

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2081

2001 SENATE JUDICIARY

SB 2081

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2081

Senate Judiciary Committee

☐ Conference Committee

Hearing Date January 16, 2001

Tape Number	Side A	Side B	Meter #
1		X	36.4-54.0
2	X		0.0-5.9
Committee Clerk Signature			

Minutes: SENATOR TRAYNOR opened the hearing on SB 2081: A BILL FOR AN ACT TO AMEND AND REENACT SUBDIVISION A OF SUBSECTION 3 OF SECTION 12.1-32-08 AND SECTION 29-07-01.1 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO APPLICATION FEES FOR INDIGENT DEFENSE SERVICES, REIMBURSEMENT OF INDIGENT DEFENSE COSTS AND EXPENSES, AND CREATION OF AN INDIGENT DEFENSE ADMINISTRATION FUND; AND TO PROVIDE FOR A CONTINUING APPROPRIATION.

JIM GANJE, staff attorney Office of State Court Administrator, testifies for SB 2081.

(Testimony attached)

SENATOR TRAYNOR how was the fiscal note determined?

JIM GANJE Guess work. We looked at # of assignments where criminal cases have been assigned counsel. We charged a 25% to costs. Recovery of % ranges from 10-35%. We really won't know until it starts.

Page 2

Senate Judiciary Committee

Bill/Resolution Number SB 2034 7081

Hearing Date January 16th, 2001

SENATOR TRENBEATH this appears to mandate a 25 fee. Do fee only upon assignment.

JIM GANGE difficult question to answer. Criminal defense usually don't have a problem getting the application fee.

SENATOR TRENBEATH I'm not questioning the accounting process. I'm just talking about the 25 dollars if he doesn't need a counsel, which the defendant won't know.

JIM GANGE this is a provision in the language on page 2.

SENATOR TRENBEATH I agree.

JIM GANGE the court determines that defense needs council.

SENATOR TRENBEATH the court "here" is determining that he pay 25 dollars, and to me that isn't good.

SENATOR LYSINE has the supreme court taken over the indigent council payments.

JIM GANGE yes.

SENATOR LYSINE does this include the mental health?

JIM GANGE no.

JUDGE CLOVEN, from Grand Forks ND, speaks on behalf of SBA 2081. It's easy to get 25 dollars back for indigent defense.

CHARLES WHITMAN, representing city of Bismarck, testifies against 2081. (proposed amendments attached) Explains reasons for them. (meter # 1.9)

JERRY JUMSTAD, representing league of cities wanted to go on record in support of MR. WHITMAN.

SENATOR TRAYNOR CLOSED THE HEARING ON SB 2081. SENATOR NELSON

MOVES THE AMENDMENT ON SB 2081. SECONDED BY SENATOR WATNE. VOTE

INDICATED 7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING. SENATOR TRENBEATH

Page 3

Senate Judiciary Committee

Bill/Resolution Number SB ~~2034~~ 2081

Hearing Date January 16th, 2001

OFFERED AN AMENDMENT TO SB 2081 (see attached). SECONDED BY SENATOR
DEVER. VOTE INDICATED 2 YEAS, 5 NAYS, AND 0 ABSENT AND NOT VOTING.
SENATOR BERCIER MOTIONED TO DO PASS AS AMENDED. SECONDED BY
SENATOR NELSON. SENATOR WATNE VOLUNTEERED TO CARRY THE BILL.

January 16th, 2001 tape 2, meter # 5.9

FISCAL NOTE
 Requested by Legislative Council
 12/14/2000

Bill/Resolution No.: SB 2081

Amendment to:

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$171,875		
Expenditures						
Appropriations						

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

This will provide for funds to be collected from individuals who submit an application for appointed counsel. The funds would be used to help the administration of the indigent defense system and for the collection of indigent defense costs which are required to be reimbursed by indigents. Under this bill, each applicant would be required to pay an application fee of \$25 unless waived by the court.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Based on data from the first six months of the 1999-2001 biennium, it is estimated there will be 27,500 assignments in the 2001-2003 biennium. Estimating a maximum anticipated recovery of application fees from 25% of the assignments (assume 75% of application fees are waived), revenue is estimated to \$171,875 (\$6,875 x \$25).

