

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

20724

2007 SENATE JUDICIARY

SB 2074

# 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2074

## Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: January 10, 2007

Recorder Job Number: **853, vote 856**

Committee Clerk Signature *Mona Z Solberg*

**Minutes:** Relating to duties and powers of the Labor Dept. relating to housing discrimination.

**Recorder Job No.:**853

**Senator David Nething**, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

### Testimony In Support of Bill:

**Lisa Fair McEvers**, Commissioner (meter 1:30) Reviewed the bill and gave testimony – Att. #1

**Amy Schauer Nelson**, Fair Housing of the Dakota's (meter 6:50) gave testimony – Att. #2

**Cheryl Bergian**, Ex. Dir. Of ND Human Rights (meter 10:00) Gave testimony – Att. #3

### Testimony in Opposition of the Bill:

**Rocky Gordon**, volunteer Lobbyist on ND Renters Assoc. (meter 11:26) sited his concerns for Managers of large properties having enough time to compile all of the information that could be requested. For example they could ask for all rental applications submitted to them in the past year.

**Ms. McEvers** (meter 13:33) stated that for example in the wage & hour laws we have this language. We have never had to evoke the power. She discussed current process of "writing" letters reminding them of the ability to evoke the power and that generally gets the results.

Currently we could evoke the Federal laws for this legislation if we had issues. This process is a last resort and we do not want to have a "strong arm" reputation.

**Sen. Lyson** asked who the attorneys are in there organization. She replied that she is the only attorney and that they would ask the Attorney General's office if they need services.

**Sen Fiebiger** asked what type of timeframe they use? We have the ability to grant extensions especially in the case of large amounts of information. We are under mandate to comply within 100 day.

**Testimony Neutral to the Bill:**

None

**Senator David Nething**, Chairman closed the hearing.

**Recorder Job No.: 856**

**Senator David Nething**, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

**Sen. Nething** asked the committee that he was open to any action on SB 2074

**Sen. Lyson** made the motion to Do Pass SB 2074 and **Sen. Fiebiger** seconded the motion.

All members were in favor and motion passes.

Carrier: **Sen. Fiebiger**

**Senator David Nething**, Chairman closed the hearing.

**FISCAL NOTE**  
 Requested by Legislative Council  
 02/28/2007

Amendment to: SB 2074

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

|                       | 2005-2007 Biennium |             | 2007-2009 Biennium |             | 2009-2011 Biennium |             |
|-----------------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
|                       | General Fund       | Other Funds | General Fund       | Other Funds | General Fund       | Other Funds |
| <b>Revenues</b>       | \$0                | \$0         | \$0                | \$0         | \$0                | \$0         |
| <b>Expenditures</b>   | \$0                | \$0         | \$0                | \$0         | \$0                | \$0         |
| <b>Appropriations</b> | \$0                | \$0         | \$0                | \$0         | \$0                | \$0         |

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

| 2005-2007 Biennium |        |                  | 2007-2009 Biennium |        |                  | 2009-2011 Biennium |        |                  |
|--------------------|--------|------------------|--------------------|--------|------------------|--------------------|--------|------------------|
| Counties           | Cities | School Districts | Counties           | Cities | School Districts | Counties           | Cities | School Districts |
| \$0                | \$0    | \$0              | \$0                | \$0    | \$0              | \$0                | \$0    | \$0              |

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

SB 2074 would grant the Dept of Labor the authority to subpoena persons and/or documents related to investigations under the ND Housing Discrimination Act. It is anticipated the bill would not likely have any fiscal impact, as the authority to subpoena persons is expected to be rarely exercised.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

N/A - Although subsection 4 provides that a witness who is subpoenaed and appears at a hearing or whose deposition is taken is entitled to receive the same fees and mileage as a witness in a civil case, it is anticipated this authority would be exercised in only very rare circumstances. Therefore, the estimated fiscal impact is effectively zero.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

N/A - This bill would have no impact on revenue.

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

N/A - This bill is not expected to impact department expenditures.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

N/A - Since there is no anticipated fiscal impact, no funds related to this bill are included in the department's appropriations bill.

|                      |                      |                       |                        |
|----------------------|----------------------|-----------------------|------------------------|
| <b>Name:</b>         | Lisa K. Fair McEvers | <b>Agency:</b>        | ND Department of Labor |
| <b>Phone Number:</b> | (701)328-2660        | <b>Date Prepared:</b> | 02/28/2007             |

