

**HOUSE BILL NO. 1043**

Introduced by

Judiciary Committee

(At the request of the Ethics Commission)

1 A BILL for an Act to create and enact two new sections to chapter 54-66 of the North Dakota  
2 Century Code, relating to the ethics commission delegation of duties and advisory opinions; to  
3 amend and reenact subsection 2 of section 54-66-01 and sections 54-66-05, 54-66-06,  
4 54-66-07, 54-66-08, 54-66-09, and 54-66-12 of the North Dakota Century Code, relating to  
5 ethics commission complaint procedures.

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

7 **SECTION 1. AMENDMENT.** Subsection 2 of section 54-66-01 of the North Dakota Century  
8 Code is amended and reenacted as follows:

9 2. "Complainant" means ~~an individual~~ a North Dakota resident who, in writing or verbally,  
10 submits a complaint to the commission or, as permitted in section 54-66-05, the  
11 commission.

12 **SECTION 2. AMENDMENT.** Section 54-66-05 of the North Dakota Century Code is  
13 amended and reenacted as follows:

14 **54-66-05. Making a complaint - Summary dismissal of complaint.**

15 1. A complaint may be made to the commission orally or in writing. If a complainant is a  
16 nonresident or does not provide the complainant's name, address, and telephone  
17 number with the complaint, the ethics commission may ~~not investigate, refer, or take~~  
18 other action regarding the complaint proceed as the complainant, provided the  
19 commission determines there is a reasonable belief a violation has occurred and  
20 approves proceeding by a majority vote at a meeting at which a quorum is present.  
21 The commission shall summarize each oral complaint in writing ~~unless the complaint~~  
22 ~~must be disregarded under this section.~~

23 2. Upon receipt of a complaint or information regarding a violation, the commission may  
24 summarily dismiss the complaint or decline to proceed with a complaint if the alleged

1 violation does not fall within the commission's jurisdiction, is insufficient to identify a  
2 possible violation, or fails to comply with rules adopted by the commission. In lieu of  
3 summary dismissal, the commission may refer the matter under section 54-66-08.

4 3. If a complainant would like the complainant's identity to remain confidential, the  
5 commission may not release the complainant's name and address to the accused  
6 individual without the authorization of the complainant. If the complainant also is a  
7 witness to the alleged violation and does not authorize release of the complainant's  
8 name and address to the accused individual, the statement of the complainant may  
9 not be used as evidence of a violation.

10 **SECTION 3. AMENDMENT.** Section 54-66-06 of the North Dakota Century Code is  
11 amended and reenacted as follows:

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

13 The commission shall inform an accused individual ~~by registered mail of the identity of the~~  
14 ~~complainant who made the allegation against the accused individual~~complaint and include the  
15 written complaint or written summary of the oral complaint, witness statements, and other  
16 documentary evidence considered as soon as reasonably possible but no later than twenty  
17 calendar days after the commission receives the complaint. If the commission is the  
18 complainant under section 54-66-05, the documents must be provided to the accused individual  
19 as soon as reasonably possible but no later than twenty calendar days after the date the  
20 commission voted to proceed with a complaint. The accused individual may respond to the  
21 complaint in writing within twenty calendar days of receipt of the complaint or summary of the  
22 complaint.

23 **SECTION 4. AMENDMENT.** Section 54-66-07 of the North Dakota Century Code is  
24 amended and reenacted as follows:

25 **54-66-07. Informal resolution.**

26 The commission shall attempt to negotiate or mediate an informal resolution between the  
27 accused individual and the complainant unless the commission ~~disregards~~summarily dismissed  
28 the complaint ~~pursuant to~~under section 54-66-05 ~~or for any other reason.~~ The accused  
29 individual may be accompanied by legal counsel in a negotiation or mediation.

30 **SECTION 5. AMENDMENT.** Section 54-66-08 of the North Dakota Century Code is  
31 amended and reenacted as follows:

1       **54-66-08. Investigations - Referrals.**

2       1. If an informal resolution is not reached under section 54-66-07, the ethics commission  
3       may:

4       a. ~~Disregard~~Dismiss the complaint;

5       b. Require ethics commission staff to investigate the allegations in the complaint; or

6       c. Engage an outside investigator to investigate allegations in the complaint.

7       2. If the commission believes a complaint contains allegations of criminal conduct, the

8       ethics commission shall refer the allegations of criminal conduct to the bureau of

9       criminal investigations or other law enforcement agency and may not take further

10       action on the referred allegations. ~~The commission shall inform the accused individual~~

11       ~~by registered mail of a referral under this section and the nature of the referred~~

12       ~~allegations as soon as reasonably possible~~matter must be coordinated with the

13       appropriate law enforcement agency with jurisdiction over the offense. If the law

14       enforcement agency agrees to accept a referral for possible criminal prosecution, the

15       commission may not take further action on the complaint until the law enforcement

16       agency informs the commission law enforcement proceedings regarding the complaint

17       are complete. If the law enforcement agency declines a referral for prosecution, the

18       commission may investigate the complaint under the rules and policies adopted by the

19       commission. Unless the agency accepting the referral objects, the commission shall

20       inform the complainant and respondent as soon as reasonably possible of a referral

21       and the nature of the referred allegations.

22       3. The commission may require the testimony of a witness or the production of a book,

23       record, document, data, or other object at any of the commission's investigator

24       interviews or proceedings held in connection with the investigation of a complaint. If a

25       witness fails or refuses to appear or any individual fails to produce requested

26       information, the commission may issue a subpoena to compel the witness to appear or

27       a subpoena duces tecum to compel the production of any book, record, document,

28       data, or other object.

