

2025 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1360

2025 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Pioneer Room, State Capitol

HB 1360
1/31/2025

Relating to the enforcement process for the North Dakota ethics commission; and relating to complaints filed with the North Dakota ethics commission.

8:36 a.m. Chairman Schauer opened the hearing.

Members present: Chairman Schauer, Vice Chairman Satrom, Representatives Bahl, Brown, Christy, Grindberg, Karls, McLeod, Rohr, Schneider, Steiner, VanWinkle, Vetter, Wolff

Discussion Topics:

- New definitions
- Efficient enforcement
- First amendment concerns

8:37 a.m. Representative Christy, District 27, introduced the bill and submitted testimony, #33167.

8:41 a.m. Rebecca Binstock, Executive Director of the North Dakota Ethics Commission, testified in favor and submitted testimony, #33116, #33159.

9:16 a.m. Murray Sagsveen, Director of the North Dakota Ethics Commission, testified in favor and submitted testimony, #33090.

9:16 a.m. Claire Ness, Chief Deputy Attorney General of North Dakota, testified in opposition and submitted testimony #33310.

9:33 a.m. Chairman Schauer closed the hearing.

Jackson Toman, Committee Clerk



House Government and Veterans Affairs Committee

Testimony in Support of House Bill 1360 on January 31, 2025

Chair Schauer and members of this Committee. I am Murray Sagsveen, the newest member of the Ethics Commission. My professional career spans more than a half-century as a military officer, attorney, and public official, which provides an excellent insight into an appropriate enforcement process.

Voters adopted Article XIV of the North Dakota constitution in November 2018, and legislators scrambled in the following months to adopt implementing legislation without any input from the Commission (all commissioners were appointed by September 2019, and the first executive director was hired in January 2020). Under those circumstances, the legislature should be commended for adopting version 1.0 legislation.

Nearly six years have passed since the 28-section House Bill 1521 was enacted in May 2019, and the law has been amended in 2021 and 2023. The experience of the Commission and staff has revealed that continued “fine tuning” is necessary. House Bill 1360, if enacted, would be a significant improvement to the 2019 version 1.0 legislation.

Several comments about House Bill 1360.

1. The complainant. Currently, a complainant is involved in the initial stage of the enforcement process, which causes several problems:

- A complainant could file a complaint to gain leverage over the respondent, such as adverse publicity or offering to withdraw a complaint if the respondent (a legislator or public official) would agree to take a certain action.
- During this initial stage, the executive director must assume the inappropriate role of a mediator between the complainant and respondent.
- The mediation stage may unnecessarily extend the enforcement process for many months.

House Bill 1360 solves this problem.

2. Enforcement should be an administrative process. Currently, the law includes criminal terminology and favors the criminal process.

House Bill 1360, if enacted, would remove the term “complainant” from Chapter 54-66. This is a very positive signal that the enforcement process is transitioning from a criminal to an administrative process.

Also, the current law, at 54-66-08(2), requires the Commission to refer a complaint to a law enforcement agency if “a complaint contains allegations of criminal conduct,” which could lengthen the enforcement process for many months.

From a practical aspect, law enforcement agencies may be unwilling to prosecute (what they may consider) minor violations of the law. Criminal prosecutions would require proving to a judge or jury beyond a reasonable doubt that the defendant violated the law.

A much less complicated administrative enforcement process by the Ethics Commission would accomplish a key objective of Article XIV of the constitution – the Commission would accept, investigate, and timely complete all allegations of ethical misconduct brought to its attention in a manner that prompt, efficient, confidential, and respectful of the respondents’ rights.

House Bill 1360 removes the requirement that the Commission must refer possible criminal conduct to a law enforcement agency. However, the Commission would still have the discretion to refer egregious cases to a law enforcement agency.

3. Current law is cumbersome. After my appointment to the Commission, I tried to sketch a flow chart to follow the statutory enforcement process from the complaint through the final Commission action. It revealed to me that the current statutory process is complicated, cumbersome, and time-consuming.

House Bill 1360 vastly streamlines and would certainly shorten the enforcement process without sacrificing due process rights of the respondent.

Recommendation

Therefore, I strongly recommend that this committee vote “do pass” on House Bill 1360.

Murray G. Sagsveen
1277 Eagle Crest Loop
Bismarck, ND 58503



North Dakota Ethics Commission
House Bill 1360
Testimony presented by
Rebecca Binstock, Executive Director
Before the House Government and Veterans Affairs Committee
January 31, 2025

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)

Article XIV directs the Commission to “adopt ethics rules related to transparency, corruption, elections, and lobbying” and to “investigate alleged violations of such rules, [Article XIV], and related state laws.”

In 2019, prior to commissioners being appointed, the legislature began implementing Article XIV through legislation. As part of its work, the legislature created a complaint process to guide Commission investigations. Once in place, the Commission created rules to further guide the complaint process. By working through the complaint process over the past five years, the Commission learned the process has multiple problem areas that should be addressed for the benefit of the Commission, those under its jurisdiction, and the public.

HB 1360

When chapter 54-66 was enacted in 2019, the legislature did not have the benefit of any data or ethics laws enforcement experience. We now have such data and experience. With this in mind, this past year, the Commission did a full review of how to improve the process based upon its five years of data. House Bill 1360 is the product of that work, extensive research, and many productive discussions between the Commission, legislators, legislative leadership, public officials, legislative council, lobbyists, and the public.

HB 1360 revamps the Commission's investigative process by removing "complaints" entirely. It replaces the current complaint process with an enforcement process. The enforcement process serves four main goals of the Commission and those impacted by its work.

- Goal 1 The enforcement process will address concerns brought to the Commission through education first.**
- Goal 2 The enforcement process will reduce red tape.**
- Goal 3 The enforcement process will bolster due process by allowing more opportunities for a respondent to interact with the five commissioners and defend him or herself publicly.**
- Goal 4 The enforcement process will address ethics concerns in an efficient way and use taxpayer resources responsibly.**

Problems with the Current Complaint Process

To understand the need for this enforcement process, it is important to walk through the current complaint process and its inefficiencies. Currently, the Commission must walk through a three-step process that is almost entirely driven by a complainant. However, the complainant may not have a vested, personal interest in addressing and correcting unethical conduct. The current complaint process allows a complainant to potentially abuse and politically exploit the Commission's work. The following example walks through the current complaint process to show its pitfalls.

Suppose the Commission receives a complaint alleging public official Jane Doe violated the lobbyist gift prohibition in Article XIV and the Commission's rules. The complaint alleges Ms. Doe attended a free, but expensive dinner hosted by a lobbyist, and the lobbyist encouraged Ms. Doe to take an official action that would benefit the lobbyist's

client. In addition to the free dinner, the complaint alleges the lobbyist gave Ms. Doe a \$100 gift card as a thank you.

Commission staff begin reviewing the complaint. The complaint can be many pages long, be unorganized, and to find the crux of the matter may be like finding a needle in a haystack. This requires many hours of staff time and can take months depending on Commission staff's workload.

Now suppose while Commission staff is reviewing the complaint, the complainant sends a copy of the complaint to the media, which publishes a story about it. As a public official, Ms. Doe is currently prohibited under the confidentiality statute from publicly responding and defending herself. The Commission also cannot comment, and instead of focusing on reviewing the complaint now must answer questions from the media with "no comment."

