

SENATE INDUSTRY AND BUSINESS
1/10/23

TESTIMONY OF CLAIRE NESS
OFFICE OF ATTORNEY GENERAL
SENATE BILL NO. 2142

Mr. Chairman, members of the Committee.

I am Claire Ness, Deputy Attorney General, and I appear on behalf of the Attorney General.

Senate Bill 2142 creates a new office of health care immigration within the Department of Commerce. One of the services this new office will provide is legal services. The bill asks for one FTE for an attorney to be housed in the new office.

The Attorney General is the constitutionally designated official with authority over the legal affairs of the state and is the head of the state's legal department. N.D. Const. Art. 5, § 2; *State v. Hagerty*, 580 N.W.2d 139 (1998). The Office of Attorney General employs Assistant Attorneys General who represent state agencies, boards, and commissions. Pursuant to North Dakota Century Code Section 54-12-08, a state agency may not employ legal counsel without a written appointment by the Attorney General. A few state agencies have in-house counsel, but those limited situations are set forth in statute and those attorneys are appointed Special Assistant Attorneys General (SAAGs) by the Attorney General.

There are two issues with the bill from the perspective of our office. The first is that an attorney may not be employed and housed in the Department of Commerce without the authorization of the Attorney General. The Department of

Commerce is already represented by an Assistant Attorney General in our office. Moreover, this office strongly opposes increasing the number of attorneys representing the state's interests in other executive branch entities. Doing so creates the risk of having the state inadvertently filing or arguing opposing or inconsistent legal arguments, expending unnecessary legal resources, competing for the same legal talent, and having lawyers represent the state outside the supervision of the chief legal officer of the state even though the chief legal officer has responsibility for their representation.

The second issue this office wishes to bring to your attention is – regardless of where an attorney is housed – an attorney employed by a state agency cannot provide legal advice to private citizens. The legal advice provided by the Office of Attorney General and its assistants and special assistants is to state-created agencies, boards, commissions, and committees only.

I appreciate your attention to these issues and welcome any questions you have.