

2021 HOUSE HUMAN SERVICES

HB 1118

2021 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee Pioneer Room, State Capitol

HB 1118
1/11/2021

Relating to the duration of a gubernatorial declaration of disaster or emergency relating to public health and extension requests; and to declare an emergency

Chairman Weisz opened the hearing at 2 p.m.

Representatives	Roll Call
Representative Robin Weisz	P
Representative Karen M. Rohr	P
Representative Mike Beltz	P
Representative Chuck Damschen	P
Representative Bill Devlin	P
Representative Gretchen Dobervich	P
Representative Clayton Fegley	P
Representative Dwight Kiefert	P
Representative Todd Porter	P
Representative Matthew Ruby	P
Representative Mary Schneider	P
Representative Kathy Skroch	P
Representative Bill Tveit	P
Representative Greg Westlind	P

Discussion Topics:

- State of emergency – Covid 19
- Request 60-day limit on state of emergency
- Legislative input on state of emergency
- Executive orders
- Change to 180-day limitation

Representative Bill Devlin, District 23 (2:03) introduced the bill and submitted testimony #475.

Senator Joan Heckaman, District 23 (2:18) testified in favor and submitted testimony #511.

Amber Vibeto, President ND Conservative Political Action Committee (2:23) testified in favor and submitted testimony #517.

Margo Knorr, ND Conservative Political Action Committee (2:26) testified in favor.

Peter Hanebutt, ND Farm Bureau (2:27) testified in favor.

Jace Beehler, Chief of Staff Governor's Office (2:28) testified in opposition and submitted testimony #513.

Cody Schulz, Deputy Director Department of Emergency Services (2:39) testified in opposition and submitted testimony #515.

Alan Dohrmann, Director Department of Emergency Services (2:43) testified in opposition and submitted testimony #852.

Chairman Weisz adjourned at 3:18 p.m.

Tamara Krause, Committee Clerk

Good Afternoon, Chairman Weisz and esteemed members of the House Human Service Committee. For the record I am Rep. Bill Devlin of District 23 and live in Finley.

I am here today to ask for a favorable vote and recommendation on HB 1118. Simply put this bill will bring the legislature back into the decision-making process, when the state declares an emergency related to public health.

As you know the Governor declared a state of emergency in response to the COVID 19 Public Health Crisis on March 13, 2020 under the authority granted in NDCC Chapter 37-17.1. This bill will change that authority to a 60-day limit on a declared state of disaster or emergency related to public health such as an epidemic or pandemic. After that, the Governor would have to come to the legislature to get an extension not to exceed 30 days.

It is patterned after what I have seen in other states. If the legislature is in session the extension could be considered at that time. If we are not in session, the Governor would have to call us back into special session to make the decision if he or she wanted the declaration extended. That decision could be voted on remotely.

The legislature may approve the extension request by a concurrent resolution. If the legislature does not approve the extension the declared state of disaster or emergency relating to public health expires no later than the end of the 60th day or the end of the previously approved extension.

If the state of disaster or emergency related in public health terminates after 60 days or an extension request is not approved, House Bill 1118 would prohibit the governor from declaring another state of disaster or emergency for the same disaster or emergency conditions.

There are a number of reasons I sponsored this bill and sought co-sponsors from both parties. Many of the constituents in my District and people I know across the state believe the legislature should become more involved in the process.

To me this is a policy issue and the legislature, not the executive branch is the policy making branch of government. The supreme Court described the distribution of powers as follows: The legislative branch deliberates upon and decides the policies and principles to be adopted for the future and enacts the law executive branch administers the law so enacted. The executive branch does not create policy, they can only administer it.

We allowed the governor to make this emergency declaration through a change in law in 1985. At that time there was a 30 day limit on the emergency declaration with the governor having the authority to extend it. I sincerely doubt the Legislators at that time every thought it could go for months at a time.

The present Governor has issue almost 70 executive orders relating to the declared COVID 19 emergencies. I have heard from so many frustrated people from throughout my district and across the state. Small business owner who are afraid they are going to lose their family business they have spent years building. People who have lost their jobs, parents who say their children aren't learning remotely at a level compared to in person instructions and were very upset with the closing of schools. Parents, student athletes and coaches who are frustrated on the limitations put on extracurricular activities. I appreciate the work of Legislative Leaders for working with the executive branch to change that one to a more acceptable rule. So many other people have been contacting me and most if not all other legislators to express their frustration on many different issues. I only touched on a few of them.

Families with people in long-term care have been devastated by some of the restrictions. We can point the finger at the federal government for many of the restrictions on skilled Nursing Homes.

I believe the decision by the governor's office to include Basic Care and Assistant Living in the same order was devastating and, in my opinion, ill-advised and completely wrong. Residents of those facilities had to stop visitation, stop all group dining, and stop all group activities. People were essentially ordered to stay in their apartments and not leave.

People in Basic Care and Assisted Living have a right to self-determination. The Emergency Regulations have taken away their rights as private citizens. Some of them said they felt like prisoners in their homes. In my humble opinion, those type of facilities should never have been included with Nursing Homes. The federal requirement does not require that type of regulation on Basic care and Assisted Living facilities and neither should the state of North Dakota. I personally believe they violate the Rights of Health Care Facility Residents located in NDCC 50-10.2

Specifically, I believe they violates the right to civil liberties, the right to independent personal decisions without infringement, the right to have private meetings, associations and communications with a person of choice within the facility, to name a few.

I could go on and on about the many negative issues faced by many of our citizens. There is no question the Governor had broad authority to do much of what he did, because the legislature gave it to him years ago. But it should not lead to a never-ending emergency declaration and the over-reach of many of the rules.

There are also other broader issues that concern many other legislators. The governor may suspend a regulatory statute under certain circumstances during a disaster or emergency. But there may be a question of whether the governor exceeded that authority with some of the 2020 executive orders. If so, the governor engaged in lawmaking, a power reserved for the legislature, with some of his rules.

We did not have enough days left for a special session to deal with those questions and going to court would have been a time-consuming process, which would not have been completed in a timely fashion. Essentially, we could do nothing. This bill would change that by keeping us involved throughout the emergency.

The legislature must weigh in on these issues as they go along. Citizens should know they can work with the local legislators to find relief from the burden imposed upon them by their own government, at the state level.

I believe we must quickly pass HB 1118, in this committee, on the House floor and get it to the Senate for their consideration. It will give the executive branch authority to deal with an emergency as it unfolds but will bring the legislature back into the equation after 60 days. That is the right thing to do for the future of our state.

Chairman Weisz and members of the committee, there might be others here that would wish to testify. I can try answer questions now or after the other testimony has taken place. Thank you!

HB 1118

Senator Joan Heckaman

Good afternoon, Chairman, and Members of the Committee:

I am Senator Joan Heckaman and I am here to support HB 1118 which addresses executive orders.

Over the weekend I did research on this topic on the National Council of State Legislatures web site and found that there are several states with similar situations. Authority for executive orders is ordinarily seated with the legislature when an executive order is given to suspend state laws enacted by the legislature.

This bill does not remove that authority, but it does put parameters around this so power are not abused or exceed authority and that those powers do not undermine separation of powers so important to the effectiveness of our state operations.

NCSL, in a document, states that legislatures do have authority to legislate firm limits on emergency executive powers. Some states already have specific limits, relating to the extent or time limits on orders. North Dakota does not.

Legislatures also retain the power to nullify an emergency proclamation by resolution, usually by a simple majority in both houses. However, since North Dakota was not in session during the issuance of most of these orders, that was not possible.

While this looks like an attack on the individual issuing the orders, it is not. This bill provides the necessary tools for the legislature to provide clear and concise direction on its authority to retain laws it has already deemed necessary for effective government for all North Dakotans.

Thank you.

I would stand for any questions.

Sen. Joan Heckaman

***** **CAUTION:** This email originated from an outside source. Do not click links or open attachments unless you know they are safe. *****

First and foremost, I'd like to thank all that sit on the Human Service Committee for giving me this opportunity to speak in support of HB 1118.

