

**Fifty-sixth Legislative Assembly, State of North Dakota, begun in the
Capitol in the City of Bismarck, on Tuesday, the fifth day of January,
one thousand nine hundred and ninety-nine**

SENATE BILL NO. 2390
(Senators Lyson, Kinnoin)
(Representatives Nichols, Wald)

AN ACT to create and enact a new section to chapter 11-10 of the North Dakota Century Code, relating to the appointment of state's attorneys; to amend and reenact sections 11-08-05, 11-08-07, 11-08-08, 11-08-09, 11-08-10, 11-08-13, 11-08-15, 11-09-18, 11-09-19, subsection 3 of section 11-09.1-05, sections 11-10-02, 11-10-04, subsection 3 of section 11-10.2-01, and section 11-15-01.1 of the North Dakota Century Code, relating to the election of the county sheriff and county state's attorney; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-08-05 of the North Dakota Century Code is amended and reenacted as follows:

11-08-05. Vote required - Effective date - Procedure for discontinuance. If a majority of the votes cast on the question of the adoption of the county consolidated form of government are in favor of that form, it becomes effective on the first day of January next succeeding the election. All elected officers whose offices become appointive under this chapter shall continue in office until their successors are appointed pursuant to the provisions of this chapter. The question of the discontinuance of the county consolidated office form of government may be submitted to the electors at the next primary election through the same procedures set forth in this chapter for adopting that form of government. On the first day of January following a vote to discontinue, the county reverts to the form of government of the county immediately preceding adoption of the consolidated office form of government, with all offices made appointive under this chapter subject to election at the last preceding general election, or to another optional form of county government adopted by the electors as provided by law.

SECTION 2. AMENDMENT. Section 11-08-07 of the North Dakota Century Code is amended and reenacted as follows:

11-08-07. Appointive officers - County commissioners, sheriff, and state's attorney elected - Terms of office - How vacancy filled. The board of county commissioners shall appoint each county officer mentioned in section 11-08-06, except the members of the board of county commissioners, who must be elected in the manner provided in section 11-11-02, and the sheriff and the state's attorney, who must be elected as provided in section 11-10-02, except as provided in section 12 of this Act. Each county officer shall hold office for a term of four years, except as otherwise provided in this chapter, and until the officer's successor is duly appointed and qualified. The board of county commissioners shall fill any vacancy resulting from any cause.

SECTION 3. AMENDMENT. Section 11-08-08 of the North Dakota Century Code is amended and reenacted as follows:

11-08-08. When appointment of officers made - Qualification. The county officers to be appointed must be appointed by the board of county commissioners at the following times in the year in which the county consolidated office form of government goes into effect:

1. On or before the fifteenth day of January, the ~~sheriff, state's attorney, and~~ coroner must be appointed, and ~~such officers shall~~ the coroner must qualify within ten days thereafter.
2. Not less than ten days prior to April first, the county auditor must be appointed, and the appointee qualify within ten days thereafter.

3. Not less than ten days prior to May first, the county treasurer must be appointed, and the appointee ~~shall~~ must qualify within ten days thereafter.

Thereafter, the appointments must be made within ten days prior to the expiration of the terms of office of the officers. The failure of the board of county commissioners to make any appointment within the time prescribed does not impair its power to make the appointment subsequently for the remainder of the term of office of the officer so appointed.

SECTION 4. AMENDMENT. Section 11-08-09 of the North Dakota Century Code is amended and reenacted as follows:

11-08-09. Compensation of officers. Each member of the board of county commissioners and each other county officer who is appointed by ~~such~~ the board ~~shall~~ or elected must receive as compensation for services the salary prescribed by law for ~~such~~ the officer, except that the county auditor ~~shall~~ must receive a salary not exceeding three thousand dollars per annum and the county treasurer ~~shall~~ must receive a salary not exceeding the amount provided by law for the office of county treasurer, to be fixed by the board of county commissioners.

