

1999 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1171

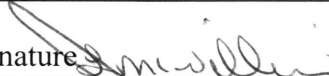
1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1171

House Government and Veterans Affairs Committee

Conference Committee

Hearing Date 1-15-1999

Tape Number	Side A	Side B	Meter #
1	X		29 - 40.6
1		X	16.8 - 25
Committee Clerk Signature 			

Minutes: Some of the individuals testifying submit written testimony. When noted please refer to it for more detailed information.

Representative Klein, Chairman of the GVA Committee opened the hearing on January 15, 1999.

Summary of the Bill: Relating to membership and voting on the state personnel board and certification of payroll by the central personnel division director and agency personnel officers

Testimony in Favor:

Dan LeRoy, Central Personnel submitted written testimony and amendment which he read in it's entirety (**please refer to his testimony**). The term chief officer refers to agency head.

Representative Kliniske, Section 2, is there an appeals process?

LeRoy, There has not been an appeals process and there is one put in here

Representative Thoreson, Does the amendment apply to line 5?

LeRoy, I believe line 5 is correct.

Representative Klein, I have a little bit of a problem with section 1, the board determines who comes in and this becomes kind of a closed system. You never really get any new blood.

LeRoy, We trying to not have a closed system. The reason we cap it with the board selecting is really a cost issue, so that we don't get into an election process. The board is a bare bones board dollar wise.

Representative Klein, How often do you meet, the board?

LeRoy, once per year.

Testimony in Opposition: None.

Representative Klein, Closed the hearing on HB 1171.

Committee Action:

Representative Klein, My only concern is that it becomes a closed board.

Representative Klemin, I am wondering about the majority vote. You would be adding another making them the 5th. It would have to be a 3 to 1 vote to get the 5th member. It might always be a 4 to 1 vote in the future.

Representative Klein, I dot think so, it would either be either 4 to 0 or 2 to 2. Their not going to put someone on the board they don't want. The board only meets once a year in the first place.

Representative Kroeber, Made a motion on the amendments.

Representative Cleary, Seconded the motion.

Motion Passes: Do Pass (vocal).

Representative Haas, Made a motion for a Do Pass on the amended bill.

Representative Grande, Seconded the motion.

Motion Passes: Do Pass **15-0-0**.

Page 3
House Government and Veterans Affairs Committee
Bill/Resolution Number HB 1171
Hearing Date 1-15-1999

Representative Thoreson, Is the carrier for the bill.

DAN L. KELLY

Office of Management and Budget
January 15, 1999

PROPOSED AMENDMENT TO HOUSE BILL NO. 1171

Page 3, line 3, overstrike "designated personnel" and insert immediately thereafter "chief"

Re-number accordingly

98190.0101
Title.0200

Adopted by the Government and Veterans
Affairs Committee
January 15, 1999

VR

1/15/99

HOUSE AMENDMENTS TO HOUSE BILL NO. 1171

GVA 1-18-99

Page 3, line 3, replace "designated personnel" with "chief"

Renumber accordingly

Date: 1-15-99

Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1171

House GOVERNMENT AND VETERANS AFFAIRS Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS AMENDED

Motion Made By HAAS Seconded By GRANDE

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN KLEIN	✓		REP. WINRICH	✓	
VICE-CHAIR KLINISKE	✓				
REP. BREKKE	✓				
REP. CLEARY	✓				
REP. DEVLIN	✓				
REP. FAIRFIELD	✓				
REP. GORDER	✓				
REP. GRANDE	✓				
REP. HAAS	✓				
REP. HAWKEN	✓				
REP. KLEMIN	✓				
REP. KROEBER	✓				
REP. METCALF	✓				
REP. THORESON	✓				

Total (Yes) 15 No 0

Absent 0

Floor Assignment THORESON

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

REPORT OF STANDING COMMITTEE (410)
January 19, 1999 7:19 a.m.

Module No: HR-10-0789
Carrier: L. Thoreson
Insert LC: 98190.0101 Title: .0200

REPORT OF STANDING COMMITTEE

HB 1171: Government and Veterans Affairs Committee (Rep. Klein, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1171 was placed
on the Sixth order on the calendar.

Page 3, line 3, replace "designated personnel" with "chief"

Renumber accordingly

1999 SENATE GOVERNMENT AND VETERANS AFFAIRS

HB 1171


1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1171

Senate Government and Veterans Affairs Committee

Conference Committee

Hearing Date March 19, 1999

Tape Number	Side A	Side B	Meter #
1	X		0-2199
Committee Clerk Signature 			

Minutes: CHAIRMAN KREBSBACH called the committee to order. The clerk called the roll. CHAIRMAN KREBSBACH opened the hearing on HB 1171 which relates to membership and voting on the state personnel board and certification of payroll by the central personnel division director and agency personnel officers. Appearing before the committee to introduce the bill was DAN LEROY, Director of the Central Personnel Division. A copy of his written testimony is attached. SENATOR DEMERS, I'm wondering if you can give us an example who the professional human resource background person might be if you were to go into the private sector? I guess I find it strange to have that kind of person in the private sector. MR. LEROY, you are asking for an example. I would anticipate a person might be someone from city or from county personnel, or from an MDU or a Basin, or one of those kinds of organization that is familiar with large organization personnel systems. The reason that we want to leave it wide open either public or private is so that first of all be held accountable if what our system is doing

doesn't compare well with what is going on in the private sector, they can inform us of that and make sure that we stay open to new ideas. That was the reason that we left it open. Clearly someone in our own system could be a part of that, they would have the advantage there of knowing our own system. We've left it as flexible, our intention is to leave it as flexible as possible. CHAIRMAN KREBSBACH asked in higher ed, who is serving on the board from higher ed at this time. MR. LEROY, Mike Sandal is serving. CHAIRMAN KREBSBACH, I would imagine your allowance here it could be public or private would not prohibit him from continuing his services but it just would not specifically designate that it has to come from higher ed. MR. LEROY, Madam Chairman you are right. MIKE SANDAL, Director of Human Resources for the North Dakota University System. I want to speak in behalf of section one of HB 1171. Mr. LeRoy and I have worked together on this section. I have as he had mentioned been the higher education appointee to the state personnel board for the past six years. That agreement has worked well in the past. As a result of some of the changes that Mr. LeRoy has already mentioned I think that it is time to add some flexibility for other agencies to have a role on the state personnel board and simply go on record in support of the bill. ALLEN C. HOBERG, Director of the Office of Administrative Hearings appeared before the committee. He indicated he was before them to testify about a somewhat related matter. He supports the bill basically but wanted to offer an amendment to the committee. A copy of his written testimony is attached. SENATOR STENEHJEM, There are cases however where you do name a judge and that is where you are seeking a supervisory writ. Is there an analogy for that in your instances. MR. HOBERG, yes that's true. There may be a case where you name a judge. That might happen. What I'm talking about is a matter of routine. We shouldn't be naming the judge in

