

2013 SENATE GOVERNMENT AND VETERANS AFFAIRS

SB 2343

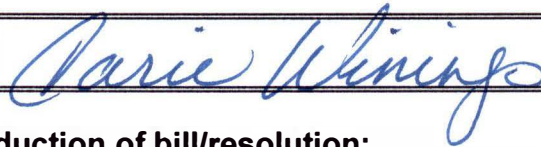
2013 SENATE STANDING COMMITTEE MINUTES

Senate Government and Veterans Affairs Committee
Missouri River Room, State Capitol

SB 2343
02/14/2013
Job Number 18918

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A Bill for an Act relating to write- in votes.

Minutes:

Chairman Dever: Opened hearing on SB 2343.

Jim Silrum, Deputy Secretary of State: See Attachment #1 for testimony in support and to explain the bill.

(2:55)Chairman Dever: The deadline to file this is the Friday before the election?

Jim Silrum: For certain offices, legislative offices, multi-county offices, city and school offices, that would be true, but for statewide offices it is 20 day prior and for judicial offices it is 20 days as well. Those are already in statute.

Chairman Dever: If you don't file a form, then are your votes counted?

Jim Silrum: They would be counted but they would not be a part of the official abstract because you haven't identified yourself as a specific candidate. Therefore, the votes for any write in candidate that is listed who had not filed a certificate of write in candidacy would be listed in the abstract as a scattered write in vote. What has prompted this over the course of time is that for some reason, we and county election officials and others, are noticing an increase in fictitious names that are being placed on the ballot. There are a lot of people who want to simply vote for themselves because they don't like any of the candidates that are there on the ballot. There are also situations in which I have had to

deal with individuals that come into my office and they want to pull a prank or a joke as a way to get the name published. Under current law you can do that but I believe that it is a travesty to the process of democracy.

Chairman Dever: I would agree with that, but don't we sometimes in smaller communities have situations where nobody puts their name on the ballot and they write the names in?

Jim Silrum: That is true. We have had a number of situations where situations like that have happened and there are other statutes in play where 20 people have all received one vote and it becomes a recount situation. We then need to go through the recount process in order to go through that and as a part of that process, those candidates who are involved in recount do have the political recourse to say they want to have their name withdrawn from consideration in the process. We have had situations where we went through that process and there are no candidates that have remained as elected because everyone pulled their name from the process. Our thinking is that if this is the case and we put a stipulation that you file a simple form 4 days before the election, you have indicated then that you are willing to serve if elected. At that point if no one does, we can still have a full jurisdiction of officers because the appointment statutes can kick in.

Senator Nelson: In the current language these things go through the Secretary of State's office, correct?

Jim Silrum: Legislative candidates would come through the Secretary of State's office, county offices would go to the county auditor, city offices would go to the city auditor, school offices would go to the school business manager, and multi-county offices would go in some cases to the county and in others to us.

Senator Nelson: How do you determine with these people that have 6 or 7 counties?

Jim Silrum: Legislators would file their certificates of write-in with the Secretary of State regardless of what the look of their county is. If you look on look on page 3, the new subsection 5, there it determines where multi-county offices would file their paperwork.

Senator Nelson: How do the other counties that it affects find out about these people running?

Jim Silrum: For legislators, we will let them know because we already do that anyway for anyone who is announced their intention to be a write-in candidate. Multi-county offices we take care that as well because we happen to be the filing office, but in those small circumstances like a soil conservation district or something of that nature, it is a simple matter of conversing between county auditors.

(11:30) Chairman Dever: On this committee, Senator Schaible is only one in a multi-county district.

Senator Schaible: I actually won a school board election that I was not running for. I beat the incumbent president and was informed the night of the election that I had won. I didn't want the job. That is not the point, but the thing is that the election was held and some of these write-ins are causing some problems with some entities. The intent of this is kind of nice.

Chairman Dever: Closed hearing on SB 2343.

Senator Schaible: Moved a Do Pass.

Vice Chairman Berry: Seconded.

