

2011 HOUSE POLITICAL SUBDIVISIONS

HB 1267

2011 HOUSE STANDING COMMITTEE MINUTES

House Political Subdivisions Committee Prairie Room, State Capitol

HB 1267
January 21, 2011
Job # 13224

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Act to establish a legislative management redistricting committee, to provide for the implementation of a legislative redistricting plan, and to provide for a special legislative session; and to declare an emergency.

Minutes:

Handout #1

Chairman Johnson: Opened the hearing on HB

Rep. Carlson: (Handout #1) Just a lesson of history on redistricting in ND. The bill says the chairman of Legislative management shall appoint a committee to develop a legislative redistricting plan for time for use in the 2012 primary. Read Section 1. of the proposed bill. At the last one we went into it with 49 legislative districts and came out of it with 47 after a special session. There is always a debate on the recommendations the committee comes out with. The procedure is the committee works through the summer and into the fall and they make a recommendation and they put it in the form of a bill and they bring that bill to the special session of the legislature and it is normally a five day session and during that time the hearings are held, the decisions are made and the caucus meet and there is a lot of discussion and in the end we vote on a plan for redistricting. There has been a time when there were some challenges to the process. Look at the sheet I handed out to you. The most recent one would be the best one to look at, which is 2001 on page 4. Went over the handout. According to the census our population has grown almost 40,000. We have not yet received the final documentation to say where that distribution of population is. Obviously the western part of the state has grown; but so has Bismarck, Fargo, West Fargo and the surrounding areas so the redistribution of districts will probably have to happen. We have already purchased a computer program on how you can move the lines to adjust the numbers and it gives us an aid to how these districts should look for the next 10 years. The last part of the bill; the Governor's office had already come down to me and said they have some concerns that this may or may not be constitutional. Obviously they think it is not. It says the governor shall call a special session of the legislative assembly for adopting a redistricting plan. It also adds one more thing on line 21 including legislation in response to federal health care legislation. We added one more item to the agenda simply because that is a very moving target at the federal level and there are things we would be required to do to implement as they adopt rules as they go forward on health care. Their concern is the mandate to call us in for special session. Last time they did call

us in; usually it is in early November. The Secretary of State has some concerns about those dates and trying to make them work. The concern is if we use all our legislative days, which they would believe would be the way to do it, by us saying shall call. What if we have no days left? Are we not going to redistrict? We have to so we would have to be called in. This bill just says they shall call us in. If they would send us a little bit easier budget maybe I could guarantee 75 days we would be out of here. Most of this is for reading material for you on the handout.

Rep. Klemin: The special session in 2001 was held November 26-30th. If we don't want to do it in October we do have the whole month of November.

Rep. Carlson: Secretary Jaeger is concerned that it would be too late. I think earlier than that would be very hard to get our people in here because of the harvesting etc.

Rep. Kretschmar: Do you think the executive branch would be a little less willing if the word wasn't shall or some easier word?

Rep. Carlson: My point is that I could not guarantee you today as a leader that I have days left over for a special session and I don't think there is anybody in this room that can tell today that we are going to be done the 74th day. I am trying to not leave anything to second guess that we need to be here to get that job done. If you can soften the language Rep. Kretschmar I would be all in favor of that.

Rep. Koppelman: It wasn't that long ago that the legislature did not have the authority to call itself into session; only the governor could. Can you tell us what happened in those times before that?

Rep. Carlson: He did call us in 2001 by the governor for a special session. Obviously, if we were saving days it would be nice to save days that we could use in February. March or April of 2012 that we need to react to something that happened in the federal healthcare. I know that is a huge impact. We have received bills for almost \$48 million from agencies of what it is going to cost us for the implementation of some phases of healthcare. We need to have some for redistricting too.

Rep. Koppelman: There is nothing historically inconsistent with expecting or asking the Governor to call a redistricting session.

Rep. Carlson: I think they are concerned in the language that it be a mandate that they call us in so if we can find a way to make that work that is fine with me. I can't guarantee we will have the days to do it.

Rep. Shirley Meyer: Will any minority members be on this redistricting committee?

Rep. Carlson: Absolutely. It would reflect the percentages we have in the chamber which would be basically 3-1. That is the way we did it in the past. It is going to be more about the population shift and where it is going than anything.

Rep. Kaiser: This is a background on why the provision for healthcare segment is at the end of it. If that is providing a constitutional issue than I would encourage this committee to find a solution as best can be accomplished to resolving that issue. The healthcare legislation has been passed; it is effective, and it is being implemented. Although the bill is over 2,000 pages in length the actual legislation contains very little in the form of definition of requirements. It did delegate to the Department of Health and Human Services the authority to provide the rules to implement the legislation as it was passed. They have added significant resources to the department of HHS and there is a core group working literally up to 16 hours a day seven days a week to do a good job in prorogating rules. There are many issues to be developed. In the original legislation there are specific dates by which things much be accomplished. The original legislation was designed to be passed in the Congress during the fall session, but because of some of the issues that rose it was carried over and as you know was not passed until late in the spring session. The bill did contain specific dates and because the bill was corrected thorough the process of budget reconsolidation they could change financial matters, but they could not change dates so suddenly we have legislation that was literally past six months later than it was designed to be passed so in April of this year the first critical date occurred and the states were required to make their first policy decision and that was whether or not to create a high risk pool; as we do in ND, the CHAN program; to modify it and make it conform to the federal government or the third option which was to keep the CHAN program and allow the federal government implement a second high risk pool in the state of ND. During the interim we had a committee that was trying to look at the federal health care legislation and see how to implement it and what impact it would have on the state of ND. During that time the State Insurance Commissioner did a terrific job. He appeared before the committee several times and he said of the committee, we have to make a decision here so what do you think? We were very explicit in conveying that we were an interim committee legislative body but we could not make any decisions and we technically can't make a recommendation that should be implemented as policy because we are nothing more than a very small part of the legislature. The decision was made that the state of ND would inform the federal government for them to implement a second high risk pool for the state of ND. We believe our CHAN program is well designed; does the job and is working very well and we don't believe we should change this program. We made a policy decision not to change this program that should have been made by the legislature, but could not be made by the legislature. The department of HHS is prorogating significant rules. They have come down with many significant rules to date. The most important policy will not be available for the state of ND or any state until May or June and that is the definition of essential health benefit services. We have that defined and just trying to give you a quick over view of what that means; I believe in ND we had 23 mandates in our plan. California had 50+ mandates. HHS is going to come out and define what is required and what is not required. If you have a mandate that is not included in the essential health benefit package then the state of ND will become responsible for paying for that mandate. We need to find a way for the legislature to remain engaged on the deliberations relative to the health care implementation of PEPAC. We need to create enabling legislation to allow the Insurance Commissioner to make decisions on behalf of the state of ND to keep us in alignment with PEPAC. As Rep. Carlson indicated I believe the legislature needs to stay engaged in the policy side. I encourage you to make this work if at all possible. I think the constitutionality issues are an important thing.

Rep. Shirley Meyer: How many days would this take?

Rep. Kaiser: There is a separate legislation that is going to be on the floor either today or Monday which requires the legislative management committee to continue the interim committee on health care so they would continue to work with the insurance department in developing a policy statement to bring to the special session. We need probably three days. If we can't find a solution here I am going to be pushing management to keep us here until midnight every night until we get out of here with five days left because we need them.

