

1999 SENATE POLITICAL SUBDIVISIONS

SB 2390

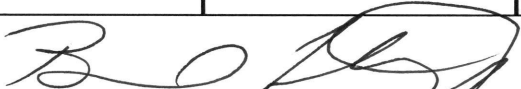
1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2390

Senate Political Subdivisions Committee

Conference Committee

Hearing Date February 5, 1999

Tape Number	Side A	Side B	Meter #
1	x		5785 to end
1		x	0 to 3220
Committee Clerk Signature 			

Minutes:

SENATOR LEE: call hearing to order on SB2390

SENATOR LYSON: introduce SB2390

SENATOR NELSON: supersede the home rule charter

SENATOR LYSON: yes

JIM ODEGARD: see testimony

SENATOR LEE: sheriff a candidate in the same county that they were running for office, contradict the current constitutional amendment

JIM ODEGARD: person so chosen, cooperative agreement, the candidate would maintain residence from the same county they came from, no change necessary

SENATOR LEE: constitutional amendment did not end up creating a conflict.

JIM ODEGARD: in sheriff issue that is correct, but this issue, I am not sure

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Senate Political Subdivisions Committee

Bill/Resolution Number Sb2390

Hearing Date February 5,1999

SENATOR NELSON: amendments for SB2248 which we don't have

DISCUSSION

JOHN GREENWOOD: see testimony

SENATOR LEE: questions

EARL MYERS: support of SB2390

SENATOR WATNE: prime sponsor of this bill last year and changed, are you in the same position this year.

EARL MYERS: I believe that we are, studies that are done by UND

SENATOR LEE: why shouldn't they still be able to do that under the home rule charter without the state coordinating this

DISCUSSION AND TOOL CHEST BILL

EARLY MYERS: county judges and wanted a change to see where we are going, not defeating tool chest and allowing combinations

SENATOR LEE: appointed states attorneys

EARL MYERS: my home state, no county government, appointment by the governor

MIKE STUFFONOWITZ: support of this bill, and concerned with the potential conflict of interest with this bill

SENATOR LEE: do you cooperate with other counties

MIKE STUFFONOWITZ: no, just this one county, important that this is an elected position

SENATOR WATNE: two counties with combined states attorneys, Slope and Adams county

MIKE STUFFONOWITZ: not under tool chest but another bill

SENATOR LEE: how does it work when the two counties share an elected states attorney

SENATOR LYSON: secretary was elected in both counties

DISCUSSION

LEANN SCHNIDER: explanation of the amendments by SENATOR KREBSBACH, SEE

ATTACHED AMENDMENTS

SENATOR LEE: reason for providing these amendments is to show inconsistencies

LEANN SCHNIDER: yes, question for SENATOR NELSON: and home rule on page 4 section

10 and this amendment to the bill 11-09..1, does not suggest any redesignation of the sheriff

TED SIBEL: position of the states attorney impeding on the tool chest bill and if they where appointed. OPPOSED TO THIS BILL.

SENATOR LEE: principle in the high school who was going to punish the child of a school board member

TED SIBEL: law and the degree of punishment

SENATOR LEE: next

MARY O'DONNELL: support of the bill and the electoral process of the sheriff and the states attorney. Personal experience of being answerable to a board of commissioners. independence of law enforcement in order to maintain the support of the state

SENATOR LEE: fighting the clock somewhat

AL KOPPY: support of this bill and the electoral process

WADE WILLIAMS: see testimony, opposed to SB2390

SENATOR LEE: any questions

JOE BILLFORD: opposed to SB2390, three generations of sheriff's, would like restrictions to be not so tight as to promote further debate in future

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Senate Political Subdivisions Committee
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Hearing Date February 5, 1999

SENATOR WATNE: how come you are not being a sheriff any more

DISCUSSION

MOTION: CLOSE SB2390

FEBRUARY 12, 1999

COMMITTEE DISCUSSION ON SB2390 WITH VONNIE RICHTER TO PRESENT SOME
PORTIONS OF THE BILL WHICH NEEDED AMENDMENTS

SENATOR FLAKOLL: REVISED ONE SECTION 11-10-04

SENATOR LYSON: FAILURE OF THE BILL

SENATOR LEE: PAGE 6 LINE 22

SENATOR NELSON: CONSTITUTIONAL LAW SUPER SEEDING THIS LAW

SENATOR KELSH: JURISDICTION OF THE CASE

SENATOR LEE: WILL NOT VOTE IN FAVOR OF THE BILL BECAUSE OF THE ISSUE
OF HOME RULE CHARTER

REPORT OF STANDING COMMITTEE

SB 2390: Political Subdivisions Committee (Sen. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2390 was placed on the Sixth order on the calendar.

Page 1, line 2, replace the second "section" with "sections"

Page 1, line 3, after the first comma insert "11-10-04,"

Page 6, after line 15, insert:

"SECTION 12. AMENDMENT. Section 11-10-04 of the North Dakota Century Code is amended and reenacted as follows:

11-10-04. Officer must be qualified elector - Exceptions. Except as otherwise specifically provided by the laws of this state, a county officer must be a qualified elector in the county in which the person is ~~chosen or~~ appointed, and a county commissioner must be a qualified elector in the district from which the commissioner is chosen. Upon approval of the board of county commissioners of each affected county, a person may serve as an elected officer of more than one county and must be a qualified elector of one of the counties in which the person is elected. A candidate for election to a county office must be, at the time of election, a qualified elector in the jurisdiction in which the candidate is to serve. Two or more counties may appoint one person to fill the same office in each county and the person filling the office must be a qualified elector of one of the counties."

Renumber accordingly

1999 HOUSE POLITICAL SUBDIVISIONS

SB 2390

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2390

House Political Subdivisions Committee

Conference Committee

Hearing Date 3-4-99

Tape Number	Side A	Side B	Meter #
1	x		15.2--54.2
		x	0.1--18.6
2		x	0.1-13.9
Committee Clerk Signature <i>Pam Dever</i>			

Minutes: BILL SUMMARY: Relating to the election of the county sheriff and county state's attorney. Chairman Froseth opened the hearing with all committee members present except Rep. Gunter.

Sen Stan Lyson, Dist. 1, Williston : testified in support of the bill. Last year the sheriff's bill, on the ballot, proved by 87% in favor of keeping them elected.

Rep. Delmore : 16.8 Are there any residency requirements?

Sen. Lyson : There is one that came in the election last fall. Yes, there is one.

Rep. Koppelman : 17.5 I see this as an issue that is permitted under the Tool Chest legislation.

Do we allow counties and political subdivisions within the state the flexibility that those laws are designed to give them; or do we incrementally change things back to the way they were. This seems to be an incremental approach. What do you think?

Sen. Lyson : I don't think this bill does this.

Rep. Koppelman : Why aren't you suggestion a bill that would state, if a county decides that it wants to appoint a state's attorney, it can do so by the vote of the people.

Sen. Lyson : I guess I'm kind of prejudice, also. I think there are some department heads within the county that should be appointed. I supported the sheriffs.

Chairman Froseth : The requirements are that the state's attorney candidate must be a lawyer and reside in the county in which he is to be elected. In some of our counties now, we are getting to the point that we have only one lawyer in the whole county. He is the only one that can run for the state's attorney position.

Rep. Frank Wald, Dist 37, Dickinson : 20.6 testified in support of the bill. I wouldn't want the state's attorney to be compromised or intimidated by the county commission that hire him. I think there are times that the state's attorney has to make a decision sitting around that board room when a meeting is going. He or she should be free to exercise their best judgment. Rep. Delmore brought up a good point about residency. In Slope County, Amidon being the county seat, doesn't have an attorney living in county. I don't think there is one living in Billings County, either. Question you may want to address.

