2011 HOUSE POLITICAL SUBDIVISIONS

HB 1354

2011 HOUSE STANDING COMMITTEE MINUTES

House Political Subdivisions Committee
Prairie Room, State Capitol

HB 1354
January 28, 2011
Job #13626

☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Relating to filling a vacancy in a legislative office and resignation of a member of the legislative assembly.

Minutes: Handout #1

Chairman Johnson: Opened the hearing on HB 1354.

Rep. Kretschmar: I have a strong feeling that members of our legislative assembly should be elected by the people of their districts. That is the normal practice. Up until about 10-12 years ago that was the practice in our state. When there was a vacancy in our seat the Governor called a special election that was held in the district that filled the seat. In 1996 election the people of our state increased terms of members of the House of Representatives to four years from two years. That generated this bill whereby under current law members when there is a vacancy in a legislative seat the district committee of that member's party chooses someone and appoints someone. So then it is legislatures appointed by a dozen or a couple dozen people. I think this bill arose because of the untimely passing of Rep. Clarence Martin. We passed on during a legislative session. I don't think this bill was in effect then but the current law grows out of that situation because the district then did not have a representative for the rest of that legislative session. Under the current bill if a vacancy occurs during a regular legislative session the appointment situation stays in tack under the proposed bill. If a vacancy occurs outside of a regular session then there are two other options under the bill and they would both require an election in that district to fill the seat. Under the first one if there is a legislative session coming up soon the Governor is required to call the special election. If it is a longer period of time as described in the bill then the Governor may call a special election to fill the seat. We meet every two years on the odd number of year and it would seem to me if a vacancy occurs in March of an even number year that it would really not pay for the governor to call a special election because the primary is coming up and the political process is in place and that district could fill that seat when the general election comes along in November of the even numbered year. The system has been in use no 10 or 12 years and there have been several appointment and there have been persons appointed to the legislative assembly that have never served in a session'; they have not survived in an election.. There was one instance when a person was defeated in the primary election before even

taking a seat in the legislative assembly so I firmly believe that all North Dakota's like to elect their people.

Rep.Devlin: I remember all the debate at the time we did this. At the time of Rep. Martin's death counties were concerned about the expenditure for elections and not having people there during some of the intern process depending on whether the governor called a special election or not so there was a number of factors that entered into it. Do you think the concern of the county auditors on costs is a concern yet?

Rep. Kretschmar: that was certainly one of the factors, I believe, but when we look at our system of government democracy does not always come inexpensive. In order for the people to express their opinions or views on candidates I firmly the elected process is much better than the appointed process. ND operated over a 100 years with people in the legislature being elected.

Rep. Mock: Is the cost per vote in a special election is it about the same as it would be for a primary or general?

Rep. Kretschmar: It of course will depend on the number of people that go to vote in a special election. I don't have any figures off hand. I am sure Sec. of State or his office can try to answer some of those questions.

Opposition:

Al Jaegar, Secretary of State: (See handout #1). I passed out the legislative history for your information. In 2003 the law was amended and essentially the amendment there covered the situation Rep. Kretschmar mentioned where an election could be held under certain circumstances. My concern is more from an election administration standpoint. On Page 2, line 21 it talks about if there is a resignation. If there is a regular session of the legislative assembly between the times the vacancy occurs and the next general election there shall be a rite of election issued. On December 3 Rep. Carlson received a letter from Sen. Lindens. He resigned effective December 1. Based on this law an election would have to be called. You have to allow parties enough time to even come up with candidates and under state law you need to have at least 60 days. So assuming that on Dec. 1 we allow the parties one, two or three weeks and then add 60 days to that then you have a canvassing board that legislature would come on board about late March or early April.
Why the 800 and some days are in there; that is a calculation based on when the general election takes place adding in 60 days and adding in time for the political parties to secure candidates so you do not have a situation where a legislative district goes unrepresented.
Vacancies have occurred with both parties and in some cases the persons appointed could not win in the following election. There are at least two members of the current legislature that did ultimately win election. All of you received a certificate that was signed by the state election board. We know the partisan stuff so the party that didn't have the appointment could force an election. I suspect the reason it has not happened is they look at the calendar and know under current law that is going to be on the ballot so why force an election. I think this law has worked right well.

