

2013 HOUSE POLITICAL SUBDIVISIONS

HB 1193

2013 HOUSE STANDING COMMITTEE MINUTES

House Political Subdivisions Committee
Prairie Room, State Capitol

HB 1193
January 24, 2013
Job # 17716

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to taking of testimony, appeals, and assessment of costs on removal proceedings.

Minutes:

Testimony #1, Proposed Amend. #2

Chairman N. Johnson: Introduced HB 1193. It comes to you because of the concern on the process of removal elected officials. In the current process it puts the information to the governor and has the governor do the exploration and investigation first and then it comes back to the attorney general's office. It seems a little confusing since the attorney general's office is more the entity that should be taking a look at the investigation and then bringing that to the governor's office.

Jonathan Byers, Ass't Attorney General: (See testimony #1). (Proposed Amendment #2).

01:43- 08:49

Rep. L. Meier: How many public elected officials have been removed from office by the Governor?

Jonathan Byers: Very few. In the twenty years that I have been at the Attorney General's office I believe that there have been actually four of them filed. Three of them resulted in a proceeding and the other one the public official resigned. I don't think there were very many before then.

Rep. Kathy Hogan: On line 16 of the first page does any custodian of public money does that mean the auditor of a city or a finance manager. Those are generally not elected officials either and I wondered who that would be?

Jonathan Byers: I could be some elected officials like a county auditor. There could be other ones in there that are not elected officials so they could all be removed using this process.

Rep. Kathy Hogan: So they could all be removed using this process?

Jonathan Byers: So they could all be removed using this process. I believe that was one that was not in the original language from 1913, but was added subsequent to that but it has been there for a while.

Rep. M. Klein: Who is this post board you are referring to and who makes that up?

Jonathan Byers: It is peace officer standard and training board and it is primary law enforcement officials from around the state that are on the post board.

Rep. M. Klein: Why did you leave out school board members?

Jonathan Byers: School board member is in the language already and because they are elected I did not see the need to remove them out of the bill. That is another one where a number of school board officials from up in the west central part of the state at one time there was an action to remove some of the school board members, but they may have resigned before it came to that.

Rep. Koppelman: Superintendents of schools are not elected and you have left them in. and other ones so why the picking and choosing?

Jonathan Byers: The only reason I even tinkered with who is in there at all is because I was aware that the peace officer and standards training board is getting more teeth in their licensing process to where they can take action even without a criminal conviction etc. With the other people since we haven't had a lot of these cases out there, I didn't feel comfortable myself making a judgment call as to whether there are other appropriate governing bodies or licensing boards that can deal with them.

Rep. Koppelman: I realize these cases are rare. What about situations of corruption? Could there be situations of corruption where maybe it does involve elected officials and their employees and then it would be appropriate for the Governor to come in?

Jonathan Byers: There could be situations where more than one of the public officials is involved. The problem with the school board that I mentioned is a number of them had taken trips together and used some of the public funds inappropriately. I can see where a police chief and his staff maybe involved. We would not have any concerns with leaving those people in.

Rep. Koppelman: On page 2 on the bottom where you talk about changing the process where the attorney general actually gets the petition and conducts the investigation; couldn't that occur now?

Jonathan Byers: In fact there is a little more that occurs in reality than provided for even the way the statute is written. The way it was written seems to be more of a mandatory process, but had some very short time frames that it allowed for anything so if there were investigating or consulting going on back and forth with the governor and attorney general it didn't leave much time for that to happen.

Rep. Koppelman: On page 5 at the top of the page at the end of the 5th line you have stricken the word forthwith, which seems to imply don't hurry. What was your thought there?

Jonathan Byers: My purpose here was to take out words like forthwith and there to and add intern. It still does contain certain timeframes like 30 days for the attorney general to do the investigation and only 10 days for the special commissioner to make a report to the governor and then the governor does not have a time constraint on his decision. Everything would have been done by then so there is nothing for the governor to do other than potentially make a decision whether he actually wants a transcript to be prepared of the commissions hearing.

Rep. Klemin: Page 2 on the bottom of the page the way this is written now the attorney general conducts and investigation and when it is completed the attorney general makes a recommendation to the governor. Then upon receipt of the recommendation the governor determines whether to proceed in a situation where the attorney general investigates and makes a recommendation that there is no grounds for removal; that still goes to the governor, right?

