

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

JUDICIARY COMMITTEE

Tuesday, January 5, 2016
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator David Hogue, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators David Hogue, Kelly M. Armstrong, John Grabinger, Carolyn C. Nelson, Erin Oban, Mac Schneider; Representatives Roger Brabandt, Lois Delmore, Richard G. Holman, Karen Karls, Lawrence R. Klemin, Kim Koppelman, William E. Kretschmar, Diane Larson, Andrew G. Maragos, Gary Paur, Mary Schneider

Members absent: Representatives Pamela Anderson, Kathy Hawken, Mary C. Johnson, Christopher D. Olson

Others present: See [Appendix A](#)

It was moved by Representative Delmore, seconded by Senator Nelson, and carried on a voice vote that the minutes of the September 17, 2015, meeting be approved as distributed.

OBERGEFELL V. HODGES STUDY

Chairman Hogue said the United States Supreme Court in *Obergefell v. Hodges* found that the 14th Amendment of the United States Constitution provides the right for same-sex couples to marry. He said the committee should determine whether the Constitution of North Dakota and applicable statutes should be amended to reflect the new constitutional right.

Chairman Hogue called on Mr. Doug Bahr, Director of Civil Litigation, Attorney General's office, for testimony regarding the impact of the *Obergefell v. Hodges* decision. Mr. Bahr said he handled the two federal lawsuits challenging North Dakota's definition of marriage as used in North Dakota Century Code Sections 14-03-01 and 14-03-08, which were declared unconstitutional in June 2015. He said one of the lawsuits brought against North Dakota involved seven same-sex couples, some of whom wanted to be married in North Dakota and some of whom wanted their marriages to be recognized in North Dakota. Although the state filed a motion to dismiss in each case, he said the cases were stayed pending the outcome of the *Obergefell v. Hodges* case. He said the federal judge issued orders finding the statutory provisions unconstitutional after the United States Supreme Court opinion was released in June 2015. He said the order requires North Dakota to issue marriage licenses to a same-sex couple as it would to a heterosexual couple.

In response to a question from Chairman Hogue, Mr. Bahr said although only two sections were specifically declared unconstitutional, many other sections are likely unenforceable. However, he said, it is a legislative policy decision as to whether to conform all of those references to meet the rights defined by the Supreme Court. He said any limitations on marriage that apply to opposite-sex couples, such as age, must also apply to same-sex couples.

In response to a question from Representative Koppelman, Mr. Bahr said some states are updating statutory provisions in response to the Supreme Court decision. He said his only concern about not updating statutes is the possibility for confusion among those administering the law.

In response to a question from Senator Schneider, Mr. Bahr said the statutes referring to obligations of a husband or wife may be impacted by the decision. He said he is not aware of any other unsettled cases or legislation relating to the *Obergefell v. Hodges* decision.

Chairman Hogue requested the Legislative Council staff to provide an analysis of the affected statutory provisions at the next meeting.

Chairman Hogue called on Mr. Jonathan Alm, Attorney, Department of Human Services, for a presentation ([Appendix B](#)) regarding the impact of the *Obergefell v. Hodges* decision on the Department of Human Services (DHS). Mr. Alm said the day-to-day impact of the decision is minimal and DHS is updating and revising any necessary forms. He said DHS does not collect any specific data relating to whether a couple is opposite or same-sex.

Chairman Hogue called on Ms. Donnell Preskey Hushka, North Dakota Association of Counties, for a presentation ([Appendix C](#)) regarding the impact of the *Obergefell v. Hodges* decision on counties. Ms. Preskey Hushka said out of the 4,797 marriage licenses issued in 2015, 66 were issued to same-sex couples. She said the only reason there is data relating to the number of same-sex couples compared to the number of opposite-sex couples is because the Vital Records Division collects the data.

Chairman Hogue directed the committee to written testimony ([Appendix D](#)) provided by Mr. Sparb Collins, Executive Director, North Dakota Public Employee Retirement System, which relates to the impact of the *Obergefell v. Hodges* decision on the North Dakota Public Employee Retirement System. Mr. Collin's testimony indicated the decision has not resulted in a fiscal impact nor would there be a need for future legislation as a result of the decision.

COMMISSION ON LEGAL COUNSEL FOR INDIGENTS REPORT

Chairman Hogue called on Ms. Jean Delaney, Executive Director, Commission on Legal Counsel for Indigents, for an annual report (Appendices [E](#) and [F](#)) of pertinent data on the indigent defense contract system and the established public defender offices. Ms. Delaney said in fiscal year 2015, the Commission provided attorneys for over 13,500 case assignments across the state. She said a person generally qualifies for services if it is a type of case in which an individual has a right to counsel at public expense and the person is indigent. She said the caseloads in the northwest area of the state have been fairly high, however, the Commission works to ensure each attorney in the public defender office does not take more than 240 cases each year.

In response to a question from Representative Delmore, Ms. Delaney said the Commission does not receive any grants or federal funding in part because there are too few staff to do the application process associated with grants. In addition, she said, federal funds can be taken away making it difficult to have consistent funding.

In response to a question from Representative Klemin, Ms. Delaney said the Commission does not anticipate a budget shortfall this biennium like the one experienced last biennium. She said the discussion of budget cuts across all agencies makes her nervous.

In response to a question from Representative Paur, Ms. Delaney said some district courts are better at ordering the payment of costs and expenses by a defendant at the time of adjudication than others.

In response to a question from Chairman Hogue, Ms. Delaney said three of the new full-time positions funded for this biennium are filled by attorneys and the others are administrative assistants.

