

2009 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1122

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB1122

House Government and Veterans Affairs Committee

Check here for Conference Committee

Hearing Date: 01/15/09

Recorder Job Number: 7080

Committee Clerk Signature

Loni Englisson

Minutes:

Chairman Grande: We will take up HB1122. The clerk will read the title.

The title was read by the clerk.

Pam Sharp offered testimony in support of HB1122. See attachment #1. I only want to address our economic consulting contract. My intent is that it be very narrow and not opened up to other vendors.

Chairman Grande: We don't need to emergency clause this.

Pam Sharp: It does not have to have an emergency clause.

Chairman Grande: Any other questions from the committee. Is there anyone else who wishes to testify on 1122. Favorably? Against? We'll close the hearing on 1122

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB1122

House Government and Veterans Affairs Committee

Check here for Conference Committee

Hearing Date: 01/15/2009

Recorder Job Number: 7084

Committee Clerk Signature

Hathy Roden

Minutes:

Chairman Grande: I will call the meeting back to order and take up the bills heard this morning starting with HB1122.

Rep. Dahl: Made a motion for a do pass on HB1122.

Rep. Schneider: Seconded the motion.

Chairman Grande: Is there any discussion?

Rep. Karls: If the economic forecasters make a mistake, we can't get back at them?

Chairman Grande: I think our attorney may have a better answer, but what I think it does state a limited liability; that there is limited liability on both sides. It doesn't all fall in the lap of one. I haven't seen how the contract is written to know exactly how those are going.

Rep. Dahl: So it would limit the ability to recover indirect consequential damages. We should have had her define what consequential damages are. They are punitive damages and different types of damages that I don't recall exactly what they are, but that would be the limit of what the state could recover.

Chairman Grande: Are there any other comments or concerns?

Chairman Grande: Called for a vote on HB1122.

The roll call vote was taken: **Yea: 12** **Nay: 0** **Absent: 1**

 **Representative Dahl will carry the bill.**



Date: 01-15-09
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1122

House **Government and Veterans Affairs** Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DP

Motion Made By Dahl Seconded By Schneider

Representatives	Yes	No	Representatives	Yes	No
Chairman Grande	✓		Rep. Amerman	✓	
Vice Chairman Boehning	✓		Rep. Conklin	✓	
Rep. Dahl	✓		Rep. Schneider	✓	
Rep. Froseth	✓		Rep. Winrich	✓	
Rep. Karls	✓		Rep. Wolf	✓	
Rep. Kasper					
Rep. Meier	✓				
Rep. Nathe	✓				

Total (Yes) 12 No 0

Absent 1

Floor Assignment Dahl

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

REPORT OF STANDING COMMITTEE (410)
January 15, 2009 2:37 p.m.

Module No: HR-08-0389
Carrier: Dahl
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1122: Government and Veterans Affairs Committee (Rep. Grande, Chairman)
recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
HB 1122 was placed on the Eleventh order on the calendar.

2009 SENATE GOVERNMENT AND VETERANS AFFAIRS

HB 1122

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No.1122

Senate Government and Veterans Affairs Committee

Check here for Conference Committee

Hearing Date: 03/06/09

Recorder Job Number: 10401

Committee Clerk Signature *Katie Oliver*

Minutes:

Chairman Dever opened the public hearing on HB1122. Pam Sharp was there to speak in favor of the bill.

Pam Sharp: Director of the Office of Management and Budget. See attached testimony #1.

Senator Oehlke: This is just a disclosure?

Pam Sharp: That is correct.

Senator Oehlke: Are we talking about people doing actual IT type work?

Pam Sharp: It would be the maintenance agreements for a software purchase.

Senator Oehlke: If they do something and it causes a shock to hurt someone that is where the personal injury comes in.

Pam Sharp: Yes

Senator Horne: We are talking about the company that makes the financial forecast for the state of North Dakota and their concerned that we don't have a clause in the contract limiting their liability that they would be liable for an inaccurate forecast?

Pam Sharp: That is correct.

Senator Horne: Is this a legitimate concern?

Pam Sharp: No, it is something that is standard among these companies. It is standard contact language; we were not able to include it in our contract.

Senator Horne: Would this a problem with other forecasters?

Pam Sharp: I think it could be. We have contracts with www.economy.com since the 1990's. All the economic forecasting firms would have the same concern.

Senator Dever: The contract for the legislative council software, did it go through OMB?

Pam Sharp: Did not go through OMB at all.

Senator Dever: Generally ITD would involve computer related services.

Pam Sharp: That is correct.

Pat Forester: My name is Pat Forester from the IT Department.

Chairman Dever closed the public hearing on HB1122. A motion was made by Senator Nelson for a do pass with a second by Senator Horne. There was no further discussion, roll was taken, and the motion passed 5-0 with Senator Oehlke carrying the bill

Date: 3/6/09
Roll Call Vote #: 1

**2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.**

Senate Government and Veteran's Affairs Committee

Check here for Conference Committee

Legislative Council Amendment Number 1122

Action Taken Do Pass

Motion Made By Nelson Seconded By Horne

Representatives	Yes	No	Representatives	Yes	No
Dick Dever			Dwight Cook		
Dave Oehlke			Carolyn Nelson		
Robert M. Horne					

Total Yes 5 No 0

Absent _____

Floor Assignment _____

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

*Carrier
Oehlke*

REPORT OF STANDING COMMITTEE (410)
March 6, 2009 1:24 p.m.

Module No: SR-41-4229
Carrier: Oehlke
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1122: Government and Veterans Affairs Committee (Sen. Dever, Chairman)
recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1122
was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

HB 1122

Testimony on HB 1122
Pam Sharp Director
Office of Management and Budget
January 15, 2009

*Same given
to Senate.*

Chairman Grande and members of the Government and Veteran's Affairs Committee, my name is Pam Sharp and I am the Director of the Office of Management and Budget. I appear today to provide information on House Bill 1122.

N.D.C.C. § 32-12.2-15 was passed by the 2005 Legislature to address circumstances the State was facing when it was attempting purchase software and electronic and communications equipment where the vendors were refusing to do business with the State unless the State agreed to a limitation of liability clause in the contract. This legislation allowed the State to agree to contracts that limited a software, electronic and communication equipment vendor's liability for consequential damages. In order to limit this practice to only those situation where it was strictly necessary, the legislation required the approval of the Director of OMB and the Attorney General.

Line 12 of this Bill provides that contracts for services related to the purchase or lease of software, electronic and communications equipment are within the scope of what is authorized under this statute. Software and electronic and communications equipment purchases or leases often require ongoing servicing agreements. This clarifies that the interrelated services provided as part of a purchase or lease of software or electronic or communications equipment are within the scope of what the State may agree to limit the liability of the vendor.

Starting at line 15, the first sentence adds that contracts for economic forecasting on behalf of OMB may also contain a provision limiting the vendor's liability to the State for consequential damages if the Director of OMB and the Attorney General determine it is necessary and the risk of loss to the State is not significant and is in the best interest of the State. Those limited vendors that undertake the type of economic forecasting that OMB needs have also begun to insist on contractual limitations of liability. This amendment will allow the State to continue receiving these important services.

Finally, the last sentence starting in line 20 clarifies that the only limitation of liability the State may agree to under this section is for indirect consequential damages, not direct loss resulting from property damage or personal injury.

That concludes my prepared remarks. I would be happy to answer any questions you may have.

Thank you.