The Commission also must determine if it believes any criminal conduct is implicated by the allegations in the complaint. If so, a statute requires the Commission to refer the matter to law enforcement and put a pin in any further Commission action. This referral process can also take many months, adds additional work for state's attorneys to review, and because of the nominal amount involved, will likely not result in a prosecution.

After completing the initial review, the Commission must then offer the complainant and Ms. Doe an opportunity to informally resolve or mediate the complaint. This is step 2. The Commission has found informal resolution to be the most significant bottleneck in the complaint process. The Commission must maintain its neutrality at this step and cannot take a stance on the allegations. Instead, the Commission must provide both individuals ample time to think about and propose a resolution. Once the Commission has these proposals, it must go back and forth between the complainant and respondent in an attempt to settle the complaint. In theory, this seems workable. In reality, complainants will often unacceptably ask for money or for a public official to resign. Informal resolution can then turn into months of going back and forth with the complainant and the respondent, with little to no movement.

Finally, after much time has passed, the Commission can then begin investigating the complaint at step 3. Commission staff must identify witnesses and documents needed for the investigation and then obtain interviews and documents. Depending on the complexity of the allegations, an investigation takes time, especially when the Commission is met with a lack of cooperation. At the end of the investigation, the facts may indicate Ms. Doe did not actually accept the \$100 gift card. However, Commission

staff's work is not over if that fact is made clear. Instead, Commission staff writes a thorough report documenting the investigation and its findings for the five commissioners. By the time the Commission can act on the report, a lot of time and resources have been invested by the Commission, Commission staff, Ms. Doe, and witnesses.

Review of Article XIV and Constitutional Ethics Commissions

To address the problems with the current complaint process, the Commission looked back to Article XIV. At the end of the day, the duty of the Commission and all public servants is to uphold and carry out the constitution. Interestingly, Article XIV does not mention the word "complaint." Rather, Article XIV states the Commission "may investigate **alleged violations**" and "any person acting in good faith may submit **relevant information**."

Using Article XIV's language as the starting point, the Commission looked to constitutional ethics commissions in other states for how they enforce the law and promote ethical governance. Other ethics commissions serve as a great guide for North Dakota as they have the benefit of many years of operation. The Commission particularly focused on the process used in Texas, which is another constitutional ethics commission.

The Enforcement Process

The enforcement process reinvents the current complaint process to achieve the goals identified and better align with the language of Article XIV. Before we discuss the steps of the process, at its outset, HB 1360 addresses two of the previously identified goals. First, HB 1360 and the Commission's companion rules that will follow shorten the law and remove duplicate provisions. Reducing these unnecessary red tape provisions makes it easier for individuals to understand and navigate the process.

Second, HB 1360 changes the confidentiality provisions to reduce opportunities for political exploitation and to allow a respondent to defend him or herself publicly. Moreover, by removing the word "complaint," the phrase "a complaint has been filed" loses any steam in the rumor mill. Instead of complaints, relevant information is submitted to the Commission.

Commission investigations will still maintain their confidential status until a respondent has a chance to appeal or does appeal a Commission finding of an ethical violation in court. However, HB 1360 ensures the person submitting information and the respondent can speak about the matter while the Commission goes through the process. The Commission has First Amendment concerns with the current statute. Its language does

not allow a public official to publicly discuss a complaint pending against the public official.

Now to demonstrate the proposed enforcement process, let's use the same example of Ms. Doe and the \$100 gift card. I would encourage committee members to follow along with by using Attachment 1, Enforcement Process Flowchart.

1. Relevant information is submitted to the Commission and the opportunity for settlement begins.

An individual who is concerned about Ms. Doe accepting the gift card may call or write to the Commission. The information provided is considered "relevant information" as defined in the bill. Once the Commission receives the relevant information, the Commission can then work with Ms. Doe at any point to understand her perspective of the matter, and, if she is open to it, settle it before it gets any further along in the process. As part of this settlement, the Commission has the option to provide guidance and help correct any potential concerns of Ms. Doe by working through the relevant information with her.

2. Commission staff conducts an informal investigation.

In the event Ms. Doe does not want to settle the matter or in the case of egregious conduct, the process bolsters due process by adding evidentiary standards and additional notice for Ms. Doe and opportunities for her to respond. If the matter must continue, the next step is an informal investigation by Commission staff. Here, Commission staff will gather additional information to better understand the relevant information provided to the Commission. At the end of this step, the executive director must prepare a report for the Commission and recommend the Commission close the matter or issue an alleged violation. The Commission may then issue the alleged violation, require additional informal investigation, or close the matter. Again, Ms. Doe and the Commission still have the option to settle and close the enforcement action at this stage.

3. The Commission may issue an alleged violation and formally investigate.

If an alleged violation is issued, Ms. Doe will have a clear written allegation, so she is aware of what specifically the Commission is investigating. The Commission will then proceed to a formal investigation. The formal investigation expands on the informal investigation and could include review of additional documents and additional interviews. Again, Ms. Doe and the Commission still have the option to settle and close the enforcement action during the formal investigation.

4. The Commission may find reasonable cause exists for a formal hearing.

Once the formal investigation is concluded, the executive director may prepare a request for a finding of reasonable cause by the Commission. If requested, Ms. Doe has thirty days to respond in writing. The Commission can then find reasonable cause exists to proceed to a formal hearing, require additional formal investigation, or close the matter. Again, Ms. Doe and the Commission still have the option to settle and close the enforcement action at this stage.

5. A formal hearing is held by the Commission, and an opportunity for rehearing is given to the respondent.

If the Commission issues a finding of reasonable cause, the Commission sets and notices a time and place for a formal hearing. The executive director then prepares a thorough report of the formal investigation and a recommendation to the Commission for how to resolve the enforcement action. Ms. Doe has thirty days to respond in writing before the hearing. Again, Ms. Doe and the Commission still have the option to settle and close the enforcement action at this stage.

At the formal hearing, Ms. Doe has an opportunity to be heard and present a defense to the Commission. After the formal hearing, the Commission deliberates and determines whether an ethical violation occurred. Ms. Doe then has additional time to ask for a rehearing before the Commission and, if still not satisfied with the Commission's conclusion, appeal the matter to district court for the court to review the Commission's actions.

6. A finding of an ethical violation becomes public.

If Ms. Doe does not appeal the Commission's finding of an ethical violation or, if appealed, the court affirms the finding, it becomes an open record. The Commission believes many enforcement actions will not get to this step in the process.

Effect on Enforcement

By focusing on education first, the Commission expects most enforcement actions will end with a settlement and a guidance letter. By changing the approach from punitive to corrective, the process encourages ethical government instead of a gotcha mentality. The citizens of North Dakota are the primary beneficiaries of the education first approach, as all residents of the state deserve honest and ethical governance.

In Texas, a similar approach has provided constructive, but effective enforcement of state ethics laws, with nearly all matters being settled without a formal hearing. Additionally, an enforcement process allowing the Commission, as opposed to the complainant, settle a matter with the respondent, reinforces the Commission's regulatory role and maintains accountability for non-compliance.

