

2009 HOUSE JUDICIARY

HB 1452

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1452

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 1/26/09

Recorder Job Number: 7714, 7715

Committee Clerk Signature

*DeRose*

Minutes:

**Chairman DeKrey:** We will open the hearing on HB 1452.

**Al Jaeger, Secretary of State:** Support (attachment).

**Rep. Dahl:** Special elections, does that mean the candidate is picked, there is no primary election process. Is that correct.

**Al Jaeger:** Based on their timeline, there would not only be no chance for a convention, but they could certainly do that in short order to do what they want to do.

**Rep. Koppelman:** You talked about the Senate having a procedure that is different than this. How does that work.

**Al Jaeger:** I believe that they can appoint someone to fill the vacancy.

**Rep. Koppelman:** You said that this was passed by Congress in an appropriations bill, and want the states to adopt the law, that implies that the states had the authority to control this. Is there a uniform system now, or is there a patchwork system to fill vacancies now.

**Al Jaeger:** I don't think there is a system, that's why they did this.

**Chairman DeKrey:** Is this bill pretty much verbatim of what the congressional act said, or is there some leeway that you had here within your office that you actually tried to put in this bill.

**Al Jaeger:** We asked our attorney in the AG's office to review and set the policy as to what was adopted.

**Rep. Delmore:** Most states will be adopting something very similar to this, that's not verbatim.

**Al Jaeger:** I believe we will all be adopting this policy, because it said we shall. I don't believe it is optional.

**Chairman DeKrey:** Thank you. Further testimony in support. Testimony in opposition. We will close the hearing. What are the committee's wishes in regard to HB 1452.

**Rep. Delmore:** I move a Do Pass.

**Rep. Wolf:** Second.

**12 YES 0 NO 1 ABSENT**

**DO PASS**

**CARRIER: Rep. Hatlestad**

Date: 1/26/09  
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1452

**HOUSE JUDICIARY COMMITTEE**

☐ Check here for Conference Committee

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

Action Taken ☒ DP ☐ DNP ☐ DP AS AMEND ☐ DNP AS AMEND

Motion Made By Rep. Delmore Seconded By Rep. Wolf

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin		
Rep. Boehning	✓		Rep. Vig	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Hatlestad	✓		Rep. Zaiser	✓	
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 12 No —

Absent 1

Floor Carrier: Rep. Hatlestad

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

**REPORT OF STANDING COMMITTEE**

**HB 1452: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS**  
(12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1452 was placed on the  
Eleventh order on the calendar.

2009 SENATE GOVERNMENT AND VETERANS AFFAIRS

HB 1452

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No.1452

Senate Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Hearing Date: 03/19/09

Recorder Job Number: 11301

Committee Clerk Signature

*Kate Oliver*

Minutes:

Chairman Dever opened the public hearing on HB1452.

**Al Jager:** Secretary of State. See attached testimony #1.

**Representative Rust:** Representative David Rust District 2. This bill is a bill that calls for a special election to fill a vacancy in the United States House of Representatives. What we need to do as a state with regard to federal regulations and it does ask for a timeline for which to hold that election. I would defer questions to Mr. Jager.

**Senator Dever:** It seems to that part of the issue is to hold an election rather than a gubernatorial appointment.

**Al Jager:** The thing with this is, I make reference to what happened in 2005 in my testimony. It does provide for the filling of vacancies, they included the text in a legislative branch appropriations bill, that is why I gave you the extra handout with my testimony, and then you see what congress is doing. Our national office was not aware of it at all. So this is the first session we have been able to do anything with it, it doesn't match any of our timelines but this is what they have in federal law. We are bringing it forth because Congress says that the states will adopt this.

**Senator Dever:** Can you clarify for me the ability or inability of the governor to make an appointment?

**Al Jager:** The appointment that I understand it for vacancy is only applied to U.S. Senate; there is not an appointment provision for a member of congress.

**Senator Oehlke:** If it was not a catastrophe and only 98 Congressmen disappeared at once, then the process would not have to be followed like this at all?

**Al Jager:** Yes

**Senator Horne:** Is this something Congress has mandated of the states and these timelines that you gave us, we are just trying to cooperate with Congress?

**Al Jager:** Yes and when I am asked in the next survey I can say that we have adopted it.

**Senator Dever:** The bill makes sense but the idea that Congress can tell us, rubs me the wrong way. If we were to rather grant the governor the responsibility to appointment would it be in violation?

**Al Jager:** The timelines are not in keeping with anything the other states have.

**Senator Dever:** When we passed the bill for dist to fill a vacancy it was in the hope that if someone dies today then they can have someone in there the next day.

**Al Jager:** I just know that if there is a vacancy in the House the governor doesn't have an appointment.

**Senator Nelson:** Why do they use the word 'if' in sub section 3?

**Senator Dever:** They would have the ability to reject anyone we send to them.

**Senator Cook:** If this happens the chances that we could pull this off is hard.

**Senator Nelson:** What do they do if we do not pass this bill?

**Al Jager:** I brought it forth because I am supposed to and let's hope we never have to deal with it.



There was no further testimony and Chairman Dever closed the public hearing on HB1452.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No.1452

Senate Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Hearing Date: 03/19/09

Recorder Job Number: 11659

Committee Clerk Signature

*Kathleen Owe*

Minutes:

Chairman Dever opened the committee work on HB1452.

