

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

11886

2005 HOUSE POLITICAL SUBDIVISIONS

HB 1186

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1186

House Political Subdivisions Committee

Conference Committee

Hearing Date January 13, 2005

Tape Number	Side A	Side B	Meter #
1		x	8.5 to end
2	x		0.1 to 9.3
3	x		0.1 to 2.4

Committee Clerk Signature



Minutes: **Rep. Devlin, Chairman** opened the hearing on HB 1186 A Bill for an Act to amend and reenact section 37-17.1-10 of the North Dakota Century Code, relating to violation of a local burning ban; and to provide a penalty.

Rep. Mueller representing District 24 appeared as prime sponsor on HB 1186. As you know the Governor has the authority to issue restrictions and also through the court processes to seek penalties for violations. The law also currently allows other jurisdiction -- counties and other political subdivisions -- to also impose those restriction and bans. This bill talks about imposing a penalty when that local jurisdiction choose to restrict open burning but they don't have the authority to do that. That's what this bill is about. the underlined parts do exactly what I am suggesting needs to be done here. I will briefly give the 'why' for this bill. Reading from the first paragraph of an Attorney General's opinion dated December 1, 2003. "The Grant County commission may declare a local emergency ban for open fires in the county and may find a

person in woeful violation of the ban guilty of an infraction. It is my opinion however, that Grant County Commissioning as part of the emergency management plan under chapter 37- 17.1 May declare an emergency ban on open fire; however, that law does not provide Grant County, in this case, with the authority to impose an infraction for violating that ban." Again that is what this bill is about.

Rep. Zaiser (11.0) Is it a particular problem where you live? And, are familiar with it ?

Rep. Mueller : I think there are some folks back in my area -- they are from the Sanborn Fire Department who braved the weather. They will be testifying later. They will address that but the short answer is there were two major fires in that area in the summer before last.

Rep. N. Johnson: (11.7) What kinds of fire and what kinds of infractions are we talking about?

Rep. Mueller : You are not talking to a lawyer but there are places in the code that define infractions and the recourse for the various infractions. There are some definitions in the code. I don't have them today. Rep. Kretschmar says \$500 -- will that do it for you. There are, I think, some other recourses that allow to some expense of putting that fire out to be recovered. That is important to those that want this bill.

Rep. Ekstrom : (12.6) We have been talking about 'willful' but what if they didn't hear of the ban?

Rep. Mueller : I've discussed that with the Fire Marshall within the last few days. It is going to be incumbent upon the jurisdictions to make all efforts and to follow the rules and regulations for getting the notices out. Of course, there is always the outsiders like hunters who may not know our local radio stations, papers and the like.

Rep. Koppelman : (13.6) The Attorney General's opinion addresses the counties and their authority -- what about the cities?

Rep. Mueller : As I read it , it says political subdivisions --- in my opinion that includes cities.

Rep. Koppelman : (14.7) Regarding this language, line 3 of number 3 -- "citation or criminal complaint or information to the District Clerk" --- what does that mean?

Rep. Mueller : ? Ask someone smarter than me.

Rep. Koppelman : Then on line 22 by local order or proclamation --- again would this include ordinances?

Rep. Mueller : A good distinction could be made there but the intent of this legislation is to allow --- when the conditions are right -- allow boards to impose restrictions on burning. I would think that if the city of Fargo would pass an ordinance which bans open burning any time, winter or summer -- I would think that would override this.

Rep. Herbal, Vice Chairman : (16.2) This is primarily a rural bill -- a rural issue. Driving in rural areas I will occasionally see a burning barrel burning in somebody's yard. They are willfully burning their garbage. If there was a burn ban -- would they be allowed to do that?

Rep. Mueller : As outlined here it is fairly restrictive. They could be. The reality of it is that unless your fire caused a fire nobody would ever cite you most of the time.

Rep. DeKrey : I appear in support of this bill. I can't say much more than what rep. Mueller has said. We have had several fire in northern Kidder County in the past several years.

