

**2013 SENATE JUDICIARY**

**SB 2076**

# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee  
Fort Lincoln Room, State Capitol

SB2076  
1/21/2013  
Job #17444

Conference Committee

Committee Clerk Signature



**Minutes:**

*Written testimony*

## Relating to Judgeships

### Senator David Hogue - Chairman

**Chief Justice VandeWalle** - See written testimony.(1) Explains that this bill is a housekeeping measure and somewhat a math issue. He said when the Legislature added new judges in 2009 he was asked when they take office which was 1/1/2010 but he had not computed the length of the term under the new constitutional provision that was enacted in 1998 that say before a judge appointed to fill a vacancy has to stand for election, they serve two years. So unless you start the term of the new judges in 2015 there term will expire in a year there is no election. The Secretary of State's office asked that this be dealt with so there is this bill 2076. He continues to explain the language in the bill.

**Senator Hogue** - Clarifies the year that they will stand for election.

**Chief Justice** - Says this is the first time there are new judges appointed under the new provision of the constitution.

**Chief Justice** - Said it's the provision, if they just served and then they started a six year term in the next election but that is not what the constitution provides. It provides that the amount they have served is taken off the six year term. He says this is where the problem is.

**Senator Berry** - Asks if declaring an emergency would help.

**Chief Justice** - Replies there is a process they have to go and they do not want to violate the process. He said it all takes time. He thinks it may get the person on board 3 months earlier and he would be in favor of that. That would help SB2075 but this issue is for 2076.

The committee discusses SB 2075 also.

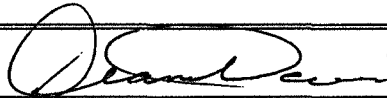
# 2013 SENATE STANDING COMMITTEE MINUTES

**Senate Judiciary Committee**  
Fort Lincoln Room, State Capitol

SB 2076  
1/22/2013  
Job #17539

Conference Committee

Committee Clerk Signature



**Minutes:**

**Committee work**

**Senator David Hogue - Chairman**

**Discussion**

Senator Hogue explains the bill and why this corrective legislation is needed to clarify when their term ends and begins. Committee sites examples of how this can affect someone who becomes a judge. Senator Armstrong comments that if someone knows they have to run in four months they may not choose to take it and you need qualified candidates to take these positions.

Senator Armstrong moves a do pass  
Senator Grabinger seconds

Vote - 7 yes, 0 no  
Motions passes

Senator Hogue will carry

Date: 1/22/13  
 Roll Call Vote #: 1

**2013 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2076**

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By S Armstrong Seconded By S Grabinger

Senators	Yes	No	Senator	Yes	No
Chairman David Hogue	X		Senator Carolyn Nelson	X	
Vice Chairman Margaret Sitte	X		Senator John Grabinger	X	
Senator Stanley Lyson	X				
Senator Spencer Berry	X				
Senator Kelly Armstrong	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Hogue

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

**REPORT OF STANDING COMMITTEE**

**SB 2076: Judiciary Committee (Sen. Hogue, Chairman) recommends DO PASS**  
(7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2076 was placed on the  
Eleventh order on the calendar.

**2013 HOUSE JUDICIARY**

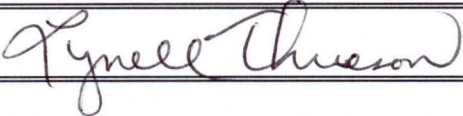
**SB 2076**

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

SB 2076  
March 19, 2013  
Job 20150

Conference Committee



## Explanation or reason for introduction of bill/resolution:

A BILL relating to judgeships created in 2010.

## Minutes:

Attachment 1

**Vice Chairman Klemin:** Opens the hearing on SB 2076.

**1:00 Chief Justice Vanderwall:** Explained the bill. The Constitution says a District Court Judge holds their position for 2 years or until their successor has been appointed.

**4:36 Representative Kretschmar:** Assume now that a Judge is appointed April 15, 2013, how would that work?

**Chief Justice:** The next election will be 2016 but they would serve until 2019. The only way is to avoid it to authorize a Judge two years in advance.