**FISCAL NOTE**  
**Requested by Legislative Council**  
12/27/2006

Bill/Resolution No.: SB 2074

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

|                       | 2005-2007 Biennium |             | 2007-2009 Biennium |             | 2009-2011 Biennium |             |
|-----------------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
|                       | General Fund       | Other Funds | General Fund       | Other Funds | General Fund       | Other Funds |
| <b>Revenues</b>       | \$0                | \$0         | \$0                | \$0         | \$0                | \$0         |
| <b>Expenditures</b>   | \$0                | \$0         | \$0                | \$0         | \$0                | \$0         |
| <b>Appropriations</b> | \$0                | \$0         | \$0                | \$0         | \$0                | \$0         |

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

| 2005-2007 Biennium |        |                  | 2007-2009 Biennium |        |                  | 2009-2011 Biennium |        |                  |
|--------------------|--------|------------------|--------------------|--------|------------------|--------------------|--------|------------------|
| Counties           | Cities | School Districts | Counties           | Cities | School Districts | Counties           | Cities | School Districts |
| \$0                | \$0    | \$0              | \$0                | \$0    | \$0              | \$0                | \$0    | \$0              |

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

SB 2074 would grant the Dept of Labor the authority to subpoena persons and/or documents related to investigations under the ND Housing Discrimination Act. It is anticipated the bill would not likely have any fiscal impact, as the authority to subpoena persons is expected to be rarely exercised.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

N/A - Although subsection 4 provides that a witness who is subpoenaed and appears at a hearing or whose deposition is taken is entitled to receive the same fees and mileage as a witness in a civil case, it is anticipated this authority would be exercised in only very rare circumstances. Therefore, the estimated fiscal impact is effectively zero.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

N/A - This bill would have no impact on revenue.

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

N/A - This bill is not expected to impact department expenditures.

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

N/A - Since there is no anticipated fiscal impact, no funds related to this bill are included in the department's appropriations bill.

|                      |                      |                       |                        |
|----------------------|----------------------|-----------------------|------------------------|
| <b>Name:</b>         | Lisa K. Fair McEvers | <b>Agency:</b>        | ND Department of Labor |
| <b>Phone Number:</b> | 328-2660             | <b>Date Prepared:</b> | 01/03/2007             |



**REPORT OF STANDING COMMITTEE**

**SB 2074: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS**  
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2074 was placed on the  
Eleventh order on the calendar.

2007 HOUSE JUDICIARY

SB 2074

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2074

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 2/26/07

Recorder Job Number: 3794

Committee Clerk Signature 

Minutes:

**Chairman DeKrey:** We will open the hearing on SB 2074.

**Lisa Fair McEvers, Commissioner of Labor, Dept. of Labor:** (see attached testimony).

**Rep. Delmore:** It seems like you are favoring one side over the other. If you don't see it being utilized, why would you put it in there?

**Lisa Fair McEvers:** I don't believe it does favor one side vs. the other, because it could actually be used for any person or their documents. It is usually the respondent that is uncooperative, but we don't believe that we will need to use this very often because most people are cooperative. The Dept. of Labor has similar authority under the labor chapters giving the Commissioner the authority to go in and get records from employers. Most employers, when we're doing those types of investigations, also voluntarily provide the information, but when they don't, it's amazing how when a letter comes from the commissioner saying I have the authority and if you don't provide it, I'm going to ask the AG's office to come get it, it's the stick that requires people to respond that's actually effective in having people respond. So I anticipate that when we get that uncooperative respondent or aggrieved person for that matter, or any other witness that the mere writing of a letter by me or my representative, saying look at the statute, we have the authority to have this information, so

please provide it, so then they will voluntarily comply. It's having the stick, not necessarily using it that I think is going to be effective.

**Rep. Koppelman:** You said that this will not negatively impact the substantial equivalency of the department and your authority. But that also implies that it isn't necessary, or deemed necessary to come up with that authority. You've also indicated that this would never be used, why is this bill here, is there a problem you are trying to solve.

**Lisa Fair McEvers:** Yes there is, we have had cases recently where we have had uncooperative respondents and one of those was in a Fargo housing discrimination case, and we were actually able to get enough information to make a reasonable cause determination, that without their cooperation, but when I look and see that in many other areas of the law, that various commissions and boards are given the subpoena power, and the Dept. of Labor doesn't have it for this very important authority, that we're being asked to carry out. You look in other areas of the law, the Board of Barber Examiners has the right to subpoena witnesses, the State Board of Cosmetology has the right, the Board of Counselor Examiners has the right, and I think if you want us to carry out the work you have to give us the tools to do that.

**Rep. Koppelman:** In the 1999 session, I worked on legislation for the Dept. and I also remember that subsequent to that, in ND we didn't want to necessarily create an adversarial climate for these types of complaints. We didn't have a huge problem, but when problems occurred, the goal was reconciliation for the desired outcomes. The only thing that troubles me about this is it seems to be moving us toward the courtroom style adversarial climate, whereas in the past, their criticism of the work of the Dept. was that it was. Do you have that fear?

