

2019 HOUSE JUDICIARY COMMITTEE

HB 1284

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1284
1/22/2019
31243 (43:29-51:40)

- Subcommittee
 Conference Committee

Committee Clerk Signature: DeLores D. Shimek by Donna Whetham

Explanation or reason for introduction of bill/resolution:

Relating to equitable buyouts of cotenant interests in an estate of inheritance subject to a partitions

Minutes:

Chairman Koppelman opens the hearing on HB 1284. We will have Dustin Assel provide us some information on HB 1284.

Neutral Testimony:

Dustin Assel, Legislative Council: This bill essentially creates a buy-out option where in the situation where one sibling does not want to sell and the other does want to, it could be anyone with an inheritance interest in the estate they can buyout the party that wants to sell and maintain their ownership of the property without having to sell the property and just receive their monetary value of their interest. This deals with inheritance of a homestead property.

Chairman K. Koppelman: Thank you. Any questions?

Rep. Roers Jones: Who is in charge of who gets to buy the property. How does that work?

Dustin Assel: We have a whole chapter on Partition Action, so I haven't had a chance to review the entire chapter but this would only come into play where one interested party wanted to sell and wanted the monetary value. It wouldn't be a factor if both parties wanted to keep their equal values in its land itself or if they both wanted to sell.

Chairman K. Koppelman: You talked about a scenario where the forced sale occurs because it can't be fairly divided. Under current law what about where one party says I want to sell and the other says no, and you have a grid lock there to whether there is a sale or not, what happens then?

Dustin Assel: Under current law the party that wants to sell can force the sale. Which is where this bill comes to play. Under current law there is no buyout option. You can still purchase the property at the fair market value, but you wouldn't have the right as the first purchaser.

Chairman K. Koppelman: So it would be a forced sale and one of those siblings could still say I want this and I am going to buy the other parties interest. So there is no authority for the party that does not want to sell.

Dustin Assel: Yes but you wouldn't have the buyout option that you have under this bill.

Rep. Magrum: Say I want to sell out, I need the money, but my brother wants to keep it, so now this would say he can keep it but where would the money come from because I need the money?

Dustin Assel: Under this bill, you want the money and your brother would have the option to buy you out. The money comes from your brother. He would purchase the interest from you.

Rep. Magrum: What if he doesn't have the money so we will have to go to a public sale, how is this going to help me get my money?

Dustin Assel: This bill only provides an option for a buyout. If they don't have the means to buy you out, then the sale will be forced under the current law.

Rep. Paur: The way I see it the current system would work just fine. Where the property would go up for sale and the one that wants to keep it would just purchase it. It would be done. Is there much of an advantage to have this bill?

Dustin Assel: Just going through the normal forced sale process there are other interested parties that could buyout as well. This bill provides the fair market value. The court determines a fair market value of that property is and then you can buyout that property at the appraised price. If you go through the current law is set up you may have to contend with other interested parties who may want to buy the property.

Rep. McWilliams: This just sets up a first right of refusal for the interested parties.

Dustin Assel: Yes, more or less. If you have an inheritant interest in the property you have the opportunity to buy out the other cotenants who also has interest in the property without it going to a sale or auction.

Chairman K. Koppelman: Seeing no further questions that helps us understand it much better.

Hearing closed.

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1284
1/22/2019
31244

- Subcommittee
 Conference Committee

Committee Clerk: DeLores D. Shimek By Elaine Stromme

Explanation or reason for introduction of bill/resolution:

Relating to equitable buyouts of cotenant interests in an estate of inheritance subject to a partitions

Minutes:

Chairman Koppelman: Opened the hearing on HB 1284.

Rep. Headland: Introduced the bill. The intent of this bill is to go to arbitration? Instead of going through probate. The language is fairly simple on what we are trying to do. Samantha Kramer drafted the bill.

Representative Jones: I appreciate you doing this. I support this bill.

Opposition: none

Chairman Koppelman: Let us know if the attorney wants to be here to support this bill. If not, we will deal with it.

Hearing closed. We will recess the HB1284

Chairman Koppelman: Reopened the hearing on HB1284

Chairman Koppelman: The bill sponsor was in when we opened the hearing this afternoon and he said he had drafted it at the request of someone else, and he wasn't real sure about the impact. We would like you to explain exactly what the bill does and what your understanding of the purpose and the effect are.