Rep. Klemin: Where does the 828 days has been determined?

Al Jaeger: It is a calculation that starts at the election. It build's in the time before that following general election goes through and the absolute next general election and then it adds the 60 days and the extra time so that is how it gets to be the 828 days. When what was done in 2003 if you get to a certain point the people could force a special election to take care of this.

Rep. Hatelstad: If I get this correct in 2003 if there was a vacancy the 3rd of December we could make an appointment to start the term and at some point down the road we could mandate a special election.

Al Jaeger: there is an election in 2012 so when the vacancy is filled by appointment that person has to run in the next general election even though it might be midterm.

Rep. Hatelstad: We will accept the fact it is too late to hold an election so we allow the appointment to stand. May 1st I want a special election; could we do it that way rather than wait until the next general election?

Al Jaegar: If you look on the last page of my handout that is what covers that in the 2003 change. That is what was put in to allow a special election to be done. Parties tool with the idea and there is no session; they come in and do the intern committee and they haven't made it through the election. We are not going to force it.

Neutral: None

Hearing closed.

2011 HOUSE STANDING COMMITTEE MINUTES

House Political Subdivisions Committee
Prairie Room, State Capitol

HB 1354
February 4, 2011
Job # 14026

☐ Conference Committee

Committee Clerk Signature

Minutes:

Chairman Johnson: reopened the hearing on HB 1354.

Do Not Pass Motion Made by Rep.Devlin: Seconded by Rep. Koppelman:

Discussion:

Rep. Kretschmar: I will oppose the motion that is on the table now. I think the system we have currently for replacing legislative vacancies is not the best that we could devise. I think the people of our state are entitled to vote for their representatives and senators and even where a vacancy occurs there should be in most cases and election. The bill before us does not change the law when the vacancy occurs during a regular session. The law originally came about because the untimely death of Rep. Clarence Martin in the 1997 session. It is not a good system whereby a member of the legislative session is chosen by a small group of people. It should be done by a special election. Under our current system the party not of the legislature how has left the legislature gets to chose the successor and I think that is unfair to the other major party that should have a shot at putting someone in place by election. I believe people in our districts would like to have an election, even though it would have to be a special election. Under this bill it would be up to the Governor to call the special election on behalf of that district. We have used this system for 10-12 years now. There have been instances of people being appointed to the legislature and then not surviving an election. I think there was one instance where a person didn't even survive the primary.

Rep. Maragos: I too will resist the do not pass motion. I think with the modernization of elections and the mail in voting I think we can keep the cost down and still allow the voters of a district to have a say in who they get have them represent them so I would also joint Rep. Kretschmar.

Rep.Devlin: I was here at the time this was originally done and part of it was the expense and it shouldn't factor in but it does particularly in the rural areas. At the time we did this they were supposed to have five special elections in my district; estimating it costing about $5000. per county so it was about $25,000 to fill the spots. When Clarence Martin died that created a lot of problems for the district and for the voters of that area. Even under today's standards the expense would be $2700 - $3000 and two of mine have to vote. I think in 2003 the legislature gave the people of the district the opportunity to put it to a vote if they

wanted to by allowing them to partition for a special election. They could partition the governor to fill that vacancy and for a special election. I think the people have the opportunity to do a vote if they want. I think we are creating some unnecessary expense for the property tax payers and that is why I believe a do not pass is appropriate.

Rep. Koppelman: Have we had resignations since that this.

Rep.Devlin: Senator Landaus resigned the first part of December and they went through the process there and filled that vacancy. I think the system by enlarge is working well.

