

2021 SENATE POLITICAL SUBDIVISIONS

SB 2068

2021 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Sakakawea Room State Capitol

SB 2068
1/7/2021

A BILL for an Act to create and enact a new subsection to section 44-11-02 of the North Dakota Century Code, relating to payment of fees and costs for removal of an official.
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(9:30 A.M.) Chairman Burckhard opens the hearing on SB 2068.

All members present: Chairman Burckhard, Vice-Chairman H. Anderson, Senator Heitkamp, Senator Kannianen, Senator D. Larson, Senator Lee, Senator Oban.

Discussion Topics:

- State responsibility for costs
- Clarify the political subdivision for payments of legal fees

(9:35:11) Tag Anderson, Director of Risk Management Division of OMB, testified in favor #180

(9:49:03) Amy De Kok, Legal Counsel at ND School Boards Association, testified in opposition #4678

(10:12:15) Chairman Burckhard closes the hearing on SB 2068.

Patricia Lahr, Committee Clerk

TESTIMONY OF

Tag Anderson, Risk Management Division Director

Chairman Burckhard, and members of the Senate Political Subdivisions Committee, my name is Tag Anderson. I am the Director of the Risk Management Division of OMB. I appear today in support of HB 2068.

This legislation clarifies that when a public official employed by a political subdivision is being removed from office by the Governor pursuant to N.D.C.C. Chapter 44-11, the political subdivision that employed the official is responsible for the costs, including attorney's fees, in prosecuting the removal. This issue was recently litigated resulting in a North Dakota Supreme Court decision, holding that the State was responsible for the costs under the current statute. Because there was no monies appropriated to the Governor's Office or any other agency of state government, the attorney's fees have gone unpaid and are continuing to accrue interest. This legislation would clarify that it is the political subdivision involved that is responsible for payment and avoid delays in the payment of costs, including attorney's fees.

This concludes my prepared remarks and I would be happy to answer any questions you may have.

Thank you.



NDSBA
NORTH DAKOTA SCHOOL
BOARDS ASSOCIATION

P.O. Box 7128
Bismarck ND 58507-7128
1-800-932-8791 • (701)255-4127
www.ndsba.org

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.

2021 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Fort Totten Room, State Capitol

SB 2068
1/14/2021

A BILL for an Act to create and enact a new subsection to section 44-11-02 of the North Dakota Century Code, relating to payment of fees and costs for removal of an official.

Chairman Burckhard opened committee work at 10:33 a.m. All members present: Senators Burckhard, H. Anderson, Heitkamp, Kannianen, D. Larson, Lee, Oban.

Discussion Topics:

- Amendment 21.8035.01002
- Changing “recall” language in the amendment
- Control over costs and fees
- Cap of dollar amount
- Amendment responsibility of payment

Senator Burckhard, District 5. Introduces amendment 21.8035.01002 as testimony #11731. **(10:34)**

Tag Anderson, Director, Risk Management. Provided clarification on amendment language and submitted testimony #180. **(10:39)**

Leslie Bakken Oliver, Governor’s Office. Provided clarification on costs and fees and submitted amended judgement #850 to the committee. **(10:50)**

Samantha Kramer, Senior Council, Legislative Council. Provided clarification on amendment 21.8035.01002 and the language. **(11:00)**

Chairman Burckhard closed committee work at 11:25 a.m.

Patricia Lahr, Committee Clerk

PROPOSED AMENDMENTS TO SENATE BILL NO. 2068

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 5 of section 44-11-02 of the North Dakota Century Code, relating to the obligations to prosecute the removal of an official.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 44-11-02 of the North Dakota Century Code is amended and reenacted as follows:

5. Upon receipt of the recommendation of the attorney general, the governor shall determine whether to proceed with the appointment of a special commissioner. If the governor decides not to appoint a special commissioner, the governor shall notify the individuals who filed the petition and summarize the reasons for the decision. If the governor decides to appoint a special commissioner, the governor shall request that a prosecutor draft and serve the official complaint against the officer.
 - a. When the officer sought to be removed is other than the state's attorney, the state's attorney ~~or other competent attorney, upon request of the governor, for the county involved or in which the~~ political subdivision or office is located, upon request of the governor, shall appear and prosecute. Upon approval of the governor, the state's attorney may contract with a state's attorney from another county or other competent attorney.
 - b. ~~When the proceedings are brought to remove the state's attorney, the governor shall request the attorney general or other competent attorney to~~ shall appear on behalf of the state and prosecute such proceedings. Upon approval of the governor, the attorney general may contract with a state's attorney or other competent attorney."