SECTION 5. AMENDMENT. Section 11-08-10 of the North Dakota Century Code is amended and reenacted as follows:

11-08-10. ~~Board may appoint officers~~ Sheriff or state's attorney of adjoining county may run for election - Term of office - Compensation. ~~The board of county commissioners may appoint the sheriff or the state's attorney, or both, of an adjoining county to act as the sheriff or state's attorney of its county~~ may run for election in a county which has adopted the county consolidated office form of government. Any such officer of an adjoining county so ~~appointed~~ elected shall serve for a term of ~~two~~ four years and until that officer's successor is ~~appointed~~ elected and qualified. An officer ~~appointed~~ elected under this section is eligible to serve in such dual capacity and ~~shall~~ must receive, in addition to the salary as an officer of the county of residence, a sum not exceeding one-half of such salary, to be fixed by the board of county commissioners. The additional salary ~~shall~~ must be paid by the county in the same manner as other county officers are paid.

SECTION 6. AMENDMENT. Section 11-08-13 of the North Dakota Century Code is amended and reenacted as follows:

11-08-13. Powers and duties of other officers. The sheriff, state's attorney, and coroner elected or appointed under this chapter shall perform the duties and exercise the powers conferred by law upon them.

SECTION 7. AMENDMENT. Section 11-08-15 of the North Dakota Century Code is amended and reenacted as follows:

11-08-15. Removal of officers. Any county officer appointed by the board of county commissioners or elected under the provisions of this chapter may be suspended or removed by the governor or by judicial proceedings in the manner provided by law.

SECTION 8. AMENDMENT. Section 11-09-18 of the North Dakota Century Code is amended and reenacted as follows:

11-09-18. ~~State's attorney to be elected~~ - ~~Appointment~~ Powers - Duties. ~~The county manager~~ Except as provided in section 12 of this Act, the state's attorney of a county adopting any form of county managership, with the approval of the board of county commissioners, may appoint a must be elected in the manner prescribed by general statutes. ~~The state's attorney~~ shall serve as legal adviser to the board of county commissioners and to the county manager, ~~to~~ act as counsel for the county in any suit instituted by or against it, and ~~to~~ perform ~~such~~ other duties as may be prescribed by the board of county commissioners or which are imposed on state's attorneys by general statute. ~~In a county adopting a short form of county managership, the county manager, with the approval of the board of county commissioners, from time to time or on an annual basis, may appoint the~~ The state's attorney of an adjoining county to perform such duties as are required of a state's attorney may run for election in a county which has adopted a short form of county managership. The compensation of the

state's attorney of an adjoining county ~~shall~~ must be that agreed upon by the person so ~~appointed~~ elected, the county manager, and the boards of county commissioners of the two counties affected.

SECTION 9. AMENDMENT. Section 11-09-19 of the North Dakota Century Code is amended and reenacted as follows:

11-09-19. Sheriff - Election - ~~Appointment~~— Duties - Powers. The sheriff of a county adopting a any form of county manager form of government shall ~~managership~~ must be elected in the manner prescribed by general statutes and ~~shall~~ must perform the duties and be subject to the restrictions contained in the general statutes. ~~In a county adopting a short form of county managership, the county manager shall, with the approval of the board of county commissioners, appoint one or more police officers who shall perform all police duties imposed on the sheriff by general statutes. All other duties imposed on the sheriff shall be performed by or under the direction of the county manager. The county manager, from time to time or on an annual basis, may contract with an adjoining county and its sheriff to obtain the services of such sheriff, and the of an adjoining county may run for election in a county that has adopted a short form of county managership. The compensation of such officer shall the sheriff of an adjoining county must be such as shall be that agreed upon by the sheriff so elected,~~ the county manager, and the boards of county commissioners of the counties affected.

SECTION 10. AMENDMENT. Subsection 3 of section 11-09.1-05 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Provide for county elected and appointed officers and employees, their selection, powers, duties, qualifications, and compensation, and the terms of county appointed officers and employees. However, after adoption of a home rule charter a county elected office may not be eliminated or combined with another office except upon approval of a majority of the electors of the county voting upon the question at a primary or general election or pursuant to the county officer combination, separation, or redesignation procedures of chapter 11-10.2. A home rule charter may not diminish the term of office for which a current county officer was elected, redesignate that elected office during that term as appointed, or reduce the salary of the office for that term. This subsection does not authorize a county to redesignate the elected offices of sheriff and state's attorney as appointed, except as provided in section 12 of this Act.

