

**2017 HOUSE POLITICAL SUBDIVISIONS**

**HB 1173**

# 2017 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee  
Prairie Room, State Capitol

HB 1173  
1/19/2017  
27106

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*Donna Whetham*

## Explanation or reason for introduction of bill/resolution:

Relating to the powers and duties of the legislative audit and fiscal review committee

## Minutes:

Attachment 1.

**Chairman Klemin:** Opened the hearing on HB 1173.

**Roll Call:** 13 present: 2 absent. We have a quorum.

**Rep. Kempenich:** Introduced HB 1173. What it basically does is audit agencies, mainly performance type audits. What this bill basically does is it puts teeth to these audits if the agencies are showing resistance and are not complying with what has been bought out. Gives them a period of time to correct the findings. If they aren't willing to go forward, there would be some consequences of not following the audit. (See Attachment 1).

**Chairman Klemin:** You handed out an amendment; can you tell us what it is?

**Rep. Kempenich:** What the amendment does is takes the auditor's office out of the process of calling about what the findings were. They wanted more flexibility with them, that they weren't the ones to have to call this portion into play. It wouldn't be the auditor's office that were doing the motions but go to the committee. There are different findings: informal, findings, or a significant finding it would have to be up left up to the committee to push it.

**Chairman Klemin:** The amendment takes out the word significant.

**Rep. Kempenich:** Yes it does.

**Rep K. Koppelman:** It appears the bill just give the committee the authority to reduce the budget of an agency that falls into this circumstance and to recommend to the legislature that the budget be reduced. Isn't that already an option?

**Rep. Kempenich:** It can be, the committee going forward is to solve issues and make recommendations and not be run by one person.

**Rep. K. Koppelman:** If the committee had reached a conclusion like this it could make a recommendation to the budget section to think about this the next session. This formalizes it and this might be the result of correcting the issue.

**Rep. Kempenich:** Yes, it puts it into a more formal action. Most agencies are in compliance. Some corrections need some time to get themselves square with the findings. It can sometime take a year, by the next biennium, to reach compliance.

**Rep. Ertelt:** You said the percentage of reduction in appropriation is up to 10%; do you foresee the possibility that they may need to be penalized even more?

**Rep. Kempenich:** We don't have a formalized way of doing things. In appropriations you get a green sheet and shows the cost. Basically it puts a bold letter underneath they are not following through. If they are moving forward, there are options but if they are not following through; there is consequences for that action with real consequences when we get into the appropriation process. 11:22

**Rep. Hanson:** If an audit recognizes a problem and recommendations are made pertaining to the timeframe for going forward, where are the capabilities or authority of the committee that is in place today for the committee or the governor to be given this authority over the agency?

**Rep. Kempenich:** It is just a black mark on their record. There are no repercussions for not doing an audit; it just keeps following them around until they start working toward compliance. It's more of a reputation thing and answering to the people of North Dakota. There has to be some kind of push to get them to go forward.

**Chairman Klemin:** I served on that committee and we hear a lot of routine audits that are provided for by law. All agencies have to submit audit reports and what they are doing with the funds. What you are referring to are performance audits. Can you explain that?

**Rep. Kempenich:** A financial audit is they go through the finances and they sometimes find some categories where money has been misplaced or findings of miscategorized items. A performance audit is more of the performance of the agency itself. They get into how they do business; that is more where this comes into play. It gets into categorizing how they are controlling security, privacy; It's gets into how they do business; it gets into the mechanics of how the agency operates.

**Chairman Klemin:** The routine financial audit is done by private auditors hired for that purpose. Performance audits are done by the State Auditor's Office.

**Rep. Kempenich:** They're started by their state auditors and they hire people also to come in because some of this needs expertise that we don't have on staff. There is a managing auditor out of the state's auditor office and has on staff but they bring in outside people if it is outside of our expertise.

**Chairman Klemin:** There are audit findings that may address some problem and the agency or department has the opportunity to correct that issue. Then it comes back the following

year with another audit to see whether they have done it. What the new language will say what will be done if they have not corrected it?

**Rep. Kempenich:** That is correct. We can talk a lot about the audit but if there is no movement on it there has to be in place some kind of push to get them to fix it.

**Vice Chairman Hatlestad:** On line 24, although your amendment would remove the word "significant". My guess is that this would be considered serious yet you give them two bienniums to correct it. Why so much time? If it is serious, do it!

