

2017 HOUSE JUDICIARY

HB 1193

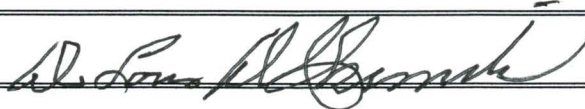
2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1193
1/17/2017
26987

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to disorderly conduct; and to provide a penalty.

Minutes:

1,2,3,4

Chairman K. Koppelman: Opened the hearing on HB 1193.

Representative Klemin: Introduced the bill. (Handing out #1, #2) This bill adds language in Section 1 & 2. (:34-5:20) Went over the proposed handouts. Section 3 is the new section. Discussed proposed amendment on this bill.

Rep. Porter: This bill came forward directly from the protest activity and the situation that has been happening since August 10. There have been numerous situations of economic harm and there were lock downs of businesses; there were businesses that had to completely stop their business for an entire day and sometimes two days before they could resume normal activity and then only at a cost of hiring private security. The Bank of ND has incurred increased cost for security. We had instances of vandalism and one on our capitol. When I visited with local prosecutors this is one of the things they asked for.

Jonathan Byers, Attorney General's office: (#3) (8:36-10:18) An additional suggestion I had for an amendment to the bill relates to the language after this second does not apply to constitutional protected activity. That is on page 2, line 20. We are asking for a do pass.

Representative Nelson: I remember when the abortion clinic protestors went into the clinic and chained themselves together etc. so it would be the Attorney General's opinion we should be charging people in that situation with a criminal activity?

Jonathan Byers: The Attorney General is in the state to enforce the state laws. There are ways to express their opposition to an abortion without disrupting the economic activity to do that; not trespass to do that.

Representative Nelson: Did you discuss any situation other than the DPAL protest.

Jonathan Byers: No.

Representative Hanson: I noticed it would be a Class C felony. Looks like a big jump to go from Class B misdemeanor to Class C felony. I know our state is looking at criminal justice reform. Has there been discussion around the level of the penalty and how it would have ramifications across the state?

Jonathan Byers: One of the aims of criminal sentencing is general deterrence. A B misdemeanor is not causing a deterrent. It is hopeful this jump would be a deterrent. The court has discursion on whether they sentence someone to the penitentiary or not.

Chairman K. Koppelman: If someone is being paid to so some of these things or they are an employee of someone else; is there anything in this statue or law elsewhere that would make the employer responsible?

Jonathan Byers: We do have laws on this if it can be proved. We do have statues that address this. Can we get anyone to say so and so paid me.

Chairman K. Koppelman: The intent is not to infringe on anyone's constitutional rights to protest; it is only when people step over a line and do any of the things the bill describes. Is that right?

Jonathan Byers: That is to protect people who go beyond expressing their constitutional rights and committee crimes against other people.

Aaron Burst, Association. of Counties: We support this bill. I have not seen the amendments so I want time to review them. Clearly the B misdemeanor is not working. Prosecutors do apply the law to everyone.

Chairman K. Koppelman: We have heard testimony that a Class B is not sufficient as a deterrent for this kind of activity. Do you believe a Class C felony is necessary?

Aaron Burst: This represents all counties but I work with States Attorney's Association. They are really county based prosecutors and in the state of ND all prosecutions are county based on behalf of the state. The B misdemeanors are not working.

Gaylynn Becker: In favor of this bill. I am in favor of people at having their constitutional rights taken away. Discussed how upset he was with the protesting situation. (19:00-22:40)

Opposition:

Waylon Hedegaard, Present of ND AFL-CIO: (#4) (23:10-28:53) It is our members who have felt the most incurred I cannot support this bill. Protesting is a fundamental right to be there. I think the laws are working just fine. We don't need a new set of laws that make the punishment for a crime worse than the crime.

Representative Vetter: You have a problem with this. Do you have an amendment that you want to put in there?

Waylon Hedegaard: I am a construction worker. I do not have a specific amendment. Don't link it to the protesting. Make it a law to chain yourself to a piece of equipment or whatever.

Representative Klemin: Doesn't this bill say it doesn't apply to a constitutionally protected activity. Doesn't this bill say it doesn't apply to a constitutionally protected activity?

Waylon Hedegaard: When I look back on the abortion protest and labor disputes there are a lot of times where people are going to fall into this.

Representative Klemin: This section may not be used for a basis for conspiracy? Does that take care of your concern there?

Waylon Hedegaard: It still does not.

Representative Jones: I am alarmed about your observation that it is appropriate for someone protesting and the purpose of that protest to cause economic harm. My father used to tell me my right to swing ended where your nose begins. Do you think this is proper for these people who are exercising their right to protest to cause economic harm to other people?

Waylon Hedegaard: Every anti-abortion protestors purpose is to shut down that clinic. If we put a boycott on something we don't like it usually causes economic harm.

Chairman K. Koppelman: The bill seems to say with the amendment or without it. The bill says basically the misdemeanor offense; what is currently in law; is the underlining activity and then the bill would propose that the additional higher penalty come into play someone is intentionally committing that misdemeanor offense, but also intentionally intending to cause direct or indirect economic harm in excess of \$1000 to a government or person. Where are the white lines are? Is it important when a peaceful protest is taking place; but that is not causing physical harm to anyone.

Waylon Hedegaard: All of those things are a step too far. They are causing economic harm on their own. I don't like the linking of this bill is specifically linking it to protestors. I think it is a dangerous road to go down for freedom.

