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2007 HOUSE JUDICIARY

HB 1387

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1387

House Judiciary Committee

Check here for Conference Committee

Hearing Date: ~~11/22/07~~ 11/23/07

Recorder Job Number: 1658

Committee Clerk Signature



Minutes:

**Chairman DeKrey:** We will open the hearing on HB 1387.

**Rep. Larry Bellew:** Sponsor, introduced the bill. The court costs at the county level are to be paid out of the Supreme Court budget. They are being funded by the county taxpayers of the county where they are located. I am a member of the Ward County Commission.

**Rep. Delmore:** The fiscal note doesn't say anything. I can't imagine that there isn't a cost.

**Rep. Larry Bellew:** I did ask for a fiscal note, the accounting department at the Supreme Court couldn't come up with one.

**Rep. Alon Wieland:** I support this bill. Cass County is obligated by state law to provide space for all state court functions. In the Cass County courthouse this includes seven courtrooms, nine judicial offices, clerical space, court reporter offices, jury deliberation rooms and ancillary space. Also there is space for 21 people in the clerk of court's office which is a rather large office, which is now a part of the state district court system and also includes a large amount of storage space. Of the 77,000 sq. ft. of space available in the Cass County courthouse, nearly ½ is used for state court functions. In addition, across the street from the courthouse, the Cass County annex has approximately 50,000 sq. ft with about 11,000 sq. ft. dedicated to juvenile court, which is also a part of the state court system. In addition to

providing the space, the county government pays the bills for heating, cooling, custodial, and security services. The security bill for 2003 was \$125,000; however, the sheriff's department now provides security at a continued cost to Cass County taxpayers. Custodial, electricity, heating/ac/water/snow removal/telephone/computer wiring/general maintenance are all provided, including the court space. The current cost for providing these services for the courthouse and annex for 2006 were about \$790,000 and about 40% of that cost is related to court space. This adds to real estate taxes in the community and while the court services provided by the state, some consideration should be given to provide some relief to the real estate taxes in the community. This situation needs some debate and dialog and I hope this bill will provide that impetus.

**Rep. Onstad:** When it comes to lease arrangements, from county to county, are they uniform, is it up to each county to work out arrangements what rate to charge.

**Rep. Alan Wieland:** I'm not exactly sure if it should be the same, I think different communities would have different rates of costs per sq. ft. of office space. I'm not sure that office space in Slope County would be the same as in Cass County. Whatever arrangement that might be, it should be compatible for each of the counties. I do not think it would be uniform.

**Rep. Onstad:** I assume that \$60/sq ft is standard for these rates.

**Rep. Alan Wieland:** If that is the way it would work out, something is better than nothing.

**Rep. Koppelman:** Those of us who have been around for a while, remember when court unification happened, and I know you were a county commissioner back in the days of the county courts and kind of saw that process happen. When the county courts were replaced by district courts, I assume that is where the costs came from, was there discussion at that time about the state bearing more of the costs of structures, etc. How did that all come together.

**Rep. Alan Wieland:** At the time, which I think was around 1991 or 1993, I'm not sure of the exact year, is when they went to court unification. The discussion primarily was to eliminate county court judges and a small amount of staff, which was probably incorporated into district court. The only consideration that was talked about that I recall, was in relationship to the costs of the district clerk of courts. That was the only discussion. There was a bill that was introduced in 2003, that had to do with the state providing assistance to courthouses or to counties where there was an increase in costs of the district court system. For example, it was a Cass County bill, because we the number of judges were being increased, we were having to provide more courtroom space and more offices for courts. The thought was to build an additional building and to provide some space for the district court judges and in doing so, they were looking for some assistance in helping to construct that building. That bill failed.

**Rep. Klemin:** Based on the figures you provided, the \$790,000, and 40% of that is \$316,000 and so for the biennium it would be \$632,000 just in Cass County that the Supreme Court would have to add to its budget to pay for that if the sole basis of determining that was the cost of heating, etc. Do you think this bill allows the counties to charge a little more if they can get it than what it actually costs for that space.