these appeals and as a matter of routine you shouldn't be naming the office of administrative hearings or central personnel and I'm just asking that that be prohibited. You could still name the judge if it was appropriate, even under this language. CHAIRMAN KREBSBACH, your intention with the amendment is to add this section with the changes included therein. MR. HOBERG, that is correct madam chairman. SENATOR DEMERS, I'm assuming that one of the employee groups probably is assisting the employee and bringing this action I wonder if you talked to them? MR. HOBERG, No, we haven't talked to them. This actually came out of the attorney general's office, naming the office of administrative hearings and central personnel. This was not from employee groups. They just felt like because we're named in the statute they didn't want to take any chances about not naming somebody that wasn't in the statute so they named everybody even though that statute 28-32 is really aimed at that agency against whom that employee has an appeal. They should be named as the party. SENATOR DEMERS, why is the attorney general involved again? Can you run through that? MR. HOBERG, they would be representing the agency in the hearing. CHAIRMAN KREBSBACH, would they not become involved when you had their name removed, in the appeals case. SENATOR STENEHJEM, well, I'm confused. I thought it was the attorney for the employee that named the office of administrative hearings as a party and that makes sense. I don't understand why the attorney general named you and now they're coming in and saying what you is a bill saying we shouldn't name you. And then they represented you to get out of the situation. SENATOR DEMERS, It seems to me this would make life easier for both parties but I guess I am wondering if you could look at from the employees point of view and how do you think this would be supported by them? MR. HOBERG, I haven't talked to them but I can't imagine that that would affect them at

all because their grievance, their concern is with that agency that they were employed with which will still be a party. It will be a battle between those two parties on appeal. It is not, it never has been a battle between the employee and OAH or the employee and Central Personnel. It's a battle between the employing agency and the employee. CHAIRMAN KREBSBACH, Just to clarify in my own mind the process now, if an employee from any division of the state has a grievance, bring us up to speed as to where the process is and what happens. Perhaps it would be best if DAN LEROY did this. MR. LEROY explained the process to the committee. There was no further testimony at this time. CHAIRMAN KREBSBACH closed the hearing on HB 1171, The committee determined that there were a number of questions that needed to be researched on the bill before the committee will be ready to take action on the bill. Later in the afternoon the committee continued the discussion of HB 1171 Tape 1, Side A, Meter #'s 4796-5780.

SENATOR DEMERS indicated to the committee that she had spoken with the executive director of the North Dakota Public Employees Association regarding the proposed amendments and she indicated there was no problem with them in terms of her opinion, in terms of how they affect her associations employees. In fact she thought it was a good idea. SENATOR DEMERS made a motion to adopt the amendments proposed by MR. HOBERG from the Office of Administrative hearings, seconded by SENATOR WARDNER. SENATOR KILZER, I'm not a legal person but, I would assume the reason that they would name the administrative law judge would be to get input into the further decisions down the trail of the grievance procedure. If we adopt these amendments and take out those two parties, does that information still come to the procedure, the district court or wherever it goes? SENATOR STENEHJEM, the purpose of the appeal is to appeal the decision that is made based upon the facts in the law, not to appeal the

judge. This would track the way you appeal in a typical court case where you have two parties and then the judge makes a ruling, then you appeal to the supreme court. You don't name the judges of the parties. The decision is made and then the decision is what gets appealed and this will track along with that. I was an original sponsor of this office of administrative hearings and can tell you that we never intended that they would be a party. They are supposed to be an independent group that looks at the testimony and the evidence and makes a decision. They are not advocates. They are impartial hearing officers. Furthermore nobody comes out, these two cases have done that, in the ten or fifteen years since we've had this office, it just hadn't been done, now all of a sudden in these two cases they named the office of administrative hearings as the party. They are not a party to this and so that's. SENATOR KILZER, Are the conclusions of the ALJ admissible or reviewed at the time in the district court before a jury? SENATOR STENEHJEM, that is what the appeal is on. The hearing officer doesn't get called into the court to defend what he did. That is basically what this would require. There was no further discussion on the amendments. ROLL CALL VOTE indicated 7 YEAS, 0 NAYS, 0 ABSENT OR NOT VOTING. SENATOR STENEHJEM, Madam Chairman, before you go any further, I need to ask the chair for this consideration. Beth Baumstark from the Attorney General's Office, has brought to my attention some further problems that have resulted because of the Billey Decision in the Stockman's Case. Although we're recommending that the constitution be amended to take care of that we have a gap time between now and when the voter's will act on that measure. There are various other loose ends that need to be tied up. She asked me to find a bill in the judiciary committee that was remotely relevant that we could tack these, I think non-controversial amendments on to. I couldn't find anything over there. The closest I could

come to something that would work is this bill which I think isn't controversial. She's here and maybe she can follow up on what it does. I don't know if she's talked to anybody else. That's my pitch and I don't have the amendments down here because I can't find them. CHAIRMAN KREBSBACH, are amendments prepared on this? BETH BAUMSTARK, with the Attorney Generals Office. It was actually drafted as a delayed bill. So it is drafted in that format rather than as amendments to any particular bill. It wouldn't take much to convert it to amendments. CHAIRMAN KREBSBACH, my question is that in view of the difference of nature, would it be better to be introduced as a delayed bill? SENATOR STENEHJEM, madam chairman I think so but leadership has suggested that we find a bill to amend it to. CHAIRMAN KREBSBACH, in that case we will certainly consider it. It was decided to wait until further examination could take place before the committee would take further action on HB 1171. SENATOR DEMERS, wouldn't we need an emergency clause on this as well? BETH BAUMSTARK, it would be well to do that.

COMMITTEE DISCUSSION March 25, 1999, Tape 1, Side B, Meter #'s 2240-END

Amendments were presented previously to the committee. Mr. Hoberg had indicated that he had a problem with the way things were currently being done. He had presented proposed amendments to the committee with his previous testimony on the bill. The committee discussed his proposed amendments at this time. SENATOR KREBSBACH indicated that the committee had already moved the adoption of his amendments. SENATOR KILZER inquired about whether or not this was the bill with the self perpetuating board. Is that provision still intact? There were comments from several of the senators that this was a self perpetuating board. Senator Kilzer indicated that he did

not like this concept. Various senators again commented on this concept. Senators Kilzer and DeMers commented on ways the bill could be further amended to make it more palatable. Senator Kilzer moved to further amend the bill, seconded by Senator DeMers. The proposed amendment included page 1, line 14, remove in either public or private employment nominated and replace with appointed by the governor. ROLL CALL VOTE indicated 7 Yeas, 0 Nays, 0 Absent or Not Voting. SENATOR DEMERS indicated to the committee that there was something in this bill that she didn't realize was in the bill and it may impact on what Senator Kilzer was talking about. If you go over to page 2, you can also have the board replace somebody when they have a conflict of interest by the board selecting someone for that position. Senators Stenehjem and DeMers commented on the strange concept brought forth on page 2, lines 7, 8, and 9. SENATOR DEMERS moved to further amend by striking beginning with however, if a board on page 1, line 23, lines 24-9 on page 2. Seconded by SENATOR KILZER. ROLL CALL VOTE indicated 7 Yeas, 0 Nays, 0 Absent and Not Voting. A motion for DO PASS AS AMENDED was made by SENATOR STENEHJEM, seconded by SENATOR DEMERS. ROLL CALL VOTE indicated 7 Yeas, 0 Nays, 0 Absent or Not Voting. SENATOR DEMERS volunteered to carry the bill.

COMMITTEE ACTION (3/26/99) Tape 1, Side A, Meter #'s 111-900, SENATOR W.

