Sixty-sixth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1521

Introduced by

Representative Pollert

Senator Wardner

A BILL for an Act to create and enact two new sections to chapter 16.1-08.1 and chapter 54-66 of the North Dakota Century Code, relating to reporting campaign contributions, 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 section 16.1-08.1-01, 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, 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, 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, 28-32-18, and 28-32-18.1, subsections 2 and 4 of section 28-32-19, and section 28-32-27 of the North Dakota Century Code, relating to rulemaking procedures, disqualification of hearing officers, and requirements for the North Dakota ethics commission; to provide for a penalty; to provide an appropriation; to provide an effective date; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

16.1-08.1-01. Definitions.

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

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

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

~~2.~~3. "Association" means any club, association, union, brotherhood, fraternity, organization, or group of any kind of two or more persons, including labor unions, trade associations, professional associations, or governmental associations, which is united for any purpose, business, or object and which assesses any dues, membership fees, or license fees in any amount, or which maintains a treasury fund in any amount. The term does not include corporations, cooperative corporations, limited liability companies, political committees, or political parties.

~~3.~~4. "Candidate" means an individual who seeks nomination for election or election to public office, and includes:

a. An individual holding public office;

b. An individual who has publicly declared that individual's candidacy for nomination for election or election to public office or has filed or accepted a nomination for public office;

c. An individual who has formed a campaign or other committee for that individual's candidacy for public office;

d. An individual who has circulated a nominating petition to have that individual's name placed on the ballot; and

e. An individual who has, in any manner, solicited or received a contribution for that individual's candidacy for public office, whether before or after the election for that office.

~~4.~~5. "Conduit" means a person that is not a political party, political committee, or candidate and which receives a contribution of money and transfers the contribution to a candidate, political party, or political committee when the contribution is designated specifically for the candidate, political party, or political committee and the person has no discretion as to the recipient and the amount transferred. The term includes a transactional intermediary, including a credit card company or a money transfer service that pays or transfers money to a candidate on behalf of another person.

~~5.~~6. "Contribution" means a gift, transfer, conveyance, provision, receipt, subscription, loan, advance, deposit of money, or anything of value, made for the purpose of influencing the nomination for election, or election, of any person to public office or aiding or opposing the circulation or passage of a statewide initiative or referendum petition or measure. The term also means a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for any of the above purposes. The term includes funds received by a candidate for public office or a political party or committee which are transferred or signed over to that candidate, party, or committee from another candidate, party, or political committee or other source including a conduit. The term "anything of value" includes any good or service of more than a nominal value. The term "nominal value" means the cost, price, or worth of the good or service is trivial, token, or of no appreciable value. The term "contribution" does not include:

a. A loan of money from a bank or other lending institution made in the regular course of business.

b. Time spent by volunteer campaign or political party workers.

c. Money or anything of value received for commercial transactions, including rents, advertising, or sponsorships made as a part of a fair market value bargained-for exchange.

d. Money or anything of value received for anything other than a political purpose.

e. Products or services for which the actual cost or fair market value are reimbursed by a payment of money.

f. An independent expenditure.

g. The value of advertising paid by a political party, multicandidate political committee, or caucus which is in support of a candidate.

h. In-kind contributions from a candidate to the candidate's campaign.

~~6.~~7. "Cooperative corporations", "corporations", and "limited liability companies" are as defined in this code, and for purposes of this chapter "corporations" includes nonprofit corporations. However, if a political committee, the only purpose of which is accepting contributions and making expenditures for a political purpose, incorporates for liability

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

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

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

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

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

d. An independent expenditure.

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

a. Advertising;

b. Campaign loan repayment;

c. Operations;

d. Travel; and

e. Miscellaneous.

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

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

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

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

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

a. A political action committee not connected to another organization and free to solicit funds from the general public, or derived from a corporation, cooperative corporation, limited liability company, affiliate, subsidiary, or an association that solicits or receives contributions from its employees or members or makes expenditures for political purposes on behalf of its employees or members;

b. A candidate committee established to support an individual candidate seeking public office which solicits or receives contributions for political purposes;

c. A political organization registered with the federal election commission, which solicits or receives contributions or makes expenditures for political purposes;

d. A multicandidate political committee, including a caucus, established to support multiple groups or slates of candidates seeking public office, which solicits or receives contributions for political purposes; and

e. A measure committee, including an initiative or referendum sponsoring committee at any stage of its organization, which solicits or receives contributions or makes expenditures for the purpose of aiding or opposing a measure sought to be voted upon by the voters of the state, including any activities undertaken for the purpose of drafting an initiative or referendum petition, seeking approval of the secretary of state for the circulation of a petition, or seeking approval of the submitted petitions.

