2019 SENATE POLITICAL SUBDIVISIONS

SB 2311

2019 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee
Red River Room, State Capitol

SB2311
1/25/2019
Job # 31475

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature Mary Jo Wocken

Explanation or reason for introduction of bill/resolution:

Relays to recalls of elected officials of political subdivisions

Minutes:

Written attachment#1 Senator Marcellais Written attachment #2 Stephanie Dassinger p.1-3

Chairman Burckhard opened the hearing for SB2311. All senators are present.

Senator Marcellais: (1:07-1:51) District 9. He introduced SB2311. **Written testimony #1**.

Senator Anderson: In my township, there is only maybe 20 electors. Some guy lives there and he's got 9 family members who live in the township. Of course if they don't like somebody or they want their own person on there, so it's possible that those 9 family members will sign the recall the petition and then this guy would be faced with election every 6 months during his term of how long the township officers are 4 year or whatever they are. Some school boards are four years or six years. So in that kind of situation, it could be kind of a harassment deal with they keep bringing that up. Can you see that as being a problem?

Senator Marcellais: Yes, I can. We have the same situation in our district. Everybody is related.

Senator Anderson: In a large deal where's there's a lot of electors it's probably not such a big deal because you have to get more signatures from other people. But in those kinds of situations you know I think that is why it's there because you don't want to harass somebody if they have an opportunity for a recall and they do it, then the guy serves out his term. Also, the last sentence there, if he's on the ballot within a year, because it costs the subdivision money to hold the election. So if he's going to be a held for election within the next year it seems like it's impractical to spend the money for a recall election when you might have to do the same thing again in six months. Can you answer that scenario what you think about those things?

Senator Marcellais: We have the same situation in our district where there are a lot of the constituents are related to the school board members in our political subdivision. The same situation happens, but I think the reason why this constituent put this in here, is if you have

somebody that is on a board, and is embezzling off of the funding, you can't recall them. So then the state is going to lose more money by the embezzlement going on.

Senator Judy Lee: Why wouldn't he be charged with a crime? It is supposed to be separate from the fact that he was township officer.

Senator Marcellais: First of all, you've got to do a forensic audit to find that embezzlement going on and that takes some time. It could take up to a year to get that forensic audit. It would continue on and on during that individual's term of office.

Senator Judy Lee: So why would one think that the results of the second recall would be significantly different than the results of the first recall election?

Senator Marcellais: I can't answer that question.

Senator Anderson: It is possible that during a term you know, that I can't imagine that they would need more than one recall but if he commits a crime during the time that he's in office. Still it seems to me like it is a little excessive to have subsequent recalls in a term.

Senator Judy Lee: Is this on tribal land or is this under the jurisdiction of the courts of the state and county and all in the state of North Dakota?

Senator Marcellais: It's on tribal land, but is a school district. So, its funded by the state. There is jurisdictions.

Senator Diane Larson: The bill that we passed earlier this year about any felony on a school board person, they then are not allowed to be on there. Is this going to be kind of a duplicative?

Senator Marcellais: Similar, but it's in the code. Like I say, you can't recall them. I have another bill in this section that is drug testing of school board members. I don't' know where that is going to go. I haven't got a hearing on it yet.

Senator Kannianen: The specific problem of embezzlement, now has there already been one recall election attempted against these individuals?

Senator Marcellais: No, there hasn't been. It was just identified the beginning of this year. So there is a process going on right now for a petition for recall and also another possible audit is going to happening, a forensic audit.

Vice Chair Anderson continued with the hearing.

Mr. Al Jaeger, Secretary of State: (9:29-) We are definitely opposed to this. We have a long history about recalls. The very first "how to" pamphlet that my office did was related to recalls. This was back in 1994-95). It was a very contentious school board recall. We need to give the people the same rule book. Everything is in law, so that was our first pamphlet. Since 2010 there have now, we don't if they all resolved in coming to the ballot. But over the years what we've done is we've asked you to refine the laws regarding recalls. One of those laws