**Rep. Alan Wieland:** It wouldn't necessarily have to. Even just paying for the utility costs and security costs, etc. and remodeling when it is required, because in Cass County, we have had lots of requests over the years to remodel or to refurbish district court offices, including private security, in other words, in our courthouse if you've been in there, you can't get back into the judge's chambers unless you know the code to get into those doors. That was all paid for by Cass County. That was not paid for by the district courts.

**Rep. Klemin:** I think Cass County courthouse is used a lot by the courts, but in a lot of the other counties, the courts use space and they aren't used that much because there isn't a lot

of court activity in some of the smaller counties; the judges aren't chambered there, and they have to travel to that courthouse. Would it be appropriate to use the same kind of formula in those counties where, let's say the court is usually used one day a week or not even that sometimes, for that district court to pay based on actual sq. footage vs. the amount of time they actually use that space.

**Rep. Alan Wieland:** I don't want to stand here and presume that I have all the answers as to what county would feel comfortable with what they might get, as opposed to another county. I think that needs to be determined. The thing was that it was time to provide some sort of dialog to assist the counties. There are continued increase in costs. I don't think it matters what county it is. I think that they have continued increasing costs and that includes space that is provided for the district court, which is a state function.

**Rep. Klemin:** Right now, the court may not have an alternative but to go out to the counties. But in looking at the other side of the coin, wouldn't it be fair to say that maybe the district court shouldn't have to have chambers or a clerk in every county. Maybe they should be chambered where there is a lot of activity and people from the surrounding counties come to the large cities. Right now, they have to go to all counties and maybe they should only have to go to the ones where there really is a lot of work and they can pay there.

**Rep. Alan Wieland:** I suppose that maybe I can say from a parochial standpoint you're right. Maybe that is the way it ought to be. I'm not trying to take away the jurisdiction of the courts and the benefit to someone who might live in a small county area, that they shouldn't have the benefit of having a courthouse or court area in their particular county. I think that was one of the things that we kind of worried about when we went to the unified court system. It was to try and maintain some sort of court presence in the smaller counties, as well as the

large counties. I realize that does present a dilemma. Maybe that is something that you in this committee will have to assist in helping to determine what way to go.

**Rep. Klemin:** It seems like there are a lot of unanswered questions here. Do you have a problem if we looked at this as an idea to study rather than put into law without answering these questions?

**Rep. Alan Wieland:** I would have absolutely no problem with that at all.

**Chairman DeKrey:** Thank you for appearing. Further testimony in support of HB 1387.

**John Fjeldahl:** I am a Ward County Commissioner. I requested that Rep. Bellew be a sponsor to this bill. I will speak to some of the things that you've already asked questions about in my prepared statement, but I would be glad to answer questions when I'm through. HB 1387 speaks to funding the courthouse space used in carrying out the duties of justice in the State. As a new Ward Co. Commissioner I listen to concerns about rising property taxes numerous times in discussions last fall. I'm sure you are aware that same concern is all over ND. Some of you may know that there was a proposed bond issue voted on by the Ward Co. residents that would have added another building adjacent to the current courthouse. That measure was soundly defeated. It was voted down for many reasons, but I believe the major reason was the increase in property tax that it would cost. Other opposition to this, is this building addition really needed and why. The proposed building was not for courtroom space but for space that would have been used by departments outside the court. Some of those spaces would be used by departments that are currently housed in the present courthouse. The NW Judicial District has been asking for more space to carry out their duties. According to the county auditor, from 2000 to 2006, over 3,000 more sq. ft. has been requested of the county and given for additional court related space. The NW Judicial District is currently using about 58% of Ward Co. Courthouse. In the district court's inception back in 1995, it was using

