

Sixty-sixth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1521

Introduced by

Representative Pollert

Senator Wardner

1 A BILL for an Act to create and enact a new section to chapter 16.1-08.1 and chapter 54-66 of
2 the North Dakota Century Code, relating to reporting campaign contributions and expenditures,
3 restrictions on public officials and lobbyists, investigations of ethics violations, and implementing
4 requirements of article XIV of the Constitution of North Dakota; to amend and reenact section
5 16.1-08.1-01, subsection 4 of section 16.1-08.1-02.1, sections 16.1-08.1-02.3, 16.1-08.1-02.4,
6 16.1-08.1-03.1, 16.1-08.1-04.1, 28-32-01, 28-32-02, 28-32-03, 28-32-06, 28-32-07, 28-32-08,
7 28-32-08.1, 28-32-08.2, 28-32-09, 28-32-10, 28-32-11, 28-32-12, 28-32-14, 28-32-15, 28-32-16,
8 28-32-17, 28-32-18, and 28-32-18.1, subsections 2 and 4 of section 28-32-19, and sections
9 28-32-27, 28-32-47, 28-32-48, and 28-32-49 of the North Dakota Century Code, relating to
10 rulemaking procedures, disqualification of agency heads in quasi-judicial proceedings,
11 implementing article XIV of the Constitution of North Dakota, and requirements for the North
12 Dakota ethics commission; to provide for a penalty; to provide an appropriation; to provide an
13 effective date; to provide an expiration date; and to declare an emergency.

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

15 **SECTION 1. AMENDMENT.** Section 16.1-08.1-01 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **16.1-08.1-01. Definitions.**

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

- 19 1. "Adjusted for inflation" means adjusted on January first of each year by the change in
20 the consumer price index for all urban consumers (all items, United States city
21 average), as identified by the secretary of state.
- 22 2. "Affiliate" means an organization that controls, is controlled by, or is under common
23 control with another organization. For purposes of this definition, control means the
24 possession, direct or indirect, of the power to direct or cause the direction of the

1 management and policies of an organization, whether through the ownership of voting
2 securities, by contract other than a commercial contract for goods or nonmanagement
3 services, or otherwise. Control is presumed to exist if an organization, directly or
4 indirectly, owns, controls, holds with the power to vote, or holds proxies representing
5 fifty percent or more of the voting securities of any other organization.

6 2-3. "Association" means any club, association, union, brotherhood, fraternity, organization,
7 or group of any kind of two or more persons, including labor unions, trade
8 associations, professional associations, or governmental associations, which is united
9 for any purpose, business, or object and which assesses any dues, membership fees,
10 or license fees in any amount, or which maintains a treasury fund in any amount. The
11 term does not include corporations, cooperative corporations, limited liability
12 companies, political committees, or political parties.

13 3-4. "Candidate" means an individual who seeks nomination for election or election to
14 public office, and includes:
15 a. An individual holding public office;
16 b. An individual who has publicly declared that individual's candidacy for nomination
17 for election or election to public office or has filed or accepted a nomination for
18 public office;
19 c. An individual who has formed a campaign or other committee for that individual's
20 candidacy for public office;
21 d. An individual who has circulated a nominating petition to have that individual's
22 name placed on the ballot; and
23 e. An individual who has, in any manner, solicited or received a contribution for that
24 individual's candidacy for public office, whether before or after the election for
25 that office.

26 4-5. "Conduit" means a person that is not a political party, political committee, or candidate
27 and which receives a contribution of money and transfers the contribution to a
28 candidate, political party, or political committee when the contribution is designated
29 specifically for the candidate, political party, or political committee and the person has
30 no discretion as to the recipient and the amount transferred. The term includes a

1 transactional intermediary, including a credit card company or a money transfer
2 service that pays or transfers money to a candidate on behalf of another person.

3 ~~5-6.~~ "Contribution" means a gift, transfer, conveyance, provision, receipt, subscription,
4 loan, advance, deposit of money, or anything of value, made for the purpose of
5 influencing the nomination for election, or election, of any person to public office or
6 aiding or opposing the circulation or passage of a statewide initiative or referendum
7 petition or measure. The term also means a contract, promise, or agreement, express
8 or implied, whether or not legally enforceable, to make a contribution for any of the
9 above purposes. The term includes funds received by a candidate for public office or a
10 political party or committee which are transferred or signed over to that candidate,
11 party, or committee from another candidate, party, or political committee or other
12 source including a conduit. The term "anything of value" includes any good or service
13 of more than a nominal value. The term "nominal value" means the cost, price, or
14 worth of the good or service is trivial, token, or of no appreciable value. The term
15 "contribution" does not include:

- 16 a. A loan of money from a bank or other lending institution made in the regular
17 course of business.
- 18 b. Time spent by volunteer campaign or political party workers.
- 19 c. Money or anything of value received for commercial transactions, including rents,
20 advertising, or sponsorships made as a part of a fair market value bargained-for
21 exchange.
- 22 d. Money or anything of value received for anything other than a political purpose.
- 23 e. Products or services for which the actual cost or fair market value are reimbursed
24 by a payment of money.
- 25 f. An independent expenditure.
- 26 g. The value of advertising paid by a political party, multicandidate political
27 committee, or caucus which is in support of a candidate.
- 28 h. In-kind contributions from a candidate to the candidate's campaign.

29 ~~6-7.~~ "Cooperative corporations", "corporations", and "limited liability companies" are as
30 defined in this code, and for purposes of this chapter "corporations" includes nonprofit
31 corporations. However, if a political committee, the only purpose of which is accepting

1 contributions and making expenditures for a political purpose, incorporates for liability
2 purposes only, the committee is not considered a corporation for the purposes of this
3 chapter.

4 ~~7-8.~~ "Expenditure" means:

5 a. A gift, transfer, conveyance, provision, loan, advance, payment, distribution,
6 disbursement, outlay, or deposit of money or anything of value, except a loan of
7 money from a bank or other lending institution made in the regular course of
8 business, made for a political purpose or for the purpose of influencing the
9 passage or defeat of a measure.

10 b. A contract, promise, or agreement, express or implied, whether or not legally
11 enforceable, to make any expenditure.

12 c. The transfer of funds by a political committee to another political committee.

13 d. An independent expenditure.

14 ~~8-9.~~ "Expenditure categories" means the categories into which expenditures must be
15 grouped for reports under this chapter. The expenditure categories are:

16 a. Advertising;

17 b. Campaign loan repayment;

18 c. Operations;

19 d. Travel; and

20 e. Miscellaneous.

21 ~~9-10.~~ "Independent expenditure" means an expenditure made for a political purpose or for
22 the purpose of influencing the passage or defeat of a measure if the expenditure is
23 made without the express or implied consent, authorization, or cooperation of, and not
24 in concert with or at the request or suggestion of, any candidate, committee, or
25 political party.

26 ~~10-11.~~ "Patron" means a person who owns equity interest in the form of stock, shares, or
27 membership or maintains similar financial rights in a cooperative corporation.

28 ~~11-12.~~ "Person" means an individual, partnership, political committee, association,
29 corporation, cooperative corporation, limited liability company, or other organization or
30 group of persons.

- 1 ~~12-13.~~ "Personal benefit" means a benefit to the candidate or another person which is not for
2 a political purpose or related to a candidate's responsibilities as a public officeholder,
3 and any other benefit that would convert a contribution to personal income.
- 4 ~~13-14.~~ "Political committee" means any committee, club, association, or other group of
5 persons which receives contributions or makes expenditures for political purposes and
6 includes:
- 7 a. A political action committee not connected to another organization and free to
8 solicit funds from the general public, or derived from a corporation, cooperative
9 corporation, limited liability company, affiliate, subsidiary, or an association that
10 solicits or receives contributions from its employees or members or makes
11 expenditures for political purposes on behalf of its employees or members;
 - 12 b. A candidate committee established to support an individual candidate seeking
13 public office which solicits or receives contributions for political purposes;
 - 14 c. A political organization registered with the federal election commission, which
15 solicits or receives contributions or makes expenditures for political purposes;
 - 16 d. A multicandidate political committee, including a caucus, established to support
17 multiple groups or slates of candidates seeking public office, which solicits or
18 receives contributions for political purposes; and
 - 19 e. A measure committee, including an initiative or referendum sponsoring
20 committee at any stage of its organization, which solicits or receives contributions
21 or makes expenditures for the purpose of aiding or opposing a measure sought
22 to be voted upon by the voters of the state, including any activities undertaken for
23 the purpose of drafting an initiative or referendum petition, seeking approval of
24 the secretary of state for the circulation of a petition, or seeking approval of the
25 submitted petitions.
- 26 ~~14-15.~~ "Political party" means any association, committee, or organization which nominates a
27 candidate for election to any office which may be filled by a vote of the electors of this
28 state or any of its political subdivisions and whose name appears on the election ballot
29 as the candidate of such association, committee, or organization.
- 30 ~~15-16.~~ "Political purpose" means any activity undertaken in support of or in opposition to the
31 election or nomination of a candidate to public office and includes using "vote for",

1 "oppose", or any similar support or opposition language in any advertisement whether
2 the activity is undertaken by a candidate, a political committee, a political party, or any
3 person. In the period thirty days before a primary election and sixty days before a
4 special or general election, "political purpose" also means any activity in which a
5 candidate's name, office, district, or any term meaning the same as "incumbent" or
6 "challenger" is used in support of or in opposition to the election or nomination of a
7 candidate to public office. The term does not include activities undertaken in the
8 performance of a duty of a public office or any position taken in any bona fide news
9 story, commentary, or editorial.

10 ~~16-17.~~ "Public office" means every office to which an individual can be elected by vote of the
11 people under the laws of this state.

12 ~~17-18.~~ "Subsidiary" means an affiliate of a corporation under the control of the corporation
13 directly or indirectly through one or more intermediaries.

14 19. "Ultimate and true source" means the person who knowingly contributed over two
15 hundred dollars, adjusted for inflation, solely to influence a statewide election or an
16 election for the legislative assembly.

