

1999 SENATE POLITICAL SUBDIVISIONS

SB 2395

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2395

Senate Political Subdivisions Committee

Conference Committee

Hearing Date February 4, 1999

Tape Number	Side A	Side B	Meter #
1		x	3555 to end
2	x		0 to 220
Committee Clerk Signature 			

Minutes:

SENATOR LEE: convene meeting on sb2395, SENATOR MUTCH: not present to introduce this bill.

CURLY HAUGLAND: introduction of sb2395

SENATOR LEE: discussion on a different bill pertaining to a similar subject

SENATOR LEE: anyone for or against sb2395

MARK JOHNSON: see testimony on SB2395

SENATOR LEE: any flare ups in any areas with this

MARK JOHNSON: one in a county in which the county decided to do something with an auditor that was against the tool chest bill, so the citizens had to step in and take over, Ward county example of combined offices. Richland County is another example of this

SENATOR LYSON: take control of committee

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Senate Political Subdivisions Committee

Bill/Resolution Number Sb2395

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SENATOR LYSON: any questions for Mark, will discuss later

SENATOR LEE: any other testimony on 2395

STACY MILLER: feel strongly that the electoral process is good for the people and keeping this process to the people, opposed sb2395

SENATOR LEE: feel the people of Ward County should be able to decide what's best for this county

STACY MILLER: yes, more cut than dry before put to the people

SENATOR LYSON: did they vote on that in Ward County, so no one started a referendum

STACY MILLER: no

SENATOR LEE: anyone opposed or neutral to sb2395

CONNIE SPRYNATIC: opposed to sb2395 and it's effects to the tool chest bill and can quote lots of examples, "power to the people" and taxes levied to the people, citizen decide

SENATOR WATNE: is there a constitutional conflict with the law

CONNIE SPRYNATIC: who is looking at the constitutional issues

MOTION: CLOSE HEARING ON SB2395

FEBRUARY 4, 1999

MOTION: DO NOT PASS

SENATOR WATNE: made the motion

SENATOR WELSH: seconded the motion

SENATOR LYSON: carry the bill to floor

Date: 2-5-99
Roll Call Vote #: (

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2398

Senate Political Subdivisions Committee Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do not pass

Motion Made By Watne Seconded By Kelsh

Senators	Yes	No	Senators	Yes	No
Senator Lee (Chairman)	/				
Senator Lyson (Vice-Chaiman)	/				
Senator Flakoll	/				
Senator Watne	/				
Senator Kelsh	/				
Senator Nelson	/				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Lyson

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

REPORT OF STANDING COMMITTEE (410)
February 5, 1999 1:36 p.m.

Module No: SR-24-2073
Carrier: Lyson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2395: Political Subdivisions Committee (Sen. Lee, Chairman) recommends DO NOT PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2395 was placed on the Eleventh order on the calendar.

1999 TESTIMONY

SB 2395

**TESTIMONY TO THE
SENATE POLITICAL SUBDIVISIONS COMMITTEE
Prepared February 4, 1999 by the
North Dakota Association of Counties
Mark Johnson, NDACo Executive Director**

Concerning Senate Bill No. 2395

Chairperson Lee and members of the Political Subdivisions Committee, I am here on behalf of counties to strongly oppose the removal of local governance options as presented in Senate Bill 2395.

Counties currently have the ability to combine, separate or redesignate county elective offices, without becoming a home rule county, through chapter 11-10.2 of the Century Code created during the 1993 session. The entire legislation has collectively become known as the "Tool Chest" for local government, and has proven itself a viable method of local government self-examination. Senate Bill 2395 seeks to remove the powers of local governing boards to create positive change in county offices, even though these governance options have been used very successfully in the five years since the adoption of this legislation.

Elected county boards must be able to make decisions that are best for their local communities. These governance laws create authorities and procedures, through local choice and citizen consent, that all can use to analyze and implement positive structural change in local government. As county budgets shrink and service needs grow, counties must consider all their available options for governing. This important tool has been used by a number of counties with success and public support.

Counties are able to start the process of combining offices with these governance tools, but if the public is opposed there are measures which can be taken to stop any initiatives. A number of counties, such as Sioux who combined their register of deed and treasurer, and Ward and Benson who combined their auditor and treasurer positions, have done so with citizen support. Morton County recently proposed the redesignation of their auditor position, and because of citizen opposition this proposal was voted down.

This tool will not be used by every county in North Dakota, but for many combining of offices is one possible consideration to address shrinking population bases. While we have not yet experienced this in county government, we are aware that some smaller cities have had trouble locating candidates interested in filling elected positions.

Nothing has happened since the inception of these statutes to warrant their repeal. Counties have used them to create positive change, and the protections in the law have prevented changes unwanted by the voters. Senate Bill 2395 is an attempt to re-establish more restrictive county statutes and remove needed local governance options. It is important that we remember these tools are optional and assessed only by petition of citizens or resolution of the governing board. Please leave as much flexibility as local level as you possibly can.

