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ROLL NUMBER

DESCRIPTION

4052

2001 SENATE GOVERNMENT AND VETERANS AFFAIRS

SCR 4052

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SCR 4052

Senate Government and Veterans Affairs Committee

☐ Conference Committee

Hearing Date April 5, 2001

Tape Number	Side A	Side B	Meter #
1	X		0.0-45.6
Committee Clerk Signature			

Minutes: **Chairman Krebsbach** called the committee to order. All members were present. **Chairman Krebsbach** opened the hearing on SCR 4052 which is a concurrent resolution for the amendment of section 8 of Article VII of the constitution of North Dakota, relating to the residency of a candidate for county elective office and to permit the legislative assembly to provide for the election of a county elective officer, other than the sheriff, to serve in more than one county. Appearing before the committee to introduce the proposed legislation to the committee was **Senator Aaron Krauter**, district 35, primary sponsor of the resolution. He presented a timeline of what has happened to the committee which has led up to the introduction of this resolution. He indicated back a couple of years ago an issue became kind of important to share county sheriffs in the state. Where they wanted to make sure that they were not appointed by the county commission. That they were elected. What they did is they put forth a measure on the ballot that would kind of protect that right so that they are elected from their county. In that process some of the wording in it also defined that they had to be a resident and in that wording

it made reference to county elected officials and it kind of all of sudden put everyone in one big loop, in one big harness, or lasso, so they are all ties together on this. Now when they did that and the voters passed it, it became part of the constitution of North Dakota. Prior to all that, the county of Slope, North Dakota had a situation when they did not have an attorney that lived in that county and they worked out some arrangements where basically an individual from another county actually two counties, ran for that position on the ballot and one of them was elected. So, what happened when this constitutional change took place, it basically said that state's attorney Mr. Rhoderrink who is a resident of Adams County and also elected states attorney in Adams County who had won the election in Slope County, said that you are in violation of the constitution. You are not a resident over here, you are a resident here. That's kind of the background of what happened here. Since then we have introduced legislation that tried to correct this. The bottom line is you have to change the constitution of North Dakota. What you have in front of you is a constitutional change for the primary election of 2002. He indicated he wants to read this on line 20 that basically explains it real carefully so you understand it. Starting on line 20 it says the candidate for election for sheriff must be a resident in the jurisdiction in which the candidate is to serve at the time of election. The office of sheriff shall be elected. So we are taking care of that whole issue that they said the sheriffs of North Dakota wanted and put it on the ballot and the people of North Dakota voted on it. The next part, the legislative assembly may provide by law for the election of any county elected office other than the sheriff, to serve more than one county provided the affected counties agree to the arrangement and any candidate elected to the office is a qualified elector in one of the effected counties. So, this would be on the ballot and the people would vote on that. It simply says that the counties effected must agree upon so that is what the resolution is in front of you. He also passed out

amendments to SB 2244 that would then take care of the legislative assembly creating that environment. That basically says that you can follow through there in that. As it came over to you from the House they have added section 5. The changes that the house has made however, are not accurate. Here's what the changes are recommended that it should read. The board of county commissioners of two or more counties may enter an agreement by resolution to allow any candidate for elective office other than the commissioner and sheriff, to petition for office in each county and to serve if elected, providing the candidate is a qualified elector in one of the counties at the time of the election in order to be considered elected to serve in a nonresident county. The candidate must receive the highest number of votes for the office in each county election and each county must certify the results and issue certifications of elections pursuant of Chapter 1. What that does is it basically says that you can't do this for sheriff and you can't do this for county commissioner. We don't want to see it open up that way. We want to give them the flexibility so that a states attorney can manage to do this. Potentially if counties agreed upon some things maybe there is another office they can share some duties in. Now, he doesn't want to see any deterioration of county services by providing that out there. But, if two counties who are neighboring and can work out some agreements on maybe register of deeds or some other county elected officer. This would at least give them flexibility. But, it is the local control that is still there. **Senator Kilzer** asked about lines 24 and 25 of the resolution where you mention the term affected counties on line 24 do you mean the county commissioners? **Senator Krauter** indicated yes. If you look at the proposed changes that we are offering in 2244 then it gives that so it is defined that the counties must agree and the governing board in a county is the elected county commission. That is where the authority lies. **Senator Kilzer** indicated that as he recalled in the House Amendment they refer to the term multi-county jurisdiction. Is that taken

