

MICROFILM DIVIDER

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



ROLL NUMBER

DESCRIPTION

21941

2007 SENATE POLITICAL SUBDIVISIONS

SB 2194

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2194**

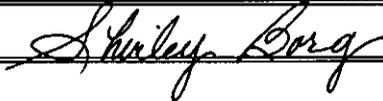
Senate Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: **January 26, 2007**

Recorder Job Number: **2050**

Committee Clerk Signature



Minutes:

Chairman Cook called the committee to order. All members (5) present.

Chairman Cook opened the hearing on SB 2194 relating to recalls of elected officials of political subdivisions.

Senator Olafson, District 10, Edinburg, ND, was asked to introduce this bill by the Secretary of State and was glad to do so. The bill related to procedures to recall elections. Some of the issues the bill addresses relating to special elections being called and then the situation where the tax payers have an additional expense. Hopefully this bill in certain cases precludes that from happening by getting the time line for fillings for a recall election in sink with that of general elections.

Al Jaeger, Secretary of State, explained the terms of the recall process. State wide officials, legislators and county officers, recalls are governed by provisions of the state constitution and we can't change those unless we amend the constitution. By state law you can not pass laws that are contrary to what is in the constitution for recall of those levels. It requires 25% of the electors in the applicable office. There are two parts to the process, one is you can circulate petitions to recall an official and once you have met all that legal requirement, that stops then what happens is all of the election laws take over and you have an election.

The bill before you is one we worked on with the League of Cities. (See attachment #1)

Connie Sprynczynatyk, ND League of Cities testified in support of SB 2194. We are trying with this piece of legislation to clear up some glitches in timing and the issue of how many signatures it takes to recall an individual. This bill is a consensus of all the discussions. There is no perfect solution.

Dan Ulmer, testified in support of SB 2194. (See attachment #2)

Malcolm Brown, testified on behalf of the City of Mandan, in support of SB 2194. (See attachment #2) He purposed an amendment to review.

Al Jaeger would like to review the amendments.

No further testimony for, against or neutral.

Chairman Cook closed the hearing on SB 2194.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2194**

Senate Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: **February 1, 2007 (action)**

Recorder Job Number: **2653**

Committee Clerk Signature

Shirley Borg

Minutes:

Chairman Cook called the Senate Political Subdivisions to order. All Members (5) present.

Chairman Cook discussed amendments.

Senator Olafson thinks the amendments would not be the way to go, they would add more confusion to the process. One of the things that appealed to him was getting the special elections in sink with the election so the tax payers did not have to pay for a separate election.

Senator Olafson moved Do Pass on SB 2194.

Senator Anderson seconded the motion.

Roll call vote: Yes 5 No 0 Absent 0

Carrier: **Senator Anderson**

Date: 2-1-07
Roll Call Vote #: 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2194

Senate Political Subdivisions Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Senator Olafson Seconded By Senator Anderson

Senators	Yes	No	Senators	Yes	No
Senator Dwight Cook, Chairman	X		Senator Arden C. Anderson	X	
Senator Curtis Olafson, ViceChair	X		Senator John M. Warner	X	
Senator Nicholas P. Hacker	X				

Total Yes 5 No 0

Absent _____

Floor Assignment Senator Anderson

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

REPORT OF STANDING COMMITTEE (410)
February 2, 2007 1:07 p.m.

Module No: SR-23-1979
Carrier: Anderson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2194: Political Subdivisions Committee (Sen. Cook, Chairman) recommends DO PASS (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2194 was placed on the Eleventh order on the calendar.

2007 HOUSE POLITICAL SUBDIVISIONS

SB 2194

2007 HOUSE STANDING COMMITTEE MINUTES

Bill No. SB 2194

House Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: March 2, 2007

Recorder Job Number: 4292

Committee Clerk Signature



Minutes:

Chairman Herbel opened the hearing on SB 2194.

Senator Olafson: The Secretary of State asked me to introduce this bill.

