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ROLL NUMBER

DESCRIPTION

2383

2007 SENATE GOVERNMENT AND VETERANS AFFAIRS

SB 2383

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2383

Senate Government and Veterans Affairs Committee

Check here for Conference Committee

Hearing Date: 02/01/07

Recorder Job Number: 2535, 2627

Committee Clerk Signature

Veronica Spurling

Minutes:

All members of the committee were present.

Sen. Dever, Chairman, opened the concurrent hearing on SB 2383 and SCR 4014.

Senator Tim Mathern from District 11 introduced the bill and the concurrent resolution. He wanted to make it clear that this has nothing to do with the performance of the present Public Service Commissioners. See attachment # 1. He mentioned that the difference of \$416,000.00 would not really affect the 2007 – 2009 biennium. The savings would actually be realized over time as the terms of the present commissioners expire. On page 2 of attachment 1, in paragraph 4 it says there is a comparison attached. He mentioned that Legislative Council did not get the comparison to him on time so it is not attached. He will get that to the committee as soon as he receives it. Governor Schafer is working with a group that is looking at budget scenarios. Senator Mathern was looking for a place to save some money and still do a great job and he feels this is a good place.

Senator Dever said he sees the PSC as a deliberative body. He asked Senator Mathern how he would feel coming before the Senate Government and Veteran Affairs Committee if he, Senator Dever, were the only person on the committee.

Senator Mathern said the elected representatives and senators are from different interest groups, from different districts. When someone comes before a legislative committee there is a variety of interest groups and districts represented. People voting for Public Service Commissioners are not voting for special interests, they are voted for in common. Senator Mathern said there is a difference between the legislative branch and the executive branch. The PSC is part of the executive branch.

Senator Oehlke said he is in favor of efficiencies in government but he is wondering if we have too many commissioners, do the two extra commissioners really not serve any purpose. On the other hand would there be gaps if there were only one commissioner.

Senator Mathern said the commissioners do work as does their staff. If we decrease the number of commissioners, we may have to hire more staff to do what they have been doing.

Senator Dever asked if it would be good to compare with other states. He was wondering how many commissioners other states have.

Senator Mathern said he did not have that information. He feels the way we do things now is different than the way we did things 25 years ago.

Senator Horne asked if there was any concern with too much power resting in one person.

Senator Mathern said he was not concerned with that. There are processes in place to get the proper information and input. He feels with the term being shortened it makes the position much more accountable to the citizens of North Dakota. With the power going from three to one, he doesn't feel it will heighten the authority. He feels it will make the commissioner more responsive to the citizens, especially with a four year term.

Opposition: - Tony Clark, Public Service Commissioner, spoke in opposition to SB 2383 and SCR 4014. See attachment # 2. He commented that this is not a partisan bill. He welcomes this kind of discussion. He is happy this has been brought to the public's attention so they

better understand how the Public Service Commission functions. He explained that the duties of the commissioners mostly are not administrative. They actually appoint an executive director to do the administrative duties. Most of their job is deliberative, giving consideration to records that are placed in front of them.

Senator Dever asked how the different responsibilities are divided among the commissioners. Tony said the commissioners each have a portfolio they are responsible for. Motions that are made and the orders that are written within their area are made by the commissioner who holds that portfolio. The position of president in North Dakota is one that they have traditionally rotated around the commission. They all have equal vote on all cases they consider. In most states they have one commissioner who acts as chairman over all cases. In the present commission each of them acts as chairman over the cases in their particular portfolio.

Senator Dever asked if it would work to have one commissioner in charge of all areas.

Tony said to cover it all he would be spread a little thin. Tony said he is in charge of the telecom matters regionally and nationally. Commissioner Wefald has the electricity portfolio. Commissioner Cramer has the gas and coal mining portfolio.

Kevin Cramer, Public Service Commissioner, spoke in opposition to the bill and the resolution.

See attachment # 3.

Senator Judy Lee presented the testimony for Public Service Commissioner Susan Wefald.

See attachment # 4.

Opposition: -

Neutral: -

Chairman Dever closed the hearing on SB 2383.

Chairman Dever opened discussion on SB 2383.

Senator Judy Lee made a do not pass motion.

Senator Oehlke seconded the motion.

Senator Lee said she feels it is important to have 3 commissioners to have good debate. Even though efficiency is important, it doesn't seem that this would be a positive change.

Senator Nelson mentioned that the only opposition expressed was from the three commissioners. She expressed an interest in seeing who signed in on the witness registration.

There was some discussion about who signed the sheet.