Renumber accordingly

TESTIMONY OF

Tag Anderson, Risk Management Division Director

Chairman Burckhard, and members of the Senate Political Subdivisions Committee, my name is Tag Anderson. I am the Director of the Risk Management Division of OMB. I appear today in support of HB 2068.

This legislation clarifies that when a public official employed by a political subdivision is being removed from office by the Governor pursuant to N.D.C.C. Chapter 44-11, the political subdivision that employed the official is responsible for the costs, including attorney's fees, in prosecuting the removal. This issue was recently litigated resulting in a North Dakota Supreme Court decision, holding that the State was responsible for the costs under the current statute. Because there was no monies appropriated to the Governor's Office or any other agency of state government, the attorney's fees have gone unpaid and are continuing to accrue interest. This legislation would clarify that it is the political subdivision involved that is responsible for payment and avoid delays in the payment of costs, including attorney's fees.

This concludes my prepared remarks and I would be happy to answer any questions you may have.

Thank you.

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF WARD

NORTH CENTRAL JUDICIAL DISTRICT

Traynor Law Firm, PC,

Plaintiff,

Case No. 51-2019-CV-00532

v.

State of North Dakota, c/o Governor Doug
Burgum; and the Board of Ward County
Commissioners,

Defendants.

AMENDED JUDGMENT

[¶1] The above-captioned matter came before this Court for hearing on June 7, 2019.

[¶2] The Court, having issued a Memorandum Order, and its Order for Judgment supported by the same entered a Judgment which was appealed to the North Dakota Supreme Court. Following the entry of the Supreme Court’s Amended Judgment, it was necessary for this Court to now enter an Order for Amended Judgment. Based upon the Order for Amended Judgment, this Court now enters the following Judgment:

1. Traynor Law Firm’s Complaint against the Board County Ward of Commissioners is hereby dismissed; and
2. Judgment is granted in favor of Traynor Law Firm, PC, and against the State of North Dakota, c/o Doug Burgum, in the principal sum of \$50,033.00, plus interest at the rate of 18% per annum commencing June 1, 2017.
3. As it is unknown when the State of North Dakota will issue payments, the amounts that are due and owing on the first day of each month for the next two years are attached to this Amended Judgment for reference.

State of North Dakota - Kukowski matter

Date	Payment	Interest	Principal	Balance
Loan 06/16/2017				50,033.99
2017 Totals	0.00	0.00	0.00	
1 06/01/2020	0.00	34,840.54	34,840.54-	84,874.53
2 07/01/2020	0.00	1,273.12	1,273.12-	86,147.65
3 08/01/2020	0.00	1,292.21	1,292.21-	87,439.86
4 09/01/2020	0.00	1,311.60	1,311.60-	88,751.46
5 10/01/2020	0.00	1,331.27	1,331.27-	90,082.73
6 11/01/2020	0.00	1,351.24	1,351.24-	91,433.97
7 12/01/2020	0.00	1,371.51	1,371.51-	92,805.48
2020 Totals	0.00	42,771.49	42,771.49-	
8 01/01/2021	0.00	1,392.08	1,392.08-	94,197.56
9 02/01/2021	0.00	1,412.96	1,412.96-	95,610.52
10 03/01/2021	0.00	1,434.16	1,434.16-	97,044.68
11 04/01/2021	0.00	1,455.67	1,455.67-	98,500.35
12 05/01/2021	0.00	1,477.51	1,477.51-	99,977.86
13 06/01/2021	0.00	1,499.67	1,499.67-	101,477.53
14 07/01/2021	0.00	1,522.16	1,522.16-	102,999.69
15 08/01/2021	0.00	1,545.00	1,545.00-	104,544.69
16 09/01/2021	0.00	1,568.17	1,568.17-	106,112.86
17 10/01/2021	0.00	1,591.69	1,591.69-	107,704.55
18 11/01/2021	0.00	1,615.57	1,615.57-	109,320.12
19 12/01/2021	0.00	1,639.80	1,639.80-	110,959.92
2021 Totals	0.00	18,154.44	18,154.44-	
20 01/01/2022	0.00	1,664.40	1,664.40-	112,624.32
21 02/01/2022	0.00	1,689.36	1,689.36-	114,313.68
22 03/01/2022	0.00	1,714.71	1,714.71-	116,028.39
23 04/01/2022	0.00	1,740.43	1,740.43-	117,768.82
24 05/01/2022	0.00	1,766.53	1,766.53-	119,535.35
25 06/01/2022	0.00	1,793.03	1,793.03-	121,328.38
2022 Totals	0.00	10,368.46	10,368.46-	
Grand Totals	0.00	71,294.39	71,294.39-	

