19.0422.04000

Sixty-sixth
Legislative Assembly
of North Dakota

FIRST ENGROSSMENT

ENGROSSED SENATE BILL NO. 2148

Introduced by

Senator Mathern

A BILL for an Act to create and enact a new subsection to section 16.1-08.1-01, a new section to chapter 16.1-08.1, and chapter 54-66 of the North Dakota Century Code, relating to disclosures of expenditures, restrictions on public officials and lobbyists, investigations of ethics violations, and implementing requirements of article XIV of the Constitution of North Dakota; to amend and reenact sections 16.1-08.1-04.1, 28-32-01, 28-32-02, 28-32-03, 28-32-06, 28-32-07, and 28-32-08, subsection 5 of section 28-32-08.1, sections 28-32-08.2, 28-32-09, 28-32-10, 28-32-11, 28-32-12, 28-32-15, and 28-32-16, and subsections 2 and 4 of section 28-32-19 of the North Dakota Century Code, relating to the prohibition on personal use of campaign contributions and the rulemaking procedures and requirements for the North Dakota ethics commission; to provide a penalty; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 16.1-08.1-01 of the North Dakota Century Code is created and enacted as follows:

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

SECTION 2. AMENDMENT. Section 16.1-08.1-04.1 of the North Dakota Century Code is amended and reenacted as follows:

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

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

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

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

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

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

2. The secretary of state may impose a fine of up to five thousand dollars or two times the value of the contribution used in violation of this section, whichever is higher, upon any person who violates this section.

SECTION 3. A new section to chapter 16.1-08.1 of the North Dakota Century Code is created and enacted as follows:

Ultimate and true source of funds - Required identification.

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

SECTION 4. AMENDMENT. Section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

28-32-01. Definitions.

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

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

code is not subject to review in an adjudicative proceeding. An adjudicative proceeding does not include rulemaking under this chapter.

2. "Administrative agency" or "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an administrative agency must be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:
   a. The office of management and budget except with respect to rules made under section 32-12.2-14, rules relating to conduct on the capitol grounds and in buildings located on the capitol grounds under section 54-21-18, rules relating to the classified service as authorized under section 54-44.3-07, and rules relating to state purchasing practices as required under section 54-44.4-04.
   b. The adjutant general with respect to the department of emergency services.
   c. The council on the arts.
   d. The state auditor.
   e. The department of commerce with respect to the division of economic development and finance.
   f. The dairy promotion commission.
   g. The education factfinding commission.
   h. The educational technology council.
   i. The board of equalization.
   j. The board of higher education.
   k. The Indian affairs commission.
   l. The industrial commission with respect to the activities of the Bank of North Dakota, North Dakota housing finance agency, public finance authority, North Dakota mill and elevator association, North Dakota farm finance agency, the North Dakota transmission authority, and the North Dakota pipeline authority.
   m. The department of corrections and rehabilitation except with respect to the activities of the division of adult services under chapter 54-23.4.

n. The pardon advisory board.

o. The parks and recreation department.

p. The parole board.

q. The state fair association.

r. The attorney general with respect to activities of the state toxicologist and the state crime laboratory.

s. The administrative committee on veterans' affairs except with respect to rules relating to the supervision and government of the veterans' home and the implementation of programs or services provided by the veterans' home.

t. The industrial commission with respect to the lignite research fund except as required under section 57-61-01.5.

u. The attorney general with respect to guidelines adopted under section 12.1-32-15 for the risk assessment of sexual offenders, the risk level review process, and public disclosure of information under section 12.1-32-15.

v. The commission on legal counsel for indigents.

w. The attorney general with respect to twenty-four seven sobriety program guidelines and program fees.

x. The industrial commission with respect to approving or setting water rates under chapter 61-40.

3. "Agency head" means an individual or body of individuals in whom the ultimate legal authority of the agency is vested by law.

4. "Complainant" means any person who files a complaint before an administrative agency pursuant to section 28-32-21 and any administrative agency that, when authorized by law, files such a complaint before such agency or any other agency.

5. "Ethics commission" means the North Dakota ethics commission established by article XIV of the Constitution of North Dakota.

~~5.~~6. "Hearing officer" means any agency head or one or more members of the agency head when presiding in an administrative proceeding, or, unless prohibited by law, one or more other persons designated by the agency head to preside in an administrative proceeding, an administrative law judge from the office of administrative hearings, or

any other person duly assigned, appointed, or designated to preside in an administrative proceeding pursuant to statute or rule.