out with this amendment? **Senator Krauter** indicated yes. We need to make sure we understand that. Counties still stay whole and that is what this intended. If we stay with that wording, multi-county jurisdiction, all of a sudden we could have states attorneys representing two or more counties, you could have jurisdiction beyond the county lines. We have to be careful of that wording because if you stop and think about it, in his understanding multi-county jurisdiction you could basically be multi-county. You could have two or more and you create a new jurisdiction, and that's not the intent. That was something that needs to be talked about to make sure that we are not creating a new jurisdiction or some other political entity out there. **Senator Kilzer** so, you want that term just wiped out. **Senator Krauter** indicated if you read the amendments, it says page 1, delete line 21-23, so this takes out all of that. **Chairman Krebsbach** indicated that she sees this going back to the language that was in the constitution prior to the sheriffs being elected or a resident in the county. There is only one other thing that she sees that was in here and that is the length of the term. That was who shall hold their office for a term of four years and until there successors are elected and qualified. Does there have to be any term length listed on these offices or will just be for the term established by? **Senator Krauter** indicated he believes those terms are pretty much defined already by statute as far as county offices. Appearing before the committee was Deputy Secretary of State Corey Fong, he indicated one of the things he wanted to clarify was that their concern from the beginning was that they agree that this needs to be fixed because they too have understood the problems especially in southwestern North Dakota where it's been very difficult for them to find states attorneys that are willing and able to serve. The problem with the original bill was that it had some constitutional problems. As you referred to just moments ago, the initiated measure that was approved a couple of years ago required that elective officers shall be elected by the electors

in the jurisdiction in which the elected officer is to serve. The candidate for election must be a resident in the jurisdiction in which they are to serve at the time of the election. That's what caused the problem because they just didn't apply that qualification to sheriff, they applied it to all county officials. That is why the original bill was in conflict with the constitution and that's why we raised it in the house here and that's what has really brought about all of this and these amendments and changes. **Mr. Fong** at this time explained the amendments which are proposed for SB 2244 which will be going to conference committee. He indicated that what they were instructed to do was to try to come up with amendments to SB 2244 that would harmonize that bill with SCR 4052 if it was passed. What they have done is they have taken out that new section 5 and replaced that section which talks about the multi-county jurisdiction states attorney. Essentially what prompted that was he thinks the fact that the house committee was trying to someway make that bill constitutional. During testimony on that bill, one of the states attorney got up and explained that perhaps one of the ways of thinking of this is when he is elected to go to these counties, at that time if there is an agreement it becomes one big jurisdiction instead of two individual jurisdictions. That is what prompted that amendment to the bill. There are still constitutional problems with that however, and that is why they are coming in with these particular amendments. Considering that fact that you have agreed and you are putting forth the constitutional amendment in 4052. Essentially again what it does, it just says that a counties commissioners can come to an agreement by resolution of two or more counties to allow a new candidate for elective county office other than commissioner or sheriff, to petition for office in each county and to serve if elected, provided the candidate is a qualified elector of one of the counties at the time of the election. In order to be considered elected to serve in a nonresident county the candidate must receive the highest number of votes in each counties election. Each

county must certify the results and issue certificates of election in concern to the law. One of the things that we were concerned about and keep in mind that we work with the association of counties and our council from the attorney general. We did not want to go outside and create a joint election. We didn't want that to happen we still thought they needed to conduct separate elections. That is why the language is in there that they have to win and they have to win in both counties or all counties in order to be considered elected to the nonresident county. He cited examples of how this would work. **Senator Wardner** inquired, what if you are the states attorney in Adams and you are running in Slope and Adams and you lose in your home county but you win in Slope, you can still be the states attorney in Slope county, can't you? **Corey Fong** indicated no, because he is not a resident of that county and as the amendments provide, a candidate must receive the highest number of votes in each counties election. **Senator Wardner**, so you have to be elected in both or your home, but you can't do it the other way. **Corey Fong** indicated that's right. That would create a big problem, for example if I was a resident of Slope county and I was running for that office and then I'm running in the neighboring county and a nonresident. I won that election, didn't win my own, but now because of this mechanism all of sudden I can serve in a county that I don't even reside in and the people in my own county rejected me. Senator Dever inquired about if two attorneys run for states attorney in Adams county and both attorneys also run for states attorney in Slope county. The only eligible one to win in slope county is the one who wins in Adams County. **Corey Fong** indicated yes. They have to win in each county that enters in to this agreement. **Chairman Krebsbach** inquired what the results would be if you won in one county and lost in the other county. Mr. Fong indicated if he won in his own county that I am a resident of I would be elected. But, if I won in the other county but not my own county I couldn't be elected to serve