Al Jaeger: Secretary of State: (see testimony #1) This bill pertains to recall provisions. This particular bill pertains to political subdivisions. Discussed the recall elections and the problems that go with them. Worked with the League of Cities to draft this bill. Much discussion on the timelines and the things that happened with the Mandan recall election. Went over the absentee and military voters and the problems that can happen with that. There are two parts to a recall process; first is you circulate the petitions for the recall and if you receive enough signatures and those petitions are ratified then that is one part. Then election law takes over and what you have is you open the field and you have filing deadlines where others can come. If you were being recalled somebody has to run against you and so if nobody runs against you are not recalled. If somebody runs against you and they win and in fact they won the election. So even though we told him there were two positions on the ballot and were going to be on the ballot anyway he proceeded. Fortunately we walked into our office two days after the deadline. But you have 90 days to circulate the petitions so once we had it approved we were up against the 60 day deadline. If he would have walked in earlier he could have very easily

had us in a very awkward position in recalling two people that were already, their positions were already going to be on the ballot. You can not recall an official if that official is on the ballot that year. Maybe on the surface it seems successful. One thing that came up on the Senate side is that if an official really needs to be removed from office there are provisions in state law to take care of that. We find that most of the reasons for the recall are based on decisions that the board has made; not anything relating to anything they did in their position. One recall we had last year it is my opinion the reason stated on the petition for the recall had nothing to do with why the people wanting to remove the official were promoting it. People are being recalled for making decisions for what they were elected to doing. They are not being recalled because of corruption or whatever.

Rep. Dwight Wrangham: Are you suggesting people who seek a recall do it in bars.

Al Jaeger: I don't know where they get signatures on any petitions they circulate.

Rep. Steve Zaiser: This bill deviates from consistency as I see it. Changing the percentage on which the number of people you need for a recall.

Al Jaeger: I don't see that. We are trying to have the filing deadlines 60 days and two of those bills have already passed. This is a situation to address a specific situation unlike any other and so I think it is not a deviation from any part of the law.

Rep. Kim Koppelman: You noted earlier about the constitutional and in some instances we recall for a percentage based on the number of vote's caste in the last election for governor etc. How does that work in state law. This one obviously says the vote's caste in that offices election. Is that the way most of them are structured in statue or do they vary?

Al Jaeger: What the law use to say is 25% of the vote caste for governor in the last election. If you have a city or school that is disproportioned to the political subdivision also is extremely hard to calculate because it spills over a school district boundary and it is hard to determine

the legal requirement. In fairness it was felt that it should be structured back to when that position was on the ballot rather than to have it tied in with the statewide election. Now for legislative and statewide that is very easy to tie it back into a number.

Rep. Kim Koppelman: I would assume the reason for including that kind of a threshold is because it was felt that that the threshold should be fairly high to recall a public official, but it wouldn't be 13 at the premium. It would be something that would be a substantial thing. Was the intent so there would be a high number of votes on the recall? Was the intent so there would be a high number of votes and so a high number of signatures on a petition?

Al Jaeger: I don't know if we have gone too far. I think we have done some tweaking each time and I think it is getting better. We had this discussion with the League of Cities and they felt it was better.

Rep. Louis Pinkerton: if you had 99 voters, then you would need 39 on the recall petition. 40% if less than 100. If you had a 101 you would need 25. Is there any legal issues or anything with 100 people you need 40 votes; with 101 then you only need 25?

Al Jaeger: I don't really know. All our bills are reviewed by our counsel at the attorney generals office.

Rep. Louis Pinkerton: Maybe it would be better to have one man one vote instead?

Al Jaeger: It has not come up. I don't know. It was felt that for a smaller city it would be better if it was at a higher level.

Rep. Kari Conrad: You go back one year before the election. Right now it is 6 months so we are doubling that concept.

Al Jaeger: At this point yes it is currently 6 months from the election as to when they have to submit the petition to my office and then they have 90 days to circulate the petition and so it could be submitted to my office basically 3 months before the election. If they are circulating a

petition to recall somebody whose position is already on that ballot then we are recalling somebody who is also on the ballot and then we have two different situations at the same time.

Rep. Kari Conrad: Discussed their recall and that it serves a really important function. It says that we don't like these people and we don't like their judgment. Once it was done then they went on with the election.

Al Jaeger: The Renville County thing was governed by the county thing and constitutional.

Jerry Hjelstad: ND League of Cities: In support of this bill We think it is in the public's interest to be able to recall public officials so we see the changes made by this bill would provide a little more efficiency allowing recall elections to be tied in more possible with the regular election process. This would help with the efficiency to save money.

Rep. Kim Koppelman: This is an effort to help the standard law because we are currently concerned about the turnout in small cities. Do you have any thoughts on that process and this one?

Jerry Hjelstad: I don't remember the change taking place. I don't know what kind of standard there should be and what I think Secretary Jaeger said was that there were some problems figuring out the overlapping jurisdiction on elections and they came up with this percentage based on the idea it would be something that would be easily determined what the amount of signatures that would be needed.

