

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.