Senator Oehlke said he tried to compare it with the activity of the committees in the legislature.

"If every committee members had to be on every committee, and try to keep all those balls in the air... " He depends on the members of the other committees to report to him so he doesn't have to know everything about every bill. The PSC is very similar with every commissioner having his area of expertise.

Senator Dever said they also have hearings and deliberations.

Senator Lee said discussion and debate is good.

Roll Call Vote: Yes 3 No 3 Absent 0.

Senator Lee made a motion to send it out of committee without committee recommendation.

Senator Nelson seconded the motion.

There was some discussion about how to handle the concurrent resolution.

Roll Call Vote: Yes 6 No 0 Absent 0

Carrier: Oehlke

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2383

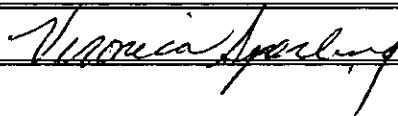
Senate Government and Veterans Affairs Committee

Check here for Conference Committee

Hearing Date: 2/02/07

Recorder Job Number: 2704

Committee Clerk Signature



Minutes:

Roll was taken and all members were present.

Chairman Dever opened discussion on SB 2383.

The committee discussed that due to scheduling and needing to get SB 2383 to appropriations by the deadline, they need to act on SB 2383 and SCR 4014. There was discussion on the need to get it to appropriations even though it has a negative fiscal impact. There was also discussion on how to best handle these twin bills.

There was also some discussion about how many PSC commissioners each state has. The states vary from 3 to 7.

Senator Oehlke said it seems if it were possible for it to be done by one person, some state would be doing it with one commissioner.

Senator Dever said 37 states elect their commissioners and the others appoint them.

There was more discussion on how to best handle these twin bills. Senator Horne said if it were possible to get them out of the conundrum of passing it out of the committee without recommendation, he would be willing to change his vote.

Senator Horne made a motion to reconsider the action that was taken yesterday on SB 2383 to pass it out of committee without recommendation.

Senator Lee seconded the motion.

Voice Vote: Yes 6 No 0 Absent 0.

Senator Judy Lee moved a do not pass on SB 2383.

Senator Oehlke seconded the motion.

Roll Call Vote: Yes 4 No 2 Absent 0.

Carrier: Oehlke

FISCAL NOTE
 Requested by Legislative Council
 01/24/2007

Bill/Resolution No.: SB 2383

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.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	(\$54,703)	\$0	(\$273,515)	\$0
Appropriations	\$0	\$0	(\$54,703)	\$0	(\$273,515)	\$0

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

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Bill reduces number of commissioners to two as of 1-1-09 and to 1 as of 1-1-11. This means some general fund savings for the last 6 months of the 2007-2009 biennium and the first 18 months of the 2009-2011 biennium, with additional general fund savings for the remainder of the 2009-2011 biennium.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 2 contains the fiscal impact. Fiscal impact includes salary estimates incorporating proposed raises in 2007 SB 2008 and estimated fringe benefits. Assumptions made include that the constitutional measure passes in time for implementation 1-1-09, that the reduction in number occurs as set out in the bill (and not earlier) and that estimated savings per month per commissioner in operating expenses is \$625.

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.*

no revenue impact

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.*

In the 2007-09 biennium, expenditures should go down for the last 6 months, when the number goes from three commissioners to two. This drop in expenditures will continue at that level for the first 18 months of the 2009-11 biennium, and then drop again for the last 6 months of the biennium when the number of commissioners goes from 2 to 1.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Appropriation requirements would drop as expenditures do.

Name:	Ilona Jeffcoat-Sacco	Agency:	PSC
Phone Number:	328-2407	Date Prepared:	01/30/2007

Date : 2-1-07
Roll Call Vote # : 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2383

Senate Government and Veterans Affairs Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken do not pass

Motion Made By Lee Seconded By Oehlke

Senators	Yes	No	Senators	Yes	No
Senator Dick Dever - Chairman	✓		Senator Robert Horne		✓
Senator Dave Oehlke - VC	✓		Senator Richard Marcellais		✓
Senator Judy Lee	✓		Senator Carolyn Nelson		✓

Total (Yes) 3 No 3

Absent 0

Floor Assignment _____

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

job# 2627

Date : 2-1-07
Roll Call Vote # : 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2383

Senate Government and Veterans Affairs Committee

Check here for Conference Committee

Legislative Council Amendment Number _____ *refer to appropriations*

Action Taken send out without committee recommendation

Motion Made By Lee Seconded By Nelson

Senators	Yes	No	Senators	Yes	No
Senator Dick Dever - Chairman	✓		Senator Robert Horne	✓	
Senator Dave Oehlke - VC	✓		Senator Richard Marcellais	✓	
Senator Judy Lee	✓		Senator Carolyn Nelson	✓	

