

2019 HOUSE ETHICS

HB 1521

2019 HOUSE STANDING COMMITTEE MINUTES

Ethics Committee
Pioneer Room, State Capitol

HB 1521
1/30/2019
Job #31853

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature ReMae Kuehn

Explanation or reason for introduction of bill/resolution:

Relating to reporting campaign contributions, restrictions on public officials and lobbyists, investigations of ethics violations and to rulemaking procedures, disqualification of hearing officers, requirements for ND ethics commission.

Minutes:

Attachments #1-14

Representative Chet Pollert, Co-Sponsor: (Attachment #1)

Acknowledged Ms. Ness of Legislative Council who wrote HB 1521.

(7:27)

Senator Rich Wardner, Co-Sponsor: (Attachment #2)

I will be one of those involved with picking the commission members.

(14:00)

Claire Ness, Legal Division of Legislative Council: (neutral)

Section 1 of the bill amends the definition section that already exists in Chapter 16.1-08.1-01 of the Century Code. That chapter already contains requirements for candidates, political parties, ballot committees and other political committees to report contributions and expenditures to the Secretary of State. It requires the Secretary of State to post the reports online. That chapter also includes a provision that establishes penalties for any violation of it.

Current statutes in that chapter set the threshold for reporting contributions and expenditures at \$200 except when there are persons engaged in activities regarding ballot measures in which case that threshold is \$100. Those thresholds under current law are not adjusted for inflation.

Article XIV of the Constitution requires disclosures of contributions over \$200 spent on certain activities but also includes a provision that adjusts the \$200 threshold for inflation. Section 2-5 of the bill would adjust the reporting thresholds in Chapter 16.1-08.1 for inflation.

The phrase “ultimate and true source” is also a new term in Section 1 of the bill.

Representative K. Koppelman: The level of report-ability law in North Dakota prior to the constitutional measure passing was that anything over \$200 was reported. Now it is increased with inflation. Under the previous law, the threshold will soon be lower than what the Constitutional measure mandates because that will be increasing. Is that correct?

Claire Ness: That is correct.

Representative K. Koppelman: So we will not be required to report contributions of a certain size that we would have had to report under previous law.

(17:37)

Claire Ness: Correct

(Continues with explanation)

The “ultimate and true source” of funds is another defined term in Section 1 of the bill. That term is found in Section 1, subsection 2 of Article XIV but is not defined.

Section 6 of the bill amends the prohibition of personal use of campaign contributions. Article XIV, Section 2, subsection 4 reiterates that prohibition and requires the legislative assembly to set a penalty for violating it. Under current law the penalty is found on Section 16.1-08.1-07. Addressing the specific requirement in Article XIV--Section 6 of the bill provides that a violation of the personal use prohibition would result in a fine of \$500 for a first violation and makes a subsequent violation a class A misdemeanor.

Section 7 of the bill requires contribution reports required under Chapter 16.1-08.1 to identify the “ultimate and true source” of funds. Again it is just implementing that provision of Article XIV.

Section 7 of the bill also authorizes taxpayers to file suit in courts of competent jurisdiction to enforce this section if all other remedies have been exhausted. A violation of this section must be proven by clear and convincing evidence.

Section 8 of the bill adds a new section to Chapter 16.1-08.1 that prohibits a lobbyist from acting as a conduit. The definition for a “conduit” for that chapter is found on page 2 of the bill. This provision was intended to relate to subsection 3 of Section 2 of Article XIV which prohibits lobbyists from delivering campaign contributions made by another person.

Sections 9-28 of the bill require the Ethics Commission to follow the administrative agency’s practice act which is codified in Chapter 28-32 when the commission is adopting rules. The commission is authorized to do that under Article XIV of the Constitution. These sections of the bill require the Ethics Commission to follow the same rule making procedures as

administrative agencies follow including but not limited to providing notice to proposed rules and holding public hearings, reviewing comments submitted by the public, calculating fiscal impact, having their rules reviewed by the Attorney General, reviewing requests for reconsideration of their rules, and bring proposed rules before the legislative management administrative rules committee.

Section 29 of the bill requires an individual serving as a hearing officer in an administrative agency adjudicative proceeding to self-disqualify if a reasonable disinterested observer would believe the hearing officer is biased due to either of two factors. The first is if one of the parties to the hearing supported the hearing officer's most recent campaign for public office. The second is if a hearing officer has an ownership interest other than an investment in a mutual fund in one of the parties to the proceeding provided the general public doesn't also share that ownership interest.

Section 29 of the bill relates to Article XIV, Section 2, subsection 5 which requires certain administrative agencies personnel to avoid the appearance of bias and disqualify themselves from certain quasi-judicial proceedings. The legislative assembly is required to enact to enforce that provision.

Section 30 of the bill creates a new chapter which is 54-66 of the Century Code pertaining to the Ethics Commission created under Article XIV, Section 3 as well as other provisions of that article. The appointment and terms of the commissioners are set out in Article XIV. The new section 54-66-01 sets out definitions for the new chapter. The definitions of "gift" and "public official" come from Article XIV. The definition of "ultimate and true source" in this chapter is slightly different than it is for the definition of that same phrase in

Chapter 16.1-08.1. That is because it is serving a different function here. In this chapter that term is used in relation to contributions solely to lobby or otherwise influence state action. Remember in Chapter 16.1-08.1 that term is used in relation to efforts to influence elections. Also the term "influence state government action" which is used in Article XIV, Section 1, subsection 2 is defined in this section of the bill as promoting or opposing the final adoption of a rule by an administrative agency or the Ethics Commission.

The new section 54-66-02 requires lobbyists and individuals who spend more than \$200 adjusted for inflation to identify the ultimate and true source of funds used for the expenditure in reports to the Secretary of State. The lobbyists must report the expenditures along with the expenditure reports they are already required to file with the Secretary of State. That can be found under, I believe, 54-05.1. The Secretary of State can impose late fees and will have to make reports electronically accessible to the public within 40 days of the filing deadline.

This section also includes on page 37, lines 10-21 of the bill exceptions to those reporting requirements.

The new section 54-66-03 prohibits lobbyists from offering or giving public officials from knowingly accepting gifts over \$60 per individual per event and requires the Secretary of State to impose a \$100 fine for a first violation and a subsequent violation is an infraction.

On page 38 there are several exceptions to the gift prohibition. Article XIV, Section 2, subsection 1 contains the prohibition on lobbyists' gifts to public officials. That is where the

definition of the term “gift” can be found. That subsection of the constitution also excludes some items from the definition of gifts and requires the Ethics Commission to adopt rules further defining the exclusion. The constitutional exclusions are included among the statutory exclusions in the bill.

Section 54-66-04 would require the Ethics Commissioners’ terms to be staggered so they don’t all expire at the same time.

(24:46)

Chairman Kasper: On page 38, lines 3-13, those are the exceptions in the measure?

Claire Ness: Some of those are included in the constitution. It is unclear what the Ethics Commission will adopt as far as their rules further defining those exceptions. Some of the exceptions on page 38 are not specifically included in Article XIV but could be adopted by the Ethics Commission.

(Continues with explanation)

Back to Section 54-66-04, the Ethics Commission also will be required to have meetings as necessary. That provision also requires those meetings to be closed to the public under various circumstances specifically unless the commission is issued a penalty or referred a complaint for enforcement by another entity. A meeting must be closed if the commission is going to discuss the complaint, the informal resolution of the complaint, the investigation or referral of the complaint, identities of the accused individual or complainant or any other matter arising from the complaint. This section also applies Ethics Commissioners to abide a code of conduct they adopt and provides for their compensation and reimbursement of expenses. It allows them to hire a part-time administrative assistant who will be provided office space within the office of the Department of Labor. But this does not make the administrative assistant part of that department. The Department of Labor is an executive branch agency that reports to the governor whereas the Ethics Commission does not.

Section 54-66-05 requires complaints which may be made verbally or in writing to include the complainant’s name, address, and phone number and be accompanied by a signed statement attesting to the truth of the complaint. If this signed statement is not provided, the complaint would be dismissed. This section says a person, who knowingly or recklessly makes a materially false complaint, is going to be guilty of defamation or their action will constitute civil defamation.

Section 54-66-06 requires the commissioners to inform an accused individual of the identity of the complainant and provide a written complaint or summary of a verbal complaint to the complainant and allows the accused individual to respond in writing.

Section 54-66-07 allows the commissioners to try to mediate an informal resolution of the complaint.

Section 54-66-08 says that each complaint that has a signed attestation will be referred to an investigator engaged by the commission. The commission would have discretion to choose the investigator and could choose a state agency to perform that function. If the

complaint has an allegation of criminal conduct, the commission will refer it to BCI or another law enforcement agency.

Section 54-66-09 sets out guidelines for investigation. The complainant and accused individual may have their legal counsel present if they agree to be interviewed. That also puts a six-month cap on the length of an investigation at which time the investigator has to issue written findings and recommendations to the commission and the commission has to provide them to the complainant and the accused individual who may respond in writing within 30 days of receiving those findings.

Section 54-66-10 requires the commission to meet with those parties to discuss the findings, their recommendations, and any written response. Afterward the commission issues its own findings and a determination whether the ethics-related law or rule was violated. If so, the commission may impose a penalty if authorized by law to do so or refer the matter to another governmental entity that is authorized by law to impose the penalty. The commission's findings may be appealed to the office of administrative hearings. The commission may not fire a public employee or move a public official from office.

Section 54-66-11 protects information regarding complaints from public disclosure unless the commission determines the accused individual violated an ethics related law or rule and if the finding is appealed the information is confidential unless the commission's findings are upheld on the appeal. The complaint is informally resolved but the information remains confidential. Violating the confidentiality provision would constitute defamation and willful publication by a person who knows the information is false is criminal defamation. A public official who violates this section is guilty of a class C felony which is the same penalty imposed under Section 12.1-13.01 of the Century Code for disclosure of confidential information by public employees.

Section 54-66-12 requires the Secretary of State to fine a public official who engages in lobbying before the end of the two-year window after the public official's term is over a fine of \$100. For the second and subsequent violation, the person is guilty of an infraction.

Under Section 34 of the bill, this section expires if and when Article XIV, Section 2, subsection 2 is amended out of the constitution.

The last section of that new chapter requires the Attorney General to provide legal services to the commission.

Section 31 of the bill provides a \$100,000 appropriation to the commission,

Section 32 of the bill provides an effective date for the portions of the bill that relate to Article XIV, Section 1, subsection 2 and Section 2, subsection 5. That effective date corresponds with the January 5, 2022 effective date of those constitutional provisions.

Section 33 of the bill provides an effective date for the portions of the bill that relate to Article XIV, Section 2, subsection 1 which corresponds to the January 5, 2021 effective date of that constitutional provision.

Section 35 of the bill declares the rule making provisions that amend Chapter 28-32 of the Century Code to be an emergency measure.

(31:30)

Chairman Kasper: On page 39, line 18 of the bill, it establishes a whistleblower hotline. Anyone could make a complaint from any place in the world. Do you read it that way because there is no definition?

Claire Ness: That is correct. The hotline is not limited to the residents of North Dakota nor is it indicated as the only way a complaint could be made to the commission.

Chairman Kasper: This part puts in place the due process procedure that protects both parties and provides confidentiality until a final decision by the Ethics Commission is made. Is that what you interpret?

Claire Ness: Due process comes into play when you have an administrative proceeding with an investigation. There are a lot of ways to satisfy due process.

Representative Boschee: Is that authority given to the legislative assembly within Article XIV or is that a role of the Ethics Commission?

Claire Ness: Article XIV doesn't give the legislative assembly authority to provide investigatory procedures. There are some areas where there is general authority given to the legislative assembly. You are correct. That authority is not spelled out in Article XIV.

Representative Boschee: Could you highlight the parts of Article XIV that gives the legislative assembly authority?

Claire Ness: Under Section 1, subsection 2? the legislative assembly is given authority to implement and enforce that section regarding the disclosure of the ultimate and true source of funds for various purposes by enacting laws and by vesting one or more entities with the authority to implement, interpret and enforce those laws as well as that section of Article XIV. The legislative assembly also has authority to provide appropriate civil and criminal sanctions for violations of Section 2, subsections 1, 2, 3, and 4. In subsection 5 of Section 2 the legislative assembly and the Ethics Commission share the authority to enforce the provision which deals with the appearance of bias. The legislative assembly is also required to provide adequate funds to the commission.

(37:00)

Christopher Dodson, North Dakota Catholic Conference: (Attachment #3)

Certainty is important now for charities and church organizations. Even if the disclosure requirements don't go into effect until January 2022, the contributions that are made now would be subject to disclosure requirements. People have a right to know now if they can continue to give to their charity. It is the disclosure that is triggered after 2022 not the contribution. If someone gives before that day, it could be subject to disclosure if that money is used for that purpose after 2022.

(49:11)

Geoff Simon, Citizen, Chairman of North Dakotans for Sound Government:
(Attachment #4)

The best solution would be to repeal most of this and put another measure on the ballot that says the legislature shall develop an Ethics Commission. Then we don't have to deal with all of this uncertainty. (54:20)

If this measure regulates my behavior as a lobbyist, does that deprive me of my rights as a private citizen?

(55:55)

Dustin Gawrylow, North Dakota Watchdog Network: (Attachment #5)

This is a privacy issue for donors. When donors want to support a cause, they want their name withheld at least for a while.

If we don't set the rules, the public is going to set the rules for us. It is in our best interest to develop a common sense approach so there is not another ballot measure.

(1:00)

Arik Spencer, President of the Greater North Dakota Chamber: (Attachment #6)

One of the previous speakers talked about the definition of a public official. The definition of a public official does include boards and commissions.

(1:04)

Opposition:

Matthew Messana, State Employee: (Attachment #7)

(1:10:10)

Representative Heinert: In your testimony you are talking about revealing confidential information. Section 6 is about personal contributions. Do you consider that the same?

Matthew Messana: I consider them to have the same goal which is to deal with ethical ramifications of people's actions in government.

Representative Lefor: Your focus is on the penalties. Is there any other portion of the bill that you think is worthwhile?

Matthew Messana: I mostly focused on the penalties.

(1:12:20)

Gregory Stites, Attorney on behalf of North Dakota for Public Integrity (NDPI): (Attachment #8)

(1:16:50)

Representative Boschee: One of your concerns on your handout, “provides a definition of an ultimate and true source of funds and other definitions that are inconsistent with the language of Article XIV.” Can you expand on that?

Gregory Stites: The definitions that are in the House bill are not authorized by Article XIV. There has to be meaning given to those within the context of what Section 1, Subsection 1 and 2. This describes the parameters for the determination of what ultimate and true source are. In the House bill, I believe, there has been a list of exclusions that are not authorized by Article XIV. There is an attempt to put in so many exceptions that it makes the source of these funds not reportable.

Vice Chair Scott Louser: Were you retained by NDPI to analyze Article XIV after the election or prior?

Gregory Stites: Not until after the election.

Vice Chair Scott Louser: You understand the confusion that when the proponents of the Article hire an attorney afterwards to determine what laws are necessary to implement what they wrote. It sounds like everyone is confused.

Gregory Stites: I don’t believe so because my job is to determine what this session has to do and then what does next session have to do. They asked that I help bring a document of what is permissible for the legislature to do vs. what is already clear in the Constitution.

Vice Chair Scott Louser: Your language says what the legislature is required to do by the language. It doesn’t say what may be allowed. You are saying “required” by a certain date. It doesn’t preclude the legislature from acting in advance of those dates. Is that true?

(1:20:52)

Gregory Stites: Clearly you could rush to the finish if you are confident that your position won’t end up in the courts. That is why the measure provided these time periods so these very important issues about what is the authority of the legislature as it regards the Constitution and what it can and can’t do.

Representative K. Koppelman: Did you also consider Article IV of the Constitution?

Gregory Stites: I did not look at Article IV.

Representative K. Koppelman: That is the article that empowers the legislative branch. That has been in the Constitution longer than this new section. Very seldom does our constitution say the legislature is required to do a, b, or c. The legislature is empowered to make law. You have confined your testimony to what this new article of the constitution requires the legislature to do rather than what the legislature is empowered to do elsewhere

in the constitution. My concern is, are you viewing this as a good faith effort to implement what the people have approved or are you trying to curtail what the legislature should be doing?

Gregory Stites: That is not my intent. I understand the proper role of what the legislature has in passing laws. From a constitutional law perspective, no legislature is authorized to change the words in the constitution.

Article XIV defines what a gift is. Only the Ethics Commission shall determine what gifts would be prohibited and what gifts are allowed. This bill throws away the definition of gift that Article XIV says. That is an example of trying to redefine what is in Article XIV. It is up to the Ethics Commission not the legislature to determine what exceptions there will be for gifts.

Representative K. Koppelman: You just said the article clearly defines what a gift is. Then you said the Ethics Commission can make exception to what a gift is.

Gregory Stites: It has the provision right in the section about gifts. Section 2 of Article XIV, subsection 1 says “gift’ does not mean any purely informational material, campaign contribution, or, in order to advance opportunities for North Dakota residents to meet with public officials in educational and social settings inside the state, any item, service, or thing of value given under conditions that do not raise ethical concerns, as determined by rules adopted by the ethics commission.”

Representative K. Koppelman: Is it your opinion that the Ethics Commission becomes a new branch of government that has legislative power?

Gregory Stites: Not exactly. It is a constitutionally created legal entity. It is given rule making authority within the parameters specified in Article XIV. There is a provision as to what types of rules they can pass on what subjects. Yes, they are somewhat similar as to what the legislature can do.

Representative K. Koppelman: In your discussions with the organization that has retained you, did you talk about proponents of the measure stating certain things when concerns were raised during the campaign leading up to this measure’s adoption? Then the proponents were refuting those.

Gregory Stites: No. I was a citizen listening. Since then my purpose was to bring clarity to the two issues. What has to be done? What is required to be done? What can be done? What is or isn’t unconstitutional?

Representative K. Koppelman: You also heard testimony earlier about people being concerned with the constitutionality under the U.S. Constitution of some parameters within the measure. Have you had an opportunity to analyze those concerns?

Gregory Stites: No. I am familiar with the Citizens United case. That case speaks to the fact that they felt that allowing corporations to give unlimited amounts of money to campaigns was alright because of the transparency laws. As long as people know who is spending what

money, then they are an educated voter. The public has the right to know the source of the funds used to influence state government action.

Representative K. Koppelman: You indicated that before you were retained, you watched this as a citizen. When you went to the polls, did you understand the measure as you do now?

Gregory Stites: Yes. I have very little fear of it. A general prohibition against gifts is good. It is good for government to be able to disclose where that money comes from.

Representative K. Koppelman: Are you satisfied that the organization you are retained by is well understood by the people of North Dakota and the sources of those funds are well disclosed?

Gregory Stites: As far as I know, yes.

Vice Chair Scott Louser: You mentioned the Citizens United case which you rightly explained was basically unlimited corporate donations as free speech. You said that was accepted because of the disclosure and the right to know. Could you expand on that?

Gregory Stites: The dicta in the case said so long as the people know what corporations are giving money, we are not going to limit what corporations are allowed to contribute. I believe the case promotes transparency of money used to influence government action

Representative Mock: On page 3 of your testimony, Section 2—Lobbyists and Conflicts of Interest, relating to the gifts. In your analysis you state that there is no action required because it has a delayed effective date. That provision doesn't take effect for two years (January 5, 2021). The Ethics Commission will have ample time to adopt the rules and clarify the list of gifts allowed and not allowed. Then the 67th Legislative Assembly can provide appropriate civil and criminal sanctions for violations based on that. What happens if we don't define those civil or criminal penalties this session? What penalties would apply towards any of those rules beginning January 5, 2021 and the effective date of anything we pass which would be August 1, 2021?

Gregory Stites: It is true the timing isn't perfect. It would be nice if the penalties and sanctions were in place by that date. If it was the subject of an interim study, the Ethics Commission could finish its work and then the legislature could formulate more appropriate penalties. That could be passed as part of that session if it was done in a short time on an emergency basis. Then the penalty would be well known fairly soon. It wouldn't be exactly on the date that it became prohibited conduct. So there would be no penalty. It would be against the law to provide the gift but there just wouldn't be a penalty associated with it for a certain period of time. Article XIV says the Ethics Commission should have been appointed on the 5th of January 2019. It should have been funded on that date. We all know that this is not practical.

Representative Mock: One of the challenges over the last couple of sessions is how to enforce the constitution when there is no enforcement mechanism defined. Another example would be when voters approved an amendment to our constitution that required legislators

to live in their district but there was no penalty. There a lot of aspects of Article XIV that require the legislature to define the appropriate civil and criminal sanctions for violations. What happens if we don't define any appropriate criminal or civil sanctions and someone is found in violation of Article XIV after it fully is in effect?

Gregory Stites: Depending on the circumstance. Someone who wanted to contest that could go to court and seek a judicial remedy for the fact that the law says that they can't. They could order them out of office.

The reason Article XIV was designed was because it wanted the participation of the legislature. There are many provisions that talk about legislative involvement. There is even a provision that says that you have an ongoing duty to keep looking at changes in technology, etc. and then revise your laws accordingly. It wanted the legislature to set reasonable penalties consistent with other laws that are already on the books for bad behavior. I believe the penalties currently in there are underwhelming. They need to be stronger consistent with other state laws of similar nature.

Representative Mock: I respectfully disagree with your urgency regarding some of these sections. I hope this legislative assembly does put all civil and criminal sanctions in code this session instead of waiting until the next legislative session. I appreciate your perspective as retained counsel for the group to provide the analysis.

Gregory Stites: Subsection 2, 3, and 4 of Section 2 of Article XIV also need to have civil and criminal penalties in place. The bill does provide for penalties even though I believe they are inadequate. You could provide penalty for subsection 1 because that goes into effect in two years. Then you could look at it two years from now and decide after the Ethics Commission does its part whether you think it is an appropriate penalty or not. Also Section 3, subsection 2, which has the funding for the Ethics Commission needs to be done this session. Section 1, subsection 2 about transparency and Section 2, subsection 5 on bias can be part of an interim study group because they don't go into effect until later.

Chairman Jim Kasper: On your testimony on top of page 2, in the first paragraph you state "3 of the subsections require an interim study." I've searched the measure and I can't find where we are required to do an interim study?

Gregory Stites: I agree. It is my recommendation based on the two and three-year implementation intended by Article XIV.

Chairman Jim Kasper: Section 3, subsection 3, "The ethics commission shall consist of five members, appointed for four-year terms by consensus agreement of the governor, the majority leader of the senate, and the minority leader of the senate." What is consensus in your definition?

Gregory Stites: The three must agree.

Chairman Jim Kasper: You also said the Ethics Commission should already be up and running? I can't find a date certain that says that. The vote of the people established the

Ethics Commission. The Ethics Commission can't be up and running until the three appointers appoint the five commissioners. Correct?

Gregory Stites: Section 3, subsection 1 states "the ND ethics commission is hereby established." The effective date is in Section 4, subsection 1, "This article shall take effect sixty days after approval."

Chairman Jim Kasper: The article takes effect. We must have an Ethics Commission. Are you suggesting that the commission should already been appointed because of 4.1?

Gregory Stites: Yes.

(1:46:35)

Chairman Jim Kasper: We are going to have a commission of five people that in most cases don't have government experience. Would it be of value to the five commissioners to have the availability of a bill like HB 1521 for a framework? We've had attorneys, legislators, outside people look at it and give input over months. We know they have the authority to do as they wish but this would be a guideline.

Gregory Stites: The senate bill does provide that structure. This bill goes way too far into the internal affairs that is left up to the Ethics Commission to make certain decisions of its own as opposed to having them done through the legislature.

Chairman Jim Kasper: I have acknowledged the Ethics Commission will have the final say. I am just asking wouldn't it benefit them to have something in place?

Gregory Stites: When you say it will be up to the Ethics Commission to accept or not, I don't believe that is in the bill. The bill makes it clear that they would be forced to follow this bill.

Chairman Jim Kasper: I would disagree. We recognize as members of the legislature and the drafters of the bill that it is not right. Whatever we do statutorily cannot overrule what the Ethics Commission might do because they are constitutional. They have the supreme power to change whatever we do if they so choose. I believe that is in the measure. The commission could start over.

Gregory Stites: I will visit with Claire to better understand that.

Representative Boschee: Page 36 of the bill, line 10 the definition of "influence state government action" means promoting or opposing the final adoption of a rule by an administrative agency or the commission under Chapter 28-32. Looking up what Chapter 28-32 is, it is the administrative practices act. Also that chapter excludes a whole list of government agencies and commissions. Is that your understanding of HB 1521, is that it is only certain government actions vs. all of government.

Gregory Stites: Article XIV seeks to define state action. It means all of state action. Decisions by the Public Service Commission, any part of the executive that is making those sorts of decisions would be subject to Article XIV. It can't be limited to rule making authority.

Representative Boschee: Do you think it was your understanding that only certain actions would be impacted by this measure?

Gregory Stites: I do believe that it is understood that it applies to all state government.

Chairman Jim Kasper: Adjourned the hearing.

Testimony provided after the hearing:

Opposition:

Dina Butcher, President of North Dakotans for Public Integrity (Attachment #9)
Ellen Chaffee, Vice President of North Dakotans for Public Integrity (Attachments #10 & 11)
Liz Anderson, Dakota Resource Council (Attachment #12)
Lisa DeVille, Mandaree (Attachment #13)
Kathleen Tweeten, Secretary/Treasurer of North Dakotans for Public Integrity
(Attachment #14)

2019 HOUSE STANDING COMMITTEE MINUTES

Ethics Committee
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2/7/2019
Job # 32422

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Committee Clerk Signature ReMae Kuehn

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Minutes:

Attachments #1-5

Representative Lawrence Klemin, Speaker of the House: (Attachment #1)

(19:28)

Representative K. Koppelman: In order to be consistent with procedural due process of law as required by Section 1 of the 14th amendment of the U.S. Constitution, you are seeing that as an appropriate provision in which to carry this rulemaking forward in an orderly fashion and provide the due process that the U.S. Constitution requires?

Speaker Klemin: That is correct. Article XIV says that the Ethics Commission may adopt ethic rules, but it doesn't say how? In my opinion, in order to have procedural due process and in view of the fact that the legislature is empowered by Article XIV to implement that article, since we already have an Administrative Agencies Practices Act which sets out how things are done from a rule making and an adjudicatory standpoint. The Ethics Commission is not an administrative agency but this does provide a map to follow to be consistent with the constitution.

Chairman Jim Kasper: Would you walk through the amendments?

Speaker Klemin: (Attachment #2) All amendments for page one is for the title of the bill.

(22:00)

Speaker Klemin: On page 6, line 15, remove "solely". I recommend that be done because it is not solely to influence a statewide election. That provision in Article XIV covers other things as well.

Page 13, line 17, replace with "assess a civil penalty". There are several places where this is stated where the Secretary of State is given the authority to impose a fine. The Secretary of State is not a court. Fines by law and by other provisions of the North Dakota Constitution go to the Common Schools Trust Fund. Most of the time when an administrative agency is given authority to do something that involves a monetary penalty, the correct language to use is they may "assess a penalty" not "impose a fine." That way the money doesn't disappear into the Common Schools Trust

Fund and can be used by the Secretary of State for part of the cost of what resulted in the imposition of that civil penalty. Any money left over at the end of the biennium goes back to the general fund.

Representative K. Koppelman: Go back to your first substantive point on page 6, line 15 to remove the word “solely”, I missed the reason.

Speaker Klemin: Article XIV is not limited solely to those items stated on that line.

Representative K. Koppelman: Some of the testimony that we heard at a previous meeting indicated concern by some as to the possibility of how to accomplish the tracking of the “ultimate and true source” of funds. The concern for charitable organizations and churches was how do they comply with this if every donor is captured by this “true source” of funds. Do you have a solution for that?

Speaker Klemin: This first part of the bill deals with reporting and the other part deals with new language in the last section of the bill.

(Continuing with amendments)

Speaker Klemin: Page 13, line 18, added sentence. There is nothing in the bill now that provides for any remedy for a person who is assessed a civil penalty to seek judicial review of that action. That needs to be added for due process reasons.

Representative Ruby: Why not just district court? Why district court of Burleigh County?

Speaker Klemin: Throughout the North Dakota Century Code there are administrative actions that are subject to appeal or judicial review by a district court. For the most part when they are dealing with something that is being done by an administrative agency they all go to Burleigh County District Court. The reason is because that is the venue of the agency imposing the violation or the penalty. There is a convenience factor built in because you will see throughout the Century Code that Burleigh County District Court gets almost all of those kinds of appeals so that we don't have to be sending people from the administrative agency all over the state.

Representative Ruby: I was thinking about the people that are accused that might live up northeast, etc.

Speaker Klemin: In this first part we are dealing with a simple penalty. In the second sentence in that part we are dealing with “the person is guilty of a class A misdemeanor for a second and subsequent.” In that case the rules provide that the accused has a right to have a trial in the county in which he is a resident. There is a distinction between a civil penalty and a criminal violation.

(Continuing with amendments)

Speaker Klemin: Page 13, line 25, replace “file a claim” with “bring suit”. “File a claim” is the wrong language because the resident taxpayer is not filing a claim. The resident taxpayer is not getting anything out of this. Bringing a suit is what can actually be done. More appropriate words would be “to commence an action.”

Page 13, lines 25 & 26, the courts “with competent jurisdiction”, all of the district courts have jurisdiction. This would be surplus language.

Page 13, line 28, “remains in violation of” is not what this section is talking about because he is commencing a civil action against a person required to comply. They must reasonably believe that the person “has failed to comply.” That presumes there is a violation. This is more specific language that is consistent with the rest of that paragraph.

Page 13, lines 30 and 31 and page 14, remove lines 1 through 6 because that language is being placed in another part of this bill with my amendments.

Page 20, line 13, the reason for the revision is because elsewhere the original bill had provisions which allowed the rules of the Ethics Commission that are adopted pursuant to Article XIV of the Constitution are to be reviewed by the Administrative Law Committee of the legislature. In my opinion that is inappropriate. It would not be constitutionally permissible for the legislature to provide that one of its committees can void a rule of a constitutional entity. Those rules are subject to judicial review by the court if appropriate.

Page 20, line 15 & 16, that clause is removed to eliminate reference in this context to the Ethics Commission because it doesn't belong here. That reference to the constitution to eliminate its authority doesn't belong there anymore either.

Pages 20-25, lines are removed because they don't apply to the Ethics Commission as created by Article XIV.

Chairman Jim Kasper: Are your amendments going to still have an administrative rules process in them?

Speaker Klemin: Yes. There are just some parts that don't apply because we are trying to adapt that process that applies to administrative agencies to a constitutional entity. Some of it applies and some of it doesn't.

(Continuing with amendments)

Speaker Klemin: Page 28, lines 2 and 3, the words "commission" are taken out because it doesn't apply. It relates to appearances before the administrative rules committee which, I have said, should not have the authority to void an action of a constitutional entity that adopted its rules. That would be constitutionally impermissible.

Pages 30-34, lines are removed because it doesn't apply in this situation. It does apply to administrative agencies but not to the Ethics Commission.

Page 35, lines 1-21 are replaced with the section given in the amendment. This is a procedural thing that would apply to the commission in the event an interested party sought to go to court to request judicial review of a rule made by the Ethics Commission. There is nothing in HB 1521 that provides for judicial review of the rules of the Ethics Commission. The court should be able to review the rules of the Ethics Commission just like it can review the rules of any other entity.

Page 36, line 20, "solely" has already been discussed.

Representative Boschee: In HB 1521 we have two definitions of "ultimate and true source"? Is there a reason why we wouldn't define it the same throughout?

Speaker Klemin: That is up to the committee. The reason is one place it is related to reporting and one place it is related to other things.

(Continues with amendments)

Speaker Klemin: Page 36-37, line 26, explanation given with page 1 of amendments.

Page 37, line 29, moving the word "knowingly" from before the word "accept" to after the word "accept."

Page 38, line 19, the Secretary of State is not a judge. That office can assess civil penalties but cannot impose fines.

Page 38, line 20, added language because the Secretary of State has that authority already in other parts of the law relating to lobbyists.

Page 39, line 19 & 27, other places in HB 1521 already use the word "orally." An oral statement is more technically correct.

Page 39, line 31, relates to defamation. In reality you don't even need to say that. It should be referring to the chapter on criminal defamation and that is in 12.1-15. This takes out the reference to civil defamation.

Page 40, line 6, puts in a time as there isn't a time specified. Ten calendar days is similar to another place in this same bill.

Page 40, line 31, remove "and recommendations." The investigations are being made at the request of the Ethics Commission. The Ethics Commission has retained an investigator to find out what the facts are. In my opinion, it is not the responsibility of that investigator to come back and say "kill him." That investigator is to report the facts and then it is up to the Ethics Commission to apply those facts to the law and determine what the appropriate remedy is.

The rest of page 3 amendments would follow as has been discussed.

Line 41, line 20, the bill sets out that if a person who is found to have violated Article XIV or rules related to ethics, can appeal that to the Office of Administrative Hearings. That is not the function of that office. It would be constitutionally impermissible to say that a person who is in violation can then appeal to an executive branch agency which is what the Office of Administrative Hearings is. Rather what should happen is that the appeal would be in the district court in the county in which the accused individual resides.

Page 41, line 21, the intent is that a person who is in violation by the Ethics Commission can request judicial review of that finding by a district court and may appeal that to the district court in the county in which the accused individual resides. Now we are dealing with the criminal side. Unless the accused individual agrees to a change in venue or actually resides in Burleigh County, that person would be tried by a jury of his peers in the county in which he is a resident.

(51:30)

Page 41, line 22, this is a provision in the Administrative Agency Practices Act which sets out what the scope of review and the procedure is in the district court. The district court doesn't have a trial de novo. The district court's job is to review what was done on the record before the Ethics Commission and make a determination of what was done was in accordance with the law.

Page 42, line 13, taking out language that refers to civil defamation. A person already has the ability to commence an action in court for civil defamation. It would be up to the court and/or jury to determine whether it is actually defamation. It is not necessary to have that in there.

Page 42, line 20, penalty instead of a fine.

Page 42, line 27, add a new section on prohibition on campaign contributions penalty and also the following section. We are trying to reconcile some inconsistencies in Article XIV so that they are made consistent by HB 1521 to provide appropriate remedies and due process of law.

Adding disclosure requirements—Delegation of limited authority: the word transparency in Section 1 of Article XIV and the word transparency in Section 3 of Article XIV mean the same thing. Whatever residual authority is not invested in the Secretary of State earlier in this bill is vested in the Ethics Commission by the legislature. The legislature may vest in one or more entities of which the Ethics Commission is one of those entities. This last part reconciles the inconsistency in the manner of which the courts have said.

The rest on page 43 is just changing line numbers and citations.

The amendments would make this a constitutionally valid bill made by the legislature.

Representative Steiner: Are there timelines that we should be concerned with?

Speaker Klemin: There are timelines set out in Article XIV. Article XIV sets an effective date three years from last November. I think it is appropriate to set things in HB 1521 and then provide a study of all of these issues. The interim legislative committee will determine if these timelines should be changed and also if the penalties are appropriate.

Representative Boschee: On page 40, HB 1521 starts to define some specific processes for the Ethics Commission to follow. Referring back to Article XIV, it says that we as the legislature may expand or open up opportunities but we can't restrict. By defining processes for the Ethics Commission which isn't created yet, are we not restricting the commission by enacting pages 40-43 which is defining processes?

Speaker Klemin: In my opinion that is not correct. What we are doing is setting out a procedure that can be followed to accomplish the intentions of Article XIV. It does not say what the Ethics Commission can or cannot do. It is just that they must do it consistent with procedural due process of law.

Representative Boschee: Wouldn't that be in conflict with their ability to create their own rules?

Speaker Klemin: Article XIV says that the Ethics Commission may adopt ethics rules. It doesn't say they may adopt rules of procedure as to how they handle the rule making and rules of procedure as to how they handle adjudicatory matters. Instead that is within the authority of the legislature to implement that.

Representative K. Koppelman: The proponents of Measure 1 indicated that the rules the Ethics Commission would make would be subject to the legislature's administrative rules committee. Was the measure not written properly or were they trying to mislead voters?

Speaker Klemin: It is my opinion that the Administrative Rules Committee has no authority to alter or void a rule of the Ethics Commission. It is a committee of the legislature. It would be constitutionally impermissible for a committee of the legislature to void a rule made by a constitutional entity.

Representative K. Koppelman: You are saying the court has authority to preside over lawsuits under your amended version. What gives the court the authority to do that because we are still dealing with a constitutionally created entity.

Speaker Klemin: That would be other provisions in the North Dakota Constitution which vests the court with the power to make those decisions. However, the Administrative Agency Practices Act sets out the scope of the procedure and the extent of the judicial review by the court. The court is not free to do whatever it wants.

Representative K. Koppelman: Does this create another branch of government?

Speaker Klemin: Yes. But this branch of government has to go by the same rules as everyone else.

Chairman Jim Kasper: You said Article XIV says the Ethics Commission may adopt ethics rules but not rules of procedure. Correct?

Speaker Klemin: I said they may adopt ethics rules but the rules of procedure can set out by the legislature in implementing them.

Chairman Jim Kasper: HB 1521 would be doing the rules of procedure? If the Ethics Commission wishes to change what they consider ethical or unethical, they can do so?

Speaker Klemin: Correct.

Chairman Jim Kasper: Would they have that power to determine ethical compared to unethical?

Speaker Klemin: Yes. Subject to judicial review.

Representative K. Koppelman: We have laws now on the books that govern many of the same things. The Ethics Commission has the authority to make rules. Is it your opinion that the Ethics Commission has the authority to adopt rules which may conflict with the law?