Chairman K. Koppelman: You are free to do that if you don't cross the line.

Jackson Lofren, President of ND ACDL: (39:00) I understand there is an attempt to have bills in place because of the protestors. Disorderly conduct is universally recognized as a minor offense. To take this a felony disorderly conduct is like with the criminal justice system is doesn't fit. This bill will affect all of the state. Does not like the penalty change. We urge a do not pass.

Representative Nelson: Class B misdemeanors can be heard locally. Are we bumping these cases all to a district court because they would be a Class C felony?

Jackson Lofren: If they can craft together an argument that there is somehow a \$1000 in damage that person is going to go right with the C felony offense to district court. So

someone who typically went to local court and got a day in jail or a fine and community service; now is going to have a C felony offense in district court where they are looking at up to five years in prison.

Representative Jones: I think in most cases this would be charged at any level and would not necessarily have to jump up to that and in most cases it would be charged as a misdemeanor?

Jackson Lofren: When you create multiple levels of defense you give the prosecutor the liberty of where they want to put that. If you give them the ability to charge a C felony they are going to charge a C felony. It can create a felony offense where we were not intending to create a felony offense.

Representative Hanson: The whole goal of a boycott is to put economic pressure on specific business or industry or something like that. How do you see the line relating to the \$1000 excess playing with the constitutional protected activity of a boycott? Is there any conflict there?

Jackson Lofren: The issue with the \$1000 there it doesn't say it has to be direct or indirect?

Chairman K. Koppelman: As I listened to your examples as I read line 11-13 on page 2 of the bill. So the disgruntled car purchaser; but that would have to mean that the underlying example. That would have to mean that the underlying offense occurred.

Jackson Lofren: Disorderly conduct and constitutionally protected activity it is sort of a hard to define gray area. (48:10-49:30) Example of a ND case.

Chairman K. Koppelman: In your experience both as a prosecutor and a defense attorney the other thing is intentionality. It is hard to prove this.

Jackson Lofren: It does change things a little bit. Disorderly conduct can be intentional or reckless. Subpart 2 would cut that part out. If it was in reckless disregard it would have to stay a B misdemeanor, but if it is intentional then that may be a felony because your intention was to cause economic harm to the store and change their policy.

Chairman K. Koppelman: You also have to do things under the misdemeanor and not just the protest that would trigger that.

Jackson Lofren: If the car dealer or tractor dealer came intentionally at 10 AM when they know I have the most customers and they also yelled out anyone that buys a car from a crook is setting themselves up now you have the lynch pin to make the misdemeanor a C felony.

Representative Hanson: I am looking through the disorderly conduct details there could be and the example of targeting the protectors there could be a link to proving underlying misdemeanors offense and what someone might see as a peaceful protest if they are making unreasonable noise; if they are loitering in a public place to disrupt the public form getting in.

Jackson Lofren: Disorderly conduct is a vague catch all.

Representative Nelson: I look at disorderly conduct where using abusive language in a public place or making an obscene jester or obstructing traffic. The public doesn't have the advantage of understanding of case law. Isn't this something that could feed fear of the government? How will people know they are violating this law?

Jackson Lefren: That is the issue with disorderly conduct. C felony does bump it up I don't think we should alter that statue.

Jennifer Cook, ACLU: We are in opposition to this bill specifically to Section 2, Paragraph 1; the intent to cause direct or indirect economic hard in excess of \$1000 to an individual. We have talked about how this language is written. We don't believe section 3 mitigates our concerns regarding our constitutional concerns. Discussed the email (57:00-1:00:09) Whether we need specific laws to address Paragraph 1 d does that. We are already putting in law chaining you to construction equipment that we have seen down in DAPL or chaining yourself to the bank doors or any activity that we have seen that is unlawful per statues that we already have on the books. Given the language in Section 2 it is too broad to be in compliance in this case and other cases that have followed it; I don't think section 3 offers any clarity since we have been talking about economic harm whether direct or indirect or what is obstruction so this tells me there is some confusion here about how it would be applied. We already have civil liability laws in place and a civil court system. We oppose the language in section 2 entirely; we already have laws on the books that address this.

Elizabeth Leos, Citizen: This bill would address all protestors. I think turning civil disobediences into a felony. This would go against the fabric of our society. This bill favors corporations over people and that is not what this state was built on.

Scott Nadland, Citizen: Everyone covered what I had concerns about. I think this bill and five other bills all look like crimination of our first amendment of our first amendment constitutional rights. I think ND is going to attract significant attention regarding these bills.

Neutral: None

Representative Paur: We had questions about the abortion protest; doesn't the bill target government or persons. Would this apply to the abortion clinic protests?

Jonathan Byers: it would apply to individual conduct. Almost every example that has been given to you doesn't fit and can't be charged with this crime. There is a 3 step process. 1. There has to be an underlying crime. 2. An intent to cause economic harm to a person, which includes a company 3 and it can't include constitutional protected activity. People can boycott all they want and it is not going to violate this law. They cannot do something like cut peoples tires; beat somebody up if they want to cross the picket line and go to work etc.

Representative Paur: The bill doesn't address persons. It addresses individuals.

Jonathan Byers: As it is written it is just individuals.

Representative Paur: I have trouble with government. An example of teacher's protesting. That would immediately cause \$1000 worth of damage to a government authority. What do you think would be the ramifications of deleting government?

