

2013 HOUSE POLITICAL SUBDIVISIONS

HB 1245

2013 HOUSE STANDING COMMITTEE MINUTES

House Political Subdivisions Committee Prairie Room, State Capitol

HB 1245
February 14, 2013
Job # 18996

Conference Committee

Committee Clerk Signature 

Relating to election recounts.

Minutes:

Testimony # 1, 2

Chairman N. Johnson: Opened the hearing on HB 1245.

Rep. Kretschmar: Introduced the bill. It is more than housekeeping. There is more in the statue (passed out testimony #1) Under current law this is an automatic recount if you are within 1% of the guy on top of you. There were four of us running in the primary election there were two nominees of the Republican Party in our district to get to the general election. This little sheet with the number on it I use as an example. The highest vote getter of the four got 2500 votes; then the second high got 1450 and that was me. One of the other gentlemen on the ballot got 1430 and the fourth one was a ways down. Under current law there is an automatic recount if you are within 1% of the guy on top of you. So under current law the 1% of 2500 is 25 votes. The difference between my opponent and me was 20 so there was a recount required. Because it was a multicounty district that was handled by the Secretary of State's office. They used three days for the recount since we have three counties involved. I was declared the winner in second place by nine votes. This bill would change that number so the percent would be on the person's vote that is highest vote count in the area. This recount was paid for by the state so that would be the change in the policy of the bill. We would only look at the two people. HB 1245 would change that number so that percent would be on the person's vote who was highest in the recount area. Under the bill instead of 25 as the percent difference it would 15 because it would be 1% of the 1450. Under that scenario there wouldn't be an automatic recount. The defeated candidate could still request a recount but he would have to pay for it. Otherwise the state pays for it.

Rep. Ben Hanson: Is your purpose in proposing this to save the state money?

Rep. Kretschmar: Maybe it would lessen the chance of a recount too. It would save the state money too.

Rep. Beadle: Unnecessary recounts?

Rep. Kretschmar: Yes. It should be the people involved in the recount; not the highest people.

Rep. Koppelman: The problem here is only in rare offices where we have more than one nominee and typically many candidates versus a one on one race where the current law would work just fine.

Rep. Kretschmar: That is correct. These four person races always involved with candidates with the House of Representatives.

Rep. Koppelman: If the percentages are recalculated it would involve the actual people involved in the recount. Not someone else that is way ahead and that number triggers the percentage versus the number of people actually affected.

Rep. Kretschmar: Under current law the top guy sets the percent.

Opposition: None

Neutral:

Al Jaeger, Secretary of State: (Testimony #2). He went over the testimony. This recount law applies to all races and also would apply to city races and my concern is with the word nominated. I think we are going to have to explain what that means. The two candidates that received the two highest votes we have to think about what that means. They are not officially nominated until we certified officially the results. We made it so the percentage was based on the highest number of votes cast in that contest. If a 1,000 people show up at the polls, they don't necessarily vote for everything on the ballot. In some cases recount it triggered is with total votes cast in the contest. Recount costs were minimal. I mainly wanted you to see my examples.

Rep. Koppelman: This section of law deals with all recounts not just those for primary.

Al Jaeger: Yes. The percentage on a primary is one; for a general is ½%.

Rep. Koppelman: Your concern about the word nominated; if we were to find a way to craft that into the language concerning primary's since the percentage is already different and then have the word elected in area that deals with general elections; would that make sense?

Al Jaeger: You are correct. In the primary we would call it a Certificate of Nomination. In the general election we wouldn't call it a nomination.

Rep. Klemin: Line 8 that word nominated if we took that word out would we have to have a situation where we would be required to have an automatic recount to find out who comes in third if the three and four are close together?

Al Jaeger: There are some different ways. We have had recounts and we do have a program to view these on our website. In 2010 we had two recounts. Recounts don't happen that often.

Rep. Koppelman: Could we indicate that that was the candidate that got the most number of votes where there are a number of seats open.

Al Jaeger: However it is done I want to be able to explain it easily. Our program is set based on the highest number.

Neutral: None

Hearing closed.

Discussion:

Rep. Koppelman: We will work with legislative council on clarification of that word.

Rep. Klemin: I think Rep. Kretschmar has a good point here in this example. Why use the percentage of the one that got the highest vote by far when that person is not connected at all to the recount.