EXHIBIT 1

2021 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Fort Totten Room, State Capitol

SB 2068
1/15/2021

A BILL for an Act to create and enact a new subsection to section 44-11-02 of the North Dakota Century Code, relating to payment of fees and costs for removal of an official.

Chairman Burckhard opens committee discussion on SB 2068 at 9:34 a.m. All members present.

Discussion Topics:

- Amendment 21.8035.01002
- Public Official shall rest with the States Attorney
- Negotiation of contract

Chairman Burckhard, District 5. Introduced LC amendment 21.8035.01002. **(9:37)**

Tag Anderson, Division Director, Risk Management, OMB. Provided clarification on amendment 21.8035.01002. **(9:41)**

Senator Lee moved to **ADOPT AMENDMENT** 21.8035.01002
Senator Heitkamp seconded.

Senators	Vote
Senator Randy A. Burckhard	Y
Senator Howard C. Anderson, Jr.	Y
Senator Jason G. Heitkamp	Y
Senator Jordan Kannianen	Y
Senator Diane Larson	Y
Senator Judy Lee	Y
Senator Erin Oban	Y

The motion passed 7-0-0

Senator Lee moved **DO PASS, AS AMENDED.**

Senator Oban seconded.

The motion passed 7-0-0.

Senator Kannianen will carry SB 2068.

Chairman Burckhard closed the discussion on SB 2068 at 9:47 a.m.

Patricia Lahr, Committee Clerk

Senators	Vote
Senator Randy A. Burckhard	Y
Senator Howard C. Anderson, Jr.	Y
Senator Jason G. Heitkamp	Y
Senator Jordan Kannianen	Y
Senator Diane Larson	Y
Senator Judy Lee	Y
Senator Erin Oban	Y

5
11/16
1 of 1

PROPOSED AMENDMENTS TO SENATE BILL NO. 2068

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 5 of section 44-11-02 of the North Dakota Century Code, relating to the obligations to prosecute the removal of an official.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 44-11-02 of the North Dakota Century Code is amended and reenacted as follows:

5. Upon receipt of the recommendation of the attorney general, the governor shall determine whether to proceed with the appointment of a special commissioner. If the governor decides not to appoint a special commissioner, the governor shall notify the individuals who filed the petition and summarize the reasons for the decision. If the governor decides to appoint a special commissioner, the governor shall request that a prosecutor draft and serve the official complaint against the officer.
 - a. When the officer sought to be removed is other than the state's attorney, the state's attorney ~~or other competent attorney, upon request of the governor,~~ for the county involved or in which the political subdivision or office is located, upon request of the governor, shall appear and prosecute. Upon approval of the governor, the state's attorney may contract with a state's attorney from another county or other competent attorney.
 - b. When the proceedings are brought to remove the state's attorney, the ~~governor shall request the attorney general or other competent attorney to~~ shall appear on behalf of the state and prosecute such proceedings. Upon approval of the governor, the attorney general may contract with a state's attorney or other competent attorney."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2068: Political Subdivisions Committee (Sen. Burckhard, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2068 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 5 of section 44-11-02 of the North Dakota Century Code, relating to the obligations to prosecute the removal of an official.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 44-11-02 of the North Dakota Century Code is amended and reenacted as follows:

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 - a. ~~When the officer sought to be removed is other than the state's attorney, the state's attorney or other competent attorney, upon request of the governor, for the county involved or in which the political subdivision or office is located, upon request of the governor, shall appear and prosecute. Upon approval of the governor, the state's attorney may contract with a state's attorney from another county or other competent attorney.~~
 - b. ~~When the proceedings are brought to remove the state's attorney, the governor shall request the attorney general or other competent attorney to shall appear on behalf of the state and prosecute such proceedings. Upon approval of the governor, the attorney general may contract with a state's attorney or other competent attorney."~~

Renumber accordingly

2021 HOUSE JUDICIARY

SB 2068

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary

Room JW327B, State Capitol

SB 2068

3/9/2021

Relating to the obligations to prosecute the removal of an official.

