



North Dakota Ethics Commission
House Bill 1360
Testimony presented by
Rebecca Binstock, Executive Director
Before the House Government and Veterans Affairs Committee
January 31, 2025

Good morning, Mr. Chair and Committee members, my name is Rebecca Binstock. I serve as the Executive Director of the North Dakota Ethics Commission.

North Dakota citizens created the Ethics Commission in 2018 by passing an initiated measure which created Article XIV of the North Dakota Constitution. The Ethics Commission, an independent constitutional entity, consists of five commissioners:

- Chair Dave Anderson (Bismarck)
- Vice-Chair Ward Koeser (Williston)
- Dr. Cynthia Lindquist (Grand Forks)
- Ron Goodman (Oakes)
- Murray Sagsveen (Bismarck)

Article XIV directs the Commission to “adopt ethics rules related to transparency, corruption, elections, and lobbying” and to “investigate alleged violations of such rules, [Article XIV], and related state laws.”

In 2019, prior to commissioners being appointed, the legislature began implementing Article XIV through legislation. As part of its work, the legislature created a complaint process to guide Commission investigations. Once in place, the Commission created rules to further guide the complaint process. By working through the complaint process over the past five years, the Commission learned the process has multiple problem areas that should be addressed for the benefit of the Commission, those under its jurisdiction, and the public.

HB 1360

When chapter 54-66 was enacted in 2019, the legislature did not have the benefit of any data or ethics laws enforcement experience. We now have such data and experience. With this in mind, this past year, the Commission did a full review of how to improve the process based upon its five years of data. House Bill 1360 is the product of that work, extensive research, and many productive discussions between the Commission, legislators, legislative leadership, public officials, legislative council, lobbyists, and the public.

HB 1360 revamps the Commission’s investigative process by removing “complaints” entirely. It replaces the current complaint process with an enforcement process. The enforcement process serves four main goals of the Commission and those impacted by its work.

Goal 1 The enforcement process will address concerns brought to the Commission through education first.

Goal 2 The enforcement process will reduce red tape.

Goal 3 The enforcement process will bolster due process by allowing more opportunities for a respondent to interact with the five commissioners and defend him or herself publicly.

Goal 4 The enforcement process will address ethics concerns in an efficient way and use taxpayer resources responsibly.

Problems with the Current Complaint Process

To understand the need for this enforcement process, it is important to walk through the current complaint process and its inefficiencies. Currently, the Commission must walk through a three-step process that is almost entirely driven by a complainant. However, the complainant may not have a vested, personal interest in addressing and correcting unethical conduct. The current complaint process allows a complainant to potentially abuse and politically exploit the Commission’s work. The following example walks through the current complaint process to show its pitfalls.

Suppose the Commission receives a complaint alleging public official Jane Doe violated the lobbyist gift prohibition in Article XIV and the Commission’s rules. The complaint alleges Ms. Doe attended a free, but expensive dinner hosted by a lobbyist, and the lobbyist encouraged Ms. Doe to take an official action that would benefit the lobbyist’s

client. In addition to the free dinner, the complaint alleges the lobbyist gave Ms. Doe a \$100 gift card as a thank you.

Commission staff begin reviewing the complaint. The complaint can be many pages long, be unorganized, and to find the crux of the matter may be like finding a needle in a haystack. This requires many hours of staff time and can take months depending on Commission staff's workload.

Now suppose while Commission staff is reviewing the complaint, the complainant sends a copy of the complaint to the media, which publishes a story about it. As a public official, Ms. Doe is currently prohibited under the confidentiality statute from publicly responding and defending herself. The Commission also cannot comment, and instead of focusing on reviewing the complaint now must answer questions from the media with "no comment."

The Commission also must determine if it believes any criminal conduct is implicated by the allegations in the complaint. If so, a statute requires the Commission to refer the matter to law enforcement and put a pin in any further Commission action. This referral process can also take many months, adds additional work for state's attorneys to review, and because of the nominal amount involved, will likely not result in a prosecution.

After completing the initial review, the Commission must then offer the complainant and Ms. Doe an opportunity to informally resolve or mediate the complaint. This is step 2. The Commission has found informal resolution to be the most significant bottleneck in the complaint process. The Commission must maintain its neutrality at this step and cannot take a stance on the allegations. Instead, the Commission must provide both individuals ample time to think about and propose a resolution. Once the Commission has these proposals, it must go back and forth between the complainant and respondent in an attempt to settle the complaint. In theory, this seems workable. In reality, complainants will often unacceptably ask for money or for a public official to resign. Informal resolution can then turn into months of going back and forth with the complainant and the respondent, with little to no movement.

Finally, after much time has passed, the Commission can then begin investigating the complaint at step 3. Commission staff must identify witnesses and documents needed for the investigation and then obtain interviews and documents. Depending on the complexity of the allegations, an investigation takes time, especially when the Commission is met with a lack of cooperation. At the end of the investigation, the facts may indicate Ms. Doe did not actually accept the \$100 gift card. However, Commission

staff's work is not over if that fact is made clear. Instead, Commission staff writes a thorough report documenting the investigation and its findings for the five commissioners. By the time the Commission can act on the report, a lot of time and resources have been invested by the Commission, Commission staff, Ms. Doe, and witnesses.

Review of Article XIV and Constitutional Ethics Commissions

To address the problems with the current complaint process, the Commission looked back to Article XIV. At the end of the day, the duty of the Commission and all public servants is to uphold and carry out the constitution. Interestingly, Article XIV does not mention the word "complaint." Rather, Article XIV states the Commission "may investigate **alleged violations**" and "any person acting in good faith may submit **relevant information.**"

Using Article XIV's language as the starting point, the Commission looked to constitutional ethics commissions in other states for how they enforce the law and promote ethical governance. Other ethics commissions serve as a great guide for North Dakota as they have the benefit of many years of operation. The Commission particularly focused on the process used in Texas, which is another constitutional ethics commission.

