

Introduced by

Representative Pollert

Senator Wardner

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

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

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

16 **16.1-08.1-01. Definitions.**

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

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

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

5 ~~2.3.~~ "Association" means any club, association, union, brotherhood, fraternity, organization,  
6 or group of any kind of two or more persons, including labor unions, trade  
7 associations, professional associations, or governmental associations, which is united  
8 for any purpose, business, or object and which assesses any dues, membership fees,  
9 or license fees in any amount, or which maintains a treasury fund in any amount. The  
10 term does not include corporations, cooperative corporations, limited liability  
11 companies, political committees, or political parties.

12 ~~3.4.~~ "Candidate" means an individual who seeks nomination for election or election to  
13 public office, and includes:  
14 a. An individual holding public office;  
15 b. An individual who has publicly declared that individual's candidacy for nomination  
16 for election or election to public office or has filed or accepted a nomination for  
17 public office;  
18 c. An individual who has formed a campaign or other committee for that individual's  
19 candidacy for public office;  
20 d. An individual who has circulated a nominating petition to have that individual's  
21 name placed on the ballot; and  
22 e. An individual who has, in any manner, solicited or received a contribution for that  
23 individual's candidacy for public office, whether before or after the election for  
24 that office.

25 ~~4.5.~~ "Conduit" means a person that is not a political party, political committee, or candidate  
26 and which receives a contribution of money and transfers the contribution to a  
27 candidate, political party, or political committee when the contribution is designated  
28 specifically for the candidate, political party, or political committee and the person has  
29 no discretion as to the recipient and the amount transferred. The term includes a  
30 transactional intermediary, including a credit card company or a money transfer  
31 service that pays or transfers money to a candidate on behalf of another person.

- 1     ~~5-6.~~ "Contribution" means a gift, transfer, conveyance, provision, receipt, subscription,  
2     loan, advance, deposit of money, or anything of value, made for the purpose of  
3     influencing the nomination for election, or election, of any person to public office or  
4     aiding or opposing the circulation or passage of a statewide initiative or referendum  
5     petition or measure. The term also means a contract, promise, or agreement, express  
6     or implied, whether or not legally enforceable, to make a contribution for any of the  
7     above purposes. The term includes funds received by a candidate for public office or a  
8     political party or committee which are transferred or signed over to that candidate,  
9     party, or committee from another candidate, party, or political committee or other  
10    source including a conduit. The term "anything of value" includes any good or service  
11    of more than a nominal value. The term "nominal value" means the cost, price, or  
12    worth of the good or service is trivial, token, or of no appreciable value. The term  
13    "contribution" does not include:
- 14    a.   A loan of money from a bank or other lending institution made in the regular  
15       course of business.
  - 16    b.   Time spent by volunteer campaign or political party workers.
  - 17    c.   Money or anything of value received for commercial transactions, including rents,  
18       advertising, or sponsorships made as a part of a fair market value bargained-for  
19       exchange.
  - 20    d.   Money or anything of value received for anything other than a political purpose.
  - 21    e.   Products or services for which the actual cost or fair market value are reimbursed  
22       by a payment of money.
  - 23    f.   An independent expenditure.
  - 24    g.   The value of advertising paid by a political party, multicandidate political  
25       committee, or caucus which is in support of a candidate.
  - 26    h.   In-kind contributions from a candidate to the candidate's campaign.
- 27    ~~6-7.~~ "Cooperative corporations", "corporations", and "limited liability companies" are as  
28    defined in this code, and for purposes of this chapter "corporations" includes nonprofit  
29    corporations. However, if a political committee, the only purpose of which is accepting  
30    contributions and making expenditures for a political purpose, incorporates for liability

1 purposes only, the committee is not considered a corporation for the purposes of this  
2 chapter.

3 ~~7-8.~~ "Expenditure" means:

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

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

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

12 d. An independent expenditure.

13 ~~8-9.~~ "Expenditure categories" means the categories into which expenditures must be  
14 grouped for reports under this chapter. The expenditure categories are:

15 a. Advertising;

16 b. Campaign loan repayment;

17 c. Operations;

18 d. Travel; and

19 e. Miscellaneous.

20 ~~9-10.~~ "Independent expenditure" means an expenditure made for a political purpose or for  
21 the purpose of influencing the passage or defeat of a measure if the expenditure is  
22 made without the express or implied consent, authorization, or cooperation of, and not  
23 in concert with or at the request or suggestion of, any candidate, committee, or  
24 political party.

