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House Appropriations – Govt. Ops. Div.

Rep. David Monson, Chairman  
Rep. Mike Brandenburg, Vice Chairman

Testimony of Nathan Svihovec

Commissioner of Labor  
N.D. Department of Labor and Human Rights

SUPPORT

January 5, 2023

## I. Introductory Summary

Chairman Monson, Vice Chairman Brandenburg, and members of the House Appropriations – Government Operations Division, my name is Nathan Svihovec and I was appointed as the North Dakota Department of Labor and Human Rights Commissioner beginning December 2022. I am a licensed attorney in the State and prior to my appointment, primarily practiced in labor and employment law as well as other civil litigation areas. I have been fortunate to formerly represent the Department as an Assistant Attorney General and to represent private businesses and individuals before the Department while I was in private practice.

Chapter (Ch.) 34-05 of the North Dakota Century Code (N.D.C.C.) created the North Dakota Department of Labor and Human Rights and prescribes the powers and duties of the Labor Commissioner. The Department's statutory duties can most concisely be summarized as ensuring citizens can live, work, and prosper in North Dakota. It is my deeply held belief that the mission of the Department is an essential service to the public. In order to fulfill our mission and adequately serve our State's businesses and individuals, I am requesting a biennial budget of \$3,311,433.

## II. Agency Overview

We have four key areas in which we provide services to the public (Human Rights, Wage & Hour, Housing, and Public Education):

### A. Human Rights

The Human Rights Division administers and enforces the North Dakota Human Rights Act (N.D.C.C. ch. 14-02.4) and the North Dakota Housing Discrimination Act (N.D.C.C. ch. 14-

02.5). Under these anti-discrimination laws, the Department receives and investigates complaints alleging discrimination in employment, housing, public services, public accommodations, and credit transactions. As required by law, the Department emphasizes conciliation to resolve complaints, provides administrative hearings on complaints where there is probable cause to believe a discriminatory practice has occurred, and fosters prevention of discrimination through education about the rights and responsibilities provided under North Dakota's human rights and housing laws. Finally, the Human Rights Division handles complaints of retaliation under North Dakota's "whistleblower" law (N.D.C.C. § 34-01-20) and Public Employee Relations Act (N.D.C.C. § 34-11.1-04.1).

In addition to receiving and investigating complaints directly from individuals who believe they have been victims of unlawful discrimination under state anti-discrimination and whistleblower laws, the Department's Human Rights Division also investigates cases for the U.S. Equal Employment Opportunity Commission (EEOC).

B. Wage & Hour

The Wage and Hour Division enforces minimum wage and overtime laws and regulations (N.D.C.C. ch. 34-06). In addition, the Division enforces North Dakota's laws and regulations dealing with equal pay for men and women, child labor, unions, employment agencies, and wage collection (N.D.C.C. chs. 34-06.1, 34-07, 34-12, 34-13, and 34-14). The Wage and Hour Division receives and investigates claims of unpaid wages or overtime, failure to pay minimum wage, misclassification of employees, and other general complaints that North Dakota's labor laws are being violated. The Division also reviews requests to issue youth employment certificates for 14 and 15-year-old workers.

C. Housing Discrimination

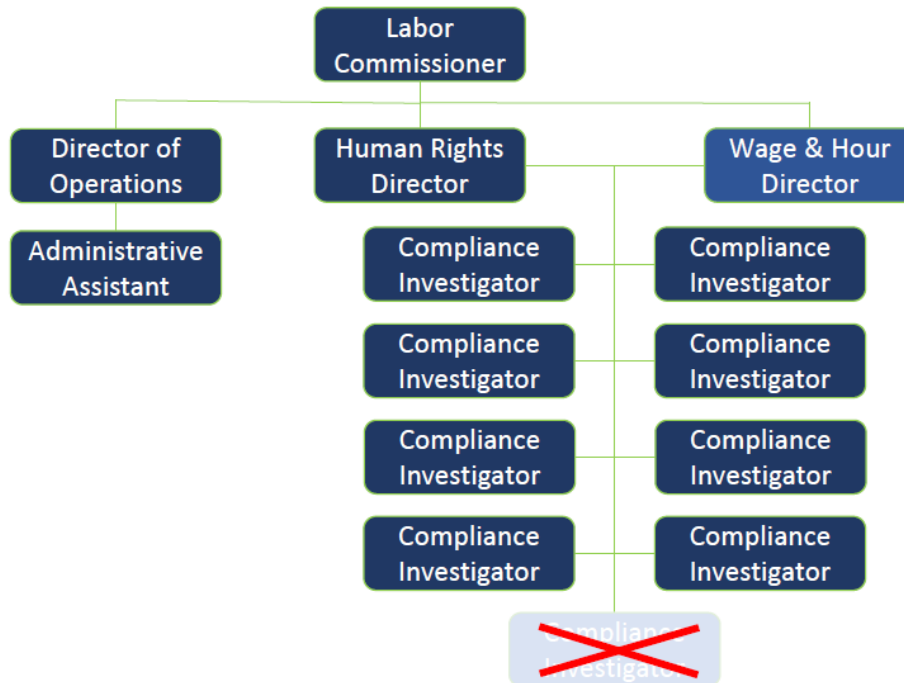
As previously mentioned, the Department receives and investigates claims of housing discrimination. Similar to the Human Rights protections, North Dakota's Housing Discrimination laws protect the public from discriminatory practices related to the sale or rental of a dwelling. These protections include the transactions, brokerage services, and reasonable accommodations. The Department also investigates cases for the U.S. Department of Housing and Urban Development (HUD) pursuant to a work-sharing agreement.

