

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2244/

2001 SENATE GOVERNMENT AND VETERANS AFFAIRS

SB 2244

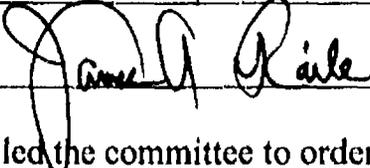
2001 SENATE STANDING COMMITTEE MINUTES

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  | | | |

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 Rotering, 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 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.

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.

2001 HOUSE POLITICAL SUBDIVISIONS

SB 2244

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2244

House Political Subdivi... Committee

Conference Committee

Hearing Date 3-15-01

| Tape Number | Side A | Side B | Meter # |
|--|--------|--------|------------|
| 2 | xx | | 1400--5100 |
| | | | |
| | | | |
| Committee Clerk Signature <i>Pam Weber</i> | | | |

Minutes: Chair Froseth opened the hearing on SB2244 relating to the residence of candidates for election to a county office.

Sen. Aaron Krauter, Dist. 35 : support this bill. This bill is to address the situation when elected officials don't reside in the county they have been elected. Before we have been able to do that. In 1999 , there was legislation that makes that difficult. Some counties don't have an attorney and an attorney in a neighboring county decided to run for state's attorney. In Hettinger and Grant County we have this situation. This bill will allow for the approval of the county commission to allow the states attorney to be elected in another county. Another approach would be to change the constitution, and we thought that was too complicated. This is to correct something that 1999 session changed.

Chair Froseth : (1675) Can't this be done, now, with the Tool Chest Legislation?

Sen. Krauter : Yes, by the joint powers agreement. When those were set up, this is at the beginning of an election. What is happening, is this does not address during the middle of a term or election cycle. With this bill, you have more options.

Rep. Delmore : I'm trying to reconcile this with a bill from last session we passed dealing with sheriffs.

Sen. Krauter : That was just sheriffs.

Jeff Roterling, State's Attorney for Adams and Slope Count : here to support SB2244. The law in 1998 allowed me to run for the office of state's attorney in 2 counties. I was state's attorney in Adams County prior, but I also ran in Slope. I had opposition in Slope County. I did win the election in both counties. I gained the approval of county commissioners in both counties to serve as state's attorney. The law in 1998 allowed the voter to decide on election day. It's important in our small counties, for voter to continue to have options and flexibility. Now, with the new legislation, this option has been eliminated. We would like that option again in law.

Vice-Chair Severson : (2040) Does this portion of law only deal with state's attorney?

Jeff : No. In most counties, the elected positions are full-time positions. It probably would only be applied to state's attorneys, for the time being. State's attorney is only a part-time position. It applies to any elected officials.

Rep. Kretschmar : (2140) It seems to me that the county commissions have a measure of power. What if the county commissioners in one county say, no?

Jeff : This was interpreted by the AG's Office and me, I did not approach the county commissioners until after the election. I acquired the position in both counties, and I was on the ballots and the primary in both counties, and was elected. Then I went to the county

commissions and received their approval. The county commissioners had no authority to keep me off the ballot. The AG's Office support that procedure.

Rep. Eckre : Is the word "adjoining" in here any where?

Jeff : No, it is not. That would be the convenient way, but not real practical in all situations.

Rep. Kretschmar : Under current law, it looks to me that if you lived in Adam County, you couldn't be a candidate in Slope County.

Jeff : Yes, currently, that's right. That's why this bill. Legislative Council like the wording of this bill.

Rep. Kretschmar : I still think subsection 3 would prevent you from running as written.

Jeff : My thoughts are that the voter actually established the jurisdiction on election day, then I was a resident of that county on election day. The attorney general staff say it's still a bit unclear.

Rep. Kerzman, Dist. 35 : (2745) support this bill. Some counties don't have a resident attorney, or one who wants to be state's attorney. This is a problem and will continue to be a problem, I feel.

Dan Stewart, Grant County Comm. Chair : here to support SB2244. This is a very important issue for us. We share a 1/2 time attorney with Hettinger County. It posses some problems. We put this issue on the ballot in our county last election. The voters wanted this position elected not appointed. Because of the present law, we are one state's attorney short. We either leave it go and do nothing, and have one resident attorney in Grant County, but he does not want the job. We will end up having to appoint and that is what the people did not want. The other option would be to enter in to a joint powers agreement with one of our adjoining counties. We've discussed this with Hettinger County at length. There are some problems with that. We sit on a line with two different judicial districts. This bill is the simplest thing to do. We have interest

from state's attorneys from neighboring counties who would run for Grant County State's Attorney. It would be wonderful for have people on the ballot.

Chair Froseth : (3320) Do you see any other uses for other positions that would use this bill?

Dan : I hope not. I don't anticipate problems in other positions.

Cory Fong, Sec. State Office : neutral on SB2244. We need to bring certain issues forward to the committee. Rep. Delmore brought it up when she brought up legislation that was passed last session dealing with sheriffs. That was specific. There were other changes made to that section of law talking about county officials. The whole reason that subsection 3 exists in this section, is because of the amendment that was attached. When you are saying that "notwithstanding subsection 3", you are basically saying not withstanding the constitution. I think there are constitutional questions that you need to consider. We come and offer this information because we think you need to consider this when making a decision.

Rep. Eckre : (3710) Did you present this testimony on the senate side?

Cory : No, but we talked to the chair in GVA Committee. There was discussion if this passed, there would be a constitutional amendment brought forth to allow this. This has not been done.

Rep. Delmore : If this concept is good, can we amend or rewrite to make it work?

Cory : I have discussed this with someone who is an expert. The problem with the amendment they could make would suggest something that is already in the tool chest legislation.

Rep. Delmore : (3930) Are there situations where they feel the tool chest would not allow them what they want to do?

Cory : I think the county commissioner that spoke said there were some restrictions. I don't necessarily disagree. Someone from association of counties needs to address this.

Rep. N. Johnson : At this point, then, is Jeff serving in violation of the constitution?