17 **SECTION 2. AMENDMENT.** Subsection 4 of section 16.1-08.1-02.1 of the North Dakota
18 Century Code is amended and reenacted as follows:

- 19 4. The statement filed according to this section must show the following:
- 20 a. The balance of the filer's convention accounts at the start and close of the
21 reporting period;
 - 22 b. The total of all revenue received and expenditures made of two hundred dollars,
23 adjusted for inflation, or less;
 - 24 c. The total of all revenue received and expenditures made in excess of two
25 hundred dollars, adjusted for inflation;
 - 26 d. For each aggregated revenue received from a person in excess of two hundred
27 dollars, adjusted for inflation:
 - 28 (1) The name of each person;
 - 29 (2) The mailing address of each person;
 - 30 (3) The date of the most recent receipt of revenue from each person; and

- 1 (4) The purpose or purposes for which the aggregated revenue total was
2 received from each person;
- 3 e. For each aggregated expenditure made to a person in excess of two hundred
4 dollars, adjusted for inflation:
- 5 (1) The name of each person or entity;
6 (2) The mailing address of each person or entity;
7 (3) The date of the most recent expense made to each person or entity; and
8 (4) The purpose or purposes for which the aggregated expenditure total was
9 disbursed to each person or entity; and
- 10 f. For each aggregated revenue from an individual which totals five thousand
11 dollars, adjusted for inflation, or more during the reporting period, the occupation,
12 employer, and principal place of business of the individual must be disclosed.

13 **SECTION 3. AMENDMENT.** Section 16.1-08.1-02.3 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **16.1-08.1-02.3. Pre-election, supplemental, and year-end campaign disclosure**
16 **statement requirements for candidates, candidate committees, multicandidate**
17 **committees, and nonstatewide political parties.**

- 18 1. Prior to the thirty-first day before a primary, general, or special election, a candidate or
19 candidate committee formed on behalf of the candidate, a multicandidate political
20 committee, or a political party other than a statewide political party soliciting or
21 accepting contributions shall file a campaign disclosure statement that includes all
22 contributions received from January first through the fortieth day before the election. A
23 candidate whose name is not on the ballot and who is not seeking election through
24 write-in votes, the candidate's candidate committee, and a political party that has not
25 endorsed or nominated any candidate in the election is not required to file a statement
26 under this subsection. The statement may be submitted for filing beginning on the
27 thirty-ninth day before the election. The statement must include:
- 28 a. For each aggregated contribution from a contributor which totals in excess of two
29 hundred dollars, adjusted for inflation, received during the reporting period:
- 30 (1) The name and mailing address of the contributor;
31 (2) The total amount of the contribution; and

- 1 (3) The date the last contributed amount was received;
- 2 b. The total of all aggregated contributions from contributors which total in excess of
- 3 two hundred dollars, adjusted for inflation, during the reporting period;
- 4 c. The total of all contributions received from contributors that contributed two
- 5 hundred dollars, adjusted for inflation, or less each during the reporting period;
- 6 and
- 7 d. For a statewide candidate, a candidate committee formed on behalf of a
- 8 statewide candidate, and a statewide multicandidate committee, the balance of
- 9 the campaign fund on the fortieth day before the election and the balance of the
- 10 campaign fund on January first.
- 11 2. Beginning on the thirty-ninth day before the election through the day before the
- 12 election, a person that files a statement under subsection 1 must file a supplemental
- 13 statement within forty-eight hours of the start of the day following the receipt of a
- 14 contribution or aggregate contribution from a contributor which is in excess of five
- 15 hundred dollars, adjusted for inflation. The statement must include:
- 16 a. The name and mailing address of the contributor;
- 17 b. The total amount of the contribution received during the reporting period; and
- 18 c. The date the last contributed amount was received.
- 19 3. Prior to February first, a candidate or candidate committee, a multicandidate political
- 20 committee, or a nonstatewide political party soliciting or accepting contributions shall
- 21 file a campaign disclosure statement that includes all contributions received and
- 22 expenditures, by expenditure category, made from January first through December
- 23 thirty-first of the previous year. The statement may be submitted for filing beginning on
- 24 January first. The statement must include:
- 25 a. For a statewide candidate, a candidate committee formed on behalf of a
- 26 statewide candidate, and a statewide multicandidate committee, the balance of
- 27 the campaign fund on January first and on December thirty-first;
- 28 b. For each aggregated contribution from a contributor which totals in excess of two
- 29 hundred dollars, adjusted for inflation, received during the reporting period:
- 30 (1) The name and mailing address of the contributor;
- 31 (2) The total amount of the contribution; and

- 1 (3) The date the last contributed amount was received;
- 2 c. The total of all aggregated contributions from contributors which total in excess of
- 3 two hundred dollars, adjusted for inflation, during the reporting period;
- 4 d. The total of all contributions received from contributors that contributed two
- 5 hundred dollars, adjusted for inflation, or less each during the reporting period;
- 6 and
- 7 e. The total of all other expenditures made during the previous year, separated into
- 8 expenditure categories.
- 9 4. A person required to file a statement under this section, other than a candidate for
- 10 judicial office, county office, or city office, or a candidate committee for a candidate
- 11 exempted under this subsection, shall report each aggregated contribution from a
- 12 contributor which totals five thousand dollars, adjusted for inflation, or more during the
- 13 reporting period. For these contributions from individuals, the statement must include
- 14 the contributor's occupation, employer, and the employer's principal place of business.
- 15 5. A candidate for city office in a city with a population under five thousand and a
- 16 candidate committee for the candidate are exempt from this section.
- 17 6. A candidate for county office and a candidate committee for a candidate for county
- 18 office shall file statements under this chapter with the county auditor. A candidate for
- 19 city office who is required to file a statement under this chapter and a candidate
- 20 committee for such a candidate shall file statements with the city auditor. Any other
- 21 person required to file a statement under this section shall file the statement with the
- 22 secretary of state.
- 23 7. The filing officer shall assess and collect fees for any reports filed after the filing
- 24 deadline.
- 25 8. To ensure accurate reporting and avoid commingling of campaign and personal funds,
- 26 candidates shall use dedicated campaign accounts that are separate from any
- 27 personal accounts.

28 **SECTION 4. AMENDMENT.** Section 16.1-08.1-02.4 of the North Dakota Century Code is

29 amended and reenacted as follows:

1 **16.1-08.1-02.4. Pre-election, supplemental, and year-end campaign disclosure**
2 **statement requirements for statewide political parties and certain political committees.**

3 1. Prior to the thirty-first day before a primary, general, or special election, a statewide
4 political party or a political committee not required to file statements under section
5 16.1-08.1-02.3 which is soliciting or accepting contributions shall file a campaign
6 disclosure statement that includes all contributions received and expenditures made
7 from January first through the fortieth day before the election. A political party that has
8 not endorsed or nominated a candidate in an election is not required to file a
9 statement under this subsection. A statement required to be filed under this subsection
10 may be submitted for filing beginning on the thirty-ninth day before the election. The
11 statement must include:

- 12 a. For each aggregated contribution from a contributor which totals in excess of two
13 hundred dollars, adjusted for inflation, received during the reporting period:
- 14 (1) The name and mailing address of the contributor;
15 (2) The total amount of the contribution; and
16 (3) The date the last contributed amount was received;
- 17 b. The total of all aggregated contributions from contributors which total in excess of
18 two hundred dollars, adjusted for inflation, during the reporting period;
- 19 c. The total of all contributions received from contributors that contributed two
20 hundred dollars, adjusted for inflation, or less each during the reporting period;
- 21 d. For each recipient of an expenditure from campaign funds in excess of two
22 hundred dollars, adjusted for inflation, in the aggregate:
- 23 (1) The name and mailing address of the recipient;
24 (2) The total amount of the expenditure made to the recipient; and
25 (3) The date the last expended amount was made to the recipient;
- 26 e. The aggregate total of all expenditures from campaign funds in excess of two
27 hundred dollars, adjusted for inflation;
- 28 f. The aggregate total of all expenditures from campaign funds of two hundred
29 dollars, adjusted for inflation, or less; and
- 30 g. The balance of the campaign fund on the fortieth day before the election and
31 balance of the campaign fund on January first.

- 1 2. Beginning on the thirty-ninth day before the election through the day before the
2 election, a person that files a statement under subsection 1 must file a supplemental
3 statement within forty-eight hours of the start of the day following the receipt of a
4 contribution or aggregate contribution from a contributor which is in excess of five
5 hundred dollars, adjusted for inflation. The statement must include:
- 6 a. The name and mailing address of the contributor;
7 b. The total amount of the contribution received during the reporting period; and
8 c. The date the last contributed amount was received.
- 9 3. Prior to February first, a statewide political party or a political committee that is not
10 required to file a statement under section 16.1-08.1-2.3 shall file a campaign
11 disclosure statement that includes all contributions received and expenditures made
12 from January first through December thirty-first of the previous year. The statement
13 may be submitted for filing beginning on January first. The statement must include:
- 14 a. For each aggregated contribution from a contributor which totals in excess of two
15 hundred dollars, adjusted for inflation, received during the reporting period:
- 16 (1) The name and mailing address of the contributor;
17 (2) The total amount of the contribution; and
18 (3) The date the last contributed amount was received;
- 19 b. The total of all aggregated contributions from contributors which total in excess of
20 two hundred dollars, adjusted for inflation, during the reporting period;
- 21 c. The total of all contributions received from contributors that contributed two
22 hundred dollars, adjusted for inflation, or less each during the reporting period;
- 23 d. For each recipient of an expenditure from campaign funds in excess of two
24 hundred dollars, adjusted for inflation, in the aggregate:
- 25 (1) The name and mailing address of the recipient;
26 (2) The total amount of the expenditure made to the recipient; and
27 (3) The date the last expended amount was made to the recipient;
- 28 e. The aggregate total of all expenditures from campaign funds in excess of two
29 hundred dollars, adjusted for inflation;
- 30 f. The aggregate total of all expenditures from campaign funds of two hundred
31 dollars, adjusted for inflation, or less; and

- 1 g. The balance of the campaign fund on January first and December thirty-first.
- 2 4. A person required to file a statement under this section shall disclose each aggregated
3 contribution from a contributor which totals five thousand dollars, adjusted for inflation,
4 or more during the reporting period. For these contributions from individuals, the
5 statement must include the contributor's occupation, employer, and the employer's
6 principal place of business.
- 7 5. Statements under this section must be filed with the secretary of state.
- 8 6. The secretary of state shall assess and collect fees for any reports filed after the filing
9 deadline.

