

2009 HOUSE POLITICAL SUBDIVISIONS

HB 1128

2009 HOUSE STANDING COMMITTEE MINUTES

Bill No. HB 1128

House Political Subdivisions Committee

☐ Check here for Conference Committee

Hearing Date: January 22, 2009

Recorder Job Number: 7552, 7553

Committee Clerk Signature



Minutes:

Vice Chairman Headland opened the hearing on HB 1128.

Greg Wilz, Deputy Director, Department of Emergency Services: (Attachment #1)

(testimony #2) Explained proposed amendment.

Rep. Koppelman: the original version of the bill as you indicated talks about exemption for willful negligence is still there?

Greg: When you add in the folks you are looking at beginning of paragraph I on page 1 line 7, it carries down through 15 except case of willful misconduct, gross negligence so it is covered there. If you carry it on down it says will not be held liable.

Rep. Koppelman: Both the original bill and your amendment talks about all these organizations or people are working in coordination and under the direction of appropriate state agency. However, ND is a state where neighbor helping neighbor and I grew up in a community where everyone helps everyone else. Discussed sandbagging when flood was happening. Do you want that immunity for anyone or do you want them to be sued too?

Greg: I think any law has a loop hole of some kind. The state law says any person performing a function as directed by another entity is included here as a worker. If you were pitching those sand bags you are an emergency worker and you would have been covered.

Rep. Koppelman: Is there a Good Samaritan law that takes over where some of those questions would come in?

Greg: Yes we believe it does.

Rep. Zaiser: Under the existing law we have now is the law the way it is written been a deterrent for people providing assistance?

Greg: It has not been a deterrent but the level of disasters has not reached the level of the Katrina's or Greens Berg Kansas level. In those instances we have seen large benefactors come in and help. The corporate folks are demanding this; that they be held free of liability if they are going to make donations. It is something that if we would have an incident, as opposed to having to do separate legal agreements on receipt of goods, this law would cover us and makes us ready and prepared.

Rep. Zaiser: Everyone has the right to sue and be sued; equal protection under the law. I am concerned about community trying to create immunity for some business or some group; whatever. If we start adding these immunities in the law the only ones left to be sued is us individuals.

Greg: I believe that the greater good has to be looked at here. We are still able to be sued due to misconduct or negligent.

Rep. Conrad: I am pleased to see your amendment. It looks like you guys are getting off. In 1969 the most important heroes were the Corp of Engineers. We all knew we did what the corp. said or we were out of there. I think it is very important we have you guys in charge and able to be ones that determine how goods and services are offered. I know you are the ones liable for goods and services.

Greg: I think appropriately so. At the level that we would be bringing the stuff in clearly we would have exhausted all local resources; mutual aid resources and at some level state resources.

Rep. Corey Mock: Talking about the Good Samaritan law to protect them in these kinds of emergency's why is there not an emergency clause?

Greg: Good question. Feel free to add it.

Rep. Hatlestad: In your amendment you talk about under the direction of the appropriate state or local agency and you mention something about a government entity. Does there have to be a state agency in order to get this protection?

Greg: What we said was under the direction of the appropriate state agency. Our attempt there was the appropriate agency with regard of the product that is coming in.

Rep. Hatlestad: could state agency be the common emergency director that was coordinating that activity. Does it have to be you in order for that person to donate something? Does it have to be under the direction of a state agency?

Greg: No it does not have to be under a state agency. However, it would normally generally be because that is the process when it comes in at this level. I don't believe it precludes any local emergency operation center. Our intention was the large corporate organizations.

Rep. Kretschmar: Has anyone been sued based on this law?

Greg: I have not heard of anyone being sued.

Katie Moore Aitchison, Representing the Bismarck-Mandan Chamber of Commerce:
(See testimony #3)

Terry Traynor: ND Association of Counties: In support of HB 1128 and the amendments that were presented.

Jerry Hjelstad: In support of the bill.

No opposition.

No neutral testimony.

Hearing closed.

Job #7553

Chairman Wrangham reopened the hearing on HB 1128.

