

2021 SENATE JUDICIARY

SB 2124

2021 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

SB 2124
1/11/2021

A BILL for an Act to create and enact a new section to chapter 54-03 of the North Dakota Century Code, relating to permitting a virtual special session of the legislative assembly during an emergency or disaster; and to amend and reenact subsection 12 of section 23-01-05 and section 37-17.1-05 of the North Dakota Century Code, relating to the state health officer's and governor's authority during a declared disaster or emergency; and to provide a penalty.

8:55 AM Chairwoman Larson called the meeting to order
Senators Present: Dwyer, Bakke, Fors, Heitkamp, Luick, Myrdal, and Larson

Discussion Topics:

- Executive order provisions provided in statute
- Provisional Statutory regulations

Senator Dever, District 32 testified in favor #433 (8:59am)

Senator Myrdal, District 10 introduced the bill, testified in favor #443 and proposed amendment [LC 21.067.01001] #451 (9:06am)

Jill Grossman of Legislative Council provided neutral testimony (9:17am)

Margo North testified in favor of SB 2124 (9:24am)

Amber Vibeto testified in favor (9:26am)

Charles Tuttle, a Minot resident, testified in opposition #444 (9:27am)

Cody Schulz, Deputy Director of Emergency Services, testified in opposition #453 (9:34am)

Major General Alan S. Dohrmann testified in opposition #455 (9:46am)

Jace Beehler, Chief of Staff to Governor Burgum, testified in opposition #458 (10:09am)

Additional written testimony:

Cody Hager provides written testimony #412 and #413 in support of SB 2124

Jay Sheldon provides written testimony #431 and #432 in opposition of SB 2124

Chairwoman Larson closes the hearing at 10:28am

Jamal Omar, Committee Clerk



NORTH DAKOTA SENATE

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



Senator Dick Dever

District 32
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COMMITTEES:

Appropriations

Testimony for SB 2124 Senate Judiciary Committee January 11, 2021

Madam Chair, members of the Committee, I am Dick Dever, Senator from District 32 here in Bismarck. Senator Myrdal will be providing details on the bill. I will try to offer perspective surrounding the issue.

The first point I would like to make is that it is necessary that the Governor have the ability to declare emergencies. Governor Burgum has issued 15 declarations during his term in office. Most people would agree that everyone of them was necessary. Most are weather related that required quick response. Following is a list of those emergencies.

1. Activated the State Emergency Operations Plan for a severe summer storm on August 31, 2020
2. Declared a state of emergency in Fargo, West Fargo, and Cass County and activated the ND National Guard due to unlawful activity and civil disturbances on May 30, 2020
3. Declared a statewide flood emergency on April 24, 2020
4. Declared a statewide flood emergency on October 21, 2019
5. Ordered activation of the State Emergency Operations Plan for a severe snowstorm on October 11, 2019
6. Declared a statewide flood emergency on March 27, 2019
7. Declared a winter storm emergency in certain counties on March 26, 2019

8. Declared a drought disaster for certain counties and tribal nations on July 26, 2017
9. Declared a drought emergency and added counties to drought disaster livestock water supply program on June 30, 2017
10. Declared a statewide fire and drought emergency on June 26, 2017
11. Declared a drought emergency for certain counties on June 22, 2017
12. Declared a flood disaster for certain counties on May 19, 2017
13. Declared a flooding emergency for certain counties on April 14, 2017
14. Declared a state of emergency for flooding in Walsh County on March 24, 2017
15. Ordered emergency evacuation due to flooding on February 15, 2017

The concern that I have with the current situation and the need I see for changing the law is that the emergency is open ended. As an emergency continues, the ability to collaborate with the policy making branch of Government exists. The Executive Orders in several circumstances involve the suspension of sections of the Century Code. That may be necessary to do on a short term, emergency basis, but longer term, they should require the consent of the policy making branch.

Thirdly, I want to impress that this bill should be about the law, and not about personalities. It should not be just about the present circumstance, but in anticipation of future, unforeseen circumstances.

Throughout the last several months, the Governor has had to make difficult and sometimes unpopular decisions. I hope that he sees this bill as an opportunity to shift some of that burden to his colleagues in the Legislature. The people elected us to address difficult situations as well.

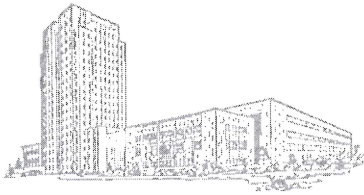
If this bill had been in place before the pandemic, I would envision that last April, the declaration would have ceased unless the Governor called a special session and extended it another 30 days. We would have had that time to consider what the situation should be going forward from there.

Considering what that might have looked like, I would like to put together another bill that will address the necessary actions from this point. I would like to work together with the Governor's office on that policy.

It's time for us to get back to living. We can die from Covid. We can quit living from fear of Covid, or we can decide what level of risk we are willing to accept, and what we can do to mitigate that risk. We know that we have a very vulnerable population, and we have a large population that is not so

vulnerable. We would be better able to focus on the vulnerable if we relaxed our efforts for the general population. The Governor was right to expect that people exercise personal responsibility. We should raise that expectation again.

With that, Madam Chair I would be happy to respond to any questions. I hope this is the beginning of a conversation that will continue through the session.



NORTH DAKOTA SENATE

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



Senator Janne Myrdal

District 10
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COMMITTEES:

Agriculture
Judiciary

January 11, 2021

Madam Chair and members of the Senate Judiciary committee,

I am Senator Janne Myrdal D10 and I am before you today to introduce SB2124. The state of North Dakota has (and to some degree still are) gone through a difficult year dealing with a challenge none of us have truly experienced before. SB 2124 is a bill to deal with gaps we have discovered in NDCC regarding emergencies such as what we have gone through and the responsibilities of the Legislative and the Executive branch during such times.

The Legislature is elected by the people of North Dakota as lawmakers and appropriators. The Executive branch then govern according to such. And together we take care of the business of our State. SB2124 aims to establish needed balance and separation of powers to fulfill our constitutional duties to the people.

SB2124 is truly a bill at the request of the people of North Dakota:

- During declared emergencies, the Executive Branch would be able to act without delay in a quick and necessary manner to reduce possible harm and danger to the citizens of North Dakota
- During the first 30 days, the Executive Branch would have the power and the means to mitigate all possible adverse outcomes relating to the emergency
 - o This would allow the Executive Branch to act, within designated powers of an emergency declaration, in a manner that would not be stagnated by possible political haste.

- After convening a special session and getting approval from the Legislative branch, the Executive branch would have additional support in taking actions deemed necessary to control issues relating to the ongoing emergency.
 - o After the special session, and with Legislative approval, the Executive branch would be acting with voted support by those representing different areas of North Dakota. This would mean the Executive Branch would be working in ways the majority of Legislators representing the entire State have deemed appropriate and necessary during the emergency
- SB 2124 would give the Legislative Branch the ability to extend the Executive branch's power if the emergency required additional actions.
- SB 2124 will give the Legislative branch the ability to have a "check" on emergency powers if the Executive branch is acting in ways the Legislative branch deems unnecessary
 - o In all government areas, it is important to have designated forms of a check and balance system.

Before I go through the provisions of SB2124, allow me to state that this is not a simple reaction to the current virus nor the current executive administration, but rather a direction for the future. It is also not about specific emergency order topics. It is about making sure our elected leaders work together on behalf of every corner of the state during difficult times.

Here are the provisions:

Page 1 deals with definition of Health Care Officers scope of authority which may not exceed that of the Governor during an emergency or disaster.

Page 2 deals with duration of an emergency order by the Governor. It limits it to 30 days but may be extended beyond such if the governor calls a special session of the legislature to be held within the 30-60 days after first declaration.

Page 2 Governor may not declare another emergency for same condition if it has been terminated by concurrent resolution by legislature or if it has terminated after 30 or 60 days.

Page 4 Governor may not use exec order that restricts monies appropriated by legislature

Page 5 Due to language that says, "seat of government" we had to make sure this language was added to include virtual session designated as "seat of government".

Madam Chair, I have also provided a copy of an amendment to SB2124. It clarifies that any subdivisions may not exceed duration or scope of the authority of the governor under this section.

This concludes my testimony. I will stand for any questions as I ask for a do pass. I have also invited LC for any clarification on language.

21.0607.01001
Title.

Prepared by the Legislative Council staff for
Senator Myrdal
January 9, 2021

PROPOSED AMENDMENTS TO SENATE BILL NO. 2124

Page 1, line 1, after "chapter" insert "37-17.1 and a new section to chapter"

Page 1, line 2, after "to" insert "authority of local elected officials and governing bodies of political subdivisions during a disaster or emergency and"

Page 1, line 2, remove "special"

Page 1, line 3, remove the first "and"

Page 1, line 18, replace "section" with "subsection"

Page 4, after line 30, insert:

"SECTION 3. A new section to chapter 37-17.1 of the North Dakota Century Code is created and enacted as follows:

Authority of local elected official and governing body of political subdivision during disaster or emergency.

An order issued by a local elected official or governing body of a political subdivision relating to addressing the effects of a declared disaster or emergency may not exceed in duration or scope the authority of the governor under this chapter."

Page 5, line 3, remove "**special**"

Renumber accordingly

IN SUPREME COURT**STATE OF NORTH DAKOTA**

Roland Riemers & Charles Tuttle)	Supreme Court # _____
Petitioners)	PETITION for EMERGENCY
vs.)	SUPERVISORY WRIT
Burleigh County District Court)	
Respondent)	Ref: 8-2020-CV-1884

I. EMERGENCY SUPERVISORY WRIT REQUESTED

Roland Riemers and Charles Tuttle (here-in-after Petitioners), are the Contestants in the Election Contest of 8-2020-CV-1884 which seeks to contest the 9 June 2020 Primary Election. Petitioners hereby petition the ND Supreme Court for an EMERGENCY SUPERVISORY WRIT directing the Burleigh County District Court that:

- a. The Contestees are in Default for not responding with a “verified” Response.
- b. The Contestees are in Default for not submitting a timely response.
- c. The District Court has Subject Matter Jurisdiction.
- d. That the Court Dismissing the Election Suit after the date for a mandated hearing was ex-post-facto, a denial of state and federal procedural due process and thus is invalid.
- e. Direct that the District Court have an immediate hearing on the election suit.

II. VERIFIED RESPONSE WAS REQUIRED:

Under NDCC 16.1-16-03 the Contestants must serve a “*verified complaint*” on the Contestees. If you look at most dictionaries or the laws in other states, they generally always state a verified complaint requires a verified answer. But 16.1-16 is silent on this issue. And under our Rules of Interpretation, the “*The code establishes the law of this state respecting the subjects to which it relates, and its provisions and all proceedings under it are to be construed liberally, with a view to effecting its objects and to promoting justice.*” (NDCC 1-

02-01) Would not justice require that if the Contestant had to submit a verified Complaint, that the Contestees must also submit a verified Response? *“Words used in any statute are to be understood in their ordinary sense, unless a contrary intention plainly appears, but any words explained in this code are to be understood as thus explained. (NDCC 1-02-02) “Technical words and phrases and such others as have acquired a peculiar and appropriate meaning in law, or as are defined by statute, must be construed according to such peculiar and appropriate meaning or definition.” (NDCC 1-02-03).* Again, this would enforce the idea that for justice a verified Complaint requires a verified Response. It is also presumed that *“A just and reasonable result is intended.”. “Public interest is favored over any private interest.” (NDCC 1-02-38.5)* We also need to look at *“The object sought to be attained.” (NDCC 1-02-39.1)* As well as the *“The consequences of a particular construction.” (NDCC 1-02-39.5).* In this instance, the law is trying to get a speedy resolution of the election process. Allowing the Respondents’ lawyers to ramble on with the usual generic cryptic legal denials defeats the whole purpose of the statute. The election statutes want speedy results. The Respondents want generic denials followed by months of meaningless discovery and redundant motions so that no real contest of any election can ever be done.

Decisive is, *“Whenever the meaning of a word or phrase is defined in any statute, such definition is applicable to the same word or phrase wherever it occurs in the same or subsequent statutes, except when a contrary intention plainly appears.” (NDCC 1-01-09)* In this instance, the rule for a verified pleadings is clearly spelled out in other statutes: *“The answer and reply must be verified . . .” (NDCC 32-30-07)*

The Contestees did not submit a verified Response and are therefore in Default.

III. CONTESTEES DID NOT SUBMIT A TIMELY RESPONSE:

It is clear from their actions that the Respondents are attempting to follow the Rules of Civil Procedure. But this action is for the most part governed by State Statute NDCC 16.1. When a statute gives clear mandates, the statute must be followed. (NDCC 1-02-01) There is no provision in 16.1 for the normal 3 days allowed for mail service. NDCC 16.1-16-04 requires “*The contestee shall serve and file an answer within fourteen days after service of the contest summons and complaint*”. In common English “served” means to give possession to. (Refer to NDCC 1-01-02 & 03) The Respondents does not get the 3 days for mail service as allowed under the Rules for Civil Procedure. They were required to have physically gotten their Response into the Petitioners hands before the end of the 14th day. Nor would any other interpretation make sense as there is only 10 days allowed after the response until the hearing. (See NDCC 16.1-16-06 and 1-02-39.1). Subtracting 3 more days off that 10 days would have allowed only 7 days maximum for the Contestants to respond before the mandated hearing. Nor did Respondents need to respond by mail. The Respondents could have personally served the Petitioners the same day they filed the return, or they could have gotten permission from the Petitioners to serve them by email or fax? Or they could have mailed out their Response 3 days before? So it really was not an impossible burden on the Respondents.

Because the Respondents did not follow the statute to physically serve the Petitioners by the 14th day (ie. the 6th of July), their Response has to be stricken from the record.

IV. THE COURT HAD SUBJECT MATTER JURISDICTION

On 20th of July the District Court Dismissed the Election Complaint “*For Lack of*

Subject Matter Jurisdiction.” The Respondents and the Court contend that an election contest can only be made against the individual winning candidate and in the County of that candidate. So in the case of Riemers, the Respondents and court contend Riemers should have sued Zachar Raknerud (here-in-after just Zach). But Zach did not set up the mail-in election. Zach did not violate state and federal election laws. Zach did not direct the Governor’s Office, the Secretary of State’s Office, nor the League of Counties or any of the various local election officers. State officials did the crime, not Zach. The State has all the answers, not Zach. So why in the world would Riemers name Zach as a Contestee? Why should Zach have to hire an expensive lawyer to defend the Contestees’ illegal election practices? Why would Riemers want to file the case in Zach’s Ward County? Absolutely none. The Governor and the Secretary of State violated the laws and caused the election problems, and the correct county for suing them is Burleigh County, not Ward County. And if Zach had been sued by the Contestants it would leave the State completely off the hook and would be a complete denial of Contestants’ Right to a Remedy under ND Constitution Article 1, Section 9 and Section 5. *“The citizens have a right . . . to apply to those invested with the powers of government for the redress of grievances, or for other proper purposes, by petition, address or remonstrance.”*

In any case Tuttle had two winning opponents. One lives in Morton County and one lives in Burleigh County. So which one of those three counties was the correct county?

In any case, Zach was actually a Contestee because in our initial complaints it was made *“ . . . against all candidates appearing on the Primary Ballot.”* (Line 13, Page 1 of Complaint.) The reason for that is that if the election was unfair and illegal for Riemers and

Tuttle, it was unfair and illegal for all the candidates on that ballot.