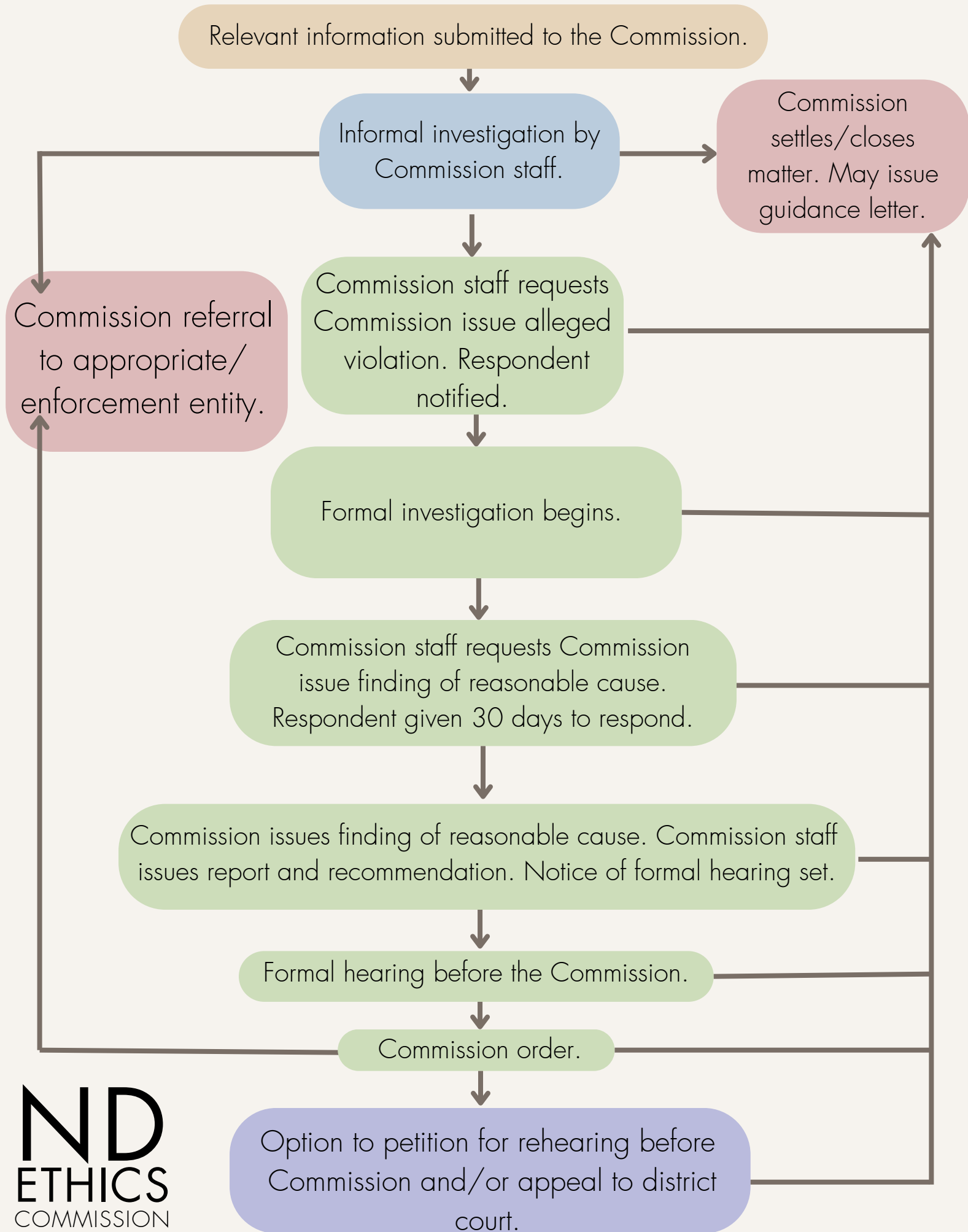
The Commission looks forward to working with the legislature to implement the enforcement process. HB 1360 is one step. After the legislation is implemented, the Commission has draft rules ready for informal guidance and amending the complaint rules to the new enforcement process. To review those documents please follow the following links:

Draft Enforcement Rules for the Commission to adopt after HB 1360: [LINK HERE](#)

Draft Informal Guidance Rules: [LINK HERE](#)

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

Proposed Enforcement Process in HB 1360 and Draft Commission Rules



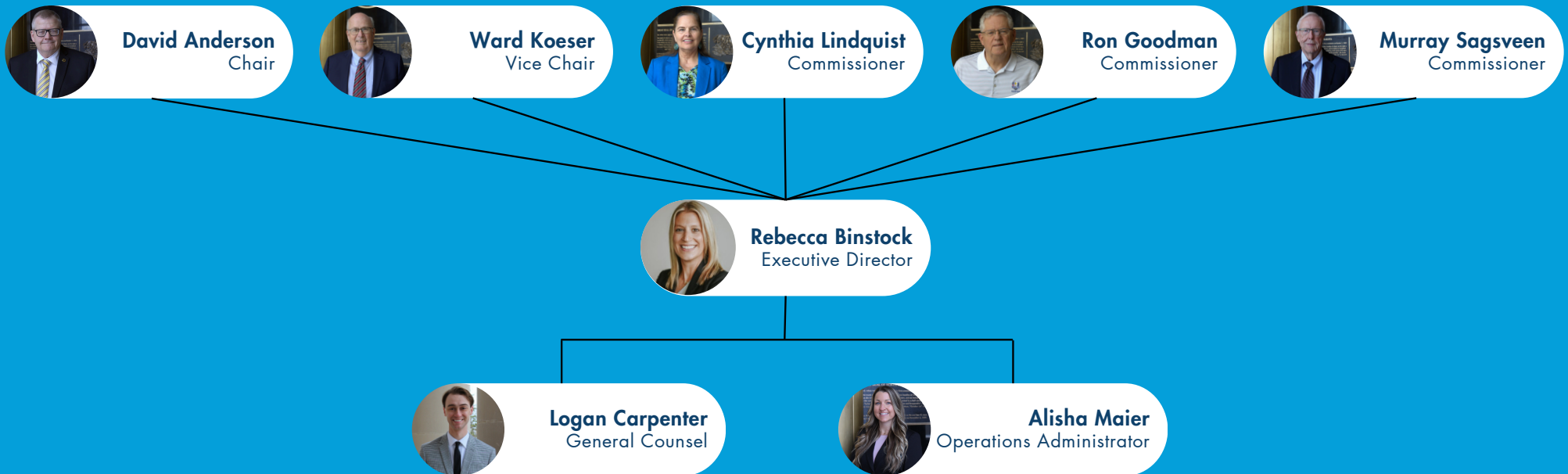
HB 1360

Testimony presented by
Executive Director Rebecca Binstock
House Government & Veteran Affairs Committee
January 31, 2025



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Organizational Chart



Goals of Improved Process

Goal 1: The enforcement process will address concerns brought to the Commission through education first.

Goal 2: The enforcement process will reduce red tape.

Goal 3: The enforcement process will bolster due process by allowing more opportunities for a respondent to interact with the five commissioners and defend him or herself publicly.

Goal 4: The enforcement process will address ethics concerns in an efficient way and use taxpayer resources responsibly.

