

1999 HOUSE APPROPRIATIONS

HB 1469


1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HOUSE BILL 1469

House Appropriations Committee

Conference Committee

Hearing Date January 25, 1999

Tape Number	Side A	Side B	Meter #
ONE	X		0. -48.4
		x	0.-20.5
Committee Clerk Signature 			

Minutes:

A BILL for an ACT to create and enact a new chapter to title 14 of the North Dakota Century Code, relating to North Dakota human rights commission; to amend and reenact sections 14-02.4-19 and 14-02.4-21 of the North Dakota Century Code, relating to actions, limitations, and mediation for discriminatory practices; to provide a penalty; and to provide an appropriation.

1A:0.5 Rep. Cleary, District 49, spoke regarding the provisions addressed in HB 1469. The mechanisms currently available under statute do not necessary assist victims of unlawful discrimination. (Note enclosed testimony.) Rep. Cleary also submitted testimony on behalf of Rep. Boucher. (Note enclosed testimony.)

1A: 6.5 Tom Disselhorst, attorney stated that the present civil rights law in North Dakota was very good but this only addresses employment discrimination which the cases usually end up in the court system. However other areas of discriminations are not addressed but the Human Right Commission could easily be the remedy. (Note the enclosed testimony.) Mr. Disselhorst also presented written testimony from David Gripp, President United Tribes Technical College. See enclosed.

1A: 13.6 Amy Schauser Nelson, Executive Director of the ND Fair Housing Council, spoke in favor of HB 1469. This bill would provide a Human Rights Commission which could conciliate, mediate and enforce complaints of housing discrimination. See enclosed testimony.

1A: 20.0 Austin Engel, Attorney, spoke on the North Dakota Status 14-02.4-01 against discrimination and how difficult it is to file a case in North Dakota for the average citizen. He spoke in favor of HB 1469.

1A: 30.8 Rev. Jeannette Hickman, Interim Pastor - Presbyterian Church, Bismarck, testified in favor of HB 1469. The Church recently held a town meeting in which there was a considerable amount of testimony regarding the discrimination. Rev. Hickman handed out testimony on behalf of Carol Barret, ND Advisory Committee to the US Commission on Civil Rights. Note enclosed.

1A: 39.6 Doug Bahr, North Dakota Attorney General Solicitor, appearing on behalf of Heidi Heitkamp. The Office of Attorney General feels this bill would provide the mechanisms for those violations that do not provide effective relief for many who are victims of unlawful discrimination. The Attorney General support HB 1469. (See enclosed testimony.)

1A:41.6 Kevin Kicons, AFSCME of North Dakota, supports HB 1468 on behalf of all employees in the state. See enclosed testimony.

2A:1.1 Harry Kohler, North Dakota Realtor, spoke regarding the discrimination in the real estate business. Mr. Kohler supports HB 1469

2A: 3.1 Chuck Stebbins, ADA Advocate, spoke in favor of HB 1469. See enclosed testimony.

2A: 4.5 Don Morrison, North Dakota Progressive Coalition, spoke on the human rights issues which come from the values of North Dakotans. The Coalition supports HB 1469.

2A: 8.3 Sister Rose spoke on behalf of Christopher T. Dodson, Executive Director of the ND Catholic Conference in favor of HB 1469. See enclosed testimony.

2A: 8.8 Susan Baker, spoke regarding the bill in the senate which is similar to HB 1469. This is not a budget issue. It is a will to change issue.

2A: 13.3 Dale Anderson, President of GNDA, spoke on behalf of the membership of GNDA which recommends a DO NOT PASS for HB 1469. See enclosed testimony.

2A: 17.7 Chairman Dalrymple asked of Ms. Nelson if there were no funds available, is there a use for a Human Rights Commission. Mr. Nelson stated it would help investigate the cases in the state and enforce the current statute. There are state and private grants available grants for some funding.

2A: 19.2 Rep. Cleary spoke about the hand out of an e-mail from the way things are being done in Colorado.

Note enclosed testimony of Bonnie Palecek, Executive Director of NDCAWS/CASAND.

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1469

House Appropriations Committee

Conference Committee

Hearing Date 2/11/99

Tape Number	Side A	Side B	Meter #
2	x		7.7-13.5
Committee Clerk Signature <i>Kevin Kern</i>			

Minutes:

(7.7) Chairman Dalrymple opened the hearing on HB ¹⁴⁶⁹~~1418~~ in the Roughrider Room.

(8.0) Rep. Timm moved for a DO PASS.

(8.7) Rep. Hoffner moved for the adoption of amendments.

HB 1469 was carried as a DO NOT PASS motion and the hearing was closed.

Proposed Amendments to HB 1469

On Page 4, Line 8: Replace the word "may" with the words "shall, to the extent possible,"

On Page 4, Line 10: Replace the word "may" with the words "shall, as it may have resources to do so,"

On Page 4, after Line 11, add a new paragraph as follows:

4. The commission may accept donations to help fund the commission's activities.

Date: 2/11/99
 Roll Call Vote #: /

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. 1469

House Appropriations Committee

Subcommittee on _____

or

Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Timm Seconded By Delzer

Representatives	Yes	No	Representatives	Yes	No
Chairman Dalrymple	X		Nichols		X
Vice-Chairman Byerly	X		Poolman	X	
Aarsvold		X	Svedjan	X	
Bernstein	X		Timm	X	
Boehm	X		Tollefson	X	
Carlson	X		Wentz	X	
Carlisle	X				
Delzer	X				
Gulleson		X			
Hoffner		X			
Huether		X			
Kerzman		X			
Lloyd	X				
Monson	X				

Total (Yes) 14 No 6

Absent 0

Floor Assignment Timm

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
February 12, 1999 9:39 a.m.

Module No: HR-28-2683
Carrier: Timm
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1469: Appropriations Committee (Rep. Dalrymple, Chairman) recommends **DO NOT PASS** (14 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING). HB 1469 was placed on the Eleventh order on the calendar.

1999 TESTIMONY

HB 1469



UNITED TRIBES TECHNICAL COLLEGE
3315 UNIVERSITY DRIVE
BISMARCK, NORTH DAKOTA 58504 • PHONE 701-255-3285 • FAX 701-255-1844

**Appropriations Committee
North Dakota House of Representatives
56th Legislative Assembly**



**Testimony of David Gipp
President, United Tribes Technical College
on HB 1469
Human Rights Commission
January 25, 1999**

Mr. Chairman, members of the Committee, thank you for the opportunity to present testimony today on the need for a Human Rights Commission in North Dakota. For your information, I am President of United Tribes Technical College, a post-secondary vocational technical school which serves primarily Indian persons from throughout Indian country.