Jonathan Byers: I can think of there being endeavors that are government endeavors that the same kind of thing might apply to. With regards to a teacher strike; there is nothing wrong with them striking as long as they don't engage in a crime to do that like breaking into the school to do that.

Representative Simons: If our laws aren't strict enough to do that I don't understand the logic to what we are trying to do here. Putting another law on the books.

Jonathan Byers: At least the belief that the additional criminal damage. A felony will stick with you longer.

Representative Simons: Is it a misdemeanor to vandalize someone's property if it is over \$500?

Jonathan Byers: For the underlying crimes there are ones that have various levels to them like if it is assaulting someone that is crossing the picket line; we have simple assault, assault and aggravated assault ranging up to felony level.

Representative Simons: Wouldn't we just look at lowering the amount down from \$500 to \$100?

Representative Magrum: Is there any way we can change these so it is two separate violations?

Jonathan Byerly: It fails on all three of the levels.

Hearing closed.

2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1193
2/1/2017
27773

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to disorderly conduct; and to provide a penalty.

Minutes:

1

Chairman K. Koppelman: Opened the meeting on HB 1193. This deals with economic harm there is a penalty. Handed out additional testimony from Andrew Varvel. (#1)

Representative Klemin: Discussed proposed amendment 17.0718.01001. we put that in intentionally knowing it is also in this other section. That is because this new section says page 2, line 11 commit a physical act constituting the commission of a misdemeanor offense. Don't assume that this language that is in section 1 now gives the only possible misdemeanor offense that they could be referred to here.

Motion Made to Amended by Rep. Klemin; Seconded by Rep. Blum.

Discussion:

Voice vote carried.

Representative Vetter: Can we add in violence in this bill?

Representative Simons: I am opposed to this bill. I am not sure we are taking out obscene jesters. How about line 10?

Do Pass As Amended Motion Made by Rep. Blum; Seconded by Rep. Jones.

Discussion:

Rep. Simons: At one point are we are sympatric to people that are doing these things like Martin Luther King.

Representative Klemin: You are referring to language that is already existing law which is not being changed by this bill.

Representative Vetter I don't like this bill either. It seems economic harm?

Representative Klemin: That is the whole point of subsection 3 that we were talking about. This doesn't apply to protest or lawful strikes or anything like that.

Representative Satrom: Jonathan Byers said this is one of the bills that attempts to address the DAPL protests that is beyond peaceful protests.

Representative Hanson: I agree we do need to add the language in lines 15 & 16 in page 1 to address the problem of enabling a charge for if you are chaining yourself to the bank or a piece of equipment. The economic harm provision requires an underlying misdemeanor offense. Our disorderly conduct is quite large. So you are emphasizing a disorderly conduct charge then suddenly it is a Class C felony.

Chairman K. Koppelman: You are using it as a precursor to a different charge. They would have to have been guilty of that plus the economic harm that the rest of the bill would have.

Representative Roers Jones: The reason I can accept this bill is because of the three step process Mr. Byer's laid out. I you don't have one of these three elements you don't use this section. There has to be an underlying crime committed; intent to cause economic harm; and it has to be not constitutionally protected activity. Then you would have this additional penalty.

Representative Vetter: I can buy into this if it wasn't a Class C felony. We are creating more felons. There is a lifetime attachment to this.

Representative Simons: We have heard a lot last week and this week. This is a huge deal. What next area we going to do.

Representative Satrom: That DAPL is a big deal. How they have been terrorizing the people down there is a big deal.

Chairman K. Koppelman: A lot of the people that might be charge under this if it becomes law; it might be a plea bargain type of thing where they say we can charge you with a Class C felony, but if you plead guilty to a Class A misdemeanor we won't press that depending on the circumstances of the case.

Representative Johnston: I see it as a deterrent than anything else. We are going to be at \$30 million and climbing.

Chairman K. Koppelman: The charge can be less. We are going to charge this instead.

Representative Simons: Every one of these things are already against the law. I don't see any added benefit for doing this.

Roll Call Vote: 9 Yes 5 No 1 Absent **Carrier:** Representative Jones:



Closed.



PROPOSED AMENDMENTS TO HOUSE BILL NO. 1193

Page 1, line 3, remove "and"

Page 1, line 4, after "penalty" insert "; and to declare an emergency"

Page 2, line 13, replace "an individual" with "a person"

Page 2, after line 24, insert:

"SECTION 3. EMERGENCY. This Act is declared to be an emergency
measure."

Renumber accordingly

Date: 2-1-17
Roll Call Vote 1

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO 1193

House Judiciary Committee

Subcommittee

Amendment LC# or Description: 17-0718 01001 Klemin's

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 Rep Klemin Seconded By Rep. Blum

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman			Rep. Hanson		
Vice Chairman Karls			Rep. Nelson		
Rep. Blum					
Rep. Johnston					
Rep. Jones					
Rep. Klemin					
Rep. Magrum					
Rep. Maragos					
Rep. Paur					
Rep. Roers-Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

*Vote
Vote
Committee*

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Date: 2-1-17
 Roll Call Vote 2

**2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO 1193**

House Judiciary Committee

Subcommittee

Amendment LC# or Description: 17.0718.01001

- 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 Rep. Blum Seconded By Rep. Jones

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman	✓		Rep. Hanson		✓
Vice Chairman Karls	✓		Rep. Nelson		✓
Rep. Blum	✓				
Rep. Johnston	✓				
Rep. Jones	✓				
Rep. Klemin	✓				
Rep. Magrum	✓				
Rep. Maragos	—				
Rep. Paur	✓	✓			
Rep. Roers-Jones	✓				
Rep. Satrom	✓				
Rep. Simons		✓			
Rep. Vetter		✓			

Total (Yes) 9 No 5

Absent 1

Floor Assignment : Rep. Jones

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

REPORT OF STANDING COMMITTEE

HB 1193: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (9 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). HB 1193 was placed on the Sixth order on the calendar.