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

N/A

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive*

budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

N/A

Name:	Keith E. Nelson	Agency:	Supreme Court
Phone Number:	328-4216	Date Prepared:	12/29/2000

PROPOSED AMENDMENTS TO SENATE BILL 2081

Page 1, line 15, replace the second "the" with "an"

Page 2, line 15, after "services." insert "For an application
for appointed defense services in the district court,"

Page 2, line 15, replace "A" with "a"

Page 2, line 16, between "The" and "court" insert "district"

Renumber accordingly

Submitted by Charlie Whitman
For the City of Bismarck

Date:
Roll Call Vote #:

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2081

Senate Judiciary Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken to Amend SB 2081 line 15, pg. 2

Motion Made By Trenbeath Seconded By Dever

Senators	Yes	No	Senators	Yes	No
Traynor, J. Chairman		X	Bercier, D.		X
Watne, D. Vice Chairman		X	Nelson, C.		X
Dever, D.	X				
Lyson, S.		X			
Trenbeath, T.	X				

Total (Yes) 2 No 5

Absent 0

Floor Assignment _____

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

Date: Jan 16, 01
Roll Call Vote #: 2

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2081

Senate Judiciary Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Amend Bill

Motion Made By Nelson Seconded By Watne

Senators	Yes	No	Senators	Yes	No
Traynor, J. Chairman	X		Bercier, D.	X	
Watne, D. Vice Chairman	X		Nelson, C.	X	
Dever, D.	X				
Lyson, S.	X				
Trenbeath, T.	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

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

Date: Jan 10/81
Roll Call Vote #: 3

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2081

Senate	Judiciary	Committee
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☐ Subcommittee on _____

or

☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Ahead

Motion Made By Berrier Seconded By Nelson

[illegible]

Total (Yes) 6 No 1

Absent 

Floor Assignment Watne

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

REPORT OF STANDING COMMITTEE (410)
January 18, 2001 3:44 p.m.

Module No: SR-08-1254
Carrier: Watne
Insert LC: 18066.0101 Title: .0200

REPORT OF STANDING COMMITTEE

SB 2081: Judiciary Committee (Sen. Traynor, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS and BE REREFERRED to the Appropriations Committee (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2081 was placed on the Sixth order on the calendar.

Page 1, line 15, replace "the" with "an"

Page 2, line 15, replace "A" with "For an application for appointed defense services in the district court, a"

Page 2, line 16, after "The" insert "district"

Renumber accordingly

2001 SENATE APPROPRIATIONS

SB 2031

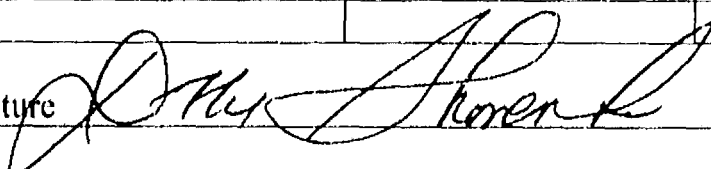
2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2081

Senate Appropriations Committee

☐ Conference Committee

Hearing Date January 29, 2001

Tape Number	Side A	Side B	Meter #
1		Indigent Defense System	38.0-44.2
Committee Clerk Signature 			

Minutes:

Senator Nething opened the hearing on SB 2081.

Jim Ganje, Staff Attorney, Supreme Court, gave a summary of SB 2081 with amendments (testimony attached).

Senator Nething: Why are we receiving this bill, the \$25.00 fee?

Jim Ganje: The fiscal note shows this; fees and recovery rate are estimated at 10-30%; imposing 25% recovery or \$171,875 per biennium. This fee revenue would be deposited in the fund and appropriated on a continued basis to the judicial branch to administer the indigent defense system.

Senator Solberg: How does this work today?

Jim Ganje: Application is filled out; the criminal defendant is reviewed by the court on financial status and attorney appointed quickly on the application process.

Senator Nething: And the waiver of these fees.

Page 2

Senate Appropriations Committee

Bill/Resolution Number SB 2091

Hearing Date January 29, 2001

Jim Ganje: The fee can be waived for the application fee depending on the criminals financial situation.

With no opposition, the hearing was closed. Tape #1, Side B, meter 44.2.

February 15, 2001 Full Committee Action (Tape 1, Side B, Meter No. 0.0 - 1.9)

Senator Nething reopened the hearing on SB2081.

Discussion. Senator Tallackson moved a DO PASS; seconded by Senator Holmberg. Roll call votes: 12 yes; 2 no; 2 absent and not voting.

Floor assignment was referred back to Senator Watne. Judiciary.

