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Lo Costa Rickford
Operator's Signature

10/16/83
Date

2003 HOUSE HUMAN SERVICES

HB 1414

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Salvatore Riccardi
Operator's Signature

10/16/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1414

House Human Services Committee

☐ Conference Committee

Hearing Date January 28, 2003

Tape Number	Side A	Side B	Meter #
2		x	0.0 - 46.7
Committee Clerk Signature <i>Ashley Raynor</i>			

Minutes:

Rep. Porter appeared as prime sponsor at the request of the ND Health Dept. as a bill to look at the way that we respond to bioterrorism and potential bioterrorism incidents.

Rep. Warner appeared as cosponsor appeared in support especially on the civil liberty aspects.

Tim Wiedrich, Bio Terrorism Section Chief of the ND Dept. of Health, appeared in support with written testimony.

Rep. Pollert: Page 2, lines 12 through 16, aren't you opening this up to anybody and everybody?

Answer: Types of surveillance, does open the scope of who reports.

Rep. Price: There is nothing from preventing that report right now, this just adds to the list that maybe affective from liability. Answer: That's correct.

Rep. Price: One of the section of the bill addresses local health units and readiness of all units, are they ready for this? Answer: Some have different types of resources and others don't, some in one part of the State and others in another part of the State.

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La Costa Richard
Operator's Signature

10/16/03
Date

Page 2

House Human Services Committee

Bill/Resolution Number HB 1414

Hearing Date January 28, 2003

Rep. Weisz: Page 8, line 16, How much have we lowered the standard? Answer: It is a lower standard, but not an attorney to answer.

Edward Erickson, Attorney General's Office to Answer: Clear and convincing is less than reasonable doubt.

What standard is the court using? Answer: clear and convincing.

Why did we lower the standard? Answer: To give benefit of doubt, we are trying to prevent diseases.

Mike Mullen, Assistant Attorney General to answer: Preponderance of evidence, second thing - least restricted means

Rep. Price: Rationale of 10 days vs. 3 days.

Mr. Erickson: We're talking about a large number of people, so its not spread outside the country.

Rep. Price: took the language out that had to do with the orders being effective for not more than 30 days and confinement. Where's the time limits on here for the orders under the new language? Answer: The bill before you doesn't contain a time limit. On Section 12, page 10, a person can ask to be released (petition the court) so the court could make the final decision. Questions of the committee as to who has jurisdiction on the reservation and the words "shall" or "may" and confinement. Also questions on quarantine, refugees and people not wanting treatment.

Doug Friesz, State Director of Emergency Management & Homeland Security Coordinator appeared in support with written testimony.

Dr. Larry Schuler, State Veterinarian asks to amend and take out veterinarian.

Page 3
House Human Services Committee
Bill/Resolution Number HB 1414
Hearing Date January 28, 2003

Rep. Pollert: Question on West Nile's Virus. Answer: applies to Health Dept. and not Dept. of Animal Health.

Dr. Larry Schirerly, State Epidemiologist appeared to state he supports the amendments.

No opposition.

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Jo Costa Rickford
Operator's Signature

10/16/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1414
House Human Services Committee

☐ Conference Committee

Hearing Date February 3, 2003

Tape Number	Side A	Side B	Meter #
2	x		24.2 - 38.6
Committee Clerk Signature <i>Sharon Ryznar</i>			

Minutes: Rep. Price had questions on jurisdiction on the Reservation and had the intern check into it and read it off.

Rep. Amerman feels this is a little broad and could include the flu.

Rep. Porter wasn't sure if something like the flu would qualify for a quarantine and that he's hesitant on parts of this understanding of, that it gives fairly broad powers to health districts and the Health Dept. and also aware that with the present state that we're currently in, something as small as anthrax and as large as small pox could happen and without the ability of the Dept. to move swiftly and contain those types of incidents that we put a larger population at risk. In weighing it out, with the risk and reward, if we are going to far or not.

Rep. Price had concerns with the local health officers with the local board, and what expertise they may or may not have on these types of issues to make some of these determinations. In the Eastern part of the State, a lot of single county public health units, that may only have one staff member and not a whole lot of resources to draw on.

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La Costa Richard
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10/6/03
Date

Page 2

House Human Services Committee

Bill/Resolution Number HB 1414

Hearing Date February 3, 2003

Rep. Porter asked who made up the local board? Answer: County Commission.

Rep. Price appointed a subcommittee of Porter, Kreidt and Potter to get some answers to some of the questions that have arisen and to come back with some possible amendments.

Rep. Devlin has problem with lowering the standards of preponderance of evidence being a good move for the people of North Dakota.