STENEHJEM indicated to the committee that the Billey Amendments he gave to the committee need to be put into amendment form and added to the bill. These are the amendments that were prepared by Beth Baumstark in the Attorney General's office. A further problem; the bill that we passed 4010 that would amend the constitution to say that we could do this was killed in the

house. SENATOR STENEHJEM indicated that to him that was a must pass constitutional amendment and they killed it. SENATOR KREBSBACH inquired if they could reconsider it. SENATOR STENEHJEM indicated there were plenty of votes on the prevailing side. I think there were 80 no votes on it. That makes it all the more necessary to take care of some of these agencies who will be depositing their funds with the state treasurer to take care of the problem. That's what these amendments do. SENATOR DEMERS, this may be a naive question but I would like to ask SENATOR STENEHJEM if this is even constitutional without a constitutional amendment since the court ruled that wouldn't be. SENATOR STENEHJEM, what the court ruled is that public funds must be deposited with the state treasurer and that's what these amendments do. You'll see that as you go through, must be deposited with the state treasurer appears in the various sections. SENATOR KREBSBACH, so in other words we have to go through the process of depositing funds in the state treasurer's office and then drawing them out again. SENATOR STENEHJEM, Yep, and then the state treasurer, what they are thinking of doing is allowing the state treasurer to appoint various agents of her office so that people in the Bank of North Dakota will be an agent of the treasurer and so they can deposit those moneys without having to actually go up to the treasurer's office. I think over the next two years every state agency is going to be looking at their procedures and we're going to be seeing a whole bunch of bills to deal with this next session. I think is unfortunate that the house killed that resolution. I think maybe you could amend the constitution. SENATOR DEMERS, I'm wondering if maybe we shouldn't do a delayed bill instead of an amendment because if the house defeated by an 80-20 margin the constitutional amendment, maybe this bill is going to survive with these amendments on either. SENATOR W. STENEHJEM made a motion to reconsider the

committees actions for a DO PASS as amended on HB 1171. The motion was seconded by SENATOR DEMERS. ROLL CALL VOTE indicated 7 Yeas, 0 Nays, 0 Absent or Not Voting. A motion to amend adding the Billey Case Amendments looking at Section 6 of the bill. The motion was seconded by SENATOR DEMERS. SENATOR STENEHJEM indicated that he just noticed that section seven of the bill is the emergency clause and I think that the emergency clause should only apply to these amendments and not to the entire bill unless we want to change the makeup of the personnel board right away which probably isn't such a good idea. CHAIRMAN KREBSBACH indicated that she agreed that the emergency should apply to these amendments only. ROLL CALL VOTE indicated 7 Yeas, 0 Nays, 0 Absent or not Voting. SENATOR STENEHJEM moved DO PASS AS AMENDED on HB 1171, seconded by SENATOR DEMERS. ROLL CALL VOTE indicated 7 Yeas, 0 Nays, 0 Absent or Not Voting. SENATOR DEMERS again volunteered to carry the bill.

703
3127499
10/23

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1171
SENATE AMENDMENTS TO ENGR. HB 1171 GVA 3/27/99

Page 1, line 1, after "to" insert "create and enact a new section to chapter 54-06 and a new section to chapter 54-11 of the North Dakota Century Code, relating to expenses to collect funds owed the state and the ability of the state treasurer to appoint agents for the receipt of public funds; to", after "sections" insert "15-39.1-26, 34-15-07, 39-12-20, 54-44-04.6", and after the first comma insert "54-44.3-12.2,"

Page 1, line 2, after "to" insert "the disposition of public funds," and after "board" insert ", appeals from agency grievance procedures,"

Page 1, line 4, after "officers" insert "; to provide a continuing appropriation; and to declare an emergency"

Page 1, after line 5, insert:

"SECTION 1. AMENDMENT. Section 15-39.1-26 of the North Dakota Century Code is amended and reenacted as follows:

15-39.1-26. Investment of moneys in fund - Interest and earnings attributable to fund. Investment of the fund ~~shall be~~ is under the supervision of the state investment board in accordance with chapter 21-10. ~~Such~~ The moneys must be placed for investment only with a firm or firms whose endeavor is money management, and only after a trust agreement or contract has been executed. Investment costs may be paid directly from the fund, and are hereby appropriated for that purpose, in accordance with section 21-10-06.2. All interest and earnings on funds administered by the board must be credited to the fund.

SECTION 2. AMENDMENT. Section 34-15-07 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

34-15-07. Disposition of civil money penalties. A civil money penalty collected under this chapter must be paid into the state treasury for deposit in the general fund ~~after the costs of recovering the civil money penalty are deducted therefrom.~~

SECTION 3. AMENDMENT. Section 39-12-20 of the North Dakota Century Code is amended and reenacted as follows:

39-12-20. Proceeds of sale - Continuing appropriation. The proceeds of sale must be ~~applied first to the payment of~~ deposited with the state treasurer. The state treasurer shall deposit in the highway fund an amount equal to the amount of the charges assessed pursuant to 39-12-17 after paying the costs to the county. An amount equal to the costs of the proceedings, including attorneys and witness fees and costs, and next to the payment of the charges assessed. Such charges must be remitted to the state treasurer to be credited to the highways fund is appropriated on a continuing basis out of the funds collected to the county in which the prosecution took place for the purpose of defraying the costs of prosecution. The balance of the proceeds of any sale after the payment of costs and charges must is appropriated on a continuing basis out of the funds collected to be paid over by the sheriff to the person entitled thereto as determined by the court or must be deposited with the clerk of court for such payment.

SECTION 4. A new section to chapter 54-06 of the North Dakota Century Code is created and enacted as follows:

Expenses incurred to collect funds owed the state - Continuing appropriation. If a state agency enters a contract with a collection or credit agency to collect money due the state, the fees for services, reimbursement, or other remuneration to the collection or credit agency must be based on the amount of money actually collected. All funds collected on behalf of a state agency by a collection or credit agency must be deposited with the state treasurer. An amount equal to the amount of fees for services, reimbursement, or any other remuneration to the collection or credit agency as set forth in the contract is appropriated from the fund into which the money collected was deposited to the state agency for which the funds were collected for the payment of fees due under the contract.

SECTION 5. A new section to chapter 54-11 of the North Dakota Century Code is created and enacted as follows:

Appointment of agents. The treasurer may appoint agents for the purpose of receiving public funds as required by section 12 of article X of the Constitution of North Dakota. If appointed by the state treasurer, the Bank of North Dakota shall serve as an agent of the state treasurer for the purpose of receiving public funds.

SECTION 6. AMENDMENT. Section 54-44-04.6 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-44-04.6. State surplus property - Department heads to inform director - Disposition of property - Proceeds - Exchange of property.

1. The person in charge of any department, agency, or institution of the state shall inform the director of the office of management and budget or the director's designee whenever that department, agency, or institution possesses property surplus to its needs, whether originally obtained with state or other funds.
2. State surplus property must be transferred at fair market value to state agencies, political subdivisions, and nonprofit organizations eligible to receive federal surplus property under the Federal Property Administrative Services Act of 1949, as amended. Eligible organizations must be notified of the availability of property on a regular basis.
3. If not disposed of under subsection 2, then by sale on sealed bids or at public auction to the highest and best bidder for property valued at more than three thousand dollars, with no money deposit required prior to sale, or by sealed bids, public auction, or negotiation at fair value for property valued at less than three thousand dollars.
4. All proceeds received from the transfer or sale of state surplus property must be deposited ~~into the fund from which the property was originally purchased, less administrative expenses~~ with the state treasurer for deposit in the surplus property operating fund. For each piece of property, the office of management and budget shall transfer to the agency from which the property was received an amount equal to the proceeds of the sale less the administrative expenses of the sale. The agency shall deposit the proceeds into the fund from which the property was originally purchased.
5. No department, agency, or institution may exchange items as part of a purchase price of new items until a detailed statement of the value of the items to be exchanged and request for approval have been submitted to the director of the office of management and budget. The director shall

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approve the exchange only if the director has determined that the item has been valued at fair value."

