

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION  
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2102

2001 SENATE POLITICAL SUBDIVISIONS

SB 2102

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2102

Senate Political Subdivisions Committee

Conference Committee

Hearing Date January 18, 2001

Tape Number	Side A	Side B	Meter #
1	x		0,0-10.5
Committee Clerk Signature <i>Mary Jo Wacker</i>			

Minutes: Senator Cook called the hearing on SB2102; relating to the use of certain structures as a nuisance. Roll call was taken with 7 members present and 1 absent.

SENATOR LYSON spoke in favor of this bill. This bill is a simple bill an ordinance in all of the large communities within the state of ND, but it really is based on is to try to have people live in a neighborhood and not disturb their neighbors to the point they cannot function very well in their community or in their neighborhood. One of the reasons for a bill like this to come into the state government is because we have so many subdivisions now, that are being built outside of the larger communities. Before we had those there probably was not a question on a bill like this because a farmstead was far enough apart we had so many subdivisions now that are close, and what's really happening and the reason for the bill to come forward today is we've got an awful lot of people going into the subdivisions and renting or buying cheaper homes and they are into the drug scene and meth labs are getting very prominent in these areas. There is just nothing that law enforcement can do, and were getting calls about parties at home that have 40-50 cars around

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it and noisy and we don't have no law to take care of these things, and this the reason for a disorderly house where we can charge the leasee or the owner or whoever is in there to try and clean the situation out and try to clean up the subdivision that is a problem. SENATOR FLAKOLL, just a quick question, in so far when they are declared a public nuisance, what are usually the ramifications of that? SENATOR LYSON, and I don't know exactly, cause I haven't researched, maybe John Olson can tell you this, but I think it is a Class A misdemeanor. SENATOR CHRISTENSON, when you say immediate neighborhood, do you think that needs further defining? SENATOR LYSON, well, if you read the bill, it would be anything that would annoy a neighbor, so when I say an immediate neighborhood. Subdivisions could be within a city however, it could be, a farmstead that is part of a mile from a neighbor, that's doing the same thing that is creating a disturbance for that neighbor, could end up with the same thing. SENATOR CHRISTENSON, you are saying this would be in judgment of the neighbor whether or not this was a nuisance and a disturbance, so it would be up to the neighbor to take the action to make a complaint or whatever? SENATOR LYSON, that's true, it would have to be a complaint, it can't be something that law enforcement would just normally go and do, normally it would be a complaint from a neighbor. SENATOR LEE, does public nuisance have a meaning in the law that, what is the definition of annoy is kind of troubling to me? SENATOR LYSON, I don't think that is what this is for, I think that's a covenant problem. SENATOR LEE, I'm just wondering about this definition of public nuisance. JOHN OLSON, NDSA/NDPOA, spoke in favor of this bill. Peace officers includes a wide range of law enforcement in ND, sheriffs, police, highway patrol, Game and Fish, and a variety of other law enforcement entities in the state. I don't think I can add anything to what Senator Lyson has said as to why the bill is needed. Major municipalities have ordinances following similar or exactly like this across the state. So what the

bill provides is for a law to be enforced in the subdivisions or out in the counties where they are no states statutes or municipal ordinances that extend it. The bill really defines what the public nuisance is going to be in this instance, however, there is another definition of public nuisance in the General Statutes, provisions relating to nuisances, 42:01:06 defines a public nuisance as one which at the same time affects an entire community or neighborhood, or any considerable number of persons although the extent of the annoyance or damage inflicted upon the individuals maybe unequal. Seems to how it is defined in 21:02 blends in with the definition of 42:01:06. Another question was asked about the remedies, as Senator Lyson stated. The chapter does provide for a penalty for maintaining a public nuisance in 42:01:15, that provides that it is a Class A misdemeanor. It says every person who maintains or commits a public nuisance the punishment for which is not otherwise prescribed or who willfully omits to perform any legal duty relating to the removal to the public nuisance, is guilty of a Class A misdemeanor. There are other remedies in the chapter. If the law enforcement fails to act, a private person has a right to petition, I think the court in order to have that nuisance abated, a person injured by a private nuisance may abate it also by removing or if necessary destroying the thing which constitutes the nuisance, but the person shall not commit a breach of the peace or do unnecessary injury while exercising this right. Other general remedies against the public nuisance, an indictment, filing information , which I don't think apply anymore cause those are terms normally used in conjunction with a felony. Bringing criminal action against a judge, which in this case, that private person who is offended would probably go through the ordinary procedure of going to the sheriffs dept., complaining, sheriffs dept. may investigate, then go on to the State's Attorney to have a complaint issued or go directly to the States Attorney. SENATOR MATHERN, John what's the fine or whatever for a Class A Misdemeanor? JOHN OLSON, up to one year, and