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Operator's Signature

Yolanda Richardson

Date

10/16/03

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1414

House Human Services Committee

☐ Conference Committee

Hearing Date February 5, 2003

Tape Number	Side A	Side B	Meter #
1		x	32.9 - 61.1
2	x		0.0 - 9.1
Committee Clerk Signature <i>Sharon Raynor</i>			

Minutes: Committee Work

Rep. Porter stated that he met with the Health Dept. and got some clarifications on several things needed. Mr. Mullen & Mr. Wiedrich are here to answer and present amendments.

Tim Wiedrich presented an amendment and spoke on the takings provision and stated it was not our intent to have the takings provision for the State. Health Dept. Regarding quarantine, isolation and emergency reporting of communicable disease, we would like additional protection in place besides quarantine & isolation for involving courts.

Mike Mullen, Assistant Attorney General, handed out written testimony (response to some questions the previously had) and explained them.

Rep Porter commented on an incident that may occur inside the reservation or inside a military base, wanted to know if there was a possibility through 1414 that we can set up out boundaries on the State of ND land rather than Sovereign land of the Military bases & Tribal Reservations just stop their entry into the State.

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10/16/03
Date

Page 2
House Human Services Committee
Bill/Resolution Number HB 1414
Hearing Date February 5, 2003

Answer: yes, in reviewing this issue I did think there would be authority to do that.

Rep. Potter made a motion to move the amendments, second by Rep. Potter. 13 - 0 - 0

Rep. Potter noted on the Civil Liberties. this would be increasing for them.

Rep. Potter made a motion that on page 2, line 7, take out "veterinarians, including", second by
Rep. Kreidt. 13 - 0 - 0

Rep. Porter made a motion for DO PASS as AMENDED, second by Rep. Potter.

10 - 3 - 0 Rep. Porter will carry the bill.

FISCAL NOTE
Requested by Legislative Council
01/21/2003

Bill/Resolution No.: HB 1414

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.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

2001-2003 Biennium			2003-2005 Biennium			2005-2007 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 bill address emergency reporting requirements of disease conditions or other information the state health officer finds probable cause to believe there is a threat affecting public health. The bill also allows the local health officer rather than the local board to order a person into confinement if there is reasonable grounds that a person or group poses a threat to public health by a written directive. It also sets out the conditions and principles of the quarantine.

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.

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.

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.

Name:	Kathy J. Albin	Agency:	Health
Phone Number:	328.4542	Date Prepared:	01/24/2003

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Operator's Signature

Date

38331.0101
Title.0200

Adopted by the Human Services Committee
February 5, 2003

VR
2/5/03

HOUSE AMENDMENTS TO HOUSE BILL NO. 1414 HS 2-5-03

Page 1, line 5, replace "paragraph" with "subdivision"

HOUSE AMENDMENTS TO HOUSE BILL NO. 1414 HS 2-5-03

Page 2, line 7, replace "Veterinarians, including the" with "The"

HOUSE AMENDMENTS TO HOUSE BILL 1414 HS 2-5-03

Page 5, after line 21, Insert:

"5. This section does not authorize the state health officer or a local public health officer to commandeer or utilize any hospital or other medical facility."

Renumber accordingly

Page No. 1

38331.0101

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La Costa Richard
Operator's Signature

10/16/03
Date

Feb 5
Date: ~~January~~ __, 2003
Roll Call Vote #:

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1414

House _____ HUMAN SERVICES _____ Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DP As Amended

Motion Made By Rep Porter Seconded By Rep. Potter

Representatives	Yes	No	Representatives	Yes	No
Rep. Clara Sue Price - Chair	✓		Rep. Sally Sandvig	✓	
Rep. Bill Devlin, Vice-Chair		✓	Rep. Bill Amerman	✓	
Rep. Robin Weisz		✓	Rep. Carol Niemeier	✓	
Rep. Vonnie Pietsch	✓		Rep. Louise Potter	✓	
Rep. Gerald Uglem	✓				
Rep. Chet Pollert		✓			
Rep. Todd Porter	✓				
Rep. Gary Kreidt	✓				
Rep. Alon Wieland	✓				

Total (Yes) 10 No 3

Absent 0

Floor Assignment Rep Porter

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

REPORT OF STANDING COMMITTEE (410)
February 6, 2003 10:58 a.m.

Module No: HR-23-1818
Carrier: Porter
Insert LC: 38331.0101 Title: .0200

REPORT OF STANDING COMMITTEE

HB 1414: Human Services Committee (Rep. Price, Chairman) recommends
AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS**
(10 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1414 was placed on the
Sixth order on the calendar.

Page 1, line 5, replace "paragraph" with "subdivision"

Page 2, line 7, replace "Veterinarians, including the" with "The"

Page 5, after line 21, insert:

"5. This section does not authorize the state health officer or a local public health officer to commandeer or utilize any hospital or other medical facility."

