

2021 SENATE JUDICIARY

SB 2233

2021 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

SB 2233
1/26/2021

A BILL for an Act to create and enact chapter 27-02.2 of the North Dakota Century Code, relating to attorney recruitment in rural counties and municipalities; to provide for a report to the legislative management; and to provide a continuing appropriation.

Chairwoman Larson calls the hearing to order. Present are Chair Larson, Vice Chair Dwyer, Senators Bakke, Fors, Heitkamp, Luick, and Myrdal. [11:00]

Discussion Topics:

- Appropriations
- Attorneys in rural areas
- Establishing a program to provide attorneys to rural counties

Senator Brad Bekk Dahl [11:00] introduces the bill and submits testimony #3203 in favor.

Taylor Olson [11:06], private practice attorney, testifies in favor and submits testimonies #3284, #3285, #3286.

Amber Fiesel [11:17], State's Attorney with Burke County, testifies in favor and submits testimony #2985.

H Patrick Weir [11:20], State's Attorney with Billings County, testifies in favor and submits testimony #3257.

Tony Weiler [11:24], Executive Director of the ND State Bar Association, testifies in favor and submits testimony #3454.

Terry Trainor [11:37], with the Association of Counties, offers oral testimony in favor.

Sara Behrens [11:40], Staff Attorney with the ND Supreme Court, offers neutral oral testimony and submits testimony #2907.

Travis Finck [11:45], Executive Director for the ND Commission on Legal Counsel for Indigents, offers neutral oral testimony and submits testimony #3214.

Additional written testimony:

Debra Hoffarth submits testimony #3290 in favor.

Chairwoman Larson closes the hearing. [11:48]

Jamal Omar, Committee Clerk

Senate Judiciary Committee

Honorable Senator Diane Larson, Chair

SB 2233 Rural Attorney Recruitment Program

January 26, 2021

Chair Larson and Committee Members,

Thank you for the opportunity to introduce SB 2233 to you today. My name is Brad Bekkedahl, Senator from District 1 in Williston. As the prime sponsor of the bill, I will be presenting the bill intent and mechanisms today and there will be supporting testimony after me from those that are in the legal occupation as well as those most directly affected by this proposed program. This bill discussion was initiated about a year ago to address the loss and current lack of attorney availability in many of our rural counties and towns in North Dakota. The State Bar Association, in discussion with State Supreme Court representatives, were looking for a way to incentivize the return of attorneys to practice in areas of need. In the discussion, involved attorneys crafted the framework of the bill before you today.

Essentially, the bill before you allow the Supreme Court, or a committee designated by the Court the ability to establish a program to assist rural counties and municipalities in recruiting and retaining attorneys in underserved areas. The local political subdivision wishing to participate must apply for consideration and grant approval to undergo an assessment to determine that the need exists for recruitment. Part of the eligibility requirement is based on population by county or municipality, as well as the county or city agreeing to provide a portion of the incentive payment.

The bill also sets out specific criteria about attorney eligibility for the program. The program is initially established to allow no more than four attorneys to be in the program at any time. Once established and operational, the need for more attorneys can be evaluated and reported to the next Legislative Session to consider adding more participants. The attorneys accepted to the program will be compensated with an amount equal to ninety percent of the University of North Dakota school of law resident tuition and fees in five annual installments, determined at the time they complete an initial agreement. If the attorney breaches the agreement, the attorney shall repay all the funds received from the program. Failure to repay the funds is grounds for discipline by the Supreme Court. The formula for funding the program is 35% from the county or municipality served, 15% from the State Bar Association, Foundation, or other legal association, and 50% provided by the State appropriation to the Supreme Court. All the funds required will be deposited into a recruitment assistance program fund created by the Supreme Court or its designated committee. The agreement requires the recipient attorney to practice law full time in the eligible area for at least five consecutive years. An attorney that has previously participated in any other attorney recruitment program, any other state or federal scholarship, loan repayment, or tuition reimbursement program requiring the individual to provide services to an underserved area, is ineligible to participate in another attorney recruitment program in this chapter. Ultimately, the Supreme Court may adopt rules as necessary to implement this chapter and provide an annual report to Legislative Management prior to July first each year.

Chair Larson, this is the bill in a nutshell. I'd be happy to answer any questions the committee may have and beg your indulgence to defer questions I cannot adequately answer to others present today.

#3284

CountyName	# licensed
ADAMS	2
BARNES	11
BENSON	2
BILLINGS	2
BOTTINEAU	5
BOWMAN	3
BURKE	1
BURLEIGH	482
CASS	519
CAVALIER	4
DICKEY	4
DIVIDE	2
DUNN	2
EDDY	4
EMMONS	3
FOSTER	3
GOLDEN VALLEY	0
GRAND FORKS	193
GRANT	1
GRIGGS	0
HETTINGER	3
KIDDER	1
LAMOURE	3
LOGAN	2
MCHENRY	1
MCINTOSH	4
MCKENZIE	13
MCLEAN	5
MERCER	7
MORTON	52
MOUNTRAIL	7
NELSON	3
OLIVER	2
PEMBINA	9
PIERCE	5
RAMSEY	23
RANSOM	5
RENVILLE	0
RICHLAND	22
ROLETTE	3
SARGENT	4
SHERIDAN	1
SIOUX	2
SLOPE	0
STARK	49
STEELE	0

