

2009 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1119

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB1119

House Government and Veterans Affairs Committee

Check here for Conference Committee

Hearing Date: 01/16/2009

Recorder Job Number: 7137

Committee Clerk Signature



Minutes:

Chairman Grande: Opened the meeting for hearing HB1119.

Chairman Grande: Is there was anyone who wants to introduce this bill? Is there anyone who wants to speak in favor of this bill? Is there anyone who wants to oppose this bill?

Mike Motschenbacher, hotel manager: Mr. Motschenbacher provided written one-page testimony in opposition to HB1119, see attachment #1.

Chairman Grande: Thank you Mike. Any questions from the committee?

Rudie Martinson, ND Hospitality Association: Mr. Martinson testified in opposition to HB 1119 and provided a one-page written testimony. See attachment #2.

Chairman Grande: Thank you. Any questions from the committee?

Chairman Grande: I'm going to go back one more time. Is there anyone in favor of HB1119?

Jeff Larshus, OMB Fiscal Management: Mr. Larshus testified in support HB 1119 and provided a one-page written testimony. See attachment #3.

Chairman Grande: You said there were 9 agencies that made requests. Did you pay them? Did you authorize for them to pay above?

Jeff Larshus: Yes.

Chairman Grande: Can I have the numbers of how much that cost us?

Jeff Larshus: We can get that for you. I don't have that information.

Chairman Grande: Any other questions?

Rep. Wolf: Thank you Chairman Grande. A couple of real quick questions; I guess I don't understand how raising the reimbursable rate, you can't get a hotel in Minot, I'm from Minot, during the ND State Fair. They are booked **years** in advance. So I don't know how raising the reimbursable rate or allowing it to be whatever you want to pay for one, will help that situation as well as with the oil boom that is happening in my part of the state. My husband travels to Williston, he has a school there. He has to make sure his travels allow him time to get back home that night because you can't get a hotel room there. And he has carte blanche to pay whatever they charge and he still can't get a room in Dickinson and Williston and any of those areas. So I guess I don't understand your reasoning behind if we allow state employees to be able to have carte blanche to be able to pay whatever. It doesn't make sense to me; allowing them to be able to pay whatever is going to guarantee they are going to get a room, because they're not.

Jeff Larshus: I agree with that. If they could not get room in that city then they would have to make some alternative travel plans. It depends on the agency and the type of work they are doing. But the request we have received were when somebody actually had a room and would have to pay those fees.

Rep. Froseth: Thank you. On your proposed amendments, you have "expenses exceeding the state lodging rate" period? Take out the rest of the language?

Jeff Larshus: Just the line 21 where it says "fifty-five dollars", replace that with "the state lodging rate". In the section it always talks about the state rate, you would always make reference then to that; whatever the current state rate is versus having to change the amount.

Rep. Dahl: Mr. Larshus, you noted that there already is a process in place to reimburse these agencies if that employee does exceed the state rate, they can apply for a waiver?

Jeff Larshus: Yes. What we have asked for if an agency has had trouble; they cannot get the state rate, we gave them the waiver to say that employee should be reimbursed above and beyond the state wages for that particular hotel stay.

Rep. Dahl: Is this bill necessary if there is already a process in place to take care of that? You don't have to worry about what the verification process is or some of the concerns that were raised on the previous testimony.

Jeff Larshus: I know this bill was introduced by the Board of Higher Ed and we liked it and I think we supported it. If it does not go through we can still address and look at these situations on an agency by agency basis. Because we feel that employee, elected official, legislator, whatever the case may be, if they are required to be in the city to perform their duties, that that amount should not have to come out of their pocket.

Rep. Nathe: What is the verification process?

Jeff Larshus: They send us a written response request that they had trouble getting a room in a particular city, could we waive the rate of \$55.00. And we send it back okaying it.

Chairman Grande: Is there anything more extensive than just saying "I can't find a room?" Do they have to verify they didn't want to stay at the Comfort Inn and they wanted to stay at the Holiday Inn?

Jeff Larshus: Yes, we've told them that in dealing with business people in their office, some of the first questions we ask are they checking more than one hotel and have they checked around. And they are telling us that yes they have been trying to get the state rate. It isn't just because someone wanted to stay at this hotel they wanted to stay at that one.

Rep. Nathe: So basically on their word, it's not really a note from the hotel or something?

Jeff Larshus: No. When we first started hearing about this, we have gone out to Williston for instance and looked at some of the hotel websites and tried ourselves to see if we could get rate or what we could get and we couldn't.