A Roll Call Vote Was Taken: 7 yeas, 0 nays, 0 absent.

Senator Schaible: Carrier.

Date: 2/14
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 2343

Senate Government and Veterans Affairs 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 Senator Schaible Seconded By Senator Berry

Senators	Yes	No	Senator	Yes	No
Chairman Dick Dever	✓		Senator Carolyn Nelson	✓	
Vice Chairman Spencer Berry	✓		Senator Richard Marcellais	✓	
Senator Dwight Cook	✓				
Senator Donald Schaible	✓				
Senator Nicole Poolman	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Schaible

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

REPORT OF STANDING COMMITTEE

SB 2343: Government and Veterans Affairs Committee (Sen. Dever, Chairman)
recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
SB 2343 was placed on the Eleventh order on the calendar.

2013 HOUSE GOVERNMENT AND VETERANS AFFAIRS

SB 2343

2013 HOUSE STANDING COMMITTEE MINUTES

House Government and Veterans Affairs Committee Fort Union Room, State Capitol

SB 2343
March 21, 2013
20286

Conference Committee

Committee Clerk Signature

Carmen Hart

Explanation or reason for introduction of bill/resolution:

Relating to write-in votes.

Minutes:

Attachment 1

Chairman Jim Kasper opened the hearing on SB 2343.

Senator Schaible appeared in support of SB 2343. We are looking for a write-in candidate to sign an original certificate of intent. The certificate must be in four days before the election by 4 p.m. When we have write-in candidates, a lot of times there are candidates that are written in whether they know it or not.

Rep. Vicky Steiner What time are you talking about?

Senator Schaible I believe it is you have to register in the county of your residence, so it would be the time of that county.

Rep. Vernon Laning You referenced the intent of the individual. Coming from a small town, we have had elections that included write-ins where the candidate actually didn't want to advance their name, but they did take the office after they were elected through write-in process. Does this negate that in any way?

Senator Schaible If this would pass, I don't think that they would be a candidate. I won an election for a school board when I didn't even know I was running, and I did not accept the position. The opposite side of this is if you have an opening then therein of because nobody ran for the election, you still have the appointment process to fill that position. Then they are on the ballot automatically the next time. I think it is important that we have candidates even if they missed the deadlines, and the opportunity for a write-in is still available. It is nice to know if the word gets out and this person is interested that they actually have the intent of being a candidate for that position.

Rep. Vernon Laning Would the person be considered legally elected if they had not filed these papers and were willing to accept the office?

Senator Schaible That would be best to ask the Secretary of State.

Rep. Karen Karls I didn't catch how many days prior?

Senator Schaible Four.

Al Jaeger, Secretary of State, appeared in support. Senator Schaible did a good job explaining. The time would be in the time zone that you are in. He read part of an email from his election specialist that said in cities that have 10-15 people may receive one write-in vote. Many of those do not care to hold the office, but the system as it stands now still requires a recount and then they can opt out of the drawing if the results remain the same and nobody accepts the office. Then they appoint. The law just allows all this extra work not to have happened. You need to keep in mind that in these situations it is our office that gets a call. **Attachment 1.** (4:18-9:32)

Rep. Vernon Laning Small town park board--nobody really wants to run for it so you end up with a couple of write-in votes for individuals that have not submitted their write-in candidacy four days early. One of them gets 10 votes. The other one gets 3. Do you have a winner or do you have to make an appointment?

Al Jaeger I am wondering if park boards are included in this. When you were elected mayor of Stanton, were you a write-in that didn't want the job?

Rep. Vernon Laning I was not a write-in as mayor.

Rep. Steven Zaiser Is this constitutional given the fact that you would be able to have the discretion to determine whether somebody is put on the ballot or not?

Al Jaeger I don't have any discretion at all. It is already a requirement of statewide offices, legislative offices, district offices.

Rep. Steven Zaiser Assuming then that you would have the discretion in determining or discerning whether or not these folks should be on the ballot if they are serious about the office, what are the factors?

