

2011 HOUSE JUDICIARY

HB 1108

2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1108
January 10, 2011
12676

☐ Conference Committee

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on HB 1108.

Sally Holewa, State Court Administrator: Chief Justice VandeWalle had hoped to testify this morning but because of a conflict with the court schedule, he had to leave, so he asked me to testify (see attached testimony). I will summarize his testimony.

Chairman DeKrey: This bill is seen every four years, because the Legislature refuses to make it permanent, because some bean counter thinks that it will be abused. Any questions from the committee. Thank you. Further testimony in support of HB 1108.

Bill Newmann, State Bar Association: Support, I have nothing prepared in writing; I just want to make it clear that the State Bar Association supports this.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition. We will close the hearing. What are the committee's wishes?

Rep. Maragos: I move a Do Pass.

Rep. Delmore: Second the motion.

14 YES 0 NO 0 ABSENT

DO PASS

CARRIER: Rep. Steiner

FISCAL NOTE

Requested by Legislative Council
12/21/2010

Bill/Resolution No.: HB 1108

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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 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.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill extends the temporary court of appeals through January 1, 2016.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The Supreme Court budget includes \$33,000 for associated costs of the temporary court of appeals.

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.*

N/A

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, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

N/A

Name:	Don Wolf	Agency:	ND Supreme Court
Phone Number:	328-3509	Date Prepared:	12/22/2010

Date: 4/10/11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1108

House JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Maragos Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Guggisberg	✓	
Rep. Beadle	✓		Rep. Hogan	✓	
Rep. Boehning	✓		Rep. Onstad	✓	
Rep. Brabandt	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos	✓				
Rep. Steiner	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Steiner

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

REPORT OF STANDING COMMITTEE

HB 1108: Judiciary Committee (Rep. DeKrey, Chairman) recommends **DO PASS**
(14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1108 was placed on the
Eleventh order on the calendar.

2011 SENATE JUDICIARY

HB 1108

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1108
2/7/11
Job #14117

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the temporary court of appeals

Minutes:

There is attached written testimony

Senator Nething – Chairman

Gerald W. VandeWalle – Chief Justice – See written testimony.

Discussion – He says they have not used any lawyers and said there was a list of lawyers they called on to sit as temporary judges in the trial courts. He said it was used occasionally. He mentions that they would like this bill made permanent. He said they are usually well over 300 cases a year.

Bill Neuman – Executive Director State Bar Association – In support of this bill. He says the Supreme Court uses this authority sparingly and he would like to see the sunset date extended. Discussion on the difference between a surrogate judge and a retired judge.

Close the hearing HB1108

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1204
3/9/11
Job #15178

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to stalking and previous convictions

Minutes:

Senator Nething – Chairman

Senator Olafson moves the adoption of the amendment
Senator Lyson seconds

Verbal vote – all yes

Senator Olafson moves for a do pass as amended
Senator Sorvaag seconds

Roll call vote – 6 yes, 0 no
Motion passes

Senator Sitte will carry

Date: 3/9
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1108

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Lyson Seconded By Senator Nelson

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman	X		Carolyn Nelson	X	
Curtis Olafson - V. Chairman	X				
Stanley Lyson	X				
Margaret Sitte	X				
Ronald Sorvaag	X				

Total (Yes) 6 No 0

Absent _____

Floor Assignment Senator Nething

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

REPORT OF STANDING COMMITTEE

HB 1108: Judiciary Committee (Sen. Nething, Chairman) recommends **DO PASS**
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1108 was placed on the
Fourteenth order on the calendar.

2011 TESTIMONY

HB 1108

HOUSE BILL 1108
House Judiciary Committee
January 10, 2011

Summary of testimony of Gerald W. VandeWalle
Chief Justice

Chairman DeKrey and Members of the House Judiciary Committee:

Section 1 of Article VI of the North Dakota Constitution provides that: "The judicial power of the state is vested in a unified judicial system consisting of a supreme court, a district court, and such other courts as may be provided by law." The Temporary Court of Appeals is a court provided by law, that is, established by the Legislature.

HB 1108 authorizes the continuation of the Temporary Court of Appeals for another four years. The Legislature initially established the Temporary Court of Appeals in the 1987 Legislative Session for a period beginning July 1, 1987 through January 1, 1990. The 1989 Legislature extended the authorization through January 1, 1994 and has reauthorized the Temporary Court of Appeals for four-year periods since that time. The current authorization expires January 1, 2012, and, if HB 1108 is enacted, the authorization will be extended through January 1, 2016.

The Temporary Court of Appeals was established as an intermediate appellate court to aid the Supreme Court in those instances in which its case load grows too large for the Supreme Court to effectively handle. Thus section 2 of the bill provides that the Supreme Court may activate the Temporary Court of Appeals if the Supreme Court has disposed of at least 250 cases in the twelve months preceding September 1, of any year. For several years prior to the establishment of the Temporary Court of Appeals in 1987 and since 1987 the Supreme Court has always disposed of at least

250 cases in one year. In the 12 months preceding September 1, 2010, the Supreme Court disposed of 374 cases and issued 267 written opinions.

You will note in section 2 of the bill that the Temporary Court of Appeals has no permanent judges. Rather, when convened, the Supreme Court establishes panels of three active or retired district judges, retired supreme court justices or lawyers. The retired judges, justices, or lawyers are entitled to receive five percent of the gross monthly salary of a supreme court justice or one-half of the daily compensation for services of one-half day or less. Active district judges receive no additional compensation.

The Temporary Court of Appeals is a safety valve intended to aid the Supreme Court in managing its caseload should the number of appeals escalate or should there be a vacancy on the court for an extended period of time. In the past, the Temporary Court of Appeals has been convened in those instances in which there is a vacancy on the Supreme Court as a result of resignation or death of a justice and the Court is left with four or less justices to handle the case load. In the last four years the Supreme Court has called the Temporary Court of Appeals to duty in four rather unusual cases in which the members of the Supreme Court were either named as parties or recused, that is disqualified, in the case because of an apparent conflict of interest. Since 1987 the Temporary Court of Appeals has been assigned 90 cases.

Under section 6 of the bill, the Supreme Court has the discretion to review the decision of the Temporary Court of Appeals. Of the 90 cases heard by the Temporary Court of Appeals, the Supreme Court has granted a petition for review in one case.

I ask your favorable consideration of HB 1108. I welcome any questions you might have concerning the bill — or the operations of the judicial system.

HOUSE BILL 1108
Senate Judiciary Committee
February 7, 2011

Summary of testimony of Gerald W. VandeWalle
Chief Justice

Chairman Nething and Members of the Senate Judiciary Committee:

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