

2015 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1181

2015 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Fort Union, State Capitol

HB 1181
2/12/2015
23734

- Subcommittee
 Conference Committee

Committee Clerk Signature

Carmen Hart

Explanation or reason for introduction of bill/resolution:

Relating to filling vacancies in the office of United States senator and the office of representative in Congress

Minutes:

Attachments 1-3

Chairman Kasper opened the hearing on HB 1181.

Rep. Roscoe Streyle appeared in support. Attachment 1. This is a hoghouse amendment. The reason for the amendment is it was poorly written, and the US House already has the ability. This amendment calls a special election in 95 days if there is a vacancy at any time. The reason for this is why would we not want the people of North Dakota decide who their senator is should a vacancy occurs? I didn't include statewide because they are administrative in nature. In my mind the US senate is far more important than an auditor or treasurer. This is a legislative branch and should be voted on by the people.

Rep. M. Johnson You are not suggesting the statue has not worked in the past?

Rep. Streyle We haven't had many cases where it has been used, but should it occur, I believe the people should decide. I don't think the Governor should have that kind of power.

Rep. Laning The House already has the provision. Is it the same number of days and everything regarding the special election?

Rep. Streyle There is a provision in this same section of code where there is a 45-day window so it varies. This was an appropriate number that the Secretary of State's Office was comfortable with.

Rep. Mooney Is there some reason that this is surfacing to the top?

Rep. Streyle I believe that people should vote on this position should this ever be vacated.

Senator Ray Holmberg, District 17, appeared in support. It is a measure to assure the people get to select their member of the US Senate. House of Representatives already has to have an election. That came in part because that was viewed as representatives being closer to the people. In this day and age we want our US senators also to be closer to the people. In 1963 we had a death, and Mark Andrews was elected to the House, and then he went on and ran for the Senate in 1980. We had the death of Senator Quentin Burdick, and in 1959 we had the death of Senator Langer. Then an appointment was made by the Governor, and he appointed a former Governor Brunsdale to serve as a temporary person because he wanted to run for the office which he did, and he was defeated by Quentin Burdick in special election in 1960. At the time Secretary of Agriculture Benson was not overly popular, and Quentin Burdick ran on the slogan "Beat Benson with Burdick," and he won.

Rep. M. Johnson I think it is imperative that when a position is vacated for whatever reason that we need that representation in the Senate in Washington because of our small size. Is that the original reasoning that the Governor could appoint a senator right away?

Senator Holmberg It is more imperative if we lose a representative in the House of Representatives since we only have one of them. We have two senators. I would suggest that what is good for the goose is good for the gander.

Rep. M. Johnson I see it differently because the Senate is even up. Everybody has two senators.

Rep. Wallman She gave examples of many state office appointments. These offices are very close to the people. Don't we feel we should be able to elect those as well?

Senator Holmberg I would agree they were more administrative in duty, but the US House and the US Senate are legislative positions not executive positions.

Rep. Schneider Were there any problems with any of the list of appointees that you reviewed when you were going through your history?

Senator Holmberg No.

Rep. Schneider Any problems with those appointments in the Senate?

Senator Holmberg I don't think so.

Rep. B. Koppelman Would you believe the 17th amendment was more of a movement to get that office closer to the people?

Senator Holmberg It was part of the populous movement.

Rep. B. Koppelman It would make sense that the electors be able to more quickly have a special election to keeping with that. Would you agree?

Senator Holmberg Right. 1181 sets up that process. Rep. Streyle worked with the Secretary of State's Office to make sure that the timeline was appropriate for all of the things that are necessary for a special election to be held.

Rep. Steiner Shall is a directive and it will happen?

Senator Holmberg It will happen.

Rep. Laning Do you have any idea what it would cost the state to have a special election?

Senator Holmberg No, but there are people that can tell you the answer.

Rep. Mooney Do you know how other states take care of this situation?

Senator Holmberg I don't have that data.

No opposition or neutral.

The hearing was closed.