My name is Amber Vibeto, Minot ND - district 3. I'm the president of the ND Conservative political Action Committee representing a committee of 120 individuals statewide.

As you know, when ND experienced the COVID-19 pandemic, the legislative branch was in their off year, and therefore was unable to represent ND citizens by weighing in on what the response to the virus should consist of. The executive orders were ongoing with no specified end date, and there were no parameters to inform citizens when, how, and why the state of emergency would end. Flood waters recede, and there is clear evidence of when it's time to rebuild, but who gets to decide what constitutes an emergency regarding a virus? COVID-19 is here to stay, and we cannot continue to infringe on people's right to live their lives as outlined in the Constitution of the United States.

Not only do the arbitrary nature of the executive orders undermine legitimate concerns of Covid-19, but it has caused and continues to cause great financial, emotional, and mental harm to thousands of North Dakotans. We have forced small businesses, restaurants, and bars to make extreme financial sacrifices, kept families away from dying loved ones, imprisoned the elderly in long-term care facilities, kept kids out of school and sports to the detriment of their mental health, forced people to wear useless and germ-soaked pieces of cloth over their faces, and even informed citizens how many people we should invite into our homes over the holidays. And we have done all of those things based on data that is inaccurate and untrustworthy. North Dakotans need to know that their voices matter. We need to know that our right to life, liberty, and the pursuit of happiness will be protected from future emergency declarations. There is already national talk of what a climate lockd!

own would look like as many believe we are in the midst of a climate crisis. There should be more input and discussion surrounding what constitutes a state of emergency, not less. And that input should come locally, not from global organizations like the World Health Organization. That is why I would support a bill that would involve more legislative input in current and future state emergency declarations.

Thank you.

House Human Services Committee | Chairman Robin Weisz

HB 1118

Monday, January 11, 2021 | 2:00pm

Chairman Weisz, members of the committee, for the record, my name is Jace Beehler, and I serve as Chief of Staff to Governor Burgum and Lt. Governor Sanford. Today, I offer this testimony in opposition to HB 1118 as it is currently written.

Ten months ago, today, marks the first confirmed case of COVID-19 in North Dakota and the day in which the World Health Organization declared COVID-19 a global pandemic. This week Wednesday will mark ten months since both President Trump and Governor Burgum declared a national and state emergency due to COVID-19. From the beginning of the pandemic, North Dakota has had over 94,000 confirmed coronavirus cases. This on top of a historic collapse of the energy economy, unemployment rates jumping to the highest rates in years, flooding across many of our counties and civil unrest, unlike what we have seen in decades. The need for emergency authority is clear from 2020.

As we have this discussion today, we know that the pandemic and economic crisis are not yet over. All 50 states and over 100 countries across the globe remain in declared emergencies. As of yesterday, 1,899 North Dakotans were currently infected and 72 were recovering in hospitals. While we have made good progress, we know that this raging virus continues to spread across the country and the globe. Just three days ago, the US recorded a new record of more than 4,000 deaths in one day. So, as we begin to discuss how North Dakota will move forward with emergencies such as this, let us not forget that the pandemic is not finished.

We are in the midst of a global pandemic – the likes of which have not been experienced for over 100 years. While the context of this pandemic is vital, the discussion today is much broader. Today we are discussing the state's ability to respond to all declared emergencies. The ability for state agencies to quickly provide the citizens of North Dakota the information they need to make decisions for their families, to rapidly develop programs to provide safety, support and resources, despite the specific emergency. Today we are talking about the ability of those elected by all citizens of North Dakota to learn, adapt, and make decisions, with nimbleness and responsiveness.

As North Dakotans we are experienced in managing emergencies. Floods, droughts, and blizzards, come frequently. In those times of need, the people of North Dakota come together, mobilize to support their family, friends and neighbors. State agencies respond quickly and efficiently and provide the necessary resources and support to help citizens come through the crisis. This pandemic is no different.

The governing systems used throughout the pandemic have been in place for decades and they have worked. Balancing lives and livelihoods, the Governor's Office, in consultation with the Unified Command and the Department of Health, utilized its authority sparingly but where

required. Throughout the pandemic, the executive branch frequently collaborated with legislative leadership, individual legislators, members of the emergency commission, budget section, county commissioners, mayors, local public health, hospital leaders, physicians, school superintendents, university system leaders, and law enforcement. The Governor's Office had weekly and bi-weekly calls with the White House COVID-19 Task Force and other national governors associations, to gain insight on how other states were responding to the urgent requests of their citizens.

Thanks to the wisdom of North Dakota's founding fathers, the state's constitution and all elected leaders from decades past, our state and its systems were prepared for the greatest challenge in a century.

While we understand the citizens of North Dakota are asking you to discuss the decisions made throughout the pandemic, it is vital we keep our focus on the future. House bill 1118 seeks to address how the length of a declared emergency is managed. It begs the question, what problem are we attempting to solve? As executive orders were requested from various stakeholders, associations, agencies and citizens, if they were implemented, they were reviewed and discussed on a daily and weekly basis and when deemed appropriate, orders were modified in response to changed circumstances, or eliminated if no longer necessary.

To maintain the responsiveness and effectiveness of North Dakota state government, we oppose this bill in its current form for the reasons already stated. Each of the 50 states have implemented and renewed their emergency orders, some up to 19 times.

The ability to maintain emergency orders varies across the country; 17 states and territories have unrestricted lengths of emergency declarations and those were in the best position to manage this prolonged health and economic emergencies, 37 states and territories have required emergency renewal timelines, ranging from 180 to 15 days and 2 states or territories have other requirements.

The processes for renewing emergency orders also varies throughout the states, though most provide significant flexibility. 47 states or territories provide the governor the ability to renew emergency orders as he or she deems appropriate or they allow the legislature to reconvene as they deem appropriate, as is the case in North Dakota. Only 8 states require their respective legislative assemblies to approve the renewals and these state's have annual legislative sessions.

The process for declaring and maintaining the emergency in North Dakota is clear, effective and transparent. If this bill's goal is to ensure discussion on each individual executive order and policy decision during the emergency, I remind you that the process to accomplish this is already in place. The legislative assembly has the ability to call themselves back to session, which was possible throughout this interim as the legislature had days remaining.

As stated, we oppose this bill in its current form for these reasons. Though we do not feel changes are needed to the process that has worked, should discussions continue, we offer the following amendments for strong consideration to ensure North Dakota can remain efficient, effective and responsive during times of crisis.

1. First, in this bill we would urge changing the length of emergency to the South Dakota timeline of 180 days. In the last 24 years, 64.9% of the of declared emergencies that have lasted more than 60 days.
2. Second, all emergencies require rapid response and complete flexibility. To maintain this in North Dakota we encourage the legislature to maintain the authority of the Governor's office to extend emergency orders as he/she deems needed, as is the case in over 47 states and territories. If changes were made to this section, we urge the legislature to adopt the Montana requirement which allows the emergency to remain in place, without renewal, so long as the President of the United States has a declaration of emergency in place.
3. Third, as we have discussed, the legislature has the authority to utilize any unused days to return, gavel in, and discuss whether an emergency should remain in place. This is currently in law. To require the Governor's Office to call the legislative assembly into special session, whether in person or virtual, in the heat of an emergency to determine if that emergency should remain in place, may not be needed based on the process already in place.
 - a. Should the assembly feel that approval for renewal is needed, based on our research, a reasonable solution would be to implement the 180-day limitation before renewal, with 90-day renewal opportunities. For approval, any remaining legislative days should be utilized first to address the renewal and then, if needed, allow the Governor's Office to call a special session for the singular purpose of renewing an emergency. This special emergency renewal session should be limited to 3 legislative or calendar days, whichever is less.
 - b. Lastly, the Governor's Office must maintain the ability to reinstitute emergencies, should the need arise, even if the legislature had, at one moment in time, rejected the request for renewal.

There is no Governor, executive official or elected official who wishes that the conditions arise to require the use of emergency declarations. Not one wishes to extend emergencies beyond what is required to meet the needs of the citizens. The emergency authority is vital in assuring that the governor's office has the ability to declare and maintain emergencies to optimize both federal aid and federal response, for the sole purpose of helping North Dakotans.

