

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2077

2001 SENATE JUDICIARY

SB 2077

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2077

Senate Judiciary Committee

Conference Committee

Hearing Date January 10th, 2001

Tape Number	Side A	Side B	Meter #
1	X		0-26.1
Committee Clerk Signature <i>Mike Hurst</i>			

Minutes:

SENATOR TRAYNOR opened the hearing on SB 2077: A BILL FOR AN ACT TO AMEND AND REENACT SECTION 29-32.1-14 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO APPEALS TO THE SUPREME COURT IN POST-CONVICTION RELIEF PROCEEDINGS.

JIM GANJE, Staff Attorney for the Office of State Court Administrator, gave testimony to pass SB 2077. (Testimony attached)

SENATOR TRAYNOR: Asked whether the effect of the bill was to extend the ten day limit to thirty days.

SENATOR TRENBEATH: Stated that this bill was getting rid of a malpractice pitfall, by putting a trap there.

SENATOR TRAYNOR: Asked if the supreme court adopted this rule?

JIM GANGE: Yes, the rules have been in effect for quite some time. Didn't know where the ten and thirty days rule came from.

SENATOR TRAYNOR: Stated that this bill was doing away with the ten day limit and opening a window.

JIM GANGE: If they look at the statutes they know to go to the supreme court; if they read the rules they know the amount of time they need to abide by. With this bill everyone knows where to go.

SENATOR BERCIER: I'm not a lawyer, how do I know that this will go to the supreme court? What directs me there?

JIM GANGE: The bill provides that the appeal will be viewed by the supreme court due to the appellate procedure.

Committee Discussion, January 10th, 2001-Tape 1, Meter # 26.0

SENATOR TRAYNOR: Asked if anyone opposed SB 2077. No one opposed the bill.

SENATOR TRAYNOR closed the hearing on SB 2077. Following the discussion, SENATOR WATNE moved to Do Pass SB 2077. SENATOR BERCIER seconded the motion. Vote indicated 7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING, SENATOR TRENBEATH volunteered to carry the bill.

Date: 1/10/2001
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2078

Senate Judiciary Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By S. Watne Seconded By S. Bercier

Senators	Yes	No	Senators	Yes	No
Traynor, J. Chairman	x		Bercier, D.	x	
Watne, D. Vice Chairman	x		Nelson, C.	x	
Dever, D.	x				
Lyson, S.	x				
Trenbeath, T.	x				

Total (Yes) 7 No 0

Absent 0

Floor Assignment S. Trenbeath, T.

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
January 10, 2001 12:32 p.m.

Module No: SR-02-0860
Carrier: Trenbeath
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2077: Judiciary Committee (Sen. Traynor, Chairman) recommends DO PASS
(7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2077 was placed on the
Eleventh order on the calendar.

2001 HOUSE JUDICIARY

SB 2077

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2077

House Judiciary Committee

Conference Committee

Hearing Date 02-20-01

Tape Number	Side A	Side B	Meter #
TAPE I	x		942 to 1499

Committee Clerk Signature *Joan Dues*

Minutes: Chairman DeKrey opened the hearing on SB 2077.

Chief Justice VandeWalle: introduced the bill (see attached testimony)

Rep Mahoney: Do you anticipate what would set the first time line with the rules, or is that something you are going to leave.

Chief Justice VandeWalle: We haven't, but I would think that we would do essentially the same thing, although we said that these proceedings would be civil in nature. I would think we would apply the criminal rules. I would proposed that we would say that they would have ten days after notice.

Rep Onstad: By being able to set the time line, would that help speed us the process.

Chief Justice VandeWalle: It would.

Chairman DeKrey: Are there any further questions, if not thank you for appearing. Is there anyone else who wishes to appear for or against. Seeing none we will close the hearing on SB 2077.

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House Judiciary Committee
Bill/Resolution Number SB 2077
Hearing Date 02-20-01

COMMITTEE ACTION

Chairman DeKrey: what are the wishes of the committee? Rep Eckre moved a DO PASS motion, seconded by Rep Mahoney. The clerk will call the roll on a DO PASS motion on SB 2077. The motion passes with 14 YES, 0 NO and 1 ABSENT. Carrier Rep Eckre.

Date: 02-20-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB-2077

House JUDICIARY Committee

Subcommittee on _____

or

Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep Eckre Seconded By Rep Mahoney

Representatives	Yes	No	Representatives	Yes	No
CHR - Duane DeKrey	✓				
VICE CHR -- Wm E Kretschmar	✓				
Rep Curtis E Brekke	✓				
Rep Lois Delmore	✓				
Rep Rachael Disrud	✓				
Rep Bruce Eckre	✓				
Rep April Fairfield	✓				
Rep Bette Grande	✓				
Rep G. Jane Gunter					
Rep Joyce Kingsbury	✓				
Rep Lawrence R. Klemin	✓				
Rep John Mahoney	✓				
Rep Andrew G Maragos	✓				
Rep Kenton Onstad	✓				
Rep Dwight Wrangham	✓				

Total (Yes) 14 No 0

Absent 1

Floor Assignment Rep Eckre

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
February 20, 2001 10:01 a.m.

Module No: HR-31-3963
Carrier: Eckre
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2077: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS
(14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2077 was placed on the
Fourteenth order on the calendar.

2001 TESTIMONY

SB 2077

SUMMARY OF SENATE BILL NO. 2077

Senate Bill No. 2077 is intended to establish a uniform understanding concerning how appeals are taken in post-conviction relief proceedings and thereby reduce confusion regarding the applicable timeframe for filing such appeals.

The bill amends NDCC Section 29-32.1-14 to provide that appeals of judgments under the Uniform Post-Conviction Relief Act (NDCC Ch. 29-32.1) may be reviewed as provided by supreme court rule. Currently, the statute provides for review if the appeal is filed by the applicant within 10 days, or the state within 30 days, after entry of the judgment. However, post-conviction relief proceedings are considered civil in nature, rather than criminal, and the timeframe for filing appeals in civil proceedings differs from that established under Section 29-32.1-14. For example, Rule 4(a) of the North Dakota Rules of Appellate Procedure provides that an appeal must be filed within 60 days of service of the notice of entry of judgment. The 60 day time period may be extended for up to 30 days if there is a showing of excusable neglect.

For perhaps obvious reasons, lawyers, as well as unrepresented applicants for post-conviction relief, often rely on the Supreme Court's procedural rules when determining the appropriate manner of filing appeals. The consequence in several cases has been that the timeframe established under Section 29-32.1-14 has been missed. The Supreme Court has clarified the applicable timeframe in recent opinions. See, e.g., McMorrow v. State, 516 N.W.2d 282 (N.D. 1994) (applying the timeframe established under the Rules of Appellate Procedure).

Senate Bill No. 2077 would relieve the confusion resulting from one timeframe for appeals being provided by statute while another, different timeframe is provided by supreme court rule.

Submitted by:

Jim Ganje, Staff Attorney
Office of State Court Administrator