The object sought to be attained.” (NDCC 1-02-39.1) from our election laws is an honest and open election, which certainly would not have been achieved by Petitioners making an election contest against Zach for a statewide poorly run election. As well as the *“The consequences of a particular construction.”*(NDCC 1-02-39.5) by dismissing a law suit because we can not decide which candidate should be sued for the Contestee’s actions?

This Court needs to direct the District Court that they do have jurisdiction.

V. THE DISTRICT COURT ERRED IN DISMISSING AFTER THE DATE REQUIRED FOR A MANDATORY HEARING.

Because of the high importance of keeping our elections honest and on time, State law NDCC 16.1-16 sets time limits much stricter than the rules of Civil or Court Procedure. After the Contestee Responds, the law mandates *“The district court shall set the hearing on the contest action not more than ten days after the filing of the contest answer.”* (NDCC 16.1-16-06) The Contestees responded on 6 July 2020. The final date for this mandated hearing was the 16th of July 2020. No hearing was set by the Burleigh County District Court, so on the 16th of July Riemers filed a Petition for Supervisory Writ with this Court. On the 20th of July, after missing the mandated hearing and after the Petition for a Supervisory Writ, the District Court issued a Ex-Post-Facto order which basically just parroted the Respondents pleadings and dismissed the election law complaint.

It is obvious that this delayed ruling is a denial of Petitioner’s Due Process Rights under the State and Federal Constitution and the order was made mostly as a way to excuse the court for not having a mandated hearing and this order should be stricken by this Court.

VI. ENOUGH DELAYS, THE COURT MUST ISSUE AN EMERGENCY SUPERVISORY WRIT CALLING FOR AN IMMEDIATE HEARING ON THE ELECTION CHALLENGE.

The November election is fast approaching. State election laws require an open and honest election process run by the rule of law. Thus the need for a speedy resolution of this election challenge. Currently August 25th is a hearing on just the Respondents' motion for a Decision on the Pleadings, for just the legality of the Governor's various emergency orders. These orders directly and indirectly caused the problems in the Primary election. So, if eventually the courts rule the Governor's orders were illegal (which they were), would not that also make the actions of the state to those orders illegal, such as our elections? Is this Court just going to continue to kick the can down the road? We therefore ask this Court to direct that the District Court set up an immediate hearing so that the issues raised can be resolved in August of 2020 and not some remote legal action in 2021?

By, _____
Roland Riemers, Petitioner

The above Petitioner I have personally identified and has subscribed and sworn before me this ____ day of August 2020, under penalty of perjury, that the statements in this Petition are true and correct to the best of his knowledge and belief.

Notary Public, State of North Dakota

By, _____
Charles Tuttle, Petitioner

The above Petitioner I have personally identified and has subscribed and sworn before me this ____ day of August 2020, under penalty of perjury, that the statements in this Petition are true and correct to the best of his knowledge and belief.

Notary Public, State of North Dakota

IN SUPREME COURT

STATE OF NORTH DAKOTA

Roland Riemers)
Petitioner)
vs.)
Burleigh County District Court)
Respondent)

Supreme Court # _____

**AFFIDAVIT OF
PERSONAL SERVICE**

Ref: 8-2020-COVID-1884

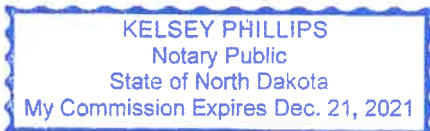
I, Charles Tuttle, being sworn, state that
I am a citizen of the United States over the age of twenty-one and I am not a party
to the above-entitled matter. That at the hour of 4:30 on this 3 day of August
2020, this Affiant served upon Respondent Attorney General ^{Governor's Office} _{Sec of State}
_____, Bismarck, North Dakota by handing to
Attorney General, a true and correct copy of the
following documents filed in the above captioned action:

Petition for Emergency Supervisory Writ

To the best of this Affiant's knowledge, information and belief, such
address as given above is the actual address of the party intended to be
served. The above documents were duly personally served in accordance
with provisions of the North Dakota Rules of Civil Procedure.

Affiant's signature: _____

The above Person I have personally identified, and has subscribed and sworn to
before me this 3rd day of August 2020.



Kelsey Phillips
Notary Public, State of North Dakota
State of North Dakota, Burleigh County

Testimony – SB 2124
Senate Judiciary Committee
January 11, 2021
By Cody Schulz
Deputy Director, Department of Emergency Services
Director, Division of Homeland Security

Chairman Larson and members of the Senate Judiciary Committee, my name is Cody Schulz. I am the Deputy Director of the Department of Emergency Services (DES) and Director of the Homeland Security Division. I offer this testimony in opposition to SB 2124 as it is currently written.

This bill may result in unintended consequences as it relates to operational and fiscal decisions made at the state and local level. Specifically, my concerns relate to potential uncertainty that may be created between the thirtieth (30) day of an emergency or disaster declaration and when the legislature makes a determination on whether to extend or terminate the declaration, which could happen up to thirty (30) days later.

First, it is not clear to me what the effective termination date of an emergency or disaster order would be in a hypothetical scenario in which the Governor calls a special session of the legislative assembly on the thirtieth (30) day of an emergency, but the legislature does not or cannot meet and act until the forty-fifth (45) day of the emergency. If the legislature would terminate the emergency, would the termination be effective on the day of the action or would it be retroactively terminated on the thirtieth (30) day.

Secondly, it does not appear that there is a mechanism to extend a disaster beyond a total of sixty days. As I will discuss in a moment, North Dakota has seen a number of disasters from which the impacts occurred over a time period longer than sixty days.

The two concerns and scenarios noted above could cause a significant and negative impact on receiving federal funding through Presidential Emergency/Disaster Declarations as authorized under Section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, PL 100-707, which authorizes the President to provide Federal assistance when the magnitude of an incident or threatened incident exceeds the affected State, Local, Territorial, and Indian Tribal government capabilities to respond or recover. The act requires, “as a prerequisite to major disaster assistance under this Act, the Governor shall take appropriate action under State law and direct execution of the State’s emergency plan,” which in practice in North Dakota is done through the executive order declaring an emergency or disaster. Therefore, if a Governor’s order is revoked, federal funding from that point forward would not be available.

While North Dakota is the best place to live and work in this country, we must admit we live in a land of extremes. Since 1997, North Dakota has received thirty-seven (37) Presidential Major Disaster Declarations resulting in nearly \$2 billion in federal aid. For each of these declarations, FEMA defines an official “incident period” in which disaster impacts were recorded and eligible for reimbursement. Of those thirty-seven (37)

Disasters, thirteen (13) had incident periods longer than thirty (30) days and eleven (11) had incident periods longer than sixty (60) days.

During disaster response and the early stages of recovery, uncertainty can negatively impact operational and fiscal decisions. Therefore, we ask that all effort be made to create stability and predictability for state and local decision makers, especially in the difficult and uncertain time of emergencies and disasters.

On behalf of the Department of Emergency Services, I recommend SB 2124, as written, receive a Do Not Pass. I would gladly participate in committee meetings to draft amendments to ensure that this or any other bill of this nature does not have unintended and negative consequences in regards to our ability to respond to disasters.

Thank you for your time; I will do my best to answer any questions you may have.

TESIMONY OF
MAJOR GENERAL ALAN S. DOHRMANN
DIRECTOR, DEPARTMENT OF EMGERENCY SERVICES
BEFORE THE 67TH LEGISLATIVE ASSEMBLY
SENATE GOVERNMENT AND VETERANS AFFAIRS
JANUARY 11, 2021

Chairman Larson and members of the Senate Judiciary Committee, my name is Al Dohrmann. I am the Director of the Department of Emergency Services (DES) and Adjutant General of the North Dakota National Guard. I offer this testimony in opposition to SB 2124 as it is currently written.

In addition to the concerns raised by Mr. Schulz in his testimony, I am also 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 the Governor 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 powers provided to the Governor under Chapter 37-17.1 have served our state well over the last several decades.

There are other ways to provide valuable Legislative input to disaster or crisis response. For one, the legislature could bank some days for contingencies and come back into session on their own initiative. If this approach would negatively impact its ability to conduct the people's business, it could explore giving the legislative branch the power to come back into session, on its own authority, to review and amend any Executive Orders issued by the Governor. Either approach, would avoid the possibility that there would be a lapse in authority or "grey area" periods during a crisis that would put at risk our ability to receive federal aid, or put into questions the status and protections of our first responders, including National Guard members called on to State Active Duty.

I provide these options not because I personally believe we need to change our current law, rather to ensure that if we do limit the Governor's emergency powers that we understand the second and third order effects of any change. As I stated earlier, crisis response is a team sport, but it requires decisive leadership at all level of the response team. While good leaders want input from all subject matter experts and must consider the political and economic implications of their decisions, when time is of the essence, there is not time to form a committee, research the prefect solution or execute a deliberate bureaucratic process.

Further, we need to fully consider the relatively short period of time that a Governor's Emergency Declaration or Executive Orders would be effective under SB 2124. Recent history has shown that many emergencies extend well past 30 days to insure we have continuous access to federal programs designed to mitigate both property damage and human suffering. Are we going to call the legislature back into session for every flood, major storm, draught or, unfortunately, period of civil unrest? If evacuations need to be ordered on day 31 of a disaster because of approaching fire or flood are we going to wait for the legislature to convene to issue that order? Is this the best use of resources and consistent with the tradition of our legislature and our Constitution? These are not questions for me to answer, but, I would submit, appropriate for this body to consider.

With that said, I understand the need and value of having co-equal branches of government in a democracy; in fact, I swore an oath to protect and defend our form of government. I would offer any assistance from my agency to ensure that any changes to Chapter 37-17.1 of the Century Code provide a more responsive government to the citizens of North Dakota during times of emergency and crisis and ensure these changes do not produce unintended consequences.

I would be pleased to stand for your questions.

Senate Judiciary Committee | Chairperson: Senator Larson

SB 2124

Monday, January 11, 2021 | 9:00am

Chairman Larson, members of the committee, for the record, my name is Jace Beehler, and I serve as Chief of Staff to Governor Burgum and Lt. Governor Sanford. Today, I offer this testimony in opposition to SB 2124 as it is currently written.

Ten months ago, today, marks the first confirmed case of COVID-19 in North Dakota and the day in which the World Health Organization declared COVID-19 a global pandemic. This week Wednesday will mark ten months since both President Trump and Governor Burgum declared a national and state emergency due to COVID-19. From the beginning of the pandemic, North Dakota has had over 94,000 confirmed coronavirus cases. This on top of a historic collapse of the energy economy, unemployment rates jumping to the highest rates in years, flooding across many of our counties and civil unrest, unlike what we have seen in decades. The need for emergency authority is clear from 2020.

As we have this discussion today, we know that the pandemic and economic crisis are not yet over. All 50 states and over 100 countries across the globe remain in declared emergencies. As of yesterday, 1,899 North Dakotans were currently infected and 72 were recovering in hospitals. While we have made good progress, we know that this raging virus continues to spread across the country and the globe. Just three days ago, the US recorded a new record of more than 4,000 deaths in one day. So, as we begin to discuss how North Dakota will move forward with emergencies such as this, let us not forget that the pandemic is not finished.

The citizens of North Dakota expect their elected leaders to continue to ensure our hospitals have capacity to care for every citizen should they need it, to provide the necessary resources to doctors, nurses and long-term care professionals and to use data and research from leaders in medicine and science to make decisions.

We are in the midst of a global pandemic – the likes of which have not been experienced for over 100 years. While the context of this pandemic is vital, the discussion today is much broader. Today we are discussing the state's ability to respond to all declared emergencies. The ability for state agencies to quickly provide the citizens of North Dakota the information they need to make decisions for their families, to rapidly develop programs to provide safety, support and resources, despite the specific emergency. Today we are talking about the ability of those elected by all citizens of North Dakota to learn, adapt, and make decisions, with nimbleness and responsiveness.

As North Dakotans we are experienced in managing emergencies. Floods, droughts, and blizzards, come frequently. In those times of need, the people of North Dakota come together, mobilize to support their family, friends and neighbors. State agencies respond quickly and

efficiently and provide the necessary resources and support to help citizens come through the crisis. This pandemic is no different.

The governing systems used throughout the pandemic have been in place for decades and they have worked. Balancing lives and livelihoods, the Governor's Office, in consultation with the Unified Command and the Department of Health, utilized its authority sparingly but where required. Throughout the pandemic, the executive branch frequently collaborated with legislative leadership, individual legislators, members of the emergency commission, budget section, county commissioners, mayors, local public health, hospital leaders, physicians, school superintendents, university system leaders, and law enforcement. The Governor's Office had weekly and bi-weekly calls with the White House COVID-19 Task Force and other national governors associations, to gain insight on how other states were responding to the urgent requests of their citizens.

Thanks to the wisdom of North Dakota's founding fathers, the state's constitution and all elected leaders from decades past, our state and its systems were prepared for the greatest challenge in a century.

While we understand the citizens of North Dakota are asking you to discuss the decisions made throughout the pandemic, it is vital we keep our focus on the future. Senate bill 2124 seeks to address how the length of a declared emergency is managed. It begs the question, what problem are we attempting to solve? As executive orders were requested from various stakeholders, associations, agencies and citizens, if they were implemented, they were reviewed and discussed on a daily and weekly basis and when deemed appropriate, orders were modified in response to changed circumstances, or eliminated if no longer necessary.

To maintain the responsiveness and effectiveness of North Dakota state government, we oppose this bill for the reasons already stated. Each of the 50 states have implemented and renewed their emergency orders, some up to 19 times.

The ability to maintain emergency orders varies across the country; 17 states and territories have unrestricted lengths of emergency declarations and those were in the best position to manage this prolonged health and economic emergencies, 37 states and territories have required emergency renewal timelines, ranging from 180 to 15 days and 2 states or territories have other requirements.

The processes for renewing emergency orders also varies throughout the states, though most provide significant flexibility. 47 states or territories provide the governor the ability to renew emergency orders as he or she deems appropriate or they allow the legislature to reconvene as they deem appropriate, as is the case in North Dakota. Only 8 states require their respective legislative assemblies to approve the renewals and these state's have annual legislative sessions.

The process for declaring and maintaining the emergency in North Dakota is clear, effective and transparent. If this bill's goal is to ensure discussion on each individual executive order and policy decision during the emergency, I remind you that the process to accomplish this is already in place. The legislative assembly has the ability to call themselves back to session, which was possible throughout this interim as the legislature had days remaining.

As stated, we oppose this bill for these reasons. Though we do not feel changes are needed to the process that has worked, should discussions continue, we offer the following amendments for strong consideration to ensure North Dakota can remain efficient, effective and responsive during times of crisis.