**Rep. Kempenich:** It's a slow process; often it is a structural issue. They address the immediate problem and it takes time to put it together. An example is WSI with revolving workers' safety; that was a two biennium and it was a huge problem. They addressed the immediate problem but still took them basically two biennia to get things working again.

**Chairman Klemin:** I mention also if there is disclosed a real problem with the funds of custody of receiver expenditure of public funds, then the committee can turn that over to attorney general to investigate so you don't have to two bienniums for that.

**Rep. Kempenich:** This is addressing a money or fraudulent issue; we have the authority to take it to another step out. This is more of a structural issue than it is an audit finding. There are different levels of how this all works.

**Chairman Klemin:** Other questions from the committee? 20:28

**Rep. Guggisberg:** When these agencies bills come before the government operations, you would have the opportunity to adjust the budget and get an audit report as a committee? Then you would have the opportunity to adjust the budget as a committee wouldn't you?

**Rep. Kempenich:** Yes. There is a list of questions to be answered and one is have you have any audit findings on the green sheet. If it is yes, then it would describe what the issue was. The question is asked, have you had any audits on it? It has the committee behind it instead of an individual legislature. It is a threat to get something done.

**Rep K. Koppelman:** The effect of the bill on page 2, line 2 when you have the language in that says by up to 10%, I think it could have an unintended consequence being read to limit the ability of the committee to make a reduction in the budget. My suggestion would be in addition to adopting your amendments that we also remove those words "by up to 10%". It allows a budget reduction and gives to the committee how much that would be to legislature to decide if they agree. Would you think it would be a wise amendment?

**Rep. Kempenich:** There is no science behind some of it. I thought 10% would be a significant number is the only reason. I wouldn't have an issue if you wanted to change that number. There is no science behind it.

**Rep. Maragos:** How devastating in your opinion would 10% be on any state agency?

**Rep. Kempenich:** They would be able to live with it, that is a cap and not a cut. It's more about you losing appropriations. Its more about bringing it up and highlighting this and having

that issue come forward. There is only a couple of incidents that might have been resolved if we would have used this. Most of it is dealing with performance audits.

**Chairman Klemin:** Other testimony that is in support of HB1173.

**Josh Gallion: North Dakota State Auditor:** available for questions.

**Rep. Johnson:** In a government audit, financial side during the audit process, do agencies have the opportunity to make minute adjustments?

**Josh Gallion:** The audit process, depending on materiality and significance, if they can correct it and fix the process right then and there, the Auditor's Office can give them leniency. If a very significant finding, more than likely not. We are not here to get people but to help people improve operations. If that improvement can help right, then and there let's make that happen.

**Chairman Klemin:** You are here testifying on neutral capacity?

**Josh Gallion:** Neutral testimony.

**Rep. Johnson:** On the performance side, none of the state agencies have their CPA's. On the performance audits, are you helping them improve in that area too?

**Josh Gallion:** Every time there is deficiencies in controls that can be overridden, even though it may be a small task, the outcome can be very significant. The agency may correct it right there on the spot but it may still show up on the report just so it is documented so we have history that we can go back on if it occurs again.

**Chairman Klemin.** Is there support testimony of HB 1173? Is there testimony in opposition of HB 1173? Seeing none, we close the hearing on HB 1173.

**Vice Chairman Hatlestad:** I move to adopt the Kempenich amendments 17.0010.01001.

**Rep. Zubke:** Seconded.

**Chairman Klemin:** Voice Vote on the Kempenich amendments. All in favor of the amendments say Aye.

All in favor.

Motion carries; the amendments 17.0010.01001 are adopted on HB 1173.. (31:18)

**Rep. Longmuir:** Rep. Koppelman had discussed an amendment; how is that proceeding?

**Chairman Klemin:** Rep. Koppelman, do you have another amendment?"

**Rep K. Koppelman:** Yes, I would move that on Line 2 of page 2, we strike the words "by up to 10% of" and replace them with the words "as compared with." What it would do is simply remove the percentage. It might be unwise to put an amount or a cap.

**Rep K. Koppelman:** I don't disagree; the only question I was going to ask is that it has to do with the previous biennium.

**Rep. Beadle:** I am just thinking of how we end up doing the budgeting right now where we base it off loss biennium anyway.