STUTSMAN	26
TOWNER	6
TRAILL	8
WALSH	13
WARD	115
WELLS	1
WILLIAMS	57

1695

#3285



Office of the Dean
215 Centennial Drive
Stop 9003
Grand Forks, ND 58202
(701) 777-2104

January 20, 2021

Tony J. Weiler
Executive Director, State Bar of North Dakota
1661 Capitol Way, Ste. 104LL
P.O. Box 2136
Bismarck, ND 58502-2136

Taylor Olson
Furuset, Olson & Evert, P.C.
107 Main St.
P.O. Box 417
Williston, ND 58802-0417

Re: Letter of Support for Senate Bill 2233

Dear Mr. Weiler and Ms. Olson:

I am writing in my capacity as a member of the North Dakota Bar to express my strong and enthusiastic personal support for Senate Bill 2233, relating to attorney recruitment in rural counties and municipalities in North Dakota.

I have been a member of the faculty of the UND School of Law since 2010. As our Dean since 2019, it has been a high priority of mine to promote the placement of our students and graduates in rural communities throughout the state, including through our thriving and popular student externship program. I have been particularly gratified that a number of my former students have gone on to establish successful law practices in rural counties and municipalities, helping to meet critical needs for quality legal services. But we still have a long way to go to address the serious lawyer shortages in our rural communities in North Dakota. In my view, Senate Bill 2233 is a tremendously important initiative to help us begin "closing the loop" from student experience to lawyer practice, and will lead to more post-graduation decisions by our UND Law graduates to become the future lawyers and leaders of our North Dakota rural counties and municipalities.

If there are any questions for which I could be helpful, please do not hesitate to contact me. My direct dial is 701-777-0588.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael S. McGinniss".

Michael S. McGinniss
Dean, UND School of Law

Good morning, Chairman Larson, and members of the Senate Judiciary Committee. My name is Taylor Olson and I am an attorney in Williston ND. I have worked in private practice in Williston since 2011. I want to thank you for considering this bill and allowing me to present testimony regarding the benefits this bill can bring to the state of ND.

The concept of this bill is not new to the state of ND. My colleague Judge Hurly has been envisioning bringing a program such as this to ND for many years. As a judge in rural ND, he can tell you the many needs of rural counties.

I am a practitioner in Williston. During my time here, I have worked as a contract attorney for many jurisdictions. I know firsthand what the need is in rural communities. In 2013, I contracted with McKenzie County to act as their State's Attorney while they searched for a permanent solution. In 2014 I contracted with Divide County in the same capacity for 11 months. I currently serve as a city attorney for many jurisdictions and a tribal judge and municipal judge.

Our program is modeled after a similar program in South Dakota. In 2013, a bill was introduced in the SD legislature to provide 16 attorneys to rural communities. The project was so popular that it expanded to 32 practitioners shortly after. SD currently operates their program with 32 participants at once. There are currently programs in North Dakota to support rural practitioners in many medical professions.

The program we have proposed is for a "pilot program" which would begin with one practitioner per year up to four. The individual would apply to the committee and be placed in a corresponding county or city who has also applied to the program to receive a participant. The individual would sign a five-year contract to work in that jurisdiction. The individual would receive a grant, payable over the five years of the equivalent of 90% of 3 years of tuition at UND Law as of the date of the approved funds from the state. They would be paid their grant funds in 5 equal installments. If they quit the program early, they are required to repay the funds.

We have five counties in North Dakota with no attorneys. We have 35 counties with fewer than 10 attorneys. 62% of the licensed attorneys in North Dakota work in Fargo and Bismarck/Mandan. The number per

county also includes individuals either not practicing, retired but still licensed, those working as corporate counsel, and judges. Once you take out those individuals, the numbers are quite low in most counties.

The most staggering percentage is the percentage of attorneys left after removing the more populous counties. If you add up the number of attorneys from Williams, Ward, Grand Forks, Cass, Stark, and Burleigh/Morton, those seven counties make up almost 87% of the attorneys in North Dakota. That means the other 46 counties contain the other 13%.

The services attorneys can provide ensure a stronger and more effective legal system. They are a key component of a highly functional judicial system. The effect of having the bulk of attorneys in more urban counties is more cost to the client and less access to justice. Jobs such as city and county attorneys, both prosecuting and defense counsel, are left unfilled. The costs to the counties and cities of travelling attorneys are passed on to the taxpayer in some instances and to the client in others. Often times, attorneys have to travel long distances to provide constitutionally guaranteed services to citizens. Pat Weir will tell you about his “break” from retirement to prosecute in Billings County because they could not fill the position.

Lastly, attorneys provide many necessary services in communities other than the professional skills they bring that community. Attorneys are great community members, often times participating in community events and serving on community boards. Attorneys provide pro bono services to non-profits and engage in the communities they live in.

We have received support for the bill from many groups, and for that, we are very thankful. The North Dakota Supreme Court, ND Association of Counties, ND Commission on Legal Counsel for Indigents, ND Bar Foundation, ND State Bar Association Board of Governors, University of North Dakota School of Law and many practitioners in private practice have all provided their support. We believe this is a great bill and has the potential to positively affect the lives of many North Dakotans. Thank you so much for your consideration.