Rep. Winrich: Thank you. At the present time you're approving this on a case-by-case basis or is it approved for a certain agency?

Jeff Larshus: For a certain agency. So they may have one state, they may have 3 states at various times throughout the year. We are not doing it on a case-by-case basis, we trusting the judgment of the agency saying we've had problems and this is what we are doing.

Rep. Winrich: I guess I don't understand what this change is. This just authorizes the agency to do it but they would still give the agency approving advantage.

Jeff Larshus: Correct. And I'm not sure, I know the Higher Ed had introduced this bill and I see Laura is here and she can maybe speak some more to that. We are just here supporting this.

Rep. Wolf: A while ago you mentioned legislators. I don't read this paragraph to include legislators. Does it include legislators? Some of us are paying \$900 a month but we're being required to pay \$1,000 a month for some of our lodging. Does that include us too?

Jeff Larshus: I guess anybody that is getting the state rate for an overnight stay, not talking about during the legislative session, if you had to go to a committee meeting in Williston, I am making an assumption, and the state rate is not available for anybody required to be in that particular city is included.

Chairman Grande: Any other questions?

Rep. Froseth: I would presume that Compensation Committee is making a recommendation to increase the lodging?

Chairman Grande: I have heard that.

Rep. Froseth: Has anyone seen a bill?

Chairman Grande: Not in this committee.

Jeff Larshus: That's correct. It's on the Senate side and it was heard this morning.

Rep. Froseth: Does anyone know what that amount is?

Chairman Grande: \$60

Chairman Grande: Thank you. Is there anyone else who wishes to speak in favor of this bill?

Laura Glatt, ND University System: I apologize to the committee for being late and I want to thank Jeff for taking all the hard questions. Laura provided a two-page written testimony, see attachment #4. Laura pointed out the emergency clause on the back of her testimony.

Chairman Grande: Does the university systems not have any kind of a waiver clause?

Laura Glatt: Our practice, based upon advice from our legal counsel, has **not** been to reimburse more than the current state-approved lodging rate and so our employees have been paying it out-of-pocket. In fact it didn't come to our attention that state agencies were on occasion paying more than the state rate until a recent audit. I think it was an audit of the Dept. of Public Instruction. In there the auditors raised the issue but didn't necessarily make a recommendation because they said in their opinion the law wasn't very clear and they also didn't believe it was fair to the state employee to ask them to pick it up out-of-pocket. And so it was really that that prompted our discussion and so until that we didn't realize it was a practice and discretion of the state agency level to permit this. So again based on legal counsel advice it was decided we needed clarification of state law to permit it.

Rep. Meier: Can you give me a dollar amount of what kind of out-of-pocket costs are being incurred?

Laura Glatt: I really can't because it varies significantly depending on the location and also the other events occurring in town depending on what the demand is for hotels in the market and the prices. I really can't tell you what the amount is. There really isn't a standard.

Rep. Meier: I think the other important point somebody raised earlier is being able to give rooms and what will this do. I can speak from personal experience. I was able to get a room in Dickinson this summer at the state rate. It was the only place in Dickinson you could find a room at the state rate. I can tell you it is not a place you want your state employees staying. I've stayed in a lot of hotels over the years attending thousands of sporting events with my children and some of them aren't so nice and this was by far the worst hotel I have ever stayed in. I wouldn't trust the cleanliness or the safety of this hotel. It was not of the highest standard.

Rep. Winrich: If I understood your comments about current law and the ambiguity, the auditor's report concluded it's not clear that OMB has the authority to grant this exemption.

Laura Glatt: I was looking to see if anyone from the auditor's office is here because I don't want to speak on their behalf. I don't know as if I would go so far to say that, that they were requesting OMB's authority, they just raised the issue that there was reimbursement beyond the state-approved rate but their conclusion was they didn't make it a specific recommendation in the audit because they didn't think it was fair to the employee to pick up the cost. Like I said, that was the first time we were aware that that was even an option or a practice and we're just seeking clarification from state law.

Rep. Winrich: This would clarify and put the responsibility with the agency?

Laura Glatt: Yes.

Chairman Grande: Any other questions? Thank you. Anyone else who wishes to speak in favor of HB1119?