Chairman Jim Kasper Let me interject. There is no discretion. The bill would state specifically that if you do not file the write-in certificate before the fourth day, any write-in that is done for your name, you are not a candidate. This specifically excludes that.

Al Jaeger Correct. That document is not filed with our office. That is filed with city auditor, business manager for the school board, etc. In all of these elections people will have to have their name actually on the ballot. They will have to have filed 64 days ahead of time. If no one is on the ballot, you essentially have 60 days to find people to run as write-ins.

Rep. Bill Amerman If this bill passed and if they were write-in votes but didn't do the four days, so they don't apply?

Al Jaeger Correct.

Rep. Bill Amerman It is up to appointment. If there are two or three people and had one or two write-in votes or maybe a tie or whatever, but they didn't meet the four day requirement, are we putting burden on the city councils to appoint somebody out of the one of the three that would have won it or would have took it?

Al Jaeger There is no restriction as to who that governing body appoints to fill a vacancy. It is not just the people that were on the ballot.

Rep. Vernon Laning Another scenario in a small town. An individual had his name put on the ballot for mayor and wasn't very well liked. A group of citizens took it upon themselves to start going around gathering support for their particular candidate which was then written in. The write-in candidate received more votes than the person that was on the ballot. What I am understanding here is that write-in candidate had they not filed ahead of time would not get the election even though they had more votes. Is that correct?

Al Jaeger That is correct. The example you used is a prime example of somebody being on the ballot and citizens wanting somebody else. In a situation like that it would seem to me that somebody would either check our website or call. There is definitely a grassroots movement. Then it becomes a bona fide candidate.

Chairman Jim Kasper Legislative race. Nobody is endorsed by any political party. Nobody's name is on the ballot and nobody files as a write-in candidate. How would that vacancy be filled?

Al Jaeger There is a whole chapter about filling vacancies. It would somewhat depend on the timing of that vacancy, whether a notice would be sent to the district party of the political party.

Chairman Jim Kasper This is a brand new election cycle so anybody could be on the ballot, but nobody nominated or endorsed anybody and...

Al Jaeger I believe there are some provisions. I would have to do a little research. I know if there is a vacancy on the ballot between the primary election and the general election, there is still a way to get a name on the ballot. There are only three reasons. You die or you move out of the legislative, and I forget what the third one is.

Chairman Jim Kasper The dilemma I see in that hypothetical is would you appoint a democrat or a republican because under this bill nobody would have qualified?

Al Jaeger Keep in mind the laws for vacancy, the laws for certificate of write-in candidacy already exist for legislative candidates. This just adds the city and the school type elections.

Chairman Jim Kasper Page 3, Line 21 is the key part which he read. Again, my hypothetical, no political party endorses a candidate for the legislature. Nobody files a write-in petition, and at the end of the general election, we have nobody who has been voted into office. How do we appoint that person under this bill?

Al Jaeger I have to do the research, but I am sure that there are vacancy provisions.

Chairman Jim Kasper I think we need to know that answer. I see a potential solution for this bill. Again going back to Page 3, Line 21, you indicated that the concern is a lot of people get written in who don't want it. What about after the fact under my hypothetical, we had a bunch of write-in candidates and maybe both parties who missed their filing deadline wanted their candidate to be written in but didn't do the four day deal. Could a person who was written in on the ballot file this certificate after the election indicating they are interested in that spot and why would that not work?

Al Jaeger What you are saying is they received votes.

Chairman Jim Kasper Yes. Let's say they are the top vote getter and they say they should have run and I didn't. I should have signed a certificate of interest and I didn't. Now the people said they want me to serve. I'll sign this certificate and say I will accept because I was the top vote getter.

Al Jaeger The likelihood of going in to a general election without having a candidate for the position would be rather rare. In the June election you have a filing deadline and as some people have experienced over the years is when paperwork has not been processed, they didn't get it in by 4:00 and they had to run a write-in campaign and they won. Between June and November I am quite certain there is a way that a political party can get someone on the ballot.