Chairman Kasper This chairman likes to support any amendment that a primary sponsor brings to his or her own bill.

Rep. Dockter made a motion to adopt Rep. Streyle's amendment.

Rep. Steiner seconded the motion.

Voice vote. Motion carries.

Rep. B. Koppelman made a motion for a DO PASS AS AMENDED.

Rep. Steiner seconded the motion.

Rep. Mooney I will resist this motion for a do pass on the premise that if it has been working in all the years that we have been a state, I don't see why we would need to change it at this point in time particularly given as Rep. Laning pointed out, elections are not cheap.

Rep. Schneider This affects another area, and I have an amendment.

Chairman Kasper We have a motion before the committee on a do pass as amended. We are going to have to act on that motion unless the person who made the motion and the second would withdraw.

Rep. Steiner I support this bill. I think people will appreciate voting for their senator versus watching all that power concentrated in the hands of one person and making that appointment.

Rep. Schneider The do pass came up pretty quickly and I would like to propose an amendment that might impact another part of the code as well.

Chairman Kasper Does it impact this bill?

Rep. Schneider Yes.

Rep. B. Koppelman I will withdraw the motion along with the amendment.

Rep. Steiner also withdrew her second.

Rep. Schneider handed out her proposed amendment. Attachment 2.

Chairman Kasper I am reading the amendment and this does not deal with the United States Senate. This deals with legislative assembly. It is not germane to the bill and, therefore, I have to rule the amendment out of order, and so we will not take the amendment up.

Rep. Wallman I have an amendment as well. Attachment 3. She read where it would fit on Rep. Streyle's hoghouse bill.

Chairman Kasper You are dealing with the original bill, not the bill that we have before us?

Rep. Wallman We have the hoghouse bill before us and would like to address.

Chairman Kasper You are proposing an amendment to the bill that we no longer have before us?

Rep. Wallman No. I am proposing an amendment to 1181 which is before us.

Chairman Kasper This is germane to his amendment?

Rep. Wallman Yes. She explained her amendment and read how it would fit into the bill.

Chairman Kasper You are making the bill subject to not only the Senate but to other statewide elected offices?

Rep. Wallman That is correct. She made a motion to adopt this amendment.

Rep. Mooney seconded the motion.

Rep. Louser We are talking about 16.1-13-08 which is specific to the US Senate. 16.1-13-10 is specific to vacancies of legislative assembly members. If we are to take up an amendment in a separate part of this bill, we need to coordinate whether or not that is in conflict with another part of our Century Code.

Rep. B. Koppelman I agree with Rep. Louser. I believe there is a section in statute that deals with how appointments to statewide offices are filled, and it is not this section. I would ask you rule this not germane as well.

Rep. Schneider I would request that we have some time to prepare and look at other sections of the code that are impacted by this and have a more extended amendment that would include other offices besides United States senator particularly with Rep. Streytle's emphasis on the importance of having the people speak that we would want either to not make changes in our current law or to allow the people to speak on their elected officials generally including those in the legislature and those that hold statewide office. Otherwise on this bill I would say that we have a solution in search of a problem, and then it is probably not coincidental that it is coming up at this period of time and is trying to be restrictive to the issue of the United States Senate.

Chairman Kasper I resent your implication in the comment that you just made. I would ask all committee members show respect to the chair and respect to our fellow committee. This bill came up as we were working through them at no other intent other than to get it on the calendar at the time it was.

Rep. Steiner This amendment speaks to something that should have been in a separate bill so you have a hearing. I am going to resist the amendment.

Rep. Wallman I believe that you are supporting Rep. Schneider's point which is lots of people haven't had an opportunity to be in a hearing that would be stakeholders in this decision. I would also suggest perhaps we have an opportunity to review, look at the codes that could be impacted, and take it up at a later time.

A roll call vote was taken. 4 Yeas, 10 Nays, 0 Absent. Motion fails.

Rep. B. Koppelman made a motion for a DO PASS AS AMENDED.