Jonathan Byers: It still goes to the governor and he is the final decision maker.

Rep. Klemin: If the governor decides to appoint a special commissioner he shall request the prosecutor. Should there be something else here that says what happens when the governor decides not to appoint a special commissioner because the attorney general recommended not doing it? If we have a petition that is filed there has to be some final disposition of that petition if it is not going to be granted.

Jonathan Byers: We could add an additional sentence here that indicates that if the governor decided not to appoint a special commissioner that a letter will be returned to people who filed the petition indicating his decline to proceed any further.

Rep. Klemin: There should be some kind of an order entered stating the reason or whatever.

Jonathan Byers: That did bring up an important point is that I tried in the bill draft distinguish what we call a petition is what the citizens file and the complaint is what the prosecutor would file if asked to do so. So what would have been filed up to that point of the governor making the decision are only the petition and not any kind of complaint. So it would be a decline of the petition that was filed by the citizens.

Rep. Klemin: I just think there should be something in here so there is some final deposition and maybe there should a reason so the people filing the petition are informed.

Jonathan Byers: I can see what you are saying so I think an additional sentence or so would satisfy that.

Rep. Koppelman: In current law we have put this responsibility on the governor, but it seems to me we are doing more here than just tweaking the process. We are saying this is

a two stag process that the attorney as an elected official has a specific responsibility on the front end and that the governor is the final arbitrator. Perhaps now the Governor could go to the attorney general and say you have more background in criminal enforcement please take a look at this form me and tell me what you think. The attorney general could advise the governor, but if you go this route now you have the attorney general making a public finding and recommending something to the governor and it might put them in a difficult spot if they disagree. Are we opening a can of worms here and maybe we don't need to do this.

Jonathan Byers: The final say is still the governors. Typically when one of these has been going on it is already in the public realm already and the press is aware of the fact that the petition has been filed. In response to what Rep. Klemin raised is if a group of fifty or more citizens have gotten together and signed a petition the reasons why there was a decision why not to go forward or to go forward, maybe it is better that they are subject to public inspection.

Rep. Koppelman: I would not want to remove the authority from the governor and give it solely to the attorney general. My point was the governor's role as chief executive officer of the state and the attorney general's role as the chief law enforcement official and the one who is responsible for defending the state for carrying out legal actions in that role. I am wondering if it needs to be this formalized. The deliberations where legal counsel and those kind of things are involved often times are confidential.

Jonathan Byers: The statue as currently written that was that way back in 1913. The special commissioner would set almost like almost a grand juror where he would call witnesses in and gather information and based upon that might decide to call other people in to conduct the investigation in a public form so I don't know about opening this up in some way that it is going to be any different than the statue that was contemplated.

Rep. Hatlestad: If the petition is denied is that the end of it? As a petitioner do I have recourse?

Jonathan Byers: Whatever the attorney general's recommendation was; if the governor said I am declining to appoint a special commissioner and I am declining to move forward on this basically your only recourse as a citizen is at the ballot box.

Rep. J. Kelsh: With any of these folks we could have a recall election on them. Some of them do it before they go to the governor.

Jonathan Byers: There isn't anything in this bill draft or in status as it exists that would prohibit that other route from being used and that is the recall process.

Chairman N. Johnson: Were you in consultation with the governor's office on looking at the change in this process?

Jonathan Byers: Yes I believe there were discussions by the attorney general with the governor's office.

House Political Subdivisions Committee

JB 1193

January 24, 2013

Page 5

Opposition: None

Hearing closed.

2013 HOUSE STANDING COMMITTEE MINUTES

House Political Subdivisions Committee
Prairie Room, State Capitol

HB 1193
January 25, 2013
Job # 17750

Conference Committee

Committee Clerk Signature



Minutes:

Proposed Amendment #1

Chairman N. Johnson reopened the hearing on HB 1193.

Rep. Maragos moved the amendment that was handed to us on page 4, over strike lines 15-21. **Seconded by Rep. Looyen:**

Rep. Klemin: Maybe we could refer to this as Byers amendment #1 because the next set is also Byers amendment.

Voice vote carried.

Chairman N. Johnson: The second amendment is also from Mr. Byers. (See proposed amendment #2).

