

2011 SENATE GOVERNMENT AND VETERANS AFFAIRS

SB 2262

2011 SENATE STANDING COMMITTEE MINUTES

Senate Government and Veteran's Affairs Committee
Missouri River Room, State Capitol

SB 2262
January 27, 2011
13516

Conference Committee

Committee Clerk Signature

Katherine Oliver

Explanation or reason for introduction of bill/resolution:

Relating to the contents of personal disclosure statements.

Minutes:

Testimony Attached

Senator Schneider: See testimony #1.

Senator Nelson: If I have a mutual fund with a variety of stocks so I list them all?

Senator Schneider: I don't think that you would have to list every one, just the fund itself.

Senator Nelson: So it is the same as the federal candidate.

Chairman Dever: Federal candidates have this requirement, but this wouldn't affect them.

Senator Schneider: It would mirror federal law. It was inspired by the federal law but the intent is the same

Senator Berry: Has there been a problem in the current system?

Senator Schneider: We don't know as we don't have disclosure. I don't think that the examples given have actually happened but in the instance that they did happen the public wouldn't know

Senator Cook: Are there no conflict of interest laws that state wide office holders have to live by?

Senator Schneider: Not that I am aware of and I didn't see any in my research of this legislation but I am not 100% sure on that.

Senator Cook: Is it possible for someone to have a means of wealth that has nothing to do with the office they are holding?

Senator Schneider: the vast majority of investments don't have anything to do with what the person's public capacity is. Regarding not wanting the public to know about it, I am not sure why you would want to keep that private but, to some extent; it comes with running for office.

Senator Cook: The degree to which people want to keep things personal differs. I think that there are some things that can be kept confidential.

Senator Schneider: You do give up some privacy if you run for office. How much privacy do you get?

Vice Chairman Sorvaag: You do have to reveal if you have an interest in a business. If own 10% or 80% of a business does that make a difference?

Senator Schneider: I think that the problem is with the ambiguity in existing law. Business and trust, that doesn't include a non principled source of income, the wages that you are paid from a consulting for the insurance industry while you are a sitting Insurance Commissioner, no disclosure of that. So under current law you would have to disclose that 10%-80% of the business.

Vice Chairman Sorvaag: Again, couldn't it be written that someone is a partner in an investment company? How important is the actual dollar amount?

Senator Schneider: I will say that any disclosure, even if you don't list specific amounts, is better than what we are doing in current law.

Senator Berry: Do you foresee any situation where you would be disqualifying people from running for office?

Senator Schneider: These provisions do mirror federal law and we haven't had a problem finding federal candidates. But it is a measure of privacy that we give up when we run for office.

Senator Berry: But when you run for federal office that becomes your full-time job and the legislature is not

Senator Schneider: As written this would apply to statewide candidates which is a full time job. There was no one present to speak in opposition of SB 2262; Jim Silrum came to testify in a neutral position

Jim Silum: See attached testimony #2.

Senator Cook: Could a candidate not answer and keep his name on the ballot?

Jim Silrum: In that situation I would defer to the Attorney General's office. I have not seen it to this date and if we did we would seek the opinion of our legal counsel.

Senator Nelson: I we were to do that our auditor wouldn't allow us on the ballot.

Senator Berry: district because they didn't have all the forms.

Jim Silrum: We would seek the advice in legal counsel. If an elected official were to ask us that question we would not be authorized to give you an interpretation of law.

Le Ann Oliver: On the form I get a lot of people who put N/A and the opponent wants to know. But once the form is notarized it is their responsibility. I don't know how it would turn out and if it's not notarized it's not complete. Whatever they put in I have to go with.

Chairman Dever: Generally the police in that situation are the opponent.

Senator Cook: And the jury is the voters, that is the point.

Senator Berry: As far as a penalty, is there any provision to check that information is correct?

Le Ann Oliver: It's a good question but the law doesn't allow us to do anything. I am not sure who enforces that. We as an office can't do anything. With the bill the way it is they would have to call their stock guy.

Senator Cook: Mr. McDonald gave me the Code; the person is guilty of a class B misdemeanor

Le Ann Oliver: I would assume they would have to go to legal counsel that is my understanding.

Senator Nelson: If my principal career is retired what would I put?

Jim Silrum: You would just identify what your principal income is. We are going to ask that the principal would be defined. Right now we are using broader definitions.

Vice Chairman Sorvaag: The principal source income is not an accurate measure. Usually they would pick the one that would be the highest.

Chairman Dever: So it would be better dealt with in SB 2254?

Jim Silrum: SB 2254 has not removed the confusion. We believe the opposition is because it makes things more

2011 SENATE STANDING COMMITTEE MINUTES

Senate Government and Veteran's Affairs Committee
Missouri River Room, State Capitol

SB 2262
February 11, 2011
14438

Conference Committee

Committee Clerk Signature

Kate Oliver

Explanation or reason for introduction of bill/resolution:

Relating to the contents of personal disclosure statements.

