21.0059.01000

Sixty-seventh
Legislative Assembly
of North Dakota

BILL NO.

Introduced by

Representative Hanson

A BILL for an Act to create and enact section 54-66-09.1 and 54-66-18 of the North Dakota Century Code, relating to the ethics commission; to amend and reenact sections 28-32-07, 28-32-08, 28-32-09, 28-32-11, 28-32-18.1, 54-66-01, 54-66-02, and 54-66-03, subsection 2 of section 54-66-04, and sections 54-66-05, 54-66-08, 54-66-10, 54-66-12, and 54-66-16 of the North Dakota Century Code, relating to rulemaking, complaint handling procedures, removal, and immunity for the ethics commission; to repeal sections 54-66-06, 54-66-07, 54-66-09, and 54-66-17 of the North Dakota Century Code, relating to ethics commission complaint handling procedures; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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 2. 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 3. 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 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 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 4. 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 5. 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 rules.

1. Upon request by the administrative rules committee, an administrative agency ~~or the commission~~ shall brief the committee on its existing 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 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 6. AMENDMENT. Section 54-66-01 of the North Dakota Century Code is amended and reenacted as follows:

54-66-01. Definitions.

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

1. "Accused ~~individual~~person" means a lobbyist, public official, candidate for public office, political committee, or contributor ~~who~~that is alleged to have violated article XIV of the Constitution of North Dakota, this chapter, or another law or rule regarding transparency, corruption, elections, or lobbying.
2. "Complainant" means an individual who, in writing or verbally, submits a complaint to the commission.
3. "Complaint" means a verbal or written allegation to the commission that a lobbyist, public official, candidate for public office, political committee, or contributor has violated article XIV of the Constitution of North Dakota, this chapter, or another law or rule regarding transparency, corruption, elections, or lobbying.
4. "Ethics commission" or "commission" means the North Dakota ethics commission established by 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, except:
   a. Purely informational material;
   b. A campaign contribution; and
   c. An 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, to advance

opportunities for state residents to meet with public officials in educational and social settings in the state.

6. a. "Influence state government action" means ~~promoting~~:

(1) Promoting or opposing the adoption of a rule by an administrative agency or the commission under chapter 28-32;

(2) Attempting to influence substantively a discretionary state administrative action or inaction, including all substantive decisionmaking matters before the public service commission, industrial commission, and similar regulatory and administrative agencies, by communicating with, or urging others to communicate with, a public official, state employee, or agent of the state regarding the legal duties and obligations of the official, employee, or agent in a particular set of circumstances; or

(3) Taking action defined by an ethics commission rule as influencing state government action.

b. "Influence state government action" does not mean activities taken to apply for or receive ministerial actions for motor vehicle licenses, hunting licenses, or grants or similar ministerial, uncontested filings not involving hearings or substantive state action.

7. a. "Lobby" means ~~an activity listed in subsection 1 of section 54-05.1-02~~:

(1) Attempting to influence the passage, amendment, or defeat of legislation by the legislative assembly, or the approval or veto of legislation by the governor;

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

(3) Attempting to otherwise influence state government action.

b. "Lobby" does not mean activities taken to apply for or receive ministerial actions for motor vehicle licenses, hunting licenses, or grants or similar ministerial, uncontested filings not involving hearings or substantive state action.

c. The ethics commission may define "lobby" further by rule consistent with article XIV of the Constitution of North Dakota.

8. "Lobbyist" means ~~an individual required to register under section 54-05.1-03~~a person that engages in lobbying. "Lobbyist" does not include:
   a. A private citizen on the citizen's own behalf exercising the right to vote; participating in public or private discourse; appearing before the legislative assembly, legislative management, an interim committee of the legislative management, or a standing committee of the legislative assembly; or engaging in similar activities;
   b. Communication by a representative of a media organization if the purpose of the communication is gathering and disseminating news and information to the public;
   c. A public official or an employee, officer, board member, volunteer, or agent of the state or a political subdivision of the state, acting in the individual's official capacity;
   d. A person invited by the chairman of the legislative management, an interim committee of the legislative management, or a standing committee of the legislative assembly to appear before the committee to provide nonpartisan educational information publicly; or
   e. A person invited by a public official to provide nonpartisan educational information publicly.
9. "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.
10. "Receives the complaint" means one or more members of the commission learn of the complaint.
11. "Ultimate and true source" means the person that ~~knowingly~~ contributed over two hundred dollars ~~solely~~ to lobby or influence state government action. The ethics commission may define "ultimate and true source" further by rule consistent with article XIV of the Constitution of North Dakota.