Our governing processes that were used and are continuing to be used to respond to the pandemic have worked. We have been able to respond to the needs of all North Dakotans, work with the federal government to drive change to policy and collaborate with all levels of local government to balance the needs across the state. For these reasons, we ask that this committee proceed with a do not pass and work with our office and the executive branch to determine what problems we are trying to solve and how to solve them without creating any unintended consequences.

Thank you chairman and I would welcome any questions you may have.

Testimony – SB 1118
House Human Services Committee
January 11, 2021
By Cody Schulz
Deputy Director, Department of Emergency Services
Director, Division of Homeland Security

Chairman Weisz and members of the House Human Services Committee, my name is Cody Schulz. I am the Deputy Director of the Department of Emergency Services (DES) and Director of the Homeland Security Division. I offer this testimony in opposition to HB 1118 as it is currently written.

DES's Division of Homeland Security has a number of statutory requirements regarding coordination and resourcing of State disasters, so issues of an administrative and fiscal nature may have a significant effect on operational decisions we are required to make in the heat of the moment.

My biggest concern is that this bill as written may create some uncertainty in the timing and process for legislative approval of an extension, and that the uncertainty could affect operational decisions at both the state and local level as well as potentially risk federal reimbursement associated with Presidential Emergency/Disaster Declarations as authorized under Section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, PL 100-707, which authorizes the President to provide Federal assistance when the magnitude of an incident or threatened incident exceeds the affected State, Local, Territorial, and Indian Tribal government capabilities to respond or recover.

Specifically, the text of the bill does not proscribe by which day of the emergency the Governor must call the Special Legislative Session or a time limit by which the legislature must convene and act. Without clarity I could envision a hypothetical scenario in which the Governor calls a special session of the legislative assembly on the fifty-eighth (58) day of an emergency, but the legislature does not or cannot meet and act until the sixty-seventh (67) day of the emergency. Subsequently, if the legislature would terminate the emergency, it appears to me the termination would be retroactive to the sixtieth (60) day.

The concern and scenario I have noted would impact receiving funding from the federal government due to a Presidential Disaster Declaration which requires, "as a prerequisite to major disaster assistance under this Act, the Governor shall take appropriate action under State law and direct execution of the State's emergency plan," which in practice in North Dakota is done through the executive order declaring an emergency or disaster. Therefore, if a Governor's order is revoked, federal funding from that point forward would not be available and in the hypothetical situation I pointed out earlier there would be a nine (9) day window in which state and local leaders would be making resource and fiscal decisions in a cloud of uncertainty.

During disaster response uncertainty can negatively impact operational and fiscal decisions. Therefore, we ask that all effort be made to create stability and predictability

for state and local decision makers, especially in the difficult and uncertain time of emergencies and disasters.

I would gladly participate in committee meetings to answer questions or draft amendments to ensure that this or any other bill of this nature does not have unintended and negative consequences in regard to our ability to respond to disasters.

Thank you for your time; I will do my best to answer any questions you may have.

TESTIMONY OF
ALAN S. DOHRMANN
DIRECTOR, DEPARTMENT OF EMERGENCY SERVICES
BEFORE THE 67TH LEGISLATIVE ASSEMBLY
HOUSE HUMAN SERVICES COMMITTEE
JANUARY 11, 2021

Chairman Nelson and members of the House Human Services Committee, my name is Al Dohrmann. I am the Director of the Department of Emergency Services for the state of North Dakota. As the officer charged with executing emergency responses under Chapter 37-17.1, I appear today to raise some concerns I have and to answer any questions you may have of the executing agency.

In addition to the concerns raised by Mr. Schulz in his testimony, I am also concerned that this bill, as written, could limit the state's ability to take decisive action, at the time and place of need. While crisis response is a team sport, to get ahead of your competition, whether it is mother nature, an invisible virus, or a thinking competitor promoting civil unrest, you need empowered leadership from the front-line responder up to the leader of the Unified Command and the executive of the state, the Governor. Additionally, you need the authority and resources required, at the time and place of need, to take the action required to save lives and protect property. Chapter 37-17.1 of the Century Code, as currently written, provides the Governor the tools needed to take decisive action at the time and place of need. Whether it is rapidly procuring flood mitigation resources, quickly calling out the National Guard, or dramatically increasing testing and bending the curve during a spike in transmission of a virus, the powers provided to the Governor under Chapter 37-17.1 have served our state well over the last several decades.

There are other ways to provide valuable Legislative input to disaster or crisis response. For one, the legislature could bank some days for contingencies and come back into session on their own initiative. If this approach would negatively impact its ability to conduct the people's business, it could explore giving the legislative branch the power to come back into session, on its own authority, to review and amend any Executive Orders issued by the Governor.

Further, we need to fully consider the relatively short period of time that a Governor's Emergency Declaration or Executive Orders would be effective under HB 1118, and the requirement for full legislative review every 30 days. Our experience in this pandemic has shown that sometimes things move slow for a period of time, then can quickly change as we saw in late October and early November. Requiring the convening of the legislature based on a day on the calendar may not support a requirement to make life-saving decision at the time of need.

With that said, I understand the need and value of having co-equal branches of government in a democracy; in fact, I swore an oath to protect and defend our form of government. I would offer any assistance from my agency to ensure that any changes to Chapter 37-17.1 of the Century Code provide a more responsive government to the

citizens of North Dakota during times of emergency and crisis and ensure these changes do not produce unintended consequences.

In the military we have a process called "after actions review" or AAR. After any operation, we do a complete review of all actions taken and how we applied applicable policies and authorities to accomplish the mission. While we seek process improvement throughout operations, we do not review the entire operation until the stress and emotion of the event has concluded and we can analysis all the data and decisions. We wait until the end to ensure we are not second-guessing decisions made in the heat of the response and to ensure leaders stay engage and take disciplined risk to accomplish the mission. I believe the same applies in the case at hand. We are still in the COVID fight, now may not the time to overhaul the law and policy. It may be better to wait until the event is over to be in a better position to analysis the data and assess the actions taking. This will provide time to remove emotion, politics and the traditional and social media pressure from the process and allow for a more thoughtful review of our policy, actions and law.

I would be pleased to stand for your questions.

2021 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee Pioneer Room, State Capitol

HB 1118
1/27/2021

Relating to the duration of a gubernatorial declaration of disaster or emergency relating to public health and extension requests; and to declare an emergency.

Chairman Weisz opened the hearing at 2:23 p.m.

Representatives	Attendance
Representative Robin Weisz	P
Representative Karen M. Rohr	P
Representative Mike Beltz	P
Representative Chuck Damschen	P
Representative Bill Devlin	P
Representative Gretchen Dobervich	P
Representative Clayton Fegley	P
Representative Dwight Kiefert	P
Representative Todd Porter	P
Representative Matthew Ruby	P
Representative Mary Schneider	P
Representative Kathy Skroch	P
Representative Bill Tveit	P
Representative Greg Westlind	P

Discussion Topics:

- State Health Officer
- Statewide public health order
- Geographical order

Rep. Robin Weisz (2:23) presented **Amendment 21.0222.06002** - #5640

Rep. Karen Rohr (2:27) made a motion to approve **Amendment 21.0222.06002**

Rep. Kathy Skroch (2:28) second

Voice Vote - Motion Carried

Rep. Robin Weisz (2:28) presented **Amendment 21.0222.06003** - #5641.

Rep. Todd Porter (2:59) made a motion to amend Amendment 21.0222.06003 – If disaster terminates governor cannot call a state of emergency again.

Rep. Karen Rohr (3:00) second

Voice Vote – Motion Failed

Rep. Todd Porter (3:01) made a motion to amend Amendment 21.0222.06003 - Change from “in effect for 30 days that Legislative Management at any time after an emergency has been declared can meet and request governor to call legislative body in.”

Rep. Karen Rohr (3:02) second

Voice Vote – Motion Carried.

Rep. Todd Porter (3:06) made a motion to delete Section 2 of HB 1118.