SECTION 11. AMENDMENT. Section 11-10-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

11-10-02. Number and election of county officers. Each organized county, unless it has adopted one of the optional forms of county government provided by the code or has combined or separated the functions of county offices or redesignated offices as elective or appointive pursuant to chapter 11-10.2 or 11-10.3, must have the following officers:

1. One county auditor.
2. One register of deeds.
3. One clerk of the district court, except as otherwise provided by this section.
4. ~~One state's attorney.~~
5. ~~One sheriff.~~
6. One county treasurer.
7. ~~5.~~ One coroner.
8. ~~6.~~ A board of county commissioners consisting of three or five members as provided in this title.

In addition, unless otherwise provided in section 12 of this Act, each county must have an elected state's attorney and an elected sheriff. In counties having a population of six thousand or less, the

register of deeds shall perform the functions of the clerk of the district court, unless the board of county commissioners adopts a resolution separating the offices no less than thirty days before petitions for nomination to county offices may first be filed for the primary election. In a county having a population of more than six thousand, the offices of clerk of district court and register of deeds may be combined into an office of register of deeds if the board of county commissioners, following consultation with the supreme court, adopts a resolution combining the offices no less than thirty days before petitions for nominations to county offices may first be filed for the primary election. For a county that has properly initiated the option pursuant to section 11-17-11, and the office of the clerk of court is funded by the legislative assembly, the board of county commissioners may provide for the functions of the register of deeds, which may include functions of the clerk of district court and other functions as determined by the board of county commissioners. Counties having a population of six thousand or less and exercising the option provided in section 11-17-11 may contract with the state court administrator for the provision of shared funding for register of deeds' services. The required officers must be chosen by the qualified electors of the respective counties at the general election in each even-numbered year, except the register of deeds, county auditor, treasurer, sheriff, state's attorney, and clerk of the district court, who must be chosen in 1966 and every four years thereafter, the members of the board of county commissioners, who must be chosen in the manner prescribed in section 11-11-02, and the county coroner, who must be chosen in the manner prescribed in section 11-19.1-03. The clerk of district court elected pursuant to this section is not subject to election in any future general election that occurs after the start of the state biennium after the county has properly initiated the option and the legislative assembly has provided appropriations pursuant to section 11-17-11.

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

Appointment of state's attorney upon voter approval. Upon the submission to the board of county commissioners of a petition signed by ten percent or more of the total number of qualified electors of the county voting for governor at the most recent gubernatorial election or upon resolution of the board of county commissioners, the county auditor shall place the question of appointing the state's attorney on the ballot at the next regular election. If a majority of the qualified electors of the county voting on the question approves the change from elective to appointive, the change is effective at the end of the term of office of the state's attorney holding office at the time of the election.

SECTION 13. AMENDMENT. Section 11-10-04 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 14. AMENDMENT. Subsection 3 of section 11-10.2-01 of the North Dakota Century Code is amended and reenacted as follows:

3. This option is available in addition to, or in lieu of, other county structural options authorized under this title, unless a specific mandate for combining or separating particular county offices is otherwise provided by law. The office of ~~county judge~~ sheriff is excluded from the application of this chapter.

SECTION 15. AMENDMENT. Section 11-15-01.1 of the North Dakota Century Code is amended and reenacted as follows:

11-15-01.1. Sheriff must be qualified elector and ~~shall~~ must receive required training - Exception. Except as otherwise specifically provided by state law, the sheriff must be a qualified elector in the county in which the sheriff is elected ~~or appointed~~. Within one year after taking office, the

sheriff shall attend the sheriffs' school on civil process for one week, and unless already licensed under sections 12-63-01 through 12-63-14, shall begin the training necessary to become so licensed. Within two years after taking office, the sheriff shall complete the procedures required to be licensed under sections 12-63-01 through 12-63-14.

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

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-sixth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2390.

Senate Vote: Yeas 43 Nays 2 Absent 4

House Vote: Yeas 83 Nays 5 Absent 10

Secretary of the Senate

Received by the Governor at _____ M. on _____, 1999.

Approved at _____ M. on _____, 1999.

Governor

Filed in this office this _____ day of _____, 1999,
at _____ o'clock _____ M.

Secretary of State