2011 HOUSE JUDICIARY

HB 1187

2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1187
January 17, 2011
12959

☐ Conference Committee

Committee Clerk Signature D. Penrose

Minutes:

Chairman DeKrey: We will take a look at HB 1187.

Rep. Brenda Heller, sponsor, support. Basically this bill changes the membership of the ND Racing Commission. It takes off a member of the ND Thoroughbred Association and it puts on the Owner and Breeders Association member.

Rep. Delmore: Is there an actual owner and breeders association right now.

Rep. Heller: Yes there is, it's called TOBA.

Chairman DeKrey: Thank you. Further testimony in support.

Rep. Gary Kreidt, sponsor, support. This deals with the membership on the Racing Commission. I'll state for the committee that I'm no expert on the Racing Commission or members on the Commission. I have some individuals in my district that asked me to introduce the bill and I was honored to do that. At this point, I will have the individuals that are interested in the bill, pro and con, discuss that before the Committee.

Sen. Randy Christmann, sponsor, support. I think we are going to have to gather the information from the supporters.

Chairman DeKrey: Thank you. Further testimony in support.

Lee Harsche: Support (attached testimony 1).

Rep. Delmore: I have a question about the appointment of the members. First of all, is there a reason that you have the Thoroughbred Owner and Breeders Association, rather than the official name of what that association is.

Mr. Harsche: In the state statute, it was our understanding that like all the other three organizations it only refers to their national or international association, or state

affiliate; it never names a specific state association. The Thoroughbred Owners and Breeders Association is the national affiliate for Thoroughbreds.

Rep. Delmore: Would there be some confusion in who could nominate and what type of list would be generated for one person, is there a handy list that all the thoroughbred owners and breeders could easily vote or whatever to establish who would be on the commission.

Mr. Harsche: That would be done within the association itself.

Rep. Klemin: It seems like the main change that is being made here, is that instead of the Governor appointing everyone other than the chairman. The Governor would continue to appoint the chairman under this bill; but instead of the Governor appointing the other members of the Racing Commission, these four associations would actually do the appointing of those other 4 members, rather than the Governor, is that correct.

Mr. Harsche: That's correct.

Leigh Backhaus: I am a representative of ND TOBA, not just TOBA but I'm also a Horsemen's Advisory Council member. The Horsemen's Advisory Council members, I talked with all of them personally about this before we entered this. We all agreed that it needs to be changed. The main reason is that in the past, the Horsemen's Advisory would decide on something unanimously and then take it to the Commission and it wouldn't even make it on the board. We have no representation. This is probably the 4th session I've been here, and I'm still saying the same thing. There's no checks and balances in this organization. This is one little step towards that. If you've any other ideas on how to enforce checks and balance, we're open to suggestions. The Horsemen's Advisory Council would love some help. As Lee stated, we've got an industry that's run by good people, but who don't know anything about it. I wouldn't hire anyone of you to shoe my horses, but the state hires these people for "$70 a day" to run our industry. It's a disaster and it has been and will continue to be until things change.

Rep. Delmore: I have a question on the terms themselves, why one begins with a one year term, then a two year term, are they only eligible for one five year terms after that. Can they serve for life, what's your intention on that.

Mr. Backhaus: I never thought of that, but if they want to serve for life and they are doing good work, as far as I'm concerned, it's a public service and they can continue doing it.

Rep. Koppelman: You indicated that people on this Commission should be people who understand the industry, but as Rep. Klemin pointed out, I think that's already part of the law, that the nominations have to come from those folks. Right now the Governor appoints, but he appoints from a list provided by those organizations. This

change would mean that the organizations make the appointment directly. The list of people still comes from each of those groups.

Mr. Backhaus: If I'm right, that's only for a few of the people on the board and not for the rest of us.

Rep. Boehning: I'm confused here, you're talking about checks and balances. What kind of recourse would the Governor have to remove one of these other four officers that are appointed by some other board that he would have no control over. So if there was a problem with Racing Commission, with these associations having appointed their members, and all of a sudden something goes wrong, and there is an error in accounting, and all these board members are involved. How do we get rid of a board member in that situation where the Governor couldn't take and remove one person.