Motion made to move amendment #2 by Rep. Koppelman: Seconded by Rep. Hatlestad:

Intern: Instead of doing page 2, line after commissioner I would do it page 3, line after officer.

Voice vote carried.

Chairman N. Johnson: What he was saying was that on 4 it talks about the beginning of the process and when they get to recommendations from the attorney general and if the governor decides to appoint a special commissioner and what Mr. Powell is suggesting that maybe we put it at the end of that sentence at the top of page 3.

Rep. Klemin: I like the way it is in the present amendment better because now it says if he doesn't this is what happens and if he does this is what happens and it is the opposite of what you just said. If he doesn't appoint special commissioner that is the end of it, but if he does decide to appoint a special commissioner than we go on after that and that is the rest of the bill.

Rep. Koppelman: I think the amendments are fine and they put the bill in better shape, but before we move on this I would really suggest that we pay some attention to the bottom half of page 1 because that really is where the meat of the bill is. It is the question of who can be removed and who can't. We had this discussion during the hearing about elected officials versus nonelected officials. I think we should decide as a public policy matter who we want included in this and who we don't. Mr. Byers initially indicated in his testimony the reason he was excluding law enforcement folks were because they were employees and they weren't elected, but as we looked at the rest of the list there is a lot of confusion there. If the legislature wants to make a policy that we shouldn't include nonelected officials in this then we should be consistent.

Rep. Klemin: I would suggest while we are doing that that we remember this is the thing of last resort because typically there is going to have been made some kind of effort to remove somebody beforehand and if that person is an employee we never get to this point. If that person is not an employee then we might. I don't know if we need to focus that much on whether they are appointed or elected because it would be a rare thing that we would get to the governor to start with.

Chairman N. Johnson: The chief justice's concern isn't so much the people, but it was changing the process where instead of going right to the governor. There are other processes to use including recall it didn't make sense to them.

Rep. Koppelman: Maybe we should not remove anyone. I am: sure the attorney general's office was focused more on the process they would engage in case of one of these things happening. I suggest we get rid of the overstrikes and leave it as is. Why is the state treasurer excluded?

Chairman N. Johnson: I asked that question and they said I have no idea why it is in there.

Motion made to amendment #3 on the overstrikes on page 14 & 15 by Rep. Koppelman: Seconded by Rep. Hatlestad:

Rep. Klemin: I cannot think of any situation in which the chief of police, deputy sheriff or police officer is elected so I don't see a problem with striking them off here.

Rep. Hatlestad: How about we just delete all the names and say any elected official?

Chairman N. Johnson: We do have a motion on the floor to remove the overstrike on chief of police, deputy sheriff or other policy officers.

Voice vote defeated.

Rep. Klemin: Someone asked the question about except the state treasurer. The state treasurer is a constitutional official. The governor can't remove somebody who is elected by the people under the constitution. There is another procedure for removing the state treasurer.

Chairman N. Johnson: Now we have the bill now twice amended.

Do pass as amended motion made by Rep. Maragos: Seconded by Rep. L. Meier

Vote: 13 Yes 1 No 1 Absent Carrier: Rep. Klemin:

Closed.

January 25, 2013

1/25/13
CMB

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1193

Page 1, line 3, after the semicolon insert "to"

Page 2, line 30, after the underscored period insert "If the governor decides not to appoint a special commissioner, the governor shall notify the individuals who filed the petition and summarize the reasons for the decision."

Page 4, overstrike lines 15 through 20

Page 4, line 21, overstrike "by attorney."

Page 5, line 13, after the period insert "If the governor decides that removal is not in the best interests of the state, the governor shall notify the individuals who filed the petition and summarize the reasons for the decision."

Renumber accordingly

Date: 1-25-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1193

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. Maragos Seconded By Rep. Looysten

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson			Rep. Ben Hanson		
Vice Chairman Patrick Hatlestad			Rep. Kathy Hogan		
Rep. Thomas Beadle			Rep. Jerry Kelsh		
Rep. Matthew Klein			Rep. Naomi Muscha		
Rep. Lawrence Klemin					
Rep. Kim Koppelman					
Rep. William Kretschmar					
Rep. Alex Looysten					
Rep. Andrew Maragos					
Rep. Lisa Meier					
Rep. Nathan Toman					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Pg 4, 15-21 Byrs' #1
Vote
Carried

Date: 1-25-13
Roll Call Vote #: 2

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1193

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. Koppelman Seconded By Rep. Hatlestad

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson			Rep. Ben Hanson		
Vice Chairman Patrick Hatlestad			Rep. Kathy Hogan		
Rep. Thomas Beadle			Rep. Jerry Kelsh		
Rep. Matthew Klein			Rep. Naomi Muscha		
Rep. Lawrence Klemin					
Rep. Kim Koppelman					
Rep. William Kretschmar					
Rep. Alex Looysten					
Rep. Andrew Maragos					
Rep. Lisa Meier					
Rep. Nathan Toman					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Byer's Amend # 2
Vote carried!