Rep. Jerry Kelsh: I would move the amendments on HB 1128.

Rep. Koppelman: I will support it however I did discuss it with Dave Sprynczynatky and we would need a little time to work on it.

Seconded By Rep. Nancy Johnson

Rep. Hatlestad: Can I amend his amendment on where it says direction of a state agency; I would like to see that changed to government entity.

Chairman Wrangham: I think we all agree with Rep. Kelsh's amendment so I would like to act on that amendment and hold it over and won't act on it today so we can discuss those other amendments.

Rep. Koppelman: I think we can just have the counsel do that and have the right wording.

Voice vote carried.

Rep. Hatlestad: I would to amend the state agency to say government entity.

Motion made by Rep. Hatlestad Seconded By Rep. Koppelman

Discussion on that amendment. Under the direction of an appropriate state agency. I would like it to say under an appropriate government entity.

Rep. Nancy Johnson: would that include school boards too?

Rep. Koppelman: would it help to say government emergency management.

Chairman Wrangham: Rep. Koppelman and Rep. Hatelstad can work on the bill and we will look at the amendment later.

Hearing closed.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill No. HB 1128

House Political Subdivisions Committee

☐ Check here for Conference Committee

Hearing Date: January 22, 2009

Recorder Job Number: 7597

Committee Clerk Signature

Minutes:

Chairman Wrangham reopened the hearing on HB 1128.

Rep. Jerry Kelsh: went over the proposed amendment (see attachment #1)

Rep. Hatlestad: I would suggest that the government entity then someone suggested the work emergent government entity so that would take care schools and park boards.

Rep. Jerry Kelsh: I would not think a school board would be a government entity.

Working on amendment.

Decided to hold this bill until later on.

Hearing closed.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill No. HB 1128

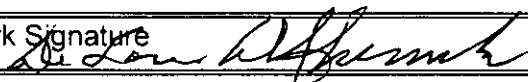
House Political Subdivisions Committee

☐ Check here for Conference Committee

Hearing Date: January 23, 2009

Recorder Job Number: 7635

Committee Clerk Signature



Minutes:

Chairman Wrangham reopened the hearing on HB 1128.

Rep. Koppelman: members of the committee will remember that that this is an emergency management that we did yesterday. Legislative Counsel discovered a flaw and they drafted the amendment to correct that and do everything that we wanted to do. So this amendment will accomplish everything and be correct. I move we reconsider our action and move the amendments. Seconded by Rep. Hatelstad.

Voice vote carried.

Rep. Koppelman: Went over latest amendment with latest changes from Legislative Counsel. Put an emergency clause on the bill.

Motion Made By Rep. Koppelman Seconded By Rep Kelsh to move the amendments.

Voice vote carried.

Do Pass As Amended Motion Made By Rep. Koppelman Seconded By Rep. Hatlestad

Chairman Wrangham: We have so many bills I am questioning every bill. I am wondering if this bill is necessary. I probably will vote no?

Rep. Koppelman: I think this bill does serve a purpose and we are all responsible for our actions and this would give the large organizations some security that they would not be

penalized for donations. We would not want to see these things drying up because ND does not have a law like this.

Rep. Jerry Kelsh: I agree with Rep. Koppelman, I would not feel right if there is not a law like this and would get into trouble just being a Good Samaritan.

Rep. Koppelman: The Good Samaritan law covers other things so that is why we put this section in.

Vote: 10 Yes 3 No 0 Absent **Carrier:** Rep. Koppelman

Hearing closed.

Vote 1

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1128

Page 1, line 2, after management insert “, and to declare an emergency.”

Page 1, line 10, remove the second “or”, after “private” insert “for-profit” and after “entity” insert “, or not-for-profit entity.”

Page 1, line 11, after “emergency.” insert “when such persons, organizations, or entities are working in coordination and under the direction of an appropriate state agency.”

Page 2, remove lines 1 through 24

Page 2, after line 24, insert:

Vote
2

“SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.”

