill goes on to require that the reports be prepared again every three years even if ordinances are unchanged.

Political subdivisions already consider the impacts of all ordinances on public safety and the welfare of the community. These considerations include how the ordinances will solve problems, as well as the economic and social impacts. A state law to require this consideration and create countless Economic Impact Reports for the state review is a waste of time and money.

I urge you to not pass such a bill. If you feel the need for these reports for all state legislation, at least do not place this costly unfunded mandate on the political subdivisions of this state.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Bruce W. Furness".

Bruce W. Furness
Mayor

BWF:jl
ffsb2397



NORTH DAKOTA
DEPARTMENT OF HEALTH

600 E. Boulevard Avenue
Bismarck, ND 58505-0200

OFFICE OF
STATE HEALTH OFFICER
701-328-2372
FAX 701-328-4727

December 4, 1998

Mr. John Walstad

Code Revisor
North Dakota Legislative Council
600 East Boulevard Avenue
Bismarck, ND 58505-0360

Dear Mr. Walstad:

In accordance with N.D.C.C. subsection 28-32-02, enclosed is the public notice concerning the proposed repeal of the following North Dakota Administrative Code chapters:

- Chapter 33-02-01. Performance of Standard Serological Tests for Syphilis.
- Chapter 33-03-01. Free Standing Outpatient Facility—Including Surgical Facilities—Excluding Physician Clinic.
- Chapter 33-03-03. Maintenance and Operation of Public Water Works Systems, Swimming Pools, and Sewerage Systems.
- Chapter 33-03-04. Quality of Water.
- Chapter 33-03-05. School Water and Sewerage Systems.
- Chapter 33-03-06. Sale of Bulk and Bottled Water Supplies Intended for Domestic Purposes.
- Chapter 33-03-07. Care and Disposal of Refuse and Garbage.
- Chapter 33-03-16. Construction and Location of Toilets.
- Chapter 33-03-17. Temporary Work Camps.
- Chapter 33-03-18. Milk Sanitation.
- Chapter 33-03-19. Food and Drink Sanitation.
- Chapter 33-03-20. Minimum Requirements for Sanitation in Places of Employment.
- Chapter 33-03-21. Minimum Requirements for Sanitation in Camps.
- Chapter 33-03-22. Migrant Labor Housing.
- Chapter 33-06-06. Food Handlers.
- Chapter 33-31-01. Rules Pertaining to Foods, Drugs, Cosmetics.
- Chapter 33-31-02. Definitions and Standards for Food Products.

Sincerely,


Murray G. Sagsveen
State Health Officer

MGS:lrr

Enc.

cc: Robert Barnett
Darleen Bartz
Alana Knudson-Buresh, Ph.D.
Francis Schwindt

Testimony
on
SB 2397, Relating to the Costs of Regulation
before the
Senate Political Subdivisions Committee
by
Michael J. Mullen, State Department of Health

February 5, 1999

Good morning Madame Chair and members of the Political Subdivisions Committee. I am Michael J. Mullen with the Department of Health and I am pleased to provide information which may assist the Committee in its consideration of SB 2397.

First, I should note that there are many concepts and guidelines in SB 2397 which are consistent with the goals and practices of the Department of Health. I have attached to this testimony an informal guidance document which has been used by a number of sections and divisions within the Department in connection with preparation of legislation for the 1999 Legislative Assembly. It requires, among other things, an analysis of proposed legislation to determine its economic impact, whether it would impose any unfunded mandates, and what alternatives were considered in connection with the proposed legislation. This "Legislative Rationale" guidance document is based on a "proposed rule analysis" used by a federal Department of Interior.

Second, I would like to comment on section 2(g) of the bill which provides that "all rules imposing any economic consequences on the taxpayer or those entities regulated or impacted [by a rule] expire at the end of three years unless renewed after being reviewed in a manner set forth in this Act."

We believe that this requirement would impose a significant burden in that it appears to require complete re-promulgation of all rules -- those that are not controversial, as well as those that are burdensome, outdated, or inappropriate.

The environmental regulations of the Department of Health comprise some 30 chapters, and some of these chapters are hundreds of pages long. The Department's concern is that instead of being authorized to focus on the rules that should be repealed or amended, all rules must be reissued after a notice, hearing, evaluation of comments, etc. We do not dismiss the serious concern of the sponsors of this legislation -- that some rules are unnecessarily burdensome or inappropriate, and that in some cases better alternatives could be utilized. The question is how can we achieve that goal of the Legislative Assembly: to channel the work of executive branch agencies toward more intelligent rules, and avoid unnecessarily burdensome rules.