Renumber accordingly

2003 SENATE HUMAN SERVICES

HB 1414

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Salvatore Richard
Operator's Signature

10/6/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1414

Senate Human Services Committee

☐ Conference Committee

Hearing Date March 5, 2003

Tape Number	Side A	Side B	Meter #
1	X		2535 - end
		X	0 - 545
Committee Clerk Signature <i>Donna Kramer, Clerk</i>			

Minutes:

SENATOR JUDY LEE opened the public hearing on HB 1414 relating to disease reporting and quarantine or isolation of persons infected or potentially infected with contagious diseases.

REPRESENTATIVE TODD PORTER, of District 24, Mandan, introduced the bill. He said it came about after September 11 attacks and the other terrorist threats. House had some concerns about civil rights and some concerns about how much power we are giving to the government in these situations. ... Amendments made and passed from the House. ... (Meter # 2616 - 2804)

TIM WIEDRICH, Bioterrorism Administration Chief of the North Dakota Department of Health, testified in support of the bill. Referred to "model legislation" in which was a takings provision. Did not think this was an appropriate provision to have ... Excluded it from bill and "or utilize" be removed. ... (Written testimony) (Meter # 2824 - 3927)

SENATOR LEE: Questioned word "deidentified."

MIKE MULLEN: Term that is introduced and in the federal privacy rule.

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Operator's Signature

10/6/03
Date

Page 2

Senate Human Services Committee

Bill/Resolution Number HB 1414

Hearing Date March 5, 2003

TIM WIEDRICH: Continued discussion with the committee regarding quarantines, emergency reporting, bio-threats, steps taken, new power, who has power of seizure, restricting people, "Emergency Powers Act", controlling movements of people and means to enforce control.

(Meter # 4060 - 5295)

ARNOLD THOMAS, President of ND Healthcare, stated support amendment relative to the deletion of one reference in 1414. We supported HB 1414 on the House side and we think that it is a measure that needs to go forward with your concurrence. Encourage committee leadership to see what we can do to identify for study a resolution that is before both bodies to look at the total Emergency Powers Act of the governor. HB 1414 is outside of that, but in this time we are now living in, it might be worthwhile to review. ... (Meter # 5314 - 5500)

DOUGLAS FRIEZ, State Emergency Management Director and Homeland Security Coordinator, testified in support of the bill as amended. (Written testimony) (Meter # 5610 - 6115)

DOUGLAS FRIEZ: Questions of and answers by Mr. Friez and Tim Wiedrich regarding the State Emergency Management. (Tape 1, Side A, Meter # 6116 - end and Side B, 0 - 452)

SENATOR LEE: Mr. Mullen, would you tell me if Section 9 is HIPAA compliant?

MIKE MULLEN: For the record, yes, Section 9 is compliant. (Meter # 493)

SENATOR LEE closed the public hearing. (Meter #545)

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1414

Senate Human Services Committee

☐ Conference Committee

Hearing Date March 5, 2003

Tape Number	Side A	Side B	Meter #
1		X	2307 - 2500
Committee Clerk Signature <i>Donna Kramer, Clerk</i>			

Minutes:

SENATOR JUDY LEE opened the committee discussion on HB 1414 regarding the State Health Department and Emergency Management in the event of disease outbreaks.

SENATOR FISCHER so move on the amendment. (Meter # 2350- 2372)

SENATOR BROWN seconded the motion.

Roll call was held. 6 yeas 0 nays.

SENATOR FISCHER moved DO PASS AS AMENDED.

SENATOR POLOVITZ seconded the motion.

Roll call read. 6 yeas 0 nays.

SENATOR POLOVITZ to be the carrier. (Meter # 2500)

38331.0201
Title.0300

Adopted by the Human Services Committee
March, 5 2003

JB
3-5-3

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1414

Page 5, line 23, remove "or utilize"

Renumber accordingly

Page No. 1

38331.0201

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Yolanda Richardson
Operator's Signature

10/6/03
Date

Date: 03-05-03
Roll Call Vote #: (1)

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1414

Senate Human Services Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Move Amendment

Motion Made By Sen Fischer Seconded By Sen. Brown

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee - Chairman	✓				
Senator Richard Brown - V. Chair.	✓				
Senator Robert S. Erbele	✓				
Senator Tom Fischer	✓				
Senator April Fairfield	✓				
Senator Michael Polovitz	✓				

Total (Yes) 6 No 0

Absent _____

Floor Assignment _____

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

Date: 03-05-03
Roll Call Vote #: 2

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1414

Senate Human Services Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Do Pass as amended

Motion Made By

Sen. Fischer

Seconded By

Sen. Polovitz

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee - Chairman	✓				
Senator Richard Brown - V. Chair.	✓				
Senator Robert S. Erbele	✓				
Senator Tom Fischer	✓				
Senator April Fairfield	✓				
Senator Michael Polovitz	✓				

Total (Yes) 6 No 0

Absent

Floor Assignment

Sen. Polovitz

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

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Operator's Signature

Richard Polovitz

Date

10/6/03

REPORT OF STANDING COMMITTEE (410)
March 6, 2003 11:04 a.m.

