

2015 SENATE JUDICIARY

SCR 4010

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SCR 4010
2/4/2015
23230

- Subcommittee
 Conference Committee

Committee Clerk Signature



Minutes:

1

Ch. Hogue: We will open the hearing on SCR 4010.

Sen. Rich Wardner: Sponsor, support. This bill deals with residency requirements for members of the Legislative Assembly. It seems like lately we have become a little bit lax about where we live. Now that I am in leadership, this issue has come to the forefront. I am concerned that legislators aren't living in their district. This is in the constitution. This bill is to correct it in the constitution. You'd think that would be a simple matter, but it's not. The real changes are in section 1, subsection 5, "each member of the legislative assembly must be a qualified elector in the district from which the member was chosen and must have been a resident of the state for one year, immediately prior to the legislative assembly". The word "qualified elector" affects not only legislators it also affects where people vote. I remember as a kid, my teacher telling me that people would come out to where they lived, they living in the large cities, they had grown up in this small community, they come out and vote (in the old residency). You would think that has gone away, but it hasn't. We have people today that live in a larger community and they go out to the place where they used to live and vote. They are a qualified elector there. They cannot vote where they live but where they decide that they're going to vote, where they used to live. It not only affects the voters but it has an effect on this issue. When you use the word "qualified elector" that means that I could be living here Bismarck and then I vote in New Salem. I used to live out there and I vote out there all the time; I could live in Bismarck and I could go out there and run for the city commission because that's where I vote, as long as I don't vote in Bismarck. We're trying to clarify this issue, so that people will stay in their district when they are in the legislature and it's not just one party; both parties. I have given you an amendment (see attached 1) that tries to tighten it up and it inserts on page 1, line 15, after "election" insert

"during the entire term for which selected". They have to live in that district. Jim Sirrum, from the Secretary of State's Office will be testifying on behalf of the SOS's office. If you have to change this amendment, please do everything you can to pass this out. All four leaders are in agreement that we need to do something about this.

Sen. Armstrong: There was someone who moved before the next election, but she wasn't going to serve in the legislature. It seems to me that there is a difference between the end of your term, after your last session and then if you're going to serve in another session before your election. Does this do anything with that?

Sen. Rich Wardner: This would mean that when that individual left that district and set up residency in another district they would be done. I just want you to know in the past we had a lot of that moving around. Both parties would have people that may have had a year or less to serve and nobody really made a big deal of it; they served out their time and that was fine. Now we've people that are starting to not live in their district. They serve this district and they live over here. We need to put an end to that so that we don't have legislators living where they aren't representing their citizens.

Sen. Luick: Do you have a definition for the "qualified elector".

Sen. Rich Wardner: We've been going around and talking about that for the last couple of days. I really am struggling with it myself. I would like Jim Sirrum to address that.

Sen. Casper: Based off the example that you're using, I think my study of this part of the Code, I think part of that would be where your domicile and residence are located. In law, domicile and residents are determined by your own intentions. Under that example, the person who moved could have maintained a residence and living someplace else and have two homes and it would still be a problem.

Sen. Rich Wardner: We do have a lot of situations like that; where they have a get-away place and they also have the place where they actually live. That's one of the issues. I'm told that if someone were to do that, they live in Bismarck and they vote in New Salem and they decided to run for the legislature from that district and got elected. The legislature would be the one that would have to say not to seat them and the legislature would be the one that would have to deal with it legally to prove that they didn't belong there. If

someone wanted to push it and be really sneaky about it, it is really tough to deal with. We're looking for some language that would take that away. I'm hoping that the SOS's office can help us with that.

Sen. Nelson: This says the primary election held in 2016; some of us were elected in 2014, what does that do to that person who was elected in 2014, who may or may not live in their district. I fully agree with what you are trying to do, but I'm concerned about that "qualified elector". I've got nursing homes in my district and I think about former first lady, Grace Link, who has forever and a day voted in Alexander and lives here in town in a nursing home. Where do my people live that live in Bethany, do they live at 210 University or do they live in the house from which they came from pre-nursing home. It's a little bit different in the larger cities, where I live in the middle of my district and if I go 10 blocks either way, I'm in two different districts. Then being out in the west, you have 5 counties before you're out of your district, you've got more choices of places to live than perhaps I did when I found my place. I made a concerted effort to find a place in my district because I knew this bill was coming through. I didn't want to get caught with where I was going to be in the spring of 2015. But there might be others. I know the people that are living outside the district that they are currently serving. I think we're going to have to be careful how we define "qualified electors".

Sen. Rich Wardner: I just thought that this would be a simple resolution and I'm finding it is not.

Ch. Hogue: The example Sen. Nelson alluded to with Grace Link and residents of the nursing home. This really wouldn't affect them at all. They can continue to vote there. This only affects them if they decide to run for the legislative assembly.

Sen. Nelson: "Qualified electors" bothers me, because that is going to permeate through to other places of what constitutes a "qualified elector".

Sen. Rich Wardner: I think the SOS's office would like it if they voted where they lived. I realize that tradition is hard to break.

Sen. Luick: I think that would put an end to all this, to make this simpler by putting an end to all of the confusion and say "where your residence is 30 days prior to the election that's where you vote" and that's where you are the "qualified elector".

Sen. Rich Wardner: If that works and is that simple, I wouldn't have a problem with that. Remember we have senior citizens that are set in their ways and they've been doing this for years and they aren't about to change. Some of them are high profile state officials.

Ch. Hogue: Thank you. Further testimony in support.

Jim Sirrum, Deputy Secretary of State: I have spent quite a bit of time here over 11 years in being in office. First, our office supports this resolution. We don't believe that it needs to be any further amended other than what was provided by Sen. Wardner. It was my intention to bring to his attention and now to your attention that the current situation is a person can be elected from a district and can move elsewhere and still say they are "qualified" to serve in that district. Even with these changes that won't be completely solved. There still could be situations where a person could say that they reside in a district but live elsewhere. That's where the difference is. There is a specific definition in law, it's already been referenced as to what it is to reside someplace. That's where the confusion comes in. If this goes before a vote of the people, and the people vote for it, if anyone decides to move outside of their district, they are probably going to be convicted by the court of public opinion, as opposed to any court of law. A qualified elector definition needs to be looked at in section 1 of article 2 of the constitution where it says that every citizen of the United States who has attained the age of 18 years and who is a ND resident shall be a qualified elector. Then it goes to say, when the elector moves within the state, he shall be entitled to vote in the precinct from which he moves until he establishes voting residence in another precinct. The legislative assembly shall provide by law for the determination of residents for voting eligibility other than physical presence. No elector shall lose his residency for voting eligibility solely by reason of his absence from the state. Even the constitution throws in those exceptions, those caveats. If we're going to truly address this issue of "qualified elector" we're going to have to also address article 2 of the constitution through a vote of the people.

Sen. Nelson: So you have to live in the same precinct, you can't just stay in your own district. I stayed in the same precinct, but my district has two precincts. I would have to live in precinct 2 for 30 days even though I found a house in district 21. I would lose my vote if I had moved to precinct 1 across the street.

Jim Sirrum: I am not going to be the one to judge; but I would say "yes" under a strict definition of the law. You would still retain your right as a qualified

elector in your prior precinct until you establish a new residence for voting purposes. It may be that just simply living in that new precinct for 30 days qualifies you, but if we look further into the law where residency says that a residence cannot be changed except through a union of act and intent. It could be your act to move elsewhere, but your intent to stay a resident of your old precinct. If I challenged you on that in a court of law, I would be required to prove that you are not a resident of the precinct that you say you are a resident of, rather than you having to prove to me that you are. The burden of proof case law says that the burden of proof is on the accuser not on the accused. I draw your attention to NDCC 16.1-01-04; that describes the qualification of electors; NDCC 54-01-26. Those two sections have to be read together because that is how the legislative assembly in the past has tried to determine what it says in the constitution. "The Legislative Assembly shall provide, by law, for the determination of residence for voting eligibility". Essentially we would say there has been a strong determination for what is described as residents, but I'm not sure if it's been clarified for voting eligibility at this point. I think that is a question for another day, perhaps for a study during the interim, perhaps it will never be answered because of the situations that Sen. Nelson brought up when Sen. Wardner was here.

Sen. Casper: Would this be retroactive; to be currently active on somebody if this passes, goes through the citizen's votes and becomes part of the constitution and you're living outside your district, basically you would be in violation of it at that time.

Jim Sirrum: Wouldn't that also depend on when this measure would be placed on the ballot.

Sen. Casper: A member of the legislature that would be disqualified under this law, or at least have the potential of having the legislative body choose to take some action against them, they would have some notice in the fact that if this law would pass the body, so they would know it is going to the people. Say if they ignored that notice and say they are a qualified elector in district 17, and they were representing district 20 at the time this passed and became codified and became a part of the constitution. Whenever this became a part of the constitution, that's when they would immediately be in violation if that was occurring.

Jim Sirrum: Yes. I would agree that measurer go into effect 30 days after the affirmative vote of the people. As the bill is presently worded, it would apply to everyone.

Sen. Casper: Okay.

Sen. Armstrong: The law goes into effect in July and you are disqualified. What is the special election requirement or is that district by district. I'm concerned about someone who's not going to serve another day in the legislature being disqualified and having to have a special election before your have your general election. Does that make sense? I think most people would understand if somebody just got done with their last legislative session and moved out of their district and isn't running for re-election is a different thing than moving out of your district and planning on serving in the legislature, representing the wrong district in the next session. I think there are two different issues here. I'm just wondering, as far as a local cost to a special election or something of that nature.

Jim Sirrum: Regarding the filling of vacancies that exist in the legislative assembly, Sen. Nelson is correct that the district can appoint. Since the law also says that if something less than 870 some odd days remain in your term, it can only be filled by appointment. So in that situation, a special election would never be called because of that prevailing statute.

Sen. Casper: If you had a house in district 27, had a home on a lake and had a condo in downtown Fargo, all three of which he owned, but where is their residence. If they vote in district 27, gets mail in district 27, has a driver's license in district 27 of that address. We're not going to affect those people who find themselves in that kind of situation. Someone would have to come out and try to prove that they didn't live in that district. The burden would be on whoever made that accusation.

Jim Sirrum: You are correct. This has been an issue for many years and people in the situation you described, simply must choose which is their residence. As the majority leader it's also worth remembering it's upon legislative management to determine and the body as a whole, to determine whether or not you are or are not qualified to serve. There is another governing body that has anything to say about your ability to continue to serve.

Ch. Hogue: Can you see anything wrong with amending this bill to say "and the legislature by rule or statute may enact specific rules to implement this constitutional provision".

Jim Sirrum: Adding that is a separate sentence.

Ch. Hogue: Under the constitution, we're the judge of the qualifications of our members. We're bringing up a lot of different fact patterns; you can't address all of those fact patterns in the constitution, but if you authorize the legislature to address them in a rule, like our Senate rules or even in the statute, I think we could do a better job than trying to get all of that into a constitutional provision.

Jim Sirrum: I wouldn't disagree with you at all, that could be helpful. My only question for you in return, if it already exists in the constitution in another section, then does it need to be repeated here.

Ch. Hogue: That's a fair point.

Sen. Nelson: The address we use on our state and federal income taxes, isn't that supposed to be our legal residence.

Jim Sirrum: I cannot answer that.

Sen. Nelson: So if I had three different homes, I would choose which one that is my legal residence and that's it.

Jim Sirrum: I can't speak to IRS rules. I do know that almost by necessity, determining residence it's a small subsection but it has seven subsections to it and those seven subsections lead to a lot of different exceptions. That's what makes it so difficult.

Sen. Casper: Have you thought about an appeal of a decision here. A decision by the legislature is made, the adverse party was removed under this based on a preponderance of the evidence showed that they weren't living in their district and the decisions made by the legislature, what recourse if any would that member have. Would it be the district court?

Jim Sirrum: I have not contemplated that at all. I always thought that your rules were final.

Ch. Hogue: We will do a little work on this resolution. We're probably not there yet but I think the intent is good. We represent territories, that's the way our system is set up, so we have to have some fidelity to the territory. We're not the only ones that have to deal with this. If you think about coops, the

coop board members are elected in territories and I can tell you that there are all kinds of different solution to this problem, when someone moves outside of their territory. Sometimes the by-laws provide that as soon as you move outside the territory, you're deemed to have resigned. There is nothing to discuss. In last session when we passed some vote identification, we specified how you can do that. Maybe the legislature can do that by rule.

Sen. Nelson: I can tell you from experience people do care that you are going to live in your district; because that was one question everybody knew they were going to tear down Park East Apartments for the flood wall. They knew the eviction notice was going to be coming and it was going to happen. The rule said on election day, you must live in your district. I don't know how many thousands of times I told people that I will be living in my district on election day. I promise you I will stay living in district 21. They did make a difference.

Sen. Wardner: I have learned more in the last two days about this, than I probably ever want to know. It may not be worth doing. That's okay, but I would hate to put this on the ballot and we've accomplished nothing.

Sen. Luick: What if we were to look at extending this date out five years, 10 years or whatever it is, and say at that point, we're going to nail down the qualified elector is someone that has to be in that particular district so that everybody has a heads up and an educational time to go through to get us into line.

Sen. Wardner: If that would work for the SOS's office, I'm for it. I think this is more than just legislators living in their district; we're talking about people voting and definition of qualified electorate. If this won't accomplish anything, we shouldn't do it.

Ch. Hogue: Thank you. Further testimony in support. Testimony in opposition. Neutral testimony. We will close the hearing.

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SCR 4010
2/11/2015
23648

- Subcommittee
 Conference Committee

Committee Clerk Signature

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Minutes:

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Ch. Hogue: Let's take a look at SCR 4010. Sen. Wardner offered an amendment on the day of the hearing. The amendment would essentially say that the legislator has to be a qualified elector in that district throughout the term that they are selected. If they moved in the middle of the term, they would no longer be eligible to serve under the constitution. I've asked Vonette to draft an amendment as an additional amendment and it goes to each house under the constitution is the exclusive authority over who is qualified to serve in their respective houses. My amendment (see attached 1 and 2) says that each house must adopt a rule to implement what is contained in section 5 of this constitutional amendment. I don't know what either house would adopt as a rule; it could be that you bring in your driver's license before you are seated that day, like we used to do. So there should be a mechanism in place in the rules that determines if they are a qualified elector in your district at the time you're being seated as a legislator. That's the purpose of the amendment. We had a couple legislators on both sides of the aisle that wanted to propose a statute that would have required us to go back to what we used to require for voters, whether it was that they had just moved, we would require them to bring in a utility bill, if they hadn't had their driver's license changed, or they could sign this affidavit that says that this is where I live. It is a one sentence affidavit. My amendment says essentially that; the Senate and House will adopt a rule that implements this section 5. That will take care of the folks that want to put in statute what the requirements are to continue to serve in a legislative district where you do not live.