**Lisa Fair McEvers:** That has actually been an issue that's been brought up by the ND Apartment Association, but the intent in bringing this is to use it as a last resort. We are still

focusing, as is the mandate under both the Human Rights Act and the Housing Act to focus on handling these without having to do to litigation and try to conciliate the claims if we can. There are instances when you cannot. The problem is without this authority, what we're finding is that we have a couple of options, specifically because HUD has the authority to subpoena records, we could go to HUD and say we'd like you to do this investigation because it's dual filed. The problem with that, is then the investigation isn't being done locally, it's going to take longer and right now, we are in a contract, we're getting paid for doing that work, so we might have invested a lot of effort and then we won't get paid for it, because we're asking them to do something we can't do. We're telling them that we can't get a determination on this, because we can't get the evidence because we don't have the right to require it. We can certainly ask for it, and we do; but we can't require it. We have had one instance where we, under employment law, where we did ask the EEOC to use their subpoena power and then they finished the investigation and we didn't get paid for it. We're not looking to be more litigious in bringing this; it's just on the rare occasion that someone is uncooperative. We can't make the determination without that particular piece of evidence. In the instance of a renter, a lot of times it's their records that are going to say and they might actually be helpful to that landlord because their practices might actually exonerate them, but they are just digging in their heels because they don't want to cooperate. I can't say that we would necessarily have more probable cause findings because of that, because the evidence could go either way.

**Rep. Charging:** How many cases do you do a year?

**Lisa Fair McEvers:** In the area of housing, it is increasing. I don't have the exact figures with me, but I believe the statistics are that it is rising by 24% a biennium over the last biennium. The last fiscal contract that we had with HUD, for one year was 50 cases. Right now, we're on track to have more than that for the next fiscal contract. It's not as large as our employment,

which is over 200 cases a year, not as large as our wage and hour, which is more like 350 cases a year. But these cases take more time to investigate than some others and so they do take a good amount of our time. I would estimate, at this point, about 50 cases a year for the last couple of years.

**Rep. Charging:** Is there a geographic location, are you able to identify certain areas.

**Lisa Fair McEvers:** It happens statewide. Allegations of housing discrimination, of course, because there are more housing units in the bigger cities, more of our claims probably come out of Fargo, Grand Forks, Bismarck and Minot. We have had complaints where we have found probable cause and gone to trial over it, in small towns as well. Most of our cases probably do come out of bigger cities because there are just that many more housing units, multiple landlord housing units in those cities.

**Lisa Fair McEvers:** The bottom of the first page of your testimony refers to Section 38 of the same chapter, about the AG enforcing a subpoena and this gives you the authority to use the subpoena and the AG is able to enforce. This other section 38 refers to a subpoena issued at the request of another party. The bill that we have here doesn't seem to include that situation, nor does it, or does the Dept. issue a subpoena to the other party.

**Lisa Fair McEvers:** That section 38 I believe could be utilized in multiple situations. It could actually be used once they are in litigation, and if the AG asked that party, the Dept. is a party, so first of all we could ask them to enforce a subpoena, but it could be that someone who intervenes in a court action could ask them to support that. It's possible and to be honest with you, I don't know what section 38 was intended to be used for, because I couldn't find anything in the legislative history discussing that particular section and I'm not aware that it's ever been utilized. I don't know exactly what the intent was for section 38, but it appears that it was for

them to be able to enforce a subpoena, but I don't see where, other than in a court appearance, a subpoena could be issued.

**Rep. Klemin:** In this particular bill, if one of the parties asked the Dept. to issue a subpoena to the other party, is that contemplated within this or do we need to add some language to permit that.

**Lisa Fair McEvers:** I did not intent that, I intend this to be solely used for the Department to be able to investigate. If an aggrieved person comes to us and wants us to get some information and we believe it is relevant, we don't want them to be able to demand that we issue subpoenas on their behalf. But if we believe it is relevant to get that information, whether it was asked for by an aggrieved party or possibly by a respondent. It could be the respondent could ask for us to subpoena evidence from the aggrieved person as well. We don't want to be required to have to become someone's subpoena agent. That was not the intent; it was solely intended for us to be able to gather evidence as part of our investigation.

**Rep. Boehning:** You were talking about 50 cases, is that a year or is that biennium that are coming to your attention.

**Lisa Fair McEvers:** In the last year, there were 50 cases reported with HUD.

**Rep. Boehning:** How many cases, out of the 50, are brought from undercover, because I know that there are people out there checking different places out? How many of the cases are brought by them.

