



North Dakota Ethics Commission Special Meeting

Minutes of January 30, 2025

MS Teams

1. **Call to Order:** The meeting was called to order by Chair Dave Anderson at 4:01 p.m. The following members of the Ethics Commission were also present: Vice Chair Ward Koeser, Commissioners Cynthia Lindquist, Ron Goodman, and Murray Sagsveen, Executive Director Rebecca Binstock, General Counsel Logan Carpenter, and Legal Intern Patrick Frise. Operations Administrator Alisha Maier was absent.
2. **Discussion of Legislation: Enforcement Action Process and Legislation Impacting Ethics Commission:** ED Binstock provided an update on the Commission's legislative proposals for HB 1360 and HB 1505. The hearings have been set for January 31, 2025.

HB 1360

This bill is the Commission's bill to transition the complaint process in N.D.C.C. 54-66 to an enforcement action process. ED Binstock will provide testimony in support of this bill and GC Carpenter will handle any legal questions. ED Binstock provided an overview of her written testimony and noted that the goals are: (1) address concerns through education, (2) reduce red tape, (3) bolster due process, (4) address ethics concerns in an efficient way.

Commissioner Sagsveen advised he would like to testify about what he has observed based on his experience in state government and provided an overview to the Commission, noting the following recommendations:

- The words complainant and complaint should be removed.
- Once an individual submits information to the Ethics Commission concerning the alleged violation, that individual should no longer be involved in the enforcement process.
- The Commission should not be required to refer all suspected criminal conduct to a law enforcement agency. Instead, the Commission should have the discretion to refer egregious cases to a law enforcement agency.
- The legislature should expressly authorize the Commission to compel the production of information needed for an investigation.

The Commission agreed and requested Commissioner Sagsveen provide the discussed testimony.

HB 1505

ED Binstock provided a brief overview of the 5 sections of HB 1505:

SECTION 1 creates immunity for legislators who disclose a conflict of interest from criminal prosecution under N.D.C.C. 12.1-13-02 if: the legislator discloses a personal or private interest,

the official action is limited to a vote on a measure, the individual is a member of the Legislative Assembly at the time.

SECTION 2 creates general immunity from criminal prosecution for legislators when they disclose a personal or private interest. It also creates an affirmative defense in a criminal prosecution if a legislator relies upon informal advice of a staff member of the Ethics Commission.

SECTION 3 affects the enforcement process. It allows the executive director to close the matter at any time during the enforcement process.

SECTION 4 outlines a 30-day timeline for appeals and creates a catch-all venue in Burleigh County or another district which has a substantial part of the alleged violation.

SECTION 5 amends the confidentiality of the enforcement process, limiting the applicability of the confidentiality provision to information when in the possession of the Commission. It also outlines specific disclosures for state employees that are allowed when the state employee has an enforcement action filed against them. It further discusses how those state employees can disclose information.

GC Carpenter and ED Binstock have several concerns related to the bill. Commissioners were provided with a detailed copy of the concerns. ED Binstock summarized the concerns and suggested changes to HB 1505:

- Allow legislators to rely upon written guidance from the executive director for an affirmative defense, instead of informal advice from staff.
- Allow the Commission, not the executive director to close or settle a matter at any time.
- Align the same confidentiality provisions of HB 1505 with the current confidentiality provisions of HB 1360.

The Commission further discussed HB 1505.

Motion: Commissioner Goodman moved to authorize staff to support HB 1505 with amendments in line with the Commission's discussion. Motion was seconded by Commissioner Lindquist. Chair Anderson called for a roll call vote. The motion was approved by unanimous roll call vote.

3. **Discussion of Proposed Commission Rules: Rules Impacted by Legislation:** ED Binstock provided an update on proposed commission rules. HB 1360 and HB 1505 impact the Commission's proposed enforcement process and informal guidance rules. The Draft Informal Guidance Rules are directly linked to HB 1505 which also has an emergency clause on it.

Therefore, if passed, the Commission would need to immediately commence the rulemaking process for these rules.

GC Carpenter provided an overview of changes to the Draft Enforcement Process Rules since the Commission last discussed them:

- Definitions were updated to coincide with HB 1360 language that was approved at a previous meeting.
- Additional language was added to clarify the effect of the rules on pending matters.
- Service of documents is still absent as this depends on how a case management system is implemented, which is currently in the Commissions proposed budget request. Commission staff will have rules or draft additions to the rules ready as appropriate to this determination.

GC Carpenter provided an overview of changes to the Draft Informal Guidance Rules since the Commission last discussed them:

- Delegating the executive director to provide written informal guidance to the Commission forty-eight hours prior to providing a copy to the regulated individual.

4. **Adjourn:** The meeting was adjourned at 4:53 p.m. The next regular meeting is scheduled for February 26, 2025, at 9:00 a.m., livestreamed with MS Teams.

Approved on 2/13/25



Rebecca Binstock, Executive Director, North Dakota Ethics Commission