Madam Chair and members of the committee, please keep the best interests of our local governments and the citizens of North Dakota in mind. I urge a "Do Not Pass" recommendation for Senate Bill 2395.

Testimony in favor of Senate Bill 2395
February 4, 1999
Senate Political Subdivisions Committee

Madam Chairwoman and members of the committee, my name is Curly Haugland. I am a resident of Lincoln and Burleigh County and appear before you today to urge the passage of Senate Bill 2395.

The reason this bill should be adopted is to correct an obvious conflict between Chapter 11-10.2 of the Century Code and Article VII, Section 9 of the North Dakota Constitution.

This conflict was created in 1993 with the passage of a massive piece of legislation some 80 or more pages long, intended to restructure local government in North Dakota, a bill that has come to be known as the tool chest bill. Chapter 11-10.2 in its entirety was part of the tool chest.

I have prepared a handout for you which, I trust, will clearly demonstrate the conflict between the constitution and this statute which I would like to review with you at this time.

(Review handout material)

As you know, this statute gave rise to a bill in the last session of the legislature regarding the status of the county sheriffs. The bill failed in the legislature, and the sheriffs then led a petition drive which resulted in an initiated Constitutional Amendment which, when presented to the voters of the state, received nearly 90 per cent approval.

Additionally, you are scheduled to hear Senate Bill 2390 tomorrow which appears to be an effort by states attorneys to preserve their elective status.

Upon having heard all the testimony both for and against this bill, I implore you to vote, mindful of your sworn obligation to the Constitution as expressed in your oath of office, and to recommend a do pass for Senate Bill 2395.

Thank you very much for your thoughtful consideration.

Changes

Additions

Alternates

SB 258

Constitutions - state revisions
North Dakota

PROPOSED
1972 CONSTITUTION
of
THE STATE OF NORTH DAKOTA

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tiguous senatorial districts, in such manner as to give equal representation by population. The commission may combine two senatorial districts so that Senators and Representatives could be elected at large, or from subdistricts thereof.

ARTICLE V, EXECUTIVE BRANCH, provides for possible extensive changes. The convention sought to strengthen the executive branch of state government and to make it more effective. The proposed constitution provides for the possible appointment of more of the executive officials, unless the legislature provides otherwise; and it calls for changes in executive organization.

The change in elective officials is indicated by comparing the present constitution with the proposed constitution.

<p>Under the present constitution there are fourteen elective officials including:</p> <p>Governor Lieutenant Governor Secretary of State State Auditor State Treasurer Attorney General Commissioner of Insurance Commissioner of Agriculture Commissioner of Labor Superintendent of Public Instruction Tax Commissioner Three Public Service Commissioners</p>	<p>Under the proposed constitution there are seven elective officials including:</p> <p>Governor and Lieutenant Governor on one ticket Secretary of State Attorney General Three Public Service Commissioners</p>
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In addition to the seven elective officials, the proposed constitution provides that a state board of public education would appoint an executive official corresponding to the present superintendent of public instruction and that the state board of higher education would continue to appoint an executive official. The Legislature would determine the method of selecting the chief executives of the remaining principle departments. Alternative methods include: appointment by the governor, election by the people, or appointment by a board or commission.

Executive Organization changes provided for in the proposed constitution include:

- The Legislature shall allocate executive powers among not more than 15 principal state departments, organized along broad functional lines.
- The Governor could reorganize the allocation of functions and powers among and within departments, except those headed by elective officials, however, these changes are subject to possible veto by the Legislature.

A **State Planning Council** would be made up of the chief executives of all principal departments. It would be directed to prepare a comprehensive state plan based on the plan from each department.

Other **additional powers given to the Governor's office** include:

-In addition to veto power, he can reduce items in appropriation bills; but this action would be subject to override by a simple majority of the Legislature.

He can assign the duties of the Lieutenant Governor, which may be changed to a full-time position.

With these changes in the executive branch, the convention aimed at reducing conflicts between state agencies and increasing governmental efficiency.

In **ARTICLE VI, JUDICIAL BRANCH**, the convention aimed at updating the Judicial Article by improving the language, deleting sections that had outlived their usefulness, deleting areas that were of legislative character, and by incorporating new ideas. We will be talking primarily about the new ideas and additions.

A **Unified Judicial System** is provided for which consists of a Supreme Court, a District Court, and other courts established by the Legislature. This is changed from the present system, in that the County Courts and the County Courts of Increased Jurisdiction are established in the constitution. The implication of these provisions is that the basic structure remains the same until the Legislature may take steps to streamline the system.

Superintending Control over the courts of the state is granted to the Chief Justice of the Supreme Court. This is an expansion of power over the present constitution, which grants this power to the Supreme Court and only over inferior courts. This change is designed to facilitate evening out the workload among the courts and judges.