Page 1, line 14, replace "in either public or private employment nominated by" with "appointed by the governor"

Page 1, line 15, remove "board members and confirmed by majority vote of the other board members"

Page 1, line 23, overstrike "However, if a board"

Page 1, line 24, overstrike "member voluntarily withdraws from deliberation and voting on an" and remove "issue"

SENATE AMENDMENTS TO ENGR. HB 1171

GVA

3/27/99

Page 2, line 1, overstrike "where there may be a possible conflict of interest, the vacancy", remove "may", and overstrike "be filled"

Page 2, line 2, overstrike "temporarily"

Page 2, line 7, remove "by a"

Page 2, remove line 8

Page 2, line 9, remove "members" and overstrike the period

Page 2, after line 19, insert:

"SECTION 8. AMENDMENT. Section 54-44.3-12.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-44.3-12.2. Employee complaints - Cooperation in development and implementation of basic agency grievance procedures and a statewide appeal mechanism - Appeals. It is the intent of the state of North Dakota to assure fair and equitable treatment and promote harmony between and among all classified employees. To ensure this the state desires to resolve bona fide employee complaints as quickly as possible. The division shall cooperate with and assist the various departments, agencies, and institutions of the state in the development and implementation of basic agency grievance procedures and a statewide appeal mechanism. The division shall certify appeals from nonprobationary employees in the classified service which are related to discrimination, merit system qualification, reprisals, reduction in force, forced relocation, demotion with loss of pay, suspension without pay, and dismissal, and from applicants for positions in the classified service related to discrimination. Upon receipt of an appeal, the division shall submit a written request to the director of the office of administrative hearings to designate an administrative hearing officer for the division to conduct the hearing and related proceedings, including receiving evidence and preparing findings of fact, conclusions of law, and issuing a final decision. The moving party in the initial action bears the burden of proof in the appeal. An appeal to the district court from the determination of the ~~office of administrative hearings~~ hearing officer must be filed according to chapter 28-32, but neither the division nor the office of administrative hearings may be named as a party to the appeal under chapter 23-32 unless an employee of one of those two agencies is involved in the grievance."

Page 3, after line 12, insert:

"SECTION 11. EMERGENCY. Sections 1 through 6 of this Act are declared to be an emergency measure."

Renumber accordingly

401

Date: 3/25/99
Roll Call Vote #:

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1171

Senate GOVERNMENT AND VETERAN'S AFFAIRS Committee

Subcommittee on _____

or

Conference Committee

Legislative Council Amendment Number Move to Amend

Action Taken Move to Amend

Motion Made By Sen. Kilzer Seconded By Sen. DeMers

Senators	Yes	No	Senators	Yes	No
SENATOR KREBSBACH	✓				
SENATOR WARDNER	✓				
SENATOR KILZER	✓				
SENATOR STENEHJEM	✓				
SENATOR THANE	✓				
SENATOR DEMERS	✓				
SENATOR MUTZENBERGER	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

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

Date: 3/25/99
Roll Call Vote #: 2

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1171

Senate GOVERNMENT AND VETERAN'S AFFAIRS Committee

Subcommittee on _____

or

Conference Committee

Legislative Council Amendment Number _____

Action Taken Further Amend

Motion Made By De Mers Seconded By Kilzer

Senators	Yes	No	Senators	Yes	No
SENATOR KREBSBACH	✓				
SENATOR WARDNER	✓				
SENATOR KILZER	✓				
SENATOR STENEHJEM	✓				
SENATOR THANE	✓				
SENATOR DEMERS	✓				
SENATOR MUTZENBERGER	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

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

Date: 3/25/99
Roll Call Vote #: 3

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1171

Senate GOVERNMENT AND VETERAN'S AFFAIRS Committee

Subcommittee on _____

or

Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended

Motion Made By Stenehjem Seconded By DeMers

Senators	Yes	No	Senators	Yes	No
SENATOR KREBSBACH	✓				
SENATOR WARDNER	✓				
SENATOR KILZER	✓				
SENATOR STENEHJEM	✓				
SENATOR THANE	✓				
SENATOR DEMERS	✓				
SENATOR MUTZENBERGER	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen. DeMers

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

Date: 3/26/99
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1171

Senate GOVERNMENT AND VETERAN'S AFFAIRS Committee

Subcommittee on _____

or

Conference Committee

Legislative Council Amendment Number _____

Action Taken Reconsider Actions on 1171

Motion Made By Sen. Stenehjem Seconded By Sen. Demers

Senators	Yes	No	Senators	Yes	No
SENATOR KREBSBACH	✓				
SENATOR WARDNER	✓				
SENATOR KILZER	✓				
SENATOR STENEHJEM	✓				
SENATOR THANE	✓				
SENATOR DEMERS	✓				
SENATOR MUTZENBERGER	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

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

Date: 3/26/99
Roll Call Vote #: 2

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1171

Senate GOVERNMENT AND VETERAN'S AFFAIRS Committee

Subcommittee on _____

or

Conference Committee

Legislative Council Amendment Number _____

Action Taken Move Amendments be adopted

Motion Made By Sen. Stenehjem Seconded By Sen. Demers

Senators	Yes	No	Senators	Yes	No
SENATOR KREBSBACH	✓				
SENATOR WARDNER	✓				
SENATOR KILZER	✓				
SENATOR STENEHJEM	✓				
SENATOR THANE	✓				
SENATOR DEMERS	✓				
SENATOR MUTZENBERGER	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

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

Date: 3/26/99
Roll Call Vote #: 3

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1171

Senate GOVERNMENT AND VETERAN'S AFFAIRS Committee

Subcommittee on _____
or

Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Sen. Stenehjem Seconded By Sen. DeMers

Senators	Yes	No	Senators	Yes	No
SENATOR KREBSBACH	✓				
SENATOR WARDNER	✓				
SENATOR KILZER	✓				
SENATOR STENEHJEM	✓				
SENATOR THANE	✓				
SENATOR DEMERS	✓				
SENATOR MUTZENBERGER	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen. DeMers

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

REPORT OF STANDING COMMITTEE

HB 1171, as engrossed: Government and Veterans Affairs Committee (Sen. Krebsbach, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1171 was placed on the Sixth order on the calendar.