Rep. Delmore : 21.6 I don't think there is anything we can do. The drafting of the amendment was poorly done, on the sheriffs bill.

Cynthia Feland, Burleigh County State's Attorney Office : 22.2 testified in support of the bill. This bill doesn't change the true spirit of Tool Chest legislation, which allows counties to consolidate their services. This means that if you consolidate the office of state's attorney with another county, that state's attorney has to be elected multi county as opposed to single county. This last election, Adams and Slope County, Jeff is the state's attorney and he resides in one of

the counties, but he is the elected state's attorney for both counties. In the event we do have a county state's attorney who is appointed under this bill, we would have huge actual legal and ethical dilemma that is created within the statutory duties of the state's attorney. Section 11-16-01 outlines the specific duties that the state's attorney has with regard to their office. Sixteen numbered duties. Now you need to start changing the duties of the state's attorney, because I can not as an assistant state's attorney or as a state's attorney uphold those duties. You have created a legal and ethical dilemma for me. I am legally bond and can become obligated for dereliction of duty for not doing those duties. But at the same time, you are asking me to sue my client, which I can't do, under the rule. The office of state's attorney is very different, because of the inherent duties of that office. We are responsible to the county and the people.

Rep. Koppelman : 27.9 We are having more offices appointed all the time. Do you feel that the Labor Commissioner, who is appointed by the governor, sees his constituency as only the governor and not the people of N.D.?

Ms. Feland : Here is the difference. When you are an attorney, you have ethical obligations to your client. There has to be a way to determine who your client is. There have been a number of cases across the country that have referenced how the determination is done. It's very clear in N.D. and I had to research this. As state's attorney, our client is the county. The advise we give to boards of county commissioners or any one else is to keep the county liability free. An auditor doesn't have an attorney-client relationship that is mandated by statute and by the licensing requirement. So this official is different. We have a responsibility to prosecute crimes of the state. We have a responsibility to insure that other appointed officials and elected officials and the boards don't do anything to injury the county. Because when we become elected, they are

electing us to represent the county as a whole. The county as a whole is best represented when criminals are taken off the street.

Rep. Koppelman : 32.2 I just can't believe that the people who appoint the officials, automatically under legal ethics, become immune from prosecution for crimes. I understand it can be uncomfortable for the state's attorney to prosecute, if it happens, against the board who elected him. Uncomfortable is not the same as liable.

Ms. Feland : If I am appointed by the board of county commissioners, I cannot prosecute them. I am prohibited by statute from doing that.

Rep. Glassheim : 34.6 The city attorney in Grand Forks is hired by the mayor and has the same problem. There must be some way where you would call in some other party, if you need to prosecute. Removal is a different story.

Ms. Feland : There isn't a clear mechanism for doing that.

Wade G. Enget, Mountrail County State's Attorney, Stanley, N.D. : 42.9 testified in support of the bill. The bill is important because it gives the ability of the people to make the choice. I don't think we mean to say that we will need 53 separate state's attorneys. This bill does not prohibit what is going on right now in Adams and Slope County. The bill will not prevent that in the future from happening in other counties. I strongly advocate that the state's attorney position stay elected. I've seen what has happened in the small communities, where they went from 3 or 4 attorneys down to 1 or none. I do feel that it's very important that we do have representation that was put in place by the people to do the counties business. To take care of the county not an individual. I take that very seriously and so do my colleagues. Please give a do pass. I also

received a letter from Jim Odegard from Grand Forks in support of this bill and it was handed out to you. (See attached testimony)

Chairman Froseth : What this bill does is it takes away the option of the county commission to appoint a state's attorney. In your state's attorney meetings, is there any real concern that most counties will begin using that option unless it's absolutely necessary?

Wade : 48.7 We have 4 or 5 counties that were considering appointing. Some because they didn't feel that the person that was in the position, now, was worthy. Others say it is a way to chose who they wanted as their state's attorney. I have had to give an opinion to my county commissioners that was against the wishes of my county commissioners. I feel that as long as I am elected, I can go in there and look them in the eyes and I will tell them what is proper.

Rep. Delmore : 50.7 Don't you think other county officials run into the same problems, like treasurer or register of deeds.

Wade : We have situations in our own county where there has been a disagreement between how the business is done in the printers office, how business is done in the clerks office, and how business is done in the insurance office. Each time the county commissions have raised up and said we need to get rid of them. I have to remind them that they can't because they are an elected official. A state's attorney has more discretionary duties then any other office in county government.

Rep. Delmore : Is there a reason you are dealing with sheriffs?

Wade : I think we had discussion with the sheriffs, and the sheriffs already had their committee going at that point in time. We decided to wait and come back to the legislature.

Tom Henning, Stark County State's Attorney : testified in support of this bill. I don't think we are trying to be alarmist about anything, with these provisions. The voters have already decided about the sheriffs staying elected, overwhelmingly. Tape 1, side B

Allen Kopy, Morton County State's Attorney : 3.7--4.7 testified in support of this bill. For me, the theme is keeping the power in the hands of the people to select the chief local public prosecutor in their jurisdiction. We used the Tool Chest legislation in Morton County last year. The County Commissioners resolved to turn the clerk of district court into an appointed position.

Chairman Froseth : 4.7 If this bill passes and you have a county where no one comes forward to run for state's attorney, what are the county commissioners to do?

Allen : They will appoint.

Chairman Froseth : Well, this will take away the option to do that.

Allen : 5.0 Under the law, if there is not a state's attorney, there will be a vacancy in the office, the board will then have the power to appoint.

Rep. Koppelman : 5.1 Where you here supporting the bill that would have repealed the Tool Chest legislation.

Allen : No, I was in court, but I did support it. I think the Tool Chest takes away people's right to vote. I like to vote.

Rep. John Dorso, Dist 46 : 5.7 testified in opposition to the bill. This bill concerns me because it undoes part of the Tool Chest Bill and also, problems with the state's attorney in the long term prospective of it's effect on N.D. Last legislative session, the supreme court justice addressed us and stressed the fact we weren't doing enough in N.D. with regard to spousal abuse. And that it was a serious problem. I had my staff do lots of research into prosecution of spousal abuse

across our state. I found that most of the time, even though there were arrests, the state's attorney did not want to take the cases. Mainly because it would have been an uncomfortable case to do in you local jurisdiction. Also, they may not have had the expertise. We have good laws in N.D. concerning spousal abuse, we don't have the expertise in our chief prosecutors to take care of these cases. Then we have the increasing area of drug traffic and increased meth cases we need convictions on, for the good of all N.D. people. We also have high intensity drug traffic, so we have to train attorneys in the AG's office to prosecute these drug cases. I'm not saying the county state's attorneys aren't good people. But they don't have the expertise to handle these complicated drug cases. We have had to ask the AG office to help in many cases. If we want to continue to have effective drug indicting and drug prosecution, we have to have people who can get convictions. When it comes to criminal matters, we should be talking in the future about district prosecutors. One of the people who proposed this bill said was going to happen in the end anyway, because of each county's demographics is changing. If you pass this bill, the opportunity to look at that may be gone. I think we should have prosecutors for criminal law in geographic areas that they are familiar with; and they are familiar with the law enforcement people that acted in the prosecution of the cases, collecting evidence, etc. I would not like having everything in Bismarck, which is what we will be doing, because of how the law reads. The AG's office will have to be increased. I look at this bill as stepping back from the Tool Chest, and also, not looking forward to what we as a state owe the people. We as a legislature are responsible for the judiciary and criminal and civil laws of the state. I think county commissioners are capable of hiring good civil attorneys that give them advise on civil matters. But on criminal law, it's getting harder to prosecute. It's sad we have someone walking

the streets of N.D. because we didn't have good prosecution in a murder case that happened in s.
w. part of the state. The case was lost.

