

2013 SENATE GOVERNMENT AND VETERANS AFFAIRS

SB 2347

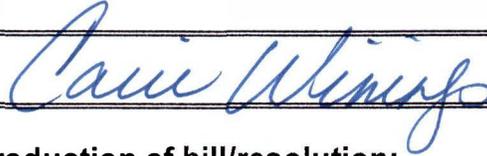
2013 SENATE STANDING COMMITTEE MINUTES

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

SB 2347
02/14/2013
Job Number 18924

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A Bill for an Act relating to emergency authority of the secretary of state for the administration of elections.

Minutes:

Chairman Dever: Opened the hearing on SB 2347.

Jim Silrum, Deputy Secretary of State: See Attachment #1 for testimony and to explanation. (Gives an example of a military cargo plane that crashed with paper ballots)

(5:33) Senator Nelson: I think it sounds good, but the logistics of it, especially if it were the general election. The balloting in North Dakota and it was put off for 2 weeks; the people already know the results of the national election. Will that cut down on the number of people that vote? You will know the night of the election who won. I don't think our three electoral votes are going swing an election too often.

Jim Silrum: You are right from a federal standpoint, however I think it is worth reminding that only once every four years is the president is on the ballot and that is the only office where every person in every state votes on that. If we are holding off an election, even our federal candidates are not going to have any votes at that point. If it were impacting only a part of the state, perhaps the special procedure that we would put in place would be that we would hold back on the election results until that portion of the state affected by the disaster did actually vote. My biggest concern with this bill it that it affects you people more

than anything because you take office most quickly after an election. After a general election you take your offices on December 1st. If we hold off for even a day or two, that impacts everything on the back end. What we all need to remember is that it is not just the Secretary of State saying that there is a bad situation; it is the Governor and Department of Emergency Services coming forward and determining that there is a disaster and a special declaration has to be declared. I would say it would be a super-storm sandy like an event that would cause something like this.

Chairman Dever: Just to point out, in the primary, school elections and city elections also take office July 1st.

Jim Silrum: I stand corrected. You have reminded me of another thing today.

Vice Chairman Berry: Has this been addressed in other states and if so, what have they done?

Jim Silrum: I modeled these off of what other states have already done. North Dakota is behind the curve on this one. Many other states do have emergency provisions already in place. Thirty days was a typical amount of time that post moments could be held. I really doubt that 30 days would ever be enacted. It would have to be a devastating event. Other actions, is a broad terminology, but I think that for example it would be better, rather than postponing the election to allow something like what Governor Christie allowed for in super-storm Sandy and that was that for those individuals who could not get to the poles - he essentially applied those statutes that effect the military and overseas voters where they are able to receive a ballot electronically and perhaps return that ballot electronically to do so. We would have to judge that because I am not sure that even Governor Christie's decision made all the sense in the world because many of the people effected by that storm were without power and if you have no power then how do you have an internet to do what

was suggested. Cell towers were down as well. It does give a broad understanding of what could be done but I think such is necessary in crisis situations because you don't have the time to develop those at the time the crisis appears. Any actions that we would take would be in concert in discussions with the Attorney General and Governor's office.

Vice Chairman Berry: I realize that the wording is intentionally broad so that those on the ground at the time can decide based on the event that is happening how to handle.

Jim Silrum: You are correct and the latitude would be given specifically to the Secretary of State in coordination with the Governor. The top officials of the state would be the ones to whom the latitude is given.

Senator Cook: I am not sure what to think about this. I have mixed emotions. I suppose one could explain this bill as it allows one person, the Secretary of State, deny the ability to vote on Election Day. I think that is a true statement. I know that is not the intent of it but it is enabling because it says "may postpone". Are we getting the Secretary of State into a position where a whole lot of pressure could be applied to him for whatever reason to actually do this? If he refused to do this, could there be a court challenge?

Jim Silrum: I have been in office for ten years and I have seen that the courts can be brought in about any time. Rather than be immobilized by that, I think those who are elected to office have to understand that they are often called upon to make decisions that are going to be questioned. You could easily say that they would be questioned for postponing it or not postponing it. I would even say that now that the bill is before the legislature, and even before, could we be held responsible for not bringing something forward if we didn't if a disaster were to take place and cause something to come out with elections. I think people elected to public office have to understand that they are going to be challenged and I think it would be difficult for a given individual sitting in the office of

Secretary of State to assume total control over this because the intent was that there would be a cooperative effort between the Governor's office and others.