Judiciary Committee Chair Larson, Vice-Chair Dwyer, Senators:

My name is Amber J. Fiesel. I am a licensed attorney in the State of North Dakota, and I am currently the Burke County State's Attorney, Assistant Mountrail County State's Attorney, and have my own firm, Fiesel Law, P.C.

I rise in support of SB 2233. This Bill would create a attorney recruitment program for counties with populations of 15,000 or fewer and cities with populations of 5,000 or less. I think this program is vital to helping rural North Dakota attract and retain attorneys. When I graduated law school and prepared to move back to my hometown of Powers Lake, North Dakota, I looked into grant programs and other options available to me. I found that there was loan forgiveness for prosecutors that were practicing in rural areas. As I knew I was going to be a prosecutor, I looked into the program only to discover that you had to be a "full time" prosecutor to qualify. As many of you may know most of the counties in North Dakota only have part-time prosecutors, including Burke County. Therefore, I did not qualify for that program. The program proposed in SB 2233 would have been a extremely helpful to me had it been available when I graduated.

Additionally, I am currently the only practicing attorney doing civil work for almost an hour in each direction of me. This means that people are driving long distances to get to see an attorney. Additional attorneys are needed in our rural areas and this bill will provide the avenue for cities and counties to attract attorneys to come and practice in their areas.

Thank you for your time and consideration. Please give SB 2233 a "do pass" recommendation.

My name is H. Patrick Weir. I have practiced law in North Dakota since September, 1965. I was a lawyer with the Vogel Law Firm in Fargo & Bismarck. I then was appointed a District Judge for the S.W. District and served in that capacity for four years, following which I served as a Surrogate Judge for the district courts upon appointment by the Supreme Court. I am now serving as the Billings County States Attorney

Over the course of my legal career and my service as a judge, I have seen an ever increasing concentration of lawyers in our larger communities. This development has led to a continuing drain on lawyers serving the smaller counties and communities throughout the state. Other than myself, I do not believe there are any licensed lawyers in Billings County and very few, if any, serving in other rural counties in SW North Dakota.

The result of the concentration of lawyers in larger communities means, of course, increased travel time, inconvenience and expense for citizens living in rural areas. An additional loss to those communities not served by lawyers is the loss of pro bono volunteer work usually done by lawyers for local churches, service organizations, fairs, etc.

I do believe the "life style" of rural areas would be attractive to many lawyers. However, the financial burden resulting from loans to complete law school is a real detriment. A lawyer starting a practice is faced with real obstacles, not the least of which is financial. Establishing a practice takes time. Even for a lawyer out of law school for a few years faces a daunting task in opening a new practice.

I therefore fully support the enactment of SB 2233.

Respectfully submitted,

H. Patrick Weir

#3454

State Bar Association of North Dakota



P.O. Box 2136 Bismarck, ND 58502
(701) 255-1404 • 1-800-472-2685 • Fax (701) 224-1621
www.sband.org • info@sband.org

Tony J. Weiler • Executive Director

Senate Bill 2233

Testimony of Tony J. Weiler

Senate Judiciary

January 26, 2021

Senator Larson and Members of the Senate Judiciary Committee, my name is Tony Weiler, and I am the Executive Director of the State Bar Association of North Dakota (SBAND).

SBAND is the professional association of 3,000 licensed North Dakota lawyers. On behalf of SBAND President Carrie Francis and our Board of Governors, I present this testimony in support of SB2233, the Rural Practice Bill. SBAND has seen the number of lawyers in our smaller, rural counties and communities shrink over time. We believe it is important for a community to have adequate legal representation "at home" and support this effort to move in that direction.

This legislation is patterned after a similar program in South Dakota, and that program has been very successful in getting more lawyers into that state's rural counties.

SBAND encourages a Do Pass recommendation from the Committee.

Tony Weiler

tony@sband.org

701-220-5846

Senate Bill 2233
Senate Judiciary Committee
Testimony Presented by Sara Behrens
January 26, 2021

Good morning Chair Larson, members of the committee. My name is Sara Behrens and I am a staff attorney with the State Court Administrator's Office. I am here today appearing in a neutral position on Senate Bill No. 2233. Although this particular program would be outside of the core function of the court system, the Supreme Court is willing to administer the proposed program, with some amendments, because it would meet an important need for citizens of North Dakota. There are three areas of the bill we would like to see amended.

Section 27-02.2-05

The first area we hope will be amended is section 27-02.2-05, Incentive payment to participating attorneys. On page 2, lines 29-31, the bill provides that an attorney selected to participate would receive "an incentive payment in five equal annual installments, each in an amount equal to ninety percent of the university of North Dakota school of law resident tuition and fees." This language is ambiguous in its intent. It does not clarify whether the payments would each be 90% of the annual tuition and fees, a semester, or the three-years it generally takes to complete law school. We would suggest a flat dollar amount to remove any ambiguity and make it easier for all entities involved to plan and budget for the program. We do not, however, suggest any specific dollar amount.

Committee References

The second area we would like to see amended is the reference to "a committee designated by the supreme court." We believe this phrase should be struck throughout the bill. The supreme

court appoints advisory committees but those committees do not make the ultimate decisions, but rather, provide recommendations to the Supreme Court. The Supreme Court then makes the ultimate decision such as a rule change. Considering there will be only four individuals enrolled in the program at any given time, there would be no reason for the Court to delegate its authority to administer the program.

