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"Ensuring a safe and secure homeland for all North Dakotans"

Comments and Recommendations Regarding the Bill for an Act to Amend and Reenact Subsection 3 of section 37-17.1-12

Presented to

Advisory Commission on Intergovernmental Relations

By Greg Wilz, Deputy Director, Department of Emergency Services

Mr. Chairman and members of the committee, my name is Greg Wilz. I am the Deputy Director of the Department of Emergency Services (NDDDES) and the Director of the division of Homeland Security. Thank you for the opportunity to address issues concerning this bill draft. My intent is to provide information about the Bill and propose language clarification.

Although I support many of the changes, I have great apprehension about the extremely high level of financial exposure created. Essentially all state taxpayers will be held legally liable for jurisdictional decisions by local officials without input or control emanating from the state.

The State of North Dakota simply does not assume or take over responsibility for local disaster preparation activities and it does not take control during emergencies unless chaotic conditions render a local government dysfunctional. For Example, months before the 2011 flood, a Governor's disaster declaration was issued to ensure state and federal resources were available to assist local entities with preparation activities. The U.S. Army Corps of Engineers, within the parameters of Public Law 84-99, worked under signed agreements with our cities and counties to prepare levees. As routes and footprints for levees were identified at the local level, the Corps required cities and counties to obtain right of entry (ROE) agreements that explain expected property damage and hold the Corps and local government harmless in rendering assistance to protect public infrastructure and in the process, private homes, or businesses.

Because local governments decide to employ the Corps, decide levee routes to protect public infrastructure, and have the responsibility to communicate and coordinate with property owners to produce ROEs, the state should not be held responsible for jurisdictional actions. However, current draft language allows local jurisdictions to shoulder no responsibility and suffer no consequences for decisions. This bill directs the state to pay damages incurred.

My recommendation includes language that places financial responsibility and accountability upon individual jurisdictions that make the decisions.

Recommended Language:

“Compensation for property must be paid if the property was commandeered or otherwise used in management of a disaster or emergency by a jurisdiction having authority. Compensation for property or damage to property shall be the responsibility of the jurisdiction that has authority to take such actions if not mitigated in agreement prior to use.”