

**2023 SENATE STATE AND LOCAL GOVERNMENT**

**SB 2048**

# 2023 SENATE STANDING COMMITTEE MINUTES

State and Local Government Committee  
Room JW216, State Capitol

SB 2048  
1/6/2023

Relating to the definition & notice to an accused individual
--

9:00 A.M. Chairman Roers opened the hearing. Present: Chair Roers, Vice Chair Barta, Sen Cleary, Sen Estenson, Sen J Lee, and Sen Braunberger.

**Discussion Topics:**

- Ethics Commission
- ND Constitution

9:00 A.M. Rebecca Binstock, Executive Director of the ND Ethics Commission, testified in support and verbally spoke about an amendment. Testimony #12482, #12483, #12484,

9:42 A.M. Chairman Roers closed the hearing.

*Pam Dever, Committee Clerk*

# 2023 SENATE STANDING COMMITTEE MINUTES

State and Local Government Committee  
Room JW216, State Capitol

SB 2048  
1/13/2023

Relating to the definitions and notice to an accused individual.
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9:20 AM Chair Roers opened committee work. Present: Chair Roers, Vice Chair Barta, Sen Cleary, Sen Estenson, Sen J Lee, and Sen Braunberger.

**Discussion Topics:**

- Bill impact
- Scope of measure
- Ethics commission

Committee discussion.

9:27 AM Chair Roers adjourned the meeting.

*Pam Dever, Committee Clerk*

# 2023 SENATE STANDING COMMITTEE MINUTES

State and Local Government Committee  
Room JW216, State Capitol

SB 2048  
1/19/2023

Relating to the definitions and notice to an accused individual.

2:29 PM Chair Roers opened committee work. Present: Chair Roers, Vice Chair Barta, Sen Cleary, Sen Estenson, Sen J Lee, and Sen Braunberger.

### Discussion Topics:

- Committee action

Sen Roers brought forth amendment 23.8026.01001. #26696.

Chair Roers moved amendment 23.8026.01001. Sen Braunberger seconded the motion.

Senators	Vote
Senator Kristin Roers	Y
Senator Jeff Barta	Y
Senator Ryan Braunberger	Y
Senator Sean Cleary	Y
Senator Judy Estenson	Y
Senator Judy Lee	Y

VOTE: YES – 6 NO – 0 Absent – 0 Motion PASSED

Sen Estenson moved a DO PASS as Amended.  
Sen Barta seconded the motion.

Senators	Vote
Senator Kristin Roers	Y
Senator Jeff Barta	Y
Senator Ryan Braunberger	Y
Senator Sean Cleary	Y
Senator Judy Estenson	Y
Senator Judy Lee	Y

VOTE: YES – 6 NO – 0 Absent – 0 Motion PASSED

Sen Roers will carry the bill.

3:00 PM Chair Roers adjourned the meeting.

*Pam Dever, Committee Clerk*

NOTE: Committee reconsidered actions on January 20, 2023 at 11:00 AM.

# 2023 SENATE STANDING COMMITTEE MINUTES

State and Local Government Committee  
Room JW216, State Capitol

SB 2048  
1/20/2023

Relating to the definition and notice to an accused individual.

11:00 Chair Roers opened committee work. Present: Chair Roers, Vice Chair Barta, Sen Cleary, Sen Estenson, Sen J Lee, and Sen Braunberger.

### Discussion Topics:

- New amendment

Chair Roers brought a corrected amendment 23.8026.01002 to committee.

Sen Lee moved to reconsider SB 2048. Sen Barta seconded.

Senators	Vote
Senator Kristin Roers	Y
Senator Jeff Barta	Y
Senator Ryan Braunberger	Y
Senator Sean Cleary	Y
Senator Judy Estenson	Y
Senator Judy Lee	Y

VOTE: YES 6 NO 0 Absent 0

Reconsider motion PASSED

Sen Roers moved a DO PASS on Amendment 23.8026.01002.

Sen Estenson seconded the motion.