Date: 2-15-01

Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB2081

Senate Appropriations Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken As passed

Motion Made By Sen Tallackson Seconded By Sen Holmberg

Senators	Yes	No	Senators	Yes	No
Dave Nething, Chairman	✓				
Ken Solberg, Vice-Chairman					
Randy A. Schobinger					
Elroy N. Lindaas	✓				
Harvey Tallackson	✓				
Larry J. Robinson	✓				
Steven W. Tomac	✓				
Joel C. Heitkamp	✓				
Tony Grindberg	✓				
Russell T. Thane	✓				
Ed Kringstad	✓				
Ray Holmberg	✓				
Bill Bowman	✓				
John M. Andrist	✓				

Total Yes 12 No 0

Absent 2

Floor Assignment Senator Watne

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

REPORT OF STANDING COMMITTEE (410)
February 15, 2001 10:07 a.m.

Module No: SR-28-3470
Carrier: Watne
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2081, as engrossed: Appropriations Committee (Sen. Nething, Chairman)
recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING).
Engrossed SB 2081 was placed on the Eleventh order on the calendar.

2001 HOUSE JUDICIARY

SB 2081

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2081

House Judiciary Committee

☐ Conference Committee

Hearing Date 03-07-01

Tape Number	Side A	Side B	Meter #
TAPE I	x		01 to 984
Committee Clerk Signature <i>Jan Davis</i>			

Minutes: Chairman DeKrey opened the hearing on Sb 2081. Relating to application fees for indigent defense services, reimbursement of indigent defense costs and expenses and creation of an indigent defense administration fund and to provide for a continuing appropriation.

Jim Ganje: Staff Attorney, office of State Court Administrator, (see attached testimony)

Rep Delmore: What are the fees, now.

Jim Ganje: There is no set fee under current law/

Rep Delmore: The fee would be based on the ability of the defendant to pay.

Jim Ganje: This fee is different from the application fee, when they are notified they can submit whether or not they can pay. The court makes the determination.

Rep Delmore: That fund that you set up with the treasurer, is that like the fund we set up that the Appropriation Committee didn't like.

Jim Ganje: I suspect it is. It is estimated that the application fee would garner \$171,000.00 per biennium.

Page 2
House Judiciary Committee
Bill/Resolution Number SB 2081
Hearing Date 03-07-01

Rep Delmore: Those fees would be ear marked to cover this amount.

Jim Ganje: There would be two pots of money, the recoup amount goes to the general fund and the application fee would be put in a special fund.

Rep Mahoney: what about the constitutional challenge, and any the any challenges in other states.

Jim Ganje: No, there is not.

Chairman DeKrey: Are there any further questions, if not thank you for appearing, any testimony for, against or neutral. We will close the hearing on SB 2081.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2081b

House Judiciary Committee

☐ Conference Committee

Hearing Date 03-13-01

Tape Number	Side A	Side B	Meter #
TAPE I		x	1226 to 1800
Committee Clerk Signature <i>Joan Deere</i>			

Minutes: Chairman DeKrey called the committee to order on SB 2081.

DISCUSSION

COMMITTEE ACTION

Rep Wrangham moved a DO NOT PASS

DISCUSSION

Chairman DeKrey asked for a second, Rep Wrangham withdrew his DO NOT PASS motion.

Rep Disrud moved a DO PASS, seconded by Rep Delmore.

DISCUSSION

Chairman DeKrey: The clerk will call the roll on a DO PASS motion on SB 2081. The motion passes with 11 YES, 2 NO and 2 ABSENT. Carrier Rep Onstad. Vice Chr Kretschmar moved that the bill be referred to Appropriations, seconded by Rep Delmore, passed on a voice vote.

Date: 03-13-01
Roll Call Vote #: /

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB-2081

House JUDICIARY Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep Disrud Seconded By Rep Delmore

Representatives	Yes	No	Representatives	Yes	No
CHR - Duane DeKrey	✓				
VICE CHR --Wm E Kretschmar	✓				
Rep Curtis E Brekke					
Rep Lois Delmore	✓				
Rep Rachael Disrud	✓				
Rep Bruce Eckre	✓				
Rep April Fairfield					
Rep Bette Grande		✓			
Rep G. Jane Gunter	✓				
Rep Joyce Kingsbury	✓				
Rep Lawrence R. Klemin	✓				
Rep John Mahoney	✓				
Rep Andrew G Maragos	✓				
Rep Kenton Onstad	✓				
Rep Dwight Wrangham		✓			

Total (Yes) 11 No 2

Absent 2

Floor Assignment Rep Onstad

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

refer to Appro
moved Vice Chm Kretschmar
Rep Delmore - second

REPORT OF STANDING COMMITTEE (410)
March 13, 2001 12:48 p.m.

