

2011 HOUSE HUMAN SERVICES

HB 1286

2011 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee Fort Union Room, State Capitol

HB 1286
January 17, 2011
Job #12950

☐ Conference Committee

Committee Clerk Signature

Nicky Crabtree

Explanation or reason for introduction of bill/resolution:

To prohibit interference with access to medical services and health insurance.

Minutes:

Chairman Weisz: Called to order the hearing on HB 1286.

Rep. Kasper: Rep. Jim Kasper from district 46 in Fargo introduced the bill. I had hoped to have some experts come to ND to testify on this bill, but it came up so quick, we could not schedule them. If by chance this bill is held over, we might be able to get those experts in to testify on this bill. HB 1286 is a part of a series of bills that address the Obamacare or the PPAC or the Patient Protection And Affordability Healthcare Act. All of them mean the same thing. Many parts of this bill mandate certain items. Examples are: a person must purchase health insurance, possible rationing of healthcare and health providers in the bill and fines and penalties for employers and employees if they do not comply. Many cities and authorities, myself included, believe Obamacare or PPAC is unconstitutional. There are some examples around the United States that seem to bare my thoughts out anyway, the Virginia law suit where the attorney general of Virginia has sued the federal government saying the individual mandate is unconstitutional. They have had a major victory just recently in federal court. Our ND attorney general has joined the Florida lawsuit where there is twenty some states who are also suing the federal government under the mandate the employees and individuals must buy health insurance. There is a movement in Congress as we speak this week where there will be a bill introduced in the US House of Representatives to repeal PPAC. The United States Constitution as many of you know who have been here in prior sessions is sort of favorite item of mine and I want to quote from the Tenth Amendment. It states, "The powers not delegated to the United States by the Constitution nor prohibited by it to the states, are reserved to the states respectively or to the people." There are many states as we speak who have introduced legislation like HB 1286. Among them are Texas, Maine, Montana, Oregon, Wyoming, and Oklahoma are the ones I am aware of and I think there are others coming on board. Thomas Jefferson, one of our founders had some interesting comments way back when he was on this earth and working on the drafting of the United States Constitution. I would like to quote what Thomas Jefferson said and wrote in 1798. He said, "Whensoever the general government assumes undelegated powers, a nullification of the act is the rightful remedy. (Rep. Kasper repeated it again.) He meant the federal government. Notice he did not advise to use nullification as a remedy once in awhile. He certainly didn't tell us that nullification is the

rightful remedy after we vote some bums out or we sue the federal government in federal court or anything else for that matter. Jefferson was pretty straight forward and recommends that every single time the federal government exercises powers not delegated to it by the Constitution, that we are to reject and nullify those acts on a state level as they happen. That is what HB 1286 attempts to do. What 1286 does, on line 4, it deals with the interference with access to medical and health insurance in prohibition and a penalty. (Reads bill from line 7 through line 21.) We are saying that we are applying the Tenth Amendment and saying the federal government has no authority to tell the citizens of ND what medical services they can have or what health insurance they can purchase because the ND Legislative Assembly has that power and authority under the Tenth Amendment to separation of powers. On line 22 beginning and thereafter, it simply provides the same guarantees to the citizens of ND and protections from any public servant of the State of ND. So not only can the U.S. government not interfere with that right, we are also saying that any public servant in the State of ND cannot interfere with that right. Unless this Legislative Assembly grants that permission. I would certainly hope you would give this bill a favorable consideration and vote to uphold the Constitution of the United States which I think is the document we need to hold most near. Thank you.

Rep. Porter: There are a couple other bills out there that I have seen and one of them is basically a simple one line bill that says that the State of ND does not support the healthcare bill. That's all it does instead of the penalties and fines. Is the keep it simple strategy ok? If we say we are not going to recognize it, is that enough or do we need a penalty to go with it?

Rep. Kasper: I think we need a penalty because simply making a statement of fact is a feel good bill, but has no validity or teeth. This bill is very specific and narrow and I think very protective for the citizens of our state. Wouldn't object to the bill you mentioned, but I haven't seen it. Other bills are coming forward and I have another bill similar to this bill which I believe has been assigned to the Industry, Business and Labor Committee which takes a different approach, but sort of the same idea. All of these bills need to be looked at as a package as we move through the session to see what it is the Legislative Assembly is going to be our policy for the people of ND as well as the law we wish to have them live under and protect them under.