Senators	Vote
Senator Kristin Roers	Y
Senator Jeff Barta	Y
Senator Ryan Braunberger	Y
Senator Sean Cleary	Y
Senator Judy Estenson	Y
Senator Judy Lee	Y

VOTE: YES 6 NO 0 Absent 0

Motion PASSED

Sen Lee moved a DO PASS as AMENDED.

Sen Cleary seconded the motion.

Senators	Vote
Senator Kristin Roers	Y
Senator Jeff Barta	Y
Senator Ryan Braunberger	Y

Senator Sean Cleary	Y
Senator Judy Estenson	Y
Senator Judy Lee	Y

VOTE: YES 6 NO 0 Absent 0

Motion PASSED

Sen Roers will carry the bill.

11:10 AM meeting was adjourned.

*Pam Dever, Committee Clerk*

January 19, 2023

*DR*  
*10x1*  
*1-20-2023*

PROPOSED AMENDMENTS TO SENATE BILL NO. 2048

Page 1, line 15, remove ", regulatory board or"

Page 1, line 16, remove "commission, licensing board or commission,"

Page 1, line 18, remove ", regulatory board"

Page 1, line 19, remove "or commission, licensing board or commission,"

Page 2, line 18, after "the" insert "ethics"

Page 2, line 21, replace "Employees of the executive branch, only as it relates to lobbyist gifting" with "Directors, officers, commissioners, heads, or other executives of state agencies"

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**SB 2048: State and Local Government Committee (Sen. K. Roers, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2048 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Page 1, line 15, remove ". regulatory board or"

Page 1, line 16, remove "commission, licensing board or commission."

Page 1, line 18, remove ". regulatory board"

Page 1, line 19, remove "or commission, licensing board or commission."

Page 2, line 18, after "the" insert "ethics"

Page 2, line 21, replace "Employees of the executive branch, only as it relates to lobbyist gifting" with "Directors, officers, commissioners, heads, or other executives of state agencies"

Renumber accordingly



**2023 HOUSE GOVERNMENT AND VETERANS AFFAIRS**

**SB 2048**

# 2023 HOUSE STANDING COMMITTEE MINUTES

## Government and Veterans Affairs Committee Pioneer Room, State Capitol

SB 2048  
3/9/2023

Relating to the definitions and notice to an accused individual.
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Chairman Schauer called the meeting to order at 8:35 AM.

Chairman Austen Schauer, Vice Chairman Bernie Satrom, Reps. Landon Bahl, Claire Cory, Jeff A. Hoverson, Jorin Johnson, Karen Karls, Scott Louser, Carrie McLeod, Karen M. Rohr, Vicky Steiner, Steve Vetter, and Mary Schneider. All present.

### **Discussion Topics:**

- Procedural clean-up
- Ethics commission
- Accountability
- Transparency
- Confidentiality of incidents

Rebecca Binstock, Executive Director of the North Dakota Ethics Commission, supportive testimony (#23230).

Allison Hicks, Office of the Attorney General, spoke in support.

Rebecca Binstock, Executive Director of the North Dakota Ethics Commission, answered questions from the committee.

Chairman Schauer adjourned the meeting at 9:19 AM.

*Phillip Jacobs, Committee Clerk*

# 2023 HOUSE STANDING COMMITTEE MINUTES

## Government and Veterans Affairs Committee Pioneer Room, State Capitol

SB 2048  
3/9/2023

Relating to the definitions and notice to an accused individual.

Chairman Schauer called the meeting to order at 4:35 PM.

Chairman Austen Schauer, Vice Chairman Bernie Satrom, Reps. Claire Cory, Jeff A. Hoverson, Jorin Johnson, Karen Karls, Scott Louser, Carrie McLeod, Karen M. Rohr, Steve Vetter, and Mary Schneider present. Reps. Landon Bahl and Vicky Steiner not present.

### Discussion Topics:

- Committee work

Chairman Schauer called for a discussion on SB 2048.

Rep. Johnson moved a do not pass on SB 2048.

Seconded by Rep. Cory.