D. Public Education

In addition to the Department's enforcement duties, the Commissioner of Labor is required to "improve working conditions and living conditions of employees and advance their opportunities for profitable employment . . . foster, promote, and develop welfare of both wage earners and industries in N.D. . . . and promote friendly and cooperative relations between employers and employees." To do this, the Department continues to broaden awareness of its enforcement areas with the goal of reducing violations and increasing compliance in North Dakota. These areas include working with groups representing human rights, businesses, labor unions, professional, and non-profit organizations. The Department continues to provide speakers and trainers for conferences, workshops, schools, employers, labor organizations, businesses, landlord and tenant organizations, government agencies, and other community groups. The Department has made strides in educating the public and I continue to identify additional ways to provide information, such as newsletters and presentations, to both employers and employees in North Dakota.

E. Organizational Chart

The Department presently has 13 FTEs, one of which was unfunded last biennium. Five FTEs are currently vacant and the Department’s priority in the first quarter of 2023 is to fill all five positions. One of my key priorities is to increase the number of claims processed by the Department by decreasing the length of time to process a claim. I look to modernize the Department and increase efficiencies at every opportunity. There are certain duties, however, that require employee time and cannot be automated. In particular, the investigations require interviews of witnesses to ascertain the facts of each case. There is also a significant amount of time required of investigators to review records and draft determinations. Thus, only through adequate staffing can the Department decrease the time it takes to render determinations. The Department’s desired organizational structure is outlined in the following graphic:



The current proposal includes the creation of one Wage & Hour Division Director with an appropriate salary rather than an additional Compliance Investigator. Depending on the needs of the agency this biennium, the Department may maintain the number of Compliance Investigators to achieve the goal of reducing case duration and increasing the number of cases processed.

**III. Agency Accomplishments**

Claims – The Department received and closed the following cases from January 1, 2021 through December 31, 2022:

Claim Type	Opened	Closed	Damages Recovered
Wage Claims	640	494	\$447,014.17
Employment	296	239	\$679,084.69
Retaliation	52	48	\$12,012.07
Housing	52	14	\$25,978.29
PS/PA/Credit	14	10	\$0.00
<b>TOTAL</b>	<b>1,054</b>	<b>805</b>	<b>\$1,164,089.22</b>

Public Education – The Department provided education through at least 21 training seminars and information publicly available on our website, including: (1) Required Employer Posters; (2) Printable Brochures; (3) Public Speaking Events; and (4) Educational Booths.

**IV. Financial Audit Findings**

The Department’s most recent financial audit, conducted and concluded in February/March 2022, resulted in a clean audit with no outstanding financial findings.

**V. Agency Challenges**

The Department continues to face difficulty in finding adequate applicants for the Compliance Investigator positions. It is my understanding that, in many other states,

Compliance Investigators are either licensed attorneys or paralegals. Given the highly technical nature and requirement of complex legal analyses, a competent Compliance Investigator applicant will need to have a bachelor's degree and experience conducting investigations.

Additionally, the Department intends to look to technology options to assist the Department in the reduction of time to process cases.

## **VI. Budget History**

### 2017-2019 Biennium

The Legislature appropriated the Department \$2,743,902, which was comprised of \$2,303,986 in general funds and \$439,916 in federal funds. The Department was authorized for 14 FTEs (all funded).

### 2019-2021 Biennium

The Legislature appropriated the Department \$2,875,850, which was comprised of \$2,395,169 in general funds + \$480,681 in federal funding authority. Included in these figures is \$118,659 in one-time funding for Phase 1 of a paperless project. The Department was authorized for 14 FTEs (1 unfunded, 1 partially funded).

### 2021-2023 Biennium

The Legislature appropriated the Department \$2,911,054 which was comprised of \$2,394,186 in general funds + \$516,868 in federal funding authority. Included in these figures is \$147,717 in one-time funding for Phase 2 of a paperless project. The Department was authorized for 13 FTEs (-1 FTE from the prior biennium; 1 FTE unfunded to grant equity adjustments).

## Senate Adjustments

The Senate slightly adjusted the request for a total appropriation of \$3,266,681, which is an increase of \$355,627 from last biennium. This increase is comprised of \$2,757,283 in general funds and \$509,398 in federal funding authority. This amount slightly decreases the Department's initial request by \$44,752.

## **VII. Budget Request**

The Department maintain its request of \$3,311,433, comprised of \$2,794,256 in general funds + \$517,174 in federal funding authority. This amount is allocated as \$2,933,026 in salaries/wages and \$378,407 in operating expenses. The Department is also requesting to retain its 13 FTEs to fully staff the agency and increase claim processing.

This request will adequately allow the Department to become competitive for applicants and decrease the time it takes to process claims and issue determinations. This request also allows the Department to ensure Compliance Investigators attend necessary training to increase their competencies and provide the highest quality services to North Dakota.

## **VIII. Effects of Other Bills**

The primary bill impacting the Department is S.B. 2249. In its present form, S.B. 2249 directs the Labor Commissioner to discuss, gather information, and develop legislation, as necessary, regarding the “. . . administration of the boards, continuing education, and the licensure of out-of-state applicants, with a goal of establishing a strategy to license out-of-state practitioners . . . .”



IX. Conclusion

The Department's duties impact every citizen in North Dakota through employment, housing, and other key areas administered by the agency. I humbly request the Committee demonstrate its support for the statutory duties granted to the Department by the Legislature and recommend a Do Pass for the requested \$3,311,433 budget and 13 funded FTEs. Thank you for your time and service to North Dakota.