2011 HOUSE HUMAN SERVICES

HB 1095

2011 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee
Fort Union Room, State Capitol

HB 1095
January 5, 2011
12584

☐ Conference Committee

Committee Clerk Signature Vicky Crabtree

Minutes:

Chairman Weisz: We will open the hearing on HB 1095.

Dean Sturn: Foster Care Administrator of the Department of Human Services (DHS), gave explanation of why bill was being introduced. (See attached Testimony).

Rep. Holman: Can you give an example of where there is a need for this and where one might be available to be licensed?

Dean Sturn: Currently we have a facility on Standing Rock Indian Reservation, north of Fort Yates. It is called the Lake Oahe Group Home and provides foster care services for up to 8 youth. We go and do an approval process with them. It will enable them to use public funds to be reimbursed for the services they are providing.

Rep. Holman: How many kids are in that facility and how would it impact any others that are close to the reservations?

Dean Sturn: They are licensed for 8 and the impact for other children, they have not been to full capacity and been around between 6 and 8.

Rep. Porter: Under the current law, the Lake Oahe Group Home does not get any state or federal funds or do they get some, but not the other?

Dean Sturn: They are currently under an approval status. What this bill will do, is it will clarify what our ability as a licensing agent to go in and grant them this approval. The difficulty is when you look at the definition which is number 4 on the bill. It tells what the facility actually means. The facility means a family foster home for adults for children, a group home, and a residential child care facility. In the law 50-11 it is not really clear that this means a group type home and that is what this is going to do. This clarifies more of what we can do.

Rep. Porter: For example, if another facility opens up across the street from the Lake Oahe and they choose not to because there on a federally recognized Indian Reservation and choose to just take the passed through federal funds that are available to them for

operation; are we now saying they have to be under the state's umbrella to operate or do they still have the option to opt in or out of the state's program?

Dean Sturn: If they are not abiding by the rules for facilities to be licensed or approved, then I do not believe they are eligible to be reimbursed through Social Security Act Title Total Funding. If they choose not to be approved and follow the rules set up by the state, they cannot secure the funds.

Rep. Kilichowski: As far as jurisdiction of the facility, once the license is approved, what jurisdiction does the DHS in North Dakota have on the Reservation?

Dean Sturn: They have to follow the ND administrative code surrounding licensure or approval process for group facilities. We have jurisdiction to go and do a review of all the administrative code and make sure they are complying as far as the services they are giving the children and the way they are doing their files, structure and layout of the facility, etc.

Rep. Kilichowski: The state and DHS would have the ability to suspend or revoke the license if they are not complying?

Dean Sturn: That is correct.

Chairman Weisz: You say that individuals and families on reservations are covered, but not the group facilities. I didn't read that into the language that you quoted in the new section 4. Where did that specifically include Native American families and not group homes? That is what you referenced, correct?

Dean Sturn: I tried to show that a facility could be a family home or a group home. This is an approval study and if it is a facility under the jurisdiction of ND or not.

Rep. Damschen: Would you clarify. The state of ND does not have authority over the Indian Reservation whether they want to run a group home, right?

Dean Sturn: That is correct. If they want to draw public funds, they have to be licensed or in the case of the Native Americans facility, approved by the department. They can run a facility and not draw any public funds through the department and not have to go through that approval process and have oversight.

Representative Devlin: You said Lake Oahe Group Home is licensed?

Dean Sturn: No they are not. They are approved. They are not under the jurisdiction of ND.

Chairman Weisz: Anyone else here to testify in support of 1095? You have some additional comments?

Dean Sturn: I do, I'm sorry Chairman Weisz and members of the committee. We have Title IV-D agreements with the Tribes and those must be signed and in place to allow the funding to flow to the Tribes. There are a number of different areas within those agreements

that talk about what the Tribes are responsible for and what we are responsible for and the different areas that will be attended to that will make sure things are in order so the public funding will flow.

Rep. Holman: I have a problem with one wording. In Part 1 of the bill, the word "owned by", doesn't seem to connect to anything. Can you clarify that for me?

Dean Sturn: "Owned by" means owned by and located on a recognized Indian Reservation. Means owned by the Tribes.

Rep. Holman: Thank you.

Chairman Weisz: Thank you. Further questions? Seeing none, anyone else here in support of 1095? Anyone here in opposition to HB 1095? If not we will close the hearing on HB 1095.

Rep. Porter: Can Mr. Sturn answer one more question?

Chairman Weisz: He's still in the room, so I assume.

Rep. Porter: So I am clear on the funding, are there any state funds or are they only pass through of federal funds?

Dean Sturn: With IV-D funding there is a state federal match which I believe if 75/25 with type of service.

Rep. Porter: So it is 75% federal IV-D dollars and 25% state general fund?

Dean Sturn: That is correct.

Rep. Hofstad: I'm confused about the licensure process and if there is a IV-D federal funding. Is there licensure requirements from the federal government and how do we get around that if we are not licensing?

