

2009 HOUSE JUDICIARY

HB 1538

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1538

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 1/26/09

Recorder Job Number: 7742

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on HB 1538.

Rep. William Kretschmar: Sponsor, support. In the 1999 session, the legislature passed the proposed constitutional amendment to allow the legislative assembly to determine how vacancies in the legislative assembly were filled. That was constitutional resolution and it was approved in the June election of 2000. So in 2001 session, the current law was met by the legislative assembly which allowed in certain instances for the appointment of legislators by the district political committees and their respective parties. I just don't think that is a good system. We've had it now for quite a few years. HB 1538 would change that system to allow the appointment of a legislator if the vacancy occurred during the legislative session. If the vacancy, under the bill, occurred during the time the legislature was not in regular session, then it would be up to the Governor to call a special election if he so desired, or if there is another regular session before the termination of that vacancy, the term of the person who created the vacancy, the Governor would have to call a special election to fill the vacancy so that there would be a legislator in place for the next regular session. It wouldn't have to be for the Senate, because now everyone has a four year term. So this would occur with every vacancy. The Governor could still call a special election if he so desired, even if there wasn't a

session. Basically it gets the system back to electing legislators. LC has prepared a list of all of the vacancies since 1980. There have been a number of vacancies that have occurred under the current system, whereby a person who was appointed as a legislator, and never survived an election. They never served one day in a session of the legislature. This is not a good system. Further, I have suspicions that some may be using this as a way to enhance the political fortunes of some. I think we should go back to a system of electing members of the legislative assembly. We can do that each two years in elections, and we should do that with the majority of vacancies. As I have served in this legislative assembly, there have only been two vacancies that occurred during session due to death (?). I would like to see this passed by our committee, the House.

Chairman DeKrey: Will this affect any Democrats that might go to the Obama administration. Would this bill affect them?

Rep. Kretschmar: Yes, if this does become law would not affect them until the 1st of August.

Chairman DeKrey: Would you recommend an emergency clause.

Rep. Zaiser: The way the bill is written, is this the way it was prior to 2000, when it was put into language where the leadership decided.

Rep. Kretschmar: Yes, before the year 2000, if a vacancy occurred in the legislative assembly it would be filled by a special election or at a general election.

Rep. Koppelman: In the handout, it doesn't seem to square with what you said about people that have been appointed to fill vacancies by the party but not survived the subsequent election.

Rep. Kretschmar: There have been some that survived; the special election coincided with a general election.

Rep. Koppelman: Would you revisit your point when you talked about the Governor appointing under your bill and you said he/she would have some latitude on whether to call for the election; whether or not to call for a special election, why would you leave that open. Why not just have it prescribed that if a special election is called for.

Rep. Kretschmar: Say a vacancy occurred in February or March, there wouldn't be a need to call for a special election.

Rep. Koppelman: So the latitude the Governor would have is the timing or whether or not to call for a special election first.

Rep. Kretschmar: If there is going to be another legislative session when they start a term, then he can call for a special election.

Rep. Koppelman: If not.

Rep. Kretschmar: Then you can wait and have the election normally.

Rep. Koppelman: Why would you leave that open, why not just say to have the election?

Rep. Kretschmar: Okay.

Chairman DeKrey: Thank you. Further testimony in support.

Al Jaeger, Secretary of State: Neutral. We always want to make sure that when a special election is called, that the county has it tied in with other elections. I haven't figured out yet if there is a concern. We are always concerned in our office about how these are going to coincide.

Rep. Kretschmar: As far as I know, I hope that's the way it is in the bill, if the Governor were to call a special election, unless it coincided with a general election that the normal laws that call for a special election would still be in place, for the deadlines, etc.

Rep. Klemin: One of the things that is deleted on page 1, is the 828 day provision. I think I was on GVA committee when this came through the first time, can you remind us why it's 828 days.

Al Jaeger: That date was picked because it coincided with the final deadline of an election. It had to be so many days ahead of time that the vacancy occurred; after that, there wasn't enough time to hold an election before the session started. That was the reason, so that as Rep. Kretschmar said, if a vacancy occurred during the session, what happens is you have a pre-session and the election is November 4th and all of a sudden you have a vacancy on November 5. All the timelines set up to have an election would end up being held in the middle of the session. So the 828 was to make sure that that type of situation did not happen, so that an election would be held so that the person that would be filling that vacancy would take their place at crossover time. That's the background.

