

North Dakota Ethics Commission
Senate Bill 2024
Testimony presented by
Executive Director, Rebecca Binstock
Before the House Appropriations - Government Operations
March 23, 2023

Agency History

Good afternoon, 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 Commission staff consists of the Executive Director and a temporary staff member, Holly Gaugler, who serves as both 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) to 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 Commission is governed by Article XIV of the North Dakota Constitution and North Dakota Century Code Chapter 54-66. 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.

Agency Update

Over the past three (3) years, the Commission has adopted complaint rules, gift rules, quasi-judicial proceeding rules, and conflict rules within the timelines outlined by Article XIV of the Constitution. The Commission continues to adopt rules to address ethics related to transparency, corruption, elections, and lobbying as authorized by the Article XIV of the Constitution.

Moving forward, the Commissioner's mission includes both rule-making and educational outreach to address citizen, public official, and lobbyist concerns. To achieve our core mission, a considerable amount of our efforts during the remainder of the current biennium as well as the 2023-25 biennium will be directed towards a greater level of communication and education with all citizens of North Dakota.

In an effort to educate citizens about the Ethics Commission, during my short tenure, I have met with lobbyists, North Dakota citizens, state legislators, state agencies, as well as state boards and commissions in an effort to increase communication and outreach. The Ethics Commission hopes to increase this community outreach and education, as I will discuss later, through the 2023-2025 biennium.

The Ethics Commission has also had a significant increase in activity in recent months, particularly since September 2022. The Commission's activity statistics are attached (**Attachment No. 2**).

Current Budget Status (Attachment No. 3)

The 2021-23 biennial budget for the Ethics Commission is \$623,984 in general funds, which does not include any one-time funding. The Commission is a general funded agency and does not receive federal or special funding. As of February 28, 2023, the Commission has spent \$492,516 with a remaining balance of \$131,468.

To date, the Commission has had one audit - with no formal audit findings. A current budget update as of February 28, 2023, is attached (**Attachment No. 3**). Although the Commission's budget is a single budget line, there is a detailed listing of our expenditures included.

When considering the Commission's budget, I would like to direct you to a few points:

- Our current salary budget includes five commission members, one FTE for my position as the Executive Director, and a temporary office manager.

- Operating costs have changed in the most recent portion of the 2021-2023 biennium due to increasing levels of activity.
- The Ethics Commission is facing significant budgetary challenges this biennium as it had to hire a Special Assistant Attorney General (SAAG) in November of this year to address several complaints that have been filed with the Commission due to the recusal of the Office of the Attorney General.
- The Commission has experienced a significant increase in activity with increased special meetings and an increase in temporary staff hours.
- The Commission anticipates a steady increase in activity as rules have recently been adopted and additional rules are implemented, the Commission provides education to those impacted by rules, and general knowledge of the Commission increases.
- To meet financial challenges, the Commission vacated its office space and limited travel and overall expenditures.
- The Commission requested a deficiency of \$97,000 in Senate Bill 2025, which includes \$72,000 for SAAG costs and \$25,000 for minimal remodel costs (to ensure separation from other agencies) and for data line and equipment install in relocating the office to the capitol in June 2023. This made a total deficiency request in SB 2025 of \$97,000. I address this again in the last part of my testimony.

2023-25 Budget Request (Attachment No. 4)

The Commission is seeking a total of \$1,151,687 with three (3) FTEs to fund and sufficiently support the Commission for the 2023-2025 biennium, as proposed in the Executive Recommendation.

The Ethics Commission's base budget for the 2023-25 biennium is \$623,984 with one (1) FTE. Our OMB adjusted base budget for 2023-25 is \$635,930 which includes OMB's adjustment to the base of \$11,946 that included a cost to continue the 2021-23 legislative salary increases and an increase for NDIT rates. The adjusted base budget was submitted with an additional request of \$515,757 and two (2) additional FTEs. Attachment No. 4 shows our requested base budget along with the additional adjustments for a total request of \$1,151,687 and three (3) FTEs. The Executive Recommendation included three (3) FTEs and the Commission's optional requests. It also included additional funding of \$56,446 for the proposed executive salary package.

As included in the Executive Recommendation, the Ethics Commission is requesting five (5) additions to the adjusted base budget:

- (1) An FTE for an education and training coordinator;
- (2) An FTE for an executive assistant;

- (3) \$216,000 for professional fees;
- (4) \$13,448 for travel expenses; and
- (5) \$7,039 in NDIT Data Processing Costs.

The following is an itemized description and justification for optional budget items:

- a. **Education & Training Coordinator FTE – \$218,472** (\$152,952 salary & \$65,520 benefits) The Education & Training Coordinator (Grade 106) will develop educational materials/curriculum in light of the Ethics Commission's educational goals to help stakeholders better understand the role of the Ethics Commission. This position will develop content, methods, and tools to effectively communicate Ethics Commission's educational goals to stakeholders.

The Ethics Commission was established pursuant to Article XIV of the North Dakota Constitution for the purpose of strengthening the confidence of the people of North Dakota in their Government and supporting open, ethical, and accountable government. To meet that constitutional directive and best support an open, ethical, and accountable government in North Dakota, individuals need to be knowledgeable about the ethical rules in place in North Dakota's Constitution, statutes, and administrative rules.