both counties. **Chairman Krebsbach** but than what would that county do without a states attorney. **Corey Fong** indicated it would be presumed that they elected someone else if they lost. **Chairman Krebsbach**, but in other words you can't have more than one person running from another county. **Mr. Fong** indicated yes you could. If it's Slope county and they are looking for candidates to run in Slope county and so they take two neighboring counties it certainly would be possible that they have Adams and Bowman counties for example having candidates. If those county commissioners agreed with that. Obviously the highest vote getter would be elected. **Mr. Fong** indicated the concern that we had and he guesses the Association of Counties and maybe they can speak to this as well, is that if I was to be elected in the nonresident county then all of a sudden I am the states attorney in a county that I don't live in and the voters in my own county rejected me so, again he would be happy to answer questions. **Chairman Krebsbach**, indicated her question was this, say you have two candidates who are residents of the county and they are both running for states attorney in their county that they reside, the county that does not have a candidate chooses one of them to run in their county. This person that is running in both counties does not win his county. Is he then allowed to serve in the county where he was elected. **Mr. Fong** indicated No. **Chairman Krebsbach** inquired who would then serve as states attorney in that county? **Mr. Fong** indicated it would be appointed. In that case there is a vacancy and then the vacancy statute takes over. **Terry Traynor** of the Association of Counties appeared before the committee. He indicated that the association of counties supports the resolution and what it is intending to do. Questions were offered by **Senators C. Nelson, Krauter,Dever, T. Mathern, and Krebsbach**, with responses from **Senator Krauter**, **Mr. Traynor,** and **Corey Fong** (Tape 1, Side A, Meter #'s 17.5-33.0). Following this discussion the hearing was closed on SCR 4052 by **Chairman Krebsbach**. It was decided that no action would

be taken until later in the afternoon after there had been additional time given to work on the amendments to SCR 4052 and also those which would have to be worked into SB 2244 which will need to go to conference committee. **Chairman Krebsbach** reconvened the committee for further discussion of SCR 4052. **Corey Fong**, Deputy Secretary of State brought the committee a draft of the proposed amendments to SCR 4052 which had been discussed earlier in the day. He indicated what the draft of the amendments essentially does is exactly what the committee had instructed on page 1, line 23 where after the word serve insert one or, delete than one county, and insert in its place counties. The sentence will then read other than the sheriff to serve one or more counties provided the effected counties agree. That essentially accomplishes that directive of this committee. Now that we have set up the framework in a constitutional measure that someone could run in residence county and run in another county through this agreement and lose in their home county and still serve the other county, he then provided amendments to SB 2244. He realizes this is not the conference committee but, given the fact when we discuss this in depth he'll explain it. The proposed amendments in SB 2244 would essentially require that a county commission could agree by resolution to allow any candidate for the office of state's attorney, we've made it specific to state's attorneys, to petition for office in each county and to serve if elected provided the candidate is a qualified elector of one of the counties at the time of the election. In order to be considered elected to serve in a nonresident county a candidate must receive the highest number of votes for the office in that county. **Chairman Krebsbach** noted just to be clear, the resolution that would the constitutional resolution would affect other offices but the legislative intent would be strictly that for state's attorneys. **Corey Fong** indicated that was correct. **Senator T. Mathern** indicated that he believed making the law more specific for present problems gives us some time to find out if the constitutional measure doesn't raise some

other issues. He thinks that is a good change. He inquired of Mr. Fong if he would agree that we really have this issue before us of state's attorneys. We don't have other issues that are clouding up a change need at this point. **Mr. Fong** indicated that he does agree. **Senator C. Nelson** inquired of Mr. Terry Traynor if everything was OK now with the way this is done. **Terry Traynor** with the Association of Counties indicated yes he is comfortable with it. He thinks that should the problem arise with any other offices, now they can come back to the legislature and try to address the problem specifically in the legislature and the wording in the constitution would allow for that. He believes this should work. **Senator Wardner** moved adoption of the proposed amendments to SCR 4052, seconded by **Senator T. Mathern.** Roll Call Vote indicated 6 Yeas, 0 Nays, and 0 Absent or Not Voting. A motion for Do Pass as Amended was made by **Senator C. Nelson**, seconded by **Senator Wardner**. Roll Call Vote indicated 6 Yeas, 0 Nays, and 0 Absent or Not Voting. Senator Kilzer will carry the resolution.