Chairman DeKrey: Thank you. Further testimony on HB 1538. We will close the hearing.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1538

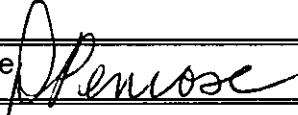
House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 2/4/09

Recorder Job Number: 8681

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will take a look at HB 1538. What are the committee's wishes.

Rep. Klemin: I move the amendment, that we add the emergency clause. In case there is a vacancy in the legislative assembly, now during the session...

Chairman DeKrey: If I understand Rep. Kretschmar's bill, now during session, it doesn't make any difference, because the political party still appoints during session. Out of session, it would go to a vote instead of a party appointment.

Rep. Klemin: But then before the next one, it would add an emergency clause.

Rep. Kretschmar: Second the motion of adding the emergency clause.

Chairman DeKrey: We will take a roll call vote on the Klemin amendment on HB 1538.

8 YES 5 NO 0 ABSENT

AMENDMENT PASSES

Chairman DeKrey: We now have the bill before us as amended.

Rep. Boehning: I move a Do Pass as amended.

Rep. Kretschmar: Second.

7 YES 6 NO 0 ABSENT

DO PASS AS AMENDED

CARRIER: Rep. Kretschmar

VR
2/4/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1538

Page 1, line 3, after "assembly" insert "; and to declare an emergency"

Page 3, after line 22, insert:

"SECTION 3. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

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

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1538

HOUSE JUDICIARY COMMITTEE

☐ Check here for Conference Committee

Legislative Council Amendment Number Klemin Amendment

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

Motion Made By Rep. Klemin Seconded By Rep. Kutschman

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) 8 No 5

Absent —

Floor Carrier: _____

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

Motion Carried.

Date: 2/4/09
Roll Call Vote #: 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1538

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. Boehning Seconded By Rep. Kretschmar

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) 7 No 6

Absent —

Floor Carrier: Rep. Kretschmar

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

REPORT OF STANDING COMMITTEE

HB 1538: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (7 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING). HB 1538 was placed on the Sixth order on the calendar.

Page 1, line 3, after "assembly" insert "; and to declare an emergency"

Page 3, after line 22, insert:

"SECTION 3. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

2009 TESTIMONY

HB 1538

LEGISLATORS RESIGNING/DYING BEFORE THEIR TERMS EXPIRE AND THEIR REPLACEMENTS 1980 - PRESENT

Name of Legislator Resigning/ Dying Before Completion of Term	Reason for Leaving	Date	Name of Replacement	Special Elections ¹
Senator Kent Jones	Resigned - Elected Commissioner of Agriculture in November 1980	11/20/80	Floyd Stromme	1/12/81
Senator Ernest Sands	Resigned - Elected Lieutenant Governor in November 1980	11/20/80	William Parker	1/12/81
Senator Frank Shablow	Death	7/12/81	William Heigaard	11/3/81
Senator Marie Tierney	Resigned - Moved to New Mexico	8/1/81	Bonnie Heinrich	11/3/81
Representative William Heigaard	Resigned his House seat to run in a special election to fill the vacancy caused by the death of Senator Frank Shablow	8/20/81	Neil Romfo	11/3/81
Senator Ralph Christensen	Death	4/16/82	Dean Meyer	
Senator Stella Fritzell	Death	4/4/84	Richard V. Shea	
Senator Francis Barth	Death	4/11/84	Walter Meyer	
Representative Peter Lipsiea	Death	6/21/85	Curt Almlie	
Representative Les Gullickson	Death	10/3/85	Dick Tokach/ Steve Tornac ²	
Senator Hal Christensen	Resigned - Moved to Nanuet, New York	10/15/85	Larry Schoenwald	
Representative Pat Conmy	Resigned - Appointed United States District Judge	12/17/85	Bill Sorensen	
Representative Ralph Dotzenrodt	Death	10/13/88	Robert Huether	
Senator Richard V. Shea	Death	3/16/90	Jayson Graba	
Representative Gerald Halmrast	Death	9/1/90	Dale Henegar/ Ron Carlisle ²	
Senator Clark Ewen	Death	9/23/90	Elroy Lindaas	12/20/90
Representative Dan Ulmer	Resigned - Moved to Fergus Falls, Minnesota	10/14/90	James Coats/ RaeAnn G. Kelsch ²	
Representative Dagne B. Olsen	Death	8/20/94	Ed Lloyd	
Senator Catherine "Kit" Scherber	Death	11/12/95	James Berg	
Representative Andrew "Andy" Hagle	Death	3/19/96	William R. Devlin/ Kenneth Kroeplin ²	
Representative Clarence F. Martin	Death	2/9/97	Shirley Meyer	5/6/97
Senator William G. Goetz	Resigned to work as Chief of Staff for Governor Ed Schafer	7/10/97	Rich Wardner	
Senator James A. Berg	Death	9/20/97	Tim Flakoll	
Representative Bob Martinson	Resigned - Appointed North Dakota Tourism Director	10/14/97	Audrey Cleary/ Jon Martinson ²	

