

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. A~~
21 meeting under this section at which the commission discusses whether there is a
22 reasonable belief a violation has occurred must be held in an executive session. The
23 commission shall summarize each oral complaint in writing ~~unless the complaint must~~
24 be disregarded under this section.

- 1 2. Upon receipt of a complaint or information regarding a violation, the commission may
2 summarily dismiss the complaint or decline to proceed with a complaint if the alleged
3 violation does not fall within the commission's jurisdiction, is insufficient to identify a
4 possible violation, or fails to comply with rules adopted by the commission. In lieu of
5 summary dismissal, the commission may refer the matter under section 54-66-08.
6 3. If a complainant would like the complainant's identity to remain confidential, the
7 commission may not release the complainant's name and address to the accused
8 individual without the authorization of the complainant. If the complainant ~~also is a~~
9 ~~witness to the alleged violation and~~ does not authorize release of the complainant's
10 name and address to the accused individual, the statement of the complainant may
11 not be used as evidence of a violation.

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

14 **54-66-06. Informing the accused individual - Written response permitted.**

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

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

27 **54-66-07. Informal resolution.**

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

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

3 **54-66-08. Investigations - Referrals.**

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

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

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

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

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

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

1 ~~4. If a person refuses to obey a subpoena by the commission, the district court, upon~~
2 ~~application by the commission, may issue to the person an order requiring the person~~
3 ~~to appear and give evidence or otherwise produce documentary evidence requested~~
4 ~~by the commission regarding the matter under investigation.~~

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

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

10 **54-66-09. Investigation findings - Ethics commission determinations.**

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

1 hearing officer failed to grant a request for disqualification under section 28-32-27 or
2 failed to comply with subsection 5 of section 2 of article XIV of the Constitution of
3 North Dakota.

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

6 **54-66-12. Confidential information.**

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

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

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

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

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

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

28 a. The individual acts in good faith; and

29 b. The material facts surrounding the action taken are **substantially** the same as the
30 **facts**conduct presented in the opinion.

- 1 5. Opinions and requests for opinions under this section are open records, except names
2 of persons in the opinions and requests are exempt records.
- 3 6. The ethics commission shall publish all written advisory opinions issued under this
4 section on a website ~~or in another medium readily available~~that is accessible to the
5 public.