

Senate Judiciary Committee | Chairperson: Senator Larson

SB 2124

Monday, January 11, 2021 | 9:00am

Chairman Larson, members of the committee, for the record, my name is Jace Beehler, and I serve as Chief of Staff to Governor Burgum and Lt. Governor Sanford. Today, I offer this testimony in opposition to SB 2124 as it is currently written.

Ten months ago, today, marks the first confirmed case of COVID-19 in North Dakota and the day in which the World Health Organization declared COVID-19 a global pandemic. This week Wednesday will mark ten months since both President Trump and Governor Burgum declared a national and state emergency due to COVID-19. From the beginning of the pandemic, North Dakota has had over 94,000 confirmed coronavirus cases. This on top of a historic collapse of the energy economy, unemployment rates jumping to the highest rates in years, flooding across many of our counties and civil unrest, unlike what we have seen in decades. The need for emergency authority is clear from 2020.

As we have this discussion today, we know that the pandemic and economic crisis are not yet over. All 50 states and over 100 countries across the globe remain in declared emergencies. As of yesterday, 1,899 North Dakotans were currently infected and 72 were recovering in hospitals. While we have made good progress, we know that this raging virus continues to spread across the country and the globe. Just three days ago, the US recorded a new record of more than 4,000 deaths in one day. So, as we begin to discuss how North Dakota will move forward with emergencies such as this, let us not forget that the pandemic is not finished.

The citizens of North Dakota expect their elected leaders to continue to ensure our hospitals have capacity to care for every citizen should they need it, to provide the necessary resources to doctors, nurses and long-term care professionals and to use data and research from leaders in medicine and science to make decisions.

We are in the midst of a global pandemic – the likes of which have not been experienced for over 100 years. While the context of this pandemic is vital, the discussion today is much broader. Today we are discussing the state's ability to respond to all declared emergencies. The ability for state agencies to quickly provide the citizens of North Dakota the information they need to make decisions for their families, to rapidly develop programs to provide safety, support and resources, despite the specific emergency. Today we are talking about the ability of those elected by all citizens of North Dakota to learn, adapt, and make decisions, with nimbleness and responsiveness.

As North Dakotans we are experienced in managing emergencies. Floods, droughts, and blizzards, come frequently. In those times of need, the people of North Dakota come together, mobilize to support their family, friends and neighbors. State agencies respond quickly and

efficiently and provide the necessary resources and support to help citizens come through the crisis. This pandemic is no different.

The governing systems used throughout the pandemic have been in place for decades and they have worked. Balancing lives and livelihoods, the Governor's Office, in consultation with the Unified Command and the Department of Health, utilized its authority sparingly but where required. Throughout the pandemic, the executive branch frequently collaborated with legislative leadership, individual legislators, members of the emergency commission, budget section, county commissioners, mayors, local public health, hospital leaders, physicians, school superintendents, university system leaders, and law enforcement. The Governor's Office had weekly and bi-weekly calls with the White House COVID-19 Task Force and other national governors associations, to gain insight on how other states were responding to the urgent requests of their citizens.

Thanks to the wisdom of North Dakota's founding fathers, the state's constitution and all elected leaders from decades past, our state and its systems were prepared for the greatest challenge in a century.

While we understand the citizens of North Dakota are asking you to discuss the decisions made throughout the pandemic, it is vital we keep our focus on the future. Senate bill 2124 seeks to address how the length of a declared emergency is managed. It begs the question, what problem are we attempting to solve? As executive orders were requested from various stakeholders, associations, agencies and citizens, if they were implemented, they were reviewed and discussed on a daily and weekly basis and when deemed appropriate, orders were modified in response to changed circumstances, or eliminated if no longer necessary.

To maintain the responsiveness and effectiveness of North Dakota state government, we oppose this bill for the reasons already stated. Each of the 50 states have implemented and renewed their emergency orders, some up to 19 times.

The ability to maintain emergency orders varies across the country; 17 states and territories have unrestricted lengths of emergency declarations and those were in the best position to manage this prolonged health and economic emergencies, 37 states and territories have required emergency renewal timelines, ranging from 180 to 15 days and 2 states or territories have other requirements.

The processes for renewing emergency orders also varies throughout the states, though most provide significant flexibility. 47 states or territories provide the governor the ability to renew emergency orders as he or she deems appropriate or they allow the legislature to reconvene as they deem appropriate, as is the case in North Dakota. Only 8 states require their respective legislative assemblies to approve the renewals and these state's have annual legislative sessions.

The process for declaring and maintaining the emergency in North Dakota is clear, effective and transparent. If this bill's goal is to ensure discussion on each individual executive order and policy decision during the emergency, I remind you that the process to accomplish this is already in place. The legislative assembly has the ability to call themselves back to session, which was possible throughout this interim as the legislature had days remaining.

As stated, we oppose this bill for these reasons. Though we do not feel changes are needed to the process that has worked, should discussions continue, we offer the following amendments for strong consideration to ensure North Dakota can remain efficient, effective and responsive during times of crisis.

1. First, in this bill we would urge changing the length of emergency to the South Dakota timeline of 180 days. As described by Cody Shultz, there are significant challenges with such a short timeframe for emergency renewal. In the last 24 years, 64.9% of the of declared emergencies that have lasted more than 60 days.
2. Second, all emergencies require rapid response and complete flexibility. To maintain this in North Dakota we encourage the legislature to maintain the authority of the Governor's office to extend emergency orders as he/she deems needed, as is the case in over 47 states and territories. If changes were made to this section, we urge the legislature to adopt the Montana requirement which allows the emergency to remain in place, without renewal, so long as the President of the United States has a declaration of emergency in place.
3. Third, as we have discussed, the legislature has the authority to utilize any unused days to return, gavel in, and discuss whether an emergency should remain in place. This is currently in law. To require the Governor's Office to call the legislative assembly into special session, whether in person or virtual, in the heat of an emergency to determine if that emergency should remain in place, may not be needed based on the process already in place.
  - a. Should the assembly feel that approval for renewal is needed, based on our research, a reasonable solution would be to implement the 180-day limitation before renewal, with 90-day renewal opportunities. For approval, any remaining legislative days should be utilized first to address the renewal and then, if needed, allow the Governor's Office to call a special session for the singular purpose of renewing an emergency. This special emergency renewal session should be limited to 3 legislative or calendar days, whichever is less.
  - b. Lastly, the Governor's Office must maintain the ability to reinstitute emergencies, should the need arise, even if the legislature had, at one moment in time, rejected the request for renewal.

Let us be clear today, there is no Governor, executive official or elected official who wishes that the conditions arise to require the use of emergency declarations. Not one wishes to extend emergencies beyond what is required to meet the needs of the citizens. The emergency authority is vital in assuring that the governor's office has the ability to declare and maintain emergencies to optimize both federal aid and federal response, for the sole purpose of helping North Dakotans.

Our governing processes that were used and are continuing to be used to respond to the pandemic have worked. We have been able to respond to the needs of all North Dakotans, work with the federal government to drive change to policy and collaborate with all levels of local government to balance the needs across the state. For these reasons, we ask that this committee proceed with a do not pass and work with our office and the executive branch to determine what problems we are trying to solve and how to solve them without creating any unintended consequences.

Thank you madam chair and I would welcome any questions you may have.