Sen. Grabinger: They need to remain in their district while they serve; if they move out of their district they can no longer serve in that position.

Ch. Hogue: Yes, that is what the amendment says.

Sen. Nelson: I have a great dislike to changing the constitution. I tend to vote against them every time they show up. I want to know if we can just leave this alone. The constitution says you have to live there on Election Day. Could we put that into our rules; leave that alone and say that anyone elected to represent their district must remain a resident of that district throughout their term.

Ch. Hogue: No, you can't do that. That's why we have to amend the constitution because the folks that object to this, because they don't live in their districts, you can't put anymore requirements on my qualifications for office other than what is contained in the constitution. The constitution just says that I have to be there on Election Day. If I'm there on Election Day I'm good for four years. So if a legislator who lived in Dickinson and in the middle of her term, moved to Fargo, completely different community. She was there on Election Day. You can't by statute or rule change her qualifications. I think that is why the constitutional amendment was brought forward. Why do we need a rule; I am proposing that amendment so that that person moved, so who tells them, you're no longer eligible to serve. There should be a rule or mechanism in place, either when we are in session we do it, or at some other time legislative management does it. I haven't given it a lot of thought, but I think that the easiest thing to do would be during each organizational session, you will bring in your driver's license or some other proof that the rule would require that says this is where I live.

Sen. Nelson: When you have people like me, who are moving in the middle of the session, but within my district. Had I not been able to find an apartment I would have had to quit right in the middle of the session.

Ch. Hogue: I suppose if you change your residence....

Sen. Nelson: Even though I am still in Fargo, which is a difference too. She moved from Dickinson to Fargo. If you move from 11th Ave to 14th Ave in Fargo, you're going to be in two different districts and you may only be 3 blocks from where you originally were. You are still representing the same people but it is a little bit different. That was one thing that I did agree with. Ethically you should live in your district.

Sen. Grabinger: I think we are all on the same page.

Ch. Hogue: That is why I just think you can't get too far down in the weeds with the constitution. You have to have the general principle that you have to live in the district throughout the term and then you let each body define how they are going to enforce that rule or implement that rule. Otherwise you get a constitutional amendment that is five paragraphs long.

Sen. Nelson: I'm just thinking that we have one House member right now, who is a snow bird, basically and has lodging in FL and here. So do we need to say that there permanent legal residence?

Ch. Hogue: Wherever they are a qualified elector, if you go back to that statute. If they are a snow bird and they vote in FL they can't vote here. You can only be a qualified elector in one place. So it doesn't affect anybody who has a lake cabin or snow birds. You declare your residency by your actions, not by the fact that you have multiple properties and your actions are voting, paying state income taxes. If you didn't pay your ND state income tax, let's say you are a snow bird in FL, which doesn't have an income tax and you say that you are declaring me to be a resident of FL, then you can't be a resident of both states.

Sen. Casper: It takes us back to our days of civil procedure. Those are all bad lawyer jokes.

Sen. Grabinger: I was just wondering if a legislator was to move out of their district that they were elected, we clarify that they must give up their position or resign. Should that be in there, then it's left on their shoulders to make sure that they take that step.

Ch. Hogue: That's why I want the rule in there. I want the rule to address that issue. Like Sen. Nelson pointed out, there are so many different fact patterns and I don't know if each house would treat them all the same. The legislator that moves from Dickinson to Fargo, vs. the one who stays in the same community of interest but is technically outside the district.

Sen. Nelson: That is what happens during redistricting, for about six months we may be in the wrong district, but we were held there because, some districts had two senators and some didn't have any because of the way the redistricting happened.

Ch. Hogue: Redistricting puts another complexity into this issue. In statute, we define every single district and it's geographically defined. It goes by street

and the rural ones as well. The two amendments were combined into one. My amendment is at line 17 through 19. Each house of the legislative assembly shall adopt rules regarding confirmation and verification of residency of its members. Whatever each house wishes to do they can.

Sen. Nelson: Are you intending for that to be a piece of the vote that the people take.

Ch. Hogue: Yes.

Sen. Nelson: So that part will be written into the constitution.

Ch. Hogue: This is how it will appear on the ballot. Yes, this will be the constitutional amendment.

Sen. Armstrong: I don't know of a better mechanical way to do it. I defer to the author of the amendment. We heard the testimony in that regard. I think this is the best option we have.

Ch. Hogue: Yes, we talked about the different fact patterns and if you try to address all those different patterns in the constitution it doesn't work. That's why you authorize the legislature to create rules. If you recall, the defense that many of the legislators have raised is you cannot put any more requirements on me because once the legislature says here are the qualifications, you can't add more to it because that is deemed to be a violation of the constitution. The constitution says you have to be a qualified elector on the date of the election. You can't put any more requirements on me.

Sen. Nelson: I like what we're trying to do. My concern still is in a period of redistricting between when a redistricting happens and when the next election is, what happens to those legislators if they have to be living in their district but now they've redistricted out.

Ch. Hogue: I guess that's why we have to have the flexibility to deal with that in a rule. If you would try to address that issue in the constitution, I think it would get very long. What would you say; however, after every census and redistricting you have a grace period. I don't know.

Sen. Armstrong: I move the amendment 15.3001.01002.

Sen. Casper: Second the motion.

Ch. Hogue: Voice vote; motion carried. We now have the bill before us as amended.

Sen. Armstrong: I move a Do Pass as amended.

Sen. Casper: Second the motion.

6 YES 0 NO 0 ABSENT

DO PASS AS AMENDED

CARRIER: Ch. Hogue

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SCR 4010
2/16/2015
23877

- Subcommittee
 Conference Committee

Committee Clerk Signature



Minutes:

1

Ch. Hogue: We need to take up SCR 4010. Due to a drafting error or an inconsistency, we need to bring this back to committee. Explained the amendment (see attached 1). We took out the reference to a resident which is different than a qualified elector. I look at this as a technical correction to the amendment previously passed.

Sen. Nelson: I move that we reconsider our Do Pass as amended on 2/11/2015.

Sen. Armstrong: Second the motion.

Ch. Hogue: We will take a voice vote - motion carried.

Sen. Armstrong: I move the amendment, 15.3001.01003.

Sen. Luick: Second the motion.

Sen. Nelson: Is that going to be an ongoing confirmation and verification, because if you verify on December 1 which is when we take office or you verify on the first day of the Session, if I had moved out of the district instead of staying in that same district in Fargo, would those rules have to set that out. Those are the questions that are going to get asked. Also the redistricting possibilities. There are going to have to be extensive rules to come up.

Ch. Hogue: I think there are different fact patterns, which is why you put them in rules instead of the constitution. I was having a conversation with J. Bjornson, when I said that I wouldn't envision the rule to be anything more than when we take the oath of office, that you provide your driver's license or

a one sentence affidavit that says "I am a qualified elector within district ____" whatever the case may be. I wouldn't envision that either House would adopt a rule that says this is an ongoing check, to check this every month or even every year. I don't think that is something we would do. I think we would check it at the beginning of every session, which would make the most sense to me.

Sen. Nelson: But ethically the member should report if they move.

Ch. Hogue: Yes. Voice vote - motion carried.

Sen. Armstrong: I move a Do Pass as amended on SCR 4010.

Sen. Casper: Second the motion.

Sen. Grabinger: If we get into a situation where redistricting comes into play, we would have to do something about that through the rules of the Senate. Under here, it's throughout the term elected and that's written in the Constitution. But if we're redistricted and we're not in our district anymore because of redistricting, how do we rectify that when this is written in the Constitution.

Ch. Hogue: Typically when we redistrict, redistricting provides for the fact that the district is new, either we have to have a special election or, even though the term of the legislator isn't up but redistricting requires them to run again, because the Constitution also says that you and I get a four year term. Guess what, when we redistrict, some people didn't get a four year term. Sen. Uglam ran for a four year term in the Senate, was successful and elected; when we redistricted though he was in the same district as Mr. Campbell, who ran against him, defeated him and Sen. Uglam had to run after two years because of redistricting. Typically in the redistricting legislation we specify that there is going to be X and Y districts that are together and you are just going to have to run again. That doesn't disqualify them from serving out the balance of whatever that term is.

Sen. Nelson: I do think that the redistricting bill that we end up passing, has something in it about our term being up on December 1st even though we may not live in the district, so I would think that would fall under some rules that are set.

Ch. Hogue: I am trying to think as between Sen. Miller and Sen. Olafson. One of them did not get a two year term.

Sen. Nelson: They ran against each other in the primary.

Ch. Hogue: Did they each get a four year term.

Sen. Armstrong: No.

Ch. Hogue: One was an odd number.

Sen. Nelson: Sen. Olafson was 10.

Ch. Hogue: What was Sen. Miller, 16? Maybe they did, there you have another fact pattern, where you redistrict to consolidate. I guess this concern is still here.

Sen. Nelson: But all of us lose or gain some territory and somebody is going to get a new senator or new house member because of the redistricting; none of them stay exactly the same.

Sen. Armstrong: I think it is important to note that redistricting happens every ten years. Those issues happen and we have to deal with them. Redistricting is one issue which I'm glad we're talking about. But this SCR just says "if you're going to represent district, you need to live in your district". Not just the ten years of redistricting, but for the ten years in between. This determination would just be a natural extension of that process. The real issue is that we all know people who don't live in their districts that are serving here.

Ch. Hogue: The redistricting is complicated. The fact remains that we represent people by territories and we represent people; not land mass. If you're the senator down in district 39, trying to represent three counties, it's because nobody lives in your counties and while that's an extra burden for them, we still represent people, not land area; that problem will always be there. Fargo will keep getting additional representation.

Ch. Hogue: We will take the roll call vote. I will carry the bill.

6 YES 0 NO 0 ABSENT DO PASS AS AMENDED
CARRIER: Ch. Hogue

PROPOSED AMENDMENTS TO SENATE CONCURRENT RESOLUTION NO. 4010

Page 1, line 14, remove the overstrike over the overstruck comma

Page 1, line 15, after "election" insert "during the entire term for which selected"

Page 1, line 15, remove the overstrike over the overstruck comma

Page 1, line 15, overstrike "chosen" and insert immediately thereafter "selected"

Page 1, line 17, after "assembly" insert ". Each house of the legislative assembly shall adopt rules regarding confirmation and verification of residency of its members"

Renumber accordingly

JH
2/11/15

TJ
2/16/15

PROPOSED AMENDMENTS TO SENATE CONCURRENT RESOLUTION NO. 4010

Page 1, line 14, remove the overstrike over the overstruck comma

Page 1, line 15, after "election" insert "during the entire term for which selected"

Page 1, line 15, remove the overstrike over the overstruck comma

Page 1, line 15, overstrike "chosen" and insert immediately thereafter "selected"

Page 1, line 17, after "assembly" insert ". Each house of the legislative assembly shall adopt rules regarding confirmation and verification of the qualifications, as required under this section, of its members throughout the term for which elected"

Renumber accordingly

Date: 2/11/2015
Voice Vote # 1

2015 SENATE STANDING COMMITTEE
VOICE VOTE
BILL/RESOLUTION NO. 4010

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: 15.3001.01002

- Recommendation: Adopt Amendment
- Do Pass Do Not Pass Without Committee Recommendation
- As Amended Rerefer to Appropriations
- Place on Consent Calendar
- Other Actions: Reconsider _____

Seconded By

Motion Made By Sen. Armstrong Sen. Casper

Senators	Yes	No	Senators	Yes	No
Ch. Hogue			Sen. Grabinger		
Sen. Armstrong			Sen. C. Nelson		
Sen. Casper					
Sen. Luick					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice Vote: Carried

Date: 2/11/2015
 Roll Call Vote #: 2

**2015 SENATE STANDING COMMITTEE
 ROLL CALL VOTE
 BILL/RESOLUTION NO. 4010**

Senate _____ **JUDICIARY** _____ Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Sen. Armstrong Seconded By Sen. Casper

Senators	Yes	No	Senators	Yes	No
Chairman Hogue	✓		Sen. Grabinger	✓	
Sen. Armstrong	✓		Sen. C. Nelson	✓	
Sen. Casper	✓				
Sen. Luick	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Hogue

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

Date: 2/16/15
Voice Vote # 1

2015 SENATE STANDING COMMITTEE
VOICE VOTE
BILL/RESOLUTION NO. 4010

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: _____

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
- Other Actions: Reconsider _____

Seconded By

Motion Made By Sen. Nelson

Sen. Armstrong

Senators	Yes	No	Senators	Yes	No
Ch. Hogue			Sen. Grabinger		
Sen. Armstrong			Sen. C. Nelson		
Sen. Casper					
Sen. Luick					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice Vote - Carried

Date: 2-16-15
Voice Vote # 2

2015 SENATE STANDING COMMITTEE
VOICE VOTE
BILL/RESOLUTION NO. 4010

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: 15.3001.01003

- Recommendation: Adopt Amendment
- Do Pass Do Not Pass Without Committee Recommendation
- As Amended Rerefer to Appropriations
- Place on Consent Calendar
- Other Actions: Reconsider _____

Seconded By

Motion Made By Sen. Armstrong Sen. Luick

Senators	Yes	No	Senators	Yes	No
Ch. Hogue			Sen. Grabinger		
Sen. Armstrong			Sen. C. Nelson		
Sen. Casper					
Sen. Luick					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice Vote - Carried

Date: 2-16-15

Roll Call Vote #: 3

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTE

BILL/RESOLUTION NO. 4010

Senate

JUDICIARY

Committee

Subcommittee

Amendment LC# or Description: 15.3001.01003 03000

- Recommendation: Adopt Amendment
- Do Pass Do Not Pass Without Committee Recommendation
- As Amended Rerefer to Appropriations
- Place on Consent Calendar
- Other Actions: Reconsider _____

Motion Made By Sen. Armstrong Seconded By Sen. Casper

Senators	Yes	No	Senators	Yes	No
Chairman Hogue	✓		Sen. Grabinger	✓	
Sen. Armstrong	✓		Sen. C. Nelson	✓	
Sen. Casper	✓				
Sen. Luick	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Hogue

REPORT OF STANDING COMMITTEE

SCR 4010: Judiciary Committee (Sen. Hogue, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SCR 4010 was placed on the Sixth order on the calendar.

