

2021 HOUSE POLITICAL SUBDIVISIONS

HB 1457

2021 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Room JW327B, State Capitol

HB 1457
2/4/2021

Relating to local disasters or emergencies

Chairman Dockter: (11:00). Opened the hearing.

Representatives	
Representative Jason Dockter	P
Representative Brandy Pyle	P
Representative Mary Adams	P
Representative Claire Cory	P
Representative Sebastian Ertelt	P
Representative Clayton Fegley	P
Representative Patrick Hatlestad	P
Representative Mary Johnson	P
Representative Lawrence R. Klemin	P
Representative Donald Longmuir	P
Representative Dave Nehring	P
Representative Marvin E. Nelson	P
Representative Luke Simons	P
Representative Nathan Toman	P

Discussion Topics:

- Seven-day effective period

Rep. Becker: (11:02). Introduced the bill. Testimony #5516.

Mary Senger, Emergency Manager for Burleigh County and Emmons County: In opposition, testimony # 5518.

Donnell Preskey, ND Association of Counties: (11:11) In opposition, testimony #5514.

Stephanie Dassinger, ND League of Cities: In opposition, no written testimony.

Rep. Longmuir: Moved amended 21.0926.03001.

Rep. Adams: Second the motion

Voice vote carried.

Rep. Longmuir: Do pass as amended. Rescind motion

Rep. Nelson: Further amend to go to 45 days

Vice Chairman Pyle: Second the motion.

Voice vote failed.

Rep. Longmuir: Made a motion do pass as amended.

Rep. Hatlestad: Second the motion.

Representatives	Vote
Representative Jason Dockter	Y
Representative Brandy Pyle	N
Representative Mary Adams	N
Representative Claire Cory	Y
Representative Sebastian Ertelt	Y
Representative Clayton Fegley	N
Representative Patrick Hatlestad	Y
Representative Mary Johnson	N
Representative Lawrence R. Klemin	Y
Representative Donald Longmuir	Y
Representative Dave Nehring	Y
Representative Marvin E. Nelson	N
Representative Luke Simons	Y
Representative Nathan Toman	Y

Roll call vote 9-5-0

Rep. Ertelt: Will carry the bill.

Additional written testimony:

Ben Gate #5364.

Chairman Dockter: (11:15). Closed the hearing.

Carmen Hickle, Committee Clerk

Dr 2/1/21
1081

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1457

Page 1, line 12, remove "consents to a longer"

Page 1, line 13, replace "period not exceeding fifteen days from the date the order was issued"
with "extends the order until the next regularly scheduled meeting"

Page 1, line 15, replace "for subsequent periods not exceeding fifteen days each" with "until the
next regularly scheduled meeting. An order under this subsection may not extend for
more than thirty-one days from the date the order was issued"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1457: Political Subdivisions Committee (Rep. Dockter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (9 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). HB 1457 was placed on the Sixth order on the calendar.

Page 1, line 12, remove "consents to a longer"

Page 1, line 13, replace "period not exceeding fifteen days from the date the order was issued" with "extends the order until the next regularly scheduled meeting"

Page 1, line 15, replace "for subsequent periods not exceeding fifteen days each" with "until the next regularly scheduled meeting. An order under this subsection may not extend for more than thirty-one days from the date the order was issued"

Renumber accordingly

21.0926.03001

Sixty-seventh
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1457

Introduced by

Representative Becker

- 1 A BILL for an Act to amend and reenact section 37-17.1-10 of the North Dakota Century Code,
2 relating to local disasters or emergencies.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 37-17.1-10 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **37-17.1-10. Local disasters, mandatory evacuations, or emergencies.**

- 7 1. Unless so declared in accordance with the provisions of subsection 4 of section
8 37-17.1-05, a local disaster, emergency, or mandatory evacuation order may be
9 declared only by the principal executive officer of the county or city. ~~#A local disaster,~~
10 ~~emergency, or mandatory evacuation order may not be continued or renewed for a~~
11 ~~period in excess of~~ be in effect for a period of more than seven days except by or with
12 ~~the consent of, unless~~ the governing board of the county or city ~~consents to a longer~~
13 ~~period not exceeding fifteen days from the date the order was issued~~ extends the order
14 until the next regularly scheduled meeting. Upon the expiration of an order issued
15 under this section, the governing body of the county or city may reauthorize the order
16 ~~for subsequent periods not exceeding fifteen days each~~ until the next regularly
17 scheduled meeting. An order under this subsection may not extend for more than
18 thirty-one days from the date the order was issued. Any order or proclamation
19 declaring a local disaster, emergency, or mandatory evacuation must be given prompt
20 and general publicity and must be filed promptly with the county or city auditor.
- 21 2. The effect of a declaration of a local disaster or emergency is to activate the response
22 and recovery aspects of any and all applicable local disaster or emergency operational
23 plans and to authorize the furnishing of aid and assistance thereunder.

