

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
5 ~~section~~sections 16.1-08.1-01, ~~subsection 4 of section 16.1-08.1-02.1, sections 16.1-08.1-02.3,~~
6 ~~16.1-08.1-02.4, 16.1-08.1-03.1~~16.1-08.1-03.7, 16.1-08.1-04.1, 16.1-08.1-06.2, 28-32-01,
7 ~~28-32-02~~, 28-32-03, 28-32-06, 28-32-07, 28-32-08, 28-32-08.1, 28-32-08.2, 28-32-09, 28-32-10,
8 28-32-11, 28-32-12, ~~28-32-14~~, 28-32-15, 28-32-16, ~~28-32-17, 28-32-18~~, and 28-32-18.1,
9 subsections 2 and 4 of section 28-32-19, and sections ~~28-32-27~~, 28-32-47, 28-32-48, and
10 28-32-49 of the North Dakota Century Code, relating to rulemaking procedures, ~~disqualification~~
11 ~~of agency heads in quasi-judicial proceedings~~, implementing article XIV of the Constitution of
12 North Dakota, and requirements for the North Dakota ethics commission; to provide for a
13 legislative management study; to provide for a penalty; to provide an appropriation; to provide
14 an effective date; ~~to provide an expiration date~~; and to declare an emergency.

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

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

18 **16.1-08.1-01. Definitions.**

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

20 1. ~~"Adjusted for inflation" means adjusted on January first of each year by the change in~~
21 ~~the consumer price index for all urban consumers (all items, United States city~~
22 ~~average), as identified by the secretary of state.~~

23 ~~2.~~ "Affiliate" means an organization that controls, is controlled by, or is under common
24 control with another organization. For purposes of this definition, control means the

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

7 | 2.3. "Association" means any club, association, union, brotherhood, fraternity, organization,
8 or group of any kind of two or more persons, including labor unions, trade
9 associations, professional associations, or governmental associations, which is united
10 for any purpose, business, or object and which assesses any dues, membership fees,
11 or license fees in any amount, or which maintains a treasury fund in any amount. The
12 term does not include corporations, cooperative corporations, limited liability
13 companies, political committees, or political parties.

14 | 3.4. "Candidate" means an individual who seeks nomination for election or election to
15 public office, and includes:
16 a. An individual holding public office;
17 b. An individual who has publicly declared that individual's candidacy for nomination
18 for election or election to public office or has filed or accepted a nomination for
19 public office;
20 c. An individual who has formed a campaign or other committee for that individual's
21 candidacy for public office;
22 d. An individual who has circulated a nominating petition to have that individual's
23 name placed on the ballot; and
24 e. An individual who has, in any manner, solicited or received a contribution for that
25 individual's candidacy for public office, whether before or after the election for
26 that office.

27 | 4.5. "Conduit" means a person that is not a political party, political committee, or candidate
28 and which receives a contribution of money and transfers the contribution to a
29 candidate, political party, or political committee when the contribution is designated
30 specifically for the candidate, political party, or political committee and the person has
31 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 ~~19.18.~~ "Ultimate and true source" means the person ~~who~~that 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~~
31 ~~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 personal~~
- 27 ~~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:~~

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

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

~~a. For each aggregated contribution from a contributor which totals in excess of two hundred dollars, adjusted for inflation, received during the reporting period:~~

~~(1) The name and mailing address of the contributor;~~

~~(2) The total amount of the contribution; and~~

~~(3) The date the last contributed amount was received;~~

~~b. The total of all aggregated contributions from contributors which total in excess of two hundred dollars, adjusted for inflation, during the reporting period;~~

~~c. The total of all contributions received from contributors that contributed two hundred dollars, adjusted for inflation, or less each during the reporting period;~~

~~d. For each recipient of an expenditure from campaign funds in excess of two hundred dollars, adjusted for inflation, in the aggregate:~~

~~(1) The name and mailing address of the recipient;~~

~~(2) The total amount of the expenditure made to the recipient; and~~

~~(3) The date the last expended amount was made to the recipient;~~

~~e. The aggregate total of all expenditures from campaign funds in excess of two hundred dollars, adjusted for inflation;~~

~~f. The aggregate total of all expenditures from campaign funds of two hundred dollars, adjusted for inflation, or less; and~~

~~g. The balance of the campaign fund on the fortieth day before the election and 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 1314 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 1314 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 2. AMENDMENT.** Section 16.1-08.1-03.7 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **16.1-08.1-03.7. Political committees that organize and register according to federal**
10 **law that make independent expenditures or disbursements to nonfederal candidates,**
11 **political parties, and political committees.**

12 A political committee that organizes and registers according to federal law and makes an
13 independent expenditure or makes a disbursement in excess of two hundred dollars to a
14 nonfederal candidate seeking public office or to a political party or political committee in this
15 state shall file a copy of that portion of the committee's federal report detailing the independent
16 expenditure or the disbursement made. The political committee shall file a copy of the
17 committee's federal report, and supplementary information as necessary under this section, with
18 the secretary of state at the time of filing the report with the applicable federal agency. The
19 report and supplementary information must include:

- 20 1. The name, mailing address, and treasurer of the political committee;
- 21 2. The recipient's name and mailing address; ~~and~~
- 22 3. The date and amount of the independent expenditure or disbursement; and
- 23 4. The ultimate and true source of funds listed by contributor and subcontributor of any
24 amount over two hundred dollars collected or used to make the independent
25 expenditure or disbursement including:
 - 26 a. The name and address of the contributor;
 - 27 b. The total amount of the contribution; and
 - 28 c. The date the last contribution was received.

29 **SECTION 3. AMENDMENT.** Section 16.1-08.1-04.1 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **16.1-08.1-04.1. Personal use of contributions prohibited.**

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

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

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

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

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

9 2. ~~For the first violation, the secretary of state shall assess a civil penalty of five hundred~~
10 ~~dollars upon any person who knowingly violates this section. The assessment of a civil~~
11 ~~penalty may be appealed to the district court of Burleigh County. For a second and~~
12 ~~subsequent knowing violation of this section, the person is guilty of a class B-~~
13 ~~misdemeanor. The secretary of state shall assess a civil penalty upon any person that~~
14 ~~knowingly violates this section.~~

15 a. If the contribution used in violation of this section has a value of two thousand
16 five hundred dollars or more, the civil penalty must be two times the value of the
17 contribution.

18 b. If the contribution used in violation of this section has a value of less than two
19 thousand five hundred dollars, the civil penalty must be at least two times the
20 value of the contribution and may be up to five thousand dollars.

21 3. The assessment of a civil penalty may be appealed to the district court of the county
22 where the candidate resides.

23 **SECTION 4. AMENDMENT.** Section 16.1-08.1-06.2 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **16.1-08.1-06.2. Secretary of state to provide instructions, make adjustments for**
26 **inflation, and conduct training.**

27 The secretary of state shall provide instructions and conduct training for the purpose of
28 promoting uniform application of campaign finance and disclosure requirements and the uniform
29 filing of statements, registrations, or reports according to this chapter. The secretary also shall
30 determine adjustments for inflation of the reporting thresholds in this chapter and instruct
31 persons submitting reports under this chapter of the adjustments. On January first of each year,

1 the secretary shall determine whether the accumulated change in the consumer price index for
2 all urban consumers (all items, United States city average), as applied to each reporting
3 threshold in this chapter, would result in an adjustment of at least ten dollars of the threshold in
4 effect on that date. If so, the secretary shall deem the reporting threshold adjusted by ten
5 dollars.

6 **SECTION 5.** A new section to chapter 16.1-08.1 of the North Dakota Century Code is
7 created and enacted as follows:

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

- 9 1. In any ~~report~~statement under this chapter which requires the identification of a
10 contributor or subcontributor, the ultimate and true source of funds must be identified.
- 11 2. 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 **SECTION 6. AMENDMENT.** Section 28-32-01 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **28-32-01. Definitions.**

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

- 20 1. "Adjudicative proceeding" means an administrative matter resulting in an agency
21 issuing an order after an opportunity for hearing is provided or required. An
22 adjudicative proceeding includes administrative matters involving a hearing on a
23 complaint against a specific-named respondent; a hearing on an application seeking a
24 right, privilege, or an authorization from an agency, such as a ratemaking or licensing
25 hearing; or a hearing on an appeal to an agency. An adjudicative proceeding includes
26 reconsideration, rehearing, or reopening. Once an adjudicative proceeding has begun,
27 the adjudicative proceeding includes any informal disposition of the administrative
28 matter under section 28-32-22 or another specific statute or rule, unless the matter
29 has been specifically converted to another type of proceeding under section 28-32-22.
30 An adjudicative proceeding does not include a decision or order to file or not to file a
31 complaint, or to initiate an investigation, an adjudicative proceeding, or any other

1 proceeding before the agency, or another agency, or a court. An adjudicative
2 proceeding does not include a decision or order to issue, reconsider, or reopen an
3 order that precedes an opportunity for hearing or that under another section of this
4 code is not subject to review in an adjudicative proceeding. An adjudicative proceeding
5 does not include rulemaking under this chapter.