Rep. Kretschmar: Is there any bill in the session now that would ratify what has been already done by the state insurance commissioner or any other agencies.

Rep. Kaiser: There is not a bill to ratify the high risk pool or anything else done that had to be done because it was date specific prior to this because it has been done and it is federal law.

Rep. Koppelman: I am testifying in support of HB 1267 from a different prospective. I was privileged to chair the council of state governments and that involves all three branches of government and all 50 states. Last summer as past chairman of that organization I was in Washington DC for a meeting and I spoke with our DC office of CSG and requested a meeting with representatives of the Health and Human Services department to speak specifically on this topic on behalf of the states. My questions were how the states are going to implement. What are your expectations for implementation of this huge legislation that has just been passed and how will you respond to what might happen on the remain months on 2010 including the law suits by nearly half the states. Their response was well we are going to have an informational meeting in Minnesota; you are close to Minnesota and it would be in October. Is that a rule prorogation hearing; a public hearing to comment on rules? No we have not started making rules yet. Most of the meat of that bill is left to the Executive Branch of the federal government to prorogate. The problem I see that is different than most is that we meet once year. They don't have some of the restrictions on days so they can come back and deal with issues. When I asked how do you expect states like ND that meet every other year to respond to regulation that is going to be coming down the pipe in a year or a year and a half and all I got was a blank stare. I support the point of this legislation which is to allow enough time so we can call ourselves back in to deal with this.

Opposition:

Ryan Bernstein, Deputy Chief of Staff, Governor Dalrymple and I only arise in opposition line 17-22 and specifically the part where the governor shall call in a special session. I think the previous speakers have summarized my testimony accurately recognized my concern on this language. We respect the legislative process and authority to redistrict. We also understand the enormous work that has to be done with the federal healthcare bill and the work Rep. Kaiser is doing on that. Article 4 Section 7 clearly outlines an 80 day session and Article 5 Section 7 says the governor is the sole authority to call a special session. We would recommend striking the language from 17-22. These things can be worked out between the branches.

Rep. Kretschmar: I think that language is a little too strong with governor's office. Would you be amendable to changing the language to so it would not be a mandate to call us back? We don't want to force it.

Ryan Bernstein: I don't like the mandate. It is a violation of separation of powers. If you had language in there that would show intent of the legislature to require us to call you back which I think would still violate separation of powers and the language and the language would probably be legally ineffective. It is up to you.

Rep. Koppelman: A constitutional measure provision which says that the Governor is the sole individual who can call the legislature back into session; that is not true. The legislature can also call them back into session.

Ryan Bernstein: You are exactly right; the governor has the authority to call a special session. The legislature has the authority to call itself back if it has enough days within the 80 days and obviously that is our preference in this case.

Rep. Koppelman: Why is that your preference?

Ryan Bernstein: To make sure we follow the intent and spirit of the constitution and the fact that it sets out 80 natural days for the legislature to meet to address all the issues before it and as a reserve that the governor may call a special session.

Rep. Koppelman: The constitution has been in existence 1889 in ND, but the ability of the legislature to call itself back into session is very recent legislation passed within the last 10 days or so. How would it violate the spirit of the constitution for the governor to call the legislature back into session for redistricting when that has always been a practice?

Ryan Bernstein: He has not always been the practice to do so. The legislature has called itself back to this in 2001 and 1991 by the governor. Before that the legislature reserved enough days to do so or there are other mechanisms where they were able to work through the redistricting.

Rep. Koppelman: I was here when the legislature passed a provision allowing itself to call itself back into session and that was vetoed by Gov. Schafer at the time and the legislature overruled the veto so that authority is relatively new so I don't think the legislature has ever called itself back into session for redistricting.

Ryan Bernstein: I believe in 1981 the legislature was able to reconvening in a joint re appropriation committee. It was handled a different way and I cannot speak to the specifics of how the legislature came back, but I don't see in this that a special session was called by the governor.

Rep. Koppelman: I would encourage you to look deeper into this and I am curious to what happened back then. Are there other places in the constitution where it says where the governor shall; are there other places in the Century Code that say the governor shall do something?

Ryan Bernstein: I have not looked thorough every part of it where it says shall or may where it talked about the governor's authority. I would hope most of the places say may.

Rep. Koppelman: How is it then not a violation of the constitution for the Governor to call the legislature into session since that is one branch telling another branch to do something?

Ryan Bernstein: Because it is numerated exactly in the constitution Article 5 Section 7 saying the governor may call the legislature back into assembly.

Rep. Klemin: The language you are asking to be deleted also includes the language about addressing other issues that maybe necessary including consideration for legislation in response to federal health care reform legislation

Ryan Bernstein: When the governor does call a special session under his authority in the constitution does the governor then specify what is to be covered in that special session or can the legislature also cover other issues that maybe necessary including federal healthcare legislation. The governor has the authority to call a special session; there is thing in the constitution to limit what the legislature talks about or takes upon its own action during that session and the governor has no ability to force the legislature to adjourn.

Rep. Klemin: If this bill said something to the effect that special session shall address redistricting and any other issue including federal health care legislation and saying nothing about the governor shall call; would you have a problem with that? If we did not require the governor to call a special session in this bill; instead had some other language can we still if we have a special session it will cover redistricting and federal health care in this bill?

Ryan Bernstein: I would say it is the purgative of the legislature to decide what it wants to visit if it calls itself back or is called back in a special session. We want to be sure that is understood when a special session is called they know what they are going to talk about and it does not go on for another 80 days. It would be line 17 & 18 and 19 could be the constitutional issues we see.

Neutral: None

Hearing closed.

2011 HOUSE STANDING COMMITTEE MINUTES

House Political Subdivisions Committee
Prairie Room, State Capitol

HB 1267
February 3, 2011
Job # 13984

☐ Conference Committee

Committee Clerk Signature



Minutes:

Chairman Johnson: Reopened the hearing on HB 1267. This is the bill that would set up legislative management for redistricting committee for a special session. Ask the governor to call a special session and it is declared an emergency.

Rep. Mock: (Handed out a proposed amendment #1) As you recall on the hearing on this bill Rep. Carlson had come in and explained that it is our responsibility to re appropriate our state and draw the district boundaries and this bill will establish the committee. In 2001 the legislature passed a resolution calling for a 15 member committee to work on the intern and draw the lines. Rep. Johnson, I gave you a copy of that resolution just for our information. I have a concern that it is an equal number of members on the committee and by virtue of that there is tie breaking vote. I don't know if that is a lynch pin that is going to cause to unravel this bill. We would like to see that the minority have a say in the members that it recommends to legislative management. Right now the recommendation is only done by the majority leader so we made the proposal. We did hear from Rep. Carlson. I believe that Rep. Meyer asked the question if members of the minority party would be included. Rep. Carlson did affirm that it would be proportional to the members that they had elected in both chambers so we included that as well. Everything in here was affirmed by the majority leader; we would just like to see this added to the bill. Otherwise the redistricting committee is going to be the redistricting committee and look forward to being part of the process.

Motion Made by Rep. Mock to move the amendment; Seconded by Rep. Zaiser:

Discussion:

Rep. Klemin: I would like to amend the amendments to add something. We have a problem on line 17 & 18 that was raised by the attorney for the governor about the constitutional issue. I would like to have at the end of line 17 is to say that the chairman of the legislative management shall request the governor to call a special session. That way we are not commanding the governor to do anything, but we are asking him to.

Added on as a further amendment.