about 34% of the courthouse. Current century code states that the county shall supply the adequate quarters for district court and related staff space needs. I don't believe people envisioned that more space would be needed in NW district court without a growth in population, creating that demand. If district court needs were growing at the rate equivalent to population, the burden to taxpayers might not be the issue here today. However, in reality, that is not what is happening. In addition to picking up costs for district courts, Ward Co. has recently picked up the cost of a rolling file system; purchased with county funds with the understanding that the county would be reimbursed by the state. Ward Co. was not reimbursed and I was told, just recently, that it was because of a timing situation in the grant application process to the state. Ward Co. is in the process of digitizing some of our own records to free up space currently used to store files. Ward Co. is doing this to avoid having to rent more space to store those files and records. The courthouse security system now being used in Ward Co. has added a cost to the county of more than \$100,000 per year. This issue was brought up by the court system back in 2000 when they desired to have some type of security system in place. The counties where district courts are housed are picking up these types of costs and we believe that this should be addressed by the legislature and the judicial system. This is an equity funding issue related to the courts, the district court system. The question in this matter is why are county tax payers, with their property taxes, paying for so much of the cost of state run offices. Is it proper for the individual county who houses chambered judges to pick up the cost of district courts, through property taxes, which serve the whole judicial court? Is it proper for county taxes to be funding new and expanding services and space requests of the court? I don't believe this should be happening. I believe the fairest and most equitable way to address this is to establish a lease with the counties for space and related services. Regardless of where the court is located and no matter how much it is used?



In regard to the question regarding rural courts and the rural communities. Century code requires that 30% of the judges be in rural areas. Item 2 shows the locations of district courts where judges are chambered. For example, Mountrail County, in which Rep. Onstad resides, currently has had their judge moved to Ward County and chambered there. Their court is still used on an intermittent basis. I believe that should remain. One way to answer that is all district courts should have a lease established, including these types of situations. A recommendation to that is it can be drawn up on a time of use type lease. These counties are currently holding open and maintaining courthouse space for the district courts at that county's taxpayer's expense as well. It is time for counties to be able to account for what is being used in our courthouses and related costs. I would also like to point out, as was already brought up, the point of a blank fiscal note attached to this bill. I believe that emphasizes the previous point I just mentioned. I am assuming the courts, the state, apparently doesn't have an idea on the complete cost to operate the district court system or there would have been a number attached. I know that number is going to take some work but I believe it is time the work begins. I'm sure Ward Co. could have a number available for you rather quickly. Expenses are tracked. We'd be willing to work with you if you wished. Speaking as a county commissioner, it will be difficult for me to ask Ward Co. taxpayers to fund more and more space for district court; considering the current population in NW Judicial District. I don't believe that would be prudent. Our state court has been very sensitive to what is fair and equal and I suspect that they would be in this issue as well.

**Rep. Klemin:** Wouldn't you agree that the courts being used in Ward Co. are being used by residents of Ward Co.

**John Fjeldahl:** I would not disagree with that.

**Rep. Klemin:** Also, I know that in some cases there are situations where the court and attorneys for convenience on the part of witnesses may have court in Ward Co. where the action may have started in Mountrail County for instance. So instead of going to Mountrail county courthouse to have the trial, they move everything to Minot and have it there. Those kinds of circumstances are always going to be activity relating to that Mountrail county case to take place at Ward Co. Would it be fair for Mountrail County to pay some of Ward County's expenses?

**John Fjeldahl:** My personal opinion, I would hope that this doesn't go that way. Because of the consolidation of these courts, that caused that movement. Before that time, every county had a court, and it was the assumption that if you wanted your day in court, you reside in your own county. It was through the wisdom of the judicial system and the legislature, they consolidated it. The argument, I believe, or the point you're trying to make is well, now they're being held there. So those people that reside outside of that county or those county taxpayers should pay for that. I think the best way to handle that would be for the lease system proposal, in where the state would fund these instead of creating the rift between counties having to pay one county to another county for a court system that the state decided to have. This should be funded with state funds; the money is coming from everybody's pockets. To selectively pick one pocket, like what is being done right now, is part of the problem. The best way to address it is through a legal system, which those terms would be negotiated through the legislature and the judicial branch to fund those courts where they select to chamber the judges.