6 2. "Administrative agency" or "agency" means each board, bureau, commission,
7 department, or other administrative unit of the executive branch of state government,
8 including one or more officers, employees, or other persons directly or indirectly
9 purporting to act on behalf or under authority of the agency. An administrative unit
10 located within or subordinate to an administrative agency must be treated as part of
11 that agency to the extent it purports to exercise authority subject to this chapter. The
12 term administrative agency does not include:

- 13 a. The office of management and budget except with respect to rules made under
14 section 32-12.2-14, rules relating to conduct on the capitol grounds and in
15 buildings located on the capitol grounds under section 54-21-18, rules relating to
16 the classified service as authorized under section 54-44.3-07, and rules relating
17 to state purchasing practices as required under section 54-44.4-04.
- 18 b. The adjutant general with respect to the department of emergency services.
- 19 c. The council on the arts.
- 20 d. The state auditor.
- 21 e. The department of commerce with respect to the division of economic
22 development and finance.
- 23 f. The dairy promotion commission.
- 24 g. The education factfinding commission.
- 25 h. The educational technology council.
- 26 i. The board of equalization.
- 27 j. The board of higher education.
- 28 k. The Indian affairs commission.
- 29 l. The industrial commission with respect to the activities of the Bank of North
30 Dakota, North Dakota housing finance agency, public finance authority, North

- 1 Dakota mill and elevator association, North Dakota farm finance agency, the
2 North Dakota transmission authority, and the North Dakota pipeline authority.
- 3 m. The department of corrections and rehabilitation except with respect to the
4 activities of the division of adult services under chapter 54-23.4.
- 5 n. The pardon advisory board.
- 6 o. The parks and recreation department.
- 7 p. The parole board.
- 8 q. The state fair association.
- 9 r. The attorney general with respect to activities of the state toxicologist and the
10 state crime laboratory.
- 11 s. The administrative committee on veterans' affairs except with respect to rules
12 relating to the supervision and government of the veterans' home and the
13 implementation of programs or services provided by the veterans' home.
- 14 t. The industrial commission with respect to the lignite research fund except as
15 required under section 57-61-01.5.
- 16 u. The attorney general with respect to guidelines adopted under section 12.1-32-15
17 for the risk assessment of sexual offenders, the risk level review process, and
18 public disclosure of information under section 12.1-32-15.
- 19 v. The commission on legal counsel for indigents.
- 20 w. The attorney general with respect to twenty-four seven sobriety program
21 guidelines and program fees.
- 22 x. The industrial commission with respect to approving or setting water rates under
23 chapter 61-40.
- 24 3. "Agency head" means an individual or body of individuals in whom the ultimate legal
25 authority of the agency is vested by law.
- 26 4. "Commission" means the North Dakota ethics commission established by article XIV
27 of the Constitution of North Dakota.
- 28 5. "Complainant" means any person who files a complaint before an administrative
29 agency pursuant to section 28-32-21 and any administrative agency that, when
30 authorized by law, files such a complaint before such agency or any other agency.

1 ~~5-6.~~ "Hearing officer" means any agency head or one or more members of the agency
2 head when presiding in an administrative proceeding, or, unless prohibited by law, one
3 or more other persons designated by the agency head to preside in an administrative
4 proceeding, an administrative law judge from the office of administrative hearings, or
5 any other person duly assigned, appointed, or designated to preside in an
6 administrative proceeding pursuant to statute or rule.

7 ~~6-7.~~ "License" means a franchise, permit, certification, approval, registration, charter, or
8 similar form of authorization required by law.

9 ~~7-8.~~ "Order" means any agency action of particular applicability which determines the legal
10 rights, duties, privileges, immunities, or other legal interests of one or more specific
11 persons. The term does not include an executive order issued by the governor.

12 ~~8-9.~~ "Party" means each person named or admitted as a party or properly seeking and
13 entitled as of right to be admitted as a party. An administrative agency may be a party.
14 In a hearing for the suspension, revocation, or disqualification of an operator's license
15 under title 39, the term may include each city and each county in which the alleged
16 conduct occurred, but the city or county may not appeal the decision of the hearing
17 officer.

18 ~~9-10.~~ "Person" includes an individual, association, partnership, corporation, limited liability
19 company, the commission, a state governmental agency or governmental subdivision,
20 or an agency of such governmental subdivision.

21 ~~10-11.~~ "Relevant evidence" means evidence having any tendency to make the existence of
22 any fact that is of consequence to the determination of the administrative action more
23 probable or less probable than it would be without the evidence.

24 ~~11-12.~~ "Rule" means the whole or a part of an agency or commission statement of general
25 applicability which implements or prescribes law or policy or the organization,
26 procedure, or practice requirements of the agency or commission. The term includes
27 the adoption of new rules and the amendment, repeal, or suspension of an existing
28 rule. The term does not include:

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

- 1 b. A rule that sets forth criteria or guidelines to be used by the staff of an agency or
2 the commission in the performance of audits, investigations, inspections, and
3 settling commercial disputes or negotiating commercial arrangements, or in the
4 defense, prosecution, or settlement of cases, if the disclosure of the
5 statementrule would:
- 6 (1) Enable law violators to avoid detection;
7 (2) Facilitate disregard of requirements imposed by law; or
8 (3) Give a clearly improper advantage to persons who are in an adverse
9 position to the state.
- 10 c. A rule establishing specific prices to be charged for particular goods or services
11 sold by an agency.
- 12 d. A rule concerning only the physical servicing, maintenance, or care of
13 agency-owned ~~or~~ agency-operated, commission-owned, or
14 commission-operated facilities or property.
- 15 e. A rule relating only to the use of a particular facility or property owned, operated,
16 or maintained by the state or any of its subdivisions, if the substance of the rule is
17 adequately indicated by means of signs or signals to persons who use the facility
18 or property.
- 19 f. A rule concerning only inmates of a correctional or detention facility, students
20 enrolled in an educational institution, or patients admitted to a hospital, if adopted
21 by that facility, institution, or hospital.
- 22 g. A form whose contents or substantive requirements are prescribed by rule or
23 statute or are instructions for the execution or use of the form.
- 24 h. An agency or commission budget.
- 25 i. An opinion of the attorney general.
- 26 j. A rule adopted by an agency selection committee under section 54-44.7-03.
- 27 k. Any material, including a guideline, interpretive statement, statement of general
28 policy, manual, brochure, or pamphlet, which is explanatory and not intended to
29 have the force and effect of law.

30 ~~**SECTION 6. AMENDMENT. Section 28-32-02 of the North Dakota Century Code is**~~
31 ~~**amended and reenacted as follows:**~~

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

~~1. The authority of an administrative agency to adopt administrative rules is authority delegated by the legislative assembly. As part of that delegation, the legislative assembly reserves to itself the authority to determine when and if rules of administrative agencies are effective. Every administrative agency may adopt, amend, or repeal reasonable rules in conformity with this chapter and any statute administered or enforced by the agency.~~

~~2. In addition to other rulemaking requirements imposed by law, each agency may include in its rules a description of that portion of its organization and functions subject to this chapter and may include a statement of the general course and method of its operations and how the public may obtain information or make submissions or requests.~~

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

SECTION 7. AMENDMENT. Section 28-32-03 of the North Dakota Century Code is amended and reenacted as follows:

28-32-03. Emergency rules.

1. If the ~~commission or an~~ agency, with the approval of the governor, or the commission finds that emergency rulemaking is necessary, the commission or agency may declare the proposed rule to be an interim final rule effective on a date no earlier than the date of filing with the legislative council of the notice required by section 28-32-10.
2. A proposed rule may be given effect on an emergency basis under this section if any of the following grounds exists regarding that rule:
 - a. Imminent peril threatens public health, safety, or welfare, which would be abated by emergency effectiveness;
 - b. A delay in the effective date of the rule is likely to cause a loss of funds appropriated to support a duty imposed by law upon the commission or agency;
 - c. Emergency effectiveness is reasonably necessary to avoid a delay in implementing an appropriations measure; or
 - d. Emergency effectiveness is necessary to meet a mandate of federal law.