Mr. Backhaus: Just like now, the Governor is still the boss. In the past, when there have been problems, the Governor is alerted and sometimes he turns a deaf ear. We know, as horsemen, that there are things that have happened and will continue to happen, that are not legal, not in the statute, not according to law. We have no recourse to do anything now, we can holler to the Governor, we can stand here in front of this committee and ask for help. But until we have some sort of step, some sort of operation to say that this is being done wrong, who do we go to, who we go to next. Until we have that, it just continues. There's absolute power in this organization.

Rep. Boehning: One of the concerns I have is maybe our language needs to be stronger, where the Governor can remove a board member a lot easier; it would be easier to remove board members whatever it would take. To have an association out there appointing to a state board as the sole appointer, I would have a problem with that. I don't know how all the rest of the boards work in the state, but I think the majority of them are appointed by the Governor.

Mr. Backhaus: It would still have to be approved by the Governor.

Rep. Boehning: It doesn't really say that in here. The Chairman is appointed by the Governor and then the rest of them are appointed by the affiliate or the chapter.

Mr. Backhaus: That's why we're here, if we need to put that in there, we can. I'm not perfect, I don't know how to do it all. On line 14, 15 and 16, when I first brought this in, this was changed that a personal financial interest could be a member of the commission. We're still asking that someone from the industry could at least try to maintain his own industry. Right now, we can leave it as it is. In the future, we are going to go after this because doctors and lawyers regulate their own industry, why can't horsemen.

Rep. Klemin: I guess you raise an interesting question here with your last comment. It seems to me that I understood the whole intent of this would be that these four associations would be appointing someone from within their organization and not an outsider. But someone from their own organization would probably have a financial interest in racing. Maybe on page 2, lines 14-16, we might need to take that language out in order to be consistent with the intent of this bill.

Mr. Backhaus: That would be so great.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition to HB 1187.

Winston Satran, Director, Racing Commission: We are opposed to this bill (see attached 2).

Rep. Klemin: Can you tell us what the reason is for a commissioner not to have any financial interest in racing, in order to be on this commission. If we took this bill the way it is now, it looks like we would have to delete that language on page 2, where it says you can't have a financial interest in racing, what's the reason for that.

Winston Satran: People who own race horses and race them may have adjudication by one of the stewards at the race, and if they don't agree with the steward's decision, which could require a fine, a suspension from racing, they can appeal to the Racing Commission. If they were a direct member of one of these associations, a close associate, or even the person who is being penalized and they were on the commission, they could certainly sway the other commissioners to overlook their infraction.

Rep. Klemin: But they certainly couldn't vote on anything relating to themselves. They would have to recuse themselves from being a party to the decision.

Winston Satran: Yes, they would; but they are part of the adjudicating body and certainly have influence on their fellow members, who are also members of the racing community. It could be someone would overlook this infraction, if they end up with an infraction in the future. I think it clouds the issue tremendously.

Rep. Klemin: You're speaking directly to the integrity of the other commissioners, now and you're suggesting that they might not have that type of integrity.

Winston Satran: I'm speaking about the influence from one issue to the other. The other significant part of it is the Racing Commission makes awards to the Racing Associations. They make Breed Fund money awards, awards for their in-state races, and there can certainly be a favoritism going one association to the other. I think that spells out the reason for independent commissioners on the board, that they aren't tied to racing.

Rep. Delmore: At the present time, can the Governor remove one of his appointees.

Winston Satran: Yes, that's my understanding.

Rep. Delmore: Secondly, how do the terms work now; how long if I'm appointed to the Racing Commission can my term be, if I'm good at it, can I be there for life.

Winston Satran: It is a one five-year term.

Rep. Steiner: What is the frustration that seems to be with some of the members of this horse industry. Why the frustration.

Winston Satran: I think that anybody who has followed horse racing in the past 10 years in ND has seen the heights that it has risen to and money flowing into the state; the legal problems that have taken place; and now rebuilding from rock bottom. It hasn't been a pleasant time after the Susan Bella incident, and money leaving the state and now we're in the process of working back through that financial problem and making it financially stable again.

Rep. Koppelman: Having sat through some of that over the years, in the statute we're looking at that the bill would propose to amend. How much of that, if any, was in reaction to some of the problems in the industry and meant to clean some of that up or is this old language that we're looking at.