Module No: HR-43-5460
Carrier: Onstad
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2081, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS and BE REREFERRED to the Appropriations Committee (11 YEAS, 2 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2081 was rereferred to the Appropriations Committee.

2001 HOUSE APPROPRIATIONS

SB 2081

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2081

House Appropriations Committee

☐ Conference Committee

Hearing Date **March 20, 2001**

Tape Number	Side A	Side B	Meter #
I		x	3688 - 5689
Committee Clerk Signature <i>ZZ Donelan</i>			

Minutes:

HOUSE APPROPRIATIONS COMMITTEE HEARING ON SB2081.

Rep. Timm: We will open the hearing on SB2081.

Jim Gange, Staff Attorney for the Supreme Court, Office Administrator. (Followed written testimony and answered questions after his testimony)

Rep. Delzer: The indigent defense is set up in the constitution is that correct? Answer was Yes.
Is it similar in the constitution as to what other states have that have implemented this?

Mr. Gange: Yes, by both federal and state constitutional law and indigent criminal defendant is entitled representation provided at state expense.

Rep. Delzer: Has any of the fees been challenged on a constitutional basis?

Mr. Gange: The only part of constitutional challenge that was raised is in one state that considered implementing the fee and did not provide for the waiver, the waiver provision that is in this bill, and it was pointed out that it was absent that waiver, if it were the case that a

defendant could not pay the application fee and as a result of that a lawyer was not appointed that would be a constitutionally impermissible act by the state and consequently we include the waiver provision in here so that the court can waive the application fee if in fact the defendant can't pay it.

Rep. Skarphol: This indigent defense administration fund, your going to collect a \$25 fee as I understand it and your going to deposit it in this and its going to be a continuing appropriation, I understand that aspect of it. The money you collect from indigent after the fact, is it also going to go into this fund and remain there as a continuing appropriation or is going somewhere else, and is there a cap or any intention of having some type of cap on the amount of dollars in that fund.

Mr. Gange: To answer your first question, first, No , revenue collected from defendants for the cost expended on their behalf that goes into the state general fund it would not go into the special fund, as to your last question on a cap, quite frankly the commission did not consider a cap because were not sure exactly how much were going to get out of this, it might be something to consider in the future certainly.

Rep. Aarsvold: What sorts of assets are viable in terms of the indigent to collect from?

Mr. Gange: Of course there are liquid assets which is any money they might have, there is also real property, personal property assets that some criminal defendants have, they of course have all the traditional exemptions that debtors have under state law, homestead and the like. I will be frank with you that recoupment is fairly difficult and its a hard row to hoe its hard to come up with the money from these folks. There is under state law the authority for the states attorney to pursue civil recovery if in six years after counsel has provided, the states attorney has information that the criminal defendant has the where with all. Otherwise it simply becomes a matter of keeping track of the defendant and requesting that they pay.

Rep. Timm: You might have went over this but what percentage of defendants in criminal court request an attorney to be provided for?

Mr. Gange: It varies considerably, however it would say that in criminal cases particularly Felony, it runs approximately 70%

Rep. Kempenich: What comes in on drug cases and stuff like that if they have assets acquired?

Mr. Gange: That's really sort of a different ball game, there are statutes that govern forfeitures of any assets that are used in the commission of a crime, particularly drug forfeiture statutes.

Rep. Delzer: You said something about how some indigents might like the option of paying for part of this, was there any discussion on making this entirely optional instead of having to be waived by the court system.

Mr. Gange: In a sense the criminal doesn't have the option of whether they have appointed counsel, if they are indigent counsel will be appointed for them, I understand the point about the fee. I suspect that the reason that other states have not made it optional, is in fact if you do make it optional you will likely never see it.

Rep. Timm: Any other questions? Any other testimony in support of SB2081? Any opposition to SB2081? Hearing will be closed on SB2081.