Rep. Matthew Ruby seconded the motion

Voice Vote – Inconclusive – Called for Roll Call Vote

Representatives	Vote
Representative Robin Weisz	N
Representative Karen M. Rohr	N
Representative Mike Beltz	N
Representative Chuck Damschen	N
Representative Bill Devlin	N
Representative Gretchen Dobervich	Y
Representative Clayton Fegley	Y
Representative Dwight Kiefert	N
Representative Todd Porter	Y
Representative Matthew Ruby	Y
Representative Mary Schneider	Y
Representative Kathy Skroch	N
Representative Bill Tveit	N
Representative Greg Westlind	Y

Motion Failed 6-8-0

Rep. Gretchen Dobervich (3:09) made motion to adopt amended version of Amendment 21.0222.06003

Rep. Karen Rohr (3:09) second

Voice Vote – Motion Carried

Rep. Kathy Skroch (3:11) made a motion **Do Pass As Amended.**

Rep. Mike Beltz (3:11) second

Representatives	Vote
Representative Robin Weisz	Y
Representative Karen M. Rohr	Y
Representative Mike Beltz	Y

Representative Chuck Damschen	Y
Representative Bill Devlin	N
Representative Gretchen Dobervich	Y
Representative Clayton Fegley	Y
Representative Dwight Kiefert	Y
Representative Todd Porter	N
Representative Matthew Ruby	Y
Representative Mary Schneider	N
Representative Kathy Skroch	Y
Representative Bill Tveit	Y
Representative Greg Westlind	N

Motion Carried Do Pass As Amended 10-4-0

Bill Carrier: Rep. Robin Weisz

Chairman Weisz adjourned 3:13 p.m.

Tamara Krause, Committee Clerk

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1118

Page 1, line 1, after "reenact" insert "subsection 12 of section 23-01-05 and"

Page 1, line 2, after "the" insert "authority of the state health officer and the"

Page 1, after line 4, insert:

"SECTION 1. AMENDMENT. Subsection 12 of section 23-01-05 of the North Dakota Century Code is amended and reenacted as follows:

12. ~~Issue any orders~~ a written order relating to ~~a disease control measures-~~
~~deemed measure~~ necessary to prevent the spread of ~~a~~ communicable
disease. ~~Disease~~ A disease control measures ~~measure~~ may include a
special immunization ~~activities~~ activity and decontamination
~~measures~~ measure. ~~Written orders~~
- a. The state health officer shall limit a written order issued under this
section to the geographical area affected by the communicable
disease. The state health officer may not issue a statewide order
under this section unless the governor has declared a statewide
disaster or emergency under chapter 37-17.1. The statewide order is
limited in duration to the duration of the declared disaster or
emergency.
- b. A written order issued under this section ~~shall have~~ has the same
effect as a physician's standing medical order.
- c. The state health officer may apply to the district court in a judicial
district ~~wherein which~~ a communicable disease is present for an
injunction canceling a public event ~~event~~ or closing ~~places~~ a place of
business. On application of the state health officer showing the
necessity of ~~such~~ the cancellation, the court may issue an ex parte
preliminary injunction, pending a full hearing."

Renumber accordingly

January 27, 2021

Ch
1/27/21
1 of 2

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1118

Page 1, line 1, after "Act" insert "to create and enact a new subsection to section 37-17.1-05 of the North Dakota Century Code, relating to the governor's authority to issue executive orders during a declared disaster or emergency;"

Page 1, line 1, after "reenact" insert "subsection 12 of section 23-01-05 and"

Page 1, line 2, replace "duration of a" with "authority of the state health officer and the"

Page 1, line 3, remove "relating to public health and extension requests"

Page 1, after line 4 insert:

"SECTION 1. AMENDMENT. Subsection 12 of section 23-01-05 of the North Dakota Century Code is amended and reenacted as follows:

12. Issue ~~any orders~~a written order relating to ~~a disease control measures deemed measure~~a disease control measuresmeasure necessary to prevent the spread of ~~a communicable disease. Disease~~a disease control measuresmeasure may include ~~a special immunization activities~~activity and decontamination ~~measuresmeasure. Written orders~~
- a. The state health officer shall limit a written order issued under this section to the geographical area affected by the communicable disease. The state health officer may not issue a statewide order under this section unless the governor has declared a statewide disaster or emergency under chapter 37-17.1. The statewide order is limited in duration to the duration of the declared disaster or emergency.
 - b. A written order issued under this section shall havehas the same effect as a physician's standing medical order.
 - c. The state health officer may apply to the district court in a judicial district wherein which a communicable disease is present for an injunction canceling a public eventsevent or closing placesa place of business. On application of the state health officer showing the necessity of suchthe cancellation, the court may issue an ex parte preliminary injunction, pending a full hearing."

Page 1, line 14, remove "A declared state of disaster or emergency relating to public health, such as an"

Page 1, replace lines 15 through 23 with "If a declared state of disaster or emergency relating to public health is in effect and the legislative assembly is not in session, the legislative management may meet to vote on whether the legislative management should request the governor call a special session of the legislative assembly. If the governor does not call a special session within seven days after receiving the request from the legislative management, the declared state of disaster or emergency relating to public health terminates thirty days after the request from the legislative management was received by the governor. If the governor calls a special session within seven days after

receiving the request from the legislative management, the special session must be held within fifteen days of the governor's call for a special session."

CH
1/27/21
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Page 2, line 3, remove "If a state of disaster or emergency relating to public health terminates after sixty"

Page 2, remove lines 4 through 6

Page 2, line 7, remove "e."

Page 2, after line 15 insert:

"SECTION 3. A new subsection to section 37-17.1-05 of the North Dakota Century Code is created and enacted as follows:

Notwithstanding subsection 3, the governor may not issue an executive order under this section unless the executive order specifically addresses the mitigation of a declared state of disaster or emergency."

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1118: Human Services Committee (Rep. Weisz, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). HB 1118 was placed on the Sixth order on the calendar.

Page 1, line 1, after "Act" insert "to create and enact a new subsection to section 37-17.1-05 of the North Dakota Century Code, relating to the governor's authority to issue executive orders during a declared disaster or emergency;"

Page 1, line 1, after "reenact" insert "subsection 12 of section 23-01-05 and"

Page 1, line 2, replace "duration of a" with "authority of the state health officer and the"

Page 1, line 3, remove "relating to public health and extension requests"

Page 1, after line 4 insert:

"SECTION 1. AMENDMENT. Subsection 12 of section 23-01-05 of the North Dakota Century Code is amended and reenacted as follows:

12. ~~Issue any orders~~ a written order relating to a disease control measures-
~~deemed measure~~ necessary to prevent the spread of a communicable
~~disease. Disease~~ a disease control measures ~~measure~~ may include a
special immunization activities ~~activity~~ and decontamination
~~measures~~ measure. ~~Written orders~~
- a. The state health officer shall limit a written order issued under this
section to the geographical area affected by the communicable
disease. The state health officer may not issue a statewide order
under this section unless the governor has declared a statewide
disaster or emergency under chapter 37-17.1. The statewide order is
limited in duration to the duration of the declared disaster or
emergency.
- b. A written order issued under this section ~~shall have~~ has the same
effect as a physician's standing medical order.
- c. The state health officer may apply to the district court in a judicial
district wherein which a communicable disease is present for an
injunction canceling a public event ~~event~~ or closing places ~~a place~~
of business. On application of the state health officer showing the
necessity of ~~such~~ the cancellation, the court may issue an ex parte
preliminary injunction, pending a full hearing."

Page 1, line 14, remove "A declared state of disaster or emergency relating to public health,
such as an"

Page 1, replace lines 15 through 23 with "If a declared state of disaster or emergency
relating to public health is in effect and the legislative assembly is not in session, the
legislative management may meet to vote on whether the legislative management
should request the governor call a special session of the legislative assembly. If the
governor does not call a special session within seven days after receiving the
request from the legislative management, the declared state of disaster or
emergency relating to public health terminates thirty days after the request from the
legislative management was received by the governor. If the governor calls a special
session within seven days after receiving the request from the legislative
management, the special session must be held within fifteen days of the governor's
call for a special session."

