

2009 SENATE JUDICIARY

SB 2275

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2275

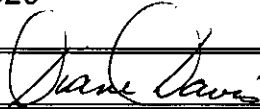
Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: 1/27/09

Recorder Job Number: 8020

Committee Clerk Signature



Minutes: **Senator D. Nething, Chairman**

Relates to prohibiting elected officials from appearing in public service announcements and the type size of the names of public officials on public documents.

Senator Tracy Potter – District 35 – Introduces the bill – He said this bill could fit in the pet peeve category. This bill prevents elected government officials from creating public service ads for the purpose of promoting their own incumbency. It simply removes them from the public service ad that their agency produces. Doesn't mean public service ads go away. If the tax commissioner believes people should file their taxes electronically he can create an ad that encourages people to do that, he does not need to appear in it. The same would be true of other state officials. He explains section two of the bill which deals with the font size of the names of officials. He says we should go back to having the name of the official smaller than the name of the office. He goes back to section one and says it is the more critical and controversial part of this. He offers this simply to reduce the temptation to use government money to aid an incumbent. The one argument he has heard in opposition to this that the public official feel they need to be the person that stands and recommends to us file our taxes, or attend marketplace, or take advantage of the donut in health insurance. His contention is, he has been doing marketing for ND for over 20 years and he has never appeared in an ad

because they are not effective. It is marketing malpractice to do talking head ads, unless you can really add some credibility. President Obama may be able to do that, maybe even Gov. Hoeven could do that. For the most part, you don't add credibility to this by your appearance.

Instead you have sucked the creativity out of your advertising. He said if we are using public dollars for advertising it should be the most effective advertising that we can get. In order to do that you need to remove the temptation of the agency that is putting the ad forward. He does not blame a single state official for the way they have conducted themselves in this regard. He would do exactly the same thing if the temptation were there.

Senator Olafson – He questions Senator Potter about his testimony. He said in Potter's testimony the intent of the bill was to prohibit elected officials from promoting their own incumbency, but he can't find any wording in the bill that says anything about prohibiting them from promoting their own incumbency. Says, your presumption is they are doing the psa to promote their own incumbency. How do we determine that is what their purpose is and why isn't it addressed in the bill.

Senator Potter – Replies that is the point of the bill, these are difficult determinations to make. Some suggested to him language that says you can't appear in a psa 3 months or 6 months before you get elected, because that is when the temptation is the greatest. He says the temptation exists all the time. The long term promotion, you have a 4 year term and you start running for election immediately and the more name and face identification you can build the better the chances are that the voters will respond. He does not want a political official, an elected official make the determination as to whether or not it is good for his agency or is good for them or both.

Senator Schneider – Asked if he knew what other states are doing.

Senator Pottter – Said he should have done that type of research but since this is a matter of opinion, he doesn't know.

Jack McDonald – ND Newspaper Association and Broadcaster Association – Opposes this bill.

He says that part of their business is advertising and they have always taken the position that they oppose legislation that seems to inhibit or prohibit of advertising of legal products. In this case this bill puts the brakes on what is called public service advertising. PSA are not a major part of advertising but an important part. They offer special rates to encourage this type of advertising because it gets the word out to the public and it is advertising for them. It is more attention getting if the head of an agency appears in an ad rather than someone else. He thinks this is one of those bills that are a solution looking for a problem. He asks for a do not pass.

Senator Olafson – Asks Mr. McDonald in his opinion doesn't this somewhat disparage the ability of the public to be smart enough to figure out the difference between the content of a psa and the candidacy of the elected official.

McDonald – Said he would agree with that. They believe the public can discern differences in advertising.

Senator Schneider – Ask if he knows what other states are doing.

McDonald – Said he has never heard of a law like this. The FCC does have what they call equal time rules, these come up 30 and 60 days before elections. If a candidate comes up in an ad in that time, primary or general, the other candidate has the right to demand equal time.

Senator Nelson – Asked about what his opinion is on section two.

McDonald – The definition of a public record or document was one produced with May public funds by a public entity. That is what this would approach. He didn't talk about that because it isn't really a concern of theirs. They do not have any position on section two.

Rod Backman – Chairman for Census Committee for the Governor – He mentions he is working with the US Census Bureau extensively getting prepared for the 2010 census count. One of the things they are encouraged to do is public service announcements by major elected officials. They concerned about the lack of count they have had in the past especially on the reservations. They would like the tribal leader to be involved in the psa's. This is an issue they are very concerned about getting the count.

Close the hearing on 2275

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2275

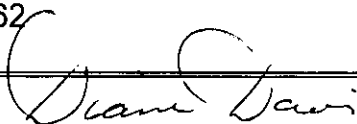
Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: 2/16/09

Recorder Job Number: 9562

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

Committee Work

Committee discusses amendments Senator Nelson brought in. She explains them line by line.

Senator Olafson – Wonders about in times of disaster when an elected official must go on.

Senator Nelson – Said those times are not paid announcements. They are news announcements.

Senator Schneider – Brought up the census taking as a legitimate concern but it is taken care of. He asks if this applies to the Tribes.