House Appropriations Committee hearing on SB2081 was closed.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2081A

House Appropriations Committee

☐ Conference Committee

Hearing Date **March 21, 2001**

Tape Number	Side A	Side B	Meter #
1	x		4919 - 5820
1		x	110 - 465
Committee Clerk Signature <i>L. Danheim</i>			

Minutes:

HOUSE APPROPRIATIONS COMMITTEE ACTION ON SB2081A.

Rep. Timm: This is the bill for indigent fees that wants to charge \$25.00 for legal fees for court appointed counsel.

Rep. Byerly: I will move a do pass. Seconded by Rep. Koppleman:

Rep. Timm: Any discussion?

Rep. Delzer: I can see this coming, but I guess against the grain to me to do something that is in the constitution and we try to put a fee on it, the constitutional right to a lawyer if you don't have one if you don't have funds available, it just goes against the grain to me.

Rep. Timm: If you look at the language on page 2 the court will probably waive that fee, they have got the authority to waive the fee, so they will probably waive it just about every time anyway, so I don't know what good this will do.

Rep. Wald: If the person doesn't have money to hire a lawyer they probably in 99% of the time have money to pay the fee and it seems to me that this is an exercise in futility and I don't know why we would want to pass this thing, the constitution as Rep. Delzer said is entitled to there day in court with the court appointed attorney, the public at large will pay for it, I don't understand why this is even in here. I would move a substitute motion of DO NOT PASS. Seconded by Rep. Glassheim.

Rep. Timm: Any discussion on that?

Rep. Koppleman: Just question and I don't remember if anyone recalls from the testimony but there is a provision here on page 2 that says that the district court may extend the time for payments of the fee or waive or reduce it if the court determines that the defendant is unable to pay all or part of the fee so it is a discretionary thing and I don't remember all the rationale for having it but it looks like there is a loop hole in there if people are truly indigent.

Rep. Carlisle: If you look at the summary on the engrossed bill there is fifteen states that are doing it but they are trying to generate some revenue to defer the costs of administration.

Rep. Timm: Any other discussion? We have a motion for DO NOT PASS we will take the roll call.

(9) YES (12) NO Motion failed. Were back to our original motion for a do pass made by Rep. Byerly and seconded by Rep. Koppleman. We will call the roll for a DO PASS. (10) YES (11) NO. Motion fails.

Rep. Byerly: Moves for a DO NOT PASS, Seconded by Rep. Kempenich.

Rep. Kliniske: I just have one comment, when were talking about indigent defendants and were talking about the ability to pay for an attorney, an attorney is sometimes in excessive of \$100 per hour and there are a lot of people who cannot afford \$100 an hour to defend themselves, but

when your talking about a \$25.00 fee for their entire case, if they can't afford \$25.00 fee for there entire case which is pretty darned indigent, then the court will waive it but I do think there is some value that people have to take responsibility for their own actions, they are not there because they didn't do anything wrong in most cases, and \$25.00 for an entire case as opposed to \$100 plus an hour for an attorney is a lot to ask of someone.

Rep. Byerly: I would only point out that this fee that is going to be charged is going to be charged is going to end up in what is called an indigent defense administration fund whose only purpose is to administer the indigent defense fees, so if they were earmarked to offset the cost of the indigent defense or something.

Rep. Timm: Any other discussion? We have a motion for a DO NOT PASS we will take the roll. (16) YES (5) NO Motion passes. Rep. Delzer will carry the bill to the floor.

End of House Appropriations Committee Action on SB2081A.

Date: 3/21/01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2081

House APPROPRIATIONS Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken _____

DO NOT PASS - FAILED

Motion Made By _____

WALD

Seconded
By

GLASSHEIM

Representatives	Yes	No	Representatives	Yes	No
Timm - Chairman	✓				
Wald - Vice Chairman	✓				
Rep - Aarsvold	✓		Rep - Koppelman		✓
Rep - Boehm		✓	Rep - Martinson		✓
Rep - Byerly		✓	Rep - Monson		✓
Rep - Carlisle		✓	Rep - Skarphol	✓	
Rep - Delzer	✓		Rep - Svedjan	✓	
Rep - Glassheim	✓		Rep - Thoreson		✓
Rep - Gulleason		✓	Rep - Warner	✓	
Rep - Huether		✓	Rep - Wentz		✓
Rep - Kempenich		✓			
Rep - Kerzman	✓				
Rep - Kliniske		✓			