Rep. Kim Koppelman: It seems like using the number of votes that were taken in the last election seems to make sense, but now we are back saying gee that has presented a problem because the votes that are fewer than 100 because the number of people that turn out to vote in the city or park board member are significantly lower than those that turn out in an electoral race or an election.

Jerry Hjelstad: I think there would be some difficulties in determining that number. I don't know if there is any magic in the current percentage that maybe that could be higher. There is always a balancing act protecting the public's right to recall with efficient spending. We probably would be having recall elections all the time.

Rep. Steve Zaiser: Do you think we should always try to base the votes we need for a recall on the same parameters. We switched Permanente's and what is your opinion on that?

Jerry Hjelstad: I can see your point where consistency would be nice. I think the reason we have that particular language in relation to the smaller jurisdiction is that any time we are looking at an election you are looking at certain fixed costs for the election board etc. Those smaller cities have less fixed costs for an election and it tends to hit them harder so we wanted to give them more protection.

Rep. Lawrence Klemin: I am having a little trouble following the first change from 25% to 40%. I think it is well brought out by Rep. Louis Pinkerton example. If you have 101 people voting and 26 on the recall petition. If you had 100 voters you need 40 signatures. I don't think I have heard the rational for changing this other than someone thinks it would be better to have more people sign the petition. Was there some other rational.

Jerry Hjelstad: The only rational would be that some of the smaller jurisdictions to balance between the ability to recall and efficient spending. It is more fixed cost on a smaller jurisdiction because there are certain fixed costs for an election board and notifications etc.

Rep. Lawrence Klemin: You don't see any constitutional issue between the 101 x 25% or 100 X 40%?

Jerry Hjelstad: Right now the ND Constitution provides for recall of state and county officials. It does not have any provisions for recall of city and school district officials.

Al Jaeger: I understand some of the questions that are coming up on the first change. I guess I would have more concern to changing the dates to 60 and doing the one year and then not changing the basis Rep. Kim Koppelman because I was just reminded that June election is where all the cities except one have their election. We have a basis there to work back on the position. If you follow the logic through as is being questioned on the first change, it should be predicated not on the governor's race but based upon when that position was on the ballot. The sixty days and one year we see that as being very beneficial.

Dan Ohmer: City of Mandan. I am the City Commissioner. I am on leave from Blue Cross. I have volunteered for election eight times and got drug in one time. Gave history on the recall that Mandan had. We are in favor of the bill. I think it should be easy to petition your government for these types of issues. I do have a problem on how the ballot was formed. During the recall election we asked our City Attorney to get an opinion from OGC. The answer came back don't ask. This is a recall election; it is not a general election. This is not a normal election; it is a vote of confidence. It took two petitions to put this together and I will get into that in a minute. None of the commissioners at this point wants to speak up because we did not want to be seen as meddling with the people's right to recall. The question is when an elected body is to be recalled what process or what should the ballot look like. The ballot should look like do you want to recall Dan Ohmer Yes or No. What happens now is the process that we just went through is it is not a recall; it is an election. The recall petitions are handed in and we are recalled. I think once those petitions come in those positions are recalled and they cease. Once 25% of the people voted in the last election, I think we could make a case to say that body no longer exists under the present process. You are automatically recalled once the petitions are handed in. It becomes a popular election then. In our case we had candidates. In our case the first recall where they were trying to recall all five

of us. They came back within the limits that exist now and the Secretary of State said you can't recall all five, but you can recall three of them. So they came out with a second set of petitions and recalled three of us. They came back with 300 and some votes and we were technically recalled. All the candidates that came in and ran against us said they had nothing to do with the recall. Mandan is the fifth largest city in the state. Discussed the city of Mandan downtown deterioration. About five years ago we had a thing to band strippers in Mandan. Burlington Northern had the large spill and we had to settle for \$30,000,000 dollars. Discussed need to clean up the spill and get rid of the buildings that were affected downtown. Discussed the possible candidates and how they were not valid applicants. However, we don't believe the handing in of 300 signatures out of 17,000 is a vote to get rid of a elected official. Indeed 75% of the voters did not have a voice in the vote. We have an amendment for you and I will turn it over to our City Attorney and I hope you will concur with our amendment.

Malcolm H. Brown, Attorney for the City of Mandan: (see testimony #2) I was surprised to find out it is not a recall the way ND law is. It is simply an option and whoever gets the most votes wins.

Rep. Nancy Johnson: If I as an individual should not be recalled I just have to know would that individual offer as a candidate. I would have to go down and vote for that individual?