- 1 3. A final rule adopted after consideration of all written and oral submissions respecting
2 the interim final rule, which is substantially similar to the interim final rule, is effective
3 as of the declared effective date of the interim final rule.
- 4 4. The commission's or agency's finding, and a brief statement of the commission's or
5 agency's reasons for the finding, must be filed with the legislative council with the final
6 adopted emergency rule.
- 7 5. The commission or agency shall attempt to make interim final rules known to persons
8 who the commission or agency can reasonably be expected to believe may have a
9 substantial interest in them. As used in this subsection, "substantial interest" means an
10 interest in the effect of the rules which surpasses the common interest of all citizens.
- 11 ~~An~~The commission or an agency adopting emergency rules shall comply with the
12 notice requirements of section 28-32-10 which relate to emergency rules and shall
13 provide notice to the chairman of the administrative rules committee of the emergency
14 status, declared effective date, and grounds for emergency status of the rules under
15 subsection 2. When notice of emergency rule adoption is received, the legislative
16 council shall publish the notice and emergency rules on its website.
- 17 6. An interim final rule is ineffective one hundred eighty days after its declared effective
18 date unless first adopted as a final rule.

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

21 **28-32-06. Force and effect of rules.**

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

27 **SECTION 9. AMENDMENT.** Section 28-32-07 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **28-32-07. Deadline for rules to implement statutory change.**

30 Any rule change, including a creation, amendment, or repeal, made to implement a
31 statutory change must be adopted and filed with the legislative council within nine months of the

1 effective date of the statutory change. If an agency or the commission needs additional time for
2 the rule change, a request for additional time must be made to the legislative council. The
3 legislative council may extend the time within which the agency or commission must adopt the
4 rule change if the request by the agency or commission is supported by evidence that the
5 agency or commission needs more time through no deliberate fault of its own.

6 **SECTION 10. AMENDMENT.** Section 28-32-08 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **28-32-08. Regulatory analysis.**

- 9 1. An agency or the commission shall issue a regulatory analysis of a proposed rule if:
- 10 a. Within twenty days after the last published notice date of a proposed rule
11 hearing, a written request for the analysis is filed by the governor or a member of
12 the legislative assembly; or
- 13 b. The proposed rule is expected to have an impact on the regulated community in
14 excess of fifty thousand dollars. The analysis under this subdivision must be
15 available on or before the first date of public notice as provided for in section
16 28-32-10.
- 17 2. The regulatory analysis must contain:
- 18 a. A description of the classes of persons who probably will be affected by the
19 proposed rule, including classes that will bear the costs of the proposed rule and
20 classes that will benefit from the proposed rule;
- 21 b. A description of the probable impact, including economic impact, of the proposed
22 rule;
- 23 c. The probable costs to the agency or commission of the implementation and
24 enforcement of the proposed rule and any anticipated effect on state revenues;
25 and
- 26 d. A description of any alternative methods for achieving the purpose of the
27 proposed rule that were seriously considered by the agency or commission and
28 the reasons why the methods were rejected in favor of the proposed rule.
- 29 3. Each regulatory analysis must include quantification of the data to the extent
30 practicable.

1 4. The agency or commission shall mail or deliver a copy of the regulatory analysis to
2 any person who requests a copy of the regulatory analysis. The agency or commission
3 may charge a fee for a copy of the regulatory analysis as allowed under section
4 44-04-18.

5 5. If required under subsection 1, the preparation and issuance of a regulatory analysis is
6 a mandatory duty of the agency or commission proposing a rule. Errors in a regulatory
7 analysis, including erroneous determinations concerning the impact of the proposed
8 rule on the regulated community, are not a ground upon which the invalidity of a rule
9 may be asserted or declared.

10 **SECTION 11. AMENDMENT.** Section 28-32-08.1 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **28-32-08.1. Rules affecting small entities - Analysis - Economic impact statements -**
13 **Judicial review.**

14 1. As used in this section:

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

16 (1) Is independently owned and operated; and

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

19 b. "Small entity" includes small business, small organization, and small political
20 subdivision;

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

23 d. "Small political subdivision" means a political subdivision with a population of less
24 than five thousand.

25 2. Before adoption of any proposed rule, the adopting agency ~~or the commission~~ shall
26 prepare a regulatory analysis in which, consistent with public health, safety, and
27 welfare, the agency ~~or commission~~ considers utilizing regulatory methods that will
28 accomplish the objectives of applicable statutes while minimizing adverse impact on
29 small entities. The agency ~~or commission~~ shall consider each of the following methods
30 of reducing impact of the proposed rule on small entities:

- 1 a. Establishment of less stringent compliance or reporting requirements for small
2 entities;
- 3 b. Establishment of less stringent schedules or deadlines for compliance or
4 reporting requirements for small entities;
- 5 c. Consolidation or simplification of compliance or reporting requirements for small
6 entities;
- 7 d. Establishment of performance standards for small entities to replace design or
8 operational standards required in the proposed rule; and
- 9 e. Exemption of small entities from all or any part of the requirements contained in
10 the proposed rule.
- 11 3. Before adoption of any proposed rule that may have an adverse impact on small
12 entities, the adopting agency ~~or the commission~~ shall prepare an economic impact
13 statement that includes consideration of:
 - 14 a. The small entities subject to the proposed rule;
 - 15 b. The administrative and other costs required for compliance with the proposed
16 rule;
 - 17 c. The probable cost and benefit to private persons and consumers who are
18 affected by the proposed rule;
 - 19 d. The probable effect of the proposed rule on state revenues; and
 - 20 e. Any less intrusive or less costly alternative methods of achieving the purpose of
21 the proposed rule.
- 22 4. For any rule subject to this section, a small entity that is adversely affected or
23 aggrieved by final agency ~~or commission~~ action is entitled to judicial review of agency
24 ~~or commission~~ compliance with the requirements of this section. A small entity seeking
25 judicial review under this section must file a petition for judicial review within one year
26 from the date of final agency ~~or commission~~ action.
- 27 5. This section does not apply to the ethics commission, any agency that is an
28 occupational or professional licensing authority, ~~nor does this section apply to and~~
29 the following agencies or divisions of agencies:
 - 30 a. Council on the arts.
 - 31 b. Beef commission.

- 1 c. Dairy promotion commission.
- 2 d. Dry bean council.
- 3 e. Highway patrolmen's retirement board.
- 4 f. Indian affairs commission.
- 5 g. Board for Indian scholarships.
- 6 h. State personnel board.
- 7 i. Potato council.
- 8 j. Board of public school education.
- 9 k. Real estate trust account committee.
- 10 l. Seed commission.
- 11 m. Soil conservation committee.
- 12 n. Oilseed council.
- 13 o. Wheat commission.
- 14 p. State seed arbitration board.
- 15 q. North Dakota lottery.
- 16 6. This section does not apply to rules mandated by federal law.
- 17 7. The adopting agency ~~or the commission~~ shall provide the administrative rules
- 18 committee copies of any regulatory analysis or economic impact statement, or both,
- 19 prepared under this section when the committee is considering the associated rules.

20 **SECTION 12. AMENDMENT.** Section 28-32-08.2 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **28-32-08.2. Fiscal notes for administrative rules.**

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

28 **SECTION 13. AMENDMENT.** Section 28-32-09 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 **28-32-09. Takings assessment.**

2 1. An agency or the commission shall prepare a written assessment of the constitutional
3 takings implications of a proposed rule that may limit the use of private real property.

4 The agency's assessment must:

- 5 a. Assess the likelihood that the proposed rule may result in a taking or regulatory
6 taking.
- 7 b. Clearly and specifically identify the purpose of the proposed rule.
- 8 c. Explain why the proposed rule is necessary to substantially advance that purpose
9 and why no alternative action is available that would achieve the agency's or
10 commission's goals while reducing the impact on private property owners.
- 11 d. Estimate the potential cost to the government if a court determines that the
12 proposed rule constitutes a taking or regulatory taking.
- 13 e. Identify the source of payment within the agency's or commission's budget for
14 any compensation that may be ordered.
- 15 f. Certify that the benefits of the proposed rule exceed the estimated compensation
16 costs.

17 2. Any private landowner who is or may be affected by a rule that limits the use of the
18 landowner's private real property may request in writing that the agency or
19 commission reconsider the application or need for the rule. Within thirty days of
20 receiving the request, the agency or commission shall consider the request and shall
21 in writing inform the landowner whether the agency or commission intends to keep the
22 rule in place, modify application of the rule, or repeal the rule.

