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OMB/RECORDS MANAGEMENT DIVISION

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ROLL NUMBER

DESCRIPTION

1174

2007 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1174

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1174

House Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Hearing Date: January 19, 2007

Recorder Job Number: 1442

Committee Clerk Signature

Morgan Penick

Minutes:

Rep. Carlson: *This bill has been in different forms in appropriations over the years. This could very well progress into something that it deals with again as well. This bill deals with filling vacant FTE positions. What happens is that we as a legislature fund positions and so many per agency. It might be 78 positions in a particular agency. If they have 6 vacancies, it normally means that money has been funded. Some agencies can take that money and move it to other salaries for other individuals while leaving those positions empty. Some positions are empty 30 days and some have been empty for a year. It all depends. We always review that as appropriations as to how long they have been open and what is the criteria to fill those. There is some existing criteria what spurred me on to this was the fact that I checked to see how often an empty position was totally reviewed and ever turned down. The answer was that it has never been turned down. If we have a position, we fill a position. My theory has always been that government does not need to always continue on. It should review its practices and its people to see if we can be more efficient and more streamline. All this bill does is, it says if you are going to fill a position the state employer review commission should view it before approving or denying a positions request, and consider the following information before approving or denying the agencies request. Length of time of vacancy, assess the positions*

duties and responsibilities, possibility of transferring the position to another agency, possibility of restriction, and the feasibility of contract of the duties of the position. All logical questions. As we go through the budget we have an excess of 200 new FTE requests for positions. We have an additional request for 200 more people working for this biennium then we had last biennium. The census data says we have less people today in ND than we had in 2000. In 2005 we lost about 1,250 people. In 2006 we gained about 1,275 people. We are adding almost 3 to 1 new employees compared to the residents in the state. This deals with the procedure and that is the purpose of the bill; to create a more fine procedure for the needs for those positions, and the length of time to fill them. With that will always come the debate of equity pools and the difficulty to hire people in certain areas. This bill is getting mixed between two topics, but this is the procedure for filling those positions and how you look at filling them.

Rep. Amerman: The only ones excluded is the State Board of Higher Education is that right?

Rep. Carlson: Yes, you will find that in our funding that most all of the regulations that we deal with, as appropriators, is outside of the realm of higher education.

Rep. Amerman: Under this language, will WSI be able to appoint their director or will they have to come to the state?

Rep. Carlson: That again is with the board structure, I couldn't give you an exact answer for that. There is a difference between classified and non classified employees.

Rep. Kasper: Do you have in your numbers, a chart with the agencies where you can show the number of employees that have been employed over the last ten years.

Rep. Carlson: All that information is available in FTE positions. New ones are going to be harder. That information is always available to the appropriation committee. This is not trying to stop hiring. This is just a little more detailed review of the needs for these positions and the functioning of the agency. It has nothing to do with cutting out a job. Its' important to know that

any business I know of goes through a lengthy process before hiring dealing with need, cost, and qualifications that are required. I'm not saying that we don't do some of that. I'm saying that my experience has been that we can leave a position open.

Rep. Karls: One thing I've noticed about this is they don't take kindly to new information.

Rep. Carlson: This is a new one but if you talk to the people from central personnel you will find that they do have something similar to this but it does not go nearly as far I believe. This would be in place of what is being done now.

Rep. Meier: how many vacant positions have we had for over a year as of now within the state?

Rep. Carlson: I don't have the chart with me. I found it amazing because we have had some vacant for up to two years. The farther out you go the less it is. You would be quite surprised when you see the number of positions that have been open for 30,60,90, and 120 days. It always gets back to us in another way because they talk about turnovers and what is an acceptable turnover rate for employees. Is it 12%, is it 8%? That reflects back to what we get requests for equity pools and what to pay. This is all in my opinion tied together when you are all done. One kind of leads to another one. Maybe we aren't paying enough to fill the positions. Maybe the position is just not attractive. Maybe we don't have enough skilled people to fill that. Maybe we are paying way too little and no one wants to take it. This is a new area for your committee. It is important for you to see that chart and see what we deal with in terms of empty positions. This bill is an attempt to say let's look at it a little more closely to see how we do business with the government.

Rep. Haas: I'm curious to know that if we want to downsize state government, why don't we take positions that are open for two years or six months or a year, and then in the next legislative session reduce the authorized FTE for that agency. Or is it possible to examine an

agency and look at the responsibilities and workload of the agency and say we don't think you need this many FTE's anymore. We are going to authorize only so many FTE's and you are going to have to get to that number of FTE's by attrition. Is that a possibility?

Rep. Carlson: We have attempted to do that. In fact we have had an attempt to do that every session that I have been here. It is a very difficult task. There is a certain amount of concern that anytime you look at the FTE's and the hiring possibilities. We have never taken the approach that we want to cut someone out of the job that has a job today. We have done it and we have brought that to appropriations. We have not been able to drive that forward because we haven't had the support to do that. What you say makes sense. You need to also say that maybe appropriations should be funding dollars and not people. There are a number of states that do not fund the particular FTE's, they fund dollars. Is that something that we should look at? It is a very difficult process. I think it's a process that you can't ask enough questions when you are filling an empty position. If you need them, hire them. If you don't, take a good long look at them and don't fill the position.

Rep. Haas: But if you need them, hire them, you still have to fit it in the authorized FTE.

Rep. Carlson: You will have at any given time a significant number of people that aren't working. What probably drives me more than anything is over the years we have had two or three biennium's when it was zero and zero. However, because of unfilled positions there were numerous people in state government that got a raise. Maybe it was 1% maybe it was 2%. They used the dollars from unfilled positions to roll them into raises for other members of the agencies. We look as the bad guys that were zero and zero but in fact if you go through the chart there were some people who got raises. So to take and fund positions with unfilled positions, the normal question as a business man would ask is if you could take an unfilled position and spread that money throughout the staff, did you really need the position?

Rep. Haas: That is a very good question. It also leads me to conclude that if that case actually existed then in the next legislative session that FTE should be removed from the agency.

Rep. Carlson: That is much easier said than done. I'm agreeing with you.

Rep. Kasper: You said earlier that you have seen so far the request for a total of 200 new FTE's. Could you give us a feel for when an agency comes before your subcommittee that you chair and say they need more FTE's. Without population growth, why do they need more FTE's. Is there a typical response you get?

Rep. Carlson: There are some that are legitimate. Where new programs are added by either us or the federal government. When people add more programs they need more people. When the program is done those people should go away. It is up to us to see if they do. There is a request for two more Highway Patrolmen. For the first time in many years all the trooper spots are filled. They want two more for various reasons and they want to continue that. You add those on top of each other and pretty soon you have over 200 people. There are agencies that reduced them over the years. What this bill does is addresses hopefully a more detailed procedure to say do you need the position, can you do without it, can you transfer the duties, is there duplication, etc. It shines the light on the fact that you have to do a review on how you do business. Let's face it. In government and in business, people are where the money is. The more people you have drive the government. My view would be that I would rather have less if you don't need them and pay the people that are remaining more. That is the way I view it.