Re-number accordingly

Roll Call Vote #: 1

Date: 1-22-09

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1128

House Political Subdivisions

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken

Do Pass

Do Not Pass

Amended

Motion Made By

Rep. Kudsk

Seconded By

Rep. Johnson

Representatives	Yes	No	Representatives	Yes	No
Rep. Dwight Wrangham, Chairman			Senator Kari Conrad		
Rep. Craig Headland, Vice Chairman			Senator Jerry Kelsh		
Rep. Patrick Hatlestad			Senator Robert Kilichowski		
Rep. Nancy Johnson			Senator Corey Mock		
Rep. Lawrence Klemin			Senator Steve Zaiser		
Rep. Kim Koppelman					
Rep. William Kretschmar					
Rep. Vonnie Pietsch					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice Vote: Carried

Roll Call Vote #: 2

Date: 1-22-09

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB1128

House Political Subdivisions Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By Rep Hatlestad Seconded By Rep Koppelman

Representatives	Yes	No	Representatives	Yes	No
Rep. Dwight Wrangham, Chairman			Senator Kari Conrad		
Rep. Craig Headland, Vice Chairman			Senator Jerry Kelsh		
Rep. Patrick Hatlestad			Senator Robert Kilichowski		
Rep. Nancy Johnson			Senator Corey Mock		
Rep. Lawrence Klemin			Senator Steve Zaiser		
Rep. Kim Koppelman					
Rep. William Kretschmar					
Rep. Vonnie Pietsch					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Held over!

Roll Call Vote #: 1

Date: 1-23-09

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1128

House Political Subdivisions

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken

Do Pass

Do Not Pass

Amended

Motion Made By

Rep Koppelman

Seconded By

Rep Hatlestad

Representatives	Yes	No	Representatives	Yes	No
Rep. Dwight Wrangham, Chairman			Senator Kari Conrad		
Rep. Craig Headland, Vice Chairman			Senator Jerry Kelsh		
Rep. Patrick Hatlestad			Senator Robert Kilichowski		
Rep. Nancy Johnson			Senator Corey Mock		
Rep. Lawrence Klemin			Senator Steve Zaiser		
Rep. Kim Koppelman					
Rep. William Kretschmar					
Rep. Vonnie Pietsch					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Vote Date: Carried

VK
1/23/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1128

Page 1, line 2, after "management" insert "; and to declare an emergency"

Page 1, line 8, overstrike "Neither the" and insert immediately thereafter "The" and overstrike "nor any" and insert immediately thereafter "a"

Page 1, line 9, overstrike "or its departments and agencies"

Page 1, line 10, after "any" insert "other" and remove ", organization, or private entity"

Page 1, line 11, after "emergency" insert "if the person is working in coordination with and under the direction of an appropriate governmental emergency or disaster response entity"

Page 1, line 13, overstrike "the provisions of"

Page 1, line 15, after "is" insert "not"

Page 1, line 23, overstrike "their" and insert immediately thereafter "the worker's" and overstrike "such" and insert immediately thereafter "the"

Page 1, after line 24, insert:

"3. This section does not affect any other provision of law that may provide immunity to a person that is providing volunteer assistance.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure."

Page 2, remove lines 1 through 24

Renumber accordingly

Roll Call Vote #: 2

Date: 1-23-09

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB1128

House Political Subdivisions

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken

Do Pass

Do Not Pass

Amended

Motion Made By

K Koppelman

Seconded By

J Kelsh

Representatives	Yes	No	Representatives	Yes	No
Rep. Dwight Wrangham, Chairman			Senator Kari Conrad		
Rep. Craig Headland, Vice Chairman			Senator Jerry Kelsh		
Rep. Patrick Hatlestad			Senator Robert Kilichowski		
Rep. Nancy Johnson			Senator Corey Mock		
Rep. Lawrence Klemin			Senator Steve Zaiser		
Rep. Kim Koppelman					
Rep. William Kretschmar					
Rep. Vonnie Pietsch					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Vote carried

Roll Call Vote # 3Date: 1-23-09

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES BILL/RESOLUTION NO. HB 1128