Senator Olafson – Looks it up but doesn't find a place addressing it.

Amendment changes to 90 days before election.

Senator Schneider – Says his amendment would push it back to 120 days.

Senator Nelson – She chose 90 days because most people don't get into it before Labor Day.

Senator Nelson motions do pass on the amendment

Senator Fiebiger seconds the amendment

Senator Schneider moves his amendment, there is discussion and he withdraws it.

Senator Nelson motions do pass as amended

Senator Fiebiger seconds

Vote – 3 yes, 3 no

Senator Lyson moves without committee recommendation

Senator Schneider seconds

Vote – 6-0

Senator Nelson will carry

PROPOSED AMENDMENTS TO SENATE BILL NO. 2275

Page 1, line 1, replace "two" with "a" and replace "sections" with "section"

Page 1, line 2, replace "prohibiting" with "restricting"

Page 1, line 3, replace "and the type size of the names of public officials on public documents;
and to" with a period

Page 1, remove line 4

Page 1, line 8, replace "**prohibited**" with "**restricted**"

Page 1, line 9, replace "An" with "During the ninety days immediately preceding a general
election at which an elected official's name is on the ballot, that"

Page 1, remove lines 14 through 21

Renumber accordingly

Date: 2/14
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES 2275
BILL/RESOLUTION NO.

Senate JUDICIARY Committee

Check here for Conference Committee

Amendment
90225,0304

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By Sen. Nelson Seconded By Sen. Fiebiger

Senators	Yes	No	Senators	Yes	No
Sen. Dave Nething - Chairman	X		Sen. Tom Fiebiger	X	
Sen. Curtis Olafson - V. Chair.	X		Sen. Carolyn Nelson	X	
Sen. Stanley W. Lyson	X		Sen. Mac Schneider	X	

Total (Yes) 6 (N) 0

Absent _____

Floor Assignment _____

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

Amendment

Date: 2/16/09
Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES 2275
BILL/RESOLUTION NO.

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By Sen Nelson Seconded By Sen Fiebiger

Senators	Yes	No	Senators	Yes	No
Sen. Dave Nething - Chairman		X	Sen. Tom Fiebiger	X	
Sen. Curtis Olafson - V. Chair.		X	Sen. Carolyn Nelson	X	
Sen. Stanley W. Lyson		X	Sen. Mac Schneider	X	

Total (Yes) 3 (N) 3

Absent _____

Floor Assignment _____

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

Date: 2/14/09
Roll Call Vote #: 3

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES 2275
BILL/RESOLUTION NO.

Senate JUDICIARY Committee

Check here for Conference Committee

*amended
moves what
committee recommendation*

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By Lyson Seconded By Schneider

Senators	Yes	No	Senators	Yes	No
Sen. Dave Nething - Chairman	X		Sen. Tom Fiebiger	X	
Sen. Curtis Olafson - V. Chair.	X		Sen. Carolyn Nelson	X	
Sen. Stanley W. Lyson	X		Sen. Mac Schneider	X	

Total (Yes) 6 (N) 0

Absent _____

Floor Assignment Sen Nelson

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

REPORT OF STANDING COMMITTEE

SB 2275: Judiciary Committee (Sen. Nething, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **BE PLACED ON THE CALENDAR WITHOUT RECOMMENDATION** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2275 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "two" with "a" and replace "sections" with "section"

Page 1, line 2, replace "prohibiting" with "restricting"

Page 1, line 3, replace "and the type size of the names of public officials on public documents; and to" with a period

Page 1, remove line 4

Page 1, line 8, replace "**prohibited**" with "**restricted**"

Page 1, line 9, replace "An" with "During the ninety days immediately preceding a general election at which an elected official's name is on the ballot, that"

Page 1, remove lines 14 through 21

Renumber accordingly

2009 TESTIMONY

SB 2275

PROPOSED AMENDMENTS TO SENATE BILL NO. 2275

Page 1, line 2, remove "prohibiting" and remove "from"

Page 1, line 3, replace "; and to" with a period

Page 1, remove line 4

Page 1, line 8, replace "**prohibited from appearing**" with "**may appear**" and replace "or" with an underscored boldfaced period

Page 1, replace line 9 with:

"1. An elected official may use or allow that individual's"

Page 1, after line 13, insert:

"2. An elected official who uses or allows that individual's name, image, or voice to be used in a public service announcement or in an advertisement or other promotional message created or purchased using public funds shall submit to the secretary of state a report that lists the fair market value of the public service announcement or the actual expenses paid for the advertisement or message. The report must be on forms prescribed by the secretary of state and must be submitted at the same time any campaign finance report is due.

"3. For the purposes of this section, an "elected official" includes any individual who is elected to a federal office from this state, a statewide office, a legislative office, or a political subdivision office."

Page 1, line 16, replace "**prohibited from placing**" with "**may place**" and remove "**In large type**"

Page 1, line 17, remove "**size - Penalty**" and remove "not"

Page 1, line 18, after "funds" insert an underscored period

Page 1, remove lines 19 through 21

Renumber accordingly