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ROLL NUMBER

DESCRIPTION

1493

2005 HOUSE POLITICAL SUBDIVISIONS

HB 1493

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1493

House Political Subdivisions Committee

Conference Committee

Hearing Date January 28, 2005

Tape Number	Side A	Side B	Meter #
2	x		35.6 to end
2		x	0.3 to 11.2
Committee Clerk Signature <i>Lauren B. Zick</i>			

Minutes: **Rep. Devlin, Chairman** opened the hearing on HB 1493, A bill for an Act to provide for a limitation on the awarding of attorney's fees in civil actions against the State or a political subdivision.

Rep. Monson representing District 10 and prime sponsor of the bill explained that his reasons for bringing this legislation is that when Rep. Herbal, Vice Chairman and several legislators had been at a conference, the State of Arkansas had advised strongly that states take action to defend themselves from horrendous and costly law suits. Their experience stems from their state being sued under the 'No Child Left Behind' program. Rep. Herbal, Vice Chairman noted that North Dakota School districts in several instances are currently being sued albeit for different actions. A copy of Rep. Monson's prepared remarks are attached.

Rep. Kretshmar, Maragos, and Kaldor were the members of the committee most closely quizzing Rep. Monson about class action suits versus civil suits; infringement upon peoples right to an attorney as this legislation may dampen practicing attorney desire to represent clients

against a district or subdivision; and, the differences between cases especially contingent fee cases. **Paula Grossinger**, representing the North Dakota Trial Lawyers spoke in opposition to the bill. Her premise was that this legislation would set a different standard of accountability with regard to the civil justice system. A copy of her prepared remarks are attached.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1493 b

House Political Subdivisions Committee

Conference Committee

Hearing Date February 3, 2005

Tape Number	Side A	Side B	Meter #
3	x		5.6 to 19.3
Committee Clerk Signature <i>Laura M. Fritz</i>			

Minutes: In work session **Rep. Devlin, Chairman** opened the discussion for action on HB 1493.

Rep. Kretschmar led the discussion saying that the suits with the school districts to date were not class action suits and that this while directed toward class action suits this bill wasn't very workable. **Rep. Kretschmar** moved a 'Do Not Pass' motion for HB 1493. **Rep. Zaiser** seconded the motion. Motion failed on a voice vote.

Rep. Koppelman moved a 'reconsider' motion for HB 1493. **Rep. Maragos** seconded the motion. Motion carried on a voice vote.

Rep. Koppelman (7.1) moved that on line 6 to strike the word "class" and insert " an" so that it would read "In an action-----" The thing that Rep. Herbal, Vice Chairman was trying to do was to address Rep. Kretschmar's concern that in North Dakota most actions are not class action and that this would address all actions. **Rep. Herbal, Vice Chairman** seconded the motion..

Rep. Kretschmar said that you have to do the same on line 5. **Rep. Koppelman** said that his motion would be to include both line 5 and line 6. **Rep. Kretschmar** cautioned that this

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amendment would open up a can of worms that you wouldn't want to get into. For example many suits against the state are of the motor vehicle type --- like someone running into a snowplow -- these cases are usually taken by trial lawyers on a contingency basis -- with this wording those would be included. On a voice vote the amendment failed.

Rep. Kretschmar with no amendments on the bill, moved a 'Do Not Pass' for HB 1493. **Rep. Zaiser** seconded the motion (16.5). On a roll call vote the motion The motion carried **9 ayes 1 nays 2 absent. Rep. Kretschmar** was designated to carry HB 1493 on the floor. End (19.3)

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1493 c

House Political Subdivisions Committee

Conference Committee

Hearing Date February 4, 2005

Tape Number	Side A	Side B	Meter #
1		x	See note
Committee Clerk Signature <i>Laura H. Zide</i>			

Minutes: **Rep. Devlin, Chairma** in work session at the close of the morning accepted a motion

Rep. Maragos to reconsider HB 1493 which the evening before had been acted upon with a 'Do

Not Pass' motion. **Note: this part of the record is constructed from the Clerk's minutes as**

The electrical plug had been bumped from the wall and the tape recording is incomplete.

Rep. N. Johnson seconded the motion. The motion carried unanimously on a voice vote.

Rep. Maragos stated that in conversation with the prime sponsor they felt that they could come with an acceptable amendment.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1493 d

House Political Subdivisions Committee

Conference Committee

Hearing Date February 10, 2005

Tape Number	Side A	Side B	Meter #
1	x		11.0 to 26.4
Committee Clerk Signature <i>Laurie L. Zerbe</i>			

Minutes: In work session **Rep. Devlin, Chairman** opened the discussion for action on HB 1493.

Rep. Koppelman brought in 2 sets of amendments, the first moved to be approve was an amendment which would simply remove the term political subdivision references in the bill.

The lc number for the first one was .0101.

Rep. Devlin, Chairman felt that it would proper procedure to vote a motion to reconsider. **Rep. Koppelman** moved to reconsider. **Rep. Herbal, Vice Chairman** seconded the motion. Motion carried on a voice vote.

Rep. Koppelman moved the amendment .0101 referenced above. **Rep. N. Johnson** seconded the motion. Motion carried on a voice vote.

Rep. Kaldor (13.6) expressed his concern that the amendment still did not help the average person who was seeking legal services.

Rep. Koppelman passed around copies of the second amendment -- lc .0102. Basically it would change class action to a civil action.

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Rep. Koppelman (15.2) moved the amendment for approval. **Rep. Herbal, Vice Chairman** seconded the motion. The motion carried on a voice vote.