is that the recall notice has to come to the Secretary of State or the petition and our only duty is to review the format. We don't want them to go out and do it wrong and have problems as they are contentious anyway. So the idea is they come in, so since 2010 I have reviewed 35 cities, 1 legislative, 22 schools, 1 township and 18 counties and yesterday I signed another one for a city. We don't make any judgment on the reasons, but some of them get very detailed about the situation. There is a very definite process in terms of them going through. A recall election is not an up and down vote. You have to have an opponent. The whole thing with the year is what kind has been hit, we've had people come in December to recall somebody that is going to be on the ballot in June. Not cost effective. Just to do a recall, the time element involved can stretch out to, 64day filing deadline up to 120 days depending on when that election is set. To recall somebody twice, during term of office that gets to be again a problem. Just so you are aware, in the House HR1201 we have worked with the League of Cities to define that year because there is questions about when does the year start, and all of that. So, we're still in the process of refining the recall. These recalls most of the time are in small towns, small school districts, to have the expense to the public of have to recall someone who is going to be on the ballot anyway. I don't know and he didn't mention what town it is and he said there is paperwork under way. In the last month I think I 've signed off on 2 or 3 recall petitions, the format. To completely wipe out the time line and to completely say you can't be recalled more than twice, members of the committee, we are strongly opposed to this bill. I hesitate to say this but I have 26 years of experience on this and we have worked very hard with the legislative process to refine it and this completely wipes all of that out.

Vice-Chair Anderson: You get involved in all of these then even the local school district where I turn my petition in to say I want to run for election.

Mr. Al Jaeger: No, not when you're a candidate. Only when your recalled.

Vice-Chair Anderson: But you get involved in all the recalls.

Mr. Al Jaeger: Yes, because I reviewed the petition for the correctness of the format.

Vice-Chair Anderson: You weren't here earlier but I talked about my township board.

Mr. Al Jaeger: Township elections are a little bit different because their set in law and there's not anything like absentee ballot or anything like that, so townships are a little bit of an animal all by itself. We've only had one situation where there was a township recall. Again, it's the schools in the cities.

Vice-Chair Anderson: Of course I just used the example of where there is 9 Anderson's in the township, they could recall him every six months.

Mr. Al Jaeger: This basically I have to strongly urge a do not pass because this undercuts everything that you as a legislative body have heard us testify about before and refined and all of a sudden this would just throw it out.

Ms. Stephanie Dassinger (16:22-18) Deputy Director North Dakota League of Cities. **Written testimony # 2 p1-3.**

Senator Judy Lee: This is related to some earlier testimony. One doesn't have to have a forensic interview completed before having visited with someone, whether it's the State's Attorney or somebody about the problem and you're the legal beagle, can you tell us what the process might be there please?

Ms. Stephanie Dassinger: In that situation, theirs is two things that happen. You go to a State's Attorney and they would have to find the evidence to be able to convict someone. There is also a process under the law where you can go to the Governor and the Governor can go through a hearing process and remove someone from office when those types of concerns arise. I think people go to the Governor when there is just not happy with the way people have voted on these elected boards and the governor's office won't do anything. For type of concern, it would surprise me if the governor didn't take that very seriously and consider that process.

Mr. Chaz Neff: I reside in McKenzie County, ND and from January 2017 to January 1, 2019 of this year I was the McKenzie County State's Attorney. I stand here as a private citizen strongly opposing this measure. If you are all familiar with McKenzie County we have had issues like come up in the last few years and I can tell you that this bill only creates more chaos and more funding and decrease in services. Example cited (20:27). To answer some of Senator Lee's questions, there are provisions if someone commits a crime or felony, there's removal by the governor, there's removal by judicial process, we unfortunately went through the removal provisions with the Governor in my county as well. So there are provisions in law although the recall really doesn't require any sort of reason to recall, removal does. But I just think that this bill is not good public policy for the state of North Dakota. I strongly urge a do not pass.

Senator Judy Lee: I am in a lot of meetings and I thought I that I kind of got how all this works. I am thinking about the school board because that was what Senator Marcellais was talking about as I recall. If somebody is embezzling there must be a way for the remainder of the school board if that's the way, the majority of the school board sees this going on to remove control of the funds from that individual. They can set a different process in place through which bills are paid or whatever with a second signature on something or whatever it is. Isn't that a local decision by a school board? I can't imagine if we were all on the school board and I was embezzling if you asked people around this table wouldn't figure out a way to keep my hands off the money.

Mr. Chaz Neff: I am sure there are provisions that would allow that especially if you can or a majority of the school board makes policy for that school board so they can make decisions as to if that person is going to be given money or better yet they are going to pay that person money. So I am sure there are processes to reign in any of that, that would be my best answer not knowing specifics. I know school boards have some special laws I never went into as State's attorney.

Senator Judy Lee: I can't imagine that there isn't some way in the interim until the determination of the crime hadn't been committed might interrupt that crime continuance so whether it's a school board or a county sheriff's office or county commissioner or township officer surely there must be a way if the majority of the decision makers in that political entity. I am firmly convinced this is happening and they reported it to the State's Attorney

they don't have to have this forensic audit done before they might be able to have some influence before all the money is gone. I am hearing you say that there is most likely a way for the remainder of the decision makers to be able to control that at least temporarily while that's going on.