This is an issue about which I personally feel very strongly, and which is also supported by the Board of Directors of United Tribes Technical College. The Board of Directors is composed of the Chairman and a representative from each of the five tribes which have a presence in North Dakota, the Standing Rock Sioux Tribe, the Turtle Mountain Band of Chippewa, the Spirit Lake Nation, the Three Affiliated Tribes and the Sisseton-Wahpeton Sioux Tribe. On Saturday, January 23, 1999 our Board of Directors, with representatives of all five tribes, and three Chairman and a Vice-Chairman present, unanimously passed a resolution supporting HB 1469 and supporting the creation of a Human Rights Commission to enforce both state and Federal civil rights laws in North Dakota.

To give you an idea of why a Human Rights Commission is so important to us, let me give you a brief description of United Tribes Technical College, "United Tribes". United Tribes was founded in 1969 by the North Dakota Indian tribes as the United Tribes of North Dakota Development Corporation. Soon, United Tribes was operating a vocational training center on the grounds of Fort Lincoln, an army base constructed in the early years of this century to replace the old Fort Lincoln which was the base for Custer's wars against the Indians. The old buildings of the fort became our classrooms, dormitories and administrative buildings which have now become United Tribes Technical College, serving more than 300 Indian students per year from more than 45 tribes and providing vocational training and two year degrees in a broad variety of disciplines.

Our students are mostly housed on our campus, in dormitories, apartments and single family dwellings. We have a number of facilities and services for our students on campus, including child care, cafeteria, gymnasium a chemical health center, counselors, both academic and personal, a financial aids office, an arts and cultural

center and a bookstore. United Tribes also seeks to provide placement services for our students as they graduate and seek employment.

Nevertheless, our students are often off campus seeking many services in the local city of Bismarck. It is in this vein that I want to discuss issues that make plain the need for a Human Rights Commission in North Dakota.

Bismarck has long been a very typical near reservation community, viewed by most Indian persons who have lived there as discriminatory. Just a little more than twenty years ago the Bismarck's Patterson Hotel, now an apartment complex for senior citizens with a popular bar and restaurant on the ground floor, had a notice under the glass that said "We do not rent to Indians." Students couldn't cash our checks at local establishments, and we still have problems with that. Our employees sometimes had difficult times finding housing, a problem that continues. Our local city judge had different bail schedules for Indians and non-Indians, with the Indian persons more likely to spend the night in jail rather than being released on their own recognizance. The gift shop at the airport sold a shot glass that depicted an Indian person in various stages of drunkenness on the side of the glass.

While a few of the more egregious examples of racist behavior have largely been eliminated, problems remain. Although we have not conducted a formal survey of our students about adverse discriminatory experiences they have had in Bismarck, we are aware generally of several problems locally. One has already been brought to the attention of the Justice Department in the past several years involving discriminatory placement of Indian children special education classes in local schools. Although this situation did not involve our students, and to my knowledge has now been largely corrected, it was indicative to me of larger problems within our community that do affect our students.

For example, our students frequent the malls and various stores of Bismarck. Consistently for a number of years, students have complained that they are followed and occasionally harassed by security forces at such establishments. In the past, security administrators have told people that they watch Indian persons more closely for possible shoplifting.

Like many other Indian people, our students, and sometimes the Indian members of our faculty and administration are unable to cash checks locally. At least one lawsuit has been filed about such practices, with mixed results. Credit opportunities can also be limited, especially in the area of housing, for both off-campus students and our Indian employees.

Each year our college sponsors a four day pow-wow which is now popularly associated with United Tribes and the end of summer. Despite our best efforts, and despite the fact that the United Tribes International Pow-wow brings in several million dollars to the City of Bismarck each year, incidents of discrimination occur almost every year against some of our out-of-town guests. For example, two years ago a guest of our pow-wow was eating with his spouse at a local restaurant. When he paid with a fifty dollar bill, he was returned only a few dollars in change. When he went to complain, in an unthreatening fashion, the waitress commented with words to the effect "This is always the way you people act." The racial reference was completely uncalled for and certainly sullied our visitor's stay in Bismarck.

Most serious have been problems with housing discrimination. One of our faculty members, from Sri Lanka, was discriminated against several times in his efforts to find housing for himself and his family. The stories are many of landlords who vow not to rent to Indian persons because of one unfortunate incident with an Indian tenant. While we are thankful for the presence of the North Dakota Fair Housing Council, we know that its efforts are limited by a lack of resources. In the past, some lawsuits have been filed but with little result. To be sure, realtor's associations do help and discrimination in housing is not uniformly present among all rental units in Bismarck.

Perhaps most troubling in the capital of North Dakota is the lack of Indian employees in state government. Except for positions that relate directly to Indians and tribal issues, there are almost no Indian employees at major state agencies headquartered in Bismarck. While one can, to some degree, say that few Indian people apply for positions at the state capitol building, that does not entirely explain the lack of Indian employees there. Is this a case of systemic discrimination? Without a Human Rights Commission to investigate, it is very hard to prove one way or the other, but the lack of Indian employees suggests the answer.

Because we are constantly seeking to place our graduates in productive jobs, employment opportunities are critical for us. Complaining to the State Labor Department about employment discrimination in state government does not seem likely to produce adequate results.

I am certain that many acts of discrimination against our students and faculty go unreported and no effort is made to seek a remedy, primarily because of the remoteness of the agencies charged with handling these cases. Given the history of treatment of Indian people by our government, it has been difficult for me to understand why our state legislators do not believe a state human rights commission is necessary, in a state where Indian people are the only significant racial minority. It is especially difficult to understand because a state human rights commission would

Testimony of David M. Gipp
HB 1469, House Appropriations Committee
January 25, 1999
Page 4 of 4

essentially be locally controlled, appointed, presumably, by our governor or some other combination of political and community leaders. The advantage for United Tribes and its students would be immediate access to an agency that could produce relatively quick results.

This committee can assist greatly the process of healing between Indians and non-Indians in North Dakota, by giving a DO PASS recommendation on HB 1469. Our students and staff have suffered long enough. Shouldn't it be a top priority of this legislative body that all of the citizens of North Dakota be treated fairly and equally?

TESTIMONY BEFORE HOUSE APPROPRIATIONS COMMITTEE
IN SUPPORT OF HOUSE BILL NO. 1469

Douglas A. Bahr
Acting Solicitor General
Office of Attorney General

January 25, 1999

My name is Doug Bahr. I am the Acting Solicitor General with the Office of Attorney General. I am appearing today on behalf of Attorney General Heidi Heitkamp in support of House Bill No. 1469.

State and federal law contain provisions to address violations of state and federal discrimination laws. However, the mechanisms currently available to remedy those violations do not provide effective relief for many North Dakotans who are victims of unlawful discrimination.