Rep. Haas: I don't disagree with you and that is why if by some rational method it can be determined that a particular agency needs fewer FTE's then we simply say alright. We aren't going to fire anyone. You must reach this reduced number by attrition. No one is impacted immediately and it happens in a natural process.

Rep. Carlson: We have budgeted on the basis that said we are going to give you a 2% raise this year and a 3% raise next year. But the 1% has to come from efficiencies in your agency. Does that mean that you just take the money from the unfilled position and fund the others?

Rep. Haas: This bill actually would create a commission that would have final approval or disapproval authority over the filling of a position.

Rep. Carlson: That would have been my intentions.

Rep. Weiler: If this group has that authority, why did you choose to put in there the three members that would make up the group? Why those three?

Rep. Carlson: It goes back to the budget process. Because we are a citizen's legislator, we do not prepare the budget as a legislature. The budget is prepared for us by OMB. They bring the budget request. They bring the FTE request. They see the request of the agencies that are funneled through them. They have a much better feel of what is going on because of our involvement in the budget. Would it be good to add some legislators? I do not know. We aren't daily involved with this as human resources. I think that those are the players that are important to be at the table because of our lack of involvement of building a budget. Could you add people to that? You surely could. They would have to be brought up to speed as to the need or not so need of that position.

Rep. Potter: I thought that I understood from you that there is something already a bit in place?

Rep. Carlson: Pam Sharp will address the committee about this. She'll explain to you whether they are doing all of this already. If they are let it be for the record that we are very carefully examining it. If not then we want to make sure that we change this to shine a better light on how we are doing in filling empty positions.

Rep. Amerman: I'm pretty sure that there is a bill out there where WSI is asking for 15 FTE's.

Rep. Carlson: My memory isn't as good as it should be on WSI but I believe that they have the ability to add those people on their own. That goes back to the establishment that we did on the board of directors giving them some authority.

Rep. Amerman: So then it sounds like they would be the only entity so I've got a little problem on deciding if they are a state agency or not.

Rep. Carlson: I understand where your position is on that. I think you ought to know that there is a huge difference between here and WSI. You are talking generally funds and dollars funding this agency. You are also talking premium payers such as myself paying for the other one. If I have a complaint I'm the guy that is going to complain about the funding of employees. That is why this bill addresses funds that are paid for by general funding.

Rep. Boehning: After reading this bill, there is no way that anyone can go cherry picking right? The job has to be vacant before anyone can use that money. No one is going to lose their job under this bill?

Rep. Carlson: I would care to wager that most of the positions are going to be filled. There may be some that we are looking for efficiencies. If I look at the working of the agencies, I would not be threatened if I was an employee if someone asked me questions about the need for a job and what went on. I believe most of them are going to be filled. Right now we are filling all of them.

Rep. Haas: This process would not reduce FTE's?

Rep. Carlson: It does not guarantee any reduction of FTE's.

Rep. Haas: That can only happen during a legislative session.

Rep. Carlson: That is absolutely true. We can un-fund it when the commission comes back and says that there were five positions that we did not fill and list the reasons. The logical response would be for us to un fund those positions. Again, I can't emphasize enough about

the frustration's I have. It makes it very difficult. What would you say the raise is for the employees?

Rep. Haas: Four and four isn't it?

Rep. Carlson: Yes. There is also a \$10 million equity pool that is available for agencies to access for the equity of salaries and employees. If you calculate that into the mix it is really a five and five. So if you need to follow the money, this does it. It makes you review the process for filling and empty position.

Rep. Haas: Is there any more testimony in favor of HB 1174? Is there opposition?

Gordy Smith: Testimony attached.

Rep. Kasper: Let me tell you an instance that I am aware of. To talk a little bit about the other side of the story. I'm aware of a young man that your department hired a number of years ago. He was very excited to work for state government as a CPA. He just passed the CPA. He went to work in your department. He was frustrated. He wasn't trained, no one paid attention to him, no one taught him his job, etc. He had a 3-4 month probationary period, however long it is. He was very eager to stay in state government. At the end of the probation period he was told that he wasn't fitting in with what they needed and so he was fired. He was devastated. He loved his job but felt improperly trained. When I look at your statement that the average starting salary is just \$500-\$600 less than private industry, when you look at the benefit package that our employee's have that is about equal with private industries. For your information I work for benefits with a private company. So it appears to me that in your testimony there may be a problem in your agency that could be addressed by this commission.

Gordy Smith: Our probationary period is six months. We have people who do political subdivision audits. There is an office that we have here for them. I can speak to the training practices that we do give to everyone that is hired in the state agency division. We are the

ones that audit all the state agencies in ND other than the colleges and universities. What we do is have a two and a half day training session. We have different people in our office that are specialists. We have people who are experts in computers. After two and a half days they are put on an audit. They are never alone on an audit. They are then instructed to tell us what is going on.

Rep. Haas: The purpose of this hearing is not to make an assessment of the internal policies of the state auditor's office or evaluate the internal procedures. It is simply to evaluate this bill and see if we want to adopt this commission. I am going to redirect the line of question here and confine it to this bill.

Illona Jeffcoat-Sacco: Testimony attached.

Dean Mattern: Testimony attached.

David Masse: Testimony attached.

Artie Pfaff: *I was very involved with an interim committee that was set forth by the ND legislative assembly. It was entitled the interim legislative committee benefits planning committee. It worked hard the last couple of years to come up with benefit recommendations. We truly understand the issues relating to the state agencies. Rep. Carlson's brought this up time and time again implying that there was something wrong with the current statute. It is well documented that we kind of put those to bed. I would like to testify in opposition to this bill. We have an abundant set of controls in place. We know that we have recruiting issues. There is nobody like the director. The minute there is a vacant position we ask ourselves how we should use this FTE if at all. We aren't here to rip people or fire people. We have the outstanding control in place today. We have the adequate controls in our agency. I think there is more to Rep. Carlson would like to get at. I would be glad to come forth and say what is the problem. How big is this problem? How many positions do we have to fill? I oppose this bill for*

those reasons. We have the abundance of controls in place. I agree with everything Gordy said. It was also implied that we are using dollars in an unethical way and I am totally opposed to what he said. I get reprimanded when I don't fill positions in a timely matter.

Rep. Boehning: How many vacancies are there in your department currently, and how many are six months or longer?

Artie Pfaff: I think we maybe have four or five that are still open. I can't tell you how long they have been open.

Rep. Boehning: So if you have an empty FTE your budget fluctuates from month to month?

Artie Pfaff: We bill their time in six minutes implements to agencies that are taking off the shelf applications.

Pam Sharp: Testimony attached.

