

TESTIMONY OF
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DIRECTOR, DEPARTMENT OF EMERGENCY SERVICES
BEFORE THE 67TH LEGISLATIVE ASSEMBLY
SENATE GOVERNMENT AND VETERANS AFFAIRS
HB 1495
MARCH 25, 2021

Chairman Vedaa and members of the Senate 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 in opposition to HB 1495.

I am concerned that this bill, as written, could limit the state's ability to take decisive action, at the time and place of need. While crisis response is a team sport, to get ahead of your competition, whether it is Mother Nature, an invisible virus, or a thinking competitor promoting civil unrest, you need empowered leadership from the front-line responder up to the leader of the Unified Command and the executive of the state, the Governor. Additionally, you need the authority and resources required, at the time and place of need, to take the action required to save lives and protect property. Chapter 37-17.1 of the Century Code, as currently written, provides this team the tools needed to take decisive action at the time and place of need. Whether it is rapidly procuring flood mitigation resources, quickly calling out the National Guard, or dramatically increasing testing and bending the curve during a spike in transmission of a virus, the authorities in Chapter 37-17.1 have served our state well over the last several decades.

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, the Department of Emergency Services believes it would be helpful in this instance and would support adding legislative leadership to the DESAC. We have come to this conclusion, based on our experience of adding legislators to the Statewide Interoperability Executive Committee, that there is benefit to the state – executive and legislative branches alike – in creating policy that is based on the data, informed by the subject matter experts charged with responding and introduced by members of this chamber.

Adding legislative leadership to the DESAC could have preempted the situation we are now working through, where we have three bills addressing the emergency authorities of the State Health Officer and Governor (HB 1118, HB 1495, SB2124), that were initiated by lawmakers that may or may not have experience in responding to disasters and emergencies, drafted by members of the legislative council, who may or may not have experience in responding to disasters and emergencies, reviewed, as far as I know, by none of the subject matter experts employed by the state and local governments, and debated within this deliberative body at a time when emotions are

running high and subject to the influence of a once in a hundred year pandemic event (more on that below). Clearly, there is no requirement for the legislative branch to work with the executive branch to bring forward new policy. With that said, there is a strong argument that the best policy would be developed jointly between the branches of Government. Section 2 of HB 1495 would facilitate this level of cooperation and should result in well informed policy decisions.

We are also concerned that HB 1495 introduces ambiguity into what should be clearly defined authority. 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 19-22 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 22-25 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. The language beginning on line 29 of page 5 and ending on line 5 on page 6, 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”.

Since the phrase “disasters and emergencies” is used, I would have to assume that this arbitrary 30/60-day construct would apply to all events, not just pandemics and epidemics. As you can see at attachment one, we do experience emergency, other than pandemics, that exceed 60 days. Putting arbitrary dates on a calendar would be a mistake and potentially put our response and our citizens at risk.

We are also concerned that the language found on lines 13-16 of page 7 may have unintended negative consequences. The definition of regulatory statute, found in section 4, is ambiguous, overly broad, and, combined with the language of lines 13-16 of page 7, 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. Executive orders like these are designed to speed response and, as opposed to the pandemic, have the effect of stimulating the economy. I do not believe these are the type of executive orders that were contemplated when drafting HB 1495, and my fear is we are debating language that was drafted at a time when emotions are running high because of frustrations surrounding COVID.

So why address Chapter 37.17.1 now? We have had other long-term emergencies, the DAPL event in 2016-2017, the drought of 2017 and the floods of 1997, 2009 and 2011 with very little policy change thereafter. To be honest, I have never heard concerns about the Governor’s authority or Executive Orders during floods, fires, storms and drought, our typical emergencies in the state. So again, why change the law now?

It is about the pandemic. I have attended all the hearings on HB 1495 and SB 2124 and have heard repeatedly that these bills are not about the pandemic. Yet, those that

speaking in favor of these bills only talk about the pandemic. The questions asked by the committee members, almost exclusively, are about the pandemic. Citizen submitted testimony in support of these Bills is exclusively about the pandemic. So, if pandemic response is the concern, why are we changing our law for all “emergencies and disasters?”