**Rep K. Koppelman:** With the frustrations overtime and reducing percentages, the media misconstrues and we have a problem. I think my suggestion would be clearer. I think that I will stick with the original amendment that I described. (35:45)

**Chairman Klemin:** The amendment has been moved by Rep. Koppelman.

**Rep. Beadle:** Seconded by Rep. Beadle.

**Chairman Klemin:** Page 2, Line 2 Remove the words "by up to 10% of and insert as compared with". Any discussion on the motion?

**Rep. Johnson:** Would you repeat the amendment?

**Chairman Klemin:** On Page 2, Line 2, the committee may recommend the legislative assembly reduce the state agency, department or institution's appropriation as compared with the amount appropriated to the agency, department, or institution's for the previous biennium. Any other discussion on the motion to amend? 37.00

Voice vote on the Koppelman Amendment: Ayes – all; No – 0. Motion carried .37.16

**Chairman Klemin:** Any further discussion on the HB 1173?

**Rep K. Koppelman:** HB 1173 on one hand, doesn't do anything in a sense in that it doesn't give any authority to the legislature that it doesn't already have which is to reduce budgets. However, it does formalize it in the sense that the committee would be making a formal recommendation based upon the unwillingness of an agency to comply with what a performance audit thought it found and what they are supposed to be doing and sensibly not doing. I think there is value in it from that perspective. The committee is looking to have authority and law safeguards built into the process. It is still up to the legislature whether they actually reduce it. The Appropriations committee would take that recommendation and decide what to do it. The full legislature would have a chance to vote on it and the Governor would have a chance to line item veto something he didn't like. I would move a Do Pass as amended.

**Rep K. Koppelman:** Moved a Do Pass as amended.

**Chairman Klemin:** Do pass as amended moved by Rep Koppelman on HB 1173.

**Rep. Hatlestad:** seconded.

**Rep. Johnson:** My problem with this bill is that it doesn't step up to the plate and make these corrections. It may well be that someone not involved in the wrong doing might be the one to lose their job to get to that 10% reduction. I have to oppose HB 1173.

**Rep K. Koppelman:** I can understand your concern about that but I can assure you agency heads care a whole lot about their budgets. Hitting them in the pocketbook even though not their own, is something they understand. What you spoke of could occur but the likelihood is that it would not for a couple of reasons: there is a lot of excess in budgets whether state or federal. We are trying to get a handle on them because of our budget crunch. We have this phenomenon we call phantom FTE's. There is a move now to have a hiring freeze until the end of the legislative session for this very reason. There is dollars sometimes appropriated for FTE's that are never filled during the biennium. I thought if they weren't hired that the money would come back into the general fund. No, that money is gone forever, the agency finds a way to do other things with it. There are dollars there and it would be a very poor agency head that would try to make an example of some employee as a result of this. I respectfully disagree.

**Rep. Johnson:** I understand the FTE part, it was an issue back in 1995. I appreciate the 10% was taken out. Maybe the embarrassment of having failed an audit is enough to warrant change.

**Chairman Klemin:** I served on the LAFRC(Legislative Audit Fiscal Review Committee) and on these performance audits the State Auditor's Office will issue audit findings relating to the agency not just in the money part of it but in how it is being run. We will make these audit findings and then agency has an opportunity to agree or disagree. They do this through a letter to the LAFRC Committee with their explanation and what they are going to do to correct the problem. The committee will make their call from their response. An agency has great opportunity and timeframe to work on compliance. If they don't comply we come to the point of this bill.

**Rep K. Koppelman:** In response to the comment earlier, I have heard that some of the new people in this building that are pouring over budgets are saying they can't see that anyone has lost their job. Maybe there are some that have.

**Rep. Guggisberg:** When these agency bills come before the appropriations committee, one of the things on the Green Sheet would be the findings of the audit. Then were able to explain the audit and if they had any findings whether they corrected them. Then the Appropriations Committee has the ability to do it right then, which they do right now. My two concerns with this bill: 1. What if LAFRC recommends they cut their budget by 10% and they come before the Appropriations Committee, let's say the Department of Corrections, cut their budget by 10% but what do we do with the prisoners? The committee doesn't have to follow their recommendations. Then the question is, why do we need this bill? When we get upset or concerned about something, we immediately want to change state law because of it. This bill won't do anything so I don't think we should pass this bill.

**Rep. Johnson:** Has there been a time when an agency could not improve their performances as, they can't hire anybody because their budgets are so low?

**Chairman Klemin:** My time on the committee has been this past interim and there has been no issue of this kind that came before the committee. Discussion is closed. We will take a Roll Call vote on the motion do pass as amended on HB 1173. 48:00

Yes – 11 No – 4 Absent – 0.