25 ~~10-11.~~ "Patron" means a person who owns equity interest in the form of stock, shares, or  
26 membership or maintains similar financial rights in a cooperative corporation.

27 ~~11-12.~~ "Person" means an individual, partnership, political committee, association,  
28 corporation, cooperative corporation, limited liability company, or other organization or  
29 group of persons.

1 ~~12-13.~~ "Personal benefit" means a benefit to the candidate or another person which is not for  
2 a political purpose or related to a candidate's responsibilities as a public officeholder,  
3 and any other benefit that would convert a contribution to personal income.

4 ~~13-14.~~ "Political committee" means any committee, club, association, or other group of  
5 persons which receives contributions or makes expenditures for political purposes and  
6 includes:

- 7 a. A political action committee not connected to another organization and free to  
8 solicit funds from the general public, or derived from a corporation, cooperative  
9 corporation, limited liability company, affiliate, subsidiary, or an association that  
10 solicits or receives contributions from its employees or members or makes  
11 expenditures for political purposes on behalf of its employees or members;
- 12 b. A candidate committee established to support an individual candidate seeking  
13 public office which solicits or receives contributions for political purposes;
- 14 c. A political organization registered with the federal election commission, which  
15 solicits or receives contributions or makes expenditures for political purposes;
- 16 d. A multicandidate political committee, including a caucus, established to support  
17 multiple groups or slates of candidates seeking public office, which solicits or  
18 receives contributions for political purposes; and
- 19 e. A measure committee, including an initiative or referendum sponsoring  
20 committee at any stage of its organization, which solicits or receives contributions  
21 or makes expenditures for the purpose of aiding or opposing a measure sought  
22 to be voted upon by the voters of the state, including any activities undertaken for  
23 the purpose of drafting an initiative or referendum petition, seeking approval of  
24 the secretary of state for the circulation of a petition, or seeking approval of the  
25 submitted petitions.

26 ~~14-15.~~ "Political party" means any association, committee, or organization which nominates a  
27 candidate for election to any office which may be filled by a vote of the electors of this  
28 state or any of its political subdivisions and whose name appears on the election ballot  
29 as the candidate of such association, committee, or organization.

30 ~~15-16.~~ "Political purpose" means any activity undertaken in support of or in opposition to the  
31 election or nomination of a candidate to public office and includes using "vote for",

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

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

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

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

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

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

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

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

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

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

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



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

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

29                  amended and reenacted as follows:

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

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

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

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

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

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

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

- 14        1. For each reportable contribution and expenditure under section 16.1-08.1-02.4, the  
15        threshold for reporting is one hundred dollars, adjusted for inflation, for any person  
16        engaged in activities described in subdivision e of subsection ~~43~~14 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 ~~43~~14 of section 16.1-08.1-01 shall  
20        include the following information regarding each subcontributor that has stated a  
21        contribution is for the express purpose of furthering the passage or defeat of a ballot  
22        measure in the statements required under section 16.1-08.1-02.4:
- 23        a. A designation as to whether any person contributed in excess of one hundred  
24        dollars, adjusted for inflation, of the total contribution;
- 25        b. The name and mailing address of each subcontributor that contributed in excess  
26        of one hundred dollars, adjusted for inflation, of the total contribution;
- 27        c. The contribution amounts of each disclosed subcontributor; and
- 28        d. The occupation, employer, and address for the employer's principal place of  
29        business of each disclosed subcontributor.
- 30        3. An initiative and referendum sponsoring committee also shall file a disclosure  
31        statement by the date the secretary of state approves the petition for circulation, and

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

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

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

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

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

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

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

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

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

17 2. For the first violation, the secretary of state shall impose a fine of five hundred dollars  
18 upon any person who violates this section. For a second and subsequent violation of  
19 this section, the person is guilty of a class A misdemeanor.

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

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

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

25 2. A resident taxpayer may file a claim in a district court of this state with competent  
26 jurisdiction against a person required to comply with this section to compel compliance  
27 if all other enforcement measures under this chapter have been exhausted and the  
28 taxpayer reasonably believes the person remains in violation of this section. A violation  
29 of this section must be proved by clear and convincing evidence.