Module No: SR-40-4075
Carrier: Polovitz
Insert LC: 38331.0201 Title: .0300

REPORT OF STANDING COMMITTEE
HB 1414, as engrossed: Human Services Committee (Sen. J. Lee, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1414
was placed on the Sixth order on the calendar.

Page 5, line 23, remove "or utilize"

Renumber accordingly

2003 HOUSE HUMAN SERVICES

CONFERENCE COMMITTEE

HB 1414

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Salvatore Riccardi
Operator's Signature

10/16/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1414

House Human Services Committee

☒ Conference Committee

Hearing Date 4-1-03

Tape Number	Side A	Side B	Meter #
1	x		0.2-14.9
Committee Clerk Signature <i>Sharon Benshaw</i>			

Minutes: Chairman Devlin; called the conference committee to order on HB 1414.

Representative Devlin, Senator Fischer, Representative Uglem, Representative Amerman,

Senator Polobitz, Senator Erbele were present.

Representative Devlin: I think utilize may not be the right word, but when we were taking testimony and discussing this what we were trying to present was someone just being able to utilize a wing of a hospital, if you are going to try and quarantine people in a hospital wing that could have some detrimental effects on the medical facilities and I think that language was in there because we couldn't utilize I think we thought that it went without saying that it was O.K. I don't think anyone had a problem with them utilizing it if the medical facility was fine with it.

Senator Fischer: I believe that was the intent of the committee that they could utilize the hospital, but they wouldn't be able to do it in the sense of commandeering and using it.

Arnold Thomas: was present to explain Section 4 on page 5.

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Yolanda Richardson
Operator's Signature

10/16/03
Date

Page 2

House Government and Veterans Affairs Committee

Bill/Resolution Number HB 1414

Hearing Date 4-1-03

Representative Uglem: made the MOTION to accede to Senate amendment and further amend that language.

Representative Amerman: SECOND the motion to accede.

VOTE: 6-YES 0-NO 0-ABSENT.

Representative Devlin: the other concern that we had was on page 6 line 10-15 talking about the temporary isolation and quarantine, the way we read this is now the local health officer may temporarily quarantine an individual. The local health officer would have the authority to quarantine the whole state of North Dakota. I don't know if that was the intent.

Representative Amerman: wouldn't you have to isolate an individual to wait for a test to come back for a short period of time?

Representative Devlin: I think we all understand what the intent was, and that was to be able to deal with something in there local area, but that is not what the language says.

Senator Fischer: If we take some of the language out then we would have no means that the local health unit could quarantine?

Representative Devlin: I think we want it in there, we want to tighten it up so the state officer can do it and the local health officer can do it within there unit, we want them both in there, but we don't think one town officer can make a decision for someone else's town.

Senator Erberle: can we deal with anything other then what's been amended ?

Representative Devlin: yes, you can you just can't hog house it.

Senator Polobitz: if you insert it somewhere in there the state or local health officer may temporarily isolate or quarantine an individual, what I'm trying to say is within their legal jurisdiction that's what I'm trying to put in there somehow.

Page 3
House Human Services Committee
Bill/Resolution Number HB 1414
Hearing Date 4-1-03

Representative Amerman: what is the jurisdiction of the local health officer?

Representative Devlin: it would depend on how the counties have it divided up.

Senator Fischer: I MOVE that we further amend with this language.

Senator Polobitz: I SECOND the motion to further amend.

VOTE: 6-YES 0-NO 0-ABSENT.

Meeting adjourned.

Sal Costa Rickford
Operator's Signature

10/16/03
Date

38331.0202
Title.0400

Adopted by the Conference Committee
April 1, 2003

House Amendments to Engrossed HB 1414 - Human Services Committee 04/02/2003

That the Senate recede from its amendments as printed on page 858 of the House Journal and page 675 of the Senate Journal and that Engrossed House Bill No. 1414 be amended as follows:

Page 5, line 23, replace "or utilize" with ". in whole or in part."

House Amendments to Engrossed HB 1414 - Human Services Committee 04/02/2003

Page 6, line 11, after "officer" insert ". within that officer's jurisdiction."

Renumber accordingly

REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE) - 420

(Bill Number) HB 1414 (, as (re)engrossed):

Your Conference Committee for HOUSE HUMAN SERVICES

For the Senate:

Rep. Devlin yes ✓✓

Rep. Uglem yes ✓✓

Rep. Amerman yes ✓✓

For the House:

Senator Fischer yes ✓✓

Senator Erbele yes ✓✓

Senator Polovitz yes ✓✓

_____ recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE FROM)

the (Senate/House) amendments on (S/HJ) page(s) 675 -- _____

_____ and place _____ on the Seventh order.

✓, adopt (further) amendments as follows, and place _____ on the Seventh order:

_____ having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

DATE: 4/1/03

CARRIER: Rep. Devlin

LC NO. _____ of amendment

LC NO. _____ of engrossment

Emergency clause added or deleted _____

Statement of purpose of amendment _____

(1 & 2) LC (3) DESK (4) COMM.