23 3. In an agency's analysis of the takings implications of a proposed rule, "taking" means
24 the taking of private real property, as defined in section 47-01-03, by government
25 action which requires compensation to the owner of that property by the fifth or
26 fourteenth amendment to the Constitution of the United States or section 16 of article I
27 of the Constitution of North Dakota. "Regulatory taking" means a taking of real
28 property through the exercise of the police and regulatory powers of the state which
29 reduces the value of the real property by more than fifty percent. However, the
30 exercise of a police or regulatory power does not effect a taking if it substantially

1 advances legitimate state interests, does not deny an owner economically viable use
2 of the owner's land, or is in accordance with applicable state or federal law.

3 **SECTION 14. AMENDMENT.** Section 28-32-10 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **28-32-10. Notice of rulemaking - Hearing date.**

6 1. An agency or the commission shall prepare a full notice and an abbreviated notice of
7 rulemaking.

8 a. The agency's full notice of the proposed adoption, amendment, or repeal of a rule
9 must include a short, specific explanation of the proposed rule and the purpose of
10 the proposed rule, identify the emergency status and declared effective date of
11 any emergency rules, include a determination of whether the proposed
12 rulemaking is expected to have an impact on the regulated community in excess
13 of fifty thousand dollars, identify at least one location where interested persons
14 may review the text of the proposed rule, provide the address to which written
15 comments concerning the proposed rule may be sent, provide the deadline for
16 submission of written comments, provide a telephone number and post-office or
17 electronic mail address at which a copy of the rules and regulatory analysis may
18 be requested, and, in the case of a substantive rule, provide the time and place
19 set for each oral hearing. ~~The~~An agency's full notice must include a statement of
20 the bill number and general subject matter of any legislation, enacted during the
21 most recent session of the legislative assembly, which is being implemented by
22 the proposed rule. The commission's full notice must include a statement of the
23 provision of the Constitution of North Dakota or the bill number and general
24 subject matter of any legislation ~~enacted during the most recent session of the~~
25 ~~legislative assembly which~~that is being implemented by the proposed rule. The
26 agency's full notice must be filed with the legislative council, accompanied by a
27 copy of the proposed rules.

28 b. The agency or commission shall request publication of an abbreviated
29 newspaper publication notice at least once in each official county newspaper
30 published in this state. The abbreviated newspaper publication of notice must be
31 in a display-type format with a minimum width of one column of approximately

1 two inches [5.08 centimeters] and a minimum depth of approximately three
2 inches [7.62 centimeters] and with a headline describing the general topic of the
3 proposed rules. The notice must also include the telephone number or address to
4 use to obtain a copy of the proposed rules, identification of the emergency status
5 and declared effective date of any emergency rules, the address to use and the
6 deadline to submit written comments, and the location, date, and time of the
7 public hearing on the rules.

8 2. The agency or commission shall mail or deliver by electronic mail a copy of the
9 agency's full notice and proposed rule to each member of the legislative assembly
10 whose name appeared as a sponsor or cosponsor of legislation, enacted during the
11 most recent session of the legislative assembly, which is being implemented by the
12 proposed rule and to each person who has made a timely request to the agency or
13 commission for a copy of the notice and proposed rule. The agency or commission
14 may mail or otherwise provide a copy of the agency's full notice to any person who is
15 likely to be an interested person. The agency or commission may charge persons who
16 are not members of the legislative assembly fees for copies of the proposed rule as
17 allowed under section 44-04-18.

18 3. In addition to the other notice requirements of this subsection, the superintendent of
19 public instruction shall provide notice of any proposed rulemaking by the
20 superintendent of public instruction to each association with statewide membership
21 whose primary focus is elementary and secondary education issues which has
22 requested to receive notice from the superintendent under this subsection and to the
23 superintendent of each public school district in this state, or the president of the school
24 board for school districts that have no superintendent, at least twenty days before the
25 date of the hearing described in the notice. Notice provided by the superintendent of
26 public instruction under this section must be by first-class mail. However, upon request
27 of a group or person entitled to notice under this section, the superintendent of public
28 instruction shall provide the group or person notice by electronic mail.

29 4. The legislative council shall establish standard procedures for the commission and all
30 agencies to follow in complying with the provisions of this section and a procedure to
31 allow any person to request and receive mailed copies of all filings made by agencies

1 and the commission pursuant to this section. The legislative council may charge an
2 annual fee as established by the administrative rules committee for providing copies of
3 the filings.

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

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

10 **28-32-11. Conduct of hearings - Notice of administrative rules committee**
11 **consideration - Consideration and written record of comments.**

12 The agency or commission shall adopt a procedure whereby all interested persons are
13 afforded reasonable opportunity to submit data, views, or arguments, orally or in writing,
14 concerning the proposed rule, including data respecting the impact of the proposed rule. The
15 agency or commission shall adopt a procedure to allow interested parties to request and
16 receive notice from the agency or commission of the date and place the rule will be reviewed by
17 the administrative rules committee. In case of substantive rules, the agency or commission shall
18 conduct an oral hearing. The agency or commission shall consider fully all written and oral
19 submissions respecting a proposed rule prior to the adoption, amendment, or repeal of any rule
20 not of an emergency nature. The agency or commission shall make a written record of its
21 consideration of all written and oral submissions contained in the rulemaking record respecting
22 a proposed rule.

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

25 **28-32-12. Comment period.**

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

30 ~~**SECTION 16. AMENDMENT.** Section 28-32-14 of the North Dakota Century Code is~~
31 ~~amended and reenacted as follows:~~

1 ~~— **28-32-14. Attorney general review of rules.**~~

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

7 ~~— 1. The rule exceeds the statutory authority of the agency, or the statutory or constitutional~~
8 ~~authority of the commission;~~

9 ~~— 2. The rule is written in a manner that is not concise or easily understandable; or when~~
10 ~~the~~

11 ~~— 3. The procedural requirements for adoption of the rule in this chapter are not~~
12 ~~substantially met. The attorney general shall advise an agency of any revision or~~
13 ~~rewording of a rule necessary to correct objections as to legality.~~

14 **SECTION 17. AMENDMENT.** Section 28-32-15 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **28-32-15. Filing of rules for publication - Effective date of rules.**

17 1. A copy of each rule adopted by an administrative agency or the commission, a copy of
18 each written comment and a written summary of each oral comment on the rule, and
19 the attorney general's opinion on the rule, if any, must be filed by the adopting agency
20 or commission with the legislative council for publication of the rule in the North
21 Dakota Administrative Code.

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

26 (1) Rules filed with the legislative council from August second through
27 November first become effective on the immediately succeeding January
28 first.

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

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

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

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

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

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

13 **28-32-16. Petition for reconsideration of rule - Hearing by agency.**

14 Any person substantially interested in the effect of a rule adopted by an administrative
15 agency or the commission may petition ~~such~~the agency or commission for a reconsideration of
16 ~~any such~~the rule or for an amendment or repeal thereof. ~~Such~~of the rule. The petition must
17 state clearly and concisely the petitioners' alleged grounds for ~~such~~ reconsideration or ~~for~~ the
18 proposed repeal or amendment of ~~such~~the rule. The agency or commission may grant the
19 petitioner a public hearing ~~upon such~~on the terms and conditions as the agency may
20 ~~prescribe~~prescribes.

21 ~~—SECTION 20. AMENDMENT. Section 28-32-17 of the North Dakota Century Code is~~
22 ~~amended and reenacted as follows:~~

23 ~~—28-32-17. Administrative rules committee objection.~~

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

29 ~~—1.—The legislative council shall attach to each objection a certification of the time and date~~
30 ~~of its filing and, as soon as possible, shall transmit a copy of the objection and the~~

1 certification to the ~~agency or commission~~ adopting the rule in question. The legislative
2 council also shall maintain a permanent register of all committee objections.