Roll Call Vote:

Representatives	Vote
Representative Austen Schauer	Y
Representative Bernie Satrom	AB
Representative Landon Bahl	AB
Representative Claire Cory	Y
Representative Jeff A. Hoverson	Y
Representative Jorin Johnson	Y
Representative Karen Karls	Y
Representative Scott Louser	N
Representative Carrie McLeod	N
Representative Karen M. Rohr	N
Representative Mary Schneider	N
Representative Vicky Steiner	AB
Representative Steve Vetter	Y

Motion carries 6-4-3.

Carried by Rep. Johnson.

Chairman Schauer adjourned the meeting at 4:37 PM.

*Phillip Jacobs, Committee Clerk*

**Reconsidered on 3/16/23.**

**REPORT OF STANDING COMMITTEE**

**SB 2048, as engrossed: Government and Veterans Affairs Committee (Rep. Schauer, Chairman) recommends DO NOT PASS (6 YEAS, 4 NAYS, 3 ABSENT AND NOT VOTING).** Engrossed SB 2048 was placed on the Fourteenth order on the calendar.

# 2023 HOUSE STANDING COMMITTEE MINUTES

## Government and Veterans Affairs Committee Pioneer Room, State Capitol

SB 2048  
3/16/2023

Relating to the definitions and notice to an accused individual.

Chairman Schauer called the meeting to order at 10:48 AM.

Chairman Austen Schauer, Vice Chairman Bernie Satrom, Reps. Landon Bahl, Claire Cory, Jeff A. Hoverson, Jorin Johnson, Karen Karls, Scott Louser, Carrie McLeod, Karen M. Rohr, Vicky Steiner, Steve Vetter, and Mary Schneider. All present.

### Discussion Topics:

- Committee work
- Out-of-state complaints
- Scope of complaints

Rep. Louser moved to reconsider the committee's actions on SB 2048.

Seconded by Rep. Schneider.

### Roll Call Vote:

Representatives	Vote
Representative Austen Schauer	Y
Representative Bernie Satrom	Y
Representative Landon Bahl	N
Representative Claire Cory	N
Representative Jeff A. Hoverson	N
Representative Jorin Johnson	N
Representative Karen Karls	N
Representative Scott Louser	Y
Representative Carrie McLeod	N
Representative Karen M. Rohr	Y
Representative Mary Schneider	Y
Representative Vicky Steiner	Y
Representative Steve Vetter	Y

Motion carries 7-6-0.

Rebecca Binstock, Executive Director of the North Dakota Ethics Commission, answered questions from the committee.

Allison Hicks, Assistant Attorney General, answered questions from the committee.

House Government and Veterans Affairs Committee

SB 2048

3/16/2023

Page 2

Rebecca Binstock, Executive Director of the North Dakota Ethics Commission, answered questions from the committee.

Chairman Schauer adjourned the meeting at 11:09 AM.

*Phillip Jacobs, Committee Clerk*

# 2023 HOUSE STANDING COMMITTEE MINUTES

## Government and Veterans Affairs Committee Pioneer Room, State Capitol

SB 2048  
3/17/2023

Relating to the definitions and notice to an accused individual.

Chairman Schauer called the meeting to order at 9:13 AM.

Chairman Austen Schauer, Vice Chairman Bernie Satrom, Reps. Landon Bahl, Claire Cory, Jeff A. Hoverson, Jorin Johnson, Karen Karls, Scott Louser, Carrie McLeod, Karen M. Rohr, Vicky Steiner, Steve Vetter, and Mary Schneider. All present.

### Discussion Topics:

- Committee work
- Amendments
- Process of filing complaints

Chairman Schauer called for a discussion on SB 2048 and the proposed amendment (#27268).

Rep. Vetter moved to adopt the proposed amendment (#27268) to SB 2048.

Seconded by Rep. McLeod.

Rebecca Binstock, Director of the Ethics Commission, answered questions from the committee.