Rep. Dockter seconded the motion.

Rep. Schneider Testimony from both of our presenters indicated that we have not had problems in the past that gave rise to this particular bill that we have before us. I think this is a solution in search of a problem and that if it isn't broken, don't fix it.

Rep. M. Johnson I feel like I have walked into a classroom to take a test I am unprepared for. I haven't heard testimony of the reasons why this was implemented the way it was in the first place. Without that testimony the determination of why it needs to be changed is questionable so I am going to resist the motion on those reasons.

Rep. Amerman A point of order. In Rep. Koppelman's motion he stated that he makes a motion amendments cease. I never heard that, and I don't know we would want to handcuff legislators that want to have amendments.

Rep. Louser There are 36 states where the governor makes the appointment and 14 where it goes to a special election.

Chairman Kasper This bill was introduced a long time ago. It was on the original bill discussing about an election for a United States senator which is changing the law. The amendment that Rep. Streyle proposed today changed the timing and the requirement of the election, but it is still germane to the bill. I for the life of me fail to see the consternation by anyone on this committee regarding wanting the people to vote. Do we want one person, in this case the governor, to be able to appoint someone to that very powerful United States senate position or do we want the people of North Dakota to have the opportunity to vote to make that decision by the people and for the people? I don't believe it was a hurry-up situation whatsoever. If there were concerned citizens that wanted to testify for or against this bill they could be here today, and you see that there is no one here that has heartburn about this bill. At least they didn't show up. There is no more discussion.

A roll call vote was taken. 8 Yeas, 6 Nays, 0 Absent.

Rep. Schneider No, and just for the record, Mr. Chairman, I am a concerned citizen and I am here.

Vice Chair Rohr will carry the bill.

AS
2-12-15

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1181

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 16.1-13-08 of the North Dakota Century Code, relating to filling vacancies in the office of United States senator.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-13-08 of the North Dakota Century Code is amended and reenacted as follows:

16.1-13-08. Filling vacancy in office of United States senator.

When a vacancy occurs in the office of United States senator from this state, the governor shall ~~issue a writ of call~~ a special election to be held within ninety-five days to fill the vacancy at the next statewide primary or general election, whichever occurs first, and that occurs at least ninety days after the vacancy. However, if the next primary or general election at which the vacancy could be filled occurs in the year immediately preceding the expiration of the term, then no election may be held. The governor, by appointment, may fill the vacancy temporarily, but any person so appointed shall serve only until the vacancy is filled by election or until the term expires if no election can be held. If the vacancy occurs within ninety-five days of the expiration of the term of office for that office, no election may be held to fill the vacancy."

Renumber accordingly

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1181

Page 1, line 2, after "in" insert "statewide elected offices,"

Page 1, line 2, after "senator" insert a comma

Page 1, line 8, after "in" insert "**a statewide elected office or**"

Page 1, line 10, after "in" insert "a statewide elected office or"

Renumber accordingly

Date: 2-12-15
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1181

House Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: 15.0568.01004

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Dockter Seconded By Steiner

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper			Rep. Bill Amerman		
Vice Chair Karen Rohr			Rep. Gail Mooney		
Rep. Jason Dockter			Rep. Mary Schneider		
Rep. Mary C. Johnson			Rep. Kris Wallman		
Rep. Karen Karls					
Rep. Ben Koppelman					
Rep. Vernon Laning					
Rep. Scott Louser					
Rep. Jay Seibel					
Rep. Vicky Steiner					

*Vote taken
no carry-over*

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Date: 2-12-15
 Roll Call Vote #: 2

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1181**

House Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: 15.0568.01002

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Wallman Seconded By Mooney

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper		X	Rep. Bill Amerman	X	
Vice Chair Karen Rohr		X	Rep. Gail Mooney	X	
Rep. Jason Dockter		X	Rep. Mary Schneider	X	
Rep. Mary C. Johnson		X	Rep. Kris Wallman	X	
Rep. Karen Karls		X			
Rep. Ben Koppelman		X			
Rep. Vernon Laning		X			
Rep. Scott Louser		X			
Rep. Jay Seibel		X			
Rep. Vicky Steiner		X			

