

2017 HOUSE EDUCATION

HB 1309

2017 HOUSE STANDING COMMITTEE MINUTES

Education Committee
Coteau A Room, State Capitol

HB 1309
1/23/2017
Job 27246

- Subcommittee
 Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Relating to the appointment of institution presidents and the commissioner of higher education.

Minutes:

Attachment 1.

Chairman- Mark S. Owens: welcomes Rep. Rich S. Becker.

Rep. Rich S. Becker: see attachment 1 for testimony

Chairman- Mark S. Owens: any questions.

Rep. Mary Johnson: you said that this reflects what is actually occurring in the hiring process for presidents and chancellors. I was under the impression that the bill would limit open documents, but I do not read that, can you explain that to me.

Rep. Rich S. Becker: you are right there is no reference in bill 1309 to closed records or open records, as you heard me say the intention of this particular bill was to keep it simple. It only applies to the number of applicants that the search committee must forward, you will hear me talk about it later today about open records. That is not a part of this bill.

Chairman- Mark S. Owens: any other questions. Do you see the problem you are trying to fix here to be a systemic issue from a different type problem?

Rep. Rich S. Becker: I do not believe so. One of the reasons that this is kind of a bur under my saddle is consistency, I have heard from other people representing universities or colleges in Dickenson, and I believe Minot, I do not have an absolute example to give. But apparently NDSU as well, but I do know for a fact that in recent years, instead of the board following the policy of three people being forwarded, there was a very major instance of only one name being put forward for the presidency of our flagship university, and that is a major institution, and there was an open forum, which a number of people spoke saying that your policy is 3, why are you not doing that. Their response was well; we can do as we please. That is the concern that I have, it is just consistency, I am not commenting on that one

individual whether that was a good or a bad individual, I am just saying there should have been more than one applicant considered.

Chairman- Mark S. Owens: I do not remember exactly that situation about that, so let me ask you a question about that, were there more than one applicant that they could have forwarded, but then through their system of evaluation they only forwarded one, is that what happened.

Rep. Rich S. Becker: maybe the chancellor was not in this position at that time, and so I am not sure if he would have background. My recollection of the time, and this would have been 2008, that according to all the newspapers and the names that were given there were multiple candidates, and how they determine that only one wants to be moved forward I don't know that answer, but I do know the fact that only one name did go forward.

Chairman- Mark S. Owens: I appreciate that, the reason I was asking was, I was trying to understand what options the selection committee would have if they only had one, where this bill would leave them, if they only had one then they would have to advertise again, and in the time of having go through all that, that sends the signal to the one frankly, that well you are ok, but we do not really like you that much, which it may not be true, because they are trying to meet the requirements of this law, and that is why I ask, was this the case before, where they only had one, they sent one forward because then what happens if we pass this bill, we force them to do more than one, and they are just not getting applicants.

Rep. Rich S. Becker: that could happen, but I do not think that was the case at the time. And some of the, if the search committee could not come up with adequate candidates, and are running out of time, I have to assume that they had the prerogative of going to the board of higher education and saying we cannot conclude our search at the time you have given us, we need additional time. I do think that exist, they could have done that. The case that I am referencing at UND I believe, it is my opinion, but it is supported by many other people that, they did not want more than one name.

Chairman- Mark S. Owens: any other questions.

Rep. Matthew Ruby: I am trying to figure out how I can form a question with this. I guess what worries me about this, this is kind of dealing with like school needs to get a new president, correct. So they go through their search process, and they figured out one they really like, but because of this bill they have to send in 3, and necessarily based on their own vetting they have this one pic, this is a perfect fit for their school, and they have to sit on three, then they have a 2 or 3 chance of getting one that they do not want. My question, is that what can potentially happen.

Rep. Rich S. Becker: all my bill states is that at least 2 and up to 4 candidates have to go in. If they have one that is a ringer or a superstar or somebody, if he is that good and he is one of the two, three, four that go forward, then he will probably stand out, and there will be lots of testimony back and forth on people that do apply for the position, I do not know if I am answering your question, but I would think that the pulp purpose of not less than two no more than four is to get the best qualified people to get put forward, and if only one is put forward many people get suspicious.

Chairman- Mark S. Owens: Any other questions?

Rep. Rich S. Becker: there were a couple of people that had planned to be here, one just told me to testify for this bill, could not make it last minute, and then others will be 10:15am and later.

Chairman- Mark S. Owens: I had people stand in line for my license plate bill, and we all know what happened to that, so. anyone else in favor for HB 1309, anyone opposed to HB 1309.