Page 2, line 3, remove "If a state of disaster or emergency relating to public health terminates after sixty"

Page 2, remove lines 4 through 6

Page 2, line 7, remove "e."

Page 2, after line 15 insert:

"SECTION 3. A new subsection to section 37-17.1-05 of the North Dakota Century Code is created and enacted as follows:

Notwithstanding subsection 3, the governor may not issue an executive order under this section unless the executive order specifically addresses the mitigation of a declared state of disaster or emergency."

Renumber accordingly

21.0222.06002
Title.

Prepared by the Legislative Council staff for
Representative Weisz
January 21, 2021

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1118

Page 1, line 1, after "reenact" insert "subsection 12 of section 23-01-05 and"

Page 1, line 2, after "the" insert "authority of the state health officer and the"

Page 1, after line 4, insert:

"SECTION 1. AMENDMENT. Subsection 12 of section 23-01-05 of the North Dakota Century Code is amended and reenacted as follows:

12. ~~Issue any orders~~ a written order relating to ~~a disease control measures-~~
~~deemed measure~~ necessary to prevent the spread of ~~a communicable~~
~~disease.~~ ~~Disease~~ A disease control measures ~~measure~~ may include a
special immunization ~~activities~~ activity and decontamination
~~measures~~ measure. ~~Written orders~~
- a. The state health officer shall limit a written order issued under this section to the geographical area affected by the communicable disease. The state health officer may not issue a statewide order under this section unless the governor has declared a statewide disaster or emergency under chapter 37-17.1. The statewide order is limited in duration to the duration of the declared disaster or emergency.
- b. A written order issued under this section ~~shall have~~ has the same effect as a physician's standing medical order.
- c. The state health officer may apply to the district court in a judicial district ~~wherein which~~ a communicable disease is present for an injunction canceling a public event ~~event~~ or closing ~~places~~ a place of business. On application of the state health officer showing the necessity of ~~such~~ the cancellation, the court may issue an ex parte preliminary injunction, pending a full hearing."

Renumber accordingly

21.0222.06003
Title.

Prepared by the Legislative Council staff for
Representative Weisz
January 27, 2021

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1118

Page 1, line 1, after "Act" insert "to create and enact a new subsection to section 37-17.1-05 of the North Dakota Century Code, relating to the governor's authority to issue executive orders during a declared disaster or emergency;"

Page 1, line 2, remove "duration of a"

Page 1, line 3, remove "relating to public health and extension requests"

Page 1, line 14, remove "A declared state of disaster or emergency relating to public health, such as an"

Page 1, replace lines 15 through 23 with "If a declared state of disaster or emergency relating to public health has been in effect for thirty days and the legislative assembly is not in session, the legislative management shall meet within thirty days from the initial declaration to vote on whether the legislative management should request the governor call a special session of the legislative assembly. If the governor does not call a special session within seven days from receiving the request from the legislative management, the declared state of disaster or emergency relating to public health terminates thirty days after the request from the legislative management was received by the governor. If the governor calls a special session within seven days from receiving the request from the legislative management, the special session must be held within fifteen days of the governor's call for a special session."

Page 2, line 3, remove "If a state of disaster or emergency relating to public health terminates after sixty"

Page 2, remove lines 4 through 6

Page 2, line 7, remove "e."

Page 2, after line 15, insert:

"SECTION 2. A new subsection to section 37-17.1-05 of the North Dakota Century Code is created and enacted as follows:

Notwithstanding subsection 3, the governor may not issue an executive order under this section unless the executive order specifically addresses the mitigation of a declared state of disaster or emergency."

Renumber accordingly

2021 SENATE HUMAN SERVICES

HB 1118

2021 SENATE STANDING COMMITTEE MINUTES

Human Services Committee Sakakawea Room, State Capitol

HB 1118
3/30/2021

A BILL for an Act to create and enact a new subsection to section 37-17.1-05 of the North Dakota Century Code, relating to the governor's authority to issue executive orders during a declared disaster or emergency; to amend and reenact subsection 12 of section 23-01-05 and subsection 3 of section 37-17.1-05 of the North Dakota Century Code, relating to the authority of the state health officer and the gubernatorial declaration of disaster or emergency; and to declare an emergency.

Madam Chair Lee opened the hearing on HB 1118 at 10:08 a.m. Members present: Lee, K. Roers, Hogan, Anderson, Clemens, O. Larsen.

Discussion Topics:

- Statewide/County declarations
- Business/school closures
- COVID-19 impact
- Fire/Flood disasters
- Legislature role during emergency disasters
- Executive orders
- Federal aid
- Unintended consequences of HB 1118

[10:09] Representative Bill Devlin, District 23. Introduced HB 1118 and provided testimony #11048 in favor.

[10:16] Representative Robin Weisz, District 14. Provided an overview to the committee on the intent of HB 1118.

[10:32] Emmery Mehlhoff, Public Policy Liason, ND Farm Bureau. Provided testimony #11161 in favor.

[10:35] Jace Beehler, Chief of Staff, Governor Burgum and Lt. Governor Stanford. Provided testimony #11047 and #11073 in favor.

[10:54] Alan Dohrmann, Director, Department of Emergency Services. Provided neutral testimony #11052 in favor.

Additional written testimony: (9)

Amber Vibeto, Minot Resident. Written testimony #10907 in favor.

Lindsay Presteng, Grafton Resident. Written testimony #10912 in favor.

Tayla Sakala, Watford City Resident. Written testimony #10913 in favor.

Jocelyn Backman, West Fargo Resident. Written testimony #10920 in favor.

Bridgette Odegard, Tioga Resident. Written testimony #10927 in favor.

Lori VanWinkle, ND Conservative Advocates. Written testimony #10946 in favor.

Jacob Holter, Williston Resident. Written testimony #10951 in favor.

Cionda Holter, Williston Resident. Written testimony #10952 in favor.

Mark Holter, Williston Resident. Written testimony #10969 in favor.

Madam Chair Lee closed the hearing on HB 1118 at 11:05 a.m.

Justin Velez, Committee Clerk

HB 1118

Good Morning, Chairman Lee and esteemed members of the Senate Human Service Committee. For the record I am Rep. Bill Devlin of District 23 and live in Finley.

I am here today to ask for a favorable vote and recommendation on HB 1118. Simply put this bill will bring the legislature back into the decision-making process, when the state declares an emergency related to public health.

As you know the Governor declared a state of emergency in response to the COVID 19 Public Health Crisis on March 13, 2020 under the authority granted in NDCC Chapter 37-17.1. As you can see, if the state of emergency relating to public health is in effect and the legislature is not in session, Legislative Management may meet to vote on whether to request the Governor call a special session to deal with the issue.

If the Governor chooses decides not to call us into special session within seven days of receiving that request, the state of emergency ends the declared state of emergency related to public health terminates thirty days after the request from Legislative Management was received by the Governor. If the Governor calls a special session within the seven days from the request the special sessions must be called within 15 days of the Governor's call for a special session.

It is patterned after what I have seen in other states. If the legislature is in session the extension could be considered at that time. If we are not in session, the Governor would have to call us back into special session to make the decision if he or she wanted the declaration extended.

The bill also puts some restrictions on the state health officer by limiting their ability to declare a statewide order unless the governor has declared a statewide disaster or emergency.

There are several reasons I sponsored this bill and sought co-sponsors from both parties. Many of the constituents in my District and people I know across the state believe the legislature should become more involved in the process.

To me this is a policy issue and the legislature, not the executive branch is the policy making branch of government. The supreme Court described the distribution of powers as follows: The legislative branch deliberates upon and decides the policies and principles to be adopted for the future and enacts the law executive branch administers the law so enacted. The executive branch does not create policy, they can only administer it.

We allowed the governor to make this emergency declaration through a change in law in 1985. At that time there was a 30-day limit on the emergency declaration with the governor having the authority to extend it. I sincerely doubt the Legislators at that time every thought it could go for months at a time.

