

2009 HOUSE POLITICAL SUBDIVISIONS

HB 1369

# 2009 HOUSE STANDING COMMITTEE MINUTES

**Bill No. HB 1369**

## **House Political Subdivisions Committee**

☐ Check here for Conference Committee

Hearing Date: February 5, 2009

Recorder Job Number: 8911

Committee Clerk Signature

Minutes:

**Chairman Wrangham** reopened the hearing on HB 1359.

**Appointed a subcommittee to work on this: Rep. Koppelman, Rep. Klemin and Rep.**

**Kilichowski.**

**Hearing closed.**

# 2009 HOUSE STANDING COMMITTEE MINUTES

## Bill No. HB 1369

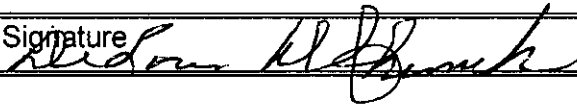
### House Political Subdivisions Committee

☐ Check here for Conference Committee

Hearing Date: February 6, 2009

Recorder Job Number: 8908

Committee Clerk Signature



### Minutes:

**Chairman Wrangham:** opened the hearing on HB 1369.

**Rep. Skarphol:** This bill is an attempt to give our political subdivisions an authority that

they currently do not have in regards to appointments for a term of office on the governing body. Our current airport authority has been indicted for five charges of fire arm violations and two charges of misappropriation of funds. \$20,000 in airport authority dollars. He was found to be in possession of almost 200 weapons. He refuses to resign and he has been appointed to a five year term. I am not sure what the remaining time is on that term. Under the current statue he cannot be removed by the city that appointed him. This is an attempt to give the political subdivision that appointed him the authority to have them serve. The city can change their home rule charter and probably get that ability. In the current situation any change made to the ordinance of the city would not affect this individual. I would hope this law would try to resolve the fact that political subdivisions, cities I guess in my mind, back some of the authority that was

mistakenly overlooked in the change in the legal process. Did a lot of discussion on the person above and what happened in this case. Discussed a lot of dealing with the attorney general office. We do not have the authority to remove him. He has not been found guilty so there has been nothing we can do.

**Rep. Zaiser:** Is it a simple majority or a 2/3 majority to remove him?

**Rep. Skarphol:** It is the airport authority itself that he serves on so it would be the city commissioner that would have authority to take such action. I guess if you were going to require more than a simple majority you would have to go to a four out of five. It does include the notice of hearing.

**Rep. Kilichowski:** This comes as a surprise to me. You are saying that if the county commission reports someone to the water board for two years; that those people cannot be removed from that position because they have a two year period?

**Rep. Skarphol:** That is my understanding unless that political subdivision has a policy, but pretty much if they are for a period of time; they are unable to be removed. I believe this to be a serious issue.

**Rep. Jerry Kelsh:** would you be comfortable in putting language that would further protect that individual. Does the employee have any other recourse? There are cases where the people aren't at fault and they have no recourse.

**Rep. Skarphol:** I don't mind refining the law and due process. I think this has been before the governor and Supreme Court and so I think it is sufficient that the committee take action.

**Rep. Klemin:** so you have hearing and determine that a person has committed a crime.

**Rep. Koppelman:** What is the current status? You are talking about employment here.

Can a board just not dismiss someone because nor do they need to go through a process of finding a fault to do that?

**Rep. Skarphol:** After substantial discussion with the governor, and the attorney general and the states attorney we have been told that they cannot refuse them employment for a period of the; otherwise, the five years so therefore they have the ability to stay in the position until they resign or their term expires.

Neutral:

**Connie Sprynczynatky:** This bill is not one that the league has asked for or we have any particular position on. After further discussion; ask you to consider carefully the language you put into that because if it is home rule, and you take it out of the city and county folks. They would have the ability to appoint. This is one of the issues we are going to concentrate on because it is something we have not thought about. I think Rep. Skarphol made an excellent case on why you would want some of this language. I don't think it does any harm; just be careful about the majority as the attorney general said.

There are 29 cities that have commissioners. In smaller communities everyone know

everyone and you can understand how this could be a tough situation. Everything else takes a majority so I would ask you not to change that threshold because we have to work with home rule communities.

**Rep. Headland:** I am assuming you are on the council in Bismarck. Do you have a policy that enables you to get rid of somebody if you need to?

**Connie Sprynczynatky:** I believe we do. There are problems in all positions and it can be very difficult getting rid of them. I can check the language and we would certainly offer than knowledge.

**Rep. Headland:** My point is if you have already got this language written in this direction it might be helpful for us to have a look at.