Senator Cook: We have been a state for 124 years and has there been any history of elections having to be postponed?

Jim Silrum: There has never been a postponed election to my knowledge and it has been understood to be against the law. However, it should be noted that the US Constitution does give the states the authority to do such because it does not specify that the general election has to be the first Tuesday after the first Monday in November. It just generally is for everyone and when it would not be, it would be because of significant situations. The Constitution does give the states the right to choose when they would elect their representatives for federal offices.

Senator Cook: Is there a timeframe on that?

Jim Silrum: Under my recollection there is not a timespan other than that the states may choose when they elect.

Senator Nelson: So those that do mail ballots or absentee ballots and early vote, will it change the deadline on when those are due?

Jim Silrum: That would be a part of the rules that would have to be put into place, but they would have to specifically put into place in order to change them. For someone who already submitted their absentee ballot prior to the event, they would be ok. It would simply be waiting for the time those would be tabulated.

Senator Nelson: (inaudible)

Jim Silrum: If that were a part of the special procedures that were allowed for by the Secretary of State.

(18:39) Vice Chairman Berry: I am curious about the executive powers of the Governor and whether it would already cover this?

Jim Silrum: We do not believe it does but we could be wrong. We don't believe that the authority exists right now to change the date of an election in North Dakota. I did not fully research all the executive powers of the Governor. I worked with the Attorney General and I also received recommendation from other states and the Department of Defense for the second section of this to see what they would think would be appropriate and they all concurred that this would be what is necessary.

Chairman Dever: (Read from current rules for the Governor's executive powers)

The focus is on the disaster not the election and I think that is what you are trying to do here. We need to remember that this bill is about a natural disaster, not the results of an election as a disaster. I would encourage the committee to read that section before we vote on the bill. (Line 9 of the bill, 37-17.105)

Chairman Dever: Closed Hearing on SB 2347.

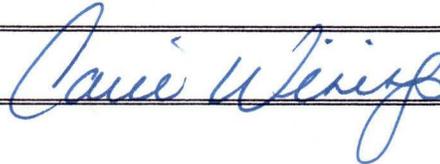
2013 SENATE STANDING COMMITTEE MINUTES

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

SB 2347
02/21/2013
Job Number 19320

Conference Committee

Committee Clerk Signature



Minutes:

Chairman Dever: Opened SB 2347 for committee discussion. (Reminds committee that he asked the committee to look at this section of the code.)

Senator Cook: Comments on the wording and suggest that it could generally lead to disputes.

Chairman Dever: Asks if other language is suggested.

Senator Cook: I am just drawing attention to the warts on the bill.

Senator Nelson: It seems to me that somewhere in that testimony they commented about ballots on a plane going down as they were being delivered to military service. I would think that somewhere in their procedural rules they would have a way to do this without us passing a bill. My feelings on the first part are if this had any connection to a federal election, our votes would be null and void because the decision has already been made by the time we get around to having a vote and people would just not go vote.

Vice Chairman Berry: Ask Senator Nelson to repeat statements.

Senator Nelson: Restates opinion.

Chairman Dever: In the primary election, you have to get 1% of the votes if we have a disaster and we went ahead with the election.

Vice Chairman Berry: It is mentioned that many states have emergency measures and that we are behind the curve. It mentioned that the Attorney General and the federal Department of Defense like this and they worked with them. It is permissive in the stating of "may" not "shall".

Chairman Dever: I think examples of the adjustments that have had to of been made was the storm in November in NJ.

Vice Chairman Berry: Super Storm Sandy was a good example.

Chairman Dever: Another example was the Mayoral election in NY was postponed after 9/11 for 2 or 3 months as I recall.

Senator Marcellais: Wasn't the Governor calling the delay on those elections by executive order.

Chairman Dever: In NJ yes.

Senator Marcellais: Couldn't that be with the declaration of a disaster included?

Chairman Dever: The bill says that the Secretary of State may postpone an election in a state of disaster or emergency declared by the Governor. It also says that the postponed election has to be within 30 days of the scheduled election.