1. First, in this bill we would urge changing the length of emergency to the South Dakota timeline of 180 days. As described by Cody Shultz, there are significant challenges with such a short timeframe for emergency renewal. In the last 24 years, 64.9% of the of declared emergencies that have lasted more than 60 days.
2. Second, all emergencies require rapid response and complete flexibility. To maintain this in North Dakota we encourage the legislature to maintain the authority of the Governor's office to extend emergency orders as he/she deems needed, as is the case in over 47 states and territories. If changes were made to this section, we urge the legislature to adopt the Montana requirement which allows the emergency to remain in place, without renewal, so long as the President of the United States has a declaration of emergency in place.
3. Third, as we have discussed, the legislature has the authority to utilize any unused days to return, gavel in, and discuss whether an emergency should remain in place. This is currently in law. To require the Governor's Office to call the legislative assembly into special session, whether in person or virtual, in the heat of an emergency to determine if that emergency should remain in place, may not be needed based on the process already in place.
 - a. Should the assembly feel that approval for renewal is needed, based on our research, a reasonable solution would be to implement the 180-day limitation before renewal, with 90-day renewal opportunities. For approval, any remaining legislative days should be utilized first to address the renewal and then, if needed, allow the Governor's Office to call a special session for the singular purpose of renewing an emergency. This special emergency renewal session should be limited to 3 legislative or calendar days, whichever is less.
 - b. Lastly, the Governor's Office must maintain the ability to reinstitute emergencies, should the need arise, even if the legislature had, at one moment in time, rejected the request for renewal.

Let us be clear today, there is no Governor, executive official or elected official who wishes that the conditions arise to require the use of emergency declarations. Not one wishes to extend emergencies beyond what is required to meet the needs of the citizens. The emergency authority is vital in assuring that the governor's office has the ability to declare and maintain emergencies to optimize both federal aid and federal response, for the sole purpose of helping North Dakotans.

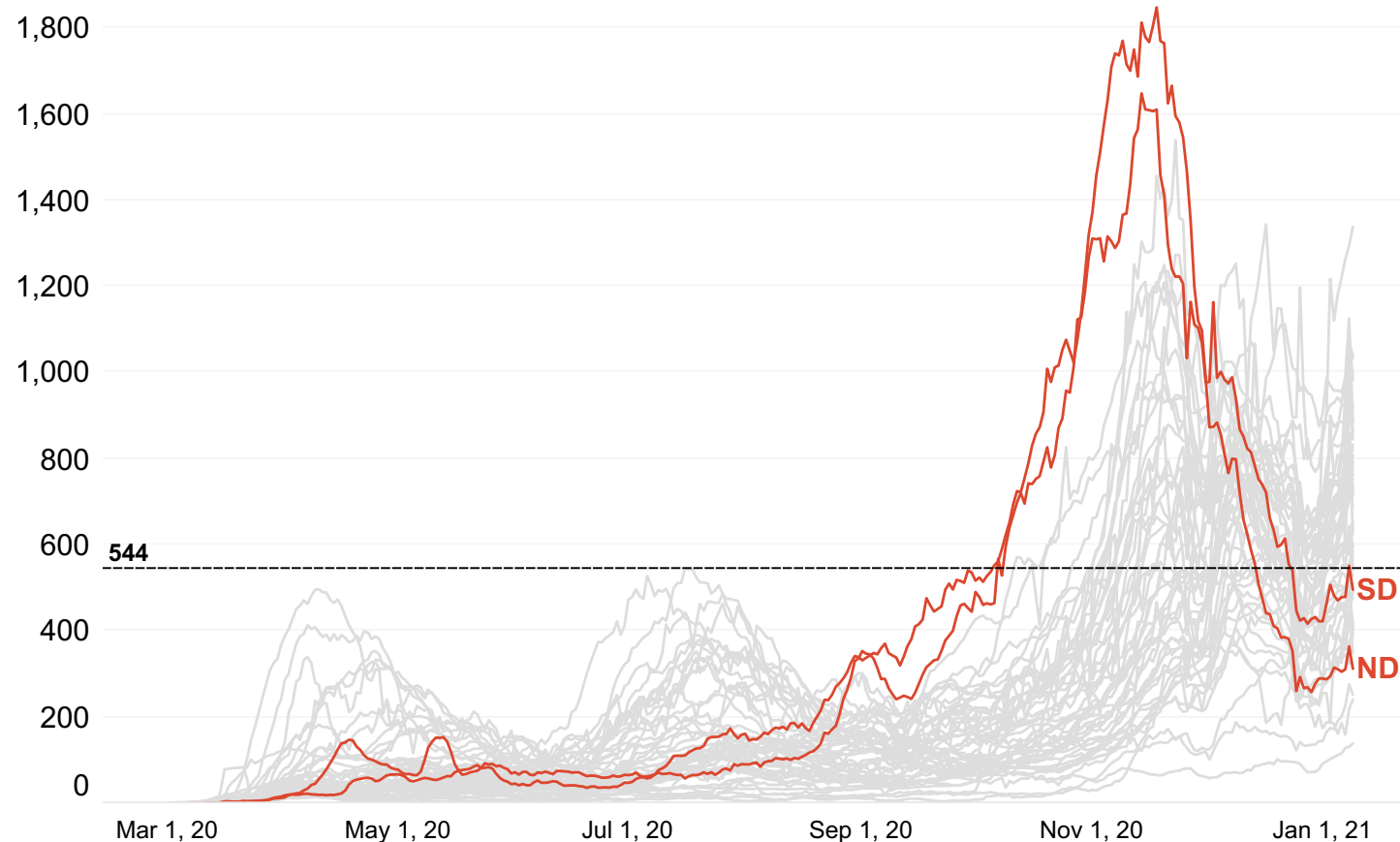
Our governing processes that were used and are continuing to be used to respond to the pandemic have worked. We have been able to respond to the needs of all North Dakotans, work with the federal government to drive change to policy and collaborate with all levels of local government to balance the needs across the state. For these reasons, we ask that this committee proceed with a do not pass and work with our office and the executive branch to determine what problems we are trying to solve and how to solve them without creating any unintended consequences.

Thank you madam chair and I would welcome any questions you may have.

I have attached a chart from the Covid Tracking Project <https://covidtracking.com/> that shows a comparison of COVID-19 cases per million in North Dakota and South Dakota. We have been told that Governor Burgum's orders are causing COVID-19 cases in North Dakota to decrease. If that is the case, why does South Dakota's case curve look exactly like North Dakota's case curve? Has Governor Noem in South Dakota issued the same executive orders at the same exact time?

CASES PER MILLION PEOPLE BY STATE. 7-DAY AVERAGE LINES

CLICK ANY STATE TO HIGHLIGHT



Select Context Line Value
544

Select Highlight States

ND	SD	AK	AL	AR
AZ	CA	CO	CT	DC
DE	FL	GA	HI	IA
ID	IL	IN	KS	KY
LA	MA	MD	ME	MI
MN	MO	MS	MT	NC
NE	NH	NJ	NM	NV
NY	OH	OK	OR	PA
RI	SC	TN	TX	UT
VA	VT	WA	WI	WV
WY				

2021 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee Peace Garden Room, State Capitol

SB 2124
1/20/2021
AM

SB 2124: A BILL for an Act to create and enact a new section to chapter 54-03 of the North Dakota Century Code, relating to permitting a virtual special session of the legislative assembly during an emergency or disaster; and to amend and reenact subsection 12 of section 23-01-05 and section 37-17.1-05 of the North Dakota Century Code, relating to the state health officer's and governor's authority during a declared disaster or emergency; and to provide a penalty

10:00 AM Chairwoman Larson call the meeting to order
Senators present: Dwyer, Luick, Myrdal, Heitkamp, Bakke, Fors, Larson

Discussion Topics:

- Special sessions
- Executive orders and expiration
- Fiscal note of special sessions

Senator Myrdal moved to Adopt the Amendment [LC 21.0607.01002] [10:10am].
Senator Dwyer second.

Senators	Vote
Senator Diane Larson	Y
Senator Michael Dwyer	Y
Senator JoNell A. Bakke	Y
Senator Robert O. Fors	Y
Senator Jason G. Heitkamp	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion passed 7-0-0

Senator Myrdal moves DO PASS AS AMENDED [10:14am]
Senator Luick second

Senators	Vote
Senator Diane Larson	Y
Senator Michael Dwyer	Y
Senator JoNell A. Bakke	N
Senator Robert O. Fors	Y
Senator Jason G. Heitkamp	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion passed 6-1-0

Senator Myrdal will carry the bill

10:18 AM meeting adjourned
Jamal Omar, Committee Clerk

January 12, 2021

PROPOSED AMENDMENTS TO SENATE BILL NO. 2124

Page 1, line 2, remove "special"

Page 1, line 3, remove the first "and"

Page 1, line 18, replace "section" with "subsection"

Page 2, line 10, replace "subdivision" with "subdivisions"

Page 2, line 10, after "b" insert "and c"

Page 2, line 15, remove "A declared state of disaster or emergency may be extended for an additional"

Page 2, line 16, replace "thirty days beyond the initial thirty days if" with "If"

Page 2, line 19, after "declaration" insert ", the declared state of disaster or emergency remains in effect through the sixtieth day after the original declaration, unless terminated by a concurrent resolution of the legislative assembly"

Page 2, line 19, after the underscored period insert:

"c."

Page 2, line 21, replace "c." with "d."

Page 2, line 25, replace "d." with "e."

Page 2, line 28, replace "e." with "f."

Page 5, line 3, remove "special"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2124: Judiciary Committee (Sen. Larson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2124 was placed on the Sixth order on the calendar.

Page 1, line 2, remove "special"

Page 1, line 3, remove the first "and"

Page 1, line 18, replace "section" with "subsection"

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Page 2, line 25, replace "d." with "e."

Page 2, line 28, replace "e." with "f."

Page 5, line 3, remove "**special**"

Renumber accordingly

2021 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee Peace Garden Room, State Capitol

SB 2124
1/25/2021

A BILL for an Act to create and enact a new section to chapter 54-03 of the North Dakota Century Code, relating to permitting a virtual session of the legislative assembly during an emergency or disaster; to amend and reenact subsection 12 of section 23-01-05 and section 37-17.1-05 of the North Dakota Century Code, relating to the state health officer's and governor's authority during a declared disaster or emergency; and to provide a penalty.

Chairwoman Larson calls the meeting to order. Present are Chair Larson, Vice Chair Dwyer, Senators Bakke, Fors, Heitkamp, Luick, and Myrdal. [3:13]

Discussion Topics:

- Emergency commission
- Appropriations

Senator Myrdal [3:14] moved to reconsider previous action taken by the committee.

Senator Heitkamp [3:14] seconds.

Motion passes 7-0-0. [3:15]

Senator Myrdal [3:15] introduces an amendment. [LC 21.0607.01003]

Senator Myrdal [3:18] moved to adopt the amendment. [LC 21.0607.01003]

Senator Luick [3:18] seconds.

Motion passes 7-0-0. [3:22]

Al Dohrmann [3:28], ND National Guard Adjunct General Nation Guard, provides oral clarifying testimony.

Chair Larson [3:59] adjourns the meeting.

Jamal Omar, Committee Clerk

Senators	Vote
Chair Diane Larson	Y
Vice Chair Michael Dwyer	Y
Senator JoNell A. Bakke	Y
Senator Robert O. Fors	Y
Senator Jason G. Heitkamp	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Senators	Vote
Chair Diane Larson	Y
Vice Chair Michael Dwyer	Y
Senator JoNell A. Bakke	Y
Senator Robert O. Fors	Y
Senator Jason G. Heitkamp	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

January 14, 2021

PROPOSED AMENDMENTS TO SENATE BILL NO. 2124

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Page 4, line 19, replace "The governor" with "During a declared state of disaster or emergency, a public official, or executive branch employee"

Page 4, line 19, replace "issue an executive order under this section which restricts" with "withhold, direct, or require"

Page 4, line 20, after "money" insert "in a manner or for a purpose other than the manner or purpose for which the money was"

Page 4, line 20, after "assembly" insert ", emergency commission, or budget section"

Page 5, line 3, remove "**special**"

Renumber accordingly

2021 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee Peace Garden Room, State Capitol

SB 2124
1/26/2021

A BILL for an Act to create and enact a new section to chapter 54-03 of the North Dakota Century Code, relating to permitting a virtual session of the legislative assembly during an emergency or disaster; to amend and reenact subsection 12 of section 23-01-05 and section 37-17.1-05 of the North Dakota Century Code, relating to the state health officer's and governor's authority during a declared disaster or emergency; and to provide a penalty.

8:57 AM Chairwoman Larson calls the meeting to order.
Senators present are Larson, Dwyer, Bakke, Fors, Heitkamp, Luick, Myrdal

Discussion Topics:

- Executive overreach
- Governor's emergency powers

Chairwoman Larson [9:16] introduced amendment [LC 21.0607.01004].
Jill Grossman [9:17], Legislative Council, provided neutral testimony.

Senator Heitkamp [9:21] moves to adopt the amendment. [LC 21.0607.01004]
Senator Luick [9:22] seconds.

Roll Call Vote

Motion passed 7-0-0. [9:23]

Senators	Vote
Senator Diane Larson	Y
Senator Michael Dwyer	Y
Senator JoNell A. Bakke	Y
Senator Robert O. Fors	Y
Senator Jason G. Heitkamp	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Senator Luick [9:23] moved for a DO PASS AS AMENDED.
Senator Myrdal [9:23] seconded the motion

Roll Call Vote

Motion passed 6-1-0. [9:24]

9:30 AM Chairwoman Larson adjourned the meeting.

Senators	Vote
Senator Diane Larson	Y
Senator Michael Dwyer	Y
Senator JoNell A. Bakke	N
Senator Robert O. Fors	Y
Senator Jason G. Heitkamp	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Jamal Omar, Committee Clerk

January 25, 2021

SK
1/26

PROPOSED AMENDMENTS TO SENATE BILL NO. 2124

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Page 2, line 25, replace "d." with "e."

Page 2, line 28, replace "e." with "f."

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Page 4, line 20, after "assembly" insert ", emergency commission, or budget section"

Page 5, line 3, remove "special"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2124: Judiciary Committee (Sen. Larson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2124 was placed on the Sixth order on the calendar.

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Page 5, line 3, remove "**special**"

Renumber accordingly

2021 HOUSE HUMAN SERVICES

SB 2124

2021 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee Pioneer Room, State Capitol

SB 2124
3/22/2021

Relating to permitting a virtual session of the legislative assembly during an emergency or disaster; relating to the state health officer's and governor's authority during a declared disaster or emergency; and to provide a penalty

Chairman Weisz opened the committee hearing at 2:49 p.m.

Representatives	Attendance
Representative Robin Weisz	P
Representative Karen M. Rohr	P
Representative Mike Beltz	P
Representative Chuck Damschen	P
Representative Bill Devlin	P
Representative Gretchen Dobervich	P
Representative Clayton Fegley	P
Representative Dwight Kiefert	P
Representative Todd Porter	P
Representative Matthew Ruby	P
Representative Mary Schneider	P
Representative Kathy Skroch	A
Representative Bill Tveit	P
Representative Greg Westlind	P

Discussion Topics:

- Emergency powers check
- Open-ended emergency

Sen. Janne Myrdal, District 10 (2:49) introduced the bill.

Sen. Dick Dever, District 32 (3:03) testified in favor.

Daniel Dew, Legal Policy Director Pacific Legal Foundation (3:14) testified in favor and submitted testimony #10145.

Pete Hanebutt, North Dakota Farm Bureau (3:22) testified in favor.

Jace Beehler, Chief of Staff Governor's Office (3:23) testified in opposition and submitted testimony #10392.

Cody Schulz, Director Homeland Security North Dakota Department of Emergency Services (3:30) testified in opposition and submitted testimony #10342.

Al Dohrmann, Director Department of Emergency Services (3:40) testified in opposition and submitted testimony #10355.