**Lisa Fair McEvers:** I don't have an exact figure on that. There is a representative from Fair Housing of the Dakotas that may be able to answer that. I would venture a guess, that the cases that come to our attention by referral from another advocacy group would probably be less than 1/3. I don't have the figures for that. We do get a number of them, but primarily it's folks that are contacting our office and are filing complaints directly through us.

**Chairman DeKrey:** Thank you. Further testimony in support.

**Amy Nelson, Executive Director, Fair Housing of the Dakotas:** (see attached testimony).

In answer to Rep. Boehning's question, I would say that half of the 50 cases came through our agency. But that doesn't mean those were our agency cases where we assisted people in filing those cases and helped them with that. Of that, maybe 10 were our own cases, where we just filed by ourselves. Of that, 20-25 of them were individual cases that we just assisted with the filing process. I would say roughly 10 of those were probably where we filed a case. In the regard to the question asked about using this as a last resort. We see this only as a last resort method. We see this occurring with victims as well, when they don't feel threatened, and then they can go forward.

**Rep. Boehning:** You represent SD as well.

**Amy Nelson:** As of 2005.

**Rep. Boehning:** Under their law, is it the same as this or how do they handle their cases.

**Amy Nelson:** SD is very different, they do not substantial equivalency. So in SD, all cases have to go through the HUD Denver office. The state agency there does not have substantial equivalency.

**Rep. Koppelman:** You talked about your organization being an agency, but you're not an agency of government.

**Amy Nelson:** We're a non-profit agency. So as such, we are affiliated with state or federal government. We do receive grants to do investigations of housing discrimination.

**Rep. Koppelman:** Is that federal or state.

**Amy Nelson:** Federal, currently just federal. If there were state grants, we could do that.

Currently, it's just federal. So an individual who contacts us then, feels they may have been a victim of discrimination. I should also point out that I think the reference before, regarding

testing of cases. We only do complaint based testing. There has to be an allegation filed with us, in order for us to conduct an investigation. We don't do audit testing or anything like that. The individual comes to us and says that they feel that they have been a victim and we attempt to investigate to find out if discrimination did occur. That could be through volunteer testers, or it could be in sexual harassment cases, interviewing other witnesses or other people at the property. If we find discrimination, then we go back to the victim and we inform them what we found, and if they want to go forward, then we basically walk them through the process as an advocate basically, through that process. We don't have any enforcement of any kind. Individuals do not have to go through us. They can go directly to the Dept of Labor if they wanted to. Individuals tend to go through us, because of that advocacy piece that we can bring if discrimination is found.

**Rep. Koppelman:** So you advocate for people who allege that they have been the victim of housing discrimination, you're representing one side in this dispute.

**Amy Nelson:** We typically will only become an advocate if we also find evidence of discrimination. This isn't just an individual calling us, saying I feel I've been a victim, let's file. We have to do some sort of investigation to find evidence of discrimination. Otherwise, we won't represent them and go forward.

**Rep. Koppelman:** When you say, let's file, you mean a lawsuit. Do you also refer those to the State?

**Amy Nelson:** That's the bulk of where we file. We have extremely few lawsuits. What we will do, is when a case is found by the Dept. to have that cause, and then it's referred over to the AG's office, sometimes we will intervene and we also have our own interests being protected in that case as well. As far as the independent lawsuit that we bring forth on our own, we haven't done that since 2004, was our last case. It's a last resort, very rare.

**Rep. Koppelman:** Do you feel that our system is working pretty well in ND.

**Amy Nelson:** Over the past 3 or 4 years, under former commissioner Birch and current commissioner McEvers, I've seen great growth. We don't always agree on case rulings, but we agree a lot less often than we did four years ago. I feel that they are trying to do a very good job.

**Chairman DeKrey:** Thank you. Further testimony in support. Testimony in opposition.

**Rocky Gordon, ND Apartment Association:** We aren't really in opposition on this issue; I think our concerns are more along the lines of making sure that we get into the last resort for these subpoenas and not the first resort. That's where our concerns really lie. Personal history, I've been a respondent in housing discrimination cases. One case basically said we want to look at all your declined rental applications for the past year; which we provided. That's a burden; it takes a lot of time to go through that many denied applications on all the properties. We did it, there was no complaint filed, they didn't take it any further than the investigation so the system worked. But I just want to make sure that everybody understands, that's a lot of our time. We want it to be a last resort. We feel particularly strongly about that because the Dept. is again running their PSA advertisements on housing discrimination that we think are inaccurate and misleading. We don't know if this leads to frivolous filings of discrimination, but we're just concerned about that area. As far as the bill goes, as long as it's properly done and done as a last resort, we're not in opposition.