Rep. Ben Hanson: I agree with Rep. Kretschmar because it doesn't make any sense.

Chairman N. Johnson: Since there are some who want to do some word smiting on this we will hold off on any action on this particular bill.

Closed.

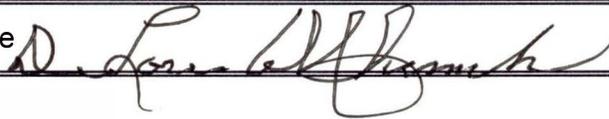
2013 HOUSE STANDING COMMITTEE MINUTES

House Political Subdivisions Committee
Prairie Room, State Capitol

HB 1245
February 21, 2013
Job # 19336

Conference Committee

Committee Clerk Signature



Minutes:

Chairman N. Johnson: reopened the meeting on HB 1245. This was Rep. Kretschmar bill when they are doing a recount done between the two parties that we in contention for the spot and not necessarily the top vote getter. Someone said they had some amendments they wanted to work on. No one came forward. There was some discussion on nominated?

Do Pass Motion Made by Rep. Hatlestad: Seconded by Rep. A. Looyen

Rep. Kretschmar: The bill would only affected races where there are more than two people. It would not affect the state Senate race, but it could affect any House race.

Chairman N. Johnson: Would it affect judgeships too where there could be more than two people running?

Rep. Kretschmar: There may be other races where there are three or four people running for the race and it would affect those too.

Discussion: None

Vote: 15 Yes 0 No 0 Absent Carrier: Rep. Kretschmar

Closed.

Date: 2-21-13
 Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1245**

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. Hatlestad Seconded By Rep. Looyen

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson	✓		Rep. Ben Hanson	✓	
Vice Chairman Patrick Hatlestad	✓		Rep. Kathy Hogan	✓	
Rep. Thomas Beadle	✓		Rep. Jerry Kelsh	✓	
Rep. Matthew Klein	✓		Rep. Naomi Muscha	✓	
Rep. Lawrence Klemin	✓				
Rep Kim Koppelman	✓				
Rep. William Kretschmar	✓				
Rep. Alex Looyen	✓				
Rep. Andrew Maragos	✓				
Rep. Lisa Meier	✓				
Rep. Nathan Toman	✓				

Total (Yes) 15 No 0

Absent 0

Floor Assignment Rep. W. Kretschmar

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

REPORT OF STANDING COMMITTEE

HB 1245: Political Subdivisions Committee (Rep. N. Johnson, Chairman) recommends **DO PASS** (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1245 was placed on the Eleventh order on the calendar.

2013 SENATE GOVERNMENT AND VETERANS AFFAIRS

HB 1245

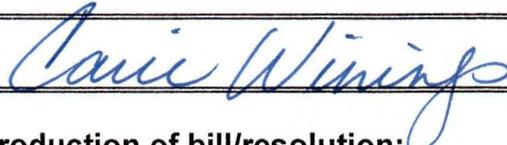
2013 SENATE STANDING COMMITTEE MINUTES

Senate Government and Veterans Affairs Committee
Missouri River Room, State Capitol

HB 1245
03/21/2013
Job Number 20295

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act relating to election recounts.

Minutes:

Chairman Dever: Opened the hearing on HB 1245.

Representative Kretschmar, District 28: Testified as sponsor and in support of the bill.

See Attachment #1 for information presented in testimony regarding votes that required a recount. This bill would apply to elections generally for the House of Representatives where there are more than two candidates running. It would not apply to Senate races where you are one on one. In races for the House there are two candidates for the Republican Party and two for the Democratic Party running for two slots to be elected. The situation arose in our district in the primary election where there were four candidates running for two Republican Party nominations and the numbers on my attachment are how the election turned out. The numbers required an automatic recount for this primary election. The current law says that if a candidate is within 1% of the high vote it would trigger a recount. The proposed bill would change the number that you looked at to down to the two that were closer together and leave the top candidate alone. I believe the percentage should apply to the ones involved in the recount and not the person high above everyone else. I do believe some technical amendments will be proposed by the Secretary of State's Office and that is just fine with me.

(5:15)Chairman Dever: Under this bill there would not have been a recount in your district?

