



North Dakota Ethics Commission  
House Bill 1141  
Testimony presented by  
Rebecca Binstock, Executive Director  
Before the House Industry, Business, and Labor 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, 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 1141**

House Bill 1141 amends N.D.C.C. § 16.1-10-02 to add a prohibition against “any agency, department, bureau, board, commission, or political subdivision” using public funds “to be a member of, contribute to, or endorse a private organization that has endorsed a candidate or publicly supported or opposed a ballot measure within the ten years immediately preceding the date of the contemplated use of public funds.” The Commission is neutral regarding this portion of the bill.

The Commission has suggestions regarding the terminology and procedures outlined in subsections 4, 5, and 6. The bill directs an individual can file a complaint with the Commission alleging a violation of the prohibited conduct. It then requires the Commission to participate in a criminal review of the complaint. However, the Commission worked with legislators to introduce a bill this session which moves away

from the current complaint process. The proposal removes the word “complaint” entirely and replaces the complaint process with an enforcement process. In its current form, this legislation impacts three goals of the proposed enforcement process.

**Goal 1      The Commission aspires to remove the negative connotation associated with “filing a complaint.”**

The filing of a complaint does not mean someone engaged in unethical conduct. However, the Commission recognizes the word “complaint” carries with it a negative connotation that someone did something wrong. One of the Commission’s primary concerns is removing the ability for political exploitation of its process. Removing the word “complaint” is the first step.

**Goal 2      The Commission aspires to move away from mandatory criminal referrals.**

Under the statute in place, when the Commission forms a belief a complaint contains allegations of criminal conduct, it must refer a complaint to law enforcement pursuant to N.D.C.C. § 54-66-08(2). The Commission cannot take action to close a complaint matter until the criminal referral and review has completed. These mandatory referrals extend the Commission’s timeline to review complaints and bog down the process. It also shifts the work to state’s attorneys for review, when in most instances the matters will not result in a prosecution. The Commission believes alleged ethics violations can be better addressed within the Commission’s civil realm. The new process will remove mandated criminal referrals.

The Commission is also not a criminal law enforcement agency. The Commission does not make decisions to prosecute individuals. Subsection 6 of this bill requires the Commission to review these matters as if it were a prosecutor. It is not—that is not the Commission’s role under the North Dakota Constitution. The Commission believes prosecutorial discretion must remain with the law enforcement agencies who criminally prosecute individuals, not the Commission.

**Goal 3      The Commission’s new enforcement process has the ability to address these issues in an efficient way.**

The new enforcement process will address concerns brought to the Commission through education first. The process will seek to correct these concerns proactively and make individuals under the Commission’s jurisdiction more confident navigating ethics requirements. In the rare cases of egregious conduct, the new enforcement process adds

additional layers of due process protections before a finding is made by the Commission, while removing needless roadblocks to resolution.

**Recommendation to the Committee**

If the legislature wishes, the Commission can review allegations of the conduct outlined in subsection 2 within the new enforcement process. If this bill moves forward, the Commission suggests removing subsections 4, 5, and 6. The Commission would further suggest replacing the removed language with language stating, "The ethics commission may assess a civil penalty for a violation of this section up to [insert a monetary amount as determined by the legislature.]"

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