



North Dakota Ethics Commission  
House Bill 1505  
Testimony presented by  
Rebecca Binstock, Executive Director  
Before the House Government and Veterans Affairs Committee  
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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 ("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)

**HB 1505**

HB 1505 addresses immunity for legislators under certain circumstances and amends the several provisions of the Commission's complaint process. While the Commission opposes the bill with its current language, it believes these concerns can be eased with an amendment to the bill.

The Commission's concerns arise in Sections 2, 3, and 5 of HB 1505.

**SECTION 2** creates general immunity from criminal prosecution for legislators when they disclose a personal or private interest. Section 2 also creates an affirmative defense in a criminal proceeding when the legislator adheres to "informal advice from a staff member of the ethics commission."

The above-quoted language is overly broad and could create evidentiary issues during a criminal trial. The Commission believes the protections afforded in Section 2 will work to promote proactive management of potential conflicts of interest and encourage disclosure of potential conflicts of interest. However, the current language places no parameters on how the advice is sought, provided, or documented. Therefore, the Commission recommends the language be amended to outline clear parameters that require a legislator rely on informal, written guidance issued by the executive director pursuant to Commission rules.

**SECTION 3** of HB 1505 allows the executive director to close a matter at any time during an enforcement process. The language of Section 3 is similar to language included in the Commission's proposed enforcement rules to transition from the complaint process to an enforcement process. However, the Commission's rule vests that authority with the Commission, not the executive director. The authority to close a matter during the enforcement action should lie with the Commission (those appointed by the senate majority leader, senate minority leader, and the governor), not the executive director. The current language simply gives the executive director too much unilateral authority to dismiss an enforcement action.

Instead, the Commission recommends the language be amended to allow the Commission to settle or close a matter at any time during the enforcement action. Doing so places the authority to manage enforcement actions where it belongs, with the five commissioners.

**SECTION 5** amends the confidentiality of the enforcement process, limiting the confidentiality of the information related to complaints or enforcement actions to apply only "when [it is] in the possession of the commission" and outlines specific disclosure provisions for state employees in subsections 5, 6, and 7. The Commission is concerned that under this language, as soon as records are no longer in the possession of the Commission, public servants (i.e. state employees) can disclose that information once it leaves the possession of the Commission. Under the current law, this is not permitted.

For example, during its investigations, the Commission frequently requests information in possession of other state offices. Under the current language of HB 1505, those requests for information are not in the possession of the commission and would no longer be confidential, effectively making information related to enforcement actions/complaints "open."

This structure is problematic. Nonetheless, there are needed changes to the confidentiality of information related to complaints/enforcement actions as the Commission has acknowledged in its testimony on HB 1360. The Commission recommends amending Section 5 to align with the language presented in HB 1360 to comply with First Amendment dictates while supporting the State's interest in ensuring the confidentiality of the complaint process/enforcement action.

The Commission must oppose the bill in its current form and supports an amendment addressing the Commission's concerns as outlined above.

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