HB 1457 Testimony
Political Subdivisions Committee
February 4, 2021

By: Mary Senger, Burleigh County Emergency Manager

Chairman Dockter and members of the Political Subdivisions Committee, my name is Mary Senger, Emergency Manager for Burleigh County, and I'm recommending an amendment to HB 1457 as introduced.

Local jurisdictions should ratify their local declarations on a more frequent basis to discuss the current status, review necessary changes, and further educate their community. I would offer an amendment to the proposed verbiage "...the governing body of the county or city may reauthorize the order for subsequent periods not exceeding fifteen days each" to "periods not exceeding forty-five days each". Many local jurisdictions convene on a monthly basis and would certainly fall within this time period.

Local declarations are required to access the local jurisdiction's emergency reserve fund to pay for emergency resources for response, and recovery. Recovery period is often longer than response. The immediate threat is stabilized; however, recovery may run simultaneously and require excessive time and resources—a change to normal services provided by local jurisdictions to their communities.

It is not uncommon for a disaster to last more than fifteen days. Locally, I offer previous declarations: flood, drought, severe summer and winter weather, and water emergencies.

Again, I propose amending "fifteen days" to a minimum of forty-five-day periods for local jurisdictions, and I'm available to answer any questions you may have.

Testimony Prepared for the
House Political Subdivisions
February 4th, 2021
By: Donnell Preskey, NDACo



RE: Opposition on HB 1457 – Length of time to extend emergencies

Chairman Dockter and committee members, I'm Donnell Preskey with the North Dakota Association of Counties. NDACo represents North Dakota's 53 counties. We speak today in opposition to HB 1457 as written but offer a suggested amendment, which would change our position on this bill.

This bill seeks to shorten the length of time a local disaster, emergency or mandatory evacuation orders may be in effect. Specifically, it says these orders may not exceed 15 days from when the order is issued without being reauthorized.

This creates some logistical, burdensome issues for our counties. As 20 counties hold meetings only once a month, they would need to hold special meetings to reauthorize. NDACo is recommending a small change to this bill by increasing the days from 15 to 45 days. This would take into consideration those commissions that only meet once a month and allow them to take care of this business during regular scheduled meetings. This in turn would also address the financial burden of holding additional meetings along with the commissioner's additional time away from their full-time jobs.

I want to stress, except for the COVID-19 pandemic, disasters and emergency orders start and finish at the local level. A large majority of our county disaster and emergency orders extend for a lengthy amount of time – 1 to 2 years. These disasters or emergencies are declared to address:

- Flood emergencies
- Snow emergencies
- Fire declarations – linked to fire index (goes "on" and "off" depending on fire index)
- Drought declarations
- Disaster declarations (Northwood Tornado)

The main reason for declaring these disasters or emergencies is to leverage FEMA funds. Once declared at the local level, if the damage meets a certain threshold, the state can declare it an emergency and forward the declaration to the President for his consideration of a Presidential declaration. In most cases, the emergency is continued until the damage has been repaired or the emergency situation no longer exists.

House Political Subdivisions Committee | Chairperson: Representative Jason Dockter
HB 1457

Thursday January 4, 2021 | 11:00am

Chairman Dockter, members of the committee, for the record, my name is Ben Gates, and I serve as the Assistant Emergency Manager in Traill County. I am representing Traill County on behalf of our Director of Emergency Management, and our Board of County Commissioners. Unfortunately, I am not able to be there in person and am providing this testimony in written format only. Today, I offer this testimony in opposition to HB 1457 as it is currently written.

HB 1457 specifically relates to the timing of the review of disaster declarations. Currently, there is no timing of review of disaster declarations at the local level. There is no doubt that an emergency or mandatory evacuation order should be reviewed from time to time by the local governing board. Requiring governing boards to meet every 15 days to discontinue or reauthorize a declaration is somewhat burdensome to governing boards that only meet once per month and even those like Traill County that meet twice per month.