**Representative Kretschmar:** Assume you are filling a vacancy.

**Chief Justice:** These are new Judges starting in new positions. If there is a vacancy there is no problem. It's the new judgeships that are the problem.

**6:45 Representative Kretschmar:** Could it be put in a statute some provision that was set that his term would be from 10-16?

**Chief Justice:** No, they have to serve two years.

**Representative Kretschmar:** Would there be a way to fix it by statute?

**Chief Justice:** This is the fix that we are coming up with, yes.

**8:8:26 Representative Maragos:** If we changed the two year provision is that in the Constitution?

**Chief Justice:** Yes it is in the Constitution.

**Representative Kretschmar:** In a current judgeship vacancy, if another judge is appointed to fill that vacancy, that judge under the constitution must serve two years before the judgeship has an election. He's appointed to only one year, if a vacancy occurs and there is one year more in that judge's term, he goes over that hump then. He stays for the balance of that term?

**Chief Justice:** If you are appointed and there is only one year left on a six year term, you serve two years before you are elected.

**10:55 Vice Chairman Klemin:** We are putting this into session laws because this is not in the Century Code? Is that a way to do this to put it in the Century Code?

**Chief Justice:** It's still the prevailing statute. This is controlled more by the Constitution than it is by legislation.

**Representative Kretschmar:** If the statute would say when those judgeships shall take effect in an even or odd numbered year?

**Chief Justice:** You can do that. You can't wait for two years.

Hearing closed.

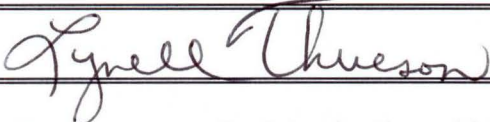


# 2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

SB 2076  
April 2, 2013  
Job 20770

Conference Committee



Explanation or reason for introduction of bill/resolution:

Relating to judgeships created in 2010.

Minutes:

**Chairman Kim Koppelman:** Opens SB 2076 for committee work.

**1:10 Vice Chairman Klemin:** I move a **Do Pass** on SB 2076. Seconded by Representative Delmore.

**Representative Kretschmar:** I looked into this as requested and I asked the Legislative Council. They couldn't understand the bill.

**Chairman Koppelman:** If we don't put this in the Century Code, what good does it really do?

**Representative Kretschmar:** I understood it when the Chief Justice was here testifying. The new judgeship in the Williston and Fargo areas were to be appointed as soon as the law permitted them to be appointed.

**4:05 Chairman Koppelman:** The only application this would have is to those judges who came into being 3 years ago.

**4:48 Representative Larson:** Since this is saying two additional district court judges in the northwest and southeast, we added one to the southcentral in the previous bill. Do we need to make those agree?

**Chairman Koppelman:** This doesn't add any new judges.

**5:33 Representative Brabandt:** So we aren't adding any judges?

**Chairman Koppelman:** No.

**A Do Pass Roll Call vote: Yes = 12, No = 1, Absent = 1. Carrier:** Representative Maragos.

Date: 4-2-13  
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2076

House Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Rep. Klemin Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman	/		Rep. Lois Delmore	/	
Vice Chairman Lawrence Klemin	/		Rep. Ben Hanson	/	
Rep. Randy Boehning	/		Rep. Kathy Hogan	/	
Rep. Roger Brabandt	/				
Rep. Karen Karls	/				
Rep. William Kretschmar	/				
Rep. Diane Larson	/				
Rep. Andrew Maragos	/				
Rep. Gary Paur	/				
Rep. Vicky Steiner					
Rep. Nathan Toman		/			

Total (Yes) 12 No 1

Absent 1

Floor Assignment Rep. maragos

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

**REPORT OF STANDING COMMITTEE**

**SB 2076: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends DO PASS**  
(12 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING). SB 2076 was placed on the  
Fourteenth order on the calendar.