Rep. Haas: Is there any additional testimony on HB 1174? If not we will close the hearing on HB 1174.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1174

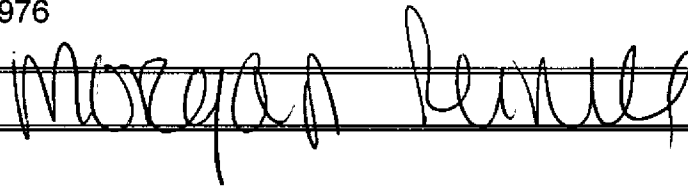
House Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Hearing Date: January 25, 2007

Recorder Job Number: 1976

Committee Clerk Signature



Minutes:

Rep. Haas: This bill would cut into quite a number of people. As I was having the conversation with Rep. Dahl about it, I got the feeling from most of you that we did not want the bill in its present form. There was a great deal of concern about the agency practice of using money that was approved and appropriated by the legislature for FTE positions and using it for raises for other staff if they didn't fill the positions. We really need to do something about that. So Rep. Dahl volunteered to talk to Legislative Council and come up with an amendment to the bill, which is really a hog house that says this "it's salary increases and the use of certain funds are prohibited". It also says "an executive branch state agency excluding entities under the control of the State Board of Higher Education, may not provide for an employee salary increase through the use of any funds made available to the agency as a result of a vacancy in an employee position within the agency. What this does is really strengthens and maintains the integrity of the budget. So it says to the agencies that if the legislature approves 100 FTE for your agency and you fill 97 of those position, but yet when the appropriated the money for the other 3, you may not use any of that money for raises. I think it does a couple more things. I think it's an excellent amendment. It maintains the integrity of the budget. I think it also then helps set the stage for subsequent legislatures. At least it opens the debate for that to happen.

This is what Rep. Dahl's amendment does.

Rep. Weiler: I don't believe it states in there what they can and can't do with the money. WE are looking at \$150,000. Does it prohibit anything?

Rep. Haas: I asked Rep. Klein that question. I asked if we need to do a little bit more with this amendment and say that the money cannot be used for salary increases for your other employees and do we need to say what it can't be used for and he said no we won't have to do that. They can't take money from the salary line item and use it for something besides salary. That is already forbidden. I don't know if that answers your question completely.

Rep. Weiler: Well it does, but can they take money from any other line item?

Rep. Haas: No they cannot.

FISCAL NOTE
Requested by Legislative Council
01/30/2007

Amendment to: HB 1174

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						
Expenditures						
Appropriations						

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

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).*

No fiscal impact.

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.*

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 fiscal 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.*

No fiscal impact.

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.*

No fiscal impact.

Name:	Pam Sharp	Agency:	OMB
Phone Number:	328-4606	Date Prepared:	01/31/2007

FISCAL NOTE
Requested by Legislative Council
01/08/2007

Bill/Resolution No.: HB 1174

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						
Expenditures						
Appropriations						

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

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).*

No fiscal impact.

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.*

No fiscal impact.

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 fiscal 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.*

No fiscal impact.

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.*

No fiscal impact.

Name:	Pam Sharp	Agency:	OMB
Phone Number:	328-4606	Date Prepared:	01/08/2007

**House Amendments to HB 1174 (70085.0101) - Government and Veterans Affairs
Committee 01/26/2007**

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 54-06 of the North Dakota Century Code, relating to prohibiting executive branch agencies from funding salary increases through the use of funds due to vacancies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-06 of the North Dakota Century Code is created and enacted as follows:

Salary increases - Use of certain funds prohibited. An executive branch state agency, excluding entities under the control of the state board of higher education, may not provide for an employee salary increase through the use of any funds made available to the agency as a result of a vacancy in an employee position within the agency."

Renumber accordingly

Date: 1-26-07
Roll Call Vote #:

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. "Click here to type Bill/Resolution No."

House Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number HB 1174

Action Taken move amendment

Motion Made By Rep. Dahl Seconded By Rep. Boehning

Representatives	Yes	No	Representatives	Yes	No
Rep. C. B Haas Chairman			Rep. Bill Amerman		
Rep. Bette Grande VC			Rep. Louise Potter		
Rep. Randy Boehning			Rep. Jasper Schneider		
Rep. Stacey Dahl			Rep. Lisa Wolf		
Rep. Glen Froseth					
Rep. Karen Karls					
Rep. Jim Kasper					
Rep. Lisa Meier					
Rep. Dave Weiler					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Date: 1-26-07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. "Click here to type Bill/Resolution No."

House Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number HB 1174

Action Taken Do pass as amended

Motion Made By Rep. Boehning Seconded By Rep. Wolf

Representatives	Yes	No	Representatives	Yes	No
Rep. C. B Haas Chairman	X		Rep. Bill Amerman		X
Rep. Bette Grande VC	X		Rep. Louise Potter		X
Rep. Randy Boehning	X		Rep. Jasper Schneider	X	
Rep. Stacey Dahl	X		Rep. Lisa Wolf	X	
Rep. Glen Froseth	X				
Rep. Karen Karls	X				
Rep. Jim Kasper	X				
Rep. Lisa Meier	X				
Rep. Dave Weiler	X				

Total (Yes) 11 No 1

Absent 1

Floor Assignment Rep. Dahl

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

REPORT OF STANDING COMMITTEE

HB 1174: Government and Veterans Affairs Committee (Rep. Haas, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (11 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). HB 1174 was placed on
the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 54-06 of the North Dakota Century Code, relating to prohibiting executive branch agencies from funding salary increases through the use of funds due to vacancies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-06 of the North Dakota Century Code is created and enacted as follows:

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Renumber accordingly

2007 SENATE APPROPRIATIONS

HB 1174

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1174

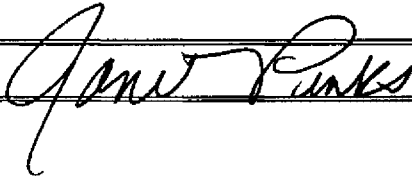
Senate Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: 02-26-07

Recorder Job Number: 3863

Committee Clerk Signature



Minutes:

Chairman Holmberg opened the hearing on HB 1174.

Representative Alan H. Carlson, District 41, Fargo, introduced HB 1174 indicating the only thing that is correct about the bill at this point is the sponsor's name and that is the only thing that is the same from the original bill. He discussed the original bill and then explained how it came out of committee and how it passed the floor of the House. The bill now states that departments cannot use vacant position wages and roll them up for salary increases.

Senator Robinson raised questions about rolling up dollars. We sometimes suggest that agencies are reckless with the dollars and that is not the case. In addition we are not being competitive. The response was if you have a long time vacancy and the work is still being done then perhaps we don't need that position. We need to take a long hard look at the positions we have and there are too many positions perhaps we can reduce employees and increase wages.

Senator Robinson said he appreciates that but the example I look at is at corrections. We've known for years we have underfunded corrections, we have an equity problem so serious there is a 50 percent turnover. I suggest that it is costing us way more for training and recruitment. It is not the agencies at fault, it is our lack of recognizing there is a private sector and if we want good people and good services we have to pay.

Chairman Holmberg indicated the original bill was quite different then the bill today.

Pam Sharp, Director, ND Office of Management and Budget, presented written testimony and testified in opposition to HB 1174. She indicated the bill does not allow a temporary pay adjustment to employees who take on additional duties during short staff periods. She stated the bill as it now stands would severely cripple the ability of state agencies to manage their workforce in a time of staffing crisis. It is a bill that is not supportive of efficient and effective government.

Laurie Steriot-Hammeren, Director, Human Resource Management Services, testified in opposition to HB 1174. She presented examples of realignment in her agency emphasizing the importance of having roll over salary funds when people have to take on additional duties.