Continuing Appropriation

Finally, a continuing appropriation clause is needed in order to treat the Recruitment Assistance Program Fund as a revolving account that can accept funds and from which the Supreme Court can draw down as needed. Under the language of the bill, the funds that get collected from the State Bar Association and subdivisions will amount to only half of the assistance amount and it appears the remainder will come from the Court's general appropriation. We suggest replacing the language in section 27-02.2-09 found on page 4, lines 6-11 with:

The attorney recruitment assistance program fund is established as a special fund in the state treasury. Payments collected under section 27-02.2-08 shall be deposited in the attorney recruitment assistance program fund. The funds deposited in the attorney recruitment assistance program fund are appropriated to the judicial branch on a continuing basis for the purpose of making attorney payments under the recruitment assistance program.

Additionally, the payment from the Supreme Court would need to be subject to the legislative appropriation under section 27-02.2-06.

SB 2233
Senate Judiciary Committee
January 26, 2021
Testimony of Travis W. Finck, Executive Director, NDCLCI

Madam Chair Larson, members of the Senate Judiciary Committee, my name is Travis Finck and I am the executive director for the North Dakota Commission on Legal Counsel for Indigents. The Commission is the state agency responsible for the delivery of indigent defense services in North Dakota. I rise today to provide neutral testimony on SB 2233.

The Commission believes SB 2233 has potential for positive impacts on indigent defense in North Dakota. We have many small counties and rural areas across the State of North Dakota where we struggle to find attorneys. Often, we are paying attorneys to travel vast distances to handle cases because of a lack of available attorneys in rural areas. The Commission is hopeful this bill will bring attorneys to those rural locales that may be willing to provide services on behalf of the Commission.

We are neutral in this bill because the bill does not directly impact or require an attorney work with us. However, in the event this bill is passed, and attorneys are brought into these communities, the Commission would be encouraged about the possibility of future partnerships with the Attorney recruitment program.

Respectfully Submitted:

A handwritten signature in black ink, appearing to read 'Travis W. Finck', with a long horizontal stroke extending to the left.

Travis W. Finck

Executive Director, NDCLCI

WRITTEN TESTIMONY IN FAVOR OF SB 2233

Senate Judiciary Committee

Hearing: January 26, 2020 11:00 a.m.

Testimony by Debra L. Hoffarth

This written testimony is given in support of SB 2233. I am a licensed attorney in the State of North Dakota and provide this written testimony in support of SB 2233. Senate Bill 2233 creates an attorney recruitment program for cities with populations less than 5,000 and counties with populations less than 15,000. This type of program would encourage young lawyers to practice in rural areas. Although I live in Minot, there is an obvious need for attorneys in rural areas. Access to justice is an important issue and deserves support.

Please give SB 2233 a “do pass” recommendation.

Debra L. Hoffarth, Minot, ND

2021 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee Peace Garden Room, State Capitol

SB 2233
1/27/2021

A BILL for an Act to create and enact chapter 27-02.2 of the North Dakota Century Code, relating to attorney recruitment in rural counties and municipalities; to provide for a report to the legislative management; and to provide a continuing appropriation.

Chairwoman Larson calls the hearing to order. Present are Chair Larson, Vice Chair Dwyer, Senators Bakke, Fors, Heitkamp, Luick, and Myrdal. [9:48]

Discussion Topics:

- Appropriations
- Attorney recruitment
- County state's attorney
- Loan forgiveness

Senator Myrdal [9:48] introduced an amendment to the bill.

Senator Myrdal [9:54] moved to adopt the amendment. [LC 21.0245.02001]

Senator Heitkamp [9:54] seconded the motion.

Roll Call Vote

Motion passes 7-0-0. [9:55]

Senators	Vote
Chair Diane Larson	Y
Vice Chair Michael Dwyer	Y
Senator JoNell A. Bakke	Y
Senator Robert O. Fors	Y
Senator Jason G. Heitkamp	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Senator Myrdal [9:55] motions DO PASS AS AMENDED.

Senator Luick [9:55] seconds.

Roll Call Vote

Motion passes 6-1-0. [9:55]

Senator Dwyer will carry.

Senators	Vote
Chair Diane Larson	Y
Vice Chair Michael Dwyer	Y
Senator JoNell A. Bakke	Y
Senator Robert O. Fors	N
Senator Jason G. Heitkamp	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Chairwoman Larson closes the meeting. [9:56]