Page 1, line 1, after "to" insert "create and enact a new section to chapter 54-06 and a new section to chapter 54-11 of the North Dakota Century Code, relating to expenses to collect funds owed the state and the ability of the state treasurer to appoint agents for the receipt of public funds; to", after "sections" insert "15-39.1-26, 34-15-07, 39-12-20, 54-44-04.6,", and after the first comma insert "54-44.3-12.2,"

Page 1, line 2, after "to" insert "the disposition of public funds," and after "board" insert ", appeals from agency grievance procedures,"

Page 1, line 4, after "officers" insert "; to provide a continuing appropriation; and to declare an emergency"

Page 1, after line 5, insert:

"SECTION 1. AMENDMENT. Section 15-39.1-26 of the North Dakota Century Code is amended and reenacted as follows:

15-39.1-26. Investment of moneys in fund - Interest and earnings attributable to fund. Investment of the fund ~~shall be~~ is under the supervision of the state investment board in accordance with chapter 21-10. ~~Such~~ The moneys must be placed for investment only with a firm or firms whose endeavor is money management, and only after a trust agreement or contract has been executed. Investment costs may be paid directly from the fund, and are hereby appropriated for that purpose, in accordance with section 21-10-06.2. All interest and earnings on funds administered by the board must be credited to the fund.

SECTION 2. AMENDMENT. Section 34-15-07 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

34-15-07. Disposition of civil money penalties. A civil money penalty collected under this chapter must be paid into the state treasury for deposit in the general fund ~~after the costs of recovering the civil money penalty are deducted therefrom.~~

SECTION 3. AMENDMENT. Section 39-12-20 of the North Dakota Century Code is amended and reenacted as follows:

39-12-20. Proceeds of sale - Continuing appropriation. The proceeds of sale must be ~~applied first to the payment of~~ deposited with the state treasurer. The state treasurer shall deposit in the highway fund an amount equal to the amount of the charges assessed pursuant to 39-12-17 after paying the costs to the county. An amount equal to the costs of the proceedings, including attorneys and witness fees and costs, and next to the payment of the charges assessed. Such charges must be remitted to the state treasurer to be credited to the highways fund is appropriated on a continuing basis out of the funds collected to the county in which the prosecution took place for the purpose of defraying the costs of prosecution. The balance of the proceeds of any sale after the payment of costs and charges must is appropriated on a continuing basis out of the funds collected to be paid ~~over by the sheriff~~ to the person entitled thereto as determined by the court or must be deposited with the clerk of court for such payment.

SECTION 4. A new section to chapter 54-06 of the North Dakota Century Code is created and enacted as follows:

Expenses incurred to collect funds owed the state - Continuing appropriation. If a state agency enters a contract with a collection or credit agency to collect money due the state, the fees for services, reimbursement, or other remuneration to the collection or credit agency must be based on the amount of money actually collected. All funds collected on behalf of a state agency by a collection or credit agency must be deposited with the state treasurer. An amount equal to the amount of fees for services, reimbursement, or any other remuneration to the collection or credit agency as set forth in the contract is appropriated from the fund into which the money collected was deposited to the state agency for which the funds were collected for the payment of fees due under the contract.

SECTION 5. A new section to chapter 54-11 of the North Dakota Century Code is created and enacted as follows:

Appointment of agents. The treasurer may appoint agents for the purpose of receiving public funds as required by section 12 of article X of the Constitution of North Dakota. If appointed by the state treasurer, the Bank of North Dakota shall serve as an agent of the state treasurer for the purpose of receiving public funds.

SECTION 6. AMENDMENT. Section 54-44-04.6 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-44-04.6. State surplus property - Department heads to inform director - Disposition of property - Proceeds - Exchange of property.

1. The person in charge of any department, agency, or institution of the state shall inform the director of the office of management and budget or the director's designee whenever that department, agency, or institution possesses property surplus to its needs, whether originally obtained with state or other funds.
2. State surplus property must be transferred at fair market value to state agencies, political subdivisions, and nonprofit organizations eligible to receive federal surplus property under the Federal Property Administrative Services Act of 1949, as amended. Eligible organizations must be notified of the availability of property on a regular basis.
3. If not disposed of under subsection 2, then by sale on sealed bids or at public auction to the highest and best bidder for property valued at more than three thousand dollars, with no money deposit required prior to sale, or by sealed bids, public auction, or negotiation at fair value for property valued at less than three thousand dollars.
4. All proceeds received from the transfer or sale of state surplus property must be deposited into the fund from which the property was originally purchased, less administrative expenses with the state treasurer for deposit in the surplus property operating fund. For each piece of property, the office of management and budget shall transfer to the agency from which the property was received an amount equal to the proceeds of the sale less the administrative expenses of the sale. The agency shall deposit the proceeds into the fund from which the property was originally purchased.

5. No department, agency, or institution may exchange items as part of a purchase price of new items until a detailed statement of the value of the items to be exchanged and request for approval have been submitted to the director of the office of management and budget. The director shall approve the exchange only if the director has determined that the item has been valued at fair value."

Page 1, line 14, replace "in either public or private employment nominated by" with "appointed by the governor"

Page 1, line 15, remove "board members and confirmed by majority vote of the other board members"

Page 1, line 23, overstrike "However, if a board"

Page 1, line 24, overstrike "member voluntarily withdraws from deliberation and voting on an" and remove "issue"

Page 2, line 1, overstrike "where there may be a possible conflict of interest, the vacancy", remove "may", and overstrike "be filled"

Page 2, line 2, overstrike "temporarily"

Page 2, line 7, remove "by a"

Page 2, remove line 8

Page 2, line 9, remove "members" and overstrike the period

Page 2, after line 19, insert:

"SECTION 8. AMENDMENT. Section 54-44.3-12.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-44.3-12.2. Employee complaints - Cooperation in development and implementation of basic agency grievance procedures and a statewide appeal mechanism - Appeals. It is the intent of the state of North Dakota to assure fair and equitable treatment and promote harmony between and among all classified employees. To ensure this the state desires to resolve bona fide employee complaints as quickly as possible. The division shall cooperate with and assist the various departments, agencies, and institutions of the state in the development and implementation of basic agency grievance procedures and a statewide appeal mechanism. The division shall certify appeals from nonprobationary employees in the classified service which are related to discrimination, merit system qualification, reprisals, reduction in force, forced relocation, demotion with loss of pay, suspension without pay, and dismissal, and from applicants for positions in the classified service related to discrimination. Upon receipt of an appeal, the division shall submit a written request to the director of the office of administrative hearings to designate an administrative hearing officer for the division to conduct the hearing and related proceedings, including receiving evidence and preparing findings of fact, conclusions of law, and issuing a final decision. The moving party in the initial action bears the burden of proof in the appeal. An appeal to the district court from the determination of the ~~office of administrative hearings~~ hearing officer must be filed according to chapter 28-32, but neither the division nor the office of administrative hearings may be named as a party to the appeal under chapter 23-32 unless an employee of one of those two agencies is involved in the grievance."

Page 3, after line 12, insert:

"SECTION 11. EMERGENCY. Sections 1 through 6 of this Act are declared to be an emergency measure."

Renumber accordingly

1999 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1171

CONFERENCE COMMITTEE

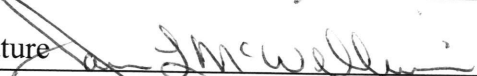
1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1171

House Government and Veterans Affairs Committee

Conference Committee

Hearing Date 4-6-1999

Tape Number	Side A	Side B	Meter #
1	X		0 - 6.0
Committee Clerk Signature 			

Minutes: The Conference Committee consists of on the House side Representative Thoreson (Chairman), Representative Haas and Representative Kroeber. The Senate members are Senator W. Stenehjem (Chairman), Senator Thane and Senator DeMers.