Mark Hagereth: current chancellor of the higher education system. First I want to thank Rep. Rich S. Becker for his support of higher education, we met multiple times, and it has been a source of feedback, and insights, also being a former engineer I recall, and all the work you have done, I want to thank for that. However, as I am standing here, I am standing in opposition, so I just want to explain why, we did change the state board policy. It may have been something you may have said a year ago. There was a time where some searches sent forward one name, which really was taking away the authority of the board to make a choice feedback from some of you, we changed that, and we acted on it, and compelled most recent searches to send three names forward, so that the board would have a choice, and it is working, and the search committee is getting a pretty large pool of applicants. Dickenson had 47, UND had 50 and that is with the incredible openness that you get in these searches here. We are taking action, and the board is taking action, and so for that reason I do not think this will be necessary, because the board is already doing that, but there can be cases where the 2 to 4 may not work, and the board may recognize it. In my previous institution, and following other searches from fellow chancellors you do have a superstar emerge, and people then begin to drop out, they begin to anticipate what is happening here. It is possible that the clear superstar emerges, someone who won the medal of honor, has a Nobel prize, the other people say I am done, and now you need to keep going back, and keep getting a couple more people, right now the board would have the ability to say ok, we are seeing what is happening, people are dropping out we want to move forward, each day you wait of course the campus is waiting on the decision. Also on the high side, in the most recent search at UND there were some late additions even with the internet, and everything else going on, people were like oh, this position became open and know someone who did not apply and was interested in applying who was in a very senior position of government who may have come in the last minute, and the board did allow that, that there could be someone coming in, but she did not do that, but if we would have a strict number, I can see that the search committee would rather take, she has won the medal of honor, and the Nobel peace prize, and her grandmother came from North Dakota, and she could not get in if we had a strict number of 4, it just restricts in some of those odd cases that you cannot anticipate, but I understand the spirit of what Rep. Rich S. Becker was getting to. The other element is that it requires the board to choose a search within a search committee, but there have been cases where the board has been their own search committee, my own search it was highly sensitive a couple of chancellors ago, there was some energy, and news elements of this and the board itself realized they had to as a representative body appointed by the governor, and confirmed by the legislative branch, but they had to take control, and be the search committee, and can be all of them in the review of my candidacy, so this would require a search committee established outside of the body of the board. The other thing that it

mentions is search firm, with this tight budget coming up I can tell you that searches are not cheap, \$70,000 it could be more if a search fails, as one of the members pointed out Bottineau does not have a president, we have a short service in the upper north west where Steve Shirley is right now both also helping Williston which has an interim, but we could have cases that we do not want to establish a search firm contract, we want to do it ourselves, because it is fairly small, in addition right now we are holding Williston as an interim right now, where this bill could be construed and the lawyers could be involved to restrict a longer interim period, but we purposely decided to keep an interim in Williston because otherwise a new president is coming right in the middle of this legislative session, and you are having someone who does not understand how this all works, and so if you know John Miller is an wonderful leader up there, he is doing very well, and gain the board had platitude to keep him in that position through probably this summer, so other points. Again these are really, we have this board they have to have the flexibility to adapt, to do things that you cannot anticipate, but I understand the spirit of this, the last point would be line one page 2, where it says the candidates have to be for their training experience to be both a chief academic officer, and a chief executive, that would restrict the future pool of presidents. Myself, we both hold PhD's we have doctoral dissertations, books, book contracts, etc. We could compete as a chief academic officer as a provost, but there is an increasing trend in higher education that they look at it as a complex business enterprise, research enterprise, all these other things that I believe the numbers are around 20% now are becoming non-traditional presidents, meaning they do not actually have a PhD, they have an MBA, um it would not be suitable to be the provost, ok. With a faculty, they would insist that the provost, the chief academic officer would have a terminal degree, a PhD. And yet the presidents we see many cases, I was a former professor, and I hope I do not upset any bodies professor, but they are not the best financial managers, they are incredible researchers, they do have award winning patents in research, but to run an enterprise of hundreds of millions of dollars, actually the better candidate would be a business person, and there are cases of this emerging across the country and even in our own case at UND, we have a president who does not have a PhD, but was a congressman, has a business background, who is a senior executive at Confederated department stores, and here on a very strict time of budget and whatnot, his skills are very interestingly very well aligned with dealing with budgets, so that would be another restriction, I see the spirit of that but it would restrict things in ways that we may need more latitude going forward, so again, totally understand the spirit, I appreciate Rep. Rich S. Becker, you energy you put into this, the time he spends to thinking about these. But this may be the way of the license plate one, and it is a little awkward to be up here, or course with ally of higher education, arguing against a bill, but we are taking action, and we are doing these things, and you do not know what may be out there, whether budgetary or other ways that this could restrict it, and be assured that the state board, my staff is already addressing this pool, and I know exactly what you are talking about, I know one candidate that was sent forward, and that is really the choice for the state board, so we do insist that now three go forward, but it could be bigger depending on late admittance to the candidate pool.