30 **SECTION 8.** A new section to chapter 16.1-08.1 of the North Dakota Century Code is  
31 created and enacted as follows:

1        **Prohibition on acting as conduit - Penalty.**

2        A lobbyist may not act as a conduit unless the lobbyist is delivering a campaign contribution  
3 to the lobbyist's campaign or the campaign of the lobbyist's family member. For a first violation,  
4 the secretary of state shall impose a fine of one hundred dollars upon any person who violates  
5 this section. For a second and subsequent violation of this section, the person is guilty of an  
6 infraction.

7        **SECTION 9. AMENDMENT.** Section 28-32-01 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9        **28-32-01. Definitions.**

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

- 11       1. "Adjudicative proceeding" means an administrative matter resulting in an agency  
12       issuing an order after an opportunity for hearing is provided or required. An  
13       adjudicative proceeding includes administrative matters involving a hearing on a  
14       complaint against a specific-named respondent; a hearing on an application seeking a  
15       right, privilege, or an authorization from an agency, such as a ratemaking or licensing  
16       hearing; or a hearing on an appeal to an agency. An adjudicative proceeding includes  
17       reconsideration, rehearing, or reopening. Once an adjudicative proceeding has begun,  
18       the adjudicative proceeding includes any informal disposition of the administrative  
19       matter under section 28-32-22 or another specific statute or rule, unless the matter  
20       has been specifically converted to another type of proceeding under section 28-32-22.  
21       An adjudicative proceeding does not include a decision or order to file or not to file a  
22       complaint, or to initiate an investigation, an adjudicative proceeding, or any other  
23       proceeding before the agency, or another agency, or a court. An adjudicative  
24       proceeding does not include a decision or order to issue, reconsider, or reopen an  
25       order that precedes an opportunity for hearing or that under another section of this  
26       code is not subject to review in an adjudicative proceeding. An adjudicative proceeding  
27       does not include rulemaking under this chapter.
- 28       2. "Administrative agency" or "agency" means each board, bureau, commission,  
29       department, or other administrative unit of the executive branch of state government,  
30       including one or more officers, employees, or other persons directly or indirectly  
31       purporting to act on behalf or under authority of the agency. An administrative unit

1 located within or subordinate to an administrative agency must be treated as part of  
2 that agency to the extent it purports to exercise authority subject to this chapter. The  
3 term administrative agency does not include:

- 4 a. The office of management and budget except with respect to rules made under  
5 section 32-12.2-14, rules relating to conduct on the capitol grounds and in  
6 buildings located on the capitol grounds under section 54-21-18, rules relating to  
7 the classified service as authorized under section 54-44.3-07, and rules relating  
8 to state purchasing practices as required under section 54-44.4-04.
- 9 b. The adjutant general with respect to the department of emergency services.
- 10 c. The council on the arts.
- 11 d. The state auditor.
- 12 e. The department of commerce with respect to the division of economic  
13 development and finance.
- 14 f. The dairy promotion commission.
- 15 g. The education factfinding commission.
- 16 h. The educational technology council.
- 17 i. The board of equalization.
- 18 j. The board of higher education.
- 19 k. The Indian affairs commission.
- 20 l. The industrial commission with respect to the activities of the Bank of North  
21 Dakota, North Dakota housing finance agency, public finance authority, North  
22 Dakota mill and elevator association, North Dakota farm finance agency, the  
23 North Dakota transmission authority, and the North Dakota pipeline authority.
- 24 m. The department of corrections and rehabilitation except with respect to the  
25 activities of the division of adult services under chapter 54-23.4.
- 26 n. The pardon advisory board.
- 27 o. The parks and recreation department.
- 28 p. The parole board.
- 29 q. The state fair association.
- 30 r. The attorney general with respect to activities of the state toxicologist and the  
31 state crime laboratory.