Page 1, line 3, remove "and"

Page 1, line 4, after "penalty" insert "; and to declare an emergency"

Page 2, line 13, replace "an individual" with "a person"

Page 2, after line 24, insert:

"SECTION 3. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

2017 SENATE JUDICIARY

HB 1193

2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1193
2/13/2017
28273

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to prohibiting economic harm; relating to disorderly conduct; to provide a penalty; and to declare an emergency.

Minutes:

Testimony attached #

1,2,3

Chairman Armstrong called the committee to order on HB 1193. All committee members were present.

Lawrence R. Klemin, North Dakota state Representative District 47, introduced and testified in support of the bill. No written testimony. Representative Klemin went over the different sections of the bill.

“The heart of the bill is in section 2 relating to economic harm. There are a couple things to note. First, before this economic harm section could be invoked. We would have to have an underlying misdemeanor offense committed. Second, that must be done intentionally to cause economic harm. Third, there’s a threshold it has to be in excess of 100,000 dollars to the Government or to a person.”

Chairman Armstrong: “How is any protest against any private business not trying to create indirect economic harm?”

Representative Klemin: “I think we have to fall back to the provision on subsection three where it doesn’t apply to constitutionally protected activity. We know there are a lot of a constitutionally activities that probably do cause economic harm, but they are protected.”

Chairman Armstrong: “I agree with the concept, it’s just a matter to make sure it gets worded properly. Would you work with me to specify issues that cause economic harm? I’d like to narrow the scope on this.”

Representative Klemin: “Yes, I will.”

Todd Porter, North Dakota state Representative District 34, briefly testified in support of the bill. No written testimony.

“It’s our duty to make sure our laws are in line with what we are seeing and what we will see in the future in regards to the infrastructure buildup in an energy producing state like the one we have.”

Chairman Armstrong: “Was the intent of this bill to look at what is constitutionally protected and what isn’t? Some of these people are chaining themselves to equipment or buildings so others can’t use it. So technically, you are not stealing from them, but you essentially are if you prohibit them from doing their daily job. That’s money that they are losing by not being able to use that machinery or open up their place of business.”

Representative Porter: “Exactly right. That’s what we’re looking at.”

Aaron Birst, Association of Counties, testified in support of the bill. No written testimony.

“I speak for myself and over 140 prosecutors. We feel obligated to tell you when something is working and something isn’t, or if there’s a gap in the system. We are willing to make some changes. The most important part here is that it is tied to some type of criminal activity. We don’t want to go after people for exercising their First Amendment rights. We think this is designed to go after those people who are not only protesting but also throwing bricks threw windows, among other violent activities.”

Chairman Armstrong: “I think the bill reads significantly broader. How come criminal mischief currently has a damages statute to it, and if you cause 2,000 dollars of economic harm to Wells Fargo by chaining yourself to their door. Why doesn’t economic harm trigger criminal mischief?”

Aaron Birst: “That’s in essence is what we are getting at. Currently, criminal mischief means there has to be some kind of actual damage, like kicking in a window or breaking a door, whatever the case may be. We have no problem by adding to the statute to expand the definition of damages.”

Chairman Armstrong: “If you chain yourself to a store and cause them 2k worth of business. Those companies don’t get that money back that afternoon when they open it later. They have to wait to get it back. So there is true economic harm.”

Aaron Birst: “Correct. They may never get it back.”

Senator Myrdal: “In section 2, intentional to cause, is there room there for ambiguity? Is this too broad of a definition?”

Aaron Birst: “We suggest that be placed in there intentionally. It’s the prosecutor’s job to prove the intent. We think it’s helpful to put that language in there so we have to prove the intent of what they were doing.”

Waylon Hedegaard, President of the North Dakota AFL-CIO, testified in opposition of the bill. (see attachment 1)

Chairman Armstrong: "When you chain yourself to a piece of equipment, that is no longer constitutional protected activity, that is committing a crime. How much does that cost the company if that piece of equipment is out of commission for the day?"

Waylon Hedegaard: "Thousands. There's no doubt it costs them money. I am not concerned with that part of it, I am concerned of this being misused by future prosecutors who may not like what these protesters are doing. I'd like to narrow this down to some specific crimes."

Chairman Armstrong: "To some degree these things show us flaws in our systems. It is essentially theft to that company to do things like that. Would you agree with that?"

Waylon Hedegaard: "I would agree with that. My concern is just that this is very broad."

Carel Two-Eagle, North Dakota citizen, testified in opposition of the bill. No written testimony.

"On page 1 lines 8-10, if someone is alarmed by someone being here. Someone is alarmed if you look at them funny. There have been incidents where people have become hysterical over things that should have not have happened. Number 12, unreasonable noise? So children playing could be considered Disorderly Conduct."

Chairman Armstrong: "In fairness it has to be proven in court."

Carel Two-Eagle continued going over what she disliked about the bill such as obscene gestures and what constitutes them and how lines 13 and 14 deal with treaty rights.