Wade Williams. N.D. County Commissioners Assoc. : 9.0 testified in opposition to the bill.

Tool Chest Bill has caused county commissioners to come at odds with our other elected officials within our county. We are not happy to be in that position. Let's either do away with Tool Chest all together, or leave it along. This picking it apart is not good. I think you will have a steady picking ; let's get this group out or that group out. A question was answered that a county can share a state's attorney with a neighbor county or counties. What if the other county doesn't want to go in with the county that has no one to run. Why are county commissions picked on. Are we less fair than the city commissioners. City commissioners appoint. The election process should be at the beginning of this not at the end. In my county, we would put in on the ballot. People need to decide.

Rep. Delmore : 15.2 Do you think the people sent us a message, like they did with the sheriff's bill?

Wade : Whenever the people get the chance to vote whether they want the choice to elect or appoint, traditionally across the state, the answer is elect.

Rep. Ekstrom : 16.8 I come from a different perspective, coming from Fargo, and my concern is if we appoint people, we will have a tendency to appoint people who have the same thoughts and ideas that the appointors have. That removes the power of the people to change that person, if something is going on that they don't care for.

Wade : Hard to answer. I don't think we would have a problem at county level.

There was no more testimony and the hearing on SB 2390 was closed.

Tape 2, Side B, The bill was brought up for discussion.

Rep. Koppelman : I visited a bit with the Association of Counties on this and I am going to ask for amendments to be drafted. There are three issues. First, the residency issue and that is sticky, because the bill says the person running for office has to live in the jurisdiction they are running for office in. Some testimony said this may be impossible in some small counties. Second, has to do with flexibility, which is really valuable in this bill in terms of allowing the adjoining counties to work together. Thirdly, the issue of appointed vs elected. If we as a legislative body decide that this is not a good bill and kill it, I think you can be certain the voters are going to have a crack at it through the referral process. The main concern seems to be that county commissioners not be allowed unilaterally to change an elected position into an appointed position. I see an amendment to specify that state's attorneys be an elected position unless a vote of the people changes it.

Rep. Eckre : 2.9 Did anyone know of any county commissioners or state's attorney who took a stand during the senate hearing of this bill?

Chairman Froseth : 3.4 I'm sure it was the same as we had. Rep. Dorso and Wade Williams testified against this in our hearing.

Rep. Ekstrom : I don't want to take this out of the hands of the voters. I know there were abuses in the state's attorney office and I don't want to name names.

Chairman Froseth : The county commissioner are elected, so you can vote them out.

Rep. Severson : 5.0 The concern I have is that the Tool Chest was brought forward to allow counties the opportunity to do this. My county only has one attorney. The next county doesn't have one at all. If you have to go to a county farther away, the voter won't vote for him or her,

because they don't trust them. Where is their loyalty. Will they represent our county. I do not think that this bill is going to reward the big counties or the small counties. We don't need 53 state's attorneys in the state of N.D. All it does is create a tax burden on the smaller counties.

Chairman Froseth : 6.7 Large counties will never take the option to appoint, I don't think. The small counties need this option. The choices are very slim for people coming forward to run in the small counties.

Rep. Koppelman : 8.2 Rep. Devlin said a compromise would be good. Speaker Wald agreed also. If we pass the bill without amendments, we aren't solving any of the problems.

Vice Chair Maragos : If this is a rural and urban split, why not allow this to happen in counties with population is less than 5000 or whatever. By vote of the people, the people can allow the county commissioner the ability to appoint. Let the larger counties elect.

Rep. Koppelman : I don't have a problem with that, except that I doubt the big counties will ever appoint, why do we want to prohibit. The amendment gives the final say to the people.

Rep. Severson : How will this effect the Tool Chest Bill. Are we setting a precedence? We need to remember this.

Vice Chair Maragos : 12.1 I think that if the major counties that came in to testify, are being held harmless, you won't see them going to the polls, and they won't get into the argument of the smaller counties doing whatever they can to get a state's attorney service. Whether it be appointed or elected. I believe the smart thing to do is to hold them harmless and maintain they be an elected office. If the counties go below a certain threshold, then they have the flexibility to react. If we don't hold those large counties harmless, I don't think the state's attorneys will want the exposure. They will still go and tighten it up like the sheriffs did.

Rep. Koppelman : I think it will be a much tougher sell to take a measure to the voters under the guise of do you want to elect your state's attorney or do you want to appoint them. If you have a provision in law that says they will always be elected, unless you the voters decide otherwise, is a easier sell. We'll get the amendment together by next week and see.

Rep. Severson : The ones who already have the Tool Chest in place, will this effect them?

Rep. Koppelman : No, my amendment will not be retroactive.

Bill is on hold.

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2390-sub

House Political Subdivisions Committee

Conference Committee

Hearing Date 3-11-99

Tape Number	Side A	Side B	Meter #
1		x	0.1--26.7
Committee Clerk Signature <i>Pam Dever</i>			

Minutes: Subcommittee for SB 2390 was held in the Prairie Room, 2:40 p.m. Committee members present: Rep. Koppelman, Rep. Severson, Rep. Glassheim, and Vonnette Richter and John Bjornson from the Legislative Council Office. Rep. Koppelman chaired the meeting.

Rep. Severson : The concern I have is that this bill allows for the appointment. What if they want to change it back. What does Tool Chest say?

Rep. Koppelman : John, what does Tool Chest do, in reference to Rep. Severson's concern?

What if there is a vote by the people to make it an appointed position. Can the people then come back later and reverse themselves and make it an elected position again?

John : 1.0 I think under Tool Chest they can petition to put it back on the ballot. The chapters we are looking at are 11-10.2 and 11-10.3. Under that chapter, we can use this e.g., say this year it goes on the ballot to make the state's attorney appointive in Cass County. A few years down the road they don't like it. They go back under this same law and say let's make this appointed position an elected position and put it back on the ballot; either by initiative of the people or

upon resolution of the county commission with the right of referral. I think it can go back and forth.

Rep. Glassheim : 2.2 Wouldn't this amendment limit the authority under this statute? This would allow the county to redesignate elected office to an appointed office. That would not allow the county to do it except by election. It is a limitation.

Rep. Koppelman : It wouldn't limit it as much as the bill. The bill would overturn it completely. There is nothing in this bill that would prevent or limit the ability to come back and change it.

John : Not that I can recall. The amendment is O.K., just a bit narrow in scope. Does the bill exempt from the application of this whole chapter.

Rep. Koppelman : 6.8 It is our intent, with the amendments, to make sure that this remains an issue of the vote by the people. Our intent is that the office of state's attorney will never become appointed except by the vote of the people, under section 12.

There was brief discussion of wording "may" or "must".

Rep. Severson : 12.5 I think "may" is O.K. I like shall, because "must" is to harsh.

John : "Shall" is imposing a legal duty upon a person or entity. "Must" means the duty is not upon anyone. The county auditor puts it on the ballot.

Rep. Koppelman : What is the definition of an appointed office? Is it at the pleasure of the county commission or are they appointed for a term?

John : It's generally at the pleasure of the commission. They can say it's for two years, but if they don't want him they can fire him.

Rep. Severson : What happens if someone is elected, then after six months, they are sorry he was elected, and they want to get rid of him.

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House Political Subdivisions Committee

Bill/Resolution Number SB 2390-sub

Hearing Date 3-11-99

John : You have to go back to the constitution. Some are subject to recall, some are subject to impeachment, and some removed by the governor. Just remember to keep sheriffs in your bill.