Motion made by Rep. Klemin: Seconded by Rep. Shirley Meyer:

Chairman Johnson: Just to clarify what we have now is an amendment to the amendment so we are going to vote on putting the amendment that the chairman of the legislative management shall request the governor to call onto this amendment; then we would have to adopt the whole thing as is.

Voice vote carried.

Chairman Johnson: Now we have before us an amendment that has on page 1, line 10 inserting after majority and minority the composition of the committee members established as printed here and also the chairman of the legislative management shall request the governor to call. There was a motion by Rep. Mock: Seconded by Rep. Zaiser:

Discussion: None

Voice vote carried.

Do Pass As Amended by Rep. Hatelstad: Seconded by Rep. Zaiser:

Refer to appropriations.

Vote: 12 Yes 2 No 0 Absent Carrier Chairman Johnson:

Hearing closed.

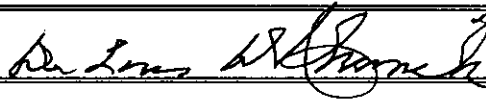
2011 HOUSE STANDING COMMITTEE MINUTES

House Political Subdivisions Committee
Prairie Room, State Capitol

HB 1267
February 4, 2011
Job #14034

☐ Conference Committee

Committee Clerk Signature



Minutes:

Chairman Johnson: reopened the hearing on HB 1267. There has been some concern on the bill.

Rep. Kretschmar moved to reconsider our action by which we passed HB 1267 in the committee. Seconded by Rep. Maragos:

Chairman Johnson: We have a motion to reconsider the bill and the vote was 12-2 and Rep. Kretschmar was on the prevailing side. I do not know if that is debatable?

Rep. Kretschmar: It is.

Discussion:

Rep. Mock: What is the intent for reconsideration of HB 1267?

Rep. Kretschmar: It would be to look at the amendments we put on the bill and further amend the bill.

Rep. Heilman: Point of information. Does this require a certain vote to reconsider? Just a majority vote.

Voice vote carried.

Rep. Kretschmar motion made that the committee reconsider the amendments that are placed on the bill. Seconded by Rep. Klemin:

Rep. Mock: Why was the concern was raised by the minority leader that the language as 1267 was presented to this committee it states that the members on the redistricting committee; equal number from both the Senate and House of Representatives and the chairman of legislative management shall appoint members based on the recommendations of the majority leaders of the Senate and House of Representatives with no regard for consideration to the minority leaders. The concern was that while the majority certainly constitutes the majority; about 3-1 majority; the minority then has no say in even

recommending the members for consideration on the committee. The request and the amendment we put on there simply allows the minority leader to make the recommendations and still selected by the chairman of legislative management. It was mentioned in conversation between our leaders that was the way it was going to happen. We felt more comfortable having it in language. I would really urge us to not reconsider the actions and to uphold the wishes that we had yesterday on HB 1267.

Rep. Koppelman: The motion on the floor is to just reconsider the amendments. We have talked about what were considering have we?

Chairman Johnson: There is a motion to reconsider the amendments on HB 1267.

Voice vote carried.

Rep. Klemin Made a Motion to amend HB 1267. Seconded by Rep. Koppelman:

Rep. Klemin: Went over the proposed amendment .02004. (See proposed amendment #1). The chairman of the legislative management shall instruct the governor to request the governor to call a special session of the legislative assembly etc. The earlier amendment; that sentence starting on line 8 would read the committee must consist of an equal number of members from the Senate and the House of Representative appointed by the chairman of the legislative management.

Rep. Shirley Meyer: So it is my understanding there won't be any Democrat's represented on this at all?

Rep. Klemin: I don't think that is the understanding we have. It is just that the committee is appointed by the chairman of the legislative management the same way that the chairman appoints all the intern committees.

Rep. Shirley Meyer: Well the understanding there is that the legislative management committee has got a long historic methodology of putting members on that board that the Democrat's can elect their own members. Rep. Carlson made it. I asked the question because I wanted to know and he said yes he had every intention of putting Democrat's on this committee. In our amendment just clarified what he stated to on the record. So now he is stepping back and saying on no we are not going to put it in here. So if red flags go up for me; well I am sorry.

Rep. Koppelman: I think I understand what the suggested amendment does. I certainly would never call the minority leader a liar. I don't think we should call the majority leader a liar. He stated in testimony in record that that was what he intends to do. I don't know if we need to put it in law to ensure he does that. He has never laired to me.

Rep. Shirley Meyer: the difference being; does the Republican leader get to pick the Democrat members. Should not, and this is a fairness issue, our leader get to pick our members? That was what our amendment just clarified. In conversations between the minority leader and the majority leader he has agreed to that. However, it rolls around. I

have been involved in this a little too long to think that it might not happen if it is not codified.

Rep. Koppelman: If the majority leader and the minority leader have had the discussions you have described and have made an agreement I believe they are both men of their word and they will keep it. I don't think we need to put something in the laws to force them to do what they agreed to do.

Rep. Maragos: I just want to make a comment about discussions between the leaders. That road travels both ways about commitments and making statements and standing by those statements and I don't think we need to go down that road. This is about these amendments and whether or not they are Jermaine to the bill.

Chairman Johnson: Right now we are reconsidering the amendments. We voted to reconsider the amendments; does that remove the amendments that we one there? Yes we did. So now we have a motion to adopt the amendments that Rep. Klemin brought forward number 11.0051.02004.

Discussion:

Rep. Klemin: there are no other amendments.

Rep. Mock: I am going to oppose the amendments. It is because the bill came in with reference to one member. There are two members in our assembly; the two leaders in the majority parties and it was to be called by the chair of legislative management with recommendations by the leader. There is only one chair of legislative management. Historically it has been one of the majority leaders in either chamber. What these changes will do is remove the formal discussion that the leaders of the four caucuses have with the chair of legislative management to discuss committee placements and instead leave it solely in the hands of the chair of legislative management. I have no problem with legislative management calling this committee but I certainly liked to know that our representatives for our caucuses in both the House and Senate and the majority and minority are having a spot at that table and making the discussions and recommendations. That is all that the previous amendments that were removed from HB 1267 did and I would like to keep the precedent that we involve all of our leaders when it comes to committee assignments. I am going to oppose the amendment. I don't know if it is going to make a difference one way or the other. I certainly like to know that we have all players at the table when choosing these committee assignments and it is a precedent I hope that we can set.

Rep. Devlin: Rep. Mock if the other one was so good why did you vote against it?

Rep. Mock: I supported the amendments, but I still did not support the bill. I look at redistricting as a vital part of our lines and it is a non partisan issue. It should never be based on political affiliation. That is a philosophical disagreement that I have with the redistricting process. I was glad to see that we are including both chambers but I believe that redistricting is not the lines that where political biases should come into play. It is the lines in which we elect our representatives and the lines that impact the people of this state for the next ten years.

Rep. Heilman: How are committees selected in general? For this committee aren't they at the same table?

Rep. Shirley Meyer: Absolutely not or I wouldn't be on this committee.

Chairman Johnson: we have the amendment before us that we presented by Rep. Klemin.

Voice vote carried.

Chairman Johnson: We now have HB 1267 before us as amended.

Rep. Klemin Moved a Do Pass As Amended and refer to appropriations. Seconded by Rep. Maragos

Discussion: None

Vote: 9 Yes 3 No 2 Absent Carrier: Chairman Johnson:

Hearing closed.