In particular, there is no governmental body with authority to enforce the North Dakota Human Rights Act, N.D.C.C. ch. 14-02.4. The Labor Commissioner may encourage parties to resolve a dispute under that Act informally, but he has no formal enforcement authority.

The Office of Attorney General receives many calls and visits from citizens who believe the Office of Attorney General is "their" lawyer and who have nowhere else to turn. Because we have no authority to enforce discrimination laws, we do not keep statistics on the number of these contacts that involve discrimination complaints. However, I can tell you this is not an infrequent occurrence.

Because there is no state governmental agency with any authority to enforce the antidiscrimination laws, in many instances we have to advise these citizens that the only real option open to them is to bring a lawsuit. That is a lengthy, costly process, and often not a viable option for an individual subject to discrimination.

For these reasons, the Attorney General supports the creation of some governmental mechanism—other than a lawsuit—through which a North Dakota citizen who is the victim of discrimination can have that discrimination redressed. Because this bill would provide that mechanism, the Office of Attorney General supports passage of HB 1469.



NORTH DAKOTA
AFSCME

THE UNION FOR PUBLIC EMPLOYEES

Post Office Box 2423, Bismarck, North Dakota 58502

Telephone: (701) 223-5979

January 25, 1999

Chairman Dalrymple and House Appropriations Committee Members:

My name is Kevin Kiconas. I am with ND AFSCME (American Federation State County Municipal Employees), the public employees union. We are proud to be here this morning in support of HB 1469, the ND Human Rights Commission.

Why is this bill necessary? From the perspective of public employees, two reasons the first being that there is no protection now. When public employees have a grievance, they don't have a place to go where they can get an independent decision where they feel their voice can be heard. Fear is the second reason. Supervisors can be intimidating. They can harass and scare employees. Every day we ask our public employees to do some of the most dangerous jobs we have. They are given very little support. Passage of HB 1469 would say that we want to treat them like first class citizens!

There is a much larger reason to pass this bill. If we look back at our states history, what is it that we see? The pioneers who came to this state came to be free from oppression. They came because they did not want to have rights determined by a King or Queen. They came because they did not want to live in a system where they were judged by who their father was. They came because they did not want to be judged by how much land their family had. They came because they wanted **FREEDOM**. It was not the land out here that drew them. It was **FREEDOM**. When they came from western Europe, they left thier friends and families. They came out as homesteaders and settlers, as farmers and workers and as business people and church leaders and teachers. Blacks came too and they were successful at everything they did.

Over the years, statehood came. When there were questions about who rights were granted to and who should be protected, our legislators stood up for the rights of its citizens. They protected small family farms. They set up the state mill and the bank. In the 1980's. They passed one of the most progressive human rights legislation in the nation, but they did not complete the job because they left the enforcements mechanisms out. That is why we are here today. The mediation procedures in this bill are designed to get the two parties to sit down and compromise a little to work together.

The intent of HB 1469 is to bring all of us together and that is why it is important to pass it. Over the years we have been divided. Business vs. labor, corporate farmers vs. family farmers, employee vs. management, tenants vs. land lords, senior citizens vs. nursing homes, native Americans vs. whites and public employees vs. their employers.

Passage of HB 1469 will put an end to this wage, social and political competition. This will complete the job of giving all of our citizens the rights they deserve. When Abraham Lincoln freed the slaves, he was asked why he did it, and he said, "If I am ever remembered in history, it will be for this single act. Overtime I came to the realization that if one of us is a slave, we are all slaves and if one of us are free, we are all free."

Today you have the opportunity to free us all. We are the last state in the nation to pass a Human Rights Commission, but passage would show that if we go into the new millennium that you would free all of us, that you would give all of us dignity and respect and that would be a powerful way to start the 21st century.

Thank you for your time and I would be glad to answer any questions.

HB 1469

Madam Chair and members of the Appropriations Committee. For the record my name is Chuck Stebbins and I am here in support of HB 1469.

In 1990 the Americans with Disabilities Act (ADA) was passed into law giving, at the time, 49 million people with disabilities their civil rights. Today the number of people with disabilities has risen to over 53 million, and is still climbing. More and more people will be covered under the ADA. Disability is a part of, and will continue to be a part of, the whole life experience.

The ADA is a civil rights law! Drafted with the intent to prohibit discrimination against people with disabilities in areas of employment, access to public and private business, and access to housing. Discrimination against people with disabilities is being addressed and deliberated on even as we speak. Law suits and the subsequent litigation is clarifying the law. But it's taking some time.

ADA complaints can be filed with the various Federal agencies given the responsibility to enforce all the Titles of the ADA: employment, public services, public accommodation operated by private entities, and telecommunications. Creation of a Human Rights Commission would give people with disabilities a local resource to address discriminatory practices.

People with disabilities have come a long way since the passage of the ADA. But we still have a long way to go. Access and accessibility is not where it needs to be if we are to truly even the playing field, whether it be access to jobs, or buildings.

Creating a Human Rights Commission improves access for people with disabilities to right the wrongs without the discouragement of a lengthy wait, and it allows the opportunity of resolution on the State and local levels.

Thank you for your time.

BISMARCK
 Abused Adult Resource Center
 222-8370
 BOTTINEAU
 Family Crisis Center
 228-2028
 DEER LAKE
 [Redacted] natives for
 [Redacted] families
 1-888-662-7378
 DICKINSON
 Domestic Violence and
 Rape Crisis Center
 225-4506
 ELLENDALE
 Kedish House
 349-4729
 FARGO
 Rape and Abuse Crisis Center
 800-344-7273
 FORT BERTHOLD RESERVATION
 Coalition Against
 Domestic Violence
 627-4171
 FORT YATES
 Tender Heart Against
 Domestic Violence
 854-3402
 GRAFTON
 Tri-County Crisis
 Intervention Center
 352-4242
 GRAND FORKS
 Community Violence
 Int [Redacted] Center
 7 [Redacted] 5
 N
 S.A. [Redacted] Shelter
 888-353-7233
 McLEAN COUNTY
 McLean Family
 Resource Center
 800-657-8643
 MERCER COUNTY
 Women's Action and
 Resource Center
 873-2274
 MINOT
 Domestic Violence Crisis
 Center
 852-2258
 RANSOM COUNTY
 Abuse Resource Network
 683-5061
 STANLEY
 Domestic Violence Program,
 NW, ND
 628-3233
 VALLEY CITY
 Abused Persons Outreach
 Center
 845-0078
 WASHINGTON
 [Redacted] Crisis Center
 WILLSBON
 Family Crisis Shelter
 572-0757

TESTIMONY ON HB 1469
 HOUSE APPROPRIATIONS COMMITTEE
 JANUARY 25, 1999

CHAIR DALRYMPLE AND MEMBERS OF THE COMMITTEE:

THE NORTH DAKOTA COUNCIL ON ABUSED WOMEN'S SERVICES WISHES TO EXPRESS ITS STRONG SUPPORT OF THE MODEST APPROPRIATIONS BILL YOU HAVE BEFORE YOU FOR A ND HUMAN RIGHTS COMMISSION.

