

2013 HOUSE POLITICAL SUBDIVISIONS

HB 1065

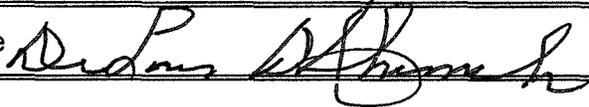
2013 HOUSE STANDING COMMITTEE MINUTES

House Political Subdivisions Committee Prairie Room, State Capitol

HB 1065
January 11, 2013
Job # 17093

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to state's attorney submission of a statement of expenses to a district judge.

Minutes:

Attached testimony #1, 2 & 3

Chairman N. Johnson: Opened the hearing on HB 1065.

Jim Ganje, Office of State Court Administrator: (See testimony #1). In the beginning I want to suggest that you amend this bill. Basically what this is a technical corrections bill. It has assembled various statues in the century code that involve district judges in doing non judicial duties. In many cases it could create a problem. Most of these sections that were amended in this bill were included in court unification legislation that was enacted in 1991; which took a lot of things that county judges did and transferred them to district judges because we were eliminated that office of county judge. Some of those transfers probably weren't appropriate, but they were done none the less. We are cleaning some of that stuff up now in this bill. There are a couple sections where the district judge is required to participate in appointing a person to fill a county commission vacancy. There are a couple of statues that require a person effected by tool chest legislation to file papers with the district judge concerning to the change in their office that can occur under tool chest. In 11-16 relating to the states attorney are more interesting; in which the district judge approves expenses for the state's attorney to gather evidence and investigate crimes, which I don't know who ever thought that was a good idea. The summary you have in front of you have two statues to be repealed. One is included in the legislation 11-16-11 which would reflect the moving a district judge from having to approve expenses for the state's attorney. 11-16-11 wouldn't be needed if that amendment was made in section 5 of the bill. There is also an amendment proposed on the second page to 11-16-13 which requires the judge to county sign the warrant for expenses that are submitted to the county auditor. 11-16-12 is reflected at the top of page 2 of the summary which requires the district judge to file in the county auditor's office the order regarding the itemized statement of expenses for the state's attorney. All of those things seem to be very odd to more to have a district judge involved in approving expenses and filing expense reports for states attorneys. The proposed amendment would close that circle. Also the amendment on page 3, section 6 that amends 11-40-02-16. That statue requires the district judge to appoint an arbitrator free holder. When is the last time you heard the word. We could not think of any time this

statue has been used in the last 30-35 years. I recommend that you take the proposed amendments and finish them out the way it was supposed to be in the beginning.

Rep. Koppelman: Is it fair to say some of these are hold overs when we had county judges versus district employees.

Jim Ganje: There are at least half of the sections in here are amended that are in that in that situation. A couple of them; the tool chest sections, 10.2 and 10.3. Those came after court unification. The others are predominantly those where a county judge was involved. In the old days the county judges were closer and a little more involved in county government activities so it made some sense to have a county judge assisting in appointing a vacancy to the county commission. Now with district judges being general jurisdiction trial court judges elected in judicial districts that connection is gone so many of them won't even know the county commissioners or about the people that would be available to fill a vacancy.

Rep. Koppelman: In 40-02-16 in regard to the arbitration. I greatly respect Mr. Holberg and his office, but we are dealing with townships and municipalities which are local concerns and we are talking about bumping it up to the level of the state government. Could a district judge not do this?

Jim Ganje: There was some discussion about this. I think probably the more significant issue with respect to this is that; aside from district judges being involved in none judicial duties and involved in the local executive branch, you do have situations in which a judges involvement may lead to conflicts of interest if you have a situation like this and the need for arbitration. The district judge appoints the arbitrator and then there is a later legal dispute and one of the parties said, but judge you appointed these people, but now you are telling us you are not going to hear the cases or something of that sort. Later conflict of interest is probably more of a consideration with respect to this statue than otherwise. The predecessor of this chapter 10-02; was declared unconstitutional back in the mid-sixties for unlawful delegation of legislative authority and separation of powers issues because it put the judge right in the middle of a lot of this reorganization activity and that statue was appealed and replaced with this one but the hung on to the judges appointing arbitrator.

Rep. J. Kelsh: Can you give a definition of free holders?

Jim Ganje: I was going to look up the definition before I came over here. I do not know what it is.

Rep. Klemin: This goes back to merry old England and a free holder would be a land owner who is not a serf. Maybe we need to change the term to something more modern. Beside the change we are making here on who is appointing the arbitrator's what was the purpose of the statue. What is being divided here? Was it property that was owned by the township and it is now going to become property of the municipality?

Jim Ganje: Yes, you have a reorganization that is occurring and there is a dispute on the valuation of the real estate or any indebtedness that might have occurred involved in that reorganization and someone has to figure out how the indebtedness will be distributed.