The state is to be **divided into judicial districts** by the Supreme Court. Under the present constitution, the state is divided into districts and the Legislature has authority to make changes. However, the Judicial Functions Committee found that under the present system some of the district boundaries are outdated and the workloads among courts are uneven.

In the section on **Vacancies**, provision is made for a Judicial Nominating Committee to select candidates for appointment to the office of justice of the Supreme Court or judge of the District Court in the event of a vacancy during a term of office. Appointments to a vacant seat last only until the next general election, rather than for a full term. Under the present constitution, a vacancy is filled by Governor appointment without commission nomination.

Another change relates to **confirmation** of incumbent Supreme Court justices or District Court judges. If no competing candidate has been nominated for the office, the ballot will ask if the incumbent shall be retained. Unless the majority of the votes cast are affirmative, the office will be deemed vacant and shall be filled as provided for under the section on vacancies.

ARTICLE VII, POLITICAL SUBDIVISIONS, has as its purpose, "to provide for maximum local self government by all political subdivisions with a minimum duplication of functions."

The revised constitution continues the principle that local governmental units or political subdivisions are crea-

tures of the state and shall have and exercise such powers as provided by the State Legislature.

Home Rule would be available to both counties and cities. Under the present constitution, it is available only to cities.

The Legislature would be responsible for establishing the procedure for converting to home rule. However, home rule would not become operative in a county or city until submitted to the people and approved by a majority vote. Under home rule, the county may prescribe its own form of government.

Optional forms of government for counties are to be provided by the Legislature, as at present, but no optional form can take effect without the approval by a majority of those voting on this issue. Under the present constitution, this approval requires 55 percent of those voting.

All **elective county offices** as they now exist in a county would continue to be elective county offices with four-year terms; however, any such offices may be eliminated by a county-wide referendum or by the adoption of a home rule charter.

A referendum on elimination of county offices would be mandatory in each county at the first state-wide election held not less than two years after the effective date of the constitution, and at least every 10 years thereafter.

The article on political subdivisions would provide opportunity for cities and counties to adapt their governments to local needs, but always subject to vote by the local people.

ARTICLE VIII, EDUCATION, calls on the Legislature to provide a uniform system of free public education. The convention was concerned about improving and equalizing opportunities for education.

A **State Board of Public Education** is created to supervise elementary and secondary education in the state. This board is to consist of nine members serving staggered seven-year terms, and they are appointed by the Governor and confirmed by the Senate.

The **Board of Higher Education** is increased from the present seven members to nine members. This board is charged with operating and controlling the state institutions of higher education, as at present.

Special and vocational education is to be provided by the Legislature. It is recognized that vocational education might span age categories covered by both elementary-secondary and higher education and, therefore, it is not placed under the control of either of the boards.

ARTICLE IX, TRUST LANDS, provides for no major changes in the constitution. This new article on trust lands allows for elimination of much detail under the present constitution governing the control of the appraisal, sale, rental, and disposal of school, university and other public lands. It provides for more legislative jurisdiction on these matters.

Income from these trust lands will remain in trust funds, and the interest from these funds is to be used for designated schools and institutions as provided by law.

Location of state institutions is not specified in the proposed constitution, with the exception that the capitol is permanently located in Bismarck. The location of state institutions is to be left to the discretion of the Legislative Assembly within the provisions of the Enabling Act. In the present constitution, an article on Public Institutions specifies the location of most of the state institutions.

ARTICLE X, FINANCE AND TAXATION, was designed to provide a structure upon which the Legislative Assembly could continue to build an improved tax system. Language was updated, some legislative type items were deleted, and changes were made.

State imposed property tax provisions were changed. The new section provides that the Legislative Assembly by a two-thirds vote of each house may provide for an annual property tax, and then for only two years at a time. It was the intention of the convention that it would only be used in extreme emergencies. The present constitution allows for not more than a four-mill levy on all taxable property in the state, levied by the State Board of Equalization.

A change in the provision for **property tax exemptions** states that the Legislative Assembly may by law define and exempt any or all classes of property. This section continues the exemptions for property used exclusively for school, religious, cemetery, charitable, or other public purposes.

Highway revenue from fuel taxes and vehicle registration and license taxes continues to be dedicated for construction, reconstruction, repair, operation, and maintenance of public highways. However, additional uses of these funds would include enforcement of highway safety, driver education and tourist promotion.

Provisions for state debt were changed in the proposed constitution. The present constitution provides for specific dollar debt limits under conditions outlined. The state debt section of the revised constitution basically provides that the state can issue debt obligations and guarantee their payment. These obligations are primarily payable from sources other than property tax. It also provides, however, that the full faith and credit and taxing powers of the state can be pledged for the payment of these obligations if the primary source of revenue is not sufficient. However, guarantee of obligations which pledge full faith and credit and taxing power would require a three-fifths vote of the members elected to each house of the Legislative Assembly.