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

**Jim Lee:** I am a Ward County Commissioner elected in 1982. I'd like to bring a little history and perspective to this. In my assessment with the court unification, we have an unfunded mandate. Many items have already been spoken about, about who's obligation is what. Back

when the unification took place, the district court was occupying about 34% of our courthouse, it now occupies 58%; almost a 25% increase in the capacity of our courthouse. That is not the obligation of the Ward County taxpayers to pick up all the added expense of the expanded district court. I don't think that when unification was taken into consideration, that anybody considered the exponential growth that there would be in the court system. They've helped a little bit along the way, with some minimal remodeling. But it's kind of interesting to me, in watching the last county election and where there were county commissioners, state representatives that were running for office were talking about property tax relief. For the state to have unloaded this big burden of court unification on the counties, we have had to increase property taxes to compensate for that. We used to have 2 district court judges in our building and one county court judge. During the unification that all changed and we didn't really get an opportunity to say much about it, but the decision was made by the legislature. So what we see now, we have a state surplus; we have the concept going about that the state hasn't raised your taxes. That's not true. The state has ended up raising the taxes through local property taxes because the court system has been underfunded. I don't think it's the proper way to do that. I think people now that are for property tax relief should try and permanently fix some of these things so this matter doesn't continue to grow. As I understand the Chief Justice is talking about increasing the number of judges that the system will have by approximately five. Hearing that, I went to our presiding judge in the NW Judicial District court, which includes all the counties in northwest ND and asked him, where does the chief justice plan on putting these new judges. He told me, according to the study, that the places where they are short are Jamestown and Minot. He said we are 1.2 judges short in the NW judicial district. So my question is, where are you going to put them. We already have space problems in our courthouse. I think it should be the obligation of the state district court to

provide the expenses necessary. We maintain these buildings. This is going to be very difficult for us to provide. I will not vote for putting another judge in that courthouse and dumping it on the backs of the Ward Co. taxpayers. The question asked about the makeup of the district and where the cases are. Well the population has not changed very much in that district over these years. These other outlying counties still have people out there. The NW Judicial District now only has judges in two chambers, Minot and Williston, but it includes all those other counties that are out there in northwest ND. It is time for the state legislature and the state court system to step up to the plate and provide the monies needed to keep these courts in there. Since court unification, it has gotten much more expensive. They took our county court away and they took our county clerk of court away, they took our county judge away and they are always asking for more space. I don't see how people can talk about taking care of property taxes, reducing property taxes, and continue to allow things like this to happen. I'm not interested in a study resolution, I would like to see action that corrects the problem. Our problem exists now. We have space needs now and with the talk about adding another judge or two, our problem is now, not two years down the road.

**Rep. Boehning:** Currently, are the judges are being by the state or the county.

**Jim Lee:** By the state.

**Rep. Boehning:** How much was it costing the county prior to court unification.

**Jim Lee:** We used to get the fines and forfeitures. When they made the switch, we lost all of those funds. The state ended up taking the fines and forfeitures. The former auditor tracked that for me; from 1985 to 1991 it averaged between \$125-140,000 a year that we were receiving in the Ward County to the court system. Those dollars came into our county. We have lost in this deal. The district court judges were there to begin with. It's just that the whole

court system expands and it enveloped the county court system and took the fines and forfeitures with it and started gobbling up space in our courthouse.

**Rep. Onstad:** On the fiscal note, you made the comment that the district court wasn't funded in the budget. As a county, did they approach district courts to add additional funding for your counties.

**Jim Lee:** We don't seem to get any response. When we were trying to have a discussion with Judge Holte up there about the security that they wanted put into the courthouse. We've made requests about consideration, but consideration never seems to come. Have we made an official budget request, no we haven't.

**Rep. Boehning:** If this were to go through, and the state would pay for your courts, I would assume that you would lower your property taxes quite considerably in the county.

**Jim Lee:** I would sure hope so. We are talking about property tax relief here. If something covers the cost that we already have, we can reduce the levy that it takes to do that. I would take issue with one word you used, "our court". It's no longer our court. We have virtually no control over what happens there. I've watched with the clerk of district courts office how they've expanded the personnel there; then they say they need more space. We have no control over the number of employees that they bring into the building and ask for space. The commissioners went through our building a few weeks back, and it's amazing that in our building, the number of areas we need to store court records. Our courthouse is similar to the capitol here; a monumental building. Those kinds of buildings should not be used for storage. They've got them piled up all over the place; records everywhere. They've consumed rooms we used for other things at other times. If we can get that space back and they provide for their storage, then I believe we can lower taxes.

**Rep. Kretschmar:** Has this question come up in the ND Association of Counties, have they taken a stand on this issue at any time.