Malcolm Brown: The California law has a provision that says the name of the individual to be recalled can not be any place on the ballot. I did not put that in here. My thought was if I am going to be recalled and at the same time going to circulate petitions to get on the ballot. I think that would be inconsistent. I don't know if legally that would be even possible.

Rep. Lawrence Klemin: You know ND and California are both peal code. I was wondering how old this provision is in California.

Malcolm Brown: I do not know. It is their current law.

Rep. Lawrence Klemin: they would still have to vote for another candidate under the second part of it here in the event that there were more yes votes in the end. If they didn't vote for one of those other persons on there is that going to be a valid ballot?

Malcolm Brown: I think they could vote no and vote for other candidates or not. It would be no different than now. People vote for some on the ballot and not everyone. First you count the votes yes or no

Rep. Lawrence Klemin: So if a person is going to campaign he is going to have to do two things. He will have to be the person who is going to be recalled and then he is going to have to campaign for himself.

Malcolm Brown: You are right. I think that is how it should be.

Rep. Pat Hatlestad: It would seem to me if you believe the recall is a vote of confidence yes or no. There should be a recall election. You vote yes or no and if you vote yes and then we should vote separate election to fill the vacancy. Would that not be logical.

Malcolm Brown: Except you have two elections and I think this way where we do have other candidates and that is the way California does it would be a more efficient way than having two elections. I did not do any extensive research on how other states handle this situation. I looked at Minnesota, South Dakota and Montana and I have to say they have variations of the way we do it.

Rep. Steve Zaiser: Responding to Rep. Lawrence Klemin question it wouldn't necessarily be the responsibility of the person who is running for the office of that person you recalled. It wouldn't be his job to campaign to defeat the others. That really is the job of the people filing the petition for the recall. Isn't that correct?

Malcolm Brown: In the political mix I don't know how you would do that. It probably depends on the issue that led to the recall. If I were one of the candidates I may criticize the incumbent.

Rep. Lawrence Klemin: Like with the five recalls you would vote five times one for each individual.

Malcolm Brown: I think you would.

Rep. Lawrence Klemin: Below that you would have other candidates so you would have the person voting go down the line yes or no on the existing five positions and then they would then vote for five other candidates under the other candidates.

Malcolm Brown: There may be more candidates, but you would only vote for five.

Is this an election or should they be removed? It truly should be a recall and not another election.

Rep. Louis Pinkerton: Do you have a copy of the ballot. Do you recall how that looked?

Malcolm Brown: It would just be another ballot like any other election. There were three candidates for mayor so it was just abc.

Rep. Louis Pinkerton: Seems like it would be very confusing as it is.

Rep. Pat Hatlestad: You say this is not an election, but this is an election. Either you are going to have the recall yes we are going to recall the individual or no we are not. Then we should hold an election.

Malcolm Brown: I did not think it was confusing. Today it is an election and I am suggesting that we have a recall that is in two parts; a recall and an election.

Rep. Pat Hatlestad: I don't disagree, but I don't think they should be held at the same time. If you recall the person you recall the person. If you don't you don't. Then you hold a separate election.

Malcolm Brown: I think that is your call. A recall is not necessarily a general election. It is a vote of confidence.

Rep. Kim Koppelman: Maybe we are tripping over terms here. I think the concern is basically what is a recall? What we are talking about is the recall is act of filing a petition. The question of whether or not you will be removed from office is as result of the recall is the result of the election. For example, President Clinton was impeached. He was not removed from office by impeachment. Lots of people confuse that. The constitution says this; the name of the official to be recalled shall be placed on the ballot unless he resigns within 10 days after filing the petition. Other candidates for the office may be nominated by manner provided by law. When the election results have been officially declared the candidate receiving the highest number of votes shall be deemed elected for the remainder of the term. No official shall be subject to recall twice for the position that they were elected. The process we are laying out is pretty much the process the constitution describes

Malcolm Brown: I don't disagree with that. It does not apply to city and park districts.

Rep. Kim Koppelman: I think we will have to follow what the constitution provides.

Malcolm Brown: I don't disagree the constitution would not require this form of a ballot for an office subject to that constitutional provision. I agree with that.

Rep. Louis Pinkerton: There is currently no standards now for a recall election?

Malcolm Brown: I don't think so.

Rep. Louis Pinkerton: It is hard enough to have those people go through a recall like Mandan did trying to find some fair legal ballot. Can't we instruct someone to come up with a ballot that is uniform?