Motion Carried. Rep. Koppelman will carry HB 1173. Hearing closed.

17.0010.01001  
Title.

Prepared by the Legislative Council staff for  
Representative Kempenich  
January 18, 2017

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1173

Page 1, line 23, remove "or have reason to believe"

Page 1, line 24, replace "a significant" with "an"

Page 2, line 1, after "bienniums" insert "that the committee determines critically important"

Renumber accordingly

1/19/17 DJP

17.0010.01002  
Title.02000

Prepared by the Legislative Council staff for  
House Political Subdivisions Committee  
January 19, 2017

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1173

Page 1, line 23, remove "or have reason to believe"

Page 1, line 24, replace "a significant" with "an"

Page 2, line 1, after "bienniums" insert "which the committee determines critically important"

Page 2, line 2, replace "by up to ten percent of" with "as compared with"

Renumber accordingly

Date: 1-19-17  
 Roll Call Vote: 1

**2017 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. HB 1173**

House Political Subdivisions Committee

Subcommittee

Amendment LC# or Description: 17.0010.01001

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Rep. Hatlestad Seconded By Rep. Zubke

Representatives	Yes	No	Representatives	Yes	No
Chairman Klemin			Rep. Guggisberg		
Vice Chairman Hatlestad			Rep. Hanson		
Rep. Beadle					
Rep. Becker					
Rep. Ertelt					
Rep. Johnson					
Rep. Koppelman					
Rep. Longmuir					
Rep. Maragos					
Rep. Pyle					
Rep. Simons					
Rep. Toman					
Rep. Zubke					

*Voice Vote!*

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

*Motion Carried*

Date: 1-19-17  
 Roll Call Vote: 2

**2017 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. HB 1173**

House Political Subdivisions Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:     Reconsider     \_\_\_\_\_

Motion Made By Rep. Koppelman Seconded By Rep. Beadle

Representatives	Yes	No	Representatives	Yes	No
Chairman Klemin			Rep. Guggisberg		
Vice Chairman Hatlestad			Rep. Hanson		
Rep. Beadle					
Rep. Becker					
Rep. Ertelt					
Rep. Johnson					
Rep. Koppelman					
Rep. Longmuir					
Rep. Maragos					
Rep. Pyle					
Rep. Simons					
Rep. Toman					
Rep. Zubke					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

*Line 2 page 2 strike "by" up to 10%* use "as compared with"  
 Voice Vote Carried

Date: 1-19-17  
 Roll Call Vote: 3

2017 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. HB 1173

House Political Subdivisions Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Rep. Koppelman Seconded By Rep. Hatlestad

Representatives	Yes	No	Representatives	Yes	No
Chairman Klemin	/		Rep. Guggisberg		/
Vice Chairman Hatlestad	/		Rep. Hanson		/
Rep. Beadle	/				
Rep. Becker	/				
Rep. Ertelt	/				
Rep. Johnson		/			
Rep. Koppelman	/				
Rep. Longmuir	/				
Rep. Maragos	/				
Rep. Pyle	/				
Rep. Simons	/				
Rep. Toman		/			
Rep. Zubke	/				

Total (Yes) 11 No 4

Absent 0

Floor Assignment Rep. K. Koppelman

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

**REPORT OF STANDING COMMITTEE**

**HB 1173: Political Subdivisions Committee (Rep. Klemin, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). HB 1173 was placed on the Sixth order on the calendar.

Page 1, line 23, remove "or have reason to believe"

Page 1, line 24, replace "a significant" with "an"

Page 2, line 1, after "bienniums" insert "which the committee determines critically important"

Page 2, line 2, replace "by up to ten percent of" with "as compared with"

Renumber accordingly

**2017 SENATE GOVERNMENT AND VETERANS AFFAIRS**

**HB 1173**

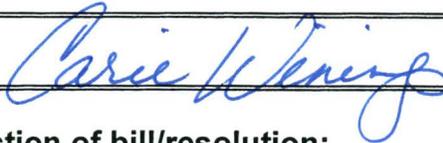
# 2017 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee  
Sheyenne River Room, State Capitol

HB 1173  
3/9/2017  
Job Number 28946

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 54-35-02.2 of the North Dakota Century Code, relating to the powers and duties of the legislative audit and fiscal review committee.

## Minutes:

No Attachments

**Chairman Poolman:** Opened the hearing on HB 1173.

No one was present to introduce the bill or to testify on the bill.