SECTION 7. AMENDMENT. Section 54-66-02 of the North Dakota Century Code is amended and reenacted as follows:

54-66-02. Disclosure of ultimate and true source of funds. (Effective after January 4, 2021)

1. A lobbyist who expends an amount greater than two hundred dollars 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 that expends an amount greater than two hundred dollars, not including the individual's own travel expenses ~~and membership dues~~or salary and benefits paid by the person's employer, 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. ~~A report under this subsection 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.~~Reports under this section must be filed electronically within thirty days of an expenditure. The secretary of state shall provide an electronic form for reports under this section and make each report electronically accessible to the public within five days of receipt.
4. ~~A resident taxpayer may commence an action in a district court of this state 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 has failed to comply with this section.~~The secretary of state shall charge and collect twenty-five dollars for a report filed within sixty days after the deadline and fifty dollars for a report filed more than sixty days after the deadline. For a second or subsequent failure to file a report required under this section by the deadline, the lobbyist or other person is guilty of a class B misdemeanor.

~~5. The secretary of state shall determine adjustments for inflation of the reporting thresholds in this section and instruct persons submitting reports under this section of the adjustments. On January first of each year, the secretary shall determine whether the accumulated change in the consumer price index for all urban consumers (all items, United States city average), as applied to each reporting threshold in this section, would result in an adjustment of at least ten dollars of the threshold in effect on that date. If so, the secretary of state shall deem the reporting threshold adjusted by ten dollars.~~

SECTION 8. AMENDMENT. Section 54-66-03 of the North Dakota Century Code is amended and reenacted as follows:

54-66-03. Lobbyist gifts - Penalty. (Effective after January 4, 2021)

1. A lobbyist may not give, offer, solicit, initiate, or facilitate a gift knowingly to a public official, and a public official may not accept a gift from a lobbyist knowingly.
2. The prohibition in subsection 1 does not apply when a lobbyist gives, offers, solicits, initiates, or facilitates, or a public official accepts a gift to or from a family member.
3. The secretary of state shall assess a civil penalty upon any individual who violates this section.
   a. If the gift has a value of five hundred dollars or more, the civil penalty must be two times the value of the gift.
   b. If the gift has a value of less than five hundred dollars, the civil penalty must be no less than two times the value of the gift and may be up to one thousand dollars.

4. For a second or subsequent violation of this section, a lobbyist is guilty of a class B misdemeanor.

SECTION 9. AMENDMENT. Subsection 2 of section 54-66-04 of the North Dakota Century Code is amended and reenacted as follows:

2. Unless the complaint at issue has resulted in the imposition of a penalty or referral for criminal enforcement ~~under section 54-66-09~~, 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~~person or complainant, or any other matter arising from a complaint are closed meetings.

SECTION 10. AMENDMENT. Section 54-66-05 of the North Dakota Century Code is amended and reenacted as follows:

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

A complaint may be made to the commission ~~orally~~verbally or in writing. ~~If a complainant does not provide the complainant's name, address, and telephone number with the complaint, the ethics commission may not investigate, refer, or take other action regarding the complaint. The commission shall summarize each oral complaint in writing unless the complaint must be disregarded under this section.~~If, after an investigation of the complaint, the ethics commission decides to issue an administrative complaint against the accused person, the ethics commission shall serve an ethics commission complaint against the accused person and give the accused person at least twenty days to respond.

SECTION 11. AMENDMENT. Section 54-66-08 of the North Dakota Century Code is amended and reenacted as follows:

54-66-08. ~~Investigations~~Hearings - Referrals.