Senator Nelson: Can the Governor in this emergency declaration also declare the postponement of the election and bypass the Secretary of State?

Senator Cook: Reads from bill.

Chairman Dever: My guess is that the Governor probably does not have that specific authority and the Secretary of State is the chief election officer in the state, so I think this bill is to provide that.

(Committee continues to discuss what this bill's language means for statewide and local elections and what the word "may" means in the bill and really what the intent of the bill is.

The concerns on how this could be used politically by one side or the other. The fact that the more than one person could be in charge concerned some of the committee members and that once it goes in code, it is in there till it is taken out - several statements were made that were not audible on the recording due to microphones not being on)

(19:35) Senator Nelson: How would the committee feel if we deleted Section 1?

Chairman Dever: That is an interesting proposition.

Senator Cook: It would make it a much better bill.

Senator Cook: Moved a Do Not Pass.

Senator Poolman: Seconded.

A Roll Call Vote Was Taken: 3 yeas, 4 nays, 0 absent.

Motion Fails.

Senator Nelson: Moved to amend by deleting Section 1.

Senator Cook: Seconded.

A Roll Call Vote Was Taken: 5 yeas, 2 nays, 0 absent.

Senator Nelson: Moved a Do Pass As Amended.

Senator Poolman: Seconded.

A Roll Call Vote Was Taken: 4 yeas, 3 nays, 0 absent.

Chairman Dever: Carrier.

13.0747.01001
Title.02000

Adopted by the Government and Veterans
Affairs Committee

February 21, 2013

2/21/13
TO

PROPOSED AMENDMENTS TO SENATE BILL NO. 2347

Page 1, line 1, remove "a new section to chapter 16.1-01 and"

Page 1, remove lines 5 through 13

Renumber accordingly

Date: 2/21

Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 2347

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 Cook Seconded By Senator Poolman

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) _____ No _____

Absent _____
Floor Assignment fails

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

Date: 2/21

Roll Call Vote #: 2

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 2347

Senate Government and Veterans Affairs Committee

Check here for Conference Committee

Legislative Council Amendment Number Delete Section 1

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment

Rerefer to Appropriations Reconsider

Motion Made By Senator Nelson Seconded By Senator Cook

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

Total (Yes) 5 No 2

Absent _____

Floor Assignment _____

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

Date: 2/21

Roll Call Vote #: 3

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 2347

Senate Government and Veterans Affairs Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.0747.01001 02000

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

Motion Made By Senator Nelson Seconded By Senator Poolman

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

Total (Yes) 4 No 3

Absent 0

Floor Assignment Senator Dever

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

REPORT OF STANDING COMMITTEE

SB 2347: Government and Veterans Affairs Committee (Sen. Dever, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (4 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). SB 2347 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "a new section to chapter 16.1-01 and"

Page 1, remove lines 5 through 13

Renumber accordingly

2013 HOUSE GOVERNMENT AND VETERANS AFFAIRS

SB 2347

2013 HOUSE STANDING COMMITTEE MINUTES

House Government and Veterans Affairs Committee Fort Union Room, State Capitol

SB 2347
March 14, 2013
19923

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to emergency authority of the secretary of state for the administration of elections.

Minutes:

You may make reference to "attached testimony."

Chairman Jim Kasper opened the hearing on SB 2347.

Senator Schaible appeared as a sponsor of the bill. As the bill was amended and what we have left, it deals mostly with emergency situations of absentee ballots and a little bit of leeway in case of an emergency.

Jim Silrum, Deputy Secretary of State, appeared in support of the bill. **Attachment 1.** (1:02-3:50)

Rep. Karen Rohr Would this require from a logistics point of view additional documentation if a situation like this would occur?

Jim Silrum It would not. We would be working with the National Guard and the military so that we knew where this troop was being deployed to. We could look into our records and say of these people that are being deployed, they are going to have absentee ballots that are just sitting and being wasted in their ballot box. We can then respond without them having to worry about their absentee ballot.

Rep. Gary Paur You cancel the one that was sent out and then you send another one overseas. I found a conflict there for a moment. My apologies.