LC will work on amendments and come before us tomorrow. Meeting adjourned.

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2390-a

House Political Subdivisions Committee

Conference Committee

Hearing Date 3-12-99

Tape Number	Side A	Side B	Meter #
1	x		8.3--36.8
Committee Clerk Signature <i>Sam Dever</i>			

Minutes: Chairman Froseth : Let's take a look at SB 2390. We had the subcommittee work on this with Rep. Koppelman chairing this.

Rep. Koppelman : 9.0 Let's discuss two separate amendments. The one amendment before you first, is the one the subcommittee came up with. It rewrites the bottom paragraph. State's attorneys will remain elected positions unless the people of the county vote differently. There is two ways that can happen. One, is by the county commission to put it on the ballot by resolution, and second, is by a petition of the people to put it on the ballot. This is a good middle ground.

Rep. Koppelman made a motion to accept amendment and Rep. Rose seconded the motion.

Chairman Froseth : If we consider a separate amendment concerning population division on this, wouldn't we have to rewrite this amendment?

Rep. Koppelman : 10.7 If you think so, maybe we could consider the population issue as an amendment to the amendment.

Rep. Niemeier : My understanding is that the commissioners already have the authority to appoint the state's attorney. Doesn't this put an extra restriction on that authority?

Rep. Koppelman : Yes, it does. But the question we have before us is the bill. This passed the senate, which is requesting that state's attorneys in all areas in all situations become strictly elected positions and nobody can ever appoint, including the people or county commissioners. That is one extreme. That's what the sheriffs asked us for last session but we defeated this. Then the sheriffs went to the people and got the constitutional amendment. If we defeat this bill, there will be another initiated measure on the ballot.

Rep. Niemeier : 12.1 If this is voted down, what happens to the counties who don't have anybody to be elected. Sometimes the electors vote no against an issue they don't understand well.

Vice Chair Maragos : 12.5 In statute, if they don't have anyone to run, the county commission automatically has authority to appoint. I don't think this takes that away. They have to be able to fill that position.

Rep. Koppelman : 12.9 I'm not sure. We should consult council.

Chairman Froseth : Vice Chair Maragos statements are correct.

Rep. Koppelman : 13.7 Now we can look at the second set of amendments. We are talking about the same thing, except we are talking about counties with a population of over 10,000, that this would take place. Maybe 12 counties or so. Nothing would change in most of the counties of the state.

Rep. Delmore : 15.2 How many counties are you looking at under 10,000?

Mr. Mark Johnson, Counties Assoc. : 15.5 I believe 42 counties.

Rep. Delmore : If it is appointed now, unless the people bring forth a petition, it will remain the way that it is.

Chairman Froseth : 16.1 Do we need to change section 12 in .0204 amendment?

Rep. Koppelman : 16.3 We do Mr. Chair. If we want to do the population issue, then we should adopt .0204 in which I'll withdraw my motion on .0203. If we decide that population is not an issue, then we should adopt .0203. But we do need the language in section 12.

Vice Chair Maragos : 16.7 I would further reamend Rep. Koppelman amendment by replacing .0203 with .0204. Rep. Ekstrom seconded the motion.

Rep. Koppelman : I withdraw my motion on 90831.0203.

Vice Chair Maragos : made a motion to DO PASS on 90831.0204 and Rep. Koppelman seconded the motion.

Rep. Eckre : 17.8 Can we still appoint?

Rep. Koppelman : If this amendment passes, Richland County is over 10,000, it would have to remain elective unless the voters change it to appointive. If no one ran, the county could appoint under the Tool Chest.

Rep. Severson : 18.9 On the bottom of section 12, applies to a population of fewer than 10,000. I would think this takes them out and they can't do this at all. This would do exactly the opposite of what we wanted.

Rep. Koppelman : 19.8 I think you may be right.

Rep. Glassheim : 20.0 It seems to me that section 12 provides for appointment and only in counties of less then 10,000 can you have appointive. The above says you must have election in

counties of over 10,000, which is what we are trying to do. Section 12 only applies to under 10,000.

Rep. Severson : The concern I have is a county with 12,000 may chose to appoint and the way I read this, they can't have the election to have this.

Rep. Koppelman : 21.7 Let me ask Vonnett Richter from LC. They drafted this. The intent of the provisions of this amendment, we are drafting, would apply only in the larger counties. In the smaller counties, nothing would change from current law.

Chairman Froseth : 23.5 Counties under 10,000 population nothing would change that is presently under current law under Tool Chest. That is the intent of the committee.

Vice Chair Maragos : 24.0 In the first part, where it ways, each county with the population over 10,000, must have an elected state's attorney. There will be an election. If there is no one running, then another part of statute will kick in, which allows the county commission the authority to appoint.

Vonnette : Perhaps John Bjornson has a better handle on this.

Rep. Glassheim : I think there is confusion in what we are trying to accomplish.

Rep. Eckre : I want to know from my county, what you asked Vice Chair Maragos.

Rep. Rose : 26.3 I have a concern of why are we making a difference between the counties.

Give them all a choice. Why two tiers? Should they not all have a choice, to be fair?

Chairman Froseth : I believe the problem we are running into, is that smaller counties don't have qualifies candidates. Big counties have full time state's attorneys.

Vice Chair Maragos : The problem we have is that the state's attorneys want the same situation as the sheriffs. We have no flexibility in the sheriffs law, after that was passed by voters.

Page 5

House Political Subdivisions Committee

Bill/Resolution Number SB 2390-a

Hearing Date 3-12-99

Rep. Delmore : I don't think it matters if you are large or small. The people of N.D. want to elect.

Chairman Froseth : I want the subcommittee to iron this out.

Chairman Froseth : committee is back to order. We have a motion before us on .0204.

Rep. Koppelman : 30.7 LC is still working on an amendment, but will not have it ready for today anymore. Vice Chair Maragos will have to withdraw his motion, though, because we know that is not the draft we want anymore.

Vice Chair Maragos : I withdraw my motion on 90831.0204 and Rep. Koppelman seconded the motion. VOICE VOTE: All YES.

John Bjornson, Legislative Council : 31.8 We are working on an amendment right now, but there are too many changes, so we can't get this all done today. John explained what he understands the committee wishes. (31.8--36.4)

Chairman Froseth : We will hold this until next Thursday. Adjourned.

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2390-aa

House Political Subdivisions Committee

Conference Committee

Hearing Date 3-18-99

Tape Number	Side A	Side B	Meter #
1	x		1.3--40.4
Committee Clerk Signature <i>Pam Deever</i>			

Minutes: Chairman Froseth called the committee to order. All committee members were present except Rep. Glassheim and Rep. Disrud.

Chairman Froseth : Let's take up SB 2390 again and go over Rep. Koppelman's new amendments.

Rep. Koppelman : I'll explain amendments .0205. We had a subcommittee on this bill and we drafted some amendment, which the full committee had some concerns about. We had new amendments drafted. Most of us understand the objectives of the bill, we also understand that in some of the smaller counties they may have a need for appointive. We understand in the larger counties, that the concern is the county commission being able to unilaterally appoint a state's attorney. So what we have done in these amendments is divide the counties into two categories of population over 10,000 and under 10,000. It changes nothing for the counties under 10,000. In those counties, the provisions of the Tool Chest Bill which allow for appointment, but also allow for referral by the people of an appointed office, would remain in place. It would also

allow the flexibility for the sharing of state's attorneys as we discussed in committee. The association of counties was very strong in wanting those provisions to be left in tack for the smaller counties. For the larger counties of population over 10,000, it is to say the office of state's attorney will always be elected in those counties, unless the voters decide otherwise. The county commission could put that kind of measure on the ballot, but it would still be up to the people to vote. The people themselves could initiate a measure for the ballot to say we want to now appoint our state's attorney.

