

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1231

2001 HOUSE POLITICAL SUBDIVISIONS

HB 1231

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1231

House Political Subdivisions Committee

Conference Committee

Hearing Date 1-25-01

Tape Number	Side A	Side B	Meter #
		XX	270-3755
Committee Clerk Signature <i>R. J. ...</i>			

Minutes: Chair Froseth opened the hearing on HB1231 with all committee members present, except Rep. Ekstrom.

Rep. Weisz, Dist 14 : testified in support of HB1231. (See Attached Testimony). This is a simple bill; however, the issues it brings up are not simple. Our country was founded on the premise of no taxation without representation.

Rep. Kretschmar : Why would you limit this to ND residence? What if a MN person buys a section of land in ND?

Rep. Weisz : Our state constitution prohibits an out of state resident from voting here.

Vice-Chair Severson : I'm a landowner and I retire. I rent my land out in the next county to two or three farmers. When a vote comes up on a school mill levy or whatever, not being a resident there, but a landowner; I may be able to influence the renter, saying I don't like this mill levy.

Do you see any problem?

Rep. Weisz : No. He cited a case in Colorado.

Rep. Herbel : Was there any consideration in the amount of property you own.

Rep. Weisz : Yes, there was.

Rep. Herbel : If I read this right, you have to have 50% ownership. If two people each have 50%, does this mean two votes?

Rep. Weisz : That's correct.

Rep. Herbel : You can see possible this could happen and people were absentee owners, they may rent that property so they can have more say.

Rep. Weisz : I suppose, but highly unlikely.

Rep. Eekre : Would it be possible for someone to buy up all the land and have the votes to stop a school project? It would be an organized effort.

Rep. Weisz : I suppose. I don't see this as a problem in ND.

Rep. N. Johnson : I'm concerned with the logistics of trying to do this. Who is in charge of keeping track if people have 50% ownership and where they live and if they are still in the state?

Rep. Weisz : They would have to send in an application, just like people who want an absentee now have to do. It's taking their word for it, but that's what we do now.

Vice-Chair Severson : You have mentioned several other states that do this. Have you researched this, and can you give us an idea how many states there are?

Rep. Weisz : No, I can't. Colorado has a community that does this, and California has an initiated measure to do this. I think Georgia may.

Vice-Chair Severson : Looking down the road in the future, some schools may have to change the way they operate. Some may consolidate, close; what have you. If this is passed, aren't we opening a Pandora's box that may influence these future changes.

Rep. Weisz : This bill doesn't address those kinds of issues. Those landowners wouldn't get to vote on those kinds of issues.

Nolan Verwest, ND Township Officers Assoc. : (1800) testified against HB1231. (See Attached)

Cory Fong, ND Sec. Of State Office : (2389) testified against the bill. (See Attached Testimony)

There are lots of constitutional questions that need to be addressed.

Vice-Chair Severson : If we were to put a number, say 60% or 75% instead of 50%, does this change anything as far as an arbitrary number.

Cory : Yes, I believe so. Unless you can arrive at some kind of well thought out number that is based on some criteria, I think it would be considered arbitrary. Even if you were to raise it, questions about multi-ownership still would exist. Equal protection issues.

Rep. Niemeier : How is *a property* defined? Is it volume or what?

Cory : That's a good question. I don't know how this bill means it. Not specified here.

Chair Froseth : I think the intent of this bill was to allow the property owner to vote only on tax issues and not effect the issues on page two of Cory's testimony.

Denise Miller, ND Landowners Assoc. : (3125) We are neutral, but we have lots of concerns.

Bev Neilson, ND School Boards Assoc. : (3290) testified against HB1231. We have opposed these types of bills every session they come up. We don't want out of state people coming in and voting on things that impact the residence of ND. Maybe we don't want people from Fargo voting on things in western ND where they bought hunting land. They won't care about schools, streets, etc. As long as they can get there to hunt, they don't care about anything else. We feel residence in the state have a vested interest in their communities. If you own property in one part of ND and live in another district, you are more vested in the area you reside. Having special

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voting rights because you own land went out years ago. You will have to redefine century code.