Winston Satran: I don't think any of this language has anything to do with the past difficulties in horse racing.

Rep. Koppelman: Just to clarify, I'm not asking about the bill, I'm saying the statute that we're looking at, has that been on the books for quite a while, or did some of those provisions come in after some of the problems occurred.

Winston Satran: I think the statute was written in 1987.

Chairman DeKrey: Thank you. Further testimony in opposition.

Scott Horst, VP of Thoroughbred Association: I have been a member of the Thoroughbred Association since 2000. Our Association has been around since 1965. We are 78 members strong, Montana, Canada, Minnesota, North Dakota, and South Dakota. I'm against the lining out of the North Dakota in this bill; which represents the ND Thoroughbred Association and as you heard the statute has been around since 1987. We've been there, we've been through this and the members of the Thoroughbred Association, that's all we do, is recommend someone to the Governor's office to be interviewed, of course, and the Governor is the one that appoints the members. We are just here to help and Mr. Satran is doing an outstanding job. Without him, the Thoroughbred Association wouldn't be where

we're at right now and we're going up. The future of horse racing in ND is going to be, in the next few years, very good.

Rep. Klemin: Just to try and get the terminology correct, we are focusing on page 1, line 21. The way it reads now it says, state chapter or affiliate of the ND Thoroughbred Association. Is there a state chapter or affiliate of the ND Thoroughbred Association.

Scott Horst: We are a non-profit organization.

Rep. Klemin: So there is no such thing as a state chapter or affiliate of the ND Thoroughbred Association. There is only the ND Thoroughbred Association, correct.

Scott Horst: Correct.

Rep. Klemin: Those words, state chapter or affiliate seems a little out of place. Then going on to the rest of the name, the proposal is to change it to the Thoroughbred Owners and Breeders Association. Is that the correct name or is that different.

Scott Horst: That is not the correct name. That is not our association. Our name is ND Thoroughbred Association. This looks like TOBA to me, so that means they would have to make a recommendation to the Governor.

Rep. Klemin: So the way you understand this, this is a completely new organization that would be making this appointment, not current ND Thoroughbred Association.

Scott Horst: It is the ND Thoroughbred Association's recommendation to the Governor's office.

Rep. Klemin: Right now that's the case. If we make the change that is proposed in this bill, then it would be a different organization.

Scott Horst: Yes.

Rep. Klemin: So it wouldn't be you any longer it would be somebody completely different.

Scott Horst: Yes.

Chairman DeKrey: Thank you. Further testimony in opposition to HB 1187. We will close the hearing. What is the committee's recommendation in regard to HB 1187.

Rep. Kretschmar: I move a Do Not Pass.

Rep. Delmore: Second.

Rep. Maragos: As you will notice, the Arabians weren't here, the Horsemen's Advisory Council was not here asking for this, there's a couple of people who just want to control everything, and if they can't, they keep coming back to get us to do something. That's just the way it is, we've seen it before. I think the organizations that didn't show up speak for itself.

Rep. Delmore: I think we've finally got the Racing Commission and the director going in the right direction. I don't think we want to mess that up at this point in time.

Chairman DeKrey: Clerk will call the roll on a Do Not Pass on HB 1187.

13 YES 1 NO 0 ABSENT DO NOT PASS CARRIER: Rep. Kretschmar

Date: 1/17/11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1187

House JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☑ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Kretschmar Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey		✓	Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Guggisberg	✓	
Rep. Beadle	✓		Rep. Hogan	✓	
Rep. Boehning	✓		Rep. Onstad	✓	
Rep. Brabandt	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos	✓				
Rep. Steiner	✓				

Total (Yes) 13 No 1

Absent Ø

Floor Assignment Rep. Kretschmar

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

REPORT OF STANDING COMMITTEE

HB 1187: Judiciary Committee (Rep. DeKrey, Chairman) recommends **DO NOT PASS** (13 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). HB 1187 was placed on the Eleventh order on the calendar.

2011 TESTIMONY

HB 1187

Chairman Dekrey, and Distinguished members of this Committee:

My Name is L.J. (Lee) Harsche, I raise and race Thoroughbred Horses here in ND.

