

2011 HOUSE POLITICAL SUBDIVISIONS

HB 1327

2011 HOUSE STANDING COMMITTEE MINUTES

House Political Subdivisions Committee Prairie Room, State Capitol

HB 1327
February 4, 2011
Job #14019

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to authority to evacuate during a local disaster or emergency; and to provide a penalty.

Minutes:

Testimony # 1, Proposed amendment # 2

Chairman Johnson: Opened the hearing on HB 1327.

Greg Wilz, Deputy Director, Department of Emergency Services: Went through the bill. (See testimony #1). and (Proposed amendment #2) We have a system of Incident command in the state and what we are doing is allowing local jurisdictions to identify authorities to conduct mandatory evaluations and allow that to occur locally beyond what can occur based on local rural and or the governor. We need to do this because often times we don't have time and we need to streamline the ability to do this. It does not asset the authority of the governor or the local officials designated by ordinance or law. With the likely flooding emergencies forecasted this spring the second sheet of paper is for an emergency clause amendment.

Rep. Kretschmar: I noticed in the new language you speak of activation of a local emergency operational plan. Is every municipality required to have one of those? I would guess there are quite a few small towns that do not have them. Does Ventura have one?

Greg Wilz: I think you are right that Venture doesn't have one. They are incorporated into a plan. In the state of ND every county by century code has to have an EMS organization and the vehicle to provide for that service for the entire county to include the cities. There are some cities that have their own plans and that is fine.

Rep. Hatelstad: How do you determine the transition from on site incident commander to a more unified command as you move up the ladder? If you go into the city and I have an incident commander that is on site issuing orders and then the state moves in at what point to we see a transition of authority?

Greg Wilz: The state would actually never move in and take control of a situation. Incident command is always local. The locals are always in charge of the incident. The state will step in and provide technical assistance on request and resources if needed. If there is an

event out there; the local incident command is on scene, he or she is taking charge of the event, and they are managing it. The mayor may be going to the governor and saying I need this and it may include also an evacuation order among other things. There is a process that allows for the incident command to be fully built up out in the field, but normally the state never jumps in and takes over. It is the locals that are in charge of the incident.

Rep. Hatelstad: Does that include if the National Guard is mobilized to come is it still under the authority of the incident commander?

Greg Wilz: Yes that is correct. There are two ways that happens. The first is the National Guard takes its orders directly from the State EMS. The National Guard builds a task force and provides it to communities like Fargo. Then Fargo directs what the National Guard is going to do. Then the National Guard just informed the National Guard headquarters what they are doing and the National Guard Headquarters tells the EOC what they are doing so we can track everything that is going on and de conflict resource assignments.

Rep. Koppelman: The evaluation orders where a problem in Fargo during the flooding. This bill almost looks like marshal law when you are saying that the incident commander finds necessary a partial or total evaluation of a jurisdiction. Where do we get to the line where this broad of a definition I am not sure it isn't going too far?

Greg Wilz: The decision as to whether to evaluate is probably one of the most gut wrenching as most recently in Fargo in 2009. There were many behind the scenes discussion on that decision. The second example would the anhydrous ammonia spill in Minot, ND. I talked to CJ Kraven who works with the agency and provides what he learned through that event still today. These are decisions that would never be taken lightly. The issue at the end of the day is if we allow this decision making at the local level the challenge for them to understand this is an awesome responsibility and it cannot be taken lightly. This would only be utilized when it is absolutely is believed that it is going to save lives.

Rep. Koppelman: So you probably wouldn't oppose a period after the word life and striking the rest of the sentence on line 21.

Greg Wilz: The only reason that is there is if the responders absolutely need excess to a piece of property or need to get people out of there so they can do their job to control the escalation of the event. We think they have to have that ability.

Rep. Koppelman: Sometimes a little bit of authority given is not exercised properly. I am not saying it ever happens in EMS, but I know in other places in life it does. How does this work now and what is the problem you are trying to solve? Are there incidents where people are refusing to evacuate and it has caused a threat to life in ND?