There are a couple of Supreme Court cases reported on this that are interesting to read, but it won't keep you awake.

Allen Hober, Director, Office of Administrative Hearings: (See testimony #2 & Amendment #3). If there would be an expense it doesn't say who is going to pay for this. Our office does not receive any general funds as you know. We bill agencies for our work so I have offered an amendment that would require the municipality and the township to share in whatever expenses there are and the services provided by myself and the three arbitrators. Other than that I don't oppose the bill.

Rep. Koppelman: Have you billed outside entities before or has it always been the interagency thing you have described and if you have are your rates comparable to what would be available in the private market?

Allen Hober: Yes we have billed the counties and cities before for doing hearings for them, but we have never billed anybody for arbitration. We have done some arbitration but we would have to come up with something.

Rep. Koppelman: Years ago we had a discussion in this committee about auditors. Would you be comfortable if there was a provision in law that said that they could excess your office if they didn't have other options, but that they could use whoever they wanted to use.

Allen Hober: No I would not have any problem with that. Putting in requirement a payment might be an incentive or disincentive for those people in the municipalities and township not agreeing to the property disposal. If they realize they are going to have to pay for this maybe they will come to an agreement.

Rep. J. Kelsh: If this was a serious event if it wouldn't be better to have somebody that is totally disinterested to come in and list to both sides and then make the judgment rather than a more local person that maybe knows and has some feelings one way or the other.

Allen Hober: On one hand someone that is familiar with the situation might have a little more knowledge about the assets. On the other hand somebody coming from another county or maybe even the state or an arbitrator that knows their business might be disinterested and more able to render a decision. There are some pros and cons on either side.

Rep. Klemin: The amendment you have here talked about paying the costs of the services provided by the arbitrators. The way this law reads now those arbitrators are free holders of the county and this statue and the amendment that you propose do not seem to compensate that your office would be doing the arbitration. What it does it says you are simply appointing the arbitrators who have to be freeholders of that county. Is that correct?

Allen Hober: That is correct. There could be some work involved in identifying and getting some people on board to get the process going.

Rep. Klemin: You are not going to do the arbitration. On the amendment the cost of services provided by the arbitrators; those freeholders of the county, is there something anywhere else in the law that specifies that they are to get paid a per diem amount or travel expenses or meals or anything like that.

Allen Hober: No there is not. The statue was silent about any kind of payment before.

Rep. Klemin: So why would we want to put an amendment in here that they agreed to pay the cost of services provided by the arbitrator's if there is nothing providing for them to be compensated for reimbursed for expenses?

Allen Hober: We could do some kind of a rule for that but I suppose it would be better to have something in statue.

Rep. Klemin: What costs or expenses of the arbitrator's would they be sharing?

Allen Hober: There would have to be a rate for their time; expenses perhaps traveling to the arbitration. Like what we would do as an administrative law judge for our time and expenses but it doesn't specify what those are to be.

Rep. Klemin: Maybe they should get any compensation because this would be a voluntary job, right?

Allen Hober: It could be a volunteer job, but it would involve a lot of time. If we do specify an amount for compensation it might be wise to say the expense would be at the state rate.

Rep. Koppelman: the objective here is to get two parties to come to some kind of agreement and I realize the current statue doesn't contemplate this. Would there be any problem if the local entities could agree on an arbitrator. If they can't agree maybe send it to you to appoint.

Allen Hober: I don't have a problem with that. It sounds like a good idea.

Rep. Klemin: I was wondering if you are really the right person to be appointing these arbitrators in Dunn County since you don't know anybody there for example. Wouldn't it be better to have somebody local appointing arbitrators?

Allen Hober: I am not sure we are the right people.

Rep. Klemin: Maybe it should be the county commissioners.

Rep. J. Kelsh: I do have an opinion on that. According to what Rep. Klemin's opinion of what a freeholder is; would that preclude someone that has lived in the county for twenty years and rented a home who doesn't own a home or land?

Allen Hober: I have not looked that the definition of a freeholder for a while, but I think it probably would. I think you are talking about somebody who holds property. It might be a good idea to change that term also.



Opposition: None

Hearing closed.



2013 HOUSE STANDING COMMITTEE MINUTES

House Political Subdivisions Committee Prairie Room, State Capitol

HB 1065
January 17, 2013
Job # 17335

Conference Committee

Committee Clerk Signature



Chairman N. Johnson: reopened the hearing on HB 1065. Question about the terminology on page 3, line 20 the term "freeholder". Maybe we need to just change that to resident.

Rep. Klemin: I think that word resident since that is the same word that is used four words later.