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

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

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

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

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

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

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

b. A rule that sets forth criteria or guidelines to be used by the staff of an agency or the ethics commission in the performance of audits, investigations, inspections, and settling commercial disputes or negotiating commercial arrangements, or in

the defense, prosecution, or settlement of cases, if the disclosure of the ~~statement~~rule would:

(1) Enable law violators to avoid detection;

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

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

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

d. A rule concerning only the physical servicing, maintenance, or care of agency-owned ~~or~~, agency-operated, ethics commission-owned, or ethics commission-operated facilities or property.

e. A rule relating only to the use of a particular facility or property owned, operated, or maintained by the state or any of its subdivisions, if the substance of the rule is adequately indicated by means of signs or signals to persons who use the facility or property.

f. A rule concerning only inmates of a correctional or detention facility, students enrolled in an educational institution, or patients admitted to a hospital, if adopted by that facility, institution, or hospital.

g. A form whose contents or substantive requirements are prescribed by rule or statute or are instructions for the execution or use of the form.

h. An agency or ethics commission budget.

i. An opinion of the attorney general.

j. A rule adopted by an agency selection committee under section 54-44.7-03.

k. Any material, including a guideline, interpretive statement, statement of general policy, manual, brochure, or pamphlet, which is explanatory and not intended to have the force and effect of law.

SECTION 5. AMENDMENT. Section 28-32-02 of the North Dakota Century Code is amended and reenacted as follows:

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

1. The authority of an administrative agency to adopt administrative rules is authority delegated by the legislative assembly. As part of that delegation, the legislative

assembly reserves to itself the authority to determine when and if rules of administrative agencies are effective. Every administrative agency may adopt, amend, or repeal reasonable rules in conformity with this chapter and any statute administered or enforced by the agency.

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

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

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

28-32-03. Emergency rules.

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

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

SECTION 7. AMENDMENT. Section 28-32-06 of the North Dakota Century Code is amended and reenacted as follows:

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

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

SECTION 8. AMENDMENT. Section 28-32-07 of the North Dakota Century Code is amended and reenacted as follows:

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

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

SECTION 9. AMENDMENT. Section 28-32-08 of the North Dakota Century Code is amended and reenacted as follows:

28-32-08. Regulatory analysis.

1. An agency or the ethics commission shall issue a regulatory analysis of a proposed rule if:
   a. Within twenty days after the last published notice date of a proposed rule hearing, a written request for the analysis is filed by the governor or a member of the legislative assembly; or
   b. The proposed rule is expected to have an impact on the regulated community in excess of fifty thousand dollars. The analysis under this subdivision must be available on or before the first date of public notice as provided for in section 28-32-10.
2. The regulatory analysis must contain:
   a. A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;
   b. A description of the probable impact, including economic impact, of the proposed rule;
   c. The probable costs to the agency or ethics commission of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues; and

d. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency or ethics commission and the reasons why the methods were rejected in favor of the proposed rule.

3. Each regulatory analysis must include quantification of the data to the extent practicable.

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

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

SECTION 10. AMENDMENT. Subsection 5 of section 28-32-08.1 of the North Dakota Century Code is amended and reenacted as follows:

5. This section does not apply to the ethics commission, any agency that is an occupational or professional licensing authority, ~~nor does this section apply to~~or the following agencies or divisions of agencies:

a. Council on the arts.

b. Beef commission.

c. Dairy promotion commission.

d. Dry bean council.

e. Highway patrolmen's retirement board.

f. Indian affairs commission.

g. Board for Indian scholarships.

h. State personnel board.

i. Potato council.

j. Board of public school education.

k. Real estate trust account committee.

l. Seed commission.

m. Soil conservation committee.

n. Oilseed council.

o. Wheat commission.

p. State seed arbitration board.

q. North Dakota lottery.

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

28-32-08.2. Fiscal notes for ~~administrative~~ rules.

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

SECTION 12. AMENDMENT. Section 28-32-09 of the North Dakota Century Code is amended and reenacted as follows:

28-32-09. Takings assessment.

1. An agency or the ethics commission shall prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private real property. The ~~agency's~~ assessment must:
   a. Assess the likelihood that the proposed rule may result in a taking or regulatory taking.
   b. Clearly and specifically identify the purpose of the proposed rule.
   c. Explain why the proposed rule is necessary to substantially advance that purpose and why no alternative action is available that would achieve the agency's or ethics commission's goals while reducing the impact on private property owners.
   d. Estimate the potential cost to the government if a court determines that the proposed rule constitutes a taking or regulatory taking.
   e. Identify the source of payment within the agency's or ethics commission's budget for any compensation that may be ordered.
   f. Certify that the benefits of the proposed rule exceed the estimated compensation costs.

