

HOUSE BILL NO. 1043

Introduced by

Judiciary Committee

(At the request of the Ethics Commission)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 2. If the commission believes a complaint contains allegations of criminal conduct, the
8 ethics commission shall refer the allegations of criminal conduct to the bureau of
9 criminal investigations or other law enforcement agency and may not take further
10 action on the referred allegations. ~~The commission shall inform the accused individual~~
11 ~~by registered mail of a referral under this section and the nature of the referred~~
12 ~~allegations as soon as reasonably possible~~matter must be coordinated with the
13 appropriate law enforcement agency with jurisdiction over the offense. If the law
14 enforcement agency agrees to accept a referral for possible criminal prosecution, the
15 commission may not take further action on the complaint until the law enforcement
16 agency informs the commission law enforcement proceedings regarding the complaint
17 are complete. If the law enforcement agency declines a referral for prosecution, the
18 commission may investigate the complaint under the rules and policies adopted by the
19 commission. Unless the agency accepting the referral objects, the commission shall
20 inform the complainant and respondent as soon as reasonably possible of a referral
21 and the nature of the referred allegations.

22 3. The commission may require the testimony of a witness or the production of a book,
23 record, document, data, or other object at any of the commission's investigator
24 interviews or proceedings held in connection with the investigation of a complaint. If a
25 witness fails or refuses to appear or any individual fails to produce requested
26 information, the commission may issue a subpoena to compel the witness to appear or
27 a subpoena duces tecum to compel the production of any book, record, document,
28 data, or other object.

29 4. If a person refuses to obey a subpoena by the commission, the district court, upon
30 application by the commission, may issue to the person an order requiring the person

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

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

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

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

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

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

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

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

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

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

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

5 **Commission delegation of duties.**

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

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

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

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

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

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

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

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

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

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

27 a. The individual acts in good faith; and

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

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

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