Problems with Current Process

Problem 1: Confidentiality Issues

Problem 2: Complainant Driven

Problem 3: Political Exploitation of Commission's Work

Problem 4: Inefficiencies Prolong Complaint Process

STEP 1: INITIAL REVIEW

STEP 2: INFORMAL RESOLUTION

STEP 3: INVESTIGATION

Article XIV, § 3(2)

Section 3.

1. In order to strengthen the confidence of the people of North Dakota in their government, and to support open, ethical, and accountable government, the North Dakota ethics commission is hereby established.
2. The ethics commission may adopt ethics rules related to transparency, corruption, elections, and lobbying to which any lobbyist, public official, or candidate for public office shall be subject, and may investigate alleged violations of such rules, this article, and related state laws. The ethics commission shall maintain a confidential whistleblower hotline through which any person acting in good faith may submit relevant information. The legislative assembly shall provide adequate funds for the proper carrying out of the functions and duties of the commission.
3. The ethics commission shall consist of five members, appointed for four-year terms by consensus agreement of the governor, the majority leader of the senate, and the minority leader of the senate. No member of the ethics commission may hold other public office or be a lobbyist, candidate for public office, or political party official.

Revision Related to Confidential Information

- Ensures relevant information remains confidential until a final commission order and, if the respondent chooses, appeal.
- Allows a respondent to discuss the enforcement action.
- Allows an individual to discuss relevant information he or she submits to the Commission.
- Allows the Commission to disclose confidential information to the relevant civil and/or criminal enforcement authority.
- Addresses First Amendment concerns of the Commission



PROPOSED ENFORCEMENT PROCESS

Complaint Resolutions: North Dakota Ethics Commission

Year	Total Complaints Received	Summarily Dismissed		Informally Resolved		Pending	
2019	2	2	100%	0	0%	0	0%
2020	3	3	100%	0	0%	0	0%
2021	9	9	100%	0	0%	0	0%
2022	14	5	36%	1	7%	8	57%
2023	15	11	73%	1	7%	3	20%
2024	41	21	51%	0	0%	20	49%
Totals	84	51	61%	2	2%	31	37%

Note: This table categorizes resolution by the year in which the complaint was filed and does not necessarily reflect the year in which the resolution occurred.

Complaint Resolutions: Texas Ethics Commission

Sworn Complaints Resolution, FYs 2021-23

Fiscal Year	Total Complaints Received	Dismissed for Lack of Jurisdiction or Insufficient Information		Resolved in Preliminary Review Stage		Resolved at Preliminary Review Hearing		Resolved at Formal Hearing		Still Pending	
2021	279	162	58%	106	38%	8	3%	3	1%	0	0%
2022	379	219	58%	155	41%	5	1%	0	0%	0	0%
2023	390	203	52%	176	45%	5	1%	0	0%	6	2%

Note: This table categorizes resolution by the fiscal year in which the sworn complaint was filed and does not necessarily reflect the fiscal year in which the resolution occurred.



*Thank
you!*

ethicscommission@nd.gov

or

701.328.5325

ND | **ETHICS**
COMMISSION

House Bill 1360

North Dakota's **House Bill No. 1360 aims to refine and enhance the enforcement process of the **North Dakota Ethics Commission** by amending multiple sections of the **North Dakota Century Code** and repealing certain outdated provisions.**

****Key Points of the Bill:****

1. **Clearer Definitions & Enforcement Process:**

- Establishes terms like "alleged violation," "enforcement action," and "ethical violation" to streamline ethics investigations.
- Defines "regulated individuals" as lobbyists, public officials, candidates, political committees, or contributors.
 - This second bullet is in line with the current definition for an “accused individual.”

2. **Changes to Complaint Procedures:**

- Complaints can now be made verbally or in writing.
- The process actually removes complaints entirely and has concerned individuals submit “relevant information” instead. Individuals will submit the relevant information and are encouraged to be thorough for the Commission’s review of any potential ethics violations.
- Strengthens confidentiality protections for complainants and respondents.

3. **Investigation & Resolution Updates:**

- Ethics Commission may dismiss complaints, investigate internally, or refer to law enforcement.
- Ensures law enforcement coordination on cases with potential criminal implications.

- The bill removes the mandate that the Commission refer all criminal allegations brought to it. Instead, the Commission will have discretion to refer egregious criminal allegations to law enforcement.

4. **Closed Meetings & Confidentiality:**

- Clarifies when Commission discussions must remain confidential.
- Ensures transparency only after final Commission orders and legal proceedings conclude.

5. **Repeal of Outdated Provisions:**

- Eliminates certain sections related to complaint handling that have been replaced by updated enforcement mechanisms.

****Purpose & Impact:****

This bill strengthens the Ethics Commission's authority, streamlines enforcement procedures, and upholds transparency while protecting the rights of individuals involved. It ensures ethical governance while refining due process protections.

HOUSE GOVERNMENT AND VETERANS AFFAIRS COMMITTEE
JANUARY 31, 2025

TESTIMONY OF CLAIRE NESS
OFFICE OF ATTORNEY GENERAL
HOUSE BILL NO. 1360

Chairman Schauer and members of the Committee:

For the record, my name is Claire Ness. I am the Chief Deputy Attorney General, and I am here on behalf of the Attorney General's Office in opposition to House Bill 1360. The Attorney General's Office supports the need for an effective Ethics Commission that has support from experienced professionals. Our office appreciates the goals set forth by the Ethics Commission during its testimony today and supports the many efforts by stakeholders to achieve a more efficient, fair, and open process for all parties involved in Ethics Commission matters. Our office has been engaged in these conversations with the Ethics Commission, legislative leadership, other legislators, our clients, and many others over the years and especially leading up to this session. However, the Office opposes this bill because it raises legal and constitutional concerns for our clients, private citizens, and the state.

Removal of Legislative Authority

HB 1360 would remove any legislative parameters on the Ethics Commission rules, even those that stem from the delegation of legislative authority rather than the Constitution. The process that was presented in testimony by the Commission's staff is not found in the bill and would not be found in statutes. Instead, it would be subject to Ethics Commission rulemaking, which is exempt from the Administrative Rules Committee. Some of the rules exceed the Commission's constitutional powers and would require a delegation of legislative power (which

is discussed later in my testimony). The Legislative Assembly should consider requiring such rules to follow the administrative rules process found in N.D.C.C. Ch. 28-32 that applies to all administrative rules stemming from such delegations of authority from the legislature.

Repeals of Protections for Individuals Brought Before the Commission

HB 1360 repeals multiple statutes that protect the legal interests of individuals in Ethics Commission proceedings, protect the integrity of administrative proceedings, and protect our democratic processes.

These statutes are especially important considering the Commission can decide that an individual violated an ethics law and can refer an individual for civil or criminal penalties. For example, the bill eliminates statutes that:

- Require the Commission to notify individuals of complaints filed against them;
- Require the Commission to allow individuals to respond to complaints filed against them;
- Protect individuals' right to have an attorney with them at Commission proceedings;
- Protect voters from having duly-elected or duly-appointed public office holders removed from office by the Ethics Commission (rather than through a recall vote or other democratic process);
- Protect administrative hearing officer determinations – that provide regulatory consistency to the state and to the energy, agriculture, and other industries – from being overturned by the Ethics Commission.