Third, we take seriously its responsibility to repeal or amend outdated rules. Attached to my testimony is a list of 17 chapters of Department of Health rules that that the Department has recommended be repealed.

* * *

Madame Chair that completes my testimony. I would be pleased to answer any questions that you or other members of the Committee may have regarding this testimony.

**North Dakota Department of Health
Rationale for 1999 Legislation**

I. Summary

The _____ Division, of the _____ Section proposes to amend the Century Code to [*Insert a brief summary of what action is being taken.*]. We are amending [*or revising or adding*] [**or we support (or oppose)** _____ **[organizations] in their effort to enact**] this law because [*Insert a brief summary of why we are taking this action. Do not include citations to the Century Code. If a court action caused the revision, do not use legal citations.*]. This bill will [*Describe the intended effect of the proposed law. In this discussion, refer to the relevant part of the Century Code by its popular name if there is one. Do not use qualifications, exceptions or specific details of the proposed law. Be brief.*].

II. Background

[Use clear language to discuss the historical and present situation necessitating the proposed bill. Include a (brief) statement about the general statutory authority of the Department that is the basis for this bill, any court cases that apply, and prior proposed legislation on this issue, if any, and how they relate to this proposal.]

III. Discussion of Proposed Legislation

[State what the bill would do and why we are proposing the bill. Include a specific, section-by-section analysis of how the proposed bill impacts our customers (physicians, nurses, hospitals, businesses, schools, local public health units, and the general public) and how it changes existing law. For example, if a particular section is being deleted because it duplicates provisions from a statute or another regulation, you should cite the duplicated Century Code or Administrative Rule.

You may also want to address the following:

Why this bill and its provisions is the best way of addressing the issues;

What other policy alternatives were considered and why they were rejected;

If this bill will impose "significant" regulatory requirements (more than \$50,000 per year), the estimated cost and benefits of those requirements [see: §28-32-02.2];

Any public participation (including comments from professional organizations and trade associations) that occurred in the development of the proposed law; and

Any coordination that has taken place between the Department and other government entities, such as other state agencies, local agencies, and tribal governments.]

IV. Interim Committee Bill; Sponsors

This bill [*was considered and approved (or is expected to be approved)*] by the Interim Committee on _____. Or state: "This is not an Interim Committee bill, but the expected sponsors of the bill are _____ (if they are known)."

V. Prior Legislation

[If a similar bill was included in a recent prior legislative session, give the votes in each Committee, and the House and Senate on the bill; as well as the principal organizations and reasons for the opposition to the bill. Also, if the bill has been modified, explain how those changes have addressed the reasons for the opposition to the prior bill.]

VI. Fiscal Note

[Indicate if a "fiscal note" is required for this bill; and, if one is required, provide your best "back of the envelope" estimate (that you can now make) of the biennial cost of this bill and how much of the cost will be "General Fund" appropriations. Include your assumptions and attach a worksheet showing your calculations.]

VII. Unfunded Mandates

[Explain whether the proposed bill would impose any "significant unfunded mandate" on units of local government—an unfunded mandate that has an aggregate annual cost of \$50,000 dollars, or more (or an average of more than \$1,000 per county) --, and if so, the justification for this action.] If there are no mandates, then state: "None."

VI. Local Flexibility; State Uniformity

[If the proposed bill relates to the structure and role of local public health units, or other local government agencies, and will have direct substantial, and significant effects on their authority, you must prepare a "Local Flexibility Assessment" explaining the justification for "uniformity" and "preemption" (if local enforcement is preempted) in addressing this issue.] If no uniformity is expressly required, then state: "None."

VII. Author.

The principal author of this bill is [Insert name, Section, Division, and phone number of the author. You may acknowledge assistance from other people, for example, the assistant Attorney General assigned to the Department, the Section Chief, Division Director, or others.]

Source: based on the U.S. Bureau of Land Management – Model Preamble for a Proposed Rule [as of May 11, 1998]; used as an example in the Plain Language Action Network www.plainlanuage.gov.

MJMmjm 7/23/98 4:40 PM