Linda Fisher, employee of the State Land Department: I am one of those state employees that has been paying out-of-pocket costs particularly during the State Fair in Minot. I am sort of for and sort of against depending on the cap that I'm wearing. The "for" hat says that I really don't like paying out-of-pocket. We are not one of the agencies that requested an exemption from OMB. We didn't really realize that that could be done. So maybe that could be addressed that agencies would know that they have the ability to do that. But from a program administrator's standpoint, I'm kind of against the bill because of the issues that have already been raised about how do you know how hard they tried? How do you know what was really available? How do you know? And I don't want to as a program administrator have to do that. So I'm not here for or against, I'm just saying it does happen, it has happened to me personally a few times. I have incurred out-of-pocket expense. It has happened in Minot, Williston, and Fargo.

Chairman Grande: Anyone else who wishes to speak? For? Against? Neutral? Chairman Grande closed the hearing on HB1119

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1119

House Government and Veterans Affairs Committee

Check here for Conference Committee

Hearing Date: 01/22/09

Recorder Job Number: 7609

Committee Clerk Signature *Lou Engleson*

Minutes:

Chairman Grande: Let's start with 1119 because I've got the information from OMB.

President Grande, per your request on 1119 enclosed is a list of state agencies that have paid above the state rate for lodging the last seven months. I have included the number of employees nights stay at cities, nightly rate, total cost. If you need additional information, please let us know. Above and beyond they've paid out \$3,559. ITV had requests in out of Fargo and Dickinson for a total of \$320. Tax Department out of Medora and Dickinson \$337. PSC, Minot, Stanley, Williston although what's the state rate? \$55. Minot was charging \$65. Stanley charged \$64 for a total of \$432. Minot, Williston, Fargo \$1,000+. They exceed all at Minot for \$292. Ag department, Minot, Medora, Jamestown \$577. Game and fish, Fargo, Williston, Grand Forks, Bottineau, Devils Lake, Medora. Medora came down in rates for them. They charged the tax department \$120, \$119 and only charged game and fish \$64. Water commission stayed in Williston and Williston gave them a \$60 rate.

Rep. Kasper: Is this only in-state travel? The \$55 above?

Rep. Dahl: I think this bill could cause a lot of ramification and I motion a do not pass.

Chairman Grande: We have a motion for a do not pass.

Rep. Boehning: Second.

Rep. Dahl: I think there is already a review process for the state agencies. They can get a high rate if they go through OMB. So what this is for is for higher ed. Is there a similar process that they could go through. This isn't fair. It's not fair that it comes out of their pocket. Obviously OMB has done some research with respect to improving the requests, is there something we could do here for higher ed?

Chairman Grande: Maybe we do need to hold off. We should probably get clarification. Who is it that told NDUS that they could not do this yet OMB is doing it. There's some misunderstanding as to what they could be doing. So, should OMB be doing this to start with. Should they be reimbursing. Do they actually have the ability to make that discretion.

Rep. Dahl: I don't have a problem if they want to go through OMB to get through that process. It's not easy to do it, then there's that extra step to make sure that there isn't anything else around. But I'm not sure we could require higher ed to go through OMB. I'm not sure it's structured in the chain of command that way.

Chairman Grande: That would lend to my concern is so then they get to just do it and then when are they going to come in asking for a fiscal note because of all these expenses they have.

Rep. Froseth: I don't think we should pass this bill. I think if we pass this they aren't even going to try to find a motel that will accept the state rate. They'll just stay wherever they please. I do think the state rate should be raised.

Rep. Boehning: My biggest concern is are the higher ed, are they just going to call up the Holiday Inn or are they going to shop around. I don't mind paying the extra if they can't find a room. I don't want people to stay in a sleazy hotel. This just basically opens it up. It's not even up to the regular employees. It's going to be the presidents, vice-presidents and down

the line. I think this is good legislation. There are times when maybe we have to reimburse more because you can't find a room.

Rep. Dahl: Could we put in some kind of an accountability measure that we can give them this authority for two years. They have to come back and report back to the location and the dates and how much they went over and we can see if it's going to be abused.

Chairman Grande: And put something in there regarding how many places they've tried to find locations to stay before they chose the higher rate?

Rep. Nathe: I asked Jeff Larshus about how you verify it? I would suggest maybe we think about maybe their supervisor makes that call and does the shopping around.

Rep. Kasper: I think we should kill this bill.

Rep. Dahl: Is it fair to allow for state employees but not higher ed. I just think we can try this for two years and if it's abused then we can revisit it. I really don't think that it's fair.

Chairman Grande: Would it be better to just tell the hotels in the state that if a state agency calls and asks for a room, you have to give them the state rate.

Rep. Meier: I call for the question.

Chairman Grande: Can I resist that as he finishes his call to counsel to find out what's legit?

