

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

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 a~~
3 defense for ~~individuals~~ persons related to voting on legislation and closure of matters by the
4 ethics commission; to amend and reenact sections 12.1-13-02, 54-66-10, 54-66-12, and
5 54-66-18 of the North Dakota Century Code, relating to immunity from criminal prosecution,
6 individuals' rights to appeals, confidential information, and conflicts of interest; to provide for
7 application; and to declare an emergency.

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

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

11 **12.1-13-02. Speculating or wagering on official action or information.**

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

- 1 c. Aids another individual to do any of the foregoing.
- 2 2. ~~A person~~An individual is guilty of a class A misdemeanor if as a public servant ~~he~~the
- 3 individual takes official action which is likely to benefit ~~him~~the individual as a result of
- 4 an acquisition of a pecuniary interest in any property, transaction, or enterprise, or of a
- 5 speculation or wager, which ~~he~~the individual made, or caused or aided another to
- 6 make, in contemplation of ~~such~~the official action.
- 7 3. An individual is immune from prosecution under this section if:
- 8 a. The individual was a member of the legislative assembly at the time the official
- 9 action was taken;
- 10 b. The official action was a vote on a measure in the senate or house of
- 11 representatives or a legislative committee; and
- 12 c. The individual adhered to ~~legislative rules~~section 54-66-18 requiring an individual
- 13 to disclose a ~~personal or private~~potential conflict of interest to the member's
- 14 respective chamber of the legislative assembly, legislative committee, the
- 15 president of the senate, or the speaker of the house.

16 **SECTION 2.** A new section to chapter 54-03 of the North Dakota Century Code is created

17 and enacted as follows:

18 **Voting on legislation - Immunity - ~~Affirmative defense~~Defense.**

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

- 20 1. ~~Legislative rules~~Section 54-66-18 requiring an individual to disclose a ~~personal or~~
- 21 ~~private~~potential conflict of interest to the member's respective chamber of the
- 22 legislative assembly, a legislative committee, the president of the senate, or the
- 23 speaker of the house, the individual ~~is~~and an "organization" for which the individual ~~is~~
- 24 an "agent", as those terms are defined under section 12.1-03-04, are immune from
- 25 criminal prosecution under the laws of this state for an offense arising from the
- 26 individual voting on a measure in a legislative committee, the senate, or the house of
- 27 representatives.
- 28 2. Informal ~~advice~~guidance from ~~a staff member~~the executive director of the ethics
- 29 commission, reliance on the ~~advice~~informal guidance is ~~an affirmative~~a defense in a
- 30 prosecution for an offense arising from the individual voting on a measure in a
- 31 legislative committee, the senate, or the house of representatives, if:

- 1 a. The individual acts in good faith; and
- 2 b. The material facts surrounding the conduct are substantially the same as the
- 3 conduct presented in the informal guidance.
- 4 3. Written guidance from the executive director of the ethics commission issued under
- 5 the rules of the ethics commission, reliance on the written guidance is a defense in a
- 6 prosecution for an offense arising from the individual voting on a measure in a
- 7 legislative committee, the senate, or the house of representatives.

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

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

11 Upon completion of an informal investigation, the executive director shall prepare a report
12 and recommendation to the commission to close the matter or ~~prepare a request to the~~
13 ~~commission to~~ issue an alleged violation. The ~~executive director~~commission may issue an
14 alleged violation, require additional informal investigation, or close the matter ~~at~~. At any time
15 during the enforcement action, the commission may settle and close the matter. A settlement
16 may include the issuance of an advisory opinion pursuant to section 54-66-04.2 or informal
17 guidance pursuant to the rules of the commission.

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

20 **54-66-10. Appeals.**

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

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

27 **54-66-12. Confidential information.**

- 28 1. The following ~~information is~~ ~~are~~ confidential ~~record as defined in~~ ~~records under~~
- 29 ~~section 44-04-17.1~~ when in the possession of the commission, unless the commission
- 30 ~~has determined the accused individual violated article XIV of the Constitution of North~~
- 31 ~~Dakota, this chapter, or another law or rule regarding transparency, corruption,~~

1 elections, or lobbying, issued ~~an a final commission order in the relevant matter~~ and a
2 court affirmed the determination ~~final commission order~~, if appealed, except the
3 ~~information records~~ may be disclosed as required by law, ~~as allowed under this~~
4 ~~chapter~~, or as necessary to conduct an investigation arising from a complaint ~~during an~~
5 ~~enforcement action~~:

6 a. ~~Information Recorded facts relating to an allegation of a violation of article XIV of~~
7 ~~the Constitution of North Dakota, this chapter, or another law or rule regarding~~
8 ~~transparency, corruption, elections, or lobbying which were~~ Relevant information
9 submitted to the commission by an individual;

10 b. ~~A record~~ Information prepared for the commission ~~by the commission's staff or~~
11 ~~agents to help the commission~~ determine whether to issue an alleged violation;

12 c. ~~A record~~ Information revealing the contents of ~~a complaint~~ an alleged violation;

13 b. Information

14 d. ~~A record~~ Information that reasonably may be used to identify ~~an accused~~
15 ~~individual~~ a respondent; and

16 e. Information

17 e. ~~A record~~ Information relating to or created as part of an investigation of ~~a~~
18 ~~complaint~~ an alleged violation.

19 2. ~~If a complaint is informally resolved under section 54-66-07, the following information~~
20 ~~is a confidential record as defined in section 44-04-17.1 when in the possession of the~~
21 ~~commission~~:

22 ~~a. Information~~ A record revealing the contents of the complaint;

23 ~~b. Information~~ A record that reasonably may be used to identify the accused
24 ~~individual~~;

25 ~~c. Information~~ A record relating to or created as part of the process leading to the
26 ~~informal resolution~~; and

27 ~~d. Information~~ A record revealing the informal resolution.

28 ~~3. Information~~ A record that reasonably may be used to identify ~~the complainant~~ an
29 individual who provides relevant information to the commission is confidential unless
30 the ~~complainant~~ individual waives confidentiality, authorizes its disclosure, or divulges
31 information that reasonably would identify the ~~complainant~~ individual. ~~Information~~ A

1 ~~record~~, including evidence under consideration by the investigator or commission,
2 deemed confidential under this subsection may be disclosed as required by law or as
3 necessary to conduct an investigation ~~arising from a complaint~~ to include disclosure of
4 evidence being considered to ~~an accused individual~~ a respondent.

5 4.3. The information ~~A record~~ deemed confidential in ~~subsections 1 and 2~~ subsection 1 may
6 be disclosed by the ~~ethics individual who provides relevant information to the~~
7 commission, the respondent, and the commission if the ~~accused individual~~ respondent
8 agrees to the disclosure.

9 ~~5. Notwithstanding this chapter:~~

10 ~~a. If an individual who is a member of a department, board, agency, commission, or~~
11 ~~other public entity is a subject of a complaint or other commission process or~~
12 ~~proceeding, the individual may disclose to the other members a record or other~~
13 ~~information reasonably necessary for the department, board, agency,~~
14 ~~commission, or other public entity to carry out the entity's duties.~~

15 ~~b. If a department, board, agency, commission, or other public entity is a subject of~~
16 ~~a complaint or other commission process or proceeding, a member of the entity~~
17 ~~may disclose to the other members a record or other information reasonably~~
18 ~~necessary for the department, board, agency, commission, or other public entity~~
19 ~~to carry out the entity's duties.~~

20 ~~6. Notwithstanding any statute or administrative rule, including a rule of the ethics~~
21 ~~commission, an individual may disclose a record or other information to the legal~~
22 ~~counsel for the individual, whether in the individual's personal or official capacity, and~~
23 ~~to legal counsel for any department, board, agency, commission, or other public entity~~
24 ~~to which the individual belongs or in which the individual is employed.~~

25 ~~7. Notwithstanding any statute or administrative rule, during the course of any process or~~
26 ~~proceeding of the commission, an individual may disclose a record or other~~
27 ~~information to a codefendant, individual with common interests, or individual who~~
28 ~~possesses information reasonably necessary for the individual to use in the~~
29 ~~commission's process or proceeding.~~

30 4. The commission may disclose the information deemed confidential in subsection 1 to
31 an entity with appropriate enforcement authority.

1 5. A record created or maintained by a public entity, other than the commission, retains
2 its status as an open, closed, exempt, or confidential record as defined in section
3 44-04-17.1, notwithstanding the disclosure of the record to the ethics commission
4 during an enforcement action or the relevance of the record to an enforcement action.

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

7 **54-66-18. 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~~ and
11 individual 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 7. APPLICATION.** This Act applies to actions occurring on or after the effective
19 date of this Act.

20 **SECTION 8. EMERGENCY.** This Act is declared to be an emergency measure.