



NDSBA
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SB 2068

**Testimony of Amy De Kok
Senate Political Subdivisions
January 7, 2021**

Chairman Burckhard and members of the Senate Political Subdivisions committee, my name is Amy De Kok. I am in-house legal counsel for the North Dakota School Boards Association. NDSBA represents all 178 North Dakota public school districts and their boards. I am here today in opposition to SB 2068.

SB 2068, if passed, would require the political subdivision to cover all costs, including attorney's fees charged by the prosecuting attorney and fees charged by an appointed special commissioner resulting from the removal of a political subdivision officer. This bill relates to the removal of certain elected and appointed officials by the Governor pursuant to the provisions of NDCC chapter 44-11. School board members are among the list of officers removable by the Governor. Removal in this fashion is permitted whenever the officers has been guilty of misconduct, malfeasance, crime in office, neglect of duty in office, or of habitual substance abuse or gross incompetency. In order to start the process, a petition containing the signatures of qualified electors of the school district equal in number to 20% of the number of persons enumerated in the school census for that district for the most recent year such census was taken. When the petition is filed, the attorney general is required to conduct an investigation within 30 days and upon completion, make a recommendation to the governor whether a removal proceeding should be conducted by a special commissioner. The governor then has the discretion whether to proceed with the proceeding and appointment of a special commissioner. If the governor decides to proceed, the governor must request that a prosecutor (usually the state's attorney for the county in which the officer serves) appear and prosecute the removal. The process involves a hearing over which a special commissioner (usually a retired judge) presides. Once the hearing is complete, the governor ultimately decides whether to remove the official.

You will note that the school board or other governing body does not play any role or have any say in this process; rather, it is entirely dependent on whether a sufficient number of electors sign and file a petition and whether the governor exercises his/her discretion to proceed. As a matter of fairness, because the removal process is left largely to the discretion of the governor, it seems more appropriate for the governor to

be responsible for any costs incurred as a result of prosecuting to the removal. For this reason, NDSBA opposes this bill.

In addition, NDSBA opposes SB 2068 because it does not indicate whether a political subdivision, such as a public school board, would be responsible for the costs incurred during the removal process whether or not the official (e.g., school board member) is ultimately removed by the governor following the prosecution and hearing. Again, NDBA opposes the bill to the extent it would charge responsibility to the political subdivision for any portion of the costs incurred during the process. However, at a minimum, responsibility to cover the costs should only follow if the official is ultimately removed following the completion of the process.

Finally, requiring a political subdivision to pay the costs and fees associated with the removal process regardless of the amount could have a significant impact on the already tight budgets of these entities. Indeed, one large bill in this respect could force a school district to become non-operating and dissolve. At a minimum, a cap on such costs would be appropriate.

Based on the foregoing, NDSBA asks the committee to issue a do not pass recommendation on SB 2068. Thank you for your time. I would be happy to answer any questions the committee may have.