Jamal Omar, Committee Clerk

9/12/21
10/1

PROPOSED AMENDMENTS TO SENATE BILL NO. 2233

- Page 1, line 2, remove the second "and"
- Page 1, line 3, after "management" insert "; and to provide a continuing appropriation"
- Page 1, line 8, remove ", or a committee designated by the supreme court,"
- Page 1, line 11, remove ", or the committee"
- Page 1, line 12, remove "designated by the supreme court,"
- Page 1, line 15, remove ", or the committee"
- Page 1, line 16, remove "designated by the supreme court,"
- Page 2, line 1, remove ", or the committee designated by the supreme court,"
- Page 2, line 4, remove ", or the committee designated by the supreme court,"
- Page 2, line 12, remove "or the committee designated by the"
- Page 2, line 13, remove "supreme court"
- Page 2, line 19, remove "or the committee designated by the"
- Page 2, line 20, remove "supreme court"
- Page 2, line 23, remove ", or the committee designated by the supreme court,"
- Page 2, line 28, remove ", or the committee designated by the supreme"
- Page 2, line 29, remove "court,"
- Page 2, line 30, after "payment" insert "of forty-five thousand dollars to be paid"
- Page 2, line 30, remove ", each in an amount equal to ninety percent of the"
- Page 2, remove line 31
- Page 3, remove line 1
- Page 3, line 2, remove "the annual installments for the five-year period"
- Page 3, line 10, remove ", or the committee"
- Page 3, line 11, remove "designated by the supreme court,"
- Page 3, line 14, remove ", or the committee designated by the supreme"
- Page 3, line 15, remove "court,"
- Page 3, line 16, remove ", or the"
- Page 3, line 17, remove "committee designated by the supreme court,"
- Page 3, line 29, remove ", or the committee"
- Page 3, line 30, remove "designated by the supreme court,"

Page 4, line 4, remove ", or the committee designated by the supreme court."

Page 4, line 6, replace "**Recruitment**" with "**Attorney recruitment**"

Page 4, line 6, after "**fund**" insert "**- Continuing appropriation**"

Page 4, replace lines 7 through 11 with "The attorney recruitment assistance program fund is established in the state treasury. Payments collected under section 27-02.2-08 must be deposited in the attorney recruitment assistance program fund. The funds deposited in the attorney recruitment assistance program fund are appropriated to the judicial branch on a continuing basis for the purpose of making attorney payments under the recruitment assistance program."

Page 4, line 14, remove ", or the committee designated by the"

Page 4, line 15, remove "supreme court"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2233: Judiciary Committee (Sen. Larson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2233 was placed on the Sixth order on the calendar.

Page 1, line 2, remove the second "and"

Page 1, line 3, after "management" insert "; and to provide a continuing appropriation"

Page 1, line 8, remove ". or a committee designated by the supreme court."

Page 1, line 11, remove ". or the committee"

Page 1, line 12, remove "designated by the supreme court."

Page 1, line 15, remove ". or the committee"

Page 1, line 16, remove "designated by the supreme court."

Page 2, line 1, remove ". or the committee designated by the supreme court."

Page 2, line 4, remove ". or the committee designated by the supreme court."

Page 2, line 12, remove "or the committee designated by the"

Page 2, line 13, remove "supreme court"

Page 2, line 19, remove "or the committee designated by the"

Page 2, line 20, remove "supreme court"

Page 2, line 23, remove ". or the committee designated by the supreme court."

Page 2, line 28, remove ". or the committee designated by the supreme"

Page 2, line 29, remove "court."

Page 2, line 30, after "payment" insert "of forty-five thousand dollars to be paid"

Page 2, line 30, remove ". each in an amount equal to ninety percent of the"

Page 2, remove line 31

Page 3, remove line 1

Page 3, line 2, remove "the annual installments for the five-year period"

Page 3, line 10, remove ". or the committee"

Page 3, line 11, remove "designated by the supreme court."

Page 3, line 14, remove ". or the committee designated by the supreme"

Page 3, line 15, remove "court."

Page 3, line 16, remove ". or the"

Page 3, line 17, remove "committee designated by the supreme court."

Page 3, line 29, remove ". or the committee"

Page 3, line 30, remove "designated by the supreme court."

Page 4, line 4, remove ", or the committee designated by the supreme court."

Page 4, line 6, replace "**Recruitment**" with "**Attorney recruitment**"

Page 4, line 6, after "**fund**" insert "**- Continuing appropriation**"

Page 4, replace lines 7 through 11 with "The attorney recruitment assistance program fund is established in the state treasury. Payments collected under section 27-02.2-08 must be deposited in the attorney recruitment assistance program fund. The funds deposited in the attorney recruitment assistance program fund are appropriated to the judicial branch on a continuing basis for the purpose of making attorney payments under the recruitment assistance program."

Page 4, line 14, remove ", or the committee designated by the"

Page 4, line 15, remove "supreme court"

Renumber accordingly

2021 HOUSE POLITICAL SUBDIVISIONS

SB 2233

2021 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Room JW327B, State Capitol

SB 2233
3/5/2021

Relating to attorney recruitment in rural counties and municipalities; and to provide for a report to the legislative management

Chairman Dockter: (10:00). Opened the hearing.

Representatives	
Representative Jason Dockter	P
Representative Brandy Pyle	P
Representative Mary Adams	P
Representative Claire Cory	P
Representative Sebastian Ertelt	P
Representative Clayton Fegley	P
Representative Patrick Hatlestad	P
Representative Mary Johnson	A
Representative Lawrence R. Klemin	P
Representative Donald Longmuir	P
Representative Dave Nehring	P
Representative Marvin E. Nelson	P
Representative Nathan Toman	A

Discussion Topics:

- Incentive payment
- Attorney eligibility

Sen. Bekkedahl: Introduced the bill. Testimony #7486.

Taylor Olson, Attorney in Williston: Testimony #7293, 7294, 7292.

Pat Weir, Billings County States Attorney and past District Court Judge: Testimony #7295.

Amber Fiesel, Burke County State's Attorney, Assistant Mountrail County State's Attorney: Testimony #7428.

Terry Traynor, Association of Counties: No written testimony. Testified orally.