Total (Yes) 9 No 12

Absent _____

Floor Assignment _____

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

Date: 3/21/01
Roll Call Vote #: 2

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2081

House APPROPRIATIONS Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken

DO PASS

FAILED

Motion Made By

Byerly

Seconded
By

Koppelman

Representatives	Yes	No	Representatives	Yes	No
Timm - Chairman		✓			
Wald - Vice Chairman		✓			
Rep - Aarsvold		✓	Rep - Koppelman	✓	
Rep - Boehm		✓	Rep - Martinson	✓	
Rep - Byerly	✓		Rep - Monson	✓	
Rep - Carlisle	✓		Rep - Skarphol		✓
Rep - Delzer		✓	Rep - Svedjan		✓
Rep - Glassheim		✓	Rep - Thoreson	✓	
Rep - Gulleason		✓	Rep - Warner		✓
Rep - Huether	✓		Rep - Wentz	✓	
Rep - Kempenich	✓				
Rep - Kerzman		✓			
Rep - Kliniske	✓				

Total (Yes) 10 No 11

Absent _____

Floor Assignment _____

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

Date: 3/21/01
Roll Call Vote #: 3

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB2081

House APPROPRIATIONS Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken DO NOT PASS

Motion Made By BYERLY Seconded By KEMPENICH

Representatives	Yes	No	Representatives	Yes	No
Timm - Chairman	✓				
Wald - Vice Chairman	✓				
Rep - Aarsvold	✓		Rep - Koppelman		✓
Rep - Boehm	✓		Rep - Martinson	✓	
Rep - Byerly	✓		Rep - Monson	✓	
Rep - Carlisle		✓	Rep - Skarphol	✓	
Rep - Delzer	✓		Rep - Svedjan	✓	
Rep - Glassheim	✓		Rep - Thoreson		✓
Rep - Gulleeson	✓		Rep - Warner	✓	
Rep - Huether	✓		Rep - Wentz		✓
Rep - Kempenich	✓				
Rep - Kerzman	✓				
Rep - Kliniske		—			

Total (Yes) 16 No 5

Absent 0

Floor Assignment DELZER

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

Page 1, line 1, replace "convey" with "sell"

Page 1, line 2, remove ", to the city of Jamestown"

Page 1, line 5, replace "convey" with "sell" and replace "this section to the city of Jamestown, North Dakota," with "subsection 1"

Page 1, line 6, after "services" insert "and may convey the land described in subsection 2 to the city of Jamestown, North Dakota, for two hundred dollars per acre or the most recent appraised value, whichever is higher"

Page 1, line 7, replace "conveyed" with "sold"

Page 1, after line 7, insert:

"1."

Page 2, after line 5, insert:

"2."

Page 2, after line 13, insert:

"3. Sections 54-01-05.2 and 54-01-05.5 do not apply to the transfer of the land described in subsection 2."

Renumber accordingly

MESSAGE TO THE SENATE FROM THE HOUSE (MARK L. JOHNSON, CHIEF CLERK)
MR. PRESIDENT: The House does not concur in the Senate amendments to HB 1182 and the Speaker has appointed as a conference committee to act with a like committee from the Senate on:

HB 1182: Reps. Brusegaard; Nelson; Mueller

MESSAGE TO THE SENATE FROM THE HOUSE (MARK L. JOHNSON, CHIEF CLERK)
MR. PRESIDENT: The House has concurred in the Senate amendments and subsequently passed: HB 1331.

MESSAGE TO THE HOUSE FROM THE SENATE (WILLIAM R. HORTON, SECRETARY)
MR. SPEAKER: The Senate does not concur in the House amendments to SB 2102 and SB 2197 and the President has appointed as a conference committee to act with a like committee from the House on:

SB 2102: Sens. Lyson; Flakoli; Christenson

SB 2197: Sens. Lee; Wayne; D. Mathem

REPORT OF STANDING COMMITTEE

SB 2043, as engrossed: Industry, Business and Labor Committee (Rep. Berg, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (14 YEARS, 0 DAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2043 was placed on the Sixth order on the calendar.

Page 2, line 17, after "purchase" insert "for a period not to exceed thirty-six months"

Page 4, line 1, replace "Section" with "If Senate Bill No. 2251 does not become effective, section"

Page 4, overstrike line 12

Page 4, line 13, overstrike "representing a", remove "workforce training advisory board", and overstrike the comma

Page 4, line 14, remove "one member", overstrike "representing", and remove "city or county"

Page 4, line 15, remove "government", one member representing the greater North Dakota association" and overstrike ", one member"

Page 4, overstrike line 16

Page 4, line 17, overstrike "commission to operate in this state."