Chairman Jim Kasper It is a very rare potential but it could happen.

Rep. Ben Koppelman In most cases like the school board if there had been any sort of vacancy that occurred, it was the school board that appointed their new member.

Chairman Jim Kasper Let me give you another hypothetical. Both candidates for the legislature are driving in a car on the third day prior to the general election, have an accident and both are killed. There again the write-in candidate obviously would not have filed a petition of interest. Who is going to win and who is going to be appointed?

Al Jaeger The deceased person would be elected. We can't take them off the ballot.

Chairman Jim Kasper The political party would appoint the replacement?

Al Jaeger Those things would kick in. When we certify the ballot which is 55 days before the election, if that certification is done on the 52nd day and you are not around anymore, you are still on the ballot. We don't reprint the ballot.

Rep. Bill Amerman Under current law if there are two write-in candidates and they both have the same number of votes, there has to be a recount and the recount is fine, is there then another special election or is this where the appointment comes in?

Al Jaeger No. If there is a tie, a drawing determines who will be the office holder.

Chairman Jim Kasper A drawing or a coin flip that the candidates would agree on. Would you bring us back some of that information on the vacancy?

Al Jaeger I will.

Neutral:

Keith Magnusson, ND League of Cities, appeared in a neutral position. We have lots of small cities and people don't seek out these jobs. They may end up with them. They may trade them. I don't have a magic solution to this but we do know it is a significant challenge for these small cities.

Rep. Karen Karls What is the minimum amount of city offices that a small incorporated town can have?

Keith Magnusson You could probably get by with a minimum of 3-5.

The hearing was closed.

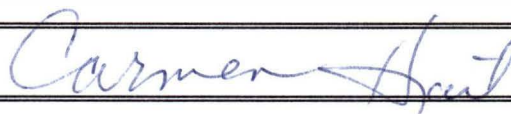
2013 HOUSE STANDING COMMITTEE MINUTES

House Government and Veterans Affairs Committee
Fort Union Room, State Capitol

SB 2343
March 28, 2013
20664

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to write-in votes.

Minutes:

Attachment 1

Chairman Jim Kasper opened the session on SB 2343.

Attachment 1 from the Secretary of State's office was handed out.

Jim Silrum, Deputy Secretary of State, appeared to explain. He pointed out lines in the bill that reference that an original certificate of write-in candidacy must be submitted to make sure it is not a copy so we have an original signature stating that person does indeed want to be a candidate for that particular office.

Chairman Jim Kasper Go through Page 3, Lines 8-14.

Jim Silrum Any certificate of write-in candidacy for offices other than those of a statewide or judicial nature must be submitted to the filing office by 4 p.m. on the 4th day before an election which is the Friday before that. For legislative offices, city offices, and school offices, that is when the certificates would be due signifying to the election official that candidate does want to be a candidate in that election.

Chairman Jim Kasper My concern was if all the candidates backed out and you have a bunch of write-in votes on election day, but they had not certified, we weren't going to count them, but they can still file within 4 days and now they are saying okay I want to be a candidate.

Jim Silrum You worked on a bill earlier this session in which the filing deadline is now going to be 64 days instead of 60 days. This bill is I want to be considered as a candidate for a write-in for one of the offices on the ballot, and you have up until the 4th day before the election in order to signify your intention to do so. The reason this is coming about is primarily for school and city elections in which no candidates filed to have their name placed on the ballot, and, therefore, because no one is required to notify anybody that they have an intention that they would like to be a candidate for that office, voters going into the poll booth often times say I don't know who should win so they write in a name. At the end

of the election when the votes are tallied, we will have 20 or 30 names of people each receiving one vote. When we go to tabulate or have the recount, odd things are happening and that is all of these candidates had no idea that somebody was going to write them in. They say they don't want the job and withdraw themselves from being considered and the city or school board is left with a vacancy and have to fill that office through the vacancy statutes.