Greg Wilz: It works right now in those cities that have some authority based on local rule, ordinance or regulation. The mayors have these authorities. The fall back today is the governor has the authority to both issue the order and compile it by law. We learned in 2009 that there is a real misunderstanding as to who has those authorities and

unfortunately there have become some politics behind it as well. Nobody wants to be the bad person and say we need to evaluate this so they make the decision sometimes too late. Because of some of the lack of understanding of the decision making process with this regard a lot of our jurisdictions did not receive some of the reimbursements from FEMA that they could have. That is not what is driving this.

Chairman Johnson: On line 17 would you go through what those two sections refer to?

Greg Wilz: Section 37-17.1-05; Subparagraph e underneath that is the expressed authority that the governor has these authorities. 40-05-01 is the part of the century code which grants powers to municipalities. It allows them to essentially put together their ordinances and regulations for their local jurisdiction. That is how some have chosen and they are allowed to do that if it is not in violation of the century code. That is how some cities have put those rules into play.

Chairman Johnson: I am going to try and paraphrase what this is doing. Currently the governor has the authority to call for an evaluation and that is the power of law. Municipalities if they have put ordinances in place can do that. This would then apply to other places where they don't have the authority or if you don't have time to contact the governor or some other group to do it.

Greg Wilz: I think that is accurate. It is a timing issue.

Rep. Klemin: We recently had this fire at the Bismarck Motor Hotel and as I understand there were 50 some people were ordered to evacuate that building. Would that come under this thing or is that something else?

Greg Wilz: It might come under this. It would depend on what activates the emergency plans for the city of Bismarck and number two are there folks identified in those plans to be able to do that.

Rep. Hatelstad: Is there a plan in place. Let's say as incident commander I am way over my head. Is there a way I can transfer responsibility to your department?

Greg Wilz: The ICS system is a well developed system. There is a process which allows you to turn over that command. Allows for people with more technical expertise on your request to come in and eventually either use them as tech liaison to help you as an incident commander and/or there is a process where you can turn over command. Most of the local folks like to be in charge of their incidents and they generally bring people in to advice and guide them. They retain the decision making locally.

Connie Sprynczyntky, ND League of Cities: In 2009 when Bismarck found itself in the midst of a serious Missouri River flooding the likes of which the city had not seen since 1953 when the dam closed we had a problem with people not evacuating and great confusion about whether or not they could or should. I remember being up here after the declaration was already been issued there were several people that approached me and said I live in south Bismarck. I understand the city has asked us to evacuate; what if I don't go? There is no penalty except you could endanger your own life. The EMS responders will not be

sent in to rescue you if the situation gets so bad. I don't believe it is going to happen. It hasn't happened in my lifetime. I am not going. At least one thing this does it put at least a small penalty. So there is not only the ability to declare a disaster and act according to your operational plan but there is a penalty. We did not lose any life.

Opposition: None

Hearing closed.

Rep. Koppelman moved an amendment and explained it. Seconded by Rep. Devlin:

Chairman Johnson: The motion is to amend 1327 by deleting on line 21 the words or to the end of the sentence.

Rep. Koppelman: I don't have a problem on what EMS folks are trying to do here. It is probably necessary but the concern is as we deal with these kinds of issues again from a public policy prospective we need to look carefully at what we are doing and we a just opposing police powers of government against freedom and liberty of people. When we do that I think we need to tread lightly. I have no problem if they need to do this for preservation of life but why put language in law that could lead to something that could be later interrupted differently down the road.

Rep. Shirley Meyer: A lot of times it is hard to convince people that their life is in danger until it is too late to save them. They might not know a wall of water is coming. I did not think they were going to put in police powers. Death is the ultimate penalty.

Rep. Koppelman: I agree with that. This bill with that amendment gives the authority and it creates a penalty if they don't. It still puts the determination in the hands of the EMS manger. I have gone to an EMS conference but one of the things I remember clearly is that those EMS managers have absolute power. It is like marshal law; when they say get out you have to get out and there are consequences if you don't. This bill strengthens that.

Rep. Heilman: Give me an example EMS situation that you wouldn't want to see an evacuation?

