Rep. Joe Atkins (D) A3 Exchange Amendment is Withdrawn from HF 1394 (Hoppe-R) after CCHF Testifies

MN House Commerce and Regulatory Committee
Chairman: Rep. Joe Hoppe
Wednesday, May 4, 2011

Rep. Tim Sanders acting as Chair as Chairman Hoppe’s bill is heard

(Tape begins - 1:31:04)


Rep. Joe Hoppe (R-Chaska): Thank you Mr. Chair and members. This is House File 1394, otherwise known as the market assurance bill. It’s a state – er – a commerce department agency bill. We discussed all the amendments and provisions in it yesterday. We laid it over because of the A3 amendment, and in light of the time growing short, why don’t we go ahead and jump into discussion of the A3 amendment.

Sanders: Chairman Davids.

Rep. Greg Davids (R-Preston): Well, thank you Mr. Chairman, and, and, has Rep. Atkins moved the A3 amendment?

Rep. Joe Atkins (D-Inver Grove Heights) (not identified): It’s been moved as of yesterday, Mr. Chair.

Davids: Oh, it’s been moved already. OK. Thank you Mr. Chairman. Members, I received a email – I think many of you have – from a Twila Brase and I’ve got some questions from that email if she could come join us possibly for a few questions.

Sanders: Ah, is Miss Brase in the room? There she is. If you would please, make your way to the testimony table and ah, Rep. Davids, you have the mic.

Davids: Well thank you Mr. Chairman and to Miss Brase. I found some comments in your email somewhat interesting, regarding the A3 amendment. First of all, I’d like thank Rep. Atkins for putting this forward. I feel very very strongly that it’s something the state needs to do so that we can control it and - - ah -- I - - members, I don’t like Obamacare. I think it’s just awful. I think it’s going to bankrupt the states.
I hope Congress – the House defunds it. I hope the Supreme Court says its unconstitutional and it goes away. Then this whole issue goes away of exchanges and those types of things, but Miss Brase would like us to vote no on this and I’m a very strong yes on the A3 amendment.

But, Ms. Brase, if we don’t do this, what would your backup plan be to take care of this - - but first of all - - you comment on an attorney Thomas Christina, a former associate deputy AG under President Reagan and so forth and she said that it’s central to the anti-market project – I don’t quite figure that one out. Essential to eradicating private plans when it’s actually selling – or helping sell – private plans. Enforcement without a federal fingerprint – I’m not sure what that means. And nationalization-in-fact.

We have a very bad law in this country called Obamacare. We either have to come up with the Exchanges or they’ll be given to us. And I’d much rather that we have the input rather than the federal government. If we don’t do this, what would you suggest we do?

Sanders: Ms. Brase, before you answer, please introduce yourself for the record.

Brase: Thank you Mr. Chair and members of the committee and Rep. Davids. I think that what, if you - -

Sanders: Would you please introduce yourself for the tape?

Brase: Oh, I’m sorry.

Sanders: No worries.


I think what legislators who are concerned about the federal health care reform law need to do is to not be party to putting it into the state law. And to make sure that the federal infrastructure does not become part of state law. To wait and see exactly what’s going to happen with the lawsuits. To make sure – I mean – when Attorney Christina said, um., enforcement without federal fingerprints, what he meant is that the federal – that the exchange would act as the federal, a federal entity within – a federal enforcer within the state without actually looking like a federal enforcer.

But it, all you have to do is actually read the law – and we did a report looking at everything the law actually says about the exchange, and you realize that the state exchange is a federal exchange. There’s really no difference. It’s just a patina of flexibility you might say to try to get you to do
what President Obama wants you to do because he does not want to put the exchange in. He would prefer for you to do it for him.

But then of course, you will have nothing to say when it takes control over decisions because it will have been a decision between this state and the administration, the federal administration, to make it happen. So.

Davids: Mr. Chairman and Miss Brase, a couple of things here. Three things. First of all, it’s the law. It’s a really, really bad law, but it’s the law. And you said, that by having the state do it rather than the feds do it that there’s no difference. Well, if there’s no difference, what is the difference?

Brase: Mr. Chair.

Sanders: Miss Brase.

Brase: and Rep. Davids. The difference is waiting to see what happens with the lawsuits. There are many lawsuits. And um, so, it is to wait to see rather than to implement something that will complete change the market. I would envision that after the market’s been changed and millions of dollars have been spent at both the public and the private level that it would be very difficult to undo once it is actually in. And if you look at Judge Vinson’s decision, he wrote that part of the reason that he let - - he didn’t do a full injunction was because several states had moved forward and it - - he was afraid of disrupting the market. The insurance market.

Sanders: Chairman Davids.