**Jim Lee:** I can't speak for them. The unique situation is that this doesn't affect every county like it affects us and Cass County. We're the major centers where a lot of this activity takes place. Even for those people outside of our county, they come into our courthouse and have court proceedings. I don't know the official position of the Assoc. of Counties on that. I would hope that they would be on our side but I think we need to make our case. I am an elected official of Ward County, it is my obligation to do my best to keep the taxes as low as possible for my constituents. When I see us subsidizing the state court, it bothers me. We should take whatever corrective action we as Ward County Commissioners can to try and resolve that. I'm not interested in a study resolution, I'm interested in something that resolves this problem now. If you, as a legislature, pass this expanding the court system, I have been told by our presiding judge that they want to put one in my courthouse. That is an immediate need.

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

**Terry Traynor, ND Association of Counties:** We support this at this time. Facility costs, particularly when you look at your own home, heating costs are going up double digits, 12-15% is what the counties are telling us. That's not everything that counties are faced with. Right now, my boss is down in the Tax committee, giving them a list of bills that the Human Service budget with a 19% increase for counties; PERS 16%; travel expenses 14%, state raises 4%, all of these affect counties. We are a merit system organization in county government. When you change salaries that ratchets things up for the counties. Those numbers are huge. At the same time, we are all talking about property tax relief. There are bills right now proposing 4% tax on the growth of county budgets, but we are looking at costs going up 19%, and court facilities is just a clear example of that. Counties are struggling; how do they do this, how do

they bring 14% cost increases with a 2% cap on growth; then you have the situation in the state, where Ward is probably the worst off in the state. They are maxed out, it isn't just that the heating costs are going up, it's that they don't have the space to do it with. Is court facility rent the answer? I certainly don't think it is the whole answer. It's maybe not even the best answer. But unless we ask the question and raise the issue, we continue to squeeze the counties and the county taxpayers, either with fewer services or more costs. The court facilities that the court deserves to have won't be there. We urge your careful consideration in this issue.

**Chairman DeKrey:** Is the State Aid Distribution fund for counties. Is the major way the state exchanges dollars with the counties.

**Terry Traynor:** That's the largest general fund way. There's actually more money in the Highway distribution fund, but that is dedicated by the constitution to only roads. Yes the State Aid Distribution fund is the largest general fund transfer.

**Chairman DeKrey:** So, normally when the legislature meets, the way we resolve our money needs with the counties that's how we usually go about funding the counties, is through that Fund.

**Terry Traynor:** Since 1997, that fund has been established as a permanent, continuing appropriation based on 4/10<sup>th</sup> of one penny sales tax. It hasn't changed. There has been growth there, but without a doubt, it's not enough.

**Chairman DeKrey:** So instead of trying to come up with a system that we never really looked at or studied in the legislature, we really don't know how it would affect anything.

Wouldn't it be better for the legislature to look at increasing the dollars that go into the State Aid Distribution Fund, than it would be to get bogged down in something that the counties and the state have no idea what the solution is.

**Terry Traynor:** We'd certainly be willing to look at that as an option.

**Rep. Klemin:** I remember that we did pass a law here a session or two ago, establishing a fee or fine for certain criminal actions and of that amount, there is a certain amount that goes to the counties and a certain amount goes to the state. Do you remember what that is.

**Terry Traynor:** I don't know the detailed amounts; yes, the criminal administrative fee was split between the indigent defense and court facilities, so much goes into Indigent defense until it reaches its threshold and then the rest goes into court facilities until that reaches a threshold and then it's split 50-50 and the money is available for grants to counties to address their court facilities specifically. Whether it's remodeling or adding equipment, etc.

**Rep. Kretschmar:** Does the association have any number or dollar amount that would be required to fund this bill.

**Terry Traynor:** Unfortunately we do not.

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

**Sally Holewa, State Court Administrator:** We are neutral. No one has approached the court about putting it in the court budget. Had they come, Chief Justice VanderWalle would have said that he is in favor of paying rent. We have some definite concerns about this bill. The bill, we think, is a little premature. There has been no discussion about what facilities should be covered, what rent would cover, how rent would be established; what happens in the small courthouses where we don't have a courtroom or chambers, but simply come in and use the community room. Those sorts of issues do need to be worked out.