Total (Yes) 6 No 0

Absent 0

Floor Assignment Oehlke

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

Date : 2-2-07
Roll Call Vote # : 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2383

Senate Government and Veterans Affairs Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken reconsider the action by which we passed it
out of committee to

Motion Made By Horne Seconded By Lee

voice vote

Senators	Yes	No	Senators	Yes	No
Senator Dick Dever - Chairman	✓		Senator Robert Horne	✓	
Senator Dave Oehlke - VC	✓		Senator Richard Marcellais	✓	
Senator Judy Lee	✓		Senator Carolyn Nelson	✓	

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

Date : 2-2-07
Roll Call Vote # : 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2383

Senate Government and Veterans Affairs Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken do not pass

Motion Made By Lee Seconded By Oehlke

Senators	Yes	No	Senators	Yes	No
Senator Dick Dever - Chairman	✓		Senator Robert Horne	✓	
Senator Dave Oehlke - VC	✓		Senator Richard Marcellais		✓
Senator Judy Lee	✓		Senator Carolyn Nelson		✓

Total (Yes) 4 No 2

Absent 0

Floor Assignment Oehlke

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

REPORT OF STANDING COMMITTEE (410)
February 2, 2007 12:37 p.m.

Module No: SR-23-1965
Carrier: Oehlke
Insert LC: . Title: .

L

REPORT OF STANDING COMMITTEE

SB 2383: Government and Veterans Affairs Committee (Sen. Dever, Chairman)
recommends **DO NOT PASS** (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING).
SB 2383 was placed on the Eleventh order on the calendar.

2007 TESTIMONY

SB 2383

attach #1
pg. 1

Government and Veterans Affairs Committee
Sen. D. Dever, Chairman
~~SCR 4014~~ at 10:00 AM on 2/1 Missouri River Room

Mr. Chairman and members of the Government and Veterans Affairs Committee,

My name is Tim Mathern, Senator from District 11 in Fargo. I am here in support of SCR 4014 and the companion bill SB 2383.

Passage of these bills and passage of the matter by the people replaces the three-member public service commission with one public service commissioner and changes the term of office from six to four years. The measure provides for the next election for public service commissioner to be held in 2012. The measure is pretty straight forward so I will go to the rationale of the bill and measure.

I have no question there is important work to do in the public service commission office, just like there is in every elected office. I'm suggesting that we reconsider the way it is done.

I introduced the bills to sharpen responsibility and to reduce the size of state government by reducing the number of Public Service Commissioners from three to one. This would be done over a period of years so no present elected public service commissioner would have their term shortened or ended. The bill includes a procedure to have the matter voted on by the people as a constitutional change. The one Commissioner would have a four year term like all other elected state officials. My intent is structural in nature and has no reflection on the abilities of persons presently elected.

All other state agencies have single elected or appointed administrators. Many of these agencies are even larger in staff than the PSC. These agencies also have a wide range of responsibilities. A single Public Service Commissioner could lead and administer the agency in the same manner. The direction of the agency would be vested in one person so the citizens, legislators, and other government officials would be clear as to who is accountable for protecting and administering our public policy.

The world of regulation has changed including deregulation over the past twenty years and control turned over to other levels of government or the

Attach 1
pg. 2

market. The PSC website itself describes this change as follows, ".....technology and a changing regulatory environment at both the federal and state levels have resulted in a greater dependence on competitive market forces to regulate services and rates of what were traditionally monopoly service providers." It is time we change the agency to be more responsive to the changes that have taken place and to make our decision making system more efficient.

Commissioners ^{might} say they meet an important consumer protection role. I submit this role is diffuse, not triply done. Consider the cell phone issue; we now have a bill in the legislature because we thought we had Public Service Commissioners to protect consumers. Or consider the railroads; we finally got something done on the freight issue because the legislature appropriated a million dollars to PSC use sue, not because there are three commissioners. Responsibility gets shifted by the citizens or by the commissioners between three people so sometimes responsibility gets lost or mushy. This is just how things work in organizations with diffuse responsibility, nothing negative about these persons.

Some have suggested that we give administrative authority to one commissioner to streamline office decision making. Though my concerns are beyond administrative concerns, taking this solution doesn't work; if all are elected they all have equal authority so giving one administrative authority over the other would not work.