Speaker Klemin: I don't know. The Ethics Commission doesn't have the power to enact or repeal laws.

Representative K. Koppelman: Suppose the Ethics Commission hands down a rule that is in conflict with the law. That is what you envision being adjudicated by the court. The third branch of government would decide which governs. Is that your understanding?

Speaker Klemin: Yes.

(1:10)

Kathryn Dunlap, Adjunct Instructor of English at Bismarck State College: (Attachment #3)

(1:14:20)

Chairman Jim Kasper: One correction to your statement where you say "the people would not be familiar enough with the process." The people "might" not be familiar.

(1:15:25)

Joshua Gallion, State Auditor: (Attachment #4)

(1:19)

We recently challenged the costs of the Governor's travel and use of resources. We questioned the use of the state airplane for out-of-state trips. Some of these costs were in excess of \$10,000 to \$15,000 that took one to two people to Washington, DC. Commercial airfare would have been \$700 to \$800. These are ethical concerns that we already bring up.

We take ethics very seriously. The concern I have is the unknown. How will these rules impact state laws? The auditor's office is a constitutional office. Our laws and duties are prescribed by law. Will this Ethics Commission redefine what ethics are? We have a set of standards that we apply that are directed to us in statute.

(1:20:50)

Chairman Jim Kasper: That is on the minds of everybody.

Representative K. Koppelman: I disagree with what we've heard about how the people of North Dakota knew what they were voting for. What concerns me is those same people were assured that there would be a check and balance. The rules made by the Ethics Commission would be reviewed by the Administrative Rules Committee of the legislature. We just heard legal authorities saying now they don't think that is constitutionally permissible. Is it constitutionally permissible for the court to oversee those rules? We are going to have a handful of people who are not elected that will be reigning over what is and isn't ethical.

What also worries me is this measure also says that if anything in that measure of the constitution is found unconstitutional under the U.S. Constitution, the rest of it stays. Also if anything in Article XIV conflicts with anything else in the North Dakota Constitution or our laws from over 130 years that we have been a state, it also reigns supreme.

Representative Rohr: Your referred to Government Auditing Standards 2018 revision. Was ethics already part of the standards that you had?

Joshua Gallion: The previous revision was in 2011. This is the most recent revision that we operate under. The government accountability office just updated them this year.

Representative Boschee: What role does the auditor's office play in campaign contribution accountability?

Joshua Gallion: We don't get involved with the candidates other than we audit the Secretary of State's Office.

Representative Boschee: Are you saying then that more of your concern is once someone becomes an elected official and they are part of the government, the potential friction that would happen between the auditor's office and the Ethics Commission would be where you are bumping heads?

Joshua Gallion: The concern is with the unknown. We don't know where the authorities are going to extend. The auditor's office conducts audits of the executive branch and judicial branch. We don't get involved with the legislative branch.

Representative Boschee: When the Auditing Standards 2018 revisions came out, how did you know what was going to come out of there?

(1:26:22)

Joshua Gallion: There is opportunity for input. There is discussion when they come up with new standards. We operate with our various associations. These standards take years to revise.

Representative Boschee: How is that any different than the unknown of the Ethics Commission in terms of whether it is rules that propagate or their relationship with the legislative branch or the auditor's office.

Joshua Gallion: Are you saying the executive branch will have an opportunity to have dialog with the establishment of the rules?

Representative Boschee: I would hope so. I would be less fearful of the unknown. In anything that we do, we don't know what the next 60 days are going to bring for this legislative session. We know that we have a process that we follow.

Representative K. Koppelman: Who determines who checks the ethics of the Ethics Commission? Is that a role of your office? Do you audit the Ethics Commission?

Joshua Gallion: If they are a state agency that is appropriated, then Yes.

(1:30)

Kathleen Tweeten, Secretary/Treasurer for North Dakotans for Public Integrity:
(Attachment #5)

HB 1521 is not consistent with Article XIV of the North Dakota Constitution. With the amendments just heard that may no longer be true. But I did not hear anything about the definition of "prohibited gifts." The legislative assembly has no role in defining those gifts because it is defined in Article XIV,

(1:38:09)

Vice Chair Scott Louser: Nobody I talked to, that voted, fully understood the measure other than lobbyists, some attorneys and some candidates. I talked to industry professionals and they hadn't read the measure. This legislative body is criticized for not acting quickly enough on the medical marijuana measure that passed two years ago. Does your sponsoring committee expect this legislature to not act on this measure on behalf of the state?

Kathy Tweeten: We expect this body to act. But give the time that is needed for people and industry and organizations to provide the input. What needs to be acted upon now is very clear. Once the commission is established, then a lot of the unknowns will become very clear. I do expect you to act.

Vice Chair Scott Louser: We have a presidential election coming, our governor is on the ballot, half of the executive branch is up for election along with half of the Senate and House. If we study this for two years, we are going to go past the next election. I think the citizens of North Dakota expect that what they voted for is going to be applied to those campaigns. Why wouldn't the voters of this state have some certainty going into the next election?

Kathy Tweeten: With time and input it would be done before two years. The timeline was given so it can be done correctly.

Vice Chair Scott Louser: The process of an interim committee and a study is about 20 months. Any study would be turned into Legislative Management after the next election which could result in a bill which wouldn't go into effect until August, 2021 which is long after the Ethics Commission is established. What would be the point of doing a study?

Kathy Tweeten: To take the input of the citizens. There seems to be a lot of concern.

Vice Chair Scott Louser: As the treasurer of the campaign, are you familiar with ActBlue?

Kathy Tweeten: It is a group that takes contributions from people from across the country that believe in Democracy.

Vice Chair Scott Louser: I heard that your group is bipartisan. I looked at your financial disclosures the night before our last committee hearing. Your committee donated money to one political party in our state and to ActBlue. Were there donations made to other political parties?

Kathy Tweeten: I am not aware of any contribution from our group to any campaign.

Vice Chair Scott Louser: It is on your disclosure statement for an expense. There are two of them. In the other eight measure committees in 2018 and nine measure committees in 2016, none of them made contributions to a political party.

Kathy Tweeten: I don't do the reporting to the Secretary of State's Office. That is done by our associate. I do need to know what those are.

Vice Chair Scott Louser: I will find those. There was also a donation to the North Dakota Newspaper Association in late October of \$5,000.

Kathy Tweeten: We paid for some ads statewide.

Vice Chair Scott Louser: If Measure 1 were constitutional prior to the last election and the ActBlue entity was based in North Dakota, how would they apply the "ultimate and true source" standard for money that was given to them by your campaign? Would they have to report everybody that gave over \$200 to North Dakotans for Public Integrity?

Kathy Tweeten: I do not know

Vice Chair Scott Louser: It looks like over 92% of the contributors to your campaign were from out of state which amounts to about 95% of the money. It looks like there is a lot of interest from people to amend the North Dakota Constitution that don't have to follow it. Why was there so much interest from out of state?

Kathy Tweeten: Because they believe in democracy?

Vice Chair Scott Louser: The attorney that was hired who spoke to us at the last hearing referenced the Citizens United court case at the federal level, He said that he believed the case promotes transparency of money used to influence government action. We heard government action in the language in Article XIV. Are you familiar with the Citizens United case?

Kathy Tweeten: Not that well.

Vice Chair Scott Louser: Citizens United allows for unlimited corporate contributions to a political campaign as long as it is fully disclosed. Your campaign accepted over \$114,000 from a group called End Citizens United. It sounds like the out-of-state group doesn't quite believe in what Citizens United promotes which is transparency in finance. Why would your group accept so much money from a group that wants to end Citizens United?

Kathy Tweeten: I believe the reason the group End Citizens United is active is because they don't believe that corporations are persons.

Vice Chair Scott Louser: The Supreme Court suggests that they are.

Did your committee participate in a similar ballot measure in any other state?

Kathy Tweeten: Just North Dakota.

Representative Lefor: Is Measure 1 a work product that you are proud of? Could there have been improvement?

Kathy Tweeten: Yes I'm proud of it. There is always room for improvement.

Representative Lefor: You mentioned there is no reason to play "gotch you" in your testimony. I refer to Section 3.2 of Article XIV. It says "The ethics commission shall maintain a confidential whistleblower hotline through which any person acting in good faith may submit relevant information." Do you believe public officials have the right to confront their accuser through a confidential whistleblower hotline?

Kathy Tweeten: When I made my comment about "gotch you" I was referring to some of the comments from individuals that this was brought about because we thought we could get some people that were doing things wrong.

Representative Lefor: You talked about gathering input. When you crafted Measure 1, who did you talk to?

Kathy Tweeten: I can't name all the names. We asked many people to be part of the discussion.

Representative Lefor: Are the people involved lobbyists, public officials, etc.? Did you seek input from them? You have a product out there now. Now you are asking for input. To me that is backwards. Did you get input from lobbyists and public officials and people that would be involved with this measure?

Kathy Tweeten: Yes.

Representative Lefor: Do you support the Senate Bill over the House Bill?

Kathy Tweeten: Yes.

Representative Lefor: The Senate Bill is spending \$900,000 with three full-time people. How many ethics complaints do you think you are you going to get? We are being criticized that \$100,000 is not enough. That is because we don't know what is going to happen. When you planned, how many complaints do you anticipate to justify the \$900,000?

Kathy Tweeten: The number was done by Senator Tim Mathern. He was looking at the salary scales of the Attorney General's office where there would be a lawyer with five years' experience. There would be an administrative assistant and investigator. He looked at the salaries now as well as space, etc. The \$900,000 plus is based on the actual expense. It is not based on how many complaints. Their job is greater than just taking complaints.

(1:54:05)

Representative Lefor: Your group criticized HB 1521. I ask your committee to take a more respectful tone. You are showing distrust of us before we can even get the job done. Work with us.

Representative Ruby: I want to get clarity on the issue of educational materials, socials, and settings. Anytime lobbyists talk to us about an issue, we are given information that they want us to know. We use them as a resource. What would they be doing that is not educational?

Kathy Tweeten: I don't know what the lobbyists give you. It should be things that give you information to make good decisions. That is in Article XIV.

Representative Ruby: This is saying that is the only thing they can do. What is your perception? What is unethical in that exchange?

Kathy Tweeten: Anything that is educational and helps you make good decisions is good. It is not good when it is very biased and partisan and takes the time and attention of a public official and denies access by the other side.

Representative Ruby: They are always partisan to their views. It always takes our time for their bias.

Kathy Tweeten: The feeling of the group was that it comes down to where there is opportunity and decreased access. The Ethics Commission would resolve a lot of questions.

Representative Heinert: You said the elected official needs to be aware of extreme bias and shouldn't be talking to people with an extreme bias. How can elected officials determine that until they got into the conversation?

Kathy Tweeten: That is a decision that you will have to make. The Ethics Commission is a body that can help answer those questions.

Representative Heinert: Did your committee talk about what are appropriate civil and criminal penalties and sanctions?

Kathy Tweeten: That language was developed by Senator Mathern in looking at what the penalties are now for others in state government.

Representative Heinert: What penalties were you looking at?

Kathy Tweeten: I cannot answer that.

Representative Heinert: How many people are on your main committee?

Kathy Tweeten: There were about 12 people.

Representative Heinert: Out of those 12, how many are lobbyists today?

Kathy Tweeten: I just signed up as did our entire board.

Chairman Jim Kasper: I want to go back to your statement about legislators should not be talking to people with bias? Is that a correct position?

Kathy Tweeten: No, I agree with you. That is an incorrect statement.

Chairman Jim Kasper: I am happy you saw that. At the heart of the issue of Measure 1 is abridging the Constitution of the U.S. in regard to free speech. (Reads the first amendment of the U.S. Constitution.) "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

That is one of the major concerns for a lot people that did not like Measure 1. In order for legislators or public officials to make decisions, we need to have that dialogue and arguments. The constitution guarantees that as citizens.

Representative Rohr: Your title is Secretary/Treasurer of North Dakotans for Public Integrity. You have had leaderships positions. What kind of ethics training have you had?

Kathy Tweeten: I have done training for extension agents and communities in ethical leadership.

Representative Rohr: What are you teaching? What does ethics mean to you?

Kathy Tweeten: Ethics means doing the right thing. Not playing favorites or taking advantage.

Representative Headland: Do you believe this measure is approved by the people of North Dakota? Do you believe the brief paragraph on the ballot describes the depth of the power that we are giving to this new branch of government? Is it fair to ask the voters to make that decision?

Kathy Tweeten: Yes.

Representative Headland: Your Ethics Commission is going to be set up by the Governor, the Senate Majority and the Senate Minority Leader. There are no other measures of approval necessary? Does anyone have the ability to object to qualifications? If not, how do we hold these people accountable?

Kathy Tweeten: I am assuming it will be through an application process. They have to come to a consensus.

Representative Headland: When we have a Supreme Court Justice chosen by the Governor, it has to be ratified by the Senate. There is oversight. Here the power to choose the commission is up to three people. This commission could be set up to be used in a partisan way.

Let's talk about a circumstance where there is a whistleblower called to the commission with a report against an elected official. Is it true there would have to be an investigation?

Kathy Tweeten: I can't answer a legal question.

Representative Headland: Where is the due process for the accused. If this commission is set up in a partisan way, with no due process for the accused--this is scary.

Kathy Tweeten: I would hope the Ethics Commission would have a due process. There have been some amendments proposed that would help with that.

Chairman Jim Kasper: The due process part is in there already.

Representative Headland: But she is objecting to what we are trying to do here. It is too fast.

Representative D. Anderson: I have relied on lobbyists for information on both sides. What drew you to thinking there was an ethics problem?

(Meeting interrupted by Emergency Alarm.)

Chairman Jim Kasper: Adjourned meeting.

2019 HOUSE STANDING COMMITTEE MINUTES

Ethics Committee Pioneer Room, State Capitol

HB 1521
2/12/2019
Job # 32631

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature ReMae Kuehn

Explanation or reason for introduction of bill/resolution:

Relating to reporting campaign contributions, restrictions on public officials and lobbyists, investigations of ethics violations and to rulemaking procedures, disqualification of hearing officers, requirements for ND ethics commission.

Minutes:

Attachments #1-5

Speaker Klemin: Updated amendments #.01005 which replaces the amendments given February 7, 2019. (Attachment #1)

Colored version of bill (Attachment #2)

The difference is on page 4 of the amendments where it refers to page 41 and 42. Those amendments apply the applicable provisions of the Administrative Agencies Practices Act with respect to rulemaking hearings and adjudicatory hearings to the operations of the Ethics Commission.

Representative D. Anderson: When I see Article XIV was driven from out-of-state interests, I don't like that. The vast majority of the legislators here are decent people. We abide by the ethics rules we have going through the Secretary of State with our funding, etc. I have lobbyists visit with me all the time about legislation. In the end I answer to what my constituents want. I don't see a problem with ethics in this state.

I am afraid that over time we are going to lose some good legislators. What happens if one of us was falsely accused? Your career is over.

What made you become a proponent of this?

Kathleen Tweeten: I am supporting it because it is the right thing to do. Over 80% of the people polled said they would like an ethics commission. It is perception.

Representative D. Anderson: In the end this is going to hurt us. I am not sure people understand the process we go through now. If people don't like what I am doing, they let me know.

Kathleen Tweeten: When I was here last time there were comments and questions to follow up on. (Attachment #3)

Chairman Jim Kasper: From my understanding, the Secretary of State and the Attorney General approve the language on the ballot. When it comes to the ballot language they can't be involved in the writing or the editing of the measure.

Kathleen Tweeten: That is correct.

(13:00)

Representative Rohr: 80% of the people responded. How reliable is the data? How was the question posed? How big was your sample size?

Kathleen Tweeten: I didn't bring any of that with. It was a company from out of state. They did a random sample. I can get that information.

Chairman Jim Kasper: When I ran for reelection, we did a poll with an out-of-state company. When you see the questions, it is interesting to see the results the polling company gives you.

Representative Steiner: You used ActBlue. Is it true they only work on Democrat issues.

Kathleen Tweeten: That is true. They put together a system so that small donors can donate.

Representative Steiner: At the last hearing we talked about the \$900,000 for three people in the Senate Bill. You said it is not based on how many complaints. "Their job is greater than just taking complaints." What is their job?

Kathleen Tweeten: (16:10) (Searching for answer.)

I'll get back to you.

(19:55)

Representative Boschee: The ballot language was not established by your committee but by the Secretary of State's office. Correct?

Kathleen Tweeten: Yes.

Representative Boschee: There were three different versions of Article XIV. How was this version selected over the other two?

Kathleen Tweeten: Everything has continuous improvement. I don't believe there were different versions circulated. The version we did training on was more palatable to more people. We took funding out of earlier versions. That is the job of the legislative assembly.

Representative D. Anderson: If a legislator is accused of an ethics violation, would he have a right to confront the whistleblower that accused him?

Kathleen Tweeten: That is a legal question.

Representative D. Anderson: Do you have any feelings about it?

Kathleen Tweeten: I would hope there is due process.

Representative D. Anderson: A career and reputation could be ruined over a false accusation.

Vice Chair Scott Louser: The poll questions were asked of the public. That should not be confidential.

Kathleen Tweeten: I don't think they are.

Vice Chair Scott Louser: We are looking at studying the meaning of some words. We are being asked to spend two years defining words. Who are we going to ask what those words mean? Who wrote the measure?

Kathleen Tweeten: The measure was written by several different people. There was much input with about five attorneys.

Vice Chair Scott Louser: Who are we going to ask for the meaning of what is in our constitution?

Kathleen Tweeten: You ask North Dakotans for Public Integrity. We will ask the creators of those words.

Vice Chair Scott Louser: What does "ultimate and true source of funds" mean?

Kathleen Tweeten: To me it means those funds spent to unduly influence decision making.

Vice Chair Scott Louser: Who did the training when the language came from the Secretary of State?

Kathleen Tweeten: I was referring to the training on how you appropriately ask people to look at the ballot measure and to sign.

Vice Chair Scott Louser: Who trained you?

Kathleen Tweeten: I don't recall the names.

Representative Mock: What do we as a committee need to do to clarify Measure 1. One of the areas was the concern of your organization with the definition of gifts. We can agree there should be prohibition on improper gifts. Article XIV is clear about what is and is not allowed.

We are citizen legislators with full time jobs. Some of our employers may have lobbyists. How do you divest an individual's role as a legislator and their professional obligations to an employer? Is that legislator able to be paid by their employer to go on a conference where they are learning material that is germane to their work setting but may be brought up as a legislative conversation. Because they are a legislator, they may or may not be subject to the requirements and restrictions in Article XIV. Can you provide clarity for citizen legislators?

Kathleen Tweeten: There are going to be cases where the Ethics Commission will help.

Representative Mock: I am petrified for those that could find themselves in that conflict.

We as a legislature are a part of at least two organizations, the Council of State Governments and the National Conference of State Legislatures. Both are funded from dues of member states but also have programs supported financially by private contributors.

We as a state will reimbursement some of those expenses that are not covered by those organizations. Are we going to be able to send legislators to those trainings if any of those costs are paid by organizations that have registered lobbyists in North Dakota?

Kathleen Tweeten: My opinion is, if it is nonpartisan sponsored by associations, that it is a training with no ethical concerns, it should be appropriate. I would hope the Ethics Commission would set standards.

Representative Mock: I would appreciate a review of this and how it could conflict with us as a state to attend conferences. There is financial support that comes from private businesses. The reason I am concerned especially with the time line, we will be sending individuals to those and other programs as early as June. If your organization can provide some analysis and I hope it is included in a study.

Does your organization support any further clarification in statute regarding what is allowed under Article XIV related to gifts?

Kathleen Tweeten: The definition of gift in Article XIV is clear and it is up to the Ethics Commission to define that and make exceptions. The effective date on gifts is not until January 5, 2021. Anything you do this June is not in effect anyway.

Representative Mock: Beyond the role of the Ethics Commission, is there any further clarity or definition that we as a legislature can put into code regarding what a gift is and that your organization would support?

Kathleen Tweeten: I would hope the Ethics Commission will define those words with a conversation with all of you. That is why I support an interim study. What the commission decides is up to them, not our committee. It is not ours anymore. We can have input.

Chairman Jim Kasper: The Ethics Commission would need to establish guidelines on gifts. How would the Ethics Commission make that binding? Would they go through the Administrative Rules process? They can't make law. The legislature does.

Kathleen Tweeten: That is not for me to decide.

Representative Lefor: You worked on Measure 1 for continuous improvement. Anything that we would put in statute this session would not be permanent and would be subject to improvement. The concern I hear from public officials and lobbyists is they want some clarity. Do we need to deal with the definitions?

Kathleen Tweeten: I think that is what the interim study committee should be about.

Representative Lefor: The Ethics Commission is going to start sooner than that. Should the legislature put some clarity to this now and provide the framework?

Kathleen Tweeten: In my opinion, that isn't the role of the legislative assembly but the role of the Ethics Commission as identified in Article XIV.

Representative Lefor: Can we speak to someone from your committee so that we can get clarification?

Kathleen Tweeten: If that opportunity exists.

Representative Heinert: Was there more than one measure floating at a time?

Kathy Tweeten: There was only one measure out there.

Representative Heinert: When did your committee adopt the final measure and when did you start collecting signatures? Is there a record?

Kathleen Tweeten: That should be on the Secretary of State's website.

Representative Heinert: Do you have minutes from your committee that shows when the final measure was adopted by your committee and a contract was signed to seek signatures and what date they were sought?

Kathleen Tweeten: Yes, they would be on the contracts.

Representative Heinert: Can we get a copy? Who has those records?

Kathleen Tweeten: I would have to ask legal counsel if we can get them.

Representative Boschee: We can keep asking these questions. We are not going to get the answers any of us are looking for. This is the hand we are dealt with. Can we talk about HB 1521 and move forward as a committee?

Chairman Jim Kasper: Point taken. Committee, focus more on the measure itself.

Vice Chair Scott Louser: Who do we ask for answers if we do a study? You had a measure sponsor committee that wasn't incorporated during the campaign. There is now a group that is incorporated. Who can we turn to for answers during the study?

Kathleen Tweeten: I will see who wants to represent us and get back to the group.

Representative Mock: Last Thursday amendments were handed out. Have you reviewed that amendment? Does your organization have a position on it knowing there is a newer version?

Kathleen Tweeten: There were several areas that I would prefer Greg Stites talk about.

Representative K. Koppelman: North Dakota has an open legislative process. We have a system in North Dakota where bills are introduced and anyone can testify. Every bill introduced has to be voted on by a committee and then voted on again on the floor. That isn't the case when our constitution is amended. Any group can put together language without an open hearing and can put together a document for the ballot.

When you ask the public a question "Do you like ethics?" Who would be against ethics?

You need to trust the legislature especially with the open system that we have.

On the second page of your testimony from last week you said "everyone should be able to agree that lobbyists nor those they represent should be able to pay for public officials to travel to and attend conferences, seminars or other opportunities as currently allowed including associated meals, etc." Did you mean they should not be able to do that?

Kathleen Tweeten: I meant they shouldn't be able to.

Representative K. Koppelman: Then you said "Subsection 1 also promotes and advances opportunities for North Dakota residents including lobbyists to meet with public officials in educational and social settings." You seemed to think that was a good thing. That sounds like a contradiction?

Kathleen Tweeten: I believe a social event where everyone is invited and can talk to legislators and the group is not trying to influence a bill and they are just saying thank you is appropriate.

Representative K. Koppelman: What you criticized were conferences, seminars or other opportunities. The groups are here because they have some concerns. Some of the wording in the measure might put some in fear that it is unethical. The bill tries to get clarity. We do have a lot of in law currently about ethics. Any advice or thoughts?

Kathleen Tweeten: I can see the confusion. What I meant was to have small groups where one legislator attends and is paid for with a message to influence a decision. There is a place for socials. The concern is that if there is something the legislator needs to know for their job, the state should pay for that.

Representative K. Koppelman: That would be the taxpayers.

Kathleen Tweeten: Yes, there should be a budget.

Representative K. Koppelman: When the Ethics Commission makes rules, how do you see that happening?

Kathleen Tweeten: There needs to be a process.

Representative K. Koppelman: That is part of what the bill does is try to lay out that process which is the same process the executive branch goes through to make its rules. Proponents of the measure said during the campaign that when these rules are made, it will be overseen by the legislature's Administrative Rules Committee.

Now that was removed from the Senate Bill because there is nothing in the actual measure that says that, which is now the constitution. Were the members of the committee giving false assurances of a procedure that is not going to happen?

Kathleen Tweeten: I believe it is back in the Senate Bill.

Representative K. Koppelman: The concern is with this new constitutional body and now we are trying to put legislative oversight over the rule making process into law. The constitutional measure doesn't include that.

Kathleen Tweeten: Those are legal questions.

Representative D. Anderson: You think the state should provide the funding for training opportunities. I disagree. The state would be very conservative. If private industry needs to educate us in a special area, we should be attending.

Representative K. Koppelman: Who supervises the ethics of the Ethics Commission?

Kathleen Tweeten: I can't answer.

Representative K. Koppelman: When you were asked what is the definition of ethics, you said "doing the right thing." How do we know what is the right thing? You said, "That is what the Ethics Commission will help us figure that out." That is unsettling.

Representative Mitskog: Did your group review the other 43 Ethics Commissions in the United States?

Kathleen Tweeten: Yes. We researched the others. We took the best that fit North Dakota.

Representative Heinert: Which state was the best, so we could look at their laws?

Kathleen Tweeten: It is a combination of many states. We felt Minnesota was too restrictive. We can share those states with you.

Representative Headland: Could we be provided with the research that they gathered during the process? I would like to see how they based their decision.

Chairman Jim Kasper: Ms. Tweeten is going back to her committee to find out what can be shared.

(1:11)

B. R. Bale from Mandan: (Attachment #4)

(1:36:14)

Businesses regularly cite uncertainty of changing, shifting, or unclear rules and rules unevenly enforced. We all have a piece of the puzzle. Seize the day. I have faith in you. You can do it well and will.

(1:36:42)

Representative D. Anderson: I think we should find a definition of “influence” and “education.”

Chairman Jim Kasper: I will assign that to you.

Mary LaDuke, Private Citizen: I was offended last Thursday because one of the representatives on the committee stated the people who voted “Yes” on Measure 1 didn’t know what they were voting for. I am always an informed voter. I knew what I was doing.

Bad things can happen in North Dakota. Transparency is paramount to good governing. If legislators don’t accept gifts, they won’t be beholden to anyone but the electorate. Represent the people. Thank you for what you do.

Chairman Jim Kasper: I want to go through a couple of points where the constitution and statute discusses and requires ethical behavior.

(Attachment #5) This was prepared by the Legislative Council in December of 2014.

**North Dakota Laws Relating to Legal Behavior and Ethics of Legislators—
Constitutional Provisions.**

We have, in statute and in our Constitution, guidelines and rules that tell us what ethical behavior is.

Representative K. Koppelman: I can understand how those not familiar with the process can have questions. I have worked with a lot of different legislators. I can’t think of a legislator from either political party that was unethical or a lobbyist that showed unethical behavior. I am proud of the North Dakota legislature.

Representative Boschee: A big component of Article XIV has to do with transparency. There are questions about who is influencing us. Who is paying for travel or meals? When I go on trips paid for by other groups, I keep the documentation in case someone asks for it.

We have time to figure this all out.

Chairman Jim Kasper: Adjourned meeting.

2019 HOUSE STANDING COMMITTEE MINUTES

Ethics Committee

Pioneer Room, State Capitol

HB 1521

2/14/2019

32822

☐ Subcommittee

☐ Conference Committee

Committee Clerk Signature ReMae Kuehn by Caitlin Fleck
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Explanation or reason for introduction of bill/resolution:

Relating to reporting campaign contributions, restrictions on public officials and lobbyists, investigations of ethics violations and to rulemaking procedures, disqualification of hearing officers, requirements for ND ethics commission.

Minutes:

Attachment #1

Chairman Kasper: Opened hearing.

Claire Ness, Legislative Council: Explained amendment 19.1078.01011.
(Attachment #1)

Representative K. Koppelman: “Knowingly” is a standard that is inadvertent, but it isn’t as high of a standard as a “willfully” lawed. Would you care to explain that?

Ms. Ness: I believe willful would be the same as knowing, but I would have to double check that and get back to the committee. Continued explanation of amendment.

Representative Ruby: Page 36 & 37, line 11 says “ethics commission” but from there on it only says “commission” is it understood that we are only talking about the ethics commission in this bill, and not about other commissions in that state?

Ms. Ness: A commission is a defining term for that chapter in the bill and it is defined as the ethics commission.

Representative Ruby: The initial appeals process had language in the Burleigh County Jurisdiction, is that still in?

Ms. Ness: I believe it is in the county where the accused individual resides

Representative Heinert: I move to adopt the amendment 19.1078.01011.

Representative Rohr: Second.

Representative Mock: I want to make sure we are all clear on the process, would you rather us work and take up amendments additionally, or would you rather us amend the amendment and then vote that way?

Chairman Kasper: I understand that Representative Boschee has some amendments on the old version, but I think that if we adopt the new version we can see how the older version amendments would impact the new version.

Representative Mock: I want us to adopt the amendment but I have a couple questions on some components of the amendment that weren't proper to ask of Claire. Would you or someone be able to answer some of those questions? They are specifically related to the penalties.

Chairman Kasper: I think the discussion was to unify the penalties.

Representative Mock: Maybe it's fair for us to have that discussion, and no matter what I would support amending this and then come back and re-amend it further.

Chairman Kasper: Ok, we can adopt the amendment, and then discuss any amendments that we may want to do then.

Voice Vote #1. Motion Carries.

Representative Mock: Page 13, Section 6 for personal use of campaign contributions. It was written as a civil penalty, second offense as a class A misdemeanor and now down to an infraction. In a later section where we are talking about the penalties associated with lobbyists and gifts, violations of this is a \$500 fine for a first offense and an infraction for a second offense. Our existing laws for personal use of campaign contributions, they are misdemeanors. Are we reducing the penalty for personal use of campaign dollars by adding a section that we would with current law?

Representative K. Koppelman: The maximum fine is a \$1,000 for an infraction. For a class A misdemeanor it can be a year in prison, and up to \$3,000 in fines. So there is a significant dollar figure difference, and a loss of liberty as well.

Representative Ruby: Isn't it if there is a second infraction within a certain amount of time, it does go to a misdemeanor.

Representative K. Koppelman: I'm not sure about that in all cases, in some cases yes.

Representative Heinert: Under chapter 12.1-32 number 7 reads "... it would go to a class B misdemeanor.

Representative Mock: It is 16.1-08.1 where we talk about statement of interest. That title is a class A misdemeanor. Current law is that if you willfully violate law, it would be A misdemeanor. Now, if you use your campaign contributions personally, knowingly, that would be a civil penalty of \$500 for the first offense and an infraction for the second offense. I would be concerned with us changing the penalty from current law because we

would be weakening it. The same would go for page 40, Section 32 also. I would bring those up as concerns because I don't want us to reduce those penalties from current law.

Representative Ruby: I don't have a problem with keeping things consistent in the bill, but you do bring up the problem that some of this is already existing language in the code in 16.108.104.1 I don't see why we need to strike anything. What section had the corrupt practices?

Representative Mock: That section did not have the corrupt practices.

Representative Ruby: So we are talking about the same issue, but in 2 separate sections.

Representative Mock: Each of those section has a penalty provision, saying that it would be a class A misdemeanor. We would be adding the language to say that it would be a civil penalty for the first or an infraction for the second. It would reduce the penalty for that section.

Representative Ruby: It would be for the use of the commission.

Representative Heinert: I believe that section says somewhere in there though that if it's not specifically identified under that code, then it is a class A misdemeanor for those that do not specifically say for a violation. So essentially the code doesn't speak specifically to a violation, but it speaks to the whole chapter of everything that does not specifically say a class A misdemeanor.

Representative Mock: In section 6 of the bill, we would then otherwise provide a penalty. As is it today it is a Class A misdemeanor, but as this is written it would be a civil penalty. I think we do need to make a motion, but I'm not ready to make a motion for it yet because I don't want to overstrike it.

Representative Heinert: I put a lot of effort and time into all these 4 sections, and I have reread this they should all be treated equally and in the same. That is where we came up with the language. All four points are equal.

Representative K. Koppelman: Representative Mock is technically correct, but his statements might be a bit misleading because he is saying that this is the specific penalty that is in law for this offense. Many pieces of that section deal with specific penalties but as Representative Heinert said there is no specific penalty for the offense, but there is a catch all at the end of the section. I think Representative Mock is correct, but it isn't correct that that was the penalty that was specifically prescribed for this violation in law.

Chairman Kasper: However, that is the penalty currently because there was no penalty in the statute. Technically we would be reducing the penalty with the language that is in the bill as it is now.

Vice Chair Scott Louser: That section is less than two years old and it was silent so that will bring up to where we are now.

Representative K. Koppelman: Is this catch all section something that previously existed or was it added to that chapter in the bill?

Vice Chair Scott Louser: That existed prior to passing this.

Representative K. Koppelman: The bill that was passed then that deals with that particular offense just happened to be placed in that chapter?

Vice Chair Scott Louser: This seems to be an oversight of language from two years ago.

Chairman Jim Kasper: However, we need to deal with the language today, and I would not be interested in reducing any penalties. So maybe we should discuss what we should do with that penalty phase right now.

Representative Ruby: I would like to keep it consistent. We have had 2 years with the law and I don't believe there is anyone that has been convicted with that. But a couple sessions ago we had bills dealing with DUI penalties and we were cautioned to not set the penalty too high as to where people would take it to district court every time. We don't say up to the \$500 fine, it's \$500. Then we have the infraction, and then another infraction within a year it's a class b misdemeanor. I like the step up and I think each level is a deterrent. I like the consistency that it has too.

Representative K. Koppelman: I don't know if anything has even been charged. Most charges are plead down, so when you are charged with something in criminal court, your attorney is talking with the prosecuting attorney and they discuss a bargain that if they do plead guilty, then they will only charge them with something else. So when it says a class A misdemeanor, the likelihood of someone being charged with that crime they would have a plea bargain. So I think that even though it looks like it would be less on paper, it might actually be harder.

Representative Boschee: The work that has been done by this committee is to try to strengthen this. I do have concerns that the contributions and lobbyists part is new, and that the 2 entities that would be impacted by the perception of reducing a penalty are us and the lobbyists. So from a perception standpoint I would lean more towards supporting Representative Mock, and I think it would be a stronger bill if we were to pass what is already in code.

Representative K. Koppelman: We have shied away from in statutes in particularly our justice reinvestment efforts are mandatory minimum sentence. This bill does have a mandatory minimum sentence in the form of the \$500 fine. If we remove and go to current law, we could be weakening the bill too.

Representative Boschee: I agree that we have done a lot of work to reduce mandatory minimums. However, there has not been many politicians going to jail and being an impacted negatively based on this.

Chairman Jim Kasper: With the first offense of \$500 instead of a misdemeanor, would you say that we are stepping down in a penalty by going to the first offense of \$500 and a second offense of the misdemeanor?

Representative Boschee: I think I would be more comfortable with just defaulting and going to what the chapter allows already, and then that is the courts problem.

Chairman Kasper: For this section and the lobbyists section?

Representative Boschee: Correct.

Representative Mock: In section 32 of the bill it is a class B misdemeanor, but there is civil penalty language in the lobbyist code now. So it's legislative lobbying, chapter 54-05-1 where it's a B misdemeanor for any of the effective violations. It does say that in addition to the misdemeanor, it does that that individual can be subject to a civil penalty by the secretary of state. We do have similar language included in current amendment. It is possible to keep it as it is, regardless of the penalties.

Representative Ruby: In that penalty section, a violation of the sections are infractions, and that is in current code. There are some exceptions or carve outs in that section as well.

Representative Headland: If we are trying to come up with a plan that has the same penalties assessed in all areas I think that we are going to have some give and take. I think that we will have to come up with something that we think to be fair and move forward

Representative Heinert: For a first time offender a \$500 fine is significant. The courts will assess the fees, but when it comes down to it I don't think that it will exceed \$500. We are eliminating all jury trials and the state paying an attorney.

Representative Mock: Would the chair entertain looking at other changes for right now and coming back to this one later?

Representative Boschee: Before you is my amendment 19.1078.01006. Before I move this amendment, there is one change I would like to propose. On page 37 line 30, after "remove" strike "to advance." I would alter that to say "except as identified in subsection 1 of Section 2 of Article XIV."

Representative Koppelman: Where in Article XIV does it give the ethics commission (EC) the authority to define the term you were talking about?

Representative Boschee: Subsection 2 of section 3 of article XIV. The EC is given the authority to define that much more than we do. We aren't authorized to do that.

Representative K. Koppelman: My concern is that subsection says "... " and to me it sounds like they are making rules with what needs to be done in respect to transparency, what constitutes corruption, defining elections, etc., but it doesn't say anything about defining terms.

Representative Boschee: I am interpreting it differently and I have don't have the experience that you have but the constitution is also silent in the legislature's ability to define that terms. I feel that the intent of the measure if to hold us accountable in defining these terms, instead of us holding ourselves accountable.

Chairman Jim Kasper: That is probably the dilemma of the measure itself, lack of specificity in definition.

Representative K. Koppelman: Defining terms is necessary in law because we have specific meanings that are intended for specific terms in statute.

Representative Boschee: I motion to move my amendment.

Representative Mitskog: Second.

Representative Ruby: I'm going to resist the motion, in reading in Section 2 article XIV, it talks about gifts and it would be the concerns that would be raised not necessarily the issue in defining it. So I think that what we would be doing would be doing would be consistent with article XIV.