The present Governor has issue almost 70 executive orders relating to the declared COVID 19 emergencies. I have heard from so many frustrated people from throughout my district and across the state. Small business owner who are afraid they are going to lose their family business they have spent years building. People who have lost their jobs, parents who say their children aren't learning remotely at a level compared to in person instructions and were very upset with the closing of schools. Parents, student athletes and coaches who are frustrated on the limitations put on extracurricular So many other people have been contacting me and most if not all other legislators to express their frustration on many different issues. I only touched on a few of them.

Families with people in long-term care have been devastated by some of the restrictions. We can point the finger at the federal government for many of the restrictions on skilled Nursing Homes.

I believe the decision by the governor's office to include Basic Care and Assistant Living in the same order was completely wrong, although it was supported by some in the industry. The federal requirement does not require that type of regulation on Basic care and Assisted Living facilities and neither should the state of North Dakota. I personally believe they violate the Rights of Health Care Facility Residents located in NDCC 50-10.2

Specifically, I believe they violates the right to civil liberties, the right to independent personal decisions without infringement, the right to have private meetings, associations and communications with a person of choice within the facility, to name a few.

I could go on and on about the many negative issues faced by many of our citizens. There is no question the Governor had broad authority to do much of what he did, because the legislature gave it to him years ago. But it should not lead to a never-ending emergency declaration on public health issues.

The legislature must weigh in on these issues as they go along. Citizens should know they can work with the local legislators to find relief from the burden imposed upon them by their own government, at the state level.

I believe we must quickly pass HB 1118, in this committee, on the Senate floor. It passed by a strong veto proof margin in the House and I am hoping we can have the same level of support in the Senate. It will give the executive branch authority to deal with an emergency, as it unfolds, but will bring the legislature back into the equation if needed. That is the right thing to do for the future of our state.

Chairman Lee and members of the committee, there might be others here that would wish to testify. I can try answer questions now or after the other testimony has taken place. Thank you!

Senate Human Services Committee – HB 1118
Emmery Mehlhoff, NDFB Public Policy Liaison
March 30, 2021

Madam Chair Lee,

My name is Emmery Mehlhoff and I represent North Dakota Farm Bureau. NDFB supports HB 1118.

NDFB is truly a grass roots organization. Our members bring issues to their county Farm Bureaus, then to their District meetings, and finally to the NDFB annual meeting to be voted on by fellow producer members. During our 2020 annual meeting, our members adopted the following policy:

Under the state of emergency declaration, all executive orders by the Governor of North Dakota must be approved by majority vote of both chambers of the legislature after 20 days and no more than 90 days after the order is executed. The lack of approval of both chambers of the legislature voids the executive order. ID#: 2467/21

We urge the committee to give HB 1118 a Do Pass Recommendation.

Fargo

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Bismarck

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Senate Human Services | Chair Sen. Judy Lee

Testimony of Jace Beehler on HB 1118

Tuesday, March 30, 2021

10:00am

Madam Chair, members of the Senate Human Services Committee, my name is Jace Beehler and I serve as Chief of Staff to Governor Burgum and Lt. Governor Sanford. I provide testimony today in opposition to HB 1118.

Over the past year, North Dakota has ranked among the top states for managing the pandemic and balancing lives and livelihoods. North Dakota consistently ranked in the top three states for testing per capita, our economy remained one of the most open, education was nearly uninterrupted and, as of yesterday, North Dakota ranked 3rd in the country with 90.89% of distributed doses of vaccine administered. We are making significant progress toward community immunity with 39.1% of the population having received at least one dose of the vaccine.

The success of our state has come with the current processes and procedures in place for state leadership to respond to all types of emergencies. Over the last 14 months, I have had the opportunity to speak with most of you in this room and many of your colleagues about varying concerns, questions and ideas to better respond to the health crisis.

While we may disagree on specific actions taken during the pandemic or certain mitigation measures that were implemented, it is critical that when reviewing the processes for emergency response, we think about the unintended consequences of any proposed policy changes and work to provide our state, local officials and all of Team ND the tools, resources and flexibility they need.

During this legislative session, there have been over 55 bills directly related to the pandemic in some form or another. Three of these bills are directly related to the process of emergency response and the authority of the governor to declare emergencies. SB 2124, HB 1495, and this bill, HB 1118 appear to be reactions, not to the process used to respond to emergencies, but to disagreements with specific mitigation measures for a once-in-100-year event.

While we do not believe changes need to be made to the process that has served North Dakota well in this emergency and in the emergencies from decades past, we urge the committee to focus on how we can provide the greatest level of flexibility and the quickest access to tools and resources for those on Team ND working to serve the citizens of this great state.

HB 1118, while impacting the process for the emergency response, is the least intrusive of the bills being considered and is balanced in multiple ways. First, it limits the changes to only emergencies directly related to public health. Second, it provides a process and optionality for the executive branch to work with legislative management if there is debate about the need for

a special session. Third, it does not limit the ability for the Governor to respond if an emergency would re-emerge following the most recently declared disaster.

While we do not believe there is a need for changes to the emergency response authority, I urge this committee to ensure we end the session with policy that is not simply a reaction to a once-in-100-year event. Madam chair, I would be happy to work with the committee and any legislators to discuss the merits of this bill and how it compares to the current process and the processes proposed in HB 1495 and SB 2124.

With that, I would be happy to answer any questions you may have.

ALL STATE COMPARISON OF TESTING EFFORTS

Through up-to-date visuals, track how testing volume, positivity, and proportion give a sense of whether the occurrence of new cases is slowing or growing.

Testing Totals By Population

Testing Weekly Change

STATE	TESTS	CONFIRMED CASES	DEATHS	▼
North Dakota	192220	13496	197.1	#11
Pennsylvania	89796	7915	195.0	
Indiana	131742	10222	194.6	
New Mexico	141820	9117	187.3	
Arkansas	94306	10947	185.6	
Illinois	157511	9714	184.6	
Iowa	43242	11080	181.4	
Georgia	73551	10031	179.9	
South Carolina	109779	10802	179.4	
Tennessee	105760	11917	174.5	
Nevada	96463	9988	172.6	
Michigan	113687	7240	170.5	
Texas	73565	9695	167.6	
Kansas	45024	10407	166.5	
Delaware	160269	9725	159.6	
Ohio	93145	8654	158.5	
Florida	96943	9597	155.8	
District of Columbia	193713	6289	150.3	
California	133888	9254	149.0	
West Virginia	135517	7787	145.9	
Missouri	78917	9468	143.6	
Maryland	143561	6753	136.5	

STATE	TESTS	CONFIRMED CASES	DEATHS	▼
Montana	112426	9802	135.2	
Kentucky	93280	9512	135.0	
Wisconsin	129679	10908	125.1	
Minnesota	135487	9179	123.1	
Oklahoma	94751	11082	123.0	
Wyoming	117698	9701	120.3	
Virginia	75405	7225	119.7	
North Carolina	99906	8721	115.8	
Nebraska	133335	10803	112.7	
Idaho	38311	10228	111.4	
Colorado	120928	8051	107.0	
New Hampshire	119367	6121	91.2	
Washington	77313	4792	69.2	
Utah	96761	12165	66.9	
Puerto Rico	13009	3333	66.1	
Oregon	98600	3912	56.7	
Maine	131185	3725	55.0	
Alaska	254043	8429	42.4	
Vermont	207806	3005	35.9	
Hawaii	88037	2099	32.5	

TESTS: *per 100k pop.*

CONFIRMED CASES: *per 100k pop*

DEATHS: *per 100k pop*

TESTIMONY OF
ALAN S. DOHRMANN
DIRECTOR, DEPARTMENT OF EMERGENCY SERVICES
BEFORE THE 57TH LEGISLATIVE ASSEMBLY
SENATE HUMAN SERVICES COMMITTEE
MARCH 29, 2021

Madam Chair and members of the Senate Human Services Committee, my name is Al Dohrmann. I am the Director of the Department of Emergency Services for the state of North Dakota. As the officer charged with executing emergency responses under Chapter 37-17.1, I appear today to provide some brief comments and stand for any questions the committee may have of me or my agency.

