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ROLL NUMBER

DESCRIPTION

1284

2007 HOUSE POLITICAL SUBDIVISIONS

HB 1284

2007 HOUSE STANDING COMMITTEE MINUTES

Bill No. HB 1284

House Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: January 23, 2007

Recorder Job Number: 1737

Committee Clerk Signature



Minutes:

Chairman Herbel opened the hearing on HB 1284.

Rep. Nancy Johnson Introduced bill. Bill says if you are both on a county commission and the city governing board and there is a conflict that arises between both boards, which one do you support?

Al Jaeger, Secretary of State: The introduction of this bill was not directed at any person, city, or county. It merely came out of a discussion with other elected officials from a conflict of interest. (see attached testimony #1) See attached amendment with this. Zoning was some of the overlapping interest because the city stretches out into the county.

Rep. Lee Kaldor In a situation in the city where a county commissioner acted against the wishes of the city or in conflict with what would be their best interest. Wouldn't the election process actually solve that problem? It seems that the electors in the city with have the option to vote for another candidate?

Al Jaeger: I don't disagree. When you are in that position and something does come up I understand the only way you can be excused from the vote is that you physically remove yourself from the situation until the vote is taken. Did someone get short changed there? More concerned about the city county issues.

Rep. Kim Koppelman Is there any where in ND right now dealing with public officials where we have this limitation where some one is serving in one office and also in another office.

Al Jaeger: I am not sure there is? I am sure people are going to say this is a bill looking for a problem to solve. I think it is worth discussion.

Rep. Kim Koppelman People in the legislature holds other offices. On one hand we value the knowledge they bring in county and city government. I can see the county and city government could be a problem and can the election process take care of that. My other question with regard to conflict of interest. We do have provisions in the legislature where we can be excused from voting. Do those not exist in county commissioners?

Al Jaeger: There seems to be some counties where that is an issue. Because I serve on some boards in my position, I asked that question and was told that abstaining was not an option. My understanding is I cannot serve on my boards and abstain.

Rep. Kim Koppelman Do you think it might open a door people would not be able to serve on the legislature or county commissioners at the same time?

Al Jaeger: I don't know.

Rep. Dwight Wrangham I am interested in zoning being a place where there could be some conflicts. The cities like Bismarck actually exercising the zoning four miles outside of their jurisdiction. Do you have more specifics on how it could be affecting the zoning areas?

Al Jaeger: I have no specifics. I would guess at the time that residences of the county aren't too keen about the decisions that are made in the city. If you have the same individual on both boards, are they representing the city or county and the greater good?

Rep. William Kretschmar If this bill became law we would allow them to serve out their terms. Would it be better or different, maybe we should have the people in those positions have 30 days to resign their offices

Al Jaeger: The citizens voted and so that individual should be able to serve out their term. That is why we extended it through the term.

Rep. Lawrence Klemin: Once this began law, this would be some type of qualification. If we had a county commissioner that wanted to run for the city, if this was law they could not serve both of them. The second sentence says you violate both positions and in light of the amendment you have on here which is going to allow those people affected to serve out their terms, we should not have any situation where this arises so do we really need that sentence.

Al Jaeger: About a half hour ago I looked at the amendment and I think your point is well taken. Rep. Lawrence Klemin did make a good statement. If I am a city commissioner and want to run for county commissioner; than if I am elected I have made a choice. That is to resign the one position.

Opposition:

Aaron Birst, Legal Counsel Association of Counties (see attached testimony #2)

Discussed need to try to work this out without giving up the need to have people who want to serve in elected capacities.

Rep. Lawrence Klemin I can see a couple of situations in the area of property taxes where we may have a constitutional due process of law issue. For example, in the area of tax equalization where we have a local board of equalization that looks at someone who wants to go to their taxes are correctly assessed on their property; city acts as the local board of equalization and then if they decide against you you can go to the county board of equalization as the next step. When that happens and you see the same person there that turned you down at the city level aren't you have your constitutional right to due process of law violated?

Aaron Birst: That is a good question.

Rep. Lawrence Klemin What about tax abatement? What if you don't think it is not fair an equitable, you can ask for a refund in fact. You have to go through the city commission and then the city decides no; then the city makes a recommendation to the county and now you go to the county commission meeting and you see the same people at both places, are you having your constitutional right violated when you have the same person being in the first and second level?

