

2013 HOUSE JUDICIARY

HB 1129

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1129
Job 17226, 17253
DATE January 15, 2013

Conference Committee

Carman Hickle

Explanation or reason for introduction of bill/resolution:

.Relating to the enactment of the Uniform Electronic Legal Material Act

Minutes:

Attachments 1

Chairman Kim Koppelman: Opened the hearing on HB 1129

Jay Buringrud, Director of Legal Services for the Legislative Council:

Provided one attachment. Explained the members of the commission set by statute. He went through the bill for explanation. Bill HB 1129 deals with electronic legal materials. The issue this bill addresses states that moving toward electronic publication of legal documents. Eventually there will be a time when there aren't books or printed documents of laws or anything. This bill addressed how do you ensure that anyone who goes onto the web to look for the North Dakota Century Code or North Dakota Constitution that what they see on their monitor is actually the official version of that. We have it on our servers but if you go on the internet you may be going through a variety of servers and there is ways of getting into that and hacking that. This addresses the situation promoted but American Library Association. How do you assure that this is official document where there is no published version available? The definition of electronic covers a variety of legal materials is very specific. It's the Constitution of this state, the Century Code, session laws and the Administrative Code. The Legislative Council publishes these documents; they are already on the web. We also however, publish the Century Code which is in bond volumes, there is also a CD version published of the Century Code. Our Administrative Code is the closest documents that we publish that will be available solely electronically in some time in the future. We used to publish a loose leaf version but we no longer do that. We publish in CD Rom format. If you want to pay for it you can buy a CD rom or you can go to our website and get it free. What this addresses is once the

decision is made that we will publish it only electronically then we have to follow three things. We can decide to publish something in electronic format and also continue to publishing it in a print format. If we do that we can officially declare it as a public record. Here's what we have to do we designate it as the official version of whatever we publish electronically. Then we also have to comply with Section 4, 6 and 7 of this bill. Section 4 is we need to authenticate it. We have to provide some means that a person going out onto the web is assured that what they see is the official version. That there has been no change in between what is on our server and what they get on their computer. We have to provide a method to authenticating that. The next item is we have to preserve it for security in Section 6. We have to make sure it is preserved, meaning it's there forever. We have to ensure the integrity, we have to provide backup and disaster recovery and we have to ensure the continuing usability of the material. That means we aren't going to publish something in Dos 3.1 that no one can read anymore. It has to be continually usable and accessible by anyone going off the computer system. In Section 7 we have to provide public access to that. Any official publisher is required to be preserved and shall ensure that the materials are reasonably available for use by the public on a permanent basis. We have to do those three things only if we published electronically. When we say this is the official version of the code and do it electronically we have to comply with this. If this bill passes Section 5 is the effect of that. People can rely on it, you can rely on the law that you obtain off the website as the official version of the law. We don't have plans on doing this at least for 6 to 8 years. We are working on improving the data base that we have of the Century Code and the Constitution right now. The website right now is the bare statute. If you look in the printed book there is also source notes. Source notes for the code identify every session law chapter that has amended that section since statehood. Some statutes go back to 1888 and 1898 and some go back further than that. Some of the contract laws in Title 8, you will see derivation Cal. This is the California field code that North Dakota took as part of the law at statehood. Some statutes go back before statehood.

Chairman Kim Koppelman: The early version of uniform laws, I assume.

Jay Buringrud: California Field Code Law was a very popular code at that time. It only affects the Legislative Council office. That's the only documents we have here, it could be expanded in the future but this lays the blueprint that if you are planning on doing this, this is what you need to do to have an official version.

Rep. Vicky Steiner: Did I understand this right, that you are not going to implement this for 6 to 8 years but you would still like this in place now and why would you want it now?

Jay Buringrud: The reason for that is that it lays out the blueprint if you want to do that. If we are ever going to go the time where we only publish electronically and we do not purchase or contract with the publishers of the books and decide to publish electronically, this is what we need to do. So we need to plan for that.

Rep. Nathan Toman: With this not being planned to be implemented for 6 to 8 years your definition of electronic right now covering what we have as electronic, do you see to broaden that for definition of electronic?

Jay Buringrud: No, we don't see any need because we have similar capabilities. We think it's covered, we think this is flexible enough to handle any technology in the future. The reason I say is that if you look at Section 4 it doesn't provide what type of authentication you have. Right now there are 2 basic types of authentication digital signatures and hash tags. By the time we do this there may be a different version that is more common that is being used by other states. Other agencies might be looking at doing this whether it's the Supreme Court for its judicial opinions or Attorney General for its Attorney General's opinions. When we decide something that's covered by Section 8 we are to look at that to see what is being used now when we do it. We think it is flexible enough to handle it.

Chairman Kim Koppelman: When you talk about authentication is that also able to be hacked or able to be fraudulently misrepresented by others and if so how do we guard against that?

Jay Buringrud: The authentication that's the software you would use that is not hacked, it is a certificate that they assure you of that. That is what the vendor would provide. We hereby certify that everything is authentic that is not what that covers, we will provide software that authenticates that. The government, the Library of Congress does this now for the US Code. It is authenticated now.

Gail Hagerty, State Bar Association: The state bar association is in support of HB 1129.