Chairman Armstrong: "I'm going to stop you quickly because the things you are talking about are not changing. I'd ask that you stick with the underline portions of the bill."

Carel Two-Eagle: "On line 20 on Section 2, I think you need to add in "or the Native American Treaties Law."

Andrew Alexis Varvel, North Dakota citizen, testified in opposition of the bill. (see attachment 2)

Tara Houska, National Campaigns Director for Honor the Earth, testified in opposition of the bill. (see attachment 3)

Chairman Armstrong: "I think the issue though is treating it differently under trespass law which is a misdemeanor compared to other theft or criminal mischief laws which set a financial barrier to a felony trigger. Theft is a 1000 dollars for a felony and criminal mischief is 2000 dollars for a felony; trespass doesn't become a felony unless there is violence involved. I don't think anybody's intent is to stop peaceful protest, I think their intent is to fix what they believe is a hole in the law in that you can cause financial damage in the same manner as theft or criminal mischief and under these laws there is no felony trigger."

Tara Houska: “Numerous felonies have been charged to many individuals who have been chaining themselves to pieces of equipment. So I fail to understand how this bill does anything different than what is already done and already exists in the law, other than suppress people’s constitutional rights to demonstrate. This is a slippery slope. You’re essentially creating a felony for peaceful assembling. I fail to see why this is needed?”

Senator Luick: “At what point does the person have the right to protest? You have a business and I don’t like your business and so I protest. So you’re in your store and I chain myself to your door. Do I have the right to do that?”

Tara Houska: “You have the right to do that, but the state can charge you with a crime.”

Senator Luick: “Now if it gets to be many people around your store, when does it turn violent from peaceful?”

Tara Houska: “The difference is simply that. Violence and peaceful.”

Senator Luick: “Define harm to me. Physical? Emotional? Economic?”

Tara Houska: “There can be economic harm, physical, emotional, everything. This law goes further than that. This law makes it a crime to even stand there.”

Chairman Armstrong closed the hearing on HB 1193.

No motions were made.

2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1193 Committee Work
3/27/2017
29708

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to prohibiting economic harm; relating to disorderly conduct; to provide a penalty; and to declare an emergency.

Minutes: **No written testimony**

Chairman Armstrong began the discussion on HB 1193. All committee members were present.

Senator Myrdal motioned Do Not Pass. **Senator Nelson** seconded.

Discussion followed:

Chairman Armstrong: "This bill was designed to figure out a more appropriate way to deal with people chaining themselves to equipment and buildings and things of that nature. I bounced this around in my head a thousand times, and here's what my fundamental problem with this bill is: The nexus from protest to this felony is a \$1,000 of economic harm if you committed any underlying misdemeanor. The most common misdemeanor cited for in any protest is a Class B Misdemeanor for disorderly conduct. And I don't think a protester spitting on another protester should be a felony. I think if you can prove the damage you can charge them now. I think this bill takes things a little too far."

A Roll Call Vote was taken. Yea: 5 Nay: 1 Absent: 0.
The motion carried.

Senator Myrdal carried the bill.

Chairman Armstrong ended the discussion on HB 1193.

**2017 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HB 1193**

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 Senator Myrdal Seconded By Senator Nelson

Senators	Yes	No	Senators	Yes	No
Chairman Armstrong	X		Senator Nelson	X	
Vice-Chair Larson		X			
Senator Luick	X				
Senator Myrdal	X				
Senator Osland	X				

Total (Yes) 5 No 1

Absent 0

Floor Assignment Senator Myrdal

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

REPORT OF STANDING COMMITTEE

**HB 1193, as engrossed: Judiciary Committee (Sen. Armstrong, Chairman) recommends
DO NOT PASS (5 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING).**
Engrossed HB 1193 was placed on the Fourteenth order on the calendar.

2017 TESTIMONY

HB 1193

12.1-31-01 Disorderly Conduct

21
1193
1-17-17

1. An individual is guilty of a class B misdemeanor if, with intent to harass, annoy, or alarm another person or in reckless disregard of the fact that another person is harassed, annoyed, or alarmed by the individual's behavior, the individual:

- a. Engages in fighting, or in violent, tumultuous, or threatening behavior;
- b. Makes unreasonable noise;
- c. In a public place, uses abusive or obscene language, knowingly exposes that individual's penis, vulva, or anus, or makes an obscene gesture;
- d. Obstructs vehicular or pedestrian traffic or the use of a public facility;
- e. Persistently follows a person in or about a public place or places;
- f. While loitering in a public place for the purpose of soliciting sexual contact, the individual solicits the contact;
- g. Creates a hazardous, physically offensive, or seriously alarming condition by any act that serves no legitimate purpose;
- h. Engages in harassing conduct by means of intrusive or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of another person; or
- i. Uses a fixed optical device that enhances or records a visual occurrence to view through any window of another person's property; or uses a surveillance camera to capture an image from the dwelling or accessory structure of another person; however, an individual using a surveillance camera has seven days from notice by a law enforcement officer to direct or shield the camera so as to not capture an image from another person's dwelling or accessory structure before there is an offense.

2. This section does not apply to constitutionally protected activity. If an individual claims to have been engaged in a constitutionally protected activity, the court shall determine the validity of the claim as a matter of law and, if found valid, shall exclude evidence of the activity.