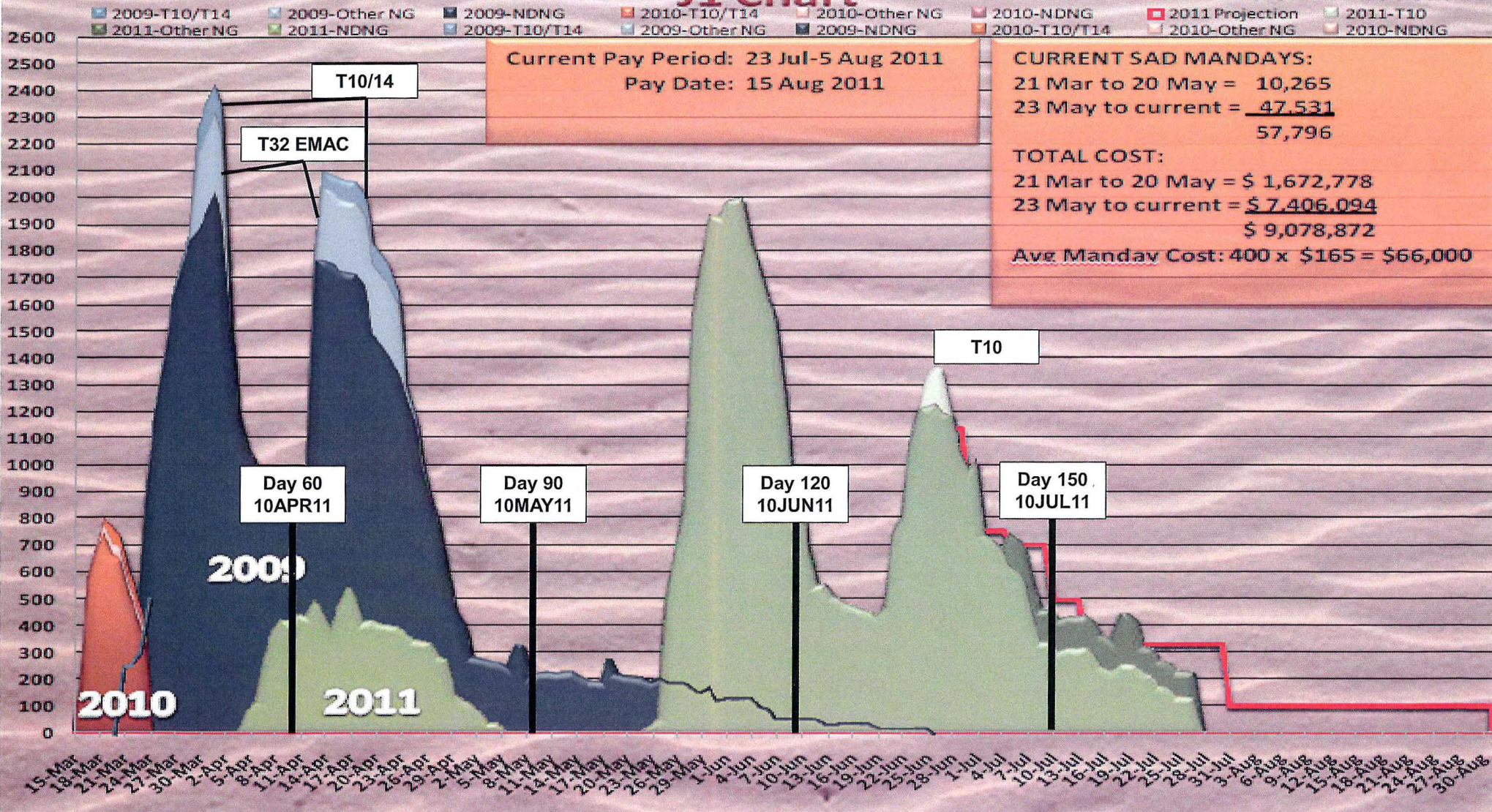
A disaster declaration provides my authority, as the Director of Emergency Services, to activate the State Emergency Operations Plan. It is the authority to bring all agencies, government, and non-government, together to protect lives and property. It also provides the authority I need, as the Adjutant General, to call out the North Dakota National Guard. Without this authority, we will put lives and property at risk. We may also delay state response in fear that we will trigger one of these key dates, requiring the convening of the legislature at the wrong time to manage the disaster or emergency.