Summary of the Bill: Relating to the membership and voting on the state personnel board and certification of payroll by the central personnel division director and agency personnel officers.

Representative Thoreson, Chairman of the House called the committee to order. We are hear because of some amendments that were added by the Senate which apparently caused some concern about the placement of them. At least part of the amendments might better be placed with the OMB budget.

Senator Stenehjem, The major part of the amendments that the House had a problem with is putting the amendments dealing with the Billey case problem on this bill. We thought it fit in very well on this bill, however we have been assured that this will go on the OMB budget. It

Page 2

House Government and Veterans Affairs Committee
Bill/Resolution Number HB 1171 Conference Committee
Hearing Date 4-6-1999

doesn't make any difference to me what bill is amended to take care of the problem. As long as a bill is amended to take care of the problem. Are these all the Senate amendments except the Billey amendment?

Representative Thoreson, Yes.

Senator DeMers, The Holmberg amendments and then the amendments to the make up of the board were also a concern.

Representative Thoreson, That's on these amendments.

Committee Action:

Senator Stenhjem, Made a motion that the Senate recedes from it's amendments and further amend.

Representative Haas, Seconded the motion.

Motion Passes: Do Pass **6-0**.

Representative Thoreson, Is the carrier for the bill on the House side.

Senator Stenhjem, Is the carrier for the bill on the Senate side.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1171

Page 1, line 1, after the first comma insert "54-44.3-12.2,"

Page 1, line 2, after "board" insert ", appeals from agency grievance procedures."

Page 2, after line 19, insert:

"SECTION 2. AMENDMENT. Section 54-44.3-12.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-44.3-12.2. Employee complaints - Cooperation in development and implementation of basic agency grievance procedures and a statewide mechanism - Appeals. It is the intent of the state of North Dakota to assure fair and equitable treatment and promote harmony between and among all classified employees. To ensure this the state desires to resolve bona fide employee complaints as quickly as possible. The division shall cooperate with and assist the various departments, agencies, and institutions of the state in the development and implementation of basic agency grievance procedures and a statewide appeal mechanism. The division shall certify appeals from nonprobationary employees in the classified service which are related to discrimination, merit system qualification, reprisals, reduction in force, forced relocation, demotion with loss of pay, suspension without pay, and dismissal, and from applicants for positions in the classified

service related to discrimination. Upon receipt of an appeal, the division shall submit a written request to the director of the office of administrative hearings to designate an administrative hearing officer for the division to conduct the hearing and related proceedings, including receiving evidence and preparing findings of fact, conclusions of law, and issuing a final decision. The moving party in the initial action bears the burden of proof in the appeal. An appeal to the district court from the determination of the ~~office of administrative hearings~~ hearing officer must be filed according to chapter 28-32, but neither the division nor the office of administrative hearings may be named as a party to the appeal under chapter 23-32 unless an employee of one of those two agencies is involved in the grievance."

Renumber accordingly.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1171

That the Senate recede from the Senate amendments as printed on pages 1065-1067 of the House Journal and pages 913-915 of the Senate Journal and that Engrossed House Bill No. 1171 be further amended as follows:

Page 1, line 1, after the first comma insert "54-44.3-12.2,"

Page 1, line 2, after "board" insert ", employee complaints,"

Page 1, line 3, remove the first "and" and after "director" insert a comma

Page 1, line 14, replace "in either public or private employment nominated by" with "appointed by the governor"

Page 1, line 15, remove "board members and confirmed by majority vote of the other board members"

Page 1, line 23, overstrike "However, if a board"

Page 1, line 24, overstrike "member voluntarily withdraws from deliberation and voting on an" and remove "issue"

Page 2, line 1, overstrike "where there may be a possible conflict of interest, the vacancy", remove "may", and overstrike "be filled"

Page 2, line 2, overstrike "temporarily"

Page 2, line 7, remove "by a"

Page 2, remove line 8

Page 2, line 9, remove "members" and overstrike the period

Page 2, after line 19, insert:

"SECTION 2. AMENDMENT. Section 54-44.3-12.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-44.3-12.2. Employee complaints - Cooperation in development and implementation of basic agency grievance procedures and a statewide appeal mechanism - Appeals. It is the intent of the state of North Dakota to assure fair and equitable treatment and promote harmony between and among all classified employees. To ensure this the state desires to resolve bona fide employee complaints as quickly as possible. The division shall cooperate with and assist the various departments, agencies, and institutions of the state in the development and implementation of basic agency grievance procedures and a statewide appeal mechanism. The division shall certify appeals from nonprobationary employees in the classified service which are related to discrimination, merit system qualification, reprisals, reduction in force, forced relocation, demotion with loss of pay, suspension without pay, and dismissal, and from applicants for positions in the classified service related to discrimination. Upon receipt of an appeal, the division shall submit a written

request to the director of the office of administrative hearings to designate an administrative hearing officer for the division to conduct the hearing and related proceedings, including receiving evidence and preparing findings of fact, conclusions of law, and issuing a final decision. The moving party in the initial action bears the burden of proof in the appeal. An appeal to the district court from the determination of the ~~office~~ of administrative ~~hearings~~ hearing officer must be filed according to chapter 28-32, but neither the division nor the office of administrative hearings may be named as a party to the appeal under chapter 23-32 unless an employee of one of those two agencies is involved in the grievance."

Renumber accordingly

(Bill Number) HB 1171 (, as (re)engrossed):

Your Conference Committee

For the Senate:	YES	NO
<u>SENATOR W. STENEHLJEM</u>	✓	
<u>SENATOR THANE</u>	✓	
<u>SENATOR DEMERS</u>	✓	

For the House:	YES	NO
<u>REPRESENTATIVE THORESON</u>	✓	
<u>REPRESENTATIVE HAAS</u>	✓	
<u>REPRESENTATIVE KROEBER</u>	✓	

recommends that the SENATE/HOUSE (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) _____
58 (1065-1067) (H5 913-915)

and place _____ on the Seventh order.

, adopt (further) amendments as follows, and place _____ on the Seventh order:

having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

DATE: 04/06/99

CARRIER: THORESON - STENEHLJEM

LC NO. 98190 : 0202 of amendment

LC NO. _____ of engrossment

Emergency clause added or deleted _____

Statement of purpose of amendment _____

(1) LC (2) LC (3) DESK (4) COMM.

