

2013 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1428

2013 HOUSE STANDING COMMITTEE MINUTES

House Government and Veterans Affairs Committee
Fort Union Room, State Capitol

HB 1428
February 8, 2013
18624

Conference Committee

Committee Clerk Signature

Carmen Hart

Explanation or reason for introduction of bill/resolution:

Relating to review of presidential executive orders.

Minutes:

You may make reference to "attached testimony."

Chairman Jim Kasper opened the hearing on HB 1428.

Rep. David Monson appeared as a sponsor and in support of this bill. **Attachment 1.** (:07-4:32) He did present an amendment. **Attachment 2.**

Rep. Bill Amerman You are right. This is a little out of character. When we are in session here, there are some bills or situations where we ask the attorney general for an opinion. Basically his opinion has the force of law. In that light, how forcible is an executive order?

Rep. Monson The amendment tones it down and really does include the attorney general and the governor. The legislative branch in North Dakota is really at a disadvantage. When we are here and something like an executive order came down, we could very quickly say we are going to put money aside to try to fight that. When we meet once every two years for 80 days, we have very little opportunity to weigh in on some of these executive orders and things that come down from Washington. We are stuck depending on somebody else, the executive branch in our case, the governor and the attorney general, to decide what they want to do. This is what I came up with as a way for our legislative management committee to at least review some of those big things and try to address and try to stall. The problem is do we have the power to suspend a rule like an executive order, and I trust you guys to answer that question and you may want to put on my amendment.

Rep. Karen Rohr Inaudible. Trouble with some of the microphones.

Rep. Monson I would think in a case as big as that, the attorney general and the governor would be calling us back into special session. Every three months roughly the legislative management committee gets together. They would talk about it and would say this is devastating ND. What can we do to fight this? I don't know how they could suspend that. Just to let you know, we have little pots of money all over. We have a bill of the public service commission. We put aside \$900,000 into that litigation fund years ago from the

beginning _fund for a rail case. Railroads were ripping off our farmers, our elevators, on rail cases.

Rep. Gail Mooney You talked about some of the federal mandates that come across. We don't necessarily have the funds. It may not necessarily relate to us as we see it, that type of thing. If we are going to have the ability to select and choose which parts of a presidential order we would want to participate in or not, doesn't that follow suit down the line? I am going to speak to a county level position. On a county level they are mandated by the state to do A, B, C, and D in a variety of things that, quite frankly, they are frustrated by. They do have a choice. They cannot follow the mandate, but then they can also pay a very hefty price in the lack of state aid and other financing that they count on to make their operating expenses. Playing that forward, do we begin to lose then our federal aid, our federal funding? Is that something we are actually willing to do? I realize that between legacy funds and other funds, we have billions in surplus. Are we saying that we are now willing to risk those billions on the guys that we want to go play with the federals?

Rep. Monson Maybe.

Rep. Gail Mooney We just finished listening to a bill where we talked about the necessity to make sure the people of ND get to weigh in on particular decisions that will affect them financially, most especially when they are affected financially. Does this not come back to some of our, as citizens, constitutional rights? I have a right to vote for a president and a vice president. In that right I have the right to the expectancy that my state will follow that suit. Now if my state is saying that they would like to weigh that decision, should that not become a vote of the people?

Rep. Monson Our system here in ND is much more transparent. When we pass a bill here, it is constitutional. When the president gives an executive order, some people argue it is constitutional, but others would say it is not really constitutional. We always as a legislature have the right to review any of those things and say you know what, it is time that we stand up and fight this. I am not saying that we are going to get scott free here and that there isn't some gray area if we would pass this.

Rep. Ben Koppelman Difficult to hear. Would the premise of this be kind of similar to the premise that in the constitution where it says we the people and it goes on to specifically state the authority that they are granting the federal government in __ and anytime that a government decides that they are going to add to that or assume or interpret and create more layers of that black and white language, don't we the people and our legislators have almost the duty to challenge those things?

Rep. Monson I think right on.