Malcolm Brown: Yes, this amendment would be a form of uniform ballot. I think the Secretary of State could come up with some other form of ballot and the way it is done.

Rep. Kim Koppelman: Could the Secretary of State create this kind of ballot now without changing the statute?

Malcolm Brown: I don't think so. I think the form of ballot had to be approved by the county auditor or Mr. Jeager's office.

Rep. Kim Koppelman: It is possible that the number of yes's could outnumber the number of no's, but the incumbent candidates name is below that among other names on the ballot and other's got more votes than the incumbent the incumbent still would stay in office if this ballot is right?

Malcolm Brown: I don't know if a person on a recall could circulate nominating petitions to be on a ballot for which he currently holds the office.

Rep. Kim Koppelman: You think there would be confusion among the public if this ballot was used. For example lets say we have John Doe to be recalled and the answer is no. then you have three names and they also vote for a name not including John Doe and somebody wins; and they say there we just had an election. The next day in the paper it would say Malcolm Brown got the most votes, but Malcolm Brown is in office. Wouldn't that confuse the matter?

Malcolm Brown: I disagree I got the most votes, the no votes got the most votes and that decided the issue.

Rep. Kim Koppelman: If there were 30 no votes and 25 yes votes and you got 50%?

Malcolm Brown: this is a recall and I would not be recalled.

Rep. Lee Kaldor: Determining whether or not the ballot is a spoiled ballot if somebody votes no on the election and also votes for another candidate then we have to state that can not be construed as a spoiled ballot. Does this foreclosure the opportunity for a write in? I am going to vote no and write in the incumbent's name?

Malcolm Brown: I don't know. In Mandan all the incumbents were reelected. Under this scenario the mayor would have been recalled. He did not get the majority of the votes.

Rep. Dwight Wrangham: If we would change the word recall to petition of no confidence and required that if that petition was filed that person would have to stand aside for recall; would that solve some problems?

Malcolm Brown: The problem you have is if it is a vote of no confidence and the petitions are filed and they have to stand for election you have lost a member of the governing body. If it was three out of five then you have no governing body and we don't want that to occur.

Rep. Lawrence Klemm: Seems like we are now converting this to a parliamentary system.

Rep. Kari Conrad: Mr. Ohmer, if the people who got their name on the ballot, would they have something to do with the recall

Dan Ohmer: They said they had nothing to do with the recall. I wonder with a recall whether the governing body ceases to exist based on 25% of the voting petition.

Rep. Kari Conrad Isn't it like impeachment where yes you were recalled?

Dan Ohmer: The impeachment is indeed a vote of confidence.

Opposition: None

Hearing closed.

Chairman Herbel reopened the hearing.

Al Jaeger: Does not like the amendment. There is no clarity and we need to have that. You can't have just three questions and the ballot needs to be defined better.

Hearing closed.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill No. SB 2194

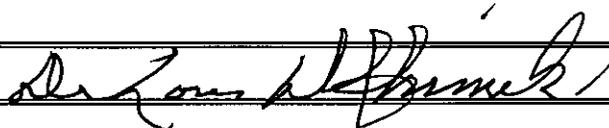
House Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: March 15, 2007

Recorder Job Number: 5111

Committee Clerk Signature



Minutes:

Chairman Herbel reopened the hearing on SB 2194.

Rep. Lawrence Klemin presented the proposed amendment and explained it.

Moved the Amendment Motion Made By Rep. Lawrence Klemin; Seconded By Rep.

Chris Griffin

Discussion:

Voice Vote Carried.

Chairman Herbel: Now we have an amended bill before us.

Rep. Louis Pinkerton: I feel that 25% is too low and would like to see it up to 33%. This means to change lines 9 & 11 to 33%.

Moved amendment to increase lines 9 and 11 to 33% Motion made By Rep. Louis Pinkerton; Seconded By Rep. Kim Koppelman

Rep. Lawrence Klemin: I intend to resist the motion since I think it is the 33% is not necessary if people are unhappy with their representatives they should be able to get rid of them.

Rep. Kim Koppelman: It is according to constitutional law that the 25% goes way back and I think it is stated to use the last election vote percentage and that is good.

Rep. Steve Zaiser: I intend to resist the amendment too because I think it is important that people are able to have their voice heard when they are unhappy with their representative.

Rep. Nancy Johnson: I am going to resist the amendment since I feel that I was recalled once from an office and I think that it was too easy for them to

Rep. Louis Pinkerton: I noticed that most of the recalls happen in rural, small towns and is seldom used in larger towns.