Additional written testimony: #10188, #10200, #10218, #10224, #10256, #10257, #10284, #10354, #10356, #10360

Chairman Weisz adjourned at 3:49 p.m.

Tamara Krause, Committee Clerk

Testimony of Daniel J. Dew
Pacific Legal Foundation
on SB 2124
North Dakota House Human Services Committee
March 22, 2021

Chair Weisz, Vice Chair Rohr, and members of the House Human Services Committee, my name is Daniel Dew, and I am the legal policy director at Pacific Legal Foundation. PLF is a nonprofit law firm dedicated to individual rights and limited government. PLF was founded in 1973 by then-Governor Ronald Reagan's staff to protect individual rights from government overreach, including property, economic, and speech rights that are increasingly under assault. We have a dozen wins before the United States Supreme Court and, just a few hours ago, my colleagues argued another case before the Supreme Court.

Thank you for taking the time to address emergency powers reform through Senate Bill 2124 and allowing me to testify in favor of the bill. PLF has been working across the country through legislation and litigation to restore the separation of powers that have been absent over the last year.

First, let me say that reforming emergency powers is not about the pandemic, nor is it a referendum on a particular governor. The pandemic exposed a flaw in current law that allows one person to rule unilaterally for more than a year. Reform is necessary to restore the separation of powers that are vital to individual liberty.

Justice Antonin Scalia said, "Every banana republic in the world has a bill of rights. Every president for life has a bill of rights." When the whole of government power rests with one person without checks and balances, the promise of rights is empty and unenforceable.

The Framers understood that the lawmaking power was the "most dangerous" threat to liberty and entrusted it exclusively to a multi-member legislature for many reasons, including because it would ensure public debate, encourage compromise between factions, and lessen the risk of individual bias.

There are times when the government must move quickly to prevent irreversible harm to life or property, and thus, state legislatures have given their governors extra authorities to be used in times of emergency. For example, we are accustomed to emergency declarations and orders passed in response to natural disasters. Natural disasters are the perfect candidate for emergency orders: they arise quickly, and immediate action may need to be taken before the legislature can reasonably respond.

As COVID-19 began to spread in the U.S. last year, little was known about the virus's contagiousness or lethality. During the initial weeks of the emerging pandemic, governors exercised their emergency powers to blunt the impact of the disease using the limited information available to them. But there is no reason why unilateral lawmaking — which is what emergency orders are — should continue indefinitely when the Legislature is in session or could

be called back into session to deliberate whether fundamental restrictions on liberty should continue and under what conditions.

If governors go unchallenged, they are likely to be emboldened to act unilaterally to combat other chronic problems that could be declared emergencies, such as the opioid epidemic, homelessness, or climate change. No doubt, these are serious issues that garner a lot of debate. But are we ready to sacrifice our constitutional safeguards and trust one person to make changes in all policy matters that those complex issues touch?

Senate Bill 2124 does an excellent job to balance the need for government to act quickly in times of emergency and ensures that the legislature is tasked with making law when an emergency shifts to an ongoing crisis.

Another feature of Senate Bill 2124 is it would prohibit the governor from reissuing an emergency order that is the same as or substantially similar to one that expired or was rejected by the legislature. It has been the sad experience in many states that even where the law provides a temporal limitation on emergency powers, the governor will simply issue it again once it has expired.

PLF has additional recommendations for reform, such as subjecting emergency orders to strict scrutiny and expedited judicial review to make sure the courts are fully engaged in their proper role to defend liberty. But Senate Bill 2124 is an enormous stride to protect North Dakota's separation of powers and I encourage your support.

Thank you for the opportunity to testify and I am happy to answer any questions the committee may have.

House Human Services Committee | Chairman Weisz

SB 2124

Monday, March 22, 2021 | 2:45 pm

Testimony by Jace Beehler

Chairman Weisz, members of the committee, for the record, my name is Jace Beehler, and I serve as Chief of Staff to Governor Burgum and Lt. Governor Sanford. I offer this testimony in opposition to SB 2124.

As we discuss this bill, we know more about the pandemic, more about preventing the spread of a virus, and more about managing a public health emergency than we knew yesterday, a week prior, a month ago and certainly more than we knew on March 11, 2020.

I have had the opportunity to speak with many of you and your colleagues during the session and over the past year. We have discussed the merits of specific events and mitigation measures and watched as science unfolded before our eyes to bring us a vaccine to help protect against the virus. I hope that we can come to this discussion today with a shared understanding that over the last twelve months the members of team North Dakota worked to provide the citizens of this great state with the resources, information, and tools to protect themselves and their families during this pandemic.

There have been more than 55 bills this session directly related to the pandemic, this being one of them. Some turn previous executive orders into law and others seek to limit certain aspects of the state's response. There are three bills directly related to the process for emergency declarations and authority, one of which, HB 1118, has already passed out of this committee.

As you are aware, the Governor's Office does not support these pieces of legislation, however, we understand the desire for discussion around emergency authority. What we ask is that we think about this piece of legislation and all COVID related legislation with a forward-looking lens, rather than litigating the past twelve months.

SB 2124 creates substantial challenges to address emergencies within North Dakota.

This bill is not specific to health-related emergencies but rather for all emergencies whether that is a flood, fire, drought, blizzard, pandemic, cyber-attack, or any emergency that is unknown. As written, if there is a flood in Minot and the need for state support and resources continues past 30 days, the entire legislature would need to approve the extension. If there is a drought in Bowman,

Hettinger, Almont and the entire southwest, the state support for the southwest citizens would rest on whether representatives from Grand Forks, Fargo and Bismarck thought the emergency was warranted.

By the time the state would be starting to understand the emergency, state agencies would be using their time to prepare testimony and data to seek approval to maintain their support and the emergency, rather than continuing to provide that energy to citizens in need.

SB 2124 severely hinders the state's ability to respond to dramatic changes quickly and nimbly in emergency situations. While we don't believe changes are necessary, we urge the legislature to find a balanced approach to emergency response for the state and for all future members of legislative and executive branches. Very literally, the safety and security of the citizens is hinged on the nimbleness of the state's response.

This committee has already moved forward legislation to address the concerns with emergency authority in HB 1118. It requires all future Governors make a choice, to end the emergency or call the legislature back into special session at the direction of legislative management. I respectfully urge this committee to move a do not pass for 2124.

Thank you, Mr. Chairman. I would welcome any of your questions.

Testimony – SB 2124
House Human Services Committee
March 22, 2021
By Cody Schulz
Director, Division of Homeland Security
Deputy Director, Department of Emergency Services

Chairman Weisz and members of the House Human Services Committee, my name is Cody Schulz. I am the Director of the Homeland Security and Deputy Director of the Department of Emergency Services (DES). I offer this testimony in opposition to SB 2124 as it is currently written.

I have a few concerns as well as a couple of considerations I respectfully ask that you contemplate. First, in issues related to public safety, and specifically emergency management, decisive and timely action is critical for successful response. I understand the intentions behind this bill and completely agree that the legislative branch provides a necessary and important oversight role in government. I do ask you to consider the potential unintended consequences of changing how we responds to disasters, which could impede our ability to respond swiftly and recover effectively from disasters and emergencies. Overall, I would argue that our current laws and processes have served us very well as we have responded to disasters ranging from 500-year floods to historic civil unrest to a once in a century pandemic in the past three decades. Anything that has the potential to bring uncertainty into processes that have worked during our recent history should be studied and contemplated very carefully.

Secondly, I am concerned how this change in process, and the potential uncertainty it could cause, would impact local government response decisions and the interaction and relationships between local and state emergency management professionals. At NDDES we pride ourselves in how well we collaborate and communicate with our local partners, and because of our efforts I believe our credibility and trust have never been higher. So I am sensitive to changes that could disrupt how we work with our partners.

I personally had the honor of serving as a County Commission for eight (8) years in Morton County and served as Chairman in 2016 and 2017 during the Dakota Access Pipeline (DAPL) protests. I have asked myself, if this bill had been law in 2016 how would it have impacted Morton County, the response and our interaction with State agencies. My answer is, I don't know. But that uncertainty alone does cause me some pause. I do know that the County's communication and collaboration with State agencies, the Governor's Office and Legislators in Morton County worked very well under our current processes and laws.

Three other considerations I ask you to think about are:

1. The potential impacts to FEMA funding. The Stafford Act, which authorizes the President to provide Federal assistance when the magnitude of an incident or threatened incident exceeds the State's capabilities to respond or recover,

- requires, “as a prerequisite to major disaster assistance under this Act, the Governor shall take appropriate action under State law and direct execution of the State’s emergency plan,” which in practice in North Dakota is done through the executive order declaring an emergency or disaster. Therefore, if a Governor’s order is revoked, federal funding from that point forward would not be available.
2. HB 1118, which has already passed in the House, already deals with most of issues addressed in this bill.
 3. This bill **requires** a special legislative session to extend the length of a disaster declaration rather than making it option, as in current law and HB 1118. While North Dakota is the best place to live and work in this country, we must admit we live in a land of extremes. Since 1997, North Dakota has received thirty-seven (37) Presidential Major Disaster Declarations resulting in nearly \$2 billion in federal aid. For each of these declarations, FEMA defines an official “incident period” in which disaster impacts were recorded and eligible for reimbursement. Of those thirty-seven (37) Disasters, thirteen (13) had incident periods longer than thirty (30) days and eleven (11) had incident periods longer than sixty (60) days. Therefore, at least thirteen (13) Special Legislative sessions would have been required, and while all disasters are unique and traumatic, most of those instances were relatively commonplace.

During disaster response and the early stages of recovery, uncertainty can negatively impact operational and fiscal decisions. The National Emergency Management Association (NEMA), of which I am a member, has drafted a memo on this topic for State Legislatures to consider, and I have attached that memo to my testimony. I would like to quote just one of NEMA’s points to consider: “disaster response must be swift and thorough to save lives and deal with the rapidly changing dynamics and complexity increasingly prevalent in the types of disasters being experienced today. Any legislative action that impedes a state’s ability to respond quickly and comprehensively is of great concern to the emergency management community.” Therefore, we ask that all effort be made to create stability and predictability for state and local decision makers, especially in the difficult and uncertain time of emergencies and disasters.

On behalf of the Department of Emergency Services, I recommend SB 2124, as written, receive a Do Not Pass.

Thank you for your time; I will do my best to answer any questions you may have.



Considerations for State Legislation Addressing Emergency and Disaster Authorities

[The National Emergency Management Association \(NEMA\)](#) represents the voice and consensus policy positions of the directors of the emergency management agencies of the 50 states, the U.S. territories, and the District of Columbia who are responsible for all hazards emergency and disaster preparedness, mitigation, response, and recovery across the nation.

In these times of increasing complexity and the proliferation of risks and hazards faced by the American public, including pandemics, the combined and integrated efforts of all of government are essential for success. Laws, authorities, policies, and funding decisions must be inclusive and foster unity of effort to ensure truly resilient states and communities.

As state legislatures consider a variety of disaster and public health emergency related bills, NEMA would like to offer points of consideration to help ensure the continued effectiveness of disaster response and recovery, including public health emergencies such as pandemics.

State Emergency Declarations for COVID-19 – Impacts of Terminating During Ongoing Response

There is discussion within some states, at the executive and legislative levels, about terminating the state emergency declaration for COVID-19. Decision-makers should keep in mind that ending an emergency declaration before the response has concluded may cause the Federal Emergency Management Agency (FEMA) to close the incident period for a presidentially declared disaster under the Stafford Act.

If FEMA were to close the disaster incident period, access to a range of federal programs could immediately end. In that case, the state could be responsible for covering the costs for all ongoing COVID-19 response actions after the state emergency declaration has ended. These costs may include, but are not limited to:

- Personal Protective Equipment: procurement of supplies, equipment, warehousing, transportation, and distribution;
- Vaccine logistics, distribution, and support;
- National Guard support under Title 32 for COVID-19 operations;
- COVID-19 testing support and contact tracing;
- Reopening and operation of eligible schools, child-care facilities, healthcare facilities, domestic violence shelters, transit systems, and other eligible facilities; and disinfecting services and supplies for those facilities;
- Emergency feeding and distribution associated with COVID positive, COVID exposed or COVID vulnerable populations;
- Emergency non-congregate housing for COVID positive, COVID exposed or COVID vulnerable populations, as well as displaced disaster survivors during the pandemic; and
- Funeral assistance.

Legislation and Governors' Emergency Authorities: Disaster Response and Recovery Implications

This year, more than 30 states and territories have had bills introduced in the state legislature that would seek to limit the governor's emergency powers. Many of these bills focus on limiting the length of time an emergency declaration remains in place; requiring the approval of the General Assembly to extend an emergency declaration; limiting the governor's ability to suspend statutes and regulations during disasters; giving the legislature the authority to direct

federal funding coming to states for disaster recovery programs; and changing the definition of the terms “disaster” and “emergency”.

A governor’s emergency declaration is most often the first step in disaster response as it activates the state emergency operations plan and a range of emergency protective measures for the public. Some of these actions are a pre-requisite to requesting federal disaster assistance.

State Emergency Declaration

One of the first actions a governor takes to initiate disaster response is to issue an emergency declaration which provides a number of authorities to enhance public safety, including some or all of the following:

- Triggers the state emergency operations plan and activation of the state emergency operations center.
- Allows access to state resources to aid in both the state and local government response. May include pre-positioning supplies and response teams in anticipation of the disaster, evacuations, warming/cooling centers and sheltering operations, distributing water, food and other commodities. Local governments may have ordinances in place that trigger their ability to respond based on a state emergency declaration.
- Activates the National Guard.
- Provides tort liability and immunity protections for jurisdictions and emergency responders performing disaster response activities (e.g., initiating a state’s crisis standards of care or granting Good Samaritan protections to volunteer healthcare providers).
- Activates the Emergency Management Assistance Compact (EMAC) to legally request mutual aid assistance from other states.
- Allows the Governor to waive statutes and regulations to expedite disaster response actions to save lives and protect property. These types of actions can allow:
 - Waiver weight restrictions for vehicles transporting equipment and supplies into the state for disaster response.
 - Suspension of tolls for emergency vehicles traveling through the state.
 - Waiver of the normal procurement process for resources needed to be obtained under exigent circumstances to aid response.
 - Expansion of healthcare provider scope of practice to allow greater access to care and treatment.
 - Elimination of licensing and reciprocity requirements for out-of-state or retired healthcare workforce.
 - Expansion of the allowable use of telehealth by healthcare providers.
 - Expanded laboratory capacity for new testing.
 - Expansion of building and capacity limits on healthcare systems.
 - Increased prescription authority of pharmacists.
- In some states, an emergency declaration is required to access state funded disaster assistance programs that provide loans, grants and other assistance to individuals and businesses.
- Serves as an indicator of the severity of the event. Actions taken by the state under an emergency declaration could be a determining factor in a request for a federal emergency declaration.

Federal Regulation: Federal Disaster Assistance

By regulation (44CFR 206.35 and 206.36), only the Governor of the State or Acting Governor in his/her absence, may request an emergency or major disaster declaration from the President through the appropriate Regional Administrator.

44CFR 206.35 and 206.36 also require the Governor to take specific actions in their state prior to submitting their declaration request. The Governor must certify on behalf of the state, and if approved, it is the Governor that must sign the federal documents.