2. Any private landowner who is or may be affected by a rule that limits the use of the landowner's private real property may request in writing that the agency or ethics commission reconsider the application or need for the rule. Within thirty days of receiving the request, the agency or ethics commission shall consider the request and shall in writing inform the landowner whether the agency or ethics commission intends to keep the rule in place, modify application of the rule, or repeal the rule.
3. In an ~~agency's~~ analysis of the takings implications of a proposed rule, "taking" means the taking of private real property, as defined in section 47-01-03, by government action which requires compensation to the owner of that property by the fifth or fourteenth amendment to the Constitution of the United States or section 16 of article I of the Constitution of North Dakota. "Regulatory taking" means a taking of real property through the exercise of the police and regulatory powers of the state which reduces the value of the real property by more than fifty percent. However, the exercise of a police or regulatory power does not effect a taking if it substantially advances legitimate state interests, does not deny an owner economically viable use of the owner's land, or is in accordance with applicable state or federal law.

SECTION 13. AMENDMENT. Section 28-32-10 of the North Dakota Century Code is amended and reenacted as follows:

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

1. An agency or the ethics commission shall prepare a full notice and an abbreviated notice of rulemaking.
   a. The ~~agency's~~ full notice of the proposed adoption, amendment, or repeal of a rule must include a short, specific explanation of the proposed rule and the purpose of the proposed rule, identify the emergency status and declared effective date of any emergency rules, include a determination of whether the proposed rulemaking is expected to have an impact on the regulated community in excess of fifty thousand dollars, identify at least one location where interested persons may review the text of the proposed rule, provide the address to which written comments concerning the proposed rule may be sent, provide the deadline for submission of written comments, provide a telephone number and post-office or electronic mail address at which a copy of the rules and regulatory analysis may

be requested, and, in the case of a substantive rule, provide the time and place set for each oral hearing. ~~The~~An agency's full notice must include a statement of the bill number and general subject matter of any legislation, enacted during the most recent session of the legislative assembly, which is being implemented by the proposed rule. The ethics commission's full notice must include a statement of the provision of the Constitution of North Dakota or the bill number and general subject matter of any legislation being implemented by the proposed rule. The ~~agency's~~ full notice must be filed with the legislative council, accompanied by a copy of the proposed rules.

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

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

3. In addition to the other notice requirements of this subsection, the superintendent of public instruction shall provide notice of any proposed rulemaking by the superintendent of public instruction to each association with statewide membership whose primary focus is elementary and secondary education issues which has requested to receive notice from the superintendent under this subsection and to the superintendent of each public school district in this state, or the president of the school board for school districts that have no superintendent, at least twenty days before the date of the hearing described in the notice. Notice provided by the superintendent of public instruction under this section must be by first-class mail. However, upon request of a group or person entitled to notice under this section, the superintendent of public instruction shall provide the group or person notice by electronic mail.
4. The legislative council shall establish standard procedures for the ethics commission and all agencies to follow in complying with the provisions of this section and a procedure to allow any person to request and receive mailed copies of all filings made by agencies and the ethics commission pursuant to this section. The legislative council may charge an annual fee as established by the administrative rules committee for providing copies of the filings.
5. At least twenty days must elapse between the date of the publication of the notice and the date of the hearing. Within fifteen business days after receipt of a notice under this section, a copy of the notice must be mailed by the legislative council to any person who has paid the annual fee established under subsection 4.

SECTION 14. AMENDMENT. Section 28-32-11 of the North Dakota Century Code is amended and reenacted as follows:

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

The agency or ethics commission shall adopt a procedure whereby all interested persons are afforded reasonable opportunity to submit data, views, or arguments, orally or in writing, concerning the proposed rule, including data respecting the impact of the proposed rule. The agency or ethics commission shall adopt a procedure to allow interested parties to request and receive notice from the agency or ethics commission of the date and place the rule will be reviewed by the administrative rules committee. In case of substantive rules, the agency or

ethics commission shall conduct an oral hearing. The agency or ethics commission shall consider fully all written and oral submissions respecting a proposed rule prior to the adoption, amendment, or repeal of any rule not of an emergency nature. The agency or ethics commission shall make a written record of its consideration of all written and oral submissions contained in the rulemaking record respecting a proposed rule.

SECTION 15. AMENDMENT. Section 28-32-12 of the North Dakota Century Code is amended and reenacted as follows:

28-32-12. Comment period.