Chairman N. Johnson: We also on that bill had amendments presented by Mr. Ganje that I think which was to add one more section that he didn't catch on the first time through on warrants on states attorney contingent fund so they are not signed by a district judge from a district court. We also had some question about paying the individuals who are doing the arbitration. That amendment was from Mr. Holberg to equally share the costs of expenses for arbitration. I think we should add another sentence that says the arbitrators' shall be reimbursed at state rate. That is just a suggestion. Any comments or concerns.

Rep. Hatlestad: Do we have a state rate for an arbitrator?

Rep. Koppelman: This has been debated a long time. Right now some of these rates are set by statute and fixed by law. Others are set by the board involved. There has been some desire by legislators to standardize that. If this hasn't been used do we really need anything here or not?

Rep. Klemin: We will see another bill coming in relating to townships and pay. Last session we had a bill to provide for the township to pay the township clerk and supervisor a rate of up to \$60/day and that is current law. The bill that is coming is they missed one so now it also applies to the township treasurer and on that board they would decide how much they would pay. We might want to use that for a guide.

Rep. J. Kelsh: Maybe an hourly wage of some type. It has affected our election boards because of the money involved. I think there should be some pay for people to do this work.

Rep. Klemin: I don't know how often this statute will be used.

Chairman N. Johnson: This statute was put in 1923 and it hasn't been used since so there is some truth to that.

Rep. Muscha: Can something be put in that says it is up to the discretion of the county and not set a limit so we have to go back and change that again?

Rep. Klemin: That state of ND has not set all of the pay scales for what counties and townships pay to their employees so why should we be getting involved in this? Let them decide.

Rep. Koppelman: I don't think that is anything here that limits so they could probably pay expenses or they could decide to offer expenses plus pay. Let's leave it to the locals to decide.

Hearing closed.

Chairman N. Johnson: reopened and we are going to look at the Ganje amendment.

Rep. Maragos made a motion to approve the Ganje amendments; Seconded by Rep. Klemin: Voice vote carried.

Rep. Hatlestad made a motion to amend the word freeholders to residents; Seconded by Rep. Maragos: Voice vote carried.

Rep. Koppelman: Have we looking into whether this is operable because of the current procedures we have in law for annexation?

Chairman N. Johnson: This is not annexing. This is when it is a new city being created so in the discussion we had you have a township that is responsible for roads and you have to borrow money to put those roads in and they have some debt; there are a bunch of houses there that want to become a city and they are now going to use some of those township roads to become their city; who pays for the bonded indebtedness on those roads. Does it become the cities or townships or a shared thing. That is why it has not been used much because they are incorporating. Now we need to consider putting on Mr. Hoberg's amendment authorizing paying for those who do the arbitration, but we are not putting on any dollar amounts.

Rep. Maragos Made a Motion to move the amendment; Seconded by Rep. J. Kelsh:

Rep. Koppelman: I wonder if this amendment is even necessary because we are talking about allowing the local entities to decide whether payment is necessary and if it is how to deal with it. The only involvement in the statues for the Office of Administrative Hearing is simply to appoint the people if they are asked to. Taxpayers are already paying these folks.

Rep. Klemin: There might be a little more involved by the Office of Administrative Hearing than simply appointing the arbitrators. They will have to assist the arbitrators to do this properly.

Rep. Beadle: When we had the testimony on this hearing that is one of the things that Mr. Hoberg had stated that his office doesn't do budgets for this they charge whatever office they are doing the hearing for.

Rep. Hatlestad: The key question here is if there is a bill who pays and this amendment nearly says they are going to charge the cost which would include the cost of the arbitrators.

Rep. Klemin: The way I read this they are not required to have the Office of Administrative hearings involved; it is permissible.

Voice vote carried.

Do Pass Motion as amended made by Rep. J. Kelsh: Seconded by Rep. Toman:

Vote: 15 Yes 0 No 0 Absent Carrier: Rep. Hatlestad

Hearing closed.

FISCAL NOTE
Requested by Legislative Council
12/26/2012

Bill/Resolution No.: HB 1065

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Section 6 of the bill is unlikely to have any fiscal impact on the operations of OAH. See 2B

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 6. The Director of the Office of Administrative Hearings is to replace district judges regarding duties for appointing arbitrators under this section. According to information received from the Supreme Court, it is likely that this section has not been used in the past; at least no one is aware that it has. Thus, it is unlikely that it will be used in the future, though it is certainly possible. Accordingly, the fiscal impact is likely to be zero, or at most minimal. However, if the section would be used, i.e. if the officers of a township and of a municipality which has been organized from the unorganized territory of a township cannot agree upon the valuation of property and arbitration is necessary, the township and municipality involved should equally be required to bear the expenses of the arbitration. There is currently nothing in chapter 40-02 that specifically requires this.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name: Allen C. Hoberg

Agency: Office of Administrative Hearings

Telephone: 328-3200

Date Prepared: 12/31/2012

January 17, 2013

17/13
SAC

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1065

Page 1, line 2, after the fourth comma insert "11-16-13,"

Page 1, line 7, replace "section" with "sections"

Page 1, line 7, after "11-16-11" insert "and 11-16-12"

Page 3, after line 9, insert:

"SECTION 6. AMENDMENT. Section 11-16-13 of the North Dakota Century Code is amended and reenacted as follows:

11-16-13. Warrants on state's attorney's contingent fund.

