



North Dakota Ethics Commission
House Bill 1046
Testimony presented by
Rebecca Binstock, Executive Director
Before the House Judiciary Committee
January 8, 2025

Good morning, Mr. Chairman 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)

HB 1046

House Bill 1046 consists of the Ethics Commission's proposed amendments to Section 54-66-04.2 of the North Dakota Century Code, the Ethics Commission's advisory opinion statute. Advisory opinions allow individuals under the Ethics Commission's jurisdiction to submit hypothetical facts or prospective conduct to the Commission for analysis of potential ethical issues under Article XIV of the North Dakota Constitution and "state statutes and ethics commission rules related to transparency, corruption, elections, and lobbying." The Ethics Commission can then provide a formal written advisory opinion to the requester so the requester can feel comfortable navigating future ethical dilemmas. A formal advisory opinion provides a "safe harbor" when the requester acts in good faith and the material facts surrounding the requester's action are substantially the same as presented in the request for an opinion.

The Ethics Commission believes the amendments proposed in this bill will provide further clarity for those subject to the Ethics Commission's jurisdiction generally and as it relates to submitting requests for advisory opinions. The amendments consist of two parts.

The first part in subsection 1 adds the ability for the Ethics Commission to provide a written advisory opinion "upon a majority vote of the entire commission." Currently, the Ethics Commission can only provide an advisory opinion upon the request of a "public official, candidate for elected office, or lobbyist." However, on occasion individuals will raise genuine and important questions, and do not follow up with a request for an advisory opinion when directed to submit one. Oftentimes it is multiple individuals with the same or similar questions. Commissioners also raise questions that would provide a good basis for an advisory opinion. In those instances, the Ethics Commission believes it would be helpful to both the Commission and those individuals under its jurisdiction to have a formal advisory opinion on these issues to provide clarity.

Additionally, the amendment would require a majority vote of the **entire** Ethics Commission, rather than a majority of a quorum, to issue an opinion on the Ethics Commission's own initiative. This would require three out of the five commissioners to agree before the Ethics Commission can initiate an advisory opinion.

The second part of the bill adds a new subsection 2 to section 54-66-04.2. This provision clarifies a request for an advisory opinion from a public official, candidate for elected office, or lobbyist must relate to hypothetical facts or prospective conduct of that same individual. Alternatively, another individual, board, entity, or organization can submit the request for an advisory opinion, but the submitting individual, board, entity, or organization must corroborate it is at the public official, candidate for office, or lobbyist's request. The Ethics Commission believes this addition to the statute will make it clear an advisory opinion request must relate to the requester's own hypothetical or prospective conduct. If someone has concerns about the conduct of someone else, it becomes an enforcement issue, as the advisory opinion process is not the proper channel to address those issues.

The Ethics Commission currently follows the protocol proposed in subsection 2. However, under the advisement of legal counsel, the Ethics Commission believes it should be formalized in the statute itself.

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