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4014

2007 SENATE GOVERNMENT AND VETERANS AFFAIRS

SCR 4014

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 4014

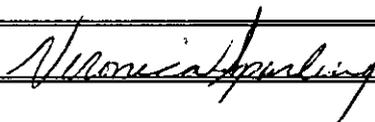
Senate Government and Veterans Affairs Committee

Check here for Conference Committee

Hearing Date: 02/01/07

Recorder Job Number: 2535, 2628

Committee Clerk Signature



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 and SCR 4014

Chairman Dever opened discussion on SCR 4014.

Senator Horne asked if SB 2383 were defeated, would there be any need for this resolution.

There was some discussion about how to handle that.

Senator Lee said she felt if SB 2383 is defeated, then this would get a do not pass. If 2383 passes, then they would have to look at SCR 4014.

There was discussion about when to put it on the calendar.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 4014

Senate Government and Veterans Affairs Committee

Check here for Conference Committee

Hearing Date: 2/02/07

Recorder Job Number: 2705

Committee Clerk Signature

Monica Spurling

Minutes:

All members of the committee were present.

Chairman Dever opened discussion on SCR 4014.

Senator Nelson moved a do not pass.

Senator Oehlke seconded the motion.

Roll Call Vote: Yes 6 No 0 Absent 0.

Carrier: Oehlke

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

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 4014

Senate Government and Veterans Affairs Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken do not pass

Motion Made By Nelson 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) 6 No 0

Absent 0

Floor Assignment Oehlke

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

L

REPORT OF STANDING COMMITTEE

SCR 4014: Government and Veterans Affairs Committee (Sen. Dever, Chairman)
recommends **DO NOT PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
SCR 4014 was placed on the Eleventh order on the calendar.

2007 TESTIMONY

SCR 4014

L
attach #1
pg. 1

Government and Veterans Affairs Committee
Sen. D. Dever, Chairman
SCR4014 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 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**

From: 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 just 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
pg 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

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,

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.

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

on these important issues. I can tell you from experience that important details can cost ratepayers big dollars. However, these details are not always readily apparent in a case. Members of multi member commissions may take issue with each other over how these details should be handled, and these **public discussions help ensure fair decisions, and help the public understand these issues. It would be very easy for a single commissioner to "not tell the full story" to the public.**

North Dakota is one of the few states in the nation that does not fund a separate office which provides advocacy for the ratepayers in public utility cases. Since we are a small state, I have always understood that it is the role of the public service commission to understand ratepayer concerns as well as industry concerns, and to make a fair decision. This takes research and homework on the issues. **At least our present three member board brings diversity of thought to the decision making process, since we do not have a separate office of ratepayer advocacy.** This bill does not even provide for a multi-member Commission, which means that North Dakotans would have far less chance for fairness than residents of any other state in the country!

Finally, the industries and companies that the Commission regulates are very strong and they have a great deal of influence in the state. They have huge financial interests and they spend a lot of money on issues which are important to them. **A multimember public service commission helps to ensure that too much pressure is not placed on only one person.** The staggered terms and six year term provide important safeguards for the public. **The staggered terms do not work against public accountability – they work against too much industry pressure on one individual.**

Mr. Chairman, this concludes the remarks of Commissioner Wefald. Please feel free to contact her if you have any questions about her position on this bill and resolution.