2011 SENATE JUDICIARY

SB 2139

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2139
1/11/11
Job #12766

☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Relating to sheriff's fees

Minutes:

There is no attached testimony

Chairman Nething called the committee to order and Senator Lyson brought forth the bill to the committee.

Greg Sampson: Sergeant with the Grand Forks County Sheriff's Department. I am also on the Civil Committee for the North Dakota Sherriff's and Deputy's Association and I teach at the law enforcement training academy in the area of civil process. Some time ago I was asked to prepare a civil fee that would involve Sheriff's Department charging plaintiffs when they issue a summons and complaint or other civil paper and then they cancel it at the last minutes. The reason being that when papers come into the Sheriff's Department there is a lot of work that goes into the processing of these papers and to just have an attorney or a plaintiff cancel it the department would not receive compensation. We have fees if we serve papers, return papers but we don't have a fee to cover the time lost if the paper is all of a sudden canceled.

Chairman Nething: The theory of doing what this bill says is to have the people that are using our court system pay for at least the portion of it that is what filing fees are all about.

Greg Sampson: And speaking for the Grand Forks County Sheriff's Department I know that some people would not think that this is a major issue but in our department alone we have 3 people that process civil papers.

Senator Lyson: When the paper comes in and you can't locate the person you are looking for and you send it back to the attorney, you get nothing right?

Greg Sampson: That is correct.

Mr. Sampson answered the remaining questions that the committee had; when the testimony was finished Chairman Nething closed the public hearing on SB 2139. A motion was made for a Do Pass by Senator Lyson with a second from Senator Sitte. There was no further

discussion and the roll call vote was taken and the motion passed 6-0. With Senator Lyson carrying the bill to the floor.

FISCAL NOTE STATEMENT

Senate Bill or Resolution No. 2139

This bill or resolution appears to affect revenues, expenditures, or fiscal liability of counties, cities, or school districts. However, no state agency has primary responsibility for compiling and maintaining the information necessary for the proper preparation of a fiscal note regarding this bill or resolution. Pursuant to Joint Rule 502, this statement meets the fiscal note requirement.

Becky Keller
Senior Fiscal Analyst

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

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2139

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 Sitte

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 0

Floor Assignment Senator Lyson

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

REPORT OF STANDING COMMITTEE

SB 2139: Judiciary Committee (Sen. Nething, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2139 was placed on the Eleventh order on the calendar.

2011 HOUSE JUDICIARY

SB 2139

2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2139
March 8, 2011
15085

☐ Conference Committee

Committee Clerk Signature D Penrose

Minutes:

Chairman DeKrey: We will open the hearing on SB 2139.

Sen. Stan Lyson: Sponsor, support, explained the bill. SB 2139 was brought to me by the Sheriffs of ND asked to have a bill put in and one of the problems with the way was written, when the sheriff's department gets a paper to serve; the sheriff's department will serve civil papers of any kind as long as they are legal paper to anybody in the county and they collect a fee to do that. They collect in advance for the fee for the service of the paper, but sometimes we get some people that when the sheriff gets the paper, attempts to serve it 2 or 3 times and aren't able to do it, the guy might have gotten scared and called the guy that initiated the action and said he'll pay the guy. So the plaintiff comes in and cancels service of the suit. The sheriff has already done his job, but he has to give the money back. This bill says that if the sheriff has attempted to serve the paper, we're going to keep the fee.

Chairman DeKrey: Is $20 enough.

Sen. Lyson: That's what the law says now. That's what this bill does, it says that if the sheriff has attempted to serve the papers, even if the action is cancelled, the fee will not be given back. There is quite a bit of paperwork to be done to serve the papers. By keeping the fee, it will help cover the costs that they have.

Rep. Klemin: It says "may retain up to $20" and you expect that they will keep the whole amount.

Sen. Lyson: I can tell you when I was sheriff, we collected $20 from everybody and even then, I think we kept the fee if they cancelled. We didn't know it was against the law.

Rep. Klemin: I know that sometimes the sheriff's department doesn't go out and serve these, they call people up and tell them to come in and get them.

Sen. Lyson: Good for them, there is still a lot of paperwork to get done.

Rep. Klemin: They would still keep the $20.

Sen. Lyson: Absolutely.

Rep. Klemin: Well I've seen the paperwork.

Chairman DeKrey: Thank you. Further testimony in support.

Sharlene Schuh: Support. The reason we requested this bill was exactly for the reasons stated by Sen. Lyson. A lot of work goes into the paperwork that we get. The secretary will log the paperwork, put a cover sheet on it, it goes to the deputy, and we may make several phone calls. The individual that we're trying to serve the paperwork on, may call the plaintiff and work out some kind of deal because the sheriff's department did call them. In that case, we would return that paperwork per the plaintiff's request without any fees at all. There may be 1.5-3 hours or more trying to work with the paperwork and get the papers served, and in essence the way the law is written now, is that we're not able to charge any fees at all. I don't think it's quite fair for the taxpayers to pay for the sheriff's department to try and collect a personal debt and not receive any money at all for the services that the sheriff's department is providing.

Rep. Klemin: I have a problem with the wording in the bill, "a request for cancellation of the civil action". First of all, in our Rules of Pleading, in a civil action, a civil action is commenced by the service of the Summons. It is not commenced until the summons is served, which creates a question of how can you cancel a civil action when it hasn't commenced. That's the way the language reads.

Sharlene Schuh: Basically, a Summons is a beginning part of a lawsuit, a civil action, so in effect, in actuality a civil action. So the plaintiff would be able to call that civil action back if they choose to work out an agreement with the defendant. In that case, of course, the work has been put into the paperwork already and no fees would be collected by the sheriff's department.

Rep. Klemin: Well I understand that, I guess I'm having trouble with the terminology with the way it is written. You can't cancel something that hasn't started. We can cancel the "starting" something I suppose.

Sharlene Schuh: I think that the way this is written is actually what it means. It is the beginning part of a lawsuit, so it is a civil proceeding when we first get it.

Chairman DeKrey: Thank you. Further testimony in support of SB 2139. Testimony in opposition to SB 2139. We will close the hearing. Let's take a look at SB 2139.

Rep. Boehning: I move a Do Pass.

Rep. Delmore: Second the motion.

13 YES 0 NO 1 ABSENT DO PASS CARRIER: Rep. Beadle

Date: 3/8/11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2139

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. Boehning 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) 13 No 0

Absent 1

Floor Assignment Rep. Beadle

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

REPORT OF STANDING COMMITTEE

SB 2139: Judiciary Committee (Rep. DeKrey, Chairman) recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2139 was placed on the Fourteenth order on the calendar.