Page 1, line 14, remove the overstrike over the overstruck comma

Page 1, line 15, after "election" insert "during the entire term for which selected"

Page 1, line 15, remove the overstrike over the overstruck comma

Page 1, line 15, overstrike "chosen" and insert immediately thereafter "selected"

Page 1, line 17, after "assembly" insert ". Each house of the legislative assembly shall adopt rules regarding confirmation and verification of residency of its members"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SCR 4010: Judiciary Committee (Sen. Hogue, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SCR 4010 was placed on the Sixth order on the calendar.

Page 1, line 14, remove the overstrike over the overstruck comma

Page 1, line 15, after "election" insert "during the entire term for which selected"

Page 1, line 15, remove the overstrike over the overstruck comma

Page 1, line 15, overstrike "chosen" and insert immediately thereafter "selected"

Page 1, line 17, after "assembly" insert ". Each house of the legislative assembly shall adopt rules regarding confirmation and verification of the qualifications, as required under this section, of its members throughout the term for which elected"

Renumber accordingly

2015 HOUSE GOVERNMENT AND VETERANS AFFAIRS

SCR 4010

2015 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Fort Union, State Capitol

SCR 4010

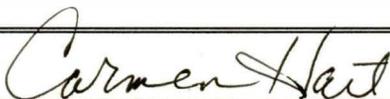
3/19/2015

25098

Subcommittee

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Concurrent resolution to amend and reenact section 5 of article IV of the Constitution of ND, relating to residency requirements of members of the legislative assembly

Minutes:

Attachment 1

Chairman Kasper opened the hearing on SCR 4010. It was realized several minutes into the bill that Senator Armstrong was testifying for SCR 4014 and we were on SCR 4010. Chairman Kasper reopened the hearing on SCR 4010.

Senator Wardner (04:00) appeared in support. This has to do with residency and the requirements as far as legislators being in their district. We have people this past biennium on both parties out of their districts. I kept getting calls about people complaining all the time. It is in the law, but it didn't match up with the constitution. This is an attempt to match it up. It has to do with a qualified elector. I am going to give you an example so you know what the issue is. There are people that have left the rural community and moved to the big city. They vote, though, in the rural community. They are a qualified elector in that community. It is kind of a nightmare for the Secretary of State. There is a lot of attempt to try to make sure that the intent is if you leave the district, then you need to give up your office so that you are living in the district that you represent. I am welcome to any amendments.

Rep. M. Johnson This goes to the primary election in 2016, so the first election to which it would apply is 2018?

Senator Wardner Yes.

Rep. Amerman If I get elected and I live in Forman, come to the assembly, and two years later I decide to move to Fargo, would I have to give up my assembly job?

Senator Wardner Yes. For years we had people from both parties we knew they were finished in the legislature, and they would probably have a year left on their term. They were leaving. They weren't running again. Nobody really cared, and they would serve out their term and represent that district. Lately people were complaining about it, because

they are gone. Maybe if I hadn't been in leadership, they wouldn't have said anything. I would like to have it settled so when the people call me, I can say it is taken care of.

Chairman Kasper Your intent is to require that any person that is elected in a district would have to be a resident of that district when they are elected and maintain a resident location in that district throughout their term of office?

Senator Wardner Yes.

Jim Silrum, Deputy Secretary of State, appeared in support. Attachment 1 (11:12-12:23)

Vice Chair Rohr Like Senator Wardner, I have had a lot of phone calls about this as well, so does the Secretary of State field a lot of these calls?

Jim Silrum We fielded a lot of questions about this issue. We fielded a lot of questions about residency issues for qualified electors.

Rep. Amerman You say it will be a step in the right direction if this passes. What is the next step?

Jim Silrum We need to address the question of what does residency for voting purposes mean in the state, and that is what I believe would be addressed within a study of elections. That is the basis for a lot of other election laws that need to be reviewed in the interim.

Rep. Mooney Earlier this session we passed a resolution to study the idea of voter registration in the state. Does that help to address any of this?

Jim Silrum That resolution would be a study. It should not impact this at all. The intent of this is strictly for you folks. When you are elected, you would remain a resident of that district in which you serve.

Rep. Mooney I understand there are slightly different objectives, but I guess when it comes to the idea of qualified elector, it is fairly problematic in the language. Wouldn't that idea then of actual registration help to identify who is a qualified elector in which parts of the state?

Jim Silrum Whether it is determining if you are qualified to be registered in that particular precinct or whether it is to determine whether you are qualified to vote in that particular precinct, it still comes back to the issue of what residency means. If I can be a resident anywhere in the state but live elsewhere in the state, it doesn't matter whether the question is about registration or about voting, it still has to be resolved.

Rep. Steiner Couldn't we require the district chairs be notified? As a legislator if your main residence changes, by law you are required to notify your district chair, and at that time the party would be notified that your main residence has located outside the district.

Jim Silrum I believe that is a part of the solution that was crafted in the Senate. I do go back to the issue that there are a number of legitimate reasons why a person could be

living in another area but remain a qualified elector of a previous area. An example is somebody who lives in a nursing home. Many of those people believe that they are going home and it is just a temporary stay.

Rep. Steiner What I was getting to is if a legislator changes their main residence, I think the adopting of the rules may solve that problem.

Rep. Louser We have referenced 54-01-26 a lot in this committee with regard to the definition of residence, but it doesn't reference elector. Where do we define or potentially change elector in Century Code?

Jim Silrum To see these issues in concert, you first need to take a look at 16.1-01-04, Subsection 3 which he read. 16.1-01-04 is qualifications of electors. To determine if you are a qualified elector, you need to determine residency and to do that the law says you must go to 54-01-26 to look at the issues for how does one determine residency.

Rep. Amerman If this passes, will the next step be to revisit the election laws and do some fixing in that area? If we revisit the election laws, would we have to change the part of it that wouldn't allow the individual to go back from the city to his rural area to vote?

Jim Silrum I don't have a particular solution to offer, but a study would be very welcomed, and the Secretary of State's office has been on record for the last number of sessions to see if that would be a possibility that we could address this through a study.

Chairman Kasper It appears to me that this bill doesn't solve the problem. If you listen to the discussion about the word qualified elector, it is in the eye of the qualified elector where the residence is even after they have moved. How does this solve the residency requirement when we are saying the qualified elector can say my residence is here even though I live here under current law?

Jim Silrum That is why I said I think this is a step in the right direction. The intent of this is that legislators will reside in their district. That intent is valuable for moving forward. I don't think there is a quick and easy solution for it.

Chairman Kasper We are talking about amending the constitution. That is a big deal. If this does not solve the intent, why would we pass this? Why wouldn't we go to a study and the next interim study the solution and come up with a bill in the next session that solves the problem, not the intent of the problem?

Jim Silrum I will leave that for you to decide. I welcome anything that furthers the discussion that we have been talking to legislature about for years, and that is what does it mean to be a resident for voting purposes? To me this furthers that discussion.

Chairman Kasper It does not solve the dilemma?

Jim Silrum This does not resolve the underlying issue. Because of the intent of this, I think the court of public opinion will convict those who try and circumvent this.

Chairman Kasper The constitution is not a place for a court of public opinion. To propose an amendment to maybe further the discussion but really not solve the issue is not the way we ought to be going.

No opposition or neutral.

The hearing was closed.

Chairman Kasper I am going to have our intern draft an amendment to this bill which is going to turn it into a study. I don't believe this gets to the issue.

Rep. Steiner I like that each house of the assembly shall adopt the rules. I think we can solve this ourselves.

Chairman Kasper If any of you would have an alternative amendment that you would like to propose to this bill, feel free to do so.

Rep. Steiner I would like to attach that each house of the assembly adopt rules to another bill that is germane so that we do adopt rules and that we start that process.

Chairman Kasper You need to find the bill.

Rep. Laning Is there anything wrong with having a bill that proposes an amendment to the laws as well as proposes a study?

Chairman Kasper I don't think that would work. We could ask legislative council. Why don't you follow up with legislative council and get the answer and report to us?

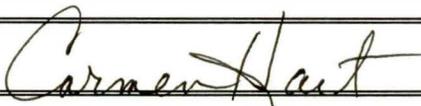
2015 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Fort Union, State Capitol

SCR 4010
3/20/2015
25221

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Concurrent resolution to amend and reenact section 5 of article IV of the Constitution of ND, relating to residency requirements of members of the legislative assembly

Minutes:

"Click to enter attachment information."

Chairman Kasper opened the meeting on SCR 4010. Yesterday I asked Jim Silrum if this solves the problem of residency, and he responded that it did not. I am reluctant to amend the North Dakota constitution to put something in it which solves no problems and might create more of a problem.

Rep. B. Koppelman What could be the possible harm of putting this in?

Chairman Kasper The way I see the harm is we have not solved the definition of a qualified elector, because when you get to residency and qualified elector, it goes to the intent of the person where their residency is. If a person says my residence is here even though they live here, the law does not allow them--they are still a qualified elector--the law does not say no you don't live there, you live here because you have moved. You say no my intent is over here. This does not address that. Once it is in the constitution, now you have to deal with it in a totally different way which could create a challenge to the constitution, could create a huge expense, could create throwing it out, could create no one knows really what the law is. It could create a whole mess.

Rep. Laning I did talk to legislative council about a bill including an amendment to law as well as a suggested study. Their guidance was that it is possible. They should be pretty much a related topic type thing.

Chairman Kasper We could hoghouse this and make it a study?

Rep. Laning Yes. That would be my preference.

Chairman Kasper I would support the study. I see a lot of nodding from other committee members. I am going to appoint a subcommittee of Rep. Laning, Rep. M. Johnson, and Rep. Schneider. Rep. Laning will chair.

Rep. Wallman I was really interested in Mr. Silrum's testimony and the information he provided. I am just wondering when he comes and says this doesn't solve the problem, has he ever come to testify on these bills with a solution to the problem?

Chairman Kasper I have seen where they very specifically have distinct testimony. Let us consider his situation for a moment. Look at who the sponsors of the bill are. We have the Secretary of State's office coming in saying reluctantly this may not solve the problem. It puts them in a difficult situation. He is trying to walk a tight rope there. I believe many times the Secretary of State's office does bring solutions that are pertinent.

Minutes of the

(HOUSE) (SENATE) BILL NO. 4010 SUBCOMMITTEE OF THE

GVA STANDING COMMITTEE

Meeting location: House Chamber

Date of meeting: March 25, 2015

Time meeting called to order: 4:00 pm.

Members present: Schneider, Johnson, Laning

Others present (may attach attendance sheet):
None

Topics discussed:
Amendment to study legislative assembly
members residency requirements

Motion and vote:
All agreed

Time of adjournment: 4:30 pm

Note: If a motion is made, a description of the motion must be provided along with the member seconding the motion. A recorded roll call vote must be taken and reported for any nonprocedural motion.

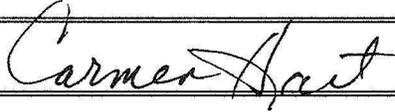
2015 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Fort Union, State Capitol

SCR 4010
3/26/2015
25510

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Concurrent resolution to amend and reenact section 5 of article IV of the Constitution of ND, relating to residency requirements of members of the legislative assembly

Minutes:

Attachment 1

Chairman Kasper opened the meeting on SCR 4010. This is a constitutional amendment, and the proposal was to amend the constitution with the language at the bottom of Page 1 on the resolution. Mr. Silrum said it would not solve the problem even if it passes. A subcommittee was formed with Rep. Laning as chair.

Rep. Laning Attachment 1 which is an amendment was presented. The proposal before you is to eliminate the reference to the constitution and make this a concurrent resolution to recommend a study on the residency of legislative assembly members only. There is in law, 44-02-01, that talks about residency, and it seems to imply for state officers which I would think would be under. At any rate, there is confusion there, and the study recommends "whereas the questions have arisen whether the statutory provision regarding residency applies to members of the legislative assembly," may like to add and how it applies as a consideration also.

Chairman Kasper Whether the statutory provision regarding residency applies to members of the legislative assembly and how it applies?

Rep. Laning Yes. Also, there should be an s down at the bottom. "Be it further resolved, the legislative management report its findings instead of it. I move the amendment.

Rep. Amerman seconded the motion. I think it is the right step. Jim Silrum said if this measure is passed by the voters it will be a step in the right direction. I think we need to take some more steps in the right direction before we change the constitution, so I think it is kind of backwards.

Rep. B. Koppelman Are we able to amend century code and do what this was trying to do in the constitution?

Chairman Kasper I do not believe we would, but we might. That is also the dilemma. Do we need a constitutional amendment to make it clear on the issue that is before us? What is interesting to me is we have the four leaders on this bill and, quite frankly, I don't think they did much of their homework when they put this bill together.

A roll call vote was taken. 14 Yeas, 0 Nays, 0 Absent.

Rep. Amerman made a motion for a DO PASS AS AMENDED.

Rep. Dockter seconded the motion.

Rep. Steiner Both political parties should seriously look at their own rules, because I honestly think we both could have taken care of this, and I think we should. I am disappointed that we don't, because we all know what moving out of your district is.

A roll call vote was taken. 14 Yeas, 0 Nays, 0 Absent.

Rep. Amerman will carry the bill.

PROPOSED AMENDMENTS TO ENGROSSED SENATE CONCURRENT RESOLUTION
NO. 4010

Page 1, line 1, after "A concurrent resolution" replace the remainder of the resolution with "directing the Legislative Management to study the residency requirements of members of the Legislative Assembly.

WHEREAS, North Dakota Century Code Section 44-02-01 provides that an office becomes vacant if the incumbent ceases to be a resident of the state, district, county, or other political subdivision in which the duties of the office are to be discharged, or for which the individual may have been elected; and

WHEREAS, questions have arisen whether the statutory provision regarding residency applies to members of the Legislative Assembly;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH
DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Management study the residency requirements of members of the Legislative Assembly; and

BE IT FURTHER RESOLVED, the the Legislative Management report it findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-fifth Legislative Assembly."

Renumber accordingly

AS
3-27-15

March 26, 2015

PROPOSED AMENDMENTS TO ENGROSSED SENATE CONCURRENT RESOLUTION
NO. 4010

Page 1, line 1, after "A concurrent resolution" replace the remainder of the resolution with
"directing the Legislative Management to study the residency requirements of members
of the Legislative Assembly.