2011 HOUSE STANDING COMMITTEE MINUTES

House Political Subdivisions Committee
Prairie Room, State Capitol

HB 1267
February 4, 2011
14058

☐ Conference Committee

Committee Clerk Signature



Minutes:

Chairman Johnson: Reopened the recording on HB 1267. I am entertaining a motion on HB 1267 for the purpose of a minority report.

Rep. Mock: I would like to request a minority report on HB 1267 to substitute the report of the majority for amendment .02002 as further amended on Thursday, February 3 that was adopted onto HB 1267 and later reconsidered.

Motion Made by Rep. Mock: Seconded by Rep. Shirley Meyer:

Discussion: None

Roll call vote: Rep. Kilichowski, Rep. Shirley Meyer: Rep. Mock:

Motion passed.

Chairman Johnson: directed the clerk to make the minority report.

Hearing closed.

FISCAL NOTE
Requested by Legislative Council
02/09/2011

Amendment to: Engrossed
HB 1267

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$272,018			
Appropriations						

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Engrossed House Bill No. 1267 provides for the establishment of a Legislative Management redistricting committee, the implementation of a legislative redistricting plan, and a special legislative session.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The bill provides for a special legislative session to allow the Legislative Assembly to adopt a redistricting plan to be implemented in time for use in the 2012 primary election.

The estimated impact is \$272,018 from the general fund, including \$167,265 for legislative pay, \$27,093 for temporary salaries, and \$77,660 for travel expenses. The estimate is based on a 5 legislative day special session.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

N/A

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The expenditure amounts reflect the estimated cost of the special legislative session for the 2011-13 biennium.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The budget request for the Legislative Assembly includes the additional funding needed for the special legislative session to address redistricting.

Name:	Allen H. Knudson	Agency:	Legislative Council
Phone Number:	328-2916	Date Prepared:	02/09/2011

FISCAL NOTE

Requested by Legislative Council
01/12/2011

Bill/Resolution No.: HB 1267

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$272,018			
Appropriations						

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill provides for the establishment of a Legislative Management redistricting committee, the implementation of a legislative redistricting plan, and a special legislative session.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The bill provides for a special legislative session to allow the Legislative Assembly to adopt a redistricting plan to be implemented in time for use in the 2012 primary election.

The estimated impact is \$272,018 from the general fund, including \$167,265 for legislative pay, \$27,093 for temporary salaries, and \$77,660 for travel expenses. The estimate is based on a 5 legislative day special session.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

N/A

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The expenditure amounts reflect the estimated cost of the special legislative session for the 2011-13 biennium.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The budget request for the Legislative Assembly includes the additional funding needed for the special legislative session to address redistricting.

Name:	Allen H. Knudson	Agency:	Legislative Council
Phone Number:	328-2916	Date Prepared:	01/14/2011

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PROPOSED AMENDMENTS TO HOUSE BILL NO. 1267

Page 1, line 10, after "majority" insert "and minority"

Page 1, line 11, after the period insert "The composition of the committee must be established so as to give the two political parties having the most members in each house approximately the same total proportionate representation on the committee as prevails in that house."

Renumber accordingly

Date: 2-3-11
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1267

House Political Subdivisions Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 11.0051.02002

Action Taken ☐ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt
Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Mock Seconded By Rep. Zaiser

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson			Rep. Kilichowski		
Vice Chairman Hatelstad			Rep. Shirley Meyer		
Rep. Beadle			Rep. Mock		
Rep. Devlin			Rep. Zaiser		
Rep. Heilman					
Rep. Klemin					
Rep. Koppelman					
Rep. Kretschmar					
Rep. Maragos					
Rep. Pietsch					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

*Vote
Carried*

February 03, 2011

old

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1267

Page 1, line 10, after "majority" insert "and minority"

Page 1, line 11, after the period insert "The composition of the committee must be established so as to give the two political parties having the most members in each house approximately the same total proportionate representation on the committee as prevails in that house."

Page 1, line 17, after "The" insert "chairman of the legislative management shall request the"

Page 1, line 17, replace "shall" with "to"

Renumber accordingly

Date: 2-3-11
Roll Call Vote #: 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1267

House Political Subdivisions

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Further Amend

Action Taken

☐ Do Pass

☐ Do Not Pass

☒ Amended

☐ Adopt

Amendment

☐ Rerefer to Appropriations

☐ Reconsider

Motion Made By

Rep. Klemin

Seconded By

Rep. Meyer

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson			Rep. Kilichowski		
Vice Chairman Hatelstad			Rep. Shirley Meyer		
Rep. Beadle			Rep. Mock		
Rep. Devlin			Rep. Zaiser		
Rep. Heilman					
Rep. Klemin					
Rep. Koppelman					
Rep. Kretschmar					
Rep. Maragos					
Rep. Pietsch					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Add line 17.

Vote
carried

Date: 2-3-11
Roll Call Vote #: 3

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1267

House Political Subdivisions

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 Rep. Hatelstad Seconded By Rep. Zaiser

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson	✓		Rep. Kilichowski	✓	
Vice Chairman Hatelstad	✓		Rep. Shirley Meyer		✓
Rep. Beadle	✓		Rep. Mock		✓
Rep. Devlin	✓		Rep. Zaiser	✓	
Rep. Heilman	✓				
Rep. Klemin	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos	✓				
Rep. Pietsch	✓				

Total (Yes) 12 No 2

Absent 0

Floor Assignment Rep. N. Johnson

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

Date: 2-4-11
Roll Call Vote #: 1
2:10 P. M.

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1267

House Political Subdivisions Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 02002 Request for Minority Report

Action Taken ☐ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt
Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Mock Seconded By Rep. Meyer

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson			Rep. Kilichowski	✓	
Vice Chairman Hatelstad			Rep. Shirley Meyer	✓	
Rep. Beadle			Rep. Mock	✓	
Rep. Devlin			Rep. Zaiser		
Rep. Heilman					
Rep. Klemin					
Rep. Koppelman					
Rep. Kretschmar					
Rep. Maragos					
Rep. Pietsch					

Total (Yes) 3 No

Absent

Floor Assignment

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

Date: 2-4-11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1267

House Political Subdivisions Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number Reconsider Vote

Action Taken ☐ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt
Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Kretschmar Seconded By Rep. Maragos

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson			Rep. Kilichowski		
Vice Chairman Hatelstad			Rep. Shirley Meyer		
Rep. Beadle			Rep. Mock		
Rep. Devlin			Rep. Zaiser		
Rep. Heilman					
Rep. Klemin					
Rep. Koppelman					
Rep. Kretschmar					
Rep. Maragos					
Rep. Pietsch					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

*Voices
Vote
Carried!*

Date: 2-4-11
Roll Call Vote #: 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1267

House Political Subdivisions Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number Reconsider amendment

Action Taken ☐ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt
Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Kritchman Seconded By Rep. Klemin

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson			Rep. Kilichowski		
Vice Chairman Hatelstad			Rep. Shirley Meyer		
Rep. Beadle			Rep. Mock		
Rep. Devlin			Rep. Zaiser		
Rep. Heilman					
Rep. Klemin					
Rep. Koppelman					
Rep. Kretschmar					
Rep. Maragos					
Rep. Pietsch					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

*Vote
Vote
carried*

February 04, 2011

#1

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1267

Page 1, line 9, replace the second "and" with "appointed by"

Page 1, line 9, remove "shall"

Page 1, remove line 10

Page 1, line 11, remove "the house of representatives"

Page 1, line 17, after "The" insert "chairman of the legislative management shall request the"

Page 1, line 17, replace "shall" with "to"

Renumber accordingly

Date: 2-4-11
Roll Call Vote #: 3

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1267

House Political Subdivisions 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 Rep. Klemin Seconded By Rep. Koppelman

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson			Rep. Kilichowski		
Vice Chairman Hatelstad			Rep. Shirley Meyer		
Rep. Beadle			Rep. Mock		
Rep. Devlin			Rep. Zaiser		
Rep. Heilman					
Rep. Klemin					
Rep. Koppelman					
Rep. Kretschmar					
Rep. Maragos					
Rep. Pietsch					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Add new line 17.