**Senator Dever:** There is no provision for the Senate.

**Senator Cook:** How was the vote in the House?

**Senator Oehlke:** Is the Senate side addressed somewhere?

**Senator Cook:** Governor Appointment.

**Senator Nelson:** Then a special election

**Senator Dever:** When Burdick's wife served when he passed away.

A motion was made for a do pass by Senator Cook with a second by Senator Oehlke. There was no further discussion and the motion passed 5-0 with Senator Oehlke carrying the bill to the floor.

Date: 4-2-09  
Roll Call Vote #: 1

Carrier  
Oehlke

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1452

Senate Government and Veteran's Affairs Committee

☐ Check here for Conference Committee

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

Action Taken Do Pass

Motion Made By Cook Seconded By Oehlke

Representatives	Yes	No	Representatives	Yes	No
Dick Dever	X		Dwight Cook	X	
Dave Oehlke	X		Carolyn Nelson	X	
Robert M. Horne	X				

Total Yes 5 No 0

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

**REPORT OF STANDING COMMITTEE (410)**  
April 2, 2009 2:01 p.m.

**Module No: SR-56-6019**  
**Carrier: Oehlke**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1452: Government and Veterans Affairs Committee (Sen. Dever, Chairman)**  
recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1452  
was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

HB 1452

ALVIN A. JAEGER  
SECRETARY OF STATE

IE PAGE [www.nd.gov/sos](http://www.nd.gov/sos)



SECRETARY OF STATE  
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*Same testimony  
& handouts given  
to Senate.*

TO: Rep DeKrey, Chairman, and Members of the House Judiciary Committee

FR: Al Jaeger, Secretary of State

RE: HB 1452 – Continuity in Representation – United States House of Representatives

The purpose of this bill is to enact the requirements of Title III of H.R. 2985, Legislative Branch Appropriations Act, 2006, presented to the President on July 29, 2005, which he signed on August 2, 2005 (see attachment).

It provides for a method of filling vacancies in the United States House of Representatives, in the event the number of vacancies in that body exceeds 100.

Unfortunately, because of the manner in which it was passed by Congress (tucked into a Legislative Branch Appropriations Bill); the need for its enactment by the states was not generally known until May 2007.

It was at that time when Congress asked the National Association of Secretaries of State to conduct a survey as to how many states had adopted the required legislation. The resulting survey revealed that very few states had known about Title III of H.R. 2985 and had not adopted the applicable laws enacting its provisions.

For North Dakota, this is the first legislative session since the requirement was known to enact a law to enact the required federal legislation.

--H.R.2985--

H.R.2985

**One Hundred Ninth Congress****of the****United States of America****AT THE FIRST SESSION**

Begun and held at the City of Washington on Tuesday,

the fourth day of January, two thousand and five

An Act

Making appropriations for the Legislative Branch for the fiscal year ending September 30, 2006, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Legislative Branch for the fiscal year ending September 30, 2006, and for other purposes, namely:

**TITLE I--LEGISLATIVE BRANCH APPROPRIATIONS****SENATE****Expense Allowances**

For expense allowances of the Vice President, \$20,000; the President Pro Tempore of the Senate, \$40,000; Majority Leader of the Senate, \$40,000; Minority Leader of the Senate, \$40,000; Majority Whip of the Senate, \$10,000; Minority Whip of the Senate, \$10,000; President Pro Tempore emeritus, \$15,000; Chairmen of the Majority and Minority Conference Committees, \$5,000 for each Chairman; and Chairmen of the Majority and Minority Policy Committees, \$5,000 for each Chairman; in all, \$195,000.

**Representation Allowances for the Majority and Minority Leaders**

For representation allowances of the Majority and Minority Leaders of the Senate, \$15,000 for each such Leader; in all, \$30,000.

**Salaries, Officers and Employees**

For compensation of officers, employees, and others as authorized by law, including agency contributions, \$147,120,000, which shall be paid from this appropriation without regard to the following limitations:

**OFFICE OF THE VICE PRESIDENT**

For the Office of the Vice President, \$2,181,000.

**OFFICE OF THE PRESIDENT PRO TEMPORE**

For the Office of the President Pro Tempore, \$582,000.

**OFFICE OF THE PRESIDENT PRO TEMPORE EMERITUS**

For the Office of the President Pro Tempore emeritus, \$290,000.

**OFFICES OF THE MAJORITY AND MINORITY LEADERS**

For Offices of the Majority and Minority Leaders, \$4,340,000.

**OFFICES OF THE MAJORITY AND MINORITY WHIPS**

For Offices of the Majority and Minority Whips, \$2,644,000.

**COMMITTEE ON APPROPRIATIONS**

For salaries of the Committee on Appropriations, \$13,758,000.

**CONFERENCE COMMITTEES**

For the Conference of the Majority and the Conference of the Minority, at rates of compensation to be fixed by the Chairman of each such committee, \$1,470,000 for each such committee; in all, \$2,940,000.