The legislative branch provides a necessary and important oversight role in government. NEMA encourages legislators to deliberate on the potential unintended consequences of legislating how a state responds to a disaster, which could impede the state's ability to respond swiftly and recover effectively from all-hazards disasters and emergencies.

Points to consider:

- The legislative process is often slow and deliberate to provide policy makers an opportunity to engage with a wide variety of stakeholders and fully assess short-term and long-term considerations. Conversely, disaster response must be swift and thorough to save lives and deal with the rapidly changing dynamics and complexity increasingly prevalent in the types of disasters being experienced today. Any legislative action that impedes a state's ability to respond quickly and comprehensively is of great concern to the emergency management community.
- The length of time that an initial state emergency declaration can remain in place should be a minimum of 30 days. Anything less does not allow sufficient time for state and local governments to take necessary response and recovery actions. Disasters such as floods and wildfires, for example, require a longer response and recovery timeframe.
- Gaps in time between an initial emergency declaration and extension by the state legislature can result in a lag in response or coordination of resources, increased loss of property, loss of life, or significant impacts on public infrastructure. Additionally, if the state were to request a presidential disaster declaration, gaps in time between emergency declarations may raise the question as to whether the request for federal disaster assistance is for the same event or multiple events. A series of smaller events would not likely meet the criteria for a federal declaration. A gap in the timing between an executive branch declaration and the ensuing legislative branch declaration may also be taken by FEMA as an indication that the situation is not in fact an emergency or disaster.
- Similarly, the absence of a state emergency declaration may send a signal to the federal government that the event has been handled and does not warrant a federal declaration.
- Disaster recovery programs are complex in nature and require emergency management's collaboration and coordination with many diverse interests within the community. Legislative oversight of disaster recovery is exceedingly helpful when solutions can be crafted that address red tape and other obstacles to expeditious community and economic recovery.

NEMA fully understands and appreciates the authority and autonomy of legislatures to conduct oversight of executives and do that which is in the best interest of their constituents and the state. Given the depth and breadth of the potential impacts of some legislation currently being considered, the emergency management community hopes elected officials will consider some of these points as they proceed with deliberations.



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TESIMONY OF
MAJOR GENERAL ALAN S. DOHRMANN
DIRECTOR, DEPARTMENT OF EMGERENCY SERVICES
BEFORE THE 67TH LEGISLATIVE ASSEMBLY
HOUSE HUMAND SERVICES COMMITTEE
SB 2124
MARCH 22, 2021

Chairman Weisz and members of the House Human Services Committee, my name is Al Dohrmann. I am the Director of the Department of Emergency Services (DES) and Adjutant General of the North Dakota National Guard. I offer this testimony in opposition to SB 2124 as it is currently written.

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 the Governor 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 powers provided to the Governor under Chapter 37-17.1 have served our state well over the last several decades.

I have concerns with the seemingly arbitrary nature of the timetables established by the current language of SB 2124. Natural disasters do not adhere to a legislative schedule. As you can see in attachment 1 to my testimony, in 2009 and 2011, North Dakota experienced flooding incidents that seemed like they were well under control, but like all natural disasters, Mother Nature had a vote, and recovery operations quickly returned to flood response. SB 2124, as written, requires the legislature to grant future authority based on what is known at the time. This places the executive in a position of scrambling to call the legislature into session, when they should be focused on response.

I want to highlight the problem I believe this bill is actually 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. Attachment 2 to my testimony provides a summary of the executive orders that were issued during the 2011 flood event. 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

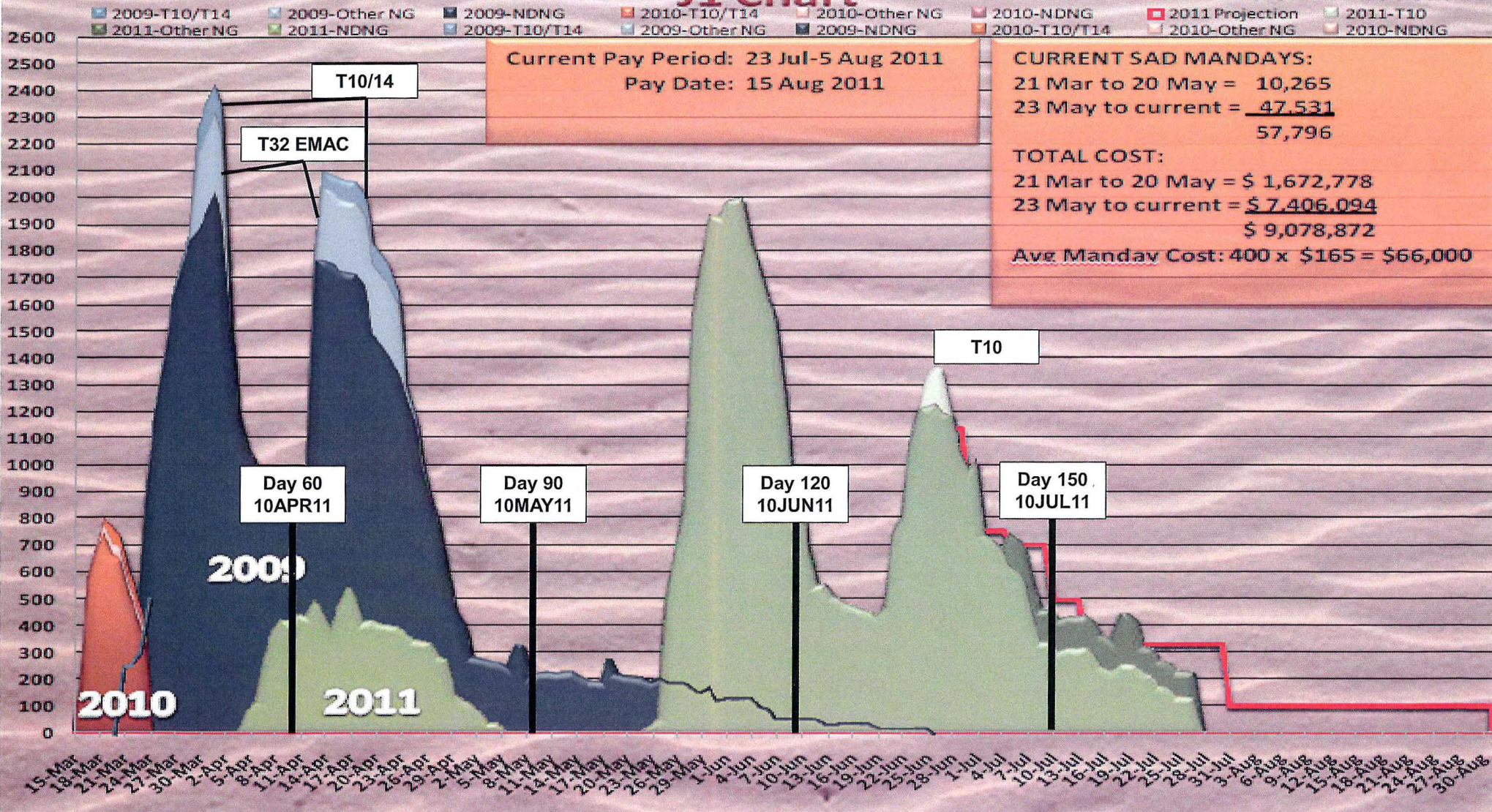
emergencies for the state, I have never heard that we move too fast, did too much or stayed too long. If the problem we are trying to fix is how we respond to public health emergency, I'd suggest we need legislation that focuses on that. I'd also suggest that this committee has already achieved this with the passing by the House of HB 1118. Although I don't believe a change to law is necessary, I also recognize that HB 1118 represents a well drafted approach to balancing pandemic related concerns with the authorities that have saved lives and property in our 4 major cities and our rural communities over the last 30 years. HB 1118 gives the legislature the option to require the Governor call a special session when there are questions or concerns about an emergency declaration. SB 2124 would make this administratively burdensome requirement mandatory, regardless how clear the need is for such emergency or disaster declaration.

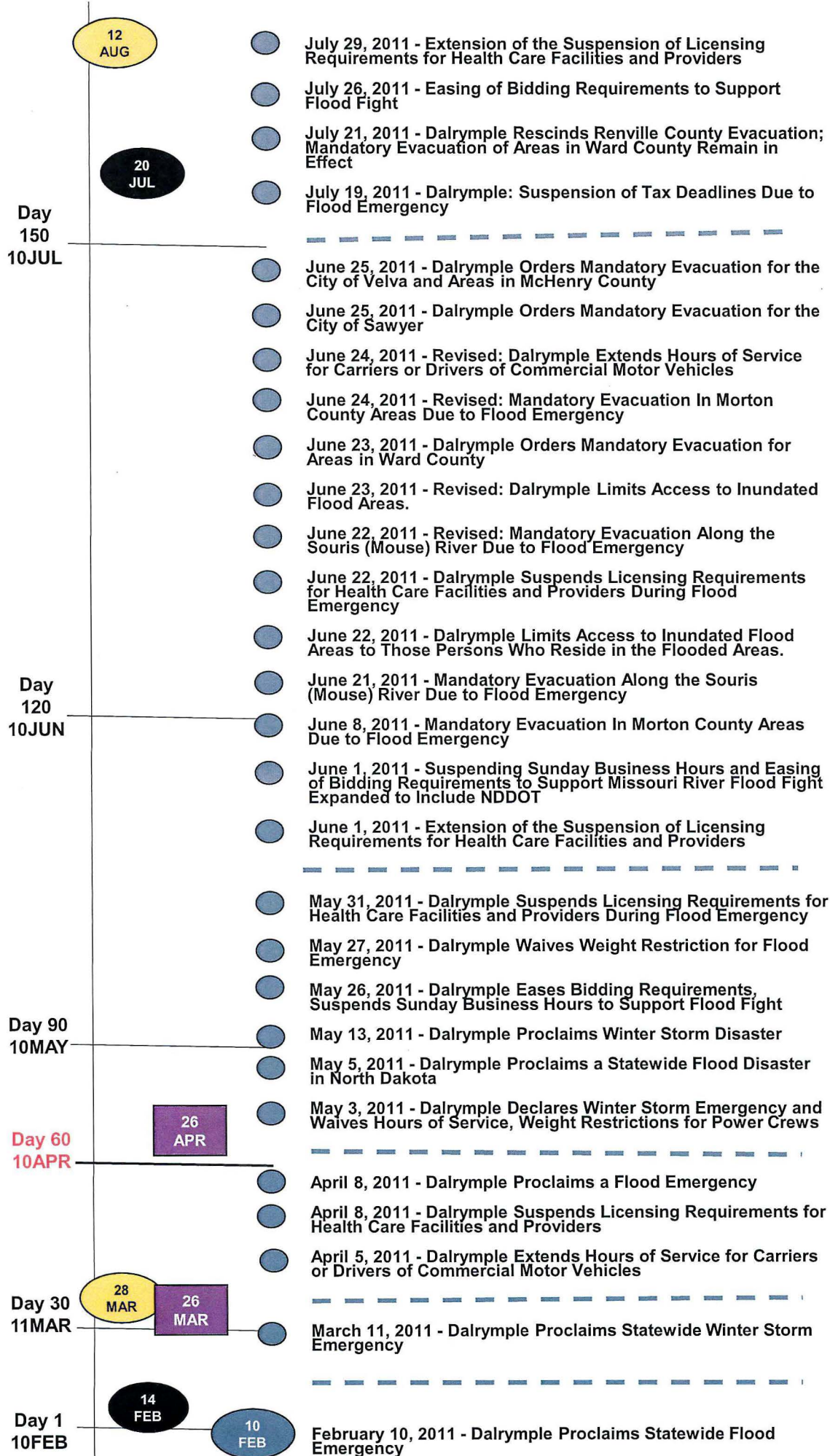
I understand the goal is oversight, but I am concerned that legislative oversight could give way to legislative management. We have a saying in emergency management that *all disasters are local*. That is how the response system was built. While you have been elected to represent your districts, only 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 urge caution in changing laws that have served North Dakota well for the last 30 years, and focus on legislation that addresses the problem this body is trying to fix. I submit this committee has already done that with HB 1118. I therefore recommend that SB 2124 as written receive a Do Not Pass.

I would be pleased to stand for your questions.

J1 Chart

AS OF: 271600JUL11





House Member,

SB 2124 is ok but should be amended to ensure no EO can violate our Constitutional Rights! We all know that most if not all of the governors EO were Unconstitutional!

It as well should be amended to clearly state that the governor cannot give money like the Cares Act money to anything or anyone he wants. We have people hurting for income and businesses closed and he gives it to wealthy oil companies!!!

The 1.8 million spent on a mask up campaign could have been better spent on real virus masks for North Dakotan's!

--

Mitchell S. Sanderson

To the House Human Services Committee:

I urge that you DO PASS SB 2124.

In written testimony the Office of the Governor of North Dakota states:

"Our governing processes that were used and are continuing to be used to respond to the pandemic have worked."

A strong self-assessment of performance! It is not, however, given with any supporting metrics. The measured characteristics of the SARS-CoV-2 virus outbreak follow the same 8-to-12-week bell curve of identified infections regardless of geography and political policy. This was predicted in advance of any government action, and **there is no evidence that government intervention has made any difference in the viral bell curve**. By all practical measures North Dakota looks like South Dakota (7). California looks like Florida. Sweden looks like the United States, and so on.

Government mandates politicized the pandemic and only accomplished fear, economic hardships, interrupted education, social discord, and intrusion upon personal liberties. **Then after they have inflicted damage, they pat themselves on the back** when virus behavior follows an already predicted path.

"Our governing processes that were used and are continuing to be used to respond to the pandemic have worked."

Or... perhaps emergencies are a new way of bypassing the bothersome legislative budgeting process by obtaining federal dollars. Thus, why constrain emergencies? I assume that our Executive branch personnel are well-meaning, but I also believe that *decisions are influenced by politics and money*. Sometimes the well-meaning are wrong. Some COVID-era observations of the North Dakota executive branch and the Department of Health (NDDOH):

1. The human cost of the mitigations (unemployment, suicides, childhood education failures, mental health) are receiving only scant consideration from NDDOH even though said costs stem from NDDOH policies.
2. The questionable reliability of the PCR test (1), the single most relied-upon statistic by politicians and media, has been known to the scientific community since the beginning. Florida has reacted with legislation to counter its abuse (2). Portugal has made it illegal. The WHO has recently acknowledged the 50% false negative problem, suspiciously within hours after the recent inauguration. North Dakota, by contrast, continues to rely heavily upon this technology without mitigating its shortcomings.
3. *NDDOH has become a skilled propaganda machine*. Presumably fueled by Federal dollars, they are interceding in the traditional patient-doctor relationship with an endless stream of debatable medical assertions.

We read this also from the Governor's office testimony:

"This on top of a historic collapse of the energy economy, unemployment rates jumping to the highest rates in years, flooding across many of our counties and civil unrest, unlike what we have seen in decades. The need for emergency authority is clear from 2020."

Excepting flooding, every bad outcome in the above quote stemmed from government action and not nature. I view the above quote in the context of the words of Ronald Reagan:

"The most terrifying words in the English language are: I'm from the government and I'm here to help."