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

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

11 ~~4. After the filing of a committee objection, the burden of persuasion is upon the agency~~
12 ~~or commission in any action for judicial review or for enforcement of the rule to~~
13 ~~establish that the whole or portion thereof of the rule objected to is within the~~
14 ~~procedural and substantive authority delegated to the agency or commission. If the~~
15 ~~agency or commission fails to meet its burden of persuasion, the court shall declare~~
16 ~~the whole or portion of the rule objected to invalid and judgment must be rendered~~
17 ~~against the agency or commission for court costs. These court costs must include a~~
18 ~~reasonable attorney's fee and must be payable from the appropriation of the agency or~~
19 ~~commission which adopted the rule in question.~~

20 **SECTION 21. AMENDMENT.** Section 28-32-18 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 ~~28-32-18. Administrative rules committee may void rule -- Grounds -- Amendment by~~
23 ~~agreement of agency and committee.~~

24 ~~1. The legislative management's administrative rules committee may find that all or any~~
25 ~~portion of a rule is void if that rule is initially considered by the committee not later than~~
26 ~~the fifteenth day of the month before the date of the administrative code supplement in~~
27 ~~which the rule change is scheduled to appear. The administrative rules committee may~~
28 ~~find a rule or portion of a rule void if the committee makes the specific finding that, with~~
29 ~~regard to that rule or portion of a rule, there is:~~

30 ~~a. An absence of statutory authority under statute or the constitution.~~

31 ~~b. An emergency relating to public health, safety, or welfare.~~

- 1 ~~c. For rules proposed by an agency, a failure to comply with express legislative~~
2 ~~intent or to substantially meet the procedural requirements of this chapter for~~
3 ~~adoption of the rule.~~
- 4 ~~d. For rules proposed by the commission, a failure to substantially meet the~~
5 ~~procedural requirements for this chapter for adoption of the rule.~~
- 6 ~~e. A conflict with state law.~~
- 7 ~~e.f. Arbitrariness and capriciousness.~~
- 8 ~~f.g. A failure to make a written record of its consideration of written and oral~~
9 ~~submissions respecting the rule under section 28-32-11.~~
- 10 ~~2. The administrative rules committee may find a rule void at the meeting at which the~~
11 ~~rule is initially considered by the committee or may hold consideration of that rule for~~
12 ~~one subsequent meeting. If no representative of the agency or commission appears~~
13 ~~before the administrative rules committee when rules are scheduled for committee~~
14 ~~consideration, those rules are held over for consideration at the next subsequent~~
15 ~~committee meeting. Rules are not considered initially considered by the committee~~
16 ~~under this subsection until a representative of the agency or commission appears~~
17 ~~before the administrative rules committee when the rules are scheduled for committee~~
18 ~~consideration. If no representative of the agency or commission appears before the~~
19 ~~administrative rules committee meeting to which rules are held over for consideration,~~
20 ~~the rules are void if the rules were adopted as emergency rules and for rules not~~
21 ~~adopted as emergency rules the administrative rules committee may void the rules,~~
22 ~~allow the rules to become effective, or hold over consideration of the rules to the next~~
23 ~~subsequent committee meeting. Within three business days after the administrative~~
24 ~~rules committee finds that a rule is void, the legislative council shall provide written~~
25 ~~notice of that finding and the committee's specific finding under subdivisions a through~~
26 ~~f of subsection 1 to the adopting agency or commission and to the chairman of the~~
27 ~~legislative management. Within fourteen days after receipt of the notice, the adopting~~
28 ~~agency or commission may file a petition with the chairman of the legislative~~
29 ~~management for review by the legislative management of the decision of the~~
30 ~~administrative rules committee. If the adopting agency or commission does not file a~~
31 ~~petition for review, the rule becomes void on the fifteenth day after the notice from the~~

1 ~~legislative council to the adopting agency or commission. If within sixty days after~~
2 ~~receipt of the petition from the adopting agency or commission the legislative~~
3 ~~management has not disapproved by motion the finding of the administrative rules~~
4 ~~committee, the rule is void.~~

5 ~~3. An agency or the commission may amend or repeal a rule or create a related rule~~
6 ~~if, after consideration of rules by the administrative rules committee, the agency or~~
7 ~~commission and the committee agree that the rule amendment, repeal, or creation is~~
8 ~~necessary to address any of the considerations under subsection 1. A rule amended,~~
9 ~~repealed, or created under this subsection is not subject to the other requirements of~~
10 ~~this chapter relating to adoption of administrative rules and may be published by the~~
11 ~~legislative council as amended, repealed, or created. If requested by the agency,~~
12 ~~commission, or any interested party, a rule amended, repealed, or created under this~~
13 ~~subsection must be reconsidered by the administrative rules committee at a~~
14 ~~subsequent meeting at which public comment on the agreed rule change must be~~
15 ~~allowed.~~

16 **SECTION 19. AMENDMENT.** Section 28-32-18.1 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **28-32-18.1. Administrative rules committee review of existing administrative rules.**

- 19 1. Upon request by the administrative rules committee, an administrative agency or the
20 commission shall brief the committee on its existing administrative rules and point out
21 any provisions that appear to be obsolete and any areas in which statutory or
22 constitutional authority has changed or been repealed since the rules were adopted or
23 amended.
- 24 2. An agency or the commission may amend or repeal a rule without complying with the
25 other requirements of this chapter relating to adoption of administrative rules and may
26 resubmit the change to the legislative council for publication provided:
- 27 a. The agency or commission initiates the request to the administrative rules
28 committee for consideration of the amendment or repeal;
- 29 b. The agency or commission provides notice to the regulated community, in a
30 manner reasonably calculated to provide notice to those persons interested in the

1 rule, of the time and place the administrative rules committee will consider the
2 request for amendment or repeal of the rule; and

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

7 **SECTION 20. AMENDMENT.** Subsection 2 of section 28-32-19 of the North Dakota
8 Century Code is amended and reenacted as follows:

9 2. The legislative council may prescribe ~~at~~the format, style, and arrangement for rules
10 ~~which are~~ to be published in the code and may refuse to accept the filing of any rule
11 that is not in substantial compliance ~~therewith~~with the format, style, and arrangement.
12 In arranging rules for publication, the legislative council may make ~~such~~ corrections in
13 spelling, grammatical construction, format, and punctuation of the rules as
14 ~~determined~~the legislative council determines are proper. The legislative council shall
15 keep and maintain a permanent code of all rules filed, including superseded and
16 repealed rules, which must be open to public inspection during office hours.

17 **SECTION 21. AMENDMENT.** Subsection 4 of section 28-32-19 of the North Dakota
18 Century Code is amended and reenacted as follows:

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

25 ~~—SECTION 25. AMENDMENT. Section 28-32-27 of the North Dakota Century Code is~~
26 ~~amended and reenacted as follows:~~

27 ~~—28-32-27. Hearing officer – Disqualification – Substitution.~~

28 ~~—1. Any person or persons presiding for the agency in an administrative proceeding must~~
29 ~~be referred to individually or collectively as hearing officer. Any person from the office~~
30 ~~of administrative hearings presiding for the agency as a hearing officer in an~~
31 ~~administrative proceeding must be referred to as an administrative law judge.~~

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

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

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

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

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

12 ~~4.5.~~ A person whose disqualification is requested shall determine whether to grant the
13 petition, stating facts and reasons for the determination.

14 ~~5.6.~~ If a substitute is required for a person who is disqualified or becomes unavailable for
15 any other reason, the substitute may be appointed by:

16 ~~a.~~ The attorney general, if the disqualified or unavailable person is an assistant
17 attorney general;

18 ~~b.~~ The agency head, if the disqualified or unavailable person is one or more
19 members of the agency head or one or more other persons designated by the
20 agency head;

21 ~~c.~~ A supervising hearing officer, if the disqualified or unavailable person is a hearing
22 officer designated from an office, pool, panel, or division of hearing officers; or

23 ~~d.~~ The governor, in all other cases.

24 ~~6.7.~~ Any action taken by a duly appointed substitute for a disqualified or unavailable person
25 is as effective as if taken by the disqualified or unavailable person.

26 ~~7.8.~~ Any hearing officer in an administrative proceeding, from the time of appointment or
27 designation, may exercise any authority granted by law or rule. A hearing officer may
28 be designated to preside over the entire administrative proceeding and may issue
29 orders accordingly. A procedural hearing officer may only issue orders in regard to the
30 course and conduct of the hearing under statute or rule and to otherwise effect an
31 orderly hearing. If a procedural hearing officer is designated, the agency head must be

1 present at the hearing and the agency head shall issue findings of fact and
2 conclusions of law, as well as any order resulting from the hearing.

3 ~~9. The North Dakota ethics commission shall assess any hearing officer who knowingly~~
4 ~~violates subsection 3 a civil penalty of five hundred dollars for the first violation. For a~~
5 ~~second and subsequent knowing violation of this section, the hearing officer is guilty of~~
6 ~~a class B misdemeanor.~~

7 **SECTION 22. AMENDMENT.** Section 28-32-47 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **28-32-47. Scope of and procedure on appeal from agency rulemaking.**

10 1. A judge of the district court shall review an appeal from an administrative agency's or
11 ethics commission's rulemaking action based only on the record filed with the court. If
12 an appellant requests documents to be included in the record but the agency or
13 commission does not include them, the court, upon application by the appellant, may
14 compel their inclusion. After a hearing, the filing of briefs, or other disposition of the
15 matter as the judge may reasonably require, the court shall affirm the agency's-
16 rulemaking action unless it finds that any of the following are present:

- 17 4. a. The provisions of this chapter have not been substantially complied with in the
18 agency's rulemaking actions.
- 19 2. b. A rule published as a result of the rulemaking action appealed is unconstitutional
20 on the face of the language adopted.
- 21 3. c. A rule published as a result of the rulemaking action appealed is beyond the
22 scope of the agency's or commission's authority to adopt.
- 23 4. d. A rule published as a result of the rulemaking action appealed is on the face of
24 the language adopted an arbitrary or capricious application of authority granted
25 by statute.