Representative Boschee: Most of what is on page 40 lines 1-18, much of that does mimic what you just read from section 2, but there are some liberties taken as well. So I guess I'm just trying to simplify the amendment.

Chairman Jim Kasper: On page 40 it is trying to discuss what the constitutional language is and maybe give it a little explanation for more understanding.

Representative Boschee: I agree, but I think that we have the time to discuss this further.

Roll Call Vote #2: 3 yes, 11 no, 0 absent. Motion fails.

Representative Mock: I don't have the specific language on the full sections yet, but I do have a little history and we could probably pull together an amendment pretty quickly. The section regarding Title 54 passed in 2011 being the civil penalty, 54-05.1-07, I think it was everything after the first sentence. The only thing we would have to remove would be the section regarding lobbyist registration fees, but everything else would be consistent to what it is today, but keep the new penalties. Since this new section doesn't reference anything about registration for lobbyists, there is no need for us to reference that registration penalties. Everything else we could keep this intent, have a civil penalty, and keep the intent the same. In section 6, page 13 of the bill, we last addressed the penalties in 2013 in the campaign contribution settlements. We changed it from an infraction to an A misdemeanor for a first offense. That was the flat penalty for anything not otherwise specified. I think that we should keep that penalty as an A misdemeanor, but allow for a civil penalty to be assessed. I would hope that we would consider keeping current penalties as is.

Chairman Kasper: So a first offense would be both a class A misdemeanor and a civil penalty?

Representative Mock: It would be a class A misdemeanor and a civil penalty could be assessed, but doesn't specify how much.

Representative Steiner: Article 14 says "shall be set." We have the freedom to set them, and if we want to make them all the same and easy to remember instead of there being the question of if we wanted what we had in the past. They are asking the legislature to use our judgment in setting them, and we would not be in violation of what they are asking us to do.

Representative Mock: I don't disagree with you. We have set them. We did use our discretion and we as a legislature set those penalties as a class A misdemeanor.

Representative Steiner: It says her that "they shall set" not that "they have been set."

Representative Mock: I can't speak with the intention of the measure 1 authors, but I don't know that it would be proper to reference current statute. The language of "shall be set" doesn't incur that the penalties have to be set, it says that the penalties have to be set by the legislatures. I don't see that to revisit and change what we already have set in statute. It would allow us to have the authority to set those penalties in statute.

Chairman Jim Kasper: I would disagree. If we read the language of the measure and hearing testimony, that the final version had the help of 5 attorneys, and had many eyes on it. And for them to put in the statute the Constitutional amendment that "... to me that's forward. It doesn't imply that we look back to what the penalties are, it states that we should set them in the future. I think they were saying that we "shall set" them in the future.

Representative K. Koppelman: We have been trying to discern the intent of the authors. While what governs is what is written in the Constitution, not what the intent of the authors was. I think that we have spent a lot of time trying to discern that out of respect for those who put this on the ballot. We haven't been able to get much information on that and we aren't taking public testimony on that anymore either, we are trying to look at the bill. We now have to look at what the bill, measure, and law will say. Secondly, the implication that the penalty of a public official would be the act of using that campaign money for personal use and the scrutiny that would come on that person for the violation. They will be out of office. I'm not sure the debate of the penalties means that much.

Chairman Jim Kasper: On page 13, the first violation is civil penalty of \$500, does that mean that there is no court? This might be then where the EC would find the person guilty. Will this end up in court?

Representative Heinert: I'd assume that this would go before the ethics board, and they would identify if they found them in the wrong. Or this might also be where if you were the one that did the offense, and you could come to an agreement and you could then file a civil assessment. The only time I would assume it would go to court would be if you believe you are absolutely right and you would then go before a hearing officer.

Chairman Jim Kasper: The first violation without an appeal would be a discussion with the EC board?

Representative Heinert: That is the way I would read it.

Chairman Jim Kasper: The second offense is an infraction. Would this give the authority to the EC to declare that an infraction has occurred, or what that have to be declared by a court?

Representative Heinert: Under the infraction, I'm not positive. Under the misdemeanor, it would have go to a court.

Representative K. Koppelman: I don't believe anything in the constitution gives the EC the authority to act as a court of law. They can establish rules and implement the fees, but courts of law adjudicate criminal activity. An infraction is a violation of criminal law, and I believe only a court can act on that.

Representative Heinert: I would say that what would happen if it was the second offense, the EC would gather the facts and go to the state's attorney's office.

Chairman Jim Kasper: If we removed lines 17-21 on page 13, would it be your opinion then that a violation would grow to the current statute?

Representative Mock: Correct, we could remove section 6 of the bill because we wouldn't make any changes to that. The personal use would revert to current code. Page 40, I would like to adopt almost all of 54-05.1-07, removing the section about lobbyist registration fees.

Chairman Jim Kasper: On page 40, lines 24-28, if we remove that section, would the penalty go back to current law as opposed to imposing a penalty in this section?

Representative Mock: I don't believe so because that is all new code. We would have to check to make sure that there is still a penalty. Because we are defining lobbyist's gifts, I would want to make sure that we are not removing the currently penalties and replacing it with what is in section 32 of the bill. Would you want to address the 2 separately first, since they are 2 separate sections?

Chairman Kasper: I think so yes, going back to page 13.

Representative Mock: I would move that we remove the language on page 13, lines 17-21 of the marked up bill.

Representative Headland: I'm wondering if we shouldn't take a recess and wait until Claire can come.

Chairman Kasper: We will wait until she gets here to act upon that motion.

Representative Steiner: If we remove that, there would still be a penalty?

Representative Mock: If we were to remove that language, it would revert to the current penalty. I think LC would suggest that we don't need to amend anything in that section of code, so it would just be removed all together, but it would not remove the penalty.

Representative K. Koppelman: The measure requires the legislature to set a penalty. SO whether it's this penalty or the default current penalty, we need to set a penalty.

Representative Boschee: If I heard correctly, the way the bill is now with the civil penalty, that accountability measure would happen and you could appeal that accountability measure. Whereas, if we default back, something may not happen at all?

Chairman Jim Kasper: Yes. Claire can you help us with the discussion on the penalties in the bill on pages 13 and 40. What would happen if these lines on page 13 were removed?

Ms. Ness: My interpretation of that is that it would revert back to what is currently in chapter 16.1-08.1. (Explaining the bill)

Chairman Kasper: So we would go to what is in current statute?

Ms. Ness: I believe that is what a court would do. That is what the effect of the legislation would do, and the court would not find that the EC could change that.

Chairman Kasper: On the article XIV under section 2, subsection 1, it states "appropriate civil and criminal sanctions for violations of this subsections shall be set by the legislative assembly." Does that mean forward we shall set them, can we set them right now, or can we revert back to current law?

Ms. Ness: If laws are in place that would fill the intent behind that provision.

Chairman Kasper: Page 40, lines 24-28, talking about lobbyists gifts and penalties, if we removed that, we do have a penalty section right now for lobbyists, would re revert or do we need a penalty section for lobbyists because of article XIV?

Ms. Ness: The current lobbyist penalty chapter doesn't currently have a penalty for lobbyists providing a gift to a public official. So you would need a penalty in the bill.

Representative Mock: The lobbyists gifts, the penalty, if there were illegal gifts given by lobbyists to a legislator, under current law would that penalty apply?

Ms. Ness: I don't believe so because that penalty would apply to chapter 54, and the prohibition in lobbyists gifts is in this new chapter 66. So the current penalty would not be read to apply. You would need to have a new penalty in this new chapter.

Representative Mock: I guess if someone were to violate the new section, without the penalty clause in that bill wouldn't be able to have a penalty. Theoretically they would have to be charged under chapter 54 of the current law?

Ms. Ness: Correct.

Representative Heinert: Under the article it says that the legislators have to set a civil and criminal penalty, correct?

Ms. Ness: Yes.

Representative Heinert: On page 13 for improper use of campaign funds, in state law there is only criminal penalties set in current law?

Ms. Ness: That is correct.

Representative K. Koppelman: The EC could adjudicate the charge of an infraction, and I would think that only a court of law could adjudicate of criminal infraction?

Ms. Ness: That would be my understanding as well.

Representative Steiner: “Appropriate civil and criminal sanctions for violations of this subsection shall be set by the legislative assembly” but by the word appropriate they aren’t implying that we have to do both or one or the other or take what we have in current law. They are saying that by your judgement what we have for appropriate civil and criminal sanctions, appropriate. So should we not strike this and go with existing, I think that we would have to take action of our own today?

Ms. Ness: I believe that to Representative Heinert’s point you would have to have both civil and criminal sanction because current law doesn’t have both. If the current law were to have both then you could say that those current penalties are appropriate and I think that that would satisfy the article XIV requirements.

Representative Mock: I have an idea. Because we need to have something in 54-66.03, for consistency I would suggest replacing infraction on page 40 line 28 with B misdemeanor. That would be the same penalty if they were charged under the current lobbyist section of law. I move that amendment.

Representative Boschee: Seconded.

Voice Vote #3: Motion carries.

Representative Heinert: I would like to change them all to a class B misdemeanor from an infraction so that they remain consistent. I move the motion to change page 13 line 21.

Representative Headland: Second.

Voice Vote #4: Motion carries.

Representative Heinert: I move to change page 45 lines 8 & 19 from infraction to class B misdemeanor.

Representative Lefor: Second.

Voice Vote #5: Motion carries.

Representative Heinert: Page 45 line 23 I think would be consistent with current law, and we can keep that.

Representative Koppelman: Page 36, line 6 I would move to change an infraction to a class B misdemeanor.

Representative Steiner: Second.

Voice Vote #6: Motion carries.

Representative Koppelman: The measure says we should set penalties, and the bill now does that, so I think that would be appropriate.

Representative Louser: I move for a do pass as amended and rerefer to appropriations.

Representative Rohr: Second.

Roll Call Vote #7: 13 yes, 1 no, 0 absent. Motion carries.

Floor assignment: **Representative Louser**

Meeting closed.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1521

Page 1, line 1, replace "two" with "a"

Page 1, line 1, replace "sections" with "section"

Page 1, line 2, after "contributions" insert "and expenditures"

Page 1, line 8, replace the second "section" with "sections"

Page 1, line 8, after "28-32-27" insert ", 28-32-47, 28-32-48, and 28-32-49"

Page 1, line 9, remove "hearing"

Page 1, line 10, replace "officers" with "agency heads in quasi-judicial proceedings,
implementing article XIV of the Constitution of North Dakota"

Page 13, line 17, replace "impose a fine" with "assess a civil penalty"

Page 13, line 18, after "who" insert "knowingly"

Page 13, line 18, after the underscored period insert "The assessment of a civil penalty may be
appealed to the district court of Burleigh County."

Page 13, line 18, after "subsequent" insert "knowing"

Page 13, line 19, replace "a class A misdemeanor" with "an infraction"

Page 13, line 25, replace "file a claim" with "commence an action"

Page 13, line 25, remove "with competent"

Page 13, line 26, remove "jurisdiction"

Page 13, line 28, replace "remains in violation of" with "has failed to comply with"

Page 13, line 28, remove the second "violation"

Page 13, line 29, replace "of" with "failure to comply with"

Page 13, remove lines 30 and 31

Page 14, remove lines 1 through 6

Page 19, line 5, after the first underscored comma, insert "as specified"

Page 28, line 22, overstrike "such"

Page 34, line 18, remove "and shall"

Page 34, remove lines 19 through 24

Page 34, line 25, remove "shared by the general public"

Page 34, line 26, after "3." insert "A hearing officer who is a director, officer, commissioner,
head, or other executive of an agency shall self-disqualify in a proceeding in which a
reasonable, disinterested observer would believe the hearing officer is biased due to:

- a. A contribution by one of the parties supporting the hearing officer's most recent campaign for public office; or
- b. An ownership interest, other than investment in a mutual fund, of the hearing officer in one of the parties to the proceeding if the ownership interest is not shared by the general public.

4."

Page 34, line 28, overstrike "4." and insert immediately thereafter "5."

Page 34, line 30, overstrike "5." and insert immediately thereafter "6."

Page 35, line 9, overstrike "6." and insert immediately thereafter "7."

Page 35, line 11, overstrike "7." and insert immediately thereafter "8."

Page 35, line 19, replace "8." with "9."

Page 35, line 19, replace "impose upon" with "assess"

Page 35, line 19, after "who" insert "knowingly"

Page 35, line 20, replace "this section" with "subsection 3"

Page 35, line 20, replace "fine of one" with "civil penalty of five"

Page 35, line 21, after "subsequent" insert "knowing"

Page 35, after line 21 insert:

"SECTION 29. AMENDMENT. Section 28-32-47 of the North Dakota Century Code is amended and reenacted as follows:

28-32-47. Scope of and procedure on appeal from agency rulemaking.

1. A judge of the district court shall review an appeal from an administrative agency's or ethics commission's rulemaking action based only on the record filed with the court. If an appellant requests documents to be included in the record but the agency or commission does not include them, the court, upon application by the appellant, may compel their inclusion. After a hearing, the filing of briefs, or other disposition of the matter as the judge may reasonably require, the court shall affirm the agency's rulemaking action unless it finds that any of the following are present:
 - 1- a. The provisions of this chapter have not been substantially complied with in the agency's rulemaking actions.
 - 2- b. A rule published as a result of the rulemaking action appealed is unconstitutional on the face of the language adopted.
 - 3- c. A rule published as a result of the rulemaking action appealed is beyond the scope of the agency's or commission's authority to adopt.
 - 4- d. A rule published as a result of the rulemaking action appealed is on the face of the language adopted an arbitrary or capricious application of authority granted by statute.

2. If the rulemaking action of the agency or commission is not affirmed by the court, ~~if the rulemaking action~~ must be remanded to the agency or commission for disposition in accordance with the order of the court, or the rule or a portion of the rule resulting from the rulemaking action of the agency or commission must be declared invalid for reasons stated by the court.

SECTION 30. AMENDMENT. Section 28-32-48 of the North Dakota Century Code is amended and reenacted as follows:

28-32-48. Appeal - Stay of proceedings.

An appeal from an order or the rulemaking action of an administrative agency or the commission does not stay the enforcement of the order or the effect of a published rule unless the court to which the appeal is taken, upon application and after a hearing or the submission of briefs, orders a stay. The court may impose terms and conditions for a stay of the enforcement of the order or for a stay in the effect of a published rule. This section does not prohibit the operation of an automatic stay upon the enforcement of an administrative order or commission order as may be required by another statute.

SECTION 31. AMENDMENT. Section 28-32-49 of the North Dakota Century Code is amended and reenacted as follows:

28-32-49. Review in supreme court.

The judgment of the district court in an appeal from an order or rulemaking action of an administrative agency or the commission may be reviewed in the supreme court on appeal in the same manner as provided in section 28-32-46 or 28-32-47, except that the appeal to the supreme court must be taken within sixty days after the service of the notice of entry of judgment in the district court. Any party of record, including the agency or commission, may take an appeal from the final judgment of the district court to the supreme court. If an appeal from the judgment of the district court is taken by an agency or the commission, the agency or commission may not be required to pay a docket fee or file a bond for costs or equivalent security."

Page 37, line 22, replace "file a claim" with "commence an action"

Page 37, line 22, remove "with competent"

Page 37, line 23, remove "jurisdiction"

Page 37, line 25, replace "remains in violation of" with "has failed to comply with"

Page 37, line 25, remove the second "violation"

Page 37, line 26, replace "of" with "failure to comply with"

Page 37, line 28, after "gift" insert "knowingly"

Page 37, line 29, remove "knowingly"

Page 37, line 30, after "lobbyist" insert "knowingly"

Page 38, line 19, replace "impose a fine" with "assess a civil penalty"

Page 38, line 19, replace "one" with "five"

Page 38, line 20, after "who" insert "knowingly"

Page 38, line 20, after "section" insert "and, if the person is a lobbyist, the secretary of state may revoke the lobbyist's registration under chapter 54-05.1"

Page 38, line 20, after "subsequent" insert "knowing"

Page 39, line 19, replace "verbally" with "orally"

Page 39, line 27, replace "verbally" with "orally"

Page 39, line 31, replace "14-02" with "12.1-15"

Page 40, line 4, replace "verbal" with "oral"

Page 40, line 6, after "writing" insert "within ten calendar days of receipt of the complaint or summary of the complaint"

Page 40, line 31, remove "and recommendations"

Page 41, line 1, remove "and recommendations"

Page 41, line 3, remove "and recommendations"

Page 41, line 4, remove "and recommendations"

Page 41, line 4, remove the underscored comma

Page 41, line 5, remove "recommendations."

Page 41, line 7, remove "and recommendations"

Page 41, line 9, remove the underscored comma

Page 41, line 10, remove "recommendations."

Page 41, line 12, remove "their"

Page 41, line 17, replace "impose a" with "assess a civil"

Page 41, line 18, replace "impose a" with "assess a civil"

Page 41, line 19, after "appeal" insert "and request judicial review of"

Page 41, line 20, remove "the office of administrative hearings, which shall"

Page 41, line 21, replace "designate an administrative law judge to hear the appeal. An appeal" with "the district court in the county in which the accused individual resides. A request for judicial review"

Page 41, line 22, replace "adjudicative proceedings" with "an appeal of a determination of an agency"

Page 41, line 22, after the underscored period insert "The scope of review and procedure on appeal from a determination of the commission must comply with section 28-32-47."

Page 41, line 29, replace "an administrative law judge" with "a court"

Page 42, line 13, remove "Disclosure of information included in subsections 1 and 2 by a person who knows the"

Page 42, remove line 14

Page 42, line 15, remove "4."

Page 42, line 17, replace "5." with "4."

Page 42, line 20, replace "impose a fine" with "assess a civil penalty"

Page 42, line 20, replace "one" with "five"

Page 42, line 20, after "who" insert "knowingly"

Page 42, line 21, after "subsequent" insert "knowing"

Page 42, after line 27, insert:

"54-66-14. Prohibition on delivering campaign contributions - Penalty.

A lobbyist may not deliver knowingly a campaign contribution made by another person in violation of subsection 3 of section 2 of article XIV of the Constitution of North Dakota. For a first violation, the secretary of state shall assess a civil penalty of five hundred dollars upon any person who knowingly violates this section and may revoke the lobbyist's registration. For a second and subsequent knowing violation of this section, the person is guilty of an infraction.

Page 42, line 29, replace "\$100,000" with "\$300,000"

Page 43, line 1, after "authorized" insert "one and"

Page 43, line 1, remove "of a"

Page 43, line 1, remove "position for an administrative"

Page 43, line 2, replace "assistant" with "positions"

Page 43, line 3, after the fifth comma insert "and"

Page 43, line 3, remove ", and 29"

Page 43, line 4, replace "30" with "32"

Page 43, line 7, replace "30" with "32"

Page 43, line 9, replace "30" with "32"

Page 43, line 11, after "Sections" insert "8,"

Page 43, line 11, remove "and"

Page 43, line 11, after "20" insert ", 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31"

Renumber accordingly

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1521

Page 37, line 8, remove "This section does not require a person to report the ultimate and true source of funds"

Page 37, remove lines 9 through 21

Page 37, line 22, remove "5."

Page 37, line 27, replace "- Penalty" with "prohibited"

Page 37, line 28, after "gift" insert "knowingly"

Page 37, line 29, remove "knowingly"

Page 37, line 29, remove "with a value over sixty dollars per"

Page 37, line 30, replace "individual per event, adjusted for inflation," with "knowingly"

Page 37, line 30, remove ", except to advance"

Page 38, remove lines 1 through 20

Page 38, line 21, remove "this section, the person is guilty of an infraction"

Renumber accordingly

February 14, 2019

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PROPOSED AMENDMENTS TO HOUSE BILL NO. 1521

Page 1, line 1, replace "two" with "a"

Page 1, line 1, replace "sections" with "section"

Page 1, line 2, after "contributions" insert "and expenditures"

Page 1, line 8, replace the second "section" with "sections"

Page 1, line 8, after "28-32-27" insert ", 28-32-47, 28-32-48, and 28-32-49"

Page 1, line 9, remove "hearing"

Page 1, line 10, replace "officers" with "agency heads in quasi-judicial proceedings, implementing article XIV of the Constitution of North Dakota"

Page 13, line 17, replace "impose a fine" with "assess a civil penalty"

Page 13, line 18, after "who" insert "knowingly"

Page 13, line 18, after the underscored period insert "The assessment of a civil penalty may be appealed to the district court of Burleigh County."

Page 13, line 18, after "subsequent" insert "knowing"

Page 13, line 19, replace "A" with "B"

Page 13, line 25, replace "file a claim" with "commence an action"

Page 13, line 25, remove "with competent"

Page 13, line 26, remove "jurisdiction"

Page 13, line 28, replace "remains in violation of" with "has failed to comply with"

Page 13, line 28, remove the second "violation"

Page 13, line 29, replace "of" with "failure to comply with"

Page 13, remove lines 30 and 31

Page 14, remove lines 1 through 6

Page 19, line 5, after the first underscored comma, insert "as specified"

Page 28, line 22, overstrike "such"

Page 34, line 18, remove "and shall"

Page 34, remove lines 19 through 24

Page 34, line 25, remove "shared by the general public"

Page 34, line 26, after "3." insert "A hearing officer who is a director, officer, commissioner, head, or other executive of an agency shall self-disqualify in a proceeding in which a reasonable, disinterested observer would believe the hearing officer is biased due to:

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- a. A contribution by one of the parties supporting the hearing officer's most recent campaign for public office; or
- b. An ownership interest, other than investment in a mutual fund, of the hearing officer in one of the parties to the proceeding if the ownership interest is not shared by the general public.

4."

Page 34, line 28, overstrike "4." and insert immediately thereafter "5."

Page 34, line 30, overstrike "5." and insert immediately thereafter "6."

Page 35, line 9, overstrike "6." and insert immediately thereafter "7."

Page 35, line 11, overstrike "7." and insert immediately thereafter "8."

Page 35, line 19, replace "8." with "9."

Page 35, line 19, replace "impose upon" with "assess"

Page 35, line 19, after "who" insert "knowingly"

Page 35, line 20, replace "this section" with "subsection 3"

Page 35, line 20, replace "fine of one" with "civil penalty of five"

Page 35, line 21, after "subsequent" insert "knowing"

Page 35, line 21, replace "an infraction" with "a class B misdemeanor"

Page 35, after line 21 insert:

"SECTION 29. AMENDMENT. Section 28-32-47 of the North Dakota Century Code is amended and reenacted as follows:

28-32-47. Scope of and procedure on appeal from agency rulemaking.

1. A judge of the district court shall review an appeal from an administrative agency's or ethics commission's rulemaking action based only on the record filed with the court. If an appellant requests documents to be included in the record but the agency or commission does not include them, the court, upon application by the appellant, may compel their inclusion. After a hearing, the filing of briefs, or other disposition of the matter as the judge may reasonably require, the court shall affirm the agency's rulemaking action unless it finds that any of the following are present:
 1. a. The provisions of this chapter have not been substantially complied with in the agency's rulemaking actions.
 2. b. A rule published as a result of the rulemaking action appealed is unconstitutional on the face of the language adopted.
 3. c. A rule published as a result of the rulemaking action appealed is beyond the scope of the agency's or commission's authority to adopt.

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4. d. A rule published as a result of the rulemaking action appealed is on the face of the language adopted an arbitrary or capricious application of authority granted by statute.
2. If the rulemaking action of the agency or commission is not affirmed by the court, ~~it~~the rulemaking action must be remanded to the agency or commission for disposition in accordance with the order of the court, or the rule or a portion of the rule resulting from the rulemaking action of the agency or commission must be declared invalid for reasons stated by the court.

SECTION 30. AMENDMENT. Section 28-32-48 of the North Dakota Century Code is amended and reenacted as follows:

28-32-48. Appeal - Stay of proceedings.

An appeal from an order or the rulemaking action of an administrative agency or the commission does not stay the enforcement of the order or the effect of a published rule unless the court to which the appeal is taken, upon application and after a hearing or the submission of briefs, orders a stay. The court may impose terms and conditions for a stay of the enforcement of the order or for a stay in the effect of a published rule. This section does not prohibit the operation of an automatic stay upon the enforcement of an administrative order or commission order as may be required by another statute.

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28-32-49. Review in supreme court.

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Page 37, line 23, remove "jurisdiction"

Page 37, line 25, replace "remains in violation of" with "has failed to comply with"

Page 37, line 25, remove the second "violation"

Page 37, line 26, replace "of" with "failure to comply with"

Page 37, line 28, after "gift" insert "knowingly"

Page 37, line 29, remove "knowingly"

Page 37, line 30, after "lobbyist" insert "knowingly"

Page 38, line 19, replace "impose a fine" with "assess a civil penalty"

Page 38, line 19, replace "one" with "five"

Page 38, line 20, after "who" insert "knowingly"

Page 38, line 20, after "section" insert "and, if the person is a lobbyist, the secretary of state may revoke the lobbyist's registration under chapter 54-05.1"

Page 38, line 20, after "subsequent" insert "knowing"

Page 38, line 21, replace "an infraction" with "a class B misdemeanor"

Page 39, line 19, replace "verbally" with "orally"

Page 39, line 27, replace "verbally" with "orally"

Page 39, line 31, replace "14-02" with "12.1-15"

Page 40, line 4, replace "verbal" with "oral"

Page 40, line 6, after "writing" insert "within ten calendar days of receipt of the complaint or summary of the complaint"

Page 40, line 31, remove "and recommendations"

Page 41, line 1, remove "and recommendations"

Page 41, line 3, remove "and recommendations"

Page 41, line 4, remove "and recommendations"

Page 41, line 4, remove the underscored comma

Page 41, line 5, remove "recommendations,"

Page 41, line 7, remove "and recommendations"

Page 41, line 9, remove the underscored comma

Page 41, line 10, remove "recommendations,"

Page 41, line 12, remove "their"

Page 41, line 17, replace "impose a" with "assess a civil"

Page 41, line 18, replace "impose a" with "assess a civil"

Page 41, line 19, after "appeal" insert "and request judicial review of"

Page 41, line 20, remove "the office of administrative hearings, which shall"

Page 41, line 21, replace "designate an administrative law judge to hear the appeal. An appeal" with "the district court in the county in which the accused individual resides. A request for judicial review"

Page 41, line 22, replace "adjudicative proceedings" with "an appeal of a determination of an agency"

Page 41, line 22, after the underscored period insert "The scope of review and procedure on appeal from a determination of the commission must comply with section 28-32-47."

Page 41, line 29, replace "an administrative law judge" with "a court"

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Page 42, line 13, remove "Disclosure of information included in subsections 1 and 2 by a person who knows the"

Page 42, remove line 14

Page 42, line 15, remove "4."

Page 42, line 17, replace "5." with "4."

Page 42, line 20, replace "impose a fine" with "assess a civil penalty"

Page 42, line 20, replace "one" with "five"

Page 42, line 20, after "who" insert "knowingly"

Page 42, line 21, after "subsequent" insert "knowing"

Page 42, line 22, replace "an infraction" with "a class B misdemeanor"

Page 42, after line 27, insert:

"54-66-14. Prohibition on delivering campaign contributions - Penalty.

A lobbyist may not deliver knowingly a campaign contribution made by another person in violation of subsection 3 of section 2 of article XIV of the Constitution of North Dakota. For a first violation, the secretary of state shall assess a civil penalty of five hundred dollars upon any person who knowingly violates this section and may revoke the lobbyist's registration. For a second and subsequent knowing violation of this section, the person is guilty of a class B misdemeanor."

Page 42, line 29, replace "\$100,000" with "\$300,000"

Page 43, line 1, after "authorized" insert "one and"

Page 43, line 1, remove "of a"

Page 43, line 1, remove "position for an administrative"

Page 43, line 2, replace "assistant" with "positions"

Page 43, line 3, after the fifth comma insert "and"

Page 43, line 3, remove ", and 29"

Page 43, line 4, replace "30" with "32"

Page 43, line 7, replace "30" with "32"

Page 43, line 9, replace "30" with "32"

Page 43, line 11, after "Sections" insert "8,"

Page 43, line 11, remove "and"

Page 43, line 11, after "20" insert ", 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31"

Renumber accordingly

Date: 2/14/2019

Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1521**

House Ethics

Committee

☐ Subcommittee

Amendment LC# or Description: 19.1078.01011

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Heinert Seconded By Rep. Rohr

Representatives	Yes	No	Representatives	Yes	No
Chairman Kasper			Rep. Boschee		
V. Chair Louser			Rep. Mitskog		
Rep. D. Anderson			Rep. Mock		
Rep. Becker					
Rep. Headland					
Rep. Heinert					
Rep. K. Koppelman					
Rep. Lefor					
Rep. Rohr					
Rep. D. Ruby					
Rep. Steiner					

**Voice Vote
Motion Passed**

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1521**

House Ethics

Committee

☐ Subcommittee

Amendment LC# or Description: 19.1078.01006, page 37, line 30, after "remove" strike "to advance". Change to "except as identified in subsection 1 of Section 2 of Article XIV"

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Boschee Seconded By Rep. Mitskog

Representatives	Yes	No	Representatives	Yes	No
Chairman Kasper		X	Rep. Boschee	X	
V. Chair Louser		X	Rep. Mitskog	X	
Rep. D. Anderson		X	Rep. Mock	X	
Rep. Becker		X			
Rep. Headland		X			
Rep. Heinert		X			
Rep. K. Koppelman		X			
Rep. Lefor		X			
Rep. Rohr		X			
Rep. D. Ruby		X			
Rep. Steiner		X			

Total (Yes) 3 No 11

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Motion Fails

Date: 2/14/2019

Roll Call Vote #: 3

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1521**

House Ethics

Committee

☐ Subcommittee

Amendment LC# or Description: 19.1078.01011 Page 40, line 28 replace infraction with class B misdemeanor

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Mock Seconded By Rep. Boschee

Representatives	Yes	No	Representatives	Yes	No
Chairman Kasper			Rep. Boschee		
V. Chair Louser			Rep. Mitskog		
Rep. D. Anderson			Rep. Mock		
Rep. Becker					
Rep. Headland					
Rep. Heinert					
Rep. K. Koppelman					
Rep. Lefor					
Rep. Rohr					
Rep. D. Ruby					
Rep. Steiner					

**Voice Vote
Motion Passed**

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1521**

House Ethics

Committee

☐ Subcommittee

Amendment LC# or Description: 19.1078.01011 Page 13, line 21 change an infraction to class B misdemeanor

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Heinert Seconded By Rep. Headland

Representatives	Yes	No	Representatives	Yes	No
Chairman Kasper			Rep. Boschee		
V. Chair Louser			Rep. Mitskog		
Rep. D. Anderson			Rep. Mock		
Rep. Becker					
Rep. Headland					
Rep. Heinert					
Rep. K. Koppelman					
Rep. Lefor					
Rep. Rohr					
Rep. D. Ruby					
Rep. Steiner					

**Voice Vote
Motion Passed**

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1521**

House Ethics

Committee

☐ Subcommittee

Amendment LC# or Description: 19.1078.01011 Page 45, lines 8 & 19
change an infraction to class B misdemeanor

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Heinert Seconded By Rep. Lefor

Representatives	Yes	No	Representatives	Yes	No
Chairman Kasper			Rep. Bosch		
V. Chair Louser			Rep. Mitskog		
Rep. D. Anderson			Rep. Mock		
Rep. Becker					
Rep. Headland					
Rep. Heinert					
Rep. K. Koppelman					
Rep. Lefor					
Rep. Rohr					
Rep. D. Ruby					
Rep. Steiner					

**Voice Vote
Motion Passed**

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1521**

House Ethics

Committee

☐ Subcommittee

Amendment LC# or Description: 19.1078.01011 Page 36, line 6
change an infraction to class B misdemeanor

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Koppelman Seconded By Rep. Steiner

Representatives	Yes	No	Representatives	Yes	No
Chairman Kasper			Rep. Boschee		
V. Chair Louser			Rep. Mitskog		
Rep. D. Anderson			Rep. Mock		
Rep. Becker					
Rep. Headland					
Rep. Heinert					
Rep. K. Koppelman					
Rep. Lefor					
Rep. Rohr					
Rep. D. Ruby					
Rep. Steiner					

**Voice Vote
Motion Passed**

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 2/14/2019

Roll Call Vote #: 7

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1521**

House Ethics Committee

☐ Subcommittee

Amendment LC# or Description: 19.1078.01012

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☒ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Louser Seconded By Rep. Rohr

Representatives	Yes	No	Representatives	Yes	No
Chairman Kasper	X		Rep. Boschee		X
V. Chair Louser	X		Rep. Mitskog	X	
Rep. D. Anderson	X		Rep. Mock	X	
Rep. Becker	X				
Rep. Headland	X				
Rep. Heinert	X				
Rep. K. Koppelman	X				
Rep. Lefor	X				
Rep. Rohr	X				
Rep. D. Ruby	X				
Rep. Steiner	X				

Total (Yes) 13 No 1

Absent 0

Floor Assignment Rep. Louser

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1521: Ethics Committee (Rep. Kasper, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (13 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). HB 1521 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "two" with "a"

Page 1, line 1, replace "sections" with "section"

Page 1, line 2, after "contributions" insert "and expenditures"

Page 1, line 8, replace the second "section" with "sections"

Page 1, line 8, after "28-32-27" insert ", 28-32-47, 28-32-48, and 28-32-49"

Page 1, line 9, remove "hearing"

Page 1, line 10, replace "officers" with "agency heads in quasi-judicial proceedings, implementing article XIV of the Constitution of North Dakota"

Page 13, line 17, replace "impose a fine" with "assess a civil penalty"

Page 13, line 18, after "who" insert "knowingly"

Page 13, line 18, after the underscored period insert "The assessment of a civil penalty may be appealed to the district court of Burleigh County."

Page 13, line 18, after "subsequent" insert "knowing"

Page 13, line 19, replace "A" with "B"

Page 13, line 25, replace "file a claim" with "commence an action"

Page 13, line 25, remove "with competent"

Page 13, line 26, remove "jurisdiction"

Page 13, line 28, replace "remains in violation of" with "has failed to comply with"

Page 13, line 28, remove the second "violation"

Page 13, line 29, replace "of" with "failure to comply with"

Page 13, remove lines 30 and 31

Page 14, remove lines 1 through 6

Page 19, line 5, after the first underscored comma, insert "as specified"

Page 28, line 22, overstrike "such"

Page 34, line 18, remove "and shall"

Page 34, remove lines 19 through 24

Page 34, line 25, remove "shared by the general public"

Page 34, line 26, after "3." insert "A hearing officer who is a director, officer, commissioner, head, or other executive of an agency shall self-disqualify in a proceeding in which a reasonable, disinterested observer would believe the hearing officer is biased due to:

- a. A contribution by one of the parties supporting the hearing officer's most recent campaign for public office; or
- b. An ownership interest, other than investment in a mutual fund, of the hearing officer in one of the parties to the proceeding if the ownership interest is not shared by the general public.

4."

Page 34, line 28, overstrike "4." and insert immediately thereafter "5."

Page 34, line 30, overstrike "5." and insert immediately thereafter "6."

Page 35, line 9, overstrike "6." and insert immediately thereafter "7."

Page 35, line 11, overstrike "7." and insert immediately thereafter "8."

Page 35, line 19, replace "8." with "9."

Page 35, line 19, replace "impose upon" with "assess"

Page 35, line 19, after "who" insert "knowingly"

Page 35, line 20, replace "this section" with "subsection 3"

Page 35, line 20, replace "fine of one" with "civil penalty of five"

Page 35, line 21, after "subsequent" insert "knowing"

Page 35, line 21, replace "an infraction" with "a class B misdemeanor"

Page 35, after line 21 insert:

"SECTION 29. AMENDMENT. Section 28-32-47 of the North Dakota Century Code is amended and reenacted as follows:

28-32-47. Scope of and procedure on appeal from agency rulemaking.

1. A judge of the district court shall review an appeal from an administrative agency's or ethics commission's rulemaking action based only on the record filed with the court. If an appellant requests documents to be included in the record but the agency or commission does not include them, the court, upon application by the appellant, may compel their inclusion. After a hearing, the filing of briefs, or other disposition of the matter as the judge may reasonably require, the court shall affirm the agency's rulemaking action unless it finds that any of the following are present:
 - 1- a. The provisions of this chapter have not been substantially complied with in the agency's rulemaking actions.
 - 2- b. A rule published as a result of the rulemaking action appealed is unconstitutional on the face of the language adopted.
 - 3- c. A rule published as a result of the rulemaking action appealed is beyond the scope of the agency's or commission's authority to adopt.
 - 4- d. A rule published as a result of the rulemaking action appealed is on the face of the language adopted an arbitrary or capricious application of authority granted by statute.

2. If the rulemaking action of the agency or commission is not affirmed by the court, the rulemaking action must be remanded to the agency or commission for disposition in accordance with the order of the court, or the rule or a portion of the rule resulting from the rulemaking action of the agency or commission must be declared invalid for reasons stated by the court.

SECTION 30. AMENDMENT. Section 28-32-48 of the North Dakota Century Code is amended and reenacted as follows:

28-32-48. Appeal - Stay of proceedings.

An appeal from an order or the rulemaking action of an administrative agency or the commission does not stay the enforcement of the order or the effect of a published rule unless the court to which the appeal is taken, upon application and after a hearing or the submission of briefs, orders a stay. The court may impose terms and conditions for a stay of the enforcement of the order or for a stay in the effect of a published rule. This section does not prohibit the operation of an automatic stay upon the enforcement of an administrative order or commission order as may be required by another statute.

SECTION 31. AMENDMENT. Section 28-32-49 of the North Dakota Century Code is amended and reenacted as follows:

28-32-49. Review in supreme court.