Dean Sturn: There are federal requirements and like most federal requirements through the Social Security Act, Title IV-D specific, they are very thick like this and many of them. We put together the ND Century Code that is in existence to govern the licensure or approval of agency. If an agency chooses not to be licensed or approved, they are not able to draw any funds

Chairman Weisz: Further questions from the committee? Thank you Mr. Sturn. Committee we do have the bill in front of us, are there any from the Committee questions?

Rep. Porter: I move a Do Pass.

Chairman Weisz: We have a motion for a Do Pass. Is there a second?

Rep. Hofstad: Second

Chairman Weisz: Any further discussion on HB 1095? Seeing none, the clerk will call a roll for a Do Pass on 1095.

Vote: 13 yeas, 0 nays, 0 absent. DO PASS. Bill Carrier: Rep. Schmidt

Date: 1-5-11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1095

House HUMAN SERVICES Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Porter Seconded By Hofstad

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN WEISZ	X		REP. CONKLIN	X	
VICE-CHAIR PIETSCH	X		REP. HOLMAN	X	
REP. ANDERSON	X		REP. KILICHOWSKI	X	
REP. DAMSCHEN	X				
REP. DEVLIN	X				
REP. HOFSTAD	X				
REP. LOUSER	X				
REP. PAUR	X				
REP. PORTER	X				
REP. SCHMIDT	X				

Total (Yes) 13 No 0

Absent 0

Floor Assignment Rep. Schmidt

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

REPORT OF STANDING COMMITTEE

HB 1095: Human Services Committee (Rep. Weisz, Chairman) recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1095 was placed on the Eleventh order on the calendar.

2011 SENATE HUMAN SERVICES

HB 1095

2011 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee
Red River Room, State Capitol

HB 1095
3-8-2011
Job Number 15131

☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Relating to the approval process of group foster care facilities.

Minutes: Attachments.

Senator Judy Lee opened the hearing on HB 1095.

Tara Muhlhauser, Dept. of Human Services, provided an overview and explanation relating to the approval process of foster care facilities as provided in HB 1095 from **Dean Sturn,** Foster Care Administrator, who was unable to be present. Attachment #1

Senator Tim Mathern asked what the words "owned by" mean.

Ms. Muhlhauser replied that it would be a facility that literally is run by the tribe. The tribe owns the facility.

Senator Tim Mathern explained why he asked was because there are very complicated issues about ownership and he wondered if they really meant owned.

Ms. Muhlhauser added that in the licensing and/or approval process they don't typically look to that. They look to make sure that the entity has a corporate parent, and that their processes, their policies, their procedure, their budget or their accounting has been assured by an outside entity. They note who they might be owned by but for them it isn't a substantial issue in terms of licensing.

Senator Tim Mathern pointed out that they might be putting qualifiers in that could limit their choices.

Jonathan Alm, Attorney for Dept. of Human Services, answered that when they were drafting this language they looked at what they actually had in administrative rules. In their family foster care rules they have the exact language. It is his understanding that over the years they haven't been faced with a problem.

Senator Tim Mathern pointed out that now they are putting the question of ownership in the law.

Mr. Alm replied that ownership can go beyond the owning of land.

Senator Judy Lee pointed out two things as being different. 1. In this case, it is a tribal owned facility and 2. She didn't see anything that said they owned the real estate – just the facility.

Mr. Alm confirmed that it would be the ownership of the business and not ownership of the land.

Senator Tim Mathern didn't think the words matched the language.

Mr. Alm was comfortable with the language as it is presented to accomplish what is needed to be done.

Senator Spencer Berry asked for an explanation of the difference between licensed and approved and if it is a state or federal requirement.

Ms. Muhlhauser responded that it is a federal requirement for a license or approval and the federal government gives them flexibility for approval because they don't have jurisdiction to do the licensing on a reservation.

Senator Dick Dever asked if they have certain minimum standards to meet the approval if the federal government prevents them, through jurisdictional issues, from licensing but requires approving them.

Ms. Muhlhauser answered that the federal government tells states that they can license or approve. They have determined by state law that they do not have jurisdiction to license those facilities so they approve them which allows them to fall in line with the federal requirements. They use the same set of standards for approving as for licensing. They are able to suspend an approval.

Senator Tim Mathern wanted to know if a recognized Indian Reservation can own or operate a facility.

Ms. Muhlhauser responded that they would have the ability to establish a facility on a reservation and not seek licensing or approval but that would mean that no funding could be provided for foster care payments, maintenance, therapeutic payments to them. The tribe would have to provide all the costs for the youth placed in that facility if they chose not to be approved.

The legal entity was discussed – Indian Reservation vs. Tribe. The Indian Reservation is the geographic boundaries. Amending line 10 to say owned by a "tribe" was discussed.

There was no opposing or neutral testimony.

The hearing on HB 1095 was closed.

Senator Spencer Berry moved a **Do Pass**.

