

Sixty-ninth
Legislative Assembly
of North Dakota

**FIRST ENGROSSMENT
with Conference Committee Amendments
ENGROSSED SENATE BILL NO. 2004**

Introduced by

Appropriations Committee

A BILL for an Act to provide an appropriation for defraying the expenses of the ethics commission; to create and enact a new section to chapter 54-03 and two new sections to chapter 54-66 of the North Dakota Century Code, relating to immunity and a defense for individuals voting on legislation, closure of a matter of the ethics commission, rules for complaint management time standards, and an ethics commission annual report; to amend and reenact sections 12.1-13-02, 54-66-01, 54-66-04, 54-66-05, 54-66-06, and 54-66-07, subsection 2 of section 54-66-08, and sections 54-66-09, 54-66-10, 54-66-12, and 54-66-18 of the North Dakota Century Code, relating to immunity from criminal prosecution, definitions, ethics commission meetings, complaints, an informal resolution process, law enforcement referrals, findings, appeals, confidential information related to a complaint, and conflicts of interest; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the ethics commission for the purpose of defraying the expenses of the ethics commission, for the biennium beginning July 1, 2025, and ending June 30, 2027, as follows:

		Adjustments or	
	<u>Base Level</u>	<u>Enhancements</u>	<u>Appropriation</u>
Ethics commission	\$1,041,374	\$316,707	\$1,358,081
New and vacant FTE pool	<u>0</u>	<u>9,935</u>	<u>9,935</u>

1	Total general fund	\$1,041,374	\$326,642	\$1,368,016
2	Full-time equivalent positions	3.00	0.00	3.00

3 **SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO**

4 **SEVENTIETH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding
5 items included in the appropriation in section 1 of this Act which are not included in the entity's
6 base budget for the 2027-29 biennium and which the entity shall report to the appropriations
7 committees of the seventieth legislative assembly regarding the use of this funding:

8	<u>One-Time Funding Description</u>	<u>General Fund</u>
9	Case management system	\$50,000
10	Office furniture	<u>2,348</u>
11	Total	\$52,348

12 **SECTION 3. NEW AND VACANT FULL-TIME EQUIVALENT POOL - LIMITATION -**

13 **TRANSFER REQUEST.** The ethics commission may not spend funds appropriated in the new
14 and vacant full-time equivalent pool line item in section 1 of this Act, but may request the office
15 of management and budget to transfer funds from the new and vacant full-time equivalent pool
16 line item to the ethics commission line item in accordance with the guidelines and reporting
17 provisions included in House Bill No. 1015, as approved by the sixty-ninth legislative assembly.

18 **SECTION 4. AMENDMENT.** Section 12.1-13-02 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **12.1-13-02. Speculating or wagering on official action or information.**

- 21 1. A ~~person~~An individual is guilty of a class A misdemeanor if during employment as a
22 public servant, or within one year thereafter, in contemplation of official action by
23 himself~~the individual~~ as a public servant or by a government agency with which he~~the~~
24 individual is or has been associated as a public servant, or in reliance on information
25 to which he~~the individual~~ has or had access only in his~~the individual's~~ capacity as a
26 public servant, he~~the individual~~:
27 a. Acquires a pecuniary interest in any property, transaction, or enterprise which
28 may be affected by such~~the~~ information or official action;
29 b. Speculates or wagers on the basis of such~~the~~ information or official action; or
30 c. Aids another individual to do any of the foregoing.

- 1 2. ~~A person~~An individual is guilty of a class A misdemeanor if as a public servant ~~he~~the
2 individual takes official action which is likely to benefit ~~him~~the individual as a result of
3 an acquisition of a pecuniary interest in any property, transaction, or enterprise, or of a
4 speculation or wager, which ~~he~~the individual made, or caused or aided another to
5 make, in contemplation of ~~such~~the official action.
- 6 3. An individual is immune from prosecution under this section if:
- 7 a. The individual was a member of the legislative assembly at the time the official
8 action was taken;
- 9 b. The official action was a vote on a measure in the senate or house of
10 representatives or a legislative committee; and
- 11 c. The individual adhered to legislative conflict of interest rules requiring an
12 individual to disclose a personal or private interest to the member's respective
13 chamber of the legislative assembly, a legislative committee, the president of the
14 senate, or the speaker of the house.

15 **SECTION 5.** A new section to chapter 54-03 of the North Dakota Century Code is created
16 and enacted as follows:

17 **Voting on legislation - Immunity - Affirmative defense.**

18 If an individual who is a member of the legislative assembly adheres to:

- 19 1. Legislative rules requiring an individual to disclose a personal or private interest to the
20 member's respective chamber of the legislative assembly, a legislative committee, the
21 president of the senate, or the speaker of the house, the individual and an
22 organization for which the individual is an agent, as defined in section 12.1-03-04, is
23 immune from criminal prosecution under the laws of this state for an offense arising
24 from the individual voting on a measure in a legislative committee, the senate, or the
25 house of representatives.
- 26 2. Informal advice from a staff member of the ethics commission, reliance on the advice
27 is an affirmative defense in a prosecution for an offense arising from the individual
28 voting on a measure in a legislative committee, the senate, or the house of
29 representatives.