ACTION: Rep. Koppelman made a motion to DO PASS amendments and Rep. Severson seconded the motion.

Vice Chair Maragos : 3.4 The bill that came over from the senate, if it were passed, would it preclude any county who is unable to have an election or elect a state's attorney? Does this piece of legislation, as it came from the senate, preclude them from appointing or filling a vacancy created as a result of a non-election.

Chairman Froseth : 3.9 I believe the only way they could appoint would be if there were no candidates for that office, or the office became vacant.

Rep. Koppelman : 4.0 That's the way I understand it currently under law.

Rep. Delmore : 4.3 Does this have any effect on the Tool Chest provisions?

Rep. Koppelman : It would effect the Tool Chest provisions in the larger counties. It would remove what the Tool Chest allows now in terms of a county commission changing an office from elective to appointive. Commissioners would no longer be able to do that in those larger counties.

Rep. Delmore : How did you get the 10,000 figure?

Rep. Koppelman : 4.9 We talked about two numbers; 35,000 and 10,000. The Association of Counties suggested the 10,000 figure was better. There are 11 or 12 counties that are over 10,000.

Rep. Eckre : 5.3 My county is Richland, which is 18,000 population, and they had one person on the ballot the last couple of elections. Let's say this person doesn't want to run again and we don't have anybody to run. Can my county commissioners appoint without having to go through an election having the people say they can appoint? Can they do it alone?

Rep. Koppelman : Under current law, they can appoint. Under this bill, since you are over 10,000, no, you could not unilaterally appoint. They could go to the people and say we have no candidates and we feel this should be appointive, then the people can decide if they want it appointive.

Rep. Eckre : Let's say that in four years from now, they have six attorney's that want to run for state's attorney. Do they have to go back to the voters again and say we want to make it elective again because we have a number of people who want to run?

Rep. Koppelman : Yes, if the voters did decide to make it appointive. If the commissioners appointed to fill a vacancy, then the status of the office would not change. The next election the office would be open again for the elective position.

Rep. Delmore : They can, however, according to section 11, "place the question of appointing the state's attorney on the ballot". The commissioners could, also, unilaterally decide. Does this apply to every county?

Rep. Koppelman : 8.5 No, that provision would apply to the counties over 10,000. What this change would do is remove the right of the county commission to unilaterally change it from elective to appointive in those counties over 10,000.

Chairman Froseth : We have some state's attorneys here that have an interest in this bill. We are not opening the hearing, but we will let them address the committee.

Wade Enget : 9.0 I am a part-time state's attorney from Mountrail County. There are several other state's attorneys with me today. We passed out a position paper from the State's Attorney Association. (See attached testimony) We are unsure as to why you have a population division in the amendments. You are telling some counties you have certain rights, while others don't have that right. We are getting lost in how we can apply this across the board throughout the state. Let's not create a second class of citizens by having the population division.

Chairman Froseth : 13.2 I can speak for the entire committee that we hold state's attorneys in the highest regard and the work they do. Our concern is looking ahead to the future. We have declining population in the rural counties. We need to look ahead and see what may have to be done a few years down the road. The committee has struggled with this bill a long time. We are not trying to create a division in the office.

Rep. Koppelman : 16.0 The committee has struggled with this bill. Philosophically we agree that people should have a voice whether they want to appoint or elect. The Association of Counties talked about the need for flexibility and some of the need for some of the provisions that are in current law to remain in the smaller counties. Maybe you could approach this to say let's try this. If it doesn't work, come back in two years and ask us to change it.

Vice Chair Maragos : 17.9 A lot has been said about where we are headed in the future as it relates to our rural areas. I'm inclined to think the case has been made that SB 2390 is going to be just fine. I don't see the changes happening so fast in N.D., that we can't monitor the effects. I know we will be back here in two year to assess all of this. I plan to support the bill and not the amendments.

Rep. Eckre : I agree with Vice Chair Maragos. I know how much time and effort went in to discussing this bill and amendments. My county back home says don't fix it if it isn't broke.

Rep. Severson : 19.4 The concern I have is my county doesn't have an attorney living in the county. I also believe that this bill as amended will not change the small counties who elect. You have to give those people in the small counties the opportunity to change.

Rep. Koppelman : 20.7 I want the committee and the state's attorneys to understand that, I doubt, the big counties will ever change from elective to appointive. I would have no problem making all state's attorneys elected. But we in the legislature, are the board of directors of the state of N.D., in essence, and we have to look at the needs of all the state. I would prefer not to have the population division in the amendments. The committee needs to remember that if we defeat these amendments, and if we pass the bill; that in effect removes some of the people's rights as well. It removes the people's rights to ever decide they want to appoint a state's attorney.

Vice Chair Maragos : We gave them that right through the Tool Chest Bill. The citizens of N.D. like to elect their officials. If there is no one there to run for election, the county commissioners automatically have the authority to fill the position. They can go to Timbuktu, I suppose, to find their state's attorney. Unless, I'm wrong and misunderstanding the process. I believe they

should have the election, because they might have attorneys move in to the county later in the future. I hope we pass the bill as is.

ROLL CALL ON AMENDMENTS .0205 : 5 YES and 8 NO with 2 ABSENT. FAILED.

Rep. Koppelman : I move the same amendment except take out the population issue, which would be .0201. Rep. Severson seconded the motion.

Rep. Ekstrom : 25.5 Why do we want to do this? We already have the Tool Chest provision.

Rep. Severson : Tool Chest allows those counties who don't have an attorney to fulfill their needs. The original bill eliminates that. The county commissioners do not have that option anymore. The rural counties need the flexibility to do a good job necessary for the citizens of their small counties.

Rep. Koppelman : 31.2 I would think the whole impetus behind SB 2390 is that the state's attorneys trust the people that elected them. They trust the people who they serve and want the people to have a continued voice in the state's attorney's office. I would hope they would respect the people's voice to choose whether or not that would ever happen. I see this happening only in rare cases. I think these amendments will only mildly change this bill.

Rep. Severson : 34.2 Another concern I have in dealing with the bill without the amendment, is it eliminates the Tool Chest Bill for state's attorneys. The county commissioners in my county worry about opening up Pandora's Box and the Tool Chest will be chipped away by one group; then another group and so on. This bill will set a precedent.

Rep. Delmore : Rep. Koppelman, are you moving amendments .0201? It seems to me that we looked at this before and we did not like the wording in the bottom part, which is the meat of the amendment.

Chairman Froseth : 36.0 We had questions on amendment .0204, so .0201 was drafted after .0204.

Rep. Koppelman : 36.4 I believe Rep. Delmore is correct. What I propose is the language in Section 12 should be changed to the wording in Section 11 of .0205. Put the words from section 11 from .0205 into Section 12 of .0201.

Rep. N. Johnson : 37.9 I think .0203 has the correct language we want in Section 12. That does not contain the population division.

Rep. Koppelman : That is correct. Thank you. I withdraw my motion on .0201 and move we adopt amendment .0203.

Rep. Severson : I withdraw my second on .0201 and second Rep. Koppelman motion on .0203.

VOICE VOTE was called. MOTION CARRIED.

ACTION: Vice Chair Maragos made a motion of DO PASS AS AMENDED and Rep.

Koppelman seconded the motion.

ROLL CALL VOTE: 11 YES and 2 NO with 2 ABSENT. PASSED.