Representative Kretschmar: Not an automatic recount. There could have still been one if the third candidate requested one but then he is obligated to bare the expense of the recount instead of the automatic one being the responsibility of the state to pay.

Chairman Dever: We consider election law to be fair if it applies equally to all sides. Had you been the number three candidate, would you still be in support of the bill?

Representative Kretschmar: I think I would be.

Chairman Dever: You wouldn't be here to express that.

Representative Kretschmar: As a citizen I could.

Al Jaeger, Secretary of State: See Attachment #2 for testimony in a neutral position on the bill. We would like to amend the bill to make it work better in law.

(8:30)Senator Nelson: Why isn't it 1% of the votes cast?

Al Jaeger: The way the law reads the recount first of all is based on the race.

Senator Nelson: I ask that because when the votes come out in the paper it is a little deceptive on how the figures are quoted.

Al Jaeger: On all recounts, the way the law reads now, it is based on 1%. The situation Representative Kretschmar is describing is a very unique situation because this is not going to happen in 99% of the races.

Jim Silrum, Deputy Secretary of State: This bill would affect every contest that has more than a vote for one issue. So it could be school board, county commissioner, etc. To Senator Nelson's question; I am asked that question quite a bit by other states because in almost every other state the recount is determined by a percentage of the total votes cast for that office. North Dakota is different in that way. It has been a law on the books for a

long time that the recount is determined by a percentage of the person receiving the most number of votes in that office. The fact that we are different than other states is neither here nor there.

Senator Nelson: Wouldn't that solve this problem of nominated elected?

Jim Silrum: If you take a percentage of a higher number, you are going to have larger instances of recounts. Obviously as Secretary Jaeger said, it is your policy decision whether you want to make recounts more likely to happen or less likely to happen. To do it the way this bill does it would lower the number of recounts that could be had or to change it so that it would be on the total number of votes, it would be more likely to have a recount.

Senator Nelson: It is confusing. How do you fix what you say is wrong because like you say they are not nominated, they are not elected?

Jim Silrum: Current law references the person receiving the most number of votes. It does not say nominated or elected. On the surface you could look at this instantly and say that maybe we could just strike the words nominated and elected but then you start having to vet the percentage off of the person receiving the fewest number of votes all together. That doesn't make sense either.

Chairman Dever: Could we say something to the effect of a 1% difference between the candidates affected by the recount?

Jim Silrum: You could. I wanted to draw the committee's attention to that as well. It is often thought of as in this particular situation, that it is the 2nd and 3rd place candidates that are involved in the recount, but that is not true. You can't have a recount for a portion of a contest. As you will look at the testimony that Secretary Jaeger handed out, votes changed in the recount for even the candidate receiving the most number of votes. That has to happen because it is entirely possible that in a recount you could find a write in vote that

was attributed to a candidate whose name was on the ballot. Then as opposed to that being listed as a write in, then that vote then goes to that candidate who is listed on the ballot. Or you might find a ballot that the election judges failed to initial and according to state law, in a recount, those ballots have to be nullified and removed from the count. Therefore every candidate can go up or down in a recount not just the ones that are close.

Chairman Dever: How could you have gone from 7 to 4 in the write-ins?

Jim Silrum: For the exact reason that I said, because there are voters who took and said as a write-in one of the candidates listed. The result changes in that regard.

Senator Cook: I am tempted to ask you to get your amendments so that we can look at what your solution to this challenge is. I won't say that yet. I am somewhat surprised that you did not come with this and I have come to the conclusion that you did not because it would be quite difficult.

Jim Silrum: I will not disagree with that. I wanted to see what the committee wanted because it will not be a simple amendment.

Al Jaeger: One of the concerns that we have is that we want to be able to explain how the recount is done. Right now the law is pretty simple. As soon as we start changing it then we have to be able to explain it.

Senator Cook: Are you really neutral?

Jim Silrum: We choose to be. It is a policy decision. If it stays the way it is then you should kill it or amend it. I will gladly be willing to work on the amendments if that is what the committee wishes.

Al Jaeger: It is difficult to take a position. We are concerned with the way it is now.

(Talked about pamphlets that the office has done to explain different situations regarding voting situations.)

(21:05)Chairman Dever: Did you have a similar conversation in the House?