Local government debt provisions were also changed. The political subdivisions' governing body can incur indebtedness up to 8 percent of the assessed value of the taxable property. Currently, the limit is 5 percent. By a 60 percent vote of the electors voting, the debt limit can be increased an additional 7 percent of the assessed value. The reason for the increase from 5 to 8 percent is to compensate for the loss incurred in the bonding base when the personal property tax was repealed.

Provisions for **government in business** are changed. The state and its political subdivisions can enter into any new business, industry, or enterprise, but only for the purpose

majority of those voting thereon. In granting home rule powers to cities, the legislative assembly shall not be restricted by city debt limitations contained in this constitution."

VICE PRESIDENT SAUGSTAD: Any discussion?

Hearing none, we shall move to Section 7.

CHIEF CLERK GILBREATH: "Section 7. OPTIONAL FORMS.

"The legislative assembly shall also provide by law for optional forms of government for counties, but no optional form of government shall become operative in any county until submitted to the electors thereof at a special or general election, and approved by a majority of those voting thereon.

"Until one of the optional forms of county government is adopted by any county, the fiscal affairs of the county shall be transacted by a board of county commissioners as provided by law."

VICE PRESIDENT SAUGSTAD: Is there any discussion?

Hearing none, we shall move to Section 8.

CHIEF CLERK GILBREATH: "Section 8. COUNTY SERVICES.

"Each county shall provide for law enforcement, administrative and fiscal services, recording and registration services, educational services and any other governmental services or functions as may be provided by law.

"All elective county offices or any combinations thereof as they now exist shall continue to be elective county offices with four-year terms; however, any such county office or offices may be eliminated either by adoption of a home rule charter, or at a countywide referendum by a majority of the electors voting on the question.

"A referendum on elimination of county offices shall be provided for by law, and shall be mandatory in each county at the first statewide election held not less than two years after the effective date of this constitution and at least every ten years thereafter.

"Whenever an office is eliminated, the county governing body may provide for any service rendered by that office."

VICE PRESIDENT SAUGSTAD: Is there any discussion?

DELEGATE LONGMIRE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Longmire.

DELEGATE LONGMIRE: Another big amendment at the desk.

CHIEF CLERK GILBREATH: Proposed amendment to Redraft Proposal 5-7.

On page 3, line 3, delete the word "body" and insert in lieu thereof the word "board".

DELEGATE McELROY: Second.

VICE PRESIDENT SAUGSTAD: Is there a second?

DELEGATE McELROY: Second.

VICE PRESIDENT SAUGSTAD: Seconded by Delegate McElroy.

Delegate Longmire.

DELEGATE LONGMIRE: The only reason, Mr. President, for putting that in is uniformity. We refer to it in a later section as a "board," so we felt we should refer to it in this section as a "board".

VICE PRESIDENT SAUGSTAD: Is there any further discussion?

Hearing none, we are on the motion of Delegate Longmire that on page 3, line 3, delete the word "body" and insert the word "board" on Proposal 5-7, Section 8.

I will now put the question. All in favor signify by saying "aye;" opposed "nay." The "ayes" have it, and the motion carried and the amendment is adopted.

Next we shall have Section 9 read.

CHIEF CLERK GILBREATH: "Section 9. REFERENDUM.

"Questions on the form of government to be adopted by any county or on the elimination of county offices may be placed upon a referendum ballot either by a two-thirds vote of the members of the county governing board or by petition of

electors of the county equal in number to fifteen percent of the votes cast in the county for the office of governor at the preceding general election, or as otherwise provided by law."

VICE PRESIDENT SAUGSTAD: Delegate Longmire.

DELEGATE LONGMIRE: Mr. President:

We — the committee has an amendment here to offer on this. You may vote it down. But we felt there should be something in the record as to the intent of this particular section. We ask that it be read.

VICE PRESIDENT SAUGSTAD: The Clerk will read the proposed amendment.

CHIEF CLERK GILBREATH: Proposed amendment to Redraft Proposal 5-7.

On page 3, line 10, after the word "equal" insert the following words: "or greater."

DELEGATE LONGMIRE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Longmire.

DELEGATE LONGMIRE: We understood that the Style and Drafting Committee has used similar wording in several other sections that they did in this amendment by leaving out the word "greater". In other words, they are saying that the number of signatures will be "equal". Now we thought if you wanted to look at that technically fifteen percent and one would not be "equal to" literally speaking. I think the intent of the Style and Drafting was to say that it was "equal" if it was "equal to" in fact, "or greater". We offered this so that we would have something in the record to show the intent of the Style and Drafting Committee. We were told that they considered "equal" in their language to mean "equal to" or "greater". So if that is the intent of the Style and Drafting, then chances are we could vote down this amendment. But if it isn't, then we ought to know and put it in.

DELEGATE BAKER: Mr. President.