Chairman- Mark S. Owens: I will stand for questions.

Rep. Rich S. Becker: two points, the last point that you mentioned in no way eliminates somebody from being considered for the presidency of any institution, that does not have a doctorate degree, the wording of this came directly from legislative management, and the wording I believe came from the existing policy that the state board has, so I do not see any

conflict there. The bill certainly does not limit your selecting someone without a terminal degree. The other question that I had, I am pleased to hear that work is ongoing, I was not aware of that, the wording that I got apparently from legal that the policy states for the board has not reflected the changes you are talking about, if you are going to be with three members I can live with that because that is between the 2 and the 4, I am pleased that you are heading in that direction, but you did not really qualify when that would become an official policy or if it could be out there for a number of years before get time to make it permanent policy, if you can respond to that.

Mark Hagereth: We, we passed the policy change, and this has been a little fluid, a few months back, so I apologize if we had not informed you of that, I know we had dinner at Grand Forks, this is one of the ideas you are going on, so if that was my oversight forgive me, but it was put in that policy, and we made it very clear to the search, out of the governance board to better manage governance in the higher education board, and that has been a clear expectation as we will send at least three names forward, and perhaps more depending on if we are seeing a pattern of people dropping out, it is interesting, younger people kind of have the in-and-out, I am here and I am not, where is the idea where you are sending it forward and putting get there. We had in one search in one university, the morning of the final board meeting we had a candidate call and just say pick my name out, like happening right as we were about to put his record up there, which I thought was a little odd, so it is a policy now and we are very dedicated to enforcing it, and I can ensure you while I am the chancellor we want choices, that is what the board is for, because you do not want to force who they wanted, and just eliminate all the other ones, and sent one name forward, which really disempowers the board, the board and the people of North Dakota are no longer being represented, and that is not happening anymore.

Chairman- Mark S. Owens: any other questions.

Rep. Mary Johnson: I just have a procedural question, so say that happened again where one name was submitted to the board, could they retire the search committee and start all over, and not accept that, are they really disempowered by that.

Mark Hagereth: the search committee established by the board can right now be very flexible, and adapt depending on what is going on, I just want to make it a point that sometimes we may want more than 4, because we are just getting a sense from the search firm that there is a lot of fluidity, in two different cases, they were in doing two different searches at the same time, meaning they were waiting to hear what was going to happen in New Mexico as they were arriving, so if they get that job they drop out. The other one that pulled out in the last minute I think was negotiating in his home university going I am about to go on that thing, I want that pay raise, done. Here we are, which I found being unkind to us, that we were being used. I am just saying yeah, it is really just international, they jet in and out, and the idea that I can get a better deal, it is a world marketplace for these things, so just having the board to have the aptitude, and the ability to respond to things you really cannot predict sometimes, that is the only point I was making.

Chairman- Mark S. Owens: any other questions.

Vice Chairman- Cynthia Schreiber-Beck: I did go back and search where this was in policy. And I did find it just sort of as reference, it in policy, 601.1 presidential searches, so that would be a reference point, to look at. 601.1 presidential searches under policies.

Chairman- Mark S. Owens: any other questions. Any further opposition, any neutral opposition for HB 1309.

2017 HOUSE STANDING COMMITTEE MINUTES

Education Committee
Coteau A Room, State Capitol

HB 1309
1/24/2017
Job 27339

- Subcommittee
 Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Relating to the appointment of institution presidents and the commissioner of higher education.

Minutes:

No attachments.

Chairman- Mark S. Owens: opens hearing on HB 1309. What is the committee's comments or pleasure?

Rep. Rich S. Becker: the main thing that this bill was trying to do is get the board of higher education to follow its own policy, and I think what we determined from the chancellor was that bit by piece they have been changing their policies and now they are currently working on the one that they will at least forward 3 candidates for consideration, judging by looking around at the table yesterday, when I was presenting this, I did not think that there would be a large segment that would vote for this and in particularly now, with the board of higher education saying that they are essentially doing the same thing, they are working on policy, I do not know it exist at this moment, but it sounded like it was going to be there just very shortly, that we are accomplishing what we want, and perhaps there is not a need for this bill, after saying that, Ronald Regan said trust but verify, this might be the kind of a bill, if we were to pass it, and I think I am still going to suggest that. This is our verification of a trust, that the board of higher education was going to do what they said they would do.