Some of these protections overlap to some extent with constitutional Due Process. However, those are not fully protected by Due Process alone. Also, there is still a question why the statutes would

be repealed. If the Ethics Commission wishes to changes its internal procedures consistent with these protections, the statutes could simply be amended to leave these important protections in place.

Additionally, any new rules that conflict with some of these protections raise concerns under the separation of powers doctrine. We often hear from one of the Commission's staff members during their training sessions that the Commission is "above the other 3 branches of government," but that is not legally accurate. The constitutional and legal authority of the branches of government remain intact.

New Enforcement Authority and Constitutional Questions

Sections 1 through 3 of HB 1360 raise questions regarding the scope of authority the Legislative Assembly would grant under this bill. Although the language of HB 1360 does not specifically state that enforcement authority would be delegated from the Legislative Assembly to the Ethics Commission, it is clear from today's testimony that that would be the basis for the Ethics Commission's planned sanctions and fines.

The Commission is seeking to change several definitions and revise its procedures. Within those changes, the phrase "enforcement action" appears several times as a replacement for the word "investigation." The replacement of the word "investigation" with "enforcement action" throughout N.D.C.C. chapter 54-66 raises the question: what is the difference between the two terms?

The bill defines the phrase "enforcement action," in part, as "an investigation and proceeding before the commission under section 3 of article XIV of the Constitution of North Dakota . . ." (emphasis added). The term "proceeding" is not defined in the bill, and, by its nature,

could mean any action of the Commission. As a result, the bill seems to give the Commission broad, new authority to carry out actions that presumably relate to “enforcement.” As noted, the testimony today – and the draft rules offered by the Commission – show the Commission plans to establish and impose their own fines and penalties.

The Constitution gives the Commission the authority to make rules and investigate alleged violations of Article XIV of the Constitution and certain, specified rules and laws. It does not give the Commission enforcement authority, most likely because enforcement authority lies with several other entities throughout state and local governments. Any enforcement authority (except the minor exception noted in footnote 1 - which does not include the power to establish civil and criminal penalties),¹ for the Commission would have to come from the Legislative Assembly, and HB 1360 uses language that may do that or may be an attempt to do that.

The draft rules from the Ethics Commission – and the testimony from the Commission’s Executive Director – refer to sanctions and financial penalties they would establish and impose. Again, this authority must be affirmatively delegated by the Legislative Assembly because it is not granted to the Commission under the Constitution. As currently written, any delegation of enforcement authority in HB 1360 has no limits, is not explicit, and does not have any detail. It could be challenged on Due Process grounds for providing insufficient notice, or on other grounds.

Additionally, the definition of the term “enforcement action” also arguably conflicts with the Constitution. As mentioned, the definition refers to “an investigation and proceeding before the Commission under section 3 of article XIV of the Constitution of North Dakota . . .” (emphasis

¹ The Commission has co-existing authority (with the legislature) under Section 2(5) of Article XIV to adopt rules to enforce the prohibition on certain officials disqualifying themselves from quasi-judicial proceedings. However, this provision does not give the Commission authority to set civil and criminal sanctions. Everywhere Article XIV provides authority to set those sanctions is explicitly stated.

added). Since Article XIV of the Constitution does not authorize any enforcement actions, it is unclear what enforcement actions would be “under” that article.

Perhaps most importantly, the Constitution does not allow the Legislative Assembly to delegate this type of enforcement authority. For example, Section 2 of Article XIV of the Constitution requires the Legislative Assembly to establish any civil and criminal sanctions for violating the many ethics provisions in that section. The power to establish sanctions and penalties for specific violations is one of the most significant powers the Legislative Assembly has. Attempts to delegate that authority to an unelected body, particularly without reserving any ability to review those penalties and sanctions through the administrative rules process, would raise significant Constitutional questions.

If the Legislative Assembly makes the policy decision to delegate enforcement authority to the Ethics Commission, a thorough analysis of the legal, drafting, and Constitutional issues should be undertaken, as the state likely would end up engaged in litigation over this matter.

If the Legislative Assembly does not wish to expand the Ethics Commission’s authority beyond the Constitution, it is recommended that the committee change the term “enforcement action” to something else and provide more clarity in the definition.

Confidentiality Concerns

The confidentiality provisions in HB 1360 are helpful but do not address some of the concerns regarding confidentiality of Ethics Commission matters.

While the ability of respondents to disclose information under the bill is a helpful step in the right direction, there are other individuals who still would be hamstrung from obtaining or

disclosing information necessary to protect their legal interests in Commission proceedings. HB 1505 provides a better solution to the problems in this area.

For example, HB 1360 allows the commission, respondents, and “individuals who provide relevant information” to the Commission to disclose some confidential information during the course of an investigation – but only if the respondent consents. (“Relevant information” is defined narrowly as “an assertion provided to the commission that a regulated individual engaged in an ethical violation.”) The bill does not address individuals summoned to appear before the Commission’s staff to provide answers and information that do not constitute “relevant information.” State employees have been summoned to appear and answer questions before a 3-attorney panel comprised of the Ethics Commission’s staff attorney, outside contracted attorney, and executive director (also an attorney). The summoned state employees likely did not have any “relevant information” as defined in the bill, so they would not be allowed to discuss the Commission’s demands with anyone under HB 1360, regardless of whether the respondent consented. As you can imagine, these individuals wanted to consult with an attorney and gather information to protect their legal interests when faced with 3 attorneys who could refer them for civil or criminal penalties. HB 1360 would not address this problem.

The testimony on House Bill 1505 from the Office of the Attorney General contains more detailed information regarding confidentiality and the Ethics Commission that the committee may wish to reference as it works on HB 1360.

I’ve been an attorney for 25 years, and I’ve spent much of that time working in areas of the law that focus heavily on legal compliance and ethics. Providing testimony in opposition to an Ethics Commission bill is not something the Attorney General or I or our office colleagues take

lightly. I think it's safe to say it can open someone up to reprisals or accusations of all sorts. But it's because ethics, our constitution, our balance of powers, and our individual rights are so important that we wanted to provide this testimony to make sure you, the elected representatives of our state, have as much information about this bill as possible before making your policy decisions.

Thank you for your time, and I will stand for questions.

2025 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Pioneer Room, State Capitol

HB 1360
2/20/2025

Relating to complaints filed with the North Dakota ethics commission.

8:06 a.m. Chairman Schauer opened the meeting.

Members present: Chairman Schauer, Vice Chairman Satrom, Representatives Brown, Christy, Grindberg, Karls, McLeod, Rohr, Schneider, Steiner, Vetter

Members absent: Representatives Bahl, VanWinkle, Wolff

Discussion Topics:

- Committee action

8:07 a.m. Chris Joseph, General Counsel from the Governor's Office, testified and answered questions and submitted testimony, #38168.

8:23 a.m. Rebecca Binstock, Executive Director of the North Dakota Ethics Commission, testified and answered questions and submitted testimony, #38257.

8:30 a.m. Representative Steiner moved a Do Not Pass.

8:30 a.m. Representative McLeod seconded the motion.