I would like to give some background on disaster declarations and how these function on the local level. Disasters start and end at the local level. In the beginning of the disaster, the local governing board, whether the City or County, reviews the situation and a recommendation is provided to the governing board whether to declare a disaster. If this disaster is affirmed or declared by the local governing board, the declaration is forwarded to the North Dakota Department of Emergency Services (NDDDES) through the County or City Emergency Manager for further situational awareness as well as initiating the process of a possible State disaster declaration. Once the State declares a disaster, the request is forwarded on to FEMA through the FEMA Region 8 office in Denver, CO and then to the National Office in Washington, DC where the President either signs in agreement of the disaster declaration or denies it. If the disaster is Presidentially Declared, then the process begins of FEMA working with the Local governments that originally declared the disaster through NDDDES. The initial response to the disaster is usually completed by the time the State and the Federal disasters are declared. However, there is still more that is involved. The disaster does not end on the local level until the recovery phase of the disaster is complete which can be anywhere from 1 week to 3 years or even longer after the initial disaster declaration. Federal reimbursement on the local level is contingent upon the continued extension of the local disaster declaration.

Local disaster declarations are made, primarily, to allow for the access to the local Emergency Fund. This allows the local jurisdictions the ability to pay for items related to the disaster. This Fund is also where funds are distributed and reimbursed throughout the FEMA reimbursement process. Removal of the local disaster declaration removes the access to this funding and the reimbursements that are provided by FEMA during a disaster.

The point is that disasters start and end on the local level and only end once the recovery phase is complete. We have steadily experienced more and longer-term disasters with more damage and longer times to stabilize and recover. This bill, as written, in essence peels away the local control by mandating that reviews of these local decisions be made every 15 days, outside of the normal local decision-making meetings.

Declarations and other emergency orders; however, should be reviewed from time to time. I stand in support of some type of amendment that would increase this timeframe for review of a disaster declaration from every 15 days to every 45 days with full control to further extend or end the declaration to remain at the local level. This amendment would provide for each local jurisdiction to meet at their normally scheduled meetings to determine the effects of the disaster on the local level and will allow for the local control to remain at the local level.

Thank you, Mr. Chairman and committee members and I would look forward to answering any questions you may have. Thank you.

Ben Gates, Traill County Assistant Emergency Manager
Cell: 701-270-1738
bgates@nd.gov

2021 SENATE POLITICAL SUBDIVISIONS

HB 1457

2021 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Sakakawea, State Capitol

HB 1457
3/25/2021

A BILL for an Act to amend and reenact section 37-17.1-10 of the North Dakota Century Code, relating to local disasters or emergencies.

Chairman Burckhard opened the hearing on HB 1457 at 11:14 a.m. Members present: Burckhard, Anderson, Lee, Larson, Kannianen, Oban, Heitkamp.

Discussion Topics:

- Flood emergencies
- Emergency declaration length
- Federal emergency coverage
- Citizen complaints
- Local control

[11:14] Representative Rick Becker, District 7. Introduced HB 1457.

[11:17] Donnell Presky, ND Association of Counties. Provided testimony #10709 in opposition and proposed amendment (testimony #10708).

[11:25] Stephanie Dassinger, ND League of Cities. Provided oral testimony in opposition.

[11:27] Cody Schulz, Director of Homeland Security, Deputy Director, Department of Emergency Services. Provided neutral testimony #10692.

Senator Lee moves to **ADOPT AMENDMENT 21.0926.04001** proposed by Donnell Presky.

Senator Anderson seconded.

Roll Call Vote 7-0-0 motion passed

Senator Lee moves **DO NOT PASS** as amended.

Senator Kannianen seconded.

Roll Call Vote 6-1-0. Motion passed.

Senator Burckhard will carry HB 1457.

Senators	Vote
Senator Randy A. Burckhard	Y
Senator Howard C. Anderson, Jr.	Y
Senator Jason G. Heitkamp	Y
Senator Jordan Kannianen	Y
Senator Diane Larson	Y
Senator Judy Lee	Y
Senator Erin Oban	Y

Additional written testimony: (2)

Mitchell S. Sanderson, Park River Resident. Written testimony #9872 in favor.

Daniel Gaustad, City Attorney, City of Grand Forks. Written testimony #9905 in opposition.

Chairman Burckhard closed the hearing at 11:33 a.m.

