

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1353

2001 HOUSE POLITICAL SUBDIVISIONS

HB 1353

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1353

House Political Subdivisions Committee

Conference Committee

Hearing Date 2-1-01

| Tape Number | Side A | Side B | Meter # |
|--|--------|--------|-----------|
| 1 | xx | | 4660--end |
| 1 | | xx | 1-68 |
| 2 | xx | | 4034-4750 |
| Committee Clerk Signature <i>Pam Dover</i> | | | |

Minutes: Chair Froseth opened the hearing on HB1353 relating to filing of oaths of office.

Rep. Lisa Meier, Dist. 32, Bismarck : bring this bill before you on behalf of the Sec. of State's Office. Please bring a do pass for this bill.

Cory Fong, Sec. of State's Office : (4790) This bill will provide a mechanism for appointments to be rescinded if an appointee fails to take an oath of office and clarify which public officials are required to file oaths of office. (SEE ATTACHED)

Rep. Grosz : (5422) If I did not file, who would terminate me?

Cory : A rescinding can only happen from someone who is appointed. Not if you are elected. You are an elected official, so you could be rescinded. You have to file your oath. Technically, you were not to have any public business before filing. This is just talking about appointees.

Rep. Herbel : The word "may rescind", on line 7, what might be some options for the term?

Cory : It is intended to give flexibility that they may rescind. It doesn't talk about reasons. The word "shall" would create problems. I don't know how many times this happens.

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House Political Subdivisions Committee
Bill/Resolution Number HB1353
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Rep. N. Johnson : On line 16, would this mean a water board, too?

Cory : This would be applicable to every council, commission, bureau, or authority. A water development board would. A committee to study would not. An appointed board would.

End Tape 1, side A

Begin Tape 1, side B Cory continues explaining. State board, state commissions, etc. who have subcommittees would not require those subs to file an oath of office.

Chair Froseth : Any more testimony for or against? Hearing none, hearing is closed.

Tape 2, side A, 2-1-01 Chair Froseth : Let's take up HB1353.

Rep. Maragos : I move a **DO PASS**.

Rep. Delmore : I second.

VOTE: 14 YES and 0 NO with 1 Absent. BILL PASSED. Rep. Maragos will carry.

FISCAL NOTE
 Requested by Legislative Council
 03/12/2001

Bill/Resolution No.:

Amendment to: HB 1353

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

| | 1999-2001 Biennium | | 2001-2003 Biennium | | 2003-2005 Biennium | |
|-----------------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
| | General Fund | Other Funds | General Fund | Other Funds | General Fund | Other Funds |
| Revenues | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Expenditures | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Appropriations | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

| 1999-2001 Biennium | | | 2001-2003 Biennium | | | 2003-2005 Biennium | | |
|--------------------|--------|------------------|--------------------|--------|------------------|--------------------|--------|------------------|
| Counties | Cities | School Districts | Counties | Cities | School Districts | Counties | Cities | School Districts |
| \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

The amendments adopted by the Senate were at the request of the Secretary of State. The intent of the amendment in Section 4 was to make it clear in 54-09-04 that no fee will be charged for the filing of an Oath of Office. Although the SOS has never charged a fee for such a filing, 54-09-04(5) implied that such a fee should be charged unless exempted in the paragraph at the end of 54-09-04. Therefore, to make sure that the law was absolutely clear and reflected actual practice, the amendment in Section 4 was requested and adopted by the Senate. In other words, this was a housekeeping admendment.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

None

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

None

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and*

appropriations.

None

| | | | |
|----------------------|-----------|-----------------------|--------------------|
| Name: | Al Jaeger | Agency: | Secretary of State |
| Phone Number: | 328-2900 | Date Prepared: | 03/12/2001 |

Date: 2-1-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1353

House POLITICAL SUBDIVISIONS Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do PASS

Motion Made By Rep. Maragos Seconded By Rep. Delmore

| Representatives | Yes | No | Representatives | Yes | No |
|-----------------------------|-----|----|----------------------|-----|----|
| Chairman Glen Froseth | / | | Rep. Wayne W. Tieman | / | |
| Vice-Chair Dale C. Severson | / | | | | |
| Rep. Lois Delmore | / | | | | |
| Rep. Rachael Disrud | / | | | | |
| Rep. Bruce Eckre | / | | | | |
| Rep. Mary Ekstrom | / | | | | |
| Rep. April Fairfield | | AB | | | |
| Rep. Michael Grosz | / | | | | |
| Rep. Jane Gunter | / | | | | |
| Rep. Gil Herbel | / | | | | |
| Rep. Nancy Johnson | / | | | | |
| Rep. William E. Kretschmar | / | | | | |
| Rep. Carol A. Niemeier | / | | | | |
| Rep. Andrew G. Maragos | / | | | | |

Total (Yes) 14 No 0

Absent 1 AB

Floor Assignment Rep. Maragos

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

REPORT OF STANDING COMMITTEE (410)
February 1, 2001 4:23 p.m.

Module No: HR-18-2166
Carrier: Maragos
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1353: Political Subdivisions Committee (Rep. Froseth, Chairman) recommends DO PASS (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1353 was placed on the Eleventh order on the calendar.

2001 SENATE POLITICAL SUBDIVISIONS

HB 1353

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1353

Senate Political Subdivisions Committee

Conference Committee

Hearing Date March 2, 2001

| Tape Number | Side A | Side B | Meter # |
|---|--------|--------|-----------|
| 1 | x | | 22.6-42.2 |
| | | x | 31.-42.2 |
| March 8, 2001 3 | X | | 1.2-15.1 |
| Committee Clerk Signature <i>Mary Jo Wocken</i> | | | |

Minutes:

The hearing was opened on HB1353 which relates to filing of oaths of office. All senators were present except for Senator Flakoll.