Rep. Koppelman: There are some things that are declared disasters and there are a lot more of things that are declared emergencies. Droughts are declared disasters for federal aid for farmers. The key issue is when we want people to evacuate specifically it is typically when their life is in danger. That is why Mr. Wilz said that would be workable language.

Rep. Klemin: I don't have any trouble with the amendment. The situation south of Mandan when we had prairie fires that rolled through Cannon Ball and basically burned down the town. Everybody had to get out right away because the fire was coming. That is an example of what happens on the prairie.

Rep. Mock: Back in 2009 when two floods at the same time were happening. Discussed situation of what the National Guard was doing during that time. It wasn't a situation that

was life threatening. It was an emergency to avoid a disaster. Are we preventing those situations of a mandatory evacuation in those circumstances?

Rep. Koppelman: No I don't think we would be at all. That was a voluntary evacuation so this statute would not even come into play. The 2009 Fargo flood is a good example of why this is a good standard to have. The mayor of the city decided not to evacuate. Had they evacuated the city would have flooded because people would not have been there to put the sand bags.

Rep. Klemin: This still doesn't take the place of the mayor of the city calling for an evacuation for some other reason. This new language we are talking about something that is happening on the spot where you have to do something now and you can't wake the mayor up at 2AM and wait for him to do something later.

Chairman Johnson: I am thinking back to the tornado that hit Dickinson. At some point they tried to get people out of the area because of the debris so it wasn't life threatening, but people were in there and in the way.

Chairman Johnson: We have a motion that would delete the words on line 21 or other disaster or emergency mitigation.

Motion voice vote carried.

Do Pass As Amended Motion Made by Rep. Koppelman: Seconded by Rep. Heilman:

Rep. Pietsch: does this also mean putting the emergency clause on that he asked about?

Motion made to move the emergency clause Rep. Koppelman: Seconded by Rep.

Maragos:

Voice vote carried.

Do Pass as further amended by Rep. Koppelman: Seconded by Rep. Heilman:

Vote 12 Yes 0 No 2 Absent Carrier: Rep. Koppelman:

Hearing closed.

Date: 2-4-11
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1327

House Political Subdivisions 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. Koppelman Seconded By Rep. Devlin

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson			Rep. Kilichowski		
Vice Chairman Hatelstad			Rep. Shirley Meyer		
Rep. Beadle			Rep. Mock		
Rep. Devlin			Rep. Zaiser		
Rep. Heilman					
Rep. Klemin					
Rep. Koppelman					
Rep. Kretschmar					
Rep. Maragos					
Rep. Pietsch					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

*Vote
carried*

Line 21

Date: 2-4-11
Roll Call Vote #: 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1327

House Political Subdivisions 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. Koppelman Seconded By Rep. Heilman

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson			Rep. Kilichowski		
Vice Chairman Hatelstad			Rep. Shirley Meyer		
Rep. Beadle			Rep. Mock		
Rep. Devlin			Rep. Zaiser		
Rep. Heilman					
Rep. Klemin					
Rep. Koppelman					
Rep. Kretschmar					
Rep. Maragos					
Rep. Pietsch					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

*Vote
Carried
Withdrawn - left on further
amended*

Date: 2-4-11
Roll Call Vote #: 23

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1327

House Political Subdivisions 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. Koppelman Seconded By Rep. Maragos

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson			Rep. Kilichowski		
Vice Chairman Hatelstad			Rep. Shirley Meyer		
Rep. Beadle			Rep. Mock		
Rep. Devlin			Rep. Zaiser		
Rep. Heilman					
Rep. Klemin					
Rep. Koppelman					
Rep. Kretschmar					
Rep. Maragos					
Rep. Pietsch					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Em Clause.

Voice Vote Carried!

February 4, 2011

VR
2/4/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1327

Page 1, line 2, remove "and"

Page 1, line 2, after "penalty" insert "; and to declare an emergency"

Page 1, line 21, remove "or other disaster or emergency mitigation"

Page 1, after line 23, insert:

"**SECTION 2. EMERGENCY.** This Act is declared to be an emergency
measure."