Chairman Jim Kasper The tenth amendment was read. The powers not delegated to the United States by the constitution nor prohibited by it to the states are reserved to the states respectively or to the people.

Rep. Gail Mooney There is also the twelfth amendment which speaks to citizen's right to vote for their president and their vice president and in that expectation that is going to be

respected. I respectfully state and stand by my belief that what we are doing is superseding the people of North Dakota. If we are going to do something like this, it should be before the people of North Dakota to vote on.

Chairman Jim Kasper We will get into that debate when we close the hearing, but I appreciate your observation.

No opposition.

Chairman Jim Kasper Would you have an objection if we considered an amendment on Line 10 where we start the legislative management may review, would you object to an amendment that would state something along the lines the legislative management, in consultation with the attorney general if it so desires, may review and temporarily etc, etc?

Rep. Monson I would be very welcome to doing that.

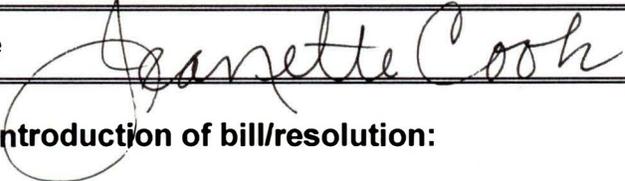
Hearing was closed.

2013 HOUSE STANDING COMMITTEE MINUTES

House Government and Veterans Affairs Committee
Fort Union Room, State Capitol

HB 1428
February 21, 2013
Job # 19343

Conference Committee

Committee Clerk Signature 

Explanation or reason for introduction of bill/resolution:

Relating to review of presidential executive orders.

Minutes:

Chairman Jim Kasper: This deals with presidential executive orders. The process under our constitution is supposed to be that the congress enacts, the president signs or vetoes, and then the president and the executive branch carry out the acts of the congress.

Chairman Kasper read the bill, lines 7-10 and stated that the sponsor of the bill was concerned about the number of executive orders that have been issued during this presidency, and wondered if the legislative body should be required to implement an executive order if we don't think that it is constitutional. So, if there was any executive order that was issued, only the legislative assembly could determine whether or not we would implement the executive order, and it would take action of the legislative body.

Vice Chair Randy Boehning: The amendments by Rep. Monson actually tamed this down a little bit.

Chairman Jim Kasper: I think that he said, if we wish to tame it down, we could add the amendment. If we wished to make it sterner, then we could keep the bill as it is. We have that option.

Vice Chair Randy Boehning moved the amendment 13.0743.01001.
Rep. Steven Zaiser seconded the motion.

Vice Chair Randy Boehning: Since we are not in session all of the time, this would give Legislative Management time to review, go through the Governor's Office and to the Attorney General's office to determine constitutionality. Then it would give them time to see if the executive order would apply or if we would seek exemption from it.

Rep. Ben Koppelman: I am going to resist this amendment. Number one because we many talk about the giving away of power of the Legislative Branch of our state. We don't necessarily want to have the Executive Branch of the United States to pass law unconstitutionally without the affirmation of the Congress. Therefore, I am not sure that we

want our Executive Branch to accept law that has not been affirmed by Congress without our legislative oversight.

Rep. Vernon Laning: I understand that the executive branch doesn't do anything until legislative management reviews the Executive order. I don't see that the Executive Branch of North Dakota takes any independent action without some guidance.

Chairman Jim Kasper read through the amendment.

Chairman Jim Kasper: It states that Legislative Management would first look at the Executive order. Then it appears that Legislative Management would move it to the Executive Branch and Attorney General for their overview. What this does not say is who has the veto power or final decision once those three branches of government have looked at it. The current bill states that Legislative Management may review and temporarily suspend the implementation in this state of any such Executive order. In that case the Legislative Management has total authority.

Rep. Bill Amerman: On the original bill it says that we can approve or reject any Executive order that does not go through the Congress. But, now we have just the Legislative Management, not the legislative assembly, that can suspend.... That is not right to have the management do that. If we are going to do something on this order, every legislator needs to be able to weigh in on it. The Legislative Management shouldn't have more power than the president of the United States.