In times of crisis, it is important to have clear authorities, predictability, and empowered leaders from the frontline incident commander, through the Unified Command to the Chief Executive. Any ambiguity in this process or authority needs to be removed to ensure we can provide the right resource at the right time to stay ahead of our competition, whether that is mother nature, an invisible virus, or a thinking competitor.

I am aware of three bills introduced this session that address the Governor's and/or the State Health Officer's authorities during emergencies – SB 2124, HB 1495 and the bill before us today, HB 1118. As an agency, we have been in opposition of both SB 2124 and HB 1495 because we believe they would introduce a level of ambiguity to the process that could put federal funding, lives, and property at risk. Of the three Bills, HB 1118 is the most narrowly drafted and provides the most clarity and predictability that is so important in times of crisis.

With that said, as an agency, the Department of Emergency Services does not see a need for a change in our Disaster Act. Chapter 37-17.1 has served our state and citizens well over the last 30 years that I have been associated with the North Dakota National Guard and the Department of Emergency Services. From the historic floods of 1997, 2009 and 2011, to the pipeline protest in 1996 to 1997, to this pandemic. It seems to me we have laws on the books now that provide what we all seek, clear authority that puts the executive branch and political sub-division in the best possible position to protect lives and property. Therefore, we should be very deliberate in any changes we make and ensure they are based on fact and informed by subject matter experts, not based on the emotions of the time.

I'm here today with Mr. Cody Schulz, the Deputy Director of Emergency Services, to answer any questions you may have and help ensure HB 1118 is informed by fact and and the people assigned the responsibility execute a crisis response under Chapter 37-17.1.

I would be pleased to stand for your questions.

Dear Committee Members,

Because the North Dakota legislative branch was in its off year when the pandemic hit, lawmakers were unable to represent citizens by weighing in on what the response to the virus should entail. Executive orders were decreed with no specified end date, and there were no parameters to inform citizens when, how, and why the state of emergency would end. Flood waters recede, and there is clear evidence of when it's time to rebuild, but who gets to decide what constitutes an emergency regarding a virus that will likely never go completely away?

Not only did the arbitrary and draconian nature of the executive orders undermine legitimate concerns of Covid-19, but it caused great financial, emotional, and mental harm to thousands of North Dakotans. Throughout the last year, we forced small businesses, restaurants, bars, and salons to make significant financial sacrifices, kept families away from dying loved ones, imprisoned the elderly in long-term care facilities, kept kids out of school and extracurricular activities to the detriment of their mental health, forced adults and children to wear useless pieces of cloth over their faces, and even informed citizens how many people we should invite into our homes over the holidays. And the executive office did all of these things based on inaccurate data provided by unelected public health officials and without the input and consent of the citizens.

North Dakotans need to know that their voices matter even during a state of emergency. We need to know that our right to life, liberty, and the pursuit of happiness will be protected from future executive orders that seek to micromanage citizens' lives in the name of safety. There is a current trend in government to declare an emergency, whether it is related to climate, guns, white supremacy, or COVID-19, in order to implement extremist policies and/or to justify spending obscene amounts of taxpayer dollars. There should be more input and discussion surrounding what constitutes a state of emergency, not less. And that input should be as local as possible, not from global organizations like the World Health Organization or from out-of-state billionaires with agendas.

The response to the pandemic highlighted the clear need for legislation that would protect the balance of power among the branches of government, particularly with regard to current and future state emergency declarations.

Please render a DO PASS on HB 1118.

Thank you for your leadership and service to the state of North Dakota.

Members of the Senate Human Services Committee:

I am a resident of District 13 (West Fargo) and a lifelong North Dakota resident. I am urging for a DO PASS on HB 1118; a Bill for an ACT to amend and reenact subsection 3 of 37-17.1-05 of the North Dakota Century Code, relating to the duration of a gubernatorial declaration of a disaster or emergency relating to public health and extension requests; and to declare an emergency.

2020 was quite a year, people can argue that what was done by the Government was what was needed to keep people safe, but was it? Since when does the State and Federal Government know what's best for the 330 million + residents and how they operate day to day? Businesses/Schools/Churches should have never been forced to shut down, it should have been left up to them on how they want to respond to the Pandemic. 2020 isn't the first time a virus will sweep through the world, and it won't be the last.

It is VERY important for the people to have a voice in decision making, especially when it's our health, livelihood and our rights being stripped away. It was obvious that those making the decisions didn't have to adhere to them the same, rules for thee but not for me.

Please vote YES or DO PASS on HB 1118 and let the Citizens of ND help make the tough decisions.

Thank you for all you do!

Dear Members of the Committee,
Regarding HB 1118

Please Pass this bill:

The citizens of North Dakota need to have representation in the case of any further state of emergency or pandemic declaration, despite the fact that the legislative branch could be on an off year term. There needs to be an ability to be able to call for a special session to assemble to determine appropriate responses and timelines for how to approach any future state of emergency or pandemic, and not leave the power solely in the hands of the governor.

Lori VanWinkle
District 3

2021 SENATE STANDING COMMITTEE MINUTES

Human Services Committee Sakakawea Room, State Capitol

HB 1118
4/5/2021

A BILL for an Act to create and enact a new subsection to section 37-17.1-05 of the North Dakota Century Code, relating to the governor's authority to issue executive orders during a declared disaster or emergency; to amend and reenact subsection 12 of section 23-01-05 and subsection 3 of section 37-17.1-05 of the North Dakota Century Code, relating to the authority of the state health officer and the gubernatorial declaration of disaster or emergency; and to declare an emergency.

Vice Chair K. Roers opened the discussion on HB 1118 at 11:19 a.m. Members present: Lee, K. Roers, Hogan, Anderson, Clemens, O. Larsen.

Discussion Topics:

- Proposed amendment
- Balance of power

[11:26] Senator Kristin Roers, District 27. Provided the committee with proposed amendment 21.0222.07002 (testimony #11354 and #11355).

Senator K. Roers moves to **ADOPT AMENDMENT 21.0222.07002**
Senator Hogan seconded.

Voice Vote – Motion passed

Senator K. Roers moves **DO PASS, AS AMENDED.**
Senator Hogan seconded.

Senators	Vote
Senator Judy Lee	Y
Senator Kristin Roers	Y
Senator Howard C. Anderson, Jr.	Y
Senator David A. Clemens	Y
Senator Kathy Hogan	Y
Senator Oley Larsen	Y

The motion passed 6-0-0

Senator K. Roers will carry HB 1118.

Additional written testimony: N/A

Madam Chair Lee closed the discussion on HB 1118 at 11:38 a.m.

Justin Velez, Committee Clerk

April 5, 2021

SK
1002
415

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1118

Page 1, line 1, after "37-17.1-05" insert "and a new section to chapter 54-03"

Page 1, line 2, after "orders" insert "and permitting a virtual meeting of the legislative management and a virtual session of the legislative assembly"

Page 1, line 17, after "37-17.1" insert "and the governor consents to the order"

Page 1, line 19, after "emergency" insert "unless terminated earlier pursuant to chapter 37-17.1"

Page 1, line 22, overstrike "may" and insert immediately thereafter "shall"

Page 2, line 12, remove "declared"

Page 2, line 12, after "is" insert "declared and"

Page 2, line 16, remove "receiving the request from"

Page 2, line 17, after "management" insert "sends a request to the governor"

Page 2, line 19, replace "received by" with "sent to"

Page 2, line 20, remove "receiving"

Page 2, line 20, after "management" insert "was sent"

Page 2, line 22, after the underscored period insert "If the legislative assembly meets to address a declared state of disaster or emergency, the legislative assembly by concurrent resolution may terminate, extend, or modify the state of disaster or emergency."

Page 3, line 5, after the underscored comma insert "if a state of disaster or emergency relating to public health is declared and in effect,"

Page 3, line 6, replace "a" with "the"

Page 3, line 7, after "emergency" insert "relating to public health"

Page 3, after line 7, insert:

"**SECTION 4.** A new section to chapter 54-03 of the North Dakota Century Code is created and enacted as follows:

Virtual session of the legislative management and legislative assembly during emergency or disaster.