Rep. Koppelman will carry the bill.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2390

Page 1, line 1, after "Act" insert "to create and enact a new section to chapter 11-10 of the North Dakota Century Code, relating to the election of state's attorneys;"

Page 1, line 5, after "attorney" insert "; and to provide for application"

Page 2, line 6, after "11-10-02" insert ", except as provided in section 12 of this Act"

Page 3, line 28, overstrike "The"

Page 3, line 29, after "~~manager~~" insert "Except as provided in section 12 of this Act, the"

Page 5, line 8, after "appointed" insert ", except as provided in section 12 of this Act"

Page 5, line 18, overstrike "One state's attorney."

Page 5, overstrike line 19

Page 5, line 20, overstrike "6."

Page 5, line 21, overstrike "7." and insert immediately thereafter "5."

Page 5, line 22, overstrike "8." and insert immediately thereafter "6."

Page 5, line 24, after the underscored comma insert "unless otherwise provided in section 12 of this Act."

Page 6, after line 17, insert:

"SECTION 12. A new section to chapter 11-10 of the North Dakota Century Code is created and enacted as follows:

Appointment of state's attorney upon voter approval. Upon the approval of the qualified electors of the county, any county may provide that the county's state's attorney be appointed. The question of appointing the state's attorney may be placed on the ballot at the next regular election by resolution of the board of county commissioners or by submitting to the board of county commissioners 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. *must*

Page 7, after line 14, insert:

"SECTION 16. APPLICATION. Section 12 of this Act does not apply to any county that has an appointive state's attorney before the effective date of this Act."

Renumber accordingly

Koppelman 2

90831.0204
Title.

Prepared by the Legislative Council staff for
Representative Koppelman
March 12, 1999

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2390

Page 1, line 1, after "Act" insert "to create and enact a new section to chapter 11-10 of the North Dakota Century Code, relating to the election of state's attorneys;"

Page 1, line 5, after "attorney" insert "; and to provide for application"

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Page 5, overstrike line 19

Page 5, line 20, overstrike "6."

Page 5, line 21, overstrike "7." and insert immediately thereafter "5."

Page 5, line 22, overstrike "8." and insert immediately thereafter "6."

Page 5, line 24, remove "an elected state's attorney and", after "sheriff" insert "and each county with a population of ten thousand or more must have an elected state's attorney", and after the underscored period insert "Each county with a population of fewer than ten thousand must have an elected state's attorney unless the position becomes appointive as provided in section 12 of this Act."

Page 6, after line 17, insert:

"SECTION 12. A new section to chapter 11-10 of the North Dakota Century Code is created and enacted as follows:

Appointment of state's attorney upon voter approval. Upon the submission to the board of county commissioners of 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 or upon resolution of the board of county commissioners, the county auditor shall place the question of appointing the state's attorney on the ballot at the next regular election. If a majority of the qualified electors of the county voting on the question approves the change from elective to appointive, the change is effective at the end of the term of office of the state's attorney holding office at the time of the election. This section applies only to a county with a population of fewer than ten thousand.

Page 7, line 3, remove the overstrike over "~~office~~" and remove "offices"

Page 7, line 4, replace "and state's attorney are" with "is"

Page 7, after line 14, insert:

"SECTION 16. APPLICATION. Section 12 of this Act does not apply to any county that has an appointive state's attorney before the effective date of this Act."

Renumber accordingly

failed

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2390

Page 1, line 1, after "Act" insert "to create and enact a new section to chapter 11-10 of the North Dakota Century Code, relating to the appointment of state's attorneys; and"

Page 1, line 2, remove "11-09-18,"

Page 2, line 1, replace the first underscored comma with "and" and remove ", and state's"

Page 2, line 2, remove "attorney"

Page 2, line 5, remove "and the state's attorney"

Page 2, line 14, remove the overstrike over "state's attorney" and remove the overstrike over "and"

Page 2, line 15, remove "the coroner"

Page 3, line 5, after "officers" insert "Appointment of state's attorney of adjoining county -"

Page 3, line 6, remove the overstrike over "board of county"

Page 3, line 7, remove the overstrike over "commissioners may appoint the", overstrike "sheriff or the", overstrike ", or both", and remove the overstrike over "to"

Page 3, line 8, remove the overstrike over "act as the" and remove the overstrike over "state's attorney of its county" and insert immediately thereafter ". The sheriff, or state's attorney, if required to be elected, of an adjoining county"

Page 3, line 10, remove the overstrike over "appointed" and insert immediately thereafter "or"

Page 3, line 11, remove the overstrike over the first "appointed" and insert immediately thereafter "or" and remove the overstrike over the second "appointed" and insert immediately thereafter "or"

Page 3, remove lines 26 through 31

Page 4, remove lines 1 through 10

Page 5, line 7, replace "offices" with "office" and remove "and state's attorney"

Page 5, line 19, overstrike "One sheriff."

Page 5, line 20, overstrike "6."

Page 5, line 21, overstrike "7." and insert immediately thereafter "6."

Page 5, line 22, overstrike "8." and insert immediately thereafter "7."

Page 5, line 24, remove "an elected state's attorney and" and after the underscored period insert "Notwithstanding any other provision of law, each county with a population of more than ten thousand must have an elected state's attorney unless the position becomes appointive as provided in section 11 of this Act."

Page 6, after line 17, insert:

"SECTION 11. A new section to chapter 11-10 of the North Dakota Century Code is created and enacted as follows:

Appointment of state's attorney upon voter approval. Upon the submission to the board of county commissioners of 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 or upon resolution of the board of county commissioners, the county auditor shall place the question of appointing the state's attorney on the ballot at the next regular election. If a majority of the qualified electors of the county voting on the question approves the change from elective to appointive, the change is effective at the end of the term of office of the state's attorney holding office at the time of the election. This section applies only to a county with a population of more than ten thousand."

Page 7, line 3, remove the overstrike over "~~office~~" and remove "offices"

Page 7, line 4, replace "and state's attorney are" with "is"

Page 7, line 5, after "chapter" insert "and, in counties with a population of more than ten thousand, the office of state's attorney is excluded from the application of this chapter"

Renumber accordingly

Please type or use black pen to complete

Date 3-18-99

Roll call vote # 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2390

House POLITICAL SUBDIVISIONS Committee

Subcommittee on _____
 Conference Committee

} Identify or check where appropriate

failed

Legislative Council Amendment Number _____

Action Taken Pass Amendments 10205

Motion Made By Rep. Koppelman Seconded By Rep. Severson

Representatives	Yes	No	Representatives	Yes	No
Chairman Froseth	/		Rep. Wikenheiser		/
Vice Chair Maragos		/			
Rep. Delmore		/			
Rep. Disrud					
Rep. Eckre		/			
Rep. Ekstrom		/			
Rep. Glasheim					
Rep. Gunter	/				
Rep. Johnson, N.		/			
Rep. Koppelman	/				
Rep. Niemeier		/			
Rep. Rose		/			
Rep. Severson	/				
Rep. Thoreson, B.	/				

Total 5 8
(Yes) (No)

Absent 2

failed

Floor Assignment _____

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

DO NOT USE HIGHLIGHTER ON ANY FORMS

VR
3/18/99
10/2

HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO. 2390 3-19-99 PS

Page 1, line 1, after "Act" insert "to create and enact a new section to chapter 11-10 of the North Dakota Century Code, relating to the appointment of state's attorneys;"

Page 1, line 5, after "attorney" insert "; and to provide for application"

HOUSE AMENDMENTS TO ENG. SB 2390 3-19-99 PS

Page 2, line 6, after "11-10-02" insert ", except as provided in section 12 of this Act"

HOUSE AMENDMENTS TO ENG. SB 2390 3-19-99 PS

Page 3, line 28, overstrike "The"

Page 3, line 29, after "~~manager~~" insert "Except as provided in section 12 of this Act, the"

HOUSE AMENDMENTS TO ENG. SB 2390 3-19-99 PS

Page 5, line 8, after "appointed" insert ", except as provided in section 12 of this Act"

Page 5, line 18, overstrike "One state's attorney."