Name of Legislator Resigning/ Dying Before Completion of Term	Reason for Leaving	Date	Name of Replacement	Special Elections ¹
Representative Tony Clark	Resigned to join the North Dakota Tax Department as an analyst	10/24/97	Byron Clark/ Blair Thoreson ²	
Representative Tom D. Freier	Resigned - Accepted position as Deputy Director of the North Dakota Department of Transportation	4/6/98	Deb Lundgren/ Ray H. Wikenheiser ²	
Representative Bill Oban	Death	7/10/98	Serenus Hoffner	
Representative Dale L. Henegar	Death	9/6/99	Dave Weiler	
Representative Jon Martinson	Resigned - Accepted position as Executive Director with the North Dakota School Boards Association	7/1/00	Governor called a special election to coincide with November 7, 2000, general election. Bob Martinson elected to Jon Martinson's seat.	
Senator Rod St. Aubyn	Resigned - Accepted a position with Blue Cross Blue Shield of North Dakota	8/30/00	Governor called a special election to coincide with November 7, 2000, general election. Duaine C. Espeland elected to Rod St. Aubyn's seat.	
Senator Gary J. Nelson	Resigned - Named State Executive Director of the Farm Service Agency	5/1/01	Gary A. Lee named replacement by District 22 Republicans ³ effective August 24, 2001 ⁴	
Representative Bill Pietsch	Resigned for health reasons	12/16/02	Vonnie Pietsch named replacement by District 22 Republicans ³ effective January 6, 2003 ⁴	
Representative Janet Wentz	Death	9/15/03	Mary Nester named replacement by District 3 Republicans ³ effective October 27, 2003 ⁴ (Mary Nester did not survive the November 2004 general election - Left office December 1, 2004, without serving in the Legislative Assembly.)	
Senator Linda Christenson	Resigned - Moved to Grand Rapids, Minnesota	9/15/03	Constance Triplett named replacement by District 18 Democrats ³ effective September 26, 2003 ⁴	
Representative Bruce Eckre	Resigned - Moved to Fargo	10/1/03	Arden C. Anderson named replacement by District 25 Democrats ³ effective October 24, 2003 ⁴ (Arden C. Anderson did not survive the November 2004 general election - Left office December 1, 2004, without serving in the House of Representatives. He was elected to the Senate in 2006.)	
Representative Dale C. Severson	Death	11/4/03	Donald W. Vigesea named replacement by District 23 Republicans ³ effective November 28, 2003 ⁴	
Representative Wayne W. Tieman	Resigned - Moved to Thief River Falls, Minnesota	1/1/04	Jo Ann Rodenbiker named replacement by District 10 Republicans ³ effective January 23, 2004 ⁴ (Jo Ann Rodenbiker did not survive the June 2004 primary - Left office December 1, 2004, without serving in the Legislative Assembly.)	
Representative Byron Clark	Resigned - Moved to Rochester, Minnesota	1/2/04	Donald Clark named replacement by District 44 Republicans ³ effective January 24, 2004 ⁴	
Senator Thomas L. Trenbeath	Resigned - Named Chief Deputy Attorney General for North Dakota	11/24/06	Curtis Olafson named replacement by District 10 Republicans ³ effective December 4, 2006 ⁴	

Name of Legislator Resigning/ Dying Before Completion of Term	Reason for Leaving	Date	Name of Replacement	Special Elections ¹
Representative Dawn Marie Charging	Resigned - Appointed the Intergovernmental Affairs Director of Native American Programs at the United States Department of Agriculture	3/14/08	Daryl Lies named replacement by District 4 Republicans ³ effective April 1, 2008 ⁴	

¹Only special elections are indicated. All others were at the next regularly scheduled general election in November of even years. The North Dakota Legislative Assembly meets biennially in the odd-numbered years beginning in January.

²Both newly elected in that district.

³North Dakota Century Code Section 16.1-13-10 stipulates legislative vacancies are filled by the party that holds the seat. Named replacement serves until the next general election.

⁴The effective date is taken directly from the "Oath of Office" form provided by the Secretary of State.

NOTE: Representative Michael D. Brandenburg resigned from the Democratic-NPL party on November 13, 1997, to become a Republican.