*motion
of
wall*

Total (Yes) 4 No 10

Absent 0

Floor Assignment _____

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

Date: 2-12-15
 Roll Call Vote #: 3

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1181**

House Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By B Koppelman Seconded By Dockter

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper	X		Rep. Bill Amerman		X
Vice Chair Karen Rohr	X		Rep. Gail Mooney		X
Rep. Jason Dockter	X		Rep. Mary Schneider		X
Rep. Mary C. Johnson		X	Rep. Kris Wallman		X
Rep. Karen Karls	X				
Rep. Ben Koppelman	X				
Rep. Vernon Laning		X			
Rep. Scott Louser	X				
Rep. Jay Seibel	X				
Rep. Vicky Steiner	X				

Total (Yes) 8 No 6

Absent _____

Floor Assignment Rohr

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

REPORT OF STANDING COMMITTEE

HB 1181: Government and Veterans Affairs Committee (Rep. Kasper, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (8 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING). HB 1181 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 amend and reenact section 16.1-13-08 of the North Dakota Century Code, relating to filling vacancies in the office of United States senator.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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Renumber accordingly

2015 SENATE GOVERNMENT AND VETERANS AFFAIRS

HB 1181

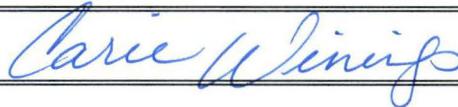
2015 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Missouri River Room, State Capitol

HB 1181
3/20/2015
Job # 25214

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 16.1-13-08 of the North Dakota Century Code, relating to filling vacancies in the office of United States senator.

Minutes:

Attachments 1 - 2

Chairman Dever: Opened the hearing on HB 1181.

Representative Streyle, District 3: See Attachment #1 for testimony as sponsor and in support of the bill.

(3:47) Senator Marcellais: Why 95 days?

Representative Streyle: That was a suggestion from the Secretary of State's office. It originally was going to be 60 but they felt 95 would be more appropriate so I put that in the amendment.

Senator Nelson: That would leave North Dakota with only one senator for over 3 months. You mentioned Conrad in 1992 but you did not say that Mrs. Burdick was appointed to fill that vacancy until that election was held so we did not lose that voice in the Senate during that interim.

Representative Streyle: Yes that has come up many times. I understand that point. I just believe that the advantage that person gets is an unfair advantage should that occur; knowing the power of incumbency. It is something that the people should decide and it is a far better policy than one individual. I understand that we would be without one for that particular time. This is probably not going to happen very often at all. It has been six times in the history of our state.

Chairman Dever: I think one recent experience was in Massachusetts when Senator Ted Kennedy passed away and they had a Republican Governor and the Democrat legislature in the process decided to change from an appointment to an election.

Representative Streyle: That is correct and it was a hot button issue there. These have flipped back and forth and it is not unprecedented to go to a special election. There is a caveat in our code for a catastrophic event.

Chairman Dever: Do you suppose that if the senators would have been brought by popular vote from the start they might have had the same provision as the House?

Representative Streyle: I absolutely believe that would be the case.

Senator Flakoll: When Representative Wahl passed away, do we know how many days that took from his death until we had a replacement in place?

Representative Streyle: I am not certain but this is not for the state but for our national representative. I know there would be some sort of lag there. I think the 95 days puts the political parties on even footing and it is a fair way to do it.

Chairman Dever: The last sentence in the bill says if the vacancy occurs within 95 days of the expiration of the term of office no election may be held to fill the vacancy - assuming that would be decided in that general election?

Representative Streyle: Correct.

Chairman Dever: If the vacancy occurs because of the death of the senator who is a candidate in that election then by default the other candidate wins?

Representative Streyle: I have looked in other sections of code and maybe Jim Silrum would know that but I would believe there would be some mechanism for that. This bill would not change that however. Even in that scenario.