Page 5, overstrike line 19

Page 5, line 20, overstrike "6."

Page 5, line 21, overstrike "7." and insert immediately thereafter "5."

Page 5, line 22, overstrike "8." and insert immediately thereafter "6."

Page 5, line 24, after the underscored comma insert "unless otherwise provided in section 12 of this Act."

HOUSE AMENDMENTS TO ENG. SB 2390 3-19-99 PS

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HOUSE AMENDMENTS TO ENG. SB 2390 3-19-99 PS

Page 7, line 3, remove the overstrike over "~~office~~" and remove "offices"

Page 7, line 4, after "~~judge~~" insert "sheriff", remove the overstrike over "~~is~~", and remove "sheriff and state's attorney are"

Page 7, after line 14, insert:

"SECTION 16. APPLICATION. Section 12 of this Act does not apply to any county that has an appointive state's attorney before the effective date of this Act."

Renumber accordingly

Please type or use black pen to complete

Date 3-18-99

Roll call vote # 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2390 eng.

House POLITICAL SUBDIVISIONS Committee

- Subcommittee on _____
 - Conference Committee
- } Identify or check where appropriate

Legislative Council Amendment Number 90831.0206

Action Taken Do Pass as Amended

Motion Made By Rep. Maragos Seconded By Rep. Koppelman

Representatives	Yes	No	Representatives	Yes	No
Chairman Froseth	/		Rep. Wikenheiser	/	
Vice Chair Maragos	/				
Rep. Delmore	/				
Rep. Disrud					
Rep. Eckre		//			
Rep. Ekstrom		//			
Rep. Glassheim					
Rep. Gunter	/				
Rep. Johnson, N.	/				
Rep. Koppelman	/				
Rep. Niemeier	/				
Rep. Rose	/				
Rep. Severson	/				
Rep. Thoreson, B.	/				

Total 11 2
(Yes) (No)

Absent -2-

Floor Assignment Rep. Koppelman

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

DO NOT USE HIGHLIGHTER ON ANY FORMS

REPORT OF STANDING COMMITTEE

SB 2390, as engrossed: Political Subdivisions Committee (Rep. Froseth, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 2 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2390 was placed on the Sixth order on the calendar.

Page 1, line 1, after "Act" insert "to create and enact a new section to chapter 11-10 of the North Dakota Century Code, relating to the appointment of state's attorneys;"

Page 1, line 5, after "attorney" insert "; and to provide for application"

Page 2, line 6, after "11-10-02" insert ", except as provided in section 12 of this Act"

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Page 5, line 18, overstrike "One state's attorney."

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Page 7, line 4, after "~~judge~~" insert "sheriff", remove the overstrike over "~~is~~", and remove "sheriff and state's attorney are"

Page 7, after line 14, insert:

"SECTION 16. APPLICATION. Section 12 of this Act does not apply to any county that has an appointive state's attorney before the effective date of this Act."

REPORT OF STANDING COMMITTEE (410)
March 19, 1999 9:07 a.m.

Module No: HR-50-5162
Carrier: Koppelman
Insert LC: 90831.0206 Title: .0300

Renumber accordingly

1999 TESTIMONY

SB 2390

**TESTIMONY TO THE
SENATE POLITICAL SUBDIVISIONS COMMITTEE**
Prepared February 5, 1999 by the
North Dakota County Commissioners Association
Wade Williams, Stutsman County Commissioner - NDCCA Lobbyist

CONCERNING SENATE BILL NO. 2390

Chairperson Lee and members of the Political Subdivisions Committee, on behalf of the county commissioners of North Dakota, I am here to strongly oppose Senate Bill 2390.

This bill is not about election or appointment of state's attorneys or sheriffs, it is about protection, plain and simple. It removes these offices from the governance options provided to local governments and citizens through Tool Chest legislation in 1993. It takes away the power of voters and county commissions to even consider structural change in these offices, thereby forming a refuge for those already holding these offices.

A March 1998 county and community service study conducted by the North Dakota State Data Center, found that over 89 percent of those polled thought state's attorneys should remain elected. A percentage that high indicates to me that any commissioners considering appointment of a state's attorney in the near future, would definitely be answering to voters come election time. It is very unlikely that any commissions would propose the appointment of this office.

Oddly enough, Senate Bill 2390 also includes the election or appointment of sheriffs in its provisions; however, that issue was decided by voters on November 2 in the general election in the form of a constitutional amendment. For this bill to even be correct, the sheriffs would have to be removed.

Tool chest legislation does give political subdivisions and citizen groups a number of governance tools with which they can restructure government. Any restructuring plan or change however, whether it be brought by the governing board or citizens, is subject to examination. Citizens need only 10 percent of those voting in the last election to ask that a change made by the governing board be put to a vote. Protections such as these, make sure that the governance options provided by the Tool Chest are only used for what the public deems appropriate.

Counties have been forced to be innovative and provide more effective and efficient government through structural changes. Property tax freezes, threats of county consolidation and other funding reductions have challenged them and other local governments into tightening already strained budgets. The options provided by the tool chest, even the ones that deal with appointment versus election of officials, gives county commissions and citizens the ability to meet the needs of their communities.

Madam Chair and members of the committee, we ask that you leave these governance tools in tact. The public already has the ability to make sure state's attorneys remain elected, trust in their power to do so and recommend a do not pass for Senate Bill 2390.

February 5, 1999

Testimony of John Greenwood in favor of SB2390

My name is John Greenwood. I am the State's Attorney for Stutsman County, and I am here to testify in favor of SB2390. Every day in my office I make serious prosecutorial decisions that impact the lives of people. I make those decisions as an independent elected official, and use my prosecutorial discretion based only on the facts of a criminal investigation free from any outside influences that may impair that discretion. In exercising a prosecutorial function of my office I have absolute immunity from suit by anyone who feels aggrieved by my actions. I am free of fear of a lawsuit in making my charging decisions. By analogy I compare that situation to that of an appointed state's attorney who, by human nature, is always going to feel outside pressure anytime he or she makes a prosecutorial decision. In defending the absolute prosecutorial immunity the US Supreme Court has stated, "The office of public prosecutor is one which must be administered with courage and independence." *Imbler v. Pachtman*, quoting from *Pearson v. Reed*. That same statement could be made in the issue of elected versus appointed state's attorneys. I urge you to adopt SB2390 to support that independent use of prosecutorial discretion. Thank you.

**GRAND FORKS COUNTY
STATES ATTORNEY**

JAMES T. ODEGARD
GRAND FORKS COUNTY COURTHOUSE

CRIMINAL DIVISION
THOMAS H. FALCK, JR.
J.E. RICK BROWN
WARREN JOHNSON

TRAFFIC DIVISION
DAVID T. JONES
JUVENILE DIVISION
DAMON ANDERSON
CHILD SUPPORT
SONJA CLAPP

February 4, 1999

Political Subdivision Committee
Attention: Hon. Judith Lee, Chair
State Capitol
Bismarck, ND 58501

Dear Senators:

The requested amendment in Senate Bill No. 2390 asks that the Office of States Attorney in the State of North Dakota remain an independent office and be elected by the people of North Dakota. I am respectfully requesting your favorable consideration of Senate Bill No. 2390.