VICE PRESIDENT SAUGSTAD: One moment, please.

For the record, I would like to have a second to Delegate Longmire's motion. Delegate McElroy seconded Delegate Longmire's proposed amendment.

Now Delegate Baker.

DELEGATE BAKER: Mr. President:

The way I read this along with Section 9 of 1-12, it seems to me that unless we make some kind of an amendment at this time, then the Style and Drafting Committee has changed the substance of the — of the proposal as it passed when it was in proposal form. The way that reads in 1-2 on line 16, page 3 of the pink one, "equal to at least fifteen percent of the total number", which is approximately the same as the present language in the Constitution and the section that corresponds here. And it has been interpreted by the Legislature to leave some leeway so that requirements for these petitions have been at one time or another as high as forty percent. Now that has nothing to do with this particular thing. But when we were arguing it at the time this was one of the points that was being argued. And the majority of this Convention, as I remember, voted for the language "equal to at least fifteen percent". And I think if we were going to be proper about it, that's the way it ought to be, without exact language in this redraft.

DELEGATE DOBSON: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Dobson.

DELEGATE DOBSON: Mr. President:

As far as I know this is the only amendment proposed by a substantive committee which the Style and Drafting Committee objects to. And I agree with Delegate Longmire it is good to spread the intent upon the record here.

Now in the Redraft Proposal on initiative and referendum and recall you will notice that we used the language of "equal in number". And that is sufficient. We do not mean that you have to turn in the precise number which would be equal in number to fifteen percent. If we meant that we would say "equal in number, but not greater than". Let's say that to get fifteen percent you need 12,000 signatures, but you turn in 15,000. Well, it's no problem there because within the fifteen thousand you do have a number equal in number to the requisite number which would be 12,000, if that's clear.

1972 CONSTITUTIONAL CONVENTION RECOMMENDATIONS
INCORPORATED INTO CONSTITUTION

This memorandum summarizes amendments to the Constitution of North Dakota which incorporate provisions of the proposed 1972 constitution disapproved at a special election on April 28, 1972. The amendments are compared with both the recommendations of the North Dakota Constitutional Convention of 1972 and the Constitution of North Dakota as it existed prior to the Constitutional Convention.

SIZE OF TRIAL JURIES

In September 1974 a constitutional measure was approved by North Dakota voters relating to the size of trial juries and the number of jurors required to render a decision in civil and criminal cases.

The Constitution of North Dakota, prior to the Constitutional Convention of 1972, required that the right of trial by jury be secured to all, and remain inviolate, "but a jury in civil cases, in courts not of record may consist of less than twelve men, as may be prescribed by law." N.D. Const., Art. I, Section 7 (renumbered as Art. I, Section 13 in 1981).

The final draft of the proposed 1972 constitution included a trial by jury provision which reads:

The right of trial by jury shall be secured to all and shall remain inviolate. A person accused of a crime for which he may be confined for a period of more than one year has the right of trial by a jury of twelve. The legislative assembly may determine the size of the jury for all other cases. Proposed 1972 Constitution, Art. I, Section 7.

The trial by jury provision of the 1972 constitution is embodied in the Constitution of North Dakota through an amendment to Article I, Section 13, approved at the September 1972 primary election. However, that amendment did not go as far as the 1972 proposal, for although the Legislative Assembly may determine the size of the jury for all other cases, a "jury must consist of at least six members." The amendment also required that all jury verdicts be unanimous.

OPEN MEETINGS

At the September 1974 primary election a constitutional measure was approved relating to open meetings of the Legislative Assembly

Constitutions - State Revisions, Dakota

district could petition for the recall of any elective, congressional, state, county, judicial, or legislative officer by filing a petition demanding the recall of such officer. Such a petition required the signatures of at least 30 percent of the qualified electors who voted at the preceding election for the office of Governor in the state, county, or district from which the officer was to be recalled. A special election would be held not less than 40 or more than 45 days from the filing of such a petition.

The language of Article III tracks closely the language of alternate proposition 2A (Article III) of the 1972 constitution. Article III provides for the proposal of a constitutional amendment by initiative petition, as recommended by the Constitutional Convention (alternate proposition 2A), and requires petition signatures from two percent of the state's population at the last federal decennial census for the referendum and the initiative, and signatures from four percent of the state's population for a constitutional amendment by initiative petition.

Further, Article III provides, as did Article III of the 1972 constitution, that any elected official of the state of any county or of any legislative or county commissioner district is subject to recall by petition of electors equal in number to 25 percent of those who voted at the preceding general election for the office of Governor in the state, county, or district in which the official is to be recalled. Such a petition is filed with the official with whom a petition for nomination to the office in question is filed, who then is required to call a special election if he finds the petition valid and sufficient. Under each article no elector could remove his name from a recall petition and the name of the official to be recalled must be placed on the ballot unless he resigns within 10 days after the filing of the petition.

