

## SUMMARY OF HOUSE BILL NO. 1521 (2019) - GOVERNMENT ETHICS

In the November 2018 general election, voters approved a ballot measure creating [Article XIV of the Constitution of North Dakota](#).<sup>1</sup> Article XIV contains several provisions related to government ethics applicable to lobbyists, legislators, other elected and appointed state officials, members of the Governor's cabinet, and employees of the legislative branch. Although Article XIV generally became effective on January 5, 2019, several of the sections in the article have delayed effective dates. Some provisions in the article require the Legislative Assembly to enact laws, and many of the provisions in the article existed in statute before Article XIV was created. The Legislative Assembly passed [House Bill No. 1521 \(2019\)](#) to implement parts of Article XIV.

House Bill No. 1521 contains 28 sections that fall into four broad categories. The first five sections of the bill amend sections of North Dakota Century Code Chapter 16.1-08.1, which regulates campaign finance. These bill sections implement Section 1 of Article XIV regarding transparency of campaign contributions and expenditures and provide a penalty for violations of Section 2(4) of Article XIV, which prohibits the personal use of campaign contributions.

Sections 6 through 24 of House Bill No. 1521 amend Chapter 28-32 and require the Ethics Commission created by Article XIV to follow many of the procedures for adopting rules that executive branch agencies are required to follow. While the Ethics Commission is not part of the executive branch, the commission is subject to constitutional due process requirements for rulemaking. However, unlike executive branch rules, Ethics Commission rules are not subject to review by the Attorney General or legislative branch under House Bill No. 1521.

Section 25 of House Bill No. 1521 creates Chapter 54-66, which implements various parts of Article XIV. This section of the bill includes Ethics Commission procedures and requirements, authorizes civil penalties for violations of Article XIV provisions, and gives the Secretary of State and Ethics Commission authority to enforce ethics laws.

Section 26 of House Bill No. 1521 appropriates \$517,155 to the Ethics Commission for general operations and authorizes the commission to hire 2 full-time equivalent positions. Section 27 provides several parts of House Bill No. 1521 will not become effective until January 5, 2021. Section 28 declares the bill sections amending Chapter 28-32 are an emergency measure.

The following chart summarizes each section of House Bill No. 1521:

Bill Section	Summary of Bill Section
1	This section adds a definition of "ultimate and true source" to Chapter 16.1-08.1 to partially implement Section 1(3) of Article XIV which requires the Legislative Assembly to enact laws mandating the "prompt, electronically accessible, plainly comprehensible, public disclosure of the <u>ultimate and true source</u> of funds spent in any medium, in an amount greater than two hundred dollars, adjusted for inflation, to influence any statewide election, election for the legislative assembly, statewide ballot-issue election, or to lobby or otherwise influence state government action." (emphasis added) Chapter 16.1-08.1 existed before Article XIV and requires candidates, political parties, political committees, and others to report campaign contributions and expenditures.
2	This section amends Section 16.1-08.1-03.7, which requires certain political committees to report independent expenditures and disbursements. The amendment requires the reports to include information about the ultimate and true source of funds used to make the independent expenditures or disbursements.
3	This section amends Section 16.1-08.1-04.1, which prohibits the use of campaign contributions for personal benefit. Section 2(4) of Article XIV duplicates this prohibition. Before the effective date of House Bill No. 1521, a willful violation of Section 16.1-08.1-04.1 was a class A misdemeanor <sup>2</sup> under Section 16.1-08.1-07. House Bill No. 1521 amended Section 16.1-08.1-04.1 to authorize the Secretary of State to assess a civil penalty upon any person that knowingly violates the section. The civil penalty will be no less than two times the amount of the contribution used in violation of the law.
4	Before Article XIV was approved by voters, the reporting thresholds under Chapter 16.1-08.1 were \$100 and \$200, depending on the type of statement being reported. Section 1(2) of Article XIV raised the reporting threshold to "two hundred dollars, adjusted for inflation." Section 4 of House Bill No. 1521 amends Section 16.1-08.1-06.2 to require the Secretary of State to make adjustments for inflation to campaign finance reporting thresholds.

<sup>1</sup> Additional analysis of Article XIV is available in Legislative Council memorandum entitled [Comparison of Constitutional Amendment on Ethics and Relevant Sections of the Constitution of North Dakota and North Dakota Century Code](#).

<sup>2</sup> Penalties for criminal offenses are found in Section 12.1-32-01.