All disbursements from the state's attorney's contingent fund ~~shall~~must be made in the usual manner by the county treasurer upon the warrant of the county auditor. The auditor's warrant ~~shall~~must be executed and delivered in the amount and to the person designated by the order of the state's attorney, ~~and shall be countersigned by a judge of the district court for that county.~~

Page 3, line 20, overstrike "freeholders" and insert immediately thereafter "residents"

Page 3, line 25, after the period insert "The township and municipality involved in the arbitration shall share equally in the costs and expenses of the arbitration. The director of the office of administrative hearings shall request payment from the township and municipality and the township and municipality shall pay to the office of administrative hearings both the costs and expenses of the arbitration proceedings and the cost of the services provided by the arbitrators and the director of the office of administrative hearings."

Page 4, line 6, replace "Section" with "Sections"

Page 4, line 6, after "11-16-11" insert "and 11-16-12"

Page 4, line 6, replace "is" with "are"

Renumber accordingly

Date: 1-17-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1065

House Political Subdivisions Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Maragos Seconded By Rep. Meier

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson			Rep. Ben Hanson		
Vice Chairman Patrick Hatlestad			Rep. Kathy Hogan		
Rep. Thomas Beadle			Rep. Jerry Kelsh		
Rep. Matthew Klein			Rep. Naomi Muscha		
Rep. Lawrence Klemin					
Rep. Kim Koppelman					
Rep. William Kretschmar					
Rep. Alex Looysten					
Rep. Andrew Maragos					
Rep. Lisa Meier					
Rep. Nathan Toman					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

*Conjunctive Amendment
Voice Vote
Carried*

Date: 1-17-13
Roll Call Vote #: 2

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1065

House Political Subdivisions Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Hatlestad Seconded By Rep. Maragos

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson			Rep. Ben Hanson		
Vice Chairman Patrick Hatlestad			Rep. Kathy Hogan		
Rep. Thomas Beadle			Rep. Jerry Kelsh		
Rep. Matthew Klein			Rep. Naomi Muscha		
Rep. Lawrence Klemin					
Rep. Kim Koppelman					
Rep. William Kretschmar					
Rep. Alex Loosten					
Rep. Andrew Maragos					
Rep. Lisa Meier					
Rep. Nathan Toman					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

*Change free holder to resident
Vote
carried*

Date: 1-17-13
Roll Call Vote #: 3

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1065

House Political Subdivisions Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Maragos Seconded By Rep. Kelsch

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson			Rep. Ben Hanson		
Vice Chairman Patrick Hatlestad			Rep. Kathy Hogan		
Rep. Thomas Beadle			Rep. Jerry Kelsh		
Rep. Matthew Klein			Rep. Naomi Muscha		
Rep. Lawrence Klemin					
Rep. Kim Koppelman					
Rep. William Kretschmar					
Rep. Alex Loosten					
Rep. Andrew Maragos					
Rep. Lisa Meier					
Rep. Nathan Toman					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:
Hokey Amendment
Voice Vote Carried

Date: 1-17-13
 Roll Call Vote #: 4

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 10a5**

House Political Subdivisions Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Kelsch Seconded By Rep. Toman

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson	✓		Rep. Ben Hanson	✓	
Vice Chairman Patrick Hatlestad	✓		Rep. Kathy Hogan	✓	
Rep. Thomas Beadle	✓		Rep. Jerry Kelsh	✓	
Rep. Matthew Klein	✓		Rep. Naomi Muscha	✓	
Rep. Lawrence Klemin	✓				
Rep Kim Koppelman	✓				
Rep. William Kretschmar	✓				
Rep. Alex Looysten	✓				
Rep. Andrew Maragos	✓				
Rep. Lisa Meier	✓				
Rep. Nathan Toman	✓				

Total (Yes) 15 No 0

Absent 0

Floor Assignment Rep. Hatlestad

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1065: Political Subdivisions Committee (Rep. N. Johnson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1065 was placed on the Sixth order on the calendar.

Page 1, line 2, after the fourth comma insert "11-16-13,"

Page 1, line 7, replace "section" with "sections"

Page 1, line 7, after "11-16-11" insert "and 11-16-12"

Page 3, after line 9, insert:

"SECTION 6. AMENDMENT. Section 11-16-13 of the North Dakota Century Code is amended and reenacted as follows:

11-16-13. Warrants on state's attorney's contingent fund.