Chairman Dever: (Gave history of an election in Missouri where the candidate was killed in an airplane crash and the voters elected a dead person and his wife was appointed to that position.)

Representative Streyle: There is interesting history throughout the US. It all lies in if you think one person should hold the power or if the people should decide.

(10:28) Senator Holmberg, District 17: Testified as a co-sponsor and in support of the bill. When Representative Wahl passed away they had the funeral and that afternoon on my way back from the funeral I talked to the county auditor and they did not realize that what happens is that the county auditor has to send a notification to legislative management chair that a vacancy has occurred. It can be just in the form of an e-mail. Then the chairman sends a letter to the party chairman in that district and from the receipt of that letter they have 21 days to fill that vacancy or the chairman of legislative management must select the person. There was one reason that I went on this bill and that was that we are not allowed to have a person appointed to fill a vacancy in the US House. It happened in 1963. If we lose a House member we have lost our voice in the US House for a number of days but if we lose a Senator we still have a voice in the US Senate. So,

my reason for going on the bill is to treat the US Senate and any vacancy the same way we treat the US House. It should be the same for both.

(13:11)Chairman Dever: With 435 members in the US House it seems like they almost at any given time have some vacancies.

Senator Holmberg: They do.

(13:55)Jim Silrum, Deputy Secretary of State: See Attachment #2 for testimony in support of the bill.

(15:50) Chairman Dever: Do the political parties have the ability to replace a candidate in event of a death?

Jim Silrum: That is a very good question. They have an ability to replace a candidate if it is prior to the deadline for candidate filing. The Secretary says that there could be a situation here in North Dakota someday because once the name is on the ballot it is on the ballot. What can and would happen is if a candidate were to die or no longer be qualified to serve, I am certain that that party would put forward a candidate on a write in basis. There is simply no way under current North Dakota law to remove a candidate after the ballots have already been prepared.

Chairman Dever: A few years ago in New Jersey I think it was where the candidate was way behind in the polls and they replaced the candidate with another candidate who was previously in that office, but not the incumbent, and then they won. That just seemed kind of odd to me.

Senator Flakoll: On an untimely death, does the clock start that day or is there some kind of a notification process?

Jim Silrum: Assuming you are meaning a seated US Senator dies, the 95 days specified in the bill says the election is to happen after the call by the Governor of a special election. The clock starts at the time of the call of the election.

Chairman Dever: Closed the hearing on HB 1181.

2015 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Missouri River Room, State Capitol

HB 1181
3/27/2015
Job # 25543

- Subcommittee
 Conference Committee

Committee Clerk Signature

Carie Wining

Minutes:

Attachments 1

Chairman Dever: Opened HB 1181 for committee discussion.

Senator Nelson: See Attachment #1 for proposed amendments.

(2:10)Committee Discussion: The committee discussed the amendments and whether or not they made the bill better. Currently the Governor appoints a person to fill the position until the special election is held and the individual elected is sworn into office. This calls a special election but it leaves us with representation in the Senate for those 95 days or so that we would not have anything. Some in the committee indicated that things could stay just the way that they are.

(3:43)Senator Cook: Senator Nelson do you think these amendments make the bill nice enough for you to vote for it?

Senator Nelson: I would be more inclined to vote for this than leaving the space open. I just as soon not have the bill at all.

Chairman Dever: This cannot cover the House of Representatives because it is in the US Constitution. The reason the US Senator is not in the US Constitution is because that we appointed by the legislature until 1913. (Decided to set the bill aside.)

Committee Discussion: The committee continued to discuss different times that this issue could come up and what would happen with that.

Chairman Dever: Closed the committee discussion on HB 1181.

2015 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Missouri River Room, State Capitol

HB 1181
4/2/2015
Job # 25746

- Subcommittee
 Conference Committee

Committee Clerk Signature

Carie Winings

Minutes:

No Attachments

Chairman Dever: Opened committee discussion on HB 1181.