10 **SECTION 5. AMENDMENT.** Section 16.1-08.1-03.1 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **16.1-08.1-03.1. Special requirements for statements required of persons engaged in**
13 **activities regarding ballot measures.**

- 14 1. For each reportable contribution and expenditure under section 16.1-08.1-02.4, the
15 threshold for reporting is one hundred dollars, adjusted for inflation, for any person
16 engaged in activities described in subdivision e of subsection ~~4314~~ of section
17 16.1-08.1-01.
- 18 2. For contributions received from an out-of-state contributor, a person engaged in
19 activities described in subdivision e of subsection ~~4314~~ of section 16.1-08.1-01 shall
20 include the following information regarding each subcontributor that has stated a
21 contribution is for the express purpose of furthering the passage or defeat of a ballot
22 measure in the statements required under section 16.1-08.1-02.4:
- 23 a. A designation as to whether any person contributed in excess of one hundred
24 dollars, adjusted for inflation, of the total contribution;
- 25 b. The name and mailing address of each subcontributor that contributed in excess
26 of one hundred dollars, adjusted for inflation, of the total contribution;
- 27 c. The contribution amounts of each disclosed subcontributor; and
- 28 d. The occupation, employer, and address for the employer's principal place of
29 business of each disclosed subcontributor.
- 30 3. An initiative and referendum sponsoring committee also shall file a disclosure
31 statement by the date the secretary of state approves the petition for circulation, and

1 shall file an additional statement on the date the petitions containing the required
2 number of signatures are submitted to the secretary of state for review. The
3 statements required under this subsection must be in the same form as the year-end
4 statements under section 16.1-08.1-02.4.

5 4. A sponsoring committee shall file a statement regarding its intent to compensate
6 circulators before paying for petitions to be circulated.

7 **SECTION 6. AMENDMENT.** Section 16.1-08.1-04.1 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **16.1-08.1-04.1. Personal use of contributions prohibited.**

10 1. A candidate may not use any contribution received by the candidate, the candidate's
11 candidate committee, or a multicandidate political committee to:

12 1. a. Give a personal benefit to the candidate or another person;

13 2. b. Make a loan to another person;

14 3. c. Knowingly pay more than the fair market value for goods or services purchased
15 for the campaign; or

16 4. d. Pay a criminal fine or civil penalty.

17 2. For the first violation, the secretary of state shall assess a civil penalty of five hundred
18 dollars upon any person who knowingly violates this section. The assessment of a civil
19 penalty may be appealed to the district court of Burleigh County. For a second and
20 subsequent knowing violation of this section, the person is guilty of a class B
21 misdemeanor.

22 **SECTION 7.** A new section to chapter 16.1-08.1 of the North Dakota Century Code is
23 created and enacted as follows:

24 **Ultimate and true source of funds - Required identification - Penalty.**

25 1. In any report under this chapter which requires the identification of a contributor or
26 subcontributor, the ultimate and true source of funds must be identified.

27 2. A resident taxpayer may commence an action in a district court of this state against a
28 person required to comply with this section to compel compliance if all other
29 enforcement measures under this chapter have been exhausted and the taxpayer
30 reasonably believes the person has failed to comply with this section. A failure to
31 comply with this section must be proved by clear and convincing evidence.

1 **SECTION 8. AMENDMENT.** Section 28-32-01 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **28-32-01. Definitions.**

4 In this chapter, unless the context or subject matter otherwise provides:

- 5 1. "Adjudicative proceeding" means an administrative matter resulting in an agency
6 issuing an order after an opportunity for hearing is provided or required. An
7 adjudicative proceeding includes administrative matters involving a hearing on a
8 complaint against a specific-named respondent; a hearing on an application seeking a
9 right, privilege, or an authorization from an agency, such as a ratemaking or licensing
10 hearing; or a hearing on an appeal to an agency. An adjudicative proceeding includes
11 reconsideration, rehearing, or reopening. Once an adjudicative proceeding has begun,
12 the adjudicative proceeding includes any informal disposition of the administrative
13 matter under section 28-32-22 or another specific statute or rule, unless the matter
14 has been specifically converted to another type of proceeding under section 28-32-22.
15 An adjudicative proceeding does not include a decision or order to file or not to file a
16 complaint, or to initiate an investigation, an adjudicative proceeding, or any other
17 proceeding before the agency, or another agency, or a court. An adjudicative
18 proceeding does not include a decision or order to issue, reconsider, or reopen an
19 order that precedes an opportunity for hearing or that under another section of this
20 code is not subject to review in an adjudicative proceeding. An adjudicative proceeding
21 does not include rulemaking under this chapter.
- 22 2. "Administrative agency" or "agency" means each board, bureau, commission,
23 department, or other administrative unit of the executive branch of state government,
24 including one or more officers, employees, or other persons directly or indirectly
25 purporting to act on behalf or under authority of the agency. An administrative unit
26 located within or subordinate to an administrative agency must be treated as part of
27 that agency to the extent it purports to exercise authority subject to this chapter. The
28 term administrative agency does not include:
 - 29 a. The office of management and budget except with respect to rules made under
30 section 32-12.2-14, rules relating to conduct on the capitol grounds and in
31 buildings located on the capitol grounds under section 54-21-18, rules relating to

- 1 the classified service as authorized under section 54-44.3-07, and rules relating
2 to state purchasing practices as required under section 54-44.4-04.
- 3 b. The adjutant general with respect to the department of emergency services.
- 4 c. The council on the arts.
- 5 d. The state auditor.
- 6 e. The department of commerce with respect to the division of economic
7 development and finance.
- 8 f. The dairy promotion commission.
- 9 g. The education factfinding commission.
- 10 h. The educational technology council.
- 11 i. The board of equalization.
- 12 j. The board of higher education.
- 13 k. The Indian affairs commission.
- 14 l. The industrial commission with respect to the activities of the Bank of North
15 Dakota, North Dakota housing finance agency, public finance authority, North
16 Dakota mill and elevator association, North Dakota farm finance agency, the
17 North Dakota transmission authority, and the North Dakota pipeline authority.
- 18 m. The department of corrections and rehabilitation except with respect to the
19 activities of the division of adult services under chapter 54-23.4.
- 20 n. The pardon advisory board.
- 21 o. The parks and recreation department.
- 22 p. The parole board.
- 23 q. The state fair association.
- 24 r. The attorney general with respect to activities of the state toxicologist and the
25 state crime laboratory.
- 26 s. The administrative committee on veterans' affairs except with respect to rules
27 relating to the supervision and government of the veterans' home and the
28 implementation of programs or services provided by the veterans' home.
- 29 t. The industrial commission with respect to the lignite research fund except as
30 required under section 57-61-01.5.

- 1 u. The attorney general with respect to guidelines adopted under section 12.1-32-15
2 for the risk assessment of sexual offenders, the risk level review process, and
3 public disclosure of information under section 12.1-32-15.
- 4 v. The commission on legal counsel for indigents.
- 5 w. The attorney general with respect to twenty-four seven sobriety program
6 guidelines and program fees.
- 7 x. The industrial commission with respect to approving or setting water rates under
8 chapter 61-40.
- 9 3. "Agency head" means an individual or body of individuals in whom the ultimate legal
10 authority of the agency is vested by law.
- 11 4. "Commission" means the North Dakota ethics commission established by article XIV
12 of the Constitution of North Dakota.
- 13 5. "Complainant" means any person who files a complaint before an administrative
14 agency pursuant to section 28-32-21 and any administrative agency that, when
15 authorized by law, files such a complaint before such agency or any other agency.
- 16 ~~5-6.~~ "Hearing officer" means any agency head or one or more members of the agency
17 head when presiding in an administrative proceeding, or, unless prohibited by law, one
18 or more other persons designated by the agency head to preside in an administrative
19 proceeding, an administrative law judge from the office of administrative hearings, or
20 any other person duly assigned, appointed, or designated to preside in an
21 administrative proceeding pursuant to statute or rule.
- 22 ~~6-7.~~ "License" means a franchise, permit, certification, approval, registration, charter, or
23 similar form of authorization required by law.
- 24 ~~7-8.~~ "Order" means any agency action of particular applicability which determines the legal
25 rights, duties, privileges, immunities, or other legal interests of one or more specific
26 persons. The term does not include an executive order issued by the governor.
- 27 ~~8-9.~~ "Party" means each person named or admitted as a party or properly seeking and
28 entitled as of right to be admitted as a party. An administrative agency may be a party.
29 In a hearing for the suspension, revocation, or disqualification of an operator's license
30 under title 39, the term may include each city and each county in which the alleged

1 conduct occurred, but the city or county may not appeal the decision of the hearing
2 officer.

3 ~~9.10.~~ "Person" includes an individual, association, partnership, corporation, limited liability
4 company, the commission, a state governmental agency or governmental subdivision,
5 or an agency of such governmental subdivision.

6 ~~10.11.~~ "Relevant evidence" means evidence having any tendency to make the existence of
7 any fact that is of consequence to the determination of the administrative action more
8 probable or less probable than it would be without the evidence.

9 ~~11.12.~~ "Rule" means the whole or a part of an agency or commission statement of general
10 applicability which implements or prescribes law or policy or the organization,
11 procedure, or practice requirements of the agency or commission. The term includes
12 the adoption of new rules and the amendment, repeal, or suspension of an existing
13 rule. The term does not include:

14 a. A rule concerning only the internal management of an agency or the commission
15 which does not directly or substantially affect the substantive or procedural rights
16 or duties of any segment of the public.