REPRESENTATIVE MEIER: Introduced and sponsored HB1353. Representative Meier gave a short explanation of the bill and then introduced Cory Fong from the Secretary of States' office.

CORY FONG: Secretary of States' office. See written attached testimony. The purpose of this bill is to allow appointments made traditionally by the governor to be rescinded if the person doesn't file their oath for an extensive period of time. It gives them the ability to do that. It says they may do that. The other thing this bill does is simply clarify who is responsible for filing

oaths of office. SENATOR COOK: Cory, I am also besides being a States Senator, I am Chairman of the Morton County Housing Authority. I've never signed an oath that I can recall. If this bill passes I'd have to sign a oath? Is that correct? CORY FONG: I think the original version of this bill, yes you would have, but I think because of the way we have refined it and identified

that you are an appointee of a state board council commission bureau you would have to file but as a county or political subdivision body you would not have to file. You would have to file an oath if you are county commissioner because you are an elected official. But if you are going to be appointed to the Morton County Housing Authority that would not be covered by this bill. You would not have to file an oath. SENATOR COOK: I was appointed by the Morton County Commission. CORY FONG: That's correct. You would not have to file an oath under this bill. If you were appointed to the State Housing Board or Authority, yes you would. SENATOR COOK: Why? Why is it important that somebody files an oath? The way I am understanding you, is the intent is if they don't file an oath it is an indication that they do not want to serve and therefore? CORY FONG: Actually, Senator Cook, right now the requirement is for all civil officers to file an oath. So really our purpose is to bring this down and narrow it down because the definition of civil officer is what is up to interpretation. That everyone could possibly under the definition of civil officer be required to file. We specifically try to narrow in what a civil officer is. To include every elected official in the state, every member who is appointed to a state board, bureau, commission, authority, every appointed member of a state agency or division and then the last component is that the legislative appointments don't count. SENATOR LEE: What brought this up? CORY FONG: Actually, this has been something that was brought forth by the Governors' office and since we filed oaths of office we work with them on this particular bill, because there are situations where they make an appointment to a state board and the person doesn't file their oath of office for a considerable amount of time. They would like the ability to have the option of rescinding that, having the appointment come back. And then, since we're making that change there are needs to obviously define what a civil officer is. So that is what prompted this. SENATOR COOK: Cory, does the governor not have the authority right now to remove anybody

from an appointed position that, for any reason? CORY FONG: Unfortunately, I am not sure I'm the person to ask that question, I have not done that research. My understanding is the real concern is that after an extensive period of time after someone has been appointed and they do not file an oath of office with our office they will be able to rescind that based on this particular bill. I can certainly do some follow-up research and contact persons in the governors office to make that request, and will get back to the committee. SENATOR COOK: Cory do you have a list or any idea how many appointments this could effect? CORY FONG: I can get a list I think we have a recording in our office how many oaths we file. Obviously the only effect this is going to have at the local level, it really won't have an affect at the local level because that same people that are filing oaths now are still going to be filing oaths at the local level. In our office I think this is going to probably make it better. I mean we're going to better define who is required to file and all, and therefore I would say it probably going to reduce the number of stray filings of people who just think they have to file an oath because you know they consider themselves civil officers. Now it is going to be very specific, if your appointee by the governor, or a state board, bureau or commission, if your state appointee of an agency or agency division it is much more specific. The intent again is to provide to narrow this versus leave it the way it is, which is very kind of uncertain and expansive. SENATOR COOK: Cory is the lawyer an officer of a court? Is the lawyer required to take an oath? CORY FONG: Every lawyer in the state that goes and passes the Bar Exam, there not filing an oaths. But special assistant attorneys that are appointed by the Attorney General are filing oaths right now. And also assistant attorney generals. But maybe this is a better question for Renee. I don't, regular attorneys out there are not filing oaths. SENATOR LYSON: Your amendments on page 1, line 3, what is 54-09-04? CORY FONG: That is the section of law that refers to the fees and charges on our office. So that is the addition

of that section of law so we can get rid of some of the claims that requires us to charge fees and things we should not be charging fees for. SENATOR POLOVITZ: If I was appointed to committees or boards being an elected official, and I have to sign one as an elected official do I then have to sign another one? Suppose I was appointed to five boards, would I have to sign an oath of office for everyone of these boards which is the same thing? CORY FONG: Yes you would. If you or your a state senator for a district 42 you would have to take an oath, if your appointed to the State Board of Higher Education you would have to file an oath. And we have people in our agency or folks who have filed several oaths on file, because they arrived at that post and are required to file an oath. SENATOR POLOVITZ: But the oath is the same? CORY FONG: It is the same. But they are filing that oath for different purposes. SENATOR COOK: Existing law requires us to file these multiple oaths, or the bill as brought before without the amendments requires that? CORY FONG: current law and as the bill currently is would require people to file multiple oaths. I can visit with our legal council to see if the bill could be amended. I get the sense that perhaps what your saying is if someone's got an oath on file it would count for all those different purposes. The concern that I guess I would have is they take an oath for different , its the same oath, but it is for different purposes to serve on the state legislature or to serve on a board or bureau, so I am not sure that would necessarily achieve our goal. SENATOR POLOVITZ: This really confuses me, because the oath is the same. Your swearing to uphold the Constitution of the United States and the State Constitution. How can it differ for a position that your going to get if your swearing to the same thing? For a different purpose I don't understand it, the purpose is the same? CORY FONG: Then based on your question, would you be interested in a provision that would allow someone who has a oath on file, that counts for subsequent appointments and or declaring to file an oath. SENATOR POLOVITZ: I would say, that at this