In response to a question from Representative Brabandt, Ms. Delaney said she expects an increase in the number of cases in fiscal year 2016.

In response to a question from Senator Armstrong, Ms. Delaney said the logistics in the western part of the state, such as housing, are slowly improving.

VOTER REGISTRATION AND VERIFICATION OF CITIZENSHIP STUDY

Chairman Hogue called on Mr. Jim Silrum, Deputy, Secretary of State, to provide information regarding voter registration in neighboring states. Mr. Silrum said election directors in Colorado and Minnesota indicated they would be happy to provide information at the next meeting. He said both states have very different types of voter registration. He said Minnesota is one of the seven states excluded from the federal National Voter Rights Act of 1993 because it had same-day registration prior to 1993. He said often people think North Dakota has same-day voter registration, however, technically that is not the case. He said when a resident obtains a state-issued identification card that individual's residential information is entered in the Central Voter File. He said when an individual updates information with the Department of Transportation, the information is updated in the Central Voter File. He said the method is similar to the type of voter registration used in Oregon, however, in Oregon every citizen is automatically registered to vote and an individual has to notify the election office if the individual does not wish to vote. He said Colorado has online voter registration, however, an individual is allowed to register online only if the individual has a state-issued identification card.

In response to a question from Chairman Hogue, Mr. Silrum said he does not know if Colorado and Minnesota use their equivalent of North Dakota's Department of Transportation to verify residential addresses. He said every time a registration comes through to the state or a county in Colorado, one of those offices must verify that the individual is a resident and that the individual lives in the location indicated on the registration.

In response to a question from Representative Koppelman, Mr. Silrum said compliance with the federal National Voter Rights Act in North Dakota would likely include parameters on who could be purged from the Central Voter File.

In response to a question from Chairman Hogue, Mr. Silrum said when an individual moves but fails to update his or her address for two years and then attempts to vote, confusion occurs because of the current definition of "residency" for voting purposes. He said if the state defines what it means to be a resident for voting purposes, policy and procedure can be discussed.

Senator Schneider said the current guidance provided by the Secretary of State's office is to direct an individual to vote in a precinct in which the individual does not reside if the individual does not have a current address on a form of state-issued identification card. Mr. Silrum said it is a difficult situation because of the lack of clarity in the definition of residency for voting purposes.

Chairman Hogue called on Mr. Kevin Glatt, Burleigh County Auditor, for a presentation ([Appendix G](#)) regarding voter registration. Mr. Glatt said the Department of Transportation is the gatekeeper of elections in North Dakota, yet there are no requirements to validate addresses or make sure the addresses used are residential addresses.

In response to a question from Senator Schneider, Mr. Glatt said some of the issues experienced in the 2012 election were the same as those experienced in the 2014 election.

In response to a question from Representative Klemin, Mr. Glatt said an individual who does not have a current form of approved identification would not be allowed to vote even if the individual was otherwise qualified to vote. He said voting is a right, but it is also a responsibility. Under current law, he said, neither a passport or concealed weapons permit is an acceptable form of identification at a polling place.

In response to a question from Chairman Hogue, Mr. Glatt said affidavits of residency were not heavily used in Burleigh County because there were several other forms of identification that could be used before 2014, such as a utility bill.

In response to a question from Senator Oban, Mr. Glatt said state-issued identification cards are free of charge if the individual states the card is to be used for voting purposes.

In response to a question from Chairman Hogue, Mr. Glatt said multiple political subdivisions would have information to verify whether an address is a residential address.

In response to a question from Senator Oban, Mr. Glatt said he prefers using utility bills or other methods of verification allowed before 2014 to confirm residence because in a tight election the current method may create issues.

Comments by Interested Persons

Chairman Hogue invited comments by interested persons in attendance regarding voter registration.

Mr. Alvin A. Jaeger, Secretary of State, said it is important that every qualified voter knows the other voters are also qualified. He said nearly every question raised by the committee is raised in states with voter registration, the only difference is those with registration have increased cost and bureaucracy. He said The PEW Charitable Trust has repeatedly ranked North Dakota first for election administration.

Representative Holman provided the committee with information ([Appendices H and I](#)) relating to his attendance at the recent National Conference of State Legislatures' meetings on voter registration. He said North Dakota already does many of the same things that states with voter registration do and electronic voting will become a method used in the future. He said as the committee continues this discussion auditors from smaller counties should be included in the discussion.

Ms. Presky Hushka said she provided the committee with a survey ([Appendix J](#)) of the 53 county auditors. She said of the 22 responses only one auditor supported voter registration.

Ms. Lois Ivers Altenberg, President, League of Women Voters of North Dakota, said the League of Women Voters of North Dakota supports the clarification, simplification, and uniformity in administration of election laws. A copy of Ms. Altenberg's presentation is attached as [Appendix K](#).

SEX OFFENDER REGISTRATION STUDY

Chairman Hogue called Mr. Steve Leopold, Director, Alternative Monitoring Services, for a presentation ([Appendix L](#)) on the use of global positioning system monitoring. Mr. Leopold said he currently services 80 devices in the state and Alternative Monitoring Services monitors about 5,000 sex offenders in California each day. He said the cost per device is between \$4.00 and \$12.00 per day.

In response to a question from Representative Maragos, Mr. Leopold said Ward County uses the service in place of work release with the cost of the device being paid by the offender.

No further business appearing, Chairman Hogue adjourned the meeting at 2:00 p.m.

Samantha E. Kramer
Counsel

ATTACH:12