17 b. A rule that sets forth criteria or guidelines to be used by the staff of an agency or
18 the commission in the performance of audits, investigations, inspections, and
19 settling commercial disputes or negotiating commercial arrangements, or in the
20 defense, prosecution, or settlement of cases, if the disclosure of the
21 ~~statement~~rule would:

22 (1) Enable law violators to avoid detection;

23 (2) Facilitate disregard of requirements imposed by law; or

24 (3) Give a clearly improper advantage to persons who are in an adverse
25 position to the state.

26 c. A rule establishing specific prices to be charged for particular goods or services
27 sold by an agency.

28 d. A rule concerning only the physical servicing, maintenance, or care of
29 agency-owned ~~or~~, agency-operated, commission-owned, or
30 commission-operated facilities or property.

- 1 e. A rule relating only to the use of a particular facility or property owned, operated,
2 or maintained by the state or any of its subdivisions, if the substance of the rule is
3 adequately indicated by means of signs or signals to persons who use the facility
4 or property.
- 5 f. A rule concerning only inmates of a correctional or detention facility, students
6 enrolled in an educational institution, or patients admitted to a hospital, if adopted
7 by that facility, institution, or hospital.
- 8 g. A form whose contents or substantive requirements are prescribed by rule or
9 statute or are instructions for the execution or use of the form.
- 10 h. An agency or commission budget.
- 11 i. An opinion of the attorney general.
- 12 j. A rule adopted by an agency selection committee under section 54-44.7-03.
- 13 k. Any material, including a guideline, interpretive statement, statement of general
14 policy, manual, brochure, or pamphlet, which is explanatory and not intended to
15 have the force and effect of law.

16 **SECTION 9. AMENDMENT.** Section 28-32-02 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **28-32-02. Rulemaking ~~power of agency~~ authority - Organizational rule.**

- 19 1. The authority of an administrative agency to adopt administrative rules is authority
20 delegated by the legislative assembly. As part of that delegation, the legislative
21 assembly reserves to itself the authority to determine when and if rules of
22 administrative agencies are effective. Every administrative agency may adopt, amend,
23 or repeal reasonable rules in conformity with this chapter and any statute administered
24 or enforced by the agency.
- 25 2. In addition to other rulemaking requirements imposed by law, each agency may
26 include in its rules a description of that portion of its organization and functions subject
27 to this chapter and may include a statement of the general course and method of its
28 operations and how the public may obtain information or make submissions or
29 requests.

1 3. The authority of the commission to adopt rules arises from article XIV of the
2 Constitution of North Dakota. The commission shall follow the process, and meet the
3 requirements, as specified in this chapter to adopt, amend, or repeal its rules.

4 **SECTION 10. AMENDMENT.** Section 28-32-03 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **28-32-03. Emergency rules.**

- 7 1. If the commission or an agency, with the approval of the governor, finds that
8 emergency rulemaking is necessary, the commission or agency may declare the
9 proposed rule to be an interim final rule effective on a date no earlier than the date of
10 filing with the legislative council of the notice required by section 28-32-10.
- 11 2. A proposed rule may be given effect on an emergency basis under this section if any
12 of the following grounds exists regarding that rule:
- 13 a. Imminent peril threatens public health, safety, or welfare, which would be abated
14 by emergency effectiveness;
- 15 b. A delay in the effective date of the rule is likely to cause a loss of funds
16 appropriated to support a duty imposed by law upon the commission or agency;
- 17 c. Emergency effectiveness is reasonably necessary to avoid a delay in
18 implementing an appropriations measure; or
- 19 d. Emergency effectiveness is necessary to meet a mandate of federal law.
- 20 3. A final rule adopted after consideration of all written and oral submissions respecting
21 the interim final rule, which is substantially similar to the interim final rule, is effective
22 as of the declared effective date of the interim final rule.
- 23 4. The commission's or agency's finding, and a brief statement of the commission's or
24 agency's reasons for the finding, must be filed with the legislative council with the final
25 adopted emergency rule.
- 26 5. The commission or agency shall attempt to make interim final rules known to persons
27 who the commission or agency can reasonably be expected to believe may have a
28 substantial interest in them. As used in this subsection, "substantial interest" means an
29 interest in the effect of the rules which surpasses the common interest of all citizens.
- 30 ~~And~~ The commission or an agency adopting emergency rules shall comply with the
31 notice requirements of section 28-32-10 which relate to emergency rules and shall

1 provide notice to the chairman of the administrative rules committee of the emergency
2 status, declared effective date, and grounds for emergency status of the rules under
3 subsection 2. When notice of emergency rule adoption is received, the legislative
4 council shall publish the notice and emergency rules on its website.

5 6. An interim final rule is ineffective one hundred eighty days after its declared effective
6 date unless first adopted as a final rule.

7 **SECTION 11. AMENDMENT.** Section 28-32-06 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **28-32-06. Force and effect of rules.**

10 Upon becoming effective, rules have the force and effect of law until amended or repealed
11 by the agency or commission, declared invalid by a final court decision, suspended or found to
12 be void by the administrative rules committee, or determined repealed by the legislative council
13 because the authority for adoption of the rules is repealed or transferred to another agency, or
14 the Constitution of North Dakota is amended to eliminate the authority.

15 **SECTION 12. AMENDMENT.** Section 28-32-07 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **28-32-07. Deadline for rules to implement statutory change.**

18 Any rule change, including a creation, amendment, or repeal, made to implement a
19 statutory change must be adopted and filed with the legislative council within nine months of the
20 effective date of the statutory change. If an agency or the commission needs additional time for
21 the rule change, a request for additional time must be made to the legislative council. The
22 legislative council may extend the time within which the agency or commission must adopt the
23 rule change if the request by the agency or commission is supported by evidence that the
24 agency or commission needs more time through no deliberate fault of its own.

25 **SECTION 13. AMENDMENT.** Section 28-32-08 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **28-32-08. Regulatory analysis.**

28 1. An agency or the commission shall issue a regulatory analysis of a proposed rule if:
29 a. Within twenty days after the last published notice date of a proposed rule
30 hearing, a written request for the analysis is filed by the governor or a member of
31 the legislative assembly; or

- 1 b. The proposed rule is expected to have an impact on the regulated community in
2 excess of fifty thousand dollars. The analysis under this subdivision must be
3 available on or before the first date of public notice as provided for in section
4 28-32-10.
- 5 2. The regulatory analysis must contain:
- 6 a. A description of the classes of persons who probably will be affected by the
7 proposed rule, including classes that will bear the costs of the proposed rule and
8 classes that will benefit from the proposed rule;
- 9 b. A description of the probable impact, including economic impact, of the proposed
10 rule;
- 11 c. The probable costs to the agency or commission of the implementation and
12 enforcement of the proposed rule and any anticipated effect on state revenues;
13 and
- 14 d. A description of any alternative methods for achieving the purpose of the
15 proposed rule that were seriously considered by the agency or commission and
16 the reasons why the methods were rejected in favor of the proposed rule.
- 17 3. Each regulatory analysis must include quantification of the data to the extent
18 practicable.
- 19 4. The agency or commission shall mail or deliver a copy of the regulatory analysis to
20 any person who requests a copy of the regulatory analysis. The agency or commission
21 may charge a fee for a copy of the regulatory analysis as allowed under section
22 44-04-18.
- 23 5. If required under subsection 1, the preparation and issuance of a regulatory analysis is
24 a mandatory duty of the agency or commission proposing a rule. Errors in a regulatory
25 analysis, including erroneous determinations concerning the impact of the proposed
26 rule on the regulated community, are not a ground upon which the invalidity of a rule
27 may be asserted or declared.

28 **SECTION 14. AMENDMENT.** Section 28-32-08.1 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 **28-32-08.1. Rules affecting small entities - Analysis - Economic impact statements -**
2 **Judicial review.**

3 1. As used in this section:

4 a. "Small business" means a business entity, including its affiliates, which:

5 (1) Is independently owned and operated; and

6 (2) Employs fewer than twenty-five full-time employees or has gross annual
7 sales of less than two million five hundred thousand dollars;

8 b. "Small entity" includes small business, small organization, and small political
9 subdivision;

10 c. "Small organization" means any not-for-profit enterprise that is independently
11 owned and operated and is not dominant in its field; and

12 d. "Small political subdivision" means a political subdivision with a population of less
13 than five thousand.

14 2. Before adoption of any proposed rule, the adopting agency or the commission shall
15 prepare a regulatory analysis in which, consistent with public health, safety, and
16 welfare, the agency or commission considers utilizing regulatory methods that will
17 accomplish the objectives of applicable statutes while minimizing adverse impact on
18 small entities. The agency or commission shall consider each of the following methods
19 of reducing impact of the proposed rule on small entities:

20 a. Establishment of less stringent compliance or reporting requirements for small
21 entities;

22 b. Establishment of less stringent schedules or deadlines for compliance or
23 reporting requirements for small entities;

24 c. Consolidation or simplification of compliance or reporting requirements for small
25 entities;

26 d. Establishment of performance standards for small entities to replace design or
27 operational standards required in the proposed rule; and

28 e. Exemption of small entities from all or any part of the requirements contained in
29 the proposed rule.

- 1 3. Before adoption of any proposed rule that may have an adverse impact on small
2 entities, the adopting agency or the commission shall prepare an economic impact
3 statement that includes consideration of:
- 4 a. The small entities subject to the proposed rule;
- 5 b. The administrative and other costs required for compliance with the proposed
6 rule;
- 7 c. The probable cost and benefit to private persons and consumers who are
8 affected by the proposed rule;
- 9 d. The probable effect of the proposed rule on state revenues; and
- 10 e. Any less intrusive or less costly alternative methods of achieving the purpose of
11 the proposed rule.
- 12 4. For any rule subject to this section, a small entity that is adversely affected or
13 aggrieved by final agency or commission action is entitled to judicial review of agency
14 or commission compliance with the requirements of this section. A small entity seeking
15 judicial review under this section must file a petition for judicial review within one year
16 from the date of final agency or commission action.
- 17 5. This section does not apply to any agency that is an occupational or professional
18 licensing authority, nor does this section apply to the following agencies or divisions of
19 agencies:
- 20 a. Council on the arts.
- 21 b. Beef commission.
- 22 c. Dairy promotion commission.
- 23 d. Dry bean council.
- 24 e. Highway patrolmen's retirement board.
- 25 f. Indian affairs commission.
- 26 g. Board for Indian scholarships.
- 27 h. State personnel board.
- 28 i. Potato council.
- 29 j. Board of public school education.
- 30 k. Real estate trust account committee.
- 31 l. Seed commission.

