

# MICROFILM DIVIDER

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ROLL NUMBER

DESCRIPTION

1294

2005 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1294

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1294

House Government and Veterans Affairs Committee

☐ Conference Committee

Hearing Date 1/21/05

28

Tape Number

1

Side A

X

Side B

Meter #

33.8-44.4

Committee Clerk Signature



Minutes: Filling a vacancy in a legislative office and resignation of a member of the legislative assembly.

**Al Jaeger, Secretary of State-Neutral-Testimony Attached.**

**Rep. Kretschmar-District 28-For:** Filling a vacancy in a legislative office and resignation of a member of the legislative assembly has been filled by appointment in the past. The vast majority of North Dakotans like to elect their government officials and the bill that is before you would change the appointment process in all but one instance and the election of filling legislative vacancy The bill would provide that if a vacancy occurs after a general election, but before a regular session of the legislature, between November and December of a year, the governor would be required to call a special election, if the legislative vacancy would occur during a regular session, the district committee of the political party would send three names to the governor and the governor would then appoint one of those three persons to fill that vacancy. All vacancies would run until the next general election, it wouldn't be more then two years. Vacancy

occurred in March of a even numbered year and that vacancy could easy be filled by the election process in that year. If a legislature moves from the district he was elected in, that seat would be declared vacant and the process for filling a vacancy would go forward.

**Rep. Klemin:** Section 3, line 27 establishes a resident, is there any difference between a resident or resident. If you established residence you have actually moved to that domicile. If you have a residence that means you have a house their.

**Rep. Kretschmar:** I would have no objection to removing the a.

**Rep Klemin:** That is what I was getting at.

**Rep. Kasper:** Page 2, section 2 where you talk about the governor appointing from a slate of three candidates from the district committee. It could be very difficult, you have a district where only one candidate comes forward and they can't find two other candidates that are interested in the position whatsoever and you forward three names and two who are not interested, the governor has the power to appoint and the governor appoints the person who doesn't want the job?

**Rep. Kretschmar:** I think under our general law, no person is required to accept the job he or she does not want. There would be information forwarded to the governor explaining the situation. I feel vacancy would be filled by election, I think that is the better way.

**Rep. Conrad:** We are not appointing precinct committee people, when it came down to who was going to run it was left to the executive committee, we now have precinct committee people in district 3, so if I do have a heart attack or something, we would prepared with a larger group to carry it out.

**Rep. Kretschmar:** I think we will get better results, because it will be persons that are elected by the citizens of there districts. I prefer elective, rather then by appointment.

**Rep. Boehning:** Can you walk us though a vacancy when it does occur.

**Rep. Kretschmar:** When a vacancy occurs by death or resignation, the legislative council is notified and the chairman notifies the district committee of the political party in which the person came from and that political party is to meet and choose a successor and forward that name to the legislative council and then that person is appointed.

**Rep. Boehning:** The only thing we are changing is if we are in a binienum.

**Rep. Kretschmar:** That is correct, you are just appointed until the next general election.

**Rep. Boehning:** The governor could call a special election in the off session until the next general election.

**Rep. Kretschmar:** The governor could do that, but he would only do that if there was a long time until the next election.

**Rep. Kasper:** Section 2, the legislature is in session, the district committee is required under your proposal to submit three names to the governor. You have a republican legislator and a democratic governor, you have the opposite party appointing the opposite parties person, think of the political ramifications there. The district committee is the one who should appoint a replacement.

**Rep. Kretschmar:** That may be a solution, I would have no objection if you would amend the bill and the governor would have to call a special election, so the people could elect the person.

**Rep. Grande:** It could happen in the even numbered period of times that the governor can wait until the next election, before he called a special election. My concern would be if the governor is

of the opposite party of the person being replaced, he just going to automatically call for a special election, to get his party in. We are playing politics with this position versus allowing this to take place.

**Rep. Kretschmar:** I have more faith in our governor in our state, that they will use there best judgment in whether they should call a special election or not.

**Rep. Grande:** Calling a special election is very costly, more in your district then in mine, the cost of that is pretty high and then they have to turn around and elect that person in the general election.

**Rep. Kretschmar:** I think the governor would take that into consideration, when he makes a decision whether or not to call a special election.

**Rep. Sitte:** I do agree with you and it is important to elect the people. Could we see what the law looked like before the changes, I believe the changes were made four years ago and maybe go back to the system four years ago.

**Rep. Kretschmar:** The system that existed before was that the governor had the authority to call a special election, the governor had to use his discretion on whether to do that or not.

**Rep. Froseth:** I like section 3 of this bill, I think that clarifies some misunderstandings, some gray areas that we had to some residencies, I am not exactly sure how you would challenge someone's actual residency in a district in how the law is now. How would this change what we are currently doing?

**Rep. Kretschmar:** I think there would have to be evidence that the person moved from his district. All of us have a principle residence. My principle reason is to get back to the election by the people of North Dakota.