### Roll Call Vote:

Representatives	Vote
Representative Austen Schauer	Y
Representative Bernie Satrom	Y
Representative Landon Bahl	Y
Representative Claire Cory	Y
Representative Jeff A. Hoverson	Y
Representative Jorin Johnson	Y
Representative Karen Karls	Y
Representative Scott Louser	Y
Representative Carrie McLeod	Y
Representative Karen M. Rohr	AB
Representative Mary Schneider	Y
Representative Vicky Steiner	Y
Representative Steve Vetter	Y

Motion carries: 12-0-1.

Rep. Vetter moved a do pass as amended on SB 2048.

Seconded by Rep. Steiner.

Rebecca Binstock, Executive Director of the North Dakota Ethics Commission, answered questions from the committee.

Allison Hicks, Assistant Attorney General for the Ethics Commission Council, answered questions from the committee.

Roll Call Vote:

<b>Representatives</b>	<b>Vote</b>
Representative Austen Schauer	N
Representative Bernie Satrom	N
Representative Landon Bahl	N
Representative Claire Cory	N
Representative Jeff A. Hoverson	N
Representative Jorin Johnson	Y
Representative Karen Karls	N
Representative Scott Louser	Y
Representative Carrie McLeod	Y
Representative Karen M. Rohr	Y
Representative Mary Schneider	Y
Representative Vicky Steiner	Y
Representative Steve Vetter	Y

Motion carries 7-6-0.

Carried by Rep. Louser.

Chairman Schauer adjourned the meeting at 9:57 AM.

*Phillip Jacobs, Committee Clerk*



DR  
191  
3-17-2023

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2048

Page 2, line 13, remove the overstrike over "an"

Page 2, line 13, remove the underscored colon

Page 2, line 14, remove "a. An"

Page 2, line 14, remove the overstrike over the overstruck comma

Page 2, line 15, remove the overstrike over "members"

Page 2, line 15, remove the underscored semicolon

Page 2, line 16, remove "b. Members"

Page 2, line 16, remove "ethics"

Page 2, line 16, remove the overstrike over ";~~members~~"

Page 2, line 16, remove the underscored semicolon

Page 2, line 17, remove "c. Members"

Page 2, line 17, remove the overstrike over ";~~and employees~~"

Page 2, line 17, remove the underscored semicolon

Page 2, line 18, remove "d. Employees"

Page 2, line 18, remove "; and"

Page 2, line 19, remove "e." "Directors, officers, commissioners, heads, or other executives of state agencies"

Re-number accordingly

**REPORT OF STANDING COMMITTEE**

**SB 2048, as engrossed: Government and Veterans Affairs Committee (Rep. Schauer, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2048 was placed on the Sixth order on the calendar.

Page 2, line 13, remove the overstrike over "an"

Page 2, line 13, remove the underscored colon

Page 2, line 14, remove "a.    An"

Page 2, line 14, remove the overstrike over the overstruck comma

Page 2, line 15, remove the overstrike over "~~members~~"

Page 2, line 15, remove the underscored semicolon

Page 2, line 16, remove "b.    Members"

Page 2, line 16, remove "ethics"

Page 2, line 16, remove the overstrike over "~~;~~members"

Page 2, line 16, remove the underscored semicolon

Page 2, line 17, remove "c.    Members"

Page 2, line 17, remove the overstrike over "~~;~~and employees"

Page 2, line 17, remove the underscored semicolon

Page 2, line 18, remove "d.    Employees"

Page 2, line 18, remove "; and"

Page 2, line 19, remove "e."    "Directors, officers, commissioners, heads, or other executives of state agencies"

Renumber accordingly

**2023 CONFERENCE COMMITTEE**

**SB 2048**

# 2023 SENATE STANDING COMMITTEE MINUTES

State and Local Government Committee  
Room JW216, State Capitol

SB 2048  
4/11/2023  
CONFERENCE COMMITTEE

Relating to the definitions and notice to an accused individual.
--

9:16 AM Chair Roers opened meeting. Present: Chair Roes, Sen Barta, Sen Braunberger, Chair Louser, Rep Steiner, and Rep Karls.

**Discussion Topics:**

- Proposed amendment 23.8026.02002
- Conference committee decision

Chair Louser explained House discussion and amendments.