Chairman Holmberg asked if there is more of a concern for a very small agency or would the concern be the same in an agency of 5,6,7, or an agency of 2400. The response was it would be equal amid all agencies.

Jodee Buhiz, Executive Director, ND Public Employees Association, testified in opposition to HB 1174 stating NDPEA is adamantly opposed to this legislation. If it passes, an agencies ability to operate effectively and efficiently will be greatly hindered. She indicated agencies are facing challenges in recruiting quality employees due to salaries, the shortage of workers in our state. She stated HB 1174 works counterproductive to everything the agencies are trying to accomplish. Agencies do not ask for vacant positions, they do not create vacant positions and most agencies prefer not to have a vacant position at all.

Carol Olson, Director, DHS, testified in opposition to HB 1174 indicating the bill would be a great hindrance to carrying out the duties of the department.

Gordy Smith, Auditor's Office, testified in opposition to HB 1174 indicating that his office is primarily general funded. They have a lot of deadlines both federal and state and he indicated

their department is projecting to turn back \$140,000 to the general fund. He indicated in 1993 there were 400+ requests for jobs that had been open for more then 6 months and in 2006 there were 55 this makes less then 8/10 of 1 percent of the jobs or positions were actually held open. These facts support the conclusion of agencies purposefully holding the position open for long periods of time is not true. The message if this bill is passed is that you appreciate our hard work, but you don't trust the way our agency management to budget dollars appropriately.

Lt. David Thich, ND National Guard, presented testimony from Maj. Gen. Sprynzynatyk and a clear message that you have had today is we need to get more creative not more restrictive.

Chairman Holmberg closed the hearing on HB 1174.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1174

Senate Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: 03-14-07

Recorder Job Number: 5057

Committee Clerk Signature

Jane B. Pinks

Minutes:

Chairman Holmberg opened the hearing on HB 1174.

Senator Grindberg moved a do not pass on HB 1174, Senator Fischer seconded. A roll call vote was taken resulting in 14 yes, 0 no, 0 absent. Senator Seymour will carry the bill.

Chairman Holmberg closed the hearing on HB 1174.

Date: 3/14
Roll Call Vote #: 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1174

Senate Appropriations

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken

DNP

Motion Made By

Grindberg

Seconded By

Fischer

Senators	Yes	No	Senators	Yes	No
Chairman Ray Holmberg	✓		Senator Aaron Krauter	✓	
Vice Chairman Bill Bowman	✓		Senator Elroy N. Lindaas	✓	
Vice Chairman Tony Grindberg	✓		Senator Tim Mathern	✓	
Senator Randel Christmann	✓		Senator Larry J. Robinson	✓	
Senator Tom Fischer	✓		Senator Tom Seymour	✓	
Senator Ralph L. Kilzer	✓		Senator Harvey Tallackson	✓	
Senator Karen K. Krebsbach	✓				
Senator Rich Wardner	✓				

Total (Yes)

14

No

1

Absent

1

Floor Assignment

Seymour

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

REPORT OF STANDING COMMITTEE (410)
March 14, 2007 3:52 p.m.

Module No: SR-48-5358
Carrier: Seymour
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1174, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman)
recommends **DO NOT PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed HB 1174 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

HB 1174

**TESTIMONY BEFORE THE
HOUSE GOVERNMENT AND VETERANS AFFAIRS COMMITTEE**
January 19, 2007

House Bill No. 1174

Testimony-Presented by:
Gordy L. Smith, Office of the State Auditor

Mr. Chairman and members of the House Government and Veterans Affairs Committee, I'm here to testify in opposition to HB1174. This bill represents another layer of bureaucracy which will unnecessarily add additional time to an already lengthy hiring process followed by the State Auditor's Office and other state agencies.

The State Auditor's Office is currently experiencing difficulties filling our professional positions, especially in the state agency division located here in Bismarck. This particular division has experienced an average turnover rate of 24% over the last three fiscal years. We have had to reopen the application period a second time on occasion because we did not receive any applications from qualified individuals in the initial application period. This has delayed filling needed positions and has resulted in a backlog of work. Somewhere between 35-45% of the people leaving employment in this division are hired by other state entities that are able to pay them more than we can.

We disagree with the theory that the State Employment Review Commission would be more knowledgeable or more qualified than our agency management as to whether or not the position needed to be filled. The possibility of restructuring an agency, or contracting out the duties of the position or transferring the duties and responsibilities to other employees are decisions best left to the management of each agency. Agency management are in the best position to make these decisions unless the State Employment Review Commission or some other entity is going to undertake a thorough, in-depth review of each agency's organizational structure and all of the agency positions prior to making these decisions for each vacancy. This would not be feasible unless the necessary resources would be provided to accomplish this.

In summary Mr. Chairman we would encourage you to recommend a "do not pass" for HB1174 since it will not improve the efficiency or effectiveness of state government. Thank you and I will gladly answer any questions you may have.

H. B. 1174

Presented by: Illona Jeffcoat-Sacco
Public Service Commission

Before: Government & Veterans Affairs Committee
Honorable C.B. Haas, Chairman

Date: January 19, 2007

TESTIMONY

Chairman Haas and committee members, my name is Illona Jeffcoat-Sacco. I am the Executive Director of the Public Service Commission. The Commission asked me to appear here today to testify against House Bill 1174.

The Commission is opposed to HB 1174 because it creates an unnecessary additional level of bureaucracy in an effort to "fix" a problem that does not exist.

The Hiring Council process in effect today via executive order works well. In addition, the legislature has ultimate control over agency size and function through the appropriation process. There is no need to create another level of bureaucracy when existing processes adequately address the issue.

This completes my testimony. I will be happy to answer any questions you may have.

Testimony
GOVERNMENT AND VETERANS AFFAIRS COMMITTEE

DEPARTMENT OF HUMAN SERVICES
JANUARY 19, 2007

Chairman Haas and members of the Government and Veterans Affairs Committee, my name is Dean Mattern, Director of Human Resources for the Department of Human Services. I appreciate the opportunity to appear before this committee. I am here to provide testimony in opposition to House Bill 1174.

I believe there is already a very good process in place to review and approve classified permanent employee positions. First the appropriations committees of both the House and Senate review our staffing levels and I can assure you that they do a good job. Next the Legislature approves our staffing levels and expected workloads with our budget. Any positions, which are not approved by the Legislature but are required to be added during the biennium, must be reviewed and approved by the Emergency Commission. And finally the Governor's Hiring Council must review and approve all positions that have been vacant six months or more.

Internally the Department of Human Services requires that vacant positions be reviewed and a justification to fill be completed by the supervisor, which is reviewed by Fiscal Administration and Human Resources before going to the Executive Director for approval to fill. The only positions exempt from this process are direct care positions, which are determined by staff to client ratios.

In addition most of our programs have some sort of Federal funding source which generally require staffing ratios or performance measures.

The Department of Human Services has approximately 2000 employees and a 14% turnover rate. This means we can expect to have approximately 280 vacancies per year. This bill would require DHS to submit for approval to the state employment review commission a request every working day of the year.

We believe that the volume of requests generated by the Department of Human Services and the other agencies by this bill could result in a duplication of effort.