Aaron Birst: Run to your state representative.

Jerome Gruenberg, Mayor of Burlington, ND and a Ward County Commissioner. I was elected mayor of Burlington in 1988. I have been elected 5 times. I was elected as county commissioner in 1999 and been elected 3 times. I was approached to run for these positions.

I did not seek them out. Discussed full disclosure on running for these offices with no problems. I have had a program with the schools in DeLacs trying to get young people to run for offices. This bill is a clear message to these people who are not wanted in these positions. If you have people that want to run for these offices you better be using these. We need to keep getting people involved. As far as the conflict on interest. We have mechanism to take care of that and it is integrity. If a conflict comes up, I excuse myself. How many of you set on several boards. I set on at least a dozen. When will this move forward to the next level of government? The people have elected me eight times. If there is conflict it will be handled at the ballot box. I would appreciate it if this bill would go down; it makes no sense.

Rep. Lawrence Klemin Do you find there are advantages to serving on both boards?

Jerome Grumberg: That mix does help.

Rep. William Kretschmar: What is the population of Burlington?

Jerome Grumberg: 1200

Rep. Nancy Johnson I commend you for wanting to be involved. The question I have, when you excuse yourself from vote, which constituency group where you representing.

Jerome Grumberg: Depends on which board I am excusing myself from. If it is a vote on the county board and I excuse myself there are still four people voting. As far as the city council, I am the mayor and I don't get to vote, unless there is a tie vote.

Hearing was closed.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill No. HB 1284

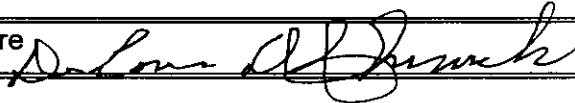
Political Subdivisions
House ~~Human Services~~ Committee

Check here for Conference Committee

Hearing Date: January 25, 2007

Recorder Job Number: 1944

Committee Clerk Signature



Minutes:

Chairman Herbel re-opened the hearing on HB 1284.

Rep. Kim Koppelman made a motion to Do Not Pass Seconded by Rep. Kari Conrad

Rep. Lawrence Klemin I am of the opinion that in a number of occasions people's rights have been violated. I don't think should be making that decision.

Chairman Herbel If the committee would like to act on the amendment first. I would have the person making the motion to Do Not Pass to withdraw their motion. Rep. Kim Koppelman and Rep. Kari Conrad withdraw their motion. The motion is withdrawn. We have the proposed amendment; do we have a motion to move the amendment?

Do Pass As Amended made by Rep. Lawrence Klemin Seconded by Rep. Donald Dietrich

Discussion:

Rep. William Kretschmar I am going to oppose the amendment. I think the amendment is making a bad bill worse.

Rep. Lee Kaldor: If I read the bill right this amendment insures or infers infringement on their rights.

Vote: 6 Yes 7 No 1 Absent Failed

Do Pass As Amended

Motion Made By Rep. Lawrence Klemin Seconded by Rep. Dwight Wrangham

Rep. Lawrence Klemin is clarifying the motion. The amendment would change to read: to delete the last line of Section 1 and Section 2.

Voice vote; motion carried.

Do Not pass As Amended Motion Made By Rep. Kim Koppelman Seconded by Rep. Kari Conrad

Rep. Kim Koppelman It seems to me that the objections of Rep. Lawrence Klemin could be dealt with in other ways. In the state of ND there probably are a lot of cases where there is a conflict or dispute. I think they are very rare so I do not think we should change it for just a few. I think we are infringing on all our rights by not allowing these people that are elected to serve for the public good. I think we should defeat the bill since we are going down a slippery slope.

Rep. Kari Conrad: I think in Minot we can't imagine why this would be a problem?

Rep. Lawrence Klemin Discussed concern about the county commissioners overseas areas that will conflict and there seems to be no recourse.

Rep. Nancy Johnson: I am not going to support the do not pass amendment because the gentleman sitting in both positions when he said when something came up he would back off; but then when he does that he is not representing anyone. He is an elected official and is not representing anyone.

Rep. William Kretschmar: Discussing rural areas and problems smaller cities and towns are having getting people to be on the boards. I do not support the do not pass motion.