Rebecca Binstock, Ethics Commission, explained new language. #27435.

Sen Barta moved the Senate accede to House Amendments and further amend with LC 23.8026.02002.

Chair Louser seconded the motion.

Roll Call Vote - Motion carried 6-0-0

Sen Roers will carry the bill for the Senate.

Rep Louser will carry the bill for the House.

09:22 AM Chair Roers adjourned the meeting.

*Pam Dever, Committee Clerk*

April 11, 2023

DA  
4-11-23  
(1-1)

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2048

That the Senate accede to the House amendments as printed on page 1127 and 1128 of the Senate Journal and page 1305 and 1306 of the House Journal and that Senate Bill No. 2048 be further amended as follows:

Page 1, line 15, remove "or regulation"

Renumber accordingly

**2023 SENATE CONFERENCE COMMITTEE  
ROLL CALL VOTES**

BILL/RESOLUTION NO. SB 2048 as (re) engrossed

**Senate State and Local Government Committee**

- Action Taken**  SENATE accede to House Amendments
- SENATE accede to House Amendments and further amend
- HOUSE recede from House amendments
- HOUSE recede from House amendments and amend as follows
- Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Sen Barta Seconded by: Rep Louser

Senators			4/11		Yes	No	Representatives			4/11		Yes	No
<i>Chair Roers</i>	x			X			<i>Chair Louser</i>	x			X		
<i>Sen Barta</i>	x			X			<i>Rep Steiner</i>	x			X		
<i>Sen Braunberger</i>	x			X			<i>Rep Karls</i>	x			X		
Total Senate Vote							Total Rep. Vote						

Vote Count Yes: 6 No: 0 Absent: 0

Senate Carrier Sen K Roers House Carrier Rep Louser

LC Number 23.8026 . 02002 of amendment

LC Number 23.8026 . 04000 of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

Insert LC: 23.8026.02002  
Senate Carrier: K. Roers  
House Carrier: Louser

**REPORT OF CONFERENCE COMMITTEE**

**SB 2048, as engrossed:** Your conference committee (Sens. K. Roers, Barta, Braunberger and Reps. Louser, Steiner, Karls) recommends that the **SENATE ACCEDE** to the House amendments as printed on SJ pages 1127-1128, adopt further amendments as follows, and place SB 2048 on the Seventh order:

That the Senate accede to the House amendments as printed on page 1127 and 1128 of the Senate Journal and page 1305 and 1306 of the House Journal and that Senate Bill No. 2048 be further amended as follows:

Page 1, line 15, remove "or regulation"

Renumber accordingly

Engrossed SB 2048 was placed on the Seventh order of business on the calendar.

**TESTIMONY**

**SB 2048**





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.