At a time when we have a budget surplus we also need to be looking for ways to be more efficient in state government lest the surplus lead us into blindness to our broader responsibilities of making sure government is the right fit for the needs.

I have attached information about cost savings; I was surprised that it is as high as it is, over \$416,000 for a biennium not even considering the building costs. Also attached is a comparison with other agencies in terms of staff and budget for your further consideration.

Thank you for your time and I ask for a Due Pass recommendation.

*attach 1
page 3***Mathern, Tim**

m: Paulson, Sandy K.
Sent: Tuesday, January 23, 2007 1:37 PM
To: Mathern, Tim
Subject: FW: SB 2383

Hello Senator Mathern,
The following is information I received from PSC related to operating with only one Commissioner. It is based on the assumption that the 2.00 FTE would be gone at the end of the present biennium (2005-07).

Sandy Paulson, OMB
Budget Analyst

From: Diller, Michael R.
Sent: Tuesday, January 23, 2007 9:47 AM
To: Paulson, Sandy K.
Cc: -Grp-PSC Commissioners; Geiger, Gloria A.
Subject: SB 2383

Sandy,

As the salaries and fringes of two commissioners (\$386,136), I estimated an additional savings of \$30,000 in operating expenses if we had one commissioner instead of three. We do not pay for office space outside of our federal programs so I see no savings related to two vacant offices. Besides, we have asked for one additional FTE next biennium only leaving one open space which would likely be sequestered by another crowded agency—thus no savings to the state. With regard to administrative assistants that work directly for commissioners, I estimated about .5 FTE's are currently filling that role with all three commissioners. I would think a lone commissioner would require additional assistance and there would likely be no savings here either. As a result, I estimate total savings for the 2007-09 biennium to be about \$416,136. Mike

1/30/2007

*Attach # 2
page 1*

**SENATE BILL 2383
SENATE CONCURRENT RESOLUTION 4014**

Presented by: Tony Clark, Public Service Commissioner
Before: Senate Government & Veterans Affairs Committee
Honorable Dick Dever, Chairman
Date: February 1, 2007

TESTIMONY

Mr. Chairman and committee members, for your record, I am Public Service Commissioner Tony Clark. I am here today to testify in opposition to SB2383 and SCR4014.

I suppose if there is any single person in North Dakota who might have reason to be in favor of this bill out of purely empire building self interest, it would be me. After all, if this were ultimately approved, I would be the last commissioner standing after 2010, and would become a very powerful state official – a virtual one-man judge and jury over some of the state's most critical industries. Nonetheless, I'm standing before you today to urge your no vote on this proposal, and it has nothing to do with who does or doesn't occupy any of these offices at the present time.

There is a reason that 50 out of 50 states and the federal government structure these types of regulatory agencies as commissions. Simply put, the power vested in them is too broad to let rest in one person's hand. In fact, North Dakota's regulatory commission is on the small side relatively speaking. Many states, including Minnesota, Nebraska and

attach 2
pg 2

Montana in our own region have more than three commissioners. Nationally, five is quite common, seven is not unheard of.

The reason all states have made this choice is because unlike most executive branch agencies which are administrative in nature, regulatory commissions are granted sweeping quasi-judicial powers to regulate private businesses in ways that are not normally allowed in a free market economy. In return for this government regulation, these firms are often granted monopoly rights over some of our citizens' most essential and basic services.

Beyond economic regulation of monopoly services, the PSC in North Dakota handles a number of duties which have broad implications on the state's economy through its vital energy industry. The Commission makes critical decisions on generation, pipeline and transmission siting, as well as issues related to the oversight of active coal mining. Again, unlike many agencies that are mainly ministerial or promotional in nature, the PSC literally is granted authority to stop or allow massive energy projects. Commission decisions have a deep reach in to this state's economy, and the legislature should avoid taking the decision making process out of the public eye and into the hands of a sole elected official regardless of who that person is. Today, when the commission reaches a decision, it happens after a series of work sessions, public meetings and recorded votes. With one commissioner, while a hearing would be public, the decision making process would be a private matter, decided by one person.

In many ways, making this change would run contrary not only to what happens in every state in the nation, it runs contrary to North Dakota's political culture. North Dakota government is marked by three distinct characteristics. The first is an open government with extensive sunshine and open meetings laws. This ensures the public's business is done in public. The second is an affinity for having a number of elected statewide offices,

Attach 2
pg 3

which ensures responsiveness from public officials. The third is that North Dakotans are suspicious of too much power being vested in any one government branch or elected official. This proposal violates all three of these foundations of our political culture. It reduces the public's ability to see how decisions affecting critical public services are made. It reduces the number of officials elected to serve and protect the public. It consolidates an enormous amount of power in one person.