Davids: Thank you Miss Brase and Mr. Chairman: Maybe it would be helpful if Mr. Pender could give us a timeline. I don’t want to sit around here and wait for the federal government to do something or wait for some court or some lawsuit to be decided. Mr. Pender, what, what is our timeline on this issue?

Sanders: Mr. Pender?

Tom Pender (legislative research): Um, Mr. Chair and Rep. Davids. The federal law, uh, provides that the, uh, the Secretary, the federal secretary of ah, health and human services, will um, test each state’s readiness on January 1st 2013. And states have to be, um, reasonably - - have to basically convince the Secretary that they’re, they’re making progress and that they’ll be fully ready to operate by a year later, January 1st 2014. And so there may may still be some things the states need to fix before 2014 but if it looks to the Secretary of HHS that the state’s not going to be ready, then HHS gets ready to come in with a federally-run exchange.
Sanders: Chair Davids

Davids: Well, Mr. Pender, I don’t think we wait on this. I think we get moving on this and what the A3 amendment, the Atkins language does, is it sets up basically, I don’t know if it’s the commission or whatever it is to you know set this thing up, to see however we want to do it, and then from what I understand Rep. Atkins then the report will come back to the legislature. We’d have to make a decision at that time as to what we’re doing. Would that be correct, if Rep. Atkins could answer the question.


Atkins: Thank you Mr. Chair and Rep. Davids. It gives an opportunity to the working group, the four and four to come up with a decision by, I believe it is November 1st. If they fail to do that, then it would default to the Commerce Department to do something so that we don’t end up with the feds doing it to us.

Davids: Mr. Chairman.

Sanders: Mr. Davids.

Davids: I certainly don’t see what the harm would be to have a working group look at this. The Atkins amendment doesn’t even put anything in place other than a group to study this to make sure that we do it right. Members, I would strongly recommend a yes vote on the A3 amendment.

Brase: Mr. Chair.

Sanders: Miss Brase.

Brase: Thank you. One thing I would like to um mention regardless of what you have said. I believe that as soon as you begin the process, you begin the bureaucracy. And one thing I would like to mention to this committee is the fact that there was no public notice about this which also means that we didn’t actually get to see the amendment until, you know, thank you to Rep. Hoppe for at least sitting it here in front of me. But there was really no public notice to this. It was just a rumor that I heard that something had happened um, yesterday. And so this is a very big thing to start - - a very controversial issue which is the exchange which many many people across the state and across the country are opposed to. And yet there was no public notice of this so that we couldn’t really have anybody to even be here to testify in addition to me.

Davids: Mr. Chair.
Sanders: Mr. Davids

Davids: Mr. Pender, does a study group set into motion a bureaucracy?

Sanders: Mr. Pender, can you help us with that? (laughter heard)

Pender: Mr. Chair, I think if the legislature tells a study group that it has the authority to set in place a bureaucracy or whatever you want to call it, I - my guess is that that would probably work. It’s unusual, but you know I mean the legislature is, you know, is pretty. The legislation - -The law’s pretty powerful.

Davids: Well.

Sanders: Chair Davids.

Davids: Mr. Pender, how can you say a bureaucracy is something that’s already put into law. Current law’s already. The bureaucracy’s already there. (somewhat inaudible)

Sanders: Mr. Pender

Pender: Mr. Chair, Rep. Davids, I’m not sure I know what you mean by ‘the bureaucracy’s already there.’

Davids: Well, Miss Brase.

Sanders: Chair Davids.

Davids: says by doing this we’re creating a bureaucracy somehow makes it that Obamacare’s going to happen. And that’s already current law.

Sanders: Mr. Pender.

Pender: Um.

Davids: Glad I cleared that up for you.

Pender: Mr. Chair, I guess I would answer that if thee – if, if, if thee, if the federal law doesn’t get repealed and isn’t declared unconstitutional by the Supreme Court, then if, if, if we don’t (laugh) we don’t create a bureaucracy, the federal government will use its bureaucracy to create an exchange here.

Diane Anderson (R-Eagan): This might be more for Chair Hoppe. I’m on the Health and Human Services Committee and the State has already been given money to implement drafting of this exchange. Is there some way we can get word from what the Department is already doing? They’re already I think going to be in the process of designing an exchange with the money that they received. Do you know what is currently happening with the Department with this issue?

Sanders: Chairman Hoppe.

Hoppe: Thank you Mr. Chair and Rep. Anderson. Which department is that?

Sanders: Representative Anderson.

Anderson: I think, wasn’t it the Department of Human Services, was given like a million dollars to start implementing an exchange?

Sanders: Chairman Hoppe.

Anderson: Designing an exchange.

Hoppe: Mr. Chairman and Representative Anderson and members. We are the Commerce Committee. If we’re going to do this, we should do this in the Commerce Department and it should be an INSURANCE exchange. It shouldn’t be done in the Department of Human Services or the Department of Health.


