



North Dakota Senate

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SB 2349 Testimony Senate State and Local Government Committee February 14, 2025

Chair Roers and Members of the Senate State and Local Government Committee,

For the record, I am Jose Castaneda, Senate District 40; North Minot and East side of Minot Air Force Base

A cornerstone of our State Government is the separation of powers between our three branches. When any of one of the three branches goes into another branch's lane, it can prove harmful. I come to you with SB 2349 because agency bills, a.k.a., the executive and judicial branch bills, as they are used today, cross into the legislature's lane.

The introduction of bills is a right afforded to elected legislators. Not only is that our right, but our responsibility. It is what we have been elected to do. We are not elected to adjudicate the law, nor to execute the law, but to write the law. Likewise, the elected officials in the executive and judicial branches are not elected to write the law.

The introduction of a bill may very well be the first step in writing law. Why do we allow the other branches of government the privilege of taking that first step on our behalf? What makes them special? Should our constituents have the same privilege? I think we allow it because it truly comes from a spirit of cooperation. We are trying to do what is best for our constituents and for our state in the most efficient way possible. Inasmuch as efficiency is a noble objective, our government is set up to be exactly the opposite. Three branches of government are meant to create checks and balances for each other which inherently slow down processes. Within our own legislative process, getting a bill to become a law is like an athlete going through an obstacle course designed to make the individual fail at each step preventing him from reaching the finish line. Every step a bill takes: committees, floor votes, more committees, amendments, conference committees, and finally a governor's signature is a step designed for a bill to die. But that is how, hopefully, only the best bills make it through. I would argue that a dictatorship is leaps and bounds more efficient, but no one wants that. Yet, the inherent inefficiency of our process is what makes it so good. Things do not move fast in government, and nor should they, but it is by design. We need to be ok with that. Trying to make an inherently inefficient and slow process fast, is asking for trouble. I fear that a high reliance on agency bills not sponsored by a legislator is taking a shortcut with unintended consequences,

That being said, is it worth injecting some efficiencies in our processes, of course it is. And I do think that both Senate and House Rule 402, section 2 seek to do just that. The rule says, "No bill introduced at the request of an executive agency or the Supreme Court may be introduced after the close of business on the day after the adjournment of the organizational session, except upon approval of a majority of the Delayed Bills Committee."

I do not think that there is anyone in this legislature that does not see the merit of many of the "Agency Bills" that we see. It is a very quick and efficient way to update law with out bogging down legislators. But the key word is update. Rule 402 was put in place to do just that. I don't know of other states that have a similar allowance, and if there are, they are not many. We should be proud that we, as a state government, have such a close and

effective working relationship with our counterparts in the other branches. But I fear that in many cases, the privilege we have extended has gone a bit too far. When our sister branches introduce bills with substantial policy changes, the pendulum has swung too far. When this occurs, we as legislators are put on the record by having to vote for or against a policy that no one has any skin in game. When we introduce a bill, we ultimately have to vote on it. If the bill is amended so much that it doesn't resemble how it began, then we might vote against it. In many cases, we might have to vote against if we discover that its result is not what we expected. When an agency sponsors a bill, they are not put on record. I sincerely believe that only legislators should be able to put other legislators on record when it comes to voting on a policy with a substantive policy change. When the other branches of government introduce a bill with substantive policy change, they are not just introducing it, per our rules, they are making us discuss it in committee, and vote on it. They are not just executing the first step, they are starting a process that can only end with a failing floor vote in either chamber or a signature or veto from the governor. Rule 402 was meant for "clean up" bills. In just 6 weeks, I have seen way too many agency bills that have substantive policy change.

Since our legislative rules allow agency bills, then why am I introducing a bill to put boundaries in statute? I do not want to handcuff our legislature. This is why my bill doesn't make them illegal. We should be able to allow or disallow agency bills as we, the legislature, see fit. But I do believe that the appropriate place for boundaries between branches is in statute. This bill is written to provide guidance to the agencies on their limits when introducing a bill, not to limit ourselves.

Let me go over the mechanics of my bill:

Thank you. I am happy to stand for any questions that you may have.