Patricia Lahr, Committee Clerk

Senators	Vote
Senator Randy A. Burckhard	Y
Senator Howard C. Anderson, Jr.	Y
Senator Jason G. Heitkamp	N
Senator Jordan Kannianen	Y
Senator Diane Larson	Y
Senator Judy Lee	Y
Senator Erin Oban	Y

March 25, 2021

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3/25

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1457

Page 1, line 15, remove "An order under this subsection may not extend"

Page 1, line 16, remove "for more than thirty-one days from the date the order was issued"

Page 1, after line 22, insert:

"3. Notwithstanding section 1, a burn ban order based on changes to a federal or state recognized fire index and issued pursuant to section 3717.110.1 is not subject to time limitations."

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1457, as engrossed: Political Subdivisions Committee (Sen. Burckhard, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO NOT PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB
1457 was placed on the Sixth order on the calendar.

Page 1, line 15, remove ". An order under this subsection may not extend"

Page 1, line 16, remove "for more than thirty-one days from the date the order was issued"

Page 1, after line 22, insert:

"3. Notwithstanding section 1, a burn ban order based on changes to a
federal or state recognized fire index and issued pursuant to section 37-
17.110.1 is not subject to time limitations."

Renumber accordingly

Testimony Prepared for the
Senate Political Subdivisions
 March 18th, 2021
 By: Donnell Preskey, NDACo



RE: Opposition on HB 1457 – Length of time to extend emergencies

Chairman Burckhard and committee members, I'm Donnell Preskey with the North Dakota Association of Counties. NDACo represents North Dakota's 53 counties. We speak today in opposition to HB 1457 as written and offer an amendment for your consideration.

This bill seeks to shorten the length of time local disaster, emergency or mandatory evacuation orders may be in effect. Specifically, it says these orders need to be reconsidered at every regularly scheduled board meeting to be renewed.

NDACo opposed HB 1457 when it was introduced as it sought to have counties reconsider these orders every 15 days. This is problematic as 20 counties hold meetings only once a month. The House committee amended the bill to require counties to renew at next regular scheduled meeting. Counties believe this change is still overly burdensome and unnecessary.

I want to stress, except for the COVID-19 pandemic, disasters and emergency orders **start and finish at the local level**. A large majority of our county disaster and emergency orders extend for a lengthy amount of time – 1 to 2 years. These disasters or emergencies are declared to address:

- Flood emergencies
- Snow emergencies
- Fire declarations – linked to fire index (goes "on" and "off" depending on fire index)
- Drought declarations
- Disaster declarations (Northwood Tornado)

The main reasons for declaring these disasters or emergencies is to open the local emergency reserve fund and pursue FEMA funds. Once declared at the local level, if the damage meets a certain threshold, the state can declare it an emergency and forward the declaration to the President for his consideration of a Presidential declaration. In most cases, the emergency is continued until the damage has been repaired or the emergency situation no longer exists.

Mr. Chairman, NDACo would like to suggest an amendment to this bill.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1457

Page 1, after line 22 insert:

"3. Notwithstanding section 1, burn ban orders based on changes to a federal or state recognized fire index and issued pursuant to section 37-17.1-10.1 are not subjected to any time limitations."

Let me further explain why this amendment is necessary. When dry conditions arise, like we are experiencing in many areas of our state currently, counties will issue a fire emergency. I have attached the current fire emergency that has been declared in McKenzie County for your review. These fire emergencies and burn bans are tied to the North Dakota Rangeland Fire Index.

1. County declares fire emergency/burn ban
2. County communicates that information to DES
3. DES updates the county emergency on the statewide map
4. Information is found at ndresponse.gov website
5. Counties link their burn ban info to the ndresponse.gov website

In most cases, when a county declares a fire emergency/burn ban the burn ban turns “on” and “off” depending on the fire index. So, while McKenzie County declared a fire emergency March 2nd – if that county would get a nice rainfall and the fire index went to the low category, the burn ban would no longer be in place for that day.

We would also request an amendment to address a second concern that an emergency order can not last more than thirty-one days between renewals. Given that some counties and cities meet only once per month, this provision may still require special meetings to stay in compliance. For example, if an entity meets on the second Tuesday of every month, there would have been four instances since the beginning of the COVID-19 disaster that would have required a special meeting because the time between meetings was thirty-five days.

Therefore, we are asking for **beginning on line 15 remove “An order under this subsection may not extend for more than thirty-one days from the date the order was issued.”** This sentence is confusing and unnecessary. If you do intend to restrict the extension, 35 days may be a better fit.