Lots of philosophical issues come up.

Chair Froese : Any more testimony on HB1231? Hearing none, HB1231 is closed.

Tape 2, Side A (700-815)

Chair Froese : I want to meet with the sponsor. We won't take action today.

Rep. Delmore : I don't know if it is amend able. I don't know where we could change it.

Rep. N. Johnson : I still have a concern that this is too complicated.

End of Discussion on HB1231.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1231 b

House Political Subdivisions Committee

Conference Committee

Hearing Date 2-2-01

Tape Number	Side A	Side B	Meter #
2	xx		1550--2221
Committee Clerk Signature <i>Pam Deane</i>			

Minutes: Chair Froseth : Let's take up HB1231. This is Rep. Weisz's bill. He thought an amendment was drafted, but we don't find it. Does someone have one.

Rep. Grosz : Yes. On line 9, take out *and at least a 50%* and replace this with *a majority*. I move this amendment.

Chair Froseth : The reason for that amendment was to eliminate the chapter dealing with a man and wife to each have a vote. 51% would have to be in one of their names.

Rep. Maragos : Has there been a second?

Rep. Kretschmar : I second.

Rep. Maragos : I think I know what they are trying to do. But can a minority interest in the property still have the majority interest in it. Say there are 10 people and one has 30% and the rest have 10%; does the 30% have the majority in the real property?

Rep. Kretschmar : I think the amendment means they want someone who owns more than 50% of the land.

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Rep. Maragos : Maybe we should change it to 51% then.

Rep. Grosz : The intent was, I believe, was for that parcel of land to just get one voter.

Rep. Maragos : I still contend that one person should not be able to tell the majority who owns it how that vote should be cast. It should read *more than 50%*. I think 51% is the way it has to be.

Chair Froseth : Let's take a voice vote on the first amendment.

VOICE VOTE: NO's take it. Amendment Failed.

Rep. Maragos : I move an amendment to say *has owned more than a 50%*.

Rep. Delmore : Going back to what Sen. Stenehjem said last session. We are putting lipstick on a corpse. I see no reason for this bill.

Rep. Delmore : I second the amendment.

VOICE VOTE: YES has it. AMENDMENT CARRIES.

Rep. Ekstrom : I move a **DO NOT PASS AS AMENDED.**

Vice-Chair Severson : I second.

VOTE: 13 YES and 2 NO BILL PASSES. Rep. Herbel will carry the bill.

FISCAL NOTE STATEMENT

House Bill or Resolution No. 1231

This bill or resolution appears to affect revenues, expenditures, or fiscal liability of counties, cities, or school districts. However, no state agency has primary responsibility for compiling and maintaining the information necessary for the proper preparation of a fiscal note regarding this bill or resolution. Pursuant to Joint Rule 502, this statement meets the fiscal note requirement.

John Walstad
Code Revisor

10385.0101
Title.0200

Adopted by the Political Subdivisions
Committee

February 2, 2002

VR
2/2/01

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1231

HOUSE AMENDMENTS to HB 1231 HOUSE POL. SUBS. 2-5-01
Page 1, line 9, replace the second "at least" with "more than"

Renumber accordingly

Date: 2-2-01
Roll Call Vote #:

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1231

House POLITICAL SUBDIVISIONS Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass As Amended

Motion Made By Rep. Ekstrom Seconded By Vice Chair Severson

Representatives	Yes	No	Representatives	Yes	No
Chairman Glen Froseth	/		Rep. Wayne W. Tieman	/	
Vice-Chair Dale C. Severson	/				
Rep. Lois Delmore	/				
Rep. Rachael Disrud	/				
Rep. Bruce Eckre	/				
Rep. Mary Ekstrom	/				
Rep. April Fairfield	/				
Rep. Michael Grosz		/			
Rep. Jane Gunter	/				
Rep. Gil Herbel	/				
Rep. Nancy Johnson	/				
Rep. William E. Kretschmar	/				
Rep. Carol A. Niemeier	/				
Rep. Andrew G. Maragos		/			

Total (Yes) 13 No 2

Absent 0

Floor Assignment Rep. Herbel

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

REPORT OF STANDING COMMITTEE (410)
February 5, 2001 8:23 a.m.

