

TESTIMONY OF DAVE THIELE
EXECUTIVE DIRECTOR, NORTH DAKOTA ETHICS COMMISSION
BEFORE THE
HOUSE JUDICIARY COMMITTEE
January 6, 2021

Mr. Chairman and Members of the Judiciary Committee, my name is Dave Thiele, Executive Director of the North Dakota Ethics Commission. The Ethics Commission in HB 1043 is attempting to fill gaps regarding its constitutional mandate and harmonize possible conflicts with NDCC 54-66. The Commission is committed to properly addressing citizen concerns in a manner that educates and corrects. We believe the proposed changes in HB 1043 will promote that goal.

Section 1 simply reflects that a “complainant” under NDCC 54-66 must be a North Dakota resident.

Section 2 provides that if a complainant is anonymous or a non-resident the Commission will review and upon determination that there is a reasonable belief that a violation has occurred and if approved by a majority vote, the Commission would proceed as the Complainant. If a complainant wishes to remain confidential, the Commission would not release their name to the respondent. If, however, the complainant is a witness, they must consent to release of their name to the respondent or their statement may not be considered as evidence of a violation. This ensures that a respondent would receive all evidence being considered to adequately defend themselves. **Section 2** also authorizes the Commission to dismiss or decline to proceed with a complaint if it does not meet certain criteria.

Section 3 eliminates the requirement for registered mail notice and eliminates the requirement that the identity of the complainant be provided to an accused individual. Article XIV of the North Dakota Constitution clearly mandates that a “confidential” complaint process be created. Mandating release of the complainant’s name is in clear conflict with the constitution. We do make clear that the respondent will receive **all** information being used as evidence of a possible violation.

Section 4 is a minor change to language regarding informal resolution.

Section 5 allows for a rapid resolution of a possible criminal violation and provides for Commission subpoena power. The Commission believes that it will be exceptionally rare that a case will rise to a level warranting criminal prosecution and rather than sending a case to the appropriate law enforcement agency where it may languish, the amendment would allow for a quick coordination and then allow for resolution of the matter. Paras 3-5 provide the Commission with subpoena power which is routine for ethics commissions and is necessary to ensure we can access documents or records necessary to investigate and resolve a complaint. Review of National Conference of State Legislators data on ethics commissions powers and duties ([NCSL ethics powers and duties](#)) verifies that every state ethics commission in the country has some form of subpoena power.

Section 6 and Section 7 reinforce that the accused individual will receive all the evidence being considered and makes clear such evidence is not confidential.

Section 8 simply authorizes the Commission to delegate duties to staff as appropriate. It also allows the Commission to change or reverse actions of delegated staff.

Finally, in **Section 9**, the Commission proposes the adoption of advisory opinion authority. The ability to issue advisory opinions that can be relied on by public officials and then to publish opinions for education is an important aspect of an effective ethics program. This language provides authority to the Commission to issue written advisory opinions in response to written requests from public officials, candidates for elected office, and lobbyists. Opinions can be based on actual or hypothetical facts, but not on past conduct. The issuance of an advisory opinion is discretionary with the Ethics Commission. Within 14 days after the receipt of a request for an opinion, the Ethics Commission must notify the requester whether an opinion will be provided and then has 90 days to issue the opinion. The bill provides that criminal and civil penalties may not be imposed upon an individual who acts, in good faith, in accordance with an ethics advisory opinion. The opinions are required to be made available to the public on the website of the Ethics Commission or on another readily available medium which will serve to educate other public officials. This language fills a gap concerning the scope of Article XIV, the statutes, and the rules of the Ethics Commission relating to

transparency, corruption, elections, and lobbying, and provides a means for written interpretations of that scope that the public can rely on. The Commission worked with Representative Klemin on this section and the language proposed is identical to SB 2034.

Mr. Chairman, Members of the Judiciary Committee, I would be happy to answer any questions.