Attorney: This bill deals with partition actions when you have children in an estate with an inheritance property, say a farmstead, where you have two siblings, each sibling gets 50% interest in that property, they want to partition the land so they each get their equal share, when there is a partition action to do that, generally the court has to either divide the land equally, if it can be done equitably.

Rep. Becker: 8:49 - So if you had a co-owner who had a majority portion; if you wanted to sell and the others 4 were protesting, they would have to say they wanted to buy out the 80% owner. The siblings can't force one another to sell to them.

Representative Rohrs Jones : I think this is a good option and I want to support this bill.

Representative Jones: 10:22 - The court is just the referee to establish the appraisal or the fair market value, and then it says the co-tenants may purchase the other co-tenants right of property. Sometimes members of the family have a distorted version of what they are getting for the land. I like this piece of legislation.

Rep. Magrum: 11:40 Is there some set time? Does the court set the time limit that my sibling has to buy me out?

Chairman Koppleman: I don't see a timetable; we will have to come back to that.

Rep. McWilliams: How long is the appraisal valid?

Rep. Vetter: Three months. You can get it updated.

Justin: Legislative Counsel: Under this bill the minority owners could buy out the majority owners at the fair market appraised value.

Chairman K. Koppelman: Reading statute 32-16.01? Upon inheritance; when is this triggered?

Justin: It would only be active if there are one or more in the state of inheritance.

Chairman K. Koppelman: Is that at the time of death or anytime there after?

Justin: I don't know the answer to that.

Rep. McWilliams: If you have an 80% owner what happens if they refuse to sell out. to the other 4 co – owners?

Justin: The court would have to decide. This bill wouldn't pertain to that.

Rep. McWilliams: So it would go through an already existing law?

Justin: The court would just do a petition of land. The bill does not address these instances

Representative Jones: So if it is subject to a partition action.

Chairman K. Koppelman: It is a specific kind of instance, I think.

Rep. Magrum: Is there a time frame for this buy out?

Justin: The bill does not touch on those aspects. 20:43

Rep. Roers Jones: If more than one person wants to buy is addressed. If you have more than one person looking to buy out, then the courts will do a partition where you will have to sell. A life estate is not an inheritable interest.

Rep. Paur: A life estate, if both parties agree, then you can sell it. Right?

Justin: I will have to research that.

Chairman Koppelman: A motion has been made for a do pass recommendation I will ask the Clerk to call the roll.

A Motion was made by Rep. Vetter for a Do Pass on HB 1284

Vice Chairman: Karen Karls: Seconded

A Roll Call Vote was taken: Yes – 12 No – 2 Absent 0

Do Pass Carries

Rep. Rohrs Jones will carry the HB 1284

The Hearing was closed.

Date: 1-22-19
 Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HB 1284**

House 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 Rep Vetter Seconded By Rep. Karls

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman	✓		Rep. Buffalo	✓	
Vice Chairman Karls	✓		Rep. Karla Rose Hanson	✓	
Rep. Becker	✓				
Rep. Terry Jones	✓				
Rep. Magrum	✓				
Rep. McWilliams	✓				
Rep. B. Paulson	✓				
Rep. Paur		✓			
Rep. Roers Jones	✓				
Rep. Satrom	✓				
Rep. Simons		✓			
Rep. Vetter	✓				

Total (Yes) 12 No 2

Absent 0

Floor Assignment Rep. Roers Jones

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

REPORT OF STANDING COMMITTEE

HB 1284: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **DO PASS**
(12 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1284 was placed on the
Eleventh order on the calendar.

2019 SENATE JUDICIARY

HB 1284

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1284
3/6/2019
#33260 (5:34)

- Subcommittee
 Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact section 32-16-49 of the North Dakota Century Code, relating to equitable buyouts of cotenant interests in an estate of inheritance subject to a partition; and to amend and reenact section 30.1-20-11 of the North Dakota Century Code, relating to partitions.

Minutes:

No Attachments

Vice Chairman Dwyer opens the hearing on HB 1284. Senator Osland was absent and Chair Larson was temporarily absent.

Senator Bakke: What is cotenant interest?

Vice Chairman Dwyer: multiple owners

Craig Headland, District 29 Representative, testifies in favor

Representative Headland: This is a fairly simple bill that would allow the courts to referee a situation where cotenants and family members inherit property and can't decide how to split it up when some want to sell and some don't. I put this bill in at the request of an attorney in Jamestown. He was supposed to come and explain it, but I don't think it's that difficult.

