

2011 HOUSE JUDICIARY

HB 1265

2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1265
January 25, 2011
13390

☐ Conference Committee

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on HB 1265.

Rep. Scott Kelsh: Sponsor, support. I appreciate the chairman holding this hearing open until Wednesday, because the people that I introduce this bill on behalf of, are unable to make it until that date. I wanted to give you a little background on where it came from. There are a select number of employees, mostly those working in the public safety sector, law enforcement, fire fighters, etc. that are exempt from paying into Social Security. In lieu of that, are required to pay into a pension. Federal law prohibits social security benefits from being considered as an assignable asset in divorce cases, while assignment of pension values vary from state to state, depending on the state law and precedents set in state court. ND is one such state. This issue arose recently in a divorce case, with an individual for whom I was asked to introduce this bill. He just stated that as a matter of fairness that the value of the pension not be considered an assignable asset in his divorce case. Then instead the court look at all the other assets and divide those up evenly just as if he had been entitled to social security benefits, instead of his pension benefits. I should add that the bill does not prevent the court from dividing those remaining assets in a fair and equitable manner.

Rep. Delmore: This would not have any effect on things like child support or whatever, we're looking at retirement benefits after someone retires or is it taken into account when all those things are figured out in a divorce case.

Rep. Scott Kelsh: This takes the value of that pension or the benefits from that pension off the table as an assignable asset; so it is not considered just like social security. I should add that the bill states that it's only equal to the value of what that person would be receiving in social security benefits. So it does not affect child support, alimony, not affect any other dividable assignable assets found to be prudent by the court.

Rep. Boehning: My question is, is the pension greater than what social security is, or is it comparable to social security. Is a pension going to be significantly higher than social security would be.

Rep. Scott Kelsh: In many cases it is. But that's why the language is written into the bill, that whatever is not assignable is only equal to what that person would have received in social security benefits.

Rep. Boehning: Basically they will be doing an actuarial report, trying to figure out what you would have paid in for social security versus your pension, and whatever the difference is, that could be the possible division.

Rep. Scott Kelsh: That is correct.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition. We will recess until Wednesday and have this bill up first.

Rep. Scott Kelsh: I will try to get them here by that time.

2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1265
January 26, 2011
13435

☐ Conference Committee

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will take a look at HB 1265. This is the bill we heard yesterday. If I remember correctly there wasn't any opposition and we held it because he had somebody coming in that wanted to speak to it, and then that person was unable to make it. This is the amendment that the person was talking about. The purpose of this amendment, as we were talking about when they go under a different kind of pension plan, like the highway patrol, firemen, or police, that the total amount of social security is what would be considered in the divorce settlement. The amendment says that it would have to be the full amount of the social security because I guess there might be some people working for McDonalds or some other place that doesn't pay into social security and they wouldn't receive any social security because they wouldn't have paid into it. This just says that in the divorce, it has to consider the full amount of social security.

Rep. Delmore: I move the Kelsch amendment, 01001.

Rep. Boehning: Second.

Chairman DeKrey: Voice vote, motion carried. We now HB 1265 before us as amended. What are the committee's wishes.

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

Rep. Delmore: Second.

13 YES 0 NO 1 ABSENT DO PASS AS AMENDED CARRIER: Rep. Maragos

11.0540.01001
Title.02000

Prepared by the Legislative Council staff for
Representative S. Kelsh
January 25, 2011

VR
1/26/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1265

Page 1, line 10, after "receive" insert "full"

Renumber accordingly

Date: 7/26/11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1265

House JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 11.0540.01001 .02000

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Maragos Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Guggisberg		
Rep. Beadle	✓		Rep. Hogan	✓	
Rep. Boehning	✓		Rep. Onstad	✓	
Rep. Brabandt	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos	✓				
Rep. Steiner	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Maragos

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

REPORT OF STANDING COMMITTEE

HB 1265: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1265 was placed on the Sixth order on the calendar.

Page 1, line 10, after "receive" insert "full"

Renumber accordingly

2011 SENATE JUDICIARY

HB 1265

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1265
3/22/11
Job #15846

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to divorce and the consideration of pension plans in the division of property and debts.

Minutes:

Senator Nething – Chairman

Representative S. Kelsh – District 11 – Introduces and explains the intent of the bill as it relates to a fireman's pension. He says there are some fire departments, police departments, etc. that set their own self-administered pension funds in lieu of paying into social security. They are allowed to retire a little bit earlier because their bodies wear out and it is a physically demanding job. He tells of a court ordering assignment of a fellow fire fighters pension as an assignable asset in a divorce case. He said in the federal rule on social security that action is prohibited; social security benefits are not an assignable asset. He explains this treats those private pensions the same as social security up until that level you would be getting in social security. He goes on to explain this doesn't prevent the ex-spouse of getting other assets but this just takes the pension off the table.

Senator Nething – Asks about the civil service retirement system. This will also affect highway patrol or any police departments or city employees.

Rep. Kelsh – Said this is intended to be any self-administered pension fund.

Senator Sitte – Asks what percentage would be assignable to social security.

Rep. Kelsh – They are entitled to 40% of whatever they are entitled to in social security.

Senator Sitte – Asks if this happens in other states.

Rep. Kelsh – Said he can't say with any certainty.

Senator Nething – Asks if both spouses were on this plan then it would be taken off the table in a divorce.

Senate Judiciary Committee

HB1265

3/22/11

Page 2

Rep. Kelsh – Says he will bring in an amendment making it more clear regarding the PERs system.

Opposition – 0

Close the hearing on HB1265

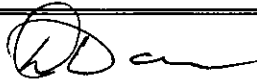
2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1265
3/30/11
Job #16195

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to divorce and the consideration of pension plans in the division of property and

Minutes:

Senator Nething – Chairman

Committee Work
Committee discusses the need for an amendment.

Senator Olafson moves a do pass
Senator Lyson seconded

Roll call vote – 6 yes, 0 no
Motion passes

Senator Olafson will carry

Date: 3/30/11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1265

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Olafson Seconded By Senator Lyson

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman	X		Carolyn Nelson	X	
Curtis Olafson - V. Chairman	X				
Stanley Lyson	X				
Margaret Sitte	X				
Ronald Sorvaag	X				

Total (Yes) 6 No 0

Absent _____

Floor Assignment Senator Olafson

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

REPORT OF STANDING COMMITTEE

HB 1265, as engrossed: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1265 was placed on the Fourteenth order on the calendar.