26 2. If the rulemaking action of the agency or commission is not affirmed by the court, ~~it~~the
27 rulemaking action must be remanded to the agency or commission for disposition in
28 accordance with the order of the court, or the rule or a portion of the rule resulting from
29 the rulemaking action of the agency or commission must be declared invalid for
30 reasons stated by the court.

1 **SECTION 23. AMENDMENT.** Section 28-32-48 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **28-32-48. Appeal - Stay of proceedings.**

4 An appeal from an order or the rulemaking action of an administrative agency or the
5 commission does not stay the enforcement of the order or the effect of a published rule unless
6 the court to which the appeal is taken, upon application and after a hearing or the submission of
7 briefs, orders a stay. The court may impose terms and conditions for a stay of the enforcement
8 of the order or for a stay in the effect of a published rule. This section does not prohibit the
9 operation of an automatic stay upon the enforcement of an administrative order or commission
10 order as may be required by another statute.

11 **SECTION 24. AMENDMENT.** Section 28-32-49 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **28-32-49. Review in supreme court.**

14 The judgment of the district court in an appeal from an order or rulemaking action of an
15 administrative agency or the commission may be reviewed in the supreme court on appeal in
16 the same manner as provided in section 28-32-46 or 28-32-47, except that the appeal to the
17 supreme court must be taken within sixty days after the service of the notice of entry of
18 judgment in the district court. Any party of record, including the agency or commission, may
19 take an appeal from the final judgment of the district court to the supreme court. If an appeal
20 from the judgment of the district court is taken by an agency or the commission, the agency or
21 commission may not be required to pay a docket fee or file a bond for costs or equivalent
22 security.

23 **SECTION 25.** Chapter 54-66 of the North Dakota Century Code is created and enacted as
24 follows:

25 **54-66-01. Definitions.**

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

- 27 1. "Accused individual" means ~~an individual~~ a lobbyist, public official, candidate for public
28 office, political committee, or contributor who is alleged to have violated article XIV of
29 the Constitution of North Dakota, this chapter, or another law or rule regarding
30 ~~government ethics~~ transparency, corruption, elections, or lobbying.

- 1 2. ~~"Adjusted for inflation" means adjusted on January first of each year by the change in~~
2 ~~the consumer price index for all urban consumers (all items, United States city~~
3 ~~average), as identified by the secretary of state.~~
- 4 ~~3.~~ "Complainant" means an individual who, in writing or verbally, submits a complaint to
5 the commission.
- 6 ~~4.3.~~ "Complaint" means a verbal or written allegation to the commission that a lobbyist,
7 public official, candidate for public office, political committee, or contributor has
8 violated article XIV of the Constitution of North Dakota, this chapter, or another law or
9 rule regarding ~~government ethics has been violated~~ transparency, corruption, elections,
10 or lobbying.
- 11 ~~5.4.~~ "Ethics commission" or "commission" means the North Dakota ethics commission
12 established by article XIV of the Constitution of North Dakota.
- 13 ~~6.5.~~ "Gift" means any item, service, or thing of value not given in exchange for fair market
14 consideration including travel and recreation, except:
- 15 a. Purely informational material;
16 b. A campaign contribution; and
17 c. An item, service, or thing of value given under conditions that do not raise ethical
18 concerns, as set forth in rules adopted by the ethics commission, to advance
19 opportunities for state residents to meet with public officials in educational and
20 social settings in the state.
- 21 ~~7.6.~~ "Influence state government action" means promoting or opposing the ~~final~~ adoption of
22 a rule by an administrative agency or the commission under chapter 28-32.
- 23 ~~8.7.~~ "Lobby" means an activity listed in subsection 1 of section 54-05.1-02.
- 24 ~~9.8.~~ "Lobbyist" means an individual required to register under section 54-05.1-03.
- 25 ~~10.9.~~ "Public official" means an elected or appointed official of the state's executive or
26 legislative branch, members of the commission, members of the governor's cabinet,
27 and employees of the legislative branch.
- 28 ~~11.10.~~ "Receives the complaint" means one or more members of the commission learn of the
29 complaint.

1 ~~12.11.~~ "Ultimate and true source" means the person that knowingly contributed over two
2 hundred dollars, ~~adjusted for inflation~~, solely to lobby or influence state government
3 action.

4 **54-66-02. Disclosure of ultimate and true source of funds.**

- 5 1. A lobbyist who expends an amount greater than two hundred dollars, ~~adjusted for~~
6 ~~inflation~~, to lobby shall file with the secretary of state a report that includes the known
7 ultimate and true source of funds for the expenditure. The report must be filed with the
8 lobbyist expenditure report required under subsection 2 of section 54-05.1-03.
- 9 2. A person ~~who~~that expends an amount greater than two hundred dollars, ~~adjusted for~~
10 ~~inflation~~ ~~not including the individual's own travel expenses and membership dues~~, to
11 influence state government action shall file with the secretary of state a report
12 including the known ultimate and true source of funds for the expenditure. ~~The A~~ report
13 ~~under this subsection~~ must be filed on or before the August first following the date of
14 the expenditure. The secretary of state shall provide a form for reports under this
15 subsection and make the form electronically accessible to the public. The secretary of
16 state also shall charge and collect fees for late filing of the reports as follows:
- 17 a. Twenty-five dollars for a report filed within sixty days after the deadline; or
18 b. Fifty dollars for a report filed more than sixty days after the deadline.
- 19 3. The secretary of state shall compile the reports required under this section and make
20 the reports electronically accessible to the public ~~within forty days after the deadlines~~
21 ~~by which the reports must be filed~~.
- 22 4. ~~This section does not require a person to report the ultimate and true source of funds~~
23 ~~expended on:~~
- 24 ~~a. A gift to or from a family member;~~
- 25 ~~b. Purely informational material, advice, or education;~~
- 26 ~~c. Reimbursement for travel, meal, and refreshment expenses incurred to, from, or~~
27 ~~during a conference, seminar, or other legitimate educational opportunity for a~~
28 ~~public official if the conference, seminar, or educational opportunity concerns~~
29 ~~issues germane to the official duties of the public official;~~
- 30 ~~d. Meals and refreshments provided while informing, advising, or educating a public~~
31 ~~official about issues germane to the official duties of the public official;~~

1 ~~e. Providing an educational or social setting in the state to provide an opportunity~~
2 ~~for individuals to meet with public officials; and~~

3 ~~f. A good or service determined not to raise ethical concerns under rules adopted~~
4 ~~by the ethics commission.~~

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

10 5. The secretary of state shall determine adjustments for inflation of the reporting
11 thresholds in this section and instruct persons submitting reports under this section of
12 the adjustments. On January first of each year, the secretary shall determine whether
13 the accumulated change in the consumer price index for all urban consumers (all
14 items, United States city average), as applied to each reporting threshold in this
15 section, would result in an adjustment of at least ten dollars of the threshold in effect
16 on that date. If so, the secretary of state shall deem the reporting threshold adjusted
17 by ten dollars.

18 **54-66-03. Lobbyist gifts - Penalty.**

19 1. A lobbyist may not give, offer, solicit, initiate, or facilitate a gift knowingly to a public
20 official, and a public official may not accept a gift ~~with a value over sixty dollars per~~
21 ~~individual per event, adjusted for inflation,~~ from a lobbyist knowingly, ~~except to~~
22 ~~advance opportunities for state residents to meet with public officials in educational~~
23 ~~and social settings in the state under conditions that do not raise ethical concerns,~~
24 ~~including:~~

25 ~~a. Reimbursement for travel, meal, and refreshment expenses incurred to, from, or~~
26 ~~during a conference, seminar, or other legitimate educational opportunity for the~~
27 ~~public official if the conference, seminar, or educational opportunity concerns~~
28 ~~issues germane to the official duties of the public official;~~

29 ~~b. Providing information, advice, or education to a public official;~~

30 ~~c. Providing meals and refreshments while informing, advising, or educating a~~
31 ~~public official about issues germane to the official duties of the public official;~~

1 ~~_____ d. Items with a fair market value of ten dollars per individual per event, adjusted for~~
2 ~~inflation, or less per individual; and~~

3 ~~_____ e. A good or service determined not to raise ethical concerns under rules adopted~~
4 ~~by the ethics commission.~~

5 2. The prohibition in subsection 1 does not apply when a lobbyist gives, offers, solicits,
6 initiates, or facilitates, or a public official accepts:

7 ~~_____ a. A gift to or from a family member;~~

8 ~~_____ b. Purely informational material; or~~

9 ~~_____ c. A campaign contribution.~~

10 3. ~~For the first violation, the secretary of state shall assess a civil penalty of five hundred~~
11 ~~dollars upon any person who knowingly violates this section and, if the person is a~~
12 ~~lobbyist, the secretary of state may revoke the lobbyist's registration under chapter-~~
13 ~~54-05.1. For a second and subsequent knowing violation of this section, the person is~~
14 ~~guilty of a class B misdemeanor. The secretary of state shall assess a civil penalty~~
15 ~~upon any individual who violates this section.~~

16 a. If the gift has a value of five hundred dollars or more, the civil penalty must be
17 two times the value of the gift.