5	This section creates a new section in Chapter 16.1-08.1 which requires campaign finance statements that identify a contributor or subcontributor also to identify the ultimate and true source of funds, as defined in Section 1 of the bill. Section 5 of the bill also states a resident taxpayer may commence an action in district court to compel compliance with the section if all other enforcement measures under Chapter 16.1-08.1 have been exhausted and the taxpayer reasonably believes there is a failure to comply. This provision stems from Section 1(2) of Article XIV, which states "[i]f the laws or rules enacted or an implementation, interpretation, or enforcement action taken under this section fail to fully vindicate the rights provided in this section, a resident taxpayer may bring suit in the courts of this state to enforce such rights."
6	This section defines "commission" as the Ethics Commission for Chapter 28-32, which includes procedures for rulemaking. Before the creation of the Ethics Commission in Article XIV, Chapter 28-32 applied only to executive branch agencies. House Bill No. 1521 amends sections in the chapter to require the Ethics Commission to comply with many rulemaking procedures.
7	This section requires the Ethics Commission to comply with emergency rulemaking procedures in Section 28-32-03.
8	This section amends Section 28-32-06 to provide Ethics Commission rules generally have the force and effect of law.
9	This section amends Section 28-32-07 to require the Ethics Commission to implement statutorily required rule changes by certain deadlines.
10	This section amends Section 28-32-08 to require the Ethics Commission to conduct and issue regulatory analyses for certain proposed rules.
11	This section amends Section 28-32-08.1 to exempt the Ethics Commission from having to conduct small business, entity, organization, and political subdivision analyses for proposed rules.
12	This section amends Section 28-32-08.2 to require the Ethics Commission to provide a fiscal note for proposed rules.
13	This section amends Section 28-32-09 to require the Ethics Commission to prepare a written assessment of the constitutional takings implications of certain proposed rules.
14	This section amends Section 28-32-10 to require the Ethics Commission to provide notice and hearings of proposed rules.
15	This section amends Section 28-32-11, which provides requirements for public hearings on proposed rules.
16	This section amends Section 28-32-12 to require the Ethics Commission to provide a comment period of at least 10 days after the conclusion of a public hearing on a proposed rule.
17	This section amends Section 28-32-15 to require the Ethics Commission to file rules with the Legislative Council for publication in the North Dakota Administrative Code.
18	This section amends Section 28-32-16 to allow interested persons to petition the Ethics Commission to reconsider an adopted rule.
19	This section amends Section 28-32-18.1 authorizing the Administrative Rules Committee to require the Ethics Commission to brief the committee on the commission's rules and identify rules that are obsolete or for which legal authority no longer exists.
20	This section amends Section 28-32-19(2) to authorize the Legislative Council to prescribe the format, style, and arrangements of Ethics Commission rules.
21	This section amends Section 28-32-19(4) to authorize the Legislative Council to omit certain Ethics Commission rules from the North Dakota Administrative Code.
22	This section amends Section 28-32-47 to provide the scope of and procedure for appeals from Ethics Commission rulemaking actions.
23	This section amends Section 28-32-48 regarding appeals from Ethics Commission rulemaking actions.
24	This section amends Section 28-32-49 to provide for Supreme Court reviews of district court judgments regarding rulemaking actions of the Ethics Commission.
25	This section creates Chapter 54-66, which implements and restates several provisions of House Bill No. 1521. Section 25 of the bill: <ul style="list-style-type: none"> <li>Provides definitions;</li> <li>Requires lobbyists and persons that influence state government action to report the ultimate and true source of funds used for certain expenditures, and authorizes resident taxpayers to bring actions in state courts to enforce the requirements;</li> <li>Requires the Secretary of State to adjust reporting thresholds for inflation;</li> <li>Prohibits gifts from lobbyists to public officials, provides certain exceptions to the gift prohibition, and authorizes the Secretary of State to assess civil penalties for violations;</li> <li>Provides for initial staggering of Ethics Commission members' terms;</li> <li>Provides for closed meetings of the Ethics Commission under certain circumstances;</li> <li>Requires the Ethics Commission to adopt and abide by a code of ethics;</li> <li>Provides for compensation and expense reimbursement for Ethics Commission members;</li> <li>Provides for office space for the Ethics Commission and states the office space may not be located in the office space of another government entity;</li> </ul>

	<ul style="list-style-type: none"> <li>• Provides a process for the Ethics Commission to receive and process ethics complaints;</li> <li>• Authorizes accused individuals to appeal Ethics Commission determinations to district courts;</li> <li>• Deems certain information regarding ethics complaints confidential;</li> <li>• Authorizes the Ethics Commission to assess civil penalties for violations of the prohibition in Article XIV against lobbying by public officials during their terms and for 2 years after their terms expire;</li> <li>• Requires the Attorney General to serve as legal counsel for the Ethics Commission unless the commission objects in a specific matter;</li> <li>• Authorizes the Secretary of State to assess a civil penalty for violations of the prohibition in Article XIV against lobbyists delivering campaign contributions;</li> <li>• Provides for removal of Ethics Commission members for specific violations; and</li> <li>• Provides an exception to the conflict of interest and disqualification provisions in Article XIV.</li> </ul>
26	This section appropriates \$517,155 to the Ethics Commission for the biennium beginning July 1, 2019, and authorizes the commission to hire 2 full-time equivalent positions.
27	This section delays the effective date for Sections 1, 3, 4, and 5 of House Bill No. 1521, and Section 54-66-03, as created by Section 25, until January 5, 2021. Sections 1, 4, and 5 of the bill implement Section 1(2) of Article XIV which becomes effective on January 5, 2022. Section 54-66-03 implements Section 2(1) of Article XIV which becomes effective on January 5, 2021. Section 3 of the bill changes the penalty for the personal use of campaign contributions.
28	This section makes Sections 6 through 24 of House Bill No. 1521, which govern rulemaking for the Ethics Commission, an emergency measure. The commission was granted rulemaking authority under Article XIV, but the article provided no process for rulemaking.