- 1 m. Soil conservation committee.
- 2 n. Oilseed council.
- 3 o. Wheat commission.
- 4 p. State seed arbitration board.
- 5 q. North Dakota lottery.
- 6 6. This section does not apply to rules mandated by federal law.
- 7 7. The adopting agency or the commission shall provide the administrative rules
- 8 committee copies of any regulatory analysis or economic impact statement, or both,
- 9 prepared under this section when the committee is considering the associated rules.

10 **SECTION 15. AMENDMENT.** Section 28-32-08.2 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **28-32-08.2. Fiscal notes for administrative rules.**

13 When an agency or the commission presents rules for administrative rules committee
14 consideration, the agency or commission shall provide a fiscal note or a statement in its
15 testimony that the rules have no fiscal effect. A fiscal note must reflect the effect of the rules
16 changes on state revenues and expenditures, including any effect on funds controlled by the
17 agency or commission.

18 **SECTION 16. AMENDMENT.** Section 28-32-09 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **28-32-09. Takings assessment.**

- 21 1. An agency or the commission shall prepare a written assessment of the constitutional
22 takings implications of a proposed rule that may limit the use of private real property.
23 The agency's assessment must:
 - 24 a. Assess the likelihood that the proposed rule may result in a taking or regulatory
25 taking.
 - 26 b. Clearly and specifically identify the purpose of the proposed rule.
 - 27 c. Explain why the proposed rule is necessary to substantially advance that purpose
28 and why no alternative action is available that would achieve the agency's or
29 commission's goals while reducing the impact on private property owners.
 - 30 d. Estimate the potential cost to the government if a court determines that the
31 proposed rule constitutes a taking or regulatory taking.

- 1 e. Identify the source of payment within the agency's or commission's budget for
2 any compensation that may be ordered.
- 3 f. Certify that the benefits of the proposed rule exceed the estimated compensation
4 costs.
- 5 2. Any private landowner who is or may be affected by a rule that limits the use of the
6 landowner's private real property may request in writing that the agency or
7 commission reconsider the application or need for the rule. Within thirty days of
8 receiving the request, the agency or commission shall consider the request and shall
9 in writing inform the landowner whether the agency or commission intends to keep the
10 rule in place, modify application of the rule, or repeal the rule.
- 11 3. In an agency's analysis of the takings implications of a proposed rule, "taking" means
12 the taking of private real property, as defined in section 47-01-03, by government
13 action which requires compensation to the owner of that property by the fifth or
14 fourteenth amendment to the Constitution of the United States or section 16 of article I
15 of the Constitution of North Dakota. "Regulatory taking" means a taking of real
16 property through the exercise of the police and regulatory powers of the state which
17 reduces the value of the real property by more than fifty percent. However, the
18 exercise of a police or regulatory power does not effect a taking if it substantially
19 advances legitimate state interests, does not deny an owner economically viable use
20 of the owner's land, or is in accordance with applicable state or federal law.

21 **SECTION 17. AMENDMENT.** Section 28-32-10 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **28-32-10. Notice of rulemaking - Hearing date.**

- 24 1. An agency or the commission shall prepare a full notice and an abbreviated notice of
25 rulemaking.
- 26 a. The agency's full notice of the proposed adoption, amendment, or repeal of a rule
27 must include a short, specific explanation of the proposed rule and the purpose of
28 the proposed rule, identify the emergency status and declared effective date of
29 any emergency rules, include a determination of whether the proposed
30 rulemaking is expected to have an impact on the regulated community in excess
31 of fifty thousand dollars, identify at least one location where interested persons

1 may review the text of the proposed rule, provide the address to which written
2 comments concerning the proposed rule may be sent, provide the deadline for
3 submission of written comments, provide a telephone number and post-office or
4 electronic mail address at which a copy of the rules and regulatory analysis may
5 be requested, and, in the case of a substantive rule, provide the time and place
6 set for each oral hearing. ~~The~~An agency's full notice must include a statement of
7 the bill number and general subject matter of any legislation, enacted during the
8 most recent session of the legislative assembly, which is being implemented by
9 the proposed rule. The commission's full notice must include a statement of the
10 provision of the Constitution of North Dakota or the bill number and general
11 subject matter of any legislation enacted during the most recent session of the
12 legislative assembly which is being implemented by the proposed rule. The
13 agency's full notice must be filed with the legislative council, accompanied by a
14 copy of the proposed rules.

15 b. The agency or commission shall request publication of an abbreviated
16 newspaper publication notice at least once in each official county newspaper
17 published in this state. The abbreviated newspaper publication of notice must be
18 in a display-type format with a minimum width of one column of approximately
19 two inches [5.08 centimeters] and a minimum depth of approximately three
20 inches [7.62 centimeters] and with a headline describing the general topic of the
21 proposed rules. The notice must also include the telephone number or address to
22 use to obtain a copy of the proposed rules, identification of the emergency status
23 and declared effective date of any emergency rules, the address to use and the
24 deadline to submit written comments, and the location, date, and time of the
25 public hearing on the rules.

26 2. The agency or commission shall mail or deliver by electronic mail a copy of the
27 agency's full notice and proposed rule to each member of the legislative assembly
28 whose name appeared as a sponsor or cosponsor of legislation, enacted during the
29 most recent session of the legislative assembly, which is being implemented by the
30 proposed rule and to each person who has made a timely request to the agency or
31 commission for a copy of the notice and proposed rule. The agency or commission

1 may mail or otherwise provide a copy of the agency's full notice to any person who is
2 likely to be an interested person. The agency or commission may charge persons who
3 are not members of the legislative assembly fees for copies of the proposed rule as
4 allowed under section 44-04-18.

5 3. In addition to the other notice requirements of this subsection, the superintendent of
6 public instruction shall provide notice of any proposed rulemaking by the
7 superintendent of public instruction to each association with statewide membership
8 whose primary focus is elementary and secondary education issues which has
9 requested to receive notice from the superintendent under this subsection and to the
10 superintendent of each public school district in this state, or the president of the school
11 board for school districts that have no superintendent, at least twenty days before the
12 date of the hearing described in the notice. Notice provided by the superintendent of
13 public instruction under this section must be by first-class mail. However, upon request
14 of a group or person entitled to notice under this section, the superintendent of public
15 instruction shall provide the group or person notice by electronic mail.

16 4. The legislative council shall establish standard procedures for the commission and all
17 agencies to follow in complying with the provisions of this section and a procedure to
18 allow any person to request and receive mailed copies of all filings made by agencies
19 and the commission pursuant to this section. The legislative council may charge an
20 annual fee as established by the administrative rules committee for providing copies of
21 the filings.

22 5. At least twenty days must elapse between the date of the publication of the notice and
23 the date of the hearing. Within fifteen business days after receipt of a notice under this
24 section, a copy of the notice must be mailed by the legislative council to any person
25 who has paid the annual fee established under subsection 4.

26 **SECTION 18. AMENDMENT.** Section 28-32-11 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **28-32-11. Conduct of hearings - Notice of administrative rules committee**
29 **consideration - Consideration and written record of comments.**

30 The agency or commission shall adopt a procedure whereby all interested persons are
31 afforded reasonable opportunity to submit data, views, or arguments, orally or in writing,

1 concerning the proposed rule, including data respecting the impact of the proposed rule. The
2 agency or commission shall adopt a procedure to allow interested parties to request and
3 receive notice from the agency or commission of the date and place the rule will be reviewed by
4 the administrative rules committee. In case of substantive rules, the agency or commission shall
5 conduct an oral hearing. The agency or commission shall consider fully all written and oral
6 submissions respecting a proposed rule prior to the adoption, amendment, or repeal of any rule
7 not of an emergency nature. The agency or commission shall make a written record of its
8 consideration of all written and oral submissions contained in the rulemaking record respecting
9 a proposed rule.

10 **SECTION 19. AMENDMENT.** Section 28-32-12 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **28-32-12. Comment period.**

13 The agency or commission shall allow, after the conclusion of any rulemaking hearing, a
14 comment period of at least ten days during which data, views, or arguments concerning the
15 proposed rulemaking will be received by the agency or commission and made a part of the
16 rulemaking record to be considered by the agency or commission.

17 **SECTION 20. AMENDMENT.** Section 28-32-14 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **28-32-14. Attorney general review of rules.**

20 Every proposed rule ~~proposed by any administrative agency~~ must be submitted to the
21 attorney general for an opinion as to its legality before final adoption, and the attorney general
22 promptly shall furnish each such opinion. The attorney general may not approve any rule as to
23 legality, and shall advise the agency or commission of any necessary rewording or revision of
24 the rule, when the:

- 25 1. The rule exceeds the statutory authority of the agency, or the statutory or constitutional
26 authority of the commission;
- 27 2. The rule is written in a manner that is not concise or easily understandable; ~~or when~~
28 ~~the~~
- 29 3. The procedural requirements for adoption of the rule in this chapter are not
30 substantially met. ~~The attorney general shall advise an agency of any revision or~~
31 ~~rewording of a rule necessary to correct objections as to legality.~~

1 **SECTION 21. AMENDMENT.** Section 28-32-15 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **28-32-15. Filing of rules for publication - Effective date of rules.**

4 1. A copy of each rule adopted by an administrative agency or the commission, a copy of
5 each written comment and a written summary of each oral comment on the rule, and
6 the attorney general's opinion on the rule must be filed by the adopting agency or
7 commission with the legislative council for publication of the rule in the North Dakota
8 Administrative Code.