Date: 1-25-13
Roll Call Vote #: 3

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1193

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. Koppelman Seconded By Rep. Hatlestad

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson			Rep. Ben Hanson		
Vice Chairman Patrick Hatlestad			Rep. Kathy Hogan		
Rep. Thomas Beadle			Rep. Jerry Kelsh		
Rep. Matthew Klein			Rep. Naomi Muscha		
Rep. Lawrence Klemin					
Rep. Kim Koppelman					
Rep. William Kretschmar					
Rep. Alex Loosten					
Rep. Andrew Maragos					
Rep. Lisa Meier					
Rep. Nathan Toman					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Remove overstrike on 14+15.

*Vote
Defeated!*

Date: 1-25-13
 Roll Call Vote #: 4

2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1193

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. Maragos Seconded By Rep. Meier

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson	✓		Rep. Ben Hanson	✓	
Vice Chairman Patrick Hatlestad	✓		Rep. Kathy Hogan	✓	
Rep. Thomas Beadle	✓		Rep. Jerry Kelsh	✓	
Rep. Matthew Klein	—		Rep. Naomi Muscha	✓	
Rep. Lawrence Klemin	✓				
Rep Kim Koppelman		✓			
Rep. William Kretschmar	✓				
Rep. Alex Looysten	✓				
Rep. Andrew Maragos	✓				
Rep. Lisa Meier	✓				
Rep. Nathan Toman	✓				

Total (Yes) 13 No 1

Absent 1

Floor Assignment Rep. Klemin

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

REPORT OF STANDING COMMITTEE

HB 1193: Political Subdivisions Committee (Rep. N. Johnson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING). HB 1193 was placed on the Sixth order on the calendar.

Page 1, line 3, after the semicolon insert "to"

Page 2, line 30, after the underscored period insert "If the governor decides not to appoint a special commissioner, the governor shall notify the individuals who filed the petition and summarize the reasons for the decision."

Page 4, overstrike lines 15 through 20

Page 4, line 21, overstrike "by attorney."

Page 5, line 13, after the period insert "If the governor decides that removal is not in the best interests of the state, the governor shall notify the individuals who filed the petition and summarize the reasons for the decision."

Renumber accordingly

2013 SENATE GOVERNMENT AND VETERANS AFFAIRS

HB 1193

2013 SENATE STANDING COMMITTEE MINUTES

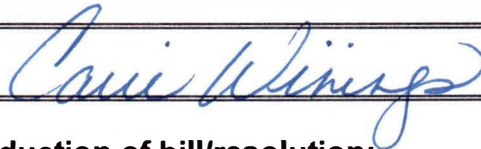
Senate Government and Veterans Affairs Committee

Missouri River Room, State Capitol

HB 1193
03/15/2013
Job Number 19996

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act relating to appointment of a special commissioner to preside over removal proceedings; relating to proceedings to remove officials from office; and relating to taking of testimony, appeals, and assessment of costs on removal proceedings.

Minutes:

Chairman Dever: Opened the hearing on HB 1193.

Representative Nancy Johnson, District 37: Testified as sponsor of the bill and to explain the bill.

(1:05)Jonathan Byers, Assistant Attorney General: See Attachment #1 for testimony in support of the bill.

(7:25)Senator Nelson: It says that there is an amendment attached but I do not see one.

Jonathan Byers: The amendment is already included. The testimony that I have here is on the House side testimony and at that time they included it.

Senator Cook: The difference between the words competent and preponderance - is that much of a difference?

Jonathan Byers: I do not believe we had a definition of what competent evidence was and since we have other standards for preponderance of the evidence we made the decision to put a standard in that the courts were used to using.