Chairman Klemin called the hearing to order at 8:30 AM.

Present: Representatives Klemin, Karls, Becker, Cory, K Hanson, Jones, Paulson, Paur, Roers Jones, Satrom, and Vetter. Absent: Christensen, Buffalo and Magrum

Discussion Topics:

- Attorney fees
- States Attorney

Tag Anderson, Director of Risk Management Division of OMB: Testimony #7808

Chairman Klemin closed the hearing at 8:51.

Rep. Becker: Motion to adopt an amendment 21.8035.02001

Rep. B. Paulson: Seconded

Voice vote carried

Rep. Karls: Do Pass as Amended

Rep. T. Jones: Seconded

Roll Call Vote:

Representatives	Vote
Chairman Klemin	Y
Vice Chairman Karls	Y
Rep Becker	Y
Rep. Christensen	A
Rep. Cory	Y
Rep T. Jones	Y
Rep Magrum	A
Rep Paulson	Y
Rep Paur	Y
Rep Roers Jones	Y
Rep B. Satrom	Y
Rep Vetter	Y
Rep Buffalo	A
Rep K. Hanson	Y

11-0-3 Motion passed

Carrier: Rep. Klemin

Stopped 9:05

DeLores D. Shimek
Committee Clerk

21.8035.02001
Title.03000

Adopted by the House Judiciary Committee

March 9, 2021

DP 3/9/21
1 of 1

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2068

Page 1, line 17, after "attorney" insert ". or request the attorney general to prosecute the proceedings"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2068, as engrossed: Judiciary Committee (Rep. Klemin, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). Engrossed SB 2068 was placed on the Sixth order on the calendar.

Page 1, line 17, after "attorney" insert ". or request the attorney general to prosecute the proceedings"

Renumber accordingly

TESTIMONY OF

Tag Anderson, Risk Management Division Director

Chairman Klemin, and members of the House Judiciary Committee, my name is Tag Anderson. I am the Director of the Risk Management Division of OMB. I appear today in support of SB 2068.

Under current law, it is the responsibility of a state's attorney, and in the case of the removal of a state's attorney, the Attorney General, to prosecute removal proceedings under N.D.C.C. chap. 44-11. This legislation clarifies that when a state's attorney or the Attorney General believes there is a conflict, it is incumbent upon the state's attorney or Attorney General to contract with another state's attorney or other competent public or private attorney to prosecute the removal proceeding on its behalf.

This legislation was prompted by removal proceedings that were brought against a former Ward County Sheriff. The Ward County State's Attorney believed a conflict existed. After attempts to have a state's attorney from a neighboring county and someone from the Attorney General's Office prosecute the removal proceedings failed, a private attorney was appointed. At the time, it was believed that the costs for the attorney's time would be paid by Ward County, as this was prompted by the Ward County State's Attorney's refusal to prosecute a case that involved a Ward County official. However, after the proceedings were completed, Ward County would not pay the law firm. Responsibility for payment of the attorney's fees was litigated in a collection action initiated by the law firm against both Ward County and the state. Ultimately, the North Dakota Supreme Court determined that the state was responsible for the costs under the current statutory language. Because there was no money appropriated to the Governor's Office or any other agency of state government, the attorney's fees have gone unpaid and continue to accrue interest. The judgment amount is currently included in section 2 of HB 1025.

This legislation will clarify that it is a state's attorney or, in the case of the removal of a state's attorney, the Attorney General that is responsible for contracting with another state's attorney, or other public or private attorney, with the issue of any attorney's fees addressed in the contract.

This concludes my prepared remarks and I would be happy to answer any questions you may have. Thank you.