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Yolanda Richardson
Operator's Signature

10/6/03
Date

REPORT OF CONFERENCE COMMITTEE (420)
April 2, 2003 2:24 p.m.

Module No: SR-59-6556

Insert LC: 38331.0202

REPORT OF CONFERENCE COMMITTEE

HB 1414, as engrossed: Your conference committee (Sens. Fischer, Erbele, Polovitz and Reps. Devlin, Uglem, Amerman) recommends that the **SENATE RECEDE** from the Senate amendments on HJ page 675, adopt further amendments as follows, and place HB 1414 on the Seventh order:

That the Senate recede from its amendments as printed on page 858 of the House Journal and page 675 of the Senate Journal and that Engrossed House Bill No. 1414 be amended as follows:

Page 5, line 23, replace "or utilize" with ". in whole or in part."

Page 6, line 11, after "officer" insert ". within that officer's jurisdiction."

Renumber accordingly

Engrossed HB 1414 was placed on the Seventh order of business on the calendar.

2003 TESTIMONY

HB 1414

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Richard Costa
Operator's Signature

10/16/03
Date

Testimony

House Bill 1414

House Human Services Committee

January 28, 2003

2:00 p.m.

North Dakota Department of Health

Chairman Price and members of the committee, my name is Tim Wiedrich. I am the Bioterrorism Administration Section Chief of the North Dakota Department of Health, and I am here to testify in support of House Bill 1414.

Certain individuals and organizations have expressed their intent to use biological agents, chemicals and other means to harm or kill Americans and our allies. These threats are real as demonstrated by the heinous acts that occurred on September 11, 2001, the subsequent release of anthrax and the recent discovery that ricin, a deadly toxin that is easily produced and distributed, was being manufactured in an apartment in the United Kingdom.

Our nation's leaders have asked public and private medical providers to serve as a first line of defense against these threats. State health departments across the country have begun reviewing existing statutes to ensure the necessary laws are in place to defend our population against terrorist attack. The Center for Law and the Public's Health at Georgetown and Johns Hopkins universities created national model legislation for state health departments. The North Dakota Department of Health, with assistance from the North Dakota Office of the Attorney General, compared our existing law to the model legislation. Revisions to the current law were identified that are important to improve North Dakota's ability to detect and respond to these threats. House Bill 1414 contains those revisions. My testimony will highlight the major provisions.

Section 1 describes who must report reportable diseases. The section more clearly defines those who must report and has been revised to exclude people such as householders, hotelkeepers and schoolteachers. This section also creates liability protection for people making a report in good faith.

Section 2 creates a provision for the state health officer to issue a temporary order for emergency reporting of disease conditions. The state health officer's temporary order can stand for no more than 90 days. Emergency rulemaking must be initiated within 90 days if the order is to remain in effect.

Tim Wiedrich
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Section 4 does not add new powers of confinement for the state health officer, but changes local authority for confinement from the local board of health to the local health officer. This section also adds clarity to the law by establishing quarantine and isolation conditions and principles. These conditions and principles provide protection for the public from inappropriate or overzealous use of confinement. The section establishes a class B misdemeanor penalty for isolated or quarantined people who fail to obey the health officer's orders and identifies who may enter isolated or quarantined premises.

Section 5 identifies the procedures for establishing isolation and quarantine. The section provides for procedures in which temporary isolation or quarantine occurs either with or without notice. When temporary isolation or quarantine is sought without notice, the section requires that a court must be petitioned within 10 days after issuance of the isolation or quarantine order. When isolation or quarantine is sought with notice, the section requires that a court must be petitioned.

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Sections 15, 16 and 17 are housekeeping revisions that more consistently apply the terms quarantine, isolation and confinement as defined in the bill.

Although state and local health departments have had powers of isolation and quarantine for many years, this bill provides greater clarity of the circumstances under which quarantine and isolation may occur, establishes procedures for implementing confinement, and protects citizens against inappropriate confinement through involvement of the courts.

The Department of Health respectfully requests your favorable response to House Bill 1414. I am happy to answer any questions you may have.

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PROPOSED AMENDMENT TO HOUSE BILL 1414

Page 5, line 21, Insert:

"5. The section does not authorize the state health officer or a local public health officer to commandeer or utilize any hospital or other medical facility."

Renumber accordingly

Presented by Tim Wiedrich

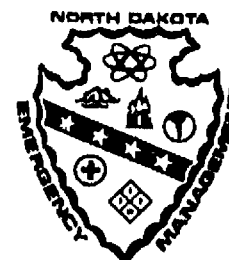
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10/6/03
Date

North Dakota

Division of Emergency Management



To: Representative Clara Sue Price, Chairperson
Human Services Committee

From: *Doug Friez* Douglas C. Friez, Director
ND Division of Emergency Management
Homeland Security Coordinator

Subject: House Bill 1414

Date: January 28, 2003

JOHN HOEVEN
GOVERNOR

Maj Gen MICHAEL J. HAUGEN
ADJUTANT GENERAL

DOUGLAS C. FRIEZ
STATE DIRECTOR

Madame Chairperson, Members of the Committee, I am Doug Friez, State Emergency Management Director and Homeland Security Coordinator.