Representatives	Vote
Representative Austen Schauer	Y
Representative Bernie Satrom	Y
Representative Landon Bahl	AB
Representative Collette Brown	Y
Representative Karen Grindberg	Y
Representative Karen Karls	Y
Representative Carrie McLeod	Y
Representative Karen Rohr	Y
Representative Mary Schneider	N
Representative Vicky Steiner	Y
Representative Lori VanWinkle	AB
Representative Steve Vetter	Y
Representative Christina Wolff	AB

8:31 a.m. Motion passed 9-1-3.

Representative Rohr will carry the bill.

Chairman Schauer closed the meeting.

Jackson Toman, Committee Clerk

REPORT OF STANDING COMMITTEE
HB 1360 ([25.1095.01000](#))

Government and Veterans Affairs Committee (Rep. Schauer, Chairman) recommends **DO NOT PASS** (9 YEAS, 1 NAY, 3 ABSENT OR EXCUSED AND NOT VOTING). HB 1360 was placed on the Eleventh order on the calendar.

To: Chris Joseph, General Counsel

From: Reed Johnson

Date: February 19, 2025

Re: Testimony in Opposition for HB 1360

Good morning, Chairman Schauer, Vice-Chairman Satrom, members of the House Government & Veteran Affairs committee. My name is Chris Joseph, and I am general counsel for the office of the Governor. Today I am testifying in opposition to HB 1360. Before I begin, I would like to take a moment to pay my respects and offer condolences to Representative Josh Christy and his family. The governor's office and I are keeping his family in our prayers as they grieve. I also want to make it crystal-clear the governor's office does not oppose the Ethics Commission, the executive director of the Ethics Commission, nor does the governor's office oppose the will of the people of North Dakota in passing the referendum that established Article XIV of the North Dakota Constitution. Our office has met with and will continue to meet with the Ethics Commission to align on policy language moving forward. As written, however, HB 1360 is overbroad and there are unintended consequences our office believes will occur if this bill passes. I will begin going section by section on HB 1360.

Section 1 of HB 1360 makes several language changes to the way the Ethics Commission receives complaints and issues recommendations. At first these language swaps appear to be direct substitutions, such as "respondent" for "accused individual" and "relevant information" for "complaint". It is good the Ethics Commission is striking language they find inflammatory with softer language. The changes did not stop here, however, and in our office's view go a step further by defining "enforcement action" and other steps of their investigation and enforcement process, such as "alleged violation", "ethical violation", and "final commission order." Our office does not

dispute the Ethics Commission's ability to adopt rules to help further their ability to *investigate* alleged violations relating to *transparency, corruption, elections, and lobbying*, but disagrees in their ability to *enforce* these rules via civil sanctions or criminal penalties. In fact, Section 2 of Article XIV squarely places the responsibility on the Legislative Assembly to provide "appropriate civil and criminal sanctions" for violations relating to gifting, lobbying, and campaign contributions. The only subsection where the Ethics Commission is granted the ability to enforce alongside the Legislative Assembly is in regard to quasi-judicial proceedings (Art. XIV, § 2, subsection 4). "Enforce" or "enforcement" is used 5 times in Article XIV, but not used in Section 3 which gives the Ethics Commission the authority to adopt rules and investigate alleged violations. So the ultimate question here is how do we interpret an ambiguous provision of law, do we take a textualist and pragmatic approach and trust that the framers of Article 14 wrote the exact words intended to be used or do we take a more expansive reading of the section and authorize powers not explicitly granted in the section.

The authority to proceed with an "enforcement action" requires more thought and diligence from various stakeholders and the governor cautions against granting this language. The Ethics Commission may contend this is a simple language change, as the plain text of the bill defines enforcement action as an "investigation and proceeding before the commission." Defining enforcement in this way is misleading, as it implies authority beyond investigating and proceeding, but also doling out appropriate punishments as well. There is not a similar entity with this broad authority to define, execute, and interpret its own rules. The three co-equal branches of government exist so one branch creates (legislative), one branch executes (executive) and one branch interprets (judiciary). By allowing the enforcement action language and new enforcement process, the ethics commission is defining, executing, and interpreting its own rules and deriving it all from a single

subsection of Article XIV. Our office is not saying the Ethics Commission as it is composed currently would ever attempt to use this procedural loophole to its own benefit, but the fact it exists at all should be very concerning for the legislature. Each constitutional entity has checks on the other. For the Ethics Commission to define themselves as a separate constitutional branch whose rules are not subject to the Legislative Assembly's admin rules committee is alarming at best. The Legislative Assembly must have a broader conversation regarding the scope of the Commission's ability to enforce, but the language contained today in HB 1360 may in fact make the cure worse than the perceived disease.

Section 2 states any portion of the new enforcement action procedure (including formal and informal investigations) is considered a closed meeting. This section includes technical corrections consistent with name changes.

Section 3 removes several procedural safeguards put in place by the Legislative Assembly to govern the informal resolution process set forth by the Ethics Commission, instead replacing these safeguards with "the commission may adopt rules of pleading, practice, and procedure the commission deems necessary for an enforcement action." Regarding my previous analysis, granting broad authority to the Ethics Commission to adopt rules of pleading, practice, and procedure is not inconsistent with their constitutional charge to "adopt rules and investigate." It is up to the legislature, however, to set forth the appropriate sanctions and criminal penalties as a result of these investigations. Because of a lack of checks and balances on the Ethics Commission, the Commission may choose to adopt rules and procedures to be as formal or informal as they see fit, so long as they meet the minimum procedural due process requirements in the US Constitution (notice and an opportunity to be heard). Outside of those minimum protections, if HB 1360 passes as written, the Legislative Assembly is delegating the *how* of a complaint without any meaningful

input into that process. Again, the governor's office is *not* suggesting the current individuals who make up the Ethics Commission would act nefariously and take advantage of this delegation, but if the language and legal schema of an entity allows an opportunity for abuse, it is something the Legislative Assembly and Executive Branch should take extremely seriously. Keep in mind any rules from the Ethics Commission are not subject to the normal admin rules committee oversight, so long as they comply with the minimum constitutional procedural safeguards addressed moments ago.

Section 4 changes the informal resolution process that exists in current day, replacing it again with a broad delegation to the Ethics Commission to adopt rules and procedures consistent with their own definitions. Section 4 also references Section 54-66-08 of the North Dakota Century Code. In 54-66-08(3), the Legislative Assembly in the 2021 session authorized a subpoena power to the Ethics Commission to allow them to procure the testimony of a witness or the production of a record. This is what the law currently allows, but our office does not know of similar investigative entities with the seriousness of the ethics commission that also have their own subpoena power. Of course, the Ethics Commission cannot do its job properly if they do not have this ability, but it is still an example of a system that is ripe for misuse and a broad delegation of this power without guardrails ought to be examined carefully by the Legislative Assembly.

Section 5 allows the respondent to appeal a final commission order to the district court of the county where the respondent resides, or the district court in Burleigh County, or the district court of the county in which a substantial part of the subject matter of the violation occurred. Each of these appeals must be made within 30 days. The governor's office does not have an issue with this language as written, but it is still problematic conceptually. Section 5, although a "check" on the Ethics Commission's ability to adopt rules and investigate, still does not address the flaws

inherent in a branch of government that allows for defining, executing, and interpreting its own rules. For example, if an Ethics Commission formal investigation finds an ethical violation occurred and issues a sanction or formal reprimand, the accused individual may appeal that to the relevant district court. The district court may interpret that ruling favorably or unfavorably to the Ethics Commission. If unfavorable to the Ethics Commission, they may appeal the ruling to the North Dakota Supreme Court. Once appealed, the Supreme Court may simply look back to the vague Constitutional language in Article XIV and determine the Ethics Commission was acting in its authorized capacity – which would be akin to legislating from the bench. The “check” is hardly a check at all. Again, our office recommends the Legislative Assembly addresses these systemic issues seriously and does not grant broad authorizations without thinking through all possible and probable scenarios.