Senator Cook: In the appeal process of the District Court, I see that the court's decision is limited to if the decision is clearly erroneous, is that common?

Jonathan Byers: The courts are already used to applying those standards in a lot of circumstances.

Senator Marcellais: It mentions removal of officials, is there something different for the Governor and the Attorney General?

Jonathan Byers: This is a separate process from the recall ability that voters in North Dakota still have to use. I do not believe there is a similar process like that that would include the Governor and the Attorney General other than the recall. I am not sure why they were never included in there.

Chairman Dever: You removed Chief of Police, Deputy Sheriff, and other officers because they are elected, are coroners and superintendent of schools, surveyors, public administrators, city auditors, are those all elected?

Jonathan Byers: City commissioners would be but city auditor may not be. Superintendent of schools is not. Some of these questions were raised on the House side. The one that was most obvious to me was the one involving the officers because they have a post board that can affect their licenses if they are guilty of misconduct. This committee could consider whether there are other ones that have a governing body that can remove them if they are guilty of misconduct. These are the ones that are currently in law right now.

Senator Cook: If you say that this was not changed since 1913, I wonder if superintendent of schools didn't mean the county superintendent of schools.

Jonathan Byers: It may have. Of the limited amendments that have been done since 1913, on that list I believe that added after the fact were township officer, rural fire protection, district board member and all of that after that was added later. But the ones occurring before the police officer were all part of the original language.

Chairman Dever: Closed the hearing on HB 1193.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Government and Veterans Affairs Committee

Missouri River Room, State Capitol

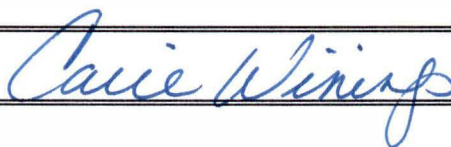
HB 1193

03/29/2013

Job Number 20678

Conference Committee

Committee Clerk Signature



Minutes:

Chairman Dever: Opened HB 1193 for committee discussion.

Senator Cook: Moved a Do Pass.

Senator Schaible: Seconded.

A Roll Call Vote Was Taken: 7 yeas, 0 nays, 0 absent.

Senator Schaible: Carrier.

Date: 3/29
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 1193

Senate Government and Veterans Affairs 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 Senator Cook Seconded By Senator Schaible

Senators	Yes	No	Senator	Yes	No
Chairman Dick Dever	✓		Senator Carolyn Nelson	✓	
Vice Chairman Spencer Berry	✓		Senator Richard Marcellais	✓	
Senator Dwight Cook	✓				
Senator Donald Schaible	✓				
Senator Nicole Poolman	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Schaible

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

REPORT OF STANDING COMMITTEE

HB 1193, as engrossed: Government and Veterans Affairs Committee (Sen. Dever, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1193 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

HB 1193

#1

HOUSE BILL 1193 TESTIMONY
HOUSE POLITICAL SUBDIVISIONS COMMITTEE
JANUARY 24TH, 2013
PRAIRIE ROOM

By Jonathan Byers, Assistant Attorney General

Madam Chairman, Members of the Committee:

My name is Jonathan Byers and I am an assistant attorney general. I wish to testify in favor of House Bill 1193.

Chapter 44-11 of the North Dakota Century Code, providing for the removal of public officials by the Governor, is a rarely used mechanism. You might attribute that to a reluctance to overturn the will of the voters or that we have less public corruption here in North Dakota, but whatever the explanation, very rarely does the Governor have to consider removing a public official from office.

That it has been little used might explain why Chapter 44-11 looks much the same as it did when originally adopted in 1913. The language is outdated and the process provided for does not fit well within the current court system. The Attorney General asked me to make an attempt at bringing this chapter up to date, and House Bill 1193 is the product of that.

The Section 1 amendments are fairly self-explanatory. Chief of Police, deputy sheriff, and other police officers are being eliminated from this removal process because

they are not elected positions, and each would have a governing body to remove them should they be guilty of misconduct or neglect of duty. Also, the North Dakota Post Board would be able to take action against their peace officer license if the circumstances warranted it.

The Section 2 amendments significantly change the way the petition for removal is handled at the outset. Instead of it being filed with the Governor and it triggering a non-discretionary process, the amendments direct that the petition be filed with the Attorney General, who would conduct an investigation of the allegations and make a recommendation to the Governor whether a removal proceeding should be conducted by a special commissioner.