Tony Weiler, Director of State Law Association: No written testimony. Testified orally.

House Political Subdivisions Committee

SB 2233

3/5/21

Page 2

Travis Finck Director ND Commission on Legal Counsel for Indigents. Testimony #7478. Neutral position.

Chairman Dockter: (10:35). Closed the hearing.

Carmen Hickle, Committee Clerk

House Political Subdivisions Committee

Honorable Representative Jason Dockter, Chairman

SB 2233 Rural Attorney Recruitment Program

March 5, 2021

Chairman Dockter and Committee Members,

Thank you for the opportunity to introduce SB 2233 to you today. My name is Brad Bekkedahl, Senator from District 1 in Williston. As the prime sponsor of the bill, I will be presenting the bill intent and mechanisms today and there will be supporting testimony after me from those that are in the legal occupation as well as those most directly affected by this proposed program. This bill discussion was initiated about a year ago to address the loss and current lack of attorney availability in many of our rural counties and towns in North Dakota. The State Bar Association, in discussion with State Supreme Court representatives, were looking for a way to incentivize the return of attorneys to practice in areas of need. In the discussion, involved attorneys crafted the framework of the bill before you today.

Essentially, the bill before you allow the Supreme Court the ability to establish a program to assist rural counties and municipalities in recruiting and retaining attorneys in underserved areas. The local political subdivision wishing to participate must apply for consideration and grant approval to undergo an assessment to determine that the need exists for recruitment. Part of the eligibility requirement is based on population by county or municipality, as well as the county or city agreeing to provide a portion of the incentive payment.

The bill also sets out specific criteria about attorney eligibility for the program. The program is initially established to allow no more than four attorneys to be in the program at any time. Once established and operational, the need for more attorneys can be evaluated and reported to the next Legislative Session to consider adding more participants. The attorneys accepted to the program will be compensated in the amount of \$45,000 paid in five annual installments. If the attorney breaches the agreement, the attorney shall repay all the funds received from the program. Failure to repay the funds is grounds for discipline by the Supreme Court. The formula for funding the program is 35% from the county or municipality served, 15% from the State Bar Association, Foundation, or other legal association, and 50% provided by the State appropriation to the Supreme Court. All the funds required will be deposited into a recruitment assistance program fund established in the state treasury. The agreement requires the recipient attorney to practice law full time in the eligible area for at least five consecutive years. An attorney that has previously participated in any other attorney recruitment program, any other state or federal scholarship, loan repayment, or tuition reimbursement program requiring the individual to provide services to an underserved area, is ineligible to participate in another attorney recruitment program in this chapter. Ultimately, the Supreme Court may adopt rules as necessary to implement this chapter and provide an annual report to Legislative Management prior to July first each year.

Chairman Dockter and Committee, this is the bill in a nutshell. I'd be happy to answer any questions the committee may have and beg your indulgence to defer questions I cannot adequately answer to others present today. Please recommend a Do Pass on SB 2233.



Office of the Dean
215 Centennial Drive
Stop 9003
Grand Forks, ND 58202
(701) 777-2104

January 20, 2021

Tony J. Weiler
Executive Director, State Bar of North Dakota
1661 Capitol Way, Ste. 104LL
P.O. Box 2136
Bismarck, ND 58502-2136

Taylor Olson
Furuset, Olson & Evert, P.C.
107 Main St.
P.O. Box 417
Williston, ND 58802-0417

Re: Letter of Support for Senate Bill 2233

Dear Mr. Weiler and Ms. Olson:

I am writing in my capacity as a member of the North Dakota Bar to express my strong and enthusiastic personal support for Senate Bill 2233, relating to attorney recruitment in rural counties and municipalities in North Dakota.

I have been a member of the faculty of the UND School of Law since 2010. As our Dean since 2019, it has been a high priority of mine to promote the placement of our students and graduates in rural communities throughout the state, including through our thriving and popular student externship program. I have been particularly gratified that a number of my former students have gone on to establish successful law practices in rural counties and municipalities, helping to meet critical needs for quality legal services. But we still have a long way to go to address the serious lawyer shortages in our rural communities in North Dakota. In my view, Senate Bill 2233 is a tremendously important initiative to help us begin "closing the loop" from student experience to lawyer practice, and will lead to more post-graduation decisions by our UND Law graduates to become the future lawyers and leaders of our North Dakota rural counties and municipalities.

If there are any questions for which I could be helpful, please do not hesitate to contact me. My direct dial is 701-777-0588.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael S. McGinniss".

Michael S. McGinniss
Dean, UND School of Law

Good morning, Chairman Dockter, and members of the House Political Subdivisions Committee. My name is Taylor Olson and I am an attorney in Williston ND. I have worked in private practice in Williston since 2011. I want to thank you for considering this bill and allowing me to present testimony regarding the benefits this bill can bring to the state of ND.

The concept of this bill is not new to the state of ND. My colleague Judge Hurly has been envisioning bringing a program such as this to ND for many years. As a judge in rural ND, he can tell you the many needs of rural counties.

I am a practitioner in Williston. During my time here, I have worked as a contract attorney for many jurisdictions. I know firsthand what the need is in rural communities. In 2013, I contracted with McKenzie County to act as their State's Attorney while they searched for a permanent solution. In 2014 I contracted with Divide County in the same capacity for 11 months. I currently serve as a city attorney for many jurisdictions and a tribal judge and municipal judge.

