

2017 SENATE POLITICAL SUBDIVISIONS

SB 2238

2017 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Red River Room, State Capitol

SB 2238
1/26/2017
Job #27483

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to employing as city employee's members of city council or city commission

Minutes:

Written testimony # 1 Stephanie Dassinger

Chairman Burckhard open the hearing for SB 2238. All senators were present.

Senator Oehlke: District 15, Devils Lake. Sponsor of SB 2238 is pretty simple stuff. The way our Century Code reads right now, if you are on the city commission in any size city, you're not able to do any work for that city either as an employee or a contractor. So, sometimes in these real small communities, and this bill says 500 or under, that if you happen to be serving on the City Commission and you happen to be the only guy in town that can move any snow, because you got the only plow or other type of contracting work, this would allow you to be able to bid those contracts. Basically what the League of Cities is concerned about is if we don't pass something like this, there are really good people out there that probably say, well I can't serve on the city commission because I dig water lines. This allows them the ability to do that, that is the sum total of the bill.

Chairman Burckhard: So, do you happen to know how many cities in North Dakota have 500 or less population?

Senator Oehlke: No, but there is a fair number. **Chairman Burckhard:** like more than 60?

Senator Oehlke: I am just thinking in my district I am sure there is 10.

Stephanie Dassinger Deputy Director of the North Dakota League of Cities, and I also serve as the staff attorney for the league. In support of SB2238. Written testimony #1.

Senator Anderson: If I live in one of these cities, and I have a bobcat and my business is Anderson Limited Liability Company, then can I do it and my company gets paid instead of me?

Stephanie Dassinger: There is a provision that allows for a contract for a city contracts actually in populations under 10,000. So you could do it as an independent contractor, the hiccup would be more the employee side of things. The worry comes in where the city has

control over that person when they do it, they own the equipment, the independent contractor and employee relationship in the law becomes very difficult. If you don't do it correctly and someone gets hurt, it causes problems.

Chairman Burckhard: how many cities do we have in North Dakota that have a population of 500 or less? *(See attachment #1 p.2)*

Stephanie Dassinger: I can get you that information. **Chairman Burckhard:** I would be curious to know?

Senator Judy Lee: I wonder if an emergency clause would be helpful so that you can get paid for this season.

Stephanie Dassinger: Yes, an emergency clause would be great.

Chairman Burckhard closed the hearing on SB2238.

Senator Judy Lee: I move that we amend it to include an emergency clause.

2nd Senator Diane Larson

Chairman Burckhard: We incorporate an emergency clause in there which means as soon as the governor signs it, it goes into effect and they have that new law effective immediately.

Roll call vote: 6 Yea, 0 No 0 Absent

Senator Anderson: If we put too many emergency clauses is that an endorsement for meeting every year?

Chairman Burckhard: We need a motion for do pass as amended

Senator Diane Larson: I make a motion for do pass as amended

2nd Senator Kannianen

Roll call vote 6 Yea, 0 N, 0 Absent

Carrier: Senator Kannianen

Senator Dotzenrod's vote was recorded on Job # 27456. He voted Yes on adopting the amendment, and Yes on do pass as amended.

2017 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee
Red River Room, State Capitol

SB 2238
1/26/2017
Job # 27437

- Subcommittee
 Conference Committee

Committee Clerk Signature *Yngwacker*

Explanation or reason for introduction of bill/resolution:

Relating to employing as city employee's members of city council or city commission

Minutes:

Chairman Burckhard opened the hearing on SB 2238. Senator Dotzenrod came to the hearing late, due to a schedule conflict on another bill. All other senators were present.

Justin LaBar, from White Earth, ND. I am the father of 9 children and am a 4th grade teacher in Stanley. But we have a small little community there. We love our small communities. But sometimes one of the challenges we run into as a city councilman, is the fact that when your small there is not a lot of resources to choose from. Some of the people we've had at times that are on the committee, are on the city council, are those who provide the skills that we need to get some things done. Unfortunately, if you're on the city council, there is some things you're restricted from doing otherwise. As a result of that, that is why I came here today on the invitation of Senator Kannianen, thankfully, but this legislation is going forward to give us an opportunity to change that and allow cities like mine with smaller populations to allow representatives to do some things they wouldn't otherwise get to do. I think it is important to note as well and perhaps you discussed this prior to me coming in, that even though some may claim a conflict of interest, when you're in a small communities keep tabs on you pretty well, so the risk or running the risk of doing anything that would any impropriety would be very small, so I appreciate a do pass recommendation and the opportunity to address you today.