**Rep. Klemin:** When I looked at those personnel policies, I don't think I have seen where they actually appear. Usually it is an opportunity to appear. They can request one if they want to. I would think you would need to have enough exponential.

**Connie Sprynczynatky:** You are bringing up another very difficult situation where in our small communities where people know people. There is always reluctance for people to go before the public and be put on the hot seat. This would require a hearing, but if we have to we have to. We already have to do in certain instances; say there is a person who works for an organization and the police had done an investigation in Dickinson. The first time it happen the city commissioner and they had to take action

and be removed. It can be a hard thing to do where everyone know everyone and you need to take action and that is what we had to go through. It is not an easy thing to do.

**Rep. Klemin:** It there is an opportunity for a hearing then it would be up to that individual whether he wanted to have a hearing or not.

**Connie Sprynczynatky:** Every once in a while we will have an individual who is eligible under the program and that person tries to appeal that. In most cases if they decide to appeal it they come to the city commission meeting and there they are in front of God and everybody. In some cases that part alone will keep them from speaking.

**Rep. Jerry Kelsh:** In a situation like this wouldn't they go into executive session?

**Connie Sprynczynatky:** that is verbatim unless you gave up that. In order to go into executive session you have to actually site the section of the century code. All personnel actions are open to the public. We get questions about this all the time at our office. We have to put the person on the spot in front of everybody.

**Rep. Kilichowski:** If a policy got out to all the cities like the city of Bismarck has; can they not take the policy and make it retroactive would you deal with the situation?

**Connie Sprynczynatky:** I don't know why assuming the law protects it. As long as the governing board has the policy I don't know why you would do it.

Hearing closed.

# 2009 HOUSE STANDING COMMITTEE MINUTES

## Bill No. HB 1369

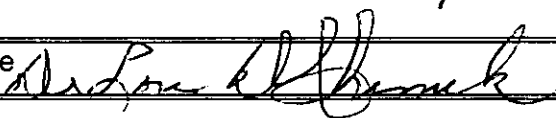
### House Political Subdivisions Committee

☐ Check here for Conference Committee

Hearing Date: February 12, 2009

Recorder Job Number: 9414

Committee Clerk Signature



#### Minutes:

Chairman Wrangham reopened the hearing on HB 1369.

**Rep. Klemin:** After our hearing there was a subcommittee appointed consisting of Rep.

Koppelman, Rep. Kilichowski, and I. I emailed the ND constitution Article XI to each member

to review. As you recall Rep. Skarphol was concerned about this person with the airport

authority. Shortly after we had that hearing the Attorney General received an opinion which I

emailed to everybody on the committee. ( Attachment #1) (Also handed out proposed

amendment #2). Went over the attachment and how it works. So basically what the

Legislature may do is anything we think is appropriate. Also went over the 44-11-01. what

officers are removable by the Governor and the boundaries? So what the committee is

recommending is we rephrase whoever does this bill to be more constituent with the language

of the constitutional provision and with the language of the governor removal statutes. It has

the same intent but when you also add the additional reference to gross incompetency, which

is in both the constitution and statute but is not in this bill, I don't know if we want to put it in

there because we could fit a situation that could come up. So the only difference that we have

other than rephrasing the language is instead of requiring a hearing we are providing for the

opportunity for a hearing, which would mean that a person who is supposed to be removed;

opportunity for a hearing, which would mean that a person who is suppose to be removed; they have to give him notice, he would have the right to request a hearing. But no hearing would be automatically held because they may not need it in all cases. So we would leave it up to the political subdivision to use their own methods to determine their hearing procedures through their local policies or however they wanted to do it. You heard the League of Cities statue on that and how to do those things. The other thing we did was add an emergency clause. That sums up the amendment.

**Motion Made By Rep. Klemin to adopt the amendment: Seconded by Rep. Koppelman  
Voice Vote Carried.**

**Do Pass As Amended Motion Made By Rep. Kilichowski:**

**Vote: 12 Yes 0 No 1 Absent Carrier: Rep. Hatlestad**

**Hearing closed.**

VR  
2/12/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1369

Page 1, line 2, after "officers" insert "; and to declare an emergency"

Page 1, line 8, replace "if the governing body, after" with ", for"

Page 1, remove line 9

Page 1, line 10, after "duty" insert "or for habitual drunkenness or gross incompetence, after notice and opportunity for a hearing"

Page 1, after line 10, insert:

**"SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1369

House Political Subdivisions Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken

DO PASS

DO NOT PASS

AS AMENDED

Motion Made By Rep. Klemin Seconded By Rep. Koppelman

| Representatives                       | Yes | No | Representatives         | Yes | No |
|---------------------------------------|-----|----|-------------------------|-----|----|
| Rep. Dwight Wrangham,<br>Chairman     |     |    | Rep. Kari Conrad        |     |    |
| Rep. Craig Headland, Vice<br>Chairman |     |    | Rep. Jerry Kelsh        |     |    |
| Rep. Patrick Hatlestad                |     |    | Rep. Robert Kilichowski |     |    |
| Rep. Nancy Johnson                    |     |    | Rep. Corey Mock         |     |    |
| Rep. Lawrence Klemin                  |     |    | Rep. Steve Zaiser       |     |    |
| Rep. Kim Koppelman                    |     |    |                         |     |    |
| Rep. William Kretschmar               |     |    |                         |     |    |
| Rep. Vonnie Pietsch                   |     |    |                         |     |    |
|                                       |     |    |                         |     |    |
|                                       |     |    |                         |     |    |
|                                       |     |    |                         |     |    |
|                                       |     |    |                         |     |    |
|                                       |     |    |                         |     |    |
|                                       |     |    |                         |     |    |
|                                       |     |    |                         |     |    |

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Carrier: \_\_\_\_\_

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

Voice  
Vote  
Carried

Date: 2/12  
Roll Call Vote #: 2

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 1369**

House Political Subdivisions Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO PASS DO NOT PASS AS AMENDED

Motion Made By Rep. Kilichowski Seconded By Rep. Koppelman

| Representatives                       | Yes | No | Representatives         | Yes | No |
|---------------------------------------|-----|----|-------------------------|-----|----|
| Rep. Dwight Wrangham,<br>Chairman     | ✓   |    | Rep. Kari Conrad        | ✓   |    |
| Rep. Craig Headland, Vice<br>Chairman | 0   |    | Rep. Jerry Kelsh        | ✓   |    |
| Rep. Patrick Hatlestad                | ✓   |    | Rep. Robert Kilichowski | ✓   |    |
| Rep. Nancy Johnson                    | ✓   |    | Rep. Corey Mock         | ✓   |    |
| Rep. Lawrence Klemin                  | ✓   |    | Rep. Steve Zaiser       | ✓   |    |
| Rep. Kim Koppelman                    | ✓   |    |                         |     |    |
| Rep. William Kretschmar               | ✓   |    |                         |     |    |
| Rep. Vonnie Pietsch                   | ✓   |    |                         |     |    |
|                                       |     |    |                         |     |    |
|                                       |     |    |                         |     |    |
|                                       |     |    |                         |     |    |
|                                       |     |    |                         |     |    |
|                                       |     |    |                         |     |    |
|                                       |     |    |                         |     |    |

Total (Yes) 12 No 0

Absent 1

Carrier: Rep Hatlestad

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

**REPORT OF STANDING COMMITTEE**

**HB 1369: Political Subdivisions Committee (Rep. Wrangham, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1369 was placed on the Sixth order on the calendar.

Page 1, line 2, after "officers" insert "; and to declare an emergency"

Page 1, line 8, replace "if the governing body, after" with ", for"

Page 1, remove line 9

Page 1, line 10, after "duty" insert "or for habitual drunkenness or gross incompetence, after notice and opportunity for a hearing"

Page 1, after line 10, insert:

**"SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

2009 SENATE JUDICIARY

HB 1369

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB1369

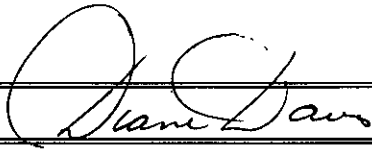
Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 3/9/09

Recorder Job Number: 10466

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

**Relating to the removal or appointed political subdivision officers.**

**Representative Bob Skarphol** – Introduces the bill – He relates the story of how this bill came to be. The chairman of the Tioga Airport Authority has been charged with numerous Federal violations of weapons laws and misappropriations of Federal dollars that had gone to the airport. As the current law stand the Tioga City Commission is unable to remove him from his job because he has been appointed for a certain period of time. He said the Airport Authority is paralyzed because it isn't appropriate for that person to be at the meetings as he is under house arrest. He will not resign. He has been charged with misappropriating \$200,000, 5 weapons violations. He would like this fast tracked so they can remove this guy before his term expires.

**Senator Nething** – Asks what position does that man hold?

**Skarphol** – He is the Chairman of the Airport Authority, not sure if that is considered a board.

**Senator Nething** – Asks under what charges he would be removed.

**Skarphol** – He thinks it would be misconduct, or misuse of funds.

**Senator Nething** – Responds, but it hasn't been convicted.

**Skarphol** – Said that if the city of Tioga were to have the ability to do what is reflected in this language and remove him from office, the burden would then fall on him to sue to be reinstated.