Renumber accordingly

Date: 2-4-11
Roll Call Vote # 34

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1327

House Political Subdivisions 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. Koppelman Seconded By Rep. Heilman

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson	✓		Rep. Kilichowski	✓	
Vice Chairman Hatelstad	✓		Rep. Shirley Meyer	✓	
Rep. Beadle	—		Rep. Mock	✓	
Rep. Devlin	✓		Rep. Zaiser	—	
Rep. Heilman	✓				
Rep. Klemin	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos	✓				
Rep. Pietsch	✓				

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep. Koppelman

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

REPORT OF STANDING COMMITTEE

HB 1327: Political Subdivisions Committee (Rep. N. Johnson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1327 was placed on the Sixth order on the calendar.

Page 1, line 2, remove "and"

Page 1, line 2, after "penalty" insert "; and to declare an emergency"

Page 1, line 21, remove "or other disaster or emergency mitigation"

Page 1, after line 23, insert:

"SECTION 2. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

2011 SENATE JUDICIARY

HB 1327

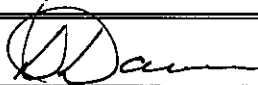
2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1327
3/22/11
Job #15845

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to authority to evacuate during a local disaster or emergency.

Minutes:

There is attached testimony

Senator Nething – Chairman

Representative Porter – District 34 – Introduces the bill on behalf of the Dept. of Emergency Services.

Greg Wilz – Deputy Director of the Department of Emergency Services and Director of Homeland Security Division – See written testimony.

Senator Nething – Asks him where to find the definition on incident commander.

Wilz – Replies that it is found in many locations and mentions some of those. He said it is that person or unified commander are those persons in charge during an emergency/disaster event, they are the ones that are calling the shots on the ground.

Senator Sorvaag – Said the city of Fargo is now debating who they will name, and asks when they do will he recognize that person.

Wilz – Responds they have been working with Fargo for the last 4 weeks on this issue. He adds if this bill is passed they would identify that commander. He said in Fargo he would hope that that plan would identify more of a unified command.

Senator Nelson – Wonders why the infraction, to her it seems a slap on the wrist.

Wilz – Said he agrees and there are situations that it isn't adequate but he says it is difficult for them to get that status. He said this part of code is to save lives but unfortunately there has to be a little teeth in there. He said a \$500 fine doesn't pay for the costs involved on the emergency but it is a starting point.

Senator Sitte – Asks for instances on needing this authority in the past.

Wilz – Says he cannot give an exact case but does give examples of cases that it would have been nice to have it.

Senator Sitte – She wants to know where he is going with compelling people to leave their homes during a disaster.

Wilz – Replies they will go where local authorities want them to go with this. It is situational based. He said they need to provide the authority and let the folks make the decisions where the rubber meets the road.

Senator Olafson – Asks if he sees any legal challenges to this.

Wilz – Said he has not looked at that but since in Century Code now it allows for Mayors and Governor to do that. He says if you have a mandatory evacuation order FEMA pays, if you have a voluntary evacuation order you don't get anything. He says he is doing this because it is the right thing to do, to give local authorities the ability.

Senator Sitte – Asks him about Mayors having this authority.

Wilz – He said in ND Century Code, 40-0501, cities have the ability to adopt ordinance and rule and within those ordinances they may adopt a rule that provides the Mayor the authority to conduct evacuations.

Senator Sitte – Ask if the Mayor has a mandatory evacuation does FEMA pay.

Wilz – Replies correct.

Senator Nething – Says this bill is in addition to the Governors authority in 37-17 and the Mayors authority in 40-05. In the mayor has not acted then this bill could function.

Senator Sitte – Asks if someone leaves their home because of this is there any liability on the part of FEMA or anyone else.

Wilz – No there would not be.

Senator Olafson – Asks why we need this if the Governor and Mayor can already issue this.

Wilz – Replies it is an issue of timing. They are out of town a lot and in some instances you have minutes to respond to a situation, even an hour could be too late.

Senator Nelson – Said you would need this is situations like the train derailment with hazardous chemicals.