Page 5
House Political Subdivisions Committee
Bill/Resolution Number SB2244
Hearing Date 3-15-01

Cory : I can't answer that. I'm not sure. I assume they have gone through tool chest.

Rep. Delmore : Rep. Kerzman, did you visit with the attorney general when you drafted this bill?

Rep. Kerzman : I'm not sure.

Chair Froseth : (4375) I think we should visit with council and work out a solution.

Rep. Kretschmar : I would like to give the county commission a correct procedure to comply with the constitution.

Jeff : I need to address the issue of my unconstitutionality. My position took effect before the constitution was amended. I am legal.

Chair Froseth : I appoint Reps. Delmore, Kretschmar, and Grosz to be a subcommittee and work with the Attorney General's Office and figure something out; maybe an amendment.

Chair Froseth : Any more testimony? Hearing none, SB2244 is closed.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2244 b

House Political Subdivisions Committee

Conference Committee

Hearing Date 3-22-01

| Tape Number | Side A | Side B | Meter # |
|--|--------|--------|-----------|
| 2 | | xx | 1700-2000 |
| | | | |
| | | | |
| Committee Clerk Signature <i>Ron Rosen</i> | | | |

Minutes: Chair Froseth : What does the committee wish for SB2244, Rep. Delmore and Rep.

Kretschmar worked on some amendments with L.C. Take a look at 10317.0101.

Rep. Delmore : I move a DO PASS on amendments.

Rep. Kretschmar : I second.

VOICE VOTE: ALL YES. MOTION PASSED.

Vice-Chair Severson : I move a DO PASS AS AMENDED.

Rep. Delmore : I second.

VOTE: 14 YES and 0 NO with 1 absent. PASSED. Rep. Grosz will carry the bill.

10517.0101
Title.0200

Prepared by the Legislative Council staff for
Representatives Delmore and Kretschmar
March 20, 2001

VR
3/22/01

HOUSE AMENDMENTS to SB2244
Page 1, after line 18, insert:

HOUSE POL. SUBS. 3-23-01

"5. The boards of county commissioners of two or more counties may enter an agreement to elect a multicounty jurisdiction state's attorney. A candidate for election to the office of multicounty jurisdiction state's attorney must be a qualified elector of the multicounty jurisdiction at the time of the election."

Renumber accordingly

Date: 3-22-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 0244

House POLITICAL SUBDIVISIONS Committee

- Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number 10577,0101 0200

Action Taken Do Pass As Amended

Motion Made By Vice-Chair Severson Seconded By Rep. Delmore

| 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) 14 No 0

Absent 1 ab

Floor Assignment Rep. Grosz

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

REPORT OF STANDING COMMITTEE

SB 2244: Political Subdivisions Committee (Rep. Froseth, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2244 was placed on the Sixth order on the calendar.

Page 1, after line 18, insert:

"5. The boards of county commissioners of two or more counties may enter an agreement to elect a multicounty jurisdiction state's attorney. A candidate for election to the office of multicounty jurisdiction state's attorney must be a qualified elector of the multicounty jurisdiction at the time of the election."

Renumber accordingly

2001 SENATE GOVERNMENT AND VETERANS AFFAIRS

CONFERENCE COMMITTEE

SB 2244

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2244

Senate Government and Veterans Affairs Committee

■ Conference Committee

Hearing Date April 10, 2001

| Tape Number | Side A | Side B | Meter # |
|---|--------|--------|----------|
| 1 | X | | 0.0-50.0 |
| | | | |
| | | | |
| Committee Clerk Signature <i>James H. Raile</i> | | | |

Minutes: The Conference Committee on SB 2244 which relates to the residence of candidates for election to a county office, was called to order by **Chairman Kilzer**. The clerk called the roll and all members of the committee were present. The discussion was opened at this time.

Representative William Kretschmar, spokesman for the house members and member of the House Political Subdivisions Committee indicated that when they heard the bill he believed the consensus of their entire committee was to grant relief to the people out there where two counties wanted to elect one states attorney. It was plain after discussion and it was pointed out to the committee that there was a problem in the constitution and that precipitated 4052 and we are trying to get that squared around. We were trying to provide an amendment that would be at least close to constitutional under our current statute so that these counties could do this in next years election if they wished. The basis of their amendment was that the counties would have to agree, make an agreement pursuant to the tool chest bill where they could make these agreements and that the person would run as states attorney for the two county area. We put the word

jurisdiction in there someplace, because that's what it says in the constitution. We wanted to do something so that these two counties if they wished could do it. **Chairman Kilzer** noted that your subsection 5 is the amendment, correct? **Representative Kretschmar** noted that it was. **Senator Kilzer** inquired if that fit very well with the other previous four subsections or does it do anything specific? He knows that it specifically talks about states attorneys where the other four do not. **Representative Kretschmar** indicated that he believed that they just specifically wanted it to be for states attorneys so they didn't run into that constitutional provision that talks about sheriffs and other officers. **Senator T. Mathern** indicated it sounds like the house intent on this bill fits basically what we did in the senate. We are trying to accommodate this situation and he thinks the house and senate just took a different tack on how to do it. The senate felt they had addressed it too in the senate. He just thinks it would be appropriate to hear from the Secretary of State to make sure that we do this correctly. He doesn't think there is really a disagreement between the house and senate on the outcome, it's more a matter of how we get there. Maybe we have proposal that we can agree on now to put in the conference committee. **Senator Krebsbach** indicated that she believes that all of us are at the same goal of trying to accommodate this situation where in there is difficulty in having someone residing within the county to be running for the office of states attorney. In instances where there is either no attorney residing within the county or if they are they are perhaps not interested in the position. The intent of ours is all the same, to allow something to happen and of course with the passage of the amendment to the constitution four years ago that drastically changed things because it eliminated or prior to that it would have been allowed. With the constitutional amendment passing it restricted it to the residential language. We all know what we are going for. With the constitutional measure that is being proposed she thinks that what we will be looking at will be

