

North Dakota Ethics Commission
Senate Bill 2048
Testimony presented by
Rebecca Binstock, Executive Director
Before the Senate State and Local Government Committee
January 6, 2023

AGENCY HISTORY

Good morning, Madam Chair and Committee members, my name is Rebecca Binstock. I serve as the Executive Director of the North Dakota Ethics Commission. I began my service with the Ethics Commission in September 2022, replacing then-Executive Director, Dave Thiele, who retired.

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 Commission staff consists of the Executive Director and a temporary staff member, Holly Gaugler, who serves as executive assistance and office manager. Pursuant to N.D.C.C. § 54-66-14, the Office of the Attorney General is to provide legal services to the Commission. Assistant Attorney General Allyson Hicks is the appointed legal advisor to the Commission. This past year, the Commission hired attorney Patricia Monson (Fargo) serve as special assistance attorney general to advise the Commission as to Complaint Nos. 22-003 through 22-010 and 22-012, from which the Office of the Attorney General recused. We have attached our organizational chart (**Attachment No. 1**).

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.

SB 2048

Senate Bill 2048 consists of the Ethics Commission's proposed amendments to Chapter 54-66 of the North Dakota Century Code. The central theme of these amendments is consistency. These amendments equitably expand the classes of individuals who can file a complaint, promote consistent application of the Ethics Commission's jurisdiction, and revise the process of notifying an individual accused of an alleged ethics violation.

SECTION 1 amends the definition of a "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.

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 the 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.

Section 1 also amends the phrase "public official" to include employees of the executive branch. 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 have been included within the definition of "public official" and are subject to oversight by the Ethics Commission. While executive branch employees were not included within the scope of Article XIV of the Constitution, the Constitution specifically dictates that "laws may be enacted to facilitate, safeguard, or expand, but not

to hamper, restrict, or impair, this article [Article XIV].” § 4(1). The Ethics Commission views this amendment as an opportunity to create consistent ethical standards that apply to employees of the legislative branch and the executive branch. 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. 2**). This list is demonstrative and not exhaustive.

To demonstrate how SB 2048 serves to consistently apply ethical rules, the following example is helpful:

Suppose a complaint is filed against an individual who allegedly accepted a prohibited gift from a lobbyist. The Ethics Commission has jurisdiction over the subject matter of the complaint (lobbying). However, if the employee was employed with the executive branch, the Commission would be required to dismiss the complaint for lack of personal jurisdiction. Whereas, if the employee was employed by the legislative branch, the complaint would not be summarily dismissed and likely proceed.

There is no rationale reason for differential treatment between employees of the executive branch and legislative branch in this example. The Ethics Commission believes defining a “public official” to include employees of the executive branch eliminates that differential treatment and promotes consistent application of ethical rules.

The Office of Management and Budget (“OMB”) has calculated the number of state employees who would be covered by this amendment to be approximately 8,960 employees. This estimate excludes executive branch employees who already fall within the definition of “public official.” While including executive branch employees within the definition of “public official” is more expansive, that expansion is limited by how the ethical rules function and would apply to executive branch employees.

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 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 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.

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