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

SECTION 16. AMENDMENT. Section 28-32-15 of the North Dakota Century Code is amended and reenacted as follows:

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

1. A copy of each rule adopted by an administrative agency or the ethics commission, a copy of each written comment and a written summary of each oral comment on the rule, and the attorney general's opinion on the rule must be filed by the adopting agency or ethics commission with the legislative council for publication of the rule in the North Dakota Administrative Code.
2. a. Nonemergency rules approved by the attorney general as to legality, adopted by an administrative agency or the ethics commission, ~~and~~ filed with the legislative council, and not voided or held for consideration by the administrative rules committee become effective according to the following schedule:
   (1) Rules filed with the legislative council from August second through November first become effective on the immediately succeeding January first.
   (2) Rules filed with the legislative council from November second through February first become effective on the immediately succeeding April first.
   (3) Rules filed with the legislative council from February second through May first become effective on the immediately succeeding July first.

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

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

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

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

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

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

SECTION 18. AMENDMENT. Subsection 2 of section 28-32-19 of the North Dakota Century Code is amended and reenacted as follows:

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

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

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

SECTION 20. Chapter 54-66 of the North Dakota Century Code is created and enacted as follows:

54-66-01. Definitions.

For purposes of this chapter and article XIV of the Constitution of North Dakota, unless the context otherwise requires:

1. "Accused individual" means an individual who is alleged to have violated article XIV of the Constitution of North Dakota, this chapter, or another law or rule regarding government ethics.
2. "Complainant" means an individual who, in writing or verbally, submits a complaint to the ethics commission.
3. "Complaint" means a verbal or written allegation to the ethics commission that article XIV of the Constitution of North Dakota, this chapter, or another law or rule regarding government ethics has been violated.
4. "Ethics commission" means the North Dakota state ethics commission established under article XIV of the Constitution of North Dakota.
5. "Gift" means any item, service, or thing of value not given in exchange for fair market consideration including travel and recreation. "Gift" does not mean:
   a. Purely informational material;
   b. A campaign contribution; and
   c. To advance opportunities for state residents to meet with public officials in educational and social settings in the state, any item, service, or thing of value given under conditions that do not raise ethical concerns as set forth in rules adopted by the ethics commission.
6. "Lobbyist":
   a. Means a person who, directly or indirectly:

(1) Attempts to secure the passage, amendment, or defeat of any legislation by the legislative assembly;

(2) Attempts to secure the approval or veto of any legislation by the governor;

(3) Attempts to influence decisions regarding legislative matters made by the legislative management or a legislative committee; or

(4) Attempts to influence decisions regarding official matters made by a public official in the executive branch of state government.

b. Does not mean:

(1) A private citizen appearing on the citizen's own behalf; or

(2) A public official or an employee, officer, board member, volunteer, or agent of the state or its political subdivisions acting in the individual's official capacity.

7. "Public official" means an elected or appointed official of the state's executive or legislative branch, members of the ethics commission, members of the governor's cabinet, and employees of the legislative branch.

8. "Receives the complaint" means one or more members of the ethics commission learn of the complaint.

9. "Ultimate and true source" means the person that knowingly contributed over two hundred dollars, adjusted for inflation, to lobby or influence state government action.

54-66-02. Ethics commission Members - Appointments - Compensation.

1. The majority leader of the senate, the minority leader of the senate, and the governor shall appoint the five members of the ethics commission by consensus agreement for four-year terms, except all vacancies must be filled for the unexpired term. The terms of the initial members must begin on or before July 1, 2019, and be staggered to ensure no more than two members' terms expire in one year. The terms of the initial members may be less than four years to accommodate the required staggering of terms.

2. Ethics commission members are entitled to:

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

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

54-66-03. Ethics commission staff.

The ethics commission shall appoint an executive director and other staff necessary to assist the ethics commission in carrying out its duties.

54-66-04. Ethics commission office.

The director of the office of management and budget shall allocate office space in the state capitol for the ethics commission, or, if office space in the capitol is unavailable, shall negotiate for, contract for, and obtain office space for the ethics commission in the city of Bismarck or in the Bismarck area. The ethics commission's office space may not be located in the office space of any other government agency, board, commission, or other governmental entity, and must provide sufficient privacy and security for the ethics commission to conduct its business. The director shall charge the ethics commission an amount equal to the fair value of the office space and related services the office of management and budget renders to the ethics commission.

54-66-05. Making a complaint - Informing the accused individual.