**Chairman DeKrey:** You mentioned the PSA, what exactly do they say.

**Rocky Gordon:** I'm paraphrasing a little bit, but they end with "if you are denied housing for any reason, you may be a victim of housing discrimination". Well, our position has been that we would like it to say "all residents may need to comply with certain rental criteria", because there are times when it's perfectly legal to deny applications; bad credit, bad landlord

references, if you are a sex offender, for example. There are times that you can be denied and it's not illegal.

**Rep. Delmore:** We ask for records for a lot of things like many of our state departments, human services, and health department. Are you aware of any instances where people felt they were asked for records, to help, even to substantiate or disprove a case, and it was a hardship for them. Is that the concern you are bringing.

**Rocky Gordon:** There are times, certainly when the respondent felt they were a hardship, and we felt that the filing was frivolous. So there are times that we feel that they're a hardship. But I would submit that the members of our association have been very cooperative and have fulfilled those requests.

**Rep. Delmore:** I would want to make sure if there was a lawsuit filed against me, as an apartment owner, I would think it would be in my best interests, frivolous claim or not, to give those records.

**Rocky Gordon:** Of course, which is why we do it.

**Rep. Klemin:** In the situation you described where the respondent thought the scope of the subpoena was unduly burdensome. Is there any procedure now whereby the respondent can ask the court to determine whether the scope of the subpoena is too broad or to quash some or all of it.

**Rocky Gordon:** Not that I know of.

**Rep. Klemin:** There is nothing in this bill about that. It's the Dept. who can go to court to get an order to enforce the subpoena, if the person refuses to obey it. I don't see anything in here that gives the person, to whom the subpoena is issued, the ability to go to court to ask the court to quash this subpoena. Do you have any opinion on whether that kind of thing should be in here.

**Rocky Gordon:** Yes, we would welcome that. I'm not sure how it would be done.

**Rep. Klemin:** Would that address your concern about the respondent thought that the scope of the subpoena was too broad, at least you would have someplace to go to have a judge say, yes it's too broad or not.

**Rocky Gordon:** Yes, sir.

**Rep. Delmore:** Would that not, however, have a tendency to bring the fiscal note on this bill up.

**Rocky Gordon:** I don't know, I wouldn't be able to answer that.

**Rep. Klemin:** I think that probably the AG's office would then more than likely represent the Dept. of Labor with respect to this.

**Rep. Delmore:** I think it will also elevate this up another step. I don't think we're getting from either side that this is a huge problem.

**Chairman DeKrey:** Thank you. Further testimony in opposition or neutral. We will close the hearing.

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2074

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 2/26/07

Recorder Job Number: 3868

Committee Clerk Signature

*Penrose*

Minutes:

**Chairman DeKrey:** We will take a look at SB 2074.

**Rep. Klemin:** Explained the amendment. I move the amendment.

**Rep. Meyer:** Isn't this already covered in the bill.

**Rep. Klemin:** No, I don't believe it is. The bill, the way it is now, says they have the authority to issue subpoenas. The way that I restructured this is that they will only issue a subpoena if the person won't appear voluntarily or won't produce the documents. It's not a significant difference.

**Rep. Kretschmar:** Second.

**Rep. Charging:** When you read the second part it provides for both the individual and/or documents. Do you need more than one subpoena to allow them to compel, the subpoena will compel them to appear.

**Rep. Klemin:** What will happen, if they only want documents, they'll only issue a subpoena for documents and they won't compel a person to come in. If they want just the person, they'll issue the subpoena for the person to come in and appear. But they can have a subpoena that includes both in the same subpoena. They can tell a person to appear and bring with you, these documents.

**Rep. Charging:** Let's say they provide the material, and that isn't the evidence they needed or are looking for. But they can still have some wiggle room to get out of it.

**Rep. Klemin:** You need to be specific about what it is you are requesting the party to produce. This is the same as it is in a civil action now. So, if the person didn't produce those records, or didn't produce all that was requested, a partial failure to produce is a failure to produce. I should add one other comment, on the last line of this amendment, we put in the word "relevant", that was so that it's not going to take a lot to establish what is relevant, but it is intended to prevent fishing expeditions, so they couldn't ask them to bring in all your books and records and let's see what you've got.

**Rep. Charging:** Is the opportunity here to say well, that wasn't what they asked for.

**Rep. Klemin:** The party being subpoenaed would have the obligation to produce what was being asked for. If there's a dispute, ordinarily they would work it out, and in our rules of civil procedure we have, rule 37 on sanctions, there is a requirement for the parties to confer before bringing a motion to compel to the court, so that they need to discuss it, otherwise the judge isn't going to consider it. So if there is some dispute about what is being requested to be introduced, ordinarily you should be able to work it out without getting the court involved. But if they, then the court will get involved.