Rep. Karen Rohr: My notes indicate that we discussed adding on line 10 of the existing bill: (after- Legislative Management,) in consultation with the Attorney General.

Chairman Jim Kasper: I had also added, if so desired.

Rep. Gary Paur: I wonder how many executive orders are confirmed by the Congress. For that matter how many executive orders by the governor are confirmed by us?

Chairman Jim Kasper: That is a good question. I don't know if we ever confirm executive orders of the governor. Since I have been here, we haven't.

Rep. Ben Koppelman: Typically executive orders are designed to be something with emergency status, or short term implementation, but, they are never supposed to replace the creation of a law. If a president or governor was to issue an executive order that directs the people that work beneath them on how to implement something that the legislature or congress passes in law; that is one thing. But, if he says that we are now going to regulate something new in this way, when congress or the legislature has not said it was going to be regulated, that would be an example of creating law. When in this process if our Legislative Management is reviewing this, it will usually be in an executive order type setting that has the weight of law forever, until congress takes its power back. I don't believe that this would be circumventing what an executive order is designed to do, but rather just putting it in line with the division of powers.

Rep. Gary Paur: I disagree; a couple sessions ago the governor issued an executive order changing the whole format for awarding IT contracts. That was it. It was only effective for the agencies under his control. The legislature passed a law that made it statewide. It was not an emergency; it was basically a creating of law.

Rep. Ben Koppelman: In that case the legislature has authorized those agencies to operate. We have authorized them sometimes with special appropriations to have IT. That was just a way of executing what we had authorized. We might come back and change that or direct how to spend the dollars.

Rep. Steven Zaiser: Executive orders at the gubernatorial or presidential level have been in existence for centuries now. In the partisan fever in DC I think it has become a "gotcha" thing. I really think that we are barking up a tree that we ought not bark up. I think it is a mistake, and it will be a mess.

Question was called on the amendment.

**Roll call vote was taken on adoption of the amendment 13.0743.01001.
Aye 7 Nay 6 Absent 1 The motion passed.**

**Vice Chair Randy Boehning moved a DO PASS as amended on HB 1428.
Rep. Karen Karls seconded the motion.**

Rep. Gail Mooney: I really don't want to make any enemies here today. But, I really believe so strongly that this is a horrendously bad bill. This is placing us in a position of being able to question the President of the United States. As a citizen I can think of numerous times when I have questioned various presidential orders, but I feel that it is my civil duty to stand behind my president. In the last administration there were several that I was vehemently against, but still he was my president. We have talked about ethics and see no reason for ethics to be called into question. We make decisions to override our governor and now we want to be able to override our president. I think the precedence for that is astounding. I sit on a county commission, and I would dare say that my commissioners would like to secede from the state from time to time when we have to abide by mandates that come to us from the state or federal government. We do it because we are part of the process.

Rep. Ben Koppelman: I would like to read the ninth and tenth amendments and tell why I think that even though why this bill, even as amended, could be argued to be authority that we have. (He read the ninth amendment.) I would say by that if our president ends up authorizing an executive order that is clearly not prescribed by the constitution, I don't think that we are bound by that. The president does not have supreme power. (Read the tenth amendment.) We represent the state and the people of the state. If we are not going to stand up and say there is no authority for you (the president) to do this in the constitution that we can find. We can challenge that and if the president can come back and prove to us that he has constitutional authority to do it; then it will be fine. This bill says that we are not going to honor and allow something to be implemented here until we are shown that it is constitutional.

Chairman Jim Kasper read Article 2 and Section 3 from the Constitution.

Chairman Jim Kasper: This does not grant the President dictatorial powers. This grants him powers in the Constitution. This bill says that if in our determination by the Legislative Management, when an executive order is issued that our legislative members do not agree is constitutional, we then have the right to take action with the consultation of the Attorney General to determine whether or not it is constitutional.