further amending from this committee. That way we can have a product that will coincide with one another between what we are attempting with the constitutional change and legislative change. **Senator T. Mathern** indicated he thinks that the attachment that we have here, the third item in is an amendment that Senator Krebsbach would be referring to. We have looked at this in the Government and Veteran's Affairs Committee when we moved ahead with the constitutional measure. What we would be looking for is a recession from the house amendments and amend to include this document in the bill. Maybe would could even hear from the counties about support or nonsupport for this while the Deputy Secretary of State is getting ready to come. **Chairman Kilzer** indicated that this possibly new proposed amendment would take out the language of multicounty jurisdictions. He indicated he would like to ask Representative Kretschmar about that. **Representative Kretschmar** indicated that they kind of wanted to get the word jurisdiction in there somewhere because that is one of the words used in the current constitutional amendment. So that if any reference to the constitution is in line at least that much. **Representative Delmore** indicated that she had a copy of the constitutional amendment here that representative Grosz brought. This went before the Judiciary Committee, came out during the '97 session and was voted on in '98. They heard in a least three locations and it wasn't until they were in Minot, that they realized how poorly worded it was and there wasn't anything they could do. None of them had a problem with what the sheriffs were trying to do but they inadvertently put something into the constitution and that is why when she and Representative Kretschmar went up to legislative council and talked with the attorney general. They thought that multicounty jurisdiction was and important part of having in there. **Senator T. Mathern** indicated that we were concerned that listing of the term jurisdiction or multicounty may create a new entity and we didn't want to create a new entity from which other things could

emanate. So, the amendments here that we asked be considered stay away from the concept of jurisdiction or multicounty unit and things like that. The goal is to make it as simple as possible and not create a new entity. Then what do you do, create a new voting block or other things from there, so that is the concern we have about the word jurisdiction. That is why this wording seems to make it possible to do what we want but yet not create a new entity. **Representative Kretschmar** indicated that the house kind of discussed that area also but we didn't want to create a problem whereby if candidate A runs for states attorney in two counties and then there is a candidate B and A wins in one county and B wins in the other. We thought that you should have the total vote of both counties to determine the winner of the election so that there wouldn't be two people elected, two different people elected in the two different counties and he thinks that is why they used the word jurisdiction. He thinks it was the intent of the house committee that if this were used and there be an election the candidates would be on the ballot in both counties but the winner would be the guy or the person that got the total vote from both counties added up. But that would kind of run in the and I see your point Senator Mathern that you didn't want to do something like that. But, he thinks we are going to have to go a little bit in that direction, which may not be bad either. **Corey Fong**, Deputy Secretary of State, indicated that as he understands, you have the amendments that were drafted by the Secretary of State's Office. He indicated that what they were asked to do was in context of 4052 being created they were asked to figure out how to somehow harmonize 2244 with 4052 and that is exactly what they have attempted to do by drafting these amendments which allow counties to agree by resolution to allow candidates for states attorney to petition in each county and to serve in each county if elected. That is essentially what we have tried to do. The amendments made between 2244 by the house probably were an attempt to make it as constitutional as possible, however, it was perhaps done

with the assumption that maybe there wouldn't be a constitutional amendment that would come out to try to fix this whole situation. Now that 4052 exists perhaps 2244 with these amendments would harmonize the two. **Senator T. Mathern** inquired if Mr. Fong could address Representative Kretschmar's concerns that the different people be receiving different votes in the different counties and how that would be resolved. With these amendments is that a problem? Would this be high vote of the two counties that agreed in combination or would there be a potential between one candidate winning in one county and another candidate in another county. **Corey Fong** indicated one of the concerns that they have is the fact that okay if we are going to have two county elections going on for all of our other county offices and all of a sudden they are going to combine for this one particular election, that is going to cause some elections administrative kinds of problems and that is why these amendments were drafted so that it is very clear that they are having separate elections. They have to win, if they are going to serve in the nonresident county, they are going to have to get the highest number of votes in that county. Instead of creating one jurisdiction and therefore one election for that one office and have them receive the highest number of votes in that particular jurisdiction. As you well know, we had a great dialogue about someone winning in this county and not winning in that county and our original amendments that we came forward with were rejected because of that. Because it really didn't get at what Senator Krauter was trying to get at. What we learned was that the concurrent resolution, the constitutional amendment was part of that problem. The purpose has been trying to allow them to do what they are trying to do, which is to elect someone, give them some flexibility but also keep it less complicated by having this large jurisdiction have a joint election. **Senator T. Mathern** indicated, the way we have these amendments there would be an election in each county. If the person won in both counties the person would be the state's attorney for

both counties. If they won election only in one county, lost in the other county, they would only be the states attorney for the county in which they won even though the combination of both would give them the total majority. **Mr. Fong** indicated that was correct. **Representative Delmore** indicated that she had one more question along that same line. What if the person wins in the county in which they don't reside? That is why they used the jurisdiction terminology it was in this last amendment and it wasn't intended to muddy the waters about the number of elections but to make clear that that total should be there so that, because otherwise she doesn't know if the person wins in the county where they don't live, constitutionally she doesn't think they can serve. **Corey Fong** indicated that if he may add, their original amendment was intended to do that so the individual would have to be, in order to be elected to both jurisdictions, they would have to receive the highest number of votes in each jurisdiction. In other words, if you are going to run for states attorney in your resident county and then a nonresident county. You would have to run separately, different elections but you would have to receive the highest number of votes in both counties. If by chance you receive the highest number of votes in your nonresident county but not in your home county, under the original draft of these amendments you would not be elected in either county. That is not what Senator Krauter was getting at. Again he thought we were interjecting residency as another obstacle to this whole process. Which is essentially the crux of the problem. One thing he might add and Mr. Traynor who is here from the Association of Counties, Mr. Fong thinks has pointed out something very important, if counties want to have this large jurisdiction they have the Tool Chest legislation to go about doing this and perhaps they could be encouraged to do that. They do have that option as well. He indicated he would defer to Mr. Traynor on that issue because he is the better expert on Tool chest Provisions. **Representative Delmore** indicated that it was her understanding that