Rep. Kretschmar: I don't think under this bill that it would necessarily call for a special election in every instance. It would be up to the Governor to decide whether there would be. If a vacancy occurred in March or April of even number year, of an election year, there the elective process could go forward. It would work by due process. It doesn't necessarily mean there would be a lot of expenses in districts where an election doesn't occur. It might happen in some districts there would be a special election, but I don't think that would be a universal occurrence and there are not a great deal of resignations either.

Do Not Pass

Vote: 7 Yes 5 No 2 Absent Carrier: Rep.Devlin:

Hearing closed.

Date: 2-4-11
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1354

House Political Subdivisions 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 Devlin Seconded By Rep K. Koppelman

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson	✓		Rep. Kilichowski	✓	
Vice Chairman Hatelstad	✓		Rep. Shirley Meyer		✓
Rep. Beadle	✓		Rep. Mock		✓
Rep. Devlin	✓		Rep. Zaiser		✓
Rep. Heilman		✓			
Rep. Klemin	✓				
Rep. Koppelman	✓				
Rep. Kretschmar		✓			
Rep. Maragos		✓			
Rep. Pietsch	✓				

Total (Yes) 7 No 5

Absent 2

Floor Assignment Rep. Devlin

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

REPORT OF STANDING COMMITTEE

HB 1354: Political Subdivisions Committee (Rep. N. Johnson, Chairman) recommends **DO NOT PASS** (7 YEAS, 5 NAYS, 2 ABSENT AND NOT VOTING). HB 1354 was placed on the Eleventh order on the calendar.

2011 TESTIMONY

HB 1354

CHAPTER 209

SENATE BILL NO. 2230

(Senators Solberg, G. Nelson, Traynor)
(Representatives Devlin, N. Johnson)

LEGISLATIVE VACANCY FILLING

AN ACT to amend and reenact sections 16.1-13-10 and 44-02-02 of the Nor Dakota Century Code, relating to filling a vacancy in a legislative office ar resignation of a member of the legislative assembly; and to repeal sectic 16.1-13-11 of the North Dakota Century Code, relating to the duty of th governor when a vacancy occurs in the legislative assembly.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-13-10 of the North Dako Century Code is amended and reenacted as follows:

16.1-13-10. Vacancy existing in office of member of legislative assemb - ~~Special election to fill.~~ ~~Whenever~~ If a vacancy in the office of a member of th legislative assembly occurs, the county auditor of the county in which ~~such~~ th former member resides or resided shall notify the ~~governor~~ chairman of th legislative council of the vacancy. The county auditor need not notify the ~~govern~~ chairman of the legislative council of the resignation of a member of the legislati assembly when the resignation was made ~~pursuant~~ ~~to~~ under section 44-02-0 ~~Upon receiving such notification, the governor, if there is a session of the legislati assembly between the time such vacancy occurs and the time of the holding of th next general election, shall issue a writ of election directed to the auditor of ea affected county commanding the auditor to notify the several boards of election in th county or district in which the vacancy exists to hold a special election to fill su vacancy at a time designated by the governor. If there is no session of the legislati assembly between the time such vacancy occurs and the time of the holding of th next general election, the special election must be held at the same time as th general election. If the term of office of the member whose office is vacated expir prior to the next session of the legislative assembly, no election shall be held to such vacancy.~~ Upon receiving notification of a vacancy, the chairman of th legislative council shall notify the district committee of the political party that th former member represented in the district in which the vacancy exists. The distr committee shall hold a meeting within twenty-one days after receiving the notificati and select an individual to fill the vacancy. If the former member was elected as independent candidate or if the district committee does not make an appointme within twenty-one days after receiving the notice from the chairman of the legislati council, the chairman of the legislative council shall appoint a resident of the distr to fill the vacancy. If eight hundred twenty-eight days or more remain until t expiration of the term of office for that office, the individual appointed to fill t vacancy shall serve until a successor is elected at the next general election to ser for the remainder of the term of office for that office.