**Rep. Delmore:** Why did you change the plural to singular tense of the record, document, etc.

**Rep. Klemin:** Legislative Council did that.

**Rep. Delmore:** So I may need five subpoenas to get the information that I need.

**Rep. Klemin:** I don't think so. You put whatever it is in the subpoena and I didn't change the tense that was done unbeknownst to me.

**Rep. Delmore:** Shouldn't we leave it as plural, rather than limiting it to one single book, etc.

**Rep. Kretschmar:** In the beginning of the Century Code, there is a statute of interpretation, and singular means plural and vice versa.

**Chairman DeKrey:** Voice vote. Motion carried. We now have the bill before us as amended. What are the committee's wishes.

**Rep. Delmore:** I move a Do Pass as amended.

**Rep. Griffin:** Second.

**11 YES 0 NO 3 ABSENT DO PASS AS AMENDED CARRIER: Rep. Klemin**

**Floor Amendments to SB 2074 (78177.0101) - 02/27/2007**

Page 1, replace lines 11 through 16 with:

- "2. For the purpose of thoroughly investigating a complaint, the department may require the attendance of a witness and the production of a book, record, document, data, or other object at any hearing or with reference to any matter the department has the authority to investigate. If under this subsection a witness fails or refuses to appear or to produce, the department may issue a subpoena to compel the witness to appear or a subpoena duces tecum to compel the witness to appear and produce a relevant book, record, document, data, or other object."

Renumber accordingly

Date: 2/26/07  
 Roll Call Vote #: 1

**2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2074**

House JUDICIARY Committee

Check here for Conference Committee

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

Action Taken Do Pass as Amended

Motion Made By Rep. Delmore Seconded By Rep. Griffin

| Representatives | Yes | No | Representatives | Yes | No |
|-----------------|-----|----|-----------------|-----|----|
| Chairman DeKrey | ✓   |    | Rep. Delmore    | ✓   |    |
| Rep. Klemin     | ✓   |    | Rep. Griffin    | ✓   |    |
| Rep. Boehning   |     |    | Rep. Meyer      | ✓   |    |
| Rep. Charging   | ✓   |    | Rep. Onstad     |     |    |
| Rep. Dahl       | ✓   |    | Rep. Wolf       | ✓   |    |
| Rep. Heller     | ✓   |    |                 |     |    |
| Rep. Kingsbury  | ✓   |    |                 |     |    |
| Rep. Koppelman  |     |    |                 |     |    |
| Rep. Kretschmar | ✓   |    |                 |     |    |
|                 |     |    |                 |     |    |
|                 |     |    |                 |     |    |
|                 |     |    |                 |     |    |
|                 |     |    |                 |     |    |

Total (Yes) 11 No 0

Absent 3

Floor Assignment Rep. Klemin

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

**REPORT OF STANDING COMMITTEE**

**SB 2074: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). SB 2074 was placed on the Sixth order on the calendar.

Page 1, replace lines 11 through 16 with:

"2. For the purpose of thoroughly investigating a complaint, the department may require the attendance of a witness and the production of a book, record, document, data, or other object at any hearing or with reference to any matter the department has the authority to investigate. If under this subsection a witness fails or refuses to appear or to produce, the department may issue a subpoena to compel the witness to appear or a subpoena duces tecum to compel the witness to appear and produce a relevant book, record, document, data, or other object."

Renumber accordingly

2007 TESTIMONY

SB 2074

John Hoeven  
Governor

Lisa K. Fair McEvers  
Commissioner



State Capitol - 13th Floor  
600 E Boulevard Ave Dept 406  
Bismarck, ND 58505-0340

nd.gov/labor  
nd.gov/humanrights

AH #1

Testimony on SB 2074  
Prepared for the  
Judiciary Committee

January 10, 2007

*Same given to  
Hove*

Chairman Nething and members of the Judiciary Committee. For the record, I am Lisa Fair McEvers, Commissioner of Labor.

North Dakota prohibits housing discrimination on the basis of race, color, religion, sex, national origin, age, disability, familial status, and status with regard to marriage or public assistance. The department of labor is charged with the duty to investigate complaints alleging discriminatory housing practices under N.D.C.C. ch. 14-02.5, commonly referred to as the Housing Discrimination Act.

The duty to investigate complaints alleging discrimination is one of the most important duties the department has been assigned, and is the basis through which evidence is obtained and upon which the department makes its determination of whether or not reasonable cause exists to believe that unlawful discrimination has occurred. When a complaint alleging unlawful housing discrimination is filed with the department, the person or entity alleged to have committed a discriminatory housing practice, known as the respondent, is given an opportunity to respond to the allegation and provide evidence to dispute the claim.