The judgment of the district court in an appeal from an order or rulemaking action of an administrative agency or the commission may be reviewed in the supreme court on appeal in the same manner as provided in section 28-32-46 or 28-32-47, except that the appeal to the supreme court must be taken within sixty days after the service of the notice of entry of judgment in the district court. Any party of record, including the agency or commission, may take an appeal from the final judgment of the district court to the supreme court. If an appeal from the judgment of the district court is taken by an agency or the commission, the agency or commission may not be required to pay a docket fee or file a bond for costs or equivalent security."

Page 37, line 22, replace "file a claim" with "commence an action"

Page 37, line 22, remove "with competent"

Page 37, line 23, remove "jurisdiction"

Page 37, line 25, replace "remains in violation of" with "has failed to comply with"

Page 37, line 25, remove the second "violation"

Page 37, line 26, replace "of" with "failure to comply with"

Page 37, line 28, after "gift" insert "knowingly"

Page 37, line 29, remove "knowingly"

Page 37, line 30, after "lobbyist" insert "knowingly"

Page 38, line 19, replace "impose a fine" with "assess a civil penalty"

Page 38, line 19, replace "one" with "five"

Page 38, line 20, after "who" insert "knowingly"

Page 38, line 20, after "section" insert "and, if the person is a lobbyist, the secretary of state may revoke the lobbyist's registration under chapter 54-05.1"

Page 38, line 20, after "subsequent" insert "knowing"

Page 38, line 21, replace "an infraction" with "a class B misdemeanor"

Page 39, line 19, replace "verbally" with "orally"

Page 39, line 27, replace "verbally" with "orally"

Page 39, line 31, replace "14-02" with "12.1-15"

Page 40, line 4, replace "verbal" with "oral"

Page 40, line 6, after "writing" insert "within ten calendar days of receipt of the complaint or summary of the complaint"

Page 40, line 31, remove "and recommendations"

Page 41, line 1, remove "and recommendations"

Page 41, line 3, remove "and recommendations"

Page 41, line 4, remove "and recommendations"

Page 41, line 4, remove the underscored comma

Page 41, line 5, remove "recommendations,"

Page 41, line 7, remove "and recommendations"

Page 41, line 9, remove the underscored comma

Page 41, line 10, remove "recommendations,"

Page 41, line 12, remove "their"

Page 41, line 17, replace "impose a" with "assess a civil"

Page 41, line 18, replace "impose a" with "assess a civil"

Page 41, line 19, after "appeal" insert "and request judicial review of"

Page 41, line 20, remove "the office of administrative hearings, which shall"

Page 41, line 21, replace "designate an administrative law judge to hear the appeal. An appeal" with "the district court in the county in which the accused individual resides. A request for judicial review"

Page 41, line 22, replace "adjudicative proceedings" with "an appeal of a determination of an agency"

Page 41, line 22, after the underscored period insert "The scope of review and procedure on appeal from a determination of the commission must comply with section 28-32-47."

Page 41, line 29, replace "an administrative law judge" with "a court"

Page 42, line 13, remove "Disclosure of information included in subsections 1 and 2 by a person who knows the"

Page 42, remove line 14

Page 42, line 15, remove "4."

Page 42, line 17, replace "5." with "4."

Page 42, line 20, replace "impose a fine" with "assess a civil penalty"

Page 42, line 20, replace "one" with "five"

Page 42, line 20, after "who" insert "knowingly"

Page 42, line 21, after "subsequent" insert "knowing"

Page 42, line 22, replace "an infraction" with "a class B misdemeanor"

Page 42, after line 27, insert:

"54-66-14. Prohibition on delivering campaign contributions - Penalty.

A lobbyist may not deliver knowingly a campaign contribution made by another person in violation of subsection 3 of section 2 of article XIV of the Constitution of North Dakota. For a first violation, the secretary of state shall assess a civil penalty of five hundred dollars upon any person who knowingly violates this section and may revoke the lobbyist's registration. For a second and subsequent knowing violation of this section, the person is guilty of a class B misdemeanor."

Page 42, line 29, replace "\$100,000" with "\$300,000"

Page 43, line 1, after "authorized" insert "one and"

Page 43, line 1, remove "of a"

Page 43, line 1, remove "position for an administrative"

Page 43, line 2, replace "assistant" with "positions"

Page 43, line 3, after the fifth comma insert "and"

Page 43, line 3, remove ", and 29"

Page 43, line 4, replace "30" with "32"

Page 43, line 7, replace "30" with "32"

Page 43, line 9, replace "30" with "32"

Page 43, line 11, after "Sections" insert "8,"

Page 43, line 11, remove "and"

Page 43, line 11, after "20" insert ", 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31"

Renumber accordingly

2019 HOUSE APPROPRIATIONS

HB 1521

2019 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee Roughrider Room, State Capitol

HB 1521
2/18/2019
32887

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Risa Bergquist by Caitlin Fleck
--

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new section to chapter 16.1-08.0 and chapter 54-66 of the North Dakota Century Code, relating to reporting campaign contributions and expenditures, restrictions on public officials and lobbyists, investigations of ethics violations, and implementing requirements of article XIV of the Constitution of North Dakota.

Minutes:

--

Chairman Delzer: Opened hearing.

Representative Kasper: Reviewed HB 1521.

12:15 Representative Schmidt: On page 42, line 9-10, then you add 1404, and then you strike that out and add 12.1, can you explain what those are?

Representative Kasper: It took it from the criminal side to the civil side.

Chairman Delzer: Was there anywhere in the measure where it says that it's a \$500 civil fine?

Representative Kasper: Yes, the first one is a \$500 civil fine, and the second is a class B misdemeanor.

Representative Kempenich: The 14 is a civil and the 12 is a criminal.

Representative Kasper: Okay, so I got them backwards.

Representative Bellew: If this doesn't go into effect for two years then why is there an emergency clause to the bill?

Representative Kasper: There are certain things that need to go into effect, that if the ethics commission is seated, then some of the things in there should go into effect while others can wait.

13:55 Representative J. Nelson: As far as the appropriation when do they begin and will that continue in the next biennium?

Representative Kasper: I would assume it would begin once the commission is seated and the dollars are organized.

Chairman Delzer: I would guess this will be a budget bill within the next two years.

Representative J. Nelson: You anticipate utilizing the entire 300,000 dollars in this biennium if the emergency clause passes?

Representative Kasper: It's hard to speculate because you don't know that make up of the 5 commissioners. They will decide when to begin and what to use the money for.

Chairman Delzer: They won't hire until they are in place and are agreed to, and if the money isn't used it will have to be returned.

Representative Howe: So if there is a complaint and it is found not to be true, would that report then be an open record?

Representative Kasper: No, if the complaint is dismissed and there is no guilt found, then it stays a closed record.

Representative Mock: The \$500 fine isn't specifically in the measure, that is what we are to set for the penalty. Are any expenses of the commissioners included in this?

Representative Kasper: Yes, they are reimbursed for travel and some of those things. But there are no salaries for them in this bill.

Representative Mock: Do we have any idea of the cost for the outside investigators?

Representative Kasper: No idea how, the \$300,000 is an estimate of what is needed.

Representative Mock: The commission itself would be the supervisors of the fulltime employees (FTE), and would the FTE be entitled to other benefits?

Representative Kasper: Yes, they would be fulltime and part-time employees of the state just like anybody else.

Chairman Delzer: You think they will be part time?

Representative Kasper: We have 1.5 FTE in there.

Chairman Delzer: So everything above the 50% gets a health insurance, but I think you have to be close to fulltime to get retirement.

Representative Monson: Page 45 this \$500 civil penalty fine, where does that money go?

Representative Kasper: That money goes to where ever the secretary of state decides where to go.

Chairman Delzer: That should be addressed so there is a plan for where that money is going and what it is being used for. It probably should go back to the general fund to pay for the other.

Representative Beadle: If a public official breaches the confidentiality, it would be a class C felony. But if anyone breaches the confidentiality, knowing the information to be false, they have a criminal defamation. But if they bring the complaint they view to be accurate, but it is confidential information because it's involving the content of the complaint itself, do they have any penalty or violation for that, and where would that be?

Representative Kasper: Yes. I think on the top of page 45.

Representative Beadle: But if they bring the complaint and believe it to be true, that wouldn't be them saying it's false and they wouldn't be breaching the 1A information revealing the content of the complaint, so it would be breaching the confidence of section 1 but they don't believe that to be false.

Representative Kasper: Now you are going into legalize that I can't answer. The bill stands on its own.

Representative Boe: What's the term of appointment to the commission?

Representative Kasper: I think they are 4 year terms, page 41 I think, but there is a point in there to the term of the appointment of the ethics commission.

Chairman Delzer: This has a direct appropriation of 300,000.

Representative Schmidt: What are the 1.5 FTE going to do if there are no complaints?

Representative Kasper: The measure says we must appropriately fund the ethics commission, so we are guessing what is appropriate, and we may be way off.

Chairman Delzer: For 2 years I don't see this as something bad. You have to have something there.

Representative Schatz: If somebody goes through this process and they are found innocent by the court, do they get any compensation?

Representative Kasper: This bill doesn't have anything like that. The bill does say there is a clause for defamation so I guess if the person could file against the person who made the complaint.

Representative Schatz: If the ethic commission itself is proven negligent, should they be held accountable?

Representative Kasper: That is the dilemma with this being a constitutional amendment.

Chairman Delzer: So if that is silent, that might be a valid use of some of the civil penalties.

Representative Randy A. Schobinger: Page 13v line 14 knowingly paying more than fair market, who determines what fair market is and why do we care?

Representative Kasper: That is current law, we did not do anything with that so that is already in statute.

Representative Schobinger: I would imagine the penalty for doing that isn't currently in law that way.

Representative Kasper: The penalty is added in line 17, right now there is no penalty for that.

Representative Martinson: I motion for a do pass.

Representative Mock: Second.

Roll Call Vote: 17 Yes, 4 No, 0 Absent.

Motion Carries.

Floor Assignment: **Representative Louser**

Meeting closed.

Date: 2/18/2019
Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1521**

House Appropriations Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Representative Martinson Seconded By Representative Mock

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer	X				
Representative Kempenich	X				
Representative Anderson	X		Representative Schobinger	X	
Representative Beadle	X		Representative Vigesaa	X	
Representative Bellew		X			
Representative Brandenburg	X				
Representative Howe	X		Representative Boe	X	
Representative Kreidt	X		Representative Holman		X
Representative Martinson	X		Representative Mock	X	
Representative Meier	X				
Representative Monson	X				
Representative Nathe	X				
Representative J. Nelson	X				
Representative Sanford	X				
Representative Schatz		X			
Representative Schmidt		X			

Total (Yes) 17 No 4

Absent 0

Floor Assignment Representative Louser

Motion Carries

REPORT OF STANDING COMMITTEE

HB 1521, as engrossed: Appropriations Committee (Rep. Delzer, Chairman)
recommends **DO PASS** (17 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed HB 1521 was placed on the Eleventh order on the calendar.

2019 SENATE ETHICS

HB 1521

2019 SENATE STANDING COMMITTEE MINUTES

Ethics Committee
Pioneer Room, State Capitol

HB 1521
3/12/2019
Job # 33605

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Carie Winings

Explanation or reason for introduction of bill/resolution:

A BILL for an Act relating to reporting campaign contributions and expenditures, restrictions on public officials and lobbyists, investigations of ethics violations, and implementing requirements of article XIV of the Constitution of North Dakota; relating to rulemaking procedures, disqualification of agency heads in quasi-judicial proceedings, implementing article XIV of the Constitution of North Dakota, and requirements for the North Dakota ethics commission; to provide for a penalty; to provide an appropriation; to provide an effective date; to provide an expiration date; and to declare an emergency.

Minutes:

Attachments: 1-2

Chairman Hogue: Opened the hearing on HB 1521.

Senator Wardner, District 37: Testified as sponsor of the bill. Thank you for serving on this committee. We are moving along and we have made some movement and we have made some changes. We are going in the right direction. The goal is still the same. I just want to point out that Representative Pollert, the other prime sponsor, is gone and he will take the opportunity when he is back to speak to the committee. The goal of the legislature is to find certainty in this ethics measure. Not only for those of us in the legislature, but all elected officials. Everyday people who want to be involved in local government. The last one I really feel strongly about, because these are the people in a democracy that make things go in our government – the everyday people that come in and let us know what their feelings are. We have issues that many of you have already worked on. You have already done a lot of work on identifying and defining a lot of the terms. It states in the measure that the legislative assembly shall have ongoing duty to revise these laws as necessary to promote the purpose of this section in light of changes in technology and political practices. I know that many times we do something and it is stated that is not what they meant to do. You have done a great job of working that out. It is my strong feeling that whatever we do with these bills that we kick out of here concerning ethics; I believe in the end it will be how we think it should be because in the end it gives the Ethics Commission the rulemaking authority. In my opinion, we are telling the Ethics Commission, who has not been nominated yet, they will have the final say on some of these rules but at least we can give some guidance. I know you have a lot of work to do and there are people here that would like to comment as well, and so I will turn it over to you.

(4:40) Senator Dever: One of the things that we have not had conversation about is the appointment of the members of the commission. You are one of the three people that will be involved in that process. Do we need to place that together, or is that something that you and Senator Heckaman and the Governor are going to work out? And, associated with that, what kind of people should we have on that?

Senator Wardner: I will tell you that we have talked informally about what we are going to do. First, we have people that are asking to be considered. We are sending them to the Governor's website where they are turning in their information. I really thought that we could start doing it about now. My plate is full. Senator Heckaman's plate is full. The Governor's plate is full. We are going to wait until after the session before we start going through the process. There is going to be some work to do; investigating and looking at bios to make sure that we bring forth common sense, everyday people that care about the state of North Dakota. Not someone that has an agenda, but someone that wants to be fair and treat everyone right.

(6:35) Chairman Hogue: I spoke with Representative Pollert, and assured him that we would give him an opportunity to testify at our next meeting date.

(7:15) Representative Kasper, District 46: Testified in support of the bill and to explain the bill. We just concluded our hearing on your bill. It was a good discussion. We will have a few more hearings I am sure. I would like to walk through the bill and make comments on what we did as a committee. (Walked through the bill page by page and pointed out the areas where the committee has made changes.)

(30:15) Vice Chair Unruh: Back on ultimate and true source of funds definition; I think we will keep working on the definition, but in its application of actual reporting requirements, you are trying to get to the person who knowingly contributed over \$200. Is that burden on the person who is giving the money or the person who is receiving the money, or both?

Representative Kasper: Under current statute, as you are aware, if a contribution of more than \$200 is given to one of us as a candidate, we need to report the contribution. The person who gives the contribution needs to report the contribution as well. We are just restating that. Now, where the ambiguity comes in, and the concern that we have and maybe needs to be addressed further, is in the measures that are coming into the state as well as throughout the country whereby we don't know often time where the money is coming from. We think there should be transparency and clarification there. We tried to get to that point, but there may be work that still needs to be done. The goal is to show the source of the funds on an individual basis, as well as a collective check being written. We should see all of it.

Vice Chair Unruh: So then I am trying to figure out if that "sub-contributor" should be based on "solely" or not "solely", or if it is based on how the money is actually spent. This does need to some work.

Representative Kasper: In the last session we implemented spending requirements and reporting for candidates as well. I think we have 5 categories where we report our

expenditures. And then of course the campaign contribution law that we are currently following.

Senator Anderson: When we get to the definition of lobbyist and so forth; previously, we as senators and representatives, have taken an expansive view of who a lobbyist is. (Gave an example.) How do you see the specifics of a definition affecting lobbyists?

Representative Kasper: That is a difficult question because of the way that measure 1 was written. When is a person a lobbyist? The way the measure was written it has become unclear. Any person that comes to testify and spends over \$200, are they required to register as a lobbyist or are they required to report the dollars? I don't think that is appropriate or the intention of measure 1 because, from our position, of the ambiguity of measure 1 we really don't know for sure. We stayed with the definitions of lobby and lobbyist as it is in current statute. Hopefully, that precludes and excludes the citizen involvement. I am very concerned that the Ethics Commission could interpret that differently. That is another concern with the power the Ethics Commission has. I think the more we can address and allow our citizens to freely testify without fear of a penalty. If they would be found guilty of a violation, there could be severe penalties here. We have to be very careful with whichever bill that comes out of this to be sure we are protecting the right of our citizens to address and ask the government to do or not to do something.

Senator Dever: I have a question regarding the definition of a lobbyist, and that is in both bills there is a new chapter created 54-66. In HB 1521, it says lobbying means an activity listed and lobbyist means an individual required to register under 54-05.1-03. In SB 2148, it creates a new definition for lobbyist, so it seems to me to be redundant and possibly in conflict with each other. Going forward, we may need to look at that for an amendment to one or the other of the bills. What are the differences between the two bills? I don't see a lot of difference. One you mentioned was the administrative rule process that you provide for in 15-21 with the ability of the administrative rules committee to reject it. The other difference I see is that you provide a penalty of \$500 for first offense, a Class B misdemeanor for second offense. SB 2148 says up to \$5000 and more on the second offense. The third difference I see is that you just provide more detail that the senate bill leaves up to the commission to determine later. Is there anything else or would that be accurate?

Representative Kasper: There was one area that I recall from the breakdown of SB 2148, and that was the section that talks about the person that makes a complaint. The bill is different there. I really believe that under due process, the accused have a right to know. Our committee was very strong that the complaint should be in writing and the person has to be identified. I don't think an oral complaint can be lodged to begin with, but our bill requires it after a certain number of days. It is confidential. The funding level is different and the location is a little different. The word "solely" is different, and I think we are maybe trying to get to the same point. The concern is that we isolate events. If we are not careful, it could be construed that for the whole year you could participate in an event at a limited amount. We have the rules of the Ethics Commission subject to the oversight of the rules committee and the senate bill did not. They really are not that far apart. We have to come together on this in the end.

(40:33) Senator Mathern: On the concept of “adjusted for inflation”, I am wondering, in light of its change and its different methods of determining that, why you chose to define it versus having the Ethics Commission define it.

Representative Kasper: In deliberation, we looked at the measure and we asked what adjusted for inflation was? We came up with a definition for adjusted for inflation. The discussion centers around the fact that the Ethics Commissioners, whoever they are, are not going to be in most likelihood anyone with public experience on an elected basis or even on boards. They will be ordinary citizens; which is fine, but they won't have the experience of maybe knowing the legislative process as many of us do. We felt that we would put in as many points that were germane to the measure and the Ethics Commission once they are seated, they will make decisions. But, we thought it might be helpful for them to know what legislative intent was. We wanted to give a road map for legislative intent.

Senator Mathern: I have heard house members state that even using the concept of adjusted for inflation is actually decreasing transparency as we go forward, because, essentially it is a higher amount of money. How did you overcome that?

Representative Kasper: We did not overcome it, but in talking with Jim Silrum earlier today he found that legislative counsel might have a simple answer under our constitution for that problem so that we don't have less transparency but that is what the measure says. That means that the \$200 base over time could become \$300 or \$400. It is another inadvertent thing that the measure committee that drafted the bill overlooked. I would at least assume that. I don't think it was intentional. It is less transparency not the less.

Senator Mathern: One of the major issues here is the question of constitutionality when we as a legislature intervene in the work of a constitutional body. Where the Ethics Commission is set up by the constitution. And the constitution has the power or guidance to us. In essence it is a higher form of law as I would see it. I am wondering if your committee had any constitutional advice on that, or who you might have used to ascertain the constitutionality of the legislature being able to second guess the Ethics Commission or the Attorney General second guessing the Attorney General. And, how you came to stating that you don't believe there is a constitutional conflict? It seems blatant.

Representative Kasper: I do not believe I stated that there is no constitutional conflict. I said that we did our best to be able to address the issues. There are some areas that your committee is going to look at. I would suggest, if you read the measure, that it is stated 9 separate times that the legislature shall enact legislation. Our committee did that and we did as good a job as we could. It is always open to review. We spent a lot of time at legislative council. We did not have an outside attorney and we don't have a budget to do that. We have attorneys in legislative council that we should call on.

Senator Anderson: On page 13, line 17-19, where it says that a violation can be appealed to the district court of Burleigh County, and then on Page 43, line 14, you use the senate language where we said it could be appealed to the county where the individual who is being accused is from. I wondered if that difference was intentional or if you just changed one and not the other?

Representative Kasper: On Page 13, that is about personal use of campaign contributions and the penalty phase. On Page 43, that is about dealing with the complaint and the accuser and the accused. It is a different circumstance and two different issues.

Senator Anderson: You are saying the difference is intentional then?

Representative Kasper: Yes, because of them being two separate issues. It could have been a drafting error. I have not thought about that. It is certainly subject to your review here.

Senator Anderson: On page 19, it talks about emergency rules, and of course there are times that as an administrative agency I would need to adopt emergency rules, but I wonder if you felt like the Ethics Commission would ever need emergency rules or why you included them under that section?

Representative Kasper: That is exactly right. Legislative council just includes them in all. If you are going to be subject to the rules process, then include them in everything.

(50:20) Senator Oban: If there is one thing I heard resoundingly I our committee hearing on the senate bill is that everyone is just looking for clarity as soon as possible. You have a few different effective dates here. Did you hear that same feedback in your committee about just wanting to get this stuff put in place and to not delay implementation? I know the article allows us to have effective dates by a certain date, but it does not preclude us from doing it before. Is there a reason you have a few different effective dates?

Representative Kasper: Following Legislative Council's drafting, we said that we did not want to violate measure 1 or Article XIV. So, those effective dates are based upon what is in the article.

Senator Oban: Certainly. I don't think you are extending it by any means. But it doesn't preclude us from effective dates before. It just says we have to have them by that date. I don't know if you heard that same feedback – that they wanted clarity as soon as possible.

Representative Kasper: Yes, there is all kinds of concern out there about what we can and cannot do. What is legal and what isn't legal. Our people in North Dakota want to abide by the law. One of our bills is going to prevail. What we pass is going to give some clarity. Although, once the ethics commission is seated, it could be a different interpretation.

Senator Oban: A couple of different places in the bill, for example on page 20, lines 13-14, it basically says this is in effect until it is not in effect. So, if this is removed from the constitution etc. Do you think that is necessary?

Representative Kasper: I guess it is a statement of fact. If the constitution is amended and eliminated authority, that would occur. I guess I would have to go back to Legislative Council and ask what that means.

Senator Oban: I would just suggest that we could include that after every sentence.

Representative Kasper: We should get clarification there.

Senator Anderson: On Page 38, line 26, the message there is that the Secretary of State shall compile the reports required under this section and make the reports electronically accessible to the public within 40 days. I wondered where the 40 days came from? We electronically report these now and you assume they should be available immediately once you report them. Anyone who is looking for influence on an election etc.; the public would like to see that information immediately.

Representative Kasper: I am assuming it is the current guideline for these types of reports but I cannot say for sure. I don't think it is a big issue with our committee.

Vice Chair Unruh: On Page 38 and 39, the bill talks about gifts and when you walked us through the bill, you stated that some of them come directly from Article XIV and some of them do not. Can you explain how the committee got to including the language here that is not directly out of the measure.

Representative Kasper: On page 38, line 28, (reads from the bill), I believe that is implied or stated in measure 1; that those are exceptions. What is ethical concerns? How do you define those two words? It could be different for two different people. It is taking what we think measure 1 meant and putting it in the statute.

Vice Chair Unruh: In Section 2.1, Article XIV explicitly states that gifts of travel or recreation are defined as gifts. That is what I was trying to get my head wrapped around. How the committee discussion got to that point? To included rather than exclude it?

Representative Kasper: I think we were looking at it the other way. That we have certain areas that you can exclude from violating ethics, and those are the areas that were discussed here. That is obviously an area of difference between our two bills.
(58:30) Closing comments – I want to talk about the hard work that our house committee did on this bill, and the effort that all parties on that committee did to come up with a solution that addresses measure 1 and now Article XIV. I want to say that some of the media that has been criticizing HB 1521 and the people that have made the effort, I think is unfortunate. The people in our committee, the House, your committee, and in the Senate are trying to do the best job that we can based on our knowledge, values, morals, and our experience. That is what our committee did. So, for the continued media blast, particularly on Facebook, that is saying that we are in a battle with certain legislators and implying that our committee is almost unethical – I think is way out of bounds and I think it almost unethical on its own merit. I would ask those that have criticism to come forward and make your points. We will be happy to have a civil discussion. I assure you that our committee is ready to do that and that is what we have been doing.

Chairman Hogue: I think the bill is a very good effort. There are a lot of issues that you addressed in the bill that I don't even think we talked about in our committee. We will get there.

(1:00:25) Gregory Stites, North Dakota Attorney, North Dakotans for Public Integrity: See Attachment #1 for testimony in opposition to the bill. See Attachment #2 for proposed amendments.

(1:12:26) Chairman Hogue: I wanted to follow up with Senator Unruh's question and I wanted to get your views on the permissibility of what the House has done in terms of Article XIV saying that gifts includes paying for someone's travel and meals, and then when I go to the house bill on pages 38 and 39 I see that would be permissible for lobbyists to provide those to public officials and for public officials to accept those. Is that an area of concern? Do you regard that as unconstitutional?

Gregory Stites: I do believe that Article XIV clearly states what a gift is and what a gift is not. It even goes so far as to add recreation and travel as being a prohibited gift. Any attempt to redefine those terms would be constitutionally impermissible. Article XIV says that the Ethics Commission will promulgate rules in order to allow for there to be exceptions for that limited purpose of getting residence in social settings and the like. I believe it is not the role of the legislature but rather it is the role of the Ethics Commission within that two-year period. It doesn't become effective for two years. They would promulgate rules that would actually allow for the sorts of exceptions that are appropriate under Article XIV.

Chairman Hogue: I heard your testimony in the House concerning SB 2148 and you seem to agree that both the legislature and the Ethics Commission have the ability to regulate public officials in terms of their campaign contributions etc. My question is if the Ethics Commission comes along and says you can accept a meal and it's less than \$50, that's ok and if the legislature says it's not ok, and that you can't accept a meal in excess of \$10; why can't the legislature do that?

Gregory Stites: I believe that the legislature can be more restrictive. It can also legislate in addition to whatever the Ethics Commission is doing. It can continue to self-police itself, as long as it does not conflict with what is in the constitution and what authority has been given or perhaps exclusive authority exists for the Ethics Commission. What I am saying is that I don't believe the legislature can do whatever it wants and if the Ethics Commission wants to change it then they can. I don't get that far. Clearly the legislature is prohibited from passing legislation in conflict with the constitution. Article XIV clearly defines certain things, like what a gift is, that the legislature is now no longer able to somehow provide a more expansive list of things that are not gifts. If it is prohibited by the constitution, then it is not permissible. We are only speaking about gifts from lobbyists. We have to remember that we are not talking about gifts that are given that are not given for the purpose of influencing your duties as a public official. It does require an analysis of what the intent of giving the item was.

Chairman Hogue: I might be inclined to agree with you – that the constitution provides a clear definition of gift, but it doesn't. It says a gift is a thing of value including travel and reimbursement. But, then it turns around and says, however, if it is given in a setting as not to raise ethical concerns, then you can have a thing of value. It is completely not clear. It is clear about out of state travel. That I will grant. There is a significant divide between what a gift is, when you start saying that it is a thing of value, but it is not a thing of value under

these ambiguous terms like “it doesn’t raise ethical concerns” or “educational setting”. I will have to disagree with you on that.

Gregory Stites: I believe that is the role of the Ethics Commission. It is clear in Article XIV that it says “as determined by the rules”. That will take public input and following the rules making process. I know as much as the legislature never wants someone else to be making these decisions, the constitution now gives the Ethics Commission the ability to do that.

(1:20:05) Senator Anderson: My question is along the same lines as what you were just getting at. You perceive that someone that gives me a small item like a rubber stress ball, you perceive that they would submit that to the Ethics Commission to see before they presented it, or should they risk a violation because they didn’t think it was a violation and now later might be determined to be. How do you see that playing out?

Gregory Stites: If you know and the giver knows, whatever the item of value is not to influence some piece of legislation that you are working on – are they giving you that item to influence you? If so, then it is prohibited. But, I can say that I do think that the Ethics Commission will be rendering those opinions as to what is acceptable and what is not acceptable. At the end of the day, I think most people know when someone is giving them something to be influenced or not, but if they don’t and it is a big enough issue they go and seek an opinion.

Senator Anderson: You used the word knowingly several times, but you just rejected that when we saw it in HB 1521, where it said someone knowingly gives that. I am having trouble reconciling those two things.

Gregory Stites: I may have misspoken, but it is always “knowingly” gives or accepts. You should never get in trouble if that is not the situation.

Senator Mathern: In light of these questions that still continue, if we were to do the best we could, leaving some things, and then getting back to having an interim study to continue the deliberations on this issue, do you think it would be proper to have an interim committee that might include ethics committee members and Ethics Commission members, or would that be too close of a connection?

Gregory Stites: I don’t think that would be inappropriate at all. This is so new to the state. When I took a look at the body of laws and rules and regulations that the other 43 states have, it was amazing. I put together a one page analysis from the national conference of state legislators of all the states that have ethical laws and regulations. It is an astounding body of work that other states have on the issue of ethics. I would hope that our Ethics Commission and legislature would not try to reinvent the wheel. There is so much valuable information out there on the code of ethics and what is appropriate and what is not.

Vice Chair Unruh: I would like to go back to the earlier conversation on gifts. I think there is a lot of ambiguity on what a gift is or is not. I agree the Ethics Commission is designated as the group that gets to oversee exactly what that means. I don’t think it removes our authority in the legislature to try and define that completely either. What prompted my

question was when you stated that those gifts are gifts from lobbyists. The house bill on pages 38-39, they talk about reports for lobbyist, and we have definitions for what a lobbyist is. We have reports for anyone, lobbyist or not, that spends over \$200 to report those expenditures when they are influencing a government action. Could you expand how all of those things work together?

Gregory Stites: I think the defect in the house bill, in saying that the term lobbyist only means whoever has to be registered under 54-05.01 is patently incorrect. I say that because it talks about only applying to people who are trying to secure the passage or defeat of legislation or to influence decisions made by legislative management or interim committee. It doesn't pick up lobbyists over the Governor, or other parts of state government. When you look at the buckets of influencing in Article XIV it is a wider universe than just those folks that right now have to be registered as lobbyists. It goes further to describe those that don't have to register as lobbyists. Under our existing law we don't make them register, even though we know they are lobbyists but we don't make them register because when they show up, they report themselves as being attached to another lobbyist. Article XIV seeks to get to all persons who are attempting to influence state government action. That is why I like the senate bill better. It specifically states that citizens who show up to lobby do not have to report. It is more in line with the article and has a great definition of what a lobbyist is and isn't.

(1:31:40) Senator Dever: When I look at your bullet points and what you consider to be conflicts with the constitution, it appears to me that some of those are simply a matter of opinion. (States a few examples) When you are talking about the constitution, what is the role of the legislature? Isn't some of this in conflict with Article IV?

Gregory Stites: There is no question that there are certain things that clearly are meant to be in the role of the legislature. I do not mean to undermine that at all. In fact, in my proposed amendments, I leave in tack much of what is in HB 1521 that I felt was consistent and just fine. But, Article XIV says "appropriate penalties", which means that you do not have an unlimited ability to just decide that you don't want to set any penalty or an extremely low penalty. That would not be appropriate.

Senator Dever: We are not talking about \$1. The House said \$500 for 1st offense, Class B misdemeanor for 2nd offense, and I believe that somewhere in 16.1 it says Class B misdemeanor under current law.

Gregory Stites: What I find somewhat unable to reconcile, in terms of the campaign contributions law, Chapter 16.1, right now if you are violating any of these provisions, and some of this is existing law that has been put into Article XIV, for example the prohibition on personal use of campaign contributions, the penalty right now is a Class A misdemeanor because this chapter says that if there is not a penalty otherwise provided it is a Class A misdemeanor. How is it then that in the bills we are reducing those penalties to something less? How is that appropriate?

Chairman Hogue: I want to allow for anyone else to testify on HB 1521 if they would like.

(1:37:00) Bruce R Bale, Resident, Mandan, North Dakota: Testified in opposition to the bill. The first thing I would like to address is consumer price index as some kind of a form of an inflation index. What would \$200 be worth in 1900? What was the German Mark worth before WW1? You could simply, every 5 years, round up to the nearest 5 or 10, or down if we have deflation under a CPI or whatever index you agree to if you want an inflation adjustor in there. These are the kinds of things that might get from members of the public if they are allowed to toss in there two cents worth. Public participation over a 2-year study period seems like a good idea. The federal government has similar provisions protecting and encouraging confidentiality of whistle blowers. I am guessing everyone here knows what we are talking about. I am the mean nasty boss and I am taking money left and right from campaign contributors or gifts and so on, and my underlings that I knuckle under all the time, they don't really want to lose their jobs by ratting me out so they go in confidentially. It sounds to me that the two houses are trying their best to find a good way to take care of that, and I am fully with the US Constitution's and the state's constitutions protections of individuals accused of a crime. You have to have the right to face your accuser. Sub-contributors; again, I think that is best left to the Ethics Commission to decide how to parse that. There are good or not so good federal reasons for setting those laws up the way they currently are - 501C4 and so on. I myself like to see who donating. Who is bringing the money in to the state. Knowing that different elected officials are receiving money from out of state entities, as well as in state entities. When a CEO or the officers of his corporation or other employees who he directs to make campaign contributions – we are your employer, you should be with us. You are members of our professional association, and you should be with us. Trust us, we will ask for good laws. Protect us. As a member of that group, you may or may not agree. That is a whole bunch of sub-contributors actually. They are just coming through one company or one institute. That is just another point. At some point you have to grab a handle on that. I understand that. As far as the question on the supremacy clause, and this being an institution or a branch of government that would be supreme over all the others, and I am recognizing that the state Highway Patrol is a branch of the Executive here, and it funded and its rules are given by the legislature, but they still equally enforce over a legislator or public office holder. I don't see a lot of difference here. I think you already steeped on what those fine differences are. I don't think that necessary to get worked up over it and I don't want to see political footballs made either. Whoever has that football is a bad thing. There is an idea here that looks like a red herring; somebody from the corners of the state spends money to come to Bismarck, and I don't know that a registered professional lobbyist for the best or the worst entity in the world, should be treated any differently. If you exclude the expenses it takes for them to situate themselves next to the government activity and for the self-sustenance while they are here. I live in Mandan. My 6-8 miles to drive over here is not going to get me up to \$200, but the guy who lives out in Williston or Grand Forks should have a right to spend his \$200 to get here should be outside the equation I think. He is just trying to get next to where he would do what I might as a private citizen and not a lobbyist under the efforts to influence or not influence. I would ask that when you consider gifts, try to avoid gaming the rules. That applies to setting as a term or how lavish and influential a small gift or large gift is. Avoid educational or social setting to be a guise of essentially providing gifts using something like that. To publically advertise in a publication of general circulation, but it is an obscure publication that you are going to hold a meeting in a quieter part of a more remote county, and you know that you are inviting 25 lawmakers and only about 10 are

going to show up and it is really about this thing. Whether it was oil or the wheat commission, but it be gaming the intention of the rules. Do any of you have any questions?

(1:44:35) Senator Anderson: The true and final source of funds question is one that I tried to get to when we were discussion SB 2148. I used an example of the reports that I saw on the passage of measure 1. When I look at the Secretary of State's website I see that large amounts of money came from out of state under the name of one non-profit up to, in one case, \$177,000. When I would like to get to the true and direct source of funds, I would like to know who put that \$177,000 in there. Now, my counterparts here said that we probably are never going to get that information from that contributor because they won't give it.

Bruce Bale: We have jails here.

Senator Anderson: Yes, but we are not going to get them here to put them in jail.

Bruce Bale: I am not sure about that.

Senator Anderson: Secondly, I am not sure that everyone agrees that we should get to that level. What I would like to hear is your opinion about those contributions and whether we should get to that level, and when we use the word "knowingly" – if a large number of people put that money in that non-profit organization, can we say that they "knowingly" knew they were going to come to North Dakota and try and influence measure 1 or any other measures in the future?

Bruce Bale: That sparks three large lights going off in my head. Third, I would like to address "solely". Second, I would like address unintended consequences of that kind of an organization that you are mentioning. First, I would like to respond to your question. It could almost seem a double standard for legislators and office holders here to take campaign funds from out of state interest, but then rail against out of state non-profits entities knowing that some of those have the highest charitable desires. Often people in this state – it's a small state, and there are not a lot of wealthy people up and down the social strata, but there are the little guys that have maybe something to say. There is a national organization that they can connect with that is from out of state. They make that contribution to that out of state entity and inform them of a problem here. Now that out of state group comes in and tries to do its work and influence legislation. Can you refresh my memory of how that links with what you are asking?

Senator Anderson: My question is with that larger contribution, whether it is for a political campaign or a measure, how can and should we get to the guy who actually gave the money?

Bruce Bale: We are in the 21st century. Businesses especially, but anyone else, when they are good outfits, they play by the rules. But they are always happy to see how far they can get those rules to stretch before they are actually enacted as the law. If you say you are going to come into our state and you want to influence something, we need to have rules to follow and the organizations need to do that. When you take money, you ask for the source of contribution. They electronically record it and it can be reported to the Secretary of State.

Senator Anderson: Campaign contributions are almost always all reported. We have regulations and rules about that now. Some of these other contributions, like the out of state money that influences our measures are not. What you are saying is that we should say to the in state organization that they cannot take that money unless you get the list of contributors. Is that what your solution would be?

Bruce Bale: Basically, yes, or take it at your own risk and if we catch you, we will come after you. Maybe not as an attack dog and you may not go to prison but we will pursue that. The “solely” thing is to avoid gaming what you set up as a good system. You should not be able to lump fancy coffee espressos and three free drinks at the bar to where it starts to look like they are getting some pretty nice stuff. This is what the coffee cost and we decided it is ok. This is what the influencing was, and we decided you have to report that.