Date: 4/05/01
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SCR 4052

Senate GOVERNMENT AND VETERAN'S AFFAIRS Committee

☐ Subcommittee on _____

or

☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Adopt Amendments

Motion Made By Sen. Wardner Seconded By Senator T. Mathern

Senators	Yes	No	Senators	Yes	No
Senator Karen Krebsbach, Chr.	✓		Senator Carolyn Nelson	✓	
Senator Dick Dever, Vice-Chr.	✓		Senator Tim Mathern	✓	
Senator Ralph Kilzer	✓				
Senator Rich Wardner	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

Date: 4/05/01
Roll Call Vote #: 2

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SCR 4052

Senate GOVERNMENT AND VETERAN'S AFFAIRS Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Sen. C. Nelson Seconded By Sen Wardner

Senators	Yes	No	Senators	Yes	No
Senator Karen Krebsbach, Chr.	✓		Senator Carolyn Nelson	✓	
Senator Dick Dever, Vice-Chr.	✓		Senator Tim Mathern	✓	
Senator Ralph Kilzer	✓				
Senator Rich Wardner	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Kilzer

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

REPORT OF STANDING COMMITTEE

SCR 4052: Government and Veterans Affairs Committee (Sen. Krebsbach, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SCR 4052 was placed on the Sixth order on the calendar.

Page 1, line 23, after "serve" insert "one or" and replace "than one county" with "counties"

Renumber accordingly

2001 HOUSE POLITICAL SUBDIVISIONS

SCR 4052

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SCR4052

House Political Subdivisions Committee

❑ Conference Committee

Hearing Date 4-11-01

Tape Number	Side A	Side B	Meter #
1	xx		1--1600

Committee Clerk Signature [signature]

Minutes: Chair Froseth opened the hearing on SCR4052 relating to the residency of a candidate for county elective office and to permit the legislative assembly to provide for the election of a county elective officer, other than the sheriff, to serve in more than one county.

Sen Aaron Krauter, Dist. 35 : I am one of the sponsors and strongly support this bill. We would like this to be placed on the June primary 2002. This is a companion to SB2244 that allows some of these processes to take place, particularly to state's attorneys. We need to have this change in the constitution to help certain counties out in ND. When we drafted this, we wanted to make sure the sheriffs were protected, so they will still be elected. The wording in this is very specific that the legislative assembly must make the changes by law, and that's where SB2244 will allow that to happen. An elected official can serve one or more counties. The counties must agree upon this. The governing body of both counties must agree.

Rep. Delmore : (280) I remember when we did the first amendment. I thought what the sheriffs wanted was simply to be elected. Was the other thing what they really intended in that bill?

Sen. Krauter : You're correct. It was to be elected, not appointed. When the measure was put on the ballot, it was mixed up.

Rep. Delmore : Is there a reason then that we still want them to be residents and make them the only ones excluded? Why aren't we making them in the same system? I don't know why residency needs to be in here.

Sen. Krauter : If you have followed some of the situations across the state, residency has been an issue in some of the shared races.

Rep. Kretschmar : We did have some conversations with Attorney General Stenehjem on this when SB2244 came over to this committee. Our consensus was that we did not want to change the part about the sheriffs in there. That's what this amendment does. It provides for the other officials also, which is a good change. We crafted SB2244 to work with the present constitution. If SCR4052 passes, then we'll work with SB2244 to make sure it fits the constitutional amendment. Our committee will support this amendment.

Chair Froseth : If SB2244 passes and becomes law, there will be a period of time when 2244 will not be constitutional, because this will not be on the ballot until June, 2002.

Sen. Krauter : That is right. There is a gap. You have to have both the cart and the horse.

Rep. Grosz : Why are we using the primary election instead of the general election for this resolution?

Sen. Krauter : It's a legislative council draft. The sooner we get this into action, the better.