very well for this either because of the constitutional change that we had. She inquired if she was wrong on that. **Mr. Terry Traynor**, representing the Association of Counties indicated that was true. The 4052 amendment would allow the use of the Tool chest Provisions that are in law. The availability of that was pointed out to these counties. That they could create under current law although it was unconstitutional right now, they could create a multicounty jurisdiction. That wasn't the solution they wanted. They wanted just the ability for someone that was a nonresident to run if it was agreeable to the county itself. That is the direction the amendments took to come up with this. **Senator T. Mathern** indicated that he thought the senate committee came to the conclusion that the very scenario that you point out is what is needed, especially in the southwest and probably some other areas around the state. There are no attorneys in some of these areas willing to serve and live in these counties and we need provisions wherein that county can get an attorney from someplace else to be their states attorney. That is our goal, even if that means someone becomes states attorney that doesn't live there. **Representative Delmore** indicated then we are looking at some kind of intent. What we were looking at is for this bill to work during the interim until hopefully that resolution will be passed by the people. All we wanted was the best shape that we could have this in to be the stop gap until hopefully this passes. **Senator Krebsbach** indicated that the house has not yet heard the resolution. What the resolution is doing is just allowing the legislative assembly to provide by law for the election of any county elective officer other than the sheriff to serve one or more counties provided the affected counties agree to the arrangement. Any candidate elected to the office is a qualified elector of one of the affected counties. Basically what we were trying to do was to coordinate this with that type of language. **Representative Grosz** commented that it is our belief that it doesn't become a problem until the next election. The next general election. The way the

The way the constitutional amendment was drafted, hopefully that will have passed prior to that time. **Chairman Kilzer** noted that the proposed constitutional amendment would be voted on in the primary election in June of 2002. That would be before the general election in November of 2002. **Representative Grosz** indicated that he wanted to throw something out here to the committee and see if it fits or something. He indicated he still like the house amendments because he believes right now without 4052 being passed, without the constitutional amendment he can see where the house amendments could be debated as to their constitutionality, but with the proposed amendments in his opinion they are on more shaky ground. He indicated he is not by far a constitutional scholar. Is there a possibility of amending or further amending 2244 to state if the constitutional measure passes, this proposed amendment is substituted into legislation so once the constitutional measure passes subsection five would change to what is being proposed? **Representative Kretschmar** indicated he thinks one of the differences he sees between the houses amendments and those proposed by the senate is the decision of whether we want to set up what is called a multicounty jurisdiction. The house in its bill envisioned that we would set up a multicounty jurisdiction so that someone who ran would have to get the most votes, most total votes in the two counties to be elected. Under the senate version as he understands it you are going to run in each county separately. And have to wind in each county separately to be elected to the office. At this point he favors the houses version rather than having the separate things. **Representative Delmore** indicated the other thing that she sees in this amendment is you have included any county elective officer other than sheriff and both of these only address states attorneys and so if we are going to be consistent she thinks that is another thing that we have to look at in where we go. **Senator Krebsbach** indicated that it says we may provide by law. At this particular time, the only thing that comes to our attention as a

attorneys, but we figured if the state's attorneys are going to be affected, there could be others and the amendments passed in the last constitutional amendment eliminated all. She even suggested putting the sheriffs back in there but that became a somewhat contentious idea. Corey Fong commented that they were concerned too that if they didn't specify just states attorneys there may be some county commissions that decided hey we don't like the performance of our auditor, so we are going to recruit someone from the next county over. This situation is unique because of the professional requirements of states attorneys and it being so rare in these particular rural areas. We didn't feel we necessarily wanted to expand it, but there may come a time when it applies to auditor or register of deeds or whatever, but right now the language of the constitutional change is permissive and therefore it is reflected in the amendment to 2244.

Senator T. Mathern inquired if Mr. Traynor would address the issue of multicounty jurisdictions. He indicated that our committee came to that conclusion based on some input and maybe that would be useful to have that. **Terry Traynor** indicated that he wasn't sure what input that was. He noted that in talking particularly with the Grant County Commission, they were very active at least in the house side of the hearing. They are hopeful that they can attract anyone to run in the county and they are concerned about though entering into agreement and locking the county into some sort of multicounty jurisdiction with a particular county, particularly a county that has a larger population than they do and then they become really dependent upon that county to whoever they elect is who they get where in their view the ideal situation would be to form agreements with maybe Hettinger County and Sioux County and they could have both of the part time states attorneys run in their county and whichever one was successful that would be their county's decision to, as to the right person for their county. They wouldn't be dependent on a larger block of voters from another county and what they thought was right for the collective two

counties. They recognize that they have the ability, they even explored the option of using the tool chest language 11-11.4 to create a joint powers agreement to create a multicounty states attorneys position. But then and with the counties down there you are still only bringing in maybe only one more attorney that's available to run so you are really kind of deciding the election for two counties at that point rather than just one. This way they could maybe get several attorneys to run and come up with someone that was appropriate for their county and if they were unfortunate enough to lose in their own county and still win in Grant County well then maybe they would move to Grant County. **Senator T. Mathern** inquired if there would be another issue in terms of multicounty that we would create a kind of different election system? Wouldn't you have to have different, I mean it's almost like a political subdivision. You could change the polling areas, you could change the polling process, you could make it quite specific to this new jurisdiction. That would make it separate from the county elections. Couldn't that also be implied by having a new jurisdiction? **Terry Traynor** indicated that the latitude that the counties have under the tool chest is quite broad. Conceivably they could do that. Dealing with counties however, and the county auditors driving the election he assumes the precincts would be the same and everything else would be the same, however, they will, it would be, there are other multicounty jurisdictions we are very familiar with, the multicounty judgeships particularly in the southwest and they dealt with that. The votes as he understands it would be canvassed as a whole and you would be creating somewhat of a separate process for that. A political subdivision of limited jurisdiction. **Representative Kretschmar** indicated it wouldn't seem to him very much different than what he runs as a legislative candidate. He runs in five counties and each county has their election process under the current law and the votes are totaled up from five counties and the person with the most votes wins. He doesn't think there would be a need to