18 b. If the gift has a value of less than five hundred dollars, the civil penalty must be
19 no less than two times the value of the gift and may be up to one thousand
20 dollars.

21 **54-66-04. Ethics commission member terms - Meetings - Code of ethics -**

22 **Compensation - Investigator Office.**

23 1. The terms of the initial members of the ethics commission must be staggered to
24 ensure no more than two members' terms expire in one year. The terms of the initial
25 members may be less than four years to accommodate the required staggering of
26 terms.

27 2. ~~The ethics commission shall meet as necessary to address each complaint the~~
28 ~~commission receives. Unless the complaint at issue has resulted in the imposition of a~~
29 ~~penalty or referral for enforcement under section ~~54-66-10~~54-66-09, any portion of a~~
30 ~~meeting during which commission members discuss complaints, informal resolutions,~~
31 ~~attempts to informally resolve complaints, investigations, or referrals under this~~

1 chapter, the identity of an accused individual or complainant, or any other matter
2 arising from a complaint are closed meetings.

3 3. The commission shall abide by a code of ethics adopted in a public meeting. The code
4 of ethics must specify when a commission member is disqualified from participating in
5 matters before the commission.

6 4. Ethics commission members are entitled to:

7 a. Compensation for each day necessarily spent conducting commission business
8 in the amount provided for members of the legislative management under section
9 54-35-10; and

10 b. Payment for mileage and travel expenses necessarily incurred in the conduct of
11 commission business as provided under sections 44-08-04 and 54-06-09.

12 ~~5. Commission members shall hire or otherwise engage a part-time administrative-~~
13 ~~assistant. The administrative assistant must be provided an office within the office-~~
14 ~~space for the department of labor and human rights. The commission shall~~
15 ~~compensate the department of labor and human rights for the office in an amount~~
16 ~~equal to the fair value of the office.~~ The director of the office of management and
17 budget shall allocate office space in the state capitol for the ethics commission, or, if
18 office space in the capitol is unavailable, shall negotiate for, contract for, and obtain
19 office space for the ethics commission in the city of Bismarck or in the Bismarck area.
20 The ethics commission's office space may not be located in the office space of any
21 other government agency, board, commission, or other governmental entity, and must
22 provide sufficient privacy and security for the ethics commission to conduct its
23 business. The director shall charge the ethics commission an amount equal to the fair
24 value of the office space and related services the office of management and budget
25 renders to the ethics commission.

26 **54-66-05. Making a complaint -- Identifying information -- False complaints.**

27 ~~1.~~ A complaint may be made to the commission orally or in writing. If a complainant does
28 not provide the complainant's name, address, and telephone number with the
29 complaint, the ethics commission may not investigate, refer, or take other action
30 regarding the complaint. The commission shall summarize each oral complaint in
31 writing unless the complaint must be disregarded under this section. ~~When making a~~

1 ~~complaint, a complainant shall provide the name, address, and telephone number of~~
2 ~~the complainant.~~

3 ~~2. Within five days after making a complaint, the complainant shall submit a signed~~
4 ~~statement attesting the complaint is true and accurate to the best of the complainant's~~
5 ~~knowledge. The commission shall develop an attestation form for this purpose and~~
6 ~~make it electronically accessible to the public. After receiving the attestation, the~~
7 ~~commission shall summarize the complaint in writing if the complaint was made orally.~~

8 ~~3. If the complainant does not submit the signed attestation by the deadline, the~~
9 ~~commission may not investigate or take other action on the complaint.~~

10 ~~4. Knowingly or recklessly making a complaint that is materially false is defamation under~~
11 ~~chapter 12.1-15.~~

12 **54-66-06. Informing the accused individual - Written response permitted.**

13 The commission shall inform an accused individual by registered mail of the identity of the
14 complainant who made the allegation against the accused individual and include the written
15 complaint or written summary of the oral complaint as soon as reasonably possible but no later
16 than ~~ten~~twenty calendar days after the commission receives the complaint. The accused
17 individual may respond to the complaint in writing within ~~ten~~twenty calendar days of receipt of
18 the complaint or summary of the complaint.

19 **54-66-07. Informal resolution.**

20 The commission ~~may~~shall attempt to negotiate or mediate an informal resolution between
21 the accused individual and the complainant ~~unless the commission disregards the complaint~~
22 pursuant to section 54-66-05 or for any other reason. The accused individual may be
23 accompanied by legal counsel in a negotiation or mediation.

24 ~~**54-66-08. Referrals to investigators – Exception for criminal allegations.**~~

25 ~~For each complaint with an attestation, the commission shall engage an investigator with~~
26 ~~the appropriate knowledge and experience regarding the Constitution of North Dakota,~~
27 ~~ethics-related statutes, and ethics investigations, and refer the complaint to the investigator~~
28 ~~within thirty calendar days of receiving the complaint. However, if a complaint with an attestation~~
29 ~~includes an allegation of criminal conduct, the commission shall refer the allegation of criminal~~
30 ~~conduct to the bureau of criminal investigation or other law enforcement agency. The~~
31 ~~commission may engage a state agency as an investigator. If the accused individual provided a~~

1 written response to the complaint, the commission shall provide the written response with the
2 referred complaint.

3 ~~**54-66-09. Investigations - Findings and Recommendations - Responses.**~~

4 ~~1. The investigator engaged under section 54-66-08 shall investigate the complaint
5 referred to it by the ethics commission. Investigations must include separate interviews
6 with the accused individual and the complainant, unless the accused individual or
7 complainant refuses to be interviewed, and consideration of the circumstances
8 surrounding the allegations. The accused individual and complainant may be
9 accompanied by legal counsel during the interviews of each. Investigations may
10 include interviews of potential witnesses and other individuals believed to have
11 relevant information.~~

12 ~~2. At the conclusion of the investigation, but no later than six months after the
13 investigator received the complaint, the investigator shall submit its written findings
14 from the investigation to the commission. The commission shall provide written copies
15 of the findings to the accused individual and complainant. The accused individual and
16 complainant may respond in writing to the findings within thirty calendar days of
17 receiving the findings. The commission shall maintain copies of the findings and any
18 written response to the findings.~~

19 ~~**54-66-10. Final determinations - Penalties - Referrals for enforcement.**~~

20 ~~1. After reviewing the findings from the investigator and any written response from the
21 accused individual or complainant, the ethics commission shall meet with the accused
22 individual and complainant to discuss the findings and written responses. A meeting
23 under this subsection is a closed meeting as defined in section 44-04-17.1, although
24 the accused individual and complainant may have legal counsel attend and
25 participate.~~

26 ~~2. After the meeting with the accused individual and complainant, the commission shall
27 issue written findings, including a determination whether a violation of article XIV of the
28 Constitution of North Dakota, this chapter, or another law or rule regarding government
29 ethics occurred. If the commission finds a violation occurred, the commission may
30 assess a civil penalty if authorized by law or refer the matter to the entity authorized by
31 law to assess a civil penalty for the violation.~~

- 1 ~~3. The accused individual and the complainant may appeal and request judicial review of~~
2 ~~a determination made or penalty imposed under this section to the district court in the~~
3 ~~county in which the accused individual resides. A request for judicial review under this~~
4 ~~section must comply with the requirements for an appeal of a determination of an~~
5 ~~agency under chapter 28-32. The scope of review and procedure on appeal from a~~
6 ~~determination of the commission must comply with section 28-32-47.~~
7 ~~4. The commission may not terminate the employment of a public official or otherwise~~
8 ~~remove a public official from the public official's public office.~~

9 **54-66-08. Investigations - Referrals.**

- 10 1. If an informal resolution is not reached under section 54-66-07, the ethics commission
11 may:
12 a. Disregard the complaint;
13 b. Require ethics commission staff to investigate the allegations in the complaint; or
14 c. Engage an outside investigator to investigate allegations in the complaint.
15 2. If the commission believes a complaint contains allegations of criminal conduct, the
16 ethics commission shall refer the allegations of criminal conduct to the bureau of
17 criminal investigations or other law enforcement agency and may not take further
18 action on the referred allegations. The commission shall inform the accused individual
19 by registered mail of a referral under this section and the nature of the referred
20 allegations as soon as reasonably possible.

