

1999 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1359

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1359

House Government and Veterans Affairs Committee

Conference Committee

Hearing Date 1-29-1999

Tape Number	Side A	Side B	Meter #
1	X		8.7 - 25.6
Committee Clerk Signature <i>J. McWilliam</i>			

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 29, 1999.

Summary of the Bill: Relating to the state nepotism law.

Testimony in Favor:

Representative Clark, Appeared before the committee to introduce the bill. The reason this bill came about is an audit at the University System and there was some instances that department heads had direct control over salaries and raises of relatives and things like that. The attorney generals opinion came back and said the law only applied to agency heads. This bill was drafted to try and correct that situation. A house keeping bill and after talking to the attorney generals office, they had some amendments to submit.

Beth Baumstark, Attorney Generals Office submitted amendments and an engrossed version of the bill. She walked the committee through the bill. This basically puts more teeth into the nepotism law.

Representative Klein, Would go back on the personal service contract part?

Baumstark, This would inhibit these contracts. You might have one with a teacher, or a hearing officer etc. If your already employed, doesn't mean your employment will be terminated. It also does not apply in employment relationships or contracts entered into before supervisory capacity. If you had two people in a peer relationships in an agency and one of them is promoted to a supervisor, it is not going to prohibit that. It doesn't apply to a temporary work arrangement when there are urgent needs for employees. The penalty is provided in section 3 where monies paid out in violation of this section would be deducted from the hiring state official or state employee.

Representative Klemin, Do you have any idea why it was agency heads to begin with?

Baumstark, I believe it was a very old law and had broad coverage.

Representative Winrich, In the UND instances, it involved a dept. chair who's daughter was working in that dept. as a teacher. In that case, the daughter had been hired by a previous dept. chair when this dept. chair was just a member of the faculty and furthermore the daughter was hired in a capacity that the university called academic staff which is considered to be temporary on a year to year contract. As I read this, that would have been all right under this law?

Baumstark, Yes I think it would have because the employment was already existing.

Representative Thoreson, What kind of penalty?

Baumstark, Salary of the subordinate would be taken out of the hirer

Dan LeRoy, Central Personnel stated that after taking a survey of a number of agencies, that this would allow us to reasonably handle this.

Mike Sandle, NDUS supports the bill as amended.

Testimony in Opposition: None.

Committee Action:

Representative Cleary, Made a motion for a Do Pass on the amendments.

Representative Fairfield, Seconded the motion.

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

Representative Brekke, Seconded the motion.

Motion Passes: Do Pass as amended **14-0-1**.

Representative Kroeber, Is the carrier for the bill.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1359

Page 1, line 11, overstrike "However, the prohibition does not apply to employment of" and remove "a"

Page 1, line 12, overstrike "spouse"

Page 1, line 13, replace "in violation of" with "Compliance with" and after "44-04-09" insert "is not discrimination under this section"

Page 1, line 19, after "over" insert ", or enter a personal service contract with,"

Page 1, line 20, after the first comma insert "stepchild,"

Page 1, line 21, after the first comma insert "brother-in-law or sister-in-law,"

Page 1, line 22, remove "by birth or adoption" and remove "A state official or state employee, in the exercise of that"

Page 1, remove lines 23 and 24

Page 2, line 1, remove "section." and remove "control or direct"

Page 2, line 2, remove "an individual in an employment relationship. The term includes the authority to"

Page 2, line 3, after "terminate." insert "Evaluate as used in this section does not include evaluations by peers or subordinates."