**A roll call vote was taken. Aye 8 Nay 5 Absent 1
The motion carried.
Vice Chair Randy Boehning will carry HB 1428.**

2/21/13
JSMK

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1428

Page 1, replace lines 7 through 15 with "The legislative management may review any executive order issued by the president of the United States which has not been affirmed by a vote of the Congress of the United States and signed into law as prescribed by the Constitution of the United States and recommend to the attorney general and the governor that the executive order be further reviewed to determine the constitutionality of the order and whether the state should seek an exemption from the application of the order or seek to have the order declared to be an unconstitutional exercise of legislative authority by the president."

Renumber accordingly

Date: 2-21-13
 Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1428**

House Government and Veterans Affairs 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 Boehning Seconded By Zaiser

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper			Rep. Bill Amerman		
Vice Chairman Randy Boehning			Rep. Gail Mooney		
Rep. Jason Dockter			Rep. Marie Strinden		
Rep. Karen Karls			Rep. Steven Zaiser		
Rep. Ben Koppelman					
Rep. Vernon Laning					
Rep. Scott Louser					
Rep. Gary Paur					
Rep. Karen Rohr					
Rep. Vicky Steiner					

Handwritten note in table: Tried to voice request to V. J. needed roll call

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Date: 2-21-13
 Roll Call Vote #: 2

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1428**

House Government and Veterans Affairs 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 Boehning Seconded By Zaiser

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper		X	Rep. Bill Amerman	X	
Vice Chairman Randy Boehning	X		Rep. Gail Mooney		X
Rep. Jason Dockter	X		Rep. Marie Strinden	A	
Rep. Karen Karls	X		Rep. Steven Zaiser	X	
Rep. Ben Koppelman		X			
Rep. Vernon Laning	X				
Rep. Scott Louser		X			
Rep. Gary Paur	X				
Rep. Karen Rohr		X			
Rep. Vicky Steiner		X			

Total (Yes) 7 No 6

Absent 1

Floor Assignment _____

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

Date: 2-21-13
 Roll Call Vote #: 3

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1428**

House Government and Veterans Affairs 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 ~~Karl~~ Boehning Seconded By Karls

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper	X		Rep. Bill Amerman		X
Vice Chairman Randy Boehning	X		Rep. Gail Mooney		X
Rep. Jason Dockter	X		Rep. Marie Strinden		A
Rep. Karen Karls	X		Rep. Steven Zaiser		X
Rep. Ben Koppelman	X				
Rep. Vernon Laning	X				
Rep. Scott Louser	X				
Rep. Gary Paur		X			
Rep. Karen Rohr	X				
Rep. Vicky Steiner		X			

Total (Yes) 8 No 5

Absent _____

Floor Assignment Randy Boehning

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

REPORT OF STANDING COMMITTEE

HB 1428: Government and Veterans Affairs Committee (Rep. Kasper, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (8 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). HB 1428 was placed on the Sixth order on the calendar.

Page 1, replace lines 7 through 15 with "The legislative management may review any executive order issued by the president of the United States which has not been affirmed by a vote of the Congress of the United States and signed into law as prescribed by the Constitution of the United States and recommend to the attorney general and the governor that the executive order be further reviewed to determine the constitutionality of the order and whether the state should seek an exemption from the application of the order or seek to have the order declared to be an unconstitutional exercise of legislative authority by the president."

Renumber accordingly

2013 SENATE GOVERNMENT AND VETERANS AFFAIRS

HB 1428

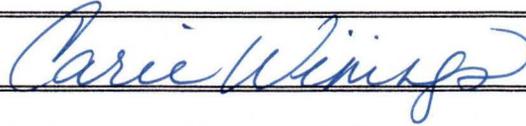
2013 SENATE STANDING COMMITTEE MINUTES

Senate Government and Veterans Affairs Committee
Missouri River Room, State Capitol

HB 1428
03/28/2013
Job Number 20605

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new section to chapter 54-03 of the North Dakota Century Code, relating to review of presidential executive orders.