Chairman- Mark S. Owens: Rep. Rich S. Becker I appreciate your point, I thought though that they did already have a policy, and he even stated that he believed it was because of your suggestion.

Rep. Rich S. Becker: I heard that too, but it was kind of, they have been updating their policy, and this one they are going to, but I do not know it has been done yet.

Chairman- Mark S. Owens: he gave me the impression, that it was there. And the only one, the only part in there that has always bothered me was that not more than 4, because what if he really had, but that was a minor thing, I figured we could change that.

Vice Chairman- Cynthia Schreiber-Beck: if you read 601.1 on presidential searches and the NDUS policy it is there; it says three or more will be. So it exists, it is that it does not exist, I believe that it has been followed, there was the instance that it was not in 2008, the last update of the policy if my memory serves me right was 2015 April. Something like that.

Rep. Rich S. Becker: there may be other discussion which I think would be interesting just to hear, but what I am coming to the conclusion is that the bill no longer is required.

Chairman- Mark S. Owens: any other comments.

Rep. Brandy Pyle: I just think we live in the type of society, especially in North Dakota, if we are federal policy and not following a policy, someone is going to know, and it will be in the public and they will hold us accountable or hold the board of higher education accountable, to what they said they are going to do, so I think if it is already in policy I think that I agree this may not be necessary.

Rep. Rich S. Becker: I concur on your point; the matter of fact is it took 8 to 9 years for the remedy to followed. That is why in two different sessions I tried to point this out, and finally it worked, but our trust sometimes the public will see it, but maybe they will, but maybe it takes a long time for them to catch it. Not everybody has a Rep. Denton Zubke that can go through and find that something has not been done for the last 2,3,4 years.

Chairman- Mark S. Owens: any other comments. What is the committees desire on HB 1309?

Rep. Rich S. Becker: do we need a motion Mr. Chairman just to withdraw.

Chairman- Mark S. Owens: we have had a hearing on it, that is the problem, I can check if you all want me to, but once we have a hearing we should just have a vote on it. If you can withdraw it, that is fine too.

Rep. Denton Zubke: I will move a do not pass on HB 1309.

Chairman- Mark S. Owens: is there a second, seconded by Rep. Matthew Ruby. Any further discussion on HB 1309. Vote is 12-0-2, and carried by Rep. Brandy Pyle. The two people absent are Rep. Corey Mock and Rep. Mary Johnson. The do not passed.

Date: 1/24/17

Roll Call Vote # 1

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1309

House Education Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Rep. Zubke Seconded By Rep. Ruby

Representatives	Yes	No	Representatives	Yes	No
Chairman- Mark S. Owens	✓		Rep. Andrew Marschall	✓	
Vice Chairman- Cynthia Schreiber-Beck	✓		Rep. Bill Oliver	✓	
Rep. Rich S. Becker	✓		Rep. Brandy Pyle	✓	
Rep. Pat D. Heinert	✓		Rep. Matthew Ruby	✓	
Rep. Dennis Johnson	✓		Rep. Denton Zubke	✓	
Rep. Mary Johnson	AD		Rep. Ron Guggisberg	✓	
Rep. Donald W. Longmuir	✓		Rep. Corey Mock	AB	

Total (Yes) 12 No 0

Absent Rep Mock, and Rep M. Johnson.

Floor Assignment Rep. Pyle

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

REPORT OF STANDING COMMITTEE

HB 1309: Education Committee (Rep. Owens, Chairman) recommends **DO NOT PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1309 was placed on the Eleventh order on the calendar.

2017 TESTIMONY

HB 1309

HB 1309

1/23/17

Attachment 1

**Testimony of Representative Rich Becker District 43 Grand Forks to the
House Education Committee House Bill No. 1309, January 23, 2017.**

Mr. Chairmen and members of the committee, I am Rich Becker and as you know, one of your fellow members on this committee. I am more than pleased to have this opportunity to introduce you to my bill 1309.

It is a very simple bill dealing with the North Dakota Century Code 15-10 that refers to the State Board of Higher Education Appointment process. Bill 1309 would add two new sections specifically referring to the hiring of a President of an institution and for the Commissioner of higher education. The State Board has a policy in place for the overall appointment process, but does not always follow the process.

There policy states that for either of these two positions at least three candidate names will be forwarded on as finalist. Since this does not always happen, my bill adds the wording that at least two and not more than four names must be forwarded onward.

The passage of House Bill 1309 will be of benefit to the North Dakota University System, all applicants for the two positions and a win/win result for the citizens of North Dakota!

Thank You,

Rich Becker

Representative Rich Becker