Voice
Vote carried

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1267

Page 1, line 9, replace the second "and" with "appointed by"

Page 1, line 9, remove "shall"

Page 1, remove line 10

Page 1, line 11, remove "the house of representatives"

Page 1, line 17, after "The" insert "chairman of the legislative management shall request the"

Page 1, line 17, replace "shall" with "to"

Renumber accordingly

Date: 2-4-11
Roll Call Vote #: 4

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1267

House Political Subdivisions 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 Rep. Klemin Seconded By Rep. Maragos

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson	✓		Rep. Kilichowski		✓
Vice Chairman Hatelstad	✓		Rep. Shirley Meyer		✓
Rep. Beadle	0		Rep. Mock		✓
Rep. Devlin	✓		Rep. Zaiser		0
Rep. Heilman	✓				
Rep. Klemin	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos	✓				
Rep. Pietsch	✓				

Total (Yes) 4 No 3

Absent 2

Floor Assignment Rep. N. Johnson

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

REPORT OF STANDING COMMITTEE (MINORITY)
HB 1267: Political Subdivisions Committee (Rep. N. Johnson, Chairman) A MINORITY
of your committee (Reps. S. Meyer, Kilichowski, Mock) recommends
AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS**
and **BE REREFERRED** to the **Appropriations Committee**.

Page 1, line 10, after "majority" insert "and minority"

Page 1, line 11, after the period insert "The composition of the committee must be established so as to give the two political parties having the most members in each house approximately the same total proportionate representation on the committee as prevails in that house."

Page 1, line 17, after "The" insert "chairman of the legislative management shall request the"

Page 1, line 17, replace "shall" with "to"

Renumber accordingly

The reports of the majority and the minority were placed on the Seventh order of business on the calendar for the succeeding legislative day.

Shirley Meyer
[Signature]
72 M₈

REPORT OF STANDING COMMITTEE (MAJORITY)

HB 1267: Political Subdivisions Committee (Rep. N. Johnson, Chairman) A MAJORITY
of your committee (Reps. N. Johnson, Hatlestad, Devlin, Heilman, Klemin,
Koppelman, Kretschmar, Maragos, Pietsch) recommends **AMENDMENTS AS**
FOLLOWS and when so amended, recommends **DO PASS** and **BE REREFERRED**
to the Appropriations Committee.

Page 1, line 9, replace the second "and" with "appointed by"

Page 1, line 9, remove "shall"

Page 1, remove line 10

Page 1, line 11, remove "the house of representatives"

Page 1, line 17, after "The" insert "chairman of the legislative management shall request the"

Page 1, line 17, replace "shall" with "to"

Renumber accordingly

Nancy Johnson
Andrew D. Marose
Wm. E. Kretschmar
Heilman
John Koppelman

2011 HOUSE APPROPRIATIONS

HB 1267

2011 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Committee Roughrider Room, State Capitol

HB 1267
2/10/11
14358

☐ Conference Committee

Committee Clerk Signature

Meredith Tracholt

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to establish a legislative management redistricting committee, to provide for the implementation of a legislative redistricting plan, and to provide for a special legislative session; and to declare an emergency.

Minutes:

You may make reference to "attached testimony."

Chairman Delzer: Called the committee to order. Roll was called and a quorum was declared. We'll start with rereferred bill 1267. This is the redistricting bill, which had a minority report and some discussion on the floor yesterday. The title was read. The Fiscal Note shows to be \$272,000.

Representative Kaldor: I question the need for the emergency measure. Does it matter?

Chairman Delzer: It needs to be on there to set this up as a legislative redistricting committee at the end of this biennium, at the end of the session. Anything further?

Vice Chairman Kempenich: I move Do Pass on 1267.

Representative Klein: Second.

Chairman Delzer: Further discussion? Roll will be called for a Do Pass on HB 1267. Motion carries 14-3. Representative Monson will carry this bill.

Date: 2/10
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1267

House Appropriations Committee

Legislative Council Amendment Number _____

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

Motion Made By Rep. Kempenich Seconded By Rep. Klein

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer	X		Representative Nelson	X	
Vice Chairman Kempenich	X		Representative Wieland	X	
Representative Pollert	X				
Representative Skarphol	X				
Representative Thoreson	X		Representative Glassheim		
Representative Bellew	X		Representative Kaldor		X
Representative Brandenburg	X		Representative Kroeber		X
Representative Dahl			Representative Metcalf		X
Representative Dosch	X		Representative Williams		
Representative Hawken	X				
Representative Klein	X				
Representative Kreidt	X				
Representative Martinson					
Representative Monson	X				

Total (Yes) 14 No 3

Absent 4

Floor Assignment Rep. Monson

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

REPORT OF STANDING COMMITTEE

HB 1267, as engrossed: Appropriations Committee (Rep. Delzer, Chairman)
recommends **DO PASS** (14 YEAS, 3 NAYS, 4 ABSENT AND NOT VOTING).
Engrossed HB 1267 was placed on the Eleventh order on the calendar.

2011 SENATE JUDICIARY

HB 1267

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1267
3/22/11
Job #15848

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

To provide for the implementation of a legislative redistricting plan, and to provide for a special legislative session.

Minutes:

There is an attachment

Senator Nething – Chairman

Representative Al Carlson – District 41 – Chairman of Legislative Mgmt. – Introduces the bill and provides a handout on the history of redistricting. He explains that this bill sets up what the process will be for redistricting, creating a special session and to declare an emergency. He reads paragraphs from the handout. See attached handout. He said there is no guarantee that they will have any extra days to call themselves back in. He gives an example of being called in 2001, they used 77 of the 80 days and the session on redistricting was five days long. He goes on to say in 1991 the Governor called them in and the Legislature had used 68 of 80 days, they were there five days. He explains that the committee that is appointed must submit a plan, it has to go to a full assembly on both sides, a hearing on the bill and voted on, basically 3 days to get through everything in both chambers. He relays what has to be worked out in redistricting. He says redistricting is an amazing process but it has winners and losers. The guidelines are to set up the committee.

Senator Nething – Asks what Legislative Management is.

Rep. Carlson- The 17 members elected to run the interim are called Legislative Management.

Senator Nething – Questions why they are not called a committee.

Senator Olafson – Asks if past assemblies have discussed anything other than redistricting.

Rep. Carlson – Replies they have put in the Federal Health Care legislation this time but in the past it was just redistricting.
Close the hearing

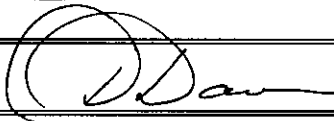
2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1267
4/5/11
Job #16371

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

To provide for the implementation of a legislative redistricting plan, and to provide for a special legislative session.

