

TESTIMONY OF DAVE THIELE
EXECUTIVE DIRECTOR, NORTH DAKOTA ETHICS COMMISSION
BEFORE THE
HOUSE GOVERNMENT AND VETERANS AFFAIRS COMMITTEE
HB 1295 February 18, 2021

The Ethics Commission supports HB 1295. All three sections of HB 1295 are referenced in Article XIV of the North Dakota Constitution mandating that the legislature establish “appropriate civil and criminal penalties for violations of this subsection.” It seems appropriate that the Ethics Commission be the entity to assess necessary civil penalties which is the proposed change to Sections 2 and 3 of HB 1295. Section 1 deletes the requirement that the Secretary of State administer civil penalties and replaces that language with an audit. If the audit reveals a violation, then the Secretary of State shall assess a fine in accordance with 16.1.08.1-05 which satisfies the requirement of Article XIV.

Sections 2 and 3 change responsibility for civil penalties for violations from Secretary of State to the Ethics Commission. The Commission would propose an amendment to that language. The current statute mandates a fine of a specific amount for a violation. The Commission believes that flexibility in assessing civil penalties allows for a more measured response that can consider all factors in determining appropriate remedies. The Commission would therefore propose in Section 2:

3. The ~~secretary of state~~ commission ~~shall~~ may assess a civil penalty upon any individual who violates this section.

a. If the gift has a value of five hundred dollars or more, the civil penalty ~~must~~ may be up to two times the value of the gift.

b. If the gift has a value of less than five hundred dollars, the civil penalty ~~must~~ may be ~~no less than~~ two times the value of the gift and may be up to one thousand dollars.

In Section 3, line 23, delete “~~shall~~” and insert “may.”

These changes would allow the Commission to consider all factors and craft an appropriate remedy. As an example, assume that a public official self-reports a possible gift violation.

A possible remedy for the public official could be return of the gift and assessment of a lower civil penalty or possibly return with no penalty and then deal with the lobbyist who gave the gift, which is also a violation, separately.

Mr. Chairman, that concludes my testimony and I will gladly stand for any questions you may have.