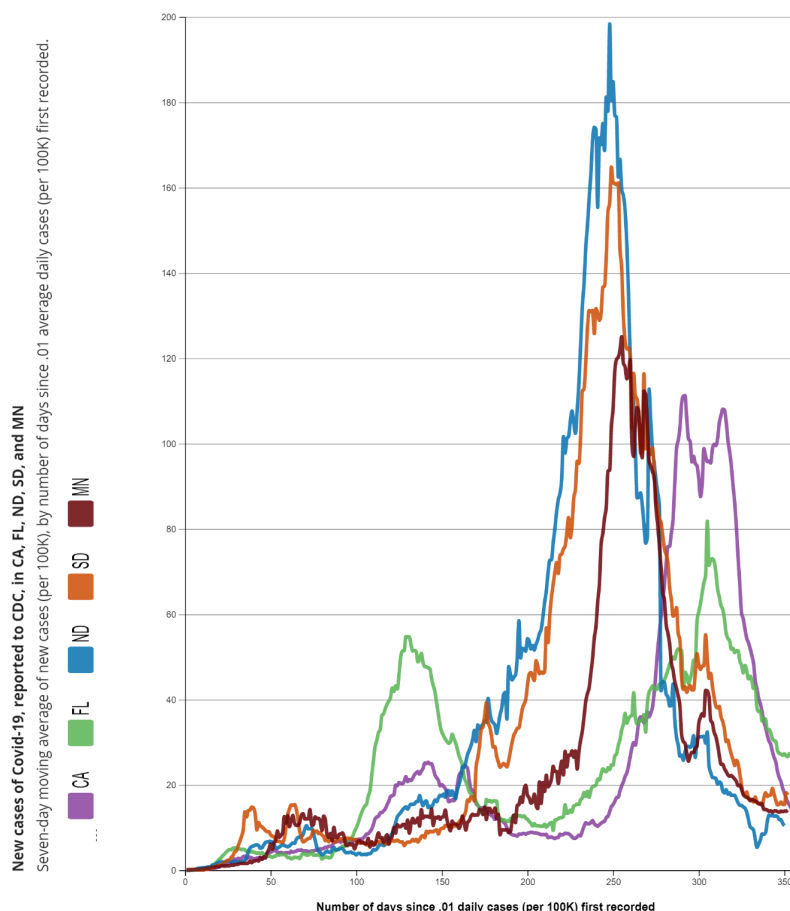
Government in North Dakota during COVID-19 proved Reagan correct. What is clear now is that **we need SB 2124 to create checks and balances within emergencies**.

Some related data to consider:

1. PCR testing has become a \$1B / year business in the US. What incentive do they have for NOT finding positives (3)?
2. Large numbers of scientists and physicians object to government actions undertaken using COVID-19 as the reason (4).
3. Hospitals routinely run at high occupancy rates and have many levers to adjust to spikes in demand.
4. Proof showing asymptomatic spread (the rationale for mask mandates) is non-existent has been ignored by NDDOH, and still is today (5)?
5. Before 2020 there were extensive scientific studies on the effectiveness of masks to prevent viral infections which all showed that they did not provide prevention (6). This was ignored by NDDOH, and still is today.
6. That Hydroxychloroquine was known to be safe at the beginning of the pandemic and was re-approved by the AMA hours after the Biden inauguration, showing how *politics* run counter to citizens' wellbeing.
7. Ditto Ivermectin, Vitamin D, Zinc, and other valuable tools omitted from the NDDOH website.

References:

- (1) <https://www.nytimes.com/2020/08/29/health/coronavirus-testing.html>
- (2) <https://www.flhealthsource.gov/files/Laboratory-Reporting-CT-Values-12032020.pdf>
- (3) <https://dossier.substack.com/p/welcome-to-the-covid-testing-industrial>
- (4) <https://gbdeclaration.org/>
- (5) <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2774102>
- (6) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4420971/>
- (7) https://covid.cdc.gov/covid-data-tracker/#compare-trends_newcasesper100k (sample below)



Dear Committee Members,

The response to COVID-19 clearly highlighted the need for legislation that would protect the balance of power among the branches of government, particularly with regard to current and future state emergency declarations.

Not only did the arbitrary and draconian nature of the executive orders undermine legitimate concerns of Covid-19, but it caused great financial, emotional, and mental harm to thousands of North Dakotans. Throughout the last year, we forced small businesses, restaurants, bars, and salons to make significant financial sacrifices, kept families away from dying loved ones, imprisoned the elderly in long-term care facilities, kept kids out of school and extracurricular activities to the detriment of their mental health, forced people to wear useless pieces of cloth over their faces, and even informed citizens how many people we should invite into our homes over the holidays. And the executive office did all of these things based on inaccurate data provided by unelected public health officials and without the input and consent of citizens. North Dakotans need to know that their voices matter even during a state of emergency. We need to know that our right to life, liberty, and the pursuit of happiness will be protected from future executive orders that seek to micromanage citizens' lives in the name of safety.

There is a current trend in government to declare an emergency, whether it is related to climate, guns, white supremacy, or COVID-19, in order to implement extremist policies and/or to justify spending obscene amounts of taxpayer dollars. There should be more input and discussion surrounding what constitutes a state of emergency, not less. And that input should be as local as possible, not from global entities like the World Health Organization, out-of-state billionaires, or a single branch of government on a power trip.

Please render a DO PASS on 2124. Thank you.

Sincerely,

Amber Vibeto
Minot, District 3

To the House Human Services Committee:

I urge you to render a DO PASS on SB 2124 **to put reasonable constraints on subjective and unending intrusions** by the Governor, the Department of Health, and through example, the Mayors across the state.

Opposition themes are threefold:

- “The pandemic” requires extraordinary responses.
 - Some of those “responses” are quite literally killing people and should require some checks.
- The legislature will not act in a timely way.
 - Timeliness is addressed in the bill.
- The process has worked well thus far.

These arguments belie two important facts: 1) The COVID emergency has been politicized, and 2) government never admits its mistakes.

Executive branch personnel may be well-meaning, but it is undeniable that *decisions are influenced by politics and money*. Some COVID-era observations of the North Dakota executive branch and the Department of Health (NDDOH):

1. The human cost of the mitigations (unemployment, suicides, childhood education failures, mental health) are receiving only scant attention from NDDOH even though said costs stem from NDDOH policies.
2. Many comparisons have been made nationally between South Dakota, which has had the lowest of mandates, and North Dakota, which has implemented mandates. South Dakota has fared as well or better without the damage cited in 1, but this is *seemingly ignored by our own state government*. Could we find two more appropriate states to compare (7)?
3. The questionable reliability of the PCR test (1), the single most relied-upon statistic by politicians and media, has been known to the scientific community since the beginning. Florida has reacted with legislation to counter its abuse (2). Portugal has made it illegal. The WHO has recently acknowledged the 50% false negative problem, suspiciously within hours after the recent inauguration. North Dakota, by contrast, has continued to this day to rely upon the PCR test as the sole indicator of the severity of the problem.
4. *NDDOH has become a skilled propaganda machine*. Presumably fueled by Federal dollars, **they are interceding in the traditional patient-doctor relationship** with an endless stream of debatable medical assertions.

Some related facts:

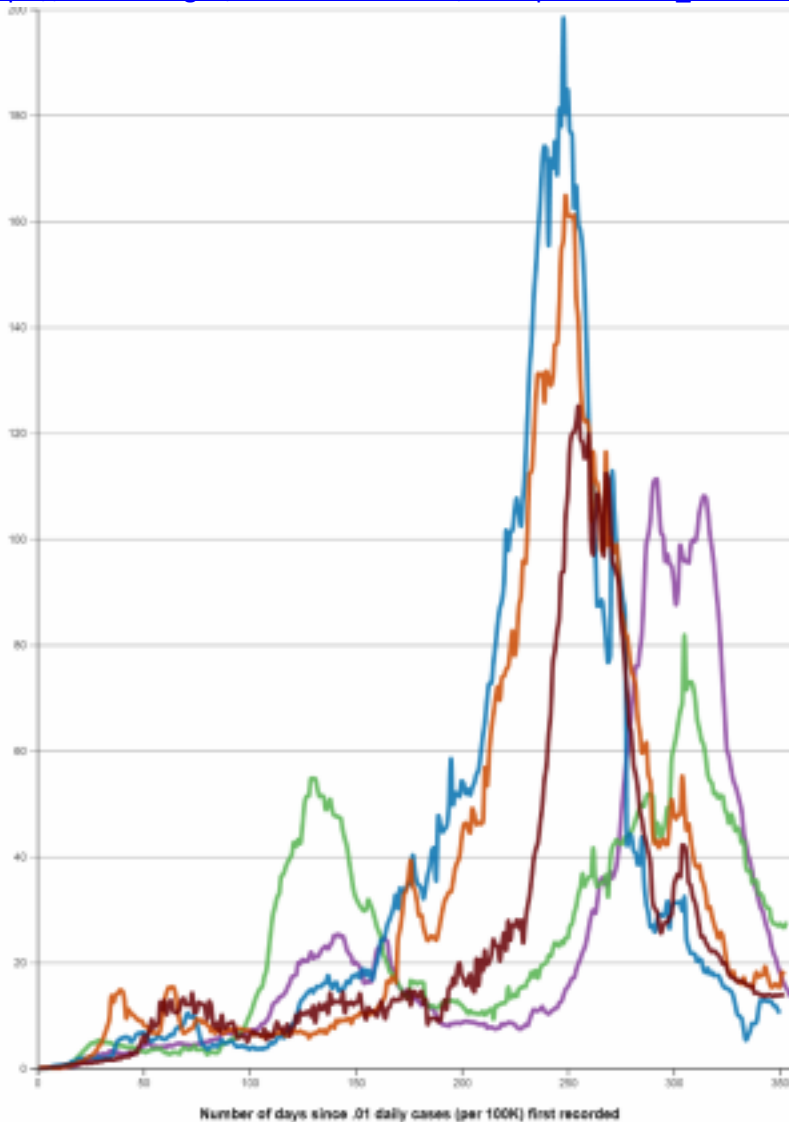
1. PCR testing has become a \$1B / year business in the US. What incentive do they have for NOT finding positives (3)?
2. Large numbers of scientists and physicians object to government actions undertaken using COVID-19 as the reason (4).
3. Hospitals routinely run at high occupancy rates and have many levers to adjust to spikes in demand.
4. Proof showing asymptomatic spread (the rationale for mask mandates) is non-existent and has been ignored by NDDOH (5).
5. Before 2020, there were extensive scientific studies on the effectiveness of masks to prevent viral infections which all showed that they did not provide prevention (6). This was also ignored by NDDOH.
6. That Hydroxychloroquine was known to be safe at the beginning and was re-approved by the AMA hours after the Biden inauguration, showing how *politics* run counter to citizens' wellbeing.

7. Blue state governors started relaxing mandates mere days after the inauguration. More *politics*.

COVID-19 gave Governors and Mayors *absolute and unending power* over our lives. They used it liberally. This is not what “the consent of the governed” looks like. Their behavior is further entrenched by rewards of federal dollars. With so-called ‘variants’ now making news they are creating their next causation for power. Politics exist within pandemic management. This is a problem that cannot continue unchecked. **Bill 2124 is a reasonable check.**

References:

- (1) <https://www.nytimes.com/2020/08/29/health/coronavirus-testing.html>
- (2) <https://www.flhealthsource.gov/files/Laboratory-Reporting-CT-Values-12032020.pdf>
- (3) <https://dossier.substack.com/p/welcome-to-the-covid-testing-industrial>
- (4) <https://gbdeclaration.org/>
- (5) <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2774102>
- (6) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4420971/>
- (7) https://covid.cdc.gov/covid-data-tracker/#compare-trends_newcasesper100k (sample below)



New cases of Covid-19, reported to CDC, in CA, FL, ND, SD, and MN

Seven-day moving average of new cases (per 100K), by number of days since .01 average daily cases (per 100K) first recorded.

... CA FL ND SD MN

Dear members of the House Human Service Committee,

I urge a DO PASS on SB 2124, as it puts a check on executive power in ND. There should always be a time limit to declared state of emergency, and I believe this bill would limit declared state of emergencies that are without legislature approval more effectively. We have seen how in times past and with this pandemic how governors are using "emergency declarations" to impose leftist agenda and take away our rights as US citizens without anybody being able to do anything, this bill would force the governor to get legislature support to prolong declared state of emergencies. I respectfully ask that you recommend DO PASS.

Thank You

Felipe Vasquez de Velasco

2021 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee Pioneer Room, State Capitol

SB 2124
4/19/2021

Relating to permitting a virtual session of the legislative assembly during an emergency or disaster; relating to the state health officer's and governor's authority during a declared disaster or emergency; and to provide a penalty

Chairman Weisz opened the committee meeting at 3:01 p.m.

Representatives	Attendance
Representative Robin Weisz	P
Representative Karen M. Rohr	P
Representative Mike Beltz	P
Representative Chuck Damschen	P
Representative Bill Devlin	P
Representative Gretchen Dobervich	P
Representative Clayton Fegley	P
Representative Dwight Kiefert	P
Representative Todd Porter	P
Representative Matthew Ruby	P
Representative Mary Schneider	P
Representative Kathy Skroch	P
Representative Bill Tveit	P
Representative Greg Westlind	P

Discussion Topics:

- Children's advocacy centers
- State licensing requirements
- Congregate housing
- Regulatory statute definition

Chairman Weisz (3:02) presented proposed **Amendments #21.0607.03007 - #11559**

Rep. Todd Porter (3:10) moved to adopt **Amendments #21.0607.03007**

Rep. Matthew Ruby (3:10) second

Voice Vote – Motion Carried

Rep. Todd Porter (3:11) moved **Do Pass As Amended**. He was then asked to hold his motion.

Rep. Karen Rohr (3:11) presented proposed **Amendments #21.0607.03008 - #11560**

Rep. Ben Koppelman (3:23) explained **Amendments #21.0607.03008**. No action on Amendments #21.0607.03008.

Rep. Todd Porter (3:34) moved **Do Pass As Amended**

Rep. Bill Devlin (3:34) second

Representatives	Vote
Representative Robin Weisz	Y
Representative Karen M. Rohr	N
Representative Mike Beltz	Y
Representative Chuck Damschen	Y
Representative Bill Devlin	Y
Representative Gretchen Dobervich	Y
Representative Clayton Fegley	Y
Representative Dwight Kiefert	Y
Representative Todd Porter	Y
Representative Matthew Ruby	Y
Representative Mary Schneider	Y
Representative Kathy Skroch	N
Representative Bill Tveit	N
Representative Greg Westlind	Y

Motion Carried Do Pass As Amended 11-3-0

Bill Carrier: Rep. Robin Weisz

Chairman Weisz adjourned at 3:36 p.m.