Rep. Devlin, Chairman : (18.6) Does the Committee have any question -- laughter.

Rep. DeKrey: Kidder County is the highest acreage for CRP in the nation -- so the fire danger is very real.

Rep. Ekstrom : (18.9) Are you aware of anything in your area which would prompt these fires?

Rep. DeKrey : Well as I said the acreage and dry conditions make conditions right for fires.

Rep. Kaldor : (20.4) Is there any provision or allowance for the fire departments to have controlled burns?

Rep. DeKrey: I haven't seen any local fire departments do any controlled burns. Most of the fires that are intentionally set in our area are by the U S Fish and Wildlife Service and they are also one of the biggest violators for letting their fires get out of hand.

Rep. Wrangham : (21.6) earlier testimony was to lead us to believe that this would not be enforced unless the fire caused damage. Is this to be a deterrent or is it a collection method to get more revenue for the local fire departments?

Rep. DeKrey : I think its a deterrent.

Wade Williams : Representing the North Dakota Association of Counties spoke in support of the bill. A copy of his prepared statements is attached.

Rep.Devlin, Chairman : (23.6) Rep. Kretschmar answered the question about infractions and penalties very well but the question comes up in this committee every so often. There is a sheet coming around for which lists the infractions and penalties for each. It should tell you everything you ever wanted to know about this subject.

Rep. N. Johnson : (25.4) Do you know the answer to my question about what an information to the clerk is?

Wade Williams : I believe it is a way to get information to the courts.

Rep. Kretschmar : That is correct in criminal cases and the went on to explain the process.

Rep. Herbal, Vice Chairman : (26.1) I have the same question as Rep. Kaldor --- Wade, do

you know whether burning in a barrel is considered open burning?

Wade Williams : I would question whether it would be. There are fire people here who will perhaps answer that.

Carol Two Eagle: (27.2) She gave her testimony orally but offered to provide a written copy of her remarks. A copy is attached. She expressed that the Indian people have a problem with this bill because of their religious practice of 'sweat lodges'. These are open pit fires which include some dugouts and rocks. These are held anywhere a member of their community has a problem for them as religious counselors are asked to address. These can be anywhere in the state or area where the afflicted person may find himself. Some examples of where sweat lodges have performed or where they exist are Bismarck, Fargo, Minot and other communities or rural areas along the rivers, -- anywhere. The Indians have had this practice for thousands of years and are a very fire conscious people. They take precautions. Their fire tender is a tribal 'holy man'. Most sites in the larger communities are secret locations. Her request of the committee was to write an exemption into the bill to allow these sweat lodge fires.

Rep.Devlin, Chairman : These fires have constitutional protection so I don't know why we would need to provide for an exemption?

Carol Two Eagle : We want the added protection so that we are not some Deputy Sheriff citing us. The fire pits are usually ten feet across and they do have a fire attendant.

Rep. Zaiser : (30.1) What is the frequency of these sweat lodge fires?

Carol Two Eagle : They can be everyday. They are done for healing. We maintain the area and they are for healing and purification. They are used all across the State.

Rep. Zaiser : (32.1) There followed a series of question and answers between Rep. Zaiser and Carol Two Eagle about locations, danger, and city ordinances in Fargo, Bismarck, etc. She reiterated that the Indians have been doing this for thousands of years, that many of her race were fearful of race issues.

Rep. Kaldor : (34.3) You stated earlier something about a dirt boundary -- would you please describe the fire pit and boundary?

Carol Two Eagle : The dug out area is about 15 feet across and about 1 foot deep and the dirt from the excavation is piled along the edge of the excavation. The fire barrier is then about 1 foot more less high. It is the fire tenders job to control the fire. It is a holy job.

Jim Drons, John Swehr, and Duane (sp?) Duittir (and their wives) :They were present representing the Sanborn Volunteer Fire Department. Jim Drons described several serious fire in their area. They were called out a two AM, 30-40 mph winds, protected farm homes, power poles burnt, etc. They do have the authority to charge back costs to the parties causing the fire. They want to have the authority to assess fines. They support the bill.