Senator Sorvaag – Thinks they would have to allow it to anyone because how would you know who is on duty and in charge.

Wilz – Says there are places out there that will struggle to put this into a plan but there are also many who have it in their advance plans. He says it will be an educational process to work with local jurisdictions across the state in regard to this law change.

Senator Nething – States there is no definition of incident commander and is at a loss to see where it is limited to.

Wilz – Said he understands the issue and if they would like he could include the definition of incident commander to clear this up.

Senator Nething – Asks who puts the plan together.

Wilz – Replies by state law every county is responsible to have an emergency management program and as a function of that program there is one plan that is required and that is the local emergency operations plan. He outlines the different plans.

Senator Nething – Asks him for an amendment to clarify who the incident commander would be.

Jerry Hjelmstad – ND League Cities – He said this would be a sudden emergency where there was no time for the Mayor to declare the emergency

Senator Sitte – Asks if a Mayor or a Police Chief would have the authority.

Hjelmstad – Replies the Mayor would if the authority was granted under city ordinances to do so. If it is a sudden emergency the incident commander would be able to order an evacuation if they were designated in the emergency operations plan.

Opposition – 0

Neutral – 0

Close the hearing 1327

Discussion

Senator Lyson gives an example of how this would be used. Senator Sitte says if this is already being done then why is this needed. Senator Nething also questions why we need this bill. Senator Lyson said you still want a plan. Senator Nelson said she would like to know there is a plan in place.

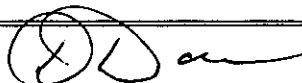
2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1327
3/30/11
Job #16194

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to authority to evacuate during a local disaster or emergency.

Minutes:

Senator Nething – Chairman

Committee Work

The committee discusses the amendment brought in by Greg Wilz.

Senator Olafson moves the adoption of the amendment

Senator Nelson seconded

Discussion

They read and discuss the definition of incident commander and unified commander. Senator Sorvaag asks if this breaks up the chain of command. Senator Lyson said the problem he has is the incident commander can't do everything. Senator Nelson said if you take this piece by piece you can see the chain of command. Senator Nething says this just identifies that person in their plan. Senator Sitte says they already have the ability to impel someone to evacuate. She does not like putting this into the hands of someone not elected. The committee says this is for a quick emergency. Every county needs to have a plan.

Verbal vote – all yes

Senator Olafson moves a do pass as amended

Senator Nelson seconded

Roll call vote – 5 yes, 1 no

Senator Nelson will carry

①

1327

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO

Page 1, after line 22, insert:

SECTION 2. AMENDMENT. Section 37-17.1-04 of the North Dakota Century Code is amended and reenacted as follows:

37-17.1-04. Definitions.

1. "Disaster" means the occurrence of widespread or severe damage, injury, or loss of life or property resulting from any natural or manmade cause, including fire, flood, earthquake, severe high and low temperatures, tornado storm, wave action, chemical spill, or other water or air contamination, epidemic, blight, drought, infestation, explosion, riot, or hostile military or paramilitary action, which is determined by the governor to require state or state and federal assistance or actions to supplement the recovery efforts of local governments in alleviating the damage, loss, hardship, or suffering caused thereby.
2. "Disaster or emergency worker" means any person performing disaster or emergency responsibilities or duties at any place in this state subject to the order or control of, or pursuant to a request of, the state government or any political subdivision.
3. "Emergency" means any situation that is determined by the governor to require state or state and federal response or mitigation actions to immediately supplement local governments to protect lives and property, to provide for public health and safety, or to avert or lessen the threat of a disaster.
4. "Emergency management" means a comprehensive integrated system at all levels of government and in the private sector which provides for the development and maintenance of an effective capability to prevent, mitigate, prepare for, respond to, and recover from known and unforeseen hazards or situations, caused by an act of nature or man, which may threaten, injure, damage, or destroy lives, property, or our environment.

5. "Homeland security" means a concerted national effort to prevent terrorist attacks within the United States, reduce America's vulnerability to terrorism, and minimize the damage and recover from attacks in the United States.