Rep. Holman: First question, this is being played out at the federal level, do we need this in our state? I would like a specific scenario as to how this might change things in ND.

Rep. Kasper: If we pass this particular bill and the PPAC continues to be going through Congress and not repealed, we now have a direct confrontation between the ND state law and the federal law. Beings we have a conflict, the way you settle the conflict, you go to court and let the courts decide. Where is the Constitutionality of the ND law compared to the Constitutionality of the federal law and the courts will decide which law prevails. As I said early the in Virginia, the federal Judge ruled that the people of Virginia cannot be mandated to buy health insurance. Many believe that will end up in the Supreme Court. I'm asking this legislative body to make a statement that we the legislature of the state of ND are going to abide by the separations of powers under the Constitution. For 30 or 50 years, the U.S. Congress in my opinion has been usurping the powers that are delegated

and left for the states and to the people. It is time we draw a line in the sand and say enough is enough. This is the area, the Healthcare Act that we are working in now.

Rep. Holman: I'd like you to follow up on that again. This is a national issue and it is going to be played out at many state levels as you indicated. Also it will go into district and circuit and maybe ultimately to the supreme court and once it goes to any of those levels ND will have to abide by whatever is decided at that level. Do we even need to bother with this?

Rep. Kasper: I don't believe it will be applied universally. If our state does not take action and we remain silent, we will be subject to federal law because the Virginia law suit only pertains to the state of Virginia. The Florida lawsuit pertains to the Florida action, but has 20 or 25 attorney generals around the U.S. who have joined in that law suit. Therefore, I believe if we want to protect the citizens of our state, we need to take action and specifically stand up for the rights of our citizens under the U.S. Constitution. That's why I introduced the bill.

Rep. Damschen: Does this affect any current programs or services in the state?

Rep. Kasper: I don't believe so. The PPAC that I'm concerned with right now won't be implemented until 2014. As this point and time, no. However, if something is not done about Obamacare or PPAC it could. And being we won't be in session again until 2013, I think this is a perfect opportunity to let the people of the state know that this legislature stands for guaranteeing the rights of the people of ND under the U.S. Constitution.

Rep. Hofstad: Assuming Obamacare is not repealed, my question is, that authority we are going to give to establish some kind of health exchange?

Rep. Kasper: We are hearing in the IBL Committee as I speak, that bill on health exchanges. We've had lengthy testimony from Commissioner Hamm and now Carol Olson with the DHS about establishing the health exchange. We have got to move forward to establish the health exchange because it is current federal law. But, we don't know six months from now or a year from now what federal law will be. I want to draw your attention back to my testimony. This bill would fly in direct conflict with certain provisions of that federal law. What this bill is saying, is that the federal law is unconstitutional and the ND law applies. How this would be settled in the future, there would be a court action between the State of ND and the federal government and a Judge would decide. It could be appealed to the Supreme Court if the our attorney general so chose to do that or if we win, the federal government chose to do that.

Rep. Hofstad: If we pass this and put this into law and we also put provisions in for an insurance exchange into law, aren't those two issues conflicting?

Rep. Kasper: In January of 2014 they may. I would assume we would have some resolution before then, if not, on January 1, 2014 we will have to have resolution and again that would require court action. If I had the druthers and I don't, we would slow down Obamacare and have the public hearings like I believe we should have had instead of the 3,000 page bill passing without a public hearing, without the light of day. But, we can't deal

with that, we have to deal with reality. I believe that every step that we as a state can stand up to the federal government and say you have made a mistake, to Congress, you have made a mistake and under the Constitution we are declaring our rights and we want our day in court, the better off we are for the people of our state.

Chairman Weisz: In your subsection 1, where you make it a Class A misdemeanor for the U.S. employees, isn't that basically a non-enforceable considering that they will be in DC or wherever it is and that you are not going to extradite them? I assume that is more of a statement then an actual ability to do something.

Rep. Kasper: What I've been told by the experts around the U.S., for this to have the type of teeth we want, we need to have the penalty clause in it. Whether it is enforceable or not, I guess that is up to our attorney general if and when it got to that point.

