

2013 HOUSE JUDICIARY

HB 1073

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1073
January 11, 2013
Job 17169

Conference Committee

Kristi Helms

Explanation or reason for introduction of bill/resolution:

Declaration of a judicial emergency.

Minutes:

Chairman Koppelman: Opens

Jim Gange: State Clerk Administer asks that the meeting be help for Chief Justice, he will be here shortly. Jim Gange sends out a thank you for waiting for Chief Justice to arrive.

Chairman Koppelman: Announces meeting will be open both today and tomorrow to accommodate. Hold the meeting open for the next few minutes.

Chief Justice Vandewalle: An order declaring a judicial emergency may suspend, toll, extend, or otherwise grant relief from deadlines, time schedules, statutes of limitation, statues of repose, or filing requirements imposed bylaw, whether in civil or criminal cases, administrative matters, or any other legal proceedings as determined by the Supreme Court. This happened when the disaster hit Grand Forks and we thought we would not have to do that again, and then came Minot. In these cases we were not opposed by anyone or another entity however we could have been. I would like to correct the matter before we are faced with it again. We are asking for approval for these types of matters such as the Grand Forks and Minot disasters, this will not happen during a snow storm type of incident.

Rep. Hogan: Do other states have this type of agreement?

Chief Justice Vandewalle: Yes, most of them have had this completed long ago

Rep. Paur: Would there be any advantage or disadvantage to tying this Governors Declaration?

Chief Justice VandeWalle: He would declare emergencies such as snow storms; we would then be getting into a question now of separation of powers which would cause another issue with Statute of Limitations.

Rep Paur: I wasn't thinking of you declaring a declaration every time the governor did but having that as a pre requisite for

Chief Justice VandeWalle: So it wouldn't automatically play I suppose that would be alright, I understand, you could put that limitation on there.

Rep Brabandt: What are the lengths of the statutes of limitation that you are talking about?

Chief Justice VandeWall: Well they will vary, they are various lengths of statutes of limitation depending on the cause of action. A lot of them are six years; I don't remember all of them.

Bill Newman, Executive Director of the State Bar Association of ND: Is in favor of HB 1073 and are if there are any questions he could answer.

Chairman Koppelman: Any other testimony? We will recess the hearing because it is published for tomorrow as well.

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1073
Job 17221
DATE January 15, 2013

Conference Committee

Carman Hicklo

Explanation or reason for introduction of bill/resolution:

Relating to declaration of a judicial emergency

Minutes:

[Empty rectangular box]

Chairman Kim Koppelman: Chairman Koppelman reopened HB 1073. This bill was held open because the Chief Justice initially we thought was going to be tied up yesterday and not able to be here. We told the court we would hold it open until today thinking he would be available. But he did come here yesterday. It was published to be on our list today as well.

No other testimony. Closed the hearing.

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1073
January 15, 2013
Job no. 17250

Conference Committee

Committee Clerk Signature

Carman Hicks

Explanation or reason for introduction of bill/resolution:

Relating to declaration of a judicial emergency

Minutes:

Chairman Kim Koppelman: Re-opened the bill on HB 1073. Supreme Court is asking for the authority to delay the statute of limitation and things related to that. He asked whether this should be tied to some other kind declaration of emergency or clarity.

Rep. Gary Paur: I propose that it is just as an observation not a recommendation. Jack McDonald used examples of computer crashes or courthouses burning, that would not be an event necessitated a Governor's declaration of an emergency, but could easily be for the court system.

Chairman Kim Koppelman: Right, we were just talking about that and it might be something the committee wants to consider. If you do want to attach something like a gubernatorial or Presidential declared emergency to take care of those kinds of circumstances you might want to have language which would indicate or other emergency affecting a court facility or function. Under this language the court could declare anything an emergency. When we make law we want to look out for what could this mean not with the current people and the current system what does it mean.

Rep. Lois Delmore: We have to keep in mind the integrity of the three branches of government. The Judicial doesn't always follow something because the Governor says it or because we do. I don't see any great reason to tie to anybody. Anything could affect the court or the state but not both of them at the same time. I think the bill as it stands has merit. I don't think it will be utilized to do any huge damage to the state. Keep in mind we have an Executive, a Legislative and Judicial branch and they are 3 separate branches of government.

Chairman Kim Koppelman: But the statute of limitations is a measure of law and what they are asking for the authority to suspend is a statute which is made by the Legislature and signed by the Governor.

Vice Chairman Larry Klemin: How do you meet the statute of limitation requirement or a statute of repose requirement or filing requirement? Statute of limitation basically says you must commence your action before that time expires. How do you do that? You do that with the service of a complaint. The court is requiring now that virtually everything will have to be filed electronically. When they are being filed electronically I have a hunch they have a backup computer somewhere. They are going to require and get rid of paper. So how would anyone be in a position not to meet the statute of limitation under those circumstances? If you have a 6 year statute of limitation like we have for tort or contracts, somebody waiting until the very last day of the 6th year should have been doing something earlier.

Rep. Gary Paur: I agree with Rep. Klemin but also the Supreme Court must have figured it was necessary as they did it twice. They did it in '97 in Grand Forks and they did it 2 years ago in Minot. I don't know what the circumstances were that they figured they couldn't work around that.

Inaudible.