House Political Subdivisions

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken

Do Pass

Do Not Pass

Amended

Motion Made By

Rep. Koppelman

Seconded By

Rep. Hatlestad

Representatives	Yes	No	Representatives	Yes	No
Rep. Dwight Wrangham, Chairman	✓		Senator Kari Conrad	✓	
Rep. Craig Headland, Vice Chairman		✓	Senator Jerry Kelsh	✓	
Rep. Patrick Hatlestad	✓		Senator Robert Kilichowski	✓	
Rep. Nancy Johnson	✓		Senator Corey Mock	✓	
Rep. Lawrence Klemin	✓		Senator Steve Zaiser		✓
Rep. Kim Koppelman	✓				
Rep. William Kretschmar		✓			
Rep. Vonnie Pietsch	✓				

Total (Yes) 10 No 3Absent 0

Floor Assignment

Rep. Koppelman

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

REPORT OF STANDING COMMITTEE

HB 1128: Political Subdivisions Committee (Rep. Wrangham, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1128 was placed on the Sixth order on the calendar.

Page 1, line 2, after "management" insert "; and to declare an emergency"

Page 1, line 8, overstrike "Neither the" and insert immediately thereafter "The" and overstrike "nor any" and insert immediately thereafter "a"

Page 1, line 9, overstrike "or its departments and agencies"

Page 1, line 10, after "any" insert "other" and remove ", organization, or private entity"

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Page 1, line 15, after "is" insert "not"

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Page 1, after line 24, insert:

"3. This section does not affect any other provision of law that may provide immunity to a person that is providing volunteer assistance.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure."

Page 2, remove lines 1 through 24

Renumber accordingly

2009 SENATE GOVERNMENT AND VETERANS AFFAIRS

HB 1128

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No.1128

Senate Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Hearing Date: 03/13/09

Recorder Job Number: 10946

Committee Clerk Signature

Kate Oliver

Minutes:

Chairman Dever opened the public hearing on HB1128. Greg Wilz was there to introduce the bill.

Greg Wilz: Director of Homeland Security. See attached testimony #1.

Senator Nelson: I think that there is something in here that protects them if it does not exempt them from bad products.

Greg Wilz: No they are held accountable.

Senator Nelson: So if the expiration date is passed on something then you don't have to accept it?

Greg Wilz: We should not accept it. If they are trying to offload junk on us, this law does not provide immunity and exceptions.

Senator Dever: They would not be protected by a Good Samaritan law?

Greg Wilz: No.

Senator Dever: Section 1 gives them coverage that others get.

Senator Nelson: If I go out and help the flood workers and I give them a meal, am I protected.

Greg Wilz: You would be protected under the Good Samaritan law.

Greg Wilz: That is what we got from other states in relation to the language. We are talking about adding. Another key phrase is, 'working on coordination with.'

Al Austin: North Dakota Association for Justice. We support this bill; the question that I have in on Page 2 section 2, do I need doctor to practice medicine during a medical emergency. The question that I have is: Do I need to be an electrician to do electrical work during the emergency. We support the bill I just think that the question needs to be asked.

Senator Nelson: I am looking at the 2nd line; I think that whoever is in charge of the volunteers.

Senator Horne: According to this number 2 on page 2, if I was authorized by emergency organization to do the work then I am covered.

Senator Cook: I guess the answer is yes you can.

Senator Oehlke: We need to read the entire paragraph; you can't try and pick it apart.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No.1128

Senate Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Hearing Date: 03/13/09

Recorder Job Number: 10948

Committee Clerk Signature

Katra Oliver

Minutes:

A motion was made by Senator Horne with a second by Senator Cook for a do pass. There was no discussion and the motion passed 5-0 with Senator Horne carrying the bill to the floor.