SECTION 2. AMENDMENT. Section 44-02-02 of the North Dakota Centu Code is amended and reenacted as follows:

44-02-02. Resignations of officers - To whom made. The resignation an officer must be in writing and must be made as follows:

1. The governor and lieutenant governor, to the legislative assembly, if it is in session, and if not, to the secretary of state.

2. Any other state or district officer, to the governor.

3. A member of the legislative assembly, to the presiding officer of the branch of which ~~he~~ the individual is a member, when in session, and when not in session, to the ~~governor~~ chairman of the legislative council. When made to the presiding officer, ~~he~~ the presiding officer at once shall notify the ~~governor thereof~~ chairman of the legislative council of the resignation.

4. An officer of the legislative assembly, to the branch of which ~~he~~ the individual is an officer.

5. An elective county officer, by filing or depositing ~~such~~ the resignation in the office of the county auditor, except that the resignation of the county auditor must be filed or deposited with the board of county commissioners. Any ~~such~~ resignation under this subsection, unless a different time is fixed therein, takes effect upon ~~such~~ the filing or deposit.

6. An officer of a civil township, to the board of supervisors of the township, except that a member of ~~such~~ the board shall submit ~~his~~ the member's resignation to the township clerk, and the township clerk forthwith shall give to the county auditor notice of the resignation of all officers whose bonds are filed with ~~such~~ that officer.

7. Any officer holding ~~his~~ office by appointment, to the body, board, court, or officer which appointed ~~him~~ the officer.

SECTION 3. REPEAL. Section 16.1-13-11 of the North Dakota Century Code is repealed.

Approved March 22, 2001
Filed March 22, 2001

HB-1357
#1

CHAPTER 178

2003

SENATE BILL NO. 2405

(Senators Dever, Krebsbach)
(Representatives Devlin, Meier)

VACANCIES IN NOMINATIONS AND LEGISLATIVE OFFICE

AN ACT to amend and reenact sections 16.1-11-18 and 16.1-13-10 of the North Dakota Century Code, relating to filling vacancies occurring in nominations for party office and filling legislative vacancies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-11-18 of the North Dakota Century Code is amended and reenacted as follows:

16.1-11-18. Party committees to fill vacancy occurring in nomination for party office.

1. If a vacancy occurs in any party certificate of endorsement at the primary election for any state or legislative district office, the proper state or district executive committee of the political party may fill the vacancy by filing another certificate of endorsement with the proper officer as provided in sections 16.1-11-06 and 16.1-11-11.

2. If no party endorsement has been made by certificate and a vacancy occurs in a slate of candidates seeking party nomination by petition at the primary election, the proper state or district executive committee may fill the vacancy by filing a certificate of endorsement with the proper officer as provided in sections 16.1-11-06 and 16.1-11-11.

3. If party endorsements by certificate have been made for any state or district office and a vacancy occurs in the slate of persons seeking nomination at the primary election because of the unavailability of the person who is seeking nomination by petition, that vacancy may not be filled except by petition.

4. If a vacancy occurs in a slate of statewide candidates after the candidates have been nominated at the primary election, the proper state executive committee may fill any vacancy by filing a certificate of nomination with the secretary of state. The chairman and secretary of the committee shall make and file with the secretary of state a certificate setting forth the cause of the vacancy, the name of the person for whom the new nominee is to be substituted, the fact that the committee was authorized to fill vacancies, and any further information as may be required to be given in an original certificate of nomination. When such a certificate is filed, the secretary of state shall certify the new nomination and the name of the person who has been nominated to fill the vacancy in place of the original nominee to the various auditors. If the secretary of state already has forwarded the certificate, the secretary of state forthwith shall certify to the auditors the name and address of

the new nominee, the office the new nominee is nominated for, the party or political principle the new nominee represents, and the name of the person for whom the new nominee is substituting. Failure to publish the name of a new nominee does not invalidate the election.