While most respondents involved in a housing discrimination investigation are fully cooperative, from time to time a respondent is not fully cooperative. Because a respondent is most often a landlord or an agent of the landlord with records on how the rental property has been utilized, a respondent is likely to have documentary evidence of the day to day operations of the business. Comparative data, which may show how a respondent treated the aggrieved person, as compared to other persons, can be very important in determining whether the evidence supports a finding of reasonable cause.

Without the power to demand that an uncooperative respondent provide testimonial or documentary evidence, the department may only have evidence as provided by the aggrieved person. SB 2074 proposes granting the department of labor the authority to issue subpoenas, under N.D.C.C. § 14-02.5-13 for the purpose of fulfilling its duty to thoroughly investigate complaints of unlawful housing discrimination.

Currently the Housing Discrimination Act has a provision under N.D.C.C. § 14-02.5-38 which states: "The attorney general, on behalf of the department or another party at whose request a subpoena is issued under this chapter, may enforce the subpoena in appropriate proceedings in district court." While this statute, included in the original language of the Housing Discrimination Act in 1999, apparently contemplated that the

attorney general may need to enforce a subpoena, nowhere in the chapter was the authority to issue a subpoena actually granted to the department.

Also of particular importance when looking at amending the Housing Discrimination Act is the need for any proposed legislation to meet substantial equivalency standards with the federal Fair Housing Act. This is because the department, since it was originally given the authority to investigate housing discrimination complaints in 1999, has had a federal contract with Housing & Urban Development (HUD) to investigate violations of the federal Fair Housing Act. This contract requires that North Dakota fair housing provisions must be substantially equivalent to the federal Fair Housing Act. I have been in contact with and forwarded a copy of the proposed legislation to regional HUD representatives in Denver. The response that I received was that any power or authority being sought to aid in investigation that is more encompassing than what authority the department already has in place will not negatively affect substantial equivalency standards.

Under 42 U.S.C. § 3611 of the federal Fair Housing Act, the Secretary of HUD has the authority to issue subpoenas and order discovery in aid of investigations. The federal statute also contemplates the payment of witness fees and mileage similar to those paid in United States District Courts. Granting the department the authority to issue subpoenas would mirror the authority granted to HUD in its investigations.

A fiscal note has been attached to this bill, which I believe merits some explanation. Under subsection 4 of the proposed statute there is a provision which would require the payment of a witness fee and mileage if a person is subpoenaed to appear. It is anticipated that this power would rarely be invoked. However even if utilized, it would be most likely be used to subpoena persons to provide documentary evidence rather than requiring a personal appearance. Based on this premise, the department does not believe that the subpoena power would have any fiscal impact, since the witness fee and travel expenses would only be incurred if a person actually was required to appear.

I thank you for your time and ask you for support of this bill. I would be happy to answer any questions you have.

# FAIR HOUSING OF THE DAKOTAS

(Formerly the North Dakota Fair Housing Council)

533 Airport Road, Suite C  
Bismarck, ND 58504  
ND Relay 1-800-366-6889 (Voice)  
SD Relay 1-800-642-6410 (Voice)

Telephone 701-221-2530  
Toll Free 1-888-265-0907  
ND TDD 1-800-927-9275  
SD TDD 1-866-273-3323

Att # 2  
1-10-07

Testimony before the  
Senate Judiciary Committee  
on Senate Bill 2074  
by the Fair Housing of the Dakotas  
January 10, 2007

same  
given to  
House

Mr. Chairman, and members of the Committee, my name is Amy Schauer Nelson and I am the Executive Director of the Fair Housing of the Dakotas (FHD). The FHD is a non-profit agency which serves North and South Dakota. We work to eliminate housing discrimination and to ensure equal housing opportunities for all. The FHD educates the public on Fair Housing Laws and also investigates allegations of housing discrimination. When discrimination is found, we assist complainants in filing complaints of housing discrimination and throughout the administrative process. In some situations, we also file complaints on our behalf when discrimination is found and the client chooses not to go forward. As a result of our assistance in complaint filing, we often work with the North Dakota Department of Labor because it is the state agency charged with receiving complaints and enforcing violations of housing discrimination. We strongly support their efforts in working to eliminate housing discrimination in North Dakota.