Mr. Chairman, working through this example with the fire emergency – illustrates how there are unforeseen complications with this legislation. Counties do not see a need for HB 1457 and would urge you to **adopt the amendments** but give HB 1457 a **Do Not Pass** Recommendation.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1457

Page 1, after line 22 insert:

“3. Notwithstanding section 1, burn ban orders based on changes to a federal or state recognized fire index and issued pursuant to section 37-17.1-10.1 are not subjected to any time limitations.”

Page 1, line 15, remove “An order under this subsection may not extend”

Page 1, line 16, remove “for more than thirty-one days from the date the order was issued.”

Renumber accordingly

Testimony – HB 1457
Senate Political Subdivisions Committee
March 25, 2021
By Cody Schulz
Director, Division of Homeland Security
Deputy Director, Department of Emergency Services

Chairman Burckhard and members of the Senate Political Subdivisions Committee, my name is Cody Schulz. I am the Director of the Homeland Security and Deputy Director of the Department of Emergency Services (DES). I offer this testimony to ask for two adjustments to HB 1457.

I believe the intention of this bill is good. It requires of both our public safety officials and elected officials a consistent analysis of the environment. As government officials we must ensure that we are communicating the best and most current threat environment, and a review of an emergency or disaster declaration at every regular meeting should accomplish this without too much administrative burden.

The first adjustment we respectfully ask you to consider is for emergencies and disasters related to fire. In practice, and most years, Counties declare a fire emergency in late spring or early summer and link burn ban restrictions to the National Fire Danger Rating System Index. This index is updated daily and published on the NDRresponse website. Most of these County emergency declarations prohibit burning on days when the index is in High, Very High, or Extreme.

Secondly, another provision that causes concern is that an emergency order can not last more than thirty-one (31) days between renewals. Given that some Counties and Cities meet only once per month, this provision may still require special meetings to stay in compliance. For example, if an entity meets on the second Tuesday of every month, there would have been four (4) instances since the beginning of the COVID-19 disaster that would have required a special meeting because the time between meetings was thirty-five (35) days.

HB 1457, with these considerations, would strike a balance between frequent assessments and adjustments of emergency and disaster declarations while ensuring a level of consistency in process and communication with the public.

On behalf of the Department of Emergency Services, I respectfully ask that these changes be considered.

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

Senator,

This bill is needed.

Walsh county put a mask mandate on for 2 months without any real danger in Walsh and without following the science!

Our masks that are NOT N95 or P100 or the like stop little to nothing they are nothing but a feel-good sensation when you are using one.

Thank you,

Mr. Mitchell S. Sanderson

255 N. 4th St.
PO Box 5200
Grand Forks, ND 58206-5200



City of Grand Forks
(701) 746-4636

TESTIMONY ON HOUSE BILL 1457

Senate Political Subdivisions Committee

March 18, 2021

Daniel L. Gaustad, City Attorney, City of Grand Forks, ND

Chairman Burckhard and members of the Senate Political Subdivisions Committee, my name is Daniel L. Gaustad and I am the City Attorney for the City of Grand Forks. I want to thank you for the opportunity to provide testimony and express the City of Grand Forks' opposition to HB 1457.

The City of Grand Forks, like many cities in North Dakota, relies on the ability of the Mayor, as the executive officer, to take action through executive orders in the time of local emergencies. This includes not only declaration of emergencies like those issued to aid in combating the current pandemic, but also executive orders to combat natural disasters like the 1997 flood in Grand Forks. As it is currently drafted, the proposed amendment to N.D.C.C. § 37-17.1-10 places additional hurdles in front of political subdivisions, like the City of Grand Forks, during the times of a local disaster or emergency and precludes the exercise of local control over local disasters and emergencies.

Rather than permitting political subdivisions to focus on the local disaster or emergency at hand, the amendments to N.D.C.C. § 37-17.1-10 require reauthorization at every regularly scheduled meeting of the governing body to extend the emergency order declaration. Thus, as amended, N.D.C.C. § 37-17.1-10 could result in an inadvertent lapse of an emergency declaration – and the unintended consequences from such a lapse – during a time the political subdivision is attempting to mitigate and address the emergency. The City of Grand Forks is opposed to this amendment as it needless adds an additional step in the process to combat a local emergency and limits local authority and control.

Accordingly, the City of Grand Forks respectfully asks for a DO NOT PASS for HB 1457.