Chairman Kim Koppelman: I do know from working on a Judicial planning committee that the court takes very seriously its responsibility to provide judicial services. My guess is that they are aiming at here is if for whatever reason, let's say a flood, that access of the public for the normal course services and is disrupted. People should not be denied the opportunity to justice because of a natural disaster or something similar.

Rep. Lois Delmore: I think he did say most states have a statute like this in place; it would be used judicial in Grand Forks when the town was evacuated. Those extenuating circumstances as the flooding gets worse we could have had the same situation in Fargo more than once. I think just the court to be able to be prepared and following within the legality's of our law, I think they could do some of this through court rules and it's what they have done. But I think they've come to us with an option that allows them to use these extenuating circumstances.

Vice Chairman Larry Klemin: I think this is going be something rarely used and when used would be very temporary in nature. I think it would be used responsibly by the Supreme Court so I will not oppose it.

Rep. Randy Boehning: Would it be wise to put in there that they could declare it for a certain amount of time then revisit it again? I don't know how it was in Grand Forks or Minot, was it reviewed every week? Do we need to put some timelines into this?

Rep. Lois Delmore: I think a timeline would be difficult. I feel we should leave it clean as it would be very hard to put on days.

Vice Chairman Larry Klemin: Didn't they move the court facility out to Larimore as soon as they could?

Rep. Lois Delmore: They did, but not right away. Then it also took a case of working our cases in with what they had there.

Rep. Bill Kretschmar: I really have faith in our Supreme Court and judicial system. It's probably one of the more conservative branches of our government in our state. Under the bill the Supreme Court declares the emergency and the Justices would have to vote on it. So I think the bill is okay as it is.

Rep. Roger Brabandt: Is this request because of emergencies or because of case loads, could that have a bearing in it too?

Chairman Kim Koppelman: I believe it is because of emergencies.

Rep. Roger Brabandt: That is what is says.

Rep. Lois Delmore: I don't think they would use it very often. We have had 2 circumstances since '97 and they have been a total exception to the rule of what it was before them. Mr. Chairman, I would move a do pass on HB 1073.

Chairman Kim Koppelman: We have a motion for a do pass on HB 1073 from Rep. Delmore. Is there a second? Seconded by Rep. Hanson.
Roll call 12-0-2. Motion carried. Rep. Hanson will carry the bill.

Date: 1-15-13
 Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES #073
 BILL/RESOLUTION NO.**

House Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Delmore Seconded By Rep. Hanson

| Representatives | Yes | No | Representatives | Yes | No |
|-------------------------------|-----|----|-------------------|-----|----|
| Chairman Kim Koppelman | / | | Rep. Lois Delmore | / | |
| Vice Chairman Lawrence Klemin | / | | Rep. Ben Hanson | / | |
| Rep. Randy Boehning | / | | Rep. Kathy Hogan | | |
| Rep. Roger Brabandt | / | | | | |
| Rep. Karen Karls | / | | | | |
| Rep. William Kretschmar | / | | | | |
| Rep. Diane Larson | / | | | | |
| Rep. Andrew Maragos | / | | | | |
| Rep. Gary Paur | / | | | | |
| Rep. Vicky Steiner | | | | | |
| Rep. Nathan Toman | / | | | | |
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Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep Hanson

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

REPORT OF STANDING COMMITTEE

HB 1073: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends DO PASS
(12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1073 was placed on the
Eleventh order on the calendar.

2013 SENATE JUDICIARY

HB 1073

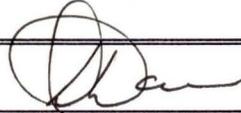
2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1073
2/18/2013
Job #19091

Conference Committee

Committee Clerk Signature



Minutes:

Relating to declaration of a judicial emergency.

Senator David Hogue - Chairman

Chief Justice Gerald Vande Walle - Explains the bill and that it came about because of the Grand Forks and Minot flooding. This gives the Court the authority to suspend the statute of limitations in emergencies. It puts a pause on it, it does not start over. He said nationwide most states already have this.

Opposition - none

Neutral - none

Close the hearing

Committee discussion

Senator Hogue talks of the way Minot was affected by this during the flood. He said there needs to be some mechanism to adjust deadlines.

Senator Nelson moves a do pass

Senator Armstrong seconded

Discussion

Senator Armstrong said there is more to it than just if the court house is functioning, you would also not be able to get a jury.

Vote - 7 yes, 0 no

Senator Grabinger will carry

Date: 2/18/13
 Roll Call Vote #: 1

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1073**

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By S. Nelson Seconded By S. Armstrong

| Senators | Yes | No | Senator | Yes | No |
|------------------------------|-----|----|------------------------|-----|----|
| Chairman David Hogue | X | | Senator Carolyn Nelson | X | |
| Vice Chairman Margaret Sitte | X | | Senator John Grabinger | X | |
| Senator Stanley Lyson | X | | | | |
| Senator Spencer Berry | X | | | | |
| Senator Kelly Armstrong | X | | | | |
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Total (Yes) 7 No 0

Absent _____

Floor Assignment S. Grabinger

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

REPORT OF STANDING COMMITTEE

HB 1073: Judiciary Committee (Sen. Hogue, Chairman) recommends DO PASS
(7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1073 was placed on the
Fourteenth order on the calendar.