- 1 s. The administrative committee on veterans' affairs except with respect to rules  
2 relating to the supervision and government of the veterans' home and the  
3 implementation of programs or services provided by the veterans' home.
- 4 t. The industrial commission with respect to the lignite research fund except as  
5 required under section 57-61-01.5.
- 6 u. The attorney general with respect to guidelines adopted under section 12.1-32-15  
7 for the risk assessment of sexual offenders, the risk level review process, and  
8 public disclosure of information under section 12.1-32-15.
- 9 v. The commission on legal counsel for indigents.
- 10 w. The attorney general with respect to twenty-four seven sobriety program  
11 guidelines and program fees.
- 12 x. The industrial commission with respect to approving or setting water rates under  
13 chapter 61-40.
- 14 3. "Agency head" means an individual or body of individuals in whom the ultimate legal  
15 authority of the agency is vested by law.
- 16 4. "Commission" means the North Dakota ethics commission established by article XIV  
17 of the Constitution of North Dakota.
- 18 5. "Complainant" means any person who files a complaint before an administrative  
19 agency pursuant to section 28-32-21 and any administrative agency that, when  
20 authorized by law, files such a complaint before such agency or any other agency.
- 21 5-6. "Hearing officer" means any agency head or one or more members of the agency  
22 head when presiding in an administrative proceeding, or, unless prohibited by law, one  
23 or more other persons designated by the agency head to preside in an administrative  
24 proceeding, an administrative law judge from the office of administrative hearings, or  
25 any other person duly assigned, appointed, or designated to preside in an  
26 administrative proceeding pursuant to statute or rule.
- 27 6-7. "License" means a franchise, permit, certification, approval, registration, charter, or  
28 similar form of authorization required by law.
- 29 7-8. "Order" means any agency action of particular applicability which determines the legal  
30 rights, duties, privileges, immunities, or other legal interests of one or more specific  
31 persons. The term does not include an executive order issued by the governor.



1     ~~8-9.~~ "Party" means each person named or admitted as a party or properly seeking and  
2           entitled as of right to be admitted as a party. An administrative agency may be a party.  
3           In a hearing for the suspension, revocation, or disqualification of an operator's license  
4           under title 39, the term may include each city and each county in which the alleged  
5           conduct occurred, but the city or county may not appeal the decision of the hearing  
6           officer.

7     ~~9-10.~~ "Person" includes an individual, association, partnership, corporation, limited liability  
8           company, the commission, a state governmental agency or governmental subdivision,  
9           or an agency of such governmental subdivision.

10  ~~40-11.~~ "Relevant evidence" means evidence having any tendency to make the existence of  
11           any fact that is of consequence to the determination of the administrative action more  
12           probable or less probable than it would be without the evidence.

13  ~~44-12.~~ "Rule" means the whole or a part of an agency or commission statement of general  
14           applicability which implements or prescribes law or policy or the organization,  
15           procedure, or practice requirements of the agency or commission. The term includes  
16           the adoption of new rules and the amendment, repeal, or suspension of an existing  
17           rule. The term does not include:

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

21           b. A rule that sets forth criteria or guidelines to be used by the staff of an agency or  
22           the commission in the performance of audits, investigations, inspections, and  
23           settling commercial disputes or negotiating commercial arrangements, or in the  
24           defense, prosecution, or settlement of cases, if the disclosure of the  
25           statementrule would:

26                   (1) Enable law violators to avoid detection;

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

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

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

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

19 **SECTION 10. AMENDMENT.** Section 28-32-02 of the North Dakota Century Code is  
20 amended and reenacted as follows:

21 **28-32-02. Rulemaking ~~power of agency~~ authority - Organizational rule.**

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

1 operations and how the public may obtain information or make submissions or  
2 requests.

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

6 **SECTION 11. AMENDMENT.** Section 28-32-03 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **28-32-03. Emergency rules.**

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

1           ~~An~~The commission or an agency adopting emergency rules shall comply with the  
2           notice requirements of section 28-32-10 which relate to emergency rules and shall  
3           provide notice to the chairman of the administrative rules committee of the emergency  
4           status, declared effective date, and grounds for emergency status of the rules under  
5           subsection 2. When notice of emergency rule adoption is received, the legislative  
6           council shall publish the notice and emergency rules on its website.

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

9           **SECTION 12. AMENDMENT.** Section 28-32-06 of the North Dakota Century Code is  
10          amended and reenacted as follows:

11           **28-32-06. Force and effect of rules.**

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

17           **SECTION 13. AMENDMENT.** Section 28-32-07 of the North Dakota Century Code is  
18          amended and reenacted as follows:

19           **28-32-07. Deadline for rules to implement statutory change.**

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

27           **SECTION 14. AMENDMENT.** Section 28-32-08 of the North Dakota Century Code is  
28          amended and reenacted as follows:

29           **28-32-08. Regulatory analysis.**

30           1. An agency or the commission shall issue a regulatory analysis of a proposed rule if:

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

1       **SECTION 15. AMENDMENT.** Section 28-32-08.1 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       **28-32-08.1. Rules affecting small entities - Analysis - Economic impact statements -**  
4 **Judicial review.**

5       1. As used in this section:

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

7           (1) Is independently owned and operated; and

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

10       b. "Small entity" includes small business, small organization, and small political  
11 subdivision;

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

14       d. "Small political subdivision" means a political subdivision with a population of less  
15 than five thousand.