## ATTACHMENT #2

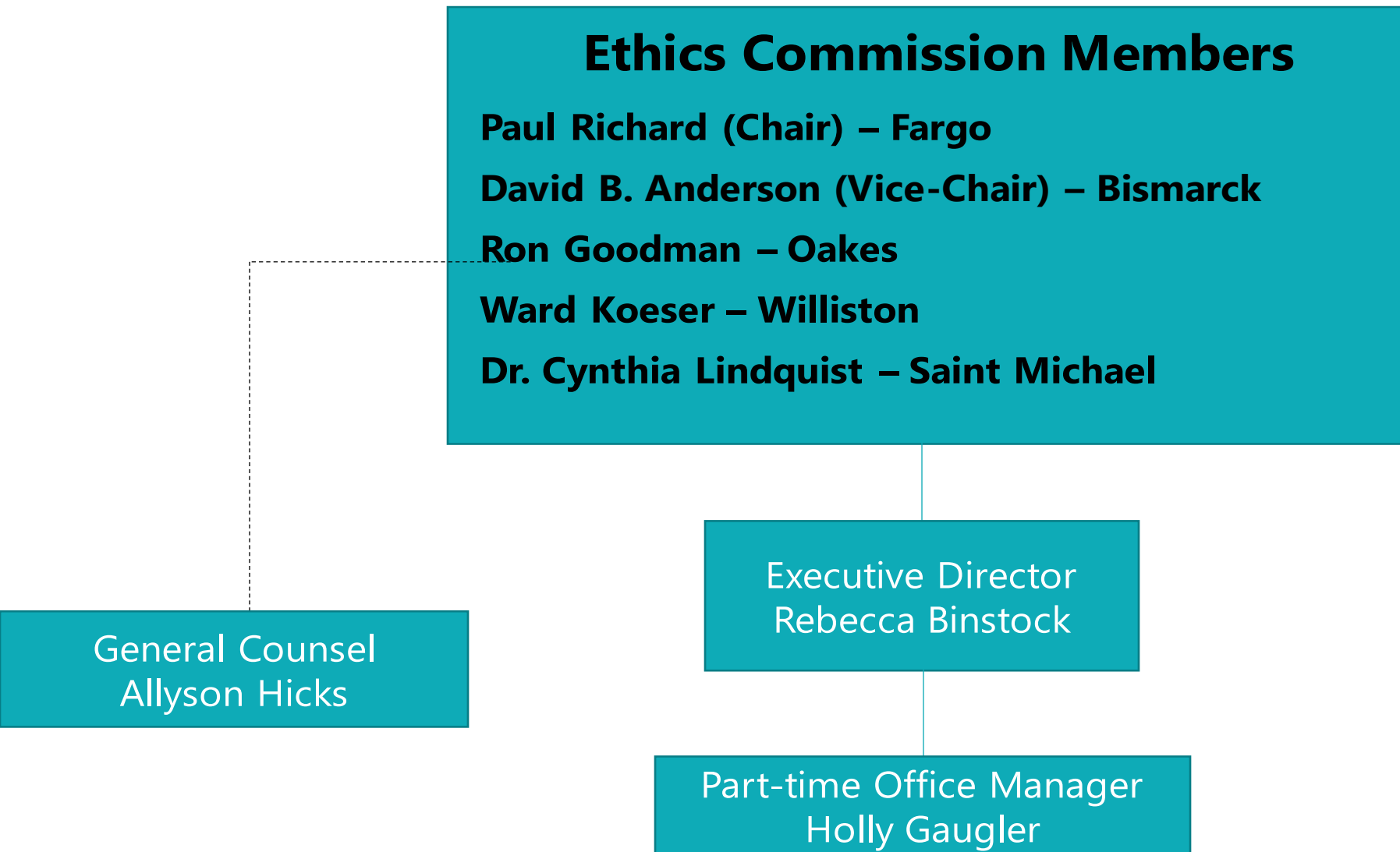
### Examples of Other State Ethics Commissions Oversight of Executive Branch Employees

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).

# ETHICS COMMISSION

Organizational chart

ATTACHMENT #1





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).

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Sixty-eighth  
Legislative Assembly  
of North Dakota

**SENATE BILL NO. 2048**

Introduced by

State and Local Government Committee

(At the request of the Ethics Commission)

1 A BILL for an Act to amend and reenact sections 54-66-01 and 54-66-06 of the North Dakota  
2 Century Code, relating to the definitions and notice to an accused individual.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 54-66-01 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 **54-66-01. Definitions.**

7 As used in this chapter, unless the context otherwise requires:

8 1. "Accused individual" means a lobbyist, public official, candidate for public office,  
9 political committee, or contributor who is alleged to have violated article XIV of the  
10 Constitution of North Dakota, this chapter, or another law or rule regarding  
11 transparency, corruption, elections, or lobbying.

12 2. "Complainant" means ~~a North Dakota resident~~ an individual who, in writing or verbally,  
13 submits a complaint to the commission and is:

14 a. A North Dakota resident;

15 b. Subject to licensing or regulation by a state agency, regulatory board or  
16 commission, licensing board or commission, or other public official subject to the  
17 jurisdiction of the ethics commission; or

18 c. Is a party to a quasi-judicial proceeding before a state agency, regulatory board  
19 or commission, licensing board or commission, or other public official subject to  
20 the jurisdiction of the ethics commission.