POLITICAL SUBDIVISION ARTICLE

At the June 1982 primary election a constitutional measure was approved creating a new political subdivision article to the Constitution of North Dakota to provide for home rule to county and city government, and to allow a political subdivision, by mutual agreement, to transfer to the county in which it is located any of its powers or functions as provided by law or home rule charter, and to revoke the transfer. The new Article VII was based primarily on, and is virtually identical to, the political subdivisions article (Article VII) of the 1972 constitution.

COMPENSATION OF ELECTED OFFICIALS

At the June 1982 primary election a constitutional measure was approved creating a new section of the Constitution of North

to compensation and the ballot form were referred. The referral was approved and the election law revision defeated at the 1980 general election. As a result conflicting sections pertaining to the compensation for election officials and to the ballot form now exist. This bill resolves the conflict by repealing the old section pertaining to the compensation of election officials and the new section pertaining to the rotating ballot form. The repeal of the new rotating ballot form was made on the basis of an Attorney General's opinion to Representative Lari Strand on August 15, 1979. [On October 22, 1980, subsequent to the final meeting of the Judiciary Committee, the United States Court of Appeals for the Eighth Circuit held in *McLaughlin v. Meier* that Section 16-11-06, the rotating ballot form statute, is unconstitutional.]

Technical Corrections Act

The committee recommends a bill which makes technical corrections to the North Dakota Century Code. This bill contains 63 sections which eliminate obsolete name and statutory references. This draft should complete the major update of the North Dakota Century Code begun last legislative session. Only minor corrections not made or only passed in future legislative sessions should be required in the future.

Grain Elevator Licensing and Bonding

The committee was asked by the Public Service Commission to consider a bill draft to change the expiration date of public warehouse licenses from August 1 to July 31 of each year and to provide continuous bonding of public warehouses as part of its statutory revision responsibilities. The PSC received many objections to the amendments and it withdrew its request that the committee consider the draft. The committee makes no recommendation concerning grain elevator licensing and bonding.

CONSTITUTIONAL REVISION

Political Subdivision Article

The committee recommends a concurrent resolution calling for a new Political Subdivisions Article to the State Constitution. The concurrent resolution calls for the repeal of the current constitutional provisions relating to municipal corporations, the election of the superintendent of schools for each county, and county and township organizations.

Major proposals which would result upon the adoption of the article would include:

1. A requirement that the legislative Assembly provide for the extension of home rule to county government.
2. A provision that a political subdivision could petition to revoke the transfer of the county in which it is located any of its powers or functions as provided by law or home rule charter.
3. A provision that county offices would no longer have constitutional status. The proposal retains the current elective county officials, but provides that any elected county office except that of county commissioner could be eliminated by adoption of a home rule charter, or an optional form of county government, or at a countywide referendum by a majority of the electors voting on the question. An elective office so eliminated may be reinstated at any time at countywide election by a two-thirds majority of the electors voting on the question. Questions on the form of government or elimination or reinstatement of elective county offices can be placed on the ballot by petition of the electors of the county equal to 25

percent of the votes cast in the county for the office of Governor at the preceding gubernatorial election.

Board of County Commissioners

The committee recommends a concurrent resolution calling for a constitutional amendment which allows any county with a population greater than 15,000 to increase the number of county commissioners to seven or nine. This draft would only raise the question on the ballot in the general election in 1982 if the proposed Political Subdivisions Article is not passed in the primary election in that year. The proposed Political Subdivisions Article allows the size of a board of county commissioners to be provided by law.

Leasing of State Lands

The committee recommends a concurrent resolution calling for a constitutional amendment to Section 8, Article IX of the Constitution (formerly Section 161), relating to the leasing of lands granted to the state for educational and charitable purposes. That section presently contains a five-year lease limitation and restricts the purposes for which the land may be leased. The draft, which would be effective July 1, 1983, provides that such land may be leased for purposes, time periods, and upon such terms and conditions as the legislative Assembly may provide. Mr. Richard Lommen, Commissioner, State Land and Department requested the amendment as an aid to good land management. He explained that the Land Department would make a request to the 1983 Legislative Assembly to change the necessary statutes if this amendment is approved.

Obsolete Constitutional References

The committee is recommending four concurrent resolutions which call for amendments to the Constitution to deal with obsolete references:

1. A resolution calling for an amendment to Section 7, Article IX, of the Constitution (formerly Section 160) and Section 16, Article IX, of the Constitution (formerly Section 11) to delete references to Section 159 which has been repealed.
2. A resolution which repeals Section 13, Article IX, of the Constitution (formerly Section 216) to eliminate obsolete references relating to the School for the Blind. This resolution would also transfer the power to determine the location of the School for the Blind from the Board of Administration to the Legislative Assembly.
3. A concurrent resolution to amend Section 9, Article X, of the Constitution (formerly Article 24) to remove a reference to the four-mill state tax which can no longer be levied due to approval by the voters of an amendment to Section 174 of the Constitution.
4. A concurrent resolution to repeal Section 12.1, Article VI, of the Constitution (formerly Article 94). This section relates to retirement, discipline, and removal of the Supreme Court and district court judges. The provisions of this section are duplicative of provisions found in Section 12 of Article VI of the Constitution.