17.0718.01001
Title.

Prepared by the Legislative Council staff for
Representative Klemin
January 13, 2017

2
1193
1-17-17

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1193

Page 1, line 3, remove "and"

Page 1, line 4, after "penalty" insert "; and to declare an emergency"

Page 2, line 13, replace "an individual" with "a person"

Page 2, after line 24, insert:

"SECTION 3. EMERGENCY. This Act is declared to be an emergency
measure."

Renumber accordingly

#3
1193
1-17-17

HOUSE JUDICIARY COMMITTEE
JANUARY 17TH, 2017

TESTIMONY OF JONATHAN BYERS
OFFICE OF ATTORNEY GENERAL
HOUSE BILL NO. 1193

Mr. Chairman, members of the Committee.

I am Jonathan Byers, Assistant Attorney General, and I appear on behalf of the Attorney General. I testify in favor of House Bill 1193.

This is one of the bill drafts intended to ^{address} elements of the DAPL conflict that go beyond prayerful and peaceful protest. There doesn't seem to be a North Dakota criminal offense that adequately addresses the conduct of chaining yourself to a piece of construction equipment, which causes economic harm to the extent of several hours of the loss of use of that equipment, and a likely work stoppage if the equipment is blocking replacement equipment from operating.

I have a few proposed amendments, some of which may have already been discussed between State's Attorney Ladd Erickson and Representative Klemin. The first is to change the word "individual" to "person," in order to protect against harming a business or corporation. The second is to delete the language on page 2, line 20, after "constitutionally protected activity." Finally, an emergency clause is recommended, since the conflict is ongoing. The Attorney General recommends a do pass. I would be happy to answer questions.

#3
HB 1193
1-17-17

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1193

Page 1, line 4, after "penalty" insert "; and to declare an emergency"

Page 2, line 13, replace "an individual" with "a person"

Page 2, line 20, remove "If an individual claims" —

Page 2, remove lines 21 through 23

Page 2, after line 24, insert:

"Section 3. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

#4
1193
1-17-17

**Testimony for 2017 House Bill 1193
House Industry, Business and Labor Committee
Presented by Waylon Hedegaard
President of the North Dakota AFL-CIO
January 16th.**

Mr. Chairman, Members of the Committee:

My name is Waylon Hedegaard, President of the North Dakota AFL-CIO.

I understand the purpose of this bill. With the DAPL protests disrupting our communities, there is a desire to do something to restore order, to restore things back to the way they were. I understand why this bill was introduced, but understanding it is not agreeing with it. I think HB-1193 is an overreach.

Now before I'm dismissed as some left-wing environmentalist out to destroy the oil industry in the state, please allow me to remind the committee of the following. I am the president of an affiliation of Unions. Our affiliate members are building the Dakota Access Pipeline. Our members dug the trenches, our members welded the pipeline together and our members buried that line well and safe in the ground. And though we understand our Native American sister's and brother's issues with this particular line, we are proud of the work we do. We are proud of the quality of our labor.

Sadly, since it is our members who have done the work, it is our members who have felt the pressure of the protest most directly. It is our members who have been called rapists, and murderers and white supremacists. It is our members who have suffered through sleepless night worrying about going to work the next morning.

If anyone here has an emotional right to at least want to strike back, it should be union workers.

But we cannot in any way, shape or form support this bill. Protesting is a fundamental right. From anti abortion groups to labor strikes and protests to anti-DAPL to that Neo-Nazi demonstration and counter-protest in Leith a few years ago, we may not agree with what they have to say. In fact, we may detest everything that they stand for, but they have a fundamental right to be there.

North Dakota has already arrested over 500 people and many of those cases are making their way through the courts now using our current laws. Those laws are working just fine. People are being arrested and people are being prosecuted, so I don't see a gap in existing law that makes this needed.

We already have laws against trespassing, against vandalism, against assault and others. These crimes are already punishable by law. People who break them will already suffer consequences. What we don't need is a new set of laws that make the punishment for a crime worse if committed while exercising constitutionally guaranteed rights.

And understand the economic harm part of this bill is a major part of every protest. Whether against an individual, organization or business, putting social and economic pressure is implicit. Pro-life demonstrations are trying to get clinics shut down. Strikes and pickets are putting economic stress on companies to better wages and conditions. These are constitutionally guaranteed activities.

Protesting is a constitutional right, and the AFL-CIO can't accept that doing something while protesting is somehow a magnifier to the severity of the crime. Despite the stress our pipeline workers have been through, in our Union's efforts to protect and comfort our members, we cannot hand over their freedoms. In our desire to restore our version of law and order, we cannot allow emotion to overcome reason.

In terms of fundamental and constitutional rights, the government that governs best is the government that governs least.

I urge this committee to vote no on HB 1193.

Thank you for hearing me, and I would stand for any questions.

#1
1193
2-1-17

Written Testimony to the House Judiciary Committee on HB 1193
Andrew Alexis Varvel
January 30, 2017

Chairman Koppelman and Members of the Committee,

My name is Andrew Alexis Varvel and I live in Bismarck, North Dakota.

When I was a teenager in Grand Forks in 1986, I needed to go to a dental appointment. I went through the back door. I avoided the front door because there was a major demonstration in front of the building. That protest had the avowed intention of closing down a private business that had rented space elsewhere in that same building. The local news media had reported on the harshness of the protesters' language. I remember reports of demonstrators showing pictures to passersby – pictures that were offensive to people in the local community. It was a scary situation. I remember how my high school newspaper, the Centralian, condemned how out-of-state protesters were disrupting the lives of local residents.