REPORT OF CONFERENCE COMMITTEE

HB 1171, as engrossed: Your conference committee (Sens. W. Stenehjem, Thane, DeMers and Reps. L. Thoreson, Haas, Kroeber) recommends that the **SENATE RECEDE** from the Senate amendments on HJ pages 1065-1067, adopt further amendments as follows, and place HB 1171 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1065-1067 of the House Journal and pages 913-915 of the Senate Journal and that Engrossed House Bill No. 1171 be amended as follows:

Page 1, line 1, after the first comma insert "54-44.3-12.2,"

Page 1, line 2, after "board" insert ", employee complaints,"

Page 1, line 3, remove the first "and" and after "director" insert a comma

Page 1, line 14, replace "in either public or private employment nominated by" with "appointed by the governor"

Page 1, line 15, remove "board members and confirmed by majority vote of the other board members"

Page 1, line 23, overstrike "However, if a board"

Page 1, line 24, overstrike "member voluntarily withdraws from deliberation and voting on an" and remove "issue"

Page 2, line 1, overstrike "where there may be a possible conflict of interest, the vacancy", remove "may", and overstrike "be filled"

Page 2, line 2, overstrike "temporarily"

Page 2, line 7, remove "by a"

Page 2, remove line 8

Page 2, line 9, remove "members" and overstrike the period

Page 2, after line 19, insert:

"SECTION 2. AMENDMENT. Section 54-44.3-12.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-44.3-12.2. Employee complaints - Cooperation in development and implementation of basic agency grievance procedures and a statewide appeal mechanism - Appeals. It is the intent of the state of North Dakota to assure fair and equitable treatment and promote harmony between and among all classified employees. To ensure this the state desires to resolve bona fide employee complaints as quickly as possible. The division shall cooperate with and assist the various departments, agencies, and institutions of the state in the development and implementation of basic agency grievance procedures and a statewide appeal mechanism. The division shall certify appeals from nonprobationary employees in the classified service which are related to discrimination, merit system qualification, reprisals, reduction in force, forced relocation, demotion with loss of pay, suspension without pay, and dismissal, and from applicants for positions in the classified service related to discrimination. Upon receipt of an appeal, the division shall submit a written request to the director of the office of administrative hearings to designate an

administrative hearing officer for the division to conduct the hearing and related proceedings, including receiving evidence and preparing findings of fact, conclusions of law, and issuing a final decision. The moving party in the initial action bears the burden of proof in the appeal. An appeal to the district court from the determination of the ~~office of administrative hearings~~ hearing officer must be filed according to chapter 28-32, but neither the division nor the office of administrative hearings may be named as a party to the appeal under chapter 23-32 unless an employee of one of those two agencies is involved in the grievance."

Renumber accordingly

Engrossed HB 1171 was placed on the Seventh order of business on the calendar.

1999 TESTIMONY

HB 1171

DAN LAROC

HB1171
Central Personnel Division Testimony
House Government & Veterans Affairs
January 15, 1999

House Bill No. 1171 addresses two issues in the operations of the State Personnel Board and the Central Personnel Division.

Section 1

- Since 1992 agreement between the Governor and Chancellor, the University System has functioned independent of the Central Personnel Division.
- Removes designation of a state personnel board higher education appointee to serve on the board.
- Changes designation to a human resource professional - private or public - nominated and voted on by the four other board members.
- Ensures that the 5th member receive votes from both appointed and employee elected representatives.

Sections 2 and 3

- Clarifies responsibility for certification of agency payrolls.
- Current statute requires Central Personnel Division director to certify that classification and pay is legal.
- Impossible for one person or one small office to actually certify on a regular basis.
- There has been past practice of delegating certification to agencies but the practice has not been done consistently or clearly.
- Section 2 retains authority for the Central Personnel Division director to take exception to an illegal or unauthorized pay situation
- Section 3 clearly places responsibility for ongoing certification with each agency.

Amendment

After the bill was submitted, our assistant attorney general pointed out a confusing reference. On page 3, line 3, we would request deleting 'designated personnel' and inserting 'chief' to refer to the personnel officer assisting the agency elected or appointed chief officer in the payroll certification.



OFFICE OF ADMINISTRATIVE HEARINGS

STATE OF NORTH DAKOTA
1707 North 9th Street
Bismarck, North Dakota 58501-1882

Allen C. Hoberg
Director

701-328-3260
FAX 701-328-3254

MEMORANDUM

TO: Fifty-sixth Legislative Assembly
State of North Dakota
Senate Government and Veteran Affairs Committee

FROM: Allen C. Hoberg, Director *ACh*
Office of Administrative Hearings

RE: House Bill No. 1171

DATE: March 19, 1999

I appear today to testify in favor of engrossed HB No. 1171, but with a proposed amendment. I apologize for not appearing before the House with this proposed amendment, but this is a matter which has recently come up because of a concern relating to two recent appeals in district court of two Central Personnel Division matters, *i.e.*, two appeals of state agency employee discipline grievance matters before the Central Personnel Division ("CPD"). It was not determined until after HB 1171 was passed by the House what to do about the concern. After consulting with CPD and the Attorney General's Office, the Office of Administrative Hearings ("OAH") decided it needed to offer an amendment to N.D.C.C. § 54-44.3-12.2. Amending HB No. 1171, with the consent of CPD, appears to be the best way to do that.

The concern arose when CPD and OAH were each named as a party in appeals to district court of two separate state agency employee discipline grievance matters (*i.e.*, two state agencies taking disciplinary action against a state employee), matters involving the Department of Transportation and the Developmental Center of the Department of Human Services. CPD and OAH were each named as a party, not because they are a true party in interest in the appeal, but, rather, because OAH and CPD are involved in a limited way in the process and are both agencies named in section 54-44.3-12.2. Also, N.D.C.C. § 28-35-15(5) requires that "[t]he agency and all other parties of record who are not designated as appellants must be named as appellees" in the notice of appeal. However, only the employee and the state agency taking the disciplinary action against the employee are true parties in interest in any state agency employee discipline grievance matter. This is the first time, to my knowledge, that OAH has been named as a party in such an appeal.

OAH's role as an agency in these types of matters is strictly ministerial. OAH simply designates the administrative law judge ("ALJ") who then presides as administrative hearing officer, conducting the hearing and issuing a final decision for CPD. Formerly, the ALJ issued a recommended decision for the State Personnel Board, which then issued the final decision. It must be emphasized that the ALJ designated by OAH now presides as a hearing officer for CPD, making a final decision on the

matter for CPD. In every matter involving an administrative hearing, the hearing officer presides for an agency. The hearing officer then makes a recommended or final decision that is that agency's decision.

The CPD function in these matters, now, is also ministerial. It certifies appeals made to it and requests designation of an ALJ from OAH to serve as its hearing officer for these grievance matters. CPD is not involved in the decisionmaking, though the decision made is a CPD decision.

We believe that under N.D.C.C. § 54-44.3-12.2, in all appeals involving employee discipline grievance matters, there are only two parties in interest which should be involved either as a party in the administrative hearing or as a party in the appeal to district court. Those two parties are the state agency taking the disciplinary action and the state employee against whom the disciplinary action was taken. It is true that the administrative action is technically an administrative action before the CPD, but because its agency function, like that of OAH, is ministerial only, neither they nor OAH should be named as a party in the appeal to the district court. We believe that naming OAH and CPD as parties makes little sense. However, once named as a party, it can be risky not to appear and be represented by an attorney. We believe it is better not to allow either OAH or CPD to be named as parties.

The only other person or entity involved in agency disciplinary grievance appeals is the ALJ, the administrative hearing officer. We also believe it inappropriate to name the ALJ as a party. However, the ALJ was not named in the two matters referred to above. Naming the ALJ as a party would be like naming a judge of the district court as a party to every appeal of that judge's decisions. It just isn't done.

In one of the two current appeals in district court, OAH wrote to the court notifying it that OAH would not be participating in the appeal. The court informed OAH that unless it filed a motion to be removed, the judge would not consider its request. It became necessary to go to the Attorney General's Office to have an assistant attorney general file a motion for removal. This cost OAH. The Attorney General bills OAH for its services. OAH should not have to file such a motion. OAH should not be a named party.

Please include this proposed amendment in engrossed HB 1171 and pass the bill with the proposed amendment. The amendment, essentially, would add the following language to the last sentence in section 54-44.3-12.2: "but neither the division nor the office of administrative hearings may be named as a party to the appeal under chapter 28-32 unless an employee of one of those two agencies is involved in the grievance."

