

2015 HOUSE JUDICIARY

HB 1076

2015 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1076
2/9/2015
23505

- Subcommittee
 Conference Committee

Armonda Muscha

Explanation or reason for introduction of bill/resolution:

Relating to the temporary court of appeals; to provide an effective date; and to provide an expiration date.

Minutes:

Chairman K. Koppelman: Opened the hearing with testimony in support.

Sally Hoverart: It is the extension of the temporary court of appeals. This creates a temporary court of appeals that the Supreme Court can call into effect if it exceeds more than 250 cases in a year. It is intended to give the Supreme Court time to work on other cases so everything can keep moving effectively. I went back to 2005 and we have been from 360 and this year 450 cases. We can use it but it is used sparingly because they take pride in getting the cases done and is we have a shortage of Surgut judges and our district court judges are overwhelmed with work. We would like to extend this for another four years.

Rep. L. Klemin: Extending the temporary court of appeals; why don't we just take out temporary?

Sally: We would not have an objection in removing that. It has been proposed in the past.

Carol Capnster, Justice: We do consider it an important back step for us. We haven't used it often and we have no objections to making it permanent.

Chairman K. Koppelman: Is there a trend where this might be employed more often?

Carol: It could be used often but we take pride in our work and don't need it unless we really need it. The case trends are going up and it will be used more often in the future.

Chairman K. Koppelman: If caseload triggers the assembling of this temporary court of appeals, are there certain types of cases they would hear? Are those cases then appealable to the Supreme Court when that body is sitting?

Carol: The triggers have been triggered every year. The triggers are not a problem. When we have called it into session in past as we have we select a type of case we will send to the court of appeals and they are quite honestly the cases that are more normal type. One of the justices will set down and go through the cases and select the cases that will be sent to the court of appeals. We have done that when we have a justice who is ill or when the Supreme Court was sued.

Rep. Mary Johnson: Who comprises the temporary appeals court?

Carol: District or surrogate judges. We prefer to use surrogate judges because they are retired district judges or Supreme Court justices. Right now we have a few but it can be a problem. We don't like to use the district judges because their schedules are busy too.

Chairman K. Koppelman: If a party to a case that was heard before the court of appeals were displeased with the results, what would be the path of appeal?

Carol: That is a petition for the assent much like the United States Supreme Court. They have a right to petition our court for review; however, that review is discretionary, we don't have to grant them a review if we don't wish to.

Tony Weiler: Executive Director of the State Bar, simply stating that the state bar association of North Dakota supports the bill in front of you.

Opposition: None

Neutral: None

Rep. K. Hawken: If we don't want to do permanent that we look at the time frame and maybe say 10 years, and talking with Justice Carol afterwards they would have a pretty good idea where things are going; and they're not comfortable with doing this but this is somewhat of a waste of time and perhaps changing that to 10 years we wouldn't be giving up control. It's a thought.

Chairman K. Koppelman: We did attempt to make this at one point permanent and it went down in flames and I think the concern is that some look at it as a permanent court of appeals you are growing government and it could become a huge expense and a huge animal versus this temporary structure coming back periodically it does keep a connection with the legislative and judicial branch on this issue.

Rep. K. Hawken: This is not funded out of the court budget. I think if it gets to be something they use a lot they would be back because they would need additional funding to run it and that is why I'm saying I don't care how many years it is.

Chairman K. Koppelman: If it became permanent then they would have to come back to appropriations more than us.

Rep. K. Wallman: This is an over flow court for appeals?

Chairman K. Koppelman: In North Dakota there is no appellate court. There is the district court system. Years ago there was a county court and we had court unification so we changed that. There is no appellate level short of the Supreme Court, so if you appeal a case out of district court it goes to the Supreme Court; and this temporary court of appeals, if the over flow demanded and the convened to this thing, it would be more of the perfunctory cases (things are not complex). I don't know if the period of time needs to be longer.