Rep. Wrangham (39.2) Do you know whether in the instances you were describing -- was there a local ban in effect?

Jim Drons : Yes there was.

Roy Schatschneider , Chief of the West Fargo Fire Department appeared in support of the bill. His department serves rural areas and college campuses as well as the city. They have had some nasty fires in the wooded areas along the rivers. His concern was that people are not aware of the burning ban but there were of burning advisories out. A curtesy phone call would do wonders.

Rep. Koppelman (44.8) Our fire department is a volunteer fire department. Does the jurisdictional differences cause a problem -- the city of West Fargo has ordinances -- then the County and rural areas have different authority -- does that cause a problem and what about the authority for assessing cost -- if the authority for the County for costs the infraction and collection is different --- do you see this or would it be a deterrent?

Roy Schatschneider: Getting into legal issues like fines and stuff I will leave that to the other people --- I am just interested that we have some legislation where we can issue a burning ban and enforce it. We do not have a way to charge for our services. With the townships we have yearly contract.

Rep. Zaiser : (47.1) We have heard the testimony from our Native American --- are familiar with those 'healing pits'? Could they present a problem?

Roy Schatschneider : The only thing I am familiar with is what we do allow in our city. We do allow recreational fires that are enclosed screened and they must be 25 feet away from a structure.

In an extremely dry period we will not allow even those screened units.

Rep. Zaiser : If they had one of their fires would you required them to screen them before you would allow them. Ans: We would have to follow city code.

Rep. Mueller : Suggested that the State Fire Marshall would be a good resource .

Rep.Devlin, Chairman (50.3) stated that the record kept the open until the work session to hear the rest of the testimony and answers the committee may have of the State Fire Marshall..

Ray Lambert : (52.1) Mr. Lambert is the State Fire Marshall. His appearance was neither for nor against the bill. I had not intended to testify but several questions did come up which I

Believe need to be addressed.

Rep. Kaldor : (52.9) Does opened not include burning in an open barrel?

Ray Lambert : Burning in an open barrel is an open fire. A barrel is not considered an Enclosure.

End of tape (53.6) .

Tape 2 Side A

Ray Lambert : State Fire Marshall (continued). A burn barrel which is considered open and causes a fire is handled the same as any intentionally set fire.

Rep. Dietrich (0.1) The Native American healing pit -- would that be an open burn.

Ray Lambert : Of course under the statute -- under state law that would be an open burn. As a point of clarification with the fire restrictions the state has the ability to impose -- is not a burn ban. Once that is imposed there guidance as to what type burning should be restricted. That would be dependent upon the conditions at the time whether it would be a low level fire indexing conditions or strict. Again I have no history that I am aware of with any the sweat lodges causing concerns with fires getting out of control. I am not aware of any situation nor have I been involved with restricting or attempting to restrict this type of burning. Our position on that or where we would come into play is if that fire did get out of control. Then that would be looked upon as any fire that got out of control and then that individual would be held responsible for that fire.

Rep. Dietrich : (1.3) Are you aware of any federal rule that would supersede the state law?

Ray Lambert : No I am not and I would say that this is the first time that I have heard of these burns or sweat lodges.

Rep. Zaiser : (1.8) The West Fargo Fire Chief talked about restrictions with screens -- do local ordinance restricting these fire pits in urban situation --- which would seem that in dry conditions would be very dangerous -- could they be applied to sweat pit?

Ray Lambert : I am aware of many city ordinances and many of them do allow fires in these ceramic type burners or fire pits --- with some restrictions. I heard for the first time this morning about this screens. I don't know the effectiveness those. I don't know if you could screen a sweat lodge.

Rep. Zaiser : In extremely dry conditions would that apply to those units as well?

Ray Lambert : When fire danger indexing reaches an extreme level to a larger percentage of the state we are then starting to include multiple counties and regions --- the governor's proclamation works rather ineffectively for one county or one community. They apply over a larger region than that. It would apply to any open burning.

Rep. Zaiser : (4.4) Would the governor's proclamation supersede any federal law?