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

22       a. Establishment of less stringent compliance or reporting requirements for small  
23 entities;

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

26       c. Consolidation or simplification of compliance or reporting requirements for small  
27 entities;

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

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

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

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

10 **SECTION 16. AMENDMENT.** Section 28-32-08.2 of the North Dakota Century Code is  
11 amended and reenacted as follows:

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

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

18 **SECTION 17. AMENDMENT.** Section 28-32-09 of the North Dakota Century Code is  
19 amended and reenacted as follows:

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

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



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

21 **SECTION 18. AMENDMENT.** Section 28-32-10 of the North Dakota Century Code is  
22 amended and reenacted as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 **SECTION 21. AMENDMENT.** Section 28-32-14 of the North Dakota Century Code is  
18 amended and reenacted as follows:

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

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

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

1       **SECTION 22. AMENDMENT.** Section 28-32-15 of the North Dakota Century Code is  
2 amended and reenacted as follows:

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

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

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

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

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

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

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

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

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

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

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

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

9       **SECTION 24. AMENDMENT.** Section 28-32-17 of the North Dakota Century Code is  
10 amended and reenacted as follows:

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

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

- 17       1. The legislative council shall attach to each objection a certification of the time and date  
18 of its filing and, as soon as possible, shall transmit a copy of the objection and the  
19 certification to the agency ~~or commission~~ adopting the rule in question. The legislative  
20 council also shall maintain a permanent register of all committee objections.
- 21       2. The legislative council shall publish an objection filed pursuant to this section in the  
22 next issue of the code supplement. In case of a filed committee objection to a rule  
23 subject to the exceptions of the definition of rule in section 28-32-01, the agency ~~or~~  
24 ~~commission~~ shall indicate the existence of that objection adjacent to the rule in any  
25 compilation containing that rule.
- 26       3. Within fourteen days after the filing of a committee objection to a rule, the adopting  
27 agency ~~or commission~~ shall respond in writing to the committee. After receipt of the  
28 response, the committee may withdraw or modify its objection.
- 29       4. After the filing of a committee objection, the burden of persuasion is upon the agency  
30 ~~or commission~~ in any action for judicial review or for enforcement of the rule to  
31 establish that the whole or portion ~~thereof~~of the rule objected to is within the

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

7 **SECTION 25. AMENDMENT.** Section 28-32-18 of the North Dakota Century Code is  
8 amended and reenacted as follows:

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

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

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

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



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

3 **SECTION 26. AMENDMENT.** Section 28-32-18.1 of the North Dakota Century Code is  
4 amended and reenacted as follows:

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

- 6 1. Upon request by the administrative rules committee, an administrative agency or the  
7 commission shall brief the committee on its existing administrative rules and point out  
8 any provisions that appear to be obsolete and any areas in which statutory or  
9 constitutional authority has changed or been repealed since the rules were adopted or  
10 amended.
- 11 2. An agency or the commission may amend or repeal a rule without complying with the  
12 other requirements of this chapter relating to adoption of administrative rules and may  
13 resubmit the change to the legislative council for publication provided:
- 14 a. The agency or commission initiates the request to the administrative rules  
15 committee for consideration of the amendment or repeal;
- 16 b. The agency or commission provides notice to the regulated community, in a  
17 manner reasonably calculated to provide notice to those persons interested in the  
18 rule, of the time and place the administrative rules committee will consider the  
19 request for amendment or repeal of the rule; and
- 20 c. The agency or commission and the administrative rules committee agree the rule  
21 amendment or repeal eliminates a provision that is obsolete or no longer in  
22 compliance with law and that no detriment would result to the substantive rights  
23 of the regulated community from the amendment or repeal.

24 **SECTION 27. AMENDMENT.** Subsection 2 of section 28-32-19 of the North Dakota  
25 Century Code is amended and reenacted as follows:

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

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

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

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

11 **SECTION 29. AMENDMENT.** Section 28-32-27 of the North Dakota Century Code is  
12 amended and reenacted as follows:

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

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

18 2. Any hearing officer is subject to disqualification for good cause shown and shall  
19 self-disqualify in a proceeding in which a reasonable, disinterested observer would  
20 believe the hearing officer is biased due to:

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

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

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

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

30 5. If a substitute is required for a person who is disqualified or becomes unavailable for  
31 any other reason, the substitute may be appointed by:

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

22 **SECTION 30.** Chapter 54-66 of the North Dakota Century Code is created and enacted as  
23 follows:

24 **54-66-01. Definitions.**

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

- 26 1. "Accused individual" means an individual who is alleged to have violated article XIV of  
27 the Constitution of North Dakota, this chapter, or another law or rule regarding  
28 government ethics.
- 29 2. "Adjusted for inflation" means adjusted on January first of each year by the change in  
30 the consumer price index for all urban consumers (all items, United States city  
31 average), as identified by the secretary of state.