Minutes:

Chairman Dever: Opened the hearing on HB 1428.

Representative Monson, District 10: See Attachment #1 for testimony as sponsor and in support of the bill.

(4:15) Senator Nelson: I question the wording of "may" in regards to Legislative Management; is that the head of legislative management or the entire committee?

Representative Monson: This would be the entire legislative management committee, when they meet roughly every three months, would review whatever they wanted to review. They would have a discussion on some that may be brought before them. They would be very onerous one. They are not going to look at every one, but if it is one that hits the news or is more of a controversial issue they would take a look at it.

Senator Nelson: I am going to be blunt on this; my first read on this was "get over it". Then you mentioned George Bush was one of the most abusive ones, but we have heard on the floor that we put this date on here because that administration will be over. President Obama won the election and we have to come to grips with it and get over it. Right now this

is who our President is and we all have to live with it. We don't agree with everything he does either.

Vice Chairman Berry: In your testimony you kept talking about legislative council but in your testimony you talked about legislative management - do you mean management?

Representative Monson: I am an old timer and it used to be council and it changed to management. My intent was legislative management committee.

Vice Chairman Berry: Are there limits to executive order and what they can pertain to?

Representative Monson: As far as I know they are not limited to anything until someone wants to challenge them. As long as Congress and the States keep letting it happen without challenging. It has been going on for a long time. The power of the President keeps getting bigger and bigger. Is it our job? Probably not, but if it affects North Dakota then maybe we should point it out. Otherwise it keeps mushrooming.

Vice Chairman Berry: Where in the Constitution does the President derive powers to do these?

Representative Monson: I believe it is Article V. Article X is the state's rights and I would argue that the states are getting trampled here by the federal government. It is my frustration and it is pretty much an innocuous thing because I think we can do it anyway. There is no authority that legislative management should be the one that does it.

Senator Nelson: On your behalf, I think you were correct in your usage, because you did say legislative council, but legislative council consists of the attorneys that help legislative management and because it says may review, they are going to depend on the expertise of those lawyers that we are paying to be there.

Representative Monson: You are right that the legislative management does depend on legislative council team of lawyers to help them.

Chairman Dever: The bill is legislative management in the bill and that is subject to interpretation. I was impressed when I heard Senator Heidi Heidtcamp's comments on the floor of the Senate when she commented on the legislature here in North Dakota being more functional than the Congress. I agree with that whole heartedly.

Representative Monson: I do to and I don't know that we appreciate our system here in North Dakota as much as we really should. I have had people come here from other states and be surprised at how we do work so well and comment on how that is how government should be. That doesn't happen in most other state. It certainly doesn't happen in Washington DC.

Chairman Dever: One thing I appreciate is the system of checks and balances. That each branch is co-equal and a checks and balances on each other one is there. It is not our purpose to follow the leadership of the Governor, although, generally we do but it is our responsibility to disagree when we disagree.

Representative Monson: That is where I am at with this and why I put it in. My frustration is that we are not seeing the checks and balances at the federal level anymore. I am blaming a dysfunctional Congress.

Chairman Dever: I believe that every member that goes to Congress has their heart in the right place, but eventually it becomes about the next election.

Representative Monson: Actually I needed a place to vent and this was the bill to do it.

Chairman Dever: You came to a committee with a chairman that has been venting for some days now.

Representative Monson: Then vent with me and pass the bill.

Chairman Dever: I have seen some of the numbers of executive orders and I have looked at executive orders by the Governor of the state of North Dakota and those are extremely rare. You are talking about Executive order not rules promulgated.

Representative Monson: The two year look-back was not for any reason but for current convenience.

Chairman Dever: You are talking about Executive order not rules promulgated. Someone said yesterday that they rules on PPAC are now 8 feet tall and growing.

Representative Monson: We cannot begin to address that and I don't know if it is our prerogative to do that. Administrative rules have been written to address how a bill passed by Congress and signed by the President is going to be utilized or put into place.

