

TESTIMONY ON HOUSE BILL 1164

House Judiciary Committee

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Chairman Klemin and members of the House Judiciary Committee, my name is Daniel L. Gaustad and I am the City Attorney for the City of Grand Forks. I want to thank you for the opportunity to provide testimony and express the City of Grand Forks' opposition for HB 1164.

The proposed amendment is included in N.D.C.C. § 54-03-32, entitled Review of presidential executive orders, however, the amendment is not clear whether it is limited to only the implementation of executive orders issued by the President of the United States. The City of Grand Forks, like many cities in North Dakota, relies on the ability of the Mayor, as the executive officer, to take action through executive orders in the time of local emergencies. This includes not only executive orders like those issued to aid in combating the current pandemic, but also executive orders to combat natural disasters like the 1997 flood in Grand Forks. As it is currently drafted, the proposed amendment reads as limiting the ability of the state, political subdivisions or any other publicly funded organization to issue these types of executive orders to combat such disasters.

In addition, if this legislation is only intended to limit the ability of the state, political subdivisions or any other publicly funded organization from implementing presidential executive orders, the constitutionality of such a proposed amendment is questionable. Under the Supremacy Clause, U.S. Const. art. VI, the laws of the United States are the "supreme law of the land," and state law that conflicts with federal law is without effect. See State ex rel. Stenehjem v. FreeEats.com, Inc., 2006 ND 84, ¶ 19, 712 N.W.2d 828. Moreover, implementation of the proposed amendment may have the unintended consequence of a loss of federal funding related to the refusal to implement a presidential executive order.

Notwithstanding these two significant issues, the proposed amendment also utilizes terms that are undefined and vague which would make implementation of the proposed amendment problematic. For example, there is no definition to identify what is considered a use of land or what constitutes the financial sector as it relates to environmental, social, or governance standards.

The passage of HB 1164 will cause confusion and potentially limit the ability of the City, and other political subdivisions, from utilizing executive orders in times of emergencies. In turn, the state, political subdivisions and other publicly funded organizations will be at a disadvantage in times of local emergencies. If this proposed amendment is intended to only limit the implementation of presidential executive orders, the proposed amendment is constitutionally infirm and may result in the unintended consequence of a loss of federal funding for the state, political subdivisions and other publicly funded organizations.

The City of Grand Forks asks for a DO NOT PASS for HB 1164.