Our program is modeled after a similar program in South Dakota. In 2013, a bill was introduced in the SD legislature to provide 16 attorneys to rural communities. The project was so popular that it expanded to 32 practitioners shortly after. SD currently operates their program with 32 participants at once. There are currently programs in North Dakota to support rural practitioners in many medical professions.

The program we have proposed is for a "pilot program" which would begin with one practitioner per year up to four. The individual would apply to the committee and be placed in a corresponding county or city who has also applied to the program to receive a participant. The individual would sign a five-year contract to work in that jurisdiction. The individual would receive a grant, payable over the five years of the equivalent of 90% of 3 years of tuition at UND Law as of the date of the approved funds from the state. They would be paid their grant funds in 5 equal installments. If they quit the program early, they are required to repay the funds.

We have five counties in North Dakota with no attorneys. We have 35 counties with fewer than 10 attorneys. 62% of the licensed attorneys in North Dakota work in Fargo and Bismarck/Mandan. The number per

county also includes individuals either not practicing, retired but still licensed, those working as corporate counsel, and judges. Once you take out those individuals, the numbers are quite low in most counties.

The most staggering percentage is the percentage of attorneys left after removing the more populous counties. If you add up the number of attorneys from Williams, Ward, Grand Forks, Cass, Stark, and Burleigh/Morton, those seven counties make up almost 87% of the attorneys in North Dakota. That means the other 46 counties contain the other 13%.

The services attorneys can provide ensure a stronger and more effective legal system. They are a key component of a highly functional judicial system. The effect of having the bulk of attorneys in more urban counties is more cost to the client and less access to justice. Jobs such as city and county attorneys, both prosecuting and defense counsel, are left unfilled. The costs to the counties and cities of travelling attorneys are passed on to the taxpayer in some instances and to the client in others. Often times, attorneys have to travel long distances to provide constitutionally guaranteed services to citizens. Pat Weir will tell you about his “break” from retirement to prosecute in Billings County because they could not fill the position.

Lastly, attorneys provide many necessary services in communities other than the professional skills they bring that community. Attorneys are great community members, often times participating in community events and serving on community boards. Attorneys provide pro bono services to non-profits and engage in the communities they live in.

We have received support for the bill from many groups, and for that, we are very thankful. The North Dakota Supreme Court, ND Association of Counties, ND Commission on Legal Counsel for Indigents, ND Bar Foundation, ND State Bar Association Board of Governors, University of North Dakota School of Law and many practitioners in private practice have all provided their support. We believe this is a great bill and has the potential to positively affect the lives of many North Dakotans. Thank you so much for your consideration.

CountyName	# licensed
ADAMS	2
BARNES	11
BENSON	2
BILLINGS	2
BOTTINEAU	5
BOWMAN	3
BURKE	1
BURLEIGH	482
CASS	519
CAVALIER	4
DICKEY	4
DIVIDE	2
DUNN	2
EDDY	4
EMMONS	3
FOSTER	3
GOLDEN VALLEY	0
GRAND FORKS	193
GRANT	1
GRIGGS	0
HETTINGER	3
KIDDER	1
LAMOURE	3
LOGAN	2
MCHENRY	1
MCINTOSH	4
MCKENZIE	13
MCLEAN	5
MERCER	7
MORTON	52
MOUNTRAIL	7
NELSON	3
OLIVER	2
PEMBINA	9
PIERCE	5
RAMSEY	23
RANSOM	5
RENVILLE	0
RICHLAND	22
ROLETTE	3
SARGENT	4
SHERIDAN	1
SIOUX	2
SLOPE	0
STARK	49
STEELE	0

STUTSMAN	26
TOWNER	6
TRAILL	8
WALSH	13
WARD	115
WELLS	1
WILLIAMS	57

1695

My name is H. Patrick Weir. I have practiced law in North Dakota since September, 1965. I was a lawyer with the Vogel Law Firm in Fargo & Bismarck. I then was appointed a District Judge for the S.W. District and served in that capacity for four years, following which I served as a Surrogate Judge for the district courts upon appointment by the Supreme Court. I am now serving as the Billings County States Attorney

Over the course of my legal career and my service as a judge, I have seen an ever increasing concentration of lawyers in our larger communities. This development has led to a continuing drain on lawyers serving the smaller counties and communities throughout the state. Other than myself, I do not believe there are any licensed lawyers in Billings County and very few, if any, serving in other rural counties in SW North Dakota.

The result of the concentration of lawyers in larger communities means, of course, increased travel time, inconvenience and expense for citizens living in rural areas. An additional loss to those communities not served by lawyers is the loss of pro bono volunteer work usually done by lawyers for local churches, service organizations, fairs, etc.

I do believe the "life style" of rural areas would be attractive to many lawyers. However, the financial burden resulting from loans to complete law school is a real detriment. A lawyer starting a practice is faced with real obstacles, not the least of which is financial. Establishing a practice takes time. Even for a lawyer out of law school for a few years faces a daunting task in opening a new practice.

I therefore fully support the enactment of SB 2233.