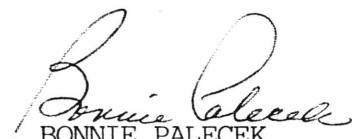
OUR COALITION HAS SUPPORTED THIS COMMISSION OVER THE LAST SEVERAL SESSIONS BECAUSE WE SEE A NEED FOR LOCAL STATE ACCESS FOR REDRESS ON SEXUAL HARASSMENT COMPLAINTS NOT IN THE WORKPLACE, AND ALSO FOR HOUSING DISCRIMINATION COMPLAINTS, WHICH WE ENCOUNTER AS WOMEN WITH CHILDREN SEEK RELOCATION. DISCRIMINATION AGAINST NATIVE AMERICANS IS ALSO SOMETHINGS OUR ADVOCATES ENCOUNTER.

IT IS VERY DISCOURAGING THAT ALL OF THESE ARGUMENTS HAVE BEEN MADE MANY TIMES BEFORE, AND STILL NONE HAS PERSUADED THE LEGISLATURE TO FUND SUCH A BODY.

WE WILL CONTINUE TO ASK, HOWEVER, BECAUSE WE FEEL IT IS NEEDED, AND A CORNERSTONE OF ASSURING THAT THE RIGHTS OF ALL OF OUR CITIZENS ARE PROTECTED.

PLEASE HELP US MOVE INTO THE NEXT CENTURY WITH THESE PROTECTIONS IN PLACE.

THANK YOU.


 BONNIE PALECEK
 EXECUTIVE DIRECTOR
 NDCAWS/CASAND



Testimony for House Bill 1469
Prepared by Representative Merle Boucher
Monday, January 25, 1999

Chair Dalrymple and members of the House Appropriations Committee, for the record I am Representative Merle Boucher from District 9.

House Bill 1469 lays the ground work to create a North Dakota Human Rights Commission. It only stands to reason, that such entity should exist and should have been created some time ago.

A Human Rights Commission would create an entity that citizens, who have reason, or cause, to believe their rights as citizens have been violated could go to seek (a, remedies) for their situation. The Commission would have the mission of protecting the rights of all citizens, from the young, minorities, disabled citizens, displaced citizens and seniors.

A Human Rights Commission is the right thing to do. I would appreciate a Due Pass recommendation. Thank you.



Representing the Diocese of Fargo
and the Diocese of Bismarck

Christopher T. Dodson
Executive Director

To: House Appropriations Committee
From: Christopher T. Dodson, Executive Director
Subject: House Bill 1469 (Human Rights Commission)
Date: January 25, 1999

The North Dakota Catholic Conference supports House Bill 1469.

Every person is made in the image of God. As such, each person possesses an inherent dignity that cannot be taken away and does not depend upon what the person does or who they are. Respect for this dignity demands that basic human rights be respected by all. Indeed, the primary purpose of government is to protect and respect human dignity by insisting that the human rights of all be protected, especially the rights of the most vulnerable and less powerful among us. If government fails in this regard, it fails to meet its most important moral obligation.

This, presumably, is the premise behind the North Dakota Human Rights Act. However, as testified to on many occasions, the mere passage of the Human Rights Act is not enough to ensure that human rights are actually protected. The state's obligation does not rest solely or even primarily on enforcing laws against discrimination. Government has the duty to assist in the creation of a positive, proactive, environment where discrimination does not occur. This is why we need a human rights commission. This is why virtually every state has a human rights commission.

This is not the first attempt at creating a human rights commission and we can anticipate some of the opposing arguments. We may hear that it is too costly, could hurt economic growth, and could increase civil rights litigation. We must, however, remember that the economy exists to serve persons -- all persons. People do not exist to serve the economy. Any economic system that accepts the denial of human rights for the sake of the economy is morally flawed. There is no moral justification for accepting discrimination, no matter how much occurs, because of fear of lawsuits or the alleged effects on the economy.

Thank you for your consideration. We urge a **Do Pass** recommendation.

277 W. Broadway, Suite 2
Bismarck, ND 58501

23-2519
(701) 223-6075



STATEMENT BY DALE O. ANDERSON, PRESIDENT, GREATER NORTH DAKOTA ASSOCIATION, REGARDING HB 1469; NORTH DAKOTA HOUSE APPROPRIATIONS COMMITTEE; JANUARY 25, 1999.

Chairman Dalrymple and members of the House Appropriations Committee. I am Dale O. Anderson, President, Greater North Dakota Association. Thank you for this opportunity to provide comments regarding HB 1469.

The Greater North Dakota Association is the voice for business and principal advocate for positive change for North Dakota. GNDA was organized in 1925 as a statewide, general business organization. The organization's membership of 950 is an economic and geographic cross section of North Dakota's private sector, including statewide associations and local chambers of commerce, development organizations and convention and visitors organizations. GNDA is governed by a 25 member Board of Directors elected by GNDA's membership. The Board of Directors sets the organization policy.

I present the following comments in opposition to HB 1469:

- 1. GNDA believes the North Dakota Legislature has established appropriate measures to address discrimination which includes:**
 - A state policy to prohibit discrimination;**
 - A law defining discrimination;**
 - A law defining consequences of discrimination;**
 - Issues of employment can be investigated through the Department of Labor;**

- **Issues of housing can be investigated through the ND Fair Housing Council; and**
 - **Discriminatory practices can also be brought before the court system for resolution.**
- 2. GNDA does not support or condone actions that discriminate. GNDA believes it is very important to provide members with educational opportunities to help them unravel today's complex discrimination laws and issues. One educational program is entitled: "Employment Discrimination – An Employer's Guide." (A flyer describing the 1998 guide is included with this testimony.)**
 - 3. HB 1469 creates a new commission within the executive branch of state government. We believe the commission would essentially perform duties available through the district court system and the Department of Labor.**
 - 4. HB 1469 has a price tag of \$560,000 from all funds. However, the proponents of the bill on line 28, Section 4 believe the program will generate \$370,000 in income. It is important to note that the sponsors are silent as to how the revenue will be generated with the exception of levying up to \$5,000 for each civil penalty that is assessed. It would take 74 complaints fined at the maximum penalty of \$5,000 each to generate \$370,000 in income.**
 - 5. HB 1469 requests \$190,000 from the general fund for the 1999-2001 biennium.**

In summary, HB 1469 creates a new special commission that duplicates the services of the Department of Labor, several housing authorities and the judicial system. The special commission acts as investigator, attorney, judge and enforcer of what they think is discrimination. The new commission requires general fund appropriation which is not necessary.