This FTE will develop and implement a continuing education and communication plan aimed at: (1) educating citizens of North Dakota so they can be knowledgeable about the role of the Ethics Commission, (2) effectively communicating with the citizens of North Dakota so they can understand how the ethical rules in the Constitution, statutes, and administrative rules function, and (3) training individuals subject to the Ethics Commission's oversight how to fully comply with the rules.

This FTE will develop and communicate educational content specific to groups of stakeholders, namely: public citizens of North Dakota, lobbyists, legislators and legislative employees, elected and appointment officials in the executive branch, and administrative boards and commissions. Both the content and communication method will be tailored to the stakeholder group. The Commission's approach to education is wholistic and proactive aimed toward increasing an understanding of the rules, reducing frivolous complaints, promoting consistent implementation of the rules, and developing situational awareness for ethical concerns. The Commission believes this FTE is critical to the Ethics Commission's role in supporting an open, ethical, and accountable government.

- b. **Executive Assistant FTE – \$164,422** (\$107,952 salary & \$56,470 benefits) The Executive Assistant (Grade 104) will provide administrative and operational support to the Executive Director and Commissioners. Administrative duties are currently performed by part-time temporary Office Manager/Executive Assistant, Holly Gaugler. Ms. Gaugler's hours have significantly increased in past months from approximately 20 hours/week to approximately 35 hours/week. It is necessary to transition the position to a full-time FTE position. The Commission also anticipates the administrative duties of the Commission will continue to increase as recent reporting requirements have gone into effect. As the Commission has adopted rules pursuant to the directive of Article XIV, reporting requirements have taken effect. This has resulted in a significant increase of filings. As the Commission matures and stakeholders are educated and trained on the jurisdiction of the Commission, we anticipate administrative duties will continue to increase.

This FTE would functionally replace the part-time temporary Office Manager/Executive Assistant. Current funding for the part-time position will partially fund this new FTE position (\$103,624).

- c. **Increased Professional Fees - \$216,000** As the Commission matures and implements rules according to ND Constitution Article XIV and N.D.C.C. 54-66, there is an increased requirement to maintain transparency as well as avoid any areas where there may be conflicts of interest as the Commission carries out its mission. The Commission's base budget has \$20,000 for professional fees. However, this amount is inadequate to carry out investigations and hire independent counsel when needed.

The Commission's request for additional funding of \$216,000 is an estimate based upon utilizing a special assistant attorney general and other possible professionals at a rate of \$300 per hour for 30 hours per month during the biennium. The basis for additional funding is based upon the Commission needing to hire a special assistant attorney general to provide legal services, this additional funding would also be for other professional services when needed. The Commission believes this is a conservative estimate for professional fees.

- d. **Increased Travel Costs - \$13,448** The Commission has been holding monthly meetings as well as special meetings virtually since Spring of 2020. Although, under the circumstances it has worked well, the Commission would like to

increase regular monthly meetings to an in-person meeting at least once a quarter. With increased awareness and education, it also sees meetings lasting two consecutive days rather than just one day per month.

The Commission is a member of the Council on Government Ethics Laws (COGEL), which holds an annual convention each year. This provides the Commissioners with best practices by networking with colleagues throughout the United States. The Commission's goal is to send at least two Commissioners or staff to this event each year of the biennium.

Although, an increase in travel costs (\$13,448) is priority 4, traveling for education and training are critical to creating awareness to our citizens as well as public officials. The Commission is dedicated to providing clarity and awareness of the Commission's jurisdiction and rules and how they can serve North Dakota citizens. Our request includes travel costs for the Executive Director and/or the Education and Training Coordinator travel throughout the state on four (4) separate occasions during the biennium to provide the public training and education opportunities.

- e. **Increased Data Processing IT Costs - \$7,039** This is the estimated cost of adding an additional employee for equipment, desktop support and line charges. Of this amount, \$1,825 is considered one-time cost for a laptop.

Senate Appropriations Budget Changes (Attachment No. 5)

Attachment No. 5 shows changes made by the Senate Appropriations to the executive recommendation:

1. The request for a Training and Education Coordinator FTE (\$218, 472) was removed, however, \$100,000 was added to hire a temporary employee to assume the duties.
2. Permanent salaries and benefits were also reduced to provide a 4%/4% salary increase instead of the executive recommendation of a 6%/4% salary increase.
3. The executive recommendation included a \$13,448 increase in travel and this was reduced by 50% (\$6,724).
4. The budget request and executive recommendation also included \$7,039 for NDIT costs for the Training and Education Coordinator FTE which was removed in the Senate version.

The Commission requests any changes made by the Senate be restored to meet the Executive Recommendation.

Proposed Deficiency and Carry-Over Amendment (Attachment No. 6)

As discussed above, the Commission had an appropriation of \$97,000 included in OMB's deficiency bill, Senate Bill 2025. The \$97,000 includes \$25,000 for relocation and remodel costs to move into the capitol this spring and \$72,000 for a special assistant attorney general (SAAG) hired in November 2022. On March 13th during a hearing of the House Appropriations Committee, the Ethics Commission provided testimony requesting a carry-over for this amount in SB 2025 to the 2023-25 biennium as the Commission is uncertain that the expenditures would all be incurred by June 30, 2023. On March 16th, the House Appropriations removed the full amount of \$97,000 and indicated during committee work that it would be added to SB 2024.

For your consideration, we have prepared an amendment that would add the \$97,000 emergency funding into SB 2024 with a carry-over to the 2023-2025 biennium.

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