Senator Cook: Moved a Do Pass.

Senator Davison: Seconded.

A Roll Call Vote Was Taken: 5 yeas, 2 nays, 0 absent.

Motion Carried.

Senator Dever will carry the bill.

4/2
1

Date:
Roll Call Vote #:

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1181

Senate Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Code Seconded By Davison

Senators	Yes	No	Senators	Yes	No
Chairman Dever	✓		Senator Marcellais		✓
Vice Chairman Poolman	✓		Senator Nelson		✓
Senator Cook	✓				
Senator Davison	✓				
Senator Flakoll	✓				

Total (Yes) 5 No 2

Absent 0

Floor Assignment Dever

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

REPORT OF STANDING COMMITTEE

HB 1181, as engrossed: Government and Veterans Affairs Committee (Sen. Dever, Chairman) recommends DO PASS (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1181 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

HB 1181

#1 1181
2-12-15

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1181

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Renumber accordingly

2 1181
2-12-15

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1181

Page 1, line 1, replace "section" with "sections"

Page 1, line 1, after "16.1-13-08.1" insert "and 16.1-13-10 and subsection 3 of section 44-02-02"

Page 1, line 2, replace "and" with a comma

Page 1, line 3, after "Congress" insert ", and in a legislative office"

Page 2, after line 9, insert:

"SECTION 2. AMENDMENT. Section 16.1-13-10 of the North Dakota Century Code is amended and reenacted as follows:

16.1-13-10. Vacancy existing in office of member of legislative assembly.

1. If a vacancy in the office of a member of the legislative assembly occurs, the county auditor of the county in which the former member resides or resided shall notify the chairman of the legislative management and the governor of the vacancy. The county auditor need not notify the chairman of the legislative management and the governor of the resignation of a member of the legislative assembly when the resignation was made under section 44-02-02. Upon receiving notification of a vacancy, the chairman of the legislative management shall notify the district committee of the political party that the former member represented in the district in which the vacancy exists. The district committee shall hold a meeting within twenty-one days after receiving the notification and select an individual to fill the vacancy. If the former member was elected as an independent candidate or if the district committee does not make an appointment within twenty-one days after receiving the notice from the chairman of the legislative management, the chairman of the legislative management shall appoint a resident of the district to fill the vacancy. Except as provided in subsection 2, if eight hundred twenty-eight days or more remain until the expiration of the term of office for that office, the individual appointed to fill the vacancy shall serve until a successor is elected at and qualified following the next general election or special election called by the governor according to subsection 2 to serve for the remainder of the term of office for that office.
2. The qualified electors of a legislative district in which a vacancy in the legislative assembly occurs may petition for a special election to be called by the governor to fill the vacancy. The petition must include the signatures of qualified electors equal in number to four percent of the resident population of the legislative district as determined by the last federal decennial census and must be presented to the secretary of state within thirty days following an appointment being made according to subsection 1. If the secretary of state determines the petition contains the required number of signatures of qualified electors of the affected legislative district, the secretary of state shall notify the governor that a

~~special election is required to be called to fill the vacancy. Upon receiving such notice, the governor shall issue a writ of election directed to the county auditor of each affected county commanding the county auditor to hold a special election to fill the vacancy at the next statewide election or, if the next statewide election is more than seventy-five days in the future, at a special election at a time designated by the governor. A special election under this section must be held within sixty days of the proclamation of the governor and must conform to the applicable election deadlines found in this title and may be called to coincide with a regularly scheduled primary or general election provided the special election is called by the fifteenth day before the deadline for candidates to file for office before a regularly scheduled primary or general election. A special election under this section may not be scheduled to occur during the time from a general election through eighty days following the adjournment of the next ensuing regular session of the legislative assembly.~~

- ~~3. The secretary of state must be notified of an appointment made by a district committee or the chairman of the legislative management according to this section. Upon notification, the secretary of state shall issue the appointee a certificate of appointment and an oath of office for the appointee to complete and file with the secretary of state established under section 16.1-13-08.1.~~

SECTION 3. AMENDMENT. Subsection 3 of section 44-02-02 of the North Dakota Century Code is amended and reenacted as follows:

3. A member of the legislative assembly, to the presiding officer of the branch of which the individual is a member, when in session, and when not in session, to the chairman of the legislative management and governor. When made to the presiding officer, the presiding officer at once shall notify the chairman of the legislative management of the resignation."