Date: 3-13-09
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1128

Carrie
Horne

Senate Government and Veteran's Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Horne Seconded By Cash

Representatives	Yes	No	Representatives	Yes	No
Dick Dever	1		Dwight Cook	1	
Dave Oehike	1		Carolyn Nelson	1	
Robert M. Horne	1				

Total Yes 5 No 0

Absent _____

Floor Assignment _____

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

REPORT OF STANDING COMMITTEE

HB 1128, as engrossed: Government and Veterans Affairs Committee (Sen. Dever, Chairman) recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1128 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

HB 1128

#/
PROPOSED AMENDMENTS TO HOUSE BILL NO. 1128

Page 1, line 10, after "private" insert "for-profit", after "entity" insert ", not-for-profit entity,"

Page 1, line 11, after "emergency," insert "when such persons, organization, or entities are working in coordination and under the direction of an appropriate state agency,"

Page 2, remove line 1 through 24

Renumber accordingly

#2

TESTIMONY - HB 1128
HOUSE COMMITTEE – POLITICAL SUBDIVISIONS
JANUARY 22, 2009
BY GREG WILZ
DEPUTY DIRECTOR, DEPARTMENT OF EMERGENCY SERVICES

Mr. Chairman and members of the committee, my name is Greg Wilz. I am the Deputy Director of the Department of Emergency Services (NDDDES) and Director of Homeland Security for the state of North Dakota. My intent is to provide information concerning the importance of HB 1128 as it relates to NDDDES.

In paragraph one, HB 1128 amends NDCC 37-17.1-16 by extending immunity and exemptions to people, organizations, or private entities that donate goods and services during emergency events. The intent is to increase the willingness of various benefactors who contribute based upon wealth, corporate policy, and a sincere desire to help.

Recently, new sources of aid have made a distinct difference during response and recovery phases of large scale disasters. From Katrina to the Greensburg Tornado, it is the resources from this huge cross section of donors that is vital to public safety.

Immunity and exemptions legislation facilitate these donations. When Walmart and Target want to deliver mass quantities of food, water, ice, or blankets, there is a level of state commitment expected that will not hold them liable for actions resulting from product or service problems after the delivery.

I do not know the extent North Dakota will benefit from passage of HB 1128 but I do know the national trend is to adopt such protective measures that clearly open more opportunities for assistance.

I urge committee members to pass HB 1128.

Thank you, I will try to answer any questions you may have.

Testimony

Katie Moore Aitchison

Representing the Bismarck-Mandan Chamber of Commerce

HOUSE BILL 1128

Chairman Wrangham and members of the House Political Subdivisions committee, good morning. My name is Katie Moore Aitchison and I am here today representing the Bismarck-Mandan Chamber of Commerce.

I am here supporting House Bill 1128, relating to immunity and exemptions for organizations and entities when contributing for the sake of disaster relief.

Businesses and organizations are not only willing to help when the need is there, they want to. People do not generally have the desire to stand by and watch as their neighbors struggle due to an emergency situation. There is an inherent desire to help. However, if an organization fears their assistance today might mean a liability suit and the organization may not be around to assist another day that inherent desire drains away.

House Bill 1128 will allow businesses to give and volunteer, as well as allow our community ties to be strengthened. Over 1200 businesses and organizations are members of the Chamber. If, god forbid, an emergency were to be declared for our area, those 1200 members could have an amazing impact on the area, working to restore the community to pre-disaster conditions. If a fear that each of those 1200 members could face a potential lawsuit if something accidentally went wrong, the effect on the community will be as devastating as the disaster itself.

When fear of litigation and liability overshadow the need for products and services during a disaster or emergency, we are asking for a longer struggle and harder road. Passing House Bill 1128 opens the doors for giving and assistance without the fear there will be repercussions.

Chairman Wrangham. Representatives. I thank you for time. Can I answer any questions?

TESTIMONY - HB 1128
SENATE COMMITTEE – GOVERNMENT AND VETERANS AFFAIRS
MARCH 13, 2009
BY GREG WILZ
DEPUTY DIRECTOR, DEPARTMENT OF EMERGENCY SERVICES

Mr. Chairman and members of the committee, my name is Greg Wilz. I am the Deputy Director of the Department of Emergency Services (NDDDES) and Director of Homeland Security for the state of North Dakota. My intent is to provide information concerning the importance of HB 1128 as it relates to NDDDES.

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