

Wed 3/22/23

JMK MASTER

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FIRST ENGROSSMENT

Sixty-eighth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1485

Thursday, Mar 23, 2023

Introduced by

Representatives Kasper, Headland, Heinert, Koppelman, Lefor, Louser, Monson, Rohr,
Steiner

Senators Meyer, Paulson, Veda

1 A BILL for an Act to create and enact a new section to chapter 54-66 of the North Dakota
2 Century Code, relating to legislative assembly conflict of interest rules; to provide for
3 application; and to declare an emergency.

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

5 **SECTION 1.** A new section to chapter 54-66 of the North Dakota Century Code is created
6 and enacted as follows:

7 **Conflicts of interest - Legislative assembly.**

8 1. Each legislative assembly shall adopt conflict of interest rules. The rules must:

9 a. Require the disclosure by a member of a potential conflict of interest relating to
10 any bill in which the member may have a direct, unique, substantial, or individual
11 interest.

12 b. Ensure a mechanism is in place to record each disclosure and make it readily
13 available to the public.

14 2. If the legislative assembly adopts rules under subsection 1 which are at least as
15 restrictive as the conflict of interest rules adopted by the ethics commission, the
16 disclosure process portion of the conflict of interest rules adopted by the ethics
17 commission may not apply to members of the legislative assembly.

18 **SECTION 2. APPLICATION.** House Rule 321, Senate Rule 321, and associated rules
19 relating to conflicts of interest of legislators, as enacted by the sixty-eighth legislative assembly,
20 are at least as restrictive as the conflict of interest rules adopted by the ethics commission and
21 control conflict of interest disclosure for members of the legislative assembly.

22 **SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

ARTICLE 115-04
CONFLICT OF INTEREST

Key Toa JMK
MARCH 23, 2023

Chapter
115-04-01 Conflict of Interest

CHAPTER 115-04-01
CONFLICT OF INTEREST

October 2022

Section
115-04-01-01 Definitions
115-04-01-02 Disclosure of Potential Conflict of Interests
115-04-01-03 Neutral Reviewer Evaluation of Potential Conflict Disclosures, Decision, and Action
115-04-01-04 Disclosure Form and Documentation
115-04-01-05 Adoption of More Restrictive Rules

115-04-01-01. Definitions.

1. "Disqualifying conflict of interest" means one of the following:

- a. A potential conflict of Interest disclosed pursuant to this rule which the public official has determined requires recusal and abstention from further action in the matter; or
- b. A potential conflict of Interest disclosed pursuant to this rule which the neutral reviewer has determined requires the public official to recuse and abstain from further action in the matter.

Equity of Conflict of Interest (LF)

2. "Potential conflict of interest" means a public official as part of the public official's duties must make a decision or take action in a matter in which the public official has:

- a. Received a gift from one of the parties;
- b. A significant financial interest in one of the parties or in the outcome of the proceeding; or
- c. A relationship in private capacity with one of the parties.

3. "Gift" means a gift not otherwise permitted under article XIV of the Constitution of North Dakota, North Dakota Century Code chapter 54-66, or North Dakota Administrative Code chapter 115-03-01.

4. "Immediate family" means a public official's parent, sibling, spouse, grandparent, grandchild, stepchild, or child by blood or adoption.

5. "Neutral reviewer" means the individual or committee designated by an agency, legislative body, board, commission, or committee to receive disclosures of potential conflicts of interest and determine whether the potential conflict of interest is a disqualifying conflict of interest. In the absence of a rule or policy designating a neutral reviewer, the following shall apply:

- a. If a public official with a potential conflict of interest is a member of a legislative body, board, commission, or committee the remaining individuals who are members of the legislative body, board, commission, or committee shall be considered as the neutral reviewer;
- b. If a public official with a potential conflict of interest is an employee of the legislature, the public official's supervisor may be considered as the neutral reviewer;

↓ Key Statement

- c. If a public official with a potential conflict of interest is a member of the governor's cabinet, the governor's designated ethics officer shall be considered as the neutral reviewer;
 - d. If the public official with a potential conflict of interest is an appointed public official, the appointing official shall be considered as the neutral reviewer; or
 - e. If none of the above apply, the public official shall make the determination but must report the disclosure and decision in the manner set forth in section 115-04-01-04 within seven calendar days.
6. "Public official" means any elected or appointed official of the North Dakota executive or legislative branches, including members of the ethics commission, members of the governor's cabinet, and employees of the legislative branch.
 7. "Relationship in a private capacity" means a past or present commitment, interest or relationship of the public official in a matter involving the public official's immediate family, individual's residing in the public official's household, the public official's employer, or employer of the public official's immediate family, or individuals with whom the public official has a substantial and continuous business relationship.
 8. "Significant financial interest" means a direct and substantial in-kind or monetary interest, or its equivalent, not shared by the general public; however, does not include investments in a widely held investment fund, such as mutual funds, exchange-traded funds, participation in a public employee benefits plan, or lawful campaign contributions.

History: Effective October 19, 2022.

* Legislature Immune ↓ ** Legislature Has This

115-04-01-02. Disclosure of potential conflict of interests.