*1815 Pages*

### TITLE III--CONTINUITY IN REPRESENTATION

SEC. 301. Section 26 of the Revised Statutes of the United States (2 U.S.C. 8) is amended--

(1) by striking 'The time' and inserting '(a) IN GENERAL- Except as provided in subsection (b), the time'; and

(2) by adding at the end the following new subsection:

“(b) Special Rules in Extraordinary Circumstances-

“(1) IN GENERAL- In extraordinary circumstances, the executive authority of any State in which a vacancy exists in its representation in the House of Representatives shall issue a writ of election to fill such vacancy by special election.

“(2) TIMING OF SPECIAL ELECTION- A special election held under this subsection to fill a vacancy shall take place not later than 49 days after the Speaker of the House of Representatives announces that the vacancy exists, unless, during the 75-day period which begins on the date of the announcement of the vacancy--

“(A) a regularly scheduled general election for the office involved is to be held; or

“(B) another special election for the office involved is to be held, pursuant to a writ for a special election issued by the chief executive of the State prior to the date of the announcement of the vacancy.

“(3) NOMINATIONS BY PARTIES- If a special election is to be held under this subsection, the determination of the candidates who will run in such election shall be made--

“(A) by nominations made not later than 10 days after the Speaker announces that the vacancy exists by the political parties of the State that are authorized by State law to nominate candidates for the election; or

“(B) by any other method the State considers appropriate, including holding primary elections, that will ensure that the State will hold the special election within the deadline required under paragraph (2).

“(4) EXTRAORDINARY CIRCUMSTANCES-

“(A) IN GENERAL- In this subsection, 'extraordinary circumstances' occur when the Speaker of the House of Representatives announces that vacancies in the representation from the States in the House exceed 100.

“(B) JUDICIAL REVIEW- If any action is brought for declaratory or injunctive relief to challenge an announcement made under subparagraph (A), the following rules shall apply:

“(i) Not later than 2 days after the announcement, the action shall be filed in the United States District Court having jurisdiction in the district of the Member of the House of Representatives whose seat has been announced to be vacant and shall be heard by a 3-judge court convened pursuant to section 2284 of title 28, United States Code.

“(ii) A copy of the complaint shall be delivered promptly to the Clerk of the House of Representatives.

“(iii) A final decision in the action shall be made within 3 days of the filing of such action and shall not be reviewable.

“(iv) The executive authority of the State that contains the district of the Member of the House of Representatives whose seat has been announced to be vacant shall have the right to intervene either in support of or opposition to the position of a party to the case regarding the announcement of such vacancy.

“(5) PROTECTING ABILITY OF ABSENT MILITARY AND OVERSEAS VOTERS TO PARTICIPATE IN SPECIAL ELECTIONS-

13-14  
8-15  
B. Pagan



` (A) DEADLINE FOR TRANSMITTAL OF ABSENTEE BALLOTS- In conducting a special election held under this subsection to fill a vacancy in its representation, the State shall ensure to the greatest extent practicable (including through the use of electronic means) that absentee ballots for the election are transmitted to absent uniformed services voters and overseas voters (as such terms are defined in the Uniformed and Overseas Citizens Absentee Voting Act) not later than 15 days after the Speaker of the House of Representatives announces that the vacancy exists.

` (B) PERIOD FOR BALLOT TRANSIT TIME- Notwithstanding the deadlines referred to in paragraphs (2) and (3), in the case of an individual who is an absent uniformed services voter or an overseas voter (as such terms are defined in the Uniformed and Overseas Citizens Absentee Voting Act), a State shall accept and process any otherwise valid ballot or other election material from the voter so long as the ballot or other material is received by the appropriate State election official not later than 45 days after the State transmits the ballot or other material to the voter.

` (6) APPLICATION TO DISTRICT OF COLUMBIA AND TERRITORIES- This subsection shall apply--

` (A) to a Delegate or Resident Commissioner to the Congress in the same manner as it applies to a Member of the House of Representatives; and

` (B) to the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, and the United States Virgin Islands in the same manner as it applies to a State, except that a vacancy in the representation from any such jurisdiction in the House shall not be taken into account by the Speaker in determining whether vacancies in the representation from the States in the House exceed 100 for purposes of paragraph (4)(A).

` (7) RULE OF CONSTRUCTION REGARDING FEDERAL ELECTION LAWS- Nothing in this subsection may be construed to affect the application to special elections under this subsection of any Federal law governing the administration of elections for Federal office (including any law providing for the enforcement of any such law), including, but not limited to, the following:

` (A) The Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.), as amended.

` (B) The Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973ee et seq.), as amended.

` (C) The Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.), as amended.

` (D) The National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.), as amended.

` (E) The Americans With Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), as amended.

` (F) The Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), as amended.

` (G) The Help America Vote Act of 2002 (42 U.S.C. 15301 et seq.), as amended.'

This Act may be cited as the 'Legislative Branch Appropriations Act, 2006'.

Speaker of the House of Representatives.

Vice President of the United States and

President of the Senate.

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15  
pages