WHEREAS, North Dakota Century Code Section 44-02-01 provides that an
office becomes vacant if the incumbent ceases to be a resident of the state, district,
county, or other political subdivision in which the duties of the office are to be
discharged, or for which the individual may have been elected; and

WHEREAS, questions have arisen regarding the statutory provision and how it
applies to members of the Legislative Assembly;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH
DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Management study the residency requirements of members
of the Legislative Assembly; and

BE IT FURTHER RESOLVED, that the Legislative Management report its
findings and recommendations, together with any legislation required to implement the
recommendations, to the Sixty-fifth Legislative Assembly."

Renumber accordingly

Date: 3-26-15
 Roll Call Vote #: 1

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 4010**

House Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: 15. 3001 03003

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Laning Seconded By Amerman

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper	X		Rep. Bill Amerman	X	
Vice Chair Karen Rohr	X		Rep. Gail Mooney	X	
Rep. Jason Dockter	X		Rep. Mary Schneider	X	
Rep. Mary C. Johnson	X		Rep. Kris Wallman	X	
Rep. Karen Karls	X				
Rep. Ben Koppelman	X				
Rep. Vernon Laning	X				
Rep. Scott Louser	X				
Rep. Jay Seibel	X				
Rep. Vicky Steiner	X				

Amerman
advised

Total (Yes) 4 No 0

Absent 0

Floor Assignment _____

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

Date: 3-26-15
 Roll Call Vote #: 2

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 4010**

House Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Amerman Seconded By Dockter

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper	X		Rep. Bill Amerman	X	
Vice Chair Karen Rohr	X		Rep. Gail Mooney	X	
Rep. Jason Dockter	X		Rep. Mary Schneider	X	
Rep. Mary C. Johnson	X		Rep. Kris Wallman	X	
Rep. Karen Karls	X				
Rep. Ben Koppelman	X				
Rep. Vernon Laning	X				
Rep. Scott Louser	X				
Rep. Jay Seibel	X				
Rep. Vicky Steiner	X				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Amerman

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

REPORT OF STANDING COMMITTEE

SCR 4010, as engrossed: Government and Veterans Affairs Committee (Rep. Kasper, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SCR 4010 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A concurrent resolution" replace the remainder of the resolution with "directing the Legislative Management to study the residency requirements of members of the Legislative Assembly.

WHEREAS, North Dakota Century Code Section 44-02-01 provides that an office becomes vacant if the incumbent ceases to be a resident of the state, district, county, or other political subdivision in which the duties of the office are to be discharged, or for which the individual may have been elected; and

WHEREAS, questions have arisen regarding the statutory provision and how it applies to members of the Legislative Assembly;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Management study the residency requirements of members of the Legislative Assembly; and

BE IT FURTHER RESOLVED, that the Legislative Management report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-fifth Legislative Assembly."

Re-number accordingly

2015 CONFERENCE COMMITTEE

SCR 4010

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SCR 4010
4/7/2015
25867

- Subcommittee
 Conference Committee

Committee Clerk Signature



Minutes:

1

Ch. Hogue: We will open the conference committee on SCR 4010 (10:30 am). All members were present except for Rep. Kasper (came at 11:00). This is the residency requirements for state legislators and the chairman from the House side isn't here.

Rep. Louser: We had testimony in the committee hearing that fully understood the intent and I think everybody in the committee agreed where we wanted to go ultimately. We understood through the testimony that the bill wouldn't necessarily achieve what the intent was. It revolved primarily around the term "qualified elector" and how that's defined and how residency is defined in century code. We ended up having a subcommittee formed and I wasn't on the subcommittee but I did some of my own research separately and the subcommittee came back with a proposal to turn it into a study, as you see and I believe that passed unanimously.

Ch. Hogue: I guess one of the questions I had when I read the House version, the first whereas references whereas section 44-02-01 provides that if a spot becomes vacant, the incumbent ceases to be a resident. We're amending the constitution so if adopted by the people of ND, SCR 4010 would trump any statutory provision. On the Senate side we had all kinds of scenarios people talked about. I don't know if they threw them out on your side as well, but that was the purpose within the constitutional amendment authorizing both the Senate and House to adopt rules to confirm verification and residency of its members. We don't need to define residency by any statute, we can define it however we want to in the Rules. A couple of examples, provided to us on the Senate side by the Secretary of State and other interested parties. One was about redistricting, what happens to that seat where I've been redistricted and now I don't live in my district because I'm

in a different district. I don't think that is what this bill is trying to accomplish. Again, both the Senate and the House could address that in a detailed rule if this measure is adopted. The second one was actually the example of where somebody lives here in Bismarck and casts their ballot where they grew up on the farm and in a different district. That is a nice sentimental idea that you want to vote back where your farm is, but that really relates to voters and not the qualifications of the 141 people that serve in the Legislature. They have a duty to live and serve in the same place. It doesn't really affect voters as much as it affects the 141 people that want to serve in the legislature. We thought about that scenario and decided the constitutional principle is that they have to be in their district for the duration of their term and allowing each body to adopt rules allows each body the flexibility to figure out how they will address that constitutional requirement when there are unique circumstances like redistricting, like someone who hasn't changed their residency from where they voted 30 years ago. Both Senate and House have rules now and they do have eligibility requirements in them, what is the House's thought on having rules that would provide flexibility to reconcile things like the perceived conflict in section 44-02-01.

Rep. Amerman: The concern that the committee had was pretty much brought forward by the Secretary of State's office. We thought that taking this to the voters might be a good step in the right direction. There was a small of testimony from the Secretary of State's office. I had to carry the bill to the floor so I called Mr. Silrum and asked him if he could expand on what he had testified and he basically wrote me an e-mail, which I used in the floor speech (see attached #1). It said that if SCR 4010 is passed by the voters it would amend the constitution, but the constitution would still say that the Legislator must be a qualified elector, etc. So he was saying, even if it is passed, the constitution is still going to muddy up the waters. That's why we thought that our ducks should be all lined up before we asked the voters to change the constitution.

Sen. Armstrong: When you are talking about the study resolution, but essentially this study would define qualified elector. It seems like this is a basic principle for voting that we should have a clear definition of.

Rep. Louser: As Rep. Amerman had mentioned, on line 15 of the original bill, where it says a qualified elector. A qualified elector is referenced in 16.1-01 in our voting laws. Subsection 3 references chapter 54 which is the residency requirements for rule-making; rules for determining residency requirements. I think what the deputy secretary of state was getting at, and I asked him

separately in an email, he says in our opinion the underlying issue will not be resolved until the law provides a clear and unambiguous definition of what it means to be a "qualified elector" as the constitution states in section 1 of article 2. The legislative assembly shall provide, by law, for the determination of residency for voting eligibility other than physical presence. One of his suggestions was to have everyone that wants to vote wouldn't have to have a current state-issued ID. This has been an issue that we've been running across here for the last two sessions. I think the concern here was, while we understand the intent and I think everybody appreciated and wanted to work towards that, but the term qualified elector is defined in this constitutional amendment but it is defined in law and I defer to the chairman that said that amendment would trump the law, except the law is still in place. I mean it still references qualified elector.

Ch. Hogue: I think maybe the Secretary of State's office has misunderstood how narrow this constitutional amendment is. It would basically apply to 141 people and people are out there trying to cast ballots but this has nothing to do with them. If we said the House and the Senate can decide under their rules what it means to be a qualified elector or a resident of a district within their rules that they take up every two years. I don't think we need to put this in statute, I don't think we need to create conflicts in statute; I do think this is an important fundamental policy for us. I don't think anybody is going to police us except ourselves. I think our constitution is set up that we represent territories. If we're going to study this, I think Sen. Armstrong is right, are we studying trying to get a definition right. Maybe we can't get it right here but we still could ask the people the constitutional question and at the same time, give us in our self-policing responsibilities, the authority to say what a resident is or a qualified elector is by rule. We don't have to put it into statute. We don't have to reconcile statutes, but we do need to police ourselves.

Rep. Louser: I understand and I see where you are going with that. I did ask the deputy secretary of state in my initial email if we were to say a qualified elector and resident, so that we could include both terms in this language and his first response was, and I'm not taking this for granted, and I am repeating what their opinion was, he said in his opinion the underlying issue would still exist as it does with the resolution now, because the rules for determining residency in 54-01 still allows options for the individual to be a resident in one location, and temporarily live in another location. Additionally, qualified elector already includes the fact that the individual is "a resident of that jurisdiction". I understand what you're saying when you say that we would be making and adopting rules regarding confirmation and verification. That was the House's

position. I would prefer to defer to the chairman, Rep. Kasper, because he had some opinion of this as well.

Ch. Hogue: Let's talk specifics. Is there somebody in the House that is currently serving that would be a qualified elector in one district and serving in another, and this would unseat them because they have been living somewhere for so long and the example that was used in our hearing, was Chief Justice Vander Walle that votes in Noonan and has obviously been a member of the Supreme Court for 30+ years. Are there concerns like that in the House, that somebody would be unseated by this.

Rep. Amerman: At this moment if there is concern that someone would be unseated, I just think the concerns of the committee was to change the constitution and as you can tell by our conversations today, there are a lot of different scenarios and you bring up a lot of good points and the Secretary of State brings up a lot of good points. We are very reluctant to put anything on a ballot measure to change the constitution when it seems like there are so many gray areas, which is pretty much how the conversation went in the committee. It was in our discussion in our committee, very evident from the get-go that the original bill wouldn't have passed the committee, but then with the study hog house amendment was brought forward and that's what we passed because we believe there is a problem, it should be fixed but thought we should look into it over the next couple of years. Then we would have a better idea in trying to do it right.

Rep. Louser: I can expand on that a little bit. I'm not certain that there would be anyone in the House that would be unseated because of that change, but I don't know for sure. I think part of it has to do with the current definition of residence can only be changed by the union of act and intent. I think our only evidence of intent and act would be where they voted in their living in a different district from where they actually voted in the last election. We don't have any information presented to us that someone was voting in a different district other than the one they represented.

Ch. Hogue: As far as the approach, we have the House is concerned about the definitions of residence and qualified elector because there is statute out there that says what a qualified elector is and what a resident is and they are two different things. They overlap often but not always. What about the approach that we forget about when the statutes say, if you put in this constitutional amendment, that the House and Senate have the authority to

adopt a rule that says for purposes of this constitutional provision only what it means to be a resident or a qualified elector. Either House may do so.

Rep. Amerman: I see where you are going but the thing that concerned me, is if it is in the constitution that the House and Senate can adopt rules to fix what we're trying to fix here, that's in the constitution. That doesn't mean every session they could try to adopt different rules on different matters. If it is in the constitutional it would allow them to do that. Is that correct.

Ch. Hogue: Yes. The idea is that each chamber, as these situations arises, from session to session. Sen. Nelson brought up being disenfranchised or unseated by redistricting. We thought about those scenarios as well as other ones where we didn't want somebody to be unseated. That's why it seemed to us that having the flexibility to put it in rules that each House reviews at the start of each session would be the best way to handle all these contingencies, rather than get hung up on what the definition is of a resident in one statute, and a qualified elector in another statute. Again, not only are we not talking about 141 people, we're talking about 3-4 people in the whole state. That's why you would want the flexibility in the rules; at least that's the Senate's sense.

Rep. Louser: So there would be rules set up during the organizational session but after the election.

Ch. Hogue: We typically amend the rules. If you recall, we make a motion to adopt the old rules until we adopt new rules. So they govern the first two days of session, until the committee on rules gets together and asks if we need to change any rules. We need to figure out if any changes are appropriate. Once they do that, those become the rules of the House and Senate.

Rep. Kasper joined the committee at 11:00 a.m.

Ch. Hogue: Rep. Louser do you want to respond to that.

Rep. Louser: Just the concept. My question is, we would be establishing rules the first week of the regular session for the upcoming two years, which would carry through the next election, which is how we currently do it.

Ch. Hogue: Yes.

Rep. Kasper: I was down here at 10:30 am and looked in the room and there was a different conference committee meeting going and looked at the sign on the door, it said 11:00 a.m. so I assumed that the meeting had been moved to 11:00 a.m. Therefore I wasn't here. I am quite upset actually that I missed this hearing. I wish someone would have come and looked for me. I was available.

Ch. Hogue: I think your being upset is misplaced. I don't know who set that up but it's not a big deal. We're not going to get this done today. We did go and look for you, did not find you. Don't sweat it. We'll come back. Did you want to add anything about the substance of the bill?

Rep. Kasper: I would like to hear the Senate's reason for non-concurring.

Ch. Hogue: We're passed our time, but our position is that we think this is a fundamental issue. We are elected to serve people within a territory. Every ten years we take great pains to divide up the state into territorial districts. That's a cornerstone of our representative democracy is that we represent people within a geographic area. This bill was brought forth by Leadership of the Senate. They thought it was a good bill. What we wanted to achieve is to require that they continue to serve in the district from which they elected for the duration of their term. Because there were a number of different fact patterns that people brought up and potential conflicts between the statute, the residency requirement and the qualified elector. We said that each Chamber (House and Senate) decides the qualification of their members. We gave within this constitutional amendment, we gave each Chamber the flexibility to adopt rules to address these exceptional circumstances as they arise and the ones we discussed were, could somebody be unseated by redistricting or someone who has always voted in a specific place but moves to a different place, there were a number of different scenarios. Rather than trying to reconcile that by adjusting the definitions in statute of qualified elector and resident, we thought the better approach for each Chamber was to allow them to define those terms in their own rules. We didn't think a study was the right thing to do for a couple of reasons: 1) we have a responsibility to police ourselves and if we don't do it, nobody else is going to; 2) we don't need two years and a study to look at potential conflicts between what it means to be a resident and/or a qualified elector, when we can simply define that in our rules as we amend them at the beginning of each session. That was our rationale. We will adjourn the comm. meeting.

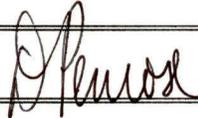
2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SCR 4010
4/8/2015
25909

- Subcommittee
 Conference Committee

Committee Clerk Signature



Minutes:

Sen. Armstrong: Called the conference committee to order. Sen. Hogue was absent due to illness.

Rep. Kasper: I would like to hear what the Senate did in your amendments.

Sen. Armstrong: There has been a lot of talk between qualified elector and resident and what the definitions of those are. We didn't concur but am hoping that with this group of people take the opportunity to fix this and maybe get it on the ballot in language that is comfortable without the need for a study because the Senate's position is that this is an important issue and we would like to exhaust every remedy before we default to the study position.

Rep. Kasper: I appreciate the Senate's position, but what does your amendment do.