Vice Chairman Berry: Executive orders are given "the full force of the law" under Article II of the Constitution and it is a vague grant of power under his executive power. It is up to the executive officers to carry out the power. They can be challenged in courts the way other federal laws can for constitutionality.

Representative Monson: That is why the Attorney General has to be in the loop here. We as legislators can bring stuff to the Attorney General and speak our piece. If there is a branch of our legislative body, legislative management committee, that we could use that channel and it might hold a little more water than just one person coming in.

(16:55)Senator Cook: This would be the first section in that chapter?

Representative Monson: I believe you are correct.

Senator Cook: Why do we limit this then to those that have not been affirmed by a vote of Congress? Could one argue that Congress has a history of being just as guilty?

Representative Monson: I cannot disagree with that statement. At least if Congress has dealt with it than it has gone through the process.

Chairman Dever: When we talk checks and balances, that probably nowhere more than between chambers too. I have always been impressed by majority leaders that insure that we have a separate look in each chamber on each bill. By the end of the session we come together and reach an agreement.

Chairman Dever: Closed the hearing on HB 1428.

Vice Chairman Berry: Moved a Do Pass.

Senator Cook: Seconded.

Senator Nelson: I think we can do this now and I don't think this is a necessary bill. I think it is a poke in the eye and I am going to vote "no".

Chairman Dever: I might agree that we can do this now and if it was during a session, someone might bring a bill to do that but I am not sure if Legislative Management has that direction from us at this point.

A Roll Call Vote Was Taken: 5 yeas, 2 nays, 0 absent.

Vice Chairman Berry: Carrier.

Date: 3/28

Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 1428

Senate Government and Veterans Affairs 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 Senator Berry Seconded By Senator Cook

Senators	Yes	No	Senator	Yes	No
Chairman Dick Dever	✓		Senator Carolyn Nelson		✓
Vice Chairman Spencer Berry	✓		Senator Richard Marcellais		✓
Senator Dwight Cook	✓				
Senator Donald Schaible	✓				
Senator Nicole Poolman	✓				

Total (Yes) 5 No 2

Absent 0

Floor Assignment Senator Berry

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

REPORT OF STANDING COMMITTEE

HB 1428, as engrossed: Government and Veterans Affairs Committee (Sen. Dever, Chairman) recommends DO PASS (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1428 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

HB 1428

Testimony on HB 1428

Rep. David Monson, Dist. 10

Chairman Kasper and members of the House GVA Committee, for the record I'm Rep. David Monson from District 10 in northeastern ND and I'm a recovering moderate. To steal a line from Jeff Foxworthy, "You know you're a redneck when you have all these people as co-sponsors on a bill you primed." This bill is a little out of character for me. Most of you who know me know that I'm one who usually prides myself on being reasonable; a peace keeper; someone who works together to find compromise or at least common ground; doesn't make waves or big, bold statements; and am slow to anger. My frustration with our whole government system, especially our federal government, finally is coming to a head. It takes a lot to get me worked up, but the mess in Washington has finally done it. I decided it was time to try to do something about it. When I had this bill drafted at the start of the session we were under assault on many fronts from Washington. Threats not just through executive orders (which I think are a very questionable means to govern and should hardly ever be used if at all), but from threats from agencies such as EPA, too. This bill doesn't address that, although perhaps it should. Some examples of fears I have where executive orders may be used to thwart Congress or the Constitution could be on gun ownership, forced registrations, clip capacities, etc. Stopping projects like the Keystone pipeline which had been supposedly blocked by environmental concerns in NE which have now gone away, could fall under either executive order or agency mandates. The same for industrial hemp issues which most of you know I've been fighting for years. The list goes on and on.