Ray Lambert : I know of no federal law that the governor's proclamation would exceed.

Rep. Herbal, Vice Chairman : (4.9) In your opinion would your authority be any different if the fire were on an Indian Reservation? Indian land versus private land?

Ray Lambert : We do have some restrictions in our authority on tribal lands. Where the fire starts on tribal lands -- we certainly have authority on tribal lands -- we have very little enforcement authority.

Rep. Koppelman : (5.7) If a burning barrel is an open fire -- what is not an open fire?

Ray Lambert : A flame in a furnace is enclosed or any flame inside an enclosure -- inside a vehicle.

Rep. Koppelman : (6.4) So out of doors it might be something like an incinerator or the like to be an enclosed flame or fire?

Ray Lambert : Yes, that is right, but even on chimneys and flues we spark arrestors and the like. We work with various agencies and local groups to make assessments of conditions to determine the type of restriction we will impose. A restriction is a ban not a law and enforcement is based on an investigation and a determination of what damages will seek to redress.

Rep.Devlin, Chairman (8.7) closed the hearing on HB 1186.

Tape 3 Side A Work Session

(0.1 to 8.2)

Discussion evolved around questions whether this authority B for assessing penalties and collecting of fines should probably left to local elected officials who would decide the ordinances or rules, the conditions for a violation, etc. Other concerns was whether the authority would be placed in one individual or the whole board. There are wide differences across the state from one county to the next but how can notices of bans be gotten out so that people would know when they are in a ban area; should it rest with local emergency managers; can county wide include large incorporated cities; and other questions arose. The chairman carried action forward to the following week. No action taken.

End of record for January 13, 2005 (8.4) side A Tape 3

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1186 b

House Political Subdivisions Committee

Conference Committee

Hearing Date January 20, 2005

Tape Number	Side A	Side B	Meter #
4	x		4.5 to 6.7

Committee Clerk Signature



Minutes: In an afternoon work session **Rep. Devlin, Chairman** opened the discussion for Action on HB 1186. After a brief discussion **Rep. Herbal, Vice Chairman** moved a 'Do Pass' Motion for HB 1186. **Rep. Koppelman** seconded the motion. On a roll call vote the motion carried **9 yeas 1 Nay 2 absent**. **Rep. Herbal, Vice Chairman** was designated to carry HB 1186 on the floor. **End of record (6.7)**.

Date: *January 20, 2005*
Roll Call Vote:

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. *HB 1186*

House **POLITICAL SUBDIVISIONS**

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Do Pass

Motion Made By *Rep. Herbel*

Seconded By *Rep. Kappel* *Sen*

Representatives	Yes	No	Representatives	Yes	No
Rep. Devlin, Chairman	✓		Rep. Ekstrom	✓	
Rep. Herbel, Vice Chairman	✓		Rep. Kaldor	✓	
Rep. Dietrich	✓		Rep. Zaiser	A	
Rep. Johnson	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos	A				
Rep. Pietsch	✓				
Rep. Wrangham		✓			

Total (Yes) *9* No *1*

Absent *2*

Floor Assignment *Rep. Herbel*

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

REPORT OF STANDING COMMITTEE (410)
January 26, 2005 7:48 a.m.

Module No: HR-17-1048
Carrier: Herbel
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1186: Political Subdivisions Committee (Rep. Devlin, Chairman) recommends DO PASS (9 YEAS, 1 NAY, 2 ABSENT AND NOT VOTING). HB 1186 was placed on the Eleventh order on the calendar.

2005 SENATE POLITICAL SUBDIVISIONS

HB 1186

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1186

Senate Political Subdivisions Committee

Conference Committee

Hearing Date March 10, 2005

Tape Number	Side A	Side B	Meter #
1		X	1951 - 2815

Committee Clerk Signature



Minutes:

Chairman Cook opened the hearing on HB 1186 relating to violation of a local burning ban. All committee members (6) were present.