Senator Luick: Please go into some more detail.

Representative Headland: You have a situation where you have a family who inherits the property of their parents. One of the family members wants to sell and the others don't. Currently I don't think the courts can officially take this action. It would allow for an arbitrator to come in and get an appraisal of the property. The intent is to allow for the willing family members who wanted to keep it to buy out the member who wanted to sell it. That was the simple way it was explained to me.

Vice Chairman Dwyer: My son does real estate work and has been involved in several actions for partition. The situation you described where the family members inherit land and

they can't agree and go to this partition action and the court divides up the land. This appears to avoid that and appoint a court appointed referee to come up with an appraisal and get the land sold instead.

Representative Headland: That's what it does.

Senator Luick: Would it be possible for you to contact the attorney and have him send us some more information on the intent?

Representative Headland: I will follow up with that.

Vice Chairman Dwyer closes the hearing on 1284.

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1284
3/12/2019
#33570 (2:08)

- Subcommittee
 Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact section 32-16-49 of the North Dakota Century Code, relating to equitable buyouts of cotenant interests in an estate of inheritance subject to a partition; and to amend and reenact section 30.1-20-11 of the North Dakota Century Code, relating to partitions.

Minutes:

1 Attachment

Testimony by Glen Nagel, Jamestown attorney, was emailed to the committee (see attachment #1)

Vice Chairman Dwyer: I think this bill is a good mediation alternative to partitions when there is an inherited property.

Senator Bakke: In the third paragraph of the testimony, he said this is based on a new Iowa law that he read about in a farm magazine.

Vice Chairman Dwyer: Motions for a Do Pass.

Senator Luick: Seconds.

Chair Larson: This is property subject to a partition action so that they can have a referee.

Senator Bakke: I think it's sad that they have to, but I understand that that's sometimes necessary.

A Roll Call Vote was Taken: 4 yeas, 0 nays, 2 absent. Motion carries.

Vice Chairman Dwyer will carry the bill.

**2019 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1284**

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 Vice Chairman Dwyer Seconded By Senator Luick

Senators	Yes	No	Senators	Yes	No
Chair Larson	X		Senator Bakke	X	
Vice Chair Dwyer	X				
Senator Luick	X				
Senator Myrdal	AB				
Senator Osland	AB				

Total (Yes) 4 No 0

Absent 2

Floor Assignment Vice Chairman Dwyer

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

REPORT OF STANDING COMMITTEE

HB 1284: Judiciary Committee (Sen. D. Larson, Chairman) recommends **DO PASS** (4 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1284 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

HB 1284

1
3.12.19
HB 1284

Subject: HB 1284

From: Glen Nagel <nagelaw@daktel.com>

Date: 2/28/2019, 4:02 PM

To: "<dklarson@nd.gov>;<madwyer@nd.gov>;<jmyrdal@nd.gov>;<lluick@nd.gov>;<aosland@nd.gov>;" <jbakke@nd.gov>, "Headland, Craig A." <theadland@nd.gov>, tmwanzek@nd.gov

Madam Chairperson and other members of the Senate Judiciary Committee:

My name is Glen Nagel. I am an attorney in Jamestown. I am writing to you personally and not as a lobbyist for any entity or organization. My work involves mostly real estate transactions, wills, probate, trusts, etc.

I am sending this message to support HB 1284 Partition Buyouts which is scheduled for hearing before your committee next Wednesday in the event I am not able to appear personally before the committee to state my support for the bill.

I asked my district Representative Headland and Senator Wanzek to introduce the bill. It is based on a new Iowa law that I read about in a farm magazine. It seemed like a good idea to me that could be used in North Dakota. I notice in your bios that several of you are listed as farmers or retired farmers.

The language of the bill applies to only land partition actions involving estates of inheritance (which usually involves family members). The bill provides a new section to the Century Code that authorizes a much less cumbersome procedure in partition actions among inherited estates than the procedures currently in the Century Code. By its language this bill would not apply to other kinds of partition actions involving, for example, divorces, co-habitant split ups, partnership split ups, etc. where the current partition laws would be used.

Lawyers try to be problem solvers for their clients and the language of this bill would seem to allow for a more efficient way to handle a family situation with inherited land where one or more of the parties wants a buy out.

Thank you for your consideration of HB 1284. Please contact me if there should be any questions. My office number is 701-251-1486.

Glen Nagel

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