Sen. Armstrong: While our amendment when we had it on the Senate side, was what had gone through one of the prime sponsors of the bill, the Senate Majority Leader and we had testimony from the Secretary of State's office saying if we were going to put this on the ballot, this was the language that we should use to not conflict with the law and with regard to putting it in the rule capacity, that would allow the House chambers and the Senate chambers to set their own rules without a detailed long information on the ballot and also to allow us to police ourselves in regard to what we determine as qualified electors and residents for the purpose of this issue.

Rep. Kasper: Your amendment does not address the ramifications of redistricting other than simply stating that if we redistrict, the day redistricting

is effective, the person who was the prior legislator is redistricted out of his/her office, they are no longer a legislator through no fault of their own.

Sen. Armstrong: We had a lengthy discussion on that during our committee testimony and our thought was that the rules that we set up, would account for those. You have all these back end, redistricting was brought up more than once in our discussion and so you have these back end issues and things that happened and occurred and you want to make sure we have some flexibility in dealing with those matters. I think the offset to that is the intent of this is the front end portion of it. If you are going to run for office and if you were going to serve a term of four years, you need to live in your district for the four years on your term. While redistricting is an issue that quite frankly needs to be addressed and hopefully we can do it in a way where we can address it in our rules, the theory behind it is we understand that redistricting happens every 10 years; we understand that someone may move for the last 3 or 4 months of their term. The intent of this is to say that if you are going to run for office and you were going to serve as a representative, per your own actions you have to maintain living in the district you're in. So we have the back end problems but we're trying to solve the front end problem. That's the best way I can describe it.

Rep. Kasper: The language doesn't seem to do what you're trying to do from my perspective. If we read through section 5 of your amendment, each member of the legislative assembly must be, during the entire term for which selected, a qualified elector in the district from which the member was selected, he must have been a resident of the state for one year prior to selecting to run for the legislative assembly. So the words "qualified elector", now we are getting into where is the intent of the person to be a qualified elector at...that's where I see the hang up. Qualified Elector is where the person says my residence is...now we're conflicting with the residence again and qualified elector. I don't know if the language solves the issue. It goes on to say, each House of the legislative assembly shall adopt rules regarding confirmation and verification of residency. That is also double-speak against what you said up above. I understand your intent. I just don't think that the words that you put in this amendment solve or address your intent.

Sen. Armstrong: The question is, is there any appetite on the House side to work with the language to get closer to the intent.

Rep. Kasper: If your intent is to state unequivocally that a legislator must physically live in the district that he or she was elected to during their entire

term that is one issue. But if your intent is to say "oh, but by the way, if you're redistricted then we're going to give you a pass card for a period of time where we are going to develop rules that says no you don't have to be in your district because you were redistricted. Is that your intent?

Sen. Armstrong: I like the first part of what you said better. I think our intent is to control the front end, but the back end is the place where a lot of the weird scenarios came up, such as redistricting or other issues. Our intent is to ensure that you live in your district for the period of time that you represent the district you got elected to. If we want to deal with some of the back end issues, we can.

Rep. Kasper: I appreciate that. When you are dealing with amending the constitution, now you're dealing with a document that, from my perspective, is a pretty important document. If you don't have it right in the front end and say we'll have to deal with that later, that's where I draw the line. If we get this bill right, with the right language that addresses what your intent is, and we agree to it, that's fine. I don't care for any ambiguity or any potential misinterpretation of what the language says if we amend the constitution. If this were statutory, I wouldn't have a problem. Since it is the constitution, that's where I have the big problem.

Sen. Armstrong: If we were talking about the intent of saying that you have to live in your district, when you get elected, would you be willing to forgo those unique circumstances on the back end like redistricting for strong constitutional language that says we don't care, you live in your district and when you don't live in your district anymore, then you're done.

Rep. Kasper: That is something I certainly would want to visit with my House colleagues about, because I have sympathy for a legislator who put the time and effort in to get elected in their legislative district and when redistricting comes through no fault of their own, they are now out of a position because they were redistricted out the day the redistricting legislation passes.

Sen. Armstrong: I agree with that statement wholeheartedly. Are there any other scenarios, other than redistricting where you would have sympathy for?

Rep. Kasper: You mean where a legislator does not live in his/her district.

Sen. Armstrong: Yes.

Rep. Kasper: Other than redistricting. I haven't gone that far in my thought process. That is the reason we put this into a study because we saw a lot of unanswered questions and the concern for amending the constitution. Mr. Silrum testified in our committee hearing that the bill we had did not solve the problem. I think he would look at this language and say that there are still unresolved situations.

Rep. Louser: One of the scenarios was about natural disasters. If you experience a flood or a tornado where your residence is destroyed, which has happened to a number of people in the last decade in our state. That would be another example.

Sen. Armstrong: I understand that; I got frustrated in our committee hearing when we were hearing this because we were getting a lot of these back end and unique circumstances and I do recognize that they exist and occur. My problem is that I thought we spent way too much time talking about the back end stuff and not the front end stuff. I think the front end staff is the problem we are trying to address.

Rep. Kasper: I appreciate your comment; however, the front end has an impact on the back end. We all know about the flooding that occurred in Grand Forks and Minot, and potential flooding in Fargo. Therefore, if this legislation was put in the constitution we could see the scenario where 50% of the city of Fargo is evacuated and we're not able to come back and 25% of the homes are destroyed through no fault of own, through a natural disaster and because of this language we are unelected.

Sen. Armstrong: I appreciate all comments. We will reschedule another meeting.

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SCR 4010
4/10/2015
26009

- Subcommittee
 Conference Committee

Committee Clerk Signature

K. Oliver

Minutes:

1

Chairman Hogue called the committee to order, roll was taken and all committee members were present.

Representative Kasper: I do not think that the position of the House has shifted; the proposed language in the resolution does not solve the problem (see attached #1).

Chairman Hogue: What about the approach, one of the concerns that the House had, is the potential problems with the phrase, "qualified elector and resident" and if we decoupled that from the constitution and from a statute and allowed the legislature to specify what that meant for the sole purpose of this constitutional provision, within their rules. Wouldn't that be able to address the problem and solve the issues as they come up?

Representative Kasper: You get to a point where each legislative session the rules are written by the chambers for their own chambers. You could have the possibility that the Senate would write rules in one way and the House would write rules in the second way and they would not work together. The second problem is in the change of majority; the majority in control of one chamber might look at things one way and if the majority changes it might be looked at in a different way.

Chairman Hogue: We should talk about defining the parameters of the problem. As I see it, from the Senate side, we have a fundamental mandate from our constitution that says we shall have representative government and that is what is required. Every 10 years we have a constitutionally mandated redistricting process, every single district is defined in the statute. The only time that this problem comes up is when a legislator moves into a district,

seeks office, is elected and decides to move outside of the district from which they were elected. I see the problem as being very narrow, at the most it affects 141 people. If we are realistic, it affects only 3 or 4 people and from the Senate's perspective that is not the way that representative government is supposed to work and we ought to be able to address that.

Representative Kasper: From the House's perspective this is not about 2 or 3 people, this is about the constitution. Once you change the constitution it affects all of us, not only the elected officials but the entire population of our state. Therefore, if we want to change the constitution I believe it should be done right. We seem to be going back and forth on these issues which give it all the more credence, from our perspective, that it should be studied and you have an interim committee that takes the time to address all the issues that have been raised in this committee and in both chambers and to try and come to that solution. I just don't think that in the course of the next 2 weeks we can solve all of the problems.

Chairman Hogue: What issues do you think should be studied; the definitions that we are currently using for resident and qualified elector?

Representative Kasper: The resolution that was passed over to the Senate was broad and it simply states that legislative management study the residency requirements of members of the legislative assembly and report its findings and recommendations to the 65th legislative session. So the residency requirements of a legislator would be all encompassing. If the Senate feels that the study should have more broad terms or add language to the study to encompass other areas that you might be so inclined to study I do not see any problem with that, it should be as broad as possible.

Senator Grabinger: I disagree with the idea that this should go to a study; we are a policy committee and we can come up with a solution. Rather than the constitution, if we can put it in statute, I have a suggestion that might work, on line 17, I think it would go along with what was being suggested. Then we can avoid the constitutional question.

Chairman Hogue: There are 2 schools of thought on that. Both the federal constitution sets forth the qualifications to be a U.S. Senator and a member of Congress and our state constitution sets forth the qualifications for members of the legislature. The argument is where the constitution has set forth the qualifications the legislature may not add or detract from them. Any additional qualifications that we would put on them would be regarded by some as

unconstitutional because the constitution already says what the qualifications are. That is the prevailing view, I would have to say. The constitution also says that we are the judge of the qualifications of our members so it is an open-ended idea. In order to address this issue we have always thought it necessary to re-amend the constitution.

Representative Kasper: The constitution, in article 4, section 5, states that each person elected to the legislative assembly must be, on the day of the election, a qualified elector in the district. The constitution does not define the term qualified elector. There may be another place in statute where the constitution does define qualified elector but if the constitution does not define qualified elector then the possibility does exist that by statute we could define a qualified elector and would not need to change the constitution but define qualified elector. If we are going in that direction where we would do it statutorily, if that could be done, then I think that we have another issue that would be potentially amenable to the House. Maybe we need to have Legislative Council give us an opinion on this.

Chairman Hogue: It seems to me that we looked at that when we heard the bill on our side; there is a statute because a qualified elector is something that is different than a resident in the sense that you can be a resident and still not be a qualified elector. A qualified elector is someone who is deemed competent; you can have some other disqualifying feature like a felony, a number of different things.

Senator Armstrong: It is in 16.1-01-01.

Representative Louser: We had this discussion in detail in the House and we also appointed a subcommittee and in referencing qualified elector we are now impacting all potential voters, not just legislators.

Chairman Hogue: I would agree with that except to the extent that we went along with the amendments that said the House and the Senate would define what a qualified elector is for purposes of this constitutional provision. Senator Armstrong made a suggestion the other day, why are we hung up on concepts like electors and residents. Why don't we just say that you have to live in the district that you serve and each House can define what it means to live in the district? I thought that was a reasonable approach, as well. It doesn't seem like it would be a difficult burden for a legislator to establish that they live in their district.

Representative Kasper: There are 2 issues that come to mind, if each chamber determines their rules they could conflict because of philosophy of the chamber or by one party ruling in one chamber and the other party ruling the second chamber. The second thing is natural disasters; in Grand Forks when they had the flood people had to move out of their homes and districts.

Chairman Hogue: What is inherently wrong with 2 Houses having 2 different rules? We have different rules now and it is not until we get into conference committees do we adopt the same rules. Is there an inherent problem with 2 Houses having 2 different rules and if there is why don't we require the rule to be adopted by both? On the issue of natural disaster, I do not think that anyone has been asked to leave office because they were temporarily displaced by a flood. The issue, as far as I know, has never come up. The question as I see it is if you make the decision not to move back to your district should you be allowed to continue to serve.

Representative Kasper: We could have a joint rule but it would not require a constitutional amendment, it would require a rule of the House and the Senate that both chambers agree to. We are getting back to constitutional amendment versus a statute and based upon our continued discussion it is more apparent to me that it is too dangerous to amend the constitution if we don't have it right. If we can come up with something statutorily I think that we may have some common ground there.

Representative Louser: Is there language that we can use to further define qualified elector as it pertains to legislators that would not conflict with the established language in section 5 of article 4 that would not change every 2 years or be subject to change every 2 years.

Chairman Hogue: We could put it in statute to say for purposes of further defining what a qualified elector means to be under the qualifications for legislature.

Representative Louser: From your standpoint could we add on 16.1-01-04 subsection 9 that doesn't conflict with 54.1-26 which is the residency requirements that also doesn't add to or take away from the constitution but further defines what 141 people need to be aware of.

Chairman Hogue: I think that you would want to be explicit and clarifying what it means under this provision of the constitution for these 141 legislators. If I

understood you right you didn't want to change what a qualified elector is for all of the qualified electors that are voting, is that right?

Representative Louser: When we had that discussion in our committee and if I had my way the qualified elector is what is causing all the problems but I don't see how we can decouple that; we have to have a way to define what an elector is.

Senator Armstrong: I think that the fundamental confusion with this whole thing is not only the qualified elector but a couple subsections in the residency statute but I do not think we should rewrite the whole section.

Representative Kasper: By amending the constitution it does not solve the problem and if we amend the constitution and create another problem or 2 we have created a worse situation that we have presently. Your amendments do not solve the constitutional issue; therefore, the idea of a study over the next 2 years is appropriate.

There was no further discussion and Chairman Hogue closed the conference committee on SCR 4010.

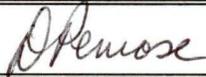
2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SCR 4010
4/14/2015
26105

- Subcommittee
 Conference Committee

Committee Clerk Signature



Minutes:

Attachments: 1

Senator Hogue: Called the committee to order, all committee members were present (see attached #1). Another amendment was drawn up. In our last meeting: if we could solve this by amending the statute that discusses what a qualified elector is. The answer is no we cannot. Reason is section 5 of the constitution, the phrase: "on the day of election". Once you start saying that a member of the legislative assembly need only be a resident on the day of the election. That is the qualification that the constitution specifies. Any time you want to go further than that the argument is that you can't as a statute because the constitution sets down the requirements for serving the legislative assembly and to do any more by statute is to be violative of the constitution. Taking that opinion to hart, and it is also prevalent in our US Constitution as well. I had Mr. Bjornson draft another amendment which in the last sentence that would be proposed to be added to section 5, which is to say that each house of the legislative assembly may adopt rules further defining the residency requirements of its members. The idea would be to give each house further discretion to say what it means to be a resident during the term of a legislator. There was a concern expressed that if we have two houses making two rules we could have different rules. I think that is true and I don't see that there would be any difficulty with that, for example the house may decide that for example, Rep. Johnson apparently moved from Dickinson to Fargo in the middle of her term yet she did not serve during the regular session. I could see one house saying that is fine she can serve out the term we don't need to have any rule to preclude her from serving her term. The other house could say no, you need to continue to be a resident, so we would need a replacement. The purpose of this amendment is that it tries to make clear that just being a resident on the day of the election may be enough but either house could say no. The rest of the overstriking and underscoring is technical in nature. The constitution uses "election" but we know when there is a vacancy the legislators are selected by the executive committee of the party who elected that legislator. That is the intent behind this amendment.

Rep. Kasper: (Read the last sentence of the amendment) Mr. Bjornson when we look at residency defined in law 54-01-26, number 7: "The residence can be changed only by the union of act and intent." What is the definition of act and intent in changing residency?