Chairman Burckhard: closed the hearing on SB2238.

2017 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Red River Room, State Capitol

SB 2238
1/26/2017
Job # 27456

- Subcommittee
 Conference Committee

Committee Clerk Signature

M. Gwock

Explanation or reason for introduction of bill/resolution:

Relating to employing as city employee's members of city council or city commission

Minutes:

Senator Dotzenrod's vote

Chairman Burckhard: Senator Dotzenrod this bill has to deal with cities of smaller than 500 populations, be able to employ city employees who are also members of the city commission. For instance, if a city commissioner does snow removal they could actually hire him and pay him to do that. We don't know the number of cities under 500 and there is a lot of them and were going to find out there is only 357 cities otherwise. It is a number smaller than that, so it was voted.

Senator Dotzenrod: I am ready to vote. Committee clerk asked Senator Dotzenrod there are two parts to this bill. The first part that they voted on was to adopt an amendment "the amendment was to move to include an emergency clause", how do you vote for this?

Senator Dotzenrod replied Yes.

Committee Clerk the second vote sir, was to do as amended, how do you vote for this?

Senator Dotzenrod: replied Yes on 2238.

Chairman Burckhard: Senator Kannianen is carrying that one.

January 26, 2017

CM
1/26/17

PROPOSED AMENDMENTS TO SENATE BILL NO. 2238

Page 1, line 3, after "commission" insert "; and to declare an emergency"

Page 2, after line 22, insert:

"SECTION 3. EMERGENCY. This Act is declared to be an emergency
measure."

Renumber accordingly

Date: 1.26.17
Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2238

Senate Political Subdivisions Committee

Subcommittee

Amendment LC# or Description: Motion to include an emergency clause

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Sen. Judy Lee Seconded By Sen. Diane Larson

Senators	Yes	No	Senators	Yes	No
Chairman Randy Burckhard	✓		Senator Jim Dotzenrod	✓	
Vice-Chairman Howard Anderson	✓				
Senator Jordan Kannianen	✓				
Senator Diane Larson	✓				
Senator Judy Lee	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

Date: 6.26.17
Roll Call Vote #: 2

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2238

Senate Political Subdivisions Committee

Subcommittee

Amendment LC# or Description: 17.0876.01001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Sen. Diane Larson Seconded By Sen. Kannianen

Senators	Yes	No	Senators	Yes	No
Chairman Randy Burckhard	✓		Senator Jim Dotzenrod	✓	
Vice-Chairman Howard Anderson	✓				
Senator Jordan Kannianen	✓				
Senator Diane Larson	✓				
Senator Judy Lee	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Kannianen

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

REPORT OF STANDING COMMITTEE

SB 2238: Political Subdivisions Committee (Sen. Burckhard, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2238 was placed on the Sixth order on the calendar.

Page 1, line 3, after "commission" insert "; and to declare an emergency"

Page 2, after line 22, insert:

"SECTION 3. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

2017 HOUSE POLITICAL SUBDIVISIONS

SB 2238

2017 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Prairie Room, State Capitol

SB 2238
3/10/2017
Job # 29048

- Subcommittee
 Conference Committee

Carmen Hickley

Explanation or reason for introduction of bill/resolution:

Relating to employing as city employees, members of city council or city commission; and to declare an emergency

Minutes:

1,2

Chairman Klemin: Opened the hearing on SB 2238.

Senator Oehlke: (Time 01:29 to 2:50) Introduced the bill. He was asked to sponsor the bill from the League of Cities. It is for cities to be able to hire someone to do work who also happens to be on the city commission.

Rep. Johnson: That person is voting on their own salary, is it your anticipation that other board members would have to pass on a vote that included salary change?

Senator Oehlke: It isn't that they would have to pass on the vote, it is they would be able to be on that city commission and provide services or perhaps be employed as an employee of that community. Now you can't do that, you can't have that conflict of interest. In small communities this would change that perspective.

Rep. Johnson: Is the anticipation that person would be deciding their own salary level? I see a problem because they would have to vote on things in which they could have a conflict of interest. Their job is in that budget and they are voting on that budget.

Senator Oehlke: I don't think it would end up being an ethical problem. The way we handle it in the Senate is if someone has a direct interest in something they may ask to be recused from voting on the issue. In general, we have not accepted that idea but it takes a vote from the entire Senate to say no you are here to vote. I am guessing that is how it is handled on a city commission as well.

Rep. Longmuir: As I read the bill this is for populations of 500 or less?