9 2. a. Nonemergency rules approved by the attorney general as to legality, adopted by
10 an administrative agency or the commission, ~~and~~ filed with the legislative council,
11 and not voided or held for consideration by the administrative rules committee
12 become effective according to the following schedule:

13 (1) Rules filed with the legislative council from August second through
14 November first become effective on the immediately succeeding January
15 first.

16 (2) Rules filed with the legislative council from November second through
17 February first become effective on the immediately succeeding April first.

18 (3) Rules filed with the legislative council from February second through May
19 first become effective on the immediately succeeding July first.

20 (4) Rules filed with the legislative council from May second through August first
21 become effective on the immediately succeeding October first.

22 b. If publication is delayed for any reason other than action of the administrative
23 rules committee, nonemergency rules, unless otherwise provided, become
24 effective when publication would have occurred but for the delay.

25 c. A rule held for consideration by the administrative rules committee becomes
26 effective on the first effective date of rules under the schedule in subdivision a
27 following the meeting at which that rule is reconsidered by the committee.

28 **SECTION 22. AMENDMENT.** Section 28-32-16 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 **28-32-16. Petition for reconsideration of rule - Hearing by agency.**

2 Any person substantially interested in the effect of a rule adopted by an administrative
3 agency ~~or the commission~~ may petition ~~such~~the agency ~~or commission~~ for a reconsideration of
4 ~~any such~~the rule or for an amendment or repeal thereof. ~~Such~~of the rule. The petition must
5 state clearly and concisely the petitioners' alleged grounds for ~~such~~ reconsideration or ~~for~~ the
6 proposed repeal or amendment of ~~such~~the rule. The agency ~~or commission~~ may grant the
7 petitioner a public hearing ~~upon such~~on the terms and conditions as the agency ~~may~~
8 ~~prescribe~~prescribes.

9 **SECTION 23. AMENDMENT.** Section 28-32-17 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **28-32-17. Administrative rules committee objection.**

12 If the legislative management's administrative rules committee objects to all or any portion
13 of a rule because the committee deems it to be unreasonable, arbitrary, capricious, or beyond
14 the authority delegated to the adopting agency ~~or commission~~, the committee may file that
15 objection in certified form with the legislative council. The filed objection must contain a concise
16 statement of the committee's reasons for its action.

17 1. The legislative council shall attach to each objection a certification of the time and date
18 of its filing and, as soon as possible, shall transmit a copy of the objection and the
19 certification to the agency ~~or commission~~ adopting the rule in question. The legislative
20 council also shall maintain a permanent register of all committee objections.

21 2. The legislative council shall publish an objection filed pursuant to this section in
22 the next issue of the code supplement. In case of a filed committee objection to a rule
23 subject to the exceptions of the definition of rule in section 28-32-01, the agency ~~or~~
24 ~~commission~~ shall indicate the existence of that objection adjacent to the rule in any
25 compilation containing that rule.

26 3. Within fourteen days after the filing of a committee objection to a rule, the adopting
27 agency ~~or commission~~ shall respond in writing to the committee. After receipt of the
28 response, the committee may withdraw or modify its objection.

29 4. After the filing of a committee objection, the burden of persuasion is upon the agency
30 ~~or commission~~ in any action for judicial review or for enforcement of the rule to
31 establish that the whole or portion ~~thereof~~of the rule objected to is within the

1 procedural and substantive authority delegated to the agency or commission. If the
2 agency or commission fails to meet its burden of persuasion, the court shall declare
3 the whole or portion of the rule objected to invalid and judgment must be rendered
4 against the agency or commission for court costs. These court costs must include a
5 reasonable attorney's fee and must be payable from the appropriation of the agency or
6 commission which adopted the rule in question.

7 **SECTION 24. AMENDMENT.** Section 28-32-18 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **28-32-18. Administrative rules committee may void rule - Grounds - Amendment by**
10 **agreement of agency and committee.**

- 11 1. The legislative management's administrative rules committee may find that all or any
12 portion of a rule is void if that rule is initially considered by the committee not later than
13 the fifteenth day of the month before the date of the administrative code supplement in
14 which the rule change is scheduled to appear. The administrative rules committee may
15 find a rule or portion of a rule void if the committee makes the specific finding that, with
16 regard to that rule or portion of a rule, there is:
- 17 a. An absence of statutory authority under statute or the constitution.
 - 18 b. An emergency relating to public health, safety, or welfare.
 - 19 c. For rules proposed by an agency, a failure to comply with express legislative
20 intent or to substantially meet the procedural requirements of this chapter for
21 adoption of the rule.
 - 22 d. For rules proposed by the commission, a failure to substantially meet the
23 procedural requirements for this chapter for adoption of the rule.
 - 24 e. A conflict with state law.
 - 25 e-f. Arbitrariness and capriciousness.
 - 26 f-g. A failure to make a written record of its consideration of written and oral
27 submissions respecting the rule under section 28-32-11.
- 28 2. The administrative rules committee may find a rule void at the meeting at which the
29 rule is initially considered by the committee or may hold consideration of that rule for
30 one subsequent meeting. If no representative of the agency or commission appears
31 before the administrative rules committee when rules are scheduled for committee

1 consideration, those rules are held over for consideration at the next subsequent
2 committee meeting. Rules are not considered initially considered by the committee
3 under this subsection until a representative of the agency or commission appears
4 before the administrative rules committee when the rules are scheduled for committee
5 consideration. If no representative of the agency or commission appears before the
6 administrative rules committee meeting to which rules are held over for consideration,
7 the rules are void if the rules were adopted as emergency rules and for rules not
8 adopted as emergency rules the administrative rules committee may void the rules,
9 allow the rules to become effective, or hold over consideration of the rules to the next
10 subsequent committee meeting. Within three business days after the administrative
11 rules committee finds that a rule is void, the legislative council shall provide written
12 notice of that finding and the committee's specific finding under subdivisions a through
13 f of subsection 1 to the adopting agency or commission and to the chairman of the
14 legislative management. Within fourteen days after receipt of the notice, the adopting
15 agency or commission may file a petition with the chairman of the legislative
16 management for review by the legislative management of the decision of the
17 administrative rules committee. If the adopting agency or commission does not file a
18 petition for review, the rule becomes void on the fifteenth day after the notice from the
19 legislative council to the adopting agency or commission. If within sixty days after
20 receipt of the petition from the adopting agency or commission the legislative
21 management has not disapproved by motion the finding of the administrative rules
22 committee, the rule is void.

- 23 3. An agency or the commission may amend or repeal a rule or create a related rule if,
24 after consideration of rules by the administrative rules committee, the agency or
25 commission and the committee agree that the rule amendment, repeal, or creation is
26 necessary to address any of the considerations under subsection 1. A rule amended,
27 repealed, or created under this subsection is not subject to the other requirements of
28 this chapter relating to adoption of administrative rules and may be published by the
29 legislative council as amended, repealed, or created. If requested by the agency,
30 commission, or any interested party, a rule amended, repealed, or created under this
31 subsection must be reconsidered by the administrative rules committee at a

1 subsequent meeting at which public comment on the agreed rule change must be
2 allowed.

3 **SECTION 25. AMENDMENT.** Section 28-32-18.1 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **28-32-18.1. Administrative rules committee review of existing administrative rules.**

6 1. Upon request by the administrative rules committee, an administrative agency or the
7 commission shall brief the committee on its existing administrative rules and point out
8 any provisions that appear to be obsolete and any areas in which statutory or
9 constitutional authority has changed or been repealed since the rules were adopted or
10 amended.

11 2. An agency or the commission may amend or repeal a rule without complying with the
12 other requirements of this chapter relating to adoption of administrative rules and may
13 resubmit the change to the legislative council for publication provided:

14 a. The agency or commission initiates the request to the administrative rules
15 committee for consideration of the amendment or repeal;

16 b. The agency or commission provides notice to the regulated community, in a
17 manner reasonably calculated to provide notice to those persons interested in the
18 rule, of the time and place the administrative rules committee will consider the
19 request for amendment or repeal of the rule; and

20 c. The agency or commission and the administrative rules committee agree
21 the rule amendment or repeal eliminates a provision that is obsolete or no longer
22 in compliance with law and that no detriment would result to the substantive
23 rights of the regulated community from the amendment or repeal.

24 **SECTION 26. AMENDMENT.** Subsection 2 of section 28-32-19 of the North Dakota
25 Century Code is amended and reenacted as follows:

26 2. The legislative council may prescribe ~~at~~the format, style, and arrangement for rules
27 ~~which are~~ to be published in the code and may refuse to accept the filing of any rule
28 that is not in substantial compliance ~~therewith~~with the format, style, and arrangement.
29 In arranging rules for publication, the legislative council may make ~~such~~ corrections in
30 spelling, grammatical construction, format, and punctuation of the rules as
31 ~~determined~~the legislative council determines are proper. The legislative council shall

1 keep and maintain a permanent code of all rules filed, including superseded and
2 repealed rules, which must be open to public inspection during office hours.

3 **SECTION 27. AMENDMENT.** Subsection 4 of section 28-32-19 of the North Dakota
4 Century Code is amended and reenacted as follows:

5 4. The legislative council, with the consent of the adopting agency or commission, may
6 omit from the code or code supplement any rule the publication of which would be
7 unduly cumbersome, expensive, or otherwise inexpedient, if the rule in printed or
8 duplicated form is made available on application to the agency or commission, and if
9 the code or code supplement contains a notice stating the general subject matter of
10 the omitted rule and stating how a copy may be obtained.

11 **SECTION 28. AMENDMENT.** Section 28-32-27 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **28-32-27. Hearing officer - Disqualification - Substitution.**

14 1. Any person or persons presiding for the agency in an administrative proceeding must
15 be referred to individually or collectively as hearing officer. Any person from the office
16 of administrative hearings presiding for the agency as a hearing officer in an
17 administrative proceeding must be referred to as an administrative law judge.

18 2. Any hearing officer is subject to disqualification for good cause shown.