Motion failed for lack of a second.

Senator Dick Dever moved the **amendment "owned by the tribe or a tribal member".**

Seconded by **Senator Tim Mathern**.

Roll call vote 5-0-0. **Amendment adopted.**

Senator Tim Mathern moved a **Do Pass as Amended**.

Seconded by **Senator Dick Dever**.

Roll call vote 5-0-0. **Motion carried**.

Carrier is **Senator Tim Mathern**.

11.8075.01001
Title.02000

Adopted by the Human Services Committee

March 8, 2011

3-8-11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1095

Page 1, line 10, after "by" insert "the tribe or a tribal member"

Renumber accordingly

Date: 3-8-2011

Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1095

Senate **HUMAN SERVICES** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number Add "the Tribe or a Tribal Member"

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By **Sen.** Dever Seconded By **Sen.** Mathern

Senators	Yes	No	Senators	Yes	No
Sen. Judy Lee, Chairman	✓		Sen. Tim Mathern	✓	
Sen. Dick Dever	✓				
Sen. Gerald Uglem, V. Chair	✓				
Sen. Spencer Berry	✓				

Total (Yes) 5 No 0

Absent 0

Floor Assignment

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

Date: 3-8-2011

Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1095

Senate **HUMAN SERVICES** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 11.8075.01001 Title 02000

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By **Sen.** Mathern Seconded By **Sen.** Dever

Senators	Yes	No	Senators	Yes	No
Sen. Judy Lee, Chairman	✓		**Sen. Tim Mathern**	✓	
Sen. Dick Dever	✓				
Sen. Gerald Uglem, V. Chair	✓				
Sen. Spencer Berry	✓				

Total (Yes) 5 No 0

Absent 0

Floor Assignment Sen. Mathern

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

REPORT OF STANDING COMMITTEE

HB 1095: Human Services Committee (Sen. J. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1095 was placed on the Sixth order on the calendar.

Page 1, line 10, after "by" insert "the tribe or a tribal member"

Renumber accordingly

2011 TESTIMONY

HB 1095

Testimony
House Bill 1095 – Department of Human Services
House Human Services Committee
Representative Robin Weisz
January 5, 2011

Chairman Weisz, members of the House Human Services Committee, my name is Dean Sturn, and I am the Foster Care Administrator for the Department of Human Services, Children and Family Services Division. I am here today to provide you an overview and explanation relating to the approval process of group foster care facilities as provided in House Bill 1095. The Department supports passage of this bill.

In North Dakota, all facilities providing group foster care must either be "licensed" or "approved" by the Department of Human Services in order to qualify for reimbursement for services under Social Security Act, Title IV-E funding. A facility providing group foster care services in North Dakota is subject to the jurisdiction of the state of North Dakota, and can apply to be "licensed".

However, North Dakota Century Code is not clear on the authority of DHS to grant "approval" status to facilities providing group foster care services owned by and located on recognized Indian reservations in North Dakota. North Dakota Century Code is clear on the granting of "approval" status of family foster homes located on recognized Indian reservations in North Dakota.

If passed, House Bill 1095 would allow a facility providing group foster care services owned by and located on a recognized Indian reservation in North Dakota, currently not subject to the jurisdiction of the state of North Dakota, to apply for "approval".

House Bill 1095 will help to clarify this issue and impacts the use of public funds for the purchase of group foster care services in these settings. Passage of this bill and the accompanying authority will provide additional flexibility for culturally appropriate and proximate foster care placements for Native American youth.

This concludes my testimony. I would be happy to answer any questions.

#1

Testimony
House Bill 1095 – Department of Human Services
Senate Human Services Committee
Senator Judy Lee-Chair
March 8, 2011

Chairman Lee, members of the Senate Human Services Committee, I am Dean Sturn, Foster Care Administrator for the Children and Family Services Division of the Department of Human Services. I am here today to provide you an overview and explanation relating to the approval process of foster care facilities as provided in House Bill 1095. The Department supports passage of this bill.

In North Dakota, all facilities providing foster care must either be "licensed" or "approved" by the Department of Human Services in order to qualify for reimbursement for services under the Social Security Act, Title IV-E funding.

However, North Dakota Century Code is not clear on the authority of DHS to grant "approval" status to facilities providing foster care services owned by and located on federally recognized Indian reservations in North Dakota. North Dakota Century Code mentions approval for foster family homes, but it does not currently define "approval" nor is it included in 50-11-03.2. The department has current IV-E agreements with all the tribes and the agreements address provision of foster care services.

If passed, House Bill 1095 would allow a facility providing foster care services owned by and located on a federally recognized Indian reservation in North Dakota to apply for "approval".

House Bill 1095 will help to clarify this issue and impacts the use of public funds for the purchase of foster care services in these settings. Passage of this bill and the accompanying authority will provide additional flexibility for culturally appropriate and proximate foster care placements for Native American youth.

This concludes my testimony. I would be happy to answer any questions.