29       4. If a person refuses to obey a subpoena by the commission, the district court, upon

30       application by the commission, may issue to the person an order requiring the person

1           to appear and give evidence or otherwise produce documentary evidence requested  
2           by the commission regarding the matter under investigation.

3           5. A witness who is subpoenaed under this section and who appears before the  
4           commission or the commission's investigator is entitled to receive the same fees and  
5           mileage as a witness in a civil case in district court.

6           **SECTION 6. AMENDMENT.** Section 54-66-09 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8           **54-66-09. Investigation findings - Ethics commission determinations.**

- 9           1. An investigator, other than a law enforcement agency, of a complaint shall provide  
10           written findings of the investigation to the ethics commission within a reasonable  
11           amount of time. The ethics commission shall provide copies of the written findings and  
12           evidence considered to the accused individual, who may respond to the commission in  
13           person or in writing within a reasonable time. If the accused individual responds in  
14           person, no fewer than three members of the commission shall meet in a closed  
15           meeting with the accused individual. An accused individual may be accompanied by  
16           legal counsel when responding to the commission in person.
- 17           2. After providing a reasonable time for an accused individual to respond to the  
18           investigation findings and considering any response to the findings, the ethics  
19           commission shall determine whether a violation of article XIV of the Constitution of  
20           North Dakota, this chapter, or another law or rule regarding transparency, corruption,  
21           elections, or lobbying occurred, and inform the accused individual of the  
22           determination. If the commission determined a violation occurred, the commission may  
23           impose a penalty authorized by law for the violation or refer the matter to the agency  
24           with enforcement authority over the violation.
- 25           3. The commission may not terminate the employment of a public official or otherwise  
26           remove a public official from the public official's public office.
- 27           4. The ethics commission may not reconsider, invalidate, or overturn a decision, ruling,  
28           recommended finding of fact, recommended conclusion of law, finding of fact,  
29           conclusion of law, or order by a hearing officer under chapter 28-32 on the grounds the  
30           hearing officer failed to grant a request for disqualification under section 28-32-27 or

1 failed to comply with subsection 5 of section 2 of article XIV of the Constitution of  
2 North Dakota.

3 **SECTION 7. AMENDMENT.** Section 54-66-12 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 **54-66-12. Confidential information.**

- 6 1. The following information is a confidential record as defined in section 44-04-17.1,  
7 unless the commission has determined the accused individual violated article XIV of  
8 the Constitution of North Dakota, this chapter, or another law or rule regarding  
9 transparency, corruption, elections, or lobbying, and a court affirmed the determination  
10 if appealed, except the information may be disclosed as required by law or as  
11 necessary to conduct an investigation arising from a complaint:
- 12 a. Information revealing the contents of a complaint;
  - 13 b. Information that reasonably may be used to identify an accused individual; and
  - 14 c. Information relating to or created as part of an investigation of a complaint.
- 15 2. If a complaint is informally resolved under section 54-66-07, the following information  
16 is a confidential record as defined in section 44-04-17.1:
- 17 a. Information revealing the contents of the complaint;
  - 18 b. Information that reasonably may be used to identify the accused individual;
  - 19 c. Information relating to or created as part of the process leading to the informal  
20 resolution; and
  - 21 d. Information revealing the informal resolution.
- 22 3. Information that reasonably may be used to identify the complainant is confidential  
23 unless the complainant waives confidentiality, authorizes its disclosure, or divulges  
24 information that reasonably would identify the complainant. ~~However, the ethics-~~  
25 ~~commission shall notify an accused individual of the identity of the complainant who-~~  
26 ~~made an allegation against the accused individual, and the information~~Information,  
27 including evidence under consideration by the investigator or commission, deemed  
28 confidential under this subsection may be disclosed as required by law or as  
29 necessary to conduct an investigation arising from a complaint to include disclosure of  
30 evidence being considered to an accused individual.

1       4. The information deemed confidential in subsections 1 and 2 may be disclosed by the  
2           ethics commission if the accused individual agrees to the disclosure.

3       **SECTION 8.** A new section to chapter 54-66 of the North Dakota Century Code is created  
4 and enacted as follows:

5       **Commission delegation of duties.**

6       The commission may delegate duties to the commission's executive director and other staff  
7 as necessary to assure the efficient administration of the commission's responsibilities.

8 Delegation of duties to the executive director and other staff must be made through rules or  
9 policies adopted by the commission at a public meeting. The commission may reconsider,  
10 modify, or reverse actions taken by the executive director or other staff pursuant to a delegated  
11 duty.

12       **SECTION 9.** A new section to chapter 54-66 of the North Dakota Century Code is created  
13 and enacted as follows:

14       **Advisory opinions - Authority - Effect.**

15       1. In response to a request from a public official, candidate for elected office, or lobbyist,  
16 the ethics commission may provide a written advisory opinion regarding the  
17 application of the following to a specified set of hypothetical or actual facts:

18       a. Article XIV of the Constitution of North Dakota; or

19       b. State statutes and ethics commission rules related to transparency, corruption,  
20 elections, and lobbying.

21       2. Within fourteen days after receiving a request for a written advisory opinion, the ethics  
22 commission shall notify the requester whether the commission will provide an opinion.

23       3. Within ninety days after notifying a requester a written advisory opinion will be  
24 provided, the ethics commission shall issue the opinion.

25       4. Criminal and civil penalties may not be imposed upon an individual for an action taken  
26 in accordance with an opinion issued under this section if:

27       a. The individual acts in good faith; and

28       b. The material facts surrounding the action taken are the same as the facts  
29 presented in the opinion.

30       5. Opinions and requests for opinions under this section are open records, except names  
31 of persons in the opinions and requests are exempt records.

- 1       6. The ethics commission shall publish all written advisory opinions issued under this
- 2       section on a website or in another medium readily available to the public.