Respectfully submitted,

H. Patrick Weir

Testimony Prepared for
House Political Subdivisions
March 5, 2021

By: Amber J. Fiesel, Attorney at Law

RE: SB2233 Rural Attorney Grant

House Political Subdivisions Chair Dockter, Vice-Chair Pyle, Representatives:

My name is Amber J. Fiesel. I am a licensed attorney in the State of North Dakota, and I am currently the Burke County State's Attorney, Assistant Mountrail County State's Attorney, and have my own firm, Fiesel Law, P.C.

I support SB 2233. This Bill would create a attorney recruitment program for counties with populations of 15,000 or fewer and cities with populations of 5,000 or less. I think this program is vital to helping rural North Dakota attract and retain attorneys. When I graduated law school and prepared to move back to my hometown of Powers Lake, North Dakota, I looked into grant programs and other options available to me. I found that there was loan forgiveness for prosecutors that were practicing in rural areas. As I knew I was going to be a prosecutor, I looked into the program only to discover that you had to be a "full time" prosecutor to qualify. As many of you may know most of the counties in North Dakota only have part-time prosecutors, including Burke County. Therefore, I did not qualify for that program. The program proposed in SB 2233 would have been a extremely helpful to me had it been available when I graduated.

Additionally, I am currently the only practicing attorney doing civil work for almost an hour in each direction of me. This means that people are driving long distances to get to see an attorney. Additional attorneys are needed in our rural areas and this bill will provide the avenue for cities and counties to attract attorneys to come and practice in their areas.

Thank you for your time and consideration. Please give SB 2233 a "do pass" recommendation.

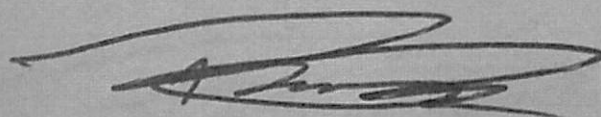
SB 2233
House Political Subdivisions Committee
March 5, 2021
Neutral Testimony of Travis W. Finck, Executive Director,
North Dakota Commission on Legal Counsel for Indigents

Chairman Dockter, members of the House Political Subdivision Committee, my name is Travis Finck and I am the Executive Director for the North Dakota Commission on Legal Counsel for Indigents. The Commission is the state agency responsible for the delivery of indigent defense services in the State of North Dakota. I rise today to on behalf of the Commission on Legal Counsel to provide neutral/agency testimony.

The Commission believes SB 2233 has potential for positive impact on indigent defense in North Dakota. We are tasked with providing attorneys across the state of North Dakota to indigent defendants. It has proven to be very difficult to recruit attorneys to provide indigent defense services in rural areas. Often, we end up paying attorneys to travel vast distances to handle cases in rural areas because of the lack of available attorneys. The Commission is hopeful the rural attorney program laid out in SB 2233 would bring attorneys to those rural areas who may be willing to provide services on behalf of the Commission.

Mr. Chairman, members of the committee, the Commission is neutral in this bill as the bill does not directly impact our agency. However, as established above, if this bill is passes and attorneys are brought to the rural communities, the Commission would be encouraged about the possibility of future partnerships with the Attorney recruitment program.

Respectfully Submitted



Travis W. Finck
Executive Director, NDCLCI

2021 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Room JW327B, State Capitol

SB 2233
3/25/2021

Relating to attorney recruitment in rural counties and municipalities; and to provide for a report to the legislative management

Chairman Dockter: (9:47). Opened for committee work.

Representatives	
Representative Jason Dockter	P
Representative Brandy Pyle	P
Representative Mary Adams	P
Representative Claire Cory	A
Representative Sebastian Ertelt	P
Representative Clayton Fegley	P
Representative Patrick Hatlestad	P
Representative Dori Hauck	P
Representative Mary Johnson	P
Representative Lawrence R. Klemin	P
Representative Donald Longmuir	P
Representative Dave Nehring	P
Representative Marvin E. Nelson	P
Representative Nathan Toman	P

Discussion Topics:

- Amendments
- Incentive payment

Rep. Nelson: Made a motion to amend to change 15,000 to 16,000. Page 2 line 5.

Rep. Adams: Second the motion.

Voice vote carried.

Rep. Klemin: Made a do pass as amended motion.

Rep. Adams: Second the motion.

Tony Weiler, Executive Director of ND Bar Association: Answered questions.

Representatives	Vote
Representative Jason Dockter	Y
Representative Brandy Pyle	N
Representative Mary Adams	Y
Representative Claire Cory	A
Representative Sebastian Ertelt	N
Representative Clayton Fegley	Y
Representative Patrick Hatlestad	Y
Representative Dori Hauck	N
Representative Mary Johnson	Y
Representative Lawrence R. Klemin	Y
Representative Donald Longmuir	Y
Representative Dave Nehring	Y
Representative Marvin E. Nelson	Y
Representative Nathan Toman	N

Roll call vote carried 9-4-1

Rep. Johnson: Will carry the bill.

Chairman Dockter: (10:15). Closed committee work.

Carmen Hickle, Committee Clerk

21.0245.04001
Title.05000

Adopted by the Political Subdivisions
Committee

March 25, 2021

AF
3/25/21

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2233

Page 2, line 5, replace "fifteen" with "sixteen"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2233, as engrossed: Political Subdivisions Committee (Rep. Dockter, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (9 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2233
was placed on the Sixth order on the calendar.

Page 2, line 5, replace "fifteen" with "sixteen"

Renumber accordingly