Rep. Devlin: I'm probably more conservative than you are and don't want to spend a bunch of state money fighting something that is already being fought by other people. Why stop here. I've got farmers that absolutely hate swampbuster or game and fish laws or federal wildlife laws or many things that have come through Congress, why don't we do the same thing with them? Anytime the Congress passes something the President signs it into federal law and we don't like it, let's just run and let's just pass something and say, we are not bound by it?

Rep. Kasper: I did not plant that question? That is Rep. Devlin's question? I couldn't agree with you more. I believe the federal government is way beyond its bounds and that is one of the reasons we are having the issues we are having now all over this country. Anytime we as a state can stand up for state rights under the Constitution, I think we should. So if there are some of your constituents that are concerned about those things, I would encourage you to get a bill in right now so we can have that battle right now. I think we ought to be having those battles not only in ND, but across the country and in all the other state legislatures.

Chairman Weisz: Some of the other bills that are going to be in IBL, are they being scheduled next week or any idea on scheduling in that respect? If indeed you wanted to get somebody in, I could speak to our committee.

Rep. Kasper: I have made Chairman Kaiser available of my hope to have a little time and have not had a chance to talk with him this morning, but we will be having that conversation and will certainly keep you and your committee informed.

Chairman Weisz: I'm sure we can arrange time to have those if you do have someone come in to speak to the bill even though we will close the hearing, we won't do any action.

Chairman Weisz: Further support for HB 1286? Anyone here in opposition to HB 1286? If not, we will close the hearing on HB 1286.

2011 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee
Fort Union Room, State Capitol

HB 1286
February 9, 2011
Job #14249

☐ Conference Committee

Committee Clerk Signature

Vicky Crabtree

Minutes:

Chairman Weisz: Opened the meeting on HB 1286. In reference to 1286 I did have an attorney general's opinion done on 1286. I'll read the highlights. "I am unable to give you a specific opinion on the constitutionality of HB 1286. However, based on the plain language of HB 1286 is my opinion that is likely pre-empted by federal law and (inaudible) likely violates the supremacy clause. In light of numerous federal laws covering the aspects of the provision of medical services and health insurance coverage, if 1286 passes I believe a conflict will likely would arise between 1286 and federal law. If 1286 passes and an actual conflict arises between it and federal law, I further believe a court would likely find 1286 pre-empted by federal law and unconstitutional under the supremacy clause." He tells of a Supreme Court case, summarizes the pre-empted doctrine and again re-emphasizes the supremacy clause. He does talk about making it a crime for federal or state employees to apply federal law. He says that, "by its very terms pits state law against federal law making compliance with both state and federal law impossible. Because the supremacy law prohibits states from enacting laws that make compliance with both federal and state law a physical impossibility or that stand as an obstacle to the accomplishment and execution of the full purposes and objectives of congress. If a conflict arises between 1286 and federal law a court would likely find 1286 violates the supremacy clause". He mentions a couple of other bills that have the same concerns.

Rep. Paur: That inherent conflict, isn't that the purpose of the bill?

Chairman Weisz: That is exactly correct.

Rep. Porter: The whole issue was settled for us already in federal court in the Florida case. Throughout those provisions of the federal health insurance bill the attorney general was defending on behalf of the State of North Dakota. In Section 1 it is an impossible provision to enforce because I don't know if you can charge any federal officer that is doing their job based on federal law with a misdemeanor in state court. It is as close to the start of succession and start of the war that ended back in 1863 in or around that area. I move a Do Not Pass on 1286

Rep. Kilichowski: Second.

VOTE: 12 y 1 n

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Bill Carrier: Rep. Devlin

Date: 2-9-11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1286

House HUMAN SERVICES 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. Porter Seconded By Rep. Kilichowski

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN WEISZ	✓		REP. CONKLIN	✓	
VICE-CHAIR PIETSCH	✓		REP. HOLMAN	✓	
REP. ANDERSON	✓		REP. KILICHOWSKI	✓	
REP. DAMSCHEN	✓				
REP. DEVLIN	✓				
REP. HOFSTAD	✓				
REP. LOUSER		✓			
REP. PAUR	✓				
REP. PORTER	✓				
REP. SCHMIDT	✓				

Total (Yes) 12 No 1

Absent _____

Floor Assignment Rep. Devlin

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

REPORT OF STANDING COMMITTEE

HB 1286: Human Services Committee (Rep. Weisz, Chairman) recommends **DO NOT PASS** (12 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). HB 1286 was placed on the Eleventh order on the calendar.