Rep. P. Anderson: If they haven't had to use this very much it would indicate to me that district are making some good decisions.

Chairman K. Koppelman: I don't think four years is a big deal.

Rep. G. Paur: Motioned a pass

Representative Hawken: Seconded the motion

A Roll Call Vote Was Taken: Yes 11, No 0, Absent 2 (Representative Brabandt, Maragos)

Motion carries

Representative Hawken will carry the bill

Date: 2-9-13
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1076

House JUDICIARY Committee

Subcommittee Conference Committee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
Other Actions: Reconsider _____

Motion Made By G. Paur Seconded By K. Hawken

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman	✓		Rep. Pamela Anderson	✓	
Vice Chairman Karls	✓		Rep. Delmore	✓	
Rep. Brabandt	—		Rep. K. Wallman	✓	
Rep. Hawken	✓				
Rep. Mary Johnson	✓				
Rep. Klemin	✓				
Rep. Kretschmar	✓				
Rep. D. Larson	✓				
Rep. Maragos	—				
Rep. Paur	✓				

Total (Yes) 11 No 0

Absent 2

Floor Assignment Rep. Hawken

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

motion carries

REPORT OF STANDING COMMITTEE

HB 1076: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends DO PASS
(11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1076 was placed on the
Eleventh order on the calendar.

2015 SENATE JUDICIARY

HB 1076

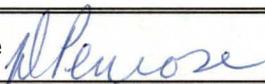
2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1076
3/11/2015
24621

- Subcommittee
 Conference Committee

Committee Clerk Signature



Minutes:

Ch. Hogue: We will open the hearing on HB 1076.

Judge Carol Kapsner: We ask for your support for continuation of the temporary court of appeals. This court has been in existence since 1987. A better term would be intermittent court of appeal since it only exists when it is called into session. We ask that when we come back in four years, we ask to omit the sunset clause. We don't use the court very often. We don't need it very often but when it is needed, it's an important stop gap.

Ch. Hogue: When was the last time the court was called into session to do some work?

Judge Carol Kapsner: Last time, it was called into session was 2007.

Ch. Hogue: Is that when your caseload hits so many cases and then the Supreme Court can assign some to the intermediate court.

Judge Carol Kapsner: It's not a matter of not reaching that minimum, because we reach that minimum every year. We do our own work, it's not a question of not reaching the caseload; it's a question of not using it because the people that we would use it with are busy themselves. We would normally use either our district judges and they're too busy to call them into session, or we would use surrogate judges and we don't have a lot of them. We don't call them into session very often. We do call it into session, for example, if there is an example an illness among our judges; if there is a gap, when one of the justices has retired, we call it into session in 2005, when there was a transition. Those are the kinds of necessities that we have for it. It's not used

just because we'd like to use it, it's not because of numbers, our numbers are increasing and we meet the minimums every single year.

Ch. Hogue: Thank you. Further testimony in support.

Tony Weiler, ND State Bar Association: Support.

Ch. Hogue: Thank you. Further testimony in support. Testimony in opposition. Neutral testimony. We will close the hearing. We have the bill before us, what are the committee's wishes.

Sen. Grabinger: I move a Do Pass.

Sen. Casper: Second the motion.

6 YES 0 NO 0 ABSENT

DO PASS

CARRIER: Sen. Casper

Date: 3/11/15

Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTE

BILL/RESOLUTION NO. 1076

Senate

JUDICIARY

Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Sen. Grabinger Seconded By Sen. Casper

Senators	Yes	No	Senators	Yes	No
Chairman Hogue	✓		Sen. Grabinger	✓	
Sen. Armstrong	✓		Sen. C. Nelson	✓	
Sen. Casper	✓				
Sen. Luick	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Casper

REPORT OF STANDING COMMITTEE

HB 1076: Judiciary Committee (Sen. Hogue, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1076 was placed on the
Fourteenth order on the calendar.