Rep. Vernon Laning I witnessed a case where an individual had his name on the ballot for being mayor. Local citizens didn't want that person to be mayor, so they were going to write in the previous mayor. The previous mayor really wasn't that enthused about running again and yet received the popular vote, and he did accept the position. In a case of this four days prior I am sure he would not have done that. This procedure would exclude him from even being considered.

Jim Silrum You are correct. There are always exceptions but the vast majority of other situations are as I have described.

Rep. Vernon Laning What would you think of an amendment that excluded small communities of under 1,000 or 2,000?

Jim Silrum You might as well kill the bill then. District 40 had to run a write in campaign. All three of those candidates filed certificates of write in candidacy even though they were not required to under current law. Four days is not a long time for a person to decide if they are willing to take this position if the voters say they want them to serve.

Rep. Ben Koppelman I understand what you are saying about election administration and how this makes things easier. In small communities I would argue that people may not pay as close attention to who is running this time and what they had to say about it, because they already know that person as opposed to a total stranger in a larger city who might be running. You also could run into cases where people don't realize that nobody has come forward to run, so people might not get there until election day and say they didn't even know they should have encouraged anybody to run, because obviously nobody is here on the ballot. I do not see the problem with the write in process. If there is a write in campaign and the top vote getter wins and didn't want the position and didn't register within these four days, would the second place person get that position?

Jim Silrum No. If a person is elected and they turn down the election, a vacancy exists. How the vacancy is filled must be followed according to law.

Rep. Ben Koppelman If the premise of this is that we want the person who gets the most write in votes to be somebody that intended to run because they filed the certificate and if nobody files the certificate under this new provision, then we would fill a vacancy. It doesn't seem any worse than what we have.

Jim Silrum This bill is not intended to make it easier on us as election officials. This bill is intended to address a situation that has occurred time and time again where all of the people named as a write in for a contest in a small jurisdiction have said they didn't want it.

This is an effort to address this from the start. This cuts to the chase a whole lot quicker than our current process.

Chairman Jim Kasper Under current law if there is no candidate on the ballot, the election judges simply count the write ins and tally them and the highest write in number is the winner. If not, then you go to the process to elect because the office is vacant. Is that not correct? Administratively, they count the ballots either way. The outcome under this bill changes because of the four day filing requirement.

Jim Silrum It could. If there are no candidates that have filed for a particular office to have their name on the ballot and there are no certificates of write in candidacy filed for that office, no write in votes would be counted for that office. The election officials at that point would just know it goes immediately to the appointment statues.

Rep. Karen Rohr If we change a law, there is an education process that would go back to these smaller communities.

Vice Chair Randy Boehning He talked about his dad and the election for mayor. At least with this legislation, it makes it a little bit cleaner.

Rep. Bill Amerman Let us use a county office. Can somebody right now file with you and say they want to be a write in candidate?

Jim Silrum Yes.

Rep. Bill Amerman Under the current law if another person gets the write in votes and beats the person that had filed, the one that had write in with the most votes, he would win the election and he would take it? That would be part of the stipulation.

Jim Silrum Correct. The greatest number of votes in that situation would trump.

Rep. Bill Amerman Now we pass this bill and have the same situation. One person writes in, meets the deadline and will accept the write in position. When the election comes, a second person gets the most write in votes. According to this, the canvassing board can't even count that second person's because he didn't officially report that even though he received the most votes.

Jim Silrum Correct. That is the way it would happen under this. That is a rare occurrence.

Rep. Steven Zaiser Do any other states do something very similar to this and have you heard of any acrimony that exists in those states from small communities that exist in those states?

Jim Silrum In most states, it is my experience that if they allow write in candidates, they do require some form of notification that they indeed want to be considered a candidate. In the state of South Dakota, for example, there is no such thing as a write in candidate. North Dakota is unique in this regard as well in that we have these rules that say if there is a full slate of candidates on the ballot, then a certificate of write in candidacy is required. If

there is not a full slate of candidates, then no certificate is required but you can file one if you want to. This intends to make it cleaner so that you know.

Rep. Steven Zaiser Have you heard of the kinds of conflicts like mentioned here today?