I am here today to testify in favor of House Bill 1414.

In the aftermath of the September 11, 2001, attacks on the World Trade Center in New York and the Pentagon near the nation's Capitol there have been several proposed changes to help reduce the vulnerability of this nation from future terrorist activity.

Some of those proposals have already been implemented, while some have been received with mixed emotions. Nevertheless, among the many impacts of the September 11 tragedy have been the special challenges presented to government leaders nationwide. One of those challenges is to continue to provide for the best combination of freedom and security to insure the public safety of our citizens, as intended by our forefathers, while maintaining a free, open society.

House Bill 1414 is a necessary and appropriate step to help ensure public health and safety. It specifically references a system, which will be extremely helpful in identifying, reporting and responding to a public health emergency.

Let me assure you that in the work that has been done nationwide, as well as in North Dakota, regarding risk assessment for potential terrorist activities the threat of bio-terrorism is among the most real. Perhaps North Dakota isn't on a "direct hit" list. But think about it, several thousand people from all walks of life and many communities near and far, at a public event, in an auditorium, theater or stadium. Exposure to a communicable disease in those circumstances poses very real concerns with people subsequently coming in contact with others, to and from, by dispersing on foot, in motor vehicles, and on trains and planes. You get the picture! We need to identify, report and respond. "Everywhere" needs to be linked, and we need to enhance our capability to communicate and exchange information and then coordinate a response.

House Bill 1414 is an important step in increasing the ability of the nations public health system to engage in the war on terrorism, but, in addition, it will enhance our everyday public health posture to deal with natural outbreaks such as flu epidemics and specific events such as West Nile Virus.

The potential devastation of a bio-terrorism event is great. To make a difference there is a requirement for a tremendous magnitude of communication, coordination and information sharing. These requirements must start at the grass roots. The system of identifying and reporting signs of a public health emergency is an extremely critical step toward appropriate response to limit the devastation.

I urge you to support passage of House Bill 1414.

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Richard Costa
Operator's Signature

10/16/03
Date



OFFICE OF ATTORNEY GENERAL
STATE OF NORTH DAKOTA

Wayne Stenehjem
ATTORNEY GENERAL

February 5, 2003

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and Antitrust Division
701-328-3404
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Gaming Division
701-328-4848
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Licensing Section
701-328-2329
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SOUTH OFFICE BUILDING
600 N. 9th St.
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Civil Litigation
701-328-3640

Natural Resources
701-328-3640

Racing Commission
701-328-4290

Bureau of Criminal
Investigation
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Bismarck, ND 58502-1054
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The Honorable Clara Sue Price
Chairman
House Human Services Committee
North Dakota Legislative Assembly
Bismarck, ND 58505

Re: House Bill 1414, relating to quarantine and isolation

Dear Chairman Price:

You asked for written comments to several questions relating to House Bill 1414, regarding quarantine and isolation of individuals exposed to or showing symptoms of contagious and infectious diseases.

Before responding to your specific questions, it is important to point out that North Dakota has had laws authorizing the quarantine of individuals infected or potentially infected with contagious diseases for many years. The primary purpose of House Bill 1414 is to clarify the law relating to this authority, and incorporate additional legal rights and procedures in connection with this authority.

1. Is a local public health authority required to have a health officer?

Section 23-35-03(15), N.D.C.C., requires a board of health to appoint a health officer. This requirement is reinforced by subsection 1 of section 23-35-12, which requires each local public health district (or department) to appoint a health officer. Subsection 1 provides that "[a] local public health officer shall serve a term of five years... [and] must be a physician licensed to practice medicine in this state and need not be a resident of the public health unit." Subsection 1 also provides that if there is a vacancy, the governing body or board of health shall promptly appoint another physician to fill the unexpired term. Thus, the statute indicates an intent that every public health unit will appoint a health officer and will promptly fill any vacancy. (It should also be noted that all land in the state must be in a public health unit. N.D.C.C. § 23-35-02. Therefore, all cities

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and counties in North Dakota are within the jurisdiction of a public health unit.)

If for any reason a local public health unit does not have a public health officer at the time of an outbreak of contagious disease, the state health officer has the authority to undertake such action as may be necessary to protect the public health.

2. What is the definition of clear and convincing evidence and why should the burden of proof for the quarantine of an individual or group of individuals be a preponderance of evidence?