Chairman Dalrymple and members of the House Appropriations Committee, GNDA, the voice of business and principal advocate for positive change, recommends a do not pass for HB 1469.



Rosey M. Sand [MSMAIL.RSAND]@GATEWAY on 01/22/99 02:43:48 PM

To: Dennis Bercier/NDLC/NoDak@NODAK
cc: Audrey Cleary/NDLC/NoDak@NODAK
Subject: Information on human rights bill

Senator Bercier: You asked that I assist you in finding information about funding sources for this bill. I had one of our paralegal staff make some contacts with the U.S. Civil Rights Commission and she also called the Colorado State Civil Rights Office. This is what she found out:

She talked primarily to two people: John Dulles, the regional director for the U.S. Civ. Rights Commission (303)866-1040 and to Judy Schneider from the Colorado State Civ. Rights Office (303)894-2997.

Judy Schneider stated that their Commission is funded as follows:

- 70% general fund
- 19% EEOC, and
- 11% HUD.

EEOC Money

The reimbursement rates vary from year to year; currently the EEOC reimburses at a rate of \$500 per case (based on cases closed in the fiscal year (6/1 through 5/31 of the previous year -- with EEOC divvying up the money given them by Congress (according to a negotiated agreement.) Both ND Labor and Colorado said they were reimbursed for approximately 85% of their closed cases.)

HUD Money

HUD will reimburse money -- IF the state has a housing law substantially similar to the federal HUD law. Judy Schneider indicated that their office has to work very hard to finish out their cases in order to get the \$1,700 reimbursement rate (Judy estimates each case actually costs \$2,000 for them). If we want more information, we can call the HUD regional office and talk to John Eubanks @ (303) 672-45430. It sounds like HUD gives grant money to provide training for doing their cases. They also may provide some start-up to states. Colorado also gets some additional money for training or doing housing studies, etc.

Other Money

John indicated that it might be possible to get some funding from community development block grants, or money from the U.S. Dept. of Justice (related to Indian Justice, Rural Justice) or money for education & training programs.

Colorado opens 1,200 - 1,300 new cases per year w/ an avg. of 220 days to close a case. They employ 35 people (17 as investigators).

The ND Labor Dept. suggested that it opened approximately EEOC labor related cases last year --and closed 77 to 80 cases. (Note: Colorado's cases

include the full spectrum of EEOC cases). ND Dept. of Labor also indicated that 300 complaints were brought to ND Fair Housing last year -- of which 15 complaints were passed on to HUD. (Labor believes that if the law passes, the number of cases that might meet HUD criteria to be closer to 30 to 40 cases).

John Dulles said legislative testimony given in Alabama indicated that start-up costs to open a civil rights commission in Alabama would be between \$300,00 to \$500,000 for that state. He suggested there may be some cost savings because some states found dramatic decreases in legal costs expended. John said he would be happy to send us some related materials to our office. He also indicated that they are very close to finishing a report on ND Civil Rights Enforcement and that he may be able to testify on the bill if he was asked to come.

I hope this is helpful to you.

TESTIMONY ON BEHALF OF THE NORTH DAKOTA ADVISORY
COMMITTEE ON CIVIL RIGHTS

Delivered by
Carole Barrett
In Reference to
H.B. 1469

My name is Carole Barrett. I am speaking on behalf of the North Dakota Advisory Committee to the United States Commission on Civil Rights. I feel it is important to stress this committee is comprised of citizens of the state of North Dakota. We all live and work in this state, and our work on the Advisory Committee reflects individual and collective commitment to human rights. The Advisory Committee on Civil Rights stresses balance in terms of race, gender, political affiliation, and religion in order to best represent and reflect the needs of the people of North Dakota. I say this so there is no misperception of the North Dakota Advisory committee as a bunch of malcontent outsiders who don't understand North Dakota.

During the past several years the Advisory Committee has conducted a study on the nature and extent of possible discrimination in North Dakota with focus on the adequacy and effectiveness of provisions of the various statutes comprising what is often termed the North Dakota Human Rights Act. In large part, our study is derived from testimony of individual North Dakota citizens, elected and appointed government officials, business owners, spokespersons for private and public agencies, and leaders of various organizations. A preliminary study report based on the findings of this committee will be released later this year. Highlights of the findings of the North Dakota Advisory Committee on Civil Rights follows.

*There is both overt and covert discrimination in North Dakota. Particularly noted are problems in the areas of accessibility, housing and employment—basic issues which strike at the heart of individual and family security and well-being.

*Those particularly feeling the sting of discrimination in housing and employment are handicapped, single women with children, and racial minorities (particularly American Indian, Hispanic, and non-white immigrants).

*In all cases, personal stories of discrimination based around these issues were verified by statistics and other data from studies, government agencies, or private organizations. There are significant and real issues of discrimination in the state, a reality that will not go away.

*The frustration level of individual citizens of the state, heads of agencies, and even elected officials is high, because there is no clear way for individuals to seek redress of grievances. Except for employment discrimination, complaints of discrimination in violation of federal statutes must be lodged with agencies in Denver or Kansas City.

*The North Dakota Department of Labor receives a grant from the federal government (EEOC) to investigate complaints of employment discrimination based on federal statutes, however, no funds are provided to the NDDOL to investigate complaints under state statutes. Additionally, many individuals, inside and outside of government, forthrightly stated significant dissatisfaction with the limited ability of the NDDOL to receive, investigate, mediate, and resolve cases satisfactorily.

*The collection of statutes referred to as the North Dakota Human Rights Act lack meaning and effectiveness for North Dakota citizens and for state government because there is a deep void in enforcement and no single state agency or commission is charged with the responsibility to investigate complaints or enforce the Act.

There is a need for leadership from the state to insure basic human rights protections for all citizens of North Dakota, and so the North Dakota Advisory Committee on Civil Rights urges a “do pass” on HB 1469. A Human Rights Commission does not threaten a state, it does not add layers of government, it does not subvert business—it affirms all citizens of the state and insures a healthy climate in which to live, work, educate and raise children.

Section
 14-02.4-20. Relief.
 14-02.4-21. Optional mediation by depart-

ment of labor — Relief — Ap-
 peals — Records exempt.

14-02.4-01. State policy against discrimination. It is the policy of this state to prohibit discrimination on the basis of race, color, religion, sex, national origin, age, the presence of any mental or physical disability, status with regard to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours which is not in direct conflict with the essential business-related interests of the employer; to prevent and eliminate discrimination in employment relations, public accommodations, housing, state and local government services, and credit transactions; and to deter those who aid, abet, or induce discrimination or coerce others to discriminate.

Source: S.L. 1983, ch. 173, § 1; 1991, ch. 142, § 1; 1993, ch. 140, § 1.