Module No: HR-20-2320
Carrier: Severson
Insert LC: 10385.0101 Title: .0200

REPORT OF STANDING COMMITTEE

HB 1231: Political Subdivisions Committee (Rep. Froseth, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO NOT PASS (13 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1231 was placed on the Sixth order on the calendar.

Page 1, line 9, replace the second "at least" with "more than"

Renumber accordingly

2001 TESTIMONY

HB 1231

AB 1231

Testimony before the House Finance and Tax Committee

By Representative Robin Welsz District 14

Pol. Sub

Mister Chairman and members of the ~~Finance and Tax~~ committee. The bill I have

before you is a very simple bill. It will only take a minute to explain but it does raise several issues that I will attempt to cover.

This bill will allow any property owner who is a resident of this State to vote on any property tax issue by absentee ballot if he or she is not a resident of the taxing district. The only requirement is that the person must have owned the property for at least 180 days, have at least a 50% ownership in the property and be a qualified elector in the state of North Dakota.

Possible?

1. Probably the first question is this legal. Yes! Various courts have ruled that while the legislature is under no obligation to allow non resident voting it is well within its purview to give nonresidents voting rights. In fact North Dakota already allows non resident voting in irrigation districts and water districts.

2. The second issue is will this bill allow multiple voting. No! Only non residents can vote if they own property and residents are already qualified to vote because of their residence status and not whether they own property or not. Residents who own property would not be able to vote twice under this law.

3. Will this cost political subdivisions a lot of money to implement. This bill does not require any additional notification for the election and by using absentee ballots eliminates the concern of cross voting for other positions that the nonresident is barred from voting on. In fact this bill may help reduce the problem of persons who have moved out who are still voting in their home precinct as for many the ability to vote on tax issues is one of the main reasons they still vote in their home precinct.

I don't know that.

2) Will this bill affect the outcome of the vote. Probably not. But we should not be deciding who should have the ability to vote based on the desired outcome but on whether they are being properly represented or not. It is important to note that these property owners have no representation at all concerning their property taxes as they currently are not able to vote for the tax issue or vote for any representation in that taxing district. Whether or not allowing nonresidents to vote changes the outcome is not relevant and should not be considered, only their ability to be represented.

Are some of these provisions in this bill arbitrary? Yes. Most of our election laws are arbitrary such as age requirements, length of residency etc. Again courts have ruled that Legislatures have broad leeway in determining voting requirements.

In closing, Remember our country was founded on the principle of no taxation without representation. Shouldn't we expect the same for the residents of our State.

ALVIN A. JAEGER
SECRETARY OF STATE



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SECRETARY OF STATE
STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

January 16, 2001

TO: Representative Glen Froseth & Members of the House Political Subs Committee
FR: Al Jaeger, Secretary of State (presented on his behalf by Cory Fong)
RE: HB 1231 – Non-Residents Voting on Tax Measures

As North Dakota's Chief Election Official, the Secretary of State has the role of overseeing our state's election laws and voting procedures. It is because of that role that the Secretary of State's office has the duty to comment on legislation that would impact elections and election administration in our state. It is our opinion that HB 1231 would do that.