The reason for choosing a preponderance of evidence test is that this is the burden of proof contained in the model Health Emergency Powers Act, which was prepared by a group of experts who reviewed the emergency power laws of all of the states. A practical reason for choosing the preponderance of evidence is that while a physician with expertise in infectious diseases may conclude on the basis of a differential diagnosis of the physical appearance of a patient and their bodily functions (breathing, pulse, consciousness, etc.), that the symptoms indicate a particular disease, a conclusive diagnosis of the presence of that disease may be shown only from the results of a sophisticated laboratory test conducted at the state microbiology laboratory (or similar medical facility with advanced diagnostic equipment).

Because a period of time from 48 to 96 hours, or perhaps even longer, may be required to obtain the test results, even though a physician with expertise in infectious diseases believes to a reasonable degree of medical certainty -- based on a preponderance of the evidence -- that a disease which requires quarantine or isolation may be present, that physician may not be able to state (or a court may not find) that there is clear and convincing evidence of the presence of that disease.

Therefore, a young child could continue to go to a day care center or an older student could remain in a large high school until the test results were received. Similarly, the resident of a nursing home, arguably, could not be isolated, until the test results were received. The issue is: do we want our children in school or our relatives in a nursing home to remain potentially exposed to a contagious disease until its presence is confirmed by a strong test, or have appropriate precautions taken on the basis of a public health officer's medical opinion based on a preponderance of evidence.

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Burdens of Proof Defined

In a legal action, one party typically has the burden or duty to affirmatively prove a fact or facts in dispute. That is called the burden of proof. To what degree the party has to establish a fact or facts varies depending on the type of action.

For example, in criminal actions the government must establish each element of the offense (that the person is guilty of the crime) beyond a reasonable doubt. This means the jury or judge must be fully satisfied or entirely convinced the individual committed the alleged crime. The North Dakota Supreme Court has said: Proof beyond a reasonable doubt is proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his own affairs.

In some types of actions, such as termination of parental rights, the burden of proof is clear and convincing evidence. This means the jury or judge must have a firm belief or conviction that the allegations are true. Clear and convincing evidence is an intermediate standard of proof, requiring less certainty than beyond a reasonable doubt, but more certainty than a preponderance of the evidence.

Preponderance of the evidence simply means the facts were shown by the greater weight of the evidence, that the fact sought to be proved is more likely true than not true. This is the common burden of proof, which the plaintiff in a typical civil action must establish.

3. What is the jurisdiction of a public health authority on a military base or an Indian Reservation?

Indian Reservations. There is no rigid rule to resolve an issue as to whether a state civil regulatory law applies on a reservation. White Mountain Apache Tribe v. Bracker, 448 U.S. 136, 100 S.Ct. 2578, 2583 (1980). Absent an express statement by Congress on a particular issue, a state's power to assert its civil regulatory laws . . . on a federal reservation turns on whether state law in that area is preempted by the operation of federal law. New Mexico v. Mescalero Apache Tribe, 462 U.S. 324, 103 S.Ct. 2378, 2386 (1983).

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To determine whether a state law is preempted, the United States Supreme Court has applied a balancing test in which courts must analyze each question on a case-by-case basis and weigh the competing interests of the state, the tribes and the federal government. Accordingly, a state law on a reservation will be preempted by the operation of federal law if it interferes or is incompatible with federal and tribal interests reflected in federal law, unless the state interests at stake are sufficient to justify the assertion of State authority. *Id.* Therefore, while no conclusive answer may be given, a strong case could be made for the exercise of state jurisdiction on tribal land if there is an outbreak of contagious disease because the state's interest in controlling and preventing the spread of that disease would, under the balancing test, justify the assertion of state authority.

In the event of an outbreak of contagious disease on a reservation, the local and state health officers would confer with the Indian Health Service and tribal officials to coordinate action to protect public health on the reservation and in the surrounding communities.

Military Bases. Under N.D.C.C. § 54-01-08, the state cedes jurisdiction to the United States over a tract of land for a military post. The state and federal government may agree to concurrent (joint) jurisdiction regarding matters located on a military post. It does not appear that chapter 54-01 limits the jurisdiction of the United States over federal military lands regarding the authority to impose a quarantine. It is possible that the conveyances and agreements entered into by the state and United States at the time the Minot and Grand Forks Air Force bases, and other federal lands, were conveyed to the federal government may contain covenants with regard to these issues. Further research is required to determine if any concurrent jurisdiction specifications regarding the authority to impose a quarantine are contained in those agreements. In the event of an outbreak of a contagious disease at an airbase or other military post, the local public health officer, the state public health officer, the Governor, and the Adjutant General would all be expected to confer, and hopefully reach a consensus as to the appropriate public health measures.

4. The bill establishes time limits for when hearings must be held, but does not establish a time limit for a court to issue an order for a quarantine. What is the maximum time for a court to make a decision?