- 1       3. "Complainant" means an individual who, in writing or verbally, submits a complaint to  
2       the commission.
- 3       4. "Complaint" means a verbal or written allegation to the commission that article XIV of  
4       the Constitution of North Dakota, this chapter, or another law or rule regarding  
5       government ethics has been violated.
- 6       5. "Ethics commission" or "commission" means the North Dakota ethics commission  
7       established by article XIV of the Constitution of North Dakota.
- 8       6. "Gift" means any item, service, or thing of value not given in exchange for fair market  
9       consideration including travel and recreation.
- 10      7. "Influence state government action" means promoting or opposing the final adoption of  
11      a rule by an administrative agency or the commission under chapter 28-32.
- 12      8. "Lobby" means an activity listed in subsection 1 of section 54-05.1-02.
- 13      9. "Lobbyist" means an individual required to register under section 54-05.1-03.
- 14      10. "Public official" means an elected or appointed official of the state's executive or  
15      legislative branch, members of the commission, members of the governor's cabinet,  
16      and employees of the legislative branch.
- 17      11. "Receives the complaint" means one or more members of the commission learn of the  
18      complaint.
- 19      12. "Ultimate and true source" means the person that knowingly contributed over two  
20      hundred dollars, adjusted for inflation, solely to lobby or influence state government  
21      action.

22      **54-66-02. Disclosure of ultimate and true source of funds.**

- 23      1. A lobbyist who expends an amount greater than two hundred dollars, adjusted for  
24      inflation, to lobby shall file with the secretary of state a report that includes the known  
25      ultimate and true source of funds for the expenditure. The report must be filed with the  
26      lobbyist expenditure report required under subsection 2 of section 54-05.1-03.
- 27      2. A person who expends an amount greater than two hundred dollars, adjusted for  
28      inflation, to influence state government action shall file with the secretary of state a  
29      report including the known ultimate and true source of funds for the expenditure. The  
30      report must be filed on or before the August first following the date of the expenditure.  
31      The secretary of state shall provide a form for reports under this subsection and make

- 1           the form electronically accessible to the public. The secretary of state also shall  
2           charge and collect fees for late filing of the reports as follows:  
3           a. Twenty-five dollars for a report filed within sixty days after the deadline; or  
4           b. Fifty dollars for a report filed more than sixty days after the deadline.  
5           3. The secretary of state shall compile the reports required under this section and make  
6           the reports electronically accessible to the public within forty days after the deadlines  
7           by which the reports must be filed.  
8           4. This section does not require a person to report the ultimate and true source of funds  
9           expended on:  
10           a. A gift to or from a family member;  
11           b. Purely informational material, advice, or education;  
12           c. Reimbursement for travel, meal, and refreshment expenses incurred to, from, or  
13           during a conference, seminar, or other legitimate educational opportunity for a  
14           public official if the conference, seminar, or educational opportunity concerns  
15           issues germane to the official duties of the public official;  
16           d. Meals and refreshments provided while informing, advising, or educating a public  
17           official about issues germane to the official duties of the public official;  
18           e. Providing an educational or social setting in the state to provide an opportunity  
19           for individuals to meet with public officials; and  
20           f. A good or service determined not to raise ethical concerns under rules adopted  
21           by the ethics commission.  
22           5. A resident taxpayer may file a claim in a district court of this state with competent  
23           jurisdiction against a person required to comply with this section to compel compliance  
24           if all other enforcement measures under this chapter have been exhausted and the  
25           taxpayer reasonably believes the person remains in violation of this section. A violation  
26           of this section must be proved by clear and convincing evidence.