**Rep. Delmore:** Would you be in favor of a study resolution during the interim where this could be looked at and be fair to the counties.

**Sally Holewa:** Yes, we would be in favor.



**Rep. Meyer:** In this bill, the leasing mechanism would be the equalizer wouldn't it. It would much cheaper to lease in Mandan than to lease in Fargo. Couldn't they establish that themselves.

**Sally Holewa:** Yes, they could, in fact in our fiscal note we talk about prevailing local rates. One of the concerns we have is having the state lose all control over the rent. If there isn't a formula in place, nothing to put a brake on rising or escalating rates.

**Rep. Boehning:** How would the counties determine a rate, when the courthouse is only used 1/x a month, or week, how can a dollar amount be figured for that.

**Sally Holewa:** That's a good example and I want to start by saying that the courthouse in Amidon is actually one of my favorites. I spent a couple of days out there and it is one of my favorites. I love to go out there in the fall. One of the concerns we have, in Slope County, we don't have judges chambered. In 12 counties, the scheduled time out there is 2 hours a month. So what is the fair and comparable rate. I think it's something that we could work out, but it's something that we seriously need to sit down with the counties and talk about what is equitable and fair.

**Chairman DeKrey:** Thank you. Further testimony on HB 1387. We will close the hearing.

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1387

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 1/24/07

Recorder Job Number: 1851

Committee Clerk Signature

*A. Penrose*

Minutes:

**Chairman DeKrey:** We will take a look at HB 1387.

**Rep. Klemin:** The bill focused on, the sponsors told me that it would be difficult to determine what this is going to cost and who it is going to affect. They couldn't tell me. They asked me if we could make this a study resolution.

**Chairman DeKrey:** I talked to Ken down in Appropriations, and we're already too far down the appropriations path to come in with a new system on how we're going to finance the courts.

**Rep. Delmore:** That was part of the problem, these guys didn't talk to the Supreme Court ahead of time. You don't come in when Session starts and all the budgets have been in for a month or two before. I just think that turning it into a study or killing the bill are the only options.

**Rep. Koppelman:** I don't disagree with anything that has been said. I really think it is something that deserves a study and folks have talked about the issues, that the information given at the hearing is evidence that it needs a look.

**Chairman DeKrey:** I think we can get it out of committee without an amendment being drafted.

**Rep. Koppelman:** I would move that we convert this to an optional study.

**Chairman DeKrey:** Go ahead and draft the resolution and we'll bring it back to the committee if we need to.

**Rep. Delmore:** It isn't that I don't think that there is some legitimacy to this issue. I don't want that to be a misconception. But if we don't study it, we might as well kill it, because it's not going to go anywhere. I second the motion to turn it into an optional study.

**Rep. Meyer:** We should address the State Aid Distribution Fund that they requested, somehow work that into the study.

**Chairman DeKrey:** Basically, the whole county funding, the State Aid Distribution Fund.

**Rep. Delmore:** There were many concerns that should be studied as well.

**Rep. Onstad:** Just one more thought that needed to be discussed. I did have an e-mail from a gentleman that testified, John, he had visited with Supreme Court Judge VanderWalle, and he realizes that it is an issue and hoped that we would put on some sort of appropriations somewhere as a state line item. But he wasn't too in favor of having a study.

**Chairman DeKrey:** The clerk will call the roll on a Do Pass as amended into a study.

**11 YES 1 NO 2 ABSENT**

**DO PASS AS AMEND**

**CARRIER: Rep. Koppelman**

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1387

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 1/30/07

Recorder Job Number: 2301

Committee Clerk Signature



Minutes:

**Chairman DeKrey:** We will take a look at HB 1387. We've said that we will turn this into a study and will bring the amendment to the committee. We've already passed it out of committee, but I said before I would sign the report I would like to see the language, so that you would feel good about it.

**Rep. Koppelman:** This is the bill that asked the state to pay some of the costs of the district courts in the counties. I think the bill called for the lease by the state of the county space, and we decided that the best way to deal with this was in a study. The amendment does that.

**Chairman DeKrey:** As soon as we get that we will take it up.

