



North Dakota Ethics Commission
Senate Bill 2048

Testimony presented by
Rebecca Binstock, Executive Director
Before the House Government & Veterans Affairs Committee
March 9, 2023

AGENCY HISTORY

Good morning, Mr. Chairman and Committee members, my name is Rebecca Binstock. I serve as the Executive Director of the North Dakota Ethics Commission.

The Commission consists of five Commissioners who were appointed September 1, 2019:

- Chair Paul Richard (Fargo)
- Vice-Chair David Anderson (Bismarck)
- Ron Goodman (Oakes)
- Ward Koeser (Williston)
- Dr. Cynthia Lindquist (St. Michael)

The North Dakota Ethics Commission was created in 2018 by passage of an initiated measure which created Article XIV of the North Dakota Constitution. The Commission is governed by Article XIV of the North Dakota Constitution and North Dakota Century Code Chapter 54-66.

Since its inception, the Commission has adopted complaint rules, gift rules, quasi-judicial proceeding rules, and conflict of interest rules within the timelines outlined by Article XIV of the Constitution. The Commission continues to adopt rules to address transparency, corruption, elections, and lobbying as authorized by the Article XIV of the Constitution. The mission of the North Dakota Ethics Commission is to strengthen the confidence of the citizens of North Dakota in their Government by ensuring and promoting transparency and accountability.

SB 2048

I am here today to testify in support of engrossed Senate Bill 2048, which consists of amendments to Chapter 54-66 of the North Dakota Century Code. SB 2048 equitably expands the classes of individuals who can file a complaint, promotes more consistent application of the Ethics Commission's jurisdiction, and revises the process of notifying an individual accused of an alleged ethics violation.

SECTION 1 amends the definition of the term "complainant" and the definition of the phrase "public official."

The term "complainant" is amended to include North Dakota residents, as well as individuals who are subject to a state board or licensing commission or a party to a quasi-judicial proceeding before a state agency. This amended definition clarifies that if an individual who is not a North Dakota resident but is subject to a state board or licensing commission or is a party to a quasi-judicial proceeding before a state agency, may bring a complaint before the Ethics Commission.

The rationale behind this amendment is fairness: If an individual holds a North Dakota license or is a party to a quasi-judicial proceeding in North Dakota, that individual is submitting himself/herself to North Dakota's jurisdiction and should have the ability to file a complaint against the board or commission under which the individual is licensed or against the agency, board, or commission which is conducting the quasi-judicial proceeding regardless of the individual's state of residency.

Engrossed SB 2048 also amends the phrase "public official" to include "directors, officers, commissioners, heads, or other executives of state agencies." The phrase "public official" defines the individuals against whom a complaint can be filed.

To date, elected or appointed officials of the executive and legislative branch, members of the Governor's cabinet, members of the Ethics Commission, and employees of the legislative branch are included within the definition of "public official" and are subject to oversight by the Ethics Commission. The individuals included within the current definition of "public official" are enumerated in Article XIV of the North Dakota Constitution.

Adding "directors, officers, commissioners, heads, or other executives of state agencies" as "public officials" covers most employees in the executive branch who are in decision-making roles. Adding these individuals to the breadth of the Ethics Commission's

jurisdiction promotes trust in our government by increasing transparency and accountability in the governmental decision-making process.

This amendment also addresses the significant gap in the Ethics Commission's jurisdiction over executive branch employees, particularly compared to its jurisdiction over legislative employees. There is no rationale reason for differential treatment between employees of the executive branch and legislative branch. The Ethics Commission believes defining a "public official" to include employees of the executive branch in decision-making roles reduces the differential treatment and promotes more consistent application of ethical rules.

It is common practice for State Ethics Commissions to oversee executive branch employees as well as legislative employees. We have attached an example list of state ethics commissions (or similar entities) that oversee executive branch employees (**Attachment No. 1**). This list is demonstrative and not exhaustive.

I would note, the Ethics Commission does not have jurisdiction over any personnel matters. The Ethics Commission also does not have jurisdiction over the judicial branch as the North Dakota Judicial Conduct Commission has authority to investigate complaints brought against the judiciary.

SECTION 2 of Engrossed SB 2048 changes the amount of time in which an accused is notified of a complaint to 30 days (instead of 20 days). Extending the notification timeframe to 30 days provides the Executive Director with adequate time to initially review the complaint and summarily dismissal the complaint if appropriate. This timeframe also better aligns to the timing of regular meetings in which the Commission considers complaints.

Essentially, 30 days allows sufficient time to initially review a complaint, gather and review documents if necessary, and consider whether summary dismissal is appropriate before notifying an accused individual. The current 20-day timeframe can create a situation in which an individual is notified of a complaint only to have the complaint summarily dismissed days later.

Section 2 also clarifies the process as it relates to notification of the accused and how the accused individual responds to the complaint by giving the accused individual 30 days (instead of 20 days) to respond to the complaint. Section 2 further instructs that an

accused individual may provide a written response to a complaint before receiving a request for a written response from the Commission.

Last, Section 2, requires the Ethics Commission to notify an accused individual of a summary dismissal when the complaint is summarily dismissed within the 30-day notification timeframe. Under the current version of § 54-66-06, it is unclear whether the Commission is required to notify an accused individual when a complaint which is filed against him/her is summarily dismissed within the current 20-day timeframe. The Ethics Commission believes fairness requires that an accused individual should be notified even if the complaint is summarily dismissed.

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

ATTACHMENT #1

Examples of Other State Ethics Commissions Oversight of Executive Branch Employees

1. Hawaii State Ethics Commission has authority over public officers and employees (including executive branch employees), which includes political subdivisions in the areas of gift rules, campaign disclosures, and lobbying.
2. Montana Commissioner of Political Practices is responsible for enforcing ethics complaints against state officers, legislators, and state employees. Mont. Code Ann. § 2-2-136.
3. New Mexico Ethics Commission oversees public officials, public employees, candidates, person subject to the Campaign Reporting Act, government contractors, lobbyists, lobbyist's employer or a restricted donor subject to the Gift Act.
4. Nevada Commission on Ethics has a code of ethical standards that governs the conduct of public officers and employees, including executive branch employees.
5. Ohio Ethics Commission has jurisdiction limited to the executive branch and does not include members of the legislative branch. Ohio Rev. Code Ann. § 102.01.
6. South Dakota Government Accountability Board was created in 2017 and was created by the Board to review and investigate allegations of misconduct by certain people: (1) any person holding a statewide office and (2) Any employee of the executive branch.
7. Texas State Ethics Commission has jurisdiction to enforce specific ethics code that apply to state employees (including executive branch employees).