Al Jaeger: I did express my concerns at that time but we did not take a real strong position and our concern now is with the wording.

Vice Chairman Berry: Do you feel the way it is proposed reflects the legislative assembly's intent as it relates to recounts on a contest electing more than one? It kind of reflects what we are currently doing when there is only one being elected. Do you not see that being congruent?

Al Jaeger: You are getting at the complication of the amendment. Is it 1% of the second on or the third or fourth; at what point does it kick in?

Vice Chairman Berry: If you keep it to the threshold for being elected in that election - if you are taking three then it would be 1% of that third or if five, 1% of the fifth. That seems to be the current intent.

Jim Silrum: I believe an amendment can be written to do this. It will look like a hog-house, but we would be happy to do it.

Chairman Dever: We are talking about in this particular circumstance is whether a 21 or a 15 vote difference would trigger a recount. It seems to me that the fact that number one and two had 600 votes difference is pretty rare too.

Jim Silrum: That is something to remember as well. Not all contests are like this where one of the candidates gets exceptionally more votes than the others. It is often times where all three candidates, in a vote for two contests, are very close together. In that situation then the person receiving the highest number of vote, the 1% of that is going to be a lower number too and that would be an advantage in that situation. The disadvantage in this situation is that if there is a clearly nominated candidate and there is not a way that it will show that they did not make it.

Senator Cook: I think that we are all losing the fact that really all this bill does is determines who pays for the recount.

Jim Silrum: You are correct.

Chairman Dever: The way to change it in this instance is to vote for seat A and seat B. It has always seemed to me that a good candidate can pull a bad one through and a bad one can pull a good one down.

Senator Nelson: We tried that before.

Jim Silrum: Would you also say that then there should not be any more than a vote for one contest on a ballot? So county commission would have to be A, B, etc. There are some counties that do that. Many of the counties are like the House races where they serve at large and they are elected at large.

Al Jaeger: In terms of cost, we have had that. We get the funds from the emergency commission. They have not been excessive.

Vice Chairman Berry: Average cost of a recount?

Al Jaeger: I believe nothing over \$1000.

Chairman Dever: I think that it would be useful to the discussion on this bill if you would prepare some other language for the committee.

Al Jaeger: We need your authorization to work with John Bjornson.

Chairman Dever: I will do that.

Senator Nelson: I have been involved in a recount, the practical matter of this thing - 19 votes is not going to be picked up in a recount. This is not a big deal and I think that the Secretary of State has a better use of his time than to write amendments for this bill. I know what I would like to do with it.

Chairman Dever: The chair would entertain a motion.

Senator Nelson: Moved a Do Not Pass.

Senator Marcellais: Seconded.

A Roll Call Vote Was Taken: 6 yeas, 1 nay, 0 absent.

Senator Nelson: Carrier.

Date: 3/21

Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 1245

Senate Government and Veterans Affairs 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 Marcellais

Senators	Yes	No	Senator	Yes	No
Chariman Dick Dever	✓		Senator Carolyn Nelson	✓	
Vice Chairman Spencer Berry		✓	Senator Richard Marcellais	✓	
Senator Dwight Cook	✓				
Senator Donald Schaible	✓				
Senator Nicole Poolman	✓				

Total (Yes) 6 No 1

Absent 0

Floor Assignment Senator Nelson

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

REPORT OF STANDING COMMITTEE

HB 1245: Government and Veterans Affairs Committee (Sen. Dever, Chairman)
recommends **DO NOT PASS** (6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING).
HB 1245 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

HB 1245

HB 1245

#1

2500

1450

1430

1100

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

February 14, 2013

#2
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TO: Rep. Johnson, Chairman, and Members of the House Political Subdivisions Committee

FR: Al Jaeger, Secretary of State

RE: HB 1245 – Election Recounts

Based on current law, an automatic recount was triggered because 1% of 2,046 (the votes cast for the person receiving the most votes) was 20 votes. The difference in votes was 19 votes.

Based on the proposed law, an automatic recount would be triggered if the difference was 14 votes based on 1% of 1,462 votes (the votes cast for a "nominated" candidate who received the fewest number of votes).



RACE TO BE RECOUNTED

June 25, 2012

We, the State Canvassing Board instruct the Secretary of State to notify the county auditors to perform the following recounts where necessary and applicable.