I don't blame this congress or this president any more than previous congresses or presidents for where we are today. This is not partisan politics. I want to be clear that I think we've seen an erosion of states' and peoples' rights and powers for many years, maybe since the day our Constitution rolled off the press over 200 years ago. Creative congressmen and presidents have been figuring out ways to do end runs around each other, the Constitution, and the states forever. Every

time a tactic works and passes muster with the courts we the people lose as does the state. It keeps compounding until today when we have over 50 tsars accountable to no one except the president whose only real job is to think up new creative ways on how to do more power grabs and end runs around congress. Gridlocked congresses and congressmen who are persuaded to turn their rights and authority over to the executive branch have made it even more egregious. You know it's bad when even I get cranked up enough to put on my redneck hat. It's time we do something to fight back. I'm not sure this is the right bill to do it. I'm not sure this will pass the court challenges, and, in fact, I'm guessing it won't. If all this bill amounts to is a chance to make a statement, so be it. But I seriously think the best statement is to create a tool that actually works and is usable. I do have an amendment that I think may tone this down and make it pass muster, but a lot of people like it as it is. I hope you see some potential to make this into a usable tool and take a little time to see if it can work. Thank you for your time, and I'll stand for any questions.

13.0743.01001
Title.

Prepared by the Legislative Council staff for
Representative Monson
January 29, 2013

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1428

Page 1, replace lines 7 through 15 with "The legislative management may review any executive order issued by the president of the United States which has not been affirmed by a vote of the Congress of the United States and signed into law as prescribed by the Constitution of the United States and recommend to the attorney general and the governor that the executive order be further reviewed to determine the constitutionality of the order and whether the state should seek an exemption from the application of the order or seek to have the order declared to be an unconstitutional exercise of legislative authority by the president."

Renumber accordingly

Testimony on HB 1428

Rep. David Monson, Dist. 10

Chairman Dever and members of the Senate GVA Committee, for the record I'm Rep. David Monson from District 10 in northeastern ND and I'm a recovering moderate. To steal a line from Jeff Foxworthy, "You know you're a redneck when you have all these people as co-sponsors on a bill you primed." This bill is a little out of character for me. Most of you who know me know that I'm one who usually prides myself on being reasonable; a peace keeper; someone who works together to find compromise or at least common ground; doesn't make waves or big, bold statements; and am slow to anger. My frustration with our whole government system, especially our federal government, finally is coming to a head. It takes a lot to get me worked up, but the mess in Washington has finally done it. I decided it was time to try to do something about it. When I had this bill drafted at the start of the session we were under assault on many fronts from Washington. Threats not just through executive orders (which I think are a very questionable means to govern and should hardly ever be used if at all), but from threats from agencies such as EPA, too. This bill doesn't address that, although perhaps it should. Some examples of fears I have where executive orders may be used to thwart Congress or the Constitution could be on gun ownership, forced registrations, clip capacities, etc. Stopping projects like the Keystone pipeline which had been supposedly blocked by environmental concerns in NE which have now gone away, could fall under either executive order or agency mandates. The same for industrial hemp issues which most of you know I've been fighting for years. The list goes on and on.

I don't blame this congress or this president any more than previous congresses or presidents for where we are today. This is not partisan politics. I want to be clear that I think we've seen an erosion of states' and peoples' rights and powers for many years, maybe since the day our Constitution rolled off the press over 200 years ago. Creative congressmen and presidents have been figuring out ways to do end runs around each other, the Constitution, and the states forever. Every

time a tactic works and passes muster with the courts we the people lose as does the state. It keeps compounding until today when we have over 50 tsars accountable to no one except the president whose only real job is to think up new creative ways on how to do more power grabs and end runs around congress. Gridlocked congresses and congressmen who are persuaded to turn their rights and authority over to the executive branch have made it even more egregious. You know it's bad when even I get cranked up enough to put on my redneck hat. It's time we do something to fight back. I'm not sure this is the right bill to do it. I'm not sure this will pass the court challenges, and, in fact, I'm guessing it won't. If all this bill amounts to is a chance to make a statement, so be it. But I seriously think the best statement is to create a tool that actually works and is usable. I do have an amendment that I think may tone this down and make it pass muster, but a lot of people like it as it is. I hope you see some potential to make this into a usable tool and take a little time to see if it can work. Thank you for your time, and I'll stand for any questions.