Renumber accordingly

15.0568.01002
Title.

Prepared by the Legislative Council staff for
Representative Wallman
February 11, 2015

#3 1181
2-12-15

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1181

Page 1, line 2, after "in" insert "statewide elected offices,"

Page 1, line 2, after "senator" insert a comma

Page 1, line 8, after "in" insert "**a statewide elected office or**"

Page 1, line 10, after "in" insert "a statewide elected office or"

Renumber accordingly

3/20 HB 1181 #1
pg 1

HB 1181

Rep. Roscoe Streyle, District 3 - Testimony

North Dakota House Vote 67-25

Summary

HB 1181 would change North Dakota law to require a special election to be held within 95 days after a U.S. Senate seat is vacated. Currently, a vacancy in the U.S. Senate is filled by gubernatorial appointment until the regularly scheduled general election. The proposed process to fill vacancies in the U.S. Senate is very similar to how we currently fill vacancies in the U.S. House. If it works for the House, it should also work well for the Senate.

The process for filling vacancies in the U.S. Senate has evolved over the years. At one time, the North Dakota Senate decided who would serve in the U.S. Senate. In 1913, the U.S. Constitution was changed to allow for the direct election of U.S. Senators. In 1992, Kent Conrad was elected in a special election to fill Sen. Burdick's remaining term.

There is no more important right in our democracy than the right to vote, and there is no more important office elected in this state than the U.S. Senate. Voters and elections, not political relationships and party affiliations, should decide who serve in the highest offices of this state and nation. Sen. Hoeven recently said, "I'm always good with going to the people and having a vote and getting their input". HB 1181 is good public policy because it trusts the voters to decide who should represent them in the U.S. Senate, and that is democracy at its best!

Other States

14 states require special election and 36 allow the governor makes an appointment.

In 2014 MT Sen. Max Baucus intentionally resigned his Senate seat so it could be filled by Governor Appointment. President Obama's Senate seat controversy landed Illinois Governor Blagojevich in jail for trying to sell the seat.

U.S. House of Representatives Vacancy

The U.S. Constitution provides that if a vacancy occurs in the US House a special election shall be held.

U.S. Constitution, Article 1, Section 2, Clause 4: Vacancies

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

Section two, Clause four, provides that when vacancies occur in the House of Representatives, it is not the job of the House of Representatives to arrange for a replacement, but the job of the State whose vacant seat is up for refilling. Moreover, the State Governor may not appoint a temporary replacement, but must instead arrange for a special election to fill the vacancy. The original qualifications and procedures for holding that election are still valid.

History Summary

The 17th amendment established the process for electing senators, but it also explained how vacant seats are to be filled.

If a vacancy occurs due to death, resignation, or expulsion the amendment allows the state legislature to empower the governor to appoint a replacement. That replacement would hold the seat until the end of the senator's current term or until a special election could be held.

According to the U.S. Senate's official website, there have been 174 men and women appointed to fill vacant seats in the Senate. Of that total, 55 have subsequently been elected to the seat, 55 were defeated, and 64 chose not to run or were unable to run. Six Senators in ND's history have been appointed by the Governor.

