

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.