Jim Silrum I have not. I more often hear when I talk to other states about rules that govern write in candidates and what is required in North Dakota, they say they are glad the way they have it in their state.

Rep. Marie Strinden This bill worries me. The situation that Rep. Amerman had could happen. We have public records and obviously people are going to find out that the person that the people wanted to get elected didn't get elected because of a paperwork issue. Can you see that being a problem?

Jim Silrum I will agree with you of that possibly happening. It very rarely exists. To me the ability to appoint--you could still appoint Rep. Boehning's dad who said I would be willing to serve if that is what you wanted, and he didn't get around to filing the paperwork in order to be included.

Chairman Jim Kasper What is the perception of the voter if the bill becomes a law? I believe the perception could be that legislature is not letting us have our way at the ballot box. I see this bill as a danger to all of us as far as sending a signal to the voters of our state.

Rep. Ben Koppelman I would make a Do not pass motion.

Rep. Vicky Steiner seconded.

Vice Chair Randy Boehning If someone is a write in and wins the majority of the votes and doesn't want the position, then the position is unfilled. The next person in line won't get the position. They will have to appoint someone. This would be the cleaner way because everybody knows ahead of time.

Rep. Vicky Steiner I agree with the chairman. I don't see the public clamoring to change this. If we had a lot of testimony from people saying they were upset about how it was working, then we would respond to it, but we are actually getting ahead of it and I am not sure the public will support this.

Rep. Steven Zaiser Rep. Laning had an interesting observation about amending the bill. I have mixed feelings.

Rep. Marie Strinden Every vote should be counted. I would be really upset if I went to the polls and wrote in a name and later found out it couldn't be counted because of a paperwork issue.

Rep. Karen Rohr There is an education process, and I feel we need to consider before we kill this bill. A roll call vote was taken and resulted in **DO NOT PASS, 8-6**. **Rep. Vernon Laning** is the carrier.

Date: 3-28-13
 Roll Call Vote #: _____

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2343**

House Government and Veterans Affairs 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 Koppelman Seconded By Steiner

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper	X		Rep. Bill Amerman	X	
Vice Chairman Randy Boehning		X	Rep. Gail Mooney		X
Rep. Jason Dockter		X	Rep. Marie Strinden	X	
Rep. Karen Karls		X	Rep. Steven Zaiser	X	
Rep. Ben Koppelman	X				
Rep. Vernon Laning	X				
Rep. Scott Louser		X			
Rep. Gary Paur	X				
Rep. Karen Rohr		X			
Rep. Vicky Steiner	X				

Total (Yes) 8 No 6

Absent 0

Floor Assignment Laning

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

REPORT OF STANDING COMMITTEE

SB 2343: Government and Veterans Affairs Committee (Rep. Kasper, Chairman)
recommends **DO NOT PASS** (8 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING).
SB 2343 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

SB 2343

Attachment #1

ALVIN A. JAEGER
SECRETARY OF STATE

HOME PAGE www.nd.gov/sos



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SECRETARY OF STATE
STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

February 14, 2013

TO: Sen. Dever, Chairman, and Members of the Senate Government and Veterans' Affairs Committee

FR: Jim Silrum, Deputy Secretary of State, on behalf of Al Jaeger, Secretary of State

RE: SB 2343 – Certificate of Candidacy for Write-in Candidates

This bill is to clarify three portions of the law related to write-in candidates.

Page 2, lines 20 and 27 and page 3, line 8: All certificates of write-in candidacy that are filed must be original copies.

Page 3, lines 15 through 20: Requires write-in candidates for any multicounty, county, city, or school office to file a certificate of write-in candidacy and identifies the filing officer with whom it must be filed.

Page 3, lines 21 through 29: The added text and the deletion make it clear that all write-in candidates for public office must file a certificate of write-in candidacy according to the requirements of the section.

In the event that no candidate is elected to fill a certain position, current law provides procedures for the vacancy to be filled by appointment under those circumstances.

We request your favorable consideration and a do pass recommendation.