To begin with, HB 1231 raises concerns from a constitutional perspective. While HB 1231 does not raise equal protection concerns because of the "one man, one vote" rule, the bill does raise equal protection concerns because of the provision of the bill that allows persons to vote on taxing issues in a taxing district who own 50% interest in a real property in the district. Unless the 50% provision is supported by a reasonable rationale and can be justified by some specific criteria, the 50% provision could be viewed as arbitrary and therefore an issue of equal protection. *This is arbitrary.*

HB 1231 may also conflict with the Constitution of North Dakota. Article II, Section 1 of the Constitution of North Dakota provides, "When an elector moves within the state, he shall be entitled to vote in the precinct from which he moves until he establishes voting residence in another precinct." This provision implies that a person has one place and one precinct to vote at in our state. HB 1231 may contradict this provision.

HB 1231 raises additional concerns from an election administrative perspective. For example, to determine the qualifications and eligibility of voters based solely upon North Dakota's definitions of residence is already a tremendous challenge for our state's election officials. To determine voter eligibility for a given precinct or political subdivision would be complicated significantly if HB 1231 were passed. Election officials, in many cases, would need to use a significant amount of time to research property ownership to determine which non-resident owners of real property were eligible to vote in an election. This task is made even more challenging by the 50% provision of the bill when considering properties owned by multi-persons.

(263)
Ballot preparation would also be impacted. Under HB 1231, election officials would be faced with creating a ballot for non-residents of the jurisdiction containing only taxing proposals separate from the regular ballot for residents of the jurisdiction that may also include any offices up for election. Not only could this impact the jurisdiction financially, it certainly would impact the jurisdiction procedurally. HB 1231 raises questions about counting and canvassing of ballots cast by non-residents as well since the bill does not address which precinct, or ward in some cases, a non-resident voter would be assigned to.

Other questions that would have to be addressed if HB 1231 were passed include:

- If a husband and wife jointly (50% each) own a property, would each have a vote?
- If a husband and wife jointly own two properties, would they have two votes, one for each property?
- If a corporation, which is not located in the voting district, has 50% ownership, would they have the right to vote?
- If the corporation does not have the right to vote, why should an individual who owns 50% of a property have the right to vote? Would that not be an equal protection issue because one class of property owner has the right to vote and another does not?
- Would the votes cast by non-resident voters be used when calculating the petition signature thresholds for running for office in the jurisdiction?
- Would non-resident voters be allowed to sign and circulate measure petitions that would impact the jurisdiction?
- How can the absentee ballot requirement of the bill be implemented for township elections when township elections don't authorize the use of absentee ballots?

ARTICLE II
ELECTIVE FRANCHISE

Section 1. The general election of the state shall be held biennially as provided by law.

Every citizen of the United States, who has attained the age of eighteen years and who is a North Dakota resident, shall be a qualified elector. When an elector moves within the state, he shall be entitled to vote in the precinct from which he moves until he establishes voting residence in another precinct. The legislative assembly shall provide by law for the determination of residence for voting eligibility, other than physical presence. No elector shall lose his residency for voting eligibility solely by reason of his absence from the state.

The legislative assembly shall provide by law for secrecy in voting, for absentee voting, for administration of elections and for the nomination of candidates.

Section 2. No person who has been declared mentally incompetent by order of a court or other authority having jurisdiction, which order has not been rescinded, shall be qualified to vote. No person convicted of a felony shall be qualified to vote until his or her civil rights are restored.

House Political Subdivisions Committee

Testimony by North Dakota Township Officers Association

Mr. Chairman and Members of this committee my name is Nolan Verwest, and I represent the North Dakota Township Officers Association. I have come here today to oppose HB 1231.

Township voting requirements as found in chapter 16 of the North Dakota Century Code , (16.1-01-04) says in my layman's terms that he who is a resident and has resided in a precinct for 30 days preceding an election may vote at that election.

I believe that our forefathers put this in our century code because they believed those who lived in the precinct and were most closely affected by its governing decisions should have a vote on those decisions.

We feel that those who are not residents become removed and remote from the problems and may not be as concerned with the local issues as those who live in the precinct.

For these reason we oppose the passage of HB1231 and ask for your vote in the negative on this bill.