Section 6 amends what is a confidential record under the proposed enforcement process. Unless the commission has issued a final commission order that has been affirmed by the courts, records throughout the enforcement and investigation process shall remain confidential. This also includes the identity of the individual who provided the “relevant information” to the commission (complainant). Further, the information deemed confidential may be disclosed by the complainant or respondent and the commission if the respondent agrees to the disclosure. According to the original testimony, this was done to allow the respondent an opportunity to defend the allegations publicly. The governor’s office does not oppose these language changes.

Lastly, section 7 repeals three sections of chapter 54-66. The governor’s office supports the removal of these sections.

Overall, HB 1360 points out the flaws with an entity that can define, execute, and interpret its own rules. Any broadening of this authority enables a system in which a bad actor could

persecute individuals under a broad reading of its own definitions. To be clear for a third time, the governor's office DOES NOT believe the current commissioners, nor the staff of the Ethics Commission believe this way or want to take advantage of the vagueness of Article XIV. As it stands, however, HB 1360 furthers a system that needs to be addressed with more thoughtfulness and particularity.

Thank you for your time and I stand for any questions.



February 18, 2025

Representative Austen Schauer
Chairman, House Government and Veterans Affairs Committee
600 East Boulevard Ave
Bismarck, ND 58505
aschauer@ndlegis.gov

RE: Correction of the Legislative Record for House Bills 1360 and 1505

Dear Chairman Schauer:

On January 31, 2025, the House Government and Veterans Affairs Committee ("Committee") held hearings for HB 1360 and HB 1505. The Ethics Commission ("Commission") presented testimony on both bills. The Commission appreciated the opportunity to discuss these bills with the Committee and looks forward to continuing to work with the Legislative Assembly.

During the hearings, the Office of the Attorney General presented testimony through Chief Deputy Attorney General Claire Ness. Many of the issues raised by the Office of the Attorney General are inaccurate, but the Commission did not have an opportunity to respond to them because the Commission testified first on HB 1360.

After discussions with Legislative Council, the Commission respectfully requests the Committee add this letter to the legislative record for HB 1360 and HB 1505. The Commission directed Commission staff to send this letter at its February 13, 2025 meeting. Due to the historical and interpretative value of legislative records, the Commission must request this correction of the record to preserve the Commission's integrity as a constitutional entity established in Article XIV of the North Dakota Constitution. Additionally, the Commission requests this correction to provide accurate information for those who may be tasked in the future with adjudicating matters related to the Commission's scope of authority, purpose, and procedures.

I. The Commission is not "above the other 3 branches of government."

The Office of the Attorney General stated in its testimony "one of the Commission's staff members" has, on multiple occasions, said the Commission is "above the other 3 branches of government" during educational sessions. The Office of the Attorney General provided no citation to this quote attributed to Commission staff. The Commission has been unable to substantiate the assertion based upon its review of its recorded, publicly available webinars, training sessions, and records.

The Commission clearly articulates on its website, in communications, and during educational sessions that it is an independent constitutional entity—not a branch of state government.¹ Under Article XIV of the North Dakota Constitution, the Commission does not exist in the traditional sense of checks and balances and does not review the institutional actions of the three branches. Instead, it reviews the actions of individuals and whether those actions comply with ethical obligations in state law.

II. HB 1360 removed duplicate provisions from statute in the interest of simplicity and recognition of the Commission's constitutional authority.

The Commission focused on removing red tape from both the statutes and its rules. Currently, many of the provisions are duplicative and unnecessary. By reducing the number of laws, it makes the Commission's process easier for all individuals to follow, specifically those navigating it without an attorney.

Throughout its testimony, the Office of the Attorney General suggests the Commission is removing due process protections and implies the Commission is moving due process protections from statute to ethics rules for nefarious reasons. This accusation is not substantiated.

Due process must be followed regardless of whether the parameters are outlined in statute or rule. The Commission has no desire for litigation on this issue and believes a regulated individual's due process rights are paramount. Bolstering due process is a primary reason the Commission worked to propose HB 1360 with the Legislative Assembly and other stakeholders.

HB 1360 simply affirms recognition of the Commission's constitutional authority to create rules. The Commission believes many of the procedural and due process aspects are better outlined in the Commission's rules, similar to how the judicial branch outlines rules of procedure in court rules. For instance, the Rules of Civil Procedure, Rules of Evidence, Rules of Court, etc. are not duplicated in statute. The specific provisions referenced by the Office of the Attorney General are addressed in turn below.

- a. Formalizing notice requirements is dependent on the Commission's budgetary request for a case management system. If the case management system is not approved, notice and service of documents will be handled through a manual process, rather than electronically. The statutory notice provision for complaints is also removed because the Commission will no longer receive complaints. Instead, in unison with Article XIV, the Commission will receive relevant information that can progress to an

¹ *E.g., Frequently Asked Questions*, N.D. Ethics Comm'n, <https://www.ethicscommission.nd.gov/frequently-asked-questions> (last visited Feb. 11, 2025) (asking "Which of the three branches of government does the Ethics Commission fall under?" and responding "None! The Ethics Commission is an independent constitutional entity and is not part of any of the three branches of our state government.").

alleged violation. A respondent will be notified and served documentation at each step in the process either manually or electronically.

- b. The statutory provisions for responding to a complaint are removed because the Commission will no longer receive complaints. The proposed ethics rules allow a respondent to respond multiple times throughout the process including: (1) at any time the respondent wishes to settle and receive education; (2) in writing before a finding of reasonable cause is issued; (3) in writing to the investigation report and recommendation; (4) in person at the formal hearing; (5) in writing in a request for hearing; and (6) if a rehearing is granted, in writing and in person at the rehearing.
- c. The statement that a respondent is entitled to be represented by counsel during a Commission investigation is moved from statute to the Commission's rules. Regardless of a statement in statute or rules, an individual can always be represented in any matter to protect his or her legal interests. This is a basic tenant of law, as eloquently explained by Ms. Thompson during the legislative hearing.
- d. The Commission does not have authority to remove public officials from office. The North Dakota Constitution specifically empowers the Legislative Assembly to expel its members and remove other public officials from office through impeachment.²
- e. Similarly, the Commission does not have the power to overturn administrative and quasi-judicial decisions of executive branch agencies. The current statute stating so is unnecessary. The Commission is not a court exercising judicial review of government action. Instead, the constitution gives the Commission authority to investigate whether *individuals* violated ethical obligations. Any underlying decision, vote, or action stands regardless of whether the Commission determines the public official acted unethically when making it.

III. Article XIV empowers the Commission to enforce ethics law.

Article XIV directs the Commission to "adopt ethics rules related to transparency, corruption, elections, and lobbying" and to "investigate alleged violations" of the Commission's rules, Article XIV, and state laws related to transparency, corruption, elections, and lobbying.³ The constitution specifically gives the Commission this investigative authority to ensure ethics laws are enforced.

