

TESTIMONY OF
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DIRECTOR, DEPARTMENT OF EMERGENCY SERVICES
BEFORE THE 67TH LEGISLATIVE ASSEMBLY
HOUSE GOVERNMENT AND VETERANS AFFAIRS
HB 1495
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Chairman Kasper and members of the House Government and Veterans Affairs committee, my name is Al Dohrmann. I am the Director of the Department of Emergency Services for the state of North Dakota. As the officer charged with executing emergency responses under Chapter 37-17.1, I appear today to raise some concerns we have and to answer any questions you may have of the executing agency.

I will briefly go through the sections of the bill and lay out our concerns. I will also offer upfront, the assistance of my team to help draft any amendments that you may identify as you deliberate on this bill. In the past, we have crafted meaningful legislation that support emergency responses and improved the readiness of our National Guard. Typically, that is you helping us accomplish our goal. I hope that this is a two-way street and that we can also help the legislature craft a bill that meets its intent and provides clear guidance and authorities for those that carry out that intent.

I will not address section 1 of the Bill since it addresses the authorities of the State Health Officer.

Section 2 of HB 1495 would add the leaders, or their designee, of both chambers of this body to the Department of Emergency Services Advisory Committee (DESAC). While adding legislative members to Executive Agency boards, commissions, and committees, is not the norm, presumably on the separation of powers concept, the Department of Emergency Services believes it would be helpful in this instance and would support adding legislative leadership to the DESAC. This advisory group brings stakeholders together from all levels of government and functional areas. One of its mandates is to ensure we have the right law and policy in place to respond appropriately to save lives and property. Having legislators in this process, could streamline our current process. For example, this session there are numerous bills that make changes to Title 37-17.1. If these bills are worked through the DESAC, we gain efficiency in future legislative assemblies.

In section 3, the Governor's authority to declare martial law has been removed. I have not experienced a situation where martial law has been needed; however, I am concerned there may be a point in time that this may be needed, but not available.

Section 4 defines "Regulatory Statute" as "...a statute prescribing, regulating, or limiting the procedures for the conduct of state business; or licensing, issuing permits, and prohibiting conduct or an activity by a person." We are concerned that this definition is so broad that when combined with the requirements for issuing executive orders under

section 5, we may lose some of the tools that served our state so well in our past responses to natural disasters.

Within our agency, we have debated the meaning of section 5 of the bill and have not come to a consensus on if there is a difference between "disasters or emergencies" generally and "epidemics or pandemics" specifically. Lines 12-15 on page 5 gives the Governor the authority to declare a disaster and the Governor or legislative assembly the ability to end a disaster. This authority is already the law today. However, lines 15-18 set a different process for epidemics or pandemics, limiting the Governor authority to 30 days, with an option to extend to 60 days by a legislative concurrent resolution. Lines 22-29, we believe provide a legislative process to extend emergencies beyond 60 days, but it is unclear to us if this extension authority applies to "disasters and emergencies" or just to "epidemics or pandemics". This part of the Bill leads us to believe that all emergencies are capped at 60 days unless extended by a concurrent resolution. As you can see in attachment one to our testimony, we have experienced numerous disasters and emergencies that have extended past the 60-day point.

We also have concerns with the process for implementing executive orders found in page 7 of HB 1495. Requiring the consent of the legislature to "suspend the provisions of a regulatory statute", as defined in section 4, may limit our ability to apply at the point of need and time executive orders required to save lives and property. Attachment 2 to my testimony provides a summary of the executive orders that were issued during the 2011 flood event. Many of these executive orders may have been late to need if we were required to bring a bill before this assembly or followed the alternate procedure provided for in the Bill of bringing the matter before the administrative rules committee. Decisions to evacuate property threatened by flood or fire, lift road restriction to ensure levy construction materials reaches the point of need in time, close roads that put the traveling public at risk do not lend themselves to a deliberative process. Policy is probably best produced by a committee with input from all stakeholders, emergency response is best executed by empowered leadership from the Governor down to the emergency manager and 1st responder on the ground.

I want to highlight the problem I believe you are trying to fix, the use of executive power during pandemics and epidemics. I understand and have felt some of the same pressure you have received from your constituents on the impact of executive orders on people's lives and livelihoods during the pandemic. To be honest, I've never heard similar concerns during floods, fires, storms and drought, our typical emergencies in the state. Drawing your attention back to attachment 2, you will notice that many of the executive orders are designed to speed response and, as opposed to the pandemic, have the effect of stimulating the economy. I have been involved in a number of more typical emergencies for the state, I have never heard that we move too fast, did too much or stayed too long. If the problem we are trying to fix is how we respond to public health emergency, I'd suggest we need legislation that focuses on that, and not change the authorities that have saved lives and property in our 4 major cities and our rural communities over the last 30 years.

I understand the goal is oversight, but I am concerned that legislative oversight could give way to legislative management. We have a saying in emergency management that *all disasters are local*. That is how the response system was built. While you have been elected to represent your districts, only the local mayors, commissioners, the Governor and a minority of this body may have been elected by the individuals experiencing the actual disaster. I believe these are the elected leaders that should be making the decision that affect the people who elected them. I understand that you all have a stake in how we spend state resources, but legislative oversight is already provided through the Emergency Commission and Budget Section process.

I would be pleased to stand for your questions.

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