I have been involved in all state “disasters and emergencies” dating back to 1997 and I never heard that we moved 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 would suggest we need legislation that focuses on that, and not change the authorities that have served our state so well over the years. I therefore urge a Do Not Pass recommendation on HB 1495.

I would be pleased to stand for your questions.

J1 Chart

AS OF: 271600JUL11



Day
150
10JUL

20
JUL

12
AUG

- July 29, 2011 - Extension of the Suspension of Licensing Requirements for Health Care Facilities and Providers
- July 26, 2011 - Easing of Bidding Requirements to Support Flood Fight
- July 21, 2011 - Dalrymple Rescinds Renville County Evacuation; Mandatory Evacuation of Areas in Ward County Remain in Effect
- July 19, 2011 - Dalrymple: Suspension of Tax Deadlines Due to Flood Emergency

Day
120
10JUN

- June 25, 2011 - Dalrymple Orders Mandatory Evacuation for the City of Velva and Areas in McHenry County
- June 25, 2011 - Dalrymple Orders Mandatory Evacuation for the City of Sawyer
- June 24, 2011 - Revised: Dalrymple Extends Hours of Service for Carriers or Drivers of Commercial Motor Vehicles
- June 24, 2011 - Revised: Mandatory Evacuation In Morton County Areas Due to Flood Emergency
- June 23, 2011 - Dalrymple Orders Mandatory Evacuation for Areas in Ward County
- June 23, 2011 - Revised: Dalrymple Limits Access to Inundated Flood Areas.
- June 22, 2011 - Revised: Mandatory Evacuation Along the Souris (Mouse) River Due to Flood Emergency
- June 22, 2011 - Dalrymple Suspends Licensing Requirements for Health Care Facilities and Providers During Flood Emergency
- June 22, 2011 - Dalrymple Limits Access to Inundated Flood Areas to Those Persons Who Reside in the Flooded Areas.
- June 21, 2011 - Mandatory Evacuation Along the Souris (Mouse) River Due to Flood Emergency
- June 8, 2011 - Mandatory Evacuation In Morton County Areas Due to Flood Emergency
- June 1, 2011 - Suspending Sunday Business Hours and Easing of Bidding Requirements to Support Missouri River Flood Fight Expanded to Include NDDOT
- June 1, 2011 - Extension of the Suspension of Licensing Requirements for Health Care Facilities and Providers

Day 90
10MAY

- May 31, 2011 - Dalrymple Suspends Licensing Requirements for Health Care Facilities and Providers During Flood Emergency
- May 27, 2011 - Dalrymple Waives Weight Restriction for Flood Emergency
- May 26, 2011 - Dalrymple Eases Bidding Requirements, Suspends Sunday Business Hours to Support Flood Fight
- May 13, 2011 - Dalrymple Proclaims Winter Storm Disaster
- May 5, 2011 - Dalrymple Proclaims a Statewide Flood Disaster in North Dakota
- May 3, 2011 - Dalrymple Declares Winter Storm Emergency and Waives Hours of Service, Weight Restrictions for Power Crews

Day 60
10APR

26
APR

- April 8, 2011 - Dalrymple Proclaims a Flood Emergency
- April 8, 2011 - Dalrymple Suspends Licensing Requirements for Health Care Facilities and Providers
- April 5, 2011 - Dalrymple Extends Hours of Service for Carriers or Drivers of Commercial Motor Vehicles

Day 30
11MAR

28
MAR

26
MAR

- March 11, 2011 - Dalrymple Proclaims Statewide Winter Storm Emergency

Day 1
10FEB

14
FEB

10
FEB

- February 10, 2011 - Dalrymple Proclaims Statewide Flood Emergency