Mr. Chaz Neff: I would agree with that and I would also point out that the removal by the Governor provisions, if you do present sufficient evidence and it doesn't have to be the whole evidence, the Governor can suspend an official until a full investigation given the gravity of the situation, so that's another provision that may have an effect there, until the removal proceedings are completed. So there are safeguards in the process.

Ms. Amy DeKok: In-house legal counsel for North Dakota School Boards Association, Opposition SB2311. A lot of comments are going to echo what's already been heard, but I thought I would address some of the issues that that Senator Lee brought up. You are correct Senator Lee, there are the board itself could take steps if there were concerns about embezzlement or improper use of funds. The reality is that a school board member should never have access solely to the funds of the district. They make the decisions on how the funds are spent, they set policy but they do not, they are not actually holders of the funds. So the reality of that if there is involved and its happening there are other employees of the district that have knowledge, are complacent or that participating in effect. Then the rest of the school board would have the ability to take action against those folks and to take steps to essential cease any improper activity. Now whether they do that, in individual situations it is questionable.

Vice-Chair Anderson: You understand this particular case we have at least three bills where they want the legislature to try and solve the problems of the local school board. Now, I don't know if you guys are involved or not, but we've already heard two of the bills in the Senate no, and I understand there is another one in the House. So obviously the school board itself isn't able in this case or willing to take any action. So they are dumping it on us to help them solve it for them.

Ms. Amy DeKok: Our position on some of these bills in particular SB2230 which was passed on the floor earlier this week. We're not opposed to that bill in particular. But you're correct, these bills seem to be targeting specific districts that are having issues in which getting back to the recall. The community members are not taking advantage of process. The processes are already in statue and in our experience it is some anecdotal. I don't have the numbers but anecdotally we have seen an uptake in the amount of recall elections for the school board members. In reality and practically speaking, it is a pretty easy process and in that is in large part due to the low turnout in many school district elections so reaching that 25% threshold is extremely easy. It takes a very small portion of the community to start the recall process. In our position, that seems to be process that is pretty easy to take advantage of and to get results from. Making it easier doesn't seem to be addressing an actual concern in our opinion.

Vice-Chair Anderson: Explain to us how the process works? I didn't realize the Secretary of State got involved in the school board recall, but otherwise who bears the cost and all that?

Ms. Amy DeKok: Secretary Jaeger is correct. There office approves the form of the petition. Once the form of the petition is approved then the petitioner will go out and collect the correct number of signatures and then once they reach the correct number of signatures they submit it to the school district business manager for certification. The business manager goes through and makes sure that the adequate number of signatures are present on the petition, that the folks that have signed the petition are electors that are able to vote in elections in the school district and if all of those requirements are met, then the recall election process is started. Other than that initial step of approving the form of the petition all the onerous after that rests on the school district. Then all the cost then as well. So, we have the same concerns echoed by many of the other folks in opposition today. This is likely going to increase significantly the cost to the school districts in terms of the amount of elections that they have to hold and again we've seen an uptake in recall petitions in elections so we do really think this is going to result in a significant amount of expense for school districts. Frankly, it will wreak havoc on the election process. These officials are put in place by the people that elect them and so that is also kind of a consideration as well to respect that choice as well.

Senator Diane Larson: The school boards bill was heard in my committee. It came out of my committee 5-1 do not pass even though it passed on the floor. In large part the concerns with that one is that we are trying to pass state law to address one school district. So, I wonder about the ramifications of other school districts if we pass this for one school district if there will be a ripple effect to the other school districts. Or if the only school district that will be affected by it will be that one. I don't know.

Vice-Chair Anderson: I doubt that because there are other school districts that wants to pick with people. This affect everybody across the state, not just school districts. In the other bill I know I understand people not wanting but the voters have to step up here and decide if the felony has nothing to do with running the school board. I don't see why. We are constantly trying to get people back into the work force and back into things and if we're not willing to reintegrate somebody you happen to have a felony for something in their history, why it makes it awful difficult for them to ever get back into things.

Senator Judy Lee: I am just thinking that we see increasing lack of civility and increasing numbers of people who want to be anonymous and shoot us on email. I don't know how many hundreds of emails I've gotten some of which have been nasty and some have been very polite about a couple of bills. I think it's part of the problem where people will not directly tell the person something is wrong. These kind of recall elections that are particularly in smaller communities divide the community terribly and if you're going to have recall elections one after the other, never mind the cost, you're just keeping the wound open all the time. What they ought to do is figure out a way to act like grown-ups but we have no examples being sent in that regard and sit down and talk about how we're going to resolve whatever those issues are. This isn't going to fix that. People are still going to snipe at one another and then they are going to say well my grandmother and your grandfather went to school together and they had fight back in '02, and so I don't like anything you ever do. That's the way it is.