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

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

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

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

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

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

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

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

(4) The purpose or purposes for which the aggregated revenue total was received from each person;

e. For each aggregated expenditure made to a person in excess of two hundred dollars, adjusted for inflation:

(1) The name of each person or entity;

(2) The mailing address of each person or entity;

(3) The date of the most recent expense made to each person or entity; and

(4) The purpose or purposes for which the aggregated expenditure total was disbursed to each person or entity; and

f. For each aggregated revenue from an individual which totals five thousand dollars, adjusted for inflation, or more during the reporting period, the occupation, employer, and principal place of business of the individual must be disclosed.

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

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

1. Prior to the thirty-first day before a primary, general, or special election, a candidate or candidate committee formed on behalf of the candidate, a multicandidate political committee, or a political party other than a statewide political party soliciting or accepting contributions shall file a campaign disclosure statement that includes all contributions received from January first through the fortieth day before the election. A candidate whose name is not on the ballot and who is not seeking election through write-in votes, the candidate's candidate committee, and a political party that has not endorsed or nominated any candidate in the election is not required to file a statement under this subsection. The statement may be submitted for filing beginning on the thirty-ninth day before the election. The statement must include:

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

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

(2) The total amount of the contribution; and

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

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

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

d. For a statewide candidate, a candidate committee formed on behalf of a statewide candidate, and a statewide multicandidate committee, the balance of the campaign fund on the fortieth day before the election and the balance of the campaign fund on January first.

2. Beginning on the thirty-ninth day before the election through the day before the election, a person that files a statement under subsection 1 must file a supplemental statement within forty-eight hours of the start of the day following the receipt of a contribution or aggregate contribution from a contributor which is in excess of five hundred dollars, adjusted for inflation. The statement must include:

a. The name and mailing address of the contributor;

b. The total amount of the contribution received during the reporting period; and

c. The date the last contributed amount was received.

3. Prior to February first, a candidate or candidate committee, a multicandidate political committee, or a nonstatewide political party soliciting or accepting contributions shall file a campaign disclosure statement that includes all contributions received and expenditures, by expenditure category, made from January first through December thirty-first of the previous year. The statement may be submitted for filing beginning on January first. The statement must include:

a. For a statewide candidate, a candidate committee formed on behalf of a statewide candidate, and a statewide multicandidate committee, the balance of the campaign fund on January first and on December thirty-first;

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

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

(2) The total amount of the contribution; and

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

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

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

e. The total of all other expenditures made during the previous year, separated into expenditure categories.

4. A person required to file a statement under this section, other than a candidate for judicial office, county office, or city office, or a candidate committee for a candidate exempted under this subsection, shall report each aggregated contribution from a contributor which totals five thousand dollars, adjusted for inflation, or more during the reporting period. For these contributions from individuals, the statement must include the contributor's occupation, employer, and the employer's principal place of business.

5. A candidate for city office in a city with a population under five thousand and a candidate committee for the candidate are exempt from this section.

6. A candidate for county office and a candidate committee for a candidate for county office shall file statements under this chapter with the county auditor. A candidate for city office who is required to file a statement under this chapter and a candidate committee for such a candidate shall file statements with the city auditor. Any other person required to file a statement under this section shall file the statement with the secretary of state.

7. The filing officer shall assess and collect fees for any reports filed after the filing deadline.

8. To ensure accurate reporting and avoid commingling of campaign and personal funds, candidates shall use dedicated campaign accounts that are separate from any personal accounts.