Minutes:

Senator Nething – Chairman

Senator Nething discusses amendment 04005 and the amendment to provide for an expiration date.

Senator Olafson moves to adopt amendment 04005 with expiration date
Senator Lyson seconded

Verbal vote – all yes

Senator Nelson proposes an amendment 04002 and explains what it does. **Senator Sorvaag** doesn't think this will guarantee geographic and gender balance.

Senator Nething asks for the two amendments to be in put in sync.

Senator Nething adjourns committee till a later date

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1267
4/8/11
Job #16453

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

To provide for the implementation of a legislative redistricting plan, and to provide for a special legislative session.

Minutes:

Senator Nething – Chairman

Committee work

Senator Nething reviews the amendment that was adopted. He brings in amendment 04007 which combines 04005 with the expiration date. He also brings in a memo from Legislative Council regarding the exemption of redistricting plans from open record requirements and why they do it. Senator Nelson discusses her amendment.

Senator Nelson moves amendment 04002
Senator Olafson seconded

Discussion

The committee discusses the amendment and makes changes to it.

Roll call vote – 3 yes, 3 no
Rejected for lack of a majority

Senator Olafson motions a do pass as amended
Senator Lyson seconded

Roll call vote – 5 yes, 1 no

Senator Nething will carry

April 6, 2011

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1267

Page 1, line 2, after the comma insert "to exempt drafts of redistricting plans from open records requirements,"

Page 1, line 3, after "session" insert "; to provide an expiration date"

Page 1, line 5, after "**COMMITTEE**" insert "- **OPEN RECORDS EXEMPTION**"

Page 1, line 6, after the boldfaced period insert:

"1."

Page 1, line 10, after the period insert:

"2."

Page 1, line 14, after the period insert:

"3."

Page 1, line 16, after the period insert:

"4. A draft of a legislative redistricting plan created by the legislative council or a member of the legislative assembly is an exempt record as defined in section 44-04-17.1 until presented or distributed at a meeting of the legislative management or the legislative assembly. Any version of a redistricting plan created before the completion of the plan is an exempt record regardless of whether the completed plan is subsequently presented or distributed at a meeting.

5."

Page 1, after line 21, insert:

"SECTION 2. EXPIRATION DATE. This Act is effective through July 31, 2012, and after that date is ineffective."

Renumber accordingly

Date: 4/5/11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1267

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 6400-7

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider 01005 w/expiration date

Motion Made By Senator Olafson Seconded By Senator Lyson

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman	1		Carolyn Nelson	1	
Curtis Olafson - V. Chairman					
Stanley Lyson					
Margaret Sitte					
Ronald Sorvaag					

Total (Yes) _____ No _____

Absent _____

Floor Assignment Senator

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

Verbal - all yes

March 24, 2011

1767 Nelson Z

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1267

Page 1, line 6, replace "The chairman of the legislative management shall appoint a" with "A"

Page 1, line 8, after "election" insert "must be appointed"

Page 1, line 9, remove "appointed by the chairman of the legislative"

Page 1, line 10, replace "management" with ". The majority and minority leaders of each house are each entitled to appoint from their respective political parties the members of the committee, with the composition of the committee established so as to give the two political parties having the most members in each house approximately the same total proportionate representation on the committee as prevails in that house. The composition of the committee must be established to generally provide gender and geographic balance"

Page 1, line 16, replace "The" with "Unless otherwise provided by the legislative management, the"

Renumber accordingly

Roll Call Vote #

BILL/RESOLUTION NO. 1267

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 Nelson Seconded By Senator Olafson

[illegible]

Total (Yes) 3 No 3

Absent

Floor Assignment Senator

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

Paul

Date: 4/6/11
Roll Call Vote # _____

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1267

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

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

Total (Yes) 5 No 1

Absent _____

Floor Assignment Senator Nething

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

REPORT OF STANDING COMMITTEE

HB 1267, as engrossed: Judiciary Committee (Sen. Nething, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1267 was placed on the Sixth order on the calendar.

Page 1, line 2, after the comma insert "to exempt drafts of redistricting plans from open records requirements,"

Page 1, line 3, after "session" insert "; to provide an expiration date"

Page 1, line 5, after "**COMMITTEE**" insert "**- OPEN RECORDS EXEMPTION**"

Page 1, line 6, after the boldfaced period insert:

"1."

Page 1, line 10, after the period insert:

"2."

Page 1, line 14, after the period insert:

"3."

Page 1, line 16, after the period insert:

"4. A draft of a legislative redistricting plan created by the legislative council or a member of the legislative assembly is an exempt record as defined in section 44-04-17.1 until presented or distributed at a meeting of the legislative management or the legislative assembly. Any version of a redistricting plan created before the completion of the plan is an exempt record regardless of whether the completed plan is subsequently presented or distributed at a meeting.

5."

Page 1, after line 21, insert:

"SECTION 2. EXPIRATION DATE. This Act is effective through July 31, 2012, and after that date is ineffective."

Renumber accordingly

2011 TESTIMONY

HB 1267

(#1)

REDISTRICTING IN NORTH DAKOTA

NORTH DAKOTA LAW Constitutional Provisions

Article IV, Section 1, of the Constitution of North Dakota provides that the "senate must be composed of not less than forty nor more than fifty-four members, and the house of representatives must be composed of not less than eighty nor more than one hundred eight members." Article IV, Section 2, requires the Legislative Assembly to "fix the number of senators and representatives and divide the state into as many senatorial districts of compact and contiguous territory as there are senators." In addition, that section provides that the districts ascertained after the 1990 federal decennial census must continue until the adjournment of the first regular session after each federal decennial census, or until changed by law.

Section 2 further requires the Legislative Assembly to "guarantee, as nearly as practicable, that every elector is equal to every other elector in the state in the power to cast ballots for legislative candidates."

Under that section, one senator and at least two representatives must be apportioned to each senatorial district. Section 2 also provides that two senatorial districts may be combined when a single senatorial district includes a federal facility or installation containing over two-thirds of the population of a single member senatorial district and that elections may be at large or from subdistricts.

Article IV, Section 3, requires the Legislative Assembly to establish by law a procedure whereby one-half of the members of the Senate and one-half of the members of the House of Representatives, as nearly as practicable, are elected biennially.

Statutory Provisions

In addition to the constitutional requirements, North Dakota Century Code (NDCC) Section 54-03-01.5 provides that a legislative apportionment plan based on any census taken after 1999 must provide that the Senate consist of 47 members and the House consist of 94 members. That section also provides that the plan must ensure that population deviation from district to district be kept at a minimum. In addition, that section provides that the total population variance of all districts, and subdistricts if created, from the average district population may not exceed recognized constitutional limitations.

North Dakota Century Code Sections 54-03-01.8 and 54-03-01.10 provided for the staggering of Senate and House terms after redistricting in 2001. Section 54-03-01.8, which addressed the staggering of Senate terms, was found to be, in part, an impermissible delegation of legislative authority in that it allowed an incumbent senator to decide whether to stop an election for the Senate in a district that had two

incumbent senators with terms expiring in different years.

As a result of concerns regarding the timetable for calling a special election to vote on a referral of a redistricting plan, in 1991 the Legislative Assembly amended NDCC Section 16.1-01-02.2 at the November 1991 special session. The amendment to the section provided that "notwithstanding any other provision of law, the governor may call a special election to be held in thirty to fifty days after the call if a referendum petition has been submitted to refer a measure or part of a measure that establishes a legislative redistricting plan."