Ladies and Gentlemen, the private business that demonstrators tried to shut down was an abortion clinic, an abortion clinic made notorious by attracting business from Canada. Many of those demonstrators came from other states. Their tactic of showing pictures of aborted fetuses to passersby was condemned as repulsive in letters to the editor. This was a pro-life demonstration. Regardless of what one thinks of pro-life demonstrations against abortion clinics, they are protected free speech.

Look on Google, type in the search terms “benzene” and “abortifacient”, and you will find copious scientific references to how benzene can induce abortions. Those who oppose abortion when abortion doctors kill infants should be appalled by poisons that cause involuntary abortions. They should be appalled by oil spills that endanger the lives of unborn children.

✓

Here is a link to a scientific poster presented to the Fifteenth World Congress in Fetal Medicine, documenting how oil spills cause abortions and birth defects in the Niger River Delta:

<https://fetalmedicine.org/abstracts/2016/var/pdf/abstracts/01174.pdf>

Many people in this state are unhappy with demonstrators who are attempting to stop an oil pipeline. Think of the emotions that motivate pro-life demonstrations against abortion clinics. Think of the concerns that motivate demonstrations against abortion clinics. Those who protest against the Dakota Access Pipeline are little different from those who protest against Planned Parenthood – it's about stopping abortion.

Any kind of police power used against pipeline protesters could be used against anti-abortion protesters. Moreover, the additional police protections in this legislation could make it feasible for abortion providers to open new abortion clinics in North Dakota.

If you want more abortion clinics in North Dakota, you should vote for House Bill 1193. Otherwise, you should vote against it.

Please recommend DO NOT PASS for House Bill 1193.

Thank you.

Andrew Alexis Varvel
2630 Commons Avenue
Bismarck, ND 58503

**Testimony for 2017 HB-1193
Senate Judiciary Committee
Presented by Waylon Hedegaard
President of the North Dakota AFL-CIO
February 12th.**

Mr. Chairman, Members of the Committee:

My name is Waylon Hedegaard, President of the North Dakota AFL-CIO.

I understand this bill's purpose. With anti-DAPL protests disrupting our communities, there is a desire to do something to restore order, to get things back to the way they were. I fully understand why this bill was introduced, but understanding it is not agreeing with it. I think HB-1193 is an overreach.

Now before I'm dismissed as some left-wing environmentalist out to destroy the oil industry in the state, please allow me to remind the committee of the following. I am the president of an affiliation of Unions, and our affiliate members are building the Dakota Access Pipeline. Our members dug the trenches, our members welded the pipeline together and our members buried that line well and safe in the ground. And though we understand our Native American sister's and brother's issues with this particular line, we are proud of the work we do. We are proud of the quality of our labor.

Sadly, since it is our members who have done the work, it is our members who have felt the pressure of the protest most directly. It is our members who have been called rapists, and murderers and white supremacists. It is our members who have suffered through sleepless nights worrying about going to work the next morning. It is our members who have been made to feel terrible about the way they make their living.

If anyone here has an emotional right to at least want to strike back, it should be union workers. This issue is stressful, and I have lost weeks of sleep over this. There have been times beyond count the last several months when I have lain awake fearing that one of our members is going to be killed or that they are going to harm someone.

Regardless of the stress and fear, we cannot in any way, shape or form support this bill. This bill is aimed at the protestors as was brought up in the

House committee hearing, but no matter how many sleepless nights I have suffered through, protesting remains a fundamental right of American citizens. From anti-abortion groups to labor strikes and protests to anti-DAPL demonstrations to that Neo-Nazi rally and counter-protest in Leith a few years ago, we may not agree with what they have to say. In fact, we may detest everything that they stand for, but they have a fundamental right to be there.

Understand the economic harm part of this bill is a major part of every protest. Whether against an individual, organization or business, putting social and economic pressure is implicit in nearly every protest. Pro-life demonstrations are trying to get clinics shut down. Strikes and pickets are putting economic pressure on companies to better wages and conditions.

These are constitutionally guaranteed activities, but what this law does is use that fundamental right to protest as a magnifier for any misdemeanor committed. If economic harm is implicit in most protests, all it requires is someone to step over the line. According to just this section itself, if a protestor uses abusive or obscene language or makes unreasonable noise, they could be facing a felony

And this magnification of minor crimes to felonies would have a chilling effect on our first amendment rights.

North Dakota has already arrested over 600 people and many of those cases are making their way through the courts now using our current laws. Fines are being levied. Penalties are being assessed. Those laws are working. People are being arrested and people are being prosecuted, so I don't see a gap in existing law that makes this needed.

We already have laws against trespassing, against vandalism, against assault and others. These crimes are already punishable. People who break them will already suffer consequences. What we don't need is a new set of laws that make the punishment for a crime worse if committed while exercising constitutionally guaranteed rights.

But if we do need laws, if there are crimes that are not being covered, we need to make them specific to the crimes. HB 1193 paints with a very broad brush.

Protesting is a constitutional right. Our country is founded on protest, and the AFL-CIO can't accept that doing something while protesting is somehow a multiplier to the severity of the crime. Despite the stress our pipeline workers have been through, in our Union's efforts to protect and comfort our members, we cannot hand over their freedoms. In our desire to restore our version of law and order, we cannot allow emotion to overcome reason. One way or another this protest will end, but these laws will be here for much longer.