Representative Mueller, District 24 introduced HB 1186. This bill is about burning bans and restrictions. As you probably know the governor has the authority to put burning ban restrictions in effect and impose penalties when the bans are not enforced. The law currently allows other jurisdictions along with the governor to impose burn bans in their areas. What the law doesn't allow for is a penalty. If this bill is passed it will allow for that and have people have second thoughts on burning and use good judgment.

Wade Williams, North Dakota Association of Counties testified in support of HB 1186. (See attachment # 1A and #1B)

Jim Drong, Sanborn Fire Department, Sanborn, ND, testified in support of HB1186 and shared some of the instance that have happened in that area. One involved a farmer that was out burning

Page 2

Senate Political Subdivisions Committee

Bill/Resolution Number HB 1186

Hearing Date March 10, 2005

some pot holes in a cultivated area and during the night the wind came up and set off a CRP fire.

We were able to keep it from burning the farm yard.

Chairman Cook: Where these parties that did not obey the burning ban in any way held liable?

I would think there would be some civil action that could be brought against the individuals.

Jim Drong: There is no way to hold them liable. I am not aware of any actions taken against them.

Senator Gary Lee: When the burning ban is in place is burning the garbage included in that?

Jim Drong: My understanding is that there be no open burning any place unless it is in a covered container and controlled in that.

No further testimony in support or opposed to HB 1186

Chairman Cook closed the hearing on HB 1186.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1186

Senate Political Subdivisions Committee

Conference Committee

Hearing Date March 17, 2005

Tape Number	Side A	Side B	Meter #
1		X	1,250-1990

Committee Clerk Signature



Minutes:

Chairman Cook opened the meeting on HB 1186, dealing with a penalty for burning bans.

All Senators were present.

Action taken:

Senator Triplett moved a Do Pass recommendation for the bill. Seconded by Senator Fairfield.

Senator Cook- My concern is the law we have on burning bans includes trash barrels.

Anytime a law enforcement officer sees a trash can burning, they could issue an infraction.

The vote was 5-1-0. The carrier of the bill is Senator Dever.

Date: 3-17-65

Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1186

Senate Political Subdivisions

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Do Pass

Motion Made By

Triplet

Seconded By

Fairfield

Senators	Yes	No	Senators	Yes	No
Senator Dwight Cook, Chairman	X				
Senator Nicholas P. Hacker, VC	X				
Senator Dick Dever	X				
Senator Gary A. Lee		X			
Senator April Fairfield	X				
Senator Constance Triplet	X				

Total Yes

5

No

1

Absent

0

Floor Assignment

Dever

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

REPORT OF STANDING COMMITTEE (410)
March 17, 2005 2:12 p.m.

Module No: SR-49-5290
Carrier: Dever
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1186: Political Subdivisions Committee (Sen. Cook, Chairman) recommends DO PASS (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1186 was placed on the Fourteenth order on the calendar.

2005 TESTIMONY

HB 1186

**TESTIMONY TO THE
HOUSE POLITICAL SUBDIVISION COMMITTEE**

Prepared January 13, 2005 by
Wade Williams Government Relations
North Dakota Association of Counties

*Same given
to Senate*

REGARDING HOUSE BILL 1186

Chairman Devlin and members of the House Political Subdivision Committee. I thank you for the opportunity to address you for the counties in regard to HB1186.

Over the past number of years counties have been faced with the dangers of wild fires and local efforts to prevent them. Counties have had the ability for many years to ban open burning when there is a fire danger, however the Century Code provides no ability for counties to enforce the ban. This was made very clearly in a December 1, 2003 Attorney General's Opinion to the Grant County States Attorney (attached).

This bill would make the violation of a county burning ban an infraction, similar to the penalty for violating a ban issued by the Governor.