30 **SECTION 6. AMENDMENT.** Section 54-66-01 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **54-66-01. Definitions.**

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

3 1. ~~"Accused individual" means a lobbyist, public official, candidate for public office,~~
4 ~~political committee, or contributor who is alleged to have violated article XIV of the~~
5 ~~Constitution of North Dakota, this chapter, or another law or rule regarding~~
6 ~~transparency, corruption, elections, or lobbying.~~

7 2. "Complainant" means an individual who, in writing or verbally, submits a complaint to
8 the commission and is:

9 a. A North Dakota resident;

10 b. Subject to licensing by a state agency or other public official subject to the
11 jurisdiction of the ethics commission; or

12 c. A party to a quasi-judicial proceeding before a state agency or other public official
13 subject to the jurisdiction of the ethics commission.

14 ~~3.2.~~ "Complaint" means a verbal or written allegation to the commission that a lobbyist,
15 public official, candidate for public office, political committee, or contributor has
16 violated article XIV of the Constitution of North Dakota, this chapter, or another law or
17 rule regarding transparency, corruption, elections, or lobbying.

18 ~~4.3.~~ "Ethics commission" or "commission" means the North Dakota ethics commission
19 established by article XIV of the Constitution of North Dakota.

20 ~~5.4.~~ "Gift" means any item, service, or thing of value not given in exchange for fair market
21 consideration including travel and recreation, except:

22 a. Purely informational material;

23 b. A campaign contribution; and

24 c. An item, service, or thing of value given under conditions that do not raise ethical
25 concerns, as set forth in rules adopted by the ethics commission, to advance
26 opportunities for state residents to meet with public officials in educational and
27 social settings in the state.

28 ~~6.5.~~ "Influence state government action" means promoting or opposing the adoption of a
29 rule by an administrative agency or the commission under chapter 28-32.

30 ~~7.6.~~ "Lobby" means an activity listed in subsection 1 of section 54-05.1-02.

31 ~~8.7.~~ "Lobbyist" means an individual required to register under section 54-05.1-03.

1 ~~9-8.~~ "Public official" means an elected or appointed official of the state's executive or
2 legislative branch, members of the commission, members of the governor's cabinet,
3 and employees of the legislative branch.

4 ~~10-9.~~ "Receives the complaint" means one or more members of the commission learn of the
5 complaint.

6 ~~10.~~ "Respondent" means a lobbyist, public official, candidate for public office, political
7 committee, or contributor who is alleged to have violated article XIV of the Constitution
8 of North Dakota, this chapter, or another law or rule regarding transparency,
9 corruption, elections, or lobbying.

10 11. "Ultimate and true source" means the person that knowingly contributed over two
11 hundred dollars solely to lobby or influence state government action.

12 **SECTION 7. AMENDMENT.** Section 54-66-04 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **54-66-04. Ethics commission member terms - Meetings - Code of ethics -**
15 **Compensation - Office.**

16 1. The terms of the initial members of the ethics commission must be staggered to
17 ensure no more than two members' terms expire in one year. The terms of the initial
18 members may be less than four years to accommodate the required staggering of
19 terms.

20 2. Unless the complaint at issue has resulted in the imposition of a penalty or referral for
21 enforcement under section 54-66-09, any portion of a meeting during which
22 commission members discuss complaints, informal resolutions, attempts to informally
23 resolve complaints, investigations, or referrals under this chapter, the identity of an-
24 accused individual a respondent or complainant, or any other matter arising from a
25 complaint are closed meetings.

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

29 4. Ethics commission members are entitled to:

1 a. Compensation for each day necessarily spent conducting commission business
2 in the amount provided for members of the legislative management under section
3 54-35-10; and

4 b. Payment for mileage and travel expenses necessarily incurred in the conduct of
5 commission business as provided under sections 44-08-04 and 54-06-09.

6 5. The director of the office of management and budget shall allocate office space in the
7 state capitol for the ethics commission, or, if office space in the capitol is unavailable,
8 shall negotiate for, contract for, and obtain office space for the ethics commission in
9 the city of Bismarck or in the Bismarck area. The ethics commission's office space
10 may not be located in the office space of any other government agency, board,
11 commission, or other governmental entity, and must provide sufficient privacy and
12 security for the ethics commission to conduct its business. The director shall charge
13 the ethics commission an amount equal to the fair value of the office space and
14 related services the office of management and budget renders to the ethics
15 commission.

