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TO: Chairman Burckhard and Members of the Senate Political Subdivisions Committee

FR: Al Jaeger, Secretary of State

RE: HB 1170 – Removal of Township Officers

Attached to this testimony is N.D.C.C. § 44-08-21, which governs the recall of elected officials of political subdivisions. The process for a recall is clearly stated and it follows all timelines related to conducting a “normal” election.

However, while a Township is a political subdivision, the election of its officers is an entirely different process compared to other political subdivisions. They are elected during a meeting held annually on the third Thursday of March and is based in part on Roberts Rules of Order.

Nevertheless, in April 2019, my office received a request from a sponsoring committee to recall township officials according to the provisions of N.D.C.C. § 44-09-21(2). Even though Township elections have a different protocol, my office had no choice but to accept the recall petitions for review because the law did not provide an exception for a Township.

Consequently, my office was placed in an administrative position with a recall that it had never encountered. The best way to explain it might be an analogy. We took an apple (normal election timelines) and a cucumber (the Township election process) and blended them together to create a smoothie (a Township recall election) albeit with a very strange taste.

It definitely was a challenge, and the assistance of the Township Officers Association was invaluable. We all agreed afterwards that a legislative change was needed to prevent a future recurrence and yet provide township residents with a viable option for removing a Township officer.

Therefore, I definitely support the change in Section 1, line 8, by which a township official is exempted from the recall provisions of N.D.C.C. § 44-08-21.

Then in Section 2, the Township Officers Association has provided a practical process for the removal of a Township officer if the residents of the Township are so inclined to initiate such an action. It also matches the traditional governance and election guidelines unique to Townships.

Please give this bill a favorable Do Pass recommendation.

44-08-21. Recall of elected officials of political subdivisions.

1. An elected official of a political subdivision, except an official subject to recall under section 10 of article III of the Constitution of North Dakota, is subject to recall by petition of electors equal in number to twenty-five percent of the voters who voted in the most recent election that the official sought to be recalled was on the ballot, not including other recall elections. An official who was appointed to fill a vacancy is subject to recall by petition of electors equal in number to twenty-five percent of the voters who voted in the most recent election that the office of the official sought to be recalled was on the ballot, not including other recall elections. The provisions of section 16.1-01-09.1, as they relate to signing and circulating recall petitions, apply to petitions under this section.
2. A recall petition must include a stated reason for the recall and be approved as to form before circulation by the secretary of state. The secretary of state shall complete the review of the form of a recall petition in not less than five, nor more than seven, business days, excluding Saturdays. To be effective, a recall petition must be submitted to the appropriate filing officer within ninety days after the date the recall petition is approved for circulation by the secretary of state.
3. Once circulated, the recall petition must be filed with the filing officer with whom a petition for nomination to the office in question is filed unless that filing officer is the individual subject to recall, in which case the petition must be filed with the secretary of state. The filing officer with whom the petition is filed shall pass on the sufficiency of a petition pursuant to section 16.1-01-09.1. Except as otherwise provided in this section, the filing officer shall call a special election to be held not sooner than ninety-five days nor later than one hundred five days following the date the filing officer certifies the petition valid and sufficient. No special election may be called if that date would be within ninety-five days of the next scheduled election. An elector's name may not be removed from a recall petition that has been submitted to and received by the appropriate filing officer.
4. The name of the official to be recalled must be placed on the ballot unless the official resigns within ten days after the filing officer certifies the petition is valid and sufficient. Other candidates for the office may be nominated in a manner provided by law and shall file nominating papers with the appropriate filing officer by the sixty-fourth day before the scheduled recall election. If the official resigns, the appropriate political subdivision governing body may call a special election or appoint an individual to complete the unexpired term of the office. When the election results have been officially declared, the candidate receiving the highest number of votes is elected for the remainder of the term. No official is subject to recall twice during the term for which the official was elected. An official whose office is on the ballot at a regularly scheduled election occurring within one year is not subject to recall if the recall special election would occur within one year of the next regularly scheduled election in which the official could be re-elected.