change any election process or precincts or anything like that. **Senator Krebsbach** indicated it is a situation that we are faced with here, trying to stay with the formula or the process that has been established by the tool chest or allowing something that the entities are looking for today to serve their needs. The counties that are here asking for this and she guesses what their concern is here is that we have to be careful because what they put in on the constitution once put in statute is not only going to be affecting those counties but every other county. She can see both ways where she wants to do it, but we've got to be very careful at this point. **Terry Traynor** indicated with the constitutional amendment, should that pass, he believes the tool chest is in place. He thinks if we are looking for a multicounty jurisdiction authority he thinks that already exists. Currently it is unconstitutional but hopefully that will be resolved. At least he assumes it is unconstitutional now, but he thinks that authority is already in statute. What his understanding of what those counties were looking for was something in addition to that authority, something a little less structured that was basically eliminating that residency requirement if that is the choice of the county. **Senator Krebsbach** indicated what she is looking at is when we set something in statute, are we going to have to spell out these counties or these entities that are coming seeking to be included within just their own entity? For example, which counties are affected right now? **Terry Traynor** indicated Grant County is struggling now because they really, they are using the assistant states attorney concept and then Slope and Adams County is sharing state's attorney right now. **Senator Krebsbach** indicated because this is giving broad band authority to any and all counties to share in this type of situation for offices for states attorney. **Terry Traynor** indicated however, it does appear to take the approval of the county, in this case the county commission. The constitutional amendment would say the county and this would specifically be the county commission through their actions would allow for it. It wouldn't permit anybody to

run in any county. The residency would be a requirement unless the county commission had made some sort of action under the amendments proposed in 2244. **Senator T. Mathern** inquired if the Association of Counties planned to support the constitutional amendment that we have before us now? **Terry Traynor** indicated yes, absolutely. The change that the sheriffs implemented have created great concerns and he sees this as protecting what they put in place for themselves but, restoring the flexibility for the other offices. Yes, we will be supporting it.

Senator T. Mathern indicated, assuming that constitutional measure passes the house and the senate and again passes by a vote of the people in a primary election. What is your preference in terms of an outcome for 2244? The house version or the proposed amendments brought by the Secretary of State to the conference committee? **Mr. Traynor** indicated now after the explanation by the sponsor and more discussion with the county commissioners particularly Grant County he thinks the most recent amendments proposed by the Secretary of State's Office really fits what those counties were looking for. **Senator T. Mathern** indicated he wanted to know what the best public policy for all of the counties in North Dakota would be to have in place? Would it be the house version or the proposed Senate amendments version? **Mr. Traynor** indicated that this is a difficult question. From an administrative position a multicounty states attorney might be able to operate more efficiently rather than trying to deal with two separate commissions, two separate budgets. He sees that as being more cumbersome possibly administratively to administer, but from the local control aspect he sees that the most recent proposal to 2244 provides another option. He thinks what is in the bill right now, the senate bill with the house amendments is really restating the provisions in the tool chest to some degree. It's allowing for multicounty jurisdictions and he doesn't think that, he doesn't think we are missing that now, that provision is available. The thing is that right now until the

constitution is changed he doesn't think that it's available. If we are going to do something he thinks that the Secretary of States Amendments will add one more option so he guesses he supports that. He doesn't feel that the bill as it sits now, provides another option. It restates an option that already exists. **Senator Krebsbach** inquired if there would be anything wrong in leaving the flexibility to the counties whether they wanted to do a multicounty jurisdiction or a separate such as what we are allowing with the newly proposed amendments election for the states attorney and leaving both within the 2244 giving the counties their choice whether they want to do the jurisdictional type of a situation or such as the individual county election. **Terry Traynor** indicated he thought that would be fine. **Representative Delmore** indicated she would agree with that in that it gives one more option and she thinks from what Mr. Traynor has said, both of them following through with what the tool chest may already provide to a degree but they both cover the residency issue which something which we need to do something about now. **Chairman Kilzer** inquired of Mr. Fong if we could broaden it that much? **Corey Fong** indicated that he thinks it goes back to the questions that Senator T. Mathern brought up earlier which was from the election kind of administrative concern that he brought up but there were some other things that came up too. If section 5 as it currently exists is going to stay in there are some questions that need to be answered and that is not to say that they couldn't be answered to address what you are trying to do but, which county are they going to file with? As far as who is going to certify the election, those kinds of election administration kinds of questions he thinks still linger with the current section 5, whereas if you look at the amendments in 2244 it specifies that they petition in both counties and they are certified by both canvassing boards in both counties and it refers specifically to the election code in 16.1-15. It was designed that way so that we wouldn't have to articulate all of those election kinds of procedures that are already in

articulate all of those election kinds of procedures that are already in the law. With the current version of section 5 he thinks there would have to be some things specified as far as where they have filed, do they petition the whole county, those kinds of things. Maybe he is being overly sensitive to that from election administration point of view. **Representative Delmore** indicated that **Representative Kretschmar** has already made a good point. In our legislative districts we already have this in place. She thinks this offers the boards of commissioners to start with this, we can't find somebody in county A, can we get together as two county commissions and try to seek a candidate because we need somebody to be our states attorney so she does think that this provides a different flexibility than the other one. **Corey Fong** indicated that he doesn't disagree, but what he is saying is that is very true but there is a part of the statute that says where you file as a legislative candidate. You see what I am getting at? **Representative Delmore** inquired if there was any reason that we couldn't further amend this and make that clear where they could do it and still give one more option she guesses is what she is saying? **Corey Fong** indicated yes that was very true and he would certainly be happy to help out in any way to try to articulate some of these questions that need to be answered through some amendments.

