

2017 SENATE JUDICIARY

SB 2246

2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2246
2/1/2017
27714

- Subcommittee
- Conference Committee

Committee Clerk Signature 

Explanation or reason for introduction of bill/resolution:

Relating to failure to vacate; to provide a penalty; to provide for an effective date; and to declare an emergency.

Minutes: Testimony attached #

Chairman Armstrong called the committee to order on SB 2246. **Senator Osland** was absent.

Dick Dever, North Dakota Senator District 36, introduced and testified in support of the bill.

Senator Dever went over the Dakota Access pipeline and how it could be dangerous to the protesters if flooding occurred; how it could cause death along with debris and other things that flow in and around the river, which could also lead to environmental concerns.

"I chose 5,000 dollars to have a high number because this is serious issue. I am willing to discuss this number, however. This is not about making a statement on the protest. This is about safety to everyone that is there. If there is a mandatory order than you should have to leave or else pay a fine."

Senator Larson: "What can you say about the potential unintentional consequences of this bill? How do you think this bill would affect something like incorporating flood procedures to prevent damage to your house? We did something like that years ago during the last flood. We weren't supposed to be there but we went back to protect our house. I'm wondering if I would have been fined for doing that, and I'm wondering how you think this bill would affect something like that?"

Senator Dever: "I know where you live and I know what your circumstances were but I don't think you were violating a mandatory evacuation. I don't think there was an evacuation order administered?"

Chairman Armstrong: "I think there was a mandatory evacuation order in south Bismarck."

Senator Dever: "We learned a lot in 2011. One of the things we learned is that it shouldn't be every person protecting their own house, it should have been the community protecting the community."

Senator Myrdal: "Can you explain to me what qualifications make it a mandatory evacuation and not a voluntary evacuation?"

Senator Dever: "My suspicion is that somebody who has the authority to make that decision is able to make that decision: Governor, Mayor, Chief of Police, etc. But I don't have an official answer."

Senator Nelson: "What's the chain of command, who officially issues the evacuation order?"

Senator Dever: "I'm not exactly sure."

Chairman Armstrong: "If I get cited and I want to challenge it, do I get a jury trial?"

Senator Dever: "You and I had a conversation about that, that's why I said I'd be willing to discuss the 5,000-dollar amount."

Chairman Armstrong: "Your price for a fine puts it in the felony range. It seems like this is a civil issue that you are trying to incorporate but it ends up turning into a criminal one. I think this bill classifies this as a Class C Felony if the bill stays as is?"

Senator Dever: "That was certainly not my intent."

Jackson Lofgren, President of the North Dakota Association of Criminal Defense Lawyers, testified in opposition of the bill, (see attachment 1)

Senator Larson: "I think their intention was that if the conditions are such that law enforcement has to put themselves at risk in order to rescue someone, that that should be a penalty. Can you see anyway to change the bill so it can address those type of situations where everyone is put at risk because of them violating and not just the mandatory evacuation order?"

Jackson Lofgren: "Under the proposed bill I don't know if there is a way to fix this to account for that. There are statutes that do apply to emergency situations, maybe one of those could be modified to create a crime so we can actual know what something is?"

Chairman Armstrong: "Just offhand, are you aware of any infraction level trespass citation that can be issued?"

Jackson Lofgren: "No I'm not."

Gaylynn Becker, representing himself, testified in support of the bill. No written testimony.
"I'm appalled at the violence happening there. I think section 2 is very important. Our law enforcement is very lenient on this and very understanding. This is really important, I would recommend that you consider when people are arrested under this and then they go

and see the Judge; if the Judge tells them he doesn't want to see them again and they go down there anyway and then they get arrested again, their fine would be doubled and they would be in contempt of court. There should be strict penalties for disobeying the Judge, and every time they disobey the Judge, their fines should get higher and higher. I think that would help deter them and save the tax payer's money. When they willingly cost the tax payer's money by doing illegal acts, that is bad for the whole state. That money could be better used helping the sick, or disabled, or college students. There should be a penalty."

Chairman Armstrong closed the hearing on SB 2246.

No motions were made.

2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2246
2/20/2017
28521

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to failure to vacate; to provide a penalty; to provide for an effective date; and to declare an emergency.

Minutes: **No written testimony**

Chairman Armstrong began the discussion on SB 2246. **Senator Myrdal** was absent.