Tamara Krause, Committee Clerk

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2124

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 23-12, two new subsections to section 37-17.1-05, a new section to chapter 50-11, and a new section to chapter 54-03 of the North Dakota Century Code, relating to prohibitions on vaccine passports, the governor's authority to issue executive orders, unaccompanied undocumented children, and permitting a virtual meeting of the legislative management and a virtual session of the legislative assembly during a declared disaster or emergency; to amend and reenact subsection 12 of section 23-01-05 and subsections 3 and 6 of section 37-17.1-05 of the North Dakota Century Code and section 50-25.1-11.1 of the North Dakota Century Code, as amended in section 2 of Senate Bill No. 2131, as approved by the sixty-seventh legislative assembly, relating to the authority of the state health officer, the gubernatorial declaration of disaster or emergency powers of the department of human services, and criminal history record checks for children's advocacy centers; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 12 of section 23-01-05 of the North Dakota Century Code is amended and reenacted as follows:

12. Issue ~~any orders~~ a written order relating to ~~a disease control measures deemed measure~~ necessary to prevent the spread of ~~a communicable disease. Disease~~ a disease control measures measure may include ~~a special immunization activities~~ activity and decontamination ~~measures measure. Written orders~~
- a. The state health officer shall limit a written order issued under this section to the geographical area affected by the communicable disease. The state health officer may not issue a statewide order under this section unless the governor has declared a statewide disaster or emergency under chapter 37-17.1 and the governor consents to the order. The statewide order is limited in duration to the duration of the declared disaster or emergency unless terminated earlier pursuant to chapter 37-17.1.
 - b. A written order issued under this section shall ~~have~~ has the same effect as a physician's standing medical order.
 - c. The state health officer may ~~shall~~ apply to the district court in a judicial district where a communicable disease is present for an injunction canceling if the state health officer seeks to cancel a public event ~~event~~ or closing places ~~close a place~~ of business. On application of the state health officer showing the necessity of such the cancellation or closure, the court may issue an ex parte preliminary injunction, pending a full hearing.

SECTION 2. A new section to chapter 23-12 of the North Dakota Century Code is created and enacted as follows:

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4/19/21
2 of 5

Vaccine passports - Prohibition.

Except as provided under section 23-07-17.1, a state or local government may not mandate that a private entity require documentation of an individual's vaccination status.

SECTION 3. AMENDMENT. Subsection 3 of section 37-17.1-05 of the North Dakota Century Code is amended and reenacted as follows:

3. A disaster or emergency must be declared by executive order or proclamation of the governor if the governor determines a disaster has occurred or a state of emergency exists. The-
 - a. Except as provided in subdivision b, the state of disaster or emergency shall continue~~continues~~ until the governor determines that the threat of an emergency has passed or the governor determines the disaster has been dealt with to the extent that emergency conditions no longer exist, whichever occurs first.
 - b. If a state of disaster or emergency relating to public health is declared and in effect and the legislative assembly is not in session, the legislative management may meet to vote on whether the legislative management should request the governor call a special session of the legislative assembly. If the governor does not call a special session within seven days after the legislative management sends a request to the governor, the declared state of disaster or emergency relating to public health terminates thirty days after the request from the legislative management was sent to the governor. If the governor calls a special session within seven days after the request from the legislative management was sent, the special session must be held within fifteen days of the governor's call for a special session. If the legislative assembly meets to address a declared state of disaster or emergency, the legislative assembly by concurrent resolution may terminate, extend, or modify the state of disaster or emergency.
 - c. The legislative assembly by concurrent resolution may terminate a state of disaster or emergency at any time.
 - d. All executive orders or proclamations issued under this subsection must indicate the nature of the disaster or emergency, the area or areas threatened, the conditions ~~which~~that have brought it about or which make possible termination of the state of disaster or emergency. An executive order or proclamation must be disseminated promptly by means calculated to bring its contents to the attention of the general public, unless the circumstances attendant upon the disaster or emergency prevent or impede such dissemination, and it must be ~~promptly filed~~ promptly with the department of emergency services, the legislative council, the secretary of state, and the county or city auditor of the jurisdictions affected.

SECTION 4. AMENDMENT. Subsection 6 of section 37-17.1-05 of the North Dakota Century Code is amended and reenacted as follow:

6. ~~In~~ The governor may not amend or repeal the provisions of a statute, but subject to prohibitions and limitations in law, and in addition to any other powers conferred upon the governor by law, the governor may:

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- a. Suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business, or the orders, rules, or regulations of any state agency, if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in managing a disaster or emergency.
- b. Utilize all available resources of the state government as reasonably necessary to manage the disaster or emergency and of each political subdivision of the state.
- c. Transfer the direction, personnel, or functions of state departments and agencies or units thereof for the purpose of performing or facilitating emergency management activities.
- d. Subject to any applicable requirements for compensation under section 37-17.1-12, commandeer or utilize any private property if the governor finds this necessary to manage the disaster or emergency.
- e. Direct and compel the evacuation of all or part of the population from any stricken or threatened area within the state if the governor deems this action necessary for the preservation of life or other disaster or emergency mitigation, response, or recovery.
- f. Prescribe routes, modes of transportation, and destinations in connection with an evacuation.
- g. Control ingress and egress in a designated disaster or emergency area, the movement of persons within the area, and the occupancy of premises therein.
- h. Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, explosives, and combustibles, not including ammunition.
- i. Make provision for the availability and use of temporary emergency housing.
- j. Make provisions for the control, allocation, and the use of quotas for critical shortages of fuel or other life and property sustaining commodities.
- k. Designate members of the highway patrol, North Dakota national guard, or others trained in law enforcement, as peace officers.

SECTION 5. A new subsection to section 37-17.1-05 of the North Dakota Century Code is created and enacted as follows:

Notwithstanding subsection 3, if a state of disaster or emergency relating to public health is declared and in effect, the governor may not issue an executive order under this section unless the executive order specifically addresses the mitigation of the declared state of disaster or emergency relating to public health.

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SECTION 6. A new subsection to section 37-17.1-05 of the North Dakota Century Code is created and enacted as follows:

The governor may not take any action under this section which violates a resident's due process rights.

SECTION 7. A new section to chapter 50-11 of the North Dakota Century Code is created and enacted as follows:

Unaccompanied undocumented children.

A person may not arrange for or promote care provided in a facility for unaccompanied undocumented children unless the facility has a license or approval issued by the department.

SECTION 8. AMENDMENT. Section 50-25.1-11.1 of the North Dakota Century Code, as amended in section 2 of Senate Bill No. 2131, as approved by the sixty-seventh legislative assembly, is amended and reenacted as follows:

50-25.1-11.1. Children's advocacy centers - Confidentiality of records - Criminal history record checks.

1. Records and digital media in the possession of a children's advocacy center relating to a forensic medical examination, forensic interview, or therapy are confidential and may be released only to a person other than a law enforcement agency, the department or the department's authorized agent, or a medical or mental health professional when the child comes before the medical or mental health professional in that person's professional capacity, upon service of a subpoena signed by a judge.
2. ~~Upon receipt of a request by a children's advocacy center, the~~The department may submit a request for a criminal history record check under section 12-60-24. ~~Under this subsection, a children's advocacy center may require the following individuals to submit to a criminal history record check:~~
 - a. ~~An on an~~ employee, final applicant for employment, contractor, multidisciplinary team member, or volunteer; of a children's advocacy center who has contact with a child at or through a children's advocacy center; and
 - b. ~~An individual a children's advocacy center determines requires a criminal history record check to participate in services at a center.~~

SECTION 9. A new section to chapter 54-03 of the North Dakota Century Code is created and enacted as follows:

Virtual session of the legislative management and legislative assembly during emergency or disaster.

1. If the legislative management meets to vote on whether the legislative management should request the governor call a special session of the legislative assembly, the legislative management may use any technology or electronic means available to conduct meetings and transact legislative business.

2. If the governor calls a special session of the legislative assembly to address a state of emergency or disaster or if the legislative assembly reconvenes to address a state of emergency or disaster, the legislative assembly may use any technology or electronic means available to conduct meetings and transact legislative business.
3. For purposes of section 7 of article IV of the Constitution of North Dakota, a meeting of the legislative assembly which occurs under this section is deemed to have occurred at the seat of the government, and all actions taken during the meeting have the same legal effect as if the members of the legislative assembly were physically present at the seat of government.

SECTION 10. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

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4/19/21
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REPORT OF STANDING COMMITTEE

SB 2124, as engrossed: Human Services Committee (Rep. Weisz, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2124 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 23-12, two new subsections to section 37-17.1-05, a new section to chapter 50-11, and a new section to chapter 54-03 of the North Dakota Century Code, relating to prohibitions on vaccine passports, the governor's authority to issue executive orders, unaccompanied undocumented children, and permitting a virtual meeting of the legislative management and a virtual session of the legislative assembly during a declared disaster or emergency; to amend and reenact subsection 12 of section 23-01-05 and subsections 3 and 6 of section 37-17.1-05 of the North Dakota Century Code and section 50-25.1-11.1 of the North Dakota Century Code, as amended in section 2 of Senate Bill No. 2131, as approved by the sixty-seventh legislative assembly, relating to the authority of the state health officer, the gubernatorial declaration of disaster or emergency powers of the department of human services, and criminal history record checks for children's advocacy centers; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 12 of section 23-01-05 of the North Dakota Century Code is amended and reenacted as follows:

12. ~~Issue any orders~~ a written order relating to ~~a disease control measures-~~ ~~deemed measure~~ necessary to prevent the spread of ~~a communicable disease.~~ ~~Disease~~ a disease control measures ~~measure~~ may include a special immunization ~~activities~~ activity and decontamination ~~measures~~ ~~measure~~. ~~Written orders~~
 - a. ~~The state health officer shall limit a written order issued under this section to the geographical area affected by the communicable disease. The state health officer may not issue a statewide order under this section unless the governor has declared a statewide disaster or emergency under chapter 37-17.1 and the governor consents to the order. The statewide order is limited in duration to the duration of the declared disaster or emergency unless terminated earlier pursuant to chapter 37-17.1.~~
 - b. ~~A written order~~ issued under this section ~~shall have~~ has the same effect as a physician's standing medical order.
 - c. ~~The state health officer may~~ shall apply to the district court in a judicial district where a communicable disease is present for an injunction ~~cancelling if the state health officer seeks to cancel a public event~~ event or ~~closing places~~ close a place of business. On application of the state health officer showing the necessity of ~~such~~ the ~~cancellation or closure~~, the court may issue an ex parte preliminary injunction, pending a full hearing.

SECTION 2. A new section to chapter 23-12 of the North Dakota Century Code is created and enacted as follows:

Vaccine passports - Prohibition.

Except as provided under section 23-07-17.1, a state or local government may not mandate that a private entity require documentation of an individual's vaccination status.

SECTION 3. AMENDMENT. Subsection 3 of section 37-17.1-05 of the North Dakota Century Code is amended and reenacted as follows:

3. A disaster or emergency must be declared by executive order or proclamation of the governor if the governor determines a disaster has occurred or a state of emergency exists. ~~The~~
 - a. ~~Except as provided in subdivision b, the state of disaster or emergency shall continue~~continues until the governor determines ~~that the threat of an emergency has passed or the governor determines the~~ disaster has been dealt with to the extent that emergency conditions no longer exist, ~~whichever occurs first.~~
 - b. If a state of disaster or emergency relating to public health is declared and in effect and the legislative assembly is not in session, the legislative management may meet to vote on whether the legislative management should request the governor call a special session of the legislative assembly. If the governor does not call a special session within seven days after the legislative management sends a request to the governor, the declared state of disaster or emergency relating to public health terminates thirty days after the request from the legislative management was sent to the governor. If the governor calls a special session within seven days after the request from the legislative management was sent, the special session must be held within fifteen days of the governor's call for a special session. If the legislative assembly meets to address a declared state of disaster or emergency, the legislative assembly by concurrent resolution may terminate, extend, or modify the state of disaster or emergency.
 - c. The legislative assembly by concurrent resolution may terminate a state of disaster or emergency at any time.
 - d. All executive orders or proclamations issued under this subsection must indicate the nature of the disaster or emergency, the area or areas threatened, the conditions ~~which~~that have brought it about or which make possible termination of the state of disaster or emergency. An executive order or proclamation must be disseminated promptly by means calculated to bring its contents to the attention of the general public, unless the circumstances attendant upon the disaster or emergency prevent or impede such dissemination, and it must be ~~promptly filed~~ promptly with the department of emergency services, ~~the legislative council,~~ the secretary of state, and the county or city auditor of the jurisdictions affected.

SECTION 4. AMENDMENT. Subsection 6 of section 37-17.1-05 of the North Dakota Century Code is amended and reenacted as follow:

6. ~~In~~The governor may not amend or repeal the provisions of a statute, but subject to prohibitions and limitations in law, and in addition to any other powers conferred upon the governor by law, the governor may:
 - a. Suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business, or the orders, rules, or regulations of any state agency, if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in managing a disaster or emergency.

- b. Utilize all available resources of the state government as reasonably necessary to manage the disaster or emergency and of each political subdivision of the state.
- c. Transfer the direction, personnel, or functions of state departments and agencies or units thereof for the purpose of performing or facilitating emergency management activities.
- d. Subject to any applicable requirements for compensation under section 37-17.1-12, commandeer or utilize any private property if the governor finds this necessary to manage the disaster or emergency.
- e. Direct and compel the evacuation of all or part of the population from any stricken or threatened area within the state if the governor deems this action necessary for the preservation of life or other disaster or emergency mitigation, response, or recovery.
- f. Prescribe routes, modes of transportation, and destinations in connection with an evacuation.
- g. Control ingress and egress in a designated disaster or emergency area, the movement of persons within the area, and the occupancy of premises therein.
- h. Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, explosives, and combustibles, not including ammunition.
- i. Make provision for the availability and use of temporary emergency housing.
- j. Make provisions for the control, allocation, and the use of quotas for critical shortages of fuel or other life and property sustaining commodities.
- k. Designate members of the highway patrol, North Dakota national guard, or others trained in law enforcement, as peace officers.

SECTION 5. A new subsection to section 37-17.1-05 of the North Dakota Century Code is created and enacted as follows:

Notwithstanding subsection 3, if a state of disaster or emergency relating to public health is declared and in effect, the governor may not issue an executive order under this section unless the executive order specifically addresses the mitigation of the declared state of disaster or emergency relating to public health.

SECTION 6. A new subsection to section 37-17.1-05 of the North Dakota Century Code is created and enacted as follows:

The governor may not take any action under this section which violates a resident's due process rights.

SECTION 7. A new section to chapter 50-11 of the North Dakota Century Code is created and enacted as follows:

Unaccompanied undocumented children.

A person may not arrange for or promote care provided in a facility for unaccompanied undocumented children unless the facility has a license or approval issued by the department.

SECTION 8. AMENDMENT. Section 50-25.1-11.1 of the North Dakota Century Code, as amended in section 2 of Senate Bill No. 2131, as approved by the sixty-seventh legislative assembly, is amended and reenacted as follows:

50-25.1-11.1. Children's advocacy centers - Confidentiality of records - Criminal history record checks.

1. Records and digital media in the possession of a children's advocacy center relating to a forensic medical examination, forensic interview, or therapy are confidential and may be released only to a person other than a law enforcement agency, the department or the department's authorized agent, or a medical or mental health professional when the child comes before the medical or mental health professional in that person's professional capacity, upon service of a subpoena signed by a judge.
2. ~~Upon receipt of a request by a children's advocacy center, the~~The department may submit a request for a criminal history record check under section 12-60-24. ~~Under this subsection, a children's advocacy center may require the following individuals to submit to a criminal history record check:~~
 - a. ~~An on an~~ employee, final applicant for employment, contractor, multidisciplinary team member, or volunteer; of a children's advocacy center who has contact with a child at or through a children's advocacy center; ~~and~~
 - b. ~~An individual a children's advocacy center determines requires a criminal history record check to participate in services at a center.~~

SECTION 9. A new section to chapter 54-03 of the North Dakota Century Code is created and enacted as follows:

Virtual session of the legislative management and legislative assembly during emergency or disaster.