SECTION 4. AMENDMENT. Section 16.1-08.1-02.4 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Prior to the thirty-first day before a primary, general, or special election, a statewide political party or a political committee not required to file statements under section 16.1-08.1-02.3 which is soliciting or accepting contributions shall file a campaign disclosure statement that includes all contributions received and expenditures made from January first through the fortieth day before the election. A political party that has not endorsed or nominated a candidate in an election is not required to file a statement under this subsection. A statement required to be filed under this subsection may be submitted for filing beginning on the thirty-ninth day before the election. The statement must include:
   a. For each aggregated contribution from a contributor which totals in excess of two hundred dollars, adjusted for inflation, received during the reporting period:
      (1) The name and mailing address of the contributor;
      (2) The total amount of the contribution; and
      (3) The date the last contributed amount was received;
   b. The total of all aggregated contributions from contributors which total in excess of two hundred dollars, adjusted for inflation, during the reporting period;
   c. The total of all contributions received from contributors that contributed two hundred dollars, adjusted for inflation, or less each during the reporting period;
   d. For each recipient of an expenditure from campaign funds in excess of two hundred dollars, adjusted for inflation, in the aggregate:
      (1) The name and mailing address of the recipient;
      (2) The total amount of the expenditure made to the recipient; and
      (3) The date the last expended amount was made to the recipient;
   e. The aggregate total of all expenditures from campaign funds in excess of two hundred dollars, adjusted for inflation;
   f. The aggregate total of all expenditures from campaign funds of two hundred dollars, adjusted for inflation, or less; and
   g. The balance of the campaign fund on the fortieth day before the election and balance of the campaign fund on January first.

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

g. The balance of the campaign fund on January first and December thirty-first.

4. A person required to file a statement under this section shall disclose each aggregated contribution from a contributor which totals five thousand dollars, adjusted for inflation, or more during the reporting period. For these contributions from individuals, the statement must include the contributor's occupation, employer, and the employer's principal place of business.

5. Statements under this section must be filed with the secretary of state.

6. The secretary of state shall assess and collect fees for any reports filed after the filing deadline.

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

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

1. For each reportable contribution and expenditure under section 16.1-08.1-02.4, the threshold for reporting is one hundred dollars, adjusted for inflation, for any person engaged in activities described in subdivision e of subsection ~~13~~14 of section 16.1-08.1-01.

2. For contributions received from an out-of-state contributor, a person engaged in activities described in subdivision e of subsection ~~13~~14 of section 16.1-08.1-01 shall include the following information regarding each subcontributor that has stated a contribution is for the express purpose of furthering the passage or defeat of a ballot measure in the statements required under section 16.1-08.1-02.4:
   a. A designation as to whether any person contributed in excess of one hundred dollars, adjusted for inflation, of the total contribution;
   b. The name and mailing address of each subcontributor that contributed in excess of one hundred dollars, adjusted for inflation, of the total contribution;
   c. The contribution amounts of each disclosed subcontributor; and
   d. The occupation, employer, and address for the employer's principal place of business of each disclosed subcontributor.

3. An initiative and referendum sponsoring committee also shall file a disclosure statement by the date the secretary of state approves the petition for circulation, and

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

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

SECTION 6. 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. For the first violation, the secretary of state shall impose a fine of five hundred dollars upon any person who violates this section. For a second and subsequent violation of this section, the person is guilty of a class A misdemeanor.

SECTION 7. 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 - Penalty.

1. 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.

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

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

Prohibition on acting as conduit - Penalty.

A lobbyist may not act as a conduit unless the lobbyist is delivering a campaign contribution to the lobbyist's campaign or the campaign of the lobbyist's family member. For a first violation, the secretary of state shall impose a fine of one 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.

SECTION 9. 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. "Commission" means the North Dakota ethics commission established by article XIV of the Constitution of North Dakota.

5. "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.~~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 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 commission statement of general applicability which implements or prescribes law or policy or the organization, procedure, or practice requirements of the agency or 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 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 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, commission-owned, or 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 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 10. 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 commission to adopt rules arises from article XIV of the Constitution of North Dakota. The commission shall follow the process, and meet the requirements, in this chapter to adopt, amend, or repeal its rules.

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

28-32-03. Emergency rules.

1. If the commission or an agency, with the approval of the governor, finds that emergency rulemaking is necessary, the commission or agency may declare the proposed rule to be an interim final rule effective on a date no earlier than the date of filing with the legislative council of the notice required by section 28-32-10.
2. A proposed rule may be given effect on an emergency basis under this section if any of the following grounds exists regarding that rule:
   a. Imminent peril threatens public health, safety, or welfare, which would be abated by emergency effectiveness;
   b. A delay in the effective date of the rule is likely to cause a loss of funds appropriated to support a duty imposed by law upon the commission or agency;
   c. Emergency effectiveness is reasonably necessary to avoid a delay in implementing an appropriations measure; or
   d. Emergency effectiveness is necessary to meet a mandate of federal law.
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 commission's or agency's finding, and a brief statement of the commission's or agency's reasons for the finding, must be filed with the legislative council with the final adopted emergency rule.
5. The commission or agency shall attempt to make interim final rules known to persons who the 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 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 12. 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 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 13. 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 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 commission must adopt the rule change if the request by the agency or commission is supported by evidence that the agency or commission needs more time through no deliberate fault of its own.