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\$1000 or has it been raised to \$2000, monetary maximum of one or two thousand dollars.

SENATOR FLAKOLL, With respect, now this not only covers a little more urban areas, but also farms? JOHN OLSON, it would cover farms, but I think you still have to tie that to, an affect it is having on people. SENATOR FLAKOLL, with that in mind, what if, for instance, the encroachment growing on people, city growing out to the farm, and the farm has a feedlot with lots of odor, does this fall in to that area too? JOHN OLSON, this may not address that, I think your getting into a zoning problem where those kinds of uses would be grandfathered/ grand mothered in, maybe to the existence of that use. I think in this bill, they are really getting at the breach of the peace type situations, wild parties, maybe the house is being used for distributing alcohol, all kinds of things that really relate to people staying up at night. TERRY TRAYNOR, Assistant Director of the Association of Counties, association of counties has taken a position to support the sheriffs and deputies and the states' attorneys on this bill. We do so support it.

SENATOR COOK, closed the hearing on SB2102.

SENATOR LEE moved to Do Pass SB2102, Senator Watne 2nd.

Discussion was held among the senators. Senator Christenson stated she certainly understands the intent of the bill, however, I guess I have to express that the word "decency" has a little bit of a red flag for me, its slightly morally judgmental. I assume that the legal definition of this has much more broad and less majorative. I won't make any formal protests but I just want to put that on the table, as an issue.

DO PASS ON SB2102 7 Yeas, 1 Absent.

Carrier: SENATOR LYSON

Date: January 18, 2001  
Roll Call Vote #:

**2001 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. SB. 2102**

Senate Political Subdivisions Committee

Subcommittee on \_\_\_\_\_

or

Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass

Motion Made By Senator Lee Seconded By Senator Watne

Senators	Yes	No	Senators	Yes	No
Senator Cook	✓		Senator Christenson	✓	
Senator Lyson	✓		Senator Mathern	✓	
Senator Flakoll	✓		Senator Polovitz	A	
Senator Lee	✓				
Senator Watne	✓				

Total (Yes) 7 No \_\_\_\_\_

Absent 1

Floor Assignment Senator Lyson

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

**REPORT OF STANDING COMMITTEE (410)**  
January 18, 2001 11:35 a.m.

**Module No: SR-08-1196**

**Carrier: Lyson**

**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2102: Political Subdivisions Committee (Sen. Cook, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2102 was placed on the Eleventh order on the calendar.**



2001 HOUSE POLITICAL SUBDIVISIONS

SB 2102

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2102

House Political Subdivisions Committee

Conference Committee

Hearing Date 3-08-01

Tape Number	Side A	Side B	Meter #
1	xx		1--1740
1		xx	1740--2700
Committee Clerk Signature <i>Ann Dever</i>			

Minutes: Chair Froseth opened the hearing on SB2102 relating to the use of certain structures as a nuisance.

Sen. Stan Lyson, Dist. 1 : prime sponsor and support this bill. This bill is a duplicate of a city ordinance throughout the state of ND. Most of the big ones. In small communities outside the cities, law enforcement is having trouble controlling disturbances. They don't have laws to address the noise complaints, etc. This bill will help law enforcement deal with some of the problems.

Rep. Ekstrom : This looks straight forward until you get to the word "decency", as in "disturbing the decency". Can you give an example?

Sen. Lyson : I would have to get out the code and read you what nuisance means. From my own experience, some people were running around naked and yelling at neighbors.