Jason Nisbet: They said that they didn't draft it, that the agency must have drafted it. All the fiscal people were out at hearings so they'll get back to us.

Chairman Grande: We have a motion of a do not pass in front of us. A second has been made. The question has been called. The clerk will call the roll on a do not pass on 1119. Do we have a carrier?

11 yes, 1 no, 1 absent. Rep. Meier was assigned to carry the bill.

FISCAL NOTE
Requested by Legislative Council
12/23/2008

Bill/Resolution No.: HB 1119

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.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 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).*

A state agency/institution may pay actual lodging costs beyond the current limit of \$55 plus any additional applicable state or local taxes based on verification that lodging accommodations are not available at state rates.

Note: Part 1A. State Fiscal Effect. Expenditures can not be determined.

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.*

Part d of Section 1 of the bill.

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.*

No impact on revenues.

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.*

The expenditure amount cannot be determined. It is unknown how often lodging is not available at allowable state rates.

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.*

Any expenditure for lodging in excess of \$55 would need to be paid from state agency's existing appropriation.

Name:	Sheila Peterson	Agency:	OMB
Phone Number:	701-328-4905	Date Prepared:	12/31/2008

Date: 1-22-09
Roll Call Vote #: _____

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 119

House Government and Veterans Affairs Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DNP

Motion Made By Meier Seconded By Boehning

Representatives	Yes	No	Representatives	Yes	No
Chairman Grande	✓		Rep. Amerman	✓	
Vice Chairman Boehning	✓		Rep. Conklin	✓	
Rep. Dahl		✓	Rep. Schneider	✓	
Rep. Froseth	✓		Rep. Winrich		0
Rep. Karls	✓		Rep. Wolf	✓	
Rep. Kasper	✓				
Rep. Meier	✓				
Rep. Nathe	✓				

Total (Yes) 11 No 1

Absent 1

Floor Assignment Meier

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

REPORT OF STANDING COMMITTEE

HB 1119: Government and Veterans Affairs Committee (Rep. Grande, Chairman)
recommends **DO NOT PASS** (11 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING).
HB 1119 was placed on the Eleventh order on the calendar.

2009 TESTIMONY

HB 1119

Madam Chair and committee members, thank you for giving me the opportunity to speak with you today. My name is Mike Motschenbacher, and I am going to speak to you today as a hotel manager who houses state employees on a daily basis, and am very familiar with the process. I'm asking you to oppose HB 1119 for the following reasons.

The amendment reads, "A political subdivision may reimburse an elective or appointive officer, employee, representative, or agent for actual lodging expenses. A state agency or institution may reimburse an officer, employee, representative, or agent for actual lodging expenses exceeding fifty-five dollars based on verification as prescribed by the agency or institution that reasonable lodging at or below that amount was not available."

Several problems can and probably will arise as a result if this bill passes.

1. The first thing that jumps out at me is the words "verification as prescribed by the agency". I interpret that as each agency will be able to determine whether or not a true state per-diem room was available. My question is, how is this ever going to be monitored? What type of verification process must the state agency or political subdivision go through? Won't this cause more work for an agency that already has enough on their hands?
2. What will prevent state employees from simply getting an upscale room, paying \$100.00 or more for it, and then simply stating that no rooms were available at the state rate. With the number of state employees that travel, this could be a HUGE added expense to the taxpayer.
3. Who will determine if a state rate actually was or was not available? For example, if a state employee is attending a conference at a hotel that does not honor the state rate, does that then allow the employee to just pay and be reimbursed for whatever rate they are charging for the conference, or will the employee still be obligated to find a nearby hotel that will offer the state rate. What, if any, repercussions will be enforced if a state employee is abusing this.
4. Will there be a requirement for a certain amount of phone calls that must be made to hotels in the desired city before choosing one that is charging above the state rate. For example, if the state employee calls the Hampton Inn and they don't have a room at the state rate, can they then just choose to stay at the Ramkota for \$95.00 and say they tried and nothing was available.

Altogether, this bill as written opens up way too many possibilities not only for abuse, but for added work for state agencies. The language is also very vague and does not address several pertinent issues, as I've stated.

With exception to a few full service, upscale hotels, the majority of hotels in the state of ND will honor the current state rate. I can testify that during 2008, there was only 2 events and 5 total days that we did not honor the state rate, and during both those events, neither one of them filled all the hotels in town, whereas it would have made it impossible to find a state rate room.

Thank you again, and I would be happy to address any questions.