Page 2, line 4, after "to" insert "':"

Page 2, line 5, after "Act" insert "; nor to any employment relationship or contract entered before the state official or employee assumed the supervisory capacity;", replace "or" with "nor", after "meet" insert "a critical and", and after "urgent" insert "agency", and replace "needs" with "need"

Page 2, remove line 6

Page 2, line 11, after "department" insert "hiring or contracting", after "or" insert "state", and remove "serving in the supervisory capacity"

Renumber accordingly

Roll Call Vote #: 1 Date: 1-28-99²⁹

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1359

House GOVERNMENT AND VETERANS AFFAIRS Committee

- Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS AS AMENDMENT

Motion Made By KLEMIN Seconded By BREKKE

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) 14 No 0

Absent 1

Floor Assignment KROEBER

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

REPORT OF STANDING COMMITTEE

HB 1359: Government and Veterans Affairs Committee (Rep. Klein, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1359 was placed on the Sixth order on the calendar.

Page 1, line 11, overstrike "However, the prohibition does not apply to employment of" and remove "a"

Page 1, line 12, overstrike "spouse"

Page 1, line 13, replace "in violation of" with "Compliance with" and after "44-04-09" insert "is not discrimination under this section"

Page 1, line 19, after "over" insert ", or enter a personal service contract with,"

Page 1, line 20, after the first comma insert "stepchild,"

Page 1, line 21, after the underscored comma insert "brother-in-law or sister-in-law,"

Page 1, line 22, remove "by birth or adoption" and remove "A state official or state employee, in the exercise of that"

Page 1, remove lines 23 and 24

Page 2, line 1, remove "section." and remove "control or direct"

Page 2, line 2, remove "an individual in an employment relationship. The term includes the authority to"

Page 2, line 3, after the underscored period insert "As used in this section, "evaluate" does not include evaluations by peers or subordinates."

Page 2, line 5, replace "or" with "; nor to any employment relationship or contract entered before the state official or employee assumed the supervisory capacity; nor", after "meet" insert "a critical and", and replace "needs" with "agency need"

Page 2, line 6, remove "resulting from an emergency"

Page 2, line 11, after "department" insert "hiring or contracting", after "or" insert "state", and remove "serving in the supervisory capacity"

Renumber accordingly

1999 SENATE GOVERNMENT AND VETERANS AFFAIRS

HB 1359

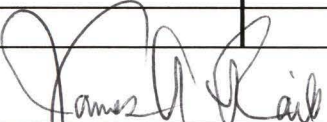
1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1359

Senate Government and Veterans Affairs Committee

Conference Committee

Hearing Date March 19, 1999

Tape Number	Side A	Side B	Meter #
1	X		6150-END
1		X	0-3586
Committee Clerk Signature 			

Minutes: CHAIRMAN KREBSBACH called the committee to order and opened the hearing on HB 1359 which relates to the state nepotism law. Appearing before the committee to introduce the legislation was REPRESENTATIVE JOHN DORSO, District 46, Fargo, prime sponsor of the bill. He indicated that this was a bill that actually got life in legislative audit and fiscal review because there was an audit where there was a problem on the UND Campus concerning some employment practices which may have been in conflict with century code. Then the attorney general and I can't remember if it was a formal opinion or whatever sent to audit and fiscal review, I think it was a formal opinion, and said that basically our nepotism law did not cover the situations there and in fact then in conversation with the attorney general, it became my impression and hers I think that we had to re-look at the nepotism law as it was on the books, because as it is, it wouldn't be enforceable. I had the bill drafted and then the attorney general's office looked at it and made some changes to it and that's the way it came to you from the house