² N.D. CONST. art. IV, §§ 7, 9, 10, 12; N.D. CONST. art. XI, §§ 8-15.

³ N.D. CONST. art. XIV, § 3(2).

The Commission's rulemaking authority under Article XIV can include provisions on how those rules are enforced. Legislation is not needed for the Commission to exercise the authority granted to it by the constitution to make ethics law as Article XIV is self-executing.⁴ The Legislative Assembly recognized this fact in 2019, as confirmed by the legislative record for HB 1521.⁵

The term "enforcement action" means the investigation and the proceeding before the Commission related to that investigation. The word proceeding refers to the respondent's multiple opportunities to respond to the Commission's investigation as outlined above. The outcome of the process is the same as what is currently in the complaint process. The Commission will make a finding of whether someone violated an ethics law, and, if so, whether the law authorizes a penalty. If another entity must enforce the penalty by law, the Commission can make the referral to that entity with its findings. This principle is already in statute with the current complaint process. Section 54-66-09(2), N.D.C.C., explicitly states, "If the commission determined a violation occurred, the commission may impose a penalty authorized by law for the violation or refer the matter to the agency with enforcement authority over the violation."

Alternatively, the Commission could conduct its investigations like audits, legislative studies, or other investigations and give the respondent an opportunity to respond when the investigation findings are made public. A process like this does not serve the interests of respondents, and the Commission wants respondents to have the opportunity to respond throughout the investigation.

The Office of the Attorney General seemed to indicate other agencies are more appropriate enforcement entities. It appears the enforcement mechanism the Office of the Attorney General references is litigation and/or criminalization of ethics related conduct. The Commission believes a litigious approach does not serve the state well. Additionally, the Legislative Assembly and the Commission both recognize the majority of ethics issues should move away from the criminal realm. The Commission believes the educational enforcement process in HB 1360 will benefit everyone involved in the process by focusing on corrective rather than punitive action.

IV. HB 1360 renamed "accused individual" to "regulated individual" but did not change the substance of the definition.

In an apparent attempt to claim HB 1360 expands the Commission's authority, the Office of the Attorney General took issue with the term "regulated individual." HB 1360 does not expand the Commission's authority over any individuals. The bill uses the current definition of "accused individual" but instead renames this person as the "regulated individual." The definition itself has not changed and still means "a lobbyist, public official, candidate for public office, political committee, or contributor." Currently, the Commission uses the campaign finance definition for "political committee" in N.D.C.C. ch. 16.1-08.1 and the plain language definition of contributor. If

⁴ N.D. CONST. art. XIV, § 4(1).

⁵ See generally *Hearings on H.B. 1521 Before the H. and S. Ethics Comms.*, 66th Legis. Assemb., Reg. Sess. (N.D. 2019).

the Legislative Assembly wishes to define "contributor" it is also an undefined term in N.D.C.C. ch. 16.1-08.1 and would likely need a definition there as well.

V. The First Amendment demands the ability for respondents to speak publicly about an investigation against them. The Commission recognized this constitutional requirement in HB 1360.

The Commission believes any respondent should be able to defend him or herself publicly—the First Amendment demands it. HB 1360 addresses this issue by allowing a respondent to share the information related to the enforcement action openly and publicly, if the respondent chooses. The proposal in HB 1360 was the result of many hours of legal research, discussion, information gathering, and years of the Commission working on complaints.

The Commission's concerns regarding the First Amendment were not addressed in the confidentiality provision in HB 1505, which the Office of the Attorney General supported. If unaddressed and left in its current form, the Commission believes that statute could open the Commission to legal liability.

The Office of the Attorney General raised issues that individuals or potential witnesses are hesitant to share information related to complaints with the Office of the Attorney General due to the confidential nature of complaints. The Commission has never read the confidentiality provisions in this way. The definition of "confidential" in N.D.C.C. § 44-04-17.1 means the record is prohibited from being open to the public, not that a public servant is precluded from discussing that confidential information with an attorney. While likely unnecessary, the Commission believes a simple amendment to the proposal in HB 1360 would ease this worry. The amendment could state, "An individual contacted by the commission regarding an enforcement action may share information related to the enforcement action with an attorney representing the individual or the individual's employer."

VI. A respondent or witness may always bring legal counsel with to Commission interviews.

As noted above, it is a basic tenant of law that an individual can always be represented by an attorney in any matter to protect his or her legal interests. Currently, the confidentiality statute does not recognize a right for a witness to have an attorney during a Commission interview. However, the Commission absolutely recognizes individuals are entitled to bring legal representation with them to protect their legal interests. The Commission has no objection to provisions in statute asserting respondents may be represented by an attorney. If included, the Commission recommends expanding it by stating witnesses may also be represented. However, the Commission believes any such statute should clearly state the attorney is at the witness' or respondent's own cost.

As a matter of practice, the Commission does not advise witnesses or respondents on who to bring with them to interviews. That is not the role of the Commission. Further, because the Commission is not a criminal law enforcement agency and does not arrest people it does not have a constitutional duty to "Mirandize" people and advise they can seek the assistance of counsel. The Office of the Attorney General's suggestion that the Commission should be held to this standard is not the norm of any investigation. A large number of state agencies conduct civil investigations. To the Commission's knowledge, there is no other state law that requires these agencies to notify witnesses or respondents to seek counsel.

Additionally, the Commission's acknowledgment forms referenced by the Office of the Attorney General give a witness or a respondent notice of the current confidentiality statute and that the interview is recorded. It is an acknowledgment of the statute, and that is why it makes no mention that a witness or respondent can bring an attorney to the interview. Notably, the Office of the Attorney General did not assert that any information presented on the forms is inaccurate. If the Office of the Attorney General wanted the Commission to add such notice to the forms, it could have contacted the Commission well before the legislative hearings to articulate any concerns.

VII. The Office of the Attorney General did not discuss HB 1360 or HB 1505 with the Commission before the hearings.

The Commission was not made aware of these concerns from the Office of the Attorney General until the hearings. In response to an open records request, the Commission provided draft language of HB 1360 to the Office of the Attorney General in October 2024. Attorneys in the Office of the Attorney General contacted the Commission's staff with questions about different proposed legislation, but not HB 1360 or HB 1505. Having not heard from anyone in their office and after discussions with a legislator indicating the Office of the Attorney General had concerns, Executive Director Binstock reached out to an assistant attorney general days before the hearing to discuss the bill in general. The assistant attorney general did not raise any of the concerns to which the Office of the Attorney General testified at the hearing. Had the Commission learned of concerns earlier, the Commission would have welcomed them and been able to alleviate those concerns through discussions.

In conclusion, the Commission looks forward to continuing the discussion on these important matters and would be happy to answer any additional questions.

Sincerely,

A handwritten signature in black ink that reads "Logan Carpenter". The signature is written in a cursive, flowing style.

Logan Carpenter
General Counsel, North Dakota Ethics Commission



CC: Rebecca Binstock, Executive Director, North Dakota Ethics Commission
Dave Anderson, Chair, North Dakota Ethics Commission
John Bjornson, Director, North Dakota Legislative Council