Rep. Niemeier : (319) Doesn't the local law enforcement have jurisdiction in the subdivisions?

Sen. Lyson : The local city doesn't. Some cities don't have any police departments any more.

Chair Froseth : I think some small towns contract with the county sheriffs. Some don't have even part-time police officers. Some are going by the century code instead of city ordinances.

Scott Busching, Williams County Sheriff : (420) here to support SB2102. Our subdivisions are expanding. Some people who like to party are avoiding the consequences by moving out of the city. We need to have jurisdiction to deal with the complaints by neighbors. When neighbors complain about noise in the subdivision, all we can do is go to the door and hope they listen to our request, because we don't have any county ordinances. We need this bill as a tool.

Rep. Herbel : (540) Under what conditions can you go into a house?

Scott : Have to have probable cause. Takes quite a legal procedure. In an emergency call we can go in. It takes a couple of hours to get a warrant.

Rep. Herbel : How often does this happen that you would use this bill?

Scott : Once a weekend.

Vice-Chair Severson : If we have a city ordinance, why do we need a state ordinance? Can't the county come up with something.

Scott : The county can't pass ordinances like the state. Code has to be passed on the state level.

Rep. Grosz : What's the penalty?

Scott : Class B misdemeanor, I think..

Rep. Delmore : (759) Do you see this being enforced?

Scott : Yes, but it will be used more as a tool. We would like to contact the people, who had the loud party or whatever, the next day, and try to resolve the complaint, and make sure they know there is a law and penalty. If it a rental, then the tenant and owner need to know there is a law and penalty.

John Olson, ND State' ; Attorney/ND Police Officers Assoc. ; testified in support of SB2102.

The city ordinance doesn't apply in the county and won't step beyond that line. The crime would be a class A misdemeanor. That's one year in jail max. and \$2000 fine. You could have civil remedies in addition to criminal count.

Chair Froseth : (1058) Does the city ordinance take precedence over county.

John : State law does apply to cities as well. But normally we defer to cities to enforce their own ordinances.

Rep. Ekstrom : Could this be amended to include maintenance property to take care of junk yard type properties?

John : That is in the public health law.

Rep. Herbel : What is "immediate neighborhood"? You are talking in the rural area.

John : That was asked in the senate, too. That might hold some difficulty. This is to prevent harassment to other people.

Rep. Delmore : (1290) Do you think this bill will increase costs to counties?

John : Maybe. I don't see it though. This is a good tool for them.

Vice-Chair Severson : Do I have the right to know who complained about me to the police?

John : It's public record. I suppose you could call anonymous.

Chair Froseth : Any more testimony for or against? Hearing none, SB2102 is closed.

**Tape 1, Side B (1740-2700)** Chair Froseth : Let's discuss SB2102.

Rep. Maragos : I think it might be wise to amend this with a sunset clause and see how it works for 2 years. Make sure there is no abuse of it.

Vice-Chair Severson : I would like the word "subdivision" behind the word building, to be included on line 7.

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Hearing Date 3-8-01

Rep. Ekstrom : I'm not happy with the decency part. I feel if we put the "subdivisions" in we might be limiting.

Rep. Disrud : On the decency thing, I don't have a problem. Think about urinating in public, etc. at parties. They don't care. That to me is a decency issue.

Chair Froseth : On problem we see are the meth labs. What if they are out there.

Rep. Maragos : That needs probable cause. I don't think this bill addresses that. Sunset is the best and see what happens in 2 years. If they move outside of the sub, then what.

Rep. Eckre : If you move into the county, you choose to do that. They moved out in the county. That's just the way it is.

Rep. Maragos : **I move to amend and put in a sunset of July 31, 2003 and insert subdivisions in line 7.**

Rep. Delmore : **I second.**

**VOICE VOTE: ALL YES.**

Rep. Herbel : **I move a DO PASS AS AMENDED.**

Rep. Ekstrom : **I second.**

**VOTE: 12 YES and 1 NO with 2 absent. PASSED AS AMENDED. Vice-Chair Severson will carry the bill.**