**Senator Nelson** – Asks if the city of Tioga has any bi-laws they could use to do this themselves without making this a state issue.

**Skarphol** – States, according to the Attorney General's opinion no.

**Senator Olafson** – Asks if the problem is that he is appointed not elected. Are there differences.

**Skarphol** – Said they have spent a lot of time with the Governor's office and they are more than willing to sign and get this happen. Waiting for his term to expire the city would really like to remove him.

**Keith Magneson** – ND League of Cities – In support of this bill.

**Senator Nething** – Asks if he is satisfied with the facts here as far as this case is concerned.

**Magneson** – Replies, yes. There is also an option for a hearing which is important.

**Senator Nething** – Said he worries about the vagueness of the reason.


**Ryan Bernstein** – Governors Legal Counsel – In support of this bill.

**Senator Olafson** – Are you comfortable with the language in this bill.

**Bernstein** – Replies, yes the language is almost identical to the language that authorizes the Governor to remove certain individuals.

**Bev Nielsen** –ND School Board Association – Neutral position. Would like it clarified if this applies to school boards.

**Senator Nething** – You may have to wait till a court case.



**Senator Lyson** – moves to do pass

**Senator Olafson** seconds.

**Senator Nething** would like to wait before taking a vote.

Close the hearing 1369



## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB1369

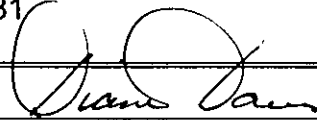
Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 3/10/09

Recorder Job Number: 10581

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

Committee Work

The committee discusses the problems in Tioga with trying to relieve of duties the Chairman of the Airport Authority there. The idea of the city having by-laws was brought up. The small towns have other problems they have to deal with.

**Senator Lyson** – moves a do pass

**Senator Olafson** – seconds

Vote – 6-0

**Senator Lyson** will carry.

Date: 3/9  
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES <sup>10</sup>1369  
BILL/RESOLUTION NO.

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ☒ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Sen Lyson Seconded By Sen Olafson

| Senators                        | Yes | No | Senators            | Yes | No |
|---------------------------------|-----|----|---------------------|-----|----|
| Sen. Dave Nething - Chairman    | X   |    | Sen. Tom Fiebiger   | X   |    |
| Sen. Curtis Olafson - V. Chair. | X   |    | Sen. Carolyn Nelson | X   |    |
| Sen. Stanley W. Lyson           | X   |    | Sen. Mac Schneider  | X   |    |
|                                 |     |    |                     |     |    |
|                                 |     |    |                     |     |    |
|                                 |     |    |                     |     |    |
|                                 |     |    |                     |     |    |
|                                 |     |    |                     |     |    |
|                                 |     |    |                     |     |    |
|                                 |     |    |                     |     |    |
|                                 |     |    |                     |     |    |
|                                 |     |    |                     |     |    |
|                                 |     |    |                     |     |    |
|                                 |     |    |                     |     |    |
|                                 |     |    |                     |     |    |

Total (Yes) 6 (N) 0

Absent \_\_\_\_\_

Floor Assignment Sen. Lyson

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

**REPORT OF STANDING COMMITTEE (410)**  
March 10, 2009 1:05 p.m.

**Module No: SR-43-4447**  
**Carrier: Lyson**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1369, as engrossed: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1369 was placed on the Fourteenth order on the calendar.**

2009 TESTIMONY

HB 1369

#1

## **North Dakota Constitution Article XI**

### **GENERAL PROVISIONS**

#### **Section 11. [Removal of officers not subject to impeachment]**

All officers not liable to impeachment shall be subject to removal for misconduct, malfeasance, crime or misdemeanor in office, or for habitual drunkenness or gross incompetency in such manner as may be provided by law.

#### **44-11-01. What officers removable by governor - Grounds.**

The governor may remove from office any county commissioner, sheriff, coroner, county auditor, recorder, states attorney, county treasurer, superintendent of schools, county commissioner, surveyor, public administrator, city auditor, city commissioner, mayor, chief of police, deputy sheriff, or other police officer, township officer, rural fire protection district board member, school board member, or any custodian of public moneys, except the state treasurer, whenever it appears to the governor by competent evidence and after a hearing as provided in this chapter, that the officer has been guilty of misconduct, malfeasance, crime in office, neglect of duty in office, or of habitual drunkenness or gross incompetency.