

Good Afternoon, Chairman Weisz and esteemed members of the House Human Service Committee. For the record I am Rep. Bill Devlin of District 23 and live in Finley.

I am here today to ask for a favorable vote and recommendation on HB 1118. Simply put this bill will bring the legislature back into the decision-making process, when the state declares an emergency related to public health.

As you know the Governor declared a state of emergency in response to the COVID 19 Public Health Crisis on March 13, 2020 under the authority granted in NDCC Chapter 37-17.1. This bill will change that authority to a 60-day limit on a declared state of disaster or emergency related to public health such as an epidemic or pandemic. After that, the Governor would have to come to the legislature to get an extension not to exceed 30 days.

It is patterned after what I have seen in other states. If the legislature is in session the extension could be considered at that time. If we are not in session, the Governor would have to call us back into special session to make the decision if he or she wanted the declaration extended. That decision could be voted on remotely.

The legislature may approve the extension request by a concurrent resolution. If the legislature does not approve the extension the declared state of disaster or emergency relating to public health expires no later than the end of the 60th day or the end of the previously approved extension.

If the state of disaster or emergency related in public health terminates after 60 days or an extension request is not approved, House Bill 1118 would prohibit the governor from declaring another state of disaster or emergency for the same disaster or emergency conditions.

There are a number of reasons I sponsored this bill and sought co-sponsors from both parties. Many of the constituents in my District and people I know across the state believe the legislature should become more involved in the process.

To me this is a policy issue and the legislature, not the executive branch is the policy making branch of government. The supreme Court described the distribution of powers as follows: The legislative branch deliberates upon and decides the policies and principles to be adopted for the future and enacts the law executive branch administers the law so enacted. The executive branch does not create policy, they can only administer it.

We allowed the governor to make this emergency declaration through a change in law in 1985. At that time there was a 30 day limit on the emergency declaration with the governor having the authority to extend it. I sincerely doubt the Legislators at that time every thought it could go for months at a time.

The present Governor has issue almost 70 executive orders relating to the declared COVID 19 emergencies. I have heard from so many frustrated people from throughout my district and across the state. Small business owner who are afraid they are going to lose their family business they have spent years building. People who have lost their jobs, parents who say their children aren't learning remotely at a level compared to in person instructions and were very upset with the closing of schools. Parents, student athletes and coaches who are frustrated on the limitations put on extracurricular activities. I appreciate the work of Legislative Leaders for working with the executive branch to change that one to a more acceptable rule. So many other people have been contacting me and most if not all other legislators to express their frustration on many different issues. I only touched on a few of them.

Families with people in long-term care have been devastated by some of the restrictions. We can point the finger at the federal government for many of the restrictions on skilled Nursing Homes.

I believe the decision by the governor's office to include Basic Care and Assistant Living in the same order was devastating and, in my opinion, ill-advised and completely wrong. Residents of those facilities had to stop visitation, stop all group dining, and stop all group activities. People were essentially ordered to stay in their apartments and not leave.

People in Basic Care and Assisted Living have a right to self-determination. The Emergency Regulations have taken away their rights as private citizens. Some of them said they felt like prisoners in their homes. In my humble opinion, those type of facilities should never have been included with Nursing Homes. The federal requirement does not require that type of regulation on Basic care and Assisted Living facilities and neither should the state of North Dakota. I personally believe they violate the Rights of Health Care Facility Residents located in NDCC 50-10.2

Specifically, I believe they violates the right to civil liberties, the right to independent personal decisions without infringement, the right to have private meetings, associations and communications with a person of choice within the facility, to name a few.

I could go on and on about the many negative issues faced by many of our citizens. There is no question the Governor had broad authority to do much of what he did, because the legislature gave it to him years ago. But it should not lead to a never-ending emergency declaration and the over-reach of many of the rules.

There are also other broader issues that concern many other legislators. The governor may suspend a regulatory statute under certain circumstances during a disaster or emergency. But there may be a question of whether the governor exceeded that authority with some of the 2020 executive orders. If so, the governor engaged in lawmaking, a power reserved for the legislature, with some of his rules.

We did not have enough days left for a special session to deal with those questions and going to court would have been a time-consuming process, which would not have been completed in a timely fashion. Essentially, we could do nothing. This bill would change that by keeping us involved throughout the emergency.

The legislature must weigh in on these issues as they go along. Citizens should know they can work with the local legislators to find relief from the burden imposed upon them by their own government, at the state level.

I believe we must quickly pass HB 1118, in this committee, on the House floor and get it to the Senate for their consideration. It will give the executive branch authority to deal with an emergency as it unfolds but will bring the legislature back into the equation after 60 days. That is the right thing to do for the future of our state.

Chairman Weisz and members of the committee, there might be others here that would wish to testify. I can try answer questions now or after the other testimony has taken place. Thank you!