Page 4, line 18, remove "one member representing"

Page 4, line 19, remove "Indian tribes, and one member representing the hospital, telecommunications industry" and overstrike the period

Page 5, after line 3, insert:

"SECTION 5. AMENDMENT. If Senate Bill No. 2251 becomes effective section 54-59-07 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-59-07. Statewide-wide-area-network State information technology advisory committee. The statewide-wide-area-network State information technology advisory committee consists of the chief information officer or the officer's designee, who is a nonvoting member; the state-board-administrator director of the department of economic development and finance or the administrator's director's designee; the administrator of the chief justice of the supreme court; the commissioner of higher education or the commissioner's designee; the chairman of the information technology council of North Dakota or a designee; the director of the North Dakota workforce development council or a designee; the chairman of the educational technology council or a designee; and twelve members appointed by the governor. The governor shall appoint two members representing state agencies, one member representing a county, one member representing a city, two members representing elementary and secondary education, one member representing noncommercial public television stations licensed by the federal communications commission to operate in the state, and two members from private industry who are knowledgeable in the deployment of major technology projects. The governor's appointees from private industry serve two-year terms, and other appointees of the governor serve at the pleasure of the governor. The governor shall designate the chairman of the committee. The department shall provide staff services to the committee. Except for the commissioner of higher education and the representatives of state agencies who receive compensation for their duties as state officers or employees, members of the committee are entitled to be compensated for time spent in attendance at meetings of the committee and for other travel as approved by the chairman of the committee at the rate of sixty-two dollars and fifty cents per day and are entitled to reimbursement for their actual and necessary expenses incurred in the same manner as other state officials. The compensation and expenses are to be paid from appropriations for the department. The committee shall advise the department with respect to planning and implementation of wide-area-network services provided by the department regarding statewide information technology planning, including providing electronic government services for citizens and businesses, developing technology infrastructure to support economic development and workforce training, and developing other statewide information technology initiatives and policy."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2081, as engrossed: Appropriations Committee (Rep. Tramm, Chairman) recommends DO NOT PASS (15 YEARS, 5 DAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2081 was placed on the Fourteenth order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2088, as reengrossed and amended: Human Services Committee (Rep. Price, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (14 YEARS, 0 DAYS, 0 ABSENT AND NOT VOTING). Reengrossed SB 2088, as amended, was placed on the Sixth order on the calendar.

Page 1, replace lines 7 through 22 with:

"23-09-3-01.1. Moratorium on expansion of basic care bed capacity.

1. Except when existing beds are converted to use by a nursing facility that converts licensed nursing facility bed capacity to basic care bed capacity or the Alzheimer's and related dementia population where request for services is provided for in established under section 50-06-14.4 request for services of the facility's existing beds as basic care bed capacity or unless the applicant demonstrates to the department and to the department of human services that a need for additional basic care bed capacity exists, the department may not issue a license under this chapter for any additional

2001 TESTIMONY

SB 2081

SUMMARY OF SENATE BILL NO. 2081

Senate Bill 2081 originated as draft legislation developed by the Supreme Court's Legal Counsel for Indigents Commission. The Commission is charged by Supreme Court rule with the responsibility of reviewing the operation of the state's indigent defense contract system and the manner in which indigent defense services generally are provided.

Senate Bill 2081 would implement a practice now adopted in approximately 15 states which requires criminal defendants requesting appointed counsel services to pay an application fee. The application fees among the several states vary from as little as \$10 to a cap of \$200. Application fees for appointed counsel services have been found to be a useful method of generating revenue to help defray the cost of providing indigent defense services and, in some states, for providing additional resources to lawyers providing such services. Anecdotal evidence gathered by The Spangenberg Group, a national consulting firm specializing in indigent defense services, has also indicated that criminal defendants tend to respond favorably to the fee requirement and view the payment of the fee as giving them a stake in the appointment process. The Legal Counsel for Indigents Commission concluded after reviewing relevant background research that implementing an application fee in North Dakota would prove useful in assisting the operation of the indigent defense system and the delivery of indigent defense services. A brief summary of Senate Bill 2081 follows.