In terms of fundamental and constitutional rights, the government that governs best is the government that governs least.

I urge this committee to vote no on HB 1193.

Thank you for hearing me, and I would stand for any questions.

House Bill 1193

Chairman Armstrong and Members of the Committee:

My name is Andrew Alexis Varvel, and I oppose House Bill 1193.

When I was a teenager in Grand Forks in 1986, I needed to go to a dental appointment. I went through the back door. I avoided the front door because there was a major demonstration in front of the building. That protest had the avowed intention of closing down a private business that had rented space elsewhere in that same building. The local news media had reported on the harshness of the protesters' language. I remember reports of demonstrators showing pictures to passersby – pictures that were offensive to people in the local community. It was a scary situation. I remember how my high school newspaper, the Centralian, condemned how out-of-state protesters were disrupting the lives of local residents.

Ladies and Gentlemen, the private business that demonstrators tried to shut down was an abortion clinic, an abortion clinic made notorious by attracting business from Canada. At the time, these protests were free speech protected by the First Amendment.

I think the term “economic harm” is overly broad. More than that, it harnesses North Dakota's police power to morally repugnant industries, whether they spew toxic pollution, spread venereal disease, or kill unborn children. There is a good chance that the police powers in this bill would increase the feasibility for abortion providers to open new abortion clinics in North Dakota.

Look on Google, type in the search terms “benzene” and “abortifacient”, and you will find copious scientific references to how benzene can induce abortions. Those who oppose abortion when abortion doctors kill infants should be appalled by poisons that cause involuntary abortions. They should be appalled by oil spills that endanger the lives of unborn children.

Here is a link to a scientific poster presented to the Fifteenth World Congress in Fetal Medicine, documenting how oil spills cause abortions and birth defects in the Niger River Delta:

<https://fetalmedicine.org/abstracts/2016/var/pdf/abstracts/01174.pdf>

The anti-pipeline protests are essentially pro-life. Still, there is plenty of hypocrisy to go around here. Leftists and Hollywood celebrities who would not normally support anti-abortion protests support these protests. Meanwhile, the official pro-life lobby has been largely absent from these protests. Indeed, some legislators who would normally oppose abortion are now taking the side of the pipeline company. These strange bedfellows should not detract from the pro-life nature of these protests. Those who fail to oppose benzene pollution should be regarded as pro-life in name only.

Any police power that can be used against those who protest a pipeline can be used against those who protest an abortion clinic.

I recommend a DO NOT PASS for House Bill 1193.

Thank you.

3

HB 1193

2/13/17



PO BOX 63, 607 MAIN AVE, CALLAWAY MN 56521
INFO@HONOREARTH.ORG | WWW.HONOREARTH.ORG

To: North Dakota Legislative Branch Senate Judiciary Committee
From: Tara Houska, J.D., National Campaigns Director, Honor the Earth
Date: February 13, 2017

Re: *H.B. 1193 is a Slippery Slope to Violating the Fundamental Rights Guaranteed by the U.S. Constitution -- Protect Our Rights, Not Corporations*

“Congress shall make no law...abridging...the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

The forefathers of the United States of America, the framers of the U.S. Constitution that is the Supreme Law of the Land, put Freedom of Speech and Freedom of Assembly first in the principles that established this country. The First Amendment has withstood the test of time – it contains fundamental rights that shape the very core of democracy. The right of every citizen to voice their opinions, express their thoughts to elected officials and fellow citizens, and believe what they choose to gets at the very heart of what it means to be an American.

The law before the committee today would chip away at those values, demean the framework of democracy, and create a slippery slope of uncertainty regarding fundamental rights.

U.S. citizens have the right to speak freely, and to assemble. We possess the right to question our government, to demonstrate, and to gather together for causes we believe in. As a licensed attorney, I swore an oath to uphold the laws of these United States. I do not personally support demonstrations of Neo-Nazis, but I fully support their right to demonstrate. The First Amendment is absolute – a bright-line law that cannot and should not be subjected to conditions or qualifiers.

H.B. 1193 is reactionary and dangerous. We cannot strip away democracy simply because we do not agree with the issues being asserted. Section 1(d) would make it a misdemeanor crime to “obstruct...the use of a...private facility, or commercial activity or equipment.” The bill proposes to make it a *felony* to “intentionally...cause direct or *indirect* economic harm in excess of one thousand dollars to the government or to a person.” In other words, it would be a punishable crime to assemble in front of a public or private building or near any “commercial activity.” Even worse, the bill poses to elevate economic interests over the First Amendment. Are corporations now entitled to override the rights of U.S. citizens? Does money invalidate the Constitution?

The freedom to assemble is an absolute right – the founders of the United States of America did not include limitations on where that assembly may occur. Trespass is a criminal law that is punishable by law. Rightly so, as a just society also necessitates a safe environment for us all.

The rights of land ownership and the right to exclude are protected by law and those entrusted to enforce it. In the instance of a demonstration, a dispersal notice provided by law enforcement easily accomplishes the upholding of land ownership as well as guaranteed Constitutional rights. Demonstrators are put on notice that they are on private lands or obstructing a commercial activity and must move, while their fundamental rights to free speech and assembly remain absolute.

We must always be vigilant, and scrutinize any law or regulation for even the slightest potential to hinder our Constitutional rights. H.B. 1193 fails to pass the test of absolute democracy. I urge this Committee not to pass this deeply troubling and reactive law.

Thank you.



National Campaigns Director
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