

**HOUSE BILL NO. 1505**

Introduced by

Representative Lefor

Senator Hogue

1 A BILL for an Act to create and enact a new section to chapter 54-03 and a new section to  
2 chapter 54-66 of the North Dakota Century Code, relating to immunity and an affirmative  
3 defense for individuals voting on legislation and closure of matters by the ethics commission; to  
4 amend and reenact sections 12.1-13-02, 54-66-10, 54-66-12, and 54-66-18 of the North Dakota  
5 Century Code, relating to immunity from criminal prosecution, individuals' rights to appeals,  
6 confidential information, and conflicts of interest; and to declare an emergency.

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

8 **SECTION 1. AMENDMENT.** Section 12.1-13-02 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10 **12.1-13-02. Speculating or wagering on official action or information.**

- 11 1. ~~A person~~An individual is guilty of a class A misdemeanor if during employment as a  
12 public servant, or within one year thereafter, in contemplation of official action by  
13 ~~himself~~the individual as a public servant or by a government agency with which ~~he~~the  
14 individual is or has been associated as a public servant, or in reliance on information  
15 to which ~~he~~the individual has or had access only in ~~his~~the individual's capacity as a  
16 public servant, ~~he~~the individual:
- 17 a. Acquires a pecuniary interest in any property, transaction, or enterprise which
  - 18 may be affected by ~~such~~the information or official action;
  - 19 b. Speculates or wagers on the basis of ~~such~~the information or official action; or
  - 20 c. Aids another individual to do any of the foregoing.
- 21 2. ~~A person~~An individual is guilty of a class A misdemeanor if as a public servant ~~he~~the  
22 individual takes official action which is likely to benefit ~~him~~the individual as a result of  
23 an acquisition of a pecuniary interest in any property, transaction, or enterprise, or of a

1 speculation or wager, which ~~hethe~~ the individual made, or caused or aided another to  
2 make, in contemplation of ~~sueh~~ the official action.

3 3. An individual is immune from prosecution under this section if:

4 a. The individual was a member of the legislative assembly at the time the official  
5 action was taken;

6 b. The official action was a vote on a measure in the senate or house of  
7 representatives or a legislative committee; and

8 c. The individual adhered to legislative rules requiring an individual to disclose a  
9 personal or private interest to the member's respective chamber of the legislative  
10 assembly, legislative committee, the president of the senate, or the speaker of  
11 the house.

12 **SECTION 2.** A new section to chapter 54-03 of the North Dakota Century Code is created  
13 and enacted as follows:

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

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

16 1. Legislative rules requiring an individual to disclose a personal or private interest to the  
17 member's respective chamber of the legislative assembly, a legislative committee, the  
18 president of the senate, or the speaker of the house, the individual is immune from  
19 criminal prosecution under the laws of this state for an offense arising from the  
20 individual voting on a measure in a legislative committee, the senate, or the house of  
21 representatives.

22 2. Informal advice from a staff member of the ethics commission, reliance on the advice  
23 is an affirmative defense in a prosecution for an offense arising from the individual  
24 voting on a measure in a legislative committee, the senate, or the house of  
25 representatives.

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

28 **Issuance of alleged violation - Closure of the matter.**

29 Upon completion of an informal investigation, the executive director shall close the matter or  
30 prepare a request to the commission to issue an alleged violation. The executive director may  
31 close the matter at any time during the enforcement action.

1       **SECTION 4. AMENDMENT.** Section 54-66-10 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       **54-66-10. Appeals.**

4       An accused individual may appeal a ~~finding of the ethics commission order~~ to the district  
5 court of the county where the accused individual resides, the district court in Burleigh County, or  
6 a district court of the county in which a substantial part of the subject matter of the alleged  
7 violation occurred within thirty days after notice of the commission order.