with the attorney general's amendments on it. I believe now that it more clearly defines nepotism and I believe that we should have nepotism statute on the books that is enforceable. I believe that the law when it was written way back in the 30's was well intentioned. The attorney general is right, it would be hard to use the one as it is. I think this is good bill to replace that section of code and update our nepotism laws. The people of North Dakota deserve that type of protection. DAN LEROY appeared before the committee and testified in support of this bill. I did have an opportunity to be a part of this bill and work on it. We sent the original work that was done by the attorney general's office around to number of agencies, got comments back. We worked with the attorney general's office to get it in a form that didn't cause any major problems and I stand in support of the bill as it is before you. SENATOR DEMERS, is there provision somehow for the say, the person who does the hiring and firing the head of the unit and the spouse. They can work for that spouse and then be supervised by somebody else? I know we had a case way back when, when something was combined with something else and all of a sudden you ended up in that situation even though people had been hired in separate units. I think that was the solution at that time but I'm not sure that that would be allowable under this new. MR. LEROY, what is very clearly allowed is that if there are preemployment situations prior to the bill going in place, that will not cause there to be a violation of this new nepotism law. For instance if there is a husband and wife situation in an agency right now, if this bill gets passed then there is not a problem with that, except in direct reporting relationships. MIKE SANDAL of the NDUS appeared before the committee. He spoke in support of HB 1359. He indicated that he and Mr. LeRoy had worked together on some of the initial amendments along with the attorney general's office. We have discussed it with our campuses and feel that the bill

does address many of those issues which were of concern by Representative Dorso. I feel this is a bill we can work with. SENATOR DEMERS, I'm curious again about alternate kinds of plans being made so that the person can actually be in a different department for administrative and hiring and evaluation kinds of things. One of the reasons I am asking, you know very well it is very hard to recruit qualified faculty in the higher ed system and at times what you are recruiting is a husband and a wife who have the same general preparation, they are both pharmacology, or physiology instructors. So they do end up working there and that can happen therefore. Mr.

Sandal offered a response. BETH BAUMSTARK of the Attorney General's Office appeared before the committee indicating that the Attorney General's Office supports this bill. It was drafted to overcome some of the problems that were found under the current nepotism statute.

For specifics of her testimony listen to Tape 1, Side B, Meter #'s 778-1315. SENATOR THANE indicated he has a question which he wasn't sure if it was valid or not. Supposing an individual was pressured in this violation of provisions. Suppose that state employee who is head of the hiring department or whatever it is, is pressured by someone over and above him to do the hiring.

What happens then? BETH BAUMSTARK, It would be my understanding that usually it's the head of the agency that ultimately has the hiring power or the hiring authority and so generally there wouldn't be somebody in direct supervisory authority above. Someone from personnel might know more about specific agencies if there are any that might fall into that category where the authority to hire at less than the top of the agency might occur. SENATOR DEMERS, That doesn't make any sense to me, because that would mean I'm an associate dean, I could hire my son or my brother-in-law or whomever in my office as long as they weren't related to my dean who has the ultimate hiring authority. You see what I am saying? BETH BAUMSTARK,

responded. SENATOR KREBSBACH, wouldn't that be precluded by the language on lines 19 and 20 on page 1? MS. BAUMSTARK responded. SENATOR STENEHJEM, would I be correct in reading this statute to say that nobody who serves on the board of higher education can have any relative who works for the university system? BETH BAUMSTARK, now that's the way the current law would be. If you have, if the hiring has been delegated to someone else where they're in fact not doing the hiring, then I think they would not be in violation. Several other questions and comments were offered by SENATORS DEMERS, MUTZENBERGER, and WARDNER. There was no further testimony offered in support of , in neutral position on, or opposition to HB 1359. The hearing was closed at this time. Further comments were offered by SENATORS MUTZENBERGER and DEMERS. A motion for DO PASS was made by SENATOR THANE, seconded by SENATOR STENEHJEM. ROLL CALL VOTE indicated 7 YEAS, 0 NAYS, 0 ABSENT OR NOT VOTING. CHAIRMAN KREBSBACH will carry the bill.

Date: 3/19/99
Roll Call Vote #:

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1359

Senate GOVERNMENT AND VETERAN'S AFFAIRS Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Sen. Thane Seconded By Sen. Stenehjem

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. Krebsbach

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

REPORT OF STANDING COMMITTEE (410)
March 19, 1999 1:28 p.m.

Module No: SR-50-5190
Carrier: Krebsbach
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1359, as engrossed: **Government and Veterans Affairs Committee (Sen. Krebsbach, Chairman)** recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1359 was placed on the Fourteenth order on the calendar.