

Representative Mike Lefor

HB 1505 Testimony

Good morning, Chairman Schauer and members of the House Government and Veterans Affairs committee, my name is Mike Lefor, and I represent District 37 – Dickinson in the House of Representatives. Today, I bring HB 1505 to you for your consideration.

When individuals run for election to the legislative assembly, they do so with the full realization they are giving up time with their family, friends and their businesses. We do so with the idea that we come to Bismarck to provide the best public policy and smart budgetary decisions.

We are a citizen legislature. The citizens of our state voted to create an Ethics Commission which was placed into our state’s constitution. During that time, there has been confusion on behalf of many legislators as to who constitutes and what does not constitute a conflict of interest.

In answer to those questions, working with House rules and the wording contained in HB 1505, it creates a path for due diligence, clarity and a system of fairness.

In House rules, we created a method by which a legislator can stand up on the floor to declare a potential conflict of interest, the House floor then debates the issue serving as a “neutral reviewer” of the facts of the situation to determine whether there is a true conflict or not.

If the floor determines it is a conflict, the legislator does not vote on the bill. If the floor determines it is not a conflict the legislator may either vote on the bill or abstain from the vote.

HB 1505 takes over from there. I will go through the bill with you. On page 1, it largely changes the wording to the word “individual” for consistency in code. Beginning on page 2, line 3, it details the fact that an individual is immune from prosecution if they are a member of the legislative assembly when the official action was taken, it was a measure in front of either the House or the Senate and third, the individual adhered to legislative rules disclosing a personal or private interest to the members respective chamber or, if they did not recognize a potential conflict and voted on the measure, they need to notify the speaker of the House or president of the Senate.

Moving forward from there, it again states the individual is immune from criminal prosecution if they adhere to legislative rules or informal advice from a staff member of the ethics commission.

On page 2, beginning on line 29, it states that upon the completion of an informal investigation, the executive director shall close the matter or prepare a request to the commission to issue an alleged violation. Further, the executive director may close the matter at any time during the enforcement action.

This provides the executive director with the flexibility to move forward with the closing of cases which they do not have currently in code. On page 3, beginning on line 3, it gives flexibility as to where the appeal may be heard.

Section 5 was changed in some areas from "information" to "records," under state law "records" and not "information" can be made confidential under our open records laws. "Records" is defined in century code and state employees are familiar with it.

Section 5 gives more clarity into what confidential information through this process is. It states that the following is confidential information when in the possession of the commission. Most of our records laws say that records are confidential "in the possession" of an entity. For example, when someone gives a record to the commission, copies of the record may exist. The copy may be needed by another agency for normal work.

Under this bill, people could use those copies without being subject to prosecution. The bill further allows members of agencies, boards, commissions, to talk to each other about commission matters to the extent reasonably necessary to carry out their duties. For example, if one or more members are involved in an Ethics Commission investigation and must recuse themselves from something, they can now tell each other why and discuss how to manage the matter.

HB 1505 lets people talk to and share records with their lawyers about commission matters. This provides much needed clarity. Further, the bill lets people talk to and share records with - co-defendants, individuals with common interests, and individuals with relevant information about commission matters without risking prosecution for a felony.

It allows an individual to disclose a record or other information to their legal counsel, whether in the individual's personal or official capacity and to legal counsel for any department, board, agency, commission or other public entity to

which the individual belongs or in which the individual is employed. HB 1505 is about fairness, clarity, flexibility and transparency which is needed to ensure a fair process.

Members of the House Government and Veterans affairs committee HB 1505 is needed to provide proper due diligence procedures and the ability to vote on legislation without fear of criminal prosecution.

That completes my testimony and I would urge a "do pass" recommendation to the House of Representatives.