Special Sessions

The committee recommends a concurrent resolution calling for a constitutional amendment relating to special sessions of the legislative Assembly and powers of the Governor. Under the proposal the Legislative Assembly would convene a special session upon the call of the Governor or upon the written request of two-thirds of the

JOINT CONSTITUTIONAL REVISION COMMITTEE
March 6, 1981

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SCR 4002

SEN. HOLMBERG presented the amendments as drawn up for him by Council. REP. KRETSCHMAR moved DO PASS AMENDMENTS, seconded by SEN. LASHKOWITZ. REP. CONMY asked why we are leaving the last sentence in the Statement of Intent. It makes it look as though it covers a different subject matter than what the new article covers. A Statement of Intent is intended to be a narratable, understandable, readable description of our purpose. He would like the last sentence deleted. SEN. HOLMBERG had no objection to that. REP. KRETSCHMAR moved removal of the last sentence of the Statement of Intent as part of his movement for the amendments. SEN. LASHKOWITZ brought up line 21 on page 3 they have that traditional two thirds majority. Do you want that written into a constitutional amendment? A further amendment will be proposed.

REP. KRETSCHMAR'S motion carried by voice vote.

REP. SWIONTEK noted at this time that this resolution will be on the primary ballot.

REP. KRETSCHMAR moved further amendments, to delete lines 9 through 21 on page 3 and insert in lieu thereof "Any elective county office shall be for a term of four years". Seconded by SEN. WENSTROM. The intent for this amendment is to provide provision of this resolution which would specify what county government would provide the residents of the county. That would be the first paragraph, line 5 through 8. He thinks county officials should be elected for four years. This would remove from the constitution the requirement for elected county officials. That would remain in the statute as it is now.

REP. CONMY stated the purpose of the amendment is to allow a county, should it desire to vote it in, to adopt home rule charter, and to provide in that home rule charter, anything they want as to those county officials, combination, elimination, appointment, or election. The intent of the amendment is to make it even more flexible than the present constitution.

REP. KRETSCHMAR'S motion for further amendments carried by voice vote.

REP. CONMY suggested the two co-chairmen form a committee to decide which of the resolutions will be in the primary and which in the general elections. Some are geared more for one election than the other. It has been done that way in the past and the committee agreed.

REP. KRETSCHMAR moved a new Statement of Intent, seconded by REP. CONMY, motion carried by voice vote.

REP. KRETSCHMAR moved DO PASS AS AMENDED, seconded by REP. CONMY. The roll call vote: 8 aye, 1 nay, 1 absent. SEN. LASHKOWITZ and REP. KRETSCHMAR will carry the resolution in their respective houses.

article to that prescribed by
orderliness and an effective
the terms of this article.

94,166 to 153,927

eral election ballot.

CONSTITUTIONAL AMENDMENTS, PROPOSED

CHAPTER 665

SENATE CONCURRENT RESOLUTION NO. 4002
(Legislative Council)
(Interim Judiciary "C" Committee)

POLITICAL SUBDIVISION ARTICLE

A concurrent resolution to create a new article VII to the Constitution of the State of North Dakota, relating to political subdivisions; and to repeal the present article VII of the Constitution of the State of North Dakota, relating to municipal corporations, the election of a superintendent of schools for each county, and county and township organization.

STATEMENT OF INTENT

This amendment creates a new article on political subdivisions to provide for home rule to county and city government. A political subdivision could, by mutual agreement, transfer functions to the county in which it is located, and could revoke the transfer. County functions, rather than officers, would be stated in the Constitution.

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

That the following proposed creation of a new article VII and the repeal of the present article VII of the Constitution of the State of North Dakota are agreed to and shall be submitted to the qualified electors of the State of North Dakota at the primary election to be held in 1982, in accordance with the provisions of section 45 of article IV of the Constitution of the State of North Dakota.

SECTION 1. A new article VII to the Constitution of the State of North Dakota is hereby created to read as follows:

ARTICLE VII POLITICAL SUBDIVISIONS

Section 1. The purpose of this article is to provide for maximum local self-government by all political subdivisions with a minimum duplication of functions.

Section 2. The legislative assembly shall provide by law for the establishment and the government of all political subdivisions. Each political subdivision shall have and exercise such powers as provided by law.

Section 3. The several counties of the state of North Dakota as they now exist are hereby declared to be counties of the state of North Dakota.

Section 4. The legislative assembly shall provide by law for relocating county seats within counties, but it shall have no power to remove the county seat of any county.