Legislative District 28	Michael D Brandenburg (R)	2,046	Automatic Recount
	William E Kretschmar (R)	1,462	
House	Jeffrey J Magrum (R)	1,443	
	Barton Schott (R)	1,161	

/s/ Kelly Schmidt, State Treasurer

/s/ Petra Mandigo Hulm, representing Penny Miller, Clerk of the Supreme Court

/s/ Robert Harms, representing Stan Stein, Chairman, North Dakota Republican Party

/s/ Greg Hodur, Chairman, North Dakota Democratic-NPL Party

/s/ Alvin A. Jaeger, Secretary of State

GREAT SEAL

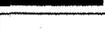
State Representative - District 28 - Republican - Vote For 2

		Votes	Percent	
Nominated	REP Michael D Brandenburg	2,051	33.38%	
Nominated	REP William E Kretschmar	1,468	23.89%	
	REP Jeffery J Magrum	1,459	23.75%	
	REP Barton Schott	1,162	18.91%	
	REP write-in 	4	0.07%	
	Total Votes	6,144		

State Representative - District 24 - Vote For 2

Precincts Reporting: 19/19 County Results Results Map

Demand Recount Not Requested ¹

		Votes	Percent	
Elected	REP Dwight Kiefert	3,262	26.08%	
	REP Myrens Peterson	2,734	21.86%	
	DEM Sharon E Buhr	3,212	25.68%	
Elected	DEM Naomi T Muscha	3,266	26.11%	
	NON write-in ¹	34	0.27%	
	Total Votes	12,508	100%	

HB 1245

2500

1450

1430

1150

example of vote totals that
require a recount

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

March 21, 2013

TO: Sen. Dever, Chairman, and Members of the Senate Government and Veterans' Affairs Committee

FR: Al Jaeger, Secretary of State

RE: HB 1245 – Election Recounts

To illustrate the proposed features of this bill, we offer the following example. In the 2012 June Election, the Republican primary contest for House of Representatives in the 28th Legislative District had vote totals that were close enough to fall into the recount range. The results were as follows:

Candidate Name	Election Results	Recount Results
Michael Brandenburg	2,046	2,051
William Kretschmar	1,462	1,468
Jeffery Magrum	1,443	1,459
Barton Schott	1,161	1,162
Write-in	7	4

Based on current law, an automatic recount was triggered because one of the candidates failed to be elected because the separation of votes was 1% or less of the highest number of votes cast for any one candidate. In this case, 1% of the votes cast for candidate Brandenburg equaled 20 votes. The difference in votes between the second placed candidate, Kretschmar, and the third place candidate, Magrum, was 19 votes.

Based on the proposed law, an automatic recount would be triggered if the difference was 14 votes based on 1% of 1,462 votes, which was for Kretschmar, the "nominated" candidate who received the fewest number of votes.

It is a policy decision whether the Legislative Assembly decides to increase or lower the likelihood for the occurrence of recounts.

Regardless, we request the committee to consider an amendment because of the incorrect usage of two words in the bill. The new wording being offered uses "nominated" and "elected" two times for each word and in all four sections of law, candidates involved in a recount are only declared elected or nominated after the recount is concluded and not before. With the authorization of the committee, the Secretary of State is willing to work with the Legislative Council to ensure the intent of the bill remains intact while at the same time utilizing the correct terminology to implement it.

Section 1, page 1, line 8:

- a. Any individual failed to be nominated in a primary election by one percent or less of the highest-vote total number of votes cast for the nominated candidate for the office sought who had the fewest number of votes.

Section 1, page 1, line 11:

- b. Any individual failed to be elected in a general or special election by one-half of one percent or less of the highest-vote total number of votes cast for the elected candidate for that office who had the fewest number of votes.

Section 2, page 1, line 21:

- a. Any individual who failed to be nominated in a primary election by more than one percent and less than two percent of the ~~highest vote~~total number of votes cast for ~~at the~~ (nominated) candidate for the office sought who had the fewest number of votes.

Section 1, page 2, line 1:

- b. Any individual who failed to be elected in a general or special election by more than one-half of one percent and less than two percent of the ~~highest vote~~total number of votes cast for ~~at the~~ (elected) candidate for that office who had the fewest number of votes.