

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2244/

2001 SENATE GOVERNMENT AND VETERANS AFFAIRS

SB 2244

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2244

Senate Government and Veterans Affairs Committee

Conference Committee

Hearing Date January 26, 2001

Tape Number	Side A	Side B	Meter #
1	X		0.0-22.0
February 15, 2001 1		X	22.8-52.6
Committee Clerk Signature <i>James A. Raile</i>			

Minutes: Chairman Krebsbach called the committee to order. The clerk called roll. All members were present. Chairman Krebsbach opened the hearing on SB 2244 which relates to residence of candidates for election to a county office. Senator Aaron Krauter, District 35, primary sponsor of this legislation introduced the bill. Last legislative session changes were made to this section of the century code. In so doing we made it illegal for someone who is serving as a states attorney in one county and living in another county and going through the processes of being eligible to serve in two counties when it is approved by county commissioners. By the little things we changed last session that made that illegal happen. What we have done is we introduced a bill to correct that to make so that it works. Jim Kerzman, representing District 35 also appeared before the committee. He indicated that this is a rather sparsely populated area and includes places such as Slope County where it is difficult to find somebody who is law trained who is willing to run for states attorney. That is why we would like to have this corrected so they can serve more than one if they have to. Jeff Roterig, from

Hettinger who serves as states attorney Adams and Slope Counties. As the law was written a couple of years ago he indicated he was able to run for states attorney in two counties and serve in two counties so long as he lived in one of those counties and received the approval of the county commissioners of both counties concerned. He did that two years ago under the law as it was at that time. Right after that election what is now designated as subsection three or rather section three, subsection three of the current draft was added. When that was added, according to the attorney general's office, he would no longer be able to do what he was doing just a couple of months earlier. By adding the wording which is proposed in subsection two would allow him and others to run in multiple counties and serve in multiple counties so long as they received the approval of the county commissioners and lived in one of the counties. For his part of the state it works very well. They have part time states attorneys. There is no need for full time state attorneys in these counties. Slope county does not have a resident attorney. Grant county does not have a resident attorney who wants to serve as states attorney. It seems to him that this gives a good option to voters. If the voters want to have someone serve them who happens to be an elected official in another county, a neighboring county. Why not give them the option and it does require the approval of the county commissioners so there is a check there. Senator C. Nelson If sections two and three had been reversed in the law, would that have made it necessary to do this? Mr. Rhotering indicated he thought so. The subsection numbers are just added in this amendment. Prior to this they were just a single paragraph and those were added for clarification. Senator T. Mathern I suspect there's another issue. If someone were to leave one of these counties to take a job someplace else and then there would need to be an election. Is this good enough? It seems like there could be some counties in a limbo situation for a couple of years. Should this be an emergency clause maybe? What would happen if one of you moved out

or died? Mr. Rhotering indicated he believed there is adequate statutory authority for the county commissioners working with the attorney general's office to fill a position that does become vacant by appointment. Chairman Krebsbach indicated she believed that subsection four would cover this, would it not? Senator Dever indicated that he was curious about the rationale behind this. I understand with the professional position of attorney that some counties don't have attorneys. Does it also allow for and encourage consolidation of services otherwise, like register of deeds, county auditor. Mr. Rhotering indicated that as far as he could tell many of those positions are not part time so it wouldn't really be practical for someone to be serving in two counties. There actual presence is needed in the offices in many situations. It could perhaps apply to other offices as well. James D. Gion, States Attorney for Hettinger and Grant Counties indicated that he had not planned to testify on this bill however, there were some questions asked which he had researched and he felt he wanted to respond to them. If this amendment is adopted it would give voters a third option in some counties. If nothing is done the commissioners in some counties must appoint and the voters of Grant County have indicated they do not want that. Senator Dever indicated that he thought the previous states attorney in Grant County actually lived in Bismarck or Mandan and maintained an apartment in Grant County. Mr. Gion indicated he believed the previous states attorney had established residency in Grant County but in fact was spending a lot of time working up here. I believe she also had a residence here. I don't know that for a fact. Senator C Nelson and Senator Kilzer asked questions of Mr. Gion. Mike Stefonowicz, Divide County States Attorney appeared before the committee to testify in support of SB 2244. Senator C. Nelson asked if he anticipated this legislation helping in his part of the state. He indicated it would. Wade Engen, States Attorney Mountrail County and Assistant States Attorney in Burke County indicated that this would allow for working