19 3. A hearing officer who is a director, officer, commissioner, head, or other executive of
20 an agency shall self-disqualify in a proceeding in which a reasonable, disinterested
21 observer would believe the hearing officer is biased due to:

22 a. A contribution by one of the parties supporting the hearing officer's most recent
23 campaign for public office; or

24 b. An ownership interest, other than investment in a mutual fund, of the hearing
25 officer in one of the parties to the proceeding if the ownership interest is not
26 shared by the general public.

27 4. Any party may petition for the disqualification of any person presiding as a hearing
28 officer upon discovering facts establishing grounds for disqualification.

29 ~~4.5.~~ A person whose disqualification is requested shall determine whether to grant the
30 petition, stating facts and reasons for the determination.

- 1 ~~5-6.~~ If a substitute is required for a person who is disqualified or becomes unavailable for
2 any other reason, the substitute may be appointed by:
- 3 a. The attorney general, if the disqualified or unavailable person is an assistant
4 attorney general;
- 5 b. The agency head, if the disqualified or unavailable person is one or more
6 members of the agency head or one or more other persons designated by the
7 agency head;
- 8 c. A supervising hearing officer, if the disqualified or unavailable person is a hearing
9 officer designated from an office, pool, panel, or division of hearing officers; or
10 d. The governor, in all other cases.
- 11 ~~6-7.~~ Any action taken by a duly appointed substitute for a disqualified or unavailable person
12 is as effective as if taken by the disqualified or unavailable person.
- 13 ~~7-8.~~ Any hearing officer in an administrative proceeding, from the time of appointment or
14 designation, may exercise any authority granted by law or rule. A hearing officer may
15 be designated to preside over the entire administrative proceeding and may issue
16 orders accordingly. A procedural hearing officer may only issue orders in regard to the
17 course and conduct of the hearing under statute or rule and to otherwise effect an
18 orderly hearing. If a procedural hearing officer is designated, the agency head must be
19 present at the hearing and the agency head shall issue findings of fact and
20 conclusions of law, as well as any order resulting from the hearing.
- 21 9. The North Dakota ethics commission shall assess any hearing officer who knowingly
22 violates subsection 3 a civil penalty of five hundred dollars for the first violation. For a
23 second and subsequent knowing violation of this section, the hearing officer is guilty of
24 a class B misdemeanor.

25 **SECTION 29. AMENDMENT.** Section 28-32-47 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **28-32-47. Scope of and procedure on appeal from agency rulemaking.**

- 28 1. A judge of the district court shall review an appeal from an administrative agency's or
29 ethics commission's rulemaking action based only on the record filed with the court. If
30 an appellant requests documents to be included in the record but the agency or
31 commission does not include them, the court, upon application by the appellant, may

1 compel their inclusion. After a hearing, the filing of briefs, or other disposition of the
2 matter as the judge may reasonably require, the court shall affirm the ~~agency's~~
3 rulemaking action unless it finds that any of the following are present:

- 4 1. a. The provisions of this chapter have not been substantially complied with in the
5 agency's rulemaking actions.
- 6 2. b. A rule published as a result of the rulemaking action appealed is unconstitutional
7 on the face of the language adopted.
- 8 3. c. A rule published as a result of the rulemaking action appealed is beyond the
9 scope of the agency's or commission's authority to adopt.
- 10 4. d. A rule published as a result of the rulemaking action appealed is on the face of
11 the language adopted an arbitrary or capricious application of authority granted
12 by statute.
- 13 2. If the rulemaking action of the agency or commission is not affirmed by the court, ~~it~~the
14 rulemaking action must be remanded to the agency or commission for disposition in
15 accordance with the order of the court, or the rule or a portion of the rule resulting from
16 the rulemaking action of the agency or commission must be declared invalid for
17 reasons stated by the court.

18 **SECTION 30. AMENDMENT.** Section 28-32-48 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **28-32-48. Appeal - Stay of proceedings.**

21 An appeal from an order or the rulemaking action of an administrative agency or the
22 commission does not stay the enforcement of the order or the effect of a published rule unless
23 the court to which the appeal is taken, upon application and after a hearing or the submission of
24 briefs, orders a stay. The court may impose terms and conditions for a stay of the enforcement
25 of the order or for a stay in the effect of a published rule. This section does not prohibit the
26 operation of an automatic stay upon the enforcement of an administrative order or commission
27 order as may be required by another statute.

28 **SECTION 31. AMENDMENT.** Section 28-32-49 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 **28-32-49. Review in supreme court.**

2 The judgment of the district court in an appeal from an order or rulemaking action of an
3 administrative agency or the commission may be reviewed in the supreme court on appeal in
4 the same manner as provided in section 28-32-46 or 28-32-47, except that the appeal to the
5 supreme court must be taken within sixty days after the service of the notice of entry of
6 judgment in the district court. Any party of record, including the agency or commission, may
7 take an appeal from the final judgment of the district court to the supreme court. If an appeal
8 from the judgment of the district court is taken by an agency or the commission, the agency or
9 commission may not be required to pay a docket fee or file a bond for costs or equivalent
10 security.

11 **SECTION 32.** Chapter 54-66 of the North Dakota Century Code is created and enacted as
12 follows:

13 **54-66-01. Definitions.**

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

- 15 1. "Accused individual" means an individual who is alleged to have violated article XIV of
16 the Constitution of North Dakota, this chapter, or another law or rule regarding
17 government ethics.
- 18 2. "Adjusted for inflation" means adjusted on January first of each year by the change in
19 the consumer price index for all urban consumers (all items, United States city
20 average), as identified by the secretary of state.
- 21 3. "Complainant" means an individual who, in writing or verbally, submits a complaint to
22 the commission.
- 23 4. "Complaint" means a verbal or written allegation to the commission that article XIV of
24 the Constitution of North Dakota, this chapter, or another law or rule regarding
25 government ethics has been violated.
- 26 5. "Ethics commission" or "commission" means the North Dakota ethics commission
27 established by article XIV of the Constitution of North Dakota.
- 28 6. "Gift" means any item, service, or thing of value not given in exchange for fair market
29 consideration including travel and recreation.
- 30 7. "Influence state government action" means promoting or opposing the final adoption of
31 a rule by an administrative agency or the commission under chapter 28-32.

- 1 8. "Lobby" means an activity listed in subsection 1 of section 54-05.1-02.
- 2 9. "Lobbyist" means an individual required to register under section 54-05.1-03.
- 3 10. "Public official" means an elected or appointed official of the state's executive or
4 legislative branch, members of the commission, members of the governor's cabinet,
5 and employees of the legislative branch.
- 6 11. "Receives the complaint" means one or more members of the commission learn of the
7 complaint.
- 8 12. "Ultimate and true source" means the person that knowingly contributed over two
9 hundred dollars, adjusted for inflation, solely to lobby or influence state government
10 action.

11 **54-66-02. Disclosure of ultimate and true source of funds.**

- 12 1. A lobbyist who expends an amount greater than two hundred dollars, adjusted for
13 inflation, to lobby shall file with the secretary of state a report that includes the known
14 ultimate and true source of funds for the expenditure. The report must be filed with the
15 lobbyist expenditure report required under subsection 2 of section 54-05.1-03.
- 16 2. A person who expends an amount greater than two hundred dollars, adjusted for
17 inflation, to influence state government action shall file with the secretary of state a
18 report including the known ultimate and true source of funds for the expenditure. The
19 report must be filed on or before the August first following the date of the expenditure.
20 The secretary of state shall provide a form for reports under this subsection and make
21 the form electronically accessible to the public. The secretary of state also shall
22 charge and collect fees for late filing of the reports as follows:
- 23 a. Twenty-five dollars for a report filed within sixty days after the deadline; or
- 24 b. Fifty dollars for a report filed more than sixty days after the deadline.
- 25 3. The secretary of state shall compile the reports required under this section and make
26 the reports electronically accessible to the public within forty days after the deadlines
27 by which the reports must be filed.
- 28 4. This section does not require a person to report the ultimate and true source of funds
29 expended on:
- 30 a. A gift to or from a family member;
- 31 b. Purely informational material, advice, or education;

- 1 c. Reimbursement for travel, meal, and refreshment expenses incurred to, from, or
- 2 during a conference, seminar, or other legitimate educational opportunity for a
- 3 public official if the conference, seminar, or educational opportunity concerns
- 4 issues germane to the official duties of the public official;
- 5 d. Meals and refreshments provided while informing, advising, or educating a public
- 6 official about issues germane to the official duties of the public official;
- 7 e. Providing an educational or social setting in the state to provide an opportunity
- 8 for individuals to meet with public officials; and
- 9 f. A good or service determined not to raise ethical concerns under rules adopted
- 10 by the ethics commission.
- 11 5. A resident taxpayer may commence an action in a district court of this state against a
- 12 person required to comply with this section to compel compliance if all other
- 13 enforcement measures under this chapter have been exhausted and the taxpayer
- 14 reasonably believes the person has failed to comply with this section. A failure to
- 15 comply with this section must be proved by clear and convincing evidence.

16 **54-66-03. Lobbyist gifts - Penalty.**

- 17 1. A lobbyist may not give, offer, solicit, initiate, or facilitate a gift knowingly to a public
- 18 official, and a public official may not accept a gift with a value over sixty dollars per
- 19 individual per event, adjusted for inflation, from a lobbyist knowingly, except to
- 20 advance opportunities for state residents to meet with public officials in educational
- 21 and social settings in the state under conditions that do not raise ethical concerns,
- 22 including:
- 23 a. Reimbursement for travel, meal, and refreshment expenses incurred to, from, or
- 24 during a conference, seminar, or other legitimate educational opportunity for the
- 25 public official if the conference, seminar, or educational opportunity concerns
- 26 issues germane to the official duties of the public official;
- 27 b. Providing information, advice, or education to a public official;
- 28 c. Providing meals and refreshments while informing, advising, or educating a
- 29 public official about issues germane to the official duties of the public official;
- 30 d. Items with a fair market value of ten dollars per individual per event, adjusted for
- 31 inflation, or less per individual; and

- 1 e. A good or service determined not to raise ethical concerns under rules adopted
- 2 by the ethics commission.
- 3 2. The prohibition in subsection 1 does not apply when a lobbyist gives, offers, solicits,
- 4 initiates, or facilitates, or a public official accepts:
- 5 a. A gift to or from a family member;
- 6 b. Purely informational material; or
- 7 c. A campaign contribution.
- 8 3. For the first violation, the secretary of state shall assess a civil penalty of five hundred
- 9 dollars upon any person who knowingly violates this section and, if the person is a
- 10 lobbyist, the secretary of state may revoke the lobbyist's registration under chapter
- 11 54-05.1. For a second and subsequent knowing violation of this section, the person is
- 12 guilty of a class B misdemeanor.