1. If the legislative management meets to vote on whether the legislative management should request the governor call a special session of the legislative assembly, the legislative management may use any technology or electronic means available to conduct meetings and transact legislative business.
2. If the governor calls a special session of the legislative assembly to address a state of emergency or disaster or if the legislative assembly reconvenes to address a state of emergency or disaster, the legislative assembly may use any technology or electronic means available to conduct meetings and transact legislative business.
3. For purposes of section 7 of article IV of the Constitution of North Dakota, a meeting of the legislative assembly which occurs under this section is deemed to have occurred at the seat of the government, and all actions taken during the meeting have the same legal effect as if the members of the legislative assembly were physically present at the seat of government.

SECTION 10. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

21.0607.03007
Title.

Prepared by the Legislative Council staff for
Representative Weisz
April 19, 2021

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2124

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 23-12, two new subsections to section 37-17.1-05, a new section to chapter 50-11, and a new section to chapter 54-03 of the North Dakota Century Code, relating to prohibitions on vaccine passports, the governor's authority to issue executive orders, unaccompanied undocumented children, and permitting a virtual meeting of the legislative management and a virtual session of the legislative assembly during a declared disaster or emergency; to amend and reenact subsection 12 of section 23-01-05 and subsections 3 and 6 of section 37-17.1-05 of the North Dakota Century Code and section 50-25.1-11.1 of the North Dakota Century Code, as amended in section 2 of Senate Bill No. 2131, as approved by the sixty-seventh legislative assembly, relating to the authority of the state health officer, the gubernatorial declaration of disaster or emergency powers of the department of human services, and criminal history record checks for children's advocacy centers; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 12 of section 23-01-05 of the North Dakota Century Code is amended and reenacted as follows:

12. ~~Issue any orders~~ a written order relating to a disease control measures ~~deemed measure~~ necessary to prevent the spread of a communicable disease. ~~Disease~~ A disease control measures measure may include a special immunization activities activity and decontamination ~~measures measure~~. ~~Written orders~~
 - a. The state health officer shall limit a written order issued under this section to the geographical area affected by the communicable disease. The state health officer may not issue a statewide order under this section unless the governor has declared a statewide disaster or emergency under chapter 37-17.1 and the governor consents to the order. The statewide order is limited in duration to the duration of the declared disaster or emergency unless terminated earlier pursuant to chapter 37-17.1.
 - b. A written order issued under this section shall have ~~has~~ the same effect as a physician's standing medical order.
 - c. The state health officer may ~~shall~~ apply to the district court in a judicial district where a communicable disease is present for an injunction ~~canceling if the state health officer seeks to cancel a public event~~ event or closing places ~~close a place~~ of business. On application of the state health officer showing the necessity of such the cancellation or closure, the court may issue an ex parte preliminary injunction, pending a full hearing.

SECTION 2. A new section to chapter 23-12 of the North Dakota Century Code is created and enacted as follows:

Vaccine passports - Prohibition.

Except as provided under section 23-07-17.1, a state or local government may not mandate that a private entity require documentation of an individual's vaccination status.

SECTION 3. AMENDMENT. Subsection 3 of section 37-17.1-05 of the North Dakota Century Code is amended and reenacted as follows:

3. A disaster or emergency must be declared by executive order or proclamation of the governor if the governor determines a disaster has occurred or a state of emergency exists. The
 - a. Except as provided in subdivision b, the state of disaster or emergency shall ~~continue~~continues until the governor determines that the threat of an emergency has passed or the governor determines the disaster has been dealt with to the extent that emergency conditions no longer exist, whichever occurs first.
 - b. If a state of disaster or emergency relating to public health is declared and in effect and the legislative assembly is not in session, the legislative management may meet to vote on whether the legislative management should request the governor call a special session of the legislative assembly. If the governor does not call a special session within seven days after the legislative management sends a request to the governor, the declared state of disaster or emergency relating to public health terminates thirty days after the request from the legislative management was sent to the governor. If the governor calls a special session within seven days after the request from the legislative management was sent, the special session must be held within fifteen days of the governor's call for a special session. If the legislative assembly meets to address a declared state of disaster or emergency, the legislative assembly by concurrent resolution may terminate, extend, or modify the state of disaster or emergency.
 - c. The legislative assembly by concurrent resolution may terminate a state of disaster or emergency at any time.
 - d. All executive orders or proclamations issued under this subsection must indicate the nature of the disaster or emergency, the area or areas threatened, the conditions ~~which~~that have brought it about or which make possible termination of the state of disaster or emergency. An executive order or proclamation must be disseminated promptly by means calculated to bring its contents to the attention of the general public, unless the circumstances attendant upon the disaster or emergency prevent or impede such dissemination, and it must be ~~promptly filed~~promptly with the department of emergency services, the legislative council, the secretary of state, and the county or city auditor of the jurisdictions affected.

SECTION 4. AMENDMENT. Subsection 6 of section 37-17.1-05 of the North Dakota Century Code is amended and reenacted as follow:

6. ~~In~~The governor may not amend or repeal the provisions of a statute, but subject to prohibitions and limitations in law, and in addition to any other powers conferred upon the governor by law, the governor may:
- a. Suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business, or the orders, rules, or regulations of any state agency, if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in managing a disaster or emergency.
 - b. Utilize all available resources of the state government as reasonably necessary to manage the disaster or emergency and of each political subdivision of the state.
 - c. Transfer the direction, personnel, or functions of state departments and agencies or units thereof for the purpose of performing or facilitating emergency management activities.
 - d. Subject to any applicable requirements for compensation under section 37-17.1-12, commandeer or utilize any private property if the governor finds this necessary to manage the disaster or emergency.
 - e. Direct and compel the evacuation of all or part of the population from any stricken or threatened area within the state if the governor deems this action necessary for the preservation of life or other disaster or emergency mitigation, response, or recovery.
 - f. Prescribe routes, modes of transportation, and destinations in connection with an evacuation.
 - g. Control ingress and egress in a designated disaster or emergency area, the movement of persons within the area, and the occupancy of premises therein.
 - h. Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, explosives, and combustibles, not including ammunition.
 - i. Make provision for the availability and use of temporary emergency housing.
 - j. Make provisions for the control, allocation, and the use of quotas for critical shortages of fuel or other life and property sustaining commodities.
 - k. Designate members of the highway patrol, North Dakota national guard, or others trained in law enforcement, as peace officers.

SECTION 5. A new subsection to section 37-17.1-05 of the North Dakota Century Code is created and enacted as follows:

Notwithstanding subsection 3, if a state of disaster or emergency relating to public health is declared and in effect, the governor may not issue an executive order under this section unless the executive order specifically

addresses the mitigation of the declared state of disaster or emergency relating to public health.

SECTION 6. A new subsection to section 37-17.1-05 of the North Dakota Century Code is created and enacted as follows:

The governor may not take any action under this section which violates a resident's due process rights.

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Unaccompanied undocumented children.

A person may not arrange for or promote care provided in a facility for unaccompanied undocumented children unless the facility has a license or approval issued by the department.

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50-25.1-11.1. Children's advocacy centers - Confidentiality of records - Criminal history record checks.

1. Records and digital media in the possession of a children's advocacy center relating to a forensic medical examination, forensic interview, or therapy are confidential and may be released only to a person other than a law enforcement agency, the department or the department's authorized agent, or a medical or mental health professional when the child comes before the medical or mental health professional in that person's professional capacity, upon service of a subpoena signed by a judge.
2. ~~Upon receipt of a request by a children's advocacy center, the~~The department may submit a request for a criminal history record check under section 12-60-24. ~~Under this subsection, a children's advocacy center may require the following individuals to submit to a criminal history record check:~~
 - a. ~~An on an~~ employee, final applicant for employment, contractor, multidisciplinary team member, or volunteer, of a children's advocacy center who has contact with a child at or through a children's advocacy center; and
 - b. ~~An individual a children's advocacy center determines requires a criminal history record check to participate in services at a center.~~

SECTION 9. A new section to chapter 54-03 of the North Dakota Century Code is created and enacted as follows:

Virtual session of the legislative management and legislative assembly during emergency or disaster.

1. If the legislative management meets to vote on whether the legislative management should request the governor call a special session of the

legislative assembly, the legislative management may use any technology or electronic means available to conduct meetings and transact legislative business.

2. If the governor calls a special session of the legislative assembly to address a state of emergency or disaster or if the legislative assembly reconvenes to address a state of emergency or disaster, the legislative assembly may use any technology or electronic means available to conduct meetings and transact legislative business.
3. For purposes of section 7 of article IV of the Constitution of North Dakota, a meeting of the legislative assembly which occurs under this section is deemed to have occurred at the seat of the government, and all actions taken during the meeting have the same legal effect as if the members of the legislative assembly were physically present at the seat of government.

SECTION 10. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

21.0607.03008
Title.

Prepared by the Legislative Council staff for
Representative B. Koppelman
April 19, 2021

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2124

Page 1, line 3, replace the second "section" with "sections 37-17.1-04,"

Page 1, line 4, after "37-17.1-05" insert ", and 37-17.1-11"

Page 1, line 5, after "emergency" insert "and disaster or emergency mitigation"

Page 1, after line 20, insert:

"SECTION 2. AMENDMENT. Section 37-17.1-04 of the North Dakota Century Code is amended and reenacted as follows:

37-17.1-04. Definitions.

As used in this chapter:

1. "Critical industry sectors" means any of the critical infrastructure sectors identified by the United States government whose assets, systems, and networks, whether physical or virtual, are considered so vital to the United States and the state that the sectors' incapacitation or destruction would have a debilitating effect on security, economic security, public health or safety, or any combination thereof.
2. "Disaster" means the occurrence of widespread or severe damage, injury, or loss of life or property resulting from any natural or manmade cause, including fire, flood, earthquake, severe high and low temperatures, tornado storm, wave action, chemical spill, or other water or air contamination, epidemic, blight, drought, infestation, explosion, riot, or hostile military or paramilitary action, or cyber attack which is determined by the governor to require state or state and federal assistance or actions to supplement the recovery efforts of local governments in alleviating the damage, loss, hardship, or suffering caused thereby.
3. "Disaster or emergency worker" means any person performing disaster or emergency responsibilities or duties at any place in this state subject to the order or control of, or pursuant to a request of, the state government or any political subdivision.
4. "Emergency" means any situation that is determined by the governor to require state or state and federal response or mitigation actions to protect lives and property, to provide for public health and safety, or to avert or lessen the threat of a disaster. Emergencies require an immediate supplement to local governments or aid to critical industry sectors that provide essential lifeline services.
5. "Emergency management" means a comprehensive integrated system at all levels of government and in the private sector which provides for the development and maintenance of an effective capability to prevent, mitigate, prepare for, respond to, and recover from known and unforeseen

hazards or situations, caused by an act of nature or man, which may threaten, injure, damage, or destroy lives, property, or our environment.

6. "Homeland security" means a concerted national effort to prevent terrorist attacks within the United States, reduce America's vulnerability to terrorism, and minimize the damage and recover from attacks in the United States.
7. "Incident command system" means a standardized on-scene incident management concept designated specifically to allow responders to adopt an integrated organizational structure equal to the complexity and demands of any single incident or multiple incidents without being hindered by jurisdictional boundaries.
8. "Mass care" means food, clothing, shelter, and other necessary and essential assistance provided to a large number of affected people in response to, or recovery from, a disaster or emergency.
9. "National incident management system" means a system that provides a consistent nationwide approach for federal, state, and local governments to work effectively and efficiently together to prepare for, respond to, and recover from domestic incidents regardless of cause, size, or complexity.
10. "Regulatory statute" means a statute prescribing, regulating, or limiting the procedures for the conduct of state business; or licensing, issuing permits, or prohibiting conduct or an activity by a person.
11. "Wide area search and rescue" means the employment, coordination, and utilization of available resources and personnel in activities occurring within large geographical areas for the purpose of locating, relieving distress, and preserving the life of an individual reported or believed to be lost, stranded, or deemed a high-risk missing individual, and removing any survivor to a place of safety."

Page 3, line 27, after the period insert "However, the governor may not suspend a regulatory statute, order, or rule if:

- (1) Doing so will impose greater restrictions; or
- (2) The statute, order, or rule affords a citizen due process of law."

Page 4, line 13, overstrike "Control ingress and egress in a designated disaster or emergency area, the"

Page 4, overstrike line 14

Page 4, line 15, overstrike "h."

Page 4, line 17, overstrike "i." and insert immediately thereafter "h."

Page 4, line 18, overstrike "j." and insert immediately thereafter "i."

Page 4, line 20, overstrike "k." and insert immediately thereafter "j."

Page 5, after line 4, insert:

"SECTION 4. AMENDMENT. Section 37-17.1-11 of the North Dakota Century Code is amended and reenacted as follows:

37-17.1-11. Disaster or emergency mitigation.

1. In addition to disaster or emergency mitigation measures as included in the state and local disaster or emergency operational plans, the governor shall consider, on a continuing basis, steps that could be taken to mitigate or reduce the harmful consequences of disasters or emergencies. At the governor's direction, and pursuant to any other authority and capability they have, state agencies charged with responsibilities in connection with floodplain management, stream encroachment and flow regulation, weather modification, fire prevention and control, air quality, public works, land use and land use planning, and construction standards, shall make studies of disaster or emergency mitigation-related matters. The governor, from time to time, shall make recommendations to the legislative assembly, local governments, and other appropriate public and private entities as may facilitate measures for mitigation or reduction of the harmful consequences of disasters or emergencies.
2. The North Dakota state engineer and the water commission, in conjunction with the division of homeland security, shall keep land uses and construction of structures and other facilities under continuing study and identify areas which are particularly susceptible to severe land shifting, subsidence, flood, or other catastrophic occurrence. The studies under this subsection must concentrate on means of reducing or avoiding the dangers caused by this occurrence or the consequences thereof.
3. If the division of homeland security determines, in coordination with lead and support agencies, on the basis of the studies or other competent evidence, that an area is susceptible to a disaster of catastrophic proportions without adequate warning; existing building standards and land use controls in that area are inadequate and could add substantially to the magnitude of the disaster or emergency; and changes in zoning regulations, other land use regulations, or building requirements are needed in order to further the purposes of this section, it shall specify the essential changes to the governor. If the governor, upon review of the determination, finds after public hearing, that the changes are essential, the governor shall so recommend to the agencies or local governments with jurisdiction over that area and subject matter. If no action or insufficient action pursuant to the governor's recommendations is taken within the time specified by the governor, the governor shall so inform the legislative assembly and request legislative action appropriate to mitigate the impact of the disaster or emergency.
4. TheUpon calling for a special session of the legislative assembly to consider the governor's request for legislative action, the governor, at the same time that the governor makes recommendations pursuant to subsection 3, may suspend the standard or control which the governor finds to be inadequate to protect the public safety and by regulation place a new standard or control in effect. The new standard or control remains in effect until rejected by concurrent resolution of both houses of the legislative assembly or amended by the governor. During the time it is in effect, the standard or control contained in the governor's regulation must

be administered and given full effect by all relevant regulatory agencies of the state and local governments to which it applies. The governor's action is subject to judicial review in accordance with chapter 28-32 but is not subject to temporary stay pending litigation. A standard or control imposed by the governor may not exceed thirty days and may not be reissued without consent of the legislative assembly."

Renumber accordingly