6. "Incident commander" means the person responsible for all aspects of an emergency response; including developing incident objectives, managing all incident operations, application of resources as well as responsibility for all persons involved. The incident commander sets priorities and defines the organization of the overall response. The incident commander position may be assumed until such time as a plan identified or designated incident commander arrives on scene.

~~6.~~ 7. "Incident command system" means a standardized on-scene incident management concept designated specifically to allow responders to adopt an integrated organizational structure equal to the complexity and demands of any single incident or multiple incidents without being hindered by jurisdictional boundaries.

~~7.~~ 8. "Mass care" means food, clothing, shelter, and other necessary and essential assistance provided to a large number of affected people in response to, or recovery from, a disaster or emergency.

~~8.~~ 9. "National incident management system" means a system that provides a consistent nationwide approach for federal, state, and local governments to work effectively and efficiently together to prepare for, respond to, and recover from domestic incidents regardless of cause, size, or complexity.

10. "Unified command" means a group of incident commanders representing agencies or jurisdictions that share responsibility for incident management and response for large and or complex emergency situations from a single incident

command post. The incident commanders will supervise a single command and general staff organization and speak with one voice fulfilling the roles of the incident commander.

Renumber accordingly

Date: 3/30/11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1327

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 Olafson Seconded By Senator Nelson

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman	1		Carolyn Nelson	1	
Curtis Olafson - V. Chairman					
Stanley Lyson					
Margaret Sitte					
Ronald Sorvaag					

Total (Yes) _____ No _____

Absent _____

Floor Assignment Senator

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

Verbal - yes

Date: 3/30/11
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1327

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 Olafson 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) 5 No 1

Absent _____

Floor Assignment Senator Nelson

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

REPORT OF STANDING COMMITTEE

HB 1327, as reengrossed: Judiciary Committee (Sen. Nething, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (5 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). Reengrossed HB 1327 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "section" with "sections 37-17.1-04 and"

Page 1, line 2, after the first "to" insert "definitions and"

Page 1, after line 4, insert:

"SECTION 1. AMENDMENT. Section 37-17.1-04 of the North Dakota Century Code is amended and reenacted as follows:

37-17.1-04. Definitions.

As used in this chapter:

1. "Disaster" means the occurrence of widespread or severe damage, injury, or loss of life or property resulting from any natural or manmade cause, including fire, flood, earthquake, severe high and low temperatures, tornado storm, wave action, chemical spill, or other water or air contamination, epidemic, blight, drought, infestation, explosion, riot, or hostile military or paramilitary action, which is determined by the governor to require state or state and federal assistance or actions to supplement the recovery efforts of local governments in alleviating the damage, loss, hardship, or suffering caused thereby.
2. "Disaster or emergency worker" means any person performing disaster or emergency responsibilities or duties at any place in this state subject to the order or control of, or pursuant to a request of, the state government or any political subdivision.
3. "Emergency" means any situation that is determined by the governor to require state or state and federal response or mitigation actions to immediately supplement local governments to protect lives and property, to provide for public health and safety, or to avert or lessen the threat of a disaster.
4. "Emergency management" means a comprehensive integrated system at all levels of government and in the private sector which provides for the development and maintenance of an effective capability to prevent, mitigate, prepare for, respond to, and recover from known and unforeseen hazards or situations, caused by an act of nature or man, which may threaten, injure, damage, or destroy lives, property, or our environment.
5. "Homeland security" means a concerted national effort to prevent terrorist attacks within the United States, reduce America's vulnerability to terrorism, and minimize the damage and recover from attacks in the United States.
6. "Incident command system" means a standardized on-scene incident management concept designated specifically to allow responders to adopt an integrated organizational structure equal to the complexity and demands of any single incident or multiple incidents without being hindered by jurisdictional boundaries.
7. "Incident commander" means the individual who sets priorities and defines the organization of a response and who is responsible for all

aspects of an emergency response, including developing incident objectives, managing all incident operations, applying resources, and assuming responsibility for all persons involved.