North Dakota Century Code Section 16.1-03-17 provides that if redistricting of the Legislative Assembly becomes effective after the organization of political parties and before the primary or the general election, the Secretary of State shall establish a timetable for the reorganization of the parties before the ensuing election.

North Dakota Century Code Section 16.1-04-03 provides that the board of county commissioners or the governing body of a city responsible for establishing precincts within the county or city must establish or reestablish voting precincts within 35 days after the effective date of a legislative redistricting.

REDISTRICTING IN NORTH DAKOTA 1931-62

Despite the requirement in the Constitution of North Dakota that the state be redistricted after each census, the Legislative Assembly did not redistrict itself between 1931 and 1963. At the time, the Constitution of North Dakota provided that (1) the Legislative Assembly must apportion itself after each federal decennial census; and (2) if the Legislative Assembly failed in its apportionment duty, a group of designated officials was responsible for apportionment. Because the 1961 Legislative Assembly did not apportion itself following the 1960 census, the apportionment group (required by the constitution to be the Chief Justice of the Supreme Court, the Attorney General, the Secretary of State, and the majority and minority leaders of the House of Representatives) issued a plan, which was challenged in court. In *State ex rel. Lien v. Sathre*, 113 N.W.2d 679 (1962), the North Dakota Supreme Court determined that the plan was unconstitutional and the 1931 plan continued to be law.

1963

In 1963 the Legislative Assembly passed a redistricting plan that was heard by the Senate and House Political Subdivisions Committees. The 1963 plan and Sections 26, 29, and 35 of the state constitution were challenged in federal district court

and found unconstitutional as violating the equal protection clause in *Paulson v. Meier*, 232 F.Supp. 183 (1964). The 1931 plan was also held invalid. Thus, there was no constitutionally valid legislative redistricting law in existence at that time. The court concluded that adequate time was not available with which to formulate a proper plan for the 1964 election and the Legislative Assembly should promptly devise a constitutional plan.

1965

A conference committee during the 1965 legislative session (consisting of the majority and minority leaders of each house and the chairmen of the State and Federal Government Committees) produced a redistricting plan. In *Paulson v. Meier*, 246 F.Supp. 36 (1965), the federal district court found the 1965 redistricting plan unconstitutional. The court reviewed each plan introduced during the 1965 legislative session and specifically focused on a plan prepared for the Legislative Research Committee (predecessor to the Legislative Council and the Legislative Management) by two consultants hired by the committee to devise a redistricting plan. That plan had been approved by the interim Constitutional Revision Committee and the Legislative Research Committee and was submitted to the Legislative Assembly in 1965. The court slightly modified that plan and adopted it as the plan for North Dakota. The plan contained five multimember senatorial districts, violated county lines in 12 instances, and had 25 of 39 districts within 5 percent of the average population, 4 districts slightly over 5 percent, and 2 districts exceeding 9 percent.

1971

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The Legislative Redistricting Committee considered redistricting plans based on 45, 47, 49, 51, and 52 districts. The committee determined that the various plans should adhere to the following criteria:

1. Preserve existing district boundaries to the extent possible.
2. Preserve political subdivision boundaries to the extent possible.
3. Provide for a population variance of under 10 percent.

The interim committee recommended 2001 Senate Bill No. 2456, which established 47 legislative districts. The bill repealed the existing legislative redistricting plan, required the Secretary of State to modify 2002 primary election deadlines and procedures if necessary, and provided an effective date of December 7, 2001. The bill also addressed the staggering of terms in even-numbered and odd-numbered districts.

Under the 47-district plan, the ideal district size was 13,664. Under the plan recommended by the committee, the largest district had a population of 14,249 and the smallest district had a population of 13,053. Thus, the largest district was 4.28 percent over the ideal district size and the smallest district was 4.47 percent below the ideal district size, providing for an overall range of 8.75 percent.

In a special session held November 26-30, 2001, the Legislative Assembly adopted the 47-district plan included in 2001 Senate Bill No. 2456 with amendments, most notably amendments to the provisions relating to the staggering of terms. (The bill was heard by the Joint Legislative Redistricting Committee.) The term-staggering provisions provided that a senator and a representative from an odd-numbered district must be elected in 2002 for a term of four years and a senator and a representative from an even-numbered district must be elected in 2004 for a term of four years. The bill further included

provisions to address situations in which multiple incumbents were placed within the same district and in which there were fewer incumbents than the number of seats available. The North Dakota Supreme Court found a portion of the staggering provisions to be an impermissible delegation of legislative authority in that it allowed an incumbent senator to decide whether to stop an election for the Senate in a district that had two incumbent senators with terms expiring in different years.

TIME DEADLINES TO BE CONSIDERED IN THE IMPLEMENTATION OF A REDISTRICTING PLAN

North Dakota Century Code Chapter 16.1-03 requires each political party to meet in each odd-numbered year to organize at the precinct, district, and state level. Section 16.1-03-17 provides that if redistricting of the Legislative Assembly becomes effective after organization of the political parties, the Secretary of State must establish a timetable for the reorganization of the parties as rapidly as possible before the ensuing election. Under that section, the Secretary of State is required to notify all county auditors of the timetable and of the details of the redistricting plan as the plan affects each county. Section 16.1-03-17 requires each county auditor to publish in the official county newspaper a notice stating the legislative redistricting has occurred; a description and a map of the new legislative districts and precincts; and the date, time, and location of the precinct caucuses and district committee meetings determined by the Secretary of State and the county auditor to be necessary according to the new districts and precincts established. (Section 16.1-04-03 requires each board of county commissioners and the governing body of any city to establish precincts within 35 days after the effective date of a redistricting plan.) After the notice is published, the political parties are required to reorganize as closely as possible in conformance with the timetable established by the Secretary of State.

North Dakota Century Code Section 16.1-11-11 provides that candidates for legislative office must submit nominating petitions by 4:00 p.m. on the 60th day before the primary election.

Article IV, Section 13, of the Constitution of North Dakota provides that, except for emergency measures and appropriation and tax measures, every law enacted by the Legislative Assembly takes effect on August 1 after its filing with the Secretary of State. However, if the bill is filed on or after August 1 and before January 1 of the following year, the law becomes effective 90 days after its filing or on a specified subsequent date. Section 13 also provides that every law enacted by a special session of the Legislative Assembly takes effect on the date specified in the Act.

REDISTRICTING IN NORTH DAKOTA

NORTH DAKOTA LAW Constitutional Provisions

Article IV, Section 1, of the Constitution of North Dakota provides that the "senate must be composed of not less than forty nor more than fifty-four members, and the house of representatives must be composed of not less than eighty nor more than one hundred eight members." Article IV, Section 2, requires the Legislative Assembly to "fix the number of senators and representatives and divide the state into as many senatorial districts of compact and contiguous territory as there are senators." In addition, that section provides that the districts ascertained after the 1990 federal decennial census must continue until the adjournment of the first regular session after each federal decennial census, or until changed by law.

Section 2 further requires the Legislative Assembly to "guarantee, as nearly as practicable, that every elector is equal to every other elector in the state in the power to cast ballots for legislative candidates."

Under that section, one senator and at least two representatives must be apportioned to each senatorial district. Section 2 also provides that two senatorial districts may be combined when a single senatorial district includes a federal facility or installation containing over two-thirds of the population of a single member senatorial district and that elections may be at large or from subdistricts.