SECTION 14. 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 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 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 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 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 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 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 15. AMENDMENT. Section 28-32-08.1 of the North Dakota Century Code is amended and reenacted as follows:

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

1. As used in this section:
   a. "Small business" means a business entity, including its affiliates, which:
      (1) Is independently owned and operated; and
      (2) Employs fewer than twenty-five full-time employees or has gross annual sales of less than two million five hundred thousand dollars;
   b. "Small entity" includes small business, small organization, and small political subdivision;
   c. "Small organization" means any not-for-profit enterprise that is independently owned and operated and is not dominant in its field; and
   d. "Small political subdivision" means a political subdivision with a population of less than five thousand.
2. Before adoption of any proposed rule, the adopting agency or the commission shall prepare a regulatory analysis in which, consistent with public health, safety, and welfare, the agency or commission considers utilizing regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small entities. The agency or commission shall consider each of the following methods of reducing impact of the proposed rule on small entities:
   a. Establishment of less stringent compliance or reporting requirements for small entities;
   b. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities;
   c. Consolidation or simplification of compliance or reporting requirements for small entities;
   d. Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule; and
   e. Exemption of small entities from all or any part of the requirements contained in the proposed rule.

3. Before adoption of any proposed rule that may have an adverse impact on small entities, the adopting agency or the commission shall prepare an economic impact statement that includes consideration of:
   a. The small entities subject to the proposed rule;
   b. The administrative and other costs required for compliance with the proposed rule;
   c. The probable cost and benefit to private persons and consumers who are affected by the proposed rule;
   d. The probable effect of the proposed rule on state revenues; and
   e. Any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule.
4. For any rule subject to this section, a small entity that is adversely affected or aggrieved by final agency or commission action is entitled to judicial review of agency or commission compliance with the requirements of this section. A small entity seeking judicial review under this section must file a petition for judicial review within one year from the date of final agency or commission action.
5. This section does not apply to any agency that is an occupational or professional licensing authority, nor does this section apply to 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.

6. This section does not apply to rules mandated by federal law.

7. The adopting agency or the commission shall provide the administrative rules committee copies of any regulatory analysis or economic impact statement, or both, prepared under this section when the committee is considering the associated rules.

SECTION 16. 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 commission presents rules for administrative rules committee consideration, the agency or 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 commission.

SECTION 17. 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 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 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 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 commission reconsider the application or need for the rule. Within thirty days of receiving the request, the agency or commission shall consider the request and shall in writing inform the landowner whether the agency or 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 18. 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 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 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 enacted during the most recent session of the legislative assembly which is 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 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 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 commission for a copy of the notice and proposed rule. The agency or 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 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 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 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 19. 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 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 commission shall adopt a procedure to allow interested parties to request and receive notice from the agency or commission of the date and place the rule will be reviewed by the administrative rules committee. In case of substantive rules, the agency or commission shall conduct an oral hearing. The agency or 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 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 20. 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 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 commission and made a part of the rulemaking record to be considered by the agency or commission.

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

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

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

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

SECTION 22. 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 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 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 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 23. 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 commission may petition ~~such~~the agency or 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 commission may grant the petitioner a public hearing ~~upon such~~on the terms and conditions ~~as~~ the agency ~~may prescribe~~prescribes.

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

28-32-17. Administrative rules committee objection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Any person or persons presiding for the agency in an administrative proceeding must be referred to individually or collectively as hearing officer. Any person from the office of administrative hearings presiding for the agency as a hearing officer in an administrative proceeding must be referred to as an administrative law judge.
2. Any hearing officer is subject to disqualification for good cause shown and shall self-disqualify in a proceeding in which a reasonable, disinterested observer would believe the hearing officer is biased due to:
   a. A contribution by one of the parties supporting the hearing officer's most recent campaign for public office; or
   b. An ownership interest, other than investment in a mutual fund, of the hearing officer in one of the parties to the proceeding if the ownership interest is not shared by the general public.
3. Any party may petition for the disqualification of any person presiding as a hearing officer upon discovering facts establishing grounds for disqualification.
4. A person whose disqualification is requested shall determine whether to grant the petition, stating facts and reasons for the determination.
5. If a substitute is required for a person who is disqualified or becomes unavailable for any other reason, the substitute may be appointed by:

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

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

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

d. The governor, in all other cases.

