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Wanted: Subpoena power

By Janell Cole

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BISMARCK - The state Labor Department's power to enforce state fair housing and human rights laws are hampered because it cannot force anyone to provide information, lawmakers learned Wednesday.

Two bills the Labor Department introduced would give the department subpoena power.

This is not an unreasonable request, said Kathy Kulesa, the human rights director for the Labor Department, explaining to the Senate Industry, Business and Labor Committee that numerous state departments and licensing boards have the power, including the securities commissioner and the state Board of Cosmetology.

The need to issue subpoenas comes up rarely, but is essential when the company or landlord is not cooperative, Kulesa and Labor Commissioner Lisa Fair McEvers testified.

"As you can imagine, without the power to demand that an uncooperative responding party provide testimonial or documentary evidence, the (Labor) Department may only have evidence as provided by the aggrieved person," Kulesa said.

The subpoena would be for documents that can show patterns of business, she said.

McEvers said the absence of subpoena power in housing cases must have been an oversight. The state housing discrimination act says the attorney general can enforce the department's subpoenas, but "nowhere in the (law) was the authority to issue a subpoena actually granted to the department."

No one opposed the bills. In the Senate Judiciary Committee, where the housing discrimination subpoenas were discussed, a property owner, Rocky Gordon, said members of the North Dakota Apartment Association only hope that the department uses subpoenas as the "last resort, not the first resort." He said it is time-consuming for a rental company to compile months or years of rental records showing applications and denials.

Amy Nelson, executive director of Fair Housing of the Dakotas, a nongovernmental agency that works for housing rights, said a subpoena can protect victims of discrimination, also. Renters who fear retaliation for providing information to the council or state will have the subpoena to prove they had no choice but to obey the law and cooperate, she said.

The Senate Industry Business and Labor Committee unanimously recommended the Senate pass Senate Bill 2076 and the Judiciary Committee unanimously recommended the Senate pass Senate Bill 2074.