13 **54-66-04. Ethics commission member terms - Meetings - Code of ethics -**

14 **Compensation - Investigator.**

- 15 1. The terms of the initial members of the ethics commission must be staggered to
- 16 ensure no more than two members' terms expire in one year. The terms of the initial
- 17 members may be less than four years to accommodate the required staggering of
- 18 terms.
- 19 2. The ethics commission shall meet as necessary to address each complaint the
- 20 commission receives. Unless the complaint at issue has resulted in the imposition of a
- 21 penalty or referral for enforcement under section 54-66-10, any portion of a meeting
- 22 during which commission members discuss complaints, informal resolutions, attempts
- 23 to informally resolve complaints, investigations, or referrals under this chapter, the
- 24 identity of an accused individual or complainant, or any other matter arising from a
- 25 complaint are closed meetings.
- 26 3. The commission shall abide by a code of ethics adopted in a public meeting. The code
- 27 of ethics must specify when a commission member is disqualified from participating in
- 28 matters before the commission.
- 29 4. Ethics commission members are entitled to:

- 1 a. Compensation for each day necessarily spent conducting commission business
- 2 in the amount provided for members of the legislative management under section
- 3 54-35-10; and
- 4 b. Payment for mileage and travel expenses necessarily incurred in the conduct of
- 5 commission business as provided under sections 44-08-04 and 54-06-09.
- 6 5. Commission members shall hire or otherwise engage a part-time administrative
- 7 assistant. The administrative assistant must be provided an office within the office
- 8 space for the department of labor and human rights. The commission shall
- 9 compensate the department of labor and human rights for the office in an amount
- 10 equal to the fair value of the office.

11 **54-66-05. Making a complaint - Identifying information - False complaints.**

- 12 1. A complaint may be made to the commission orally or in writing. When making a
- 13 complaint, a complainant shall provide the name, address, and telephone number of
- 14 the complainant.
- 15 2. Within five days after making a complaint, the complainant shall submit a signed
- 16 statement attesting the complaint is true and accurate to the best of the complainant's
- 17 knowledge. The commission shall develop an attestation form for this purpose and
- 18 make it electronically accessible to the public. After receiving the attestation, the
- 19 commission shall summarize the complaint in writing if the complaint was made orally.
- 20 3. If the complainant does not submit the signed attestation by the deadline, the
- 21 commission may not investigate or take other action on the complaint.
- 22 4. Knowingly or recklessly making a complaint that is materially false is defamation under
- 23 chapter 12.1-15.

24 **54-66-06. Informing the accused individual - Written response permitted.**

25 The commission shall inform an accused individual by registered mail of the identity of the

26 complainant who made the allegation against the accused individual and include the written

27 complaint or written summary of the oral complaint as soon as reasonably possible but no later

28 than ten calendar days after the commission receives the complaint. The accused individual

29 may respond to the complaint in writing within ten calendar days of receipt of the complaint or

30 summary of the complaint.

1 **54-66-07. Informal resolution.**

2 The commission may attempt to negotiate or mediate an informal resolution between the
3 accused individual and the complainant.

4 **54-66-08. Referrals to investigators - Exception for criminal allegations.**

5 For each complaint with an attestation, the commission shall engage an investigator with
6 the appropriate knowledge and experience regarding the Constitution of North Dakota,
7 ethics-related statutes, and ethics investigations, and refer the complaint to the investigator
8 within thirty calendar days of receiving the complaint. However, if a complaint with an attestation
9 includes an allegation of criminal conduct, the commission shall refer the allegation of criminal
10 conduct to the bureau of criminal investigation or other law enforcement agency. The
11 commission may engage a state agency as an investigator. If the accused individual provided a
12 written response to the complaint, the commission shall provide the written response with the
13 referred complaint.

14 **54-66-09. Investigations - Findings and Recommendations - Responses.**

- 15 1. The investigator engaged under section 54-66-08 shall investigate the complaint
16 referred to it by the ethics commission. Investigations must include separate interviews
17 with the accused individual and the complainant, unless the accused individual or
18 complainant refuses to be interviewed, and consideration of the circumstances
19 surrounding the allegations. The accused individual and complainant may be
20 accompanied by legal counsel during the interviews of each. Investigations may
21 include interviews of potential witnesses and other individuals believed to have
22 relevant information.
- 23 2. At the conclusion of the investigation, but no later than six months after the
24 investigator received the complaint, the investigator shall submit its written findings
25 from the investigation to the commission. The commission shall provide written copies
26 of the findings to the accused individual and complainant. The accused individual and
27 complainant may respond in writing to the findings within thirty calendar days of
28 receiving the findings. The commission shall maintain copies of the findings and any
29 written response to the findings.

1 **54-66-10. Final determinations - Penalties - Referrals for enforcement.**

- 2 1. After reviewing the findings from the investigator and any written response from the
3 accused individual or complainant, the ethics commission shall meet with the accused
4 individual and complainant to discuss the findings and written responses. A meeting
5 under this subsection is a closed meeting as defined in section 44-04-17.1, although
6 the accused individual and complainant may have legal counsel attend and
7 participate.
- 8 2. After the meeting with the accused individual and complainant, the commission shall
9 issue written findings, including a determination whether a violation of article XIV of the
10 Constitution of North Dakota, this chapter, or another law or rule regarding government
11 ethics occurred. If the commission finds a violation occurred, the commission may
12 assess a civil penalty if authorized by law or refer the matter to the entity authorized by
13 law to assess a civil penalty for the violation.
- 14 3. The accused individual and the complainant may appeal and request judicial review of
15 a determination made or penalty imposed under this section to the district court in the
16 county in which the accused individual resides. A request for judicial review under this
17 section must comply with the requirements for an appeal of a determination of an
18 agency under chapter 28-32. The scope of review and procedure on appeal from a
19 determination of the commission must comply with section 28-32-47.
- 20 4. The commission may not terminate the employment of a public official or otherwise
21 remove a public official from the public official's public office.

22 **54-66-11. Confidential information - Penalty.**

- 23 1. The following information is a confidential record as defined in section 44-04-17.1,
24 unless the commission has determined the accused individual violated article XIV of
25 the Constitution of North Dakota, this chapter, or another law or rule regarding
26 government ethics, and a court affirmed the determination if appealed, except the
27 information may be disclosed as required by law or as necessary to conduct an
28 investigation arising from a complaint:
- 29 a. Information revealing the contents of a complaint;
- 30 b. Information that reasonably may be used to identify an accused individual or
31 complainant; and

- 1 c. Information relating to or created as part of an investigation of a complaint.
- 2 2. If a complaint is informally resolved under section 54-66-07, the following information
- 3 is a confidential record as defined in section 44-04-17.1:
- 4 a. Information revealing the contents of the complaint;
- 5 b. Information that reasonably may be used to identify the accused individual or
- 6 complainant;
- 7 c. Information relating to or created as part of the process leading to the informal
- 8 resolution; and
- 9 d. Information revealing the informal resolution.
- 10 3. Willful publication of information included in subsections 1 and 2 by a person who
- 11 knows the information to be false is criminal defamation under section 12.1-15-01.
- 12 4. A public official who violates this section is guilty of a class C felony.

13 **54-66-12. Restriction on lobbying by public officials - Penalty.**

14 For the first violation of subsection 2 of section 2 of article XIV of the Constitution of North

15 Dakota, the secretary of state shall assess a civil penalty of five hundred dollars upon the

16 person who knowingly commits the violation. For a second and subsequent knowing violation of

17 the subsection, the person is guilty of a class B misdemeanor.

18 **54-66-13. Attorney general to provide legal services.**

19 The attorney general shall serve as legal counsel for the commission. When a conflict of

20 interest prevents the attorney general from providing legal services to the commission, the

21 attorney general may appoint a special assistant attorney general to serve as legal counsel for

22 the commission.

23 **54-66-14. Prohibition on delivering campaign contributions - Penalty.**

24 A lobbyist may not deliver knowingly a campaign contribution made by another person in

25 violation of subsection 3 of section 2 of article XIV of the Constitution of North Dakota. For a first

26 violation, the secretary of state shall assess a civil penalty of five hundred dollars upon any

27 person who knowingly violates this section and may revoke the lobbyist's registration. For a

28 second and subsequent knowing violation of this section, the person is guilty of a class B

29 misdemeanor.

30 **SECTION 33. APPROPRIATION.** There is appropriated out of any moneys in the general

31 fund in the state treasury, not otherwise appropriated, the sum of \$300,000, or so much of the

1 sum as may be necessary, to the ethics commission for the purpose of the operations of the
2 commission, for the biennium beginning July 1, 2019, and ending June 30, 2021. The ethics
3 commission is authorized one and one-half full-time equivalent positions for this purpose.

4 **SECTION 34. EFFECTIVE DATE.** Sections 1, 2, 3, 4, 5, and 7 of this Act, and section
5 54-66-02 of the North Dakota Century Code, as created by section 32 of this Act, become
6 effective January 5, 2022.

7 **SECTION 35. EFFECTIVE DATE.** North Dakota Century Code section 54-66-03, as
8 created by section 32 of this Act, becomes effective January 5, 2021.

9 **SECTION 36. EXPIRATION DATE.** North Dakota Century Code section 54-66-12, as
10 created by section 32 of this Act, is effective until subsection 2 of section 2 of article XIV of the
11 Constitution of North Dakota is no longer part of the Constitution of North Dakota.

12 **SECTION 37. EMERGENCY.** Sections 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21,
13 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31 of this Act are declared to be an emergency measure.