Chairman Kim Koppelman: No other testimony. Hearing closed.

Job no. 17253 reconvened on this date.

Chairman Kim Koppelman: This is the Electronic Legal Material Act, publishing the code with the authentication they talked about. He asked for discussion.

Rep. Andy Maragos: Recommended a do pass.

Chairman Kim Koppelman: Rep. Maragos moves do pass. Is there a second?
Rep. Brabandt seconds the motion.

No further discussion. Roll call 12-0-2. Rep. Toman will carry the bill to the floor.

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

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. #B 1129**

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. Maragos Seconded By Rep. Brabandt

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	/				

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep. Toman

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

REPORT OF STANDING COMMITTEE

HB 1129: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends DO PASS
(12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1129 was placed on the
Eleventh order on the calendar.

2013 SENATE JUDICIARY

HB 1129

2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1129
3/20/2013
Job #20227

Conference Committee

Committee Clerk Signature



Minutes:

Attachment and vote

Relating to the enactment of the Uniform Electronic Legal Material Act

Senator David Hogue - Chairman

Jay Buringrud - Director of Legal Services for Legislative Counsel - Attached summary (1). Explains the Uniform Law Commission and what it does. He says this Act is a pro-active Act and He says this needs to be authenticated and accessible for use by the public on a permanent basis. When they do this they would probably do the Administrative Code first. He goes on to say they are most concerned about for materials, the Constitution of ND, the ND Century Code, Session Laws, and the ND Administrative Code. They would add later the House Journals, the bills. Senator Hogue asked if others, example Supreme Court, wanted to come into this would they have to ask to be included. Mr. Buringrud responds they would. Senator Nelson asks how they authenticate. Mr. Buringrud explains software packages that are available.

Opposition - none

Neutral - none

Close the hearing on 1129

Senator Nelson moves a do pass

Senator Armstrong seconded

Vote - 7 yes, 0 no

Motion passes

Senator Nelson will carry

Date: 3/20/13
 Roll Call Vote #: 1

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1129**

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				

Total (Yes) 2 No 0

Absent _____

Floor Assignment S. Nelson

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

REPORT OF STANDING COMMITTEE

HB 1129: Judiciary Committee (Sen. Hogue, Chairman) recommends **DO PASS**
(7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1129 was placed on the
Fourteenth order on the calendar.

2013 TESTIMONY

HB 1129



Electronic Legal Material Act Summary

Increasingly, state governments are publishing laws, statutes, agency rules, and court rules and decisions online. In some states, important state-level legal material is no longer published in books, but is only available online. While electronic publication of legal material has facilitated public access to the material, it has also raised concerns. Is the legal material official, authentic, government data that has not been altered? For the long term, how will this electronic legal material be preserved? How will the public access the material 10, 50, or 100 years from now? The Uniform Electronic Legal Material Act (UELMA) provides states with an outcomes-based approach to the authentication and preservation of electronic legal material. The goals of the authentication and preservation program outlined in the Act are to enable end-users to verify the trustworthiness of the legal material they are using and to provide a framework for states to preserve legal material in perpetuity in a manner that allows for permanent access.

The Act requires that official electronic legal material be:

1. Authenticated, by providing a method to determine that it is unaltered;
2. Preserved, either in electronic or print form; and
3. Accessible, for use by the public on a permanent basis.

If electronic legal material is authenticated, it is presumed to be an accurate copy of the legal material. If your state enacts UELMA, the presumption that your authenticated electronic legal material is accurate applies in every other state that has enacted UELMA. If another state enacts UELMA, and authenticates its electronic legal material, its legal material is presumed to be an accurate copy for use in your state. Adoption of UELMA will harmonize standards for acceptance of electronic legal material across jurisdictional boundaries.

If a state preserves legal material electronically, it must provide for back-up and recovery, and ensure the integrity and continuing usability of the material. The act has no special requirements if a state chooses to preserve its legal material in print format, in recognition of the years of experience all states have in the preservation of print materials.

State policy and discretion allow each state to determine which categories of legal information will be included in the act's coverage. For each category of legal information, an official publisher is named. The act requires that the official publisher be responsible for implementing the terms of the act, regardless of where or by whom the legal material is actually printed or distributed. For the purposes of the act, only a state agency, officer, or employee can be the official publisher, although state policy may allow a commercial entity to produce an official version of the state's legal material. The UELMA does not interfere with the contractual relationship between a state and a commercial publisher with which the state contracts for the production of its legal material.

The UELMA does not require specific technologies, leaving the choice of technology for authentication and preservation up to the states. Giving states the flexibility to choose any technology that meets the required outcomes allows each state to choose the best and most cost-effective method for that state. In addition, this flexible, outcomes-based approach anticipates that technologies will change over time; the act does not tie a state to any specific technology at any time.

The UELMA is intended to be complementary to the Uniform Commercial Code (UCC, which covers sales and many commercial transactions), the Uniform Real Property Electronic Recording Act (URPERA, which provides for electronic recording of real property instruments), and the Uniform Electronic Transactions Act (UETA, which deals with electronic commerce).

In conclusion, the UELMA addresses the critical need to manage electronic legal information in a manner that guarantees the trustworthiness of and continuing access to important state legal material.

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Electronic Legal Material Act Summary

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