Introduced by

1 A BILL for an Act to create and enact new sections to chapters 54-06
2 and 54-11 of the North Dakota Century Code, relating to expenses to
3 collect funds owed the state and the ability of the state treasurer to
4 appoint agents for the receipt of public funds; to amend and reenact
5 sections 15-39.1-26, 34-15-07, 39-12-20, and 54-44-04.6 of the North
6 Dakota Century Code, relating to the disposition of public funds; to
7 provide a continuing appropriation; and to declare an emergency.

8
9 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

10
11 **SECTION 1. AMENDMENT.** Section 15-39.1-26 of the North Dakota
12 Century Code is amended and reenacted as follows:

13 **15-39.1-26. Investment of moneys in fund - Interest and earnings**
14 **attributable to fund.** Investment of the fund shall be under the
15 supervision of the state investment board in accordance with chapter
16 21-10. Such moneys must be placed for investment only with a firm or
17 firms whose endeavor is money management, and only after a trust
18 agreement or contract has been executed. Investment costs may be paid
19 directly from the fund, and are hereby appropriated for that purpose,
20 in accordance with section 21-10-06.2. **All interest and earnings on**
21 **funds administered by the board must be credited to the fund.**

22 **SECTION 2. AMENDMENT.** Section 34-15-07 of the 1997 Supplement
23 to the North Dakota Century Code is amended and reenacted as follows:

24 **34-15-07. Disposition of civil money penalties.** A civil money
25 penalty collected under this chapter must be paid into the state
26 treasury for deposit in the general fund ~~after the costs of recovering~~
27 ~~the civil money penalty are deducted therefrom.~~

1 **SECTION 3. AMENDMENT.** Section 39-12-20 of the North Dakota
2 Century Code is amended and reenacted as follows:

3 **39-12-20. Proceeds of sale - Continuing Appropriation.** The
4 proceeds of sale must be deposited with the state treasurer. The
5 state treasurer shall deposit in the highway fund an amount equal to
6 the amount of the charges assessed pursuant to 39-12-17 after paying
7 the costs to the county. An amount equal to ~~applied first to the~~
8 ~~payment of the costs of the proceedings, including attorneys and~~
9 ~~witness fees and costs, and next to the payment of the charges~~
10 ~~assessed. Such charges must be remitted to the state treasurer to be~~
11 ~~credited to the highways fund.~~ is hereby appropriated on a continuing
12 basis out of the funds collected to the county in which the
13 prosecution took place for the purposes of defraying the costs of the
14 prosecution. The balance of the proceeds of any sale after the payment
15 of costs and charges is hereby appropriated on a continuing basis out
16 of the funds collected to ~~must be paid over by the sheriff to the~~
17 person entitled thereto as determined by the court, or must be
18 deposited with the clerk of court for such payment.

19 **SECTION 4. AMENDMENT.** Section 54-44-04.6 of the 1997 Supplement
20 to the North Dakota Century Code is amended and reenacted as follows:

21 **54-44-04.6. State surplus property—Department heads to inform**
22 **director—Disposition of property—Proceeds—Exchange of property.**

- 23 1. The person in charge of any department, agency, or
24 institution of the state shall inform the director of the
25 office of management and budget or the director's designee
26 whenever that department, agency, or institution possesses
27 property surplus to its needs, whether originally obtained
28 with state or other funds.

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- 1 2. State surplus property must be transferred at fair market
2 value to state agencies, political subdivisions, and
3 nonprofit organizations eligible to receive federal surplus
4 property under the Federal Property Administrative Services
5 Act of 1949, as amended. Eligible organizations must be
6 notified of the availability of property on a regular basis.
- 7 3. If not disposed of under subsection 2, then by sale on
8 sealed bids or at public auction to the highest and best
9 bidder for property valued at more than three thousand
10 dollars, with no money deposit required prior to sale, or by
11 sealed bids, public auction, or negotiation at fair value
12 for property valued at less than three thousand dollars.
- 13 4. All proceeds received from the transfer or sale of state
14 surplus property must be deposited ~~into the fund from which~~
15 ~~the property was originally purchased, less administrative~~
16 ~~expenses~~ with the state treasurer for deposit in the surplus
17 property operating fund. For each piece of property, the
18 office of management and budget shall transfer to the agency
19 from which the property was received an amount equal to the
20 proceeds of the sale less the administrative expenses of the
21 sale. The agency shall deposit the proceeds into the fund
22 from the which the property was originally purchased.
- 23 5. No department, agency, or institution may exchange items as
24 part of a purchase price of new items until a detailed
25 statement of the value of the items to be exchanged and
26 request for approval have been submitted to the director of
27 the office of management and budget. The director shall
28 approve the exchange only if the director has determined
29 that the item has been valued at fair value.

1 **SECTION 5.** A new section to chapter 54-06 of the North Dakota
2 Century Code is created and enacted as follows:

3 **Expenses incurred to collect funds owed the state - Continuing**
4 **appropriation.** Any time a state agency enters into a contract with a
5 collection or credit agency to collect money due the state, the fees
6 for services, reimbursement, or other remuneration to the collection
7 or credit agency must be based on the amount of money actually
8 collected. All funds collected on behalf of a state agency by a
9 collection or credit agency must be deposited with the state
10 treasurer. An amount equal to the amount of fees for services,
11 reimbursement, or any other remuneration to the collection or credit
12 agency as set forth in the contract is appropriated as a continuing
13 appropriation from the fund into which the money collected was
14 deposited to the state agency for which the funds were collected for
15 the payment of fees due under the contract.

16 **SECTION 6.** A new section to chapter 54-11 of the North Dakota
17 Century Code is created and enacted as follows:

18 **Appointment of Agents.** The treasurer may appoint agents for the
19 purposes of receiving public funds as required by Article X, section
20 12 of the North Dakota Constitution. If appointed by the state
21 treasurer, the Bank of North Dakota shall serve as an agent of the
22 state treasurer for the purposes of receiving public funds.

23 **SECTION 7. EMERGENCY.** This Act is declared to be an emergency
24 measure.

HB1171
Central Personnel Division Testimony
Senate Government & Veterans Affairs
March 19, 1999

House Bill No. 1171 addresses two issues in the operations of the State Personnel Board and the Central Personnel Division.

Section 1

- Removes designation of a board of higher education appointee to serve on the state personnel board.
- Since 1992 agreement between the Governor and Chancellor, the University System has functioned independent of the Central Personnel Division.
- SB 2291 statutorily separating the University System from the jurisdiction of the Central Personnel Division has passed and been signed by Governor Schafer.
- Changes designation to a human resource professional - private or public - nominated and voted on by the four other board members.
- Ensures that the 5th member receives votes from both appointed and employee elected representatives.

Sections 2 and 3

- Clarify responsibility for certification of agency payrolls.
- Current statute requires Central Personnel Division director to certify that classification and pay is legal.
- Impossible for one person or one small office to actually certify on a regular basis.
- There has been past practice of delegating certification to agencies but the practice has not been done consistently or clearly.
- Section 2 retains authority for the Central Personnel Division director to take exception to an illegal or unauthorized pay situation
- Section 3 clearly places responsibility for ongoing certification with each agency.