Moving on to page 3 of the bill, Section 4 will now only deal with whether the officer should be suspended during the removal proceedings. Section 5 creates a new section providing for the appointment of a special commissioner, and the filing of a complaint by a prosecutor.

Section 6 deals with the hearing that is held by the special commissioner, and the report and documentation that is forwarded to the governor within ten days of the conclusion of the hearing. I have attached to my testimony an amendment to the bill. In every draft that I have of this bill, lines 15-21 are overstricken, except the official version that is now of record.

The sections being repealed are the old section 5 that is being replaced by the new section on page 4 of the bill, and two sections that provided for a bond to be filed by the citizens making the allegations, in case the charges were not made in good faith. Since House Bill 1193 provides for an investigation before a complaint is filed, and grants some discretion to the Attorney General and Governor as to whether a special commissioner is appointed, there is no need for a bond to cover frivolous filings.

The bill provides for a removal process that is easier to understand and which more closely matches the reality of the way the removal proceedings are currently handled. The Attorney General asks for a do pass on House Bill 1193. I would be happy to answer any questions.

#2

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1193

Page 4, overstrike lines 15 through 20

Page 4, line 21, overstrike "by attorney."

Renumber accordingly

#1

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1193

Page 2, line 30, after "commissioner." insert "If the governor decides not to appoint a special commissioner, the governor shall notify the individuals who filed the petition and summarize the reasons for the decision."

Page 5, line 13, after "appointed." Insert "If the governor decides that removal is not in the best interests of the state, the governor shall notify the individuals who filed the petition and summarize the reasons for the decision."

Renumber accordingly

**HOUSE BILL 1193 TESTIMONY
GOVERNMENT AND VETERANS AFFAIRS COMMITTEE
March 15th, 2013
MISSOURI RIVER ROOM**

By Jonathan Byers, Assistant Attorney General

Mr. Chairman, Members of the Committee:

My name is Jonathan Byers and I am an assistant attorney general. I wish to testify in favor of House Bill 1193.

Chapter 44-11 of the North Dakota Century Code, providing for the removal of public officials by the Governor, is a rarely used mechanism. You might attribute that to a reluctance to overturn the will of the voters or that we have less public corruption here in North Dakota, but whatever the explanation, very rarely does the Governor have to consider removing a public official from office.

That it has been little used might explain why Chapter 44-11 looks much the same as it did when originally adopted in 1913. The language is outdated and the process provided for does not fit well within the current court system. The Attorney General asked me to make an attempt at bringing this chapter up to date, and House Bill 1193 is the product of that.

The Section 1 amendments are fairly self-explanatory. Chief of Police, deputy sheriff, and other police officers are being eliminated from this removal process because

they are not elected positions, and each would have a governing body to remove them should they be guilty of misconduct or neglect of duty. Also, the North Dakota Post Board would be able to take action against their peace officer license if the circumstances warranted it.

The Section 2 amendments significantly change the way the petition for removal is handled at the outset. Instead of it being filed with the Governor and it triggering a non-discretionary process, the amendments direct that the petition be filed with the Attorney General, who would conduct an investigation of the allegations and make a recommendation to the Governor whether a removal proceeding should be conducted by a special commissioner.

Moving on to page 3 of the bill, Section 4 will now only deal with whether the officer should be suspended during the removal proceedings. Section 5 creates a new section providing for the appointment of a special commissioner, and the filing of a complaint by a prosecutor.

Section 6 deals with the hearing that is held by the special commissioner, and the report and documentation that is forwarded to the governor within ten days of the conclusion of the hearing. I have attached to my testimony an amendment to the bill. In every draft that I have of this bill, lines 15-21 are overstricken, except the official version that is now of record.

The sections being repealed are the old section 5 that is being replaced by the new section on page 4 of the bill, and two sections that provided for a bond to be filed by the citizens making the allegations, in case the charges were not made in good faith. Since House Bill 1193 provides for an investigation before a complaint is filed, and grants some discretion to the Attorney General and Governor as to whether a special commissioner is appointed, there is no need for a bond to cover frivolous filings.

The bill provides for a removal process that is easier to understand and which more closely matches the reality of the way the removal proceedings are currently handled. The Attorney General asks for a do pass on House Bill 1193. I would be happy to answer any questions.