I am here to speak in favor of HB 1187

First off, this bill is in no way meant to infer in any way that the current North Dakota Racing Commission is not comprised of anything but intelligent, good people in their own fields of expertise. This fact is evidenced by the Honorable Representative Maragos on this committee who also serves on the ND Racing Commission.

It is however intended to give control to the Horse people in this Great State over the industry that many of these highly successful individuals have, in some cases, hundreds of thousands of dollars invested in. In short the current system is not responsive to the Horse Racing People, "ND Horsemen's Advisory Council" nor North Dakota Horse Racing in general. Legal Boards are not manned by Architects, and Medical Boards are not manned by Farmers and Ranchers, so why not have The North Dakota Racing Commission manned and put in place by the people "most" affected by it? These Horse Racing people are highly intelligent, successful individuals who keep up to date, usually on a daily basis, on the changing issues of Paramutual Horse racing Nationwide. One cannot be expected to do justice to this industry by getting updated once every two or three months like the System setup now does with the current Racing Commission and their part time interest. Many of the Horse people are extremely successful not only in Horse Racing Industry but in many other fields of endeavor, from Farming & Ranching to Small and Large Business ventures and on and on. In my case I was a Rancher and feed lot owner/operator and also served on Local, State and National Boards as President and CEO.

Last but not least is the correction requested in the one Racing Breed wordage of this statute. All of the other three racing associations are listed as the affiliate of their National or International Racing Associations. An example of this is the American Quarter Horse Association is the Breed Registry Association for Quarter Horses; The American Quarter Horse Racing Association is the Horse Racing Branch for them. You will note that in ND statute it refers to the American Quarter Horse Racing Association or its state Affiliate. The same type of wordage is true for the other Horse Racing Associations; ND Statute plainly states their National Racing Associations or its State Affiliate except for the Thoroughbreds. The "Jockey Club" is the Thoroughbred Breed Registry and "The Thoroughbred Owners and Breeders Association," better known as TOBA, is the National Thoroughbred Horse Racing Association for the Thoroughbred Breed. Therefore "The Thoroughbred Owners and Breeders Association or its State Affiliate" should be added to the statute instead of a specific state organization. It is also our understanding from other Legislators that ND Statute cannot specifically refer to any specific Private Person or Business within the state, therefor we believe this correction in the Statute wording needs to be changed in order to make this Statute not only consistent but possibly legal.

Thank You for your time. If you have any questions I will be happy to answer them.

L.J. (Lee) Harsche

(2)

House Bill No. 1187
ND Racing Commission
Winston E. Satran, Director
January 17, 2011

62nd Legislative Assembly
House Judiciary Committee
Prairie Room, State Capitol
Representative Duane DeKrey, Chairman

The North Dakota Racing Commission is in opposition to HB No. 1187. Assistant Attorney General Bill Peterson, appointed to act as an advisor to the North Dakota Racing Commission, points out the question of constitutionality of the language in House Bill No. 1187. Mr. Peterson writes, "It may be a violation of separation of powers for the Legislature to give private associations the authority to appoint commissioners. It is unconstitutional delegation of the Executive power to appoint and for the Legislature to give the power to appoint executive officers to private associations. Beyond the constitutional issues, I wonder if it is good policy to allow the parties that are regulated by the Commission to appoint the members of the Commission." The Commission is charged with the responsibility of enforcing the regulations, adjudicate infractions of the rules and awarding grant monies to horse organizations and racetracks. This responsibility should rest with an independent body that does not have an affiliation to any horse or racing organization.

The second issue to be considered in this bill is in SECTION 2. TRANSITION. All unexpired terms of members of the North Dakota racing commission are deemed expired as of June 30, 2011. An individual who is a member of the commission as of June 29, 2011, who is otherwise qualified, may be reappointed to the North Dakota racing commission.

The service on the Racing Commission is an asset to horse racing and to the State of North Dakota. The struggles that the Commission has had in the past decade

make experienced Commissioners a benefit to the State of North Dakota and to horse racing. To give the Commissioners the ability to resign from the Commission before their term is completed would open the door for them to decline further service, thus leaving the Commission without experienced Commissioners.

The North Dakota Racing Commission recommends that the present statute remain intact and deny passage of HB No. 1187.