Rep. Lawrence Klemin: this does apply to the whole state and for that reason I intend to resist the amendment.

Rep. Lee Kaldor: I intend to resist the motion because I feel the recall right is a good thing. It encourages people to get involved and it is systematic of our democracy at work.

Rep. Kari Conrad: I feel with our recall that we had that it divided the community and it is now coming back together.

Rep. Pat Hatlestad: I feel lots of people do recalls and have no good reason for it, but they go ahead and get a few signatures on a petition and have the person recalled.

Rep. Steve Zaiser: I think Rep. Lee Kaldor did a good job explaining his point of view and I agree with him.

Chairman Herbel: I intend to resist the motion also.

VOICE VOTE FAILED

Do Pass As Amended Motion Made By Rep. Pat Hatlestad; Seconded By Rep. Vonnie Pietsch

Discussion: None

Vote: 12 Yes 1 No 1 Absent Carrier: Rep. Louis Pinkerton

Hearing closed.

VR
3/15/07

PROPOSED AMENDMENTS TO SENATE BILL NO. 2194

Page 1, line 13, remove "An official of a political"

Page 1, remove lines 14 and 15

Page 1, line 16, remove "electors equal in number to forty percent of the voters who voted in that election."

Renumber accordingly

Date: 3-15-07
Roll Call Vote #: 0

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2194

House Political Subdivisions Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS AS AMENDED

Motion Made By Rep. Pat Hatlestad Seconded By Rep. Vonnie Pietsch

Representatives	Yes	No	Representatives	Yes	No
Rep. Gil Herbel-Chairman	X		Rep. Kari Conrad	X	
Rep. Dwight Wrangham-V. Chair			Rep. Chris Griffin	X	
Rep. Donald Dietrich	X		Rep. Lee Kaldor	X	
Rep. Patrick Hatlestad	X		Rep. Louis Pinkerton	X	
Rep. Nancy Johnson	X		Rep. Steve Zaiser	X	
Rep. Lawrence Klemin	X				
Rep. Kim Koppelman		X			
Rep. William Kretschmar	X				
Rep. Vonnie Pietsch	X				

Total (Yes) 12 No 1

Absent 1

Floor Assignment Rep. Louis Pinkerton

See attached amendment 78214.0101 as proposed

REPORT OF STANDING COMMITTEE

SB 2194: Political Subdivisions Committee (Rep. Herbel, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (12 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). SB 2194 was placed on the Sixth order on the calendar.

Page 1, line 13, remove "An official of a political"

Page 1, remove lines 14 and 15

Page 1, line 16, remove "electors equal in number to forty percent of the voters who voted in that election."

Renumber accordingly

2007 TESTIMONY

SB 2194

ALVIN A. JAEGER
SECRETARY OF STATE

ME PAGE www.nd.gov/sos



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

Attachment #1

PHONE (701) 328-2900

FAX (701) 328-2992

E-MAIL sos@nd.gov

January 26, 2007

TO: Senator Cook, Chairman,
and Members of the Senate Political Subdivisions Committee

FR: Al Jaeger, Secretary of State

RE: SB 2194 – Recall of Elected Officials of Political Subdivisions

Section 1, page 1, lines 14 thru 16 – It increases from 25% to 40% the percentage of elector signatures required on a petition to recall an elected official in which 100 or fewer votes were cast in the most recent election for that position.

Under current law, if 50 people voted in the most recent election for that position, the number of required signatures would be 13.

Under the proposed change and having the same number of voters, the number of required signatures would be 20.

Section 1, page 2, line 6 – Changes the timelines for calling a special election to accommodate the change in establishing a 60 day candidate filing deadline on line 13

Section 1, page 2, line 13 – Establishes a 60-day filing deadline for candidates to match the filing deadline in other elections

Section 1, page 2, lines 18 thru 20 – states that an official of a political subdivision cannot be recalled if the office is on the ballot within one year.

The 1991 Legislative Assembly adopted a law requiring the format of a recall petition to be first reviewed by the Secretary of State before it could be circulated to obtain signatures. Since that law became effective, petitions from the following political subdivisions have been reviewed for legal format.