Section 5. Methods and standards by which all or any portion of a county or counties may be annexed, merged, consolidated, reclassified, or dissolved shall be as provided by law. No portion of any county or counties shall be annexed, merged, consolidated, or dissolved unless a majority of the electors of each affected county voting on the question so approve.

Section 6. The legislative assembly shall provide by law for the establishment and exercise of home rule in counties and cities. No home rule charter shall become operative in any county or city until submitted to the electors thereof and approved by a majority of those voting thereon. In granting home rule powers to cities, the legislative assembly shall not be restricted by city debt limitations contained in this constitution.

Section 7. The legislative assembly shall also provide by law for optional forms of government for counties, but no optional form of government shall become operative in any county until submitted to the electors thereof at a special or general election, and approved by a majority of those voting thereon.

Until one of the optional forms of county government is adopted by any county, the fiscal and administrative affairs of the county shall be governed by a board of county commissioners as provided by law.

Section 8. Each county shall provide for law enforcement, administrative and fiscal services, recording and registration services, educational services, and any other governmental services or functions as may be provided by law. Any elective county office shall be for a term of four years.

Section 9. Questions of the form of government to be adopted by any county or on the elimination or reinstatement of elective county offices may be placed upon the ballot by petition of electors of the county equal in number to twenty-five percent of the votes cast in the county for the office of governor at the preceding gubernatorial election.

Section 10. Agreements, including those for cooperative or joint administration of any powers or functions, may be made by any political subdivision with any other political subdivision, with the state, or with the United States, unless otherwise provided by law or home rule charter. A political subdivision may by mutual agreement transfer to the county in which it is located any of its powers or functions as provided by law or home rule charter, and may in like manner revoke the transfer.

Section 11. The power of the governing board of a city to franchise the construction and operation of any public utility or similar service within the city shall not be abridged by the legislative assembly.

SECTION 2. REPEAL. Article VII of the Constitution of the State of North Dakota is hereby repealed.

Filed March 27, 1981

HOUSE CONCL.
(Representatives)

LEGISLATIVE

A concurrent resolution
Constitution of the
legislative assembly
Constitution of the
legislative assembly

ST
This amendment creates a
for a legislative assembly
representatives and estate
allowable legislators in
legislators, legislative
based on one-man one-vote
restrictions upon legisla

The amendment also
Constitution of the State
changes will take effect

BE IT RESOLVED BY THE HOUSE
NORTH DAKOTA, THE STATE

That the following
the repeal of the present
State of North Dakota
qualified electors of the
election, in accordance
present article IV of the

SECTION 1. A new
of North Dakota is hereby

L
Section 1. The
forty nor more than
representatives shall be

11-10.2-01. County officer combination, separation, and redesignation options.

1. A county may, without requiring local citizens to permit county home rule powers:
 - a. Combine any elective county office with one or more functionally related elective or appointive county offices;
 - b. Separate an elective county office into two or more elective or appointive offices; or
 - c. Redesignate an elective county office as an appointive office or an appointive office as an elective office.
2. A combination or separation of any elected or appointed county office may include the reassignment of any statutory function of the office or service provided by that office, but may not diminish the general responsibility of county government to perform any function or provide any service that is required by law to be performed by county government.
3. This option is available in addition to, or in lieu of, other constitutional structural options authorized under this title, unless a specific mandate for combining or separating particular county offices is otherwise provided by law. The office of county judge is excluded from application of this chapter.

Source: S.L. 1993, ch. 401, § 3.

11-10.2-02. Methods of accomplishing office combination, separation, or redesignation of elective or appointive status. The combination or separation of elective county offices, or redesignation of a county office as elective or appointive, may be accomplished:

1. By resolution of the board of county commissioners, subject to the right of referendum in the county electors. The board of county commissioners may by a majority vote adopt a preliminary resolution incorporating a proposed plan for combining or separating county offices, or redesignating a county office as elective or appointive. The board shall cause the complete text of the proposed plan to be published in the official newspaper of the county, at least once during two different weeks within the thirty-day period immediately following the adoption of the preliminary resolution. The board of county commissioners shall hold public hearings and community meetings.
2. By initiative of county electors. A petition signed by ten percent or more of the total number of qualified electors of the county voting for governor at the most recent gubernatorial election may be submitted to the board of county commissioners, calling upon the board to submit to the electors the question of adopting a plan described in, or annexed to, the petition. The county auditor, or the functional equivalent of that officer, shall examine the petition and ascertain from the voter list whether or not the petition contains the signatures of a sufficient number of qualified electors. Any insufficiencies may be cured by the filing of an amended petition within thirty days after the county auditor declares the insufficiency. When a plan for the combination or separation of county offices or redesignation of county offices as elective or appointive is proposed pursuant to this subsection, the board of county commissioners shall submit the proposed plan to a vote of the qualified electors of the county at a primary or general election not less than sixty days nor more than one year after the date specified in the petition, after determining that the