Our Association appreciates your consideration of this legislation and urges a DO PASS on HB 1186

**LETTER OPINION
2003-L-57**

December 1, 2003

Mr. Ron Weikum
Grant County State's Attorney
PO Box 196
Carson, ND 58529-0196

Dear Mr. Weikum:

Thank you for your letter asking whether the Grant County Commission may declare a local emergency, ban open fires in the county, and find a person in willful violation of this ban guilty of an infraction. It is my opinion that the Grant County Commission, as part of its emergency management plan under N.D.C.C. ch. 37-17.1, may declare a local emergency and ban open fires; however, N.D.C.C. § 37-17.1-05 does not provide Grant County with the authority to impose an infraction for violating a ban.

Local governments, including counties, have authority to declare an emergency under the Disaster Act. N.D.C.C. § 37-17.1-10. The North Dakota Disaster Act allows local governments, including counties, to ban open burning as an appropriate measure included within a local disaster or emergency operational plan under N.D.C.C. § 37-17.1-07 and implemented through a declaration of a local disaster or emergency under N.D.C.C. § 37-17.1-10. Once the local disaster or emergency operational plan is in effect, it may be activated by the principal executive officer of a county or city, who may declare a local emergency for a period of up to seven days; emergencies in excess of seven days must receive consent from the governing board of the county or city. N.D.C.C. § 37-17.1-10. The effect of a declaration of a local disaster or emergency is to "activate the response and recovery aspects of any and all applicable local disaster or emergency operational plans and to authorize the furnishing of aid and assistance thereunder." N.D.C.C. § 37-17.1-10(2).

In your letter, you question whether N.D.C.C. § 37-17.1-05 provides the county with the authority to impose a criminal punishment. This section states, in relevant part, "[a]ny person who willfully violates any provision of an executive order or proclamation issued by the governor pursuant to this chapter is guilty of an infraction." N.D.C.C. § 37-17.1-05(7). As such, the section provides for a penalty to those who violate the

LETTER OPINION 2003-L-57
December 1, 2003
Page 2

order or proclamation *issued by the governor*, but does not provide the same penalty for orders issued by counties or cities. Consequently, N.D.C.C. § 37-17.1-05 does not provide Grant County with authority to impose a penalty for violating a ban on open fires.

Sincerely,

Wayne Stenehjem
Attorney General

njl/vkk

P.O. Box 293
701-426-3769

Carol Two Eagle
Mandan, ND 58554
Email: A-Wise-Spirit@Native.Redwebz.Org

Hau Chairman Devlin and Members of the Committee, I want to testify in favor of HB 1186, but I would like to ask for an amendment to it. I would place this amendment at 3 line 23 of this bill, inserting the words "except fires for American Indian sweat lodge ceremonies" after the current last word and before the period.

I have not been able to find one instance of a sweat lodge fire causing a larger fire, but I have been present at two instances where someone called the Sheriff's Department because of a sweatlodge fire during a burning "ban". One incident was near here, the other was up in McLean county. In the incident near here, the deputy was not friendly. In the other incident, he was very respectful. Regardless, no non-Indian religious practice is ever threatened with interruption by armed police, & 'demanded' that we explain "what you people think you're doing here". No one comes into *your* church services and 'demand's an explanation – or even, *asks* for one. This should not happen to anyone, but it does happen to us Indians.

Our spiritual practices are thousands of years old. The fire is holy, and we treat it & the earth we live on with respect – particularly sweat lodge sites. Tending the fire is not a haphazard practice. There is a format & a protocol to be followed. The fire and the inipi ("eeNEEpee") or sweat lodge ceremony are essential to our religious practices. It is wrong for us to be expected to forego our spiritual ways & our spiritual needs because of a burning ban, but right now, that is common practice where sweat lodges are located off the Reservations, because the People are afraid someone will call the Sheriff & we will be disrupted or even arrested & fined. Nothing other than wood, tobacco, and sacred herbs are ever burned in a sweat lodge fire. No trash or garbage, for example. The fire is not left unattended, especially in dry conditions.

I am asking for this amendment in an effort to avert any threat to our Traditional spiritual Ways & practices in the future.

Thank you for hearing me in a good way now. I am available at any time should anyone have any questions. Mitakuye oiasin (MeeTAHkooyeh oheeAHsinh) – We are all related.

Carol Two Eagle