Minutes:

No testimony attached.

Chairman Dever opened the floor to discussion on SB 2262. A motion was made for a do not pass by Vice Chairman Sorvaag with a second by Senator Cook. There was no further discussion, roll was taken with the motion passing 5-2 and Chairman Dever carrying the bill to the Senate floor.

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

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2262

Senate Government and Veteran's Affairs Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Sorvaag Seconded By Cook

Senator	Yes	No	Senator	Yes	No
Chairman Dever	X		Senator Marcellais		X
Vice Chairman Sorvaag	X		Senator Nelson		X
Senator Barry	X				
Senator Cook	X				
Senator Schaible	X				

Total (Yes) 5 No 2

Absent _____

Floor Assignment Dever

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

REPORT OF STANDING COMMITTEE

SB 2262: Government and Veterans Affairs Committee (Sen. Dever, Chairman)
recommends **DO NOT PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING).
SB 2262 was placed on the Eleventh order on the calendar.

2011 TESTIMONY

SB 2262

TESTIMONY OF SEN. MAC SCHNEIDER (DISTRICT 42 – GRAND FORKS)
SENATE COMMITTEE ON GOVERNMENT AND VETERANS AFFAIRS
SENATE BILL 2262

Mr. Chairman, members of the committee, I am the sponsor of Senate Bill 2262, legislation which would provide increased transparency by requiring additional, but reasonable, disclosure of income, investments, and assets by statewide candidates and officeholders in North Dakota.

Allow me to briefly walk the committee through the bill:

Disclosure of each source of income, not just the principal source of income

Under current law, individuals seeking or holding statewide office are only required to disclose their “principal source of income, defined in the state income tax return as ‘principal occupation’” along with each business or trust in which the person (or person’s spouse, if applicable) has a financial interest. N.D.C.C. § 16.1-09-03.

Because disclosure is limited to an individual’s principal source of income and any “business or trust[,]” a hypothetical insurance commissioner could be paid a wage to consult for the insurance industry and the public would never know about it so long as it was not his or her principal source of income. Similarly, a fictional member of the Public Service Commission could have extensive, non-trust investments in a national energy company with regulatory business before the commission, but the public would have no idea about this potential conflict under current law.

Lines 11 through 13 on page 1 address these possibilities by requiring that a candidate or appointee disclose within their statement of interests “each source of income . . . including each business or trust in which the individual has a financial interest.” This change would ensure the public knows of any potential pecuniary conflicts prior to voting to elect or re-elect a candidate.

Disclosure of interest in real property

Second, on lines 19 through 20 of page 1, the legislation requires a candidate to identify each interest in real property held by the individual (or spouse). Again, this disclosure allows the public to judge whether a statewide candidate may potentially engage in self-dealing regarding his or her real estate holdings should that candidate be elected to office. Likewise, if a candidate is seeking re-election, this disclosure will allow the public to scrutinize whether such self-dealing has occurred.

Finally, lines 4 through 11 on page 2 specify the ranges within which “each source of income, investment, or interest in real property” must be disclosed.

Legislators would see no change under this legislation as presently drafted

As drafted, lines 12 through 28 of page 2 essentially affirm that legislators would remain subject current law. Admittedly, legislators are differently situated than statewide candidates and officeholders in that most have full-time careers outside of their part-time legislative service and are already subject to the conflicts rules of Mason’s Legislative Manual, Sec. 522. However, I think whether or not legislators should be required to adhere to the above disclosure requirements is certainly something the committee should consider when assessing this legislation.

Mr. Chairman, I believe these changes to the Code are solid preventative measures that will help ensure transparency and good government at a virtually non-existent cost to the state and insignificant demand on the time of candidates themselves. Thank you for your consideration.

ALVIN A. JAEGER
SECRETARY OF STATE

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January 27, 2011

TO: Senator Dever, Chairman, and Members of the Senate Government & Veterans Affairs Committee

FR: Al Jaeger, Secretary of State

RE: SB 2262 – Statement of Interests

Although it is a legislative decision as to whether to make changes to Chapter 16.1-09 (copy attached), the Secretary of State has a filing and administrative responsibility. Our review of this bill has raised several concerns and questions.

As we read the proposed text changes to N.D.C.C. § 16.1-09-03, subsections 1 and 2 applies to the contents of a statement of interests report that must be filed by a candidate for statewide office or an appointee to a statewide elective office.

Subsection 3 beginning on page 2, line 3, applies to all other elected and appointed officials covered under NDCC § 16.1-09-02. These "other" elected and appointed officials will continue to have the same required reporting information, as they do now.

As written, the suggested changes may confuse elected and appointed officials because this bill establishes two different reporting requirements. This will require the creation of two different reporting forms.

Additionally, a discrepancy exists in that statewide candidates covered in subsection 2 are only required to report information exceeding \$2,000 in value, while the "other" elected or appointed officials are required to report everything above zero in value.