21 3. "Complaint" means a verbal or written allegation to the commission that a lobbyist,  
22 public official, candidate for public office, political committee, or contributor has  
23 violated article XIV of the Constitution of North Dakota, this chapter, or another law or  
24 rule regarding transparency, corruption, elections, or lobbying.

Sixty-eighth  
Legislative Assembly

- 1       4. "Ethics commission" or "commission" means the North Dakota ethics commission  
2       established by article XIV of the Constitution of North Dakota.
- 3       5. "Gift" means any item, service, or thing of value not given in exchange for fair market  
4       consideration including travel and recreation, except:  
5       a. Purely informational material;  
6       b. A campaign contribution; and  
7       c. An item, service, or thing of value given under conditions that do not raise ethical  
8       concerns, as set forth in rules adopted by the ethics commission, to advance  
9       opportunities for state residents to meet with public officials in educational and  
10      social settings in the state.
- 11      6. "Influence state government action" means promoting or opposing the adoption of a  
12      rule by an administrative agency or the commission under chapter 28-32.
- 13      7. "Lobby" means an activity listed in subsection 1 of section 54-05.1-02.
- 14      8. "Lobbyist" means an individual required to register under section 54-05.1-03.
- 15      9. "Public official" means ~~an~~:  
16      a. An elected or appointed official of the state's executive or legislative branch,  
17      members;  
18      b. Members of the ethics commission,~~members;~~  
19      c. Members of the governor's cabinet, and employees; and  
20      d. Employees of the legislative branch; and  
21      ~~e. Employees of the executive branch, only as it relates to lobbyist gifting~~Directors,  
22      officers, commissioners, heads, or other executives of state agencies.
- 23      10. "Receives the complaint" means one or more members of the commission learn of the  
24      complaint.
- 25      11. "Ultimate and true source" means the person that knowingly contributed over two  
26      hundred dollars solely to lobby or influence state government action.

27      **SECTION 2. AMENDMENT.** Section 54-66-06 of the North Dakota Century Code is  
28      amended and reenacted as follows:

29      **54-66-06. Informing the accused individual - Written response permitted.**

30      The

- 1       1. Within thirty calendar days, the commission shall inform an accused individual of the  
2       complaint and include, Subject to the confidentiality requirements set forth in section  
3       54-66-05, the accused individual will be provided with the written complaint or written  
4       summary of the oral complaint, witness statements, and other documentary evidence  
5       ~~considered as soon as reasonably possible but no later than twenty calendar days~~  
6       ~~after the commission receives~~included with the complaint. The accused individual may  
7       ~~respond~~provide a written response to the complaint in writing within twentythree  
8       calendar days of receipt of , or after the commission requests a written response to the  
9       complaint or summary of the complaint, a period as set by the commission. This  
10      subsection does not preclude the accused individual from providing a written response  
11      to the complaint before receiving a request for written response from the commission.  
12      2. If the commission has summarily dismissed the complaint under subsection 2 of  
13      section 54-66-05, before notifying the accused individual as required by this section,  
14      the notification to the accused individual must include notice of the summary  
15      dismissal.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2048

Page 2, line 13, remove the overstrike over "~~an~~"

Page 2, line 13, remove the semicolon

Page 2, line 14, remove "a. An"

Page 2, lines 14 and 15, remove the overstrike from "~~members~~"

Page 2, line 15, remove the semicolon

Page 2, line 16, remove "b. Members"

Page 2, line 16, remove "ethics"

Page 2, line 16, remove the overstrike from "~~members~~"

Page 2, line 16, remove the semicolon

Page 2, line 17, remove "c. Members"

Page 2, line 17, remove the overstrike from "~~and employees~~"

Page 2, line 17, remove the semicolon

Page 2, line 18, remove "d. Employees"

Page 2, line 18, remove "~~and~~"

Page 2, remove line 19.

Re-number accordingly

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2048

Page ~~2~~, line 15, after "licensing" remove "or regulation"

Renumber accordingly