8. "Mass care" means food, clothing, shelter, and other necessary and essential assistance provided to a large number of affected people in response to, or recovery from, a disaster or emergency.
- ~~8-9.~~ "National incident management system" means a system that provides a consistent nationwide approach for federal, state, and local governments to work effectively and efficiently together to prepare for, respond to, and recover from domestic incidents regardless of cause, size, or complexity.
10. "Unified command" means a group of incident commanders whose responsibilities are to supervise a single command and general staff organization to fulfill the role of an incident commander and who represent agencies or jurisdictions that share responsibility for incident management and response for large or complex emergency situations from a single incident command post."

Renumber accordingly

2011 TESTIMONY

HB 1327

#1

TESTIMONY – HB 1327
HOUSE – POLITICAL SUBDIVISIONS
FEBRUARY 4, 2011
BY GREG WILZ
DEPUTY DIRECTOR, DEPARTMENT OF EMERGENCY SERVICES

Ms. Chairman and members of the committee, my name is Greg Wilz. I am the Deputy Director of the Department of Emergency Services (DES), and Director of Homeland Security Division.

This bill, authored by the Department of Emergency Services, seeks to provide an authority and a process to issue mandatory evacuation orders at the local level. North Dakota has and will continue to encounter incidents such as hazardous material spills, flooding, fires, and storms that quickly accelerate from isolated emergencies into catastrophic events. Incident or unified command authority to proceed with a mandatory evacuation is a vital tool that allows quicker decision making by those who possess real time situational awareness.

HB 1327 includes safeguards to ensure the authority to evacuate is not misused. First, it requires activation of a jurisdiction's disaster or emergency operations plan. Second, the plan must identify those incident commanders or unified commands that will have the authority.

North Dakota adopted the federally mandated National Incident Management System (NIMS) which includes adherence to the Incident Command System (ICS). Since 2005, homeland security grants have been available to assist local jurisdictions train and deploy ICS. It is a flexible system used by incident commanders or unified commands to organize and manage response for all emergencies including small as well as large, complex, and lengthy events.

HB1327 does not usurp authority of the Governor or local officials designated by ordinance or law.

With likely flooding emergencies forecasted this spring, I offer an amendment that adds an emergency clause.

I urge members to pass this bill and will answer questions you may have.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1327

#2

Page 1, line 2, after semicolon remove “and”, after “penalty” add “; and to declare an emergency.”

Page 2, line 1, insert:

“**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.”

Renumber accordingly

TESTIMONY – HB 1327
SENATE COMMITTEE – JUDICIARY
MARCH 22, 2011
BY GREG WILZ
DEPUTY DIRECTOR, DEPARTMENT OF EMERGENCY SERVICES

Ms. Chairman and members of the committee, my name is Greg Wilz. I am the Deputy Director of the Department of Emergency Services (DES), and Director of the Homeland Security Division.

This bill, authored by the Department of Emergency Services, seeks to provide an authority and a process to issue mandatory evacuation orders at the local level. North Dakota has and will continue to encounter incidents such as hazardous material spills, flooding, fires, and storms that quickly accelerate from isolated emergencies into catastrophic events. Incident or unified command authority to proceed with a mandatory evacuation is a vital tool that allows quicker decision making by those who possess real time situational awareness.

It is crucial that legislators be informed HB1327 does not provide evacuation authority to emergency managers because they do not normally function in an operational or tactical role. Actual on-ground responders possess the knowledge required to make evacuation decisions. Authority resides with police chiefs, fire chiefs, and other response leaders acting independently as incident commanders or jointly as unified commands.

In no way does this bill serve as a foundation for instituting martial law. It only allows mandatory evacuation decisions relating to areas in which risk levels are directly associated with loss of life.

HB 1327 includes safeguards to ensure the authority to evacuate is not misused. First, it requires activation of a jurisdiction's disaster or emergency operations plan. Second, the plan must identify those incident commanders or unified commands that will have the authority.

HB1327 does not usurp authority of the Governor under NDCC 37-17.1-05 sub-paragraph 6.e. or local officials under NDCC 40-05-01 entitled "Powers of all Municipalities" when cities have adopted ordinances under paragraphs 1 or 45.

I urge members to pass this bill and will answer questions you may have.