Chairman Kilzer inquired if there were further questions or comments. **Senator T. Mathern** indicated that he believes that what they have heard is that number 5 in the house amendments is presently possible within law. If we repeat it here he thinks we have to also clarify how it is that one gets on the ballot and it's counted and all of those things, separate from the tool chest so he might be concerned that we might be creating two vehicles for those election administrative details. He cautions that if it is already in the law, let's let it work. **Representative Kretschmar** indicated that he believes what is already in the law is the power of the two county commissions to make this agreement. It is not in the law, the things that Corey talks about. Maybe we could

insist that that has to be in the agreement. An amendment with some of these details in it could be added to number 5. That would perhaps make things clearer. He does like the idea of having both of the options available to the counties if they want to do it. He thinks the tool chest does give them that right. **Senator Krebsbach** inquired if we could be referring if we did leave subsection 5 such as it is, could we be referring to the tool chest legislation section of authority? Would that give any type, or does it not give the authority as to how to go about the process? The discussion of this issue continued with input and inquiries from **Representative Kretschmar, Senator Krebsbach, and Senator T. Mathern.** The consensus of where to go and how far to take it as to the committees input on how to resolve this issue eventually resulted in a motion to have the Secretary of States Office prepare further amendments to SB 2244. The motion was made by **Representative Kretschmar**, seconded by **Representative Delmore.** Roll Call Vote indicated 6 Yeas, 0 Nays, 0 Absent or Not Voting. The Deputy Secretary of State will prepare amendments attempting to incorporate the desires of the house and the senate and the Secretary of States Office into an amendment that will sufficiently meet the needs of all concerned. **Chairman Kilzer** recessed the conference committee and indicated they will meet again at a later date when the amendments have been prepared.

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2244

Senate Government and Veterans Affairs Committee

Conference Committee (Session 2)

Hearing Date April 12, 2001

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| Committee Clerk Signature <i>James A. Raile</i> | | | |

Minutes: The second session of the Conference Committee on SB 2244 was called to order by **Chairman Kilzer**. The clerk called the roll and all members of the Conference Committee were present. **Chairman Kilzer** opened the discussion by indicating that Corey Fong, the Deputy Secretary of State had completed amendments as requested for the committee. At this time **Corey Fong** explained what these proposed amendments would do. These amendments are an attempt to balance the interests of both the house and the senate. These amendments would allow for the two different options that had been suggested by the two governing bodies. The amendments would have a subsection A and a subsection B to section 5 of 2244. The first subsection A would again reference the concept of having a multicounty jurisdiction states attorney. This section includes a reference to the tool chest legislation that already allows this to happen. This section also clarifies some of the questions which Mr. Fong had expressed in the previous discussion relative to election administration questions which needed to be addressed. Subsection B would incorporate basically those ideas the senate wanted to put forth into 2244.

This speaks toward the board of county commissioners entering into agreements to resolve the problems of choosing states attorneys. The last section added by the proposed amendments was really at the suggestion of the results of the hearing of SCR 4052 in the house which was held on April 11, 2001. There was a concern expressed relative to all of this coming together in a timely fashion. If the constitutional measure should fail in the primary, what kind of situation would that put us in? Legal counsel drafted the additional section to assist in that clarification. **Mr. Fong** indicated that they felt these amendments are a workable solution. He indicated a concern was expressed that perhaps it should be indicated somewhere that this additional portion of the amendment needs to be removed should the success of the constitutional amendment be voted on favorably by the people of North Dakota. **Mr. Fong** indicated that this could be done perhaps by the code revisor. This would however need to be noted somewhere so that this would actually be done. **Chairman Kilzer** inquired about B on the very first line where it indicates may agree by resolution. He inquired if that was a specified process. Do requests have to be submitted to the commissioners and is there a formal way of doing this or is this just language that is kind of new? **Mr. Fong** indicated that he thinks what is being said is they can agree jointly by a resolution of their county commissions. He thinks that is pretty standard procedure. With any collaborative efforts under the tool chest they would have to agree by resolution. **Senator Krebsbach** indicated that she was happy to see the addition of the contingency language to a portion of the amendments, however in regard to the last sentence there, if it is not approved they may not advance, so that puts us back to peg one. **Corey Fong** indicated that was true. He believes that what would happen is there would be a vacancy existing on the ballot for the county office and there are procedures in the statute that allow vacancies to be filled going into the general election in the county so they would have to be nominated. The crux of the problem

which is there is nobody to run for the office is still there. If there was no one elected then again we would be in the vacancy situation. **Senator Krebsbach**, then the appointment can be made of someone outside of the county. Is that permissible? **Mr. Fong** indicated he doesn't believe so. He thinks the appointments have to be made of residents. **Senator Krebsbach**, then that puts us back to square one. **Senator T. Mathern** indicated that it seems to him that this last section is not needed at all in regard to the senate concurrent resolution. That is sort of giving away our authority. Why give it away? Why wouldn't we just presume that what we are doing is constitutional and by putting this down we are saying we want everybody to know that we can't do any of this stuff. This limits an option. If somebody wants to find it unconstitutional or challenge or whatever, let them do it. This sort of says in advance what our position is and he believes that is giving away legislative prerogative. I wouldn't put that last section in. **Mr. Fong** indicated that he thinks part of the reason that they chose to offer this was because of some of the concerns that were offered in the hearing on SCR 4052. It is your prerogative to choose to leave it in or to take it out. This was done to provide options. **Representative Delmore** indicated that she sees no reason for that last part to be there. If the resolution passes this is all going to be okay to do and if it doesn't then this is going to have to be challenged. She doesn't think--we are the one's that say automatically it's challenged and it's unconstitutional when it's our law we are passing. The rest of it she really likes, but she doesn't see any need for that part. **Representative Kretschmar** indicated that one of the questions he has in the B part is "what is a nonresident county"? He doesn't think counties are residents or nonresidents. He thinks that should be rephrased a little bit. **Corey Fong** indicated that he struggled with the language in drafting that section. **Representative Kretschmar** suggested some alternative language for that particular section. **Representative Delmore** inquired about the multicounty terminology which

the house preferred. What happened to it? It was indicated that it was still there in section A.