We believe that the voice of the citizens was clear in the November 1998 Election relative to the constitutional measure of electing sheriffs rather than appointing sheriffs. The citizens overwhelmingly voted in favor of electing sheriffs, rather than the sheriffs being appointed.

We submit that in order to maintain healthy government, a separation of powers is needed in that states attorneys are called upon for legal opinions and judgments that are not necessarily in accord with the governing bodies. Further, states attorneys, in order to fairly and effectively represent the citizens of the state, should have independence to exercise discretion and judgment in both criminal and civil matters.

The amendment requested in #2390 would in no way diminish the spirit or intent of present law in that counties, at any time they deem appropriate, can enter into agreements with adjoining counties for joint services within those respective counties. Further, the commissions retain the right to appoint offices when vacancies occur in off-election years. Also, the amendment addresses only the discretionary Office of the States Attorney. It does not address a change in offices that are administrative or ministerial in their operation.

We urge the Committee's favorable consideration of Senate Bill No. 2390 restoring to the citizens of the State of North Dakota the right to elect those serving in the Office of the States Attorney.

Respectfully submitted,


James T. Odegard (02974)



SB 2390

Full Text of Measure No. 2

General Election, November 3, 1998

INITIATED CONSTITUTIONAL MEASURE NO. 2

BALLOT TITLE

This initiated measure would amend Article VII, Section 8 of the Constitution of North Dakota to require elected county officers to be elected by the voters in the jurisdiction they will serve, to require candidates for elective county office to be residents at the time of election and to require that sheriffs be elected.

FULL TEXT OF THE MEASURE

IF MATERIAL IS UNDERSCORED, IT IS NEW MATERIAL WHICH IS BEING ADDED. IF MATERIAL IS OVERSTRUCK BY SLASHES, THE MATERIAL IS BEING DELETED. IF NO MATERIAL IS UNDERSCORED OR OVERSTRUCK, THE MEASURE CONTAINS ALL NEW MATERIAL WHICH IS BEING ADDED.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 8 of article VII of the constitution of North Dakota is amended and reenacted as follows:

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 provided for by the counties shall be for a term of four years. Elective officers shall be elected by the electors in the jurisdiction in which the elected officer is to serve. A candidate for election must be a resident in the jurisdiction in which they are to serve at the time of the election. The office of sheriff shall be elected.

**GRAND FORKS COUNTY
STATES ATTORNEY****JAMES T. ODEGARD****GRAND FORKS COUNTY COURTHOUSE**CRIMINAL DIVISION
THOMAS H. FALCK, JR.
J.E. RICK BROWN
WARREN JOHNSONTRAFFIC DIVISION
DAVID T. JONESJUVENILE DIVISION
DAMON ANDERSONCHILD SUPPORT
SONJA CLAPP

March 3, 1999

Political Subdivisions Subcommittee
Attention: Glen Froseth, Chairman
State Capitol
Bismarck, ND 58501

Dear Chair Froseth:

Senate Bill No. 2390 asks that the Office of States Attorney for the State of North Dakota remain an independent office and be elected by the people of North Dakota.

We truly believe that the voice of the citizens was clear in the November, 1998 election relative to the constitutional measure of electing sheriffs rather than appointing sheriffs. The vote in favor of continuing to elect sheriffs was close to 83 percent.

We submit that in order to maintain a healthy balance in government, a separation of powers is needed in that states attorneys are called upon for legal opinions and judgments that are not necessarily in accord with the respective governing bodies. In order to maintain this balance, we believe that the states attorneys should be permitted independence to exercise discretion and judgment in both civil and criminal matters.

The requested amendment in no way would diminish the spirit or the intent of present law in that the counties, at any time they deem appropriate, can enter into agreements with adjoining counties for joint services within those respective counties. Further, the commissions retain the right to appoint officers when vacancies occur in off-election years. Also, the amendment addresses only the discretionary office of the states attorney. It does not address a change in offices that are administrative or ministerial in their operation.

We urge the committee's favorable consideration of the above bill restoring to the citizens the right to elect those serving in the office of states attorney.

Respectfully submitted,



James T. Odegard (02974)

JTO/ah

POSITION PAPER

TO: House of Representatives

FROM: North Dakota States Attorney's Association

DATE: March 17, 1999

The North Dakota States Attorneys Association, through their membership, and as affirmed by their Board of Directors, submits the following to the House Political Subdivision Committee:

1. That SB2390 should be passed as received from the Senate. The Senate considered this Bill and passed it, as amended, with 42 yeas and 5 neas.
2. That the States Attorney's Association is opposed to any population trigger being placed into this Bill for the following reasons:
 - A. In testimony before this committee, it has been asserted that the rural counties do not have a "choice" as to who is their State's Attorney. The opponents of this bill also assert that it is only in the large counties that there can be true competition for this office. This position is not true across the State of North Dakota. For instance, in the past election, the smallest county (Slope) had a contested election for the office of State's Attorney, yet in Grand Forks County and Ward County the incumbent had no opposition. In each of the above-mentioned elections, the electorate had the final decision as to who would be their state's attorney, a decision that should not be given only to those in counties in which population exceeds a certain number, but to all citizens of North Dakota.
 - B. Opponents to this Bill sight lack of flexibility as the reason it needs to be amended. Lack of flexibility should not be a concern in that SB2390 does not prohibit counties from using the cooperative agreements or consolidation provisions presently available under North Dakota statutes, specifically Section 11-10-04 (presently being used to share a States Attorney between Adams County and Slope County) and Chapter 11-10.3 which would allow office sharing amongst counties.
 - C. The election of States Attorneys as the chief law enforcement individual in a county is necessary to preserve the checks and balances that are prescribed by statute.
 - D. We specifically take exception to comments made at the hearing on the bill that domestic violence cases are not being prosecuted across the state by elected States Attorneys because they are "too tough". This statement is simply not true. Also, please note that there was not a single fact presented to your committee which supports that statement whatsoever.

- E. Previous testimony before this committee also claimed that the Attorney General's office routinely handles cases for States Attorneys because that local States Attorney does not have the expertise. The States Attorney's Association takes exception to this comment in that the Attorney General's office handles cases that are either a conflict of interest for the local prosecutor, or when they could be of assistance in the prosecution of a case in a local jurisdiction. In most cases, a state's attorney first requests that a neighboring state's attorney handle a conflict case rather than to request the assistance of the Attorney General's office. The one exception to this is the one where the State has, since 1992, established a unit to investigate and prosecute child sexual abuse. Even in those cases where Assistant Attorney General Jonathan Byers does prosecute, the local state's attorney is involved in the case and is consulted at all junctures of the case.
- F. The other statement made at the hearing on SB2390 was that the training of state's attorneys was lacking. This is anything but true. The North Dakota States Attorney's Association offers current prosecutorial training two times per year within the state. These training seminars are anywhere from two to five days in length, are well attended, and cover all current topics of prosecution.

Also, individual prosecutors within the state avail themselves of training held out of the state on such subjects as internet crime, arson, homicide prosecution, advocacy training, domestic violence training, DUI prosecution, juvenile crimes, sex crimes and other topics of interest.

As individual members of the States Attorney's Association, we are serious in our commitment to effective and competent prosecution of crimes within our local jurisdiction. We are active members of our local communities. We are available to law enforcement and our local citizens. We actively seek to be trained in technology, areas of law, and all other matters which would enhance our ability to prosecute all types of crimes committed in our jurisdiction.

We believe that the citizens of our local jurisdictions would be best served by a system in which they have a vote as to who will be their state's attorney. The right to vote is a right that should never be taken lightly, either by the citizen or by its representatives.