Section 1 of Senate Bill 2081 amends part of NDCC Section 12.1-32-08(3), which generally governs reimbursement of indigent defense costs as a condition of probation. The amendment provides that the reimbursement amount, typically assessed at the conclusion of the trial, would include the application fee if the fee was not paid before disposition of the case and payment of the fee was not waived by the court. This amendment is a secondary, complementary amendment to that set out in Section 2 of the bill.

Section 2 of Senate Bill 2081 is the central part of the bill. It amends NDCC Section 29-07-01.1, which generally governs the payment of indigent defense costs and the obligation of the

defendant to reimburse those costs. The amendments require that a defendant requesting appointed counsel services submit an application by which the court can determine the defendant's eligibility for appointed counsel. A non-refundable fee of \$25 would be required at the time the application is submitted. The court could extend the time for payment of the fee if considered necessary, and could waive or reduce the fee if it is determined that the defendant is unable to pay all or a part of the fee. The waiver provision is important to ensure that indigent criminal defendants are not denied their constitutional right to appointed counsel if they are, in fact, unable to pay the fee at the time the application is submitted or shortly thereafter.

The amendments further provide for the deposit of revenue generated from collected fees in a special fund - an "indigent defense administration fund" established in the state treasury. The special fund is created in a new subsection 4 to Section 29-07-01.1. All fee revenue deposited in the fund would be appropriated on a continuing basis to the judicial branch to be used for administration of the indigent defense system and collection of costs and expenses required to be reimbursed. It is tentatively, and conservatively, estimated - because it is difficult to predict actual collection rates - that imposing the application fee would generate approximately \$171,875 per biennium.

Submitted by:

Jim Ganje, Staff Attorney
Office of State Court Administrator

SUMMARY OF ENGROSSED SENATE BILL NO. 2081

Senate Bill 2081 originated as draft legislation developed by the Supreme Court's Legal Counsel for Indigents Commission. The Commission is charged by Supreme Court rule with the responsibility of reviewing the operation of the state's indigent defense contract system and the manner in which indigent defense services generally are provided.

Engrossed Senate Bill 2081 would implement a practice now adopted in approximately 15 states which requires criminal defendants requesting appointed counsel services to pay an application fee. (Amendments adopted by the Senate clarify that the application process applies only in district court.) The application fees among the several states vary from as little as \$10 to a cap of \$200. Application fees for appointed counsel services have been found to be a useful method of generating revenue to help defray the cost of administering indigent defense systems and collect costs and expenses ordered to be reimbursed. Anecdotal evidence gathered by The Spangenberg Group, a national consulting firm specializing in indigent defense services, has also indicated that criminal defendants tend to respond favorably to the fee requirement and view the payment of the fee as giving them a stake in the appointment process. The Legal Counsel for Indigents Commission concluded after reviewing relevant background research that implementing an application fee in North Dakota would prove useful in assisting the operation of the indigent defense system and the delivery of indigent defense services. A brief summary of the bill follows.

Section 1 of the bill amends part of NDCC Section 12.1-32-08(3), which generally governs reimbursement of indigent defense costs as a condition of probation. The amendment provides that the reimbursement amount, typically assessed at the conclusion of the trial, would include the application fee if the fee was not paid before disposition of the case and payment of the fee was not waived by the court. This amendment is a secondary, complementary amendment to that set out in Section 2 of the bill.

Section 2 of Engrossed Senate Bill 2081 is the central part of the bill. It amends NDCC Section 29-07-01.1, which generally governs the payment of indigent defense costs and the obligation of the defendant to reimburse those costs. The amendments require that a defendant requesting appointed counsel services submit an application by which the court can determine the defendant's eligibility for appointed counsel. A non-refundable fee of \$25 would be required at the time the application is submitted. The court could extend the time for payment of the fee if considered necessary, and could waive or reduce the fee if it is determined that the defendant is unable to pay all or a part of the fee. The waiver provision is important to ensure that indigent criminal defendants are not denied their constitutional right to appointed counsel if they are, in fact, unable to pay the fee at the time the application is submitted or shortly thereafter.

The amendments further provide for the deposit of revenue generated from collected fees in a special fund - an "indigent defense administration fund" established in the state treasury. The special fund is created in a new subsection 4 to Section 29-07-01.1. All fee revenue deposited in the fund would be appropriated on a continuing basis to the judicial branch to be used for administration of the indigent defense system and collection of costs and expenses required to be reimbursed. It is tentatively, and conservatively, estimated - because it is difficult to predict actual collection rates - that imposing the application fee would generate approximately \$171,875 per biennium.

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