All disbursements from the state's attorney's contingent fund ~~shall~~must be made in the usual manner by the county treasurer upon the warrant of the county auditor. The auditor's warrant ~~shall~~must be executed and delivered in the amount and to the person designated by the order of the state's attorney, ~~and shall be countersigned by a judge of the district court for that county.~~

Page 3, line 20, overstrike "freeholders" and insert immediately thereafter "residents"

Page 3, line 25, after the period insert "The township and municipality involved in the arbitration shall share equally in the costs and expenses of the arbitration. The director of the office of administrative hearings shall request payment from the township and municipality and the township and municipality shall pay to the office of administrative hearings both the costs and expenses of the arbitration proceedings and the cost of the services provided by the arbitrators and the director of the office of administrative hearings."

Page 4, line 6, replace "Section" with "Sections"

Page 4, line 6, after "11-16-11" insert "and 11-16-12"

Page 4, line 6, replace "is" with "are"

Re-number accordingly

2013 SENATE POLITICAL SUBDIVISIONS

HB 1065

2013 SENATE STANDING COMMITTEE MINUTES

Senate Political Subdivisions Committee Red River Room, State Capitol

HB 1065
February 21, 2013
19316

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Minutes:

You may make reference to "attached testimony."

Relating to district judge involvement in determining county commissioner term of office.
Relating to state's attorney submission of a statement of expenses to a district judge

Chairman Andrist opened the hearing on HB 1065. All the senators were present except for Senator Grabinger who was absent.

Jim Granje, Office of the State Court Administrator Written testimony #1.

Chairman Andrist You're supposed to say it is just a housekeeping bill.

Jim Granje replied that in many respects that is what it is. It is a technical corrections bill.
(1:16-4:00)

Chairman Andrist I am just curious. Have any of these gone to arbitration?

Jim Ganje replied the Chief Justice and I when we ran across that statement, that statute, both of us tried to think of a situation at which it happened. Of course, the Chief has been around a lot longer than I have and neither one of us could remember it ever occurring. Basically, that arbitration possibly can occur when a city is being organized out of territory within a county. The petition to organize has to be submitted to the Board of County Commissioners and then if there is any disagreement between the county and the township that's affected about any indebtedness or something like that, then the arbitration occurs but I don't know that it has ever happened within the last several decades.

Chairman Andrist In my life the only town that was created that I know is New Town.

Senator Judy Lee Would it not also have a possible application for annexation?

Jim Ganje replied I think it could be. I think it also would affect annexation, but we discussed this when it was in the House Judiciary and the intricacies in the statute and because it is one that is so infrequently used nobody quite exactly knew how it worked.

Senator Jim Dotzenrod On page 2, line 21, this subsection does not apply after January 1, 2002 or if the person holding the effected office consents in writing to the proposed plan. I am assuming that this is a section that does not operate, that this section does not apply just based on what it says there.

Jim Ganje This statute and the one above it in Section 2, are parts of what was called the 'tool chest' legislation that was enacted some years ago which gave counties the authority to redesignate an elected office as appointed offices or to combine offices in that sort of thing. What this statute provides and in the one above it, it does say they do not apply after January 1, 2002, but then the alternative is that if the person who is affected by that activity consents to it; then they also do not apply. I think what they mean is that the diminishment of a term of office is the part is being consented too, by the person so either it doesn't apply by virtue of the date, or doesn't apply if the person affected by it consents. So I suspect that somebody from the Association of Counties would have a better idea of whether or not this actually is even needed anymore. But for our purposes we just amended it to change it from documents being filed directly with the district judge to being filed with the court generally.

Chairman Andrist You could read that to say, that since its after 2002, the plan may diminish the future term of office?

Jim Ganje It could. I don't know whether there is been much tool chest action lately. I know there was a flurry within the three or four or five years after the legislation was enacted but I don't know how much of that goes on now.

Senator Judy Lee I do happen to know that I believe Walsh County just adjusted their county auditor from an elected to an appointed position. But that is the only one I can think of. I don't study this all that time, I just read the paper.

Jim Ganje, I think that is the more common thing that happens. I know that we've had some of the clerks of court that as part of their clerk legislation in several sessions back, allowed clerks to become state employees in certain counties. They were turned into designated officials appointed and some counties have where they've not become state employees and have turned them back into elected officials. I think that's the one that is probably happens more often, appointed to elect or elected to appointed. The combining of offices, I am not sure how often that occurs.

Chairman Andrist It would kind of be my take that if somebody decided to appoint some county official that had previously been elected, you would likely almost I suppose appoint the person that was elected to fill that, or serve at least until that time so probably not a significant factor anyway.