Mr. Bjornson: I have taken action by changing my place of abode; get my mail at this address. I have also shown my intent by voting at the next election at this place, I think that is the act of union. The union of act and intent: I have stated publicly that this is where I reside. Nothing is specified in law. There has been at least one case of a student moving to the university with the intention of maintaining their residence at their parent's home because it was a temporary relocation stating intent of keeping residence at parent's home.

Rep. Kasper: if a legislator lived at (gave an address) in his/her district and during the term he/she is serving moved outside of the district, sells the residence, could that legislator say even thou I live here my intent is to have my residence at where I used to live.

Mr. Bjornson: they could say that, I would argue that if they sold the home and have no other connection to that place, the action reflects certain intent as well but that is a difficult call to establish.

Rep. Kasper: if a person owns a lot with no structure on it in a legislative district and they also own a house, they sell house and move temporarily outside of the district but say intent is to build house on the lot, where would the residence be in this scenario?

Mr. Bjornson: the residence is still on that district, they are temporarily out of the district.

Rep. Kasper: third scenario: I own the house at (gave address) I sell it, move out of the district, I have my eye on a lot inside the district and I declare my intent to buy a lot at that location or some other location within the district. Where is my residence?

Mr. Bjornson: Intent is a very difficult thing to gage, are there other actions that could indicate otherwise, that you established residence outside the district. Many factors could come into play and make it difficult to determine, there are things like the driver's license.

Rep. Kasper: wouldn't that be different than intent to come back because the law says that if you relocate you need a new driver's license at your new place but that act does not say that I don't ever intend to come back just that I am following current law.

Mr. Bjornson: a lot of factors can come into play and that makes this so difficult.

Rep. Kasper: with all the scenarios I outlined, could under this proposed amendment a house or senate rule be able to disregard an individual's intent and simply state we don't care what your intent is, nor what you wish your residence to be but our rules say this is the way it is and even though state law says your intent we can override that by house or senate rule.

Mr. Bjornson: I think the intent was to constitutionally grant either both houses or the assembly that authority to say this is what we believe residency is notwithstanding the other factors that might come into play statutorily for the purposes of seating our members this is what we are going to do because the constitution has authorized us to adopt the rule to do so. Already the constitution gives you the authority to judge the qualifications of your members. If you believe they are not qualified you can challenge them being seated, this

just says it's got to be some degree of specificity in your rules that addresses how you believe residency should be determined.

Rep. Kasper: in light of the current constitution that says "on the day of the election", without amending the current constitution, could a house or senate rule, if we do not pass this amendment, have the authority in statute in other places, so a house or senate rule be developed that would determine its rules for eligibility.

Mr. Bjornson: honestly I cannot answer that.

Sen. Hogue: I want to point out that there is value in having house rules or senate rules because we don't have to go back to the statute. The statute affects 600K voters, and as we agreed last session what we are really trying to do is affect the eligibility to serve of 141 people. It makes sense that you would want to put it in rule to address the specific situation of serving as a legislative assembly without trying to affect what it is to be a qualified elector for the people who are potentially qualified electors. With students you have thousands of different situations, why would we tinker then with a statute that applies to lots of people. To follow on Rep. Kasper's hypotheticals she moved out of Dickinson, completely relocated to Fargo, had no lot, no mailing address in Dickinson and showed up to serve in the 64th legislative assembly. Assuming her term was not up what was the house's response to that? She would say I intend someday to go back to Dickinson.

Rep. Kasper: I cannot say because I would be one of 94 house members.

Senator Hogue: I will put another plug for rules vs trying to amend statutes. I think each house could amend these rules again as they do when the situation is presented that gives that house discomfort, whatever it is: the legislator who never lives in the district and seeks office in that district (we had 2 of those) who were not successful. But by all accounts they never physically lived in the district.

Senator Grabinger: It is up to us to police ourselves in that situation. We are the ones who will have to come down on our fellow membership if there is a violation of any kind if we did do this.

Rep. Louser: we talked about intent a quite a bit. The first few conference committees seems we were looking at the wording of the amendment and then we moved into potential statute and rules and I have had a hard time trying to figure out the best route here as well. I had an idea I would like to have for discussion rather than the amendment. Could the last sentence read "no individual may be seated in the legislative assembly unless they live in the district from which they are selected"? That wording I don't think would conflict with qualified elector, we would be able to leave that as it is. The other option was to completely remove qualified elector.

Senator Hogue: I like that suggestion. The purpose of representative government in the first place is that you live among the people that you serve.

Sen Armstrong: it also takes care of one concern: redistricting. You may serve out your term after redistricting but you don't vote on this chamber.

Senator Hogue: Rep. Louser could I ask you to prepare the language for our next meeting?

Rep. Louser: I will look out for the flaw in that.

Senator Hogue: with that we will adjourn.

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SCR 4010
4/16/2015
26154

- Subcommittee
 Conference Committee

Committee Clerk Signature

Penrose

Minutes:

1

Ch. Hogue called the committee to order. Roll was taken and all committee members were present.

Ch. Hogue: I see Rep. Louser has some amendments, so we will take a look at those.

Rep. Louser: Explained amendment .03007 (see attached #1). It simply replaces on the previous amendment that we had for consideration, replaces the last sentence with the words, "an individual may not be seated in the legislative assembly unless the individual lives in the district from which selected." I had a few discussions about the language; I think we all understand the intent but thought that this was probably the easiest language and probably the most understandable on the ballot. I just wanted to have this for consideration in the conference committee.

Sen. Armstrong: I have a question for Rep. Louser, by using the word "lived," does that get us out of the quagmire of the qualified elector in residency issue?

Rep. Louser: I think it does, we had talked about using the words "primary residence," "reside in," or "lives in," and for the purposes of the century code it seems they are all the same. I believe this is the best we can do and gets us out of that scenario about qualified elector and residency.

Sen. Grabinger: The last word "selected," is that by choice rather than "elected?" I would like to know why.

Rep. Louser: Because of the inclusion of "election" or "appointment" a couple lines above, "selection" includes both "appointment" and "election."

Ch. Hogue: I would note that in virtually all of the drafts of SCR 4010 from the beginning, we and legislative council have stated a preference for "selected" which encompasses those who are both elected and appointed. So that's the purpose of that term. So the concept now is you have to live in the district before you can be seated in a legislative assembly. Now we should decide what the intent is here. If I'm moving out of the district, we're in the interim phase, and I'm attending interim committees, I'm not being seated in the legislative assembly, am I?

Rep. Louser: Correct. Being seated during the Legislative Assembly means that you vote and take action on bills.

Ch. Hogue: So our intent would be that before you could attend either a regular session, a special session of any kind, you would have to be living in the district from which you are selected.

Rep. Louser: Correct.

Sen. Armstrong: I think it is a very good compromise, especially considering what we've been talking about for the last conference committees and I understand that interim committees do a lot of work and there's a lot of stuff that goes on for us in the interim; however, the only binding effects we take are when we are seated. Voting on an interim bill just means it moves forward, it doesn't mean it becomes law. So I think given with all the things we've learned, this definitely goes to the intent of what the measure was. I like the language.

Ch. Hogue: I like it too, I support the amendment. I'm not throwing any opposition but I want to remind the committee of our budget section. The budget section takes the position that what they do is law and of course the full legislature has acquiesced to that practice so it is certainly possible that somebody who is in the budget section could be casting votes which in effect spends state money and yet they are not seated in the legislative assembly. I certainly can live with that as an exception to what this amendment is trying to accomplish.

Rep. Kasper: I'm going to support the amendment. However, I don't believe it solves the dilemma. The amendment says "an individual may not be seated in

a legislative assembly." From my perspective, that term means on the day the legislature begins is the day we are seated. So on that day, what this amendment says is the legislator must live in the district which is fine with me. However, it says nothing about after that day that the legislator is seated. So once you are seated, you're seated and this says you're seated. After that date, I still believe because of going back to the qualified elector, the legislator could move from his or her district and still represent the district during that legislative session in the interim. Now when the next legislative session starts, if they are in the first year of their four year term, there again in order to be seated for that subsequent legislative session, the legislator must live in his or her district but this does not address vacating your house during the legislative assembly or during that period. So I will support it because I think it goes toward the direction that was the intent of the bill all along but I don't think it quite solves the dilemma we are addressing.

Ch. Hogue: I think there will always be ways to game the system. I think it will cover a majority of the situations that the original bill was trying to address.

Rep. Kasper: If I might add, that may not be a bad thing in the situation with a natural disaster where you are forced from your home for a time.

Sen. Armstrong: I don't think I disagree with anything Rep. Kasper said. I would add though by doing this and making it simple is good. What gets very complicated for us is very clear to the voters and I think this will definitely cost you more political capital to game the system than the current law and I think that is the intent.

Rep. Kasper: I think the language will be very simple for the voters to understand.

Sen. Armstrong: I think they will be surprised that this isn't the law now.

Ch. Hogue: I noticed in the House version, you turned it into a study which then didn't require us to select whether this is on the June or the November ballot so we do probably need to address that issue as well.

Rep. Kasper: I suggest we put it on the general election where the most people are going to vote; more people will have their eyes on it and have an opportunity to vote because the primary is poorly utilized by a lot of our citizens. So if we need a motion to add the amendment that we put it on the general election, I would move it.

Ch. Hogue: Let's first act on Rep. Louser's amendment and then we will go from there. Is there a motion on the Louser amendment?

Sen. Armstrong: Moved Rep. Louser's amendment.

Rep. Louser: Second the motion (vote #1).

Ch. Hogue: Roll call vote. Motion carried.

6 YES 0 NO 0 ABSENT

INTENT: Rep. Louser's amendment .03007 was added to SCR 4010.

Rep. Louser: I move that we amend the amendment to put this on the general election ballot for 2016.

Sen. Armstrong: Second the motion.

Rep. Louser: The practical application of that is on the general election, November 2016; it would be effective for legislators that are being seated the following month.

Ch. Hogue: We need to think about that.

Rep. Kasper: The practical application of that on the general election, if it's passed on November 2016 ballot, it is effective on that day. I believe that is in the constitution.

Ch. Hogue: I think it is effective 30 days after the vote.

Rep. Kasper: We might need an effective date then.

Ch. Hogue: Or put it on the June ballot.

Rep. Kasper: I would resist that.

Ch. Hogue: I don't think we can put an effective date on a constitutional measure if the constitution itself says that measures are not effective (looked it up in NDCC) until 30 days later.

Rep. Kasper: The only solution that would be that the organizational session is held after the 30 days effective date.

Ch. Hogue: If a majority of votes cast upon an initiated or referred measure, are affirmative; an initiated or referred measure which is approved, shall

become law 30 days after the election. A referred measure which is rejected shall be void immediately. A constitutional amendment may be proposed by initiated petition. It does apply to constitutional measures. All other provisions related to initiated measures apply hereto. The rule that it doesn't become law until 30 days after the election would apply to constitutional amendments as well. We need to look at when the November election will be held. December is the organizational session. You're seated and take the oath of office during the organizational session.

Sen. Armstrong: Could we have the organizational session and then take the oath at the beginning of the session.

Ch. Hogue: We're anticipating that this measure will pass. We could signal to legislative management that you should technically hold off on the organizational session just for this one session, until this law has been in effect for 30 days after the election. We could do that.

Rep. Kasper: I don't think that should be a problem for one time.

Sen. Armstrong: I think the calendar works well for a practical reason. It would either be the 5th or the 12th. It's not like it is pushing into the 15 or 16th, so calendar-wise according to century code, we would be fine.

Ch. Hogue: We will go with the general election and advise Legislative Management not to convene the organizational session before the 9th of December. We will take a roll call vote (vote #2). Motion carried.

Rep. Kasper: I move that the House recede from the house amendments, adopt further amendments (vote #3).

Sen. Armstrong: Second the motion.

Ch. Hogue: Motion carried.

6 YES 0 NO 0 ABSENT
HOUSE RECEDE FROM HOUSE AMENDMENTS AND AMEND AS
FOLLOWS: (15.3001.03008, 05000) (vote #3).

CARRIER: Sen. Hogue

CARRIER: Rep. Kasper

Ch. Hogue: We will dissolve the committee.

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SCR 4010
4/202015
26261

- Subcommittee
 Conference Committee

Committee Clerk Signature



Minutes:

Ch. Hogue: We will open the conference committee on SCR 4010. All members present. Please explain why we are back here.

Rep. Kasper: The House didn't like the bill; we just voted it down on a verification vote 39 for and the rest against. The debate on the floor had to do with not having enough clarification on living in your district. I think there was more desire in the House to tighten it up, that you had to be living in your district, in speaking with a couple of people, but not all of them. We're back to that it doesn't do the job that the House wants. That goes back to my early discussion that's why I felt the study was appropriate. So maybe the Senate has some ideas. We just got off the floor just a bit ago.

Ch. Hogue: Living in the district.

Rep. Kasper: On the last sentence of the amendment, "an individual may not be seated in the Legislative Assembly unless the individual lives in the district from which selected." Of course, we know that the term "seated" refers to the day that you are sworn in, the day that you are seated. Questions came up, what if someone lives outside of the district afterward. This did not address that. I think there was more desire to require living in your district during the term that you are eligible to be endorsed, elected and serving. I think that is more where the sense of the House was, if we're going to move down that path.

Ch. Hogue: I don't know that any of those would be a problem on the Senate side. You're suggesting that it be tightened up to say that you must be living in the district before the primary election, general election and while serving.

Rep. Kasper: I think that's where the sense of the House is maybe. Maybe my colleagues should comment as well. I'm one opinion; I would like to hear the comments from Rep. Louser and Rep. Amerman to be sure that I felt that my feelings are the same as what they feel.

Rep. Amerman: There actually wasn't a debate. There were several questions; Rep. Kasper answered them the best he could. There wasn't really a debate as far as somebody asking a question and continuing to speak about it. You could probably tell from the questions they were asking what they were thinking but they never came out and gave you something to get a handle on. Then we had the verification vote because you couldn't tell from the voice vote who won. My hang-up on the original bill was each Chamber in their rulemaking, would make rules, I never cared for that. I think that just about every legislator would agree that you should live in your district. I think the proper thing to do if you move, you should resign. But of course, that doesn't happen. I think if you don't have that rulemaking process, maybe we can up with language that would be agreeable.

Ch. Hogue: How about an individual must live in the district from which selected for the entire term for which the member serves.

Rep. Amerman: Is there something we could put to deal with natural disasters, along those lines so we don't run into that.