Of all the reports that must be filed with the Secretary of State's office, the Statement of Interests form generates the greatest number of questions for the election staff. For example, an often asked question is what is meant by, "The name of each business or trust, not the principal source of income, in which the individual making the statement, and that individual's spouse, have a financial interest."

This question is difficult to answer because any response would be an interpretation of law, which the Secretary of State's office is not authorized to provide. This office believes that this bill would increase the number of questions asked by those individuals required to complete the form. For example, this bill adds "real property" as a reporting requirement. Would that be the property's market value, assessed value, or depreciated value?

Later this morning, your committee will hear testimony on SB 2254, which does include in Section 19 a clarifying amendment to N.D.C.C. § 16.1-09-03.

CHAPTER 16.1-09 STATEMENT OF INTERESTS

16.1-09-01. Declaration of policy. The legislative assembly declares that public office is a public trust, and in order to continue the faith and confidence of the people of the state in that trust and in their government, the people have a right to be assured that the interest of holders of or candidates for public office present no conflict with the public trust.

16.1-09-02. Statement of interests to be filed. Every candidate for elective office shall sign and file the statement of interests as required by this chapter. In a year when a president and vice president of the United States are to be chosen, presidential and vice presidential candidates shall file with the secretary of state either a statement of interests as required by this chapter or a copy of the personal disclosure statement that is required by the federal election commission. Candidates for elective office who are required to file such statements shall do so with the filing officer for that election at the time of filing a certificate of nomination, a certificate of endorsement, a petition of nomination, or a certificate of write-in candidacy, pursuant to chapter 16.1-11, 16.1-12, or 40-21, as is appropriate. An individual who has filed a statement as the result of candidacy in a primary election need not refile before running in the following general election. A write-in candidate who is not required to file a certificate of write-in candidacy shall file the statement of interests after the candidate's election at the time of filing the required oath of office. Every individual who is appointed by the governor to a state agency, board, bureau, commission, department, or occupational or professional licensing board shall file a statement of interests as required by this chapter with the secretary of state simultaneously with announcement of the appointment. A filing officer may not include a candidate's name on the ballot if an error is discovered on the statement and the candidate is unable to or refuses to make the necessary correction before the sixtieth day before the election.

16.1-09-03. Contents of statement of interests. The statement of interests required to be filed under this chapter applies to the candidate or appointee and that person's spouse and must include:

1. An identification of the principal source of income, defined in the state income tax return as "principal occupation", of both the candidate or appointee and that person's spouse.
2. The name of each business or trust, not the principal source of income, in which the person making the statement, and that person's spouse, have a financial interest.
3. A list of the associations or institutions with which the person making the statement, and that person's spouse, are closely associated, or for which they serve as a director or officer, and which may be affected by legislative action, in the case of a statement submitted by a legislative candidate, or action by the candidate or appointee in that person's capacity as an officeholder.
4. The identity by name of all business offices, business directorships, and fiduciary relationships the person making the statement, and that person's spouse, have held in the preceding calendar year.

16.1-09-04. Powers and duties of the secretary of state. The secretary of state shall:

1. Prescribe the forms for statements of interests required to be filed under this chapter and furnish such forms, on request, to persons subject to this chapter.
2. Prepare and publish guidelines setting forth recommended uniform methods of reporting for use by persons required to file statements under this chapter.
3. Adopt such rules and regulations, in the manner prescribed by chapter 28-32, as may be appropriate to effectuate the purposes of this chapter.

16.1-09-05. Powers and duties of the secretary of state and county and city auditors. The secretary of state, or the county or city auditor, when appropriate shall:

1. Accept and file any statement submitted pursuant to this chapter.
2. Make statements filed available for public inspection and copying during regular office hours. A reasonable fee may be charged to cover the cost of copying. Proceeds from any fees charged must be deposited in the general fund of the appropriate governmental entity.
3. Preserve statements filed under this chapter for the term of office to which the person making disclosure is elected or appointed or until a new statement is filed and preserve statements filed pursuant to this chapter by those candidates who are not elected or appointed for a period of one year after the date of receipt.

16.1-09-06. Procedure for enforcement - Investigation by attorney general or state's attorney. Upon a complaint, signed under penalty of perjury, by any person, or upon the motion of the attorney general or a state's attorney, the attorney general or state's attorney shall investigate any alleged violation of this chapter. The investigation and its proceedings are confidential until a determination has been reached by the investigating officer that enough incriminating evidence exists to bring an action and such action is commenced in the appropriate district court.

16.1-09-07. Effect of intentional violation of chapter - Penalty. Any person who intentionally violates a provision of this chapter is guilty of a class B misdemeanor and that person's appointment, nomination, or election, as the case may be, must be declared void. Any vacancy that may result from the intentional violation of this chapter must be filled in the manner provided by law. This section does not remove from office a person who is already in office and who has entered upon the discharge of the person's duties where such office is subject to the impeachment provisions of the Constitution of North Dakota.