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pg 2

HB 1181

Rep. Roscoe Streyle, District 3 - Testimony

North Dakota House Vote 67-25

Additional Information on History

17th Amendment to the U.S. Constitution: Direct Election of U.S. Senators Americans did not directly vote for senators for the first 125 years of the Federal Government. The Constitution, as it was adopted in 1788, stated that senators would be elected by state legislatures. The first proposal to amend the Constitution to elect senators by popular vote was introduced in the U.S. House of Representatives in 1826, but the idea did not gain considerable support until the late 19th century when several problems related to Senate elections had become evident. Several state legislatures deadlocked over the election of senators, which led to Senate vacancies lasting months and even years. In other cases, political machines gained control over state legislatures, and the Senators elected with their support were dismissed as puppets. In addition, the Senate was seen as a "millionaire's club" serving powerful private interests. The rise of the People's Party, commonly referred to as the Populist Party, added motivation for making the Senate more directly accountable to the people.

During the 1890s, the House of Representatives passed several resolutions proposing a constitutional amendment for the direct election of senators. Each time, however, the Senate refused to even take a vote. When it seemed unlikely that both houses of Congress would pass legislation proposing an amendment for direct election, many states changed strategies. Article V of the Constitution states that Congress must call a constitutional convention for proposing amendments when two-thirds of the state legislatures apply for one. Although the method had never previously been used, many states began sending Congress applications for conventions. As the number of applications neared the two-thirds bar, Congress finally acted.

In 1911, the House of Representatives passed House Joint Resolution 39 proposing a constitutional amendment for direct election of senators. However, it included a "race rider" meant to bar Federal intervention in cases of racial discrimination among voters. A substitute amendment by Senator Joseph L. Bristow (R-KS) removed the "race rider." The amended Joint Resolution was adopted by the Senate on a close vote in May of 1911. Over a year later, the House accepted the change, and the amendment was sent to the states for ratification. On April 8, 1913, three-quarters of the states had ratified the proposed amendment, and it was officially included as the 17th Amendment.

#2

ALVIN A. JAEGER
SECRETARY OF STATE

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SECRETARY OF STATE

STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

March 20, 2015

TO: Chairman Dick Dever and members of the Senate Government and Veteran's Affairs Committee

FR: Jim Silrum, Deputy Secretary of State, on behalf of Secretary of State Al Jaeger

RE: HB 1181 – Vacancy in the office of United States Senator

The Secretary of State's office supports this bill as it defines the number of days in which the special election is to be held after it is called. The ninety-five days specified gives thirty-one days for candidates to step forward and the political parties to endorse a candidate prior to the candidate filing deadline at 4 p.m. on the sixty-fourth day before the election.

We request your favorable consideration and a do pass recommendation.

3/27 #1 pg 1

15.0568.02004
Title.

Prepared by the Legislative Council staff for
Senator Nelson

March 23, 2015

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1181

Page 1, line 8, after "of" insert "appoint an individual to fill the office until a special election is held and the individual elected at the special election is sworn into office. The governor shall"

Renumber accordingly

3/27

1 pg 2

Sixty-fourth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1181

Introduced by

Representatives Streyle, Brabandt, Dockter, Louser, Owens, Rohr, Schmidt

Senators Casper, Holmberg, Laffen, Unruh

1 A BILL for an Act to amend and reenact section 16.1-13-08 of the North Dakota Century Code,
2 relating to filling vacancies in the office of United States senator.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 16.1-13-08 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **16.1-13-08. Filling vacancy in office of United States senator.**

7 When a vacancy occurs in the office of United States senator from this state, the governor
8 shall ~~issue a writ of~~ appoint an individual to fill the office until a special election is held and the
9 individual elected at the special election is sworn into office. The governor shall call a special
10 election to be held within ninety-five days to fill the vacancy at the next statewide primary or
11 general election, whichever occurs first, and that occurs at least ninety days after the vacancy.
12 ~~However, if the next primary or general election at which the vacancy could be filled occurs in~~
13 ~~the year immediately preceding the expiration of the term, then no election may be held. The~~
14 ~~governor, by appointment, may fill the vacancy temporarily, but any person so appointed shall~~
15 ~~serve only until the vacancy is filled by election or until the term expires if no election can be~~
16 ~~held. If the vacancy occurs within ninety-five days of the expiration of the term of office for that~~
17 ~~office, no election may be held to fill the vacancy.~~