agreements with other counties when it comes to a variety of situations that develop in these smaller counties. There was nothing further at this time so Chairman Krebsbach closed the hearing on SB2244. Senator T. Mathern made a motion for a Do Pass on SB 2244, seconded by Senator Wardner. Roll Call Vote indicated 6 Yeas, 0 Nays, and 0 Absent or Not Voting. Senator Kilzer will carry the bill. On February 15, 2001 the committee reconsidered their actions by which they gave SB 2244 a Do Pass motion. Chairman Krebsbach indicated to the committee that she had pulled back SB 2244 from the floor because she had been informed that what the committee was trying to do through this bill was unconstitutional. In as much as there is a serious problem, there is not much that we as a legislative body can do to address this. This bill requires a constitutional amendment that is required to correct the problem. Senator Kilzer moved for a Reconsideration of the committees actions on SB 2244, seconded by Senator Wardner. Roll Call Vote indicated 6 Yeas, 0 Nays, 0 Absent or Not Voting. John Bjornson appeared before the committee and indicated that his involvement just goes back a little ways in that he had one of his law school classmates is a states attorney down in the southwestern part of the state. They got to talking one day about the fact that he serves two counties and was elected in two counties. The statue doesn't allow that. After doing a little research they found out that the constitution also requires that an elected official is required to be a resident of the jurisdiction in which they are elected on the day of election. Even with this bill it would make things okay statutorily the problem is the constitution is still in place which basically says they can't do that. Something needs to be done to clear up this situation. Under current law I believe there is some state provision whereby they can do a joint powers and appoint from the neighboring county. But, if they want to elect their states attorney it is impossible to do under the current law. This bill would authorize what they are doing now however, the consitution still presents a little problem.

If a constitutional amendment were placed on the ballot to address that and they took out the language where they have to be a resident of the county on the day they are elected. That would clarify things somewhat. However, if you didn't pass this bill this session it would still be a statutory prohibition on what they are doing. You may still want to consider passing this bill to address things down the road, or you could wait until the next legislative session. The earliest that measure could be on the ballot to the voters would be the primary election of 2002. Things could be clarified at that point. The bill if passed will say what they are doing is okay but more needs to be done. Apparently what they are doing now is not constitutional but they are continuing to do it. I assume they are exploring other ways to cover themselves in the meantime but until somebody comes along and says what you are doing is unconstitutional, I guess it's okay. Comments and questions were offered by Senator C. Nelson, concerning how some of these men are serving in more than one county at a time. Senator Wardner commented on some of the smaller counties in the southwest part of the state. Additional comments were offered by Senator T. Mathern. Questions, answers, and discussion concerning this bill continued with Senators C. Nelson, Dever, Wardner, and Kilzer participating. (Tape 1, Side B, Meter #'s 33.4 to 49.0) There was no further discussion at this time. The committee decided to take action on SB 2244. A motion for Do Pass was made by Senator T. Mathern, seconded by Senator C. Nelson. Roll Call Vote indicated 6 Yeas, 0 Nays, and 0 Absent or Not Voting. Senator Kilzer once again agreed to carry the bill.





**REPORT OF STANDING COMMITTEE (410)**  
January 26, 2001 12:07 p.m.

**Module No: SR-14-1708**  
**Carrier: Kilzer**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2244: Government and Veterans Affairs Committee (Sen. Krebsbach, Chairman)**  
recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2244  
was placed on the Eleventh order on the calendar.

Date: 2/15/01  
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2244

Senate GOVERNMENT AND VETERAN'S AFFAIRS Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Reconsider Actions on SB 2244

Motion Made By Sen Kilzer 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 \_\_\_\_\_

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



**REPORT OF STANDING COMMITTEE (410)**  
**February 15, 2001 12:38 p.m.**

**Module No: SR-28-3500**  
**Carrier: Kilzer**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2244: Government and Veterans Affairs Committee (Sen. Krebsbach, Chairman)**  
recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2244  
was placed on the Eleventh order on the calendar.