We support and encourage the use of subpoena power by the North Dakota Department of Labor (NDDOL). Unfortunately, it's been my experience that threats that a subpoena may be issued once a case is caused (found to have discrimination and referred to the Attorney General's Office) is typically only perceived by respondents as an idle threat. Respondents are unwilling to turn over documents or information which could provide evidence of discrimination until they are forced to do so. The investigative process can also be very intimidating to individuals who participate as witnesses. We have seen most recently in cases involving sexual harassment that witnesses may also have a reluctance to contact or respond to requests of interviews by the North Dakota Department of Labor in fair housing investigations. Witnesses in cases such as these can be easily intimidated by respondents. Threats of being evicted from their housing or having bad decisions from their past made public are examples we have heard most recently. Although retaliation and threats such as these are illegal under the Fair Housing Act, people in vulnerable situations are going to go with the side of caution rather than run the risk of losing their housing or being publicly embarrassed. Often times, these individuals are critical in order to determine if discrimination is occurring. Only with their participation can illegal acts of discrimination be uncovered and just remedy provided to victims. Being forced to participate as a result of the subpoena would provide support to them that they are following the law when confronted or threatened by a respondent. In other cases, once cause was found and the Respondent was required to turn over rental records as a result of private litigation or through the North Dakota Attorney General's Office, we were then able to locate several additional witnesses to the illegal discrimination which otherwise would not have been found had cause not been issued due to lack of subpoena power by the NDDOL.

The Fair Housing of the Dakotas supports passage of Senate Bill 2074. I thank you for the opportunity to provide testimony today and please let me know if you have any questions. Thank you.



# North Dakota Human Rights Coalition

P.O. Box 1961, Fargo, ND 58107-1961 (701) 239-9323 Fax (701) 478-4452 www.ndhrc.org



Testimony  
Senate Bill 2074  
Senate Judiciary Committee  
January 10, 2007

Chairman Nething and members of the Committee, thank you for the opportunity to present testimony in favor of Senate Bill 2074. I am Cheryl Bergian, Executive Director of the North Dakota Human Rights Coalition. The Coalition includes a broad-based, statewide membership of individuals and organizations interested in the furtherance of human rights in North Dakota; the Coalition's mission is to effect change so that all people in North Dakota enjoy full human rights.

We support the work of the Division of Human Rights in the North Dakota Department of Labor for the enforcement of the North Dakota Human Rights Act and North Dakota Housing Discrimination Act. The request of our Coalition for enforcement of the anti-discrimination law in North Dakota was the impetus for the creation of the Division of Human Rights in 2000 and the assignment of its regulatory responsibilities in 2001. It is my understanding that a significant amount of the work of the North Dakota Department of Labor now consists of activity for those two chapters of state law, as opposed to enforcement of the Wage and Hour laws and other duties of the department.

We support the request for subpoena power under the North Dakota Housing Discrimination Act by the North Dakota Department of Labor. It is important that the Department have the resources it needs to carry out its statutory mandate to prevent and eliminate discrimination under the North Dakota Human Rights Act and North Dakota Housing Discrimination Act, and the ability to subpoena information from respondents is a necessary resource for the Department to carry out its investigations in a timely and thorough manner.

We ask for a do pass recommendation on Senate Bill 2074. I appreciate this opportunity to testify on behalf of the North Dakota Human Rights Coalition.

Chairman DeKrey and members of the Committee, I apologize that I wasn't able to attend the hearing on SB 2074 & SB 2076 earlier this week. Please accept this belated support for both bills.

I am Cheryl Bergian, Executive Director of the North Dakota Human Rights Coalition. The Coalition includes a broad-based, statewide membership of individuals and organizations interested in the furtherance of human rights in North Dakota; the Coalition's mission is to effect change so that all people in North Dakota enjoy full human rights.

We support the work of the Division of Human Rights in the North Dakota Department of Labor for the enforcement of the North Dakota Human Rights Act and North Dakota Housing Discrimination Act. The request of our Coalition for enforcement of the anti-discrimination law in North Dakota was the impetus for the creation of the Division of Human Rights in 2000 and the assignment of its regulatory responsibilities in 2001. It is my understanding that a significant amount of the work of the North Dakota Department of Labor now consists of activity for those two chapters of state law, as opposed to enforcement of the Wage and Hour laws and other duties of the department.

We support the request for subpoena power under the North Dakota Human Rights Act and North Dakota Housing Discrimination Act by the North Dakota Department of Labor. It is important that the Department have the resources it needs to carry out its statutory mandate to prevent and eliminate discrimination under the North Dakota Human Rights Act and North Dakota Housing Discrimination Act, and the ability to subpoena information from respondents is a necessary resource for the Department to carry out its investigations in a timely and thorough manner.

Please convey our support for these two bills to the other members of the House of Representative, if that information would be helpful. I appreciate this opportunity to provide information on behalf of the North Dakota Human Rights Coalition.

Cheryl Bergian  
Executive Director  
North Dakota Human Rights Coalition  
P.O. Box 1961  
Fargo, ND 58107-1961  
(701) 239-9323  
(701) 478-4452 (fax)  
[www.ndhrc.org](http://www.ndhrc.org)

The North Dakota Human Rights Coalition works to effect change so that all people in North Dakota enjoy full human rights.