Rep. Kim Koppelman I think the occasions are rare where the cities and counties have a problem on the voting. I think the voters have weighed in on who they want in this position and I would think there are procedures to handle these things already. I hope you support the do

not pass. I do think Rep. William Kretschmar indicated, this is probably a small community problem and situation where this does happen. Consequently I am going to support the do not pass because if it is a problem down the road I think we will address it later.

Rep. Lawrence Klemin I don't think the population of 1200 is a small town. Discussed other methods of utilizing the existing laws to make the system work,

Rep. Kim Koppelman You as an attorney of a constitutional nature and you could not take that to court so there is a law to address those grievances.

Rep. Lawrence Klemin The county commission is the most powerful governing political body in the state of ND. The district court seems to refer to the county commissioner's decision asking if their decision is illegal and they can't say that they were doing it different. You are put in a place of being between a rock and a hard spot.

Rep. Kari Conrad: There is a board of arbitration so there is another way. I appreciate your argument but there is a way to have your voice heard now.

Rep. Dwight Wrangham: I plan to support the bill. I do understand Rep. Klemin's position, but I do not think this bill will solve this problem.

Chairman Herbel: Rep. William Kretschmar would you please respond. What is the impact on the concern.

Rep. William Kretschmar If you have an adverse decision in city counsel, again you can appeal to the district court. The court will make the final decision on this.

Vote: 9 4 No 1 Absent Carrier: Chairman Herbel

Hearing closed.

**2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. HB 1284**

House Political Subdivisions Committee _____

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Rep. Kim Koppelman Seconded By Rep. Kari Conrad

Representatives	Yes	No	Representatives	Yes	No
Rep. Gil Herbel-Chairman			Rep. Kari Conrad		
Rep. Dwight Wrangham-V. Chair			Rep. Chris Griffin		
Rep. Donald Dietrich			Rep. Lee Kaldor		
Rep. Patrick Hatlestad			Rep. Louis Pinkerton		
Rep. Nancy Johnson			Rep. Steve Zaiser		
Rep. Lawrence Klemin					
Rep. Kim Koppelman					
Rep. William Kretschmar					
Rep. Vonnie Pietsch					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

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Title.0200

Adopted by the Political Subdivisions
Committee

January 25, 2007

VR
1/26/07

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1284

Page 1, line 9, remove "An individual violating this provision forfeits both offices and any"

Page 1, remove line 10

Page 1, line 15, remove "An individual violating this provision forfeits"

Page 1, remove line 16

Renumber accordingly

**2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. HB 1284**

House Political Subdivisions Committee _____

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass on Amendment

Motion Made By Rep. Lawrence Klemin Seconded By Rep. Donald Dietrich

Representatives	Yes	No	Representatives	Yes	No
Rep. Gil Herbel-Chairman		X	Rep. Kari Conrad		X
Rep. Dwight Wrangham-V. Chair	X		Rep. Chris Griffin		X
Rep. Donald Dietrich	X		Rep. Lee Kaldor		X
Rep. Patrick Hatlestad	X		Rep. Louis Pinkerton		x
Rep. Nancy Johnson	X		Rep. Steve Zaiser		
Rep. Lawrence Klemin	X				
Rep. Kim Koppelman		X			
Rep. William Kretschmar		X			
Rep. Vonnie Pietsch	x				

Total (Yes) 6 No 7

Absent. 1

Floor Assignment _____

Motion Failed.

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1284

House Political Subdivisions Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amendment

Motion Made By Rep. Lawrence Klemin Seconded By Rep. Dwight Wrangham

Representatives	Yes	No	Representatives	Yes	No
Rep. Gil Herbel-Chairman			Rep. Kari Conrad		
Rep. Dwight Wrangham-V. Chair			Rep. Chris Griffin		
Rep. Donald Dietrich			Rep. Lee Kaldor		
Rep. Patrick Hatlestad			Rep. Louis Pinkerton		
Rep. Nancy Johnson			Rep. Steve Zaiser		
Rep. Lawrence Klemin					
Rep. Kim Koppelman					
Rep. William Kretschmar					
Rep. Vonnie Pietsch					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

Voice Vote Carried...