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House Bill 1414 does not establish a time limit within which a court must issue an order for quarantine or isolation. The committee should note, however, that the district courts of North Dakota maintain a motions judge in each judicial district who is available upon notice to hear any emergency motion, such as a search warrant or other matter that requires immediate judicial action. In addition, the presiding judges of all North Dakota judicial districts were required to submit to the state court administrator an outline of their procedures to ensure judge availability after hours and on weekends. Minutes, Council of Presiding Judges, November 20, 2000.

In addition, the Supreme Court of North Dakota issues decisions fairly quickly in civil commitment proceedings requiring treatment for mental illness. A review of the last six civil commitment proceedings before the Supreme Court indicates that in four of the six cases an opinion was issued in nine days or less; and in the other two cases an opinion was issued 20 and 24 days, respectively, following oral argument.

The capability of the judicial system to act promptly to address an important public issue is illustrated by the action of the United States Supreme Court regarding the 2000 presidential election. On December 8, 2000, the Supreme Court of Florida ordered a tabulation of certain ballots. That decision was appealed to the United States Supreme Court, which received briefs, held an oral argument, and issued a decision on December 12, 2000. Bush v. Gore, 531 U. S. 98 (2000). If a major outbreak of contagious disease occurred in North Dakota, it is anticipated that the courts would schedule expedited proceedings and promptly issue orders and opinions appropriate to protect the public health.

5. Does HB 1414 establish or expand the authority of the state health officer or the Governor to exercise authority or control over a health care facility to aid in addressing an outbreak of contagious disease?

No. HB 1414 does not establish or expand the authority of the state health officer or the Governor regarding the use of private property to address an outbreak of contagious disease. The Model Emergency Health Powers Act does contain provisions authorizing the government to exercise control over a health care facility if that is considered to be necessary to respond to an outbreak of disease or a bioterrorism incident. As noted, HB 1414 does not include any such authority. It also should be noted, however, that the North Dakota Disaster Act, chapter 37-17.1,

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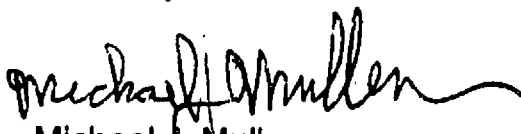
The Honorable Clara Sue Price
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which has been in existence since 1973, does authorize the Governor to exercise powers needed to address a natural disaster, including, subject to any applicable requirements for compensation under section 37-17.1-12, the power to "commandeer or utilize any private property if the governor finds this necessary to manage the disaster or emergency." N.D.C.C. § 37-17.1-05(6)(d).

* * *

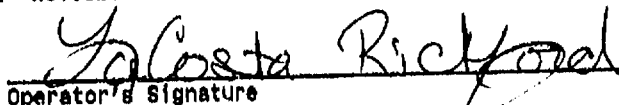
Please let me know if you have any further questions regarding these issues or any other provisions of HB 1414.

Sincerely,


Michael J. Mullen
Assistant Attorney General

vk

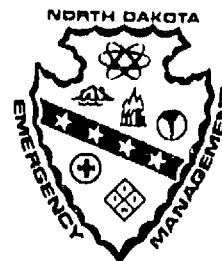
cc: Attorney General Wayne K. Stenehjem
Dr. Terry Dwelle, State Health Officer
Tim Wiedrich, State Health Department
Sandi Tabor, Deputy Attorney General
Edward Erickson, Assistant Attorney General
Arvy Smith, Deputy State Health Officer
Larry Shireley, Director of the Division of Disease Control


Operator's Signature

10/16/03
Date

North Dakota

Division of Emergency Management



To: Senator Judy Lee, Chairperson
Senate Human Services Committee

From: *Doug Friez* Douglas C. Friez, Director
ND Division of Emergency Management
Homeland Security Coordinator

Subject: Engrossed House Bill 1414

Date: March 5, 2003

JOHN HOEVEN
GOVERNOR

Maj Gen MICHAEL J. HAUGEN
ADJUTANT GENERAL

DOUGLAS C. FRIEZ
STATE DIRECTOR

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Testimony

House Bill 1414

Senate Human Services Committee

March 5, 2003

9:30 a.m.

North Dakota Department of Health

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Section 14 indicates that an order of confinement continues in effect while a matter is on appeal.

Sections 15, 16 and 17 are housekeeping revisions that more consistently apply the terms quarantine, isolation and confinement as defined in the bill.

An amendment was added to the bill on page five, lines 22-23 that states: "This section does not authorize the state health officer or a local public health officer to commandeer or utilize any hospital or other medical facility." We request that the words "or utilize" be removed to enable the state health officer to use a facility with the consent of that facility.

Although state and local health departments have had powers of isolation and quarantine for many years, this bill provides greater clarity of the circumstances under which quarantine and isolation may occur, establishes procedures for implementing confinement, and protects citizens against inappropriate confinement through involvement of the courts.

The Department of Health respectfully requests your favorable response to House Bill 1414. I am happy to answer any questions you may have.

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