**2013 TESTIMONY**

**SB 2076**

**2013 SENATE BILL NO. 2076 — SUMMARY**

Senate Bill No. 2076 would amend Section 4 of chapter 261 of the 2009 Session Laws (2009 Senate Bill No. 2121), which provided for the creation of two district court judgeships. The bill would correct an anomaly concerning the terms of office for the two judgeships.

The individuals appointed to fill the vacant judgeships created by 2009 Senate Bill No. 2121 took office on January 1, 2010. Following an inquiry from the Secretary of State before the 2012 election cycle it became apparent that the terms of office for the two judgeships were uncertain.

Article VI, Section 13, of the North Dakota Constitution provides that an appointment to fill a vacant judgeship “must continue for at least two years”. The appointment “must continue until the next general election” following the two year period, at which time the office “must be filled by election for the remainder of the term”. These particular provisions resulted from constitutional amendments approved in 1998. The judgeships established in 2010 were the first new judgeships to be created following the approval of the amendments.

The practical effect of the “two year service” requirement and the subsequent “election for the remainder of the term” provision is that the terms of office of the created judgeships will end before the following general election at which a successor could be elected.

**Example:**

January 1, 2010 ---- individual takes office as new district judge. The appointment must continue for “at least two years”.

January 1, 2012 ---- the district judge has completed two years of service.

November 2012 ---- individual appointed to the judgeship must run in the general election for purposes of filling “the remainder of the term”. The individual will have served 2 years and 10 months (and some days) when the general election occurs. The “remainder of the term” for which the individual is then elected would be, approximately, 3 years and 2 months\*. \*This calculation assumes that the constitutional directive that the appointment “must continue until the next general election” (emphasis added) means the appointed term ends on the general election date.

January 1, 2016 — while 2016 is a general election year, the remainder of the elected judge’s term (3 years, 2 months) will end on January 1, 2016, far before when the next general election occurs.

Senate Bill No. 2076 is intended to address the anomaly in which the appointed and then elected judge’s term ends before the 2016 general election. The bill recognizes that the appointed judge serves until the next general election following the two year period and is then elected for the remainder of the term. The bill then provides that the judge is elected and serves “until a successor is elected and duly qualified” (line 15). This is consistent with Article VI, Section 9, of the Constitution. Essentially, the elected judge will “hold over” until the 2016 general election and a successor is elected and duly qualified. The net effect is that the judge will have served a total of seven years, although having been elected after the two year period of service, rather than six years. The extra year of service is simply due to the fact that the judge’s term in office after election will end before the next available general election.

# JUDICIAL BRANCH OF GOVERNMENT

## CHAPTER 261

### SENATE BILL NO. 2121 (Judiciary Committee) (At the request of the Supreme Court)

AN ACT to provide an appropriation for defraying expenses of the judicial branch of state government related to the establishment of two additional district court judgeships; and to amend and reenact sections 27-05-01 and 27-05-02.1 of the North Dakota Century Code, relating to the number of district court judges and vacancies in judicial office.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$875,094, or so much of the sum as may be necessary, to the judicial branch for the purpose of establishing two additional district court judgeships as provided in section 2 of this Act, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 2. AMENDMENT.** Section 27-05-01 of the North Dakota Century Code is amended and reenacted as follows:

#### **27-05-01. Judicial districts - Number of judges.**

4. ~~The judicial districts in this state and the number of judges in each of the judicial districts are as designated by rule of the supreme court. The number of judges in each of the judicial districts is as follows:~~
  - a. ~~The northwest judicial district shall have five judges.~~
  - b. ~~The northeast judicial district shall have three judges.~~
  - c. ~~The northeast central judicial district shall have four judges.~~
  - d. ~~The east central judicial district shall have four judges.~~
  - e. ~~The southeast judicial district shall have three judges.~~
  - f. ~~The south central judicial district shall have five judges.~~
  - g. ~~The southwest judicial district shall have three judges.~~
2. ~~Each judicial district has that number of additional judges as designated by rule of the supreme court pursuant to subsection 3 of section 27-05-00.1. The supreme court shall reduce the number of district judges pursuant to section 27-05-02.1 to forty-two before January 2, 2004.~~