Mr. Chairman, I thank you for the opportunity to speak with you today. I would be happy to answer any questions you might have.

S. B. 2383 and SCR 4014

Presented by:

**Kevin Cramer
Public Service Commissioner**

*Attach #3
page 1*

Before:

**Senate Committee on Government and Veterans Affairs
Honorable Dick Dever, Chairman**

Date:

February 1, 2007

TESTIMONY

Chairman Dever and members of the committee, my name is Kevin Cramer. I am a member of the North Dakota Public Service Commission and I am here today to express my gentle opposition to this legislation.

I say gentle opposition because although I believe the safeguards inherent in a three member commission are too important to discard, I agree with many of the sentiments and goals of this proposal. Senator Mathern has always been a thoughtful statesman and I appreciate the opportunity his legislation presents to have a public debate on the important role the PSC plays in our state. I often say the PSC is one of the most important and least understood agencies in government and so it is great to see so much renewed interest in the work we do.

As I read Senator Mathern's news release announcing the introduction of this legislation, I found myself agreeing with nearly everything he said. I also noticed the exclusion of important points. Perhaps the most constructive part of this exercise is that it prompts some self examination which is not done often enough in government.

First let's look at some of Senator Mathern's stated goals and objectives embedded in the legislation before you and articulated in his own comments. He said this legislation will "sharpen responsibility and reduce the size of government..." Now there is a goal I can support.

Attach #3
page 2

In fact, the PSC is one agency in government that can brag about its record in that regard. In 1983 the commissioners and staff numbered 61. Today we number 41. We could only wish the rest of government could trim one-third of its overhead.

Several times in his announcement the senator refers to the "administration" of the PSC and comparing it to other agencies with one "administrator". It is here where I find myself agreeing most with his sentiments and it is here where things get dicey. The reason every state in the country has three or more public utility regulators is to ensure diverse debate and avoid concentrating too much power in important decisions. Administering an agency is inefficient and even awkward for three people, but voting on the issues before us could be down right dangerous if there was only one vote.

The senator references the PSC website in his comments and highlights the use of technology as a means to justify the efficiency he seeks in this proposal. Again I must say the PSC takes a backseat to no one in our use of technology. Our Abandoned Mine Lands and Reclamation divisions have been recognized nationally for their efficiencies and effectiveness. It is because we have stretched our imaginations and dared to step out with intellect and guts that we are able to provide oversight to the permitting of over 100,000 acres of mines and the production of over 30 million tons of coal every year with the smallest staff in the nation.

Senator Mathern said in his statement, "At a time when we have a budget surplus we also need to be looking for ways to be more efficient in state government lest the surplus lead us into blindness to our broader responsibilities of making sure government is the right fit for the needs." To that I say amen and good luck. Perhaps you could look for real efficiencies in agencies and institutions whose budgets and staff grow as though they are entitled to it. In the mean time I assure you the North Dakota Public Service Commission and staff will continue to find innovative ways to be more efficient and productive at a time when our state sits on the brink of an energy development boom that will require thoughtful dialogue that will be reduced if this legislation passes.

attach #4 page 1

S. B. 2383 and SCR 4014

Presented by: Susan Wefald, President
Public Service Commission

Before: Senate Government and Veterans Affairs
Honorable Dick Dever

Date: February 1, 2007

Mr Chairman and members of the Committee, I am sharing the comments of Commissioner Susan Wefald, President of the Public Service Commission. She is very sorry that she can not be here with you today. The following are her thoughts on these matters.

I am not in support of Senate Bill 2383 and SCR 4014. *Yes, I would be the Commissioner who is not able to run for office in the next general election, if this bill and constitutional amendment passes.* However, that is not the reason for my concern about this bill and resolution. I believe in the concept of a multi-person commission because this arrangement provides the fairest system of regulation for both the public at large and the industries who are regulated by the Commission. **I do not think the concept of an "energy Czar" contained in this bill, serves the public interest.**

For example, the Commission, since it is a multi member board, is required to hold its meetings and deliberations on issues in public. All this would change if only one Commissioner was in charge of the work at the Commission. Although it isn't always easy discussing complex issues involving utility rate cases, gas pipeline safety fines, or changes in mining permits in public, I know that it is the best way to do business. Public meetings give the public confidence in the work of the Commission, because they have an opportunity to see how decisions are being made.

Although a single commissioner would still need to hold public hearings, decision making would take place in private. No votes would take place on the orders, and so only one person's viewpoint would be heard for at least four years