Contract.

A contract cannot excuse later unlawful discrimination. *Moses v. Burleigh County*, 438 N.W.2d 186 (N.D. 1989).

When an important public policy would be frustrated by a promise, the policy outweighs enforcement of the promise. *Moses v. Burleigh County*, 438 N.W.2d 186 (N.D. 1989).

To permit a contractual term to vary the intent of a law against discrimination in commercial and contractual matters would make the law ineffective. If an employer could require waiver of an anti-discrimination law as a condition of employment, it could become a widespread practice, increasing discrimination rather than doing away with it. It would be nearly impossible to enforce anti-discrimination laws in employment. Intrinsicly, a law against discrimination outlaws contradictory contracts. *Moses v. Burleigh County*, 438 N.W.2d 186 (N.D. 1989).

Overweight.

The mere assertion that one is overweight or obese is not alone adequate to make a claimant one of the class of persons afforded relief for discrimination; something more must be shown. *Krein v. Marian Manor Nursing Home*, 415 N.W.2d 793 (N.D. 1987).

Training and Transfer.

A sheriff cannot unfairly refuse to consider training and transfer for a person while later hiring applicants of another race or sex into the same division for training and transfer. *Moses v. Burleigh County*, 438 N.W.2d 186 (N.D. 1989).

Waiver of Prior Discrimination.

A clear subsequent contract may properly waive or settle prior discriminatory conduct.

That circumstance must be distinguished, from the proscription against contractual waiver of unlawful discrimination in advance of the conduct. *Moses v. Burleigh County*, 438 N.W.2d 186 (N.D. 1989).

Women Prisoners.

The warden of a penitentiary cannot categorically exclude all women from the Missouri River correctional center when the legislature has authorized sentencing judges to place women there. *Little v. Graff*, 507 N.W.2d 55 (N.D. 1993).

Collateral References.

Exclusion of one sex from admission to or enjoyment of equal privileges in places of accommodation or entertainment as actionable sex discrimination under state law, 38 A.L.R.4th 339.

Exclusion or expulsion from association or club as violation of state civil rights act, 38 A.L.R.4th 628.

Accommodation requirement under state legislation forbidding job discrimination on account of handicap, 76 A.L.R.4th 310.

Judicial construction and application of state legislation prohibiting religious discrimination in employment, 37 A.L.R.5th 349.


Application of state law to age discrimination in employment, 51 A.L.R.5th 1.

Law Reviews.

Civil Rights: Race and Sex Discrimination in Refusal to Train Correctional Officer is Not Excused by Contract Under North Dakota Human Rights Act, 66 N.D. L. Rev. 537 (1990).

Civil Rights — Employment Discrimination: Modifying Federal Standards to Reflect Principles of State Law: The North Dakota Supreme Court's Examination of the Hicks Rationale Prompts the Court to Customize Its Own Standard to Review State-Based Em-

NORTH DAKOTA Fair Housing Council, INC.

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Equal Housing Opportunity

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Testimony before the House Appropriations Committee by the North Dakota Fair Housing Council January 25, 1999

Good morning. Mr. Chairman, and members of the Committee, my name is Amy Schauer Nelson. I am Executive Director of the North Dakota Fair Housing Council. The Fair Housing Council supports HB 1469 because it will provide a Human Rights Commission which could conciliate, mediate and enforce complaints of housing discrimination.

The North Dakota Fair Housing Council is a non-profit organization designed to provide support, encouragement, and assistance to those seeking equal access to housing in the State of North Dakota. Our purposes are to provide education and outreach explaining fair housing to both housing providers and users of the services and to investigate complaints of housing discrimination. The federal Fair Housing Law states that it is illegal to discriminate in the sale, rental or lending of housing based upon race, color, religion, gender, national origin, disability and familial status. A victim may file a complaint with the U.S. Department of Housing & Urban Development's (HUD) Denver Office or in court. When filed with HUD, HUD is then required to review and rule on the complaint.

The North Dakota Human Rights Act provides all the federal protections and also protects individuals based upon marital status, source of income and age. However, a victim under the North Dakota Human Rights Act can only file in court. A complaint under a state issue cannot be filed with HUD.

In 1998, the Fair Housing Council registered or received 332 complaints of alleged housing discrimination. Our organization investigates these complaints and if the investigation supports the allegations, we then assist individuals in filing their complaint. In cases in which discrimination falls under the federal act, complainants have one year to file a complaint with HUD and two years to file with district court. In cases in which we do not find support to the allegations, we notify the complainant. The complainant still has the option of filing a complaint with HUD or in court, but the Fair Housing Council will not assist in the process. We received the largest number of complaints in 1998 based upon familial status and disability.

In cases in which discrimination falls only under the state act, complainants currently have six months to file in court. Again, they do not have the option of filing with HUD. Of the 332 complaints received in 1998, 104 were based on state protected

classes (marital status, age and source of income). These are complaints where the only remedy is filing in court and hiring attorneys. As you know, attorneys are expensive. The Fair Housing Council has a limited budget and if we are unable to hire attorneys for a complainant, complainants typically let the discrimination continue to occur because they do not have the funds to hire an attorney on their own. As a result, individuals discriminated against under the North Dakota Human Rights Act have few options and are not being adequately served by the State. Victims believe there is little they can do to end discrimination.

The HUD process is the preferred mechanism for most of our clients because it is a free process and attorneys need not be hired. However, when it comes to ruling on a complaint, HUD's resources are extremely limited in staff and travel budgets. When a complaint is filed with HUD, there is typically a two-three year lapse before there is a "no cause," "conciliation," or "enforcement" agreement, whereas, the court process typically only takes one year for a ruling. We sympathize with HUD's budget and staff cut-backs. We know that it is expensive for HUD to fly staff from Denver to North Dakota to investigate so that HUD can rule on filed complaints. However, it is difficult for our clients to understand this lengthy process when they continue to be a victim of discrimination. Since 1995, the Fair Housing Council and/or its clients have filed seventy complaints with HUD. Of these complaints, the Fair Housing Council and/or its clients have thirty-three complaints still pending with HUD, some having been filed in 1995.

It is my understanding that if another bill, HB 1043, passes as it is currently written, HUD would deem North Dakota to have a substantially equivalent fair housing law. As such, a North Dakota agency or department would then be eligible to receive federal funding to review, conciliate, mediate, and enforce complaints of federal housing discrimination. Should a Human Rights Commission be created and HB 1043 passes, the Commission would be eligible for these funds.

This agency or department would then also have the capability to mediate, conciliate and enforce state complaints, thus, providing an option to the court process. North Dakota would then be more adequately meeting the needs of its citizens. North Dakota would also have the exclusive right to process a complaint from one of its citizens, instead of that citizen having to look outside the State for needed assistance.