Senator T. Mathern indicated that he thought that it seems to him that the house is wanting to move toward creating district attorneys. He doesn't know why we would want to do that in North Dakota but that is what the houses amendments do. Basically this creates a situation where eventually we would eliminate county states attorneys and we would have district attorneys. That is going to, well maybe what that means is you want to fit it with district courts and eliminate counties. But that's the consequence he thinks of the houses amendments. He would prefer to eliminate the house amendments and just adopt these, but if the house wants those in he's fine with that and we can adopt both, but he just wants to clarify that he thinks the ultimate direction this would be going. **Representative Kretschmar** indicated he doesn't see it going that direction. He believes that if we give the counties options, they don't have to do either if they don't want to. They can do if they wish and he thinks we should allow them to do the multicounty jurisdiction if they want it. That would be a decision of the boards of commissioners of the counties involved and not be a mandate in any way from the state that would require a consolidation of counties which if you get out in rural North Dakota and want to get in an argument right away, just talk consolidation. **Senator T. Mathern** indicated he knows it wouldn't mandate it but he is just saying that if one wanted to promote district attorney concepts, it would now be in the law to permit it. **Representative Delmore** indicated it was her understanding that it was already in the law now, all this does is allow those counties who can't afford or find qualified people, we wanted to qualify or stipulate because of the unique beast of the attorney qualification that has to be there. There are counties that don't have any or if they have people, they don't want to do it. There was never the intent of anyone in the house to put this in there to have anything to do with consolidation. Some of us were involved in the clerks of

court and she doesn't want to go back to that discussion ever again so that had nothing to do with the amendment that was drafted at all. **Representative Kretschmar** indicated, historically, in the '40's the legislature passed laws to allow counties to consolidate. There are statutes on the books and he believes no county has ever tried it. He doesn't think that those people thought they were encouraging that, they were allowing it. He thinks the same thing here, we are allowing it. **Terry Traynor** was asked to comment on the terminology agree by resolution. He indicated that is a common phrase used for county actions by the board of commissioners. He believes that the amendments address both the house and senate issues and he also supports the language change proposed. He also believes that the last paragraph is unnecessary. **Senator T. Mathern** moved that the House recede from the House Amendments and that the committee reamend in the house amendments with the addition of the proposed amendments handed out, excluding the last paragraph and changing the wording nonresident county to reflect **Representative Kretschmar's** verbiage. The motion was seconded by **Representative Kretschmar**. Discussion continued with **Representative Grosz** expressing his concerns of the fact that the committee is not putting the cart before the horse so to speak, rather he sees the committee as putting the cart beside the horse in trying to get to the destination at the same time. He really has reservations with putting verbiage in the century code when the constitution hasn't been changed yet. He believes that we should stick with the original house version of the bill which he believes is constitutional until we are able to amend the constitution and then it would have to be revisited. He knows what kind of problems that brings up in solving the outcomes. He is afraid we might be opening up a can of worms if the cart and the horse don't get to the destination at the same time. **Senator T. Mathern** indicated he believes we are already in a difficult situation in some of our counties in North Dakota. He sees this as an attempt to help

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Senate Government and Veterans Affairs Committee

Bill/Resolution Number SB 2244 Conference Committee-Session 2

Hearing Date April 12, 2001

those counties provide services to their residents. Sometimes it is a little messy and he thinks we are in one of those spots. We do the best we can. We also have a matter of responsibility to address the law as we see it. He sees no evidence where anything we have done or are doing is unconstitutional. No one has brought an action under anything like that so he presumes what we are doing is constitutional and for those people who have questions we have a constitutional matter to put forward to the voters. That is the way he sees it. Discussion of the committee continued with comments, observations, and information being provided by **Representative Grosz, Senator T. Mathern, Chairman Kilzer, Representative Kretschmar, Senator Krebsbach, and Representative Delmore** (Tape 1, Side A, Meter #'s 21.0-29.5). **Chairman Kilzer** at this time asked the clerk to call the roll on the motion from **Senator T. Mathern**, seconded by **Representative Kretschmar**. Roll Call Vote indicated 5 Yeas, 1 Nay, and 0 Absent or Not Voting. The Conference Committee on SB 2244 was adjourned.

REPORT OF CONFERENCE COMMITTEE

SB 2244: Your conference committee (Sens. Kilzer, Krebsbach, T. Mathern and Reps. Grosz, Kretschmar, Delmore) recommends that the **HOUSE RECEDE** from the House amendments on SJ page 1004, adopt amendments as follows, and place SB 2244 on the Seventh order:

That the House recede from its amendments as printed on page 1004 of the Senate Journal and page 1079 of the House Journal and that Senate Bill No. 2244 be amended as follows:

Page 1, after line 18, insert:

- "5. a. The boards of county commissioners of two or more counties may agree by resolution to elect a multicounty jurisdiction state's attorney pursuant to chapter 11-10.3. An agreement made between two or more counties according to this subsection must specify procedures for filing for office, the use of a single canvassing board, the sharing of election personnel, the printing of election materials, the publishing of legal notices, and the apportioning of election expenses. A candidate for election to the office of multicounty jurisdiction state's attorney must be a qualified elector of the multicounty jurisdiction at the time of the election; or
- b. The boards of county commissioners of two or more counties may agree by resolution to allow any candidate for the office of state's attorney to petition for office in each county, and to serve if elected, if the candidate is a qualified elector of one of the counties at the time of the election. To be elected to serve a county in which the candidate is not a resident, the candidate must receive the highest number of votes for the office in that county. Each county shall certify the results and issue certificates of election pursuant to chapter 16.1-15."

Renumber accordingly

SB 2244 was placed on the Seventh order of business on the calendar.

2001 TESTIMONY

SB 2244

Proposed Amendments to Senate Bill No. 2244 with the House Amendments

Page 1, line 20, replace "enter an" with "agree by resolution to allow any candidate for the office of state's attorney 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 non-resident county, a candidate must receive the highest number of votes for the office in that county. Each county must certify the results and issue certificates of election pursuant to chapter 16.1-15."

Page 1, delete lines 21 through 23

Re-number accordingly

CHAPTER 11-10.3 MULTISUBDIVISIONS OFFICE COMBINATIONS

Section

11-10.3-01. Multicounty combination of elective officers.

11-10.3-02. Contents of plan - Limitations.

11-10.3-03. Office sharing among political subdivisions.

11-10.3-01. Multicounty combination of elective officers.