Senator Oehlke: That is correct, it is for only the communities that are small and having hardships right now. The best person for the job might be someone who is on the city commission but can't do both.

Chairman Klemin: It seems to me there are some provisions in the law relating to procedure to follow in an event of a conflict of interest in the political subdivision. What happens when a city of 499 has a couple of twins born and we are now at 501? So once a person has the job he will have it even if the population increases?

Senator Oehlke: The way that is written I suppose that is true.

Chairman Klemin: Do you how many cities we have in North Dakota that are 500 or less?

Senator Oehlke: I do not.

Rep. Ertelt: You mentioned conflict of interest and that is my concern. Do you think it would be prudent that in decisions regarding this particular decision of employment that member of the city council, commission or mayor recuse themselves from voting?

Senator Oehlke: If I was on the city commission I would make rules to that effect personally. There may be rules for that already, I think it would be a good idea. There may be some city commissions out there that are only 3 people.

Rep. Simons: I see what you are talking about, the little town that I live by is that exact way. A lot of people that would like to do work are stepping forward and they are the best. But the bidding process how does that work for transparency?

Senator Oehlke: The bidding process has its own rules and regulations depending on the size of the job. We are typically talking about small jobs that are extremely necessary even in small communities and no one else is there to do it. It would give them that option.

Stephanie Dassinger, Deputy Director of the ND League of Cities: (Testimony #1, attachment #2) (Time :11:25 to14:25).

Rep. Hanson: Because this bill has the requirement of cities under 500, are there other laws in our statutes that apply to cities that are population based? How are those handled by cities that have grown?

Ms. Dassinger: The other law that has a population base would be for requirements for contracting. As a practical matter they are going off the census that was the most recent.

Rep. Pyle: Another example is municipal judge, cities under a certain population their municipal judge does not have to be an attorney.

Chairman Klemin: Why is there an emergency clause?

Ms. Dassinger: The Senate added the emergency clause and it is basically for if there is another snow emergency these cities can get relief as soon as possible.

Rep. Ertelt: If there is already law governing the conflict of interest, and we are alright with allowing it for these cities under 500, why not get rid of the whole section of law and don't have any restriction on whether or not they can serve as an employee of the city??

Ms. Dassinger: There are two different statutes that apply. There are provisions that apply to employees and other elected officials and then there are provisions that apply to contracts.

Chairman Klemin: No other testimony. Closed the hearing on SB 2238.

Rep. Maragos: Move a do pass motion.

Rep. Johnson: Second the motion.

Chairman Klemin: Two-thirds of cities in North Dakota have 500 or fewer population.

Rep. Longmuir: We have a number of small towns in our district and these guys are using their own equipment and sometimes don't even get the fuel.

Rep. Ertelt: I have concern about an arbitrary number of 500, why not 1000? Early in this winter in regard to snow removal, we didn't get it all removed and the city suffered the whole time because they were not able to clear it all in time before additional snowfall. I am quite hesitant to carve out another section of law or exemption for certain sizes of cities and we have only really talked about snow removal. I think we might need a little longer for consideration.

Chairman Klemin: What do you mean by longer we are going to consider this right now?

Rep. Ertelt: If we would perhaps defeat the motion we might have more time.

Rep. Pyle: This could apply to some of the lawn mowing, public works positions. If you are having anybody doing any type of work for a city and they get injured this provides protection of liability while they are working.

Rep. Beadle: I will support the motion but I do understand Rep. Ertelt concerns. Especially with regards to the cap threshold of 500, I wouldn't have any problem if we did come back next Legislative session and remove the language, any city having a population of 500 or fewer, for future use because it does have the qualifier on there, that no other qualified individual is available to hold the position at an equal cost to the city.

Rep. Simons: I do see this in Belfield, the mayor works 60 to 70 hours per week mostly for free. The closed bidding process, how would we know on an hourly, what exactly is the bill encompassing?

Chairman Klemin: The bill requires that there be unanimous approval of the other members of the council or commission. The approval must be documented in the official minutes of the council. That would be an open record and of course nothing requires a council or city commission to hire somebody.

Rep. Simons: Is there a peer pressure to vote yes for a person on the board?

Rep. Johnson: There is independent thought on boards and local authorities.

Rep. Ertelt: No other qualified individual able to hold the position, but it seems this is hard to prove. The assumption is within the city itself but you could have a neighboring city 5 miles away potentially there is someone in that community who would be able to be employed for those services.

Rep. Pyle: But then that person has to apply for the job.

Rep. Ertelt: It seems like the main focus is snow removal. Are we actually advertising when there is snowfall to have an additional individual help clear the roads? Are we publishing that in the local paper and waiting until we fill that?