Senator Anderson: That is helpful. I have been trying to get to what “solely” means, and I get a lot of different opinions. Also, with the true and final source of funds. I don’t agree that we should say “solely” given for that purpose, because if you give to a non-profit and that is there general purpose, ‘solely’ doesn’t really make any difference because you knew what they were up to. I like the idea of saying, unless you can provide that, the local group can’t take the money. That is a great idea. That doesn’t prevent them from buying the ads from New Jersey and publishing them in North Dakota because we probably can’t get to that. That is the quandary here.

Bruce Bale: I get what you are saying. The legislature can be responsive. We want it to be fair to everyone. I can’t give you decent first amendment analysis. That speech can’t stop at our borders and there is almost no way you can prevent it even before social media and the internet, and know that it all pervasive. It is impossible to control that. I do not totally appreciate, but I am totally with any state who is going to have to fund things like Marcy’s Law that may have unintended consequences. What does it cost to set up an Ethics Commission and run it? What does it cost to enforce and run Marcy’s Law or something down the line? Are the taxpayers being fully informed? Does the state now, for these first amendment things that drift across our border, have to take upon itself to say what it will cost and figure out how to pay for it.

(1:55:56) Chairman Hogue: There was no further testimony. Adjourned the hearing on HB 1521.

2019 SENATE STANDING COMMITTEE MINUTES

Ethics Committee
Pioneer Room, State Capitol

HB 1521
4/9/2019
Job # 34642

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Carie Winings

Explanation or reason for introduction of bill/resolution:

A BILL for an Act relating to reporting campaign contributions and expenditures, restrictions on public officials and lobbyists, investigations of ethics violations, and implementing requirements of article XIV of the Constitution of North Dakota; relating to rulemaking procedures, disqualification of agency heads in quasi-judicial proceedings, implementing article XIV of the Constitution of North Dakota, and requirements for the North Dakota ethics commission; to provide for a penalty; to provide an appropriation; to provide an effective date; to provide an expiration date; and to declare an emergency.

Minutes:

Attachments: 1-8

Chairman Hogue: Opened the hearing on HB 1521. Explained to committee that the purpose of the meeting today was to go through all of the proposed amendments that were being brought to the committee.

Senator Anderson: (Asked to have a question answered by Dr. Chaffee.) Relative to the statement – “adequately funded Ethics Commission and no need for judicial review”; what do you mean by no judicial review. That means that even the North Dakota Supreme Court cannot weigh in on a case, or what do you mean by that?

Ellen Chaffee: See Attachment #1 for testimony provided. Thank you for the question. I understand that was not clear. What that means is that we are hoping for a final result from the legislature that is totally consistent with Article IV. That there is not conflict that would have to be reviewed in the court.

Senator Dever: We have argued before that Article XIV is in conflict with Article IV, but you are suggesting that we should wipe away any conflict?

Ellen Chaffee: I misspoke I meant Article XIV.

Senator Dever: So, it is ok for us to consider adjudication on the conflicts between IV and XIV?

Ellen Chaffee: It is ok for you to do your job in the best way you know how.

Senator Dever: I appreciate that. We received an e mail from the Coalition for Integrity, and one of the issues that bothered me is that the Ethics Commission should have jurisdiction over the legislative branch, executive branch, and now the judicial branch. We have another group of people that have jurisdiction over all three branches, and they are the voters. It seems to me that some of this whole process that we are going through is about bypassing voters. I am bothered by that. We have an election and they serve as the jury. Integrity in this process is everything. Success in the legislative process is a matter of relationships. If someone compromises themselves for their integrity, they neutralize themselves in the process. Then we go to an election and their opponents draw attention to that. I am bothered by the fact that whatever rules we come up with I will abide by them, but I am concerned that doesn't matter. Because if someone wants to find a reason, they can make it up. There are checks on the other branches already in the Constitution. We are creating a commission outside of those checks and balances that is accountable only to themselves.

Ellen Chaffee: We are seeing two sides of the same coin. It was the voters put Article XIV in the Constitution because they wanted some of the things that it does. That is why those things are in it. I suggest further conversation later to give you a chance to focus on the agenda for the day. My main intent with this message is to thank you for your thoughtful, responsible, and constructive attention to Article XIV in your deliberations on SB 2148. That is really all I wanted to say. Please continue to take that approach as you go forward.

Senator Dever: I would be more than happy to continue this conversation elsewhere. I have serious questions on how things would operate and how we prevent the potential for abuse of the process. A couple of those questions have to do with what seems to be a barrier that is being placed between lobbyists and elected officials. The lobbyists are hired as agents for the organizations that they represent. The organizations are allowed to give campaign contributions but the lobbyists are not allowed to be involved in that process at all. Help me out with how that is supposed to work.

Ellen Chaffee: I am happy to do that at another time.

Chairman Hogue: We have a number of amendments to consider. I think we should get a chance to hear about all of them and take them to look at and we will come back Thursday and see where we are at. We will build momentum on what we will recommend to the full Senate. We should not try to pass on any of these today. One of the difficult parts about this bill is that our committee meetings have been disjointed for a number of reasons. I constantly have to refresh my memory. If we need more time next week, we will do so, so that we have a comfort level with the final product that we recommend to the full Senate.

(9:15) Jim Silrum, Deputy Secretary of State: See Attachment #2 and Attachment #3. The phrase "adjusted for inflation" removed. It is my understanding that the intent is that if someone makes a contribution and it is lumped in with another it becomes a sub contributor and should be disclosed – if that was your intent I would suggest further amendments be added. (Page 2 of testimony) It achieve the transparency you are seeking. Fiscal note of \$10,000 would be needed it adjust the systems. Our intent is to ask for the Governor and

legislature to overhaul the campaign finance system. We have ideas to explore in how we can incorporate.

(19:55) Chairman Hogue: I noticed in the back you thought that you would need \$10,000 but you also said that we need to ask for a fiscal note. Would the fiscal note simply formalize the \$10,000 estimate or are you thinking that there is more work to be done in terms of figuring out a fiscal effect?

Jim Silrum: It is my understanding that an agency can only be asked to provide a fiscal note if someone within the legislature requests that of the agency. Generally, what we have done this session, is if legislative council has not thought that there would be a fiscal impact then the chairman would request that.

Senator Anderson: When you proposed the amendments and you talked about sub contributors, you are using the definition we have now for lobbyists, however, when I look at Article XIV and there is disagreement on that definition being too vague, have you talked about that when you are talking about this reporting business?

Jim Silrum: When I am talking sub contributors, I am only speaking in terms of campaign finance. I am not speaking about lobbyists at all. What generally happens right now, because sub contributors are required of measure committees, is when a check is given to a measure committee and there is more than one person that contributed to the total check amount the sub contributor to that check needs to be disclosed. That is what I am talking about strictly with respect to campaign contributions. How it relates to the lobbyist issue, I admit I have not contemplated that at all. I would say that is for your deliberations.

Senator Anderson: When we got the reports from the measure committee that sponsored Article XIV, I would expect that they would be providing us an example of how we should do this in the future. However, when I see the reports on your website, there are large checks that came from groups and there are no sub contributors listed. How does the Secretary of State deal with that when you get \$35,000 from one corporation with sub contributors? Have we just ignored that? How do we handle that now?

Jim Silrum: I can assure you that based on how law is worded now, if a group had a contribution and they reported that no sub contribution was given - we can ask if there were any sub contributors, and we do, but they can say no. We have no right to say that can't be true. In other situations, those that have been in favor of measure 1, we have been working with them on amendments to their campaign contribution statements for their measure committees last year so that they can correct them and correctly report the sub contributors that they have. In full disclosure, I will admit that there have been problems with our application in terms of reporting of sub contributors and we have worked to correct those that so that those committees can properly do those amendments. However, that being said, if an organization says there are no sub contributors and they attest to that fact, there is nothing that the Secretary of State can do to say that we disagree with that.

(26:28) Senator Mathern: See Attachment #4 for amendments that relate to the issue of "adjusted for inflation". The reason I agree with you is not just in terms of the past, but in terms of the future. It seems like the legislature might keep the \$200 in place for 5 years or

whatever, because the legislature can be more restrictive than the measure. How would you suggest that we change the “adjusted for inflation” in the future? Would we take the inflation from the passage of this bill and then set a new rate? How would it work? I have heard from people that is one of the difficulties of this. How would you do it different in the future?

Jim Silrum: As I understand it, Article XIV does say specifically, “adjusted for inflation”. So therefore, the legislature could never pick an amount that requires less disclosure than that. If the inflation at that time was the equivalent of adding \$10 to that amount, the legislature could not come back and make it \$225. Other than that based on how the legislature would determine, as you have within this bill, that the Secretary of State would determine the rate of inflation and adjust it accordingly each year. I think that is how the legislature would do it at that time, but honestly, from our perspective, because of the fact that filers have such a hard time understanding if they need to report a \$200 check - once it goes 1 cent over \$200 you have to disclose it, I am recommending to the committee that you think long and hard about raising that amount at any time until such time as maybe the inflation is such that \$250 is the amount etc.

Chairman Hogue: Asked Senator Mathern to go through the amendments brought to the committee.

(30:25) Senator Mathern: See Attachment #4 and Attachment #5 for additional amendments proposed to the committee.

Generally, this amendment is taking the House version and inserting what we did in the Senate. It is the Hogue amendments placed into 1521. To take it a step further there are some issues we may want to look at:

- Page 6, lines 14-23, description of ultimate and true source. Addresses the concerns of organizations. Trying to get at the question of something like the plate that is passed at church.
- Pages 13-14, clarity of contributor and sub-contributor.
- Page 38, where there is a new way to determine a gift. It excludes some things. Section on lobbyists, definition of ultimate and true source.

Those are the items that are different from your amendments.

(36:02) Senator Mathern: See Attachment #6 an amendment for a study to be done. I know we took out the legislative study that was originally in SB 2148, but the longer I work on this, the more convinced I am that we should have a study. This study is different than the one that was in SB 2148. We would be studying those areas of law that we created that we could have actually waited on till the next legislative session. We would be studying those things that we would likely do. We would have a couple people from the Ethics Commission to be invited to take part. I suggested 2 just to make sure they would be involved but not to get connected or involved in the issues. At some point, it appears that we need to be communicating. Also, we need to find effective ways to educate the public, public officials, and lobbyists on the requirements of Article XIV and what it all means in the process. I hear constant questions. We need to educate for all of the parties involved.

(38:55) Senator Mathern: See Attachment #7 for an amendment on the definition of lobbyist. The intent of this amendment would be to have us all on the same page of what a lobbyist

is. This is not a counsel drafted amendment but the intent of this would be that we all have one definition. I offer these all to you with full recognition that at some point there will probably be an amendment that will bring all of this together. Between now and our next meeting everyone can look at these.

(47:44) Senator Anderson: On your definition of a lobbyist, your intent is to make 54-05 where we define lobbyist match what Article XIV says, is that correct?

Senator Mathern: Correct.

Senator Anderson: On the study, I am all in favor of a study. The more information I know, the better. But, you don't feel like the Ethics Commission itself would do a study and invite people in to comment?

Senator Mathern: I am a little bit concerned that we may not have enough resources in the bill. I did not put anything in here in terms of appropriation. I think the Ethics Commission appropriation that we put together is just enough to have some staff and pay for the expenses. I do not think there is enough there to have hearings etc. The other issue is that I am trying to promote the concept that we need to communicate about this. At some point, we need to work together to accomplish the general goals of the Constitution. We have done this in the past with interim committees, and it was taking that model and trying to use it to have a collaborative relationship with the Ethics Commission.

Chairman Hogue: I am interested in the idea of inviting the yet to be appointed commissioners to an interim study, and you sound hesitant because you would only want two there so that they are not a quorum. How much more effort would it take just for them to notice that they are meeting in conjunction with an interim legislative committee.

Senator Mathern: I think that is another way of addressing quorum issue. I would be very supportive of that. I am also concerned about their time and their ability. I am hoping we have some very talented people on the commission. Generally, very talented people are not sitting around home doing nothing. They might have a difficult time for all of them to take part in these meetings due to time constraints.

Chairman Hogue: We don't know who these ethics commissioners are going to be at this point, but I don't think that we can assume that they will be experts in this area such that they are not going to need some mechanism to be educated and get up to speed. It seems like the interim committee process would be a good avenue for them to learn.

Senator Mathern: I think you are right. I have talked to a few folks about applying, and they are expressing what you are saying. They are interested but they want to learn more etc.

Senator Anderson: I support effort to make this bill similar to SB 2148. I think it smooths everything out. I hope we can move forward to that.

Senator Mathern: If we agreed on the adjusted for inflation issue, we are already taking off 10 pages.

Senator Dever: Regarding the definition of a lobbyist, as I understand, in Article XIV a lobbyist may not give a gift, they may not facilitate a contribution for the organization for whom they serve as an agent – would it be your view that these definitions and those barriers would apply to the organization as well as to a lobbyist?

Senator Mathern: We have in here the definition of a lobbyist. I would see them as actually the person designated to do this work. Not the association or group that they are representing. If there was someone here lobbying for the Greater North Dakota Association, the application would relate to the person who attempts to do these duties. It would not apply to every member of that association.

Senator Dever: So, the PAC represented by that must have someone directing it other than a lobbyist?

Senator Mathern: Ok.

Senator Dever: My understanding is that those organizations and that the lobbyist can make a contribution to a campaign, otherwise you are in trouble with the 1st Amendment and freedom of speech.

Senator Mathern: I would see the application of these other provisions, in terms of who can give a gift, how the gift is given, what is the ultimate and true source, as certainly applying. There are still provisions that apply to the person that is giving money. That would be my interpretation.

(51:25) Chairman Hogue: See Attachment #8 for amendments. I would describe these amendments a hybrid of trying to incorporate the things that we adopted in the Senate Bill as well as other things that we missed. Also, some concessions on areas that the House disagreed with us. (Walks through amendments.)

- Removes adjusted for inflations (Pages 6-13).
- Section 2, Page 13, where we retain what was in 2148 – criminal issue in a different venue than where residing. Fair to accused to stay where reside.
- Section 4, consumer price adjustment (based on CPI).
- Section 6, No legislative authority as legislative branch to reject rules of commission.

(59:10) Senator Anderson: On Page 29, Line 19, you took the AG out above and you left it here. Is that an oversight?

Chairman Hogue: I think the words “if any” is trying to create that exception for the Ethics Commission. The AG would be obliged to issue an opinion on every executive branch new rule and that goes on record.

(1:00:24) Chairman Hogue: (Returned to explaining the amendments.)

- Section 21, Page 35, creates an issue fixing the Public Official term use – elected and public official. Eliminate concerns of folks considered public officials and the need to not have to disqualify themselves. I don’t want the Ethics Commission to be a super board. Their jurisdiction is only to find and go after ethics violations only.

- Section 25, we should focus on what the scope of their jurisdiction is. Tried to mirror what is in the constitution. Government ethics is not defined. We chose 4 terms transparency, corruption, elections, lobbying. In the definition of “gift” is an area where I went closer to the Senate. I threw in \$20 – I think something less than \$20 is not something the public should be concerned about.

(1:08:00) Chairman Hogue: I think Senator Mathern has keyed in one of the key definitions of the entire bill, and that is a lobbyist definition. Once you define who a lobbyist is, that defines who may not give public officials gifts. I am comfortable with how the House defined a lobbyist, because a lobbyist is essentially someone who advocates before us, the legislature. But, that is not the universe of everyone who is regulated under this because there are those that are trying to “influence state action”, and so that is the group of people that the House bill describes as they are trying to influence the adoption of our rules. By the time you capture those people and lobbyists, I think you would have a good list of the people that Article XIV is trying to regulate and trying to bring some transparency to. That is why we don’t have to worry about the common concern that we have had about a general citizen coming to lobby on legislation. Under this draft, they would never have to register because Title 54-05 exempts them, and they are not trying to influence “state government action” because we are not a rule making body. I do call for a provision for removal of the commission members. It was a matter of good draftsmanship. Neither version of the bill provided for that. If needed, we have to have a way to do that. That is on Page 46, Lines 3-13. Two out of the three appointing authorities could have the authority to remove for substantial neglect of duty, gross misconduct, and violations of commission code or ethics.

(Returned to explanations.)

- Went back to the \$517, 000 appropriation and the 2 FTE that we allowed for.
- Page 41- 45, felt that in the House version there were a lot of places that the legislature had a lot of authority over the commission and they don’t need those things defined for them. I took those out.
- Tried to streamline the effective dates. Several effective date and held it to 2.

(1:15:25) Senator Anderson: When I got your amendment, I looked to make sure that we were complying with Article XIV, and the things that the legislature needed to do. Basically we are charged with setting the civil or criminal penalty. I did not find all of them. (Gave a couple of examples.) I don’t think we need to go over each one now, but I would like to look at the areas that we are specifically charged by Article XIV with adopting civil and criminal penalties. We at least need to cover all of the bases that Article XIV requires us to do. A lot of the other things we have tried to do are a little bit extraneous but we at least need to do those.

Chairman Hogue: So Section 2, Subsection 3 of Article XIV is what you are looking at?

Senator Anderson: Yes. I found it in Subsections 1 and 2 but not 3.

Vice Chair Unruh: I do the same thing. (Reviewed what Senator Anderson was looking for and noted a couple of areas that the bill did cover what he was looking for.)

Chairman Hogue: That brings up a point I failed to make on pages 45-46. The Constitutional amendment forbids elected public officials from becoming lobbyists within two years. This

54-66-12 seems to reference just public officials; which is a bigger group than elected public officials. That is something that we should think about. We are actually going farther than the Constitution by prescribing conduct of all public officials in terms of their ability to become lobbyists.

Senator Mathern: I appreciate these amendments, and I think there are a lot of features that we did not think about the first time around. I am a little concerned about some definitions that seem inconsistent with the Constitution, but I will do some more study.

Senator Oban: There are parts I like and parts I don't. I would really struggle to be able to approve any full amendment. Can we go section by section and do a vote of the committee? Those are the things I was thinking about as we were hearing the summary of everyone's suggestions. To take a wholesale change or to reject it completely would be a waste of the people's time that have put significant time into those suggested amendments.

Chairman Hogue: It is possible. If we have disagreements about things like the definitions for example. They are key indicators of what the scope of this commission is and what their authority is. We spent a lot of time focused on the ultimate and true source, and to me that is not key. Others may not see it that way. The key definitions of lobbyists, public official, and the actual lobbying and state government action are the top definitions that tell us what the scope of this act is. Everything is up for debate and discussion.
Adjourned the committee discussion.

2019 SENATE STANDING COMMITTEE MINUTES

Ethics Committee
Pioneer Room, State Capitol

HB 1521
4/11/2019
Job # 34704

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Carie Winings

Explanation or reason for introduction of bill/resolution:

A BILL for an Act relating to reporting campaign contributions and expenditures, restrictions on public officials and lobbyists, investigations of ethics violations, and implementing requirements of article XIV of the Constitution of North Dakota; relating to rulemaking procedures, disqualification of agency heads in quasi-judicial proceedings, implementing article XIV of the Constitution of North Dakota, and requirements for the North Dakota ethics commission; to provide for a penalty; to provide an appropriation; to provide an effective date; to provide an expiration date; and to declare an emergency.

Minutes:

Attachments: 1-4

Chairman Hogue: Opened HB 1521 for committee discussion. (Set additional meetings for next Monday and Tuesday at 3:30. We have some additional amendment today that we will talk about. I believe Mr. Clayburgh had something to talk to us about.

Rick Clayburgh, President and CEO, North Dakota Bankers Association: Testified to present a potential amendment. (See Attachment #1) I do not know if this is the right answer. I am also the Secretary and Treasurer of NDBA Services Inc., which is a for profit and I am also the Secretary and Treasurer of North Dakota Bank PAC, which is the PAC of the North Dakota Bankers Association. One of the issues that I see, as I have looked at this article, is trying to address the issue of trade associations. Which I don't think were originally thought about in what the intent was with the measure. The idea that we are a small organization, and we have a tremendous amount of transparency on the front side when contributions come to our PAC. We have a tremendous amount of transparency when we then write a PAC check out to you. I happen to work for a small organization, and there are a number of us that are executives of small organizations who have PACs and we are also the lobbyist. I happen to be an executive director that is a lobbyist. The way that this is set up, it would cause us a lot of hoops and steps to jump through to get around and properly follow the law, and we are really transparent through our whole process. The amendment we laid out is just allow for a situation such as mine. We would still be registered as lobbyists and do all of our reporting, but some of the issues on the prohibition of delivering a PAC check on behalf of our members is a problem. I don't think that was the intent. It may not be the right way to do

it, but this seemed to be a simple way to do it. We will continue to be transparent as we always have.

(5:15) Vice Chair Unruh: In reading through these, I am not sure that we have a whole lot of wiggle room in this department. Article XIV explicitly says that a lobbyist may not knowingly deliver a campaign contribution. While I understand the complication there, I am not sure that we have the ability or the authority to change that. A lobbyist is a lobbyist, and a campaign contribution is a campaign contribution. Maybe there is a way that we could address it, but at first blush I am not sure.

Rick Clayburgh: I think that the issue of what this committee is doing is putting some meat on the bone. There are specific provisions that we cannot deliver a campaign check on behalf of another, and I think that what we would be doing is working with the commission to talk about ways that they can also in the rules. What we are trying to say is that anything the legislature does to try and put clarity and specifically say that anything you do would not necessarily put constraints on us operating in a small trade association.

Senator Mathern: I think one of the reasons for the wording in the article is to assure the proper recording of the people who give a person like you money so that those amounts are clear. Whether it is you personally or 17 other people and what amounts they were, and also to clarify that the gift provision applies. I am hearing that you want to meet those requirements. You literally would have access to your sub contributors and you would be willing and able to report those. It is not an intent to get around Article XIV but make it fit. Is that accurate?

Rick Clayburgh: Yes, our intent is to get rid of a convoluted process that trade associations or PACs would have to try to get through when they have small staff to do what we do. I am not referring to the gift provisions. This is just to the PAC aspect of our trade association. We already report. Anyone who give a contribution to our PAC at more than \$200, we report and when we give a PAC contribution, it is reported in total dollar amount and all expenditures. We are already complying with the law. Measure 1 does not change how we report any of that. It is just the one issue of my signature being on the check and I am a lobbyist.

Chairman Hogue: Sen. Unruh is correct that we are held to the issue that a lobbyist cannot deliver or facilitate a check, and it is constitutional law that we cannot amend. So, how do we work around that – if at all. The only thing I can think of is that everyone has a First Amendment right to make political contributions. Could Measure 1 make it so logistically difficult to make that political contribution that it infringes on that First Amendment right? That is the question to Claire Ness.

Rick Clayburgh: I believe it is a direct violation of my freedom of speech; both federally and at the state level.

Chairman Hogue: It is one of these conundrums, and it is compounded by the fact that it is in the Constitution and it is further compounded by that fact but there is no legislative intent that tells us what they were thinking about this provision.

Rick Clayburgh: We do not distribute check on behalf of multiple organizations. We are a single PAC organization.

(11:20) Chairman Hogue: See Attachment #2 for amendments proposed. This is a Senator Mathern amendment that relates to these political committees. They are currently obligated under state law to file a report of their expenditures, and the Mathern amendment seeks to specify that there no reason they should not have to also report their contributions.

(Explained)

- Page 44, Lines 3-7, open meetings law violation – makes clear those types of complaints get referred to the AG.

(14:24) Senator Dever: Do I understand that if there is a confidential matter regarding a complaint, that they would be required to notice the meeting, move into the meeting, and then move into executive session and out again?

Chairman Hogue: I don't know the answer to that. I had not thought of that. My primary thought is that we have consistently not had the Ethics Commission duplicate what we are already doing in terms of financial disclosures. That is in the Secretary of States daily wic. Open meetings and open records are within the Attorney General's historical purview. That is my only intent.

Senator Mathern: On Page 44, Line 1, you use the term "may" – I assume you intend for the Ethics Commission to choose or not choose to use this avenue. In light of the small appropriation, they might make that decision based on whether they have the staff or budget available?

Chairman Hogue: That is correct. I substituted that word because, again, it is respect for the autonomy of the agency. Why should we tell them that they have to do this? Maybe they want to negotiate an informal resolution with the accused. Maybe they could decide that the feds are interested and hand it over. The idea of taking away the discretion from the Ethics Commission is bad policy. This gives them more latitude and more bargaining power relative to the people that they are trying to regulate.

(17:25) Vice Chair Unruh: See Attachment #3 for amendments proposed. These go off of the House 2000 version, Page 39-40. They address the section of the bill that talks about gifts. The point is to take the language back to Article XIV regarding gift definitions.

(22:10) Senator Mathern: Would this be interpreted to mean that any kind of detail that we would be concerned about to make this workable would be left up to the Ethics Commission to add some rules that relate to this?

Vice Chair Unruh: As you know, Section 2.1 states that the gift section of Article XIV is "as determined rules adopted by the Ethics Commission". All I have done is take what they have defined in the article and put that in the Century Code. Anything beyond that is very clearly stated that it needs to be done by the Ethics Commission, and I would assume that they would do that.

Chairman Hogue: I am in agreement with some of the other amendments that we discussed and we need to get the committees agreement or disagreement on them.

Vice Chair Unruh: I will work off of the 2004 version to explain additional amendments (Hogue's first amendment version). They are not drafted yet.

- Page 38, Definition of "influence state government action", if we retain the original definition of lobbyist as proposed in these amendments and if we retained this we are missing a big piece of the puzzle by saying "the final adoption of a rule". There are a lot of influences that happen prior to the final adoption of a rule. I propose to remove the word "final".

(25:50) Chairman Hogue: Your intent would be to essentially say that if you are attempting to influence state government action, whenever you advocated for or against the adoption of an administrative rule?

Vice Chair Unruh: Correct. You would fall under those reporting requirements if you spend more than \$200 in that process. You would have to file that report.

Chairman Hogue: What is the committee's thoughts on that?

Senator Oban: That is doing a little bit of the job of the Ethics Commission and I would prefer to not do that.

Senator Anderson: I think this is the definition of influencing the state government, and I have adopted a lot of rules in my life and the final version of the rules – nobody hardly ever tries to influence you after you have the final version. That effort is made while you are working on the final version. They announce the rule hearing and the input that you receive at that rule hearing is what develops the final rule. Once the final rule is in place, hardly anyone every says yes or no about that because they had participation in and up to that point. That is the significant portion of it.

Chairman Hogue: If they go to the administrative rules, they are trying to block a rule they don't like. There they are lobbying because they are appearing before us as one of our interim sub committees. Up to that point they are still interfacing with the agency.

Vice Chair Unruh: They solution to that would be, in your eyes, just removing the definition of influence state government action?

Senator Oban: Yes. I think there are a whole lot of ways of influencing state government action that are far beyond rules that are adopted or debated.

Senator Mathern: In this section, I like the fact that you created these issues of transparency, corruption, elections, and lobbying to sort of bring some sort of parameters. I think within that context; Ethics Commission would address what Senator Unruh is talking about. While I think it would merit that, that would be that they would be concerned about influencing state government action. I am thinking they might make it broader and not just a rule. Sometimes there are things that happen even outside a rule. It seems a little bit limiting. I think her intent

is to broaden it, which I think is positive, but I am thinking the Ethics Commission might have within their purview to broaden it further. Sometimes there are lobbyists that are just there and they have influence.

Chairman Hogue: It sounds there is some disagreement on it, but I think you should prepare that amendment and then we can vote it up or down.

(30:56) Vice Chair Unruh: (Continued on amendment suggestions.)

- Page 41 (There are two spots and this is just one.) I believe Senator Mathern had this concept included in his amendments as well. It is the ability of the Sec. of State to revoke a lobbyist registration on the first offense. This prohibition of delivering and then maybe the gift prohibition as well. I agree with some harsh penalties if they violate the chapter, but revocation of a lobbyist registration would ultimately result in them losing their job. While these rules are very new, and we don't have a clear path on exactly how they work, I think that is an aggressive thing to have in the Century Code right now.

Senator Anderson: You don't think the word "may" gives them enough flexibility to say they are going to do it or not based on what the violation was.

Vice Chair Unruh: I would rather not leave up to interpretation at this point. Maybe in two years when we come back after we have a better idea.

Chairman Hogue: You are thinking for a second violation maybe they could be exposed to that revocation of their lobbyist license?

Vice Chair Unruh: I would be amenable to that. I would rather take it all the way out, but I am open to that discussion.

Senator Oban: The Mathern amendment did remove that completely. I went through the bill section by section, and looked at both yours and Mathern amendments and liked pieces and parts of both as well as some I would take pieces out. I do not know how we try to do this quickly, but I think that is what Senator Unruh is getting to.

Chairman Hogue: You say that the Mathern amendments would have denied the Secretary of State the right to revoke a lobbyist's license?

Senator Oban: It struck that language.

Chairman Hogue: Ok. Are you supportive of what Mathern's amendment did in terms of decreasing the penalty for a lobbyist who would violate?

Senator Oban: If I had to choose, I would take that section of the Mathern amendment and I would put in the bill.

Chairman Hogue: What about the rest of the committee. (The committee confirmed they like the Mathern amendment in that section.

Vice Chair Unruh: (Continued on suggested amendments.)

- Page 42 – On addressing how to make a complaint. It sets general guidelines for the Ethics Commission to operate under. However, Article XIV allows for the commission to set up their own rules, and I think what we had in the bill takes our roll in that a little too far. I am not sure what should be removed and what should stay. I think a due process piece should stay. It is important for us to identify the difference between confidential and anonymous.

Senator Mathern: I support what she is talking about. I think that is what the Senate did in SB 2148. I think Senator Oban came up with an excellent suggestion on how to go through the bill section by section and try to come up with a draft in that is related to the discussion.

Chairman Hogue: I think it makes good sense to work off of the engrossed version. We need to be able to cut and paste different amendments. That is why, in my amendments, I try to take what the committee supports and keep incorporating them into one bill draft so that we can either adopt that or not, and then if there are still a couple of things we want to throw in, we can do so. I would say to plan to do that at our next meeting. We have been taking a long time for a lot of reasons, and I think the bill is getting better because we are getting lots of different suggestions. That is a good part of the process. It has not been a rush to try and spit out a recommendation, but we do have a firm backstop of Tuesday. Is there anything else we should cover?

(39:41) Jack McDonald, North Dakota Broadcasters Association: I have a couple of amendments that I would like to draft for you. Our concern is twofold. One is that the bill essentially has a closed court proceeding. Under the North Dakota Constitution, it says that all courts should be open. The procedure you are running is a completely closed proceeding. It is not completely clear that if you are creating a closed court proceeding even.

(41:40) See Attachment #4 for information provided to the committee.

(45:15) Chairman Hogue: When would you have those amendments?

Jack McDonald: I can get them to you tomorrow.

Chairman Hogue: Is there anything in Article XIV that would prevent the Ethics Commission from adopting rules as you advocate?

Jack McDonald: I don't believe so.

Chairman Hogue: What would you say to Senator Unruh or Senator Oban's sentiment that we let them do their thing? If they are not prevented from adopting this rule.

Jack McDonald: My understanding is when this bill comes in, this is law. So, it is already adopted. You are not giving the commission a choice in this case. You have already said that the violations are criminal law and you have already said that the meetings shall be closed. I am not sure they have any choice in the matter.

Chairman Hogue: You think they would be precluded from doing something that contradicts what we do in HB 1521?

Jack McDonald: Yes. In fact, if you follow through. Which I think is a good idea – that the administrative rule process – it says that it has to be based on state law. Any administrative rule has to have a foundation in state law. In this case, this is what the state law says. You can't say something just the opposite. That is my opinion.

Vice Chair Unruh: I have some clarification on my intent with allowing the commission to develop their own rules. In my opinion, we can put whatever we want in the Century Code, but Article XIV has a clause that says if there is any conflict, the article prevails and the article give the authority to the Ethics Commission to develop their own rules and processes. Even though I would like to change what we have in here, I think they would still have the authority to do whatever they wanted in the first place.

Chairman Hogue: I concur with that.

Senator Mathern: I presume that you are actually saying it is already in the bill when you say it is already in the law.

Jack Mc Donald: Yes.

Senator Mathern: And, presumably we would pass the bill as is, but I think your amendment would take those sections out?

Jack McDonald: I would amend to modify them. I am not sure that you can validate state laws under the Constitution. I am not so sure a constitutional group can invalidate any state laws that are on the books. I know what it says, but I have never heard of that before. The rules can maybe be different.

Chairman Hogue: If their rules provide for something and there is a statute that says that it has to be closed, which is going to prevail?

Jack McDonald: I don't know. The rule is not a part of the Constitution. The rule they make is just a rule they make. That is not the Constitution. The Constitution gives them the right to make the rules, but it does not say those rules will be part of the Constitution.

Senator Mathern: Should the complainant be the person or the Ethics Commission?

Jack McDonald: I think the complainant should remain as such. The way this is set up now, the complainant will file a complaint with the Ethics Commission, and the Ethics Commission will then investigate the complaint and then they will meet with the accused individual to discuss the proceeding. That is what I think is equivalent to what I passed out when the board meets. That is the part that should be public. I think the complainant needs to be the party bringing the thing forward.

(52:03) Senator Dever: At the first meeting of SB 2148, I raised a question you just addressed. That is that the rule making authority of the commission flows from the Constitution. The rules have the force of law. I asked the question of the attorney that drafted these bills, which takes precedence? Her response was that it was a matter for the courts to

decide. Every bill that we pass is considered constitutional until it is challenged. I have similar concerns to yours. Also, when you talk about not being accountable for what you say, Article IV, Section 15 says that members of the legislative assembly may not be questioned in any other place for any words used in any speech or debate in legislative proceedings.

Jack McDonald: That is one of the exemptions for liable and slander. If you quote what is said in a legislative proceeding, for instance, you cannot be sued for liable or slander because it was said in a legislative proceeding.

Senator Dever: Article XIV gives itself authority over all the rest of the Constitution.

Chairman Hogue: (Clarified what the plan to proceed is.) Adjourned the discussion on HB 1521.

2019 SENATE STANDING COMMITTEE MINUTES

Ethics Committee
Pioneer Room, State Capitol

HB 1521
4/15/2019
Job # 34756

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Carie Winings

Explanation or reason for introduction of bill/resolution:

A BILL for an Act relating to reporting campaign contributions and expenditures, restrictions on public officials and lobbyists, investigations of ethics violations, and implementing requirements of article XIV of the Constitution of North Dakota; relating to rulemaking procedures, disqualification of agency heads in quasi-judicial proceedings, implementing article XIV of the Constitution of North Dakota, and requirements for the North Dakota ethics commission; to provide for a penalty; to provide an appropriation; to provide an effective date; to provide an expiration date; and to declare an emergency.

Minutes:

Attachments: 1-5

Chairman Hogue: Opened HB 1521 for committee discussion. We can start with version .02010. (See Attachment #1)

Senator Dever: Before we start, can I just say that no matter what we do, until this is put into practice and goes through the biennium and the rulemaking process, we are not going to come to a finished product until we are into the next session. I think if we spend a lot of time trying to tweak everything, it will be for no apparent reason. As we go through this, we should keep that in mind. This is a work in progress, and there will be some things that we have to come back and fix at a later date. The commission might come back and say there are some things they would like for the legislature to clarify also. We have to realize that we will not be able to make it perfect.

Chairman Hogue: I appreciate that sentiment. I am doing a couple of things based on where we are at in our calendar and how long the journey this bill has to go through yet. This has to go to the Senate floor, and then to Appropriations, and then back to the Senate floor, and then possibly conference committee. My concern is that we would be on day 72 by that time, and I don't think that is fair to the House or is it something that we want to do to get a good product. One of the things that I have asked is that we bypass the Appropriations Committee because I have not heard anyone on the committee say that they want to change that appropriation. I think the appropriations committee will have to take a look at this, but if we don't, then I think I have the chairman of the appropriations committee and leadership that we can bypass that and we could suspend our rules for that purpose.

Vice Chair Unruh: To that point, the Appropriations Committee have seen identical language that they had approved. I don't see a problem with that, but the one thing I do want to point out, if we are making opening statements, that this record that we have here as we discuss the bill also reflects legislative intent and I think that is going to be an important thing as we move forward.

(3:30) Chairman Hogue: Walked through .02010 version highlighting only the amendments that were advocated for in the last hearing on Thursday, which were the amendments of Senator Unruh, the proposal from Mr. McDonald, and the proposal from Mr. Clayburgh.

(5:54) Senator Oban: You removed the reference to the dollar value for a gift in that section, but you did not remove the dollar value that you put in the definition of gift on page 39; is that correct?

Chairman Hogue: That is a good catch. That should come out. If we were to adopt Senator Unruh's amendments, we should not have any monetary amount associated with a gift.

(6:45) Continued on Page 42 of amendments.

- Page 42, Lines 10-11 constitutional – not lose license until 2nd offense
- Page 43, Mr. McDonald's suggestion to strike language (Already an offense in Title 12.1 of Code.
- Discussed concerns of Mr. Clayburgh and we could not come up with a solution for that. The Constitution is specific on that. They will have to have it delivered by someone other than a lobbyist.

(9:50) Senator Oban: I also had those discussions with Claire Ness and we tried to find multiple ways to try and accommodate the request and they did indicate that it would be very hard to defend.

Chairman Hogue: As I have tried to point out, if a person has a 1st Amendment right to make political contributions on the one hand, and another constitutional provision comes along as says you cannot deliver it, the US Constitution has to trump, but all we are saying in our state provision is that you can make all the contributions you want, but the lobbyist cannot deliver it. It is making it harder, but I do not know to what policy purpose, but it is something we are stuck with.