Vice Chair Anderson: We have a small city right close to Bismarck where that's been going on for some time now and several recalls. He asked for neutral testimony. No one came forward.

Vice-Chairman Anderson closed the hearing on SB2311. We will stand in recess until other committee members return from introducing other bills.

Senator Dotzenrod motioned for a do not pass on SB2311
Senator Diane Larson 2nd
Roll call vote: 6-0-0
Carrier: Senator Anderson

Date: 1.25.2019
Roll Call Vote #: 1

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2311

Senate Political Subdivisions 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. Dotzenrod Seconded By Sen Diane Larson

Senators	Yes	No	Senators	Yes	No
Chair Randy Burkhard	X		Sen. Jim Dotzenrod	X	
Vice chair Howard Anderson	X				
Sen. Diane Larson	X				
Sen. Judy Lee	X				
Sen. Jordan Kannianen	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Anderson

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

REPORT OF STANDING COMMITTEE

SB 2311: Political Subdivisions Committee (Sen. Burckhard, Chairman) recommends **DO NOT PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2311 was placed on the Eleventh order on the calendar.

2019 TESTIMONY

SB 2311

SB 2311
1-25-2019
Written Attest #1

NORTH DAKOTA SENATE

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360

Senator Richard Marcellais
District 9
301 Laite Loop NE
Belcourt, ND 58316-3877

R: 701-477-8985
B: 701-477-8985
C: 701-278-0632
F: 701-477-8985
rmarcellais@nd.gov

COMMITTEES:
Education
Government and Veterans Affairs

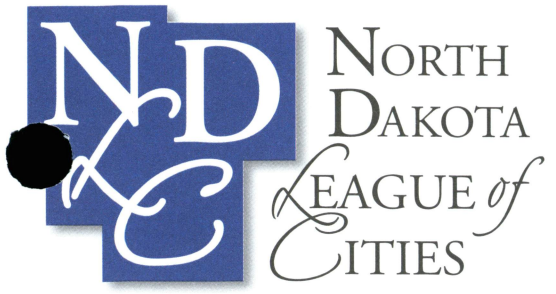
Good Morning Chairman Burckhard and the Senate Political Subdivisions Committee. For the record, my name is Richard Marcellais, Senator from District 9, Rolette County I am here today to introduce Senate Bill 2311.

Senate Bill 2311 relating to recalls of elected officials of political subdivisions.

Currently the Century Code will not allow for an official to be recalled twice during the term for which the official was elected or during there last year in office.

Thank You very much for the opportunity to appear in support of SB 2311.
If there are any questions, I will try and answer them.

S.B. 2311
1-25-2019
Written att #2
p.1



January 25, 2019

Senate Political Subdivisions Committee
SB 2311

Chairman Burckhard and members of the committee, for the record I am Stephanie Dassinger, deputy director and attorney for the North Dakota League of Cities.

I appear before you today to express the League's opposition to SB 2311.

This bill applies to elected officers of political subdivisions, including cities, and does two things: 1) it eliminates the protection that city elected officials have from not being recalled more than once during their terms; and 2) eliminates the prohibition on a recall election occurring during the one year prior to an office being on a city general election ballot

From the League's perspective, both propositions are problematic. First, special elections are not free. I have attached some information that the League collected during the interim session on the cost of city special elections for you to review.

Second, based on the 2010 census 263 of the 357 incorporated cities in North Dakota have a population of 500 or less. When a city has a population of 500 people or less, that means even less of the people voted. A recall petition must have signatures equal to 25% of the votes that were cast for the office the last time it appeared on the regular ballot. I have attached a sample of some of the city voter numbers from the 2018 election and the number of signatures that would be required on a recall election. Please notice the smaller the city gets, the smaller the number of signatures that are required on the recall petition.

The League is especially concerned that in the small cities, an elected official will continually be facing a recall election and not be able to perform the duties of his or her office based on a petition that is continually submitted by the same group of citizens.

For these reasons, the League urges the committee to vote DO NOT PASS on HB 2311.

Thank you for your time and consideration.

Phone: (701) 223-3518 • ND Toll Free: (800) 472-2692
410 E Front Ave • Bismarck, ND 58504-5641 • www.ndlc.org

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written att #2
p.2

Examples of Signatures Required on Recall Petition Based on 2018 City Elections

City	Votes in 2018 Mayor or President of City Commission	Signatures Required for Recall Petition
Bismarck	10,918	2,730
Buffalo	72	18
Casselton	281	70
Mercer	46	12
Neche	36	9
Minot	6,271	1,568
Stanley	425	106
Turtle Lake	109	27
West Fargo	3,628	907
Wyndmere	65	16