Jim Silrum May I bail you out? We have a record that we sent an absentee ballot to a person living here in Bismarck. Then we recognize that they are in the deployed group that it went out, so we send out another ballot. Whether we send out one ballot or two, there is still only one application for that request and even if for some unknown reason both ballots were to come back to the election official as being submitted, only one would be counted. In the central voter file we designate that the initial absentee ballot has been canceled and the new one which is probably going to be sent out electronically because we are really talking about in the 40 days leading up to an election so we want to respond quickly to them.

Vice Chair Randy Boehning When they return that ballot, are they able to fax or email it back?

Jim Silrum It is the choice of the voter who qualifies as a military or overseas voter. North Dakota was one of the first states to allow faxing of ballots back. They can send it back by mail, fax, or they are invited to come into our servers, mark it here, and then leave the ballot on the servers where then their election official is notified that there is a ballot waiting for them and that is where they receive it.

Chairman Jim Kasper On Line 14 where it says in a foreign country, are we inadvertently omitting people who are in the United States stationed away from home that there may be some emergency or something that occurs so they could use the service as well?

Jim Silrum I don't believe so. Notice on Line 8 where it says if an international, national, state, or local disaster or emergency or other situation arises. This is model language that was provided to us from the Department of Defense from the Pentagon. It is used in many states and is intended to be broadly covering. Line 8 speaks to the broad and Line 14 speaks to a specific situation.

Chairman Jim Kasper This is model legislation?

Jim Silrum Correct.

The hearing closed.

Rep. Karen Rohr moved a Do pass.

Rep. Jason Dockter seconded.

A roll call vote was taken and resulted in **DO PASS, 14-0**. **Rep. Gary Paur** is the carrier.

Date: 3-14-13
 Roll Call Vote #: _____

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2347**

House 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 Rohr Seconded By Dockter

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper	X		Rep. Bill Amerman	X	
Vice Chairman Randy Boehning	X		Rep. Gail Mooney	X	
Rep. Jason Dockter	X		Rep. Marie Strinden	X	
Rep. Karen Karls	X		Rep. Steven Zaiser	X	
Rep. Ben Koppelman	X				
Rep. Vernon Laning	X				
Rep. Scott Louser	X				
Rep. Gary Paur	X				
Rep. Karen Rohr	X				
Rep. Vicky Steiner	X				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Paur

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

REPORT OF STANDING COMMITTEE

SB 2347, as engrossed: Government and Veterans Affairs Committee (Rep. Kasper, Chairman) recommends DO PASS (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2347 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

SB 2347

ALVIN A. JAEGER
SECRETARY OF STATE

HOME PAGE www.nd.gov/sos



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

February 14, 2013

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

FR: Jim Silrum, Deputy Secretary of State, on behalf of Al Jaeger, Secretary of State

RE: SB 2347 – Emergency Authority for Elections

This bill would allow the Secretary of State, together with the Governor, to implement special election procedures in the event of a natural disaster or when members of the military service are deployed in a situation that could impact their participation in an election.

Section 1: North Dakota law currently does not contain emergency provisions related to the conducting of an election when it might be needed as evidenced by recent weather related events in other sections of the country. This section would grant the Secretary of State authority to conduct an election in the event it becomes necessary to postpone an election.

Section 2: The adoption of the Uniform Military and Overseas Voters Act (UMOVA) by the 2011 Legislative Assembly provides the procedures for voting by military and overseas residents. However, it was discovered that it did not cover all situations in which ballots may have been destroyed while in transit. This section would authorize the Secretary of State with emergency authority under certain circumstances to facilitate the transmission of replacement ballots to these voters.

We request your favorable consideration and a do pass recommendation.

Attachment 1

ALVIN A. JAEGER
SECRETARY OF STATE

HOME PAGE www.nd.gov/sos



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 14, 2013

TO: Rep. Kasper, Chairman, and Members of the House Government and Veterans' Affairs Committee

FR: Jim Silrum, Deputy Secretary of State, on behalf of Al Jaeger, Secretary of State

RE: SB 2347 – Emergency Authority for Elections

Section 1: The adoption of the Uniform Military and Overseas Voters Act (UMOVA) by the 2011 Legislative Assembly provides the procedures for voting by military and overseas residents. However, it was discovered that it did not cover all situations in which ballots may have been destroyed while in transit. This section would authorize the Secretary of State with emergency authority under certain circumstances to facilitate the transmission of replacement ballots to these voters.

We request your favorable consideration and a do pass recommendation.