

2019 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1306

2019 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Fort Union Room, State Capitol

HB 1306
1/25/2019
31516

- Subcommittee
 Conference Committee

Committee Clerk Signature Carmen Hart

Explanation or reason for introduction of bill/resolution:

Relating to membership of the board of university and school lands and the industrial commission; to provide an effective date; and to provide a contingent effective date

Minutes:

Attachment 1

Chairman Kasper opened the hearing on HB 1306.

Rep. Marvin Nelson appeared in support of HB 1306. Attachment 1. (:08-5:14)

Rep. Schauer: Would it not be more effective to have the attorney general to be right there during the discussion and offer his advice hearing all the discussion?

Rep. Nelson: Nothing prevents him from attending the meetings. If you have legal counsel, it is sitting up there in legislative council. Why aren't you having someone from legislative council sit in here. It is not any different than it is for any of the agencies.

Rep. B. Koppelman: Do you think this is the only way to solve this problem?

Rep. Nelson: I am not casting aspersions on the people involved. You are setting up a conflict, the same way you would set up a conflict with an auditor auditing the performance of a board on which he sits. One of the primary functions of the attorney general is to give legal opinions to the boards and commissions. In addition, the attorney general's office provides legal representation in the case of lawsuits.

Rep. P. Anderson: How many people are on the land board?

Rep. Nelson: I think 5.

Rep. P. Anderson: Do you think we should have more than 3 on the industrial commission board?

Rep. Nelson: I thought about that, because it does create problems under our open meeting laws that a five-member board doesn't have. It takes a lot of time to do the industrial

commission work properly. Frankly, I think it is a better use of the attorney general's valuable time to be worried about crime in the oil patch than it would be worrying about interest rates at the state bank. I don't think it makes a huge difference on numbers.

Opposition

Wayne Stenehjem, ND Attorney General, appeared in opposition. I enjoy the work that I do on the industrial commission and the land board. The attorney general is put on those boards, because the attorney general brings legal expertise to the boards. I have not heard of any issues along the lines that the sponsor of the bill mentioned. The board and the industrial commission are managed well, and the attorney general ought to stay. The governor has a lawyer, and she gives legal advice to him. I serve on the industrial commission and board of university and school lands as a lawyer for them. I think it is critical to have the attorney general there, someone who can offer advice then and there to make sure that those two boards are operating within the law, and that is exactly what we do.

Rep. Laning: Wouldn't you say that your being on those boards be more efficient from the point of legal opinions than having to go separately to your office to get an opinion?

Mr. Stenehjem: Right. Remember, we have 42 lawyers in our office. They represent boards, bureaus, agencies, and commissions, and they give legal advice all the time.

Rep. Rohr: Did you ever have to recluse yourself or appoint another attorney?

Mr. Stenehjem: Yes. During the last year we had the dispute between the governor and the legislature about the vetoes the governor had issued. The statute states in those cases the attorney general chooses which side to represent and chooses somebody else to represent the other side. That way the legal dispute is brought to the place that makes those decisions, and that is the court.

Rep. B. Koppelman: I can think of two scenarios where you as a board member can really violate what they are charged to do. It is their job to make decisions, and they have a right as a board member to make decisions they see fit unless it is a conflict of interest with them personally or unless somebody has undue influence on them like corruption or bribery. In both of those cases this very same thing could be accused of you running your department. In either one of those cases, an attorney general's opinion would not be the way to go. Is that fair?

Mr. Stenehjem: That is a good analysis.

Rep. Hoverson: I know some boards have nonvoting members. How would that strike you?

Mr. Stenehjem: I prefer to be in a decision making position. I think it is important to have that authority. An example was given. (20:13- 20:19)

Rep. Schauer: If you are on a committee and you officially take position and ND is challenged, how can you be impartial when that challenge comes up?

Mr. Stenehjem: Serving as attorney general it is my job to give consistent, proper, and constitutional legal advice.

Rep. Schauer: I don't disagree with but if you have already taken a position on a committee, it seems like you are already biased when that case comes before you.

Mr. Stenehjem: I guess that is true with everybody who serves on these boards. Open meetings is an issue that comes up the most.

Chairman Kasper closed the hearing.

Rep. Vetter made a motion for a DO NOT PASS.

Rep. Laning seconded the motion.

Chairman Kasper: I think this is just a pure philosophical decision. It is sort of black and white.

A roll call vote was taken. 11-3, 0 absent.

Rep. Karls will carry the bill.

Date: 1-25-19
 Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1306**

House 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 Rep Vetter Seconded By Rep Laning

| Representatives | Yes | No | Representatives | Yes | No |
|--------------------------|-----|----|----------------------|-----|----|
| Chairman Jim Kasper | X | | Rep. Pamela Anderson | | X |
| Vice Chair Vicky Steiner | X | | Rep. Mary Schneider | | X |
| Rep. Jeff Hoverson | X | | | | |
| Rep. Craig Johnson | X | | | | |
| Rep. Daniel Johnston | X | | | | |
| Rep. Karen Karls | X | | | | |
| Rep. Ben Koppelman | X | | | | |
| Rep. Vernon Laning | X | | | | |
| Rep. Scott Louser | X | | | | |
| Rep. Karen Rohr | X | | | | |
| Rep. Austen Schauer | | X | | | |
| Rep. Steve Vetter | X | | | | |
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Total (Yes) 11 No 3

Absent 0

Floor Assignment Rep Karls

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

REPORT OF STANDING COMMITTEE

HB 1306: Government and Veterans Affairs Committee (Rep. Kasper, Chairman)
recommends **DO NOT PASS** (11 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING).
HB 1306 was placed on the Eleventh order on the calendar.

2019 TESTIMONY

HB 1306

#1
HB 1306
1-25-19

Chairman Kasper and members of the House Government and Veteran's Affairs Committee

I am Representative Marvin Nelson District 9

HB 1306 removes the Attorney General from the Industrial Commission and the Board of University and School Lands (Land Board) and puts the Secretary of State on the Industrial Commission, and the Tax Commissioner on the Board of University and School Lands.

There is a bit of a twist the bill becomes effective in 2023 after the three positions are elected in approximately 4 years and the Board of University and School Lands needs a vote of the people to change the Constitution and then takes effect in 2023.

That way the people will know they are electing someone to the Commission and Land Board. I would not be comfortable doing so in midterm.

The reasoning behind this is much like the Auditor used to be on boards but needed to be off to the side to do the auditing work, the Attorney General needs to be off to the side to give legal advice.

With the Industrial Commission he is put in the position of being on the Commission and the Commission's Attorney. Not a good situation. If the Governor is talking to the AG about Industrial Commission work, is he consulting his attorney or is he having an illegal meeting?

With the Land Board they deal with some complicated legal issues. It is awkward to ask the AG to give a legal position after he has voted on an issue. Effectively asking him if he acted correctly.

This is a government infrastructure bill a bill to make government run effectively. The Land Board has existed since statehood. The Industrial Commission was set up by the Nonpartisan League and the makeup had more to do with whom the League had and which positions were the most powerful at that time.