**SECTION 3. AMENDMENT.** Section 27-05-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**27-05-02.1. Vacancy in office of district judge - Transfer of judgeships - Abolition of offices - Hearing.**

1. Notwithstanding section 44-02-03, when a vacancy occurs in the office of district court judge, the supreme court shall determine, within ninety days of receiving notice of the vacancy from the governor and in consultation with the judges and attorneys in the affected judicial district, whether that office is necessary for effective judicial administration or whether a the district judgeship may be transferred to the another location to fulfill a need for judicial services. The supreme court may, consistent with that determination, order that:
  - a. The vacancy be filled in the manner provided pursuant to chapter 27-25; or
  - b. ~~The vacant office be abolished, with or without transfer of a district judgeship as provided by subsection 5; or~~
  - e. The vacant office be transferred to a judicial district in which an additional judge is necessary for effective judicial administration, and that the vacancy be filled in the manner provided pursuant to chapter 27-25 with respect to that judicial district.
2. ~~Subject to subsection 3, the supreme court may, after consultation with district court judges and attorneys in the affected judicial district, abolish one or more offices of district court judge if the supreme court determines that the office is not necessary for effective judicial administration and abolition of the office is necessary to reduce the number of district court judges as required in subsection 2 of section 27-05-01. At least one year before the end of the term of office of a district court judge holding the judgeship, the supreme court shall notify the judges of the affected judicial district of a determination that the judgeship will be abolished. The abolition of an office of district court judge under this subsection is effective at the end of the term of office of the district court judge holding that judgeship. The district court judge holding the judgeship to be abolished may petition the supreme court, within thirty days after receiving notice that the judgeship will be abolished, for a hearing on the determination. The supreme court shall hold the hearing within thirty days after receipt of the petition. Within thirty days after the hearing, the supreme court shall affirm, reverse, or modify its previous determination.~~
3. ~~The authority conferred upon the supreme court in subsection 2 may be exercised:~~
  - a. ~~From July 1, 1995, until June 30, 1997, if on July 1, 1995, the number of district court judges is more than forty-eight;~~
  - b. ~~From July 1, 1997, until June 30, 1999, if on July 1, 1997, the number of district court judges is more than forty-six; and~~
  - e. ~~From July 1, 1999, until December 31, 2000, if on July 1, 1999, the number of district court judges is more than forty-two.~~



4. For purposes of subsection 1, a vacancy is also only deemed to have occurred in the office of district judge if the judge in the affected office declares the intention not to seek reelection or if a judge fails to timely file a petition for candidacy with the secretary of state pursuant to section 16.1-11-06. The secretary of state shall immediately notify the supreme court if a judge fails to timely file a petition. The supreme court may establish by rule procedures for providing notice of the intention not to seek reelection. The supreme court, within ninety days of receiving notice of a judge's intention not to seek reelection or within twenty-one days of receiving notice that a judge has failed to timely file a petition for candidacy, shall determine whether the office is necessary for effective judicial administration. The supreme court shall consult with the judges and attorneys of the affected judicial district in making the determination. The supreme court, consistent with that determination, may order any disposition available under subsection 1. The supreme court shall notify the secretary of state of its determination. ~~If the vacant office is abolished, an election for that office may not be held. This subsection applies to notice given by or the failure to timely file a petition for candidacy by a district judge otherwise eligible for reelection to the office of district judge or by a county judge otherwise eligible for election in 1994 to the district judgeship replacing the county judgeship.~~
6. 3. The supreme court may transfer a district judgeship to any location in which a judge is necessary for effective judicial administration.
6. 4. The supreme court shall notify the governor of its determinations made pursuant to this section.

**SECTION 4. DISTRICT JUDGES.** The appropriation provided in section 1 of this Act provides for two additional district court judges to be assigned pursuant to section 10 of article VI of the Constitution of North Dakota in the northwest and southeast judicial districts, and to be assigned to chambers by the supreme court. Within thirty days after January 1, 2010, the judgeship vacancies created by this section shall be filled in accordance with section 13 of article VI of the Constitution of North Dakota.

Approved April 22, 2009  
Filed April 23, 2009