Senator Judy Lee History of the tool chest (9:53- 11:50)

Chairman Andrist When you talk about the history Senator Lee, it seems to me the ultimate outcome was the sheriffs were so upset, that they initiated a measure to require that they be elected and I think it passed. Am I right in that, Jim?

Jim Ganje replied I recall that. I know that there was a great deal of discomfort among the sheriffs. **Chairman Andrist** How about the state's attorney's? That was another controversy.

Jim Ganje replied I think you started part of that controversy.

Senator Jim Dotzenrod On line 14, and line 24, what we're doing there is striking out the reference to the judge in serving the judicial district, and we're putting in place the court Is the practical difference there if you're going to submit it to the court doesn't it essentially become a matter for the judge anyway? Am I missing something here?

Jim Ganje Occasionally we run across these statutes and they require things to be filed with the court and we have no idea why because they are not part of a legal action. Example cited (13:11-14:18).

Senator Jim Dotzenrod Essentially it appears from reading it that was just a way to sort of make it part of the official record. It appears that is what they were intending to do. It could have been made part of a record with the county register of deeds. **Jim Ganje:** I think it seemed like a way to say this is the official place where we're going to put this, and hopefully if its' ever a part of something in the future people will know that its there.

Alan Holberg Director of the Office of Administrative Hearings. My interest would be Subsection 7, where we're involved of course. As the bill is currently written we don't have any problems with doing that especially since the likelihood is not that great. But one thing I did want to point out, there is nothing that requires the municipality and the township to go to arbitration. It says they may, so if they settle their disagreements or their disputes about the evaluation there is nothing that requires them to go there. Perhaps allowing us and the people involved to charge is somewhat a disincentive for them to go there so and settle their disagreements among themselves.

Senator Judy Lee Mr. Holberg going back and talk about annexation. You know we had a little dust up between Fargo and West Fargo. The administrative law judge did end up mediating in that situation. They system worked well and now everybody is talking to each other. So, I think that it is an example of something that may not be exactly where this was but in another section of statute. But it worked.

Alan Holberg I've done about 3 or 4 of those annexations myself, and that's kind of what you are is a mediator, arbitrator. Of course you hold a hearing and take evidence, but, it's trying to understand all the angles from the community and the municipality that is annexing and in a sense coming to a fair resolution.

Senator Judy Lee Everybody was ticked about something. This ended that process which meant it worked really well.

Chairman Andrist Alan, are you appointed by the court system?

Alan Holberg replied no I am appointed by the Governor.

Chairman Andrist You're appointed by the governor. **Alan Holberg** replied and I have a term of set years and so that there can't be much influence on me when I am conducting hearings and running the office. I can only be removed for cause during that set term. But every 6 years I am up for reappointment by the Governor and I should know better than to not tell who I am because I have been here many times before. We started in 1991, the first time this office of Administrative Hearings was opened.

Chairman Andrist Was that a new position then? **Alan Holberg** Yes he replied. It kind of evolved out of the Attorney's General office at the time because at that time, agencies had their own hearing officers either part time or full time; and then the Attorney General's office would conduct some hearings. I remember when I was in the attorney general's office, I would be representing an agency in another assistant attorney general would be conducting a hearing and that conflict of interest thing wasn't very satisfactory with a number of people, so we developed the Office of Administrative hearings to get rid of that conflict of interest situation. The Attorney General's office at that time was doing quite a number of hearings for agencies.

Chairman Andrist closed the hearing for HB 1065.

Senator Judy Lee moved do pass
Senator Ron Sorvaag 2nd
Roll call vote: 6 Yea, 0 No, 0 Absent
Carrier: Senator Howard Anderson

FISCAL NOTE
Requested by Legislative Council
01/18/2013

Revised
 Amendment to: HB 1065

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Section 7 of the bill is unlikely to have any significant fiscal impact on the operations of OAH. See 2B

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 6. The Director of the Office of Administrative Hearings is to replace district judges regarding duties for appointing arbitrators under this section. According to information received from the Supreme Court, it is likely that this section has not been used in the past; at least no one is aware that it has. Thus, it is unlikely that it will be used in the future, though it is certainly possible. Accordingly, the fiscal impact is likely to be zero, or at most minimal. However, if the section would be used, i.e. if the officers of a township and of a municipality which has been organized from the territory of a township cannot agree upon the valuation of property and they believe arbitration is necessary, as amended the bill requires that the township and municipality involved will share equally in the costs and expenses of the arbitration. If the section is used, and it is assumed that the total time expended for services by the director is 2 hours and the total time expended for services by the three arbitrators is 15 hours (total for the three - 5 hours each), without considering the arbitrators expenses and any expenses there may be for an independent appraisal, if necessary, the costs for the arbitration would be approximately \$2,300.00. The hourly costs for the director and the arbitrators were determined using the current OAH billable rate for its ALJ services (\$135.00/hour). Of course, because this section may never have been used before, and there is no information regarding historical costs, this is a rather speculative analysis. Expenses and the cost of an independent appraisal of real estate could raise this amount significantly, as could additional time spent on the arbitration. Both the time spent and the expenses of the arbitration would likely depend upon the quantity and the type of the property in dispute.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name: Allen C. Hoberg