Anderson: So Mr. Chair and Mr. Hoppe, or Rep. Hoppe. I think we should find out what the Department is doing with the money that they’ve received and I’d like to have legislative oversight as to what’s -- designing this Exchange instead of just having the Department using that money and designing it without legislative oversight.

Sanders: Chairman Hoppe.

Hoppe: Okay. (laughter of committee)

Sanders: Chairman Hoppe to the A3?

Hoppe: Um, thank you Mr. Chair and thank you Rep. Atkins and Rep. Davids. Um, the truth is nobody really knows what’s going to happen with the new federal health care act. We don’t know what the courts are going to decide. We don’t know when they’re going to decide it. We don’t know what happens in the next election. We could have a Republican President and
House and Senate. We could have a Democratic President, House and Senate. Nobody really knows.

No one’s gonna happen with this – no one knows what’s going to happen with this legislation. I do think it’s something that as a legislature we need to be talking about. I think we need to be pro-active. I do think that this is something that we want to make sure that we implement in Minnesota and do it the best way that we can.

I am sympathetic to this amendment because as the Chair of the Commerce committee, and as the Commerce Committee, I think we want to make sure that we do this the right way. And I have spoken to Rep. Atkins about this and, um, at this time, while I do like the amendment, I think we’re not going to - - I’m going to recommend that we not adopt the A3 amendment and perhaps continue these discussions and find another vehicle for it or um, at least continue the discussions.

Sanders: Chair Davids.

Davids: Mr. Chairman, another question for Mr. Pender. What would happen if we don’t adopt the A3 amendment or if it never gets adopted anywhere? What happens?

Sanders: Mr. Pender

Davids: In your opinion?

Pender: Um, Mr. Chair and Rep. Davids. Um. If, if we don’t do this or do anything similar than we won’t have, we won’t have the State creating its own exchange, and as I said before, unless the federal law is, is ah repealed or found to be unconstitutional, and then the federal government will come in here and operate an exchange of its own design beginning in, ah, 2014.

Sanders: Chair Davids

Davids: Mr. Chairman and Mr. Pender, what would happen if we don’t do it this year?

Sanders: Mr. Pender.

Pender: Um, Mr. Chair and Representative Davids, um (pause), based on the, the ah, the reading of the federal law and the, the seminars I’ve been at on the subject and so on, most ah people that are, that are really um, um experts on, on this process say that, that, that if if ah, if a, if a state doesn’t pass something and get it started in 2012 that it would be difficult for them to meet the deadline of being ready by 2013.
Davids: Well, thank you Mr. Pender.

Sanders: Chair Davids.

Davids: Mr. Chairman, I, like I said, I don’t like the Obamacare law. I think it bankrupts the state. I think it’s just an abomination, but it’s the law.

It – is – the law. And we have to prepare for this and I think we need to have our input as a state legislature instead of, you know, all these ifs and buts. I’ve always said if all the ifs and butts were candy and nuts, you’d all have a merry Christmas. You know, we have to do something this year and I’m somewhat disappointed that the Chair’s not supporting the A3 amendment, but ah, we do have to find a vehicle for this.

We have to do this. We can’t wait around for the courts. We have to get ‘er done. (LONG PAUSE)

Hoppe: Mr. Chair, in light of the hour and with our total understanding that we are the crème de la crème of the House of Representatives and they can’t function without all of us, and the fact that we are in session in eight minutes, maybe we should wrap up this discussion and move on the bill.

Sanders: At this time, seeing no further discussion on the A3, all in favor please say Aye.

Aye

Sanders: Opposed?

No.

Sanders: The amendment is not adopted.

(Atkins??): Divison please Mr. Chair

Sanders: Having a division requested, all those in favor, please raise their hands.

Sanders: Thank you. All those opposed?

Sanders: Division being requested and all hands being counted, the amendment is not adopted. 9 – 12. [did one person abstain? – I did not see Davids hand move at all]

Atkins: Mr. Chairman

Atkins: Are there any other options besides roll calls and divisions, because we’re not having real good luck on either one! (laughter)

Sanders: We’ll have Mr. Pender research that. (lots of laughter) Chairman Hoppe to your bill, House File 1394, as not amended.

Hoppe: Well, Mr. Chair, I would renew my motion that we pass House File 1394, as amended yesterday and move its passage and send it on to the General Register.

Sanders: With that, all in favor of House File 1394 as amended, please say Aye.

Aye

Sanders: Opposed? (no voices). House File 1394 is passed as amended.

Hoppe: Thank you Mr. Chair and members.

Sanders: We are recessed.

___: Recess? Are we coming back?

Sanders: We’re adjourned.

(Ends: 1:48:53)

Transcribed by Twila Brase, president, Citizens’ Council for Health Freedom