



North Dakota Ethics Commission
House Bill 1434
Testimony presented by
Logan Carpenter, General Counsel
Before the House Political Subdivisions Committee
January 30, 2025

Mr. Chair and Committee members, my name is Logan Carpenter. I serve as General Counsel for 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 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 1434

House Bill 1434 creates a new section to chapter 28-32. The new section sets an expiration date for administrative rules and Ethics Commission rules after ten years. The Commission rules are included by referencing all rules published in the North Dakota Administrative Code and using the phrase "agency or the *commission*." Chapter 28-32 defines "commission" as the Ethics Commission. When the expiration date nears, the new section directs the governor to review the rules, extend the effect of the rules, or have the rules expire.

Article XIV of the North Dakota Constitution created the Ethics Commission as an independent constitutional entity. The constitution provides the authority for the Commission to adopt rules related to transparency, corruption, elections, and lobbying. This constitutional rulemaking authority is different from executive branch agencies'

rulemaking authority. Executive branch agencies derive their rulemaking authority through the legislative process in statute. Because their rulemaking authority is from statute, executive branch agencies are subject to additional executive and legislative oversight.

However, because the constitution provides the Commission authority to make rules, the legislature cannot create a statute allowing the governor to review, renew, or repeal Commission rules. The constitution places final authority over rulemaking with the Commission. This bill would essentially grant the governor veto power over Commission rules, which is not in the constitution and conflicts with it. The Commission's rulemaking authority is like the judicial branch's constitutional authority to make certain rules. The constitution separates these rulemaking powers from both the executive and legislative branches.

The "check" on whether the Commission has acted outside its constitutional rulemaking authority is through the court system, not the governor's review every ten years.

The Commission has communicated its concerns with the current language of the bill to the prime sponsor. The Commission understands the effect of including the Commission in this bill was unintended. The Commission must oppose the bill in its current form and supports an amendment removing the Commission from the bill.

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