1. A county may combine any county elective office with one or more elective offices of one or more other counties for the purpose of sharing that combined office for the performance of functions and the provision of services among those counties. The procedures set forth in this chapter apply to the combination, unless a specific procedure for combining particular elective county offices is otherwise provided by law.

2. A proposal for combining county elective offices may be accomplished:

a. By the boards of county commissioners of each affected county by entering into a joint powers agreement incorporating a plan for the office combination, subject to the right of referendum in the electors of each of the counties; or

b. By initiative of the electors of each affected county. A petition signed by ten percent or more of the total number of qualified electors of each county voting for governor at the most recent gubernatorial election may be submitted to the boards of county commissioners of each county, calling upon the boards to submit to the electors the question of adopting a plan described in, or annexed to, the petition.

3. A joint powers agreement entered into between counties for combining the functions of any county elective office pursuant to subdivision a of subsection 2 may be referred to the qualified electors of an affected county by a petition protesting the agreement. The petition must be 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, and filed with the county auditor, or functional equivalent of that office, before four p.m. on the thirtieth day after the agreement is adopted. Within ten days after the filing of the petition, the county auditor shall examine the petition and ascertain from the voter list whether the petition contains the signatures of a sufficient number of qualified electors. Any insufficiencies may be cured by the filing of an amended petition within ten days after the county auditor declares the insufficiency. The implementation of the terms of the joint powers agreement is suspended upon a determination by the county auditor that the petition was timely filed and contains the signatures of a sufficient number of qualified electors. The board of county commissioners shall reconsider the referred agreement and, if the board does not terminate the agreement in its entirety, shall submit the question to a vote of the qualified electors of the county at the next regular election. The county auditor shall cause the complete text of the agreement to be published in the official newspaper of the county, not less than two weeks nor more than thirty days, before the date of the election. The boards of county commissioners may, prior to the election, hold public hearings and community forums and use other suitable means to disseminate information, receive suggestions and comments, and encourage public discussion of the purpose and provisions of the plan. If a majority of the qualified electors voting on the question in the county approve the question, the plan incorporated in the agreement is effective and becomes operative according to the terms of

the agreement as if the agreement had not been suspended. If the electors of either county do not approve the question, the plan does not become effective.

4. The question of combination of the functions of elective county offices brought by petition pursuant to subdivision b of subsection 2 must be submitted by the boards of county commissioners to the electors in each of the affected counties at a primary or general election not less than sixty days nor more than two years, as specified in the petition, after the petition is determined sufficient by each board. The question on the ballot at the election must be framed in a manner that fairly and accurately describes the substance of the proposed office-sharing arrangement. The board of county commissioners in each affected county shall cause the complete text of the proposed plan for combining offices to be published in the official newspaper of the county, at least once during two different weeks within the thirty-day period immediately preceding the date of the election. The boards of county commissioners may, prior to the election, hold public hearings and community forums and use other suitable means to disseminate information, receive suggestions and comments, and encourage public discussion of the purpose and provisions of the plan. If a majority of the qualified electors of each county voting on the question approves of its adoption, the plan is effective according to its terms.

5. One copy of the plan as approved must be filed with the district court for each county and one with each county auditor or functional equivalent to remain as a part of each county's permanent records. The boards of county commissioners may take any action necessary to bring about an orderly transition in implementation of the plan.

6. A plan, or part of a plan, adopted pursuant to this chapter may be revised or terminated through another joint powers agreement or petition submitted pursuant to the procedure set forth in this chapter for adopting a plan, or pursuant to provisions for termination or revision provided in the original joint powers agreement.

Source: S.L. 1993, ch. 401, § 4; 1997, ch. 108, § 5.

Effective Date: The 1997 amendment of this section by section 5 of chapter 108, S.L. 1997 became effective August 1, 1997.

11-10.3-02. Contents of plan - Limitations.

1. A joint powers agreement or plan for combining the function of county elective offices may specify:

- a. The offices to be combined;
- b. The selection, powers, duties, functions, qualifications and training, terms, candidate residency requirements notwithstanding section 11-10-04, and compensation of the combined office, and status of the office as elective or appointive;
- c. The manner of apportionment of the costs of the office;
- d. Procedures for the selection, transfer, reassignment, or termination of personnel associated with the affected offices;
- e. Procedures for the transfer of powers, records, documents, and property;
- f. Procedures for termination or modification of the arrangement;

g. The process for transition in implementing the office combination, including delayed effective dates for implementation at the end of a current term or a future term, upon the occurrence of a vacancy, or on a date certain;

h. A process for the limited application or temporary implementation of the plan, including provisions that permit implementation on an experimental or pilot basis such as the expiration of the plan on a date certain in the future, require reapproval of the plan by the electors at a future date, or a phased-in implementation of various components of the plan; and

i. Other provisions pertaining to the combined office that the affected boards of county commissioners deem necessary or advisable.

2. A proposed plan for combining the functions of county elective offices 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. The plan may not diminish any general responsibility of county government to perform any function or provide any service that is required by law to be performed or provided by county government.

3. A proposed plan may not diminish the future term of office, or redesignate an elected office as appointed, with respect to any person who, on August 1, 1993, holds an elected county office and continues to hold that specific office for future terms on an uninterrupted basis. This subsection does not apply after January 1, 2002, or if the person holding the affected office consents in writing to the proposed plan, and submits that written document prior to the scheduled implementation of the plan to a district judge serving the judicial district in which the county is located.

Source: S.L. 1993, ch. 401, § 4.

11-10.3-03. Office sharing among political subdivisions.

A proposal for combining appointive offices of two or more counties, appointive offices of a county and another political subdivision, or appointive offices of two or more political subdivisions which are not counties, may be implemented through the execution of a joint powers agreement, unless a specific procedure for combining particular appointive offices is otherwise provided by law. The proposal is not subject to the referendum or election procedures of this chapter. A proposal for combining both elective and appointive offices of two or more counties, between a county and another political subdivision, or between two or more political subdivisions which are not counties, is subject to the referendum procedures of this chapter only in the county or other political subdivision of the elective office.

Source: S.L. 1993, ch. 401, § 4.