Chairman Armstrong: "The bill reads that upon further issuance of a law enforcement officer, failure to evacuate is a 5,000 dollar fine. I have some concerns about this not being qualified as any kind of crime, yet, it would be a Class C or Class D Felony range because of the 5,000 dollar fine. I don't like this bill."

Senator Luick motioned Do Not Pass. **Senator Larson** seconded.

Discussion followed:

Senator Osland: "What is the amount of the fine you can charge now?"

Chairman Armstrong: "There are two things that happen when you get charged with a crime; you get a fine and/or a fee. Sometimes there's minimum mandatory fines, but most of the time there's a range."

Senator Osland: "So, there is already something here?"

Chairman Armstrong: "Yeah, up to 1500 dollars."

Senator Nelson: "This is all on top of this bill being unconstitutional in the first place?"

Chairman Armstrong: "This bill?"

Senator Nelson: "That's what Lofgren said."

Chairman Armstrong: "I think it would need some work, I'm not sure it's unconstitutional in the way it's written, but I don't know how it would be applied in a constitutional matter? I'm not sure it's unconstitutional but it is definitely contrary to our other statutes."

Senator Nelson: "That's what he said in his testimony, that it was unconstitutional; it gives law enforcement the authority to cite a person 5,000 dollar fine for not following instructions. I'm not aware of any other section in North Dakota Century Code that allows that? There's no way to challenge that."

Chairman Armstrong: "Except, all we would have to do is change our non-criminal infraction and some other statutes. It's contrary to our statutes, that is clear. This would stick out horribly bad but there are ways we could change things."

A Roll Call Vote was taken. Yea: 5 Nay: 0 Absent: 1.
The motion carried.

Chairman Armstrong carried the bill.

Chairman Armstrong ended the discussion on SB 2246.

**2017 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2246**

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Senator Luick Seconded By Senator Larson

| Senators | Yes | No | Senators | Yes | No |
|--------------------|-----|----|----------------|-----|----|
| Chairman Armstrong | X | | Senator Nelson | X | |
| Vice-Chair Larson | X | | | | |
| Senator Luick | X | | | | |
| Senator Myrdal | | | | | |
| Senator Osland | X | | | | |
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Total (Yes) 5 No 0

Absent 1

Floor Assignment Chairman Armstrong

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

REPORT OF STANDING COMMITTEE

SB 2246: Judiciary Committee (Sen. Armstrong, Chairman) recommends **DO NOT PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2246 was placed on the Eleventh order on the calendar.

2017 TESTIMONY

SB 2246

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2/11/17

Testimony of Jackson Lofgren in Opposition to SB 2246

Good Morning,

My name is Jackson Lofgren and I am the President of the North Dakota Association of Criminal Defense Lawyers. Our membership includes lawyers throughout the State of North Dakota who devote some or all of their practice to criminal defense. We would urge you to give a do not pass vote to SB 2246.

The statutory change proposed by SB 2246 is unconstitutional. It gives a law enforcement officer the authority to cite a person with a \$5,000.00 fine for not following instructions. I am not aware of any other section in the North Dakota Century Code that allows a law enforcement officer to unilaterally assess a fine. There is no apparent court involvement. There is no identified mechanism for collecting or challenging the fine. Without court involvement and the ability to challenge the fine SB 2246 blatantly violates the due process clauses of both our State and Federal Constitutions.

Additionally, SB 2246 does not fit with any other section of the Century Code. It creates a new section in the Miscellaneous Offenses chapter in the Criminal Code but does not create an independent criminal offense and does not attach to any other criminal offense. Is this a civil fine, a criminal fine, a traffic ticket? It references the Disorderly Conduct and Criminal Trespass statutes but exceeds the maximum fine allowed under N.D.C.C. §12.1-32-15 for these offenses in most instances.

Finally, SB 2246 appears to be directed at the Dakota Access Pipeline protest. I urge you to be mindful that any changes to the Century Code will apply throughout North Dakota and will be in place long after the protest has ended. This bill is vague and could be used in many unintended situations. A homeless person who is told to leave the mall on a -15 degree day but decides to come back later in the day could be assessed a \$5,000.00. A group of college kids who do not disperse their house party fast enough could be assessed \$5,000.00 fines.

I urge you to give a do not pass vote to SB 2246.

Thank You,

Jackson Lofgren
President of the NDACDL