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

10       **54-66-12. Confidential information.**

11       1. The following ~~information is a~~ are confidential record ~~as defined in~~ records under  
12 section 44-04-17.1 when in the possession of the commission, unless the commission  
13 has ~~determined the accused individual violated article XIV of the Constitution of North~~  
14 ~~Dakota, this chapter, or another law or rule regarding transparency, corruption,~~  
15 ~~elections, or lobbying,~~ issued an order in the relevant matter and a court affirmed the  
16 ~~determination~~ order if appealed, except the ~~information~~ records may be disclosed as  
17 required by law, as allowed under this chapter, or as necessary to conduct an  
18 investigation arising ~~from a complaint~~:

- 19       a. ~~Information~~ Recorded facts relating to an allegation of a violation of article XIV of  
20 the Constitution of North Dakota, this chapter, or another law or rule regarding  
21 transparency, corruption, elections, or lobbying which were submitted to the  
22 commission by an individual;
- 23       b. A record prepared for the commission by the commission's staff or agents to help  
24 the commission determine whether to issue an alleged violation;
- 25       c. A record revealing the contents of a complaint;
- 26       ~~b. Information~~
- 27       d. A record that reasonably may be used to identify an accused individual; and
- 28       ~~e. Information~~
- 29       e. A record relating to or created as part of an investigation of a complaint.

- 1           2.    If a complaint is informally resolved under section 54-66-07, the following information-  
2                    is a confidential record as defined in section 44-04-17.1 when in the possession of the  
3                    commission:
- 4                    a.    ~~Information~~A record revealing the contents of the complaint;  
5                    b.    ~~Information~~A record that reasonably may be used to identify the accused  
6                            individual;  
7                    c.    ~~Information~~A record relating to or created as part of the process leading to the  
8                            informal resolution; and  
9                    d.    ~~Information~~A record revealing the informal resolution.
- 10           3.    ~~Information~~A record that reasonably may be used to identify the complainant is  
11                    confidential unless the complainant waives confidentiality, authorizes its disclosure, or  
12                    divulges information that reasonably would identify the complainant. ~~Information~~A  
13                    record, including evidence under consideration by the investigator or commission,  
14                    deemed confidential under this subsection may be disclosed as required by law or as  
15                    necessary to conduct an investigation arising from a complaint to include disclosure of  
16                    evidence being considered to an accused individual.
- 17           4.    ~~The information~~A record deemed confidential in subsections 1 and 2 may be disclosed  
18                    by the ethics commission if the accused individual agrees to the disclosure.
- 19           5.    Notwithstanding this chapter:
- 20                    a.    If an individual who is a member of a department, board, agency, commission, or  
21                            other public entity is a subject of a complaint or other commission process or  
22                            proceeding, the individual may disclose to the other members a record or other  
23                            information reasonably necessary for the department, board, agency,  
24                            commission, or other public entity to carry out the entity's duties.
- 25                    b.    If a department, board, agency, commission, or other public entity is a subject of  
26                            a complaint or other commission process or proceeding, a member of the entity  
27                            may disclose to the other members a record or other information reasonably  
28                            necessary for the department, board, agency, commission, or other public entity  
29                            to carry out the entity's duties.
- 30           6.    Notwithstanding any statute or administrative rule, including a rule of the ethics  
31                    commission, an individual may disclose a record or other information to the legal

1 counsel for the individual, whether in the individual's personal or official capacity, and  
2 to legal counsel for any department, board, agency, commission, or other public entity  
3 to which the individual belongs or in which the individual is employed.

4 7. Notwithstanding any statute or administrative rule, during the course of any process or  
5 proceeding of the commission, an individual may disclose a record or other  
6 information to a codefendant, individual with common interests, or individual who  
7 possesses information reasonably necessary for the individual to use in the  
8 commission's process or proceeding.

9 **SECTION 6. AMENDMENT.** Section 54-66-18 of the North Dakota Century Code is  
10 amended and reenacted as follows:

11 **54-66-18. Conflicts of interest - Legislative assembly.**

- 12 1. Each legislative assembly shall adopt conflict of interest rules. The rules must:
- 13 a. Require the disclosure by a member of a potential conflict of interest relating to
- 14 any bill in which the member may have a ~~direct, unique, substantial, or~~ and
- 15 individual interest.
- 16 b. Ensure a mechanism is in place to record each disclosure and make it readily
- 17 available to the public.
- 18 2. If the legislative assembly adopts rules under subsection 1 which are at least as
- 19 restrictive as the conflict of interest rules adopted by the ethics commission, the
- 20 disclosure process portion of the conflict of interest rules adopted by the ethics
- 21 commission may not apply to members of the legislative assembly.

22 **SECTION 7. EMERGENCY.** This Act is declared to be an emergency measure.