Rep. Pyle: A lot of times cities will have contacts or people ready to go so when there the snow emergency happens, they are ahead of time.

Rep. Ertelt: So they are contingent employees?

Rep. Pyle: Yes, just part time. This isn't a regular employment type.

SB 2238 passed 11 yes, 2 no, 2 absent.

Rep. Johnson: will carry the bill

Date: 3-10-17
Roll Call Vote: 1

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2238

House Political Subdivisions Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Rep. Maragos Seconded By Rep. Johnson

Representatives	Yes	No	Representatives	Yes	No
Chairman Klemin	/		Rep. Guggisberg	/	
Vice Chairman Hatlestad	/		Rep. Hanson	/	
Rep. Beadle	/				
Rep. Becker	/				
Rep. Ertelt		/			
Rep. Johnson	/				
Rep. Koppelman	/				
Rep. Longmuir	/				
Rep. Maragos	/				
Rep. Pyle	/				
Rep. Simons	/				
Rep. Toman	/	/			
Rep. Zubke	/	/			

Total (Yes) 11 No 2

Absent 2

Floor Assignment Rep. Johnson

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

REPORT OF STANDING COMMITTEE

SB 2238, as engrossed: Political Subdivisions Committee (Rep. Klemin, Chairman)
recommends **DO PASS** (11 YEAS, 2 NAYS, 2 ABSENT AND NOT VOTING).
Engrossed SB 2238 was placed on the Fourteenth order on the calendar.

2017 TESTIMONY

SB 2238

SB 2238
1.26.17
Written test #1

January 26, 2017

Senate Political Subdivisions
SB 2238

Chairman Burckhard and members of the committee, for the record I am Stephanie Dassinger, Deputy Director of the North Dakota League of Cities. I also serve as the staff attorney for the League.

I appear before you today to express the League's support of SB 2238. As part of my job with the League, I correspond with elected city officials and appointed city officials to help them understand the provisions in the Century Code and how those laws apply to cities.

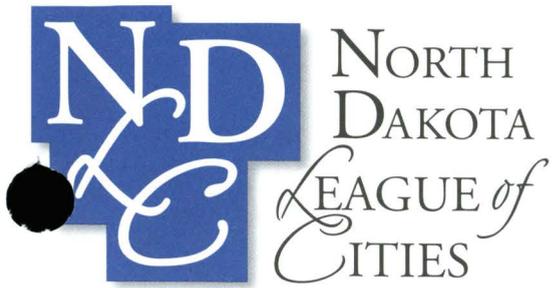
Recently, I have received phone calls from several city council members from small cities asking about whether there is a state law that prohibits them from being paid for being employed by the city to do other work for the city. The main tasks that these elected officials are calling about are snow shoveling and driving the snow plow. I have been told that citizens expect these services to be completed but that city officials cannot find someone else they can hire to do the work. I have tell these city officials that Sections 40-08-09 and 40-09-17 of the North Dakota Century Code do not allow a city council member or city commissioner to be employed by the city and draw an additional salary from the city unless it is in a position as a volunteer firefighter or ambulance crew member.

To illustrate the problem these elected officials are facing, I present you with the following scenario. A city owns two snow plows. Only the city police chief and a city council member are ready, willing and able to drive the snow plows after a blizzard. Both the police chief and the city council member drive the snow plow for 10 hours to clear the snow from the streets. Due to state law, only the police chief can be paid for snow plowing for 10 hours. The city council member, even though he just worked 10 hours clearing snow, cannot be paid for the work he did.

SB 2238 adds an exemption for cities with a population under 500 people to allow a city council member or city commissioner to receive a salary for other work if the city governing board finds that it cannot find another qualified individual to do the work for similar cost. The exemption does not apply to appointed positions for example city auditor or police chief positions. This bill offers a fair and balanced approach and allows your fellow elected officials from small cities to be paid for additional work they may do for their city.

For these reasons, the League urges the committee to vote DO PASS on SB 2238.

THANK YOU FOR YOUR TIME AND CONSIDERATION. I will try to answer any questions.



SB. 2238
1.26.17
Written testimony
1

January 26, 2017

Senate Political Subdivisions
SB 2238

Dear Chairman Burckhard and members of the Senate Political Subdivisions Committee:

In follow up to your question today about how many cities in North Dakota have a population under 500, the answer is: **263 of the 357 cities in North Dakota have a population under 500.**

Sincerely,

Stephanie Dassinger
Deputy Director

2

SB 2238

#1

March 10, 2017

House Political Subdivisions
SB 2238

3-10-17

Chairman Klemin and members of the committee, for the record I am Stephanie Dassinger, Deputy Director of the North Dakota League of Cities. I also serve as the staff attorney for the League.