**2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. HB 1284**

House Political Subdivisions Committee _____

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass As Amended

Motion Made By Rep. Kim Koppelman Seconded By Rep. Kari Conrad

Representatives	Yes	No	Representatives	Yes	No
Rep. Gil Herbel-Chairman	X		Rep. Kari Conrad	X	
Rep. Dwight Wrangham-V. Chair	x		Rep. Chris Griffin	X	
Rep. Donald Dietrich		X	Rep. Lee Kaldor	X	
Rep. Patrick Hatlestad	x		Rep. Louis Pinkerton	x	
Rep. Nancy Johnson		X	Rep. Steve Zaiser		
Rep. Lawrence Klemin		X			
Rep. Kim Koppelman	X				
Rep. William Kretschmar	x				
Rep. Vonnie Pietsch		x			

Total (Yes) 9 No 4

Absent 1

Floor Assignment Rep. Herbel

REPORT OF STANDING COMMITTEE

HB 1284: Political Subdivisions Committee (Rep. Herbel, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO NOT PASS (9 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). HB 1284 was placed on the Sixth order on the calendar.

Page 1, line 9, remove "An individual violating this provision forfeits both offices and any"

Page 1, remove line 10

Page 1, line 15, remove "An individual violating this provision forfeits"

Page 1, remove line 16

Renumber accordingly

2007 TESTIMONY

HB 1284

ALVIN A. JAEGER
SECRETARY OF STATE

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#1

January 23, 2007

TO: Rep. Herbel, Chairman, and Members of the Political Subdivisions Committee

FR: Al Jaeger, Secretary of State

RE: HB 1284 – Serving on both City and County Governing bodies at the same time

First, I want to make it clear for the record that the introduction of this bill was not directed towards any person, city, or county.

Second, some people might even suggest this is a bill in search of a problem to solve. That could be true.

Third, since the voters have voted the same person to a position on each governing body, isn't that their choice to make? That is also true.

Nevertheless, I believe a valid question remains, which is deserving of discussion. That is, is it possible for one person to provide equal and impartial representation to the interests of the citizens who elected him or her to a city position and to the voters who elected that same individual to a county position?

When both governing bodies are making a decision on an issue affecting both political subdivisions, how does that person make his or her decision? Or, stated another way, if a favorable decision on a particular issue would be in the best interests of the entire county but not for the city, which constituency will that person represent?

This situation seems to be unique to the city and county relationship because of overlapping jurisdictional responsibility. For example, among others issues, city and county interests may differ on zoning or waste management issues.

Since the bill was introduced, I learned there are at least three individuals currently serving on both a city and county governing board at the same time. To accommodate those situations, I have attached an amendment to allow them to serve out the respective terms of office.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1284

Page 1, line 10, after the period insert "This restriction does not prevent an individual whose terms of office commenced before the effective date of this Act from serving the remainder of those terms."

Page 1, line 16, after the period insert "This restriction does not prevent an individual whose terms of office commenced before the effective date of this Act from serving the remainder of those terms."

Renumber accordingly

#2

Testimony to the
HOUSE POLITICAL SUBDIVISION COMMITTEE
Prepared January 23, 2007 by the North Dakota Association of Counties
Aaron Birst, Legal Counsel

CONCERNING HOUSE BILL 1284

Chairman Herbel and members of the Committee, the North Dakota Association of Counties is here today to oppose House Bill 1284.

First, I would like to acknowledge The Secretary of State and all the work he and his staff have done on behalf of counties especially in the election arena.

The reason for our opposition is two fold. First, this legislation attempts to address an issue that is not an issue. Currently, there are 221 total county commissioners. In a survey done by NDACo recently, only 4 county commissioners are also serving as city board members. Three other counties responded that they have had this dual representation before but not currently. Therefore, this is just not something that has become a critical issue.

Secondly, and more to the heart of the matter, in all of these cases the elected official was just that.....elected. In some of these jurisdictions finding not only qualified candidates but those willing to serve and give back to their communities can be difficult. Why should those who have been legitimately chosen by the people be barred from serving?

The basis of this bill is presumably to keep individuals from being involved in situations where there could be a conflict of interest. However, what this bill does not take into account is that conflicts of interest can arise in any situation and then it becomes the responsibility of that individual to take the appropriate steps to eliminate that conflict.

What happens if they do not? Then the voters can hold them accountable. Legislating simple solutions to conflicts of interests does not solve the issue and may even create a larger issue by barring otherwise well qualified and community minded individuals from giving back to their communities.

For the following reasons I ask that you do not support House Bill 1284.

Thank you.