16 **SECTION 8. AMENDMENT.** Section 54-66-05 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **54-66-05. Making a complaint - Summary dismissal of complaint.**

19 1. A complaint may be made to the commission orally or in writing. If a complainant does
20 not provide the complainant's name, address, and telephone number with the
21 complaint, the ethics commission may not investigate or take other action regarding
22 the complaint. The commission shall summarize each oral complaint in writing unless
23 the complaint must be disregarded under this section.

24 2. Upon receipt of a complaint or information regarding a violation, the commission may
25 summarily dismiss the complaint or decline to proceed with a complaint if the alleged
26 violation does not fall within the commission's jurisdiction, is insufficient to identify a
27 possible violation, or fails to comply with rules adopted by the commission. In lieu of
28 summary dismissal, the commission may refer the matter under section 54-66-08.

29 3. If a complainant would like the complainant's identity to remain confidential, the
30 commission may not release the complainant's name and address to the ~~accused-~~
31 ~~individual~~ respondent without the authorization of the complainant. If the complainant

1 does not authorize release of the complainant's name and address to the ~~accused-~~
2 ~~individual~~respondent, the statement of the complainant may not be used as evidence
3 of a violation.

- 4 4. If the commission receives an anonymous complaint that contains documentary or real
5 evidence of possible criminal conduct, the commission may refer the matter to the
6 appropriate law enforcement agency as provided under section 54-66-08, and may not
7 otherwise divulge the documentary or real evidence.

8 **SECTION 9. AMENDMENT.** Section 54-66-06 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **54-66-06. Informing the ~~accused individual~~respondent - Written response permitted -**
11 **Petition to dismiss complaint.**

- 12 1. Within thirty calendar days, the commission shall inform an ~~accused individual~~a
13 respondent of the complaint. Subject to the confidentiality requirements set forth in
14 section 54-66-05, the ~~accused individual~~respondent will be provided with the written
15 complaint or written summary of the oral complaint, witness statements, and other
16 documentary evidence included with the complaint. The ~~accused individual~~respondent
17 may provide a written response to the complaint within thirty calendar days, or after
18 the commission requests a written response to the complaint or summary of the
19 complaint, a period as set by the commission. This subsection does not preclude the
20 ~~accused individual~~respondent from providing a written response to the complaint
21 before receiving a request for written response from the commission.
- 22 2. If the commission has summarily dismissed the complaint under subsection 2 of
23 section 54-66-05, before notifying the ~~accused individual~~respondent as required by
24 this section, the notification to the ~~accused individual~~respondent must include notice of
25 the summary dismissal.

26 **SECTION 10. AMENDMENT.** Section 54-66-07 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **54-66-07. Informal resolution.**

29 The commission shall attempt to negotiate or mediate an informal resolution between the
30 ~~accused individual~~respondent and the complainant unless the commission summarily dismissed
31 the complaint under section 54-66-05. The ~~accused individual~~respondent may be accompanied

1 by legal counsel in a negotiation or mediation. If the informal resolution process between the
2 respondent and the complainant is unsuccessful, the commission may work with the respondent
3 to settle and close the matter.

4 **SECTION 11. AMENDMENT.** Subsection 2 of section 54-66-08 of the North Dakota Century
5 Code is amended and reenacted as follows:

- 6 2. If the commission believes a complaint contains allegations of criminal conduct, the
7 matter ~~must~~may be coordinated with the appropriate law enforcement agency with
8 jurisdiction over the offense. If the law enforcement agency agrees to accept a referral
9 for ~~possible~~ criminal prosecution, the commission may not take further action on the
10 complaint until the law enforcement agency informs the commission law enforcement
11 proceedings regarding the complaint are complete. If the law enforcement agency
12 declines a referral for prosecution, the commission may investigate the complaint
13 under the rules adopted by the commission. If the law enforcement agency takes no
14 action on the referral for prosecution within sixty days, the commission may resume its
15 review of the complaint. Unless the agency accepting the referral objects, the
16 commission shall inform the complainant and respondent as soon as reasonably
17 possible of a referral and the nature of the referred allegations.

18 **SECTION 12. AMENDMENT.** Section 54-66-09 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **54-66-09. Investigation findings - Ethics commission determinations.**

- 21 1. An investigator, other than a law enforcement agency, of a complaint shall provide
22 written findings of the investigation to the ethics commission within a reasonable
23 amount of time. The ethics commission shall provide copies of the written findings and
24 evidence considered to the ~~accused individual~~respondent, who may respond to the
25 commission in person or in writing within a reasonable time. If the ~~accused-~~
26 ~~individual~~respondent responds in person, no fewer than three members of the
27 commission shall meet in a closed meeting with the ~~accused individual~~respondent. ~~An~~
28 ~~accused individual~~A respondent may be accompanied by legal counsel when
29 responding to the commission in person. Upon completion of an investigation, the
30 executive director shall prepare a report and recommendation to the commission to

close the matter or issue an alleged violation. The commission may issue an alleged violation, require additional investigation, or close the matter.