5. If a vacancy occurs in a slate of legislative candidates after the candidates have been nominated at the primary election, the proper district executive committee may fill the vacancy by filing a certificate of nomination with the county auditor of the new nominee's county of residence. The chairman and secretary of the committee shall make and file with the county auditor of the new nominee's county of residence a certificate setting forth the cause of the vacancy, the name of the person for whom the new nominee is to be substituted, the fact that the committee was authorized to fill vacancies, and any further information as may be required to be given in an original certificate of nomination. When the certificate is filed, the county auditor of the new nominee's county of residence shall certify the new nomination to the various auditors affected by the change and to the secretary of state by forwarding to them the name of the person who has been nominated to fill the vacancy in place of the original nominee. The certification must include the name and address of the new nominee, the office the new nominee is nominated for, the party or political principle the new nominee represents, and the name of the person for whom the new nominee is substituting. Failure to publish the name of a new nominee does not invalidate the election.

6. A vacancy in a nomination following a primary election may not be filled according to subsections 4 or 5 unless the nominated candidate:

   a. Dies;

   b. Would be unable to serve, if elected, as a result of a debilitating illness;

   c. Ceases to be a resident of the state or an individual nominated for legislative office will not be a resident of the legislative district at the time of the election; or

   d. Ceases to be qualified to serve, if elected, as otherwise provided by law.

Vacancies to be filled according to the provisions of this section may be filled not later than sixty days prior to the election.

SECTION 2. AMENDMENT. Section 16.1-13-10 of the North Dakota Century Code is amended and reenacted as follows:

16.1-13-10. Vacancy existing in office of member of legislative assembly.

1. If a vacancy in the office of a member of the legislative assembly occurs, the county auditor of the county in which the former member resides or resided shall notify the chairman of the legislative council of the vacancy. The county auditor need not notify the chairman of the legislative council of the resignation of a member of the legislative assembly when the resignation was made under section 44-02-02.

Upon receiving notification of a vacancy, the chairman of the legislative council shall notify the district committee of the political party that the former member represented in the district in which the vacancy exists. The district committee shall hold a meeting within twenty-one days after receiving the notification and select an individual to fill the vacancy. If the former member was elected as an independent candidate or if the district committee does not make an appointment within twenty-one days after receiving the notice from the chairman of the legislative council, the chairman of the legislative council shall appoint a resident of the district to fill the vacancy. If Except as provided in subsection 2, if eight hundred twenty-eight days or more remain until the expiration of the term of office for that office, the individual appointed to fill the vacancy shall serve until a successor is elected at and qualified following the next general election or special election called by the governor according to subsection 2 to serve for the remainder of the term of office for that office.

2. The qualified electors of a legislative district in which a vacancy in the legislative assembly occurs may petition for a special election to be called by the governor to fill the vacancy. The petition must include the signatures of qualified electors equal in number to four percent of the resident population of the legislative district as determined by the last federal decennial census and must be presented to the secretary of state within thirty days following an appointment being made according to subsection 1. If the secretary of state determines the petition contains the required number of signatures of qualified electors of the affected legislative district, the secretary of state shall notify the governor that a special election is required to be called to fill the vacancy. Upon receiving such notice, the governor shall issue a writ of election directed to the county auditor of each affected county commanding the county auditor to hold a special election to fill the vacancy at a time designated by the governor. A special election under this section must conform to the applicable election deadlines found in this title and may be called to coincide with a regularly scheduled primary or general election provided the special election is called by the fifteenth day before the deadline for candidates to file for office before a regularly scheduled primary or general election. A special election under this section may not be scheduled to occur during the time from a general election through eighty days following the adjournment of the next ensuing regular session of the legislative assembly.

3. The secretary of state must be notified of an appointment made by a district committee or the chairman of the legislative council according to this section. Upon notification, the secretary of state shall issue the appointee a certificate of appointment and an oath of office for the appointee to complete and file with the secretary of state.

Approved April 11, 2003
Filed April 14, 2003