Agency: Office of Administrative Hearings

Telephone: 328-3200

Date Prepared: 01/22/2013

FISCAL NOTE
Requested by Legislative Council
12/26/2012

Bill/Resolution No.: HB 1065

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Section 6 of the bill is unlikely to have any fiscal impact on the operations of OAH. See 2B

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 6. The Director of the Office of Administrative Hearings is to replace district judges regarding duties for appointing arbitrators under this section. According to information received from the Supreme Court, it is likely that this section has not been used in the past; at least no one is aware that it has. Thus, it is unlikely that it will be used in the future, though it is certainly possible. Accordingly, the fiscal impact is likely to be zero, or at most minimal. However, if the section would be used, i.e. if the officers of a township and of a municipality which has been organized from the unorganized territory of a township cannot agree upon the valuation of property and arbitration is necessary, the township and municipality involved should equally be required to bear the expenses of the arbitration. There is currently nothing in chapter 40-02 that specifically requires this.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name: Allen C. Hoberg

Agency: Office of Administrative Hearings

Telephone: 328-3200

Date Prepared: 12/31/2012

REPORT OF STANDING COMMITTEE

HB 1065: Political Subdivisions Committee (Sen. Andrist, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1065 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

HB 1065

#1

2013 HOUSE BILL NO. 1065 - SUMMARY

House Bill 1065 might essentially be considered a technical correction bill. The bill amends several statutes that require district judge involvement in a variety of non-judicial duties. The majority of statutes amended by House Bill 1065 were included in court unification legislation enacted in 1991. The 1991 legislation, by numerous "technical" amendments, transferred duties then held by county judges to district judges to reflect the evolution to a one-level general jurisdiction trial court system.

The duties addressed in House Bill 1065 generally concern district judge involvement in a variety of county government activity. For example, a district judge is required to participate in designating a person to fill a county commission vacancy [Sections 1, 4, and 7], or is required to receive documents from a person affected by the redesignation or reorganization of a county office [Sections 2 and 4], or is required to approve expenses incurred by a state's attorney in securing evidence and investigating criminal cases [Section 5]. With respect to the latter example, Section 8 repeals Section 11-16-11, which requires the state's attorney to submit an itemized statement of expenses to the district judge. Additionally, it appears that another related statute should also be repealed and a related statute amended. Proposed amendments to effect these additions to the bill are attached.

The various duties addressed in House Bill 1065 may have been more appropriate when they were related to the office of county judge as a county judge was institutionally closer to the operation of county government. District judges, however, are more removed from county and local political subdivision operations and are elected in judicial districts, a generally larger geographic region. There is also the additional concern that the various statutes involve a general jurisdiction judicial officer directly in activities affecting the operation of a local executive branch entity, which may be the cause for later conflicts of interest. House Bill 1065, with the additional proposed amendments, would address these issues.

Submitted by:

Jim Ganje
Office of State Court Administrator

Statutes to be repealed:

11-16-11. District judge to require statement before approving order for payment from state's attorney's contingent fund. Before the district judge shall approve an order of the state's attorney for payment from the state's attorney's contingent fund, the judge shall require the state's attorney to present to the judge an itemized and detailed statement of the expenses, duly verified as

other claims against the county are verified, which the state's attorney wishes paid from such fund.

[If the amendment is accepted] 11-16-12. Statement of expense paid from state's attorney's contingent fund to be filed. Immediately after the judge of the district court has signed the order of the state's attorney for payment of expenses from the state's attorney's contingent fund, the judge shall file in the office of the county auditor of the county on which the order is drawn so much of the itemized statement made by the state's attorney as public interest will permit.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1065

Page 1, line 2, after the fourth comma insert "11-16-13,"

Page 1, line 7, replace "section" with "sections"

Page 1, line 7, after "11-16-11" insert "and 11-16-12"

Page 3, after line 9, insert:

"SECTION 6. AMENDMENT. Section 11-16-13 of the North Dakota Century Code is amended and reenacted as follows:

11-16-13. Warrants on state's attorney's contingent fund. All disbursements from the state's attorney's contingent fund shall be made in the usual manner by the county treasurer upon the warrant of the county auditor. The auditor's warrant shall be executed and delivered in the amount and to the person designated by the order of the state's attorney, ~~and shall be countersigned by a judge of the district court for that county.~~

Page 4, line 6, replace "Section" with "Sections"

Page 4, line 6, after "11-16-11" insert "and 11-16-12"