Ch. Hogue: There is, but here is the tightrope we have to walk. You can get as specific as you want in the constitution, but you're not going to cover every hypothetical. We had this discussion on the Senate side. Rep. Kasper had 4 or 5 scenarios for Mr. Bjornson last week. You simply cannot cover all those in a constitutional amendment. What you can do is say that you have to live there, let's say for the entire period. Then leave it up to the legislature to prescribe in either statute or rule further delineating what that means. Yes, you have a natural disaster and you address that. By the way, I don't think anybody has ever suggested that if someone moves outside of their district because of a natural disaster, that they aren't eligible to serve. Or if they have a vacation home, that they aren't eligible to serve; or that they have a farm somewhere else, they go and farm for a while. I don't think anybody is suggested any of those scenarios. I think we end up shadow boxing a little too much with ourselves. When you think about it, this only affects three or four people in any election cycle and when there is a problem, you address it in a rule. That's what I like about our approach. Every session we adjust

those rules because of something that happened in the previous session. To me, that's the best way to solve this. Because there aren't that many variations because you are only talking about 141 people, 95% of whom all live in their district.

Sen. Armstrong: Two things, one I don't think you should use the word "entire". I think you should just say "the term". Secondly, if the House as we move forward with this are uncomfortable with the rules situation, that's why I liked Rep. Louser's version of "live", because you can codify what that means too. It wouldn't necessarily have to be a rule, it could be statutory. That would be something to come into play afterwards. But if you don't say "entire" and say "live during the term", nobody is going to begrudge Rep. Kasper if your house is flooded and you can't be there because there is a flood in Fargo. I would say that you still live there. You are just temporarily domiciled somewhere else. Just don't use the term "entire", use the term "term" and then I think there are very simple ways where this can be codified once we are done with it.

Rep. Louser: If we were to do this by rule and we find that the rules were violated, who makes the decision that the rule was violated. Is that by a vote of the chamber, legislative management, how do we handle that.

Ch. Hogue: It is set in statute that each House is the judge of the eligibility to serve of all its members now. It would be each House. If someone is not living in their district on the House side, that's up to the House to police that.

Rep. Louser: I guess my question more specifically is, would that be put to a vote on the floor of the House.

Ch. Hogue: Absolutely.

Rep. Louser: Majority would have to pass that.

Ch. Hogue: Yes. Someone would have to make the motion. If something like SCR 4010 were to pass, that legislator would not put themselves through that vote that they would step aside. If they didn't, it would be up to either house to select the membership. How about it if we changed it to an individual may not serve, because that makes it clear that it's not just the date that you are seated, you may not serve period.

Sen. Armstrong: Thinking of Rep. Amerman's comment, that the simpler the better when it's going on the ballot and going in the constitution, as long as it's right.

Ch. Hogue: You could also add a sentence that makes it clear, although I think it is understood, the Legislative Assembly may prescribe what it means to live in a district by statutory law. I think Legislative Council may say that's implied, but if we want it to be explicit, we could do that as well.

Rep. Kasper: I think you already indicated that's already in statute, what you had just stated. The legislative assembly sets the rules of membership in our chambers. It is already there.

Ch. Hogue: Right. We decide the qualifications. What is the committee's feeling on substituting the word "serve" for "be seated"?

Rep. Kasper: That would not; the implication that the legislative assembly during session or would the implication be during the interim as well.

Ch. Hogue: I think "serve" would be every day that you put on your name badge, whether it's an interim committee or legislative management or organization session, regular session, special session.

Rep. Kasper: So that would be the intent.

Rep. Louser: We talked last week about intent and all the different ideas, whether it's century code, rules or constitution, and what wording to achieve the same thing. As we arrived at what the individual may not do, maybe we should say what the individual may do, unless some circumstance arises, that circumstance being that they don't live in their district. Something to the effect that the individual selected to the assembly that no longer lives in the district would be considered to have vacated the office.

Ch. Hogue: I think that would be fine, except it doesn't solve the House's concerns. I think the House has to be comfortable with the ambiguity or the notion that when this or if that becomes an issue of what it means to live in the district, we're going to have to pass a statute to say what that means. That may be the House's stress point is; it's still not clear in the constitution. I don't know that we will ever get that level of detail in the constitution to say that "live" means that you are present in the district except for, you start

listing exceptions for natural disasters, redistricting, maybe it's a sickness; it could be a number of issues.

Rep. Louser: I took some notes, but can you repeat what you had stated. "Except as provided in this section, if an individual selected to the Legislative Assembly no longer lives in the district from which the individual was selected, the individual is considered to have vacated that office."

Rep. Kasper: I think that is much more problematic if you have some type of disaster or event which forces you to be out of your district temporarily; such as a fire or flood, etc. That would go to the point where you need to be there all the time. That is a concern of mine.

Ch. Hogue: I can tell you having gone through this probably a half dozen of times, not obviously in this context but this same issue plays out in ND a number of times and the place where it plays out a lot is in the representation on boards for electric and telephone coops. I think all of the coops contain a by-law provision that says that you must get electrical service from your residence from our cooperative to serve on the board. The telephone coops typically say you must get your landline from your personal residence to serve on our boards. When board member A moves to a different part where they are not getting service from that coop, this question comes up. Invariably the person wants to continue to serve because they enjoy serving on the board; they say that they are getting their service at the farm so that should count. There is always a debate. We're always going to have this debate. It's going to come down to that chamber to make that decision. There isn't going to be clear cut rule that helps you define this. You can't get that specificity in the constitution.

Rep. Kasper: In the interest of moving forward, I move that the House recede from their amendments and amend further to change the last sentence to read: "an individual may not serve in the legislative assembly unless the individual lives in the district from which selected." Then keep all the rest of section 5 the same.

Rep. Louser: Second the motion.

Ch. Hogue: I would support that. I think the message to both the Senate and House is that you need to live in your district while you are serving in the chamber. When this problem arises, and it probably will, we are going to have to define by statute what it means to serve and live, which is fine. We'll do

that. We may not have to do that, though, because the situation is truly a onesie, twosie thing. It happens once or twice. In the last session, we had to change our Senate rules for a particular form of "misconduct", something that the Senate Majority didn't like. So we changed the rules. That's what we will have to do if this passes. If somebody says "I'm living there because I have a lot there and I intend to live there". We will say what that means in statute if somebody comes forward with that fact pattern.

Sen. Grabinger: To that point, I visited with a legislator a little while ago. They sold their home in the district where she was elected, and subsequently they are living in a place in another district at the time. They want to go back to their district but they haven't found a place available at this point. In that circumstance, it's their intent to move back into that district, but at this time, she's really not living in the district from which she was elected, under this proposal. Would that come before the Chamber to make a decision?

Ch. Hogue: Well it's not going to come to the chamber I guess unless we are in session. Nothing comes to the chamber now when somebody says they weren't a qualified elector because there are people that are making that allegation about a number of candidates. They were not a qualified elector on the day of the election in that district. That doesn't seem to come to anybody's attention.

Sen. Grabinger: So would this legislator's term end when they sold the home and moved into another district; they don't consider it permanent, but yet it is at this point because they don't have another place to live.

Ch. Hogue: Let's a good question. I would say, probably it does.

Rep. Louser: I think a lot goes into the decision to sell your house or buy a house, or the example we heard was to build a house. That's not something you just do. If the constitution says, if you do that, then this happens. That will impact your decision to sell the house without knowing where you are going to go, or it will make you realize that you need to find a temporary place to live within your district lines because that's what the constitution says. I've run through all those scenarios; what if I want to build a house and I move out of the district but I have the lot and I'm going to build. The constitution says I need to live in my district, so I better find somewhere to live for six months. If I don't, and I want to game the system, and I want to roll the dice, I might get called on it and I don't want to take that chance. I don't want to put my

colleagues in that position to have to vote whether or not to expel me because I chose to rent somewhere when I knew I shouldn't do that.

Sen. Armstrong: A different scenario would be that you sell your house, you rent somewhere for temporary while you are building your house back in your original district, this goes kind of to the natural disaster situation. Your intent is to stay in your district. You're building a house in your district; you're doing things like that if you are temporarily removed from it. There's geography involved. That's a little different in my opinion than selling your house in the district, moving out of your district and saying, "well someday I am going to move back into my district". That is a very different flow that goes to that. I don't think that any of us would begrudge somebody who lives, primarily in urban areas at this point, who is renting an apartment while their house is being completed in their district versus someone who is living somewhere else, saying "yeah, when I get around to it, I'll move back into my district". Those are two very different scenarios.

Ch. Hogue: I appreciate Sen. Grabinger's point; my overall thrust is I don't want to overshadow box ourselves and keep coming up with all these contingencies. I think we want to address the fundamental problem with our constitution today is that it says you only have to have this qualification on the day of the election. I think both chambers agree that we want to have this qualification throughout the entire term that you are selected for. That's the problem we are trying to solve. We're not going to be able to solve every contingency. We're just not. Is this an improvement over what the constitution says now, yes it is. I think if the people adopt this, a lot of these issues that are out there will go away.

Rep. Kasper: If there is anyone right now who may have a problem with this potential change to the constitution, this would not occur until a year and a half from now, when the people vote on it. That gives ample time for people who may fall in to this scenario to solve that situation, to get them to the point, if this passes, where they would be in compliance.

Ch. Hogue: We are striking the words "be seated" and inserting the word "serve". The clerk will call the roll.

6 YES 0 NO 0 ABSENT

HOUSE RECEDE FROM ITS AMENDMENTS AND AMEND FURTHER.

CARRIER: Ch. Hogue

CARRIER: Rep. Kasper

PROPOSED AMENDMENTS TO ENGROSSED SENATE CONCURRENT RESOLUTION
NO. 4010

That the House recede from its amendments as printed on page 1069 of the Senate Journal and pages 1233 and 1234 of the House Journal and that Engrossed Senate Concurrent Resolution No. 4010 be amended as follows:

Page 1, line 5, after "selected" insert "and would prohibit an individual from being seated in the legislative assembly if the individual does not live in the district from which selected"

Page 1, replace lines 12 through 20 with:

"SECTION 1. AMENDMENT. Section 5 of article IV of the Constitution of North Dakota is amended and reenacted as follows:

Section 5. Each ~~person~~individual elected or appointed to the legislative assembly must be, on the day of the election or appointment, a qualified elector in the district from which the member was chosen and must have been a resident of the state for one year immediately prior to that election. An individual may not be seated in the legislative assembly unless the individual lives in the district from which selected.

Renumber accordingly

April 16, 2015

4/16/15
JRC

PROPOSED AMENDMENTS TO ENGROSSED SENATE CONCURRENT RESOLUTION NO.
4010

That the House recede from its amendments as printed on page 1069 of the Senate Journal and pages 1233 and 1234 of the House Journal and that Engrossed Senate Concurrent Resolution No. 4010 be amended as follows:

Page 1, line 5, after "selected" insert "and would prohibit an individual from being seated in the legislative assembly if the individual does not live in the district from which selected"

Page 1, line 10, replace "primary" with "general"

Page 1, replace lines 12 through 20 with:

"SECTION 1. AMENDMENT. Section 5 of article IV of the Constitution of North Dakota is amended and reenacted as follows:

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Renumber accordingly

April 20, 2015

TD
4/20/15

PROPOSED AMENDMENTS TO ENGROSSED SENATE CONCURRENT RESOLUTION NO.
4010

That the House recede from its amendments as printed on page 1069 of the Senate Journal and pages 1233 and 1234 of the House Journal and that Engrossed Senate Concurrent Resolution No. 4010 be amended as follows:

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Renumber accordingly

Date: 4/7/15
 Roll Call Vote #: _____

**2015 SENATE CONFERENCE COMMITTEE
 ROLL CALL VOTES**

BILL/RESOLUTION NO. 4010 as (re) engrossed

Senate Judiciary Committee

- Action Taken**
- SENATE accede to House Amendments
 - SENATE accede to House Amendments and further amend
 - HOUSE recede from House amendments
 - HOUSE recede from House amendments and amend as follows
 - Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: _____ Seconded by: _____

Senators	4/7	4/8	4/10	Yes	No	Representatives	4/7	4/8	4/10	Yes	No
S. Hogue	✓	✓	✓			Rep. Kasper	✓	✓	✓		
Armstrong	✓	✓	✓			Louser	✓	✓	✓		
Grabinger	✓	✓	✓			Amerman	✓	✓	✓		
Total Senate Vote						Total Rep. Vote					

Vote Count Yes: _____ No: _____ Absent: _____

Senate Carrier _____ House Carrier _____

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted: _____

Statement of purpose of amendment: _____

No action taken on 4/7, 4/8 or 4/10/15.

Date: 4/16/19
 Roll Call Vote #: 1

2015 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 4010 as (re) engrossed

Senate Judiciary Committee

- Action Taken**
- SENATE accede to House Amendments
 - SENATE accede to House Amendments and further amend
 - HOUSE recede from House amendments
 - HOUSE recede from House amendments and amend as follows
 - Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Sen. Armstrong Seconded by: Rep. Louser

Senators		4/14	4/16	Yes	No	Representatives		4/14	4/16	Yes	No
Hogue	✓	✓	✓			Kasper	✓	✓	✓		
Armstrong	✓	✓	✓			Louser	✓	✓	✓		
Drabinger	✓	✓	✓			Amerman	✓	✓	✓		
Total Senate Vote						Total Rep. Vote					

Vote Count Yes: 6 No: 0 Absent: 0

Senate Carrier _____ House Carrier _____

LC Number 15.3001.03007 . _____ of amendment

LC Number _____ . _____ of engrossment

Emergency clause added or deleted: _____

Statement of purpose of amendment:
Sen. Armstrong Moved the motion
Rep. Louser amendment; Carried, . 03007 version.

Date: 4/16/15
 Roll Call Vote #: 2

**2015 SENATE CONFERENCE COMMITTEE
 ROLL CALL VOTES**

BILL/RESOLUTION NO. 4010 as (re) engrossed

Senate Judiciary Committee

- Action Taken**
- SENATE accede to House Amendments
 - SENATE accede to House Amendments and further amend
 - HOUSE recede from House amendments
 - HOUSE recede from House amendments and amend as follows

 - Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Rep. Louser Seconded by: Sen. Armstrong

Senators				Yes	No	Representatives				Yes	No
<u>Sen. Hogue</u>				✓		<u>Rep. Kasper</u>				✓	
<u>Armstrong</u>				✓		<u>Louser</u>				✓	
<u>Beal</u>				✓		<u>Amerman</u>				✓	
Total Senate Vote						Total Rep. Vote					

Vote Count Yes: 6 No: 0 Absent: 0

Senate Carrier _____ House Carrier _____

LC Number 15. 3001, 03008 . 05000 of amendment

LC Number _____ of engrossment

Emergency clause added or deleted: _____

Statement of purpose of amendment: _____

moved to further amend, version . 03008.