1. If the legislative management meets to vote on whether the legislative management should request the governor call a special session of the legislative assembly, the legislative management may use any technology or electronic means available to conduct meetings and transact legislative business.

2. If the governor calls a special session of the legislative assembly to address a state of emergency or disaster or if the legislative assembly reconvenes to address a state of emergency or disaster, the legislative assembly may use any technology or electronic means available to conduct meetings and transact legislative business.
3. For purposes of section 7 of article IV of the Constitution of North Dakota, a meeting of the legislative assembly which occurs under this section is deemed to have occurred at the seat of the government, and all actions taken during the meeting have the same legal effect as if the members of the legislative assembly were physically present at the seat of government."

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1118, as engrossed: Human Services Committee (Sen. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1118 was placed on the Sixth order on the calendar.

Page 1, line 1, after "37-17.1-05" insert "and a new section to chapter 54-03"

Page 1, line 2, after "orders" insert "and permitting a virtual meeting of the legislative management and a virtual session of the legislative assembly"

Page 1, line 17, after "37-17.1" insert "and the governor consents to the order"

Page 1, line 19, after "emergency" insert "unless terminated earlier pursuant to chapter 37-17.1"

Page 1, line 22, overstrike "may" and insert immediately thereafter "shall"

Page 2, line 12, remove "declared"

Page 2, line 12, after "is" insert "declared and"

Page 2, line 16, remove "receiving the request from"

Page 2, line 17, after "management" insert "sends a request to the governor"

Page 2, line 19, replace "received by" with "sent to"

Page 2, line 20, remove "receiving"

Page 2, line 20, after "management" insert "was sent"

Page 2, line 22, after the underscored period insert "If the legislative assembly meets to address a declared state of disaster or emergency, the legislative assembly by concurrent resolution may terminate, extend, or modify the state of disaster or emergency."

Page 3, line 5, after the underscored comma insert "if a state of disaster or emergency relating to public health is declared and in effect."

Page 3, line 6, replace "a" with "the"

Page 3, line 7, after "emergency" insert "relating to public health"

Page 3, after line 7, insert:

"SECTION 4. A new section to chapter 54-03 of the North Dakota Century Code is created and enacted as follows:

Virtual session of the legislative management and legislative assembly during emergency or disaster.

1. If the legislative management meets to vote on whether the legislative management should request the governor call a special session of the legislative assembly, the legislative management may use any technology or electronic means available to conduct meetings and transact legislative business.
2. If the governor calls a special session of the legislative assembly to address a state of emergency or disaster or if the legislative assembly reconvenes to address a state of emergency or disaster, the legislative

assembly may use any technology or electronic means available to conduct meetings and transact legislative business.

3. For purposes of section 7 of article IV of the Constitution of North Dakota, a meeting of the legislative assembly which occurs under this section is deemed to have occurred at the seat of the government, and all actions taken during the meeting have the same legal effect as if the members of the legislative assembly were physically present at the seat of government."

Renumber accordingly

21.0222.07002

FIRST ENGROSSMENT

Sixty-seventh
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1118

Introduced by

Representatives Devlin, Becker, Bellew, Delzer, Pollert, M. Ruby, Vigesaa, Weisz

Senator Heckaman

A BILL for an Act to create and enact a new subsection to section 37-17.1-05 and a new section to chapter 54-03 of the North Dakota Century Code, relating to the governor's authority to issue executive orders and permitting a virtual meeting of the legislative management and a virtual session of the legislative assembly during a declared disaster or emergency; to amend and reenact subsection 12 of section 23-01-05 and subsection 3 of section 37-17.1-05 of the North Dakota Century Code, relating to the authority of the state health officer and the gubernatorial declaration of disaster or emergency; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 12 of section 23-01-05 of the North Dakota Century Code is amended and reenacted as follows:

12. ~~Issue any orders~~ a written order relating to ~~a disease control measures-~~ deemed measure necessary to prevent the spread of a communicable disease. ~~Disease~~ A disease control ~~measures~~ measure may include a special immunization activities activity and decontamination ~~measures~~ measure. ~~Written orders~~
 - a. The state health officer shall limit a written order issued under this section to the geographical area affected by the communicable disease. The state health officer may not issue a statewide order under this section unless the governor has declared a statewide disaster or emergency under chapter 37-17.1 and the governor consents to the order. The statewide order is limited in duration to the duration of the declared disaster or emergency unless terminated earlier pursuant to chapter 37-17.1.
 - b. A written order issued under this section ~~shall have~~ has the same effect as a physician's standing medical order.

c. The state health officer ~~may~~shall apply to the district court in a judicial district ~~wherein which~~ a communicable disease is present for an injunction canceling ~~a~~ public ~~event~~event or closing ~~places~~a place of business. On application of the state health officer showing the necessity of ~~such~~the cancellation, the court may issue an ex parte preliminary injunction, pending a full hearing.

SECTION 2. AMENDMENT. Subsection 3 of section 37-17.1-05 of the North Dakota Century Code is amended and reenacted as follows:

3. A disaster or emergency must be declared by executive order or proclamation of the governor if the governor determines a disaster has occurred or a state of emergency exists. The

a. ~~Except as provided in subdivision b, the state of disaster or emergency shall~~continue~~continues~~ until the governor determines that the threat of an emergency has passed or the governor determines the disaster has been dealt with to the extent that emergency conditions no longer exist, whichever occurs first.

b. ~~If a declared state of disaster or emergency relating to public health is declared and in effect and the legislative assembly is not in session, the legislative management may meet to vote on whether the legislative management should request the governor call a special session of the legislative assembly. If the governor does not call a special session within seven days after receiving the request from the legislative management~~ sends a request to the governor, the declared state of disaster or emergency relating to public health terminates thirty days after the request from the legislative management was received by~~sent to the governor. If the governor calls a special session within seven days after receiving the request from the legislative management was sent, the special session must be held within fifteen days of the governor's call for a special session. If the legislative assembly meets to address a declared state of disaster or emergency, the legislative assembly by concurrent resolution may terminate, extend, or modify the state of disaster or emergency.~~

c. The legislative assembly by concurrent resolution may terminate a state of disaster or emergency at any time.

d. All executive orders or proclamations issued under this subsection must indicate the nature of the disaster or emergency, the area or areas threatened, the conditions ~~which~~that have brought it about or which make possible termination of the state of disaster or emergency. An executive order or proclamation must be disseminated promptly by means calculated to bring its contents to the attention of the general public, unless the circumstances attendant upon the disaster or emergency prevent or impede such dissemination, and it must be ~~promptly~~ filed promptly with the department of emergency services, the legislative council, the secretary of state, and the county or city auditor of the jurisdictions affected.

SECTION 3. A new subsection to section 37-17.1-05 of the North Dakota Century Code is created and enacted as follows:

Notwithstanding subsection 3, if a state of disaster or emergency relating to public health is declared and in effect, the governor may not issue an executive order under this section unless the executive order specifically addresses the mitigation of ~~a~~the declared state of disaster or emergency relating to public health.

SECTION 4. A new section to chapter 54-03 of the North Dakota Century Code is created and enacted as follows:

Virtual session of the legislative management and legislative assembly during emergency or disaster.

1. If the legislative management meets to vote on whether the legislative management should request the governor call a special session of the legislative assembly, the legislative management may use any technology or electronic means available to conduct meetings and transact legislative business.

2. If the governor calls a special session of the legislative assembly to address a state of emergency or disaster or if the legislative assembly reconvenes to address a state of emergency or disaster, the legislative assembly may use any technology or electronic means available to conduct meetings and transact legislative business.

3. For purposes of section 7 of article IV of the Constitution of North Dakota, a meeting of the legislative assembly which occurs under this section is deemed to have occurred at the seat of the government, and all actions taken during the meeting have the same

1 legal effect as if the members of the legislative assembly were physically present at
2 the seat of government.

3 **SECTION 5. EMERGENCY.** This Act is declared to be an emergency measure.

21.0222.07002
Title.

Prepared by the Legislative Council staff for
Senator K. Roers

April 5, 2021

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1118

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Renumber accordingly