Finally because the Department of Human Services is required to comply with the Federal Merit system, our hiring time from resignation to employment is longer than most other agencies. This bill would only increase that time and could affect the delivery of care to our clients.

In summary the Department of Human Services is in opposition to this bill because it believes:

- There already exists, appropriate processes to review and approve employee positions by the Legislature, the Emergency Commission and the Governor's office.

- The Department uses an effective internal process to review every position, which becomes vacant that is not a direct care position.

I would be happy to answer any questions you might have.

Thank You.



Department of Public Instruction

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Dr. Wayne G. Sanstead
State Superintendent

To: House Government and Veterans Affairs Committee

From: Dr. Wayne G. Sanstead

Re: HB 1174 – Hiring Review Committee

Date: 8:30 AM

I wish to take this opportunity to go on record to vehemently oppose HB 1174. It is an affront to the office of all duly elected officials. Not only does it impinge upon my authority as superintendent, I believe there are serious separation of power issues as well as checks and balance encroachments.

I have other concerns as well. The hiring process outlined in this bill will create unnecessary delays in filling vacant positions, create additional work for an already stressed workforce, waste tax payer money and is yet another attempt to micro-manage legal obligations assigned individual elected agencies.

Sincerely,

Dr. Wayne G. Sanstead
State Superintendent

Testimony on HB 1174
Pam Sharp, Director
Office of Management and Budget
January 19, 2007

Good morning Chairman Haas and members of the House Government and Veterans Affairs Committee.

I am Pam Sharp, Director of the Office of Management and Budget.

House Bill 1174 provides for a State employment review commission to oversee the filling of vacant employee positions in executive branch state agencies.

I am here this morning to provide you with information regarding the current Hiring Council.

The Hiring Council was initially established through Executive Order 1992-10 by former Governor Ed Schafer. Governor Hoeven revised the Executive Order to reflect changes in hiring guidelines. Elected Officials and certain other agencies are not required to use the Hiring Council, but may opt to do so. This is because the first Hiring Council Executive Order was challenged which resulted in the December 29, 1992, Attorney General's Opinion concluding that the Governor is not authorized to exercise executive authority over independently elected constitutional state officers through an executive order. It was further opinioned that independently elected constitutional state officers are not subject to Executive Order 92-10.

The intent of the Hiring Council created by the Governor's Executive Order is to require agencies to analyze and justify the need to fill positions as vacancies occur in order to right-size state government.

The existing Hiring Council is made up of the Lieutenant Governor, the OMB Director, the Human Resource Management Services Director, the Governor's Chief of Staff, and a classified employee chosen by the Hiring Council members. The person currently serving as a classified employee is the HR Director of the Department of Corrections and Rehabilitation.

The Hiring Council has established "Guidelines Regarding When Agencies Need to Use the Hiring Council." Those agencies subject to the Hiring Council are required to bring any non-temporary position that has been vacant 6 months or longer, or is new or was created through reorganization or realignment of duties, or has duties which changed substantially. I have provided you with a copy of the complete "Guidelines." In addition, I have provided you with the following:

- The "Request to Fill Vacant Position Form" that the agencies must complete and submit to the Hiring Council
- Hiring Council Statistics from 1993 through 2006
- Executive Order 2003-07

Mr. Chairman, this concludes my remarks. I would be happy to answer any questions.

Hiring Council Statistics

1993-Present

Year	Total Requests	No. of Requests Denied
2006	55	0
2005	58	0
2004	48	0
2003	112	10
2002	116	0
2001	216	0
2000	65	0
1999	116	0
1998	129	0
1997	112	0
1996	133	6
1995	74	3
1994	127	9
1993	439	33

Guidelines Regarding When Agencies Need to Use the Hiring Council

The intent of the Hiring Council created by the Governor's Executive Order is to require agencies to analyze and justify the need to fill positions as vacancies occur in order to right-size state government.

State agencies have been placed into six categories below to determine if they are required to go before the Hiring Council. In parentheses behind each agency is the agency's authorized FTEs for 2003-2005.

1. **Elected Officials** are *not* required to go before the Hiring Council. However, if voluntary applications are received, they will be reviewed according to the guidelines for 'Other' agencies in category six.
 - Agriculture (57)
 - Attorney General, Office of (182)
 - Auditor, State (55)
 - Insurance (45.5)
 - Public Instruction, Dept. of (92.75)
 - Public Service Commission (41)
 - Secretary of State (27)
 - Tax Department (137)
 - Treasurer (6)
2. **Commodity Groups** are *not* required to go before the Hiring Council.
 - Barley Council
 - Beef Commission
 - Corn Utilization Council
 - Dairy Products Promotion Commission
 - Dry Pea & Lentil Council
 - Milk Marketing
 - Oilseed Council
 - Soybean Council
 - Wheat Commission
3. **Self-governing Agencies** are *not* required to go before the Hiring Council.
 - Bank of North Dakota (178.5)
 - Housing Finance Agency, ND (43)
 - Mill and Elevator, State (125)
 - Workforce Safety and Insurance (227)
4. **Non-cabinet agencies with less than 10 employees** are *not* required to go before the Hiring Council.
 - Administrative Hearings, Office of (8)
 - Aeronautics Commission (6)
 - Council on the Arts (5)
 - Fair Association, ND
 - Veterans Affairs (5)
5. **Cabinet** agencies under the Governor's jurisdiction *are* required to go before the Hiring Council for any *non-temporary* position that 1) has been vacant 6 months or longer, or 2) is new or was created through reorganization or realignment of duties, or 3) has duties which changed substantially.

- Adjutant General (139)
- Commerce, Department of (57)
- Corrections and Rehabilitation, Department of (644.18)
- Emergency Management, Division of (20)
- Financial Institutions, Department of (25)
- Game and Fish Department (147)
- Health, Dept. of (313)
- Highway Patrol, ND (192)
- Human Services, Department of (2053.42)
- Indian Affairs Commission (3)
- Information Technology Department (256.7)
- Job Service ND (366.17)
- Labor Commissioner, Office of (10)
- Management and Budget, Office of (162)
- Parks and Recreation, Department of (44.25)
- Securities Department (8)
- Transportation, Department of (1044.5)

6. **Other** agencies (not falling under any of the above categories) *are* required to go before the Hiring Council for any *classified, non-temporary* position that 1) has been vacant 6 months or longer, or 2) is new or was created through reorganization or realignment of duties, or 3) has duties which changed substantially.