I appear before you today to express the League's support of SB 2238. As part of my job with the League, I correspond with elected city officials and appointed city officials to help them understand the provisions in the Century Code and how those laws apply to cities.

Recently, I have received phone calls from several city council members from small cities asking about whether there is a state law that prohibits them from being paid for being employed by the city to do other work for the city. The main tasks that these elected officials are calling about are snow shoveling and driving the snow plow. I have been told that citizens expect these services to be completed but that city officials cannot find someone else they can hire to do the work. I have tell these city officials that Sections 40-08-09 and 40-09-17 of the North Dakota Century Code do not allow a city council member or city commissioner to be employed by the city and draw an additional salary from the city unless it is in a position as a volunteer firefighter or ambulance crew member.

To illustrate the problem these elected officials are facing, I present you with the following scenario. A city owns two snow plows. Only the city police chief and a city council member are ready, willing and able to drive the snow plows after a blizzard. Both the police chief and the city council member drive the snow plow for 10 hours to clear the snow from the streets. Due to state law, only the police chief can be paid for snow plowing for 10 hours. The city council member, even though he just worked 10 hours clearing snow, cannot be paid for the work he did.

SB 2238 adds an exemption for cities with a population under 500 people to allow a city council member or city commissioner to receive a salary for other work if the city governing board finds that it cannot find another qualified individual to do the work for similar cost. The exemption does not apply to appointed positions for example city auditor or police chief positions. This change has the potential to affect 263 of the 357 incorporated cities in North Dakota. This bill offers a fair and balanced approach and allows your fellow elected officials from small cities to be paid for additional work they may do for their city.

For these reasons, the League urges the committee to vote DO PASS on SB 2238.

THANK YOU FOR YOUR TIME AND CONSIDERATION. I will try to answer any questions.

3-10-17

CONFLICTS OF INTEREST

Council cities

In cities operating under the Council form of government, “[N]o member of the city council shall: (a) Be eligible to any other office the salary of which is payable out of the city treasury; (b) Hold any other office under the city government; or (c) Hold a position of remuneration in the employment of the city.” The law also provides that a member of the city council may serve as an ambulance crew member and be remunerated for those services, or as a volunteer firefighter or ambulance crew member and be compensated for training or emergency calls.⁵²

Commission cities

In cities operating under the Commission form of government, restrictions on commissioners are listed in: “[N]o member of the board of city commissioners shall: (a) Be eligible to any other office the salary of which is payable out of the city treasury; (b) Hold any other office under the city government; and (c) Hold a position of remuneration in the employment of the city.” The law also provides that that a member of the city commission may serve as an ambulance crew member and be remunerated for those services, or as a volunteer firefighter or ambulance crew member and be compensated for training or emergency calls.⁵³

Municipal contracts

There are also restrictions on city officials being involved in contracts or work of the city. “Except as otherwise provided by law, no municipal officer, in a municipality having a population of ten thousand or more according to the last federal decennial census, shall be directly or indirectly interested in: (1) Any contract, work, or business of the municipality, (2) The sale of any article the expense, price, or consideration of which is paid from the municipal treasury or by any assessment levied by any act or ordinance; or (3) The purchase of any real estate or other property belonging to the municipality or which shall be sold for taxes or assessments or by virtue of any process issued in any suit brought by the municipality.” Provided, however, that the foregoing shall not be applicable if unanimously approved by the other members of the governing body by a finding unanimously adopted by such other members and entered in the official minutes of the governing body, to be necessary for the reason that the services or property obtained are not otherwise available at equal cost.⁵⁴

Disclosure of substantial or pecuniary interest

A member of city council or city commission “who has a direct and substantial personal or pecuniary interest in a matter before that [board or commission] must disclose the fact to the body of which that person is a member, and may not participate in or vote on that particular matter without the consent of a majority of the rest of the body.”⁵⁵

⁵² NDCC 40-08-09.

⁵³ NDCC 40-09-17.

⁵⁴ NDCC 40-13-05.

⁵⁵ NDCC 44-04-22.

Nepotism

The head of an executive or administrative department of a city may not appoint that individual's spouse, son, daughter, brother or sister to any position under the control or direction of that individual, unless the appointment has been approved by the governing body of the city.⁵⁶

⁵⁶ NDCC 40-13-13.