27           **54-66-03. Lobbyist gifts - Penalty.**

- 28           1. A lobbyist may not give, offer, solicit, initiate, or facilitate a gift to a public official, and a  
29           public official knowingly may not accept a gift with a value over sixty dollars per  
30           individual per event, adjusted for inflation, from a lobbyist, except to advance

- 1 opportunities for state residents to meet with public officials in educational and social  
2 settings in the state under conditions that do not raise ethical concerns, including:  
3 a. Reimbursement for travel, meal, and refreshment expenses incurred to, from, or  
4 during a conference, seminar, or other legitimate educational opportunity for the  
5 public official if the conference, seminar, or educational opportunity concerns  
6 issues germane to the official duties of the public official;  
7 b. Providing information, advice, or education to a public official;  
8 c. Providing meals and refreshments while informing, advising, or educating a  
9 public official about issues germane to the official duties of the public official;  
10 d. Items with a fair market value of ten dollars per individual per event, adjusted for  
11 inflation, or less per individual; and  
12 e. A good or service determined not to raise ethical concerns under rules adopted  
13 by the ethics commission.  
14 2. The prohibition in subsection 1 does not apply when a lobbyist gives, offers, solicits,  
15 initiates, or facilitates, or a public official accepts:  
16 a. A gift to or from a family member;  
17 b. Purely informational material; or  
18 c. A campaign contribution.  
19 3. For the first violation, the secretary of state shall impose a fine of one hundred dollars  
20 upon any person who violates this section. For a second and subsequent violation of  
21 this section, the person is guilty of an infraction.

22 **54-66-04. Ethics commission member terms - Meetings - Code of ethics -**

23 **Compensation - Investigator.**

- 24 1. The terms of the initial members of the ethics commission must be staggered to  
25 ensure no more than two members' terms expire in one year. The terms of the initial  
26 members may be less than four years to accommodate the required staggering of  
27 terms.  
28 2. The ethics commission shall meet as necessary to address each complaint the  
29 commission receives. Unless the complaint at issue has resulted in the imposition of a  
30 penalty or referral for enforcement under section 54-66-10, any portion of a meeting  
31 during which commission members discuss complaints, informal resolutions, attempts

1 to informally resolve complaints, investigations, or referrals under this chapter, the  
2 identity of an accused individual or complainant, or any other matter arising from a  
3 complaint are closed meetings.

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

7 4. Ethics commission members are entitled to:

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

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

13 5. Commission members shall hire or otherwise engage a part-time administrative  
14 assistant. The administrative assistant must be provided an office within the office  
15 space for the department of labor and human rights. The commission shall  
16 compensate the department of labor and human rights for the office in an amount  
17 equal to the fair value of the office.

18 **54-66-05. Making a complaint - Identifying information - False complaints.**

19 1. A complaint may be made to the commission verbally or in writing. When making a  
20 complaint, a complainant shall provide the name, address, and telephone number of  
21 the complainant.

22 2. Within five days after making a complaint, the complainant shall submit a signed  
23 statement attesting the complaint is true and accurate to the best of the complainant's  
24 knowledge. The commission shall develop an attestation form for this purpose and  
25 make it electronically accessible to the public. After receiving the attestation, the  
26 commission shall summarize the complaint in writing if the complaint was made  
27 verbally.

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

30 4. Knowingly or recklessly making a complaint that is materially false is defamation under  
31 chapter 14-02.

1        **54-66-06. Informing the accused individual - Written response permitted.**

2        The commission shall inform an accused individual by registered mail of the identity of the  
3 complainant who made the allegation against the accused individual and include the written  
4 complaint or written summary of the verbal complaint as soon as reasonably possible but no  
5 later than ten calendar days after the commission receives the complaint. The accused  
6 individual may respond to the complaint in writing.

7        **54-66-07. Informal resolution.**

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

10       **54-66-08. Referrals to investigators - Exception for criminal allegations.**

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

20       **54-66-09. Investigations - Findings and Recommendations - Responses.**

- 21       1. The investigator engaged under section 54-66-08 shall investigate the complaint  
22 referred to it by the ethics commission. Investigations must include separate interviews  
23 with the accused individual and the complainant, unless the accused individual or  
24 complainant refuses to be interviewed, and consideration of the circumstances  
25 surrounding the allegations. The accused individual and complainant may be  
26 accompanied by legal counsel during the interviews of each. Investigations may  
27 include interviews of potential witnesses and other individuals believed to have  
28 relevant information.
- 29       2. At the conclusion of the investigation, but no later than six months after the  
30 investigator received the complaint, the investigator shall submit its written findings  
31 and recommendations from the investigation to the commission. The commission shall



1 provide written copies of the findings and recommendations to the accused individual  
2 and complainant. The accused individual and complainant may respond in writing to  
3 the findings and recommendations within thirty calendar days of receiving the findings  
4 and recommendations. The commission shall maintain copies of the findings,  
5 recommendations, and any written response to the findings.