Date: 4/16/15
 Roll Call Vote #: 3

**2015 SENATE CONFERENCE COMMITTEE
 ROLL CALL VOTES**

BILL/RESOLUTION NO. 4010 as (re) engrossed

Senate Judiciary Committee

- Action Taken**
- SENATE accede to House Amendments
 - SENATE accede to House Amendments and further amend
 - HOUSE recede from House amendments
 - HOUSE recede from House amendments and amend as follows
 - Unable to agree, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Rep. Kasper Seconded by: Sen. Armstrong

Senators				Yes	No	Representatives				Yes	No
<u>Sens. Hogue</u>				✓		<u>Reps. Kasper</u>				✓	
<u>Armstrong</u>				✓		<u>Louder</u>				✓	
<u>Grabinger</u>				✓		<u>Amernan</u>				✓	
Total Senate Vote						Total Rep. Vote					

Vote Count Yes: 6 No: 0 Absent: 0

Senate Carrier Sen. Hogue House Carrier Rep. Kasper

LC Number 15-3001-03008 . 05000 of amendment

LC Number _____ of engrossment

Emergency clause added or deleted: _____

Statement of purpose of amendment: _____

Date: 4/20/2015
 Roll Call Vote #: 1

**2015 SENATE CONFERENCE COMMITTEE
 ROLL CALL VOTES**

BILL/RESOLUTION NO. 4010 as (re) engrossed

Senate Judiciary Committee

- Action Taken
- SENATE accede to House Amendments
 - SENATE accede to House Amendments and further amend
 - HOUSE recede from House amendments
 - HOUSE recede from House amendments and amend as follows
 - Unable to agree, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Rep. Kasper Seconded by: Rep. Louser

Senators	4/20		Yes	No	Representatives	4/20		Yes	No
<u>Sens. Hogue</u>	<u>✓</u>		<u>✓</u>		<u>Reps. Kasper</u>	<u>✓</u>		<u>✓</u>	
<u>Armstrong</u>	<u>✓</u>		<u>✓</u>		<u>Louser</u>	<u>✓</u>		<u>✓</u>	
<u>Grabinger</u>	<u>✓</u>		<u>✓</u>		<u>Amerman</u>	<u>✓</u>		<u>✓</u>	
Total Senate Vote					Total Rep. Vote				

Vote Count Yes: 6 No: 0 Absent: 0

Senate Carrier Sen. Hogue House Carrier Rep. Kasper

LC Number 15.3001.03009 . 06000 of amendment

LC Number _____ of engrossment

Emergency clause added or deleted: _____

Statement of purpose of amendment: _____

REPORT OF CONFERENCE COMMITTEE

SCR 4010, as engrossed: Your conference committee (Sens. Hogue, Armstrong, Grabinger and Reps. Kasper, Louser, Amerman) recommends that the **HOUSE RECEDE** from the House amendments as printed on SJ page 1069, adopt amendments as follows, and place SCR 4010 on the Seventh order:

That the House recede from its amendments as printed on page 1069 of the Senate Journal and pages 1233 and 1234 of the House Journal and that Engrossed Senate Concurrent Resolution No. 4010 be amended as follows:

Page 1, line 5, after "selected" insert "and would prohibit an individual from being seated in the legislative assembly if the individual does not live in the district from which selected"

Page 1, line 10, replace "primary" with "general"

Page 1, replace lines 12 through 20 with:

"SECTION 1. AMENDMENT. Section 5 of article IV of the Constitution of North Dakota is amended and reenacted as follows:

Section 5. Each ~~person~~individual elected or appointed to the legislative assembly must be, on the day of the election or appointment, a qualified elector in the district from which the member was ~~chosen~~selected and must have been a resident of the state for one year immediately prior to that election. An individual may not be seated in the legislative assembly unless the individual lives in the district from which selected."

Renumber accordingly

Engrossed SCR 4010 was placed on the Seventh order of business on the calendar.

REPORT OF CONFERENCE COMMITTEE

SCR 4010, as engrossed: Your conference committee (Sens. Hogue, Armstrong, Grabinger and Reps. Kasper, Louser, Amerman) recommends that the **HOUSE RECEDE** from the House amendments as printed on SJ page 1069, adopt amendments as follows, and place SCR 4010 on the Seventh order:

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Renumber accordingly

Engrossed SCR 4010 was placed on the Seventh order of business on the calendar.

2015 TESTIMONY

SCR 4010

15.3001.01001
Title.

Prepared by the Legislative Council staff for
Senator Wardner

February 3, 2015

#1-1
2/4/15

PROPOSED AMENDMENTS TO SENATE CONCURRENT RESOLUTION NO. 4010

Page 1, line 14, remove the overstrike over the overstruck comma

Page 1, line 15, after "~~election~~" insert "during the entire term for which selected"

Page 1, line 15, remove the overstrike over the overstruck comma

Page 1, line 15, overstrike "chosen" and insert immediately thereafter "selected"

Renumber accordingly

#1-1
2/11/15

Introduced by

Senators Wardner, Schneider

Representatives Carlson, Onstad

1 A concurrent resolution to amend and reenact section 5 of article IV of the Constitution of North
2 Dakota, relating to residency requirements of members of the legislative assembly.

3 **STATEMENT OF INTENT**

4 This measure would require a member of the legislative assembly to be a resident of the district
5 from which selected.

6 **BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF**
7 **REPRESENTATIVES CONCURRING THEREIN:**

8 That the following proposed amendment to section 5 of article IV of the Constitution of
9 North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the
10 primary election to be held in 2016, in accordance with section 16 of article IV of the
11 Constitution of North Dakota.

12 **SECTION 1. AMENDMENT.** Section 5 of article IV of the Constitution of North Dakota is
13 amended and reenacted as follows:

14 **Section 5.** Each ~~person elected to~~member of the legislative assembly must be, ~~on the day~~
15 ~~of the election~~during the entire term for which selected, a qualified elector in the district from
16 which the member was ~~chosen~~selected and must have been a resident of the state for one year
17 immediately prior to ~~that election~~selection to the legislative assembly. Each house of the
18 legislative assembly shall adopt rules regarding confirmation and verification of residency of its
19 members.

#2-1

15.3001.01002
Title.

Prepared by the Legislative Council staff for
Senator Hogue

February 11, 2015

PROPOSED AMENDMENTS TO SENATE CONCURRENT RESOLUTION NO. 4010

Page 1, line 14, remove the overstrike over the overstruck comma

Page 1, line 15, after "election" insert "during the entire term for which selected"

Page 1, line 15, remove the overstrike over the overstruck comma

Page 1, line 15, overstrike "chosen" and insert immediately thereafter "selected"

Page 1, line 17, after "assembly" insert ". Each house of the legislative assembly shall adopt rules regarding confirmation and verification of residency of its members"

Renumber accordingly

15.3001.01003
Title.

Prepared by the Legislative Council staff for
Senator Hogue

February 12, 2015

1-1
2/16/15

PROPOSED AMENDMENTS TO SENATE CONCURRENT RESOLUTION NO. 4010

Page 1, line 14, remove the overstrike over the overstruck comma

Page 1, line 15, after "election" insert "during the entire term for which selected"

Page 1, line 15, remove the overstrike over the overstruck comma

Page 1, line 15, overstrike "chosen" and insert immediately thereafter "selected"

Page 1, line 17, after "assembly" insert ". Each house of the legislative assembly shall adopt rules regarding confirmation and verification of the qualifications, as required under this section, of its members throughout the term for which elected"

Renumber accordingly

#1 4010
3-19-15

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

March 19, 2015

TO: Chairman Jim Kasper and members of the House Government and Veteran's Affairs Committee

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

RE: SCR 4010 – Residency of Legislators

The Secretary of State's office supports the intent of this constitutional measure that would be decided by the voters at the election to be held on June 14, 2016. It is worth noting, however, that since the Constitution will still say that a legislator must be "a qualified elector," the underlying issue will remain unresolved. This is due to the fact that the law for determining residency NDCC § 54-01-26 is open-ended. If this measure is passed by the voters, it will be a step in the right direction.

PROPOSED AMENDMENTS TO ENGROSSED SENATE CONCURRENT RESOLUTION
NO. 4010

Page 1, line 1, after "A concurrent resolution" replace the remainder of the resolution with
"directing the Legislative Management to study the residency requirements of members
of the Legislative Assembly.

WHEREAS, North Dakota Century Code Section 44-02-01 provides that an
office becomes vacant if the incumbent ceases to be a resident of the state, district,
county, or other political subdivision in which the duties of the office are to be
discharged, or for which the individual may have been elected; and

WHEREAS, questions have arisen whether the statutory provision regarding
residency applies to members of the Legislative Assembly;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH
DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Management study the residency requirements of members
of the Legislative Assembly; and

BE IT FURTHER RESOLVED, the the Legislative Management report it
findings and recommendations, together with any legislation required to implement the
recommendations, to the Sixty-fifth Legislative Assembly."

Renumber accordingly

Amerman, Bill D.

#1-1
SCR 4010
4/7/15

From: Silrum, Jim
Sent: Tuesday, March 31, 2015 12:33 PM
To: Amerman, Bill D.
Subject: RE: SCR 4010
Attachments: 4010 Reside vs Live - Qualified Elector.docx

Hi Bill,

Since all of this hinges on the definition for a "qualified elector," I have attached the parts of the Constitution and the NDCC that apply. The second page contains the section you said that you could not find within the law.

Perhaps your speech on the floor could be limited to the following, (mind you, I have not seen the amendment so the following might not be appropriate depending on what the study is to be about.)

"The House Government and Veteran's Affairs Committee recommended a study to determine the definition for what it means to be "a qualified elector" in the state since under current law it is possible for an elector to reside at one address in the state and temporarily live at another address. The difficulty that exists with this is that there are no clear definitions as to what makes one address temporary and the other the elector's actual residence for voting. Only when a solid definition has been outlined in law for qualified elector could the intent of SCR 4010 be realized. Just like a voter who can "live" at one address, but be a qualified elector at another address, so also could a sitting legislator "live" at one address outside of his or her district, but potentially remain a qualified elector of that district. SCR 4010, if passed by the voters, would amend the Constitution, but the Constitution would still say that a legislator must be a qualified elector of the district throughout the term of office and this is why a study on "qualified elector" must first be completed for the idea behind HCR 4010 to be fully realized."

I hope this makes sense. It isn't an easy concept for anyone to wrap their head around and there are no quick fixes to the situation that would be plausible.

Sincerely,

Jim Silrum

Deputy Secretary of State
701-328-3660 – Desk



From: Amerman, Bill D.
Sent: Tuesday, March 31, 2015 9:30 AM
To: Silrum, Jim
Subject: RE: SCR 4010

It could be on the floor today, tomorrow for sure.

Thank You
Bill

#1-1
SCR 401
4/10/15

**The Difference Between
Where an Individual Resides
and
Where an Individual Lives for Work, School or Other Purpose**

**ARTICLE II
ELECTIVE FRANCHISE**

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

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

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

16.1-01-04. Qualifications of electors.

1. Every citizen of the United States who is eighteen years or older; a resident of this state; and has resided in the precinct at least thirty days next preceding any election, except as otherwise provided in regard to residency in chapter 16.1-14, is a qualified elector.
2. For the purposes of this title, every qualified elector may have only one residence, shown by an actual fixed permanent dwelling, establishment, or any other abode.
3. Except as otherwise provided in this section, an individual's residence must be determined in accordance with the rules for determining residency as provided in section 54-01-26.
4. Pursuant to section 2 of article II of the Constitution of North Dakota, voting by individuals convicted and sentenced for a felony must be limited according to chapter 12.1-33.
5. For the purposes of this title, an individual may not be deemed to have gained or lost a residence solely by reason of the individual's presence or absence while enrolled as a student at a college, university, or other postsecondary institution of learning in this state.
6. For the purposes of this title, a member of the armed forces of the United States may not be deemed to have gained or lost a residence in this state solely by reason of the member being stationed on duty in this state.
7. For the purposes of this title, an individual may not be deemed to have lost residence in the individual's precinct or in the state by reason of the individual engaging in temporary government service or private employment outside the individual's precinct or outside the state.
8. For purposes of this title, a qualified elector may not authorize an attorney in fact, guardian, or other individual to apply for any ballot or to vote in any election on behalf of or in the place of the qualified elector.

1-2
SCR4010
4/10/15

Residency Defined In Law

54-01-26. Residence — Rules for determining.

Every person has in law a residence. In determining the place of residence, the following rules must be observed:

1. It is the place where one remains when not called elsewhere for labor or other special or temporary purpose and to which the person returns in seasons of repose.
2. There can be only one residence.
3. A residence cannot be lost until another is gained.
4. The residence of the supporting parent during the supporting parent's life, and after the supporting parent's death, the residence of the other parent is the residence of the unmarried minor children.
5. An individual's residence does not automatically change upon marriage, but changes in accordance with subsection 7. The residence of either party to a marriage is not presumptive evidence of the other party's residence.
6. The residence of an unmarried minor who has a parent living cannot be changed by either that minor's own act or that of that minor's guardian.
7. The residence can be changed only by the union of act and intent.

1-1

15.3001.03006
Title.

Prepared by the Legislative Council staff for
Senator Hogue

April 14, 2015

PROPOSED AMENDMENTS TO ENGROSSED SENATE CONCURRENT RESOLUTION
NO. 4010

That the House recede from its amendments as printed on page 1069 of the Senate Journal and pages 1233 and 1234 of the House Journal and that Engrossed Senate Concurrent Resolution No. 4010 be amended as follows:

Page 1, line 5, after "selected" insert "and allow each house of the legislative assembly to adopt rules relating to the residency of its members"

Page 1, replace lines 12 through 20 with:

"SECTION 1. AMENDMENT. Section 5 of article IV of the Constitution of North Dakota is amended and reenacted as follows:

Section 5. Each ~~person~~individual elected or appointed to the legislative assembly must be, on the day of the election or appointment, a qualified elector in the district from which the member was chosen and must have been a resident of the state for one year immediately prior to that election. Each house of the legislative assembly may adopt rules further defining the residency requirements of its members."

Renumber accordingly

April 14, 2015

17
4/16/15

PROPOSED AMENDMENTS TO ENGROSSED SENATE CONCURRENT RESOLUTION
NO. 4010

That the House recede from its amendments as printed on page 1069 of the Senate Journal and pages 1233 and 1234 of the House Journal and that Engrossed Senate Concurrent Resolution No. 4010 be amended as follows:

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Renumber accordingly