Attachment #1

Testimony of Rudie Martinson
ND Hospitality Association
Executive Director
HB 1119

Madam Chair and committee members, thank you for the opportunity to appear before you today. My name is Rudie Martinson, and I represent the ND Hospitality Association.

I am here today because of the concerns our industry has regarding HB 1119. First off, we wonder how frequently the situation addressed by this legislation actually happens. It is very rare for an entire city's complement of hotel rooms to be rented on a given night, and even more rare for that to happen during the Sunday through Thursday period when state employees are generally travelling on business.

I'd also like to offer the committee some background information regarding the market rate for hotel rooms in North Dakota. Generally speaking, the Average Daily Rate for hotel rooms in 2008 was just below \$71. This number represents an average rate a hotel room garners on the open market, and the state can logically expect to pay at least this amount if a given city's complement of hotels does not have a state rate available. More likely, hotels that do have rooms left under this scenario will charge their rack rate, which tends to be higher than the ADR.

Our final concern regards the mechanism that is set forth in the bill for determining whether or not the state rate is available. The proposed legislation leaves the determination of this standard up to the individual reimbursing agency. Our overarching concern with this provision, and this legislation in general, is the number of hotel rooms that will be reimbursed at a rate greater than the \$55. Our fear is that the number of rooms reimbursed at higher rates under this statute will be unacceptable to the next legislature, and we will have to answer to accusations of price gouging or other activity exploiting the law.

Overall, the ND Hospitality Association is concerned about the potential ramifications of this legislation.

Thank you for your time today. I would be happy to answer any questions.

Attachment # 2

HB 1119

Government and Veterans Affairs – 1/16/2009 – 11:00PM Fort Union Room

Jeff Larshus, OMB Fiscal Management

Madam Chairman and members of the committee, my name is Jeff Larshus with the Fiscal Management Division of OMB. I am here today on behalf of OMB in support of HB 1119.

- In the past year OMB has been notified by agencies that it is getting harder, if not impossible to get a state rate in the western part of the state. This appears to be because of the oil boom. Cities where this is happening are Dickinson, Williston, Stanley, and Watford City to name a few. Even Minot at certain times of the year you cannot get state rate. In Medora, the state rate never seems to be available during the summer.
- There are also times on weekends where state employees are required to be out of town on the job and getting a state rate is not available. This seems to be very common across the state but especially in Grand Forks and Fargo.
- Since July 2008 there have been 9 state agencies that have requested waivers to pay above the state rate because their employees could not get a state rate at any hotel in that city.
- OMB is unable to determine the fiscal impact of this bill, due to the fact we would not know how many nights stay would be incurred and what the nightly rate would be at each hotel. Any amounts above the state rate would be paid from a state agency's existing appropriation.
- OMB recommends language change to this bill. In section 1 line 21 replace the "fifty-five dollars" with the "state lodging rate". The reason for this change would be one less line to change whenever the state rate would be increased. Also would like to see a section added to declare the act an emergency measure.
- Questions?

Attachment #3

HB1119 – North Dakota University System

House GVA, January 16, 2009

Laura Glatt

HB1119, introduced at the request of the State Board of Higher Education would permit state employees, including NDUS employees, to be reimbursed actual in-state lodging expenses which exceed the current \$55 limit, if lodging at the state-rate is not available. Each agency and institution would implement procedures to verify that reasonable state-rate lodging accommodations were not available, before reimbursement is provided to the employee.

Smaller campuses indicate that they have between 5-10, and the larger campuses between 40-50 employees per year who incur personal out-of-pocket costs for lodging while on state business, when they cannot find a state-rate room. State-rate rooms in Williston and Dickinson are consistently difficult to locate, given the oil activity in those areas. Summer is especially problematic in Dickinson, due to the proximity to Medora. Other locations, where it is difficult, at times, to find a room due to special events like the State Fair, conferences and legislative session include Bismarck, Minot, and Fargo. Belcourt was also mentioned. You have probably also experienced the same difficulty while in Bismarck for meetings.

Shifting this cost to the employee is especially problematic given that the employee may also be picking up the cost differential between their actual and reimbursed meal costs as well.

I have attached an amendment to add an emergency clause to the bill. This was inadvertently missed when we filed the bill.

I would ask for your favorable consideration of the amendment and bill.

Attachment #4
page 1

North Dakota University System
PROPOSED AMENDMENTS TO HOUSE BILL NO. 1119:

Page 1, after line 22, insert:

“SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.”

Renumber accordingly