2. After providing a reasonable time for an ~~accused individual~~ a respondent to respond to the investigation findings and considering any response to the findings, the ethics commission shall determine whether 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, and inform the ~~accused individual~~ respondent of the determination. If the commission determined a violation occurred, the commission may impose a penalty authorized by law for the violation or refer the matter to the agency with enforcement authority over the violation.

3. The commission may not terminate the employment of a public official or otherwise remove a public official from the public official's public office.

4. The ethics commission may not reconsider, invalidate, or overturn a decision, ruling, recommended finding of fact, recommended conclusion of law, finding of fact, conclusion of law, or order by a hearing officer under chapter 28-32 on the grounds the hearing officer failed to grant a request for disqualification under section 28-32-27 or failed to comply with subsection 5 of section 2 of article XIV of the Constitution of North Dakota.

5. The respondent may petition the commission at any time to dismiss the complaint in the manner prescribed by the commission.

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~~ A respondent may appeal a finding of the ethics commission to the district court of the county where the ~~accused individual~~ respondent 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 the ~~accused individual~~ respondent violated article XIV of the Constitution of North Dakota, this chapter, or another law or rule

1 regarding transparency, corruption, elections, or lobbying, and a court affirmed the
2 determination if appealed, except the information may be disclosed as required by law
3 or as necessary to conduct an investigation arising from a complaint:

- 4 a. Information revealing the contents of a complaint;
5 b. Information that reasonably may be used to identify ~~an accused individual~~
6 respondent; and
7 c. Information relating to or created as part of an investigation of a complaint.

8 2. If a complaint is informally resolved under section 54-66-07, the following information
9 is a confidential record as defined in section 44-04-17.1:

- 10 a. Information revealing the contents of the complaint;
11 b. Information that reasonably may be used to identify the ~~accused~~
12 individual respondent;
13 c. Information relating to or created as part of the process leading to the informal
14 resolution; and
15 d. Information revealing the informal resolution.

16 3. Information that reasonably may be used to identify the complainant is confidential
17 unless the complainant waives confidentiality, authorizes its disclosure, or divulges
18 information that reasonably would identify the complainant. Information, including
19 evidence under consideration by the investigator or commission, deemed confidential
20 under this subsection may be disclosed as required by law or as necessary to conduct
21 an investigation arising from a complaint to include disclosure of evidence being
22 considered to ~~an accused individual~~ respondent.

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

26 **SECTION 15. AMENDMENT.** Section 54-66-18 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **54-66-18. Conflicts of interest - Legislative assembly.**

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

- 1 a. Require the disclosure by a member of a potential conflict of interest relating to
- 2 any bill in which the member may have a ~~direct, unique, substantial, or and~~
- 3 individual interest.
- 4 b. Ensure a mechanism is in place to record each disclosure and make it readily
- 5 available to the public.
- 6 2. If the legislative assembly adopts rules under subsection 1 which are at least as
- 7 restrictive as the conflict of interest rules adopted by the ethics commission, the
- 8 disclosure process portion of the conflict of interest rules adopted by the ethics
- 9 commission may not apply to members of the legislative assembly.

10 **SECTION 16.** A new section to chapter 54-66 of the North Dakota Century Code is created
11 and enacted as follows:

12 **Complaint management time standards.**

13 The commission shall adopt rules for the efficient and timely disposition of complaints from
14 receipt to resolution.

15 **SECTION 17.** A new section to chapter 54-66 of the North Dakota Century Code is created
16 and enacted as follows:

17 **Ethics commission annual report.**

18 1. The ethics commission shall prepare an annual report each fiscal year. The ethics
19 commission shall make the annual report available on its public website within sixty
20 days of the end of each fiscal year.

21 2. The annual report must include:

22 a. The number of complaints received by the commission, the status of those
23 complaints, the commission's actions to resolve the complaints, and the timing
24 related to those actions;

25 b. The number of advisory opinions requested and issued, as well as information
26 regarding general conflict disclosures and quasi-judicial disclosures received;
27 and

28 c. Information regarding education and outreach and the status of the commission's
29 budget.

1 3. The annual report may include recommendations for new or revised laws, rules, or
2 policies that could improve the confidence that North Dakota citizens have in their
3 government.

4 **SECTION 18. EMERGENCY.** Sections 4, 5, 10, 11, 14, and 15 of this Act are declared to be
5 an emergency measure.