2001

Mapleton (2)
Minto

2002

Drayton
Solen (2)
Hebron
Pick City
Balta
New Town
Devils Lake School (4)
Bismarck School (3)

2003

Flasher (2)
Flaxton
Rolla
New Salem (4)

2004

Selfridge
McClusky School
Linton
Hebron
Reile's Acres
Belfield
Mayville

2005

Lincoln (7)
Mandan (5)
Oakes
Page

2006

Mandan (3)
Cass School District
Max

Personal history- stood for election 8 times in Mandan

Represented Dist 34- for 3 2yr terms. Your chairman and I have worked very hard at trying to leave our community better off than we found it. City commissioner 4-4yr term,-difference in your job and city =neighbors and controversy-

Present lobbyist for BCBSND, and for the record I'm on PTO whilst representing Dan Ulmer in my role as a citizen.

During our recent recall the city commission instructed its city attorney to get an AG's opinion on the recall process question I'm about to pose. Pursuing that question came to a halt when a source from the Attorney General's office said, 'you don't want to ask.'

Well actually we did want the answer but the recall was underway and none of the commissioners wanted to speak up because the commission didn't want to be perceived as meddling with 'the people's' right to recall. It was much easier to just acquiesce to the Secretary of State, get on with the election, and take the issue to this body.

The question is when an elected body/member/commissioner is 'to be' recalled what process should the ballot look like?

-Should Dan Ulmer be recalled 'yes' or 'no'?

-Or should a popular election occur anytime 25% of the voters in the last election sign and hand in recall petitions? (300 or so in Mandan's case)

Our answer is both. However our entire commission thought the first question should be a vote of confidence called once the petitions are verified. If the members are recalled (i.e. the majority answer 'yes') the voters then select whatever candidate they want to replace the recalled member/commissioner.

After considerable thought most of us on the city commission think that the Sec. of State's present interpretation of how to conduct recalls leads us to believe that once petitions are filed then the governing body or the subject of the recall ceases to exist...and can no longer act. It may be far fetched but those of us on a local level who have to regulate our neighbors' interests have had to deal with folks who believe very deeply about what they're doing and such a demand could occur...unless you find a better path.

Indulge me for a moment whilst I relive our recall: Manda is the 5th largest city in North Dakota. Downtown deterioration began in the '70's- Kirkwood Express to Lowes---over 70% of people who live in Mandan work in Bismarck and 99% shop there. We haven't been able to buy underwear in Mandan for the last 20yrs.

About 5yrs ago the commission decided to meddle with Strippers,1952, major controversy-ordinance confirmed by 80% of voters

Diesel Spill discovered in mid'80's—spanned two decades—we sued—parties split—we settled and property owners went to trial and won. We settled for \$30,000,000, largest in BNSF's and N.D.'s history—property owners and employees didn't get what they thought they should get. We began tearing down old buildings to clean up the spill and opposition showed up as our downtown began to look like a war zone.

Then as a result of a compliance check gone awry we revoked one of our more vociferous downtown establishments liquor license Ratz Bar. Popular bar, my 20 something kids hung out there and I warned them that my closing the bar might have repercussions on their friends...it did as their friends jumped them for their dad's actions.

And the next thing you know petitions were being circulated to recall all five city commissioners. But it's discovered that 2 can't be recalled because they were too close to the June election when their terms ended.

A well substantiated rumor indicated that the bar owner (who lives in the county) hired a local attorney to put the first recall together and the other rumor was that the petitioners were paid to carry petitions as many of them were former bar employees or patrons.

The first set of petitions were handed in and the commission felt fraud charges were in order...but our state's attorney refused to enter the fray (not many politicians want to stick their nose into a hornets nest) so we went through the verification process and the petitions collapsed on their own.

The lawyer chairing the drive was undaunted, or his client may have threatened him with malpractice, so he once again fired up his petitioners and this time the commission could have cared less about the petitions legitimacy and called for a vote of confidence that set the recall process in motion and it's that process that we're here to bring to your attention.

The Sec. of State was consulted, two deadlines were set for candidates to file their petitions and when they were re-set many of Mandan's snow birds flew south without the city ballots.

We believe that a recall is a vote of confidence and the people are entitled to that vote, we also believe that candidates should be allowed to file for the recalled office...however we don't believe that the mere handing in of recall petitions equals a vote of no confidence or automatically recalls a sitting commissioner as indeed 75% of the voters haven't said whether or not they concur with the recall petitioners. It is our thinking that the voters not the petitioners need to decide if they want the commissioners recalled before deciding who should replace them and we therefore hope you'll concur with our amendment to rectify the problem.

Here's part of what I wrote after the recall-

Handwritten signature

Senate Political Subdivisions Committee
January 26, 2007

Senate Bill 2194

Testimony of Malcolm H. Brown on behalf of the City of Mandan.