Rep. Kretschmar : If this is passed in the primary, then it will be the law for the general election and will help us all. If the counties want to use this, they will have to count on the provisions of 2244.

Terry Traynor, ND Assoc. of Counties : we support this resolution.

Cory Fong, Sec. State : (775) We want to go on record that we support SCR4052.

Rep. N. Johnson : (795) Looking at SB2244 and SCR4052, are they compatible if they both pass?

Cory : Right now there is a conference committee on SB2244 that is there just for that purpose.

Chair Froseth : Is the residency requirement the same for all elected county offices?

Cory : That's correct. Sheriffs are elected, which is the intent of the measure. It did other things because it was broader. One thing it did was require that all county officers be residents.

Rep. Grosz : How will candidates handle the next election cycle?

Cory : To start with, you have to be on the primary to run in a county election. The people running for states attorneys in more than one county, will have to be using SB2244. They will hope SCR4052 will pass and be in effect by the time the general election takes place.

Chair Froseth : Any more testimony for or against? Hearing none, SCR4052 is closed. What are the committee's wishes?

Vice-Chair Severson : **I move a DO PASS.**

Rep. Disrud : **I second.**

Rep. Grosz : I have great reserves having this in the primary instead of the general election. This deals with the great constitution of ND. I would like as many voters as possible to decide this. I want this problem solved, too, but not by patchwork to our constitution. **I move to amend "primary" to say "general election".**

Rep. Kretschmar : **I second.**

Rep. Delmore : I understand what Rep. Grosz means, and I agree with him in many ways. I feel this is a unique situation. If we really want to allow counties some flexibility, we have to put this on the primary so that it is constitutional for the states attorneys in those types of situations.

Rep. Kretschmar : I agree with Rep. Delmore. This is a unique situation. I don't think we will have a great turnout for the 2002 primary. Hopefully we will have some publicity so people know what this is about and vote "yes".

Rep. Eckre : This is an excellent measure. Both parties are behind this.

VOTE: 13 YES and 1 NO with 1 absent. PASSED. Rep. Kretschmar will carry.

Date: 4-11-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2010

House POLITICAL SUBDIVISIONS Committee

☐ Subcommittee on

or

☐ Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass

Motion Made By Vice Chair Severson Seconded By Rep. Eckre

Representatives	Yes	No	Representatives	Yes	No
Chairman Glen Froseth	✓		Rep. Wayne W. Tieman	✓	
Vice-Chair Dale C. Severson	✓				
Rep. Lois Delmore	✓				
Rep. Rachael Disrud	✓				
Rep. Bruce Eckre	✓				
Rep. Mary Ekstrom	✓				
Rep. April Fairfield	AB				
Rep. Michael Grosz		✓			
Rep. Jane Gunter	✓				
Rep. Gil Herbel	✓				
Rep. Nancy Johnson	✓				
Rep. William E. Kretschmar	✓				
Rep. Carol A. Niemeier	✓				
Rep. Andrew G. Maragos	✓				

Total (Yes) No 1

Absent 1

Floor Assignment Rep Kretschmar

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

REPORT OF STANDING COMMITTEE (410)
April 11, 2001 10:41 a.m.

Module No: HR-64-8375
Carrier: Kretschmar
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SCR 4052, as engrossed: Political Subdivisions Committee (Rep. Froseth, Chairman) recommends **DO PASS** (13 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). Engrossed SCR 4052 was placed on the Fourteenth order on the calendar.

2001 TESTIMONY

SCR 4052

ALVIN A. JAEGER
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SECRETARY OF STATE

April 5, 2001

TO: Senator Aaron Krauter, Senate Minority Leader
FR: Cory G. Fong, Secretary of State's Office
RE: **SCR 4052 & SB 2244 – Proposed Amendments**

Per the request of the Senate Government and Veterans Affairs Committee, I have drafted a set of amendments to SCR 4052 along with another set of proposed amendments to SB 2244 that are intended to harmonize the two. The proposed amendments are attached for your use and reference.

If you have any questions about the amendments or would like me to explain them to the committee, please feel free to contact me at 328-3660.

Cc Senator Karen Krebsbach, Chairman, Senate Government and Veterans Affairs Committee

Proposed Amendments to Senate Concurrent Resolution No. 4052

Page 1, line 23, after "serve" insert "one or" and replace "than one county" with "counties"

Renumber accordingly