- Career and Technical Education, Department of (27.5)
- Historical Society (57)
- Industrial Commission (58.37) – Includes Oil & Gas and Geological Survey
- Land Department (17.75)
- Public Employees Retirement System (29)
- Protection and Advocacy (24.5)
- Retirement and Investment (17)
- Seed Department, State (32)
- Veterans' Home (89.41)
- Water Commission (82)



Department/Agency		Division/Unit	
Classification/Grade		Position Number	
Name of Last Incumbent	Date Position Vacated	Anticipated New Hire Date	
Reason for Vacancy (Attach Additional Sheet if Necessary)			
Number of Authorized FTE in Unit	Number of Current Vacancies	Number of Temps in Unit	Source of Funds

Impact if Position Is Not Filled (Attach Additional Sheet if Necessary)

Alternatives to Filling Vacancy (Attach Additional Sheet if Necessary)

*** APPROVAL MUST BE RECEIVED BEFORE EXTENDING AN OFFER OF EMPLOYMENT.**

AGENCY SIGNATURES:

Appointing Authority	Agency Head	Date
----------------------	-------------	------

REVIEW:

Request to Fill Vacant Position Is ☐ Approved ☐ Denied

Comments

Planning Council

Date _____

EXECUTIVE ORDER 2003 - 07

WHEREAS, the Hoeven Administration seeks to rightsize state government by reducing State employment to the level necessary to carry out essential state services; and

WHEREAS, this Administration seeks to ensure that state government operates efficiently and within its means; and

WHEREAS, this Administration seeks to adjust State employment and services in an orderly and managerially sound manner; and

WHEREAS, management and control of the state's personnel and fiscal resources continue to be essential to the accomplishment of these objectives; and

WHEREAS, Executive Order 2001-03 regarding the Governor's Hiring Council requires revision to reflect a change in hiring guidelines;

NOW, THEREFORE, I, John Hoeven, by virtue of the authority vested in me as Governor of the State of North Dakota, hereby order and direct the following:

1. The continuation of the Governor's Hiring Council, to consist of:
Lieutenant Governor;
State Budget Director;
Governor Appointee;
Human Resource Management Director;
Classified State Employee;
2. New or vacant non-temporary positions of agencies and commissions of the State of North Dakota, and of the offices of State elected officials who consent to use the Governor's Hiring Council, shall remain vacant and shall not be filled unless prior, written authorization is given by the Governor's Hiring Council in accordance with hiring guidelines the Hiring Council shall establish and may, from time to time, amend.
3. The Governor is vested with the executive power pursuant to Article V, Section 1 of the North Dakota Constitution.
4. The Governor is vested with the statutory supervision of the official conduct of all executive and ministerial offices pursuant to Section 54-070 1 of the North Dakota Century Code.
5. This Executive Order is effective immediately and will continue until further order of the Governor.

Executed at Bismarck, North Dakota, this 30th day of December 2003.

John Hoeven
Governor

Attest:

Secretary of State

Deputy

**Testimony
House Bill 1174
Senate Appropriations Committee
Senator Holmberg, Chairman
February 26, 2007**

Chairman Holmberg and members of the Senate Appropriations Committee, I am Carol K. Olson, Executive Director of the Department of Human Services (DHS). I am here to provide testimony in opposition to House Bill 1174.

Many functions of staff positions within DHS differ from those of an office-based agency, in that they are responsible for the provision of direct care services to our clients. The nature of our work is such that the work duties must be carried out despite staff turnover or recruitment difficulties. For example, hospitalized patients need adequate staff to meet facility standards for both treatment and safety. Community clients depend upon staff to fill and deliver medication boxes, to assist them with daily living skills, and to monitor symptoms for signs of relapse.

Even with these critical functions, it is our internal procedure to assess the need to fill any vacancy, and to explore any alternatives. In order to do this, the flexibility to utilize available salary funds is necessary. We may, for example, redistribute workload and ask others to assume additional duties. At times this is done for a trial period to determine whether it is feasible on a permanent basis; at other times we can immediately implement the change permanently. To do this requires that we use salary rollup funds to provide some workload salary adjustment to those who assumed additional duties. This works well, and has enabled us to save money while compensating staff for extra effort. If we were

unable to do so, it would actually decrease the potential for finding additional efficiencies within our department.

As we have testified in other areas during this session as well as during the interim period, we at times experience major challenges in maintaining our workforce for several reasons. Probably the most prevalent is due to increasing market pressures for staff salaries. If the market in North Dakota's cities sees increasing salaries, we see a larger number of staff leave for other jobs, and we in turn face barriers to replacing those staff.

When recruitment is difficult, we may turn to use of temporary staff in order to meet critical client needs while the position is empty. We then utilize rollup funds from the vacant position to assist us in maintaining continuity of services until a permanent hire can be located. This prevents creating new barriers to client access due to the vacancy.

In addition, at times it becomes obvious in the recruitment process that we will not be able to fill a position at the offered salary level. In that case, rollup funds may be needed to increase the salary for that position, as well as other internal staff who would be negatively impacted in terms of equity. This is done only if recruitment efforts have been exhausted.

Internally the Department of Human Services requires that all vacant positions not of direct care status are reviewed and a justification to fill is completed by the supervisor. This is reviewed by Fiscal Administration and Human Resources before going to the Executive Director for approval to fill. Likewise, any salary adjustments, whether for workload or market

adjustment, occur only after the same process has been completed. This is true for all staff including direct care staff.

The Department of Human Services has approximately 2000 employees and a 14% turnover rate. This means we can expect to have approximately 280 vacancies per year. Our ability to utilize salary rollup in a flexible manner to meet unusual needs is a necessary tool if we are to maintain critical client services.

It is for these reasons that the Department is in opposition to House Bill 1174. Thank you for the opportunity to speak with you; I would be happy to answer any questions you might have.

TESTIMONY OF
MAJOR GENERAL DAVID A. SPRYNCZYNATYK
THE ADJUTANT GENERAL
BEFORE THE
SENATE APPROPRIATIONS COMMITTEE
FEBRUARY 26, 2007
ENGROSSED HOUSE BILL 1174

Good morning Mr. Chairman and members of the Committee. I am Major General David Sprynczynatyk, the Adjutant General of North Dakota. I apologize for not being with you today, but I have to be in Washington, DC, meeting with fellow Adjutants General working to address our nation's mobilization and deployment policy for our National Guard.

I present this testimony to you in opposition to HB 1174. Having had the opportunity to serve as the head of three state agencies over the past 18 years, I have on many occasions personally experienced the difficulty of recruiting and retaining quality employees in state government. HB 1174 would take away one of the most important tools available to agency managers; the availability and flexibility to manage the fiscal resources appropriated to the agency by the legislature to effectively manage the agency's work force.

From 1989 through 2000, I was the State Engineer and the Secretary of the State Water Commission. From 2001 to 2006, I served as the Director of the Department of Transportation. Since August of 2006, I have served as the Adjutant General of the North Dakota National Guard. In every instance it was a constant struggle to maintain a quality workforce and I do not recall there ever being a time where we were at 100% of our authorized strength. Turnover, the difficulty in hiring new employees and, in many instances, the inability of the agency to be competitive in the market, all contributed to the problem. At no time was a vacancy ever held open in order to bank salary dollars and give salary increases to others.

In the dynamic labor market that exists in our state and nation it is more and more difficult than ever to be competitive. As new employees are sought, upward adjustments have to be made to salary offers at the entry level. This has the domino effect of leading to compression of salaries at all levels in the agency. This then requires salary adjustments to be made in many areas in the agency. Often the only dollars available are those resulting from temporary vacancies within the agency.