- * 1. Subject to the requirements of section 115-04-01-05, this section shall only apply if an agency, board, or commission does not have a current conflicts of interest statute or rule. In any assessment of a possible conflict of interest the matter will be reported to the ethics commission in accordance with section 115-04-01-04.
- 2. When a matter comes before a public official and the public official has a known potential conflict of interest, the public official must disclose the potential conflict of interest.
- 3. The disclosure of potential conflict of interest must be made prior to the public official taking any action or making any decision in the matter and must provide sufficient information concerning the matter and the public official's potential conflict of interest. Disclosure shall be on the written form approved by the ethics commission as set forth in section 115-04-01-04.
- 4. In emergency or other exigent circumstances where time is of the essence, and a public official is not permitted or is otherwise unable to abstain from action in connection with the matter, the public official must disclose the potential conflict of interest and the action with the neutral reviewer in the manner requested by the neutral reviewer. The disclosure must occur within seven calendar days of the public official's action in the matter.
- 5. Upon the completion of the required disclosure of a potential conflict of interest, the public official may voluntarily recuse himself and abstain from further action in the matter.

History: Effective October 19, 2022.

115-04-01-03. Neutral reviewer evaluation of potential conflict disclosures, decision, and action.

1. Subject to section 115-04-01-05, this section shall only apply if an agency, board, or commission does not have a current conflict of interest statute or rule. In any assessment of a possible conflict of interest the matter will be reported to the ethics commission in accordance with section 115-04-01-04.
2. If a public official elects not to recuse themselves from the matter, the public official may consult with or defer to the neutral reviewer. The neutral reviewer, if utilized, shall evaluate the disclosure, may request further information from the public official regarding the disclosure, and shall determine if the disclosed potential conflict of interest constitutes a disqualifying conflict of interest.
3. Upon completion of the review of the potential conflict of interest, the neutral reviewer should communicate to the public official one of the following:
 - a. The potential conflict of interest does not constitute a disqualifying conflict of interest, and the public official may participate in the matter; or
 - b. The potential conflict of interest does constitute a disqualifying conflict of interest, and the public official shall recuse himself and abstain from participating in the matter.
4. A violation of article XIV of the Constitution of North Dakota or these rules will not be found if:
 - a. The public official consults with and adheres to the neutral reviewer's suggested course of action;
 - b. The public official acts in good faith; and
 - c. The disclosed material facts surrounding the potential conflict of interest are substantially the same as the facts presented in the complaint.
5. If applicable the neutral reviewer shall comply with the requirements of North Dakota Century Code chapter 44-04 in its consideration and review of the potential conflict of interest. During any discussion of a potential conflict of interest, upon request by the neutral reviewer, the public official may provide additional information regarding the potential conflict of interest and the matter in question. Where North Dakota Century Code chapter 44-04 applies, the public official may not be asked to leave the discussion of the potential conflict of interest; however, the disclosing public official may voluntarily leave the meeting at which the discussion occurs.
6. If the neutral reviewer is a group of individuals in which the public official is a member, the public official may not vote on the issue of whether a potential conflict of interest constitutes a disqualifying conflict of interest. The public official may not be counted for purposes of determining whether a quorum is present. Any quorum requirement established under statute or rule shall be reduced as though the public official were not a member of the group of individuals that constitutes the neutral reviewer.
7. The following standards shall guide the review and decision of either a public official or the neutral reviewer with respect to any public official's potential conflict of interest:
 - a. Appropriate weight and proper deference must be given to the requirement that a public official perform the duties of elected or appointed office, including the duty to vote or otherwise act upon a matter, provided the public official has properly disclosed the potential conflict of interest as required by this rule.

- b. A decision that requires a public official to recuse or abstain from further action or decision in a matter should only occur in cases where the independence of judgment of a reasonable person in the public official's situation would be materially affected by the disclosed potential conflict of interest.
- c. The review of a potential conflict of interest and any decision that would require a public official to recuse themselves or abstain from further involvement in a matter shall consider any applicable North Dakota law which precludes the public official from recusal or abstention in the matter. *No Conflict of Interest IF:*
- * d. It is presumed that a public official does not have a disqualifying conflict of interest if the public official would not derive any personal benefit which is greater than that accruing to any other member of the general public or any general business, profession, occupation, or group affected by the matter.
- e. Any guidance issued by the ethics commission, including informal guidance, advisory opinions, rules, standards, and precedent.

History: Effective October 19, 2022.

115-04-01-04. Disclosure form and documentation.

- 1. Disclosure required under these rules shall be made using the form approved by the ethics commission and available on the ethics commission website. The form will allow public officials and directors, officers, commissioners, heads, or other executives of agencies to input information and attach relevant documentation.
- 2. The neutral reviewer or public official shall document the decision regarding any disclosures on the approved form. Upon completion, the neutral reviewer or public official shall provide a copy of the completed form to the relevant department, agency, board, body, commission, or committee, and the ethics commission. The public official may retain a copy of the completed form.
- 3. Departments, agencies, boards, commissions, or public entities shall document in the official minutes of a proceeding information, if applicable, that a public official or director, officer, commissioner, head, or other executive has been recused from any further involvement in the matter.

History: Effective October 19, 2022.

Legislatures Has Done This

115-04-01-05. Adoption of more restrictive rules.

Any agency, office, commission, board, or entity subject to these rules may adopt conflict of interest rules that are more restrictive than these rules but may not adopt conflict of interest rules that are less restrictive.

History: Effective October 19, 2022.