**Chairman Poolman:** Closed the hearing.

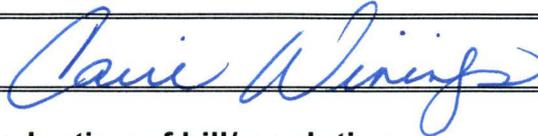
# 2017 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee  
Sheyenne River Room, State Capitol

HB 1173  
3/9/2017  
Job Number 28954

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 54-35-02.2 of the North Dakota Century Code, relating to the powers and duties of the legislative audit and fiscal review committee.

## Minutes:

No Attachments

**Chairman Poolman:** Re-opened the hearing on HB 1173.

**Representative Kempenich, District 39:** Testified as sponsor and in support of the bill. This bill was brought forward by the legislative audit and fiscal review committee. When we do audits with agencies, there are times that they can be really drug out for multiple years and there have been no repercussions for that. This bill basically gives a little more encouragement for them to get it done. The original idea was to decrease their appropriation but that did not go over very well, so this is what we were able to come up with. Basically it would bring it into the next biennium where the appropriations could look at putting some penalties or fiscal pressure on for them to get the audits straightened out. It doesn't happen often but it does happen. This was something to put a little teeth into the audits. It is more of how LAFRC would operate. There is no basic penalty for the agency, but it does give LAFRC the ability to start the process to recommend some type of repercussions if audits are not followed up on.

**(3:05) Senator Bekkedahl:** Couldn't the committee do this now or do they have to have this intent language to allow them to bring forward a recommendation to the legislative assembly?

**Representative Kempenich:** We need that to get it into the green sheets – what the council brings forward. That is the whole crux of the issue. We really can't bring anything forward. It is just a committee. You have to get council to do this and that is what this bill is doing is directing council. It seems like you should be able to, but it would take a motion every time to do that. We need some type of formal way to get this done. We have a report right now but it is just the findings but there is no recommendation there.

**Chairman Poolman:** It is just a recommendation and it still needs a vote of the assembly, right?

**Representative Kempenich:** Yes. The first version had that there would be, but that got frowned upon so we ended up doing this to move it forward. It is just one tool to use to force some of the audit findings to be moved forward. It has to meet a standard. If it is something that is being worked on you would not be something that you would push.

**Chairman Poolman:** It certainly would be a way to inform those of us that are not on appropriations or don't serve on LAFRC; to know when certain agencies or institutions are not making these corrections. Right now I don't ever know that.

**Representative Kempenich:** No, and if you don't work on appropriations. The way it works right now is that it asks for any significant audit findings but that is just for the current year and a lot of these issues are 2 to 4 years old. This bill keeps highlighting these issues.

**Senator Bekkedahl:** This is probably not a fair question, but since you are the bill sponsor and you heard this on the House side, what were the negatives in the discussion on the House side?

**Representative Kempenich:** There really wasn't. We amended it at the request of the auditor's office and this is the language that they proposed on that. The first version would have been a little harder to implement and we had some words that they wanted changed.

**Chairman Poolman:** There were no further questions or testimony. Closed the hearing on HB 1173.

**Senator Bekkedahl:** Moved a Do Pass.

**Senator Davison:** Seconded.

**A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent.**

**Motion Carried.**

**Senator Bekkedahl will carry the bill.**

**2017 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1173**

Senate Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

- Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Bekkedahl    Seconded By Davison

Senators	Yes	No	Senators	Yes	No
Chairman Poolman	✓		Senator Marcellais	✓	
Vice Chairman Davison	✓				
Senator Bekkedahl	✓				
Senator Meyer	✓				
Senator Vedaa	✓				

Total (Yes) 6    No 0

Absent 0

Floor Assignment Bekkedahl

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

**REPORT OF STANDING COMMITTEE**

**HB 1173, as engrossed: Government and Veterans Affairs Committee (Sen. Poolman, Chairman)** recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1173 was placed on the Fourteenth order on the calendar.

**2017 TESTIMONY**

**HB 1173**

HB 1173

#1 1-19-17

17.0010.01001  
Title.

Prepared by the Legislative Council staff for  
Representative Kempenich  
January 18, 2017

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1173

Page 1, line 23, remove "or have reason to believe"

Page 1, line 24, replace "a significant" with "an"

Page 2, line 1, after "bienniums" insert "that the committee determines critically important"

Renumber accordingly