Attachment 1

ALVIN A. JAEGER
SECRETARY OF STATE

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SECRETARY OF STATE

STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

March 21, 2013

TO: Rep. Kasper, Chairman, and Members of the House Government and Veterans' Affairs Committee

FR: Al Jaeger, Secretary of State

RE: SB 2343 – Certificate of Candidacy for Write-in Candidates

This bill is to clarify three portions of the law related to write-in candidates.

Page 2, lines 20 and 27 and page 3, line 8: All filed certificates of write-in candidacy must be originals.

Page 3, lines 15 through 20: Requires write-in candidates for any multi-county, county, city, or school office to file a certificate of write-in candidacy and identifies the filing officer with whom it must be filed.

Page 3, lines 21 through 29: The added text and the deletion make it clear that all write-in candidates for public office must file a certificate of write-in candidacy according to the requirements of the section.

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We request your favorable consideration and a do pass recommendation.

SB 2343
Attachment 1

NDLA, Intern 09 - Wallace, Carrie

From: Jaeger, Al A.
Date: Wednesday, March 27, 2013 10:12 AM
To: Kasper, Jim M.
Cc: Silrum, Jim; NDLA, Intern 09 - Wallace, Carrie; Oliver, Lee Ann M.; Arnold, John
Subject: SB 2343 Counting of write-in votes

Rep Kasper,

As we discussed on Monday, this bill is primarily related to county, city, and school elections. However, I did miss something related to legislative candidates and I will try to explain.

The requirement for legislative candidates to file a certificate of write-in candidacy has existed in state law since the 1997 session. It is true that under current law, even for legislative candidates, a certificate of write-in candidacy is not required if there are no names on the ballot. However, that has rarely happened in legislative races and when it has, the candidates have filed the certificate of write-in candidacy anyway just to be sure.

For example, in District 40 last year, the endorsed legislative candidates for one political party did not file their documents prior to the 4:00 p.m. filing deadline for the June election. They then had to run a write-in campaign. Even though there were no candidates on the ballot in their primary race, they still filed certificates of write-in candidacy.

Under existing law, these certificates for a legislative race have to be filed no later than 4:00 p.m. on the fourth day before the election. That means if the election is held on Tuesday, the filing of that certificate would have to take place by 4:00 p.m. the previous Friday. It makes no difference if it were a June primary election or the general election.

It is doubtful that in a legislative race in the general election where no candidate was on the ballot for at least one of the political parties, that any political party would not run someone as a write-in candidate and file a certificate of write-in candidacy prior to the fourth day before the election.

You know, under current law, the filing deadline is 60 days before an election. That means that any potential legislative write-in candidates would still have 56 days before they would have to file a certificate of write-in candidacy or four days before the election. If they did that, their votes would be counted.

The problem of having to count write-in candidates is mostly with city elections, in particular in small towns where the names of people are written in that have do not have a desire or intend to serve if elected and refuse to take the position even though they received most of the votes.

Because there are provisions for filling vacancies, it is thought that is a better way to fill the position compared to having someone elected who refuses to take the office. Yes, I know there are exceptions, as was brought forward by some committee members. However, based on our experience and calls to our office, we have many more people that are elected by write-in votes who do not take the office. This bill would require a candidate to indicate their interest no later than the fourth day prior to the election, which should result in only people being elected by write-in votes that are willing to take the office.

I also think that 16.1-13-10(1) would cover the rare case where a vacancy in the office of a member of the legislative assembly occurs because of a vacant ballot. In particular, the sentence in that section reads, "If the former member was elected as an independent candidate or if the district committee does not make an appointment within twenty-one days after receiving the notice from the chairman of the legislative management, the chairman of the legislative management shall appoint a resident of the district to fill the vacancy."

If my explanation does not answer your concerns and questions, please let me know. In my opinion, this bill does nothing that impacts a legislative race in a negative manner. In fact, it just makes sure that even a legislative candidate has publicly declared his or her intent that they will take the office if elected in this manner.

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328-3670