One of the most graphic examples of this problem is in the hiring of engineers and engineering technicians. Due to the high demand for engineers and engineering technicians, it is not uncommon for entry level salaries to increase 10% a year, which creates inequities for others in the agency that were hired just a year or two before. Having left the Department of Transportation just six months ago, I am well aware of the challenges. Because of supply and

demand and the ever increasing entry level salaries in the market, there exists today nearly 25 vacancies for engineers and engineering technicians. Situations like this exist in many areas; within the office of the Adjutant General we are experiencing this same problem with State Radio where today, more than 10% of the dispatching positions are vacant.

Another benefit of being able to manage and utilize salary funds accruing through attrition is being able to reward outstanding performance. In the past, additional funds for performance and merit adjustments have not been appropriated to agencies. Being able to use funds from attrition has allowed us to recognize performance and retain valuable employees.

A significant area of concern is how HB 1174 may affect bonuses. As an agency manager it is critical that we have the flexibility to provide, as authorized by state law, performance bonuses, recruiting bonuses, and retention bonuses. It was the 2001 Legislative Assembly that had the foresight to recognize how valuable these three tools would be in providing the ability to attract and retain quality employees in state government. No additional funds have ever been provided to utilize these tools; the only funds available are those that accrue to the agency through attrition and the vacancy dollars that may result.

Mr. Chairman and members of the Committee, these are just a few of the concerns regarding HB 1174 and I recommend to you a do not pass on HB 1174.

STATE AUDITOR
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**TESTIMONY BEFORE SENATE
APPROPRIATIONS COMMITTEE**
February 26, 2007

Engrossed House Bill No.1174

Testimony----Presented by Gordy L. Smith, CPA
Office of the State Auditor's Office

Chairman Holmberg and members of the Senate Appropriations Committee, I am here to testify in opposition to HB1174. Since this bill was hog-housed in the House, this is the first public hearing on the bill in its present form. It's unfortunate that this was the case since this bill, if passed, will have long term negative effects on state employees.

State agencies do not want turnover because it inevitably negatively affects the efficiency and effectiveness of agency performance. It is expensive and inefficient to constantly train new employees and agencies can't help but lose productivity during the learning curve a new employee experiences. Many of the functions we have in the State Auditor's Office have deadlines attached to them. For example, the deadline for our audit of the federal funds received by North Dakota is established in federal law. When we have turnover, we cannot just push the deadline back. Instead, other employees must pick up the slack not only during the hiring process, but also afterwards while the new employee is trained. Therefore we use some of the general funds resulting from the turnover to provide modest increases to our employees to recognize their additional effort. We do not and could not use all of this money to provide huge raises because we could not sustain that salary level in the next biennium. Our office has approximately 38 positions funded by state general funds and we are projecting a general fund turn back from salaries of approximately \$140,000 this biennium. That is a lot of salary money to a relatively small agency like ours. If we had been using our turnover salary moneys to provide huge raises as some people would have you believe, we would not be able to turn back such a large sum of general funds.

Sometime during the past 2-3 legislative sessions, legislators saw the wisdom of allowing state agencies to provide bonuses to their employees under certain guidelines. HB1174 will effectively eliminate this tool for state agencies to reward their employees. The Legislature did not provide any funding related to bonuses and as a result, agencies like ours use some of the monies from turnover to provide bonuses to the high performers on our staff. Bonuses represent a win-win situation for state agency

managers as they allow us to reward high performing employees but they do not become part of the base salary for the next biennium. If HB1174 passes, you might as well repeal the statutes dealing with bonuses too because agencies like ours will not be able to use them as we would have no funding.

HB1174 is a classic example of a solution looking for a problem. Presently if an agency has a vacancy for more than six months they must receive approval from the Governor's Hiring Council before filling the position. According to OMB, in 1993 there were 439 requests to fill positions that had been left vacant for more than six months. In 2006 there were 55 such requests or a decrease of more than 87%. According to the Human Resources Management System if we exclude the University System and the Legislative and Judicial branches, there are approximately 7,000 state employees. Therefore less than 8/10's of 1 percent of state positions were left open for more than six months during 2006. I'm sure in many cases there were valid reasons for positions being open this long, such as problems filling certain professional positions. The facts support the conclusion that the "urban legend" of agencies purposely holding positions open for long periods of time is simply not true.

State employees are left to wonder why the Legislature has seen fit to grant certain state entities like the University System and Workforce Safety and Insurance more flexibility through such things as single line item appropriations while legislation such as HB1174 reduces flexibility for the rest of us in state government. How have those state entities demonstrated the ability to better manage themselves and their salary monies than the rest of state government?

Like many state employees, I felt some pride in the fact the Legislature saw fit to pass the employee compensation bill as one of the earliest bills this session rather than what has historically been done. We heard legislative leaders tell us the message they were sending was that state employees are number 1 and that our hard work and loyalty were greatly appreciated. Well exactly what message is the Legislature sending to state employees if it passes HB1174? We appreciate your loyalty and hard work but we can't trust your agency management to administer your budgeted salary dollars appropriately? You have earned your 4% annual raises, but you don't deserve a chance to be rewarded with a bonus? These are hardly the messages that state employees and their management deserve. I'm hoping this committee will recognize the adverse long term effect this bill will have on state employees and the operation of state government. It will increase turnover and make it difficult if not impossible to operate state government as efficiently and effectively as it is now.

I urge you to kill this bill and avoid watering down the message you sent to state employees when the compensation bill was passed.

Thank you for the opportunity to testify before you, I will gladly stand for any questions you might have.



NORTH DAKOTA
PUBLIC EMPLOYEES ASSOCIATION

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OF TEACHERS LOCAL 4660 AFL-CIO



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TESTIMONY OF JODEE BUHR
ON HB 1174
BEFORE SENATE APPROPRIATIONS COMMITTEE
FEBRUARY 26, 2007

Good morning Chairman Holmberg and members of the Senate Appropriations Committee. My name is Jodee Buhr, Executive Director of the North Dakota Public Employees Association, AFT Local #4660. NDPEA is opposed to HB 1174 and believes that if passed, an agency's ability to operate effectively and efficiently would be greatly hindered. As you know, agencies are facing challenges in recruiting and retaining quality employees due to salaries lagging the market, the shortage of workers in our state, and the increasing competition for qualified workers in our State. NDPEA would like to thank you for your support in passing the salary compensation package for State employees. Combined with the salary increase passed last Legislative Session, this salary package is a step in the right direction of bringing the salaries of our State employees more in line with the market, however, we still have work to do and must recognize that agencies still face challenges in recruiting and maintaining quality employees.