A complaint may be made to the ethics commission verbally or in writing. The ethics commission shall inform the accused individual the ethics commission received a complaint against the accused individual as soon as reasonably possible. If the complaint was made in writing, the ethics commission shall provide a copy of the complaint to the accused individual no later than twenty calendar days after the ethics commission receives the complaint. If the complaint was made verbally, the ethics commission shall inform the accused individual of the allegations and other information provided in the complaint no later than twenty calendar days after the ethics commission receives the complaint.

54-66-06. Informal resolution.

The ethics commission may attempt to negotiate or mediate an informal resolution between the accused individual and the complainant after receiving a complaint.

54-66-07. Investigations and referrals.

1. The ethics commission may investigate a complaint if the accused individual and the complainant have not agreed on an informal resolution. An investigation must include separate interviews with the accused individual and the complainant, unless the

accused individual or complainant refuses to be interviewed, and consideration of the circumstances surrounding the allegations.

2. The ethics commission may refer a matter described in or arising from a complaint to the bureau of criminal investigation or other appropriate law enforcement agency if a majority of the ethics commission members reasonably believes a crime was committed or the safety of the complainant is at risk.

54-66-08. Investigation findings - Penalties.

1. At the conclusion of an investigation, the ethics commission shall issue its written findings to the accused individual and complainant.
2. The findings must state whether the ethics commission believes, based on a preponderance of the evidence as viewed by a reasonable person, a violation of article XIV of the Constitution of North Dakota, this chapter, or another law or rule regarding government ethics occurred. The accused individual and complainant may respond in writing to the findings within twenty calendar days of receiving the findings. The ethics commission shall maintain copies of the findings and any written response to the findings.
3. If the ethics commission finds a violation occurred, the ethics commission may impose a penalty specified by law for the violation.

54-66-09. Appeals.

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

54-66-10. Confidential information - Penalty.

1. The following information is a confidential record as defined in section 44-04-17.1 until the ethics commission issues its findings regarding the relevant complaint, except the information may be disclosed as required by law or as necessary to conduct an investigation arising from the complaint:
   a. Information revealing the contents of a complaint;
   b. Information that reasonably may be used to identify an accused individual or complainant; and
   c. Information relating to or created as part of an investigation of a complaint.

2. Information relating to or created as part of an informal resolution of a complaint is confidential except the information may be disclosed by the complainant and the accused individual.

3. A public official who knowingly violates this section is guilty of a class C felony.

54-66-11. Restriction on lobbying by public officials - Penalty.

A knowing violation of subsection 2 of section 2 of article XIV of the Constitution of North Dakota is a class A misdemeanor. The ethics commission shall impose a fine of up to one thousand dollars upon any person that knowingly violates the subsection.

54-66-12. Lobbyist delivery of campaign contributions prohibited - Penalty.

A knowing violation of subsection 3 of section 2 of article XIV of the Constitution of North Dakota is a class A misdemeanor. The ethics commission shall impose a fine of up to five hundred dollars upon any person that knowingly violates the subsection. The ethics commission may impose a fine of up to one thousand dollars upon any person for a second or subsequent knowing violation of the subsection.

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

The attorney general shall serve as legal counsel for the ethics commission, unless the ethics commission objects to the representation by the attorney general in a specific matter. When a conflict of interest prevents the attorney general from providing legal services to the ethics commission, the attorney general may appoint a special assistant attorney general to serve as legal counsel for the commission.

54-66-14. Disclosure of ultimate and true source of funds.

A person who expends an amount greater than two hundred dollars, adjusted for inflation, to lobby or influence state government, other than to influence a statewide election or election for the legislative assembly, shall report the ultimate and true source of funds for the expenditure to the secretary of state.

54-66-15. Lobbyist gifts - Penalty.

A lobbyist may not give, offer, solicit, initiate, or facilitate a gift to a public official knowingly, and a public official may not accept a gift from a lobbyist knowingly. For the first violation, the secretary of state may impose a fine of up to five hundred dollars upon any person who violates this section. For a second and subsequent violation of this section, the person is guilty of an infraction.

54-66-16. Lobbyist requirements.

A person who meets the definition of a lobbyist under this chapter and article XIV of the Constitution of North Dakota is not required to comply with the requirements of chapter 54-05.1, unless the person also meets the definition of a lobbyist under section 54-05.1-02.

SECTION 21. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the North Dakota ethics commission for the purpose of defraying the expenses of the commission, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

	Appropriation
Salaries and expenses	$214,800
Operating expenses	207,200
Total general fund	$422,000
Full-time equivalent positions	3.00