Page 4, line 6, replace "is" with "are"

Renumber accordingly

#2

OFFICE OF ADMINISTRATIVE HEARINGS

STATE OF NORTH DAKOTA
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DIRECTOR

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MEMORANDUM

TO: Sixty-third Legislative Assembly
State of North Dakota
House Political Subdivisions Committee

FROM: Allen C. Hoberg, Director 
Office of Administrative Hearings

RE: House Bill No. 1065

DATE: January 11, 2013

It is only section 6 of the bill, on page 3, that concerns the director of the Office of Administrative Hearings. That section replaces district judges with the director of the Office of Administrative Hearings. I am not certain that having a state official unfamiliar with the dynamics of the various townships, municipalities, and counties in the state appointing county freeholders for arbitration is better than having a district judge in the locality making the appointments. However, I am not opposed to the bill because I am informed that this arbitration process rarely, if ever, happens. I have not talked to anyone who knows whether the process found in section 40-02-16 has ever been used. Thus, the fiscal note I prepared shows no or minimal fiscal impact on the Office of Administrative Hearings.

However, if you are going to make the changes found in section 6, in the event that this arbitration process is being used, I suggest that you will want to add language to the effect that the township and municipality involved in the arbitration equally share in the expenses of the arbitration, both for the costs incurred by the three arbitrators and the costs incurred by the director of the Office of Administrative Hearings. Although it may be understood that those two entities would be required to pay the expenses for the costs incurred in the arbitration process, I am not aware of anything in chapter 40-02 that specifically requires it. Making it clear that the township and municipality are to pay for the expenses of the arbitration may prove to be an incentive for them coming to an agreement to avoid arbitration. OAH is a special funds agency and; it receives no monies for funding this arbitration process.

#3

PROPOSED AMENDMENTS TO HOUSE BILL 1065

Page 3, line 25, after the period insert "The township and municipality involved in the arbitration shall share equally in the costs and expenses of the arbitration. The director of the office of administrative hearings shall request payment from the township and municipality and they must pay to the office of administrative hearings both the costs and expenses of the arbitration proceedings and the cost of the services provided by the arbitrators and the director of the office of administrative hearings."

2013 ENGROSSED HOUSE BILL NO. 1065 - SUMMARY

Engrossed House Bill 1065 might essentially be considered a technical correction bill. The bill amends several statutes that require district judge involvement in a variety of non-judicial duties. The majority of statutes amended by House Bill 1065 were included in court unification legislation enacted in 1991. The 1991 legislation, by numerous "technical" amendments, transferred duties then held by county judges to district judges to reflect the evolution to a one-level general jurisdiction trial court system.

The duties addressed in House Bill 1065 generally concern district judge involvement in a variety of county government activity. For example, a district judge is required to participate in designating a person to fill a county commission vacancy [Sections 1 and 4], or is required to receive documents from a person affected by the redesignation or reorganization of a county office [Sections 2 and 3], or is required to approve expenses incurred by a state's attorney in securing evidence and investigating criminal cases and to countersign auditor warrants for state's attorney expenses [Sections 5 and 6]. With respect to the latter examples, Section 9 repeals Sections 11-16-11 and 11-16-12, which require a state's attorney to submit an itemized statement of expenses to the district judge and the judge to then file the statement with the county auditor. These non-judicial duties imposed on a district judge are, arguably, inappropriate. The bill was additionally amended by the House to clarify responsibility for costs and expenses incurred by the office of administrative hearings if arbitration is required under Section 40-02-16 [Section 7].

The various duties addressed in House Bill 1065 may have been more appropriate when they were related to the office of county judge as a county judge was institutionally closer to the operation of county government. District judges, however, are more removed from county and local political subdivision operations and are elected in judicial districts, a generally larger geographic region. There is also the additional concern that some of the statutes involve a general jurisdiction judicial officer directly in activities affecting the operation of a local executive branch entity, which may be the cause for later conflicts of interest. Engrossed House Bill 1065, as amended, would address these issues.

Submitted by:

Jim Ganje
Office of State Court Administrator

Statutes to be repealed:

11-16-11. District judge to require statement before approving order for payment from state's attorney's contingent fund. Before the district judge shall approve an order of the state's

attorney for payment from the state's attorney's contingent fund, the judge shall require the state's attorney to present to the judge an itemized and detailed statement of the expenses, duly verified as other claims against the county are verified, which the state's attorney wishes paid from such fund.

11-16-12. Statement of expense paid from state's attorney's contingent fund to be filed.

Immediately after the judge of the district court has signed the order of the state's attorney for payment of expenses from the state's attorney's contingent fund, the judge shall file in the office of the county auditor of the county on which the order is drawn so much of the itemized statement made by the state's attorney as public interest will permit.