21 **54-66-09. Investigation findings - Ethics commission determinations.**

- 22 1. An investigator, other than a law enforcement agency, of a complaint shall provide
23 written findings of the investigation to the ethics commission within a reasonable
24 amount of time. The ethics commission shall provide copies of the written findings to
25 the accused individual, who may respond to the commission in person or in writing
26 within a reasonable time. If the accused individual responds in person, no fewer than
27 three members of the commission shall meet in a closed meeting with the accused
28 individual. An accused individual may be accompanied by legal counsel when
29 responding to the commission in person.
30 2. After providing a reasonable time for an accused individual to respond to the
31 investigation findings and considering any response to the findings, the ethics

1 commission shall determine whether a violation of article XIV of the Constitution of
2 North Dakota, this chapter, or another law or rule regarding transparency, corruption,
3 elections, or lobbying occurred, and inform the accused individual of the
4 determination. If the commission determined a violation occurred, the commission may
5 impose a penalty authorized by law for the violation or refer the matter to the agency
6 with enforcement authority over the violation.

7 3. The commission may not terminate the employment of a public official or otherwise
8 remove a public official from the public official's public office.

9 4. The ethics commission may not reconsider, invalidate, or overturn a decision, ruling,
10 recommended finding of fact, recommended conclusion of law, finding of fact,
11 conclusion of law, or order by a hearing officer under chapter 28-32 on the grounds the
12 hearing officer failed to grant a request for disqualification under section 28-32-27 or
13 failed to comply with subsection 5 of section 2 of article XIV of the Constitution of
14 North Dakota.

15 **54-66-10. Appeals.**

16 An accused individual may appeal a finding of the ethics commission to the district court of
17 the county where the accused individual resides.

18 **54-66-11. Rulemaking.**

19 When adopting rules, the ethics commission shall follow the provisions in chapter 28-32
20 which are specifically applicable to the commission.

21 **~~54-66-11.~~54-66-12. Confidential information—Penalty.**

22 1. The following information is a confidential record as defined in section 44-04-17.1,
23 unless the commission has determined the accused individual violated article XIV of
24 the Constitution of North Dakota, this chapter, or another law or rule regarding
25 ~~government ethics~~transparency, corruption, elections, or lobbying, and a court affirmed
26 the determination if appealed, except the information may be disclosed as required by
27 law or as necessary to conduct an investigation arising from a complaint:

28 a. Information revealing the contents of a complaint;

29 b. Information that reasonably may be used to identify an accused individual ~~or~~
30 ~~complainant~~; and

31 c. Information relating to or created as part of an investigation of a complaint.

- 1 2. If a complaint is informally resolved under section 54-66-07, the following information
2 is a confidential record as defined in section 44-04-17.1:
- 3 a. Information revealing the contents of the complaint;
4 b. Information that reasonably may be used to identify the accused individual ~~or~~
5 complainant;
6 c. Information relating to or created as part of the process leading to the informal
7 resolution; and
8 d. Information revealing the informal resolution.
- 9 3. ~~Willful publication of information included in subsections 1 and 2 by a person who~~
10 ~~knows the information to be false is criminal defamation under~~
11 ~~section 12.1-15-01~~ Information that reasonably may be used to identify the complainant
12 is confidential unless the complainant waives confidentiality, authorizes its disclosure,
13 or divulges information that reasonably would identify the complainant. However, the
14 ethics commission shall notify an accused individual of the identity of the complainant
15 who made an allegation against the accused individual, and the information deemed
16 confidential under this subsection may be disclosed as required by law or as
17 necessary to conduct an investigation arising from a complaint.
- 18 4. ~~A public official who violates this section is guilty of a class C felony.~~ The information
19 deemed confidential in subsections 1 and 2 may be disclosed by the ethics
20 commission if the accused individual agrees to the disclosure.
- 21 ~~54-66-12.~~ **54-66-13. Restriction on lobbying by public officials - Penalty.**
- 22 ~~For the first violation of subsection 2 of section 2 of article XIV of the Constitution of North~~
23 ~~Dakota, the secretary of state shall assess a civil penalty of five hundred dollars upon the~~
24 ~~person who knowingly commits the violation. For a second and subsequent knowing violation of~~
25 ~~the subsection, the person is guilty of a class B misdemeanor.~~ A knowing violation of
26 subsection 2 of section 2 of article XIV of the Constitution of North Dakota is a class A
27 misdemeanor. The ethics commission shall assess a civil penalty of up to one thousand dollars
28 on any individual who knowingly violates the subsection.
- 29 ~~54-66-13.~~ **54-66-14. Attorney general to provide legal services.**
- 30 The attorney general shall serve as legal counsel for the commission unless the
31 commission objects to representation by the attorney general in a specific matter. When a

1 conflict of interest prevents the attorney general from providing legal services to the
2 commission, the attorney general may appoint a special assistant attorney general to serve as
3 legal counsel for the commission.

4 **54-66-14, 54-66-15. Prohibition on delivering campaign contributions - Penalty.**

5 A lobbyist may not deliver knowingly a campaign contribution made by another person in
6 violation of subsection 3 of section 2 of article XIV of the Constitution of North Dakota. For a first
7 violation, the secretary of state shall assess a civil penalty of five hundred dollars upon any
8 personindividual who knowingly violates this section and may revoke the lobbyist's registration.
9 For a second and subsequent knowing violation of this section, the person is guilty of a class B
10 misdemeanor, and, if the lobbyist is a registered lobbyist, the secretary of state may revoke the
11 lobbyist's registration. For purposes of this section, "deliver" means to transport, transfer, or
12 otherwise transmit, either physically or electronically. This prohibition does not apply to an
13 individual who delivers a campaign contribution to the individual's own campaign or to the
14 campaign of the individual's immediate family member. This prohibition may not be interpreted
15 to prohibit any person from making a campaign contribution, encouraging others to make a
16 campaign contribution, or otherwise supporting or opposing a candidate.

17 **54-66-16. Removal of ethics commission members.**

18 1. An ethics commission member may be removed from office for:

19 a. Substantial neglect of duty;

20 b. Gross misconduct in office;

21 c. Violation of the commission's code of ethics; or

22 d. Willful or habitual neglect or refusal to perform the duties of the member.

23 2. Removal of an ethics commission member under subsection 1 requires agreement by
24 a majority of:

25 a. The governor;

26 b. The majority leader of the senate; and

27 c. The minority leader of the senate.

28 **54-66-17. Participation in quasi-judicial proceedings.**

29 For purposes of subsection 5 of section 2 of article XIV of the Constitution of North Dakota,
30 an individual is not disqualified from participating in any capacity in a quasi-judicial proceeding,
31 including an adjudicative proceeding under chapter 28-32, due to an investment in a mutual

1 fund, an ownership interest in one of the parties to the proceeding which is shared by the
2 general public, and an investment or ownership interest in a retirement account of one of the
3 parties to the proceeding.

4 **SECTION 26. APPROPRIATION.** There is appropriated out of any moneys in the general
5 fund in the state treasury, not otherwise appropriated, the sum of ~~\$300,000~~\$517,155, or so
6 much of the sum as may be necessary, to the ethics commission for the purpose of the
7 operations of the commission, for the biennium beginning July 1, 2019, and ending June 30,
8 2021. The ethics commission is authorized ~~one and one-half~~two full-time equivalent positions
9 for this purpose.

10 **SECTION 27. EFFECTIVE DATE.** Sections ~~1, 2, 3, 4, 5, and 7~~1, 3, 4, and 5 of this Act, and
11 ~~section~~sections 54-66-02 and 54-66-03 of the North Dakota Century Code, as created by
12 section ~~32~~25 of this Act, become effective January 5, ~~2022~~2021.

13 ~~—SECTION 35. EFFECTIVE DATE. North Dakota Century Code section 54-66-03, as~~
14 ~~created by section 32 of this Act, becomes effective January 5, 2021.~~

15 ~~—SECTION 36. EXPIRATION DATE. North Dakota Century Code section 54-66-12, as~~
16 ~~created by section 32 of this Act, is effective until subsection 2 of section 2 of article XIV of the~~
17 ~~Constitution of North Dakota is no longer part of the Constitution of North Dakota.~~

18 **SECTION 28. EMERGENCY.** Sections 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20,
19 21, 22, 23, ~~24, 25, 26, 27, 28, 29, 30, and 31,~~ and 24 of this Act are declared to be an
20 emergency measure.