6. Any action taken by a duly appointed substitute for a disqualified or unavailable person is as effective as if taken by the disqualified or unavailable person.

7. Any hearing officer in an administrative proceeding, from the time of appointment or designation, may exercise any authority granted by law or rule. A hearing officer may be designated to preside over the entire administrative proceeding and may issue orders accordingly. A procedural hearing officer may only issue orders in regard to the course and conduct of the hearing under statute or rule and to otherwise effect an orderly hearing. If a procedural hearing officer is designated, the agency head must be present at the hearing and the agency head shall issue findings of fact and conclusions of law, as well as any order resulting from the hearing.

8. The North Dakota ethics commission shall impose upon any hearing officer who violates this section a fine of one hundred dollars for the first violation. For a second and subsequent violation of this section, the hearing officer is guilty of an infraction.

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

54-66-01. Definitions.

As used in this chapter, 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. "Adjusted for inflation" means adjusted on January first of each year by the change in the consumer price index for all urban consumers (all items, United States city average), as identified by the secretary of state.

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

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

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

the form electronically accessible to the public. The secretary of state also shall charge and collect fees for late filing of the reports as follows:

a. Twenty-five dollars for a report filed within sixty days after the deadline; or

b. Fifty dollars for a report filed more than sixty days after the deadline.

3. The secretary of state shall compile the reports required under this section and make the reports electronically accessible to the public within forty days after the deadlines by which the reports must be filed.

4. This section does not require a person to report the ultimate and true source of funds expended on:

a. A gift to or from a family member;

b. Purely informational material, advice, or education;

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

d. Meals and refreshments provided while informing, advising, or educating a public official about issues germane to the official duties of the public official;

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

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

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

54-66-03. Lobbyist gifts - Penalty.

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

opportunities for state residents to meet with public officials in educational and social settings in the state under conditions that do not raise ethical concerns, including:

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

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

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

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

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

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

a. A gift to or from a family member;

b. Purely informational material; or

c. A campaign contribution.

3. For the first violation, the secretary of state shall impose a fine of one 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.

54-66-04. Ethics commission member terms - Meetings - Code of ethics - Compensation - Investigator.

1. The terms of the initial members of the ethics commission must 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. The ethics commission shall meet as necessary to address each complaint the commission receives. Unless the complaint at issue has resulted in the imposition of a penalty or referral for enforcement under section 54-66-10, any portion of a meeting during which commission members discuss complaints, informal resolutions, attempts

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

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

4. Ethics commission members are entitled to:

   a. Compensation for each day necessarily spent conducting 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 commission business as provided under sections 44-08-04 and 54-06-09.

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

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

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

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

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

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

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

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

54-66-07. Informal resolution.

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

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

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

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

1. The investigator engaged under section 54-66-08 shall investigate the complaint referred to it by the ethics commission. Investigations 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. The accused individual and complainant may be accompanied by legal counsel during the interviews of each. Investigations may include interviews of potential witnesses and other individuals believed to have relevant information.
2. At the conclusion of the investigation, but no later than six months after the investigator received the complaint, the investigator shall submit its written findings and recommendations from the investigation to the commission. The commission shall

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

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

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

54-66-11. Confidential information - Penalty.

1. The following information is a confidential record as defined in section 44-04-17.1, unless the commission has determined the accused individual violated article XIV of the Constitution of North Dakota, this chapter, or another law or rule regarding government ethics, and an administrative law judge affirmed the determination if appealed, except the information may be disclosed as required by law or as necessary to conduct an investigation arising from a 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. If a complaint is informally resolved under section 54-66-07, the following information is a confidential record as defined in section 44-04-17.1:

a. Information revealing the contents of the complaint;

b. Information that reasonably may be used to identify the accused individual or complainant;

c. Information relating to or created as part of the process leading to the informal resolution; and

d. Information revealing the informal resolution.

3. Disclosure of information included in subsections 1 and 2 by a person who knows the information to be false is defamation under chapter 14-02.

4. Willful publication of information included in subsections 1 and 2 by a person who knows the information to be false is criminal defamation under section 12.1-15-01.

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

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

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

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

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

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

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

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

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

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

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