HB 1174 works counter to everything we have been working toward. We have all seen the data that supports the challenges agencies are facing in attracting and retaining quality

Quality Services from Quality People

Testimony

employees in our State. In considering HB 1174, we must acknowledge that there are times when State agencies are faced with the challenge of vacant positions – but **not because they choose to have vacant positions**, rather because of the reasons previously mentioned. It is imperative that you understand that agencies do not ask to have vacant positions, they do not create vacant positions, and frankly, most agencies would prefer not to have vacant positions. The truth of the matter is that when an agency has a vacant position, they are still required to carry out the services and duties assigned to the vacant position, while they are in the process of trying to fill the vacancy. What are an agency's options when they are faced with the challenges caused by a vacant position? The agency will obviously begin the process of trying to hire someone to fill the vacant position. If an agency is fortunate enough to have the funds available to attract a qualified candidate, the agency's first choice is to fill the position. However, if the agency does not have the funding necessary to fill the vacant position and/or based on the nature of the skills, education and experience required, the qualified candidate pool is limited or nonexistent, the agency must then work on an alternate plan to provide the services assigned to the vacant position. Most often, the "alternate plan" is that other employees in the agency are asked to step up and take on more responsibility - and they do! When you drive by the Capitol late at night and see lights on in the windows of the Capitol, it is because these employees, who have accepted additional responsibilities, are working. When we drive on our roads that have been plowed, it is possible that it is an employee who has taken on additional duties that has made sure that our streets are safe for the citizens of our State. When an employee is willing to accept additional responsibilities, in an effort to help the agency, NDPEA strongly believes that they

should be compensated for their dedication and commitment. The funds designated to the vacant position are the very funds an agency should use to compensate the employees who have taken on additional duties. We believe that an agency needs the ability to use these funds to continue providing the services required and that employees who are willing to take on additional duties, deserve to be compensated for this.

Passing HB 1174 will not prevent vacancies from occurring, however, it will greatly limit an agency's ability to continue to provide services and more importantly, prevent them from compensating the hard-working, dedicated employees who have and continue to take on additional duties.

There might be a point in time where an agency realizes that they may not be able to fill the vacant position and the "alternate plan" might need to become permanent, i.e., the employees who accepted additional responsibilities may be asked to continue to perform the additional duties on a permanent basis. If this occurs, it is important to remember that the agency did not ask for the vacancy and it would be their preference to fill the position. However, if they cannot fill the position, they must continue to provide the required services and to do this, they must have the ability to administer their salary funds.

It is also important for you to be aware that there is a reporting mechanism in place that provides oversight and accountability of vacant positions. State agencies are required to complete a *Vacant Position Listing Report* and submit the report to the Legislative Council. This report contains information on the number of vacant positions, length of

time the position has been vacant, and the agency's plan to fill the position. This report should provide you the information you need regarding vacant positions in State agencies.

NDPEA urges a Do Not Pass on HB 1174. This concludes my testimony. I would be happy to answer any questions you might have.

**TESTIMONY BEFORE THE SENATE APPROPRIATIONS COMMITTEE
REGARDING HB 1174, RELATING TO PROHIBITING EXECUTIVE
BRANCH AGENCIES FROM FUNDING SALARY INCREASES
THROUGH THE USE OF FUNDS DUE TO VACANCIES**

**February 26, 2007
ND OFFICE OF MANAGEMENT AND BUDGET
PAM SHARP, DIRECTOR**

Mr. Chairman and Committee Members, I am Pam Sharp, Director of OMB. I am testifying today in opposition to HB 1174 which was hog-housed and sent to the Senate for consideration.

HB1174 as it now stands would severely cripple the ability of state agencies to manage their workforce in this time of staffing crisis. To fully understand our position, let's start at the beginning and analyze why agencies have vacancies. Agencies have vacancies because of a variety of reasons: tight competitive labor market, state salaries lagging the market, limited availability of qualified applicants in certain occupations, and inability to recruit to certain areas of the state, to name a few. Agencies do not intentionally create vacancies to roll-up dollars for other purposes.

The average State turnover rate during 2006 was 10.6%. Some occupational groups were significantly higher, for example 16.5% for medical and health occupations and 14.5% for social services. It is extremely costly to recruit and train staff. Therefore agencies need the flexibility to manage effectively when vacancies occur. The bottom line is this-even though agencies experience turnover and difficulty in filling positions, agencies are required to carry on the business of the State and deliver services to the taxpayers regardless of staffing issues. Therefore, it is sometimes necessary to reassign work and authorize temporary pay adjustments for existing staff who are asked to assume additional duties during the period of a vacancy. **HB 1174 does not allow a temporary pay adjustment to employees who take on additional duties during short-staffed periods.**

When vacancies occur, agencies do not automatically proceed to fill those vacancies. We have seen agencies analyze their business operations for opportunities to reorganize for more efficiency or to realign their business processes for more effective delivery of services. This may mean not filling a position or not filling it at the same level. Sometimes a decision not to fill a

position is due to an agency's difficulty in recruiting a new employee. Any of these situations may result in reassigning work to existing staff and then providing a nominal responsibility/workload pay adjustment. Enhancing workers jobs often has multiple benefits: efficiency, providing new challenges and motivation to workers, and incentives to meet succession needs. Responsibility/workload adjustments within a division or program may also be necessary due to new initiatives, expanded service, or unfunded mandates. **HB 1174 would prevent pay adjustments to employees who take on additional responsibility or workload.**

In our current job market, recruiting replacement staff due to vacancies, in recent years, often requires salary offers above the minimum of the respective salary range. As this occurs, existing staff salaries within the same grade, particularly those with 5-7 years tenure, become compressed creating equity problems with newly hired staff. Managers need the flexibility to offer equity adjustments to retain staff when salaries are markedly behind the market. **HB 1174 would prevent managers from addressing critical staffing shortages.**

State government is experiencing the effects of an aging workforce. As baby boomers retire, it is imperative that agencies plan for succession of employees to maintain the state's knowledge-base. Agencies' abilities to reorganize and ultimately find efficiencies are hampered if they are not able to offer incentives like workload or promotional adjustments. **HB 1174 would prevent agencies from funding those necessary changes.**

In 2001, the legislature gave agencies the authority in NDCC 54-06-30 & 31 to give recruitment, retention, and performance bonuses to their employees. HRMS has regularly reported to designated legislative committees the bonuses given and the effectiveness of the program. In 2005, the legislature removed a sunset provision thereby making the law permanent. **HB 1174 may prevent the continuing use of the very effective bonus incentive programs.**

In 1993, the legislature enacted NDCC 54-06-24 providing a Suggestion Incentive Program that has saved state agencies thousands of dollars and returned 20% of the initial documented savings to the suggesting employees. Suggestion incentive awards are paid from salary and wages because taxes must be withheld. **HB 1174 may prevent the continuation of the Suggestion Incentive Program.**

Administrative Rules provide for agency salary administration procedures. These rules outline the parameters agencies must follow regarding classified worker salary adjustments that occur during the interim. The Administrative Rules clearly define responsibility/workload,

equity, probationary, reclassification, performance, and promotional adjustments and recruitment and retention bonuses. Not unlike private sector business, state government must effectively deal with these same employee issues that occur. Agencies must fund these adjustments through roll-up because they are not funded anywhere else in their budgets. **HB 1174 would prevent necessary salary administration adjustments to manage their human resources.**

For agencies with federal funding any unspent dollars would not benefit the general fund and may possibly result in loss of federal funds.

The Governor's Hiring Council requires agencies under the Governor's jurisdiction to obtain approval to fill positions that have been vacant for longer than 6 months, are new or were created through reorganization, or have substantially changed duties. Our experience is that agencies have thoroughly scrutinized their need to fill positions before those positions are filled.

HRMS staff is here to discuss specific examples of how HB 1174 would negatively impact agencies.

HB 1174 is not supportive of efficient and effective government. I strongly urge a DO NOT Pass on this Bill.