(11:33) Vice Chair Unruh: I had one other thing that I brought up when we met last, and that was the outline for how we set up the rules for the actual Ethics Commission. The amendment I am handing out is off the .02000 version. (See Attachment #2 for amendments.)

The amendments, as a whole, take the outline that we have in this bill out and insert the language that we had in the senate bill for the construct that we set up for the Ethics Commission. As I started to go through and try to figure out which pieces of this to keep and which pieces to get rid of, I decided the best way to do it was to use language we already approved. This is that language that we set up for the rules for the commission. They have the ability and authority to make their own rules. It leaves most of it up to the commission themselves. It removes timeframes that we had on the pieces that we needed to keep as well. We can get a Christmas tree version if that is helpful.

Chairman Hogue: Is this supplemental to .02010 or substitution for it?

Vice Chair Unruh: It would replace these parts in .02010 version on the commission functions. It was very difficult to draft based on all the different versions, and I didn't know if we would be getting a new version.

Chairman Hogue: Are there any other amendments in addition?

(17:15) Senator Oban: See Attachment #3 and #4 for amendments proposed. I distributed a .02016 version. I went section by section, and wrote in the margins whose amendments that were from, who made the suggestion, and if there is new language being proposed by me. The changes from Page 1 to Page 6 are removing references to "adjusted for inflation".

(18:15) Walked through the amendments.

(24:41) Chairman Hogue: Page 34, section 22, I would have to study that to know whether we want to strike it. I think I would want to keep that section.

Senator Oban: I was just thinking that if the administrative rules committee cannot object and or void it; I can understand why they would want to hear about them, but that would be fine.

(Returns to page 35.)

-Page 38 to end of the bill is mostly new language. Page 39 is a new way of defining a lobbyist based on some research that I did looking at other states.

(27:46) Senator Anderson: Can we go back to Page 39 where you talk about influencing state government action? If the local wildlife club doesn't like a game and fish bill and they are meeting together, and they encourage each other to go and talk to someone – that is a violation?

Senator Oban: There is no violation. We are just trying to clarify who would be able to give gifts and who could not. If they were to spend more than \$200 doing it, then they would have to disclose that.

Senator Dever: Does that apply to organizations that send us all those formed e mails from all over the country?

Senator Oban: I guess if those people are spending \$200 to get those e mails out. I am not opposed to getting communication from my constituents no matter how it comes.

Senator Dever: I am not opposed to that either, but there are certainly concerted efforts to influence government state action by organizing all of the followers or members of organizations.

Senator Oban: If those individuals, outside of their membership dues, were spending more \$200 then they would have to disclose that.

Senator Dever: I am not thinking of the individuals. I am thinking of the organizations that are mounting an effort on one side or the other of a bill.

Senator Oban: If those organizations are spending, then I believe they should be disclosing that. That is certainly lobbying.

(30:30) Returns to page 39 explanation.

- Page 40, 42 consistent with SB
- Meant to have the Sec. of State having the right to revoke for 2nd offense in here.
- Only thing that becomes public is when it goes before a licensing board.
- Removal of commission member by consensus.

(36:00) Senator Mathern: We have a complete set of amendments under .02016 that has input from Senator Hogue, Senator Unruh, and Senator Oban. I find it even more interesting that the first thing and last thing we probably all agree on. The first being “adjusted for inflation” and the last is the proper appropriation for the commission. Should we come to a consensus to each section we agree to?

Senator Oban: I would note that one thing that I did not include on the adjusted for inflation change that you did include is allowing the Secretary of State to do an automatic adjustment. I think that should be a policy decision left up to us in the legislature. If we were to change the threshold for reporting, unless that inflationary causes it to go under the \$200 threshold.

Chairman Hogue: I was curious on your definition of “influencing state government action”; you indicated that you may have gotten that from another state, or where did you get that from?

Senator Oban: I looked at WY, MT, Minnesota, South Dakota, federal etc., and I felt that was more encompassing of how I believe lobbying and influencing happens. It is not just about rules. Whether it is the final adoption, or the development of them. It could be the appointment of someone, or a whole host of decisions that are made at the state level that people have an interest in. Where they would be expressing that interest. To limit it to the rule making process could be pretty narrow.

Chairman Hogue: I am trying to figure out if it is a workable definition. The state, through its agencies, is conducting and considering administrative action on a wide range of things every day. I am sure the Governor get someone trying to influence him about a half dozen issues a day, and I suppose the limiting factors they are probably not spending \$200. I am curious on how the person that is trying to influence that should keep track of that. Lobbyist are required to disclose because they typically are lobbying on multiple different issues, but how about if a professional witness travels and spends \$200, which is easy to do, they would all have to report under this definition?

Senator Oban: Yes, it depends if the \$200 used for influencing though.

Senator Anderson: I am thing about practical instances where people have tried to influence rules. If someone sends a lobbyist from another state, you have exempted their travel and the room they stay here, but their salary is not exempt. So, that guy is getting paid while they are here, is that reportable then?

Senator Oban: That is what I was thinking of. I was thinking about people that come in front of the committees that I serve on that are very clearly lobbying for a benefit for themselves or for their organization or employer. They get introduced by lobbyist and then they are covered, but they are clearly lobbying and trying to influence the outcome of some decision we are making.

Senator Anderson: So that individual or the employer would need to report what he got paid while he was here?

Senator Oban: I don't think it is necessarily what they got paid.

Senator Anderson: Someone spent the money. If we are getting to that level, then those things need to be reported as well.

Senator Oban: A number of times during the campaign for this measure, we heard people saying something, so the goal was to make sure that they report what they have spent.

Senator Anderson: I think that is the difference. That person is a volunteer from the group and the person that comes from a company from another state is getting paid to be here.

Senator Mathern: I would say that this is the intent of Article XIV. This is tough for us. But it is for the citizens to know what you are suggesting and there would have to be a report.

Senator Anderson: That is fine with me. It is just not something we do now, and it would be something to figure out and it is a challenge for anyone who is sending someone to North Dakota to do that.

Vice Chair Unruh: I have a little discomfort with asking companies to reveal salaries of someone that is sent here. I get where we are trying to go, but that is just a bridge too far in my opinion, to capture that piece. I think there are other pieces that we can capture that are clearer. Under the definition of ultimate and true source of funds in this section, how it works with those. That is really complicated and hard for people to try and understand what to report.

(45:05) Senator Oban: I don't think this would affect salaried employees because they are not having to take any time off to come. In Education Committee we have superintendents come in all day long who never have to take time off. If you get a teacher in front and they have to take the day off. That is very different.

Senator Anderson: What exactly do you want reported from them?

Senator Oban: I think that is something we need to discuss and come to an agreement on. If that means we exempt a salary – I don't know. This process makes us think of things that individually we don't think of on our own. That is why I specifically thought of travel and those kind of expenses. I have never known anyone on a salary that has had to take the day off to come and testify. Then there are others that have to take the day off. (Gave another example.) Why would we require something for the lobbyist and not of the person that is doing just as much lobbying as the lobbyist.

Senator Anderson: I am not sure that we require that of the lobbyist unless he is giving money or a gift to someone. We don't require the lobbyists that are hired here to report how much they got paid.

Senator Oban: That is correct, but we do if they are doing anything over \$60 to influence a certain member.

Senator Anderson: Right, now you are asking, generally speaking, that they report how much they got paid for the time they were here. Is that your intention?

Senator Oban: I had not even thought about their pay. It is certainly something that we would have to discuss.

Senator Dever: I think about all kinds of organizations that organize to contact legislators, and I am not sure that we want to or that we can ask them without impeding the First Amendment, for the kinds of reports that we would have to ask for. We get certain issues that we get hundreds of e mails on and they are a form e mail. I have gotten one from Minnesota that started out with, "as your constituent". It is easy for me to delete it, and I am not influenced by it, but that is their effort.

Chairman Hogue: Am I correct that amendments .02016 is sort of your reconciliation of all the things that I, Senator Unruh, and Senator Mathern have proposed and put them in one comprehensive amendment? Is that true.

Senator Oban: That is true, but also inserting my own opinions as well.

(49:50) Vice Chair Unruh: See Attachment #5 for christmas tree version of .02014 amendments. This is just addressing the one issue I mentioned earlier. These are not in a way that we could pass them because of a few things that need correction. These amendments are not quite right – not worth me taking the committees time.

(52:49) Chairman Hogue: I am suggesting that we look at .02010 and .02016 amendments. They are competing proposals, although much of what they have overlaps and is the same, but there are significant differences. I would suggest that we adopt one of them and work off of that tonight, and tomorrow morning. Then we can decide which, if any, of the competing amendment proposals we want to put in. As well as any of Senator Unruh's. Then we would be able to pass something out. We are time constrained, yet we still the ability to do amendments tomorrow at the very latest. Then, assuming we bypass the Appropriations Committee, we could have it to the Senate floor no later than Thursday. Of course, on the Senate floor there is a possibility for floor amendments if someone felt strongly.

Senator Mathern: What you say makes sense. I think we have to get away from identifying the names of proposals. I think the .02016 version, without anyone's name, has most of what all committee members have. I don't see it as being offered. I never heard a motion, but I think your idea of working from one composite of proposals makes sense. I suggest that by consensus we work on .02016, and then we come prepared tomorrow.

Senator Anderson: Moved to adopt amendment .02016. I like the way they are indexed. I would say that we can start with that and in the future we can add the things that you thought we should have and take out what we need to. Same with Senator Unruh's suggestions.

Senator Oban: Seconded.

Chairman Hogue: Is there any discussion? We would be adopting the amendment so that we can further amend.

Senator Dever: I have some discomfort with a few things in there. I follow Senator Mathern's argument as it applies to .02010.

Senator Oban: I have some concerns with my own amendment after this discussion. However, I think that the complaint process in the House bill is so broken, in my opinion, that I would rather work from the .02016 version where we kind of paralleled it to the Senate bill but incorporated all of those other amendments proposed by everyone else. The majority of those changes are going to be in the definitions; which, I agree after this discussion, need and deserve more work.

Vice Chair Unruh: I agree that Senator Oban did a thorough job of fixing that back, and I attempted and did not quite get, but I do have some serious concerns with the definitions on pages 39-40, with how those reporting requirements would work. I plan to support the amendments. I think they are a good combination of everyone's thoughts.

Chairman Hogue: Any further discussion?

Senator Dever: I understand that we can further amend this later, but regarding the penalties, if the rules are clear, and I hope when this all settles out, that someone comes up with a booklet where the rules are plain and understandable. And, I will abide by those rules and the severity of penalties will make no difference. If as exists, there is abuse of this process, then some good honest people will fall victim to it, and I am concerned about that. With whatever the penalty is, I would rather suffer that than the loss of my reputation. That is what this whole process is all about. I mourn the fact that the voters are being second guessed on their ability to elect ethical people, and we as elected officials and almost every one of us is ethical by our own discretion. And, that is passed on to 5 unelected people sitting as constitutional officers with jurisdiction over the executive and legislative branches. Going forward, I think we need to consider that.

Senator Oban: I hope that if you feel that strongly you will come with amendments to the committee.

Chairman Hogue: I will speak in opposition to the motion. I hope you will all vote against it. I think the amendments do make an honest effort to incorporate the things that we have agreed to, but I think in so many areas it goes back to what I think is good policy. We talked about the penalties when we had our senate bill and I was one that proposed the stronger penalties, but I guess that I am persuaded that when we are dealing with new legislation and regulating new people under new regulations and using a new administrative body to do so. I think the better course of action is to move slower and do like we do with every other crime

– to ratchet up penalties where we see they are not being followed or that they are being ignored. That is one area that I think this .02016 version goes the wrong direction. It reinserts the word “solely”, which I think is bad policy. It provides a little too much discretion for the Ethics Commission. We know they can adopt their own rules. It is set out for us in the Constitution. Should they have some preliminary rules on a go forward basis when they are appointed? Absolutely. I think the first thing they will be required to do is to start their administrative process to adopt their rules to define things like gifts, but we cannot rule out the possibility that they won’t have complaints from the first day that they are constituted. I don’t think there is anything wrong with giving them some guidance and letting them change those rules if necessary. I have a couple other issues but I have not seen them until this hearing so I would like to study them this evening. I think from a strategy perspective it is harder for us to take something that is already in front of us than to try to add. My issue with .02010 is that we have only added things to it that I felt was the consensus of the committee and I think we should continue to do that. I am opposed to the motion.

Senator Mathern: With due respect to the one that made the motion, an encouragement to change their mind, I do not think the motion was made to adopt .02016 as what we agree on. I really saw the motion as just selecting a work spot to which we add and delete. Not that we accepted each of the proposals.

Senator Poolman: Regarding the penalties, the concept of using your contributions for personal use is not a new rule and so I don’t think that it is terrible to have a pretty stiff penalty for that because it has been the rule for a while now. The other penalties for giving someone a \$500 gift or more; I think is pretty egregious and I don’t have a problem with the penalties. I do like idea of working off of .02016, and if it means that tomorrow people come back with amendments to remove some of those things that they didn’t like, or to adjust them, I think that is a good idea for tomorrow. It is good combination of the things that we have taken a look at. I will support the motion.

Senator Dever: I am not opposed to working off one of the drafts. I would prefer .02010.

A Roll Call Vote Was Taken: 5 yeas, 2 nays, 0 absent.

Motion Carried.

Chairman Hogue: We will work off of .02016 from here.

Senator Mathern: Could we leave on a note of agreement. It seems like everyone agrees that we should have the Ethics Commission, they should have office space, and we should go by the Senate amount. Should we see if we agree on that piece?

Vice Chair Unruh: I would like to take a closer look at those things. I would like to read this to make sure that we caught everything. I expressed a little concern on the definitions there, but there is one other thing. The definition of “ultimate and true source of funds” on Page 6. The legislature expressly has the authority to do that. I think it is appropriate for us to tackle that ourselves.

Senator Oban: I was going to bring up the definition of “ultimate and true source” as well. From everything that we have discussed, there have been sort of three different ideas. Removing solely, and adding in some language that Senator Mathern had proposed in his amendment. Maybe we can all look at that by tomorrow. Keeping solely in, which is what Senator Hogue had. This was just another option, because there seemed to not be agreements, so I was trying to find some way of allowing some flexibility. That is ok if that is not the right option either. I do think that is one area where we should all spend some time figuring out where we are at on that.

Chairman Hogue: Let’s be sure that we work off of the .02016 version tomorrow, and whatever changes we would like – let’s bring them.

Senator Dever: Clarified that the version of the amendments we will work off of would be the .02000 version with .02016 being applied as well.

Chairman Hogue: Yes, unless you bring a whole new set of amendments; which would supersede. Closed the committee discussion.

2019 SENATE STANDING COMMITTEE MINUTES

Ethics Committee
Pioneer Room, State Capitol

HB 1521
4/16/2019
Job # 34790

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Carie Winings

Explanation or reason for introduction of bill/resolution:

A BILL for an Act relating to reporting campaign contributions and expenditures, restrictions on public officials and lobbyists, investigations of ethics violations, and implementing requirements of article XIV of the Constitution of North Dakota; relating to rulemaking procedures, disqualification of agency heads in quasi-judicial proceedings, implementing article XIV of the Constitution of North Dakota, and requirements for the North Dakota ethics commission; to provide for a penalty; to provide an appropriation; to provide an effective date; to provide an expiration date; and to declare an emergency.

Minutes:

Attachments: 1-5

Chairman Hogue: Opened HB 1521 for committee discussion.

Senator Oban: I reflected on the discussion on the amendment that was adopted yesterday. See Attachment #1 for a guide to my notes from yesterday.
All of the further amending has to be made from amendments adopted yesterday.
(2:00) Walks through changes.

(3:38) Chairman Hogue: On removing the striking of Section 22, the effect of this is that, although they would not be subject to the veto authority of the administrative rules committee, they would still report to them on there?

Senator Oban: Yes. That is correct.

(3:57) Returns to attachment #1.

(4:38) See Attachment #2 for amendments to match up with section A of #1.

Chairman Hogue: Is there any discussion on what appear to be 3 changes within that .02025 amendment?

Senator Oban: I highlighted the changes made.

Senator Anderson: Moved to adopt .02025 amendments.

Senator Mathern: Seconded.

A Voice Vote Was Taken - Motion Carried

(6:45) Senator Oban: Returned to Attachment #1 section B.

(8:00) Chairman Hogue: This is one concept with three different alternatives?

Senator Oban: Correct, and also a 4th would be to go with your version that left “solely” in.

Senator Mathern: In light of it being crucial to the final bill, maybe we should hand out the wording.

Chairman Hogue: You mean the amendments of .02027, .02028, and .02029?

Senator Mathern: Yes, unless everyone understands it.

Chairman Hogue: Is anyone unclear about this?

Senator Anderson: I think we know what it means. It would be my intention to move to restore the word “solely”, because I think that the thing is unconstitutional unless we have “solely” in there. It will be challenged by someone. I am not sure that “substantially” would be a good substitution for “solely”.

Senator Oban: That sounds like that would be option 4, which is not on the list, but certainly something that we can discuss.

Senator Mathern: As I understand Senator Anderson’s comment, he would be suggesting that we adopt the language that came from the House or what you suggested. I am not sure which one, but we do have that wording. I would note to the senators that I think that is too broad of a hole in the reporting process. To use the word “solely”, it appears to permit so many contributions to these campaigns that would never get reported. I was at a fundraiser the other night and part of the money being put into the event was that you got a free drink. If someone put in \$250, the amount of dollars that went into the campaign activity would not have been “solely” \$250 because of the drink in addition. It would seem to exempt that reporting. That is a concern of mine – that it is just too broad of an exemption for the reporting requirements.

Chairman Hogue: I think in that example, since we are talking about the ultimate and true source, and not a contributor, so if I buy a ticket to come to your event, and I write out a check for \$250 I have to report the \$250. It is only if I am getting that \$250 from someone else, then we worry about sub contributor and the notion that they made that contribution “solely” to advance your campaign.

Senator Mathern: I would agree in terms of its applicability to the sub contributors. I guess I make the point there too. The sub contributors coming to that event or giving you money to give to me for the campaign could receive something as part of their contribution that they would be exempted from reporting it as a sub contributor.

Chairman Hogue: Does the committee understand the 4 options on either deleting or leaving the word “solely” in the two spots in the bill that Senator Anderson referenced?

Senator Anderson: Let’s discuss the difference between “solely” and “substantially”.

Chairman Hogue: We are talking about a percentage of a dollar contribution. So, what does substantial mean? In terms of dollars, I don’t know. If I give you \$1000 and \$500 is for your cause and \$500 for another cause; where does substantial come from? I don’t know what that means. “Solely” means only for that purpose.

Senator Anderson: Perhaps Senator Oban had something in mind.

Senator Oban: In discussing the option of using “substantially” with Legislative Counsel, I know we used the word “substantially” throughout code in a number of places. I suppose that would not be left up to our interpretation unless this was challenged and went to court. Then it would be up to the judges. In that circumstance, I think that creates far less questions. If someone is going to a fundraiser and gives \$250 and gets a free beer for it; they are still giving the \$250 to influence the election. I think it provides more understanding. I would also think about the examples that we heard from the Catholic Conference. If someone gave money to the Catholic Church and they gave some of that money to the conference, and some of that was used to influence an election – those sub contributors did not give even substantially to influence an election. It just happened that somewhere down the line that the dollars went to that cause. I looked for a way to encompass all of those examples. It might be harder to do than

Senator Poolman: Can we keep “solely”, and still remove “and may be defined further by the Ethics Commission”? So, option B but keep “solely”. Can we do that without having to have a formal amendment.

Senator Oban: That would go back to the engrossed version of the bill.

Senator Anderson: On .02029 option, that would be the new definition of lobbyist that Senator Mathern had proposed. So, that would be going away from the statutory definition of lobbyist?

Senator Mathern: No, it would be somewhere between “solely” and totally undefined. It would essentially mean that “ultimate and true source” does not include an individual who is a member of an organization that is not substantially engaged in lobbying or influencing statewide elections or elections for the legislative assembly. If the member provided only a donation or membership fee to be used to influence the statewide election, or if the substantial portion of the donation membership fee was not used to influence a statewide election. It actually takes out “solely” and the exempts all of those individuals.

Senator Oban: See Attachment #3 for .02029 amendment version.

Senator Mathern: That would be Page 6 of this set of amendments. It is in two places. 2 and 6 are the same wording. It essentially takes out “solely” and then adds these words. I am

not sure if it meets the constitutional measure. I think it would. The attempt of those words were to address the concerns of organizations that came to me and said they needed more room or they would have to go to everyone's collection basket to see what money was in there and who gave it.

Chairman Hogue: Is there any further discussion on the four options on the definition of "ultimate and true source"?

(20:50) Senator Dever: To give another example; three months ago I renewed my membership to the Chamber. It was \$295. The fact that they lobby is not why I pay the membership fee. It is because of all of the other benefits. Just to make a point that 501C3's do not involve themselves or they are not supposed to involve themselves in political campaigns for or against candidates. They can talk about issues but not candidates.

Senator Mathern: That is the attempt here. It is to address that situation. From all I have learned thus far, I like .02008 the best. We actually use the Ethics Commission to define it.

Senator Oban: That is the .02016 version really.

Senator Mathern: It keeps in the issue of the "ultimate and true source", but it actually sets to the Ethics Commission the responsibility to define "solely".

Vice Chair Unruh: We explicitly have the authority and directive in Article XIV to define "ultimate and true source of funds". I think it is important that we have a policy stance on that as we move forward with the bill, and not leave it up to the Ethics Commission. They have plenty of decisions that they will be burdened with. This is one that we were burdened with, and I think we should do that.

Chairman Hogue: Is there a motion on any of the 4 options?

Senator Poolman: Moved to return to .02010 version for definition of "ultimate and true source".

Vice Chair Unruh: Seconded.

A voice vote was taken - Motion Carried

(25:58) Senator Oban: I have one more discussion item. It is the discussion we had on the definition of "influence state government action".
Returns to Attachment #1 section E.

See Attachment #4 for .02026 version of amendments.

(28:47) Senator Anderson: I noticed that in the subsequent pages after that one you used the person who lobbies. Can you explain the intent of that?

Senator Oban: I returned in this version to the definition of lobbyist back to what was in the bill as brought to us, but that excludes a whole lot of people that engage in lobbying to

influence state government action. The goal was to make sure that, even if you are not registered, if you are engaged in lobbying then you are prohibited from giving us gifts. (Gave Example.)

Senator Anderson: How do we capture those people because we are not requiring them to register as lobbyists?

Senator Oban: I would suggest the activity is what captures them, and we need to know that if they give us gifts then we don't accept it.

Senator Anderson: Most of it is not giving us gifts, but peoples attempt to influence are mostly talking to us, showing up in the meetings, criticizing what we are doing, or making other suggestions. It is very seldom that gifts are really involved in that. I am looking at the general public who might come and do that, and I would hate to see them get in trouble because they did not know that they were supposed to report. Many people come every day to try to influence us, and it troubles me a little bit for those that are out there that don't know what they are doing.

Senator Oban: I am not interested in getting anyone in trouble.

Senator Anderson: We need a clear line for them to identify when they are stepping over the line.

Chairman Hogue: Was it your intent to narrow the definition? When I compare .02026 to .02016, they are capturing the same types of activities. Or is there something I am not understanding?

Senator Oban: I think the intent was limiting it because of the change in the definition of "influence state government action".

Chairman Hogue: If I am a citizen and I suggest someone for a position, is that prescribed by this definition?

Senator Oban: That would only prohibit him from giving a gift to the Governor?

Senator Mathern: The definition of a gift and how that is tracked will become more clear with the rules adopted by the Ethics Commission. It might be someone saying to someone else that a person gave a gift, and that might then be reported to the Ethics Commission. Then the Ethics Commission would have rules that would say that some of the minor or small things where someone really doesn't know would not escalate to a charge. But others that do, where there is a clear violation, I suspect the Ethics Commission would be involved in a complaint.

Senator Anderson: If the intent is to prevent them from giving gifts, I do not have a problem with that, because very few of them do that. However, when we go back to the definition of a lobbyist on Page 39, of lobbyist; we have expanded that to include those people who come here and lobby. That is not just giving gifts. Now we are saying anyone who lobbies. Whether

they are a lobbyist or not. Everyone comes under the reporting requirements. Nobody should be giving gifts anyway, and if they do, they should report them.

Senator Oban: What is proposed is not all that different from how the bill was brought to us. Although, they limited it to specifically if you were “influencing state government action” and they had a different definition of “state government action”. They were making all of those people disclose that anyway

(36:35) Chairman Hogue: (Reads from page 39) Can you be lobbying and not be a lobbyist?

Senator Oban: Yes. I think we see a whole lot of that. There is almost somehow this insinuation that is a bad thing, but it is not. On the surface, lobbying is not a bad thing. It is if you are giving gifts to do it or spending money to do it. I think that is what this is trying to make more transparent.

Senator Anderson: My only concern is that those people, and many of them are in the room, are not lobbyists, but they are here lobbying today if they say anything to anyone. We excluded their travel and membership dues, but any other expenses, if they are getting paid while they are here. I am concerned that would be captured by this. I don’t think that is the intention.

Senator Oban: Nor is it mine, and I specifically brought up that discussion we had about salaries yesterday with Legislative Counsel, and they do not think in any way that salaries would even come up in this discussion.

Senator Anderson: If a group of people came on a bus, the person renting the bus most likely paid more than \$250 to get them here. Would it be the intention, even though none of them spent any money, that the person that rented the bus have to report that?

Senator Oban: I would suggest that the organization that rented the bus should report it; not the people on the bus.

(40:41) Chairman Hogue: Do you feel you fully explained .02026?

Senator Oban: I do. I think this version is better than the .02016 version. It deserves discussion.

Senator Mathern: I would say that one of the better features of this over what we had in .02016, is that it clarifies more of the activity related to the executive branch because it does include that definition. Not everything that someone does as a member of the executive branch would be captured the way I understand it. It would only be within the scope of the executive branch activities as defined here; which wasn’t in the earlier version.

Senator Anderson: With the discussion we have had, I don’t have a problem with .02026. It is ok with me.

Chairman Hogue: I have the same concern with .02026's definition of "influencing state government" as I do with .02016. I think they are both too broad, but I think we need to act as a committee. Is there any motion?

Senator Oban: Did you think the definition that we had in bill, as brought to us, as too narrow? Do you see something in the middle?

Chairman Hogue: I think when we cover two sets of behavior; we are covering lobbyists who are appearing before us as a legislative branch either in regular session or interim or when they are seeking to encourage the Governor to sign or veto a bill. I think that covers a set of people, and I think the .02010 version as we had proposed amended to cover all of the rule making at every state. As "influencing state government action" is a reasonably broad definition, and all of these other activities of all of these other state officials brings in too many types of problems that are so ill defined that we ought not attempt out of the box. When you say in .02026, discharging their duties under Title 54; well, all of their duties are discharged. All state officials' duties are discharged under that title except the Governor whose duties are defined by the Constitution.

Senator Oban: In Title 54 there are powers and duties designated to the Governor included in there. Which is what brought me there to begin with. Do you believe there are ways of influencing state actions beyond the rule making process?

Chairman Hogue: I think there are, but I don't know how we begin to regulate those without doing more harm than good. We have a lot of different executives and informal conversations that I hate to try to chill all of that activity that goes on that is a normal part of a Democratic Republic, but we do have to move along. If the committee has any wishes, we should hear them in the form of a motion or we can accept .02016.

Senator Oban: Moved the new language in .02026.

Senator Mathern: Seconded.

Chairman Hogue: Is there any discussion?

Senator Dever: Would the modifications that we passed previously then apply to .02026 – as in the definition of "ultimate and true source"?

Senator Oban: To make sure that that concern is reflected in whatever our final version is, I have been taking notes on everything that we are adopting because we also adopted .02025. Then we went to the .02010 version of "ultimate and true source", and now we are adopting .02026 and they will not be all in the same version.

Chairman Hogue: Understood.

Senator Dever: I would just say that I prefer .02010.

Senator Anderson: What we have is .02010 if we don't adopt these changes?

Chairman Hogue: No, we have .02016, and that is a material change in the definition of “influencing state government action” from version .02010.

Senator Poolman: To provide some clarity, the .02010 version defines “influencing state government” as promoting or opposing the adoption of a rule by an administrative agency. So, both .02016 and the proposed amendment are much broader.

Chairman Hogue: We have .02016 in front of us, and a motion to amend it as provided in .02026.

**A Roll Call Vote Was Taken: 2 yeas, 5 nays, 0 absent.
Motion Failed.**

Vice Chair Unruh: Moved to retain definitions of Influence State Government Action, Lobby, and Lobbyist from .02010.

Senator Poolman: Seconded.

Senator Oban: Does Senator Unruh want to continue to include those same to make sure it is reflected. Where I continued to highlight in 54-66-02 and 54-66-03 would also need to then reflect that change as well.

Vice Chair Unruh: I read those and sub 2 would have to because you have a lobbyist other than a registered lobbyist, but in 54-66-02 you have a registered lobbyist which would remain the same as the lobbyist as defined in the .02010 version.

A Roll Call Vote Was Taken: 5 yeas, 2 nays, 0 absent.

Motion Carried

Chairman Hogue: Senator Oban is done and Senator Mathern now has an amendment to propose.

(53:30) Senator Mathern: See Attachment #5 for amendments proposed. This is an amendment to .02016 to change nothing but to insert a Section 25, Page 9, for a study resolution. It is not the same as was in the original senate bill. It incorporates a thought that came up. In the study we would focus on those items of Article XIV that relate to our legislative authority. So we would be studying what we would have adopted this session, and we would be looking at other things we might learn as well as things we might bring up in the next session. It would Include the Ethics Commission members, and they can decide how many of them want to show up. This study would also attempt to draft educational materials to educate the public officials and others to help us all get better in interpreting this going forward. I think it behooves us to have an interim committee that looks at these things.

Senator Mathern: Moved to Amend with Section 25 of .02024.

Senator Oban: Seconded.

Chairman Hogue: This is a shall consider study and I guess I don't see anything wrong with it. I don't know how we can adopt the whole amendment. How do we know that it does not interfere with the prior amendments that we have adopted?

Senator Mathern: As part of the motion, we would only be adopting Section 25 on page 9 of the amendment.

Senator Dever: I don't have any objection on the language regarding putting literature together.

Senator Mathern: That might be one way to get the information out. It is just a suggestion. It is not requiring they do a booklet. The goal is to recognize that we need more work on this and to use an interim committee to do that.

Senator Dever: The only question in my mind is how the commission and the legislative management work together. It seems to me that there should be some sort of arm's length thing in there, but we will see where it goes.

Senator Mathern: I would suggest that legislative management would make sure that there are many more legislators on the committee than Ethics Commissioners. It is more a matter of developing some sort of collaboration.

Chairman Hogue: Any further discussion on the motion? (There was none.)

A Voice Vote Was Taken - Motion Carried

(1:02:00) Chairman Hogue: I have one more thing. It concerns how the commissioners are selected and how they are discharged. I know in the .02016 version, Senator Oban followed what the Constitution says and that is if you are going to appoint these commissioners, it has to be by consensus of the 3 (Senate Majority Leader, Senate Minority Leader, and the Governor) I think that is a big mistake and I don't think in this legislation that we should repeat that mistake for discharging them, and here is why; Any one of those appointing authorities can derail this whole process by simply refusing to agree by consensus that these are the 5 people that will be the commissioners. There is nothing that compels them to say that you have to have these people appointed. You must agree by consensus to these 5. Nothing. You could have 2 that want to appoint a certain group, and they could labor all year long and have one hold out that would say no. I think that is a mistake. I think the committee, and maybe if this committee does not want to do this, then I would ask the House to consider it. It should be a 2/3 majority. If you have 3 people appointing these commissioners, they should be able to be removed in a different way. Just because the Constitution went that way for appointing them, I do not think that is good policy for removing them. I have to enforce my own rules. I do not have a written amendment today, but I just wanted you to be aware of that as we go forward. If we see bad policy in the Constitution, it does not mean that we should repeat it in other areas.

Senator Mathern: I would have a view that passing it like this does in fact compel those 3 people to act, and to actually make a responsible decision. And, if they, in fact, were to just say no, it appears to me that they would be one hand in the appointment process violating

the Constitution. Where on the other end, they would be violating the law if they did that. Couldn't they be compelled to carry out their duties?

Chairman Hogue: There is a remedy in the law called a Ret of Mandamus, but in this particular case, the holdout person is asked to exercise their discretion and consent to this person. The Senate has to consent to the appointment of certain people that the President nominates, and if the Senate does not want to consent sometimes they just don't act. If one of the 3 would not act, how would you get your commissioners appointed? It seems to me that you ought to have more appointing authorities, but this whole consensus thing strikes me as bad.

Vice Chair Unruh: On Page 48, Line 23 of the .02016 version; I was wondering if we could replace the word "consensus" with "majority"?

Chairman Hogue: I think it would.

Vice Chair Unruh: Moved to amend Page 48, Line 23 of .02016 with replacing "consensus" with "majority".

Senator Poolman: Seconded.

Senator Mathern: While I appreciate the attempt, the reality here is that there are 2 persons of one party and 1 person of another party, and whether the Democrats or the Republicans are in control this will last in perpetuity. That is what we are doing here. To me, when you say the majority, it essentially says that one party can control the longevity of any commission members. One party can say that they don't like a commissioner, and therefore they are off. I think that is troublesome situation. That would be the goal here of keeping it on and off at the same time.

Vice Chair Unruh: The majority of the 3 would only be able to remove a commission member for substantial neglect of duty, gross misconduct, violation of the commissions code of ethics, or willful or habitual neglect or refusal to perform duties. I think it actually provides a layer of protection.

Senator Poolman: On the flip side of that argument, in a consensus you allow one party to protect that person that has done of these things. It would be the same problem. Whether you are talking about the majority party removing someone or the minority party keeping them on there because of the consensus requirements. It is a double edged sword.

Senator Oban: To that I would say if you cannot get consensus among three people to remove someone for those four reasons, that is a problem. When it is that clear on the reasons why you can remove someone for. I think sometimes we like to use examples of major dysfunction we are seeing, like we see in DC. Whether you like the word consensus in the Constitution or not, and I realize that is just for the appointment process, to me it makes sense to require that same consensus from the people that are doing the appointing to the people that are doing the removing when we have made clear what those reasons are.

Senator Anderson: I personally don't see a problem with leaving it in the way it is because you can always revisit that if you have problems in the future. I am comfortable either way.

Senator Dever: The number one reason to remove anyone is if they are acting in a partisan manor. I think that is the last thing that any of us want to see. What we want to see is virtuous people on the commission who are objective. It seems to me that if a move was made to remove someone on a partisan basis, and one of those three were to protect that person on a partisan basis, then the other two should have the ability to remove it. I am in favor of the majority.

A Roll Call Vote Was Taken: 4 yeas, 3 nays, 0 absent.

Motion Carried.

Chairman Hogue: I think we should have some finalizing motions at this point. We should summarize what we have done thus far.

- .02016 version adopted yesterday
- Into that we adopted:
 - *.02025
 - *Definition of "Ultimate and True Source" from .02010
 - *Definition of "Influencing State Government Action", "Lobby", and "Lobbyist" from .02010
 - * Section 25 from .02024
 - *Page 48, Line 23 of .02016 – replace "consensus" with "majority"

Senator Poolman: Moved a Do Pass As Amended.

Vice Chair Unruh: Seconded.

A Roll Call Vote Was Taken: 5 yeas, 2 nays, 0 absent.

Motion Carried.

Senator Oban will carry the bill.

Senator Oban: I wanted to comment before we voted, but I think we made some good changes. I think we really missed capturing what the intent was of Article XIV with regard to the definitions. My hope is that we can make some slight improvements to it. I would like to support it, and I want to acknowledge that we moved a lot closer to something that I can support. We are not there yet for me.

Chairman Hogue: Adjourned the meeting on HB 1521.

April 15, 2019

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1521

Page 1, line 4, replace "section" with "sections"

Page 1, line 5, remove "subsection 4 of section 16.1-08.1-02.1, sections 16.1-08.1-02.3, 16.1-08.1-02.4,"

Page 1, line 6, replace "16.1-08.1-03.1" with "16.1-08.1-03.7"

Page 1, line 6, remove "28-32-02,"

Page 1, line 7, remove "28-32-14,"

Page 1, line 7, after the eighth comma insert "and"

Page 1, line 8, remove "28-32-17, 28-32-18, and 28-32-18.1,"

Page 1, line 9, remove "28-32-27,"

Page 1, line 10, remove "disqualification of agency heads in quasi-judicial proceedings,"

Page 1, line 19, remove "Adjusted for inflation" means adjusted on January first of each year by the change in"

Page 1, remove lines 20 and 21

Page 1, line 22, remove "2."

Page 2, line 6, remove the overstrike over "2."

Page 2, line 6, remove "3."

Page 2, line 13, remove the overstrike over "3."

Page 2, line 13, remove "4."

Page 2, line 26, remove the overstrike over "4."

Page 2, line 26, remove "5."

Page 3, line 3, remove the overstrike over "5."

Page 3, line 3, remove "6."

Page 3, line 29, remove the overstrike over "6."

Page 3, line 29, remove "7."

Page 4, line 4, remove the overstrike over "7."

Page 4, line 4, remove "8."

Page 4, line 14, remove the overstrike over "8."

Page 4, line 14, remove "9."

Page 4, line 21, remove the overstrike over "9."

Page 4, line 21, remove "10."

Page 4, line 26, remove the overstrike over "~~10.~~"

Page 4, line 26, remove "11."