Rep. Koppelman (15.6) moved a 'Do Pass as Amended' motion for HB 1493. **Rep. N. Johnson** seconded the motion. On a roll call vote the motion failed **5 ayes 7 nays 0 absent.**

Rep. Kretschmar moved a 'Do Not Pass as Amended' motion for HB 1493. **Rep. Ekstrom** seconded the motion. On a roll call vote the motion carried **7 ayes 5 nays 0 absent.**

Rep. Kretschmar was designated to carry HB 1493 on the floor.

End of record (26.4)

Date: February 3, 2005
 Roll Call Vote:

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1493

House POLITICAL SUBDIVISIONS Committee _____

Check here for Conference Committee

Legislative Council Amendment Number voice amend failed

Action Taken D N P

Motion Made By Rep. Kutoch Seconded By Rep. Zaiser

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

Total (Yes) 9 No 1

Absent 2

Floor Assignment Rep. Kretschmar

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

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1493

Page 1, line 2, remove "or a political subdivision"

Page 1, line 4, remove "or political subdivision"

Page 1, line 5, remove "or a"

Page 1, line 6, remove "political subdivision"

Page 1, line 7, remove "or a political subdivision"

Page 1, line 13, remove "or"

Page 1, line 14, remove "political subdivision"

Renumber accordingly

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1493

Page 1, line 5, replace "class" with "civil"

Page 1, line 6, replace "class" with "civil"

Renumber accordingly

February 9, 2005

House Amendments to HB 1493 - Political Subdivisions Committee 02/11/2005

Page 1, line 2, remove "or a political subdivision"

Page 1, line 4, remove "or political subdivision"

Page 1, line 5, replace "class" with "civil" and remove "or a"

Page 1, line 6, remove "political subdivision" and replace "class" with "civil"

Page 1, line 7, remove "or a political subdivision"

Page 1, line 13, remove "or"

Page 1, line 14, remove "political subdivision"

Renumber accordingly

Date: February 10, 2005
 Roll Call Vote: 2, 3-

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1493

House POLITICAL SUBDIVISIONS Committee

Check here for Conference Committee Amend. 1010 - M. Kop. and John
Carried Voice Vote

Legislative Council Amendment Number Amend. 1020 M. Kop. Rep. Herb. 2.
Carried Voice Vote

Action Taken Do Pass as Amended

Motion Made By Rep. Koppelman Seconded By Rep. Johnson

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

Total (Yes) 5 No 7

Absent failed

Floor Assignment _____

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

Date: February 10, 2005
Roll Call Vote: X

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1493

House POLITICAL SUBDIVISIONS

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Do NOT Pass as Amended

Action Taken

Motion Made By

Rep. Kutschmar

Seconded By

Rep. Ekstrom

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

Total (Yes)

7

No

5

Absent

0

Floor Assignment

Rep. Kutschmar

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

REPORT OF STANDING COMMITTEE

HB 1493: Political Subdivisions Committee (Rep. Devlin, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO NOT PASS (7 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). HB 1493 was placed on the Sixth order on the calendar.

Page 1, line 2, remove "or a political subdivision"

Page 1, line 4, remove "or political subdivision"

Page 1, line 5, replace "class" with "civil" and remove "or a"

Page 1, line 6, remove "political subdivision" and replace "class" with "civil"

Page 1, line 7, remove "or a political subdivision"

Page 1, line 13, remove "or"

Page 1, line 14, remove "political subdivision"

Renumber accordingly

2005 TESTIMONY

HB 1493

HB1493

Rep. David Monson

Dist. 10

Chairman Devlin and members of the House Political Subdivisions Committee, HB 1493 is the result of an NCSL conference that Senator Cook and I attended about a year ago on No Child Left Behind and other educational issues. While at the conference we heard a horror story about a state that was sued by school districts and parents in a class action lawsuit over the equity and adequacy of their K-12 funding formula. In case you are unaware, ND is presently being sued in such a case. The state that was sued and lost its case ended up putting massive amounts of new state money into their formula. It turned out that the lawyers for the case had taken the clients' case on a contingency basis. As a result, the lawyers claimed a large percentage of the many millions of dollars of new money put into the formula over the years by the state. Not only did the taxpayers of the state have to pay millions more in taxes to improve the equity and adequacy of their K-12 schools, they also had to pay millions to the lawyers who won the case against the states. The Senator who was leading the session we attended advised everyone to pass a law similar to what we have before you in this bill. Mr. Chairman and members of the committee, this bill is here in an attempt to prevent such a situation from happening in ND. As you can see, the bill also covers any political subdivision that may end up in a class action suit against it.

HB 1493
Political Subdivisions
January 28, 2005

Information prepared by
Paula J. Grosinger, Lobbyist
North Dakota Trial Lawyers Association
701-202-1293 grosingr@ndtla.com

House Bill 1493, if enacted, would interfere with and severely limit the ability of injured individuals to contract for legal services in cases against political subdivisions. While the legislature may direct the manner in which civil suits may be brought against the state, the State Constitution does not provide for state interference in the contractual arrangements between individuals and their legal counsel in civil cases.

Applying different standards of accountability to political subdivisions with regard to the civil justice system undermines the principle that all should be treated equally under the law. Legislatively manipulating the contractual terms between individuals and their legal counsel to best benefit the state in anticipation of a defensive position likewise undermines the principle that all should be treated equally under the law.

The restrictions on attorney fee arrangements imposed by this legislation make it unlikely attorneys would represent plaintiffs in complex cases. These include toxic torts, engineering issues, hydrology-related cases, and complex employment cases where classes of injured individuals may be unable to afford to engage legal representation by any means other than the contingency fee/percentage basis.

For every wrong there should be a remedy. Every person, regardless of who has harmed them, should have the benefit of contingency fee arrangements.

We urge DO NOT PASS.