

Chair Beltz and members of the Committee:

On behalf of the ACLU of North Dakota, I submit testimony in support of House Bill 1496 relating to landlord obligations owed to a tenant regarding reasonable temperature standards.

According to the U.S. Census Bureau, approximately 35% of North Dakota’s households are renter-occupied, making rental housing a significant part of the state’s housing landscape. Approximately 40% of renter households are cost-burdened, meaning they spend at least 30% of their income on housing expenses. Due to rising rates of housing instability, homelessness, and eviction in relation to the COVID 19 pandemic, the ACLU has been working with collaborative partners across the state to gain understanding of the needs of renters to assess where tenants’ rights can be strengthened to address the aforementioned concerns—which results in our support of HB 1496.

North Dakota Century Code 47-16-13.1(f) guarantees landlords supply reasonable heat, except if the heat is “generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection.” This is a critical tenant protection since North Dakota ranks as the coldest state in the lower 48 U.S. states (National Centers for Environmental Information). However, “reasonable heat” is subjective, raising concern for tenants who do not control their heat.

Issued during by first Trump administration, the U.S. Department of Housing and Urban Development (HUD) provided guidance (Notice PIH 2018-19) on minimum heating requirements for public housing that includes minimum temperature of at least 68 degrees Fahrenheit in units where a tenant does not control the heat. This guidance for public housing provides an appropriate base to clarify NDCC for privately owned rental properties during the coldest months of the year.

The ACLU of North Dakota supports the bill as currently written. However, it is worth noting that bouts of extreme weather common on the Northern Plains can introduce variables due to infrastructure age and types of building materials which can stress the effectiveness of heating systems. This may raise questions of landlord liability when prescribing a minimum temperature in statute. Therefore, we provide the following additional information to the committee for your consideration in your deliberation: Heating equipment is designed to accommodate the lowest expected outdoor temperature, referred to as the “design-day temperature.” If the design-day temperature is 17 degrees Fahrenheit outside, the heating equipment should be able to maintain an indoor temperature of 68 degrees.

The HUD guidance in Notice PIH 2018-19 allows the indoor temperature to be lower than 68 degrees when the outside temperature drops below the design-day temperature, or when the outside temperature is within five degrees of the design-day temperature for more than two consecutive days.

HB 1496 clarifies ambiguity in current law, strengthens tenants’ rights, and improves the standard of safe housing in the state. Potential amendments would also address landlord liability in the existing law, as well as in the proposed definition for minimum heat requirement set before you. Therefore, the ACLU of North Dakota urges the House Agriculture Committee to give HB 1496 a “do pass” recommendation as written—or with highlighted potential amendments.

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