Senate Bill 2194 proposes to make minor changes to Sec. 44-08-21 N.D.C.C. I think that section requires more than minor changes and have a suggested amendment.

In 2006 the City of Mandan went through a recall election. Three of the members of the City Commission were subject to the filing of petitions requesting their recall. Although the petitions were filed in late spring, some conflicts with the existing election laws deferred the recall election to the November general election. I believe the proposed amendments in SB 2194 relating to the time for the recall election to be held address that problem the City of Mandan faced.

For background, and reference to the amendments to this bill that we propose, I refer you to Article III, Sec. 10 of the North Dakota Constitution;

“The name of the official *to be* recalled shall be placed on the ballot...” (emphasis supplied)

While the Attorney General has opined some time ago that this section of the Constitution does not apply to elected officials of political subdivisions, which opinion led to the enactment of Sec. 44-08-21, I think it instructive regarding the status of the official subject

to the recall. I think that wording suggests very strongly that the recall, if at all, takes place at the recall election.

The North Dakota Secretary of State is of the opinion that a recall election is an election between those subject of the recall and those filing petitions to be placed on the ballot for that office at the recall election. In effect that position would appear to mean that the "recall" takes place at the time of filing of the recall petitions and its every person for themselves at the election.

We believe that the use of the words "*to be*" in the section of the constitution cited above is used in the future tense...in other words the recall does not take place until the results of the recall election are known.

The proposed amendment is taken from California law on the same subject. This ballot language would give the elector the clear choice of responding to the recall petition, should the official be recalled (removed) from office? The elector would also vote for other candidates, if any, and at the time of tabulation of the results, the official could be recalled and another person elected to that office, or the votes to recall would be insufficient and the official would remain in office.

Proposed amendment to Senate Bill No. 2194

Add the following language at page 2, line 14 after the word "election".

The ballot shall be in substantially the following form;

Shall (name of individual) be recalled from the office of (name of office) in (name of political subdivision)?

Yes _____

No _____

Other candidates:

(Name)

(Name)

(Name)

If one-half or more of the votes at a recall election are "No", the officer sought to be recalled shall continue in office.

If a majority of the votes on a recall proposal are "Yes", the officer sought to be recalled shall be removed from office upon the qualifications of his successor, who shall be the person receiving the highest number of votes of "Other candidates".

ALVIN A. JAEGER
SECRETARY OF STATE
HOME PAGE www.nd.gov/sos



#1
PHONE (701) 328-2900
FAX (701) 328-2992
E-MAIL sos@nd.gov

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

March 2, 2007

TO: Rep. Herbel, Chairman, and Members of the House Political Subdivisions Committee

FR: Al Jaeger, Secretary of State

RE: SB 2194 – Recall of Elected Officials of Political Subdivisions

Section 1, page 1, lines 14 thru 16 – It increases from 25% to 40% the percentage of elector signatures required on a petition to recall an elected official in which 100 or fewer votes were cast in the most recent election for that position.

Under current law, if 50 people voted in the most recent election for that position, the number of required signatures would be 13.

Under the proposed change and having the same number of voters, the number of required signatures would be 20.

Section 1, page 2, line 6 – Changes the applicable timelines for calling a recall election to accommodate the change in establishing a 60 day candidate filing deadline on line 13

Section 1, page 2, line 13 – Establishes a 60-day filing deadline for candidates to match the filing deadline in other elections

Section 1, page 2, lines 18 thru 20 – states that an official of a political subdivision cannot be recalled if the office is on the ballot within one year.

2

House Political Subdivisions Committee
March 2, 2007

Senate Bill 2194

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to the recall. I think that wording in the Constitution suggests very strongly that the recall, if at all, takes place at the recall election.

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We believe that the use of the words "*to be*" in the section of the constitution cited above is used in the future tense...in other words the recall does not take place until the results of the recall election are known.

The proposed amendment is taken from California law on the same subject. This ballot language would give the elector the clear choice of responding to the recall petition, should the official be recalled (removed) from office? The elector would also vote for other candidates, if any, and at the time of tabulation of the results, the official could be recalled and another person elected to that office, or the votes to recall would be insufficient and the official would remain in office.

We think that the current practice of placing the official subject of the recall and other candidates on the same ballot does not give the electors the choice that a recall is intended to address. The current practice could result in the official subject of the recall being "re-elected" with only a plurality of the votes if there are several other candidates. Or if no other candidates, and only one vote for the recalled official, they would be "re-elected". We do not believe that is the true intent of the recall process and offer this amendment to give the electorate a clear choice.

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