Article IV, Section 3, requires the Legislative Assembly to establish by law a procedure whereby one-half of the members of the Senate and one-half of the members of the House of Representatives, as nearly as practicable, are elected biennially.

Statutory Provisions

In addition to the constitutional requirements, North Dakota Century Code (NDCC) Section 54-03-01.5 provides that a legislative apportionment plan based on any census taken after 1999 must provide that the Senate consist of 47 members and the House consist of 94 members. That section also provides that the plan must ensure that population deviation from district to district be kept at a minimum. In addition, that section provides that the total population variance of all districts, and subdistricts if created, from the average district population may not exceed recognized constitutional limitations.

North Dakota Century Code Sections 54-03-01.8 and 54-03-01.10 provided for the staggering of Senate and House terms after redistricting in 2001. Section 54-03-01.8, which addressed the staggering of Senate terms, was found to be, in part, an impermissible delegation of legislative authority in that it allowed an incumbent senator to decide whether to stop an election for the Senate in a district that had two

incumbent senators with terms expiring in different years.

As a result of concerns regarding the timetable for calling a special election to vote on a referral of a redistricting plan, in 1991 the Legislative Assembly amended NDCC Section 16.1-01-02.2 at the November 1991 special session. The amendment to the section provided that "notwithstanding any other provision of law, the governor may call a special election to be held in thirty to fifty days after the call if a referendum petition has been submitted to refer a measure or part of a measure that establishes a legislative redistricting plan."

North Dakota Century Code Section 16.1-03-17 provides that if redistricting of the Legislative Assembly becomes effective after the organization of political parties and before the primary or the general election, the Secretary of State shall establish a timetable for the reorganization of the parties before the ensuing election.

North Dakota Century Code Section 16.1-04-03 provides that the board of county commissioners or the governing body of a city responsible for establishing precincts within the county or city must establish or reestablish voting precincts within 35 days after the effective date of a legislative redistricting.

REDISTRICTING IN NORTH DAKOTA 1931-62

Despite the requirement in the Constitution of North Dakota that the state be redistricted after each census, the Legislative Assembly did not redistrict itself between 1931 and 1963. At the time, the Constitution of North Dakota provided that (1) the Legislative Assembly must apportion itself after each federal decennial census; and (2) if the Legislative Assembly failed in its apportionment duty, a group of designated officials was responsible for apportionment. Because the 1961 Legislative Assembly did not apportion itself following the 1960 census, the apportionment group (required by the constitution to be the Chief Justice of the Supreme Court, the Attorney General, the Secretary of State, and the majority and minority leaders of the House of Representatives) issued a plan, which was challenged in court. In *State ex rel. Lien v. Sathre*, 113 N.W.2d 679 (1962), the North Dakota Supreme Court determined that the plan was unconstitutional and the 1931 plan continued to be law.

1963

In 1963 the Legislative Assembly passed a redistricting plan that was heard by the Senate and House Political Subdivisions Committees. The 1963 plan and Sections 26, 29, and 35 of the state constitution were challenged in federal district court

and found unconstitutional as violating the equal protection clause in *Paulson v. Meier*, 232 F.Supp. 183 (1964). The 1931 plan was also held invalid. Thus, there was no constitutionally valid legislative redistricting law in existence at that time. The court concluded that adequate time was not available with which to formulate a proper plan for the 1964 election and the Legislative Assembly should promptly devise a constitutional plan.

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EXEMPTION OF REDISTRICTING PLANS FROM OPEN RECORDS REQUIREMENTS

This is a summary of the proposed amendments (11.0051.04004) to House Bill No. 1267 (2011), which would create an open records exemption for redistricting plans created by the Legislative Council or a member of the Legislative Assembly.

The proposed amendment would create an exemption from the open records requirements for a draft of a legislative redistricting plan created by the Legislative Council or a member of the Legislative Assembly until the redistricting plan is presented at a meeting of the Legislative Management or the Legislative Assembly. The purpose of the exemption is to allow members of the Legislative Assembly to draft proposed plans and allow the Legislative Council staff to develop proposed plans and review any plans developed by legislators for accuracy before the plans are submitted to any committee responsible for legislative redistricting without the drafts becoming public records. Once a plan is presented or distributed at a meeting, that version of the plan

becomes a public record. However, the prior versions that may have been saved in the drafting process will remain exempt records.

The exemption for versions of a plan created before the completion of the plan is intended to protect work product from disclosure, similar to the Legislative Council work product and Legislative Council-client communications protected under North Dakota Century Code Section 44-04-18.6. Because the redistricting software automatically saves and creates versions of a plan based upon those saves, plans that are not completed may have multiple versions. Some of those versions will likely contain errors or inadvertent boundaries that could be misconstrued when viewed after the fact. Therefore, the amendment is intended to exempt those draft versions and make the completed plans open to the public after distribution.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1267

Page 1, line 2, after the comma insert "to exempt drafts of redistricting plans from open records requirements,"

Page 1, line 5, after "COMMITTEE" insert "- OPEN RECORDS EXEMPTION"

Page 1, line 6, after the boldfaced period insert:

"1."

Page 1, line 10, after the period insert:

"2."

Page 1, line 14, after the period insert:

"3."

Page 1, line 16, after the period insert:

"4. A draft of a legislative redistricting plan created by the legislative council or a member of the legislative assembly is an exempt record as defined in section 44-04-17.1 until presented or distributed at a meeting of the legislative management or the legislative assembly. Any version of a redistricting plan created before the completion of the plan is an exempt record regardless of whether the completed plan is subsequently presented or distributed at a meeting.

5."

Renumber accordingly

April 5, 2011

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1267

Page 1, line 2, after the comma insert "to exempt drafts of redistricting plans from open records requirements,"

Page 1, line 3, after "session" insert "; to provide an expiration date"

Page 1, line 5, after "**COMMITTEE**" insert "- **OPEN RECORDS EXEMPTION**"

Page 1, line 6, replace "The chairman of the legislative management shall appoint a" with:

"1. A legislative management"

Page 1, line 8, after "election" insert "must be appointed"

Page 1, line 9, remove "appointed by the chairman of the legislative"

Page 1, line 10, replace "management" with ". The majority and minority leaders of each house are each entitled to appoint from their respective political parties the members of the committee, with the composition of the committee established so as to give the two political parties having the most members in each house approximately the same total proportionate representation on the committee as prevails in that house. The composition of the committee must be established to generally provide gender and geographic balance"

Page 1, line 10, after the period insert:

"2."

Page 1, line 14, after the period insert:

"3."

Page 1, line 16, replace "The" with:

"4. A draft of a legislative redistricting plan created by the legislative council or a member of the legislative assembly is an exempt record as defined in section 44-04-17.1 until presented or distributed at a meeting of the legislative management or the legislative assembly. Any version of a redistricting plan created before the completion of the plan is an exempt record regardless of whether the completed plan is subsequently presented or distributed at a meeting.

5. Unless otherwise provided by the legislative management, the"

Page 1, after line 21, insert:

"**SECTION 2. EXPIRATION DATE.** This Act is effective through July 31, 2012, and after that date is ineffective."

Renumber accordingly

PROPOSED AMENDMENT TO ENGROSSED HOUSE BILL 1267

Page 1, line 3, after "session;" insert "to provide an expiration date;"

Page 1, after line 21 insert:

"SECTION 2: EXPIRATION DATE. This Act is effective through July 31, 2012, and after that date is ineffective."

Renumber accordingly.