

HB 1226

Senate Education

March 6, 2023

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Chair Elkin and Committee Members: My name is Chris Pieske, and I am the Chief Compliance Officer of the North Dakota University System (NDUS). I am here today in support of HB 1226. This bill would provide protections to the working papers of the NDUS compliance officer like those provided to the working papers of NDUS internal auditors and the State Auditor's Office.

The NDUS compliance office is responsible for promoting ethics and compliance with state and federal law, regulations, and policies throughout the North Dakota University System. The compliance office currently consists of one chief compliance officer. I also work with partners on each campus. A significant portion of the compliance office's work consists of investigating reports of potential violations of law, regulations, or policies. These reports are received through a Fraud and Compliance Hotline, an online form, and direct reports to the chief compliance officer. My office and my campus partners regularly obtain and evaluate sensitive, exempt, or confidential information while investigating these reports.

The work of the compliance office is made more difficult because protections for the working papers of the NDUS compliance officer are insufficient. Currently, under N.D.C.C. § 44-04-18.1(6), records of an investigation are exempt until the investigation is complete, but no longer than 75 days. This means that the subject of an investigation (or any member of the public) could make an open records request for investigators' notes and working papers for any compliance investigation in progress for longer than 75 days. Complex and highly sensitive investigations can take much longer than 75 days. This gap in protection could frustrate the purpose of the compliance office, the effectiveness of our investigations, and the trust necessary to promote ethics and compliance throughout the North Dakota University System.

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During the 2021 legislative session, this body adopted N.D.C.C. § 15-10-44.3, which provides protection to the working papers of NDUS internal auditors. My office works closely with the NDUS internal auditors, and I receive similarly sensitive information in the course of my work. The protections HB 1226 would provide to working papers of the compliance office are like those provided to NDUS internal auditors and the State Auditor's Office in N.D.C.C. § 54-10-26. Working papers include records kept by the compliance officer of the procedures applied, the tests performed, the information obtained, draft compliance reports, and the preliminary conclusions reached in the engagement. Under HB 1226, the compliance officer would have the discretion to make non-confidential working papers available for inspection before the final report. Once the report is issued, the working papers will be publicly available, if appropriate. In instances when the compliance officer's working papers contain sensitive, exempt, or confidential information, all or a portion of the working papers related to an issued report may be declared confidential at the discretion of the compliance officer. The declaration of confidentiality must state the reason for the confidentiality and the date when the working papers will be made public, if any.

This bill ensures that the NDUS compliance office can conduct investigations in a confidential and sensitive manner while still ensuring transparency to the public. HB 1226 provides similar protections to those already granted to NDUS internal auditors and the State Auditor's Office. I respectfully request that the members of the Committee give this bill a "do pass" recommendation.

Thank you for your time and consideration. I stand ready to answer your questions.