The Enforcement Process

The enforcement process reinvents the current complaint process to achieve the goals identified and better align with the language of Article XIV. Before we discuss the steps of the process, at its outset, HB 1360 addresses two of the previously identified goals. First, HB 1360 and the Commission's companion rules that will follow shorten the law and remove duplicate provisions. Reducing these unnecessary red tape provisions makes it easier for individuals to understand and navigate the process.

Second, HB 1360 changes the confidentiality provisions to reduce opportunities for political exploitation and to allow a respondent to defend him or herself publicly. Moreover, by removing the word "complaint," the phrase "a complaint has been filed" loses any steam in the rumor mill. Instead of complaints, relevant information is submitted to the Commission.

Commission investigations will still maintain their confidential status until a respondent has a chance to appeal or does appeal a Commission finding of an ethical violation in court. However, HB 1360 ensures the person submitting information and the respondent can speak about the matter while the Commission goes through the process. The Commission has First Amendment concerns with the current statute. Its language does

not allow a public official to publicly discuss a complaint pending against the public official.

Now to demonstrate the proposed enforcement process, let's use the same example of Ms. Doe and the \$100 gift card. I would encourage committee members to follow along with by using Attachment 1, Enforcement Process Flowchart.

1. Relevant information is submitted to the Commission and the opportunity for settlement begins.

An individual who is concerned about Ms. Doe accepting the gift card may call or write to the Commission. The information provided is considered "relevant information" as defined in the bill. Once the Commission receives the relevant information, the Commission can then work with Ms. Doe at any point to understand her perspective of the matter, and, if she is open to it, settle it before it gets any further along in the process. As part of this settlement, the Commission has the option to provide guidance and help correct any potential concerns of Ms. Doe by working through the relevant information with her.

2. Commission staff conducts an informal investigation.

In the event Ms. Doe does not want to settle the matter or in the case of egregious conduct, the process bolsters due process by adding evidentiary standards and additional notice for Ms. Doe and opportunities for her to respond. If the matter must continue, the next step is an informal investigation by Commission staff. Here, Commission staff will gather additional information to better understand the relevant information provided to the Commission. At the end of this step, the executive director must prepare a report for the Commission and recommend the Commission close the matter or issue an alleged violation. The Commission may then issue the alleged violation, require additional informal investigation, or close the matter. Again, Ms. Doe and the Commission still have the option to settle and close the enforcement action at this stage.

3. The Commission may issue an alleged violation and formally investigate.

If an alleged violation is issued, Ms. Doe will have a clear written allegation, so she is aware of what specifically the Commission is investigating. The Commission will then proceed to a formal investigation. The formal investigation expands on the informal investigation and could include review of additional documents and additional interviews. Again, Ms. Doe and the Commission still have the option to settle and close the enforcement action during the formal investigation.

4. The Commission may find reasonable cause exists for a formal hearing.

Once the formal investigation is concluded, the executive director may prepare a request for a finding of reasonable cause by the Commission. If requested, Ms. Doe has thirty days to respond in writing. The Commission can then find reasonable cause exists to proceed to a formal hearing, require additional formal investigation, or close the matter. Again, Ms. Doe and the Commission still have the option to settle and close the enforcement action at this stage.

5. A formal hearing is held by the Commission, and an opportunity for rehearing is given to the respondent.

If the Commission issues a finding of reasonable cause, the Commission sets and notices a time and place for a formal hearing. The executive director then prepares a thorough report of the formal investigation and a recommendation to the Commission for how to resolve the enforcement action. Ms. Doe has thirty days to respond in writing before the hearing. Again, Ms. Doe and the Commission still have the option to settle and close the enforcement action at this stage.

At the formal hearing, Ms. Doe has an opportunity to be heard and present a defense to the Commission. After the formal hearing, the Commission deliberates and determines whether an ethical violation occurred. Ms. Doe then has additional time to ask for a rehearing before the Commission and, if still not satisfied with the Commission's conclusion, appeal the matter to district court for the court to review the Commission's actions.

6. A finding of an ethical violation becomes public.

If Ms. Doe does not appeal the Commission's finding of an ethical violation or, if appealed, the court affirms the finding, it becomes an open record. The Commission believes many enforcement actions will not get to this step in the process.

Effect on Enforcement

By focusing on education first, the Commission expects most enforcement actions will end with a settlement and a guidance letter. By changing the approach from punitive to corrective, the process encourages ethical government instead of a gotcha mentality. The citizens of North Dakota are the primary beneficiaries of the education first approach, as all residents of the state deserve honest and ethical governance.

In Texas, a similar approach has provided constructive, but effective enforcement of state ethics laws, with nearly all matters being settled without a formal hearing. Additionally, an enforcement process allowing the Commission, as opposed to the complainant, settle a matter with the respondent, reinforces the Commission's regulatory role and maintains accountability for non-compliance.

The Commission looks forward to working with the legislature to implement the enforcement process. HB 1360 is one step. After the legislation is implemented, the Commission has draft rules ready for informal guidance and amending the complaint rules to the new enforcement process. To review those documents please follow the following links:

Draft Enforcement Rules for the Commission to adopt after HB 1360: [LINK HERE](#)

Draft Informal Guidance Rules: [LINK HERE](#)

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

Proposed Enforcement Process in HB 1360 and Draft Commission Rules