6 **54-66-10. Final determinations - Penalties - Referrals for enforcement.**

- 7 1. After reviewing the findings and recommendations from the investigator and any  
8 written response from the accused individual or complainant, the ethics commission  
9 shall meet with the accused individual and complainant to discuss the findings,  
10 recommendations, and written responses. A meeting under this subsection is a closed  
11 meeting as defined in section 44-04-17.1, although the accused individual and  
12 complainant may have their legal counsel attend and participate.
- 13 2. After the meeting with the accused individual and complainant, the commission shall  
14 issue written findings, including a determination whether a violation of article XIV of the  
15 Constitution of North Dakota, this chapter, or another law or rule regarding government  
16 ethics occurred. If the commission finds a violation occurred, the commission may  
17 impose a penalty if authorized by law or refer the matter to the entity authorized by law  
18 to impose a penalty for the violation.
- 19 3. The accused individual and the complainant may appeal a determination made or  
20 penalty imposed under this section to the office of administrative hearings, which shall  
21 designate an administrative law judge to hear the appeal. An appeal under this section  
22 must comply with the requirements for adjudicative proceedings under chapter 28-32.
- 23 4. The commission may not terminate the employment of a public official or otherwise  
24 remove a public official from the public official's public office.

25 **54-66-11. Confidential information - Penalty.**

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

- 1           a. Information revealing the contents of a complaint;
- 2           b. Information that reasonably may be used to identify an accused individual or
- 3                 complainant; and
- 4           c. Information relating to or created as part of an investigation of a complaint.
- 5        2. If a complaint is informally resolved under section 54-66-07, the following information
- 6        is a confidential record as defined in section 44-04-17.1:
- 7           a. Information revealing the contents of the complaint;
- 8           b. Information that reasonably may be used to identify the accused individual or
- 9                 complainant;
- 10          c. Information relating to or created as part of the process leading to the informal
- 11                 resolution; and
- 12          d. Information revealing the informal resolution.
- 13        3. Disclosure of information included in subsections 1 and 2 by a person who knows the
- 14        information to be false is defamation under chapter 14-02.
- 15        4. Willful publication of information included in subsections 1 and 2 by a person who
- 16        knows the information to be false is criminal defamation under section 12.1-15-01.
- 17        5. A public official who violates this section is guilty of a class C felony.

18        **54-66-12. Restriction on lobbying by public officials - Penalty.**

19        For the first violation of subsection 2 of section 2 of article XIV of the Constitution of North  
20 Dakota, the secretary of state shall impose a fine of one hundred dollars upon the person who  
21 commits the violation. For a second and subsequent violation of the subsection, the person is  
22 guilty of an infraction.

23        **54-66-13. Attorney general to provide legal services.**

24        The attorney general shall serve as legal counsel for the commission. When a conflict of  
25 interest prevents the attorney general from providing legal services to the commission, the  
26 attorney general may appoint a special assistant attorney general to serve as legal counsel for  
27 the commission.

28        **SECTION 31. APPROPRIATION.** There is appropriated out of any moneys in the general  
29 fund in the state treasury, not otherwise appropriated, the sum of \$100,000, or so much of the  
30 sum as may be necessary, to the ethics commission for the purpose of the operations of the  
31 commission, for the biennium beginning July 1, 2019, and ending June 30, 2021. The ethics

1 commission is authorized one-half of a full-time equivalent position for an administrative  
2 assistant for this purpose.

3 **SECTION 32. EFFECTIVE DATE.** Sections 1, 2, 3, 4, 5, 7, and 29 of this Act, and section  
4 54-66-02 of the North Dakota Century Code, as created by section 30 of this Act, become  
5 effective January 5, 2022.

6 **SECTION 33. EFFECTIVE DATE.** North Dakota Century Code section 54-66-03, as  
7 created by section 30 of this Act, becomes effective January 5, 2021.

8 **SECTION 34. EXPIRATION DATE.** North Dakota Century Code section 54-66-12, as  
9 created by section 30 of this Act, is effective until subsection 2 of section 2 of article XIV of the  
10 Constitution of North Dakota is no longer part of the Constitution of North Dakota.

11 **SECTION 35. EMERGENCY.** Sections 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20 of  
12 this Act are declared to be an emergency measure.