In my discussions with HUD, it is my understanding that there are capacity building funds available at a rate of \$100,00 per year. To receive these funds, the agency must commit to activities such as: HUD-sponsored training, case processing, education and outreach, implementation of data and information systems and other fair housing activities. For each complaint processed, the agency would receive \$1,700-2,200 in support. Additional funding of up to 20% of a cooperative agreement is available if an agency meets certain guidelines. For a staff of 3-6, the agency is also eligible for up to \$15,000 in HUD training for that staff. Additional funding is available for larger staffs. Funding at varying rates is also available for outreach and data and information training for the staff.

Discrimination tends to be invisible unless you happen to be among the groups whose freedom is restricted. Providing an agency or department capable of ruling on both federal and state housing discrimination complaints, improves the quality of life for North Dakota citizens. This legislation would be a positive step forward in providing a free and open housing market and further show North Dakota's commitment to equal housing opportunities for its citizens. We are anxious to work with another organization to eliminate the obstacles found at every step of the housing consumer's search for a decent and safe home that they can afford.

Thank you for hearing my testimony and I appreciate your time.

A091.B

**Appropriations Committee
North Dakota House of Representatives
56th Legislative Assembly**

**Testimony of Thomas M. Disselhorst
Attorney at Law
on HB 1469
Human Rights Commission
January 25, 1999**

Thank you, Mr. Chairman, for the opportunity to testify on HB 1469 concerning the need to establish a Human Rights Commission in North Dakota. First, for identification purposes, I should note that I am a staff attorney for the Three Affiliated Tribes, as well as counsel for United Tribes Technical College in Bismarck, North Dakota.

Second, I wish to note that I have a recommended amendment to the bill, to ensure that the Human Rights Commission seek all possible funding for its operations from sources other than the state. A copy of the amendment is attached to my testimony.

For more than 23 years, in a variety of settings, I have been an attorney representing Indian citizens of the state of North Dakota. When I first came to North Dakota in 1975, I was a VISTA volunteer attorney at United Tribes. As I looked for an apartment, and was asked where I was employed, more than once I had doors closed in my face, apparently simply because of where I worked. It was a stark introduction to racism in North Dakota, and at that time, I did not know where to turn for a remedy.

As I began assisting Indian citizens in various legal actions, I soon learned that it was highly unlikely for an Indian to ever appear on a jury panel, that the Bismarck Municipal Judge had different bail schedules for Indians and non-Indians, and that the local Clerk of Court had a different, and more difficult, set of requirements for identification cards for Indians than for non-Indians. Through pressure that myself and other attorneys working on behalf of Indian citizens were able to exert on these, and other, racist practices, some of them have now been eliminated.

Yet, I would suggest that Indians are still rarely selected to be on a jury panel and that their representation on jury panels is still proportionately far less than their population would warrant. While this is not an issue that a Human Rights Commission could easily remedy, it is indicative of larger racial problems in our state, problems that are costing this state both economically and socially, problems that undermine dramatically confidence that our state government is treating its citizens fairly.

Powers of a Human Rights Commission

What would a Human Rights Commission as established under HB 1469 do? It would have the power to investigate, mediate and resolve claims of violations of our state's Human Rights Act, contained in Chapter 14-02.4. These powers are listed on pages 3 and 4 of the HB 1469, and include, among other things, the right to issue orders, such as an order to cease and desist a discriminatory practice, to award actual damages and assess civil penalties for discriminatory conduct. The actions of the Human Rights Commission would be reviewable in state District Court as a final agency decision under the state's Administrative Procedures Act, N.D.C.C. chapter 28-32. These are powers that are not contained in the kind of agency created in HB 1043, also under consideration in the House.

Human Rights Commission as Economic Boon to State

A Human Rights Commission that would provide education about the civil rights of all of our citizens and would enforce our Human Rights Act would begin to alleviate the social problems that racism causes and would eventually be a tremendous economic boon to our state. Why do I say that the Human Rights Commission would be an economic boon?

The House Appropriations Committee of the North Dakota Legislature is understandably concerned about keeping government expenditure of public dollars at a minimum. But racial injustice almost always causes unnecessary economic dislocations. People who otherwise are qualified for work are unable to obtain it and have little remedy or do not seek such employment because they believe they will not get the job advertised. Such individuals often end up on the welfare rolls, costing the state untold millions of dollars. As representatives from the North Dakota Department of Human Services will tell you, Indians now represent approximately 55% of the all persons on welfare in the state of North Dakota. Unemployment rates are often artificially low on the Indian reservations because most unemployed people have not been employed recently enough or long enough to be able to be counted as looking for work.

Now, with welfare reform, individuals and families only have a limited time to find employment. Just 3 1/2 years from now, the 60 month time limit will begin affecting North Dakotans. It is critical that persons on welfare know that they will have fair chance to seek employment -- that if they are denied work because of their race, they will have an adequate remedy right here in North Dakota, not in Denver, Colorado or in the Department of Justice in Washington, D.C. They need to know that if they are successful in finding employment, they will be able to obtain affordable housing, and if a landlord or real estate agent or bank denies them housing because of their race, that they will have

a remedy right here in North Dakota, and not in Denver, Colorado or Washington, D.C. They need to know that if they find employment, and housing, they will be able to cash their paychecks without undue difficulty, and that they will be able to shop in the local malls and other shopping areas without feeling unwelcome. They need to know that state agencies will provide them services, such as housing financing, without regard to their race and that if they are denied state services, they will have a remedy that will not require them to hire an attorney to file a state court action that will be heard by an all-white jury.

Welfare services cost the state many millions of dollars. If a Human Rights Commission can help people secure adequate employment, housing and public services that otherwise might be denied to those on welfare, it will pay for itself in each year of its operation as persons on welfare become productive tax-paying citizens. That is why in the end a Human Rights Commission is a very cost effective agency and a boon to our state.

Further, it should be recognized that much of the funding for a Human Rights Commission can be supplied by the Federal government, and by grants from a variety of private funding sources. The appropriation asked for, \$190,000, is very modest investment of state resources that, as indicated above, will be more than paid for by allowing all state citizens to fully enjoy the rights and privileges of citizenship.

Do statistics show that a Human Rights Commission is needed in North Dakota?

During the past two years, the North Dakota Advisory Committee to the U.S. Commission on Civil Rights held two hearings, in Fargo and Bismarck, concerning the need for a Human Rights Commission in North Dakota. Presenter after presenter provided graphic testimony of problems of discrimination in this state, against Indians, against single mothers, against foreign refugees, against other minorities, against poor people, and against women, to name a few of the groups whose members suffered discrimination. Before this Committee acts on HB 1469, I would urge the Appropriations Committee to carefully study the information provided at those hearings, particularly the testimony and information compiled by the Human Relations Office that was operated for approximately 4 years in Grand Forks, North Dakota. The Grand Forks office gives some indication of the level of discrimination present in just one of the four major cities in North Dakota, and some indication of the number of complaints a Human Rights Commission can be expected to receive when it is known that an office is available to handle and fully resolve such complaints in North Dakota.