1. ~~If an informal resolution is not reached under section 54-66-07, the ethics commission may:~~
   a. ~~Disregard the complaint;~~
   b. ~~Require ethics commission staff to investigate the allegations in the complaint; or~~
   c. ~~Engage an outside investigator to investigate allegations in the complaint.~~The ethics commission may hold a public hearing regarding a complaint if the ethics commission and the accused person do not agree to an informal resolution.
2. ~~If the commission believes a complaint contains allegations of criminal conduct, the ethics commission shall refer the allegations of criminal conduct to the bureau of criminal investigations or other law enforcement agency and may not take further action on the referred allegations. The commission shall inform the accused individual by registered mail of a referral under this section and the nature of the referred allegations as soon as reasonably possible.~~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 believe a crime was committed or the safety of the complainant is at risk.

3. The ethics commission may refer a complaint alleging a violation of open meetings or open records requirements to the attorney general, and the attorney general shall review the allegation under section 44-04-21.1 if the complaint was submitted to the ethics commission by the review deadline in section 44-04-21.1.

SECTION 12. Section 54-66-09.1 of the North Dakota Century Code is created and enacted as follows:

54-66-09.1. Hearing findings - Penalties.

1. At the conclusion of a hearing, the ethics commission shall issue and make public its written findings of fact, conclusions of law, and any noncriminal penalty the commission imposes. If the commission concludes a crime was committed, the commission may refer the matter to the appropriate prosecutor.
2. The findings of fact must include a statement 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 transparency, corruption, elections, or lobbying occurred.

SECTION 13. AMENDMENT. Section 54-66-10 of the North Dakota Century Code is amended and reenacted as follows:

54-66-10. Appeals.

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

SECTION 14. AMENDMENT. Section 54-66-12 of the North Dakota Century Code is amended and reenacted as follows:

54-66-12. Confidential information.

1. The following information is a confidential record as defined in section 44-04-17.1, unless the commission ~~has determined~~issued conclusions of law stating the accused ~~individual~~person violated article XIV of the Constitution of North Dakota, this chapter, or another law or rule regarding transparency, corruption, elections, or lobbying, ~~and a court 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~~person; 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;~~

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

~~d. Information revealing the informal resolution.~~

~~3.~~ Information that reasonably may be used to identify the complainant is confidential unless the complainant waives confidentiality, authorizes its disclosure, or divulges information that reasonably would identify the complainant. ~~However, the ethics commission shall notify an accused individual of the identity of the complainant who made an allegation against the accused individual, and the information deemed confidential under this subsection may be disclosed as required by law or as necessary to conduct an investigation arising from a complaint.~~

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

SECTION 15. AMENDMENT. Section 54-66-16 of the North Dakota Century Code is amended and reenacted as follows:

54-66-16. Removal of ethics commission members.

1. An ethics commission member may be removed from office for:

a. Substantial neglect of duty;

b. Gross misconduct in office;

c. Violation of the commission's code of ethics; or

d. Willful or habitual neglect or refusal to perform the duties of the member.

2. Removal of an ethics commission member under subsection 1 requires agreement by ~~a majority~~consensus of:

   a. The governor;

   b. The majority leader of the senate; and

   c. The minority leader of the senate.

SECTION 16. Section 54-66-18 of the North Dakota Century Code is created and enacted as follows:

54-66-18. Immunity from liability.

1. No cause of action arises from, and no liability may be imposed against the ethics commission, members or representatives of the ethics commission, or investigators appointed by the ethics commission, for any statements made or actions taken to carry out this chapter, if the statements were made or actions were taken:

   a. In good faith;

   b. Without malice; and

   c. Without fraudulent intent or intent to deceive.

2. No cause of action arises from, and no liability may be imposed against any person for communicating with or delivering information to the ethics commission, the ethics commission's authorized representative, or an investigator appointed by the ethics commission as part of an investigation under this chapter if the communication or delivery was made:

   a. In good faith;

   b. Without malice; and

   c. Without fraudulent intent or intent to deceive.

3. This section does not limit or modify any immunity or privilege in common law or statute a person identified in subsection 1 or 2 may invoke.

SECTION 17. REPEAL. Sections 54-66-06, 54-66-07, 54-66-09, and 54-66-17 of the North Dakota Century Code are repealed.