

Sixty-first
Legislative Assembly
of North Dakota

HOUSE BILL NO.

Introduced by

Representative Delmore

1 A BILL for an Act to amend and reenact section 44-04-21.1 of the North Dakota Century Code,
2 relating to civil penalties for violations of open meetings and open records laws; and to provide
3 a penalty.

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

5 **SECTION 1. AMENDMENT.** Section 44-04-21.1 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **44-04-21.1. Administrative review procedure - Civil penalty.**

8 1. Any interested person may request an attorney general's opinion to review a
9 written denial of a request for records under section 44-04-18, a denial of access to
10 a meeting under section 44-04-19, or other alleged violation of section 44-04-18,
11 44-04-19, 44-04-19.2, 44-04-20, or 44-04-21 by any public entity other than the
12 legislative assembly or any committee thereof. A request made under this section
13 must be made within thirty days of the alleged violation, except that a request
14 based on allegations that a meeting occurred without the notice required by section
15 44-04-20, must be made within ninety days of the alleged violation. In preparing
16 an opinion under this section, the attorney general has discretion to obtain and
17 review a recording made under section 44-04-19.2. The attorney general may
18 request and obtain information claimed to be exempt or confidential for the purpose
19 of determining whether the information is exempt or confidential. Any such
20 information may not be released by the attorney general and may be returned to
21 the provider of the information. The attorney general shall issue to the public entity
22 involved an opinion on the alleged violation unless the request is withdrawn by the
23 person requesting the opinion or a civil action has been filed involving the possible
24 violation. If the request pertains to a public entity as defined in subdivision c of

subsection 12 of section 44-04-17.1, the opinion must be issued to the public entity providing the public funds. In any opinion issued under this section, the attorney general shall base the opinion on the facts given by the public entity.

2. If the attorney general issues a written opinion concluding that a violation has occurred, the public entity has seven days after the opinion is issued, regardless of whether a civil action is filed under section 44-04-21.2, to disclose the record, to issue a notice of a meeting that will be held within a reasonable time to correct the violation, or to take steps to correct any other violation. If the public entity fails to take the required action within the seven-day period and the person requesting the opinion prevails in a civil action brought under section 44-04-21.2, the person must be awarded costs, disbursements, and reasonable attorney's fees in the action and on appeal. The consequences for failing to comply with an attorney general's opinion issued under this section will be the same as for other attorney general's opinions, including potential personal liability for the person or persons responsible for the noncompliance.

3. If the attorney general issues a written opinion concluding that a violation has occurred and that the executive officer of the public entity or the presiding officer of the governing body of the public entity willfully committed the violation, the attorney general shall impose a civil penalty of one thousand dollars against that individual. The individual against whom the civil penalty is imposed may appeal the imposition of the penalty under chapter 28-32.

4. If a state-level public entity as defined in subdivision a of subsection 12 of section 44-04-17.1 does not comply in full with the attorney general's opinion, and a civil action is brought under section 44-04-21.2 or is reasonably predictable, the entity, at its sole cost and expense, shall retain separate counsel who has been approved and appointed by the attorney general as a special assistant attorney general to represent the entity in that action.