There is no doubt that someone from the Labor Department will tell you that there are no major employment discrimination problems in North Dakota of which it is aware, since it provides an initial investigation of employment discrimination complaints in North

Testimony of Thomas M. Disselhorst
HB 1469, House Appropriations Committee
January 25, 1999
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Dakota before the file is sent to the Equal Employment Opportunity Commission's regional office in Denver, Colorado. As an attorney, I am also aware that making a complaint to the Labor Department is basically a futile act for the person seeking any kind of prompt remedy for a discriminatory act. Since the Labor Department lacks the ability to provide a complete resolution of a discrimination complaint, many legitimate complaints of employment discrimination will simply not be filed or acted upon by the person who suffered the discrimination, in large part because of the inordinate amount of time it takes to get any kind of just resolution in a case, and the unlikelihood that any satisfactory resolution will be obtained. As the testimony before the North Dakota Advisory Committee to the U.S. Commission on Civil Rights indicated, a real Human Rights Commission will undoubtedly receive far more employment discrimination complaints, many with more substance to them, than the Labor Department generally has received.

This testimony could continue for many more pages, outlining many examples of discriminatory treatment I have observed in recent years or which have been described to me by many persons, clients and otherwise. A Human Rights Commission located in North Dakota cannot solve all of the problems of generations of racial discrimination. But it can begin the process of showing people how harmful discrimination really is, and what it costs the state of North Dakota and its citizens. It can help restore faith to many persons who simply do not now have a reasonable remedy when they suffer from harmful acts of discrimination.

I urge a DO PASS recommendation for HB 1469.

Mr. Chairman and members of the Appropriations Committee,

My name is Audrey Cleary and I represent District 49, the northeast corner of Bismarck.

HB 1469 would establish a North Dakota Human Rights Commission.

You have heard this concept before.

State and federal laws contain provisions to address violations of state and federal discrimination laws. However, the mechanisms currently available to remedy those violations do not provide effective relief for many North Dakotans who are victims of unlawful discrimination. This bill would give them a place to have that discrimination redressed.

We, as North Dakotans, want to believe that we not suffer from these problems. The reality, however, is that we do. We can acknowledge our need and provide a means and a place whereby those oppressed by discrimination can be heard and helped.

Please endorse fairness and equity by passing HB 1469. Attached is a summary of the bill.

Thank you and I would be happy to try to answer any questions. There are many people here who wish to testify and they have better answers than I.

TESTIMONY ON HB 1469

It is short-sited to view \$560,000 as an unnecessary expense. It is a minimal investment in the people of North Dakota.

\$560,000 is not the actual cost to the state.

- Contracts with the federal Equal Employment Opportunity Commission and the Department of Housing and Urban Development could easily pick up one third to one half of the total expense.**
- A start-up grant from a private foundation might easily defray the Initial cost of creating a new office, and**
- The costs of a case could be offset by allowing the commission to assess an administrative fee against an individual or entity which has been found, through an appropriate administrative proceeding to have violated state and/or federal human rights provisions.**

TESTIMONY FOR HB 1469

Prepared by Representative Audrey Cleary

Monday, January 25, 1999

Mr. Chairman and members of the committee. What follows is the Human Rights Commission Bill Summary.

- Requires commission to educate employers, Realtors, landlords, service providers and commercial lenders so they can develop strategies to prevent unlawful discrimination and avoid having to defend against costly and unnecessary complaints and lawsuits.
- Requires commission to educate the public about their rights and responsibilities under state and federal anti-discrimination laws.
- Commission is administratively attached, and therefore under the supervision of the office of the governor to ensure accountability.
- Requires commission to attempt to informally resolve conflicts between parties to a complaint through conference, conciliation, or persuasion in order to avoid a more formal action of the commission.
- If informal conflict resolution attempts are unsuccessful, the bill authorizes the commission to conduct hearings, issue subpoenas, accept recommendations from its hearing officers, award actual damages, and assess administrative fees to remedy unlawful discrimination.
- The commission will have five commissioners, appointed by the governor, who will serve a five year term, or at the pleasure of the governor. Commissioners should demonstrate through volunteer activities, education, work and employment history, etc., that they have some special sensitivity to human rights concerns from the perspectives of employers and employees; management and labor; providers and users of public accommodations and services; landlords and tenants; real estate sellers, buyers, and sales people; providers and users of state and local government services; and borrowers and commercial lenders. Commissioners should also demonstrate a special sensitivity to issue of discrimination based upon race, color, national origin, religion, status with regard to public assistance, sex, age, marital status, or the perception of a physical or mental disability.
- Commissioners must be 18 years of age or older and a resident of North Dakota; must not have been convicted of a felony, or found to have committed an act of unlawful discrimination.

- The commission shall have responsibility for hiring an executive director and other staff, although they may delegate their authority for all employment decisions (except concerning the executive director) to the executive director. The commission may hire an attorney to serve as legal counsel and other staff as funds allow. The commission may also appoint hearing officers to hear contested cases and petitions for declaratory rulings, or contract with a private provider of dispute resolution services to provide these services.
- The commission has authority to enforce the provisions in chapter 14-02.4 of the North Dakota Century Code; may contract with the federal government or any federal agency to coordinate and fund some of the commission's activities; and seek other contracts and grants to help fund the commission's activities.
- Prevailing parties in hearings before the commission may bring action in state district court for reasonable attorney fees.
- If the commission determines that unlawful discrimination has occurred, it may order the offending party to conform all future conduct to certain conditions relative to the type of discriminatory practice involved; implement reasonable measures to correct the unlawful discrimination and rectify any harm, pecuniary or otherwise, to the victim or victims of the unlawful discrimination; report on the manner and progress of compliance; permit commission staff to investigate and monitor compliance for no more than three years; and dismiss all complaints if the commission cannot determine that unlawful discrimination has occurred.
- The commission cannot issue any order for the payment of punitive damages to the alleged victim.
- Orders of the commission can be enforced in state district court. It will be a Class B misdemeanor to willfully resist, prevent, impede, or interfere with the commission or its staff in the performance of an official duty, or to willfully violate an order of the commission.
- The bill preserves the private right of action which allows anyone who claims to be aggrieved by an unlawfully discriminatory practice to bring an action in state district court within three hundred days of the alleged act of wrongdoing without first filing a complaint with the commission. However, a complainant may not bring an action in district court within sixty days after a hearing on the merits of the case by the commission. Complaints properly filed in district court immediately divest the commission from jurisdiction in the matter.