**Al:** I don't necessarily stand here in favor, because one thing I need to say up front is that the Constitution makes it very clear that the legislative assembly itself decides how the vacancies are going to be filled. Page 2, line 23, under the system we presently have in place, if somebody is appointed and 4% of the electors in the district do sign a petition the governor needs to call a special election. That hasn't happened, as you know I am involved, because there needs to be done, there was some problem with finality, how does the individual actually become ordained. My main concern today is page 1, line 16, there is a regular session of the legislative assembly between the time vacancy occurs, in the next general election the governor shall issue a right of election. Under this provision and using 2004 as an example, if a legislative vacancy had occurred between November 2nd and January 4th, the governor would have been required to call for a special election, in other words the special election would be called, because a regular session of the legislative assembly was taking place between the date the vacancy occurred and the next general election. Special cannot be held for at least 80 or 90 day after the governor calls one, because they have the front end where the law allows time for the political parties to come up with candidates, the law says 55 days before the special election, I have to certify the ballot, I have so many days after the election to certify the results. I bring this out because if that vacancy had occurred on November 3rd, it is quite conceivable that the results would not be certified until about this time or mid February. I don't think that is the intent what the sponsors want. That is what it says and that is what the result would be, obviously the later it got after November 3rd, the longer that would be and it is conceivable when the governor is going to call an election, that the newly elected person probably would come in time to vote.

**Rep. Froseth:** On the residency issue, is the residency clear enough in the law or do we have to clarify that.

**Al:** A person should resign when they are no longer qualified elector of the political subdivision from which they are elected from, but that hasn't necessarily taken place with the legislators. The only way the vacancy could be filled was through an election and the governor never called an election, because there wasn't a demand. One of the reasons it makes easier for the person who has moved to resign knowing that the position will be filled in relatively short time and that the district still has representation. Title 54 act and intent.

**Rep. Haas:** Thank you very much. Any more questions?

**Rep. Boehning:** I MOVE A DO PASS AS AMENDED ON HB 1294.

**REP. MEIER:** I SECOND.

**VOTE:** YES 14 NO 0 ABSENT 0 DO PASS

**REP. BOEHNING WILL CARRY THE BILL.**



VK  
1/28/05

HOUSE AMENDMENTS TO HOUSE BILL NO. 1294 GVA 1/31/05

Page 1, line 2, replace "; and to" with a period

Page 1, remove lines 3 through 5

Page 1, remove lines 7 through 24

Page 2, remove lines 1 through 31

Page 3, remove lines 1 through 23

Page 3, remove the underscore under line 26

Page 3, line 27, remove the underscore under "**creates vacancy**. If a member of the legislative assembly establishes", remove "a", and remove the underscore under "residence outside the"

Page 3, remove the underscore under lines 28 and 29

Renumber accordingly

Date: 4/28/05  
Roll Call Vote #: 1

**2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 1294**

House House Government and Veterans Affairs

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 50500.0101

Action Taken Do PASS AS Amended

Motion Made By Rep Boehning Seconded By Rep. Meier

Representatives	Yes	No	Representatives	Yes	No
Chairman C.B. Haas	✓		Rep. Bill Amerman	✓	
Bette B. Grande - Vice Chairman	✓		Rep. Kari Conrad	✓	
Rep. Randy Boehning	✓		Rep. Louise Potter	✓	
Rep. Glen Froseth	✓		Rep. Sally M. Sandvig	✓	
Rep. Pat Galvin	✓				
Rep. Stacey Horter	✓				
Rep. Jim Kasper	✓				
Rep. Lawrence R. Klemin	✓				
Rep. Lisa Meier	✓				
Rep. Margaret Sitte	✓				

Total (Yes) 14

No 0

Absent 0

Floor Assignment Rep Boehning

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

Rep Grande move the amendments  
Rep. Boehning second  
Voice vote motion carried

**REPORT OF STANDING COMMITTEE**

**HB 1294: Government and Veterans Affairs Committee (Rep. Haas, Chairman)**  
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends  
**DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1294 was placed  
on the Sixth order on the calendar.

Page 1, line 2, replace "; and to" with a period

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2005 TESTIMONY

HB 1294

ALVIN A. JAEGER  
SECRETARY OF STATE

HOME PAGE [www.state.nd.us/sec](http://www.state.nd.us/sec)



PHONE (701) 328-2900  
FAX (701) 328-2992  
E-MAIL [sos@state.nd.us](mailto:sos@state.nd.us)

## SECRETARY OF STATE

STATE OF NORTH DAKOTA  
600 EAST BOULEVARD AVENUE DEPT 108  
BISMARCK ND 58505-0500

January 28, 2005

TO: Chairman Haas, Chairman,  
and Members of the House Government and Veteran Affairs Committee

FR: Al Jaeger, Secretary of State

RE: HB 1294 – Vacancy in Legislative Office

As Secretary of State, I do not have a position on this bill because the constitution makes it clear the Legislative Assembly is responsible for determining how legislative vacancies are filled.

However, as the state's chief election official, I do have a responsibility to raise a concern about one portion of the bill, which is logistically challenging and may not achieve the intent of this bill.

Beginning in line 16, it states:

"if there is a regular session of the legislative assembly between the time the vacancy occurs and the next general election, 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."

Under this provision and using 2004 as an example, if a legislative vacancy had occurred between November 2, 2004, and January 4, 2005, the Governor would be required to call for a special election. In other words, the special election would be called because a regular session of the legislative was taking place between the date the vacancy occurred and the next general election.

As I understand state law, a special election could not be held for at least 80 to 90 days after the Governor calls one. Therefore, as proposed, if a vacancy had occurred on November 3, 2004, it probably would be close to 100 or more days before the results of the election would be certified and the vacancy filled, which would be mid-February.

The later the vacancy occurred and still before the beginning of the regular session, the vacancy might not be filled until towards the end of the regular legislative session.

Counties may also have a concern because the calling of a special election would be an unanticipated cost for them in conducting the election, which they would not have budgeted for.