Page 4, line 28, remove the overstrike over "~~11.~~"

Page 4, line 28, remove "12."

Page 5, line 1, remove the overstrike over "~~12.~~"

Page 5, line 1, remove "13."

Page 5, line 4, remove the overstrike over "~~13.~~"

Page 5, line 4, remove "14."

Page 5, line 26, remove the overstrike over "~~14.~~"

Page 5, line 26, remove "15."

Page 5, line 30, remove the overstrike over "~~15.~~"

Page 5, line 30, remove "16."

Page 6, line 10, remove the overstrike over "~~16.~~"

Page 6, line 10, remove "17."

Page 6, line 12, remove the overstrike over "~~17.~~"

Page 6, line 12, remove "18."

Page 6, line 14, replace "19." with "18."

Page 6, line 14, replace "who" with "that"

Page 6, line 15, remove ", adjusted for inflation, solely"

Page 6, line 16, after "assembly" insert ", and may be defined further by the ethics commission"

Page 6, remove lines 17 through 30

Page 7, remove lines 1 through 31

Page 8, remove lines 1 through 31

Page 9, remove lines 1 through 29

Page 10, remove lines 1 through 31

Page 11, remove lines 1 through 31

Page 12, remove lines 1 through 31

Page 13, replace lines 1 through 6 with:

"SECTION 2. AMENDMENT. Section 16.1-08.1-03.7 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-03.7. Political committees that organize and register according to federal law that make independent expenditures or disbursements to nonfederal candidates, political parties, and political committees.

A political committee that organizes and registers according to federal law and makes an independent expenditure or makes a disbursement in excess of two hundred dollars to a nonfederal candidate seeking public office or to a political party or political committee in this state shall file a copy of that portion of the committee's federal report detailing the independent expenditure or the disbursement made. The political committee shall file a copy of the committee's federal report, and supplementary information as necessary under this section, with the secretary of state at the time of filing the report with the applicable federal agency. The report must include:

1. The name, mailing address, and treasurer of the political committee;
2. The recipient's name and mailing address; ~~and~~
3. The date and amount of the independent expenditure or disbursement; and
4. The ultimate and true source of funds listed by contributor and subcontributor of any amount over two hundred dollars collected or used to make the independent expenditure or disbursement including:
 - a. The name and address of the contributor;
 - b. The total amount of the contribution; and
 - c. The date the last contribution was received."

Page 13, line 17, remove "For the first violation, the secretary of state shall assess a civil penalty of five hundred"

Page 13, replace lines 18 through 21 with "The secretary of state shall assess a civil penalty upon any person that knowingly violates this section.

- a. If the contribution used in violation of this section has a value of two thousand five hundred dollars or more, the civil penalty must be two times the value of the contribution.
- b. If the contribution used in violation of this section has a value of less than two thousand five hundred dollars, the civil penalty must be at least two times the value of the contribution and may be up to five thousand dollars.
3. The assessment of a civil penalty may be appealed to the district court of the county where the candidate resides."

Page 13, line 25, remove "1."

Page 13, line 25, replace "report" with "statement"

Page 13, remove lines 27 through 31

Page 18, remove lines 16 through 29

Page 19, remove lines 1 through 3

Page 19, line 7, remove "commission or an"

Page 19, line 7, after the second comma insert "or the commission"

Page 20, line 13, remove ", or"

Page 20, line 14, remove "the Constitution of North Dakota is amended to eliminate the authority"

Page 22, line 14, remove "or the commission"

Page 22, line 16, remove "or commission"

Page 22, line 18, remove "or commission"

Page 23, line 2, remove "or the commission"

Page 23, line 13, remove "or commission"

Page 23, line 14, remove "or commission"

Page 23, line 16, remove "or commission"

Page 23, line 17, after "to" insert "the ethics commission."

Page 23, line 18, overstrike "nor does this section apply to" and insert immediately thereafter "and"

Page 24, line 7, remove "or the commission"

Page 26, line 11, remove "enacted during the most recent session of the"

Page 26, line 12, remove "legislative assembly"

Page 28, remove lines 17 through 31

Page 30, remove lines 9 through 31

Page 31, remove lines 1 through 31

Page 32, remove lines 1 through 31

Page 33, remove lines 1 through 23

Page 34, remove lines 11 through 30

Page 35, remove lines 1 through 24

Page 37, line 17, replace "government ethics" with "transparency, corruption, elections, or lobbying"

Page 37, line 18, remove "Adjusted for inflation" means adjusted on January first of each year by the change in"

Page 37, remove lines 19 and 20

Page 37, line 21, remove "3."

Page 37, line 23, replace "4." with "3."

Page 37, line 25, replace "government ethics" with "transparency, corruption, elections, or lobbying"

Page 37, line 26, replace "5." with "4."

Page 37, line 28, replace "6." with "5."

Page 37, line 29, after "recreation" insert ", except:

- a. Purely informational material;
- b. A campaign contribution; and
- c. An item, service, or thing of value given under conditions that do not raise ethical concerns, as set forth in rules adopted by the ethics commission, to advance opportunities for state residents to meet with public officials in educational and social settings in the state"

Page 37, line 30, replace "7." with "6."

Page 37, line 30, remove "promoting or opposing the final adoption of"

Page 37, line 31, replace "a rule by an administrative agency or the commission under chapter 28-32" with "an attempt to influence state administrative action by communicating or urging others to communicate with public officials or state employees, unless the attempt is made by a public official or state employee acting in an official capacity, and may be defined further by ethics commission rule"

Page 38, line 1, replace "8." with "7."

Page 38, line 1, replace "an" with ":

- a. Engage in an"

Page 38, line 1, after "54-05.1-02" insert ", and

- b. Influence state government action"

Page 38, line 2, replace "9." with "8."

Page 38, line 2, replace "an individual required to register under section 54-05.1-03" with ":

- a. A registered lobbyist; and
- b. Any other individual who spends more than two hundred dollars, not including the individual's own travel expenses and membership dues, in any calendar year to lobby"

Page 38, line 3, replace "10." with "9."

Page 38, line 6, replace "11." with "10."

Page 38, after line 7, insert:

- "11. "Registered lobbyist" means an individual required to register under section 54-05.1-03."

Page 38, line 9, remove ", adjusted for inflation, solely"

Page 38, line 10, after "action" insert ", and may be defined further by ethics commission rule"

Page 38, line 12, after "A" insert "registered"

Page 38, line 12, remove ", adjusted for"

Page 38, line 13, remove "inflation."

Page 38, line 16, replace "person" with "lobbyist other than a registered lobbyist"

Page 38, line 16, remove "adjusted for"

Page 38, line 17, replace "inflation" with "not including the individual's own travel expenses and membership dues"

Page 38, line 17, replace "influence state government action" with "lobby"

Page 38, line 18, replace "The" with "A"

Page 38, line 19, after "report" insert "under this subsection"

Page 38, line 26, remove "within forty days after the deadlines"

Page 38, line 27, remove "by which the reports must be filed"

Page 38, remove lines 28 through 31

Page 39, remove lines 1 through 15

Page 39, line 18, remove "with a value over sixty dollars per"

Page 39, line 19, remove "individual per event, adjusted for inflation."

Page 39, line 19, remove ", except to"

Page 39, remove lines 20 through 31

Page 40, remove line 1

Page 40, line 2, remove "by the ethics commission"

Page 40, line 4, remove the underscored colon

Page 40, line 5, replace "a. A" with "a"

Page 40, line 5, remove the underscored semicolon

Page 40, remove line 6

Page 40, line 7, remove "c. A campaign contribution"

Page 40, line 8, remove "For the first violation, the secretary of state shall assess a civil penalty of five hundred"

Page 40, replace lines 9 through 12 with "The secretary of state shall assess a civil penalty upon any person that violates this section."

a. If the gift has a value of five hundred dollars or more, the civil penalty must be two times the value of the gift.

b. If the gift has a value of less than five hundred dollars, the civil penalty must be no less than two times the value of the gift and may be up to one thousand dollars.

Page 40, line 14, replace "Investigator" with "Office"

Page 40, line 19, remove "The ethics commission shall meet as necessary to address each complaint the"

Page 40, line 20, remove "commission receives."

Page 40, line 20, after "in" insert "a public hearing or"

Page 40, line 21, remove "or referral for enforcement under section 54-66-10"

Page 41, line 6, remove "Commission members shall hire or otherwise engage a part-time administrative"

Page 41, replace lines 7 through 10 with "The director of the office of management and budget shall allocate office space in the state capitol for the ethics commission, or, if office space in the capitol is unavailable, shall negotiate for, contract for, and obtain office space for the ethics commission in the city of Bismarck or in the Bismarck area. The ethics commission's office space may not be located in the office space of any other government agency, board, commission, or other governmental entity, and must provide sufficient privacy and security for the ethics commission to conduct its business. The director shall charge the ethics commission an amount equal to the fair value of the office space and related services the office of management and budget renders to the ethics commission."

Page 41, line 11, remove "- Identifying information - False complaints"

Page 41, line 12, remove "1."

Page 41, line 12, remove "When making a"

Page 41, remove lines 13 through 30

Page 42, remove lines 1 through 29

Page 43, replace lines 1 through 21 with:

54-66-06. Informal resolution - Investigation - Referrals.

After receiving a complaint, the ethics commission may:

1. Attempt to negotiate or mediate an informal resolution between the accused individual and the complainant.
2. Investigate the allegations in the complaint.
3. Refer a matter described in or arising from a complaint to the bureau of criminal investigation or other appropriate law enforcement agency if a majority of the ethics commission members reasonably believes a crime was committed or the safety of the complainant is at risk.
4. Refer a complaint alleging a violation of open meetings or open records requirements to the attorney general, and the attorney general shall review the allegation under section 44-04-21,1 if the complaint was submitted to the ethics commission by the relevant deadline in section 44-04-21,1.

54-66-07. Ethics commission complaint - Informing the accused individual.

If, after investigating a complaint, the ethics commission decides to charge the accused individual with a violation of law, the ethics commission shall serve an ethics commission complaint against the accused individual and give the accused individual no less than twenty days to respond.

54-66-08, Informal resolutions - Public hearings - Referrals.

After serving an ethics commission complaint, the ethics commission may:

1. Resolve the charges in the ethics commission complaint informally with the accused individual; or
2. Hold a public hearing regarding the charges in the ethics commission complaint. The accused individual must be afforded due process, including an opportunity to respond to the charges.

54-66-09, Hearing findings - Penalties.

1. At the conclusion of a hearing, the ethics commission shall issue and make public its written findings of fact, conclusions of law, and any penalty authorized by law which the ethics commission imposes.
2. The written findings of fact must state whether the ethics commission believes, based on a preponderance of the evidence, as viewed by a reasonable person, 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.

54-66-10, Appeals.

An accused individual or complainant may appeal a finding of the ethics commission to the district court of the county where the accused individual resides."

Page 43, line 24, remove "determined the accused individual violated article XIV of"

Page 43, remove line 25

Page 43, line 26, replace "government ethics, and a court affirmed the determination if appealed" with "issued an ethics commission complaint"

Page 44, line 2, replace "54-66-07" with "54-66-06"

Page 44, line 10, replace "Willful publication" with "Publication"

Page 44, line 11, replace "criminal defamation under section 12.1-15-01" with "a class B misdemeanor"

Page 44, line 12, replace "A public official who violates this section is guilty of a class C felony." with "The information deemed confidential in this section may be disclosed by the ethics commission if the accused individual agrees to the disclosure."

Page 44, replace lines 14 through 17 with "A knowing violation of subsection 2 of section 2 of article XIV of the Constitution of North Dakota is a class A misdemeanor. The ethics commission shall assess a civil penalty of up to one thousand dollars on any person that knowingly violates the subsection."

Page 44, line 19, after "commission" insert "unless the commission objects to representation by the attorney general in a specific matter"

Page 44, line 27, remove "and may revoke the lobbyist's registration"

Page 44, line 29, after "misdemeanor" insert ", and, if the lobbyist is a registered lobbyist, the secretary of state may revoke the lobbyist's registration"

Page 44, after line 29, insert:

"54-66-15. Removal of ethics commission members.

1. An ethics commission member may be removed from office for:
 - a. Substantial neglect of duty;
 - b. Gross misconduct in office;
 - c. Violation of the commission's code of ethics; or
 - d. Willful or habitual neglect or refusal to perform the duties of the member.
2. Removal of an ethics commission member under subsection 1 requires consensus agreement by:
 - a. The governor;
 - b. The majority leader of the senate; and
 - c. The minority leader of the senate."

Page 44, line 31, replace "\$300,000" with "\$517,155"

Page 45, line 3, replace "one and one-half" with "two"

Page 45, line 4, after the third comma insert "and"

Page 45, line 4, remove ", 5, and 7"

Page 45, line 5, replace "32" with "23"

Page 45, line 8, replace "32" with "23"

Page 45, line 10, replace "32" with "23"

Page 45, line 12, after "Sections" insert "5, 6, 7,"

Page 45, line 12, after the fourteenth comma insert "and"

Page 45, line 13, remove ", 23, 24, 25, 26, 27, 28, 29, 30, and 31"

Renumber accordingly

April 16, 2019

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1521

Page 1, line 4, replace "section" with "sections"

Page 1, line 5, remove "subsection 4 of section 16.1-08.1-02.1, sections 16.1-08.1-02.3, 16.1-08.1-02.4,"

Page 1, line 6, replace "16.1-08.1-03.1" with "16.1-08.1-03.7"

Page 1, line 6, remove "28-32-02,"

Page 1, line 7, remove "28-32-14,"

Page 1, line 7, after the eighth comma insert "and"

Page 1, line 8, remove "28-32-17, 28-32-18,"

Page 1, line 9, remove "28-32-27,"

Page 1, line 10, remove "disqualification of agency heads in quasi-judicial proceedings,"

Page 1, line 13, remove "to provide an expiration date;"

Page 1, line 19, remove ""Adjusted for inflation" means adjusted on January first of each year by the change in"

Page 1, remove lines 20 and 21

Page 1, line 22, remove "2."

Page 2, line 6, remove the overstrike over "2."

Page 2, line 6, remove "3."

Page 2, line 13, remove the overstrike over "3."

Page 2, line 13, remove "4."

Page 2, line 26, remove the overstrike over "4."

Page 2, line 26, remove "5."

Page 3, line 3, remove the overstrike over "5."

Page 3, line 3, remove "6."

Page 3, line 29, remove the overstrike over "6."

Page 3, line 29, remove "7."

Page 4, line 4, remove the overstrike over "7."

Page 4, line 4, remove "8."

Page 4, line 14, remove the overstrike over "8."

Page 4, line 14, remove "9."

Page 4, line 21, remove the overstrike over "9."

Page 4, line 21, remove "10."

Page 4, line 26, remove the overstrike over "10."

Page 4, line 26, remove "11."

Page 4, line 28, remove the overstrike over "11."

Page 4, line 28, remove "12."

Page 5, line 1, remove the overstrike over "12."

Page 5, line 1, remove "13."

Page 5, line 4, remove the overstrike over "13."

Page 5, line 4, remove "14."

Page 5, line 26, remove the overstrike over "14."

Page 5, line 26, remove "15."

Page 5, line 30, remove the overstrike over "15."

Page 5, line 30, remove "16."

Page 6, line 10, remove the overstrike over "16."

Page 6, line 10, remove "17."

Page 6, line 12, remove the overstrike over "17."

Page 6, line 12, remove "18."

Page 6, line 14, replace "19." with "18."

Page 6, line 14, replace "who" with "that"

Page 6, line 15, remove ", adjusted for inflation, solely"

Page 6, line 16, after "assembly" insert ", and may be defined further by the ethics commission"

Page 6, remove lines 17 through 30

Page 7, remove lines 1 through 31

Page 8, remove lines 1 through 31

Page 9, remove lines 1 through 29

Page 10, remove lines 1 through 31

Page 11, remove lines 1 through 31

Page 12, remove lines 1 through 31

Page 13, replace lines 1 through 6 with:

"SECTION 2. AMENDMENT. Section 16.1-08.1-03.7 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-03.7. Political committees that organize and register according to federal law that make independent expenditures or disbursements to nonfederal candidates, political parties, and political committees.

A political committee that organizes and registers according to federal law and makes an independent expenditure or makes a disbursement in excess of two hundred dollars to a nonfederal candidate seeking public office or to a political party or political committee in this state shall file a copy of that portion of the committee's federal report detailing the independent expenditure or the disbursement made. The political committee shall file a copy of the committee's federal report, and supplementary information as necessary under this section, with the secretary of state at the time of filing the report with the applicable federal agency. The report must include:

1. The name, mailing address, and treasurer of the political committee;
2. The recipient's name and mailing address; ~~and~~
3. The date and amount of the independent expenditure or disbursement; and
4. The ultimate and true source of funds listed by contributor and subcontributor of any amount over two hundred dollars collected or used to make the independent expenditure or disbursement including:
 - a. The name and address of the contributor;
 - b. The total amount of the contribution; and
 - c. The date the last contribution was received."

Page 13, line 17, remove "For the first violation, the secretary of state shall assess a civil penalty of five hundred"

Page 13, replace lines 18 through 21 with "The secretary of state shall assess a civil penalty upon any person that knowingly violates this section."

- a. If the contribution used in violation of this section has a value of two thousand five hundred dollars or more, the civil penalty must be two times the value of the contribution.
- b. If the contribution used in violation of this section has a value of less than two thousand five hundred dollars, the civil penalty must be at least two times the value of the contribution and may be up to five thousand dollars.
3. The assessment of a civil penalty may be appealed to the district court of the county where the candidate resides."

Page 13, line 25, remove "1."

Page 13, line 25, replace "report" with "statement"

Page 13, remove lines 27 through 31

Page 18, remove lines 16 through 29

Page 19, remove lines 1 through 3

Page 19, line 7, remove "commission or an"

Page 19, line 7, after the second comma insert "or the commission"

Page 20, line 13, remove ", or"

Page 20, line 14, remove "the Constitution of North Dakota is amended to eliminate the authority"

Page 22, line 14, remove "or the commission"

Page 22, line 16, remove "or commission"

Page 22, line 18, remove "or commission"

Page 23, line 2, remove "or the commission"

Page 23, line 13, remove "or commission"

Page 23, line 14, remove "or commission"

Page 23, line 16, remove "or commission"

Page 23, line 17, after "to" insert "the ethics commission."

Page 23, line 18, overstrike "nor does this section apply to" and insert immediately thereafter "and"

Page 24, line 7, remove "or the commission"

Page 26, line 11, remove "enacted during the most recent session of the"

Page 26, line 12, remove "legislative assembly"

Page 28, remove lines 17 through 31

Page 29, line 6, after "rule" insert ", if any."

Page 30, remove lines 9 through 31

Page 31, remove lines 1 through 31

Page 32, remove lines 1 through 31

Page 33, remove lines 1 and 2

Page 34, remove lines 11 through 30

Page 35, remove lines 1 through 24

Page 37, line 17, replace "government ethics" with "transparency, corruption, elections, or lobbying"

Page 37, line 18, remove ""Adjusted for inflation" means adjusted on January first of each year by the change in"

Page 37, remove lines 19 and 20

Page 37, line 21, remove "3."

Page 37, line 23, replace "4." with "3."

Page 37, line 25, replace "government ethics" with "transparency, corruption, elections, or lobbying"

Page 37, line 26, replace "5." with "4."

Page 37, line 28, replace "6." with "5."

Page 37, line 29, after "recreation" insert ", except:

- a. Purely informational material;
- b. A campaign contribution; and
- c. An item, service, or thing of value given under conditions that do not raise ethical concerns, as set forth in rules adopted by the ethics commission, to advance opportunities for state residents to meet with public officials in educational and social settings in the state"

Page 37, line 30, replace "7." with "6."

Page 37, line 30, remove "promoting or opposing the final adoption of"

Page 37, line 31, replace "a rule by an administrative agency or the commission under chapter 28-32" with "an attempt to influence state administrative action by communicating or urging others to communicate with public officials or state employees, unless the attempt is made by a public official or state employee acting in an official capacity, and may be defined further by ethics commission rule"

Page 38, line 1, replace "8." with "7."

Page 38, line 1, replace "an" with ";

- a. Engage in an"

Page 38, line 1, after "54-05.1-02" insert "; and

- b. Influence state government action"

Page 38, line 2, replace "9." with "8."

Page 38, line 2, replace "an individual required to register under section 54-05.1-03" with ";

- a. A registered lobbyist; and
- b. Any other individual who spends more than two hundred dollars, not including the individual's own travel expenses and membership dues, in any calendar year to lobby"

Page 38, line 3, replace "10." with "9."

Page 38, line 6, replace "11." with "10."

Page 38, after line 7, insert:

- "11. "Registered lobbyist" means an individual required to register under section 54-05.1-03."

Page 38, line 9, remove ", adjusted for inflation, solely"

Page 38, line 10, after "action" insert ", and may be defined further by ethics commission rule"

Page 38, line 12, after "A" insert "registered"

Page 38, line 12, remove ", adjusted for"

Page 38, line 13, remove "inflation,"

Page 38, line 16, replace "person" with "lobbyist other than a registered lobbyist"

Page 38, line 16, remove "adjusted for"

Page 38, line 17, replace "inflation" with "not including the individual's own travel expenses and membership dues"

Page 38, line 17, replace "influence state government action" with "lobby"

Page 38, line 18, replace "The" with "A"

Page 38, line 19, after "report" insert "under this subsection"

Page 38, line 26, remove "within forty days after the deadlines"

Page 38, line 27, remove "by which the reports must be filed"

Page 38, remove lines 28 through 31

Page 39, remove lines 1 through 15

Page 39, line 18, remove "with a value over sixty dollars per"

Page 39, line 19, remove "individual per event, adjusted for inflation,"

Page 39, line 19, remove ", except to"

Page 39, remove lines 20 through 31

Page 40, remove line 1

Page 40, line 2, remove "by the ethics commission"

Page 40, line 4, remove the underscored colon

Page 40, line 5, replace "a. A" with "a"

Page 40, line 5, remove the underscored semicolon

Page 40, remove line 6

Page 40, line 7, remove "c. A campaign contribution"

Page 40, line 8, remove "For the first violation, the secretary of state shall assess a civil penalty of five hundred"

Page 40, replace lines 9 through 12 with "The secretary of state shall assess a civil penalty upon any person that violates this section."

a. If the gift has a value of five hundred dollars or more, the civil penalty must be two times the value of the gift.

b. If the gift has a value of less than five hundred dollars, the civil penalty must be no less than two times the value of the gift and may be up to one thousand dollars.

Page 40, line 14, replace "Investigator" with "Office"

Page 40, line 19, remove "The ethics commission shall meet as necessary to address each complaint the"

Page 40, line 20, remove "commission receives."

Page 40, line 20, after "in" insert "a public hearing or"

Page 40, line 21, remove "or referral for enforcement under section 54-66-10"

Page 41, line 6, remove "Commission members shall hire or otherwise engage a part-time administrative"

Page 41, replace lines 7 through 10 with "The director of the office of management and budget shall allocate office space in the state capitol for the ethics commission, or, if office space in the capitol is unavailable, shall negotiate for, contract for, and obtain office space for the ethics commission in the city of Bismarck or in the Bismarck area. The ethics commission's office space may not be located in the office space of any other government agency, board, commission, or other governmental entity, and must provide sufficient privacy and security for the ethics commission to conduct its business. The director shall charge the ethics commission an amount equal to the fair value of the office space and related services the office of management and budget renders to the ethics commission."

Page 41, line 11, remove "- Identifying information - False complaints"

Page 41, line 12, remove "1."

Page 41, line 12, remove "When making a"

Page 41, remove lines 13 through 30

Page 42, remove lines 1 through 29

Page 43, replace lines 1 through 21 with:

"54-66-06. Informal resolution - Investigation - Referrals."

After receiving a complaint, the ethics commission may:

1. Attempt to negotiate or mediate an informal resolution between the accused individual and the complainant.
2. Investigate the allegations in the complaint.
3. Refer a matter described in or arising from a complaint to the bureau of criminal investigation or other appropriate law enforcement agency if a majority of the ethics commission members reasonably believes a crime was committed or the safety of the complainant is at risk.
4. Refer a complaint alleging a violation of open meetings or open records requirements to the attorney general, and the attorney general shall review the allegation under section 44-04-21.1 if the complaint was submitted to the ethics commission by the relevant deadline in section 44-04-21.1.

54-66-07. Ethics commission complaint - Informing the accused individual.

If, after investigating a complaint, the ethics commission decides to charge the accused individual with a violation of law, the ethics commission shall serve an ethics

commission complaint against the accused individual and give the accused individual no less than twenty days to respond.

54-66-08. Informal resolutions - Public hearings - Referrals.

After serving an ethics commission complaint, the ethics commission may:

1. Resolve the charges in the ethics commission complaint informally with the accused individual; or
2. Hold a public hearing regarding the charges in the ethics commission complaint. The accused individual must be afforded due process, including an opportunity to respond to the charges.

54-66-09. Hearing findings - Penalties.

1. At the conclusion of a hearing, the ethics commission shall issue and make public its written findings of fact, conclusions of law, and any penalty authorized by law which the ethics commission imposes.
2. The written findings of fact must state whether the ethics commission believes, based on a preponderance of the evidence, as viewed by a reasonable person, 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.

54-66-10. Appeals.

An accused individual or complainant may appeal a finding of the ethics commission to the district court of the county where the accused individual resides."

Page 43, line 24, remove "determined the accused individual violated article XIV of"

Page 43, remove line 25

Page 43, line 26, replace "government ethics, and a court affirmed the determination if appealed" with "issued an ethics commission complaint"

Page 44, line 2, replace "54-66-07" with "54-66-06"

Page 44, line 10, replace "Willful publication" with "Publication"

Page 44, line 11, replace "criminal defamation under section 12.1-15-01" with "a class B misdemeanor"

Page 44, line 12, replace "A public official who violates this section is guilty of a class C felony." with "The information deemed confidential in this section may be disclosed by the ethics commission if the accused individual agrees to the disclosure."

Page 44, replace lines 14 through 17 with "A knowing violation of subsection 2 of section 2 of article XIV of the Constitution of North Dakota is a class A misdemeanor. The ethics commission shall assess a civil penalty of up to one thousand dollars on any person that knowingly violates the subsection."

Page 44, line 19, after "commission" insert "unless the commission objects to representation by the attorney general in a specific matter"

Page 44, line 27, remove "and may revoke the lobbyist's registration"

Page 44, line 29, after "misdemeanor" insert ", and, if the lobbyist is a registered lobbyist, the secretary of state may revoke the lobbyist's registration"

Page 44, after line 29, insert:

"54-66-15. Removal of ethics commission members.

1. An ethics commission member may be removed from office for:
 - a. Substantial neglect of duty;
 - b. Gross misconduct in office;
 - c. Violation of the commission's code of ethics; or
 - d. Willful or habitual neglect or refusal to perform the duties of the member.
2. Removal of an ethics commission member under subsection 1 requires consensus agreement by:
 - a. The governor;
 - b. The majority leader of the senate; and
 - c. The minority leader of the senate."

Page 44, line 31, replace "\$300,000" with "\$517,155"

Page 45, line 3, replace "one and one-half" with "two"

Page 45, line 4, replace "1, 2, 3, 4, 5, and 7" with "1, 3, and 4"

Page 45, line 4, replace "section" with "sections"

Page 45, line 5, after "54-66-02" insert "and 54-66-03"

Page 45, line 5, replace "32" with "24"

Page 45, line 6, replace "2022" with "2021"

Page 45, remove lines 7 through 11

Page 45, line 12, after "Sections" insert "5, 6, 7,"

Page 45, line 13, after the first comma insert "and"

Page 45, line 13, remove ", 24, 25, 26, 27, 28, 29, 30, and 31"

Renumber accordingly

April 15, 2019

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1521

Page 1, line 4, replace "section" with "sections"

Page 1, line 5, remove "subsection 4 of section 16.1-08.1-02.1, sections 16.1-08.1-02.3, 16.1-08.1-02.4,"

Page 1, line 6, replace "16.1-08.1-03.1" with "16.1-08.1-03.7"

Page 1, line 6, after the second comma insert "16.1-08.1-06.2,"

Page 1, line 6, remove "28-32-02,"

Page 1, line 7, remove "28-32-14,"

Page 1, line 8, remove "28-32-17, 28-32-18,"

Page 1, line 13, remove "to provide an expiration date;"

Page 1, line 19, remove ""Adjusted for inflation" means adjusted on January first of each year by the change in"

Page 1, remove lines 20 and 21

Page 1, line 22, remove "2."

Page 2, line 6, remove the overstrike over "~~2~~."

Page 2, line 6, remove "3."

Page 2, line 13, remove the overstrike over "~~3~~."

Page 2, line 13, remove "4."

Page 2, line 26, remove the overstrike over "~~4~~."

Page 2, line 26, remove "5."

Page 3, line 3, remove the overstrike over "~~5~~."

Page 3, line 3, remove "6."

Page 3, line 29, remove the overstrike over "~~6~~."

Page 3, line 29, remove "7."

Page 4, line 4, remove the overstrike over "~~7~~."

Page 4, line 4, remove "8."

Page 4, line 14, remove the overstrike over "~~8~~."

Page 4, line 14, remove "9."

Page 4, line 21, remove the overstrike over "~~9~~."

Page 4, line 21, remove "10."

Page 4, line 26, remove the overstrike over "10."

Page 4, line 26, remove "11."

Page 4, line 28, remove the overstrike over "11."

Page 4, line 28, remove "12."

Page 5, line 1, remove the overstrike over "12."

Page 5, line 1, remove "13."

Page 5, line 4, remove the overstrike over "13."

Page 5, line 4, remove "14."

Page 5, line 26, remove the overstrike over "14."

Page 5, line 26, remove "15."

Page 5, line 30, remove the overstrike over "15."

Page 5, line 30, remove "16."

Page 6, line 10, remove the overstrike over "16."

Page 6, line 10, remove "17."

Page 6, line 12, remove the overstrike over "17."

Page 6, line 12, remove "18."

Page 6, line 14, replace "19." with "18."

Page 6, line 15, remove ", adjusted for inflation."

Page 6, remove lines 17 through 30

Page 7, remove lines 1 through 31

Page 8, remove lines 1 through 31

Page 9, remove lines 1 through 29

Page 10, remove lines 1 through 31

Page 11, remove lines 1 through 31

Page 12, remove lines 1 through 31

Page 13, replace lines 1 through 6 with:

"SECTION 2. AMENDMENT. Section 16.1-08.1-03.7 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-03.7. Political committees that organize and register according to federal law that make independent expenditures or disbursements to nonfederal candidates, political parties, and political committees.

A political committee that organizes and registers according to federal law and makes an independent expenditure or makes a disbursement in excess of two hundred dollars to a nonfederal candidate seeking public office or to a political party or political

committee in this state shall file a copy of that portion of the committee's federal report, and supplementary information as necessary under this section, detailing the independent expenditure or the disbursement made. The political committee shall file a copy of the committee's federal report with the secretary of state at the time of filing the report with the applicable federal agency. The report must include:

1. The name, mailing address, and treasurer of the political committee;
2. The recipient's name and mailing address; ~~and~~
3. The date and amount of the independent expenditure or disbursement; and
4. The ultimate and true source of funds listed by contributor and subcontributor of any amount over two hundred dollars collected or used to make the independent expenditure or disbursement, including:
 - a. The name and address of the contributor;
 - b. The total amount of the contribution; and
 - c. The date the last contribution was received.

Page 13, line 19, replace "Burleigh County" with "the county where the candidate resides"

Page 13, line 27, remove "in a district court of this state"

Page 13, line 28, after "section" insert "in the district court of the county where the person required to comply with this section resides"

Page 13, after line 31, insert:

"SECTION 5. AMENDMENT. Section 16.1-08.1-06.2 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-06.2. Secretary of state to provide instructions, make adjustments for inflation, and conduct training.

The secretary of state shall provide instructions and conduct training for the purpose of promoting uniform application of campaign finance and disclosure requirements and the uniform filing of statements, registrations, or reports according to this chapter. The secretary also shall determine adjustments for inflation of the reporting thresholds in this chapter and instruct persons submitting reports under this chapter of the adjustments. On January first of each year, the secretary shall determine whether the accumulated change in the consumer price index for all urban consumers (all items, United States city average), as applied to each reporting threshold in this chapter, would result in an adjustment of at least ten dollars of the threshold in effect on that date. If so, the secretary shall deem the reporting threshold adjusted by ten dollars.

Page 18, remove lines 16 through 29

Page 19, remove lines 1 through 3

Page 19, line 7, remove "commission or an"

Page 19, line 7, after the second comma insert "or the commission"

Page 28, remove lines 17 through 31

Page 29, line 6, after "rule" insert ", if any,"

Page 30, remove lines 9 through 31

Page 31, remove lines 1 through 31

Page 32, remove lines 1 through 31

Page 33, remove lines 1 and 2

Page 34, line 24, after "fund" insert "or retirement account"

Page 35, after line 24, insert:

"10. A decision, ruling, recommended finding of fact, recommended conclusion of law, finding of fact, conclusion of law, or order by a hearing officer may not be reconsidered, invalidated, or overturned on the grounds the hearing officer failed to self-disqualify under subsection 3, except by a court if the court finds, based on clear and convincing evidence, the hearing officer was required to self-disqualify."

Page 37, line 17, replace "government ethics" with "transparency, corruption, elections, or lobbying"

Page 37, line 18, remove "Adjusted for inflation" means adjusted on January first of each year by the change in"

Page 37, remove lines 19 and 20

Page 37, line 21, remove "3."

Page 37, line 23, replace "4." with "3."

Page 37, line 25, replace "government ethics" with "transparency, corruption, elections, or lobbying"

Page 37, line 26, replace "5." with "4."

Page 37, line 28, replace "6." with "5."

Page 37, line 29, after "recreation" insert ". The term does not include an item, service, or thing with a value of twenty dollars or less; an item, service, or thing given to or received from a family member; purely informational material; or a campaign contribution"

Page 37, line 30, replace "7." with "6."

Page 37, line 30, remove "final"

Page 38, line 1, replace "8." with "7."

Page 38, line 2, replace "9." with "8."

Page 38, line 3, replace "10." with "9."

Page 38, line 6, replace "11." with "10."

Page 38, line 8, replace "12." with "11."

Page 38, line 9, remove ", adjusted for inflation,"

Page 39, line 1, remove "Reimbursement for travel, meal, and refreshment expenses incurred to, from, or"

Page 39, remove lines 2 through 6

Page 39, line 7, remove "e."

Page 39, line 9, replace "f." with "d."

Page 39, line 11, remove "in a district court of this state"

Page 39, line 12, after "section" insert "in the district court of the county where the person required to comply with this section resides"

Page 39, after line 15, insert:

"6. The secretary also shall determine adjustments for inflation of the reporting threshold in this section and instruct persons submitting reports under this section of the adjustments. On January first of each year, the secretary shall determine whether the accumulated change in the consumer price index for all urban consumers (all items, United States city average), as applied to the reporting threshold, would result in an adjustment of at least ten dollars of the threshold in effect on that date. If so, the secretary shall deem the reporting threshold adjusted by ten dollars."

Page 39, line 18, remove "with a value over sixty dollars per"

Page 39, line 19, remove "individual per event, adjusted for inflation,"

Page 39, line 19, remove ", except to"

Page 39, remove lines 20 through 31

Page 40, remove lines 1 and 2

Page 40, line 6, remove "or"

Page 40, line 7, after "contribution" insert "; or

d. An item, service, or thing of value given under conditions that do not raise ethics concerns, as determined by rules adopted by the ethics commission, in order to advance opportunities for North Dakota residents to meet with public officials in educational and social settings in the state"

Page 40, line 9, remove "and, if the person is a"

Page 40, remove line 10

Page 40, line 11, remove "54-05.1"

Page 40, line 12, after "misdemeanor" insert ", and, if the person is a lobbyist, the secretary of state may revoke the lobbyist's registration under chapter 54-05.1"

Page 40, line 14, remove "- Investigator"

Page 40, line 19, remove "The ethics commission shall meet as necessary to address each complaint the"

Page 40, line 20, remove "commission receives."

Page 41, remove lines 6 through 10

Page 41, remove lines 22 and 23

Page 42, line 4, after "Referrals" insert "of certain allegations"

Page 42, line 4, replace "investigators - Exception for criminal allegations" with "attorney general or law enforcement"

Page 42, remove lines 5 through 7

Page 42, line 8, replace "within thirty calendar days of receiving the complaint. However, if" with "It"

Page 42, line 9, replace "shall" with "may"

Page 42, line 10, remove "The"

Page 42, line 11, replace "commission may engage a state agency as an investigator." with "If a complaint with an attestation includes an allegation of a violation of open meetings or open records requirements, the commission shall refer the allegation to the attorney general, and the attorney general shall review the allegation under section 44-04-21.1 if the complaint was submitted to the commission by the relevant deadline in section 44-04-21.1."

Page 42, line 14, replace "Findings and Recommendations" with "Recommended findings"

Page 42, line 15, replace "investigator engaged under section 54-66-08" with "ethics commission staff"

Page 42, line 15, replace "the" with "each"

Page 42, line 16, replace "referred to it by the ethics commission" with "with an attestation"

Page 42, line 23, replace "At the conclusion of the investigation, but no later" with "An investigation must conclude no more"

Page 42, line 24, replace the first "investigator" with "ethics commission"

Page 42, line 24, replace ", the investigator" with ". The ethics commission staff"

Page 42, line 24, replace "its written" with "recommended"

Page 42, line 25, after the first "commission" insert "at the conclusion of the investigation"

Page 42, line 27, after "the" insert "recommended"

Page 42, line 28, after the first "the" insert "recommended"

Page 42, line 28, after the second "the" insert "recommended"

Page 42, line 29, after "the" insert "recommended"

Page 43, line 2, after the first "the" insert "recommended"

Page 43, line 2, replace "investigator" with "ethics commission staff"

Page 43, line 4, after "the" insert "recommended"

Page 43, line 10, remove "government"

Page 43, line 11, replace "ethics" with "transparency, corruption, elections, or lobbying"

Page 43, line 26, replace "government ethics" with "transparency, corruption, elections, or lobbying"

Page 44, line 19, after "the" insert "ethics"

Page 44, line 19, after "commission" insert ", unless the ethics commission objects to the representation by the attorney general in a specific matter"

Page 44, line 27, remove "and may revoke the lobbyist's registration"

Page 44, line 29, after "misdemeanor" insert ", and the secretary of state may revoke the lobbyist's registration."

Page 44, after line 29, insert:

"54-66-15. Removal of ethics commission members.

1. An ethics commission member may be removed from office for:
 - a. Substantial neglect of duty;
 - b. Gross misconduct in office;
 - c. Violation of the commission's code of ethics; or
 - d. Willful or habitual neglect or refusal to perform the duties of the member.
2. Removal of an ethics commission member requires agreement by two of the following individuals that grounds for removal under subsection 1 exist:
 - a. The governor;
 - b. The majority leader of the senate; and
 - c. The minority leader of the senate"

Page 44, line 30, remove "There is appropriated out of any moneys in the general"

Page 44, remove line 31

Page 45, replace lines 1 through 3 with "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 North Dakota ethics commission for the purpose of defraying the expenses of the commission, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

Ethics commission	\$517,155
Total general fund	\$517,155
Full-time equivalent positions	2.00"

Page 45, line 4, remove "2,"

Page 45, line 4, replace "7" with "22"

Page 45, line 4, replace "section" with "sections"

Page 45, line 5, after "54-66-02" insert ", 54-66-03, and 54-66-13"

Page 45, line 5, replace "32" with "26"

Page 45, line 6, replace "2022" with "2021"

Page 45, remove lines 7 through 11

Page 45, line 12, after "Sections" insert "6, 7,"

Page 45, line 13, remove "22,"

Page 45, line 13, replace "26," with "and"

Page 45, line 13, remove ", 28, 29, 30, and 31"

Renumber accordingly

April 16, 2019

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1521

Page 1, line 4, replace "section" with "sections"

Page 1, line 5, remove "subsection 4 of section 16.1-08.1-02.1, sections 16.1-08.1-02.3, 16.1-08.1-02.4,"

Page 1, line 6, replace "16.1-08.1-03.1" with "16.1-08.1-03.7"

Page 1, line 6, remove "28-32-02,"

Page 1, line 7, remove "28-32-14,"

Page 1, line 7, after the eighth comma insert "and"

Page 1, line 8, remove "28-32-17, 28-32-18, and 28-32-18.1,"

Page 1, line 9, remove "28-32-27,"

Page 1, line 10, remove "disqualification of agency heads in quasi-judicial proceedings,"

Page 1, line 19, remove ""Adjusted for inflation" means adjusted on January first of each year by the change in"

Page 1, remove lines 20 and 21

Page 1, line 22, remove "2."

Page 2, line 6, remove the overstrike over "2."

Page 2, line 6, remove "3."

Page 2, line 13, remove the overstrike over "3."

Page 2, line 13, remove "4."

Page 2, line 26, remove the overstrike over "4."

Page 2, line 26, remove "5."

Page 3, line 3, remove the overstrike over "5."

Page 3, line 3, remove "6."

Page 3, line 29, remove the overstrike over "6."

Page 3, line 29, remove "7."

Page 4, line 4, remove the overstrike over "7."

Page 4, line 4, remove "8."

Page 4, line 14, remove the overstrike over "8."

Page 4, line 14, remove "9."

Page 4, line 21, remove the overstrike over "9."

Page 4, line 21, remove "10."

Page 4, line 26, remove the overstrike over "~~10.~~"

Page 4, line 26, remove "11."

Page 4, line 28, remove the overstrike over "~~11.~~"

Page 4, line 28, remove "12."

Page 5, line 1, remove the overstrike over "~~12.~~"

Page 5, line 1, remove "13."

Page 5, line 4, remove the overstrike over "~~13.~~"

Page 5, line 4, remove "14."

Page 5, line 26, remove the overstrike over "~~14.~~"

Page 5, line 26, remove "15."

Page 5, line 30, remove the overstrike over "~~15.~~"

Page 5, line 30, remove "16."

Page 6, line 10, remove the overstrike over "~~16.~~"

Page 6, line 10, remove "17."

Page 6, line 12, remove the overstrike over "~~17.~~"

Page 6, line 12, remove "18."

Page 6, line 14, replace "19." with "18."

Page 6, line 14, replace "who" with "that"

Page 6, line 15, remove ", adjusted for inflation, solely"

Page 6, line 16, after "assembly" insert ", and may be defined further by the ethics commission"

Page 6, remove lines 17 through 30

Page 7, remove lines 1 through 31

Page 8, remove lines 1 through 31

Page 9, remove lines 1 through 29

Page 10, remove lines 1 through 31

Page 11, remove lines 1 through 31

Page 12, remove lines 1 through 31

Page 13, replace lines 1 through 6 with:

"SECTION 2. AMENDMENT. Section 16.1-08.1-03.7 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-03.7. Political committees that organize and register according to federal law that make independent expenditures or disbursements to nonfederal candidates, political parties, and political committees.

A political committee that organizes and registers according to federal law and makes an independent expenditure or makes a disbursement in excess of two hundred dollars to a nonfederal candidate seeking public office or to a political party or political committee in this state shall file a copy of that portion of the committee's federal report detailing the independent expenditure or the disbursement made. The political committee shall file a copy of the committee's federal report, and supplementary information as necessary under this section, with the secretary of state at the time of filing the report with the applicable federal agency. The report must include:

1. The name, mailing address, and treasurer of the political committee;
2. The recipient's name and mailing address; ~~and~~
3. The date and amount of the independent expenditure or disbursement; and
4. The ultimate and true source of funds listed by contributor and subcontributor of any amount over two hundred dollars collected or used to make the independent expenditure or disbursement including:
 - a. The name and address of the contributor;
 - b. The total amount of the contribution; and
 - c. The date the last contribution was received."

Page 13, line 17, remove "For the first violation, the secretary of state shall assess a civil penalty of five hundred"

Page 13, replace lines 18 through 21 with "The secretary of state shall assess a civil penalty upon any person that knowingly violates this section.

- a. If the contribution used in violation of this section has a value of two thousand five hundred dollars or more, the civil penalty must be two times the value of the contribution.
- b. If the contribution used in violation of this section has a value of less than two thousand five hundred dollars, the civil penalty must be at least two times the value of the contribution and may be up to five thousand dollars.
3. The assessment of a civil penalty may be appealed to the district court of the county where the candidate resides."

Page 13, line 25, remove "1."

Page 13, line 25, replace "report" with "statement"

Page 13, remove lines 27 through 31

Page 18, remove lines 16 through 29

Page 19, remove lines 1 through 3

Page 19, line 7, remove "commission or an"

Page 19, line 7, after the second comma insert "or the commission"

Page 20, line 13, remove ", or"

Page 20, line 14, remove "the Constitution of North Dakota is amended to eliminate the authority"

Page 22, line 14, remove "or the commission"

Page 22, line 16, remove "or commission"

Page 22, line 18, remove "or commission"

Page 23, line 2, remove "or the commission"

Page 23, line 13, remove "or commission"

Page 23, line 14, remove "or commission"

Page 23, line 16, remove "or commission"

Page 23, line 17, after "to" insert "the ethics commission,"

Page 23, line 18, overstrike "nor does this section apply to" and insert immediately thereafter "and"

Page 24, line 7, remove "or the commission"

Page 26, line 11, remove "enacted during the most recent session of the"

Page 26, line 12, remove "legislative assembly"

Page 28, remove lines 17 through 31

Page 30, remove lines 9 through 31

Page 31, remove lines 1 through 31

Page 32, remove lines 1 through 31

Page 33, remove lines 1 through 23

Page 34, remove lines 11 through 30

Page 35, remove lines 1 through 24

Page 37, line 17, replace "government ethics" with "transparency, corruption, elections, or lobbying"

Page 37, line 18, remove "Adjusted for inflation" means adjusted on January first of each year by the change in"

Page 37, remove lines 19 and 20

Page 37, line 21, remove "3."

Page 37, line 23, replace "4." with "3."

Page 37, line 25, replace "government ethics" with "transparency, corruption, elections, or lobbying"

Page 37, line 26, replace "5." with "4."

Page 37, line 28, replace "6." with "5."

Page 37, line 29, after "recreation" insert ", except:

- a. Purely informational material;
- b. A campaign contribution; and
- c. An item, service, or thing of value given under conditions that do not raise ethical concerns, as set forth in rules adopted by the ethics commission, to advance opportunities for state residents to meet with public officials in educational and social settings in the state"

Page 37, line 30, replace "7." with "6."

Page 37, line 30, remove "final"

Page 37, line 31, after "28-32" insert "and means attempting to influence a public official's execution of a power or duty under title 54, unless the promotion, opposition, or attempt is made by a public official or public employee acting in an official capacity. "Influence state government action" may be defined further by ethics commission rule"

Page 38, line 1, replace "8." with "7."

Page 38, line 1, replace "an" with ":

- a. Engage in an"

Page 38, line 1, after "54-05.1-02" insert ": and

- b. Influence state government action"

Page 38, line 2, replace "9." with "8."

Page 38, line 3, replace "10." with "9."

Page 38, line 6, replace "11." with "10."

Page 38, line 8, replace "12." with "11."

Page 38, line 9, remove ", adjusted for inflation, solely"

Page 38, line 10, after "action" insert ", and may be defined further by ethics commission rule"

Page 38, line 12, remove ", adjusted for"

Page 38, line 13, remove "inflation,"

Page 38, line 16, remove "adjusted for"

Page 38, line 17, replace "inflation" with "not including the individual's own travel expenses and membership dues"

Page 38, line 17, replace "influence state government action" with "lobby"

Page 38, line 18, replace "The" with "A"

Page 38, line 19, after "report" insert "under this subsection"

Page 38, line 26, remove "within forty days after the deadlines"

Page 38, line 27, remove "by which the reports must be filed"

Page 38, remove lines 28 through 31

Page 39, remove lines 1 through 15

Page 39, line 17, replace "lobbyist" with "person who lobbies"

Page 39, line 18, remove "with a value over sixty dollars per"

Page 39, remove lines 19 through 31

Page 40, remove line 1

Page 40, line 2, replace "by the ethics commission" with "knowingly from a person who lobbies"

Page 40, line 3, replace "lobbyist" with "person who lobbies"

Page 40, line 4, remove the underscored colon

Page 40, line 5, replace "a. A" with "a"

Page 40, line 5, remove the underscored semicolon

Page 40, remove line 6

Page 40, line 7, remove "c. A campaign contribution"

Page 40, line 8, remove "For the first violation, the secretary of state shall assess a civil penalty of five hundred"

Page 40, replace lines 9 through 12 with "The secretary of state shall assess a civil penalty upon any person that violates this section."

a. If the gift has a value of five hundred dollars or more, the civil penalty must be two times the value of the gift.

b. If the gift has a value of less than five hundred dollars, the civil penalty must be no less than two times the value of the gift and may be up to one thousand dollars."

Page 40, line 14, replace "Investigator" with "Office"

Page 40, line 19, remove "The ethics commission shall meet as necessary to address each complaint the"

Page 40, line 20, remove "commission receives."

Page 40, line 20, after "in" insert "a public hearing or"

Page 40, line 21, remove "or referral for enforcement under section 54-66-10"

Page 41, line 6, remove "Commission members shall hire or otherwise engage a part-time administrative"

Page 41, replace lines 7 through 10 with "The director of the office of management and budget shall allocate office space in the state capitol for the ethics commission, or, if office space in the capitol is unavailable, shall negotiate for, contract for, and obtain office space for the ethics commission in the city of Bismarck or in the Bismarck area. The ethics commission's office space may not be located in the office space of any other government agency, board, commission, or other governmental entity, and must

provide sufficient privacy and security for the ethics commission to conduct its business. The director shall charge the ethics commission an amount equal to the fair value of the office space and related services the office of management and budget renders to the ethics commission."

Page 41, line 11, remove "**- Identifying information - False complaints**"

Page 41, line 12, remove "1."

Page 41, line 12, remove "When making a"

Page 41, remove lines 13 through 30

Page 42, remove lines 1 through 29

Page 43, replace lines 1 through 21 with:

"54-66-06. Informal resolution - Investigation - Referrals.

After receiving a complaint, the ethics commission may:

1. Attempt to negotiate or mediate an informal resolution between the accused individual and the complainant.
2. Investigate the allegations in the complaint.
3. Refer a matter described in or arising from a complaint to the bureau of criminal investigation or other appropriate law enforcement agency if a majority of the ethics commission members reasonably believes a crime was committed or the safety of the complainant is at risk.
4. Refer a complaint alleging a violation of open meetings or open records requirements to the attorney general, and the attorney general shall review the allegation under section 44-04-21.1 if the complaint was submitted to the ethics commission by the relevant deadline in section 44-04-21.1.

54-66-07. Ethics commission complaint - Informing the accused individual.

If, after investigating a complaint, the ethics commission decides to charge the accused individual with a violation of law, the ethics commission shall serve an ethics commission complaint against the accused individual and give the accused individual no less than twenty days to respond.

54-66-08. Informal resolutions - Public hearings - Referrals.

After serving an ethics commission complaint, the ethics commission may:

1. Resolve the charges in the ethics commission complaint informally with the accused individual; or
2. Hold a public hearing regarding the charges in the ethics commission complaint. The accused individual must be afforded due process, including an opportunity to respond to the charges.

54-66-09. Hearing findings - Penalties.

1. At the conclusion of a hearing, the ethics commission shall issue and make public its written findings of fact, conclusions of law, and any penalty authorized by law which the ethics commission imposes.
2. The written findings of fact must state whether the ethics commission believes, based on a preponderance of the evidence, as viewed by a reasonable person, 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.

54-66-10. Appeals.

An accused individual or complainant may appeal a finding of the ethics commission to the district court of the county where the accused individual resides."

Page 43, line 24, remove "determined the accused individual violated article XIV of"

Page 43, remove line 25

Page 43, line 26, replace "government ethics, and a court affirmed the determination if appealed" with "issued an ethics commission complaint"

Page 44, line 2, replace "54-66-07" with "54-66-06"

Page 44, line 10, replace "Willful publication" with "Publication"

Page 44, line 11, replace "criminal defamation under section 12.1-15-01" with "a class B misdemeanor"

Page 44, line 12, replace "A public official who violates this section is guilty of a class C felony." with "The information deemed confidential in this section may be disclosed by the ethics commission if the accused individual agrees to the disclosure."

Page 44, replace lines 14 through 17 with "A knowing violation of subsection 2 of section 2 of article XIV of the Constitution of North Dakota is a class A misdemeanor. The ethics commission shall assess a civil penalty of up to one thousand dollars on any person that knowingly violates the subsection."

Page 44, line 19, after "commission" insert "unless the commission objects to representation by the attorney general in a specific matter"

Page 44, line 27, remove "and may revoke the lobbyist's registration"

Page 44, line 29, after "misdemeanor" insert ", and, if the lobbyist is a registered lobbyist, the secretary of state may revoke the lobbyist's registration"

Page 44, after line 29, insert:

"54-66-15. Removal of ethics commission members.

1. An ethics commission member may be removed from office for:
 - a. Substantial neglect of duty;
 - b. Gross misconduct in office;

- c. Violation of the commission's code of ethics; or
 - d. Willful or habitual neglect or refusal to perform the duties of the member.
- 2. Removal of an ethics commission member under subsection 1 requires consensus agreement by:
 - a. The governor;
 - b. The majority leader of the senate; and
 - c. The minority leader of the senate."

Page 44, line 31, replace "\$300,000" with "\$517,155"

Page 45, line 3, replace "one and one-half" with "two"

Page 45, line 4, after the third comma insert "and"

Page 45, line 4, remove ", 5, and 7"

Page 45, line 5, replace "32" with "23"

Page 45, line 8, replace "32" with "23"

Page 45, line 10, replace "32" with "23"

Page 45, line 12, after "Sections" insert "5, 6, 7,"

Page 45, line 12, after the fourteenth comma insert "and"

Page 45, line 13, remove ", 23, 24, 25, 26, 27, 28, 29, 30, and 31"

Renumber accordingly

Page 44, line 29, after "misdemeanor" insert ", and, if the lobbyist is a registered lobbyist, the secretary of state may revoke the lobbyist's registration"

Page 44, after line 29, insert:

"54-66-15. Removal of ethics commission members.

1. An ethics commission member may be removed from office for:
 - a. Substantial neglect of duty;
 - b. Gross misconduct in office;
 - c. Violation of the commission's code of ethics; or
 - d. Willful or habitual neglect or refusal to perform the duties of the member.
2. Removal of an ethics commission member under subsection 1 requires consensus agreement by:
 - a. The governor;
 - b. The majority leader of the senate; and
 - c. The minority leader of the senate."

Page 44, line 31, replace "\$300,000" with "\$517,155"

Page 45, line 3, replace "one and one-half" with "two"

Page 45, after line 3, insert:

"SECTION 25. LEGISLATIVE MANAGEMENT STUDY - ETHICS COMMISSION AND LEGISLATIVE ASSEMBLY RESPONSIBILITIES. During the 2019-20 interim, the legislative management shall consider studying subsection 2 of section 1 of article XIV and subsections 1 through 5 of section 2 of article XIV of the Constitution of North Dakota, and the responsibilities of the legislative assembly and ethics commission under the subsections. The study committee must include members of the ethics commission as selected by the ethics commission. The study must include consideration of whether the civil and criminal sanctions for violations of the constitutional provisions are appropriate; whether additional authority is needed by the entity vested to implement, interpret, and enforce section 1 of article XIV; and effective means to educate public officials, lobbyists, and the public on the requirements of article XIV and other laws regarding government ethics. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-seventh legislative assembly."

Page 45, line 4, after the third comma insert "and"

Page 45, line 4, remove ", 5, and 7"

Page 45, line 5, replace "32" with "23"

Page 45, line 8, replace "32" with "23"

Page 45, line 10, replace "32" with "23"

Page 45, line 12, after "Sections" insert "5, 6, 7,"

1 misdemeanor. The ethics commission shall assess a civil penalty of up to one thousand dollars
2 on any person that knowingly violates the subsection.

3 **54-66-13. Attorney general to provide legal services.**

4 The attorney general shall serve as legal counsel for the commission unless the
5 commission objects to representation by the attorney general in a specific matter. When a
6 conflict of interest prevents the attorney general from providing legal services to the
7 commission, the attorney general may appoint a special assistant attorney general to serve as
8 legal counsel for the commission.

9 **54-66-14. Prohibition on delivering campaign contributions - Penalty.**

10 A lobbyist may not deliver knowingly a campaign contribution made by another person in
11 violation of subsection 3 of section 2 of article XIV of the Constitution of North Dakota. For a first
12 violation, the secretary of state shall assess a civil penalty of five hundred dollars upon any
13 person who knowingly violates this section and may revoke the lobbyist's registration. For a
14 second and subsequent knowing violation of this section, the person is guilty of a class B
15 misdemeanor, and, if the lobbyist is a registered lobbyist, the secretary of state may revoke the
16 lobbyist's registration.

17 **54-66-15. Removal of ethics commission members.**

18 1. An ethics commission member may be removed from office for:

- 19 a. Substantial neglect of duty;
20 b. Gross misconduct in office;
21 c. Violation of the commission's code of ethics; or
22 d. Willful or habitual neglect or refusal to perform the duties of the member.

23 2. Removal of an ethics commission member under subsection 1 requires consensus
24 agreement by:

- 25 a. The governor;
26 b. The majority leader of the senate; and
27 c. The minority leader of the senate.

28 **SECTION 24. APPROPRIATION.** There is appropriated out of any moneys in the general
29 fund in the state treasury, not otherwise appropriated, the sum of ~~\$300,000~~ \$517,155, or so
30 much of the sum as may be necessary, to the ethics commission for the purpose of the
31 operations of the commission, for the biennium beginning July 1, 2019, and ending June 30,

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PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1521

Page 1, line 4, replace "section" with "sections"

Page 1, line 5, remove "subsection 4 of section 16.1-08.1-02.1, sections 16.1-08.1-02.3, 16.1-08.1-02.4,"

Page 1, line 6, replace "16.1-08.1-03.1" with "16.1-08.1-03.7"

Page 1, line 6, remove "28-32-02,"

Page 1, line 7, remove "28-32-14,"

Page 1, line 8, remove "28-32-17, 28-32-18,"

Page 1, line 9, remove "28-32-27,"

Page 1, line 10, remove "disqualification of agency heads in quasi-judicial proceedings,"

Page 1, line 12, after the first semicolon insert "to provide for a legislative management study;"

Page 1, line 13, remove "to provide an expiration date;"

Page 1, line 19, remove "Adjusted for inflation" means adjusted on January first of each year by the change in

Page 1, remove lines 20 and 21

Page 1, line 22, remove "2."

Page 2, line 6, remove the overstrike over "2."

Page 2, line 6, remove "3."

Page 2, line 13, remove the overstrike over "3."

Page 2, line 13, remove "4."

Page 2, line 26, remove the overstrike over "4."

Page 2, line 26, remove "5."

Page 3, line 3, remove the overstrike over "5."

Page 3, line 3, remove "6."

Page 3, line 29, remove the overstrike over "6."

Page 3, line 29, remove "7."

Page 4, line 4, remove the overstrike over "7."

Page 4, line 4, remove "8."

Page 4, line 14, remove the overstrike over "8."

Page 4, line 14, remove "9."

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Page 4, line 21, remove the overstrike over "9."

Page 4, line 21, remove "10."

Page 4, line 26, remove the overstrike over "10."

Page 4, line 26, remove "11."

Page 4, line 28, remove the overstrike over "11."

Page 4, line 28, remove "12."

Page 5, line 1, remove the overstrike over "12."

Page 5, line 1, remove "13."

Page 5, line 4, remove the overstrike over "13."

Page 5, line 4, remove "14."

Page 5, line 26, remove the overstrike over "14."

Page 5, line 26, remove "15."

Page 5, line 30, remove the overstrike over "15."

Page 5, line 30, remove "16."

Page 6, line 10, remove the overstrike over "16."

Page 6, line 10, remove "17."

Page 6, line 12, remove the overstrike over "17."

Page 6, line 12, remove "18."

Page 6, line 14, replace "19." with "18."

Page 6, line 14, replace "who" with "that"

Page 6, line 15, remove ", adjusted for inflation,"

Page 6, remove lines 17 through 30

Page 7, remove lines 1 through 31

Page 8, remove lines 1 through 31

Page 9, remove lines 1 through 29

Page 10, remove lines 1 through 31

Page 11, remove lines 1 through 31

Page 12, remove lines 1 through 31

Page 13, replace lines 1 through 6 with:

"SECTION 2. AMENDMENT. Section 16.1-08.1-03.7 of the North Dakota Century Code is amended and reenacted as follows:

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16.1-08.1-03.7. Political committees that organize and register according to federal law that make independent expenditures or disbursements to nonfederal candidates, political parties, and political committees.

A political committee that organizes and registers according to federal law and makes an independent expenditure or makes a disbursement in excess of two hundred dollars to a nonfederal candidate seeking public office or to a political party or political committee in this state shall file a copy of that portion of the committee's federal report detailing the independent expenditure or the disbursement made. The political committee shall file a copy of the committee's federal report, and supplementary information as necessary under this section, with the secretary of state at the time of filing the report with the applicable federal agency. The report and supplementary information must include:

1. The name, mailing address, and treasurer of the political committee;
2. The recipient's name and mailing address; ~~and~~
3. The date and amount of the independent expenditure or disbursement; and
4. The ultimate and true source of funds listed by contributor and subcontributor of any amount over two hundred dollars collected or used to make the independent expenditure or disbursement including:
 - a. The name and address of the contributor;
 - b. The total amount of the contribution; and
 - c. The date the last contribution was received."

Page 13, line 17, remove "For the first violation, the secretary of state shall assess a civil penalty of five hundred"

Page 13, replace lines 18 through 21 with "The secretary of state shall assess a civil penalty upon any person that knowingly violates this section.

- a. If the contribution used in violation of this section has a value of two thousand five hundred dollars or more, the civil penalty must be two times the value of the contribution.
- b. If the contribution used in violation of this section has a value of less than two thousand five hundred dollars, the civil penalty must be at least two times the value of the contribution and may be up to five thousand dollars.
3. The assessment of a civil penalty may be appealed to the district court of the county where the candidate resides."

Page 13, line 24, remove "- Penalty"

Page 13, line 25, remove "1."

Page 13, line 25, replace "report" with "statement"

Page 13, remove lines 27 through 31

Page 18, remove lines 16 through 29

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Page 19, remove lines 1 through 3

Page 19, line 7, remove "commission or an"

Page 19, line 7, after the second comma insert "or the commission"

Page 20, line 13, remove ", or"

Page 20, line 14, remove "the Constitution of North Dakota is amended to eliminate the authority"

Page 22, line 14, remove "or the commission"

Page 22, line 16, remove "or commission"

Page 22, line 18, remove "or commission"

Page 23, line 2, remove "or the commission"

Page 23, line 13, remove "or commission"

Page 23, line 14, remove "or commission"

Page 23, line 16, remove "or commission"

Page 23, line 17, after "to" insert "the ethics commission,"

Page 23, line 18, overstrike "nor does this section apply to" and insert immediately thereafter "and"

Page 24, line 7, remove "or the commission"

Page 26, line 11, remove "enacted during the most recent session of the"

Page 26, line 12, replace "legislative assembly which" with "that"

Page 28, remove lines 17 through 31

Page 29, line 6, after "rule" insert ", if any,"

Page 30, remove lines 9 through 31

Page 31, remove lines 1 through 31

Page 32, remove lines 1 through 31

Page 33, remove lines 1 and 2

Page 34, remove lines 11 through 30

Page 35, remove lines 1 through 24

Page 37, line 17, replace "government ethics" with "transparency, corruption, elections, or lobbying"

Page 37, line 18, remove "Adjusted for inflation" means adjusted on January first of each year by the change in"

Page 37, remove lines 19 and 20

Page 37, line 21, remove "3."

Page 37, line 23, replace "4." with "3."

Page 37, line 25, replace "government ethics" with "transparency, corruption, elections, or lobbying"

Page 37, line 26, replace "5." with "4."

Page 37, line 28, replace "6." with "5."

Page 37, line 29, after "recreation" insert ", except:

- a. Purely informational material;
- b. A campaign contribution; and
- c. An item, service, or thing of value given under conditions that do not raise ethical concerns, as set forth in rules adopted by the ethics commission, to advance opportunities for state residents to meet with public officials in educational and social settings in the state"

Page 37, line 30, replace "7." with "6."

Page 37, line 30, remove "final"

Page 38, line 1, replace "8." with "7."

Page 38, line 2, replace "9." with "8."

Page 38, line 3, replace "10." with "9."

Page 38, line 6, replace "11." with "10."

Page 38, line 8, replace "12." with "11."

Page 38, line 9, remove ", adjusted for inflation,"

Page 38, line 12, remove ", adjusted for"

Page 38, line 13, remove "inflation,"

Page 38, line 16, replace "who" with "that"

Page 38, line 16, remove "adjusted for"

Page 38, line 17, replace "inflation" with "not including the individual's own travel expenses and membership dues"

Page 38, line 18, replace "The" with "A"

Page 38, line 19, after "report" insert "under this subsection"

Page 38, line 26, remove "within forty days after the deadlines"

Page 38, line 27, remove "by which the reports must be filed"

Page 38, remove lines 28 through 31

Page 39, remove lines 1 through 15

Page 39, line 18, remove "with a value over sixty dollars per"

Page 39, line 19, remove "individual per event, adjusted for inflation,"

Page 39, line 19, remove ", except to"

609

Page 39, remove lines 20 through 31

Page 40, remove line 1

Page 40, line 2, remove "by the ethics commission"

Page 40, line 4, remove the underscored colon

Page 40, line 5, replace "a. A" with "a"

Page 40, line 5, remove the underscored semicolon

Page 40, remove line 6

Page 40, line 7, remove "c. A campaign contribution"

Page 40, line 8, remove "For the first violation, the secretary of state shall assess a civil penalty of five hundred"

Page 40, replace lines 9 through 12 with "The secretary of state shall assess a civil penalty upon any individual who violates this section."

a. If the gift has a value of five hundred dollars or more, the civil penalty must be two times the value of the gift.

b. If the gift has a value of less than five hundred dollars, the civil penalty must be no less than two times the value of the gift and may be up to one thousand dollars."

Page 40, line 14, replace "Investigator" with "Office"

Page 40, line 19, remove "The ethics commission shall meet as necessary to address each complaint the"

Page 40, line 20, remove "commission receives."

Page 40, line 20, after "in" insert "a public hearing or"

Page 40, line 21, remove "or referral for enforcement under section 54-66-10"

Page 41, line 6, remove "Commission members shall hire or otherwise engage a part-time administrative"

Page 41, replace lines 7 through 10 with "The director of the office of management and budget shall allocate office space in the state capitol for the ethics commission, or, if office space in the capitol is unavailable, shall negotiate for, contract for, and obtain office space for the ethics commission in the city of Bismarck or in the Bismarck area. The ethics commission's office space may not be located in the office space of any other government agency, board, commission, or other governmental entity, and must provide sufficient privacy and security for the ethics commission to conduct its business. The director shall charge the ethics commission an amount equal to the fair value of the office space and related services the office of management and budget renders to the ethics commission."

Page 41, line 11, remove "- Identifying information - False complaints"

Page 41, line 12, remove "1."

Page 41, line 12, remove "When making a"

Page 41, remove lines 13 through 30

Page 42, remove lines 1 through 29

Page 43, replace lines 1 through 21 with:

"54-66-06. Informal resolution - Investigation - Referrals.

After receiving a complaint, the ethics commission may:

1. Attempt to negotiate or mediate an informal resolution between the accused individual and the complainant.
2. Investigate the allegations in the complaint.
3. Refer a matter described in or arising from a complaint to the bureau of criminal investigation or other appropriate law enforcement agency if a majority of the ethics commission members reasonably believes a crime was committed or the safety of the complainant is at risk.
4. Refer a complaint alleging a violation of open meetings or open records requirements to the attorney general, and the attorney general shall review the allegation under section 44-04-21.1 if the complaint was submitted to the ethics commission by the relevant deadline in section 44-04-21.1.

54-66-07. Ethics commission complaint - Informing the accused individual.

If, after investigating a complaint, the ethics commission decides to charge the accused individual with a violation of law, the ethics commission shall serve an ethics commission complaint against the accused individual and give the accused individual no less than twenty days to respond.

54-66-08. Informal resolutions - Public hearings - Referrals.

After serving an ethics commission complaint, the ethics commission may:

1. Resolve the charges in the ethics commission complaint informally with the accused individual; or
2. Hold a public hearing regarding the charges in the ethics commission complaint. The accused individual must be afforded due process, including an opportunity to respond to the charges.

54-66-09. Hearing findings - Penalties.

1. At the conclusion of a hearing, the ethics commission shall issue and make public its written findings of fact, conclusions of law, and any penalty authorized by law which the ethics commission imposes.
2. The written findings of fact must state whether the ethics commission believes, based on a preponderance of the evidence, as viewed by a reasonable person, 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.

899

54-66-10. Appeals.

An accused individual or complainant may appeal a finding of the ethics commission to the district court of the county where the accused individual resides."

Page 43, line 24, remove "determined the accused individual violated article XIV of"

Page 43, remove line 25

Page 43, line 26, replace "government ethics, and a court affirmed the determination if appealed" with "issued an ethics commission complaint"

Page 44, line 2, replace "54-66-07" with "54-66-06"

Page 44, line 10, replace "Willful publication" with "Publication"

Page 44, line 10, replace "who" with "that"

Page 44, line 11, replace "criminal defamation under section 12.1-15-01" with "a class B misdemeanor"

Page 44, line 12, replace "A public official who violates this section is guilty of a class C felony." with "The information deemed confidential in this section may be disclosed by the ethics commission if the accused individual agrees to the disclosure."

Page 44, replace lines 14 through 17 with "A knowing violation of subsection 2 of section 2 of article XIV of the Constitution of North Dakota is a class A misdemeanor. The ethics commission shall assess a civil penalty of up to one thousand dollars on any individual who knowingly violates the subsection."

Page 44, line 19, after "commission" insert "unless the commission objects to representation by the attorney general in a specific matter"

Page 44, line 27, replace "person" with "individual"

Page 44, line 27, remove "and may revoke the lobbyist's registration"

Page 44, line 29, after "misdemeanor" insert ", and, if the lobbyist is a registered lobbyist, the secretary of state may revoke the lobbyist's registration"

Page 44, after line 29, insert:

"54-66-15. Removal of ethics commission members.

1. An ethics commission member may be removed from office for:
 - a. Substantial neglect of duty;
 - b. Gross misconduct in office;
 - c. Violation of the commission's code of ethics; or
 - d. Willful or habitual neglect or refusal to perform the duties of the member.
2. Removal of an ethics commission member under subsection 1 requires agreement by a majority of:
 - a. The governor;

b. The majority leader of the senate; and

c. The minority leader of the senate.

SECTION 25. LEGISLATIVE MANAGEMENT STUDY - ETHICS COMMISSION AND LEGISLATIVE ASSEMBLY RESPONSIBILITIES. During the 2019-20 interim, the legislative management shall consider studying subsection 2 of section 1 of article XIV and subsections 1 through 5 of section 2 of article XIV of the Constitution of North Dakota, and the responsibilities of the legislative assembly and ethics commission under the subsections. The study committee must include members of the ethics commission as selected by the ethics commission. The study must include consideration of whether the civil and criminal sanctions for violations of the constitutional provisions are appropriate; whether additional authority is needed by the entity vested to implement, interpret, and enforce section 1 of article XIV; and effective means to educate public officials, lobbyists, and the public on the requirements of article XIV and other laws regarding government ethics. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-seventh legislative assembly."

Page 44, line 31, replace "\$300,000" with "\$517,155"

Page 45, line 3, replace "one and one-half" with "two"

Page 45, line 4, replace "1, 2, 3, 4, 5, and 7" with "1, 3, and 4"

Page 45, line 4, replace "section" with "sections"

Page 45, line 5, after "54-66-02" insert "and 54-66-03"

Page 45, line 5, replace "32" with "24"

Page 45, line 6, replace "2022" with "2021"

Page 45, remove lines 7 through 11

Page 45, line 12, after "Sections" insert "5, 6, 7,"

Page 45, line 13, after the first comma insert "and"

Page 45, line 13, remove ", 24, 25, 26, 27, 28, 29, 30, and 31"

Renumber accordingly

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1521

Senate Ethics Committee

☐ Subcommittee

Amendment LC# or Description: 02016 amendments

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
 Other Actions: ☐ Reconsider ☐

Motion Made By Anderson Seconded By Oban

Senators	Yes	No	Senators	Yes	No
Chairman D. Hogue		<input checked="" type="checkbox"/>	Senator Oban	<input checked="" type="checkbox"/>	
Vice Chair J. Unruh	<input checked="" type="checkbox"/>		Senator Mathern	<input checked="" type="checkbox"/>	
Senator H. Anderson	<input checked="" type="checkbox"/>				
Senator D. Dever		<input checked="" type="checkbox"/>			
Senator N. Poolman	<input checked="" type="checkbox"/>				

Total (Yes) 5 No 2

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

motion carries

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1521

Senate Ethics Committee

☐ Subcommittee

Amendment LC# or Description: .02025

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
 Other Actions: ☐ Reconsider ☐

Motion Made By Anderson Seconded By Mathern

Senators	Yes	No	Senators	Yes	No
Chairman D. Hogue			Senator Oban		
Vice Chair J. Unruh			Senator Mathern		
Senator H. Anderson					
Senator D. Dever					
Senator N. Poolman					
<u>Voice vote</u> <u>motion carried</u>					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1521

Senate Ethics Committee

☐ Subcommittee

Amendment LC# or Description: return to 102010

Recommendation: ☒ Adopt Amendment

☐ Do Pass

☐ Do Not Pass

☐ Without Committee Recommendation

☐ As Amended

☐ Rerefer to Appropriations

☐ Place on Consent Calendar

Other Actions:

☐ Reconsider

☐

*definition of ultimate
& true source*

Motion Made By

Poolman

Seconded By

Unruh

Senators	Yes	No	Senators	Yes	No
Chairman D. Hogue			Senator Oban		
Vice Chair J. Unruh			Senator Mathern		
Senator H. Anderson					
Senator D. Dever					
Senator N. Poolman					
<i>voice vote motion carried</i>					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1521

Senate Ethics Committee

☐ Subcommittee

Amendment LC# or Description: new language in 02026

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Oban Seconded By Mathern

Senators	Yes	No	Senators	Yes	No
Chairman D. Hogue		<input checked="" type="checkbox"/>	Senator Oban	<input checked="" type="checkbox"/>	
Vice Chair J. Unruh		<input checked="" type="checkbox"/>	Senator Mathern	<input checked="" type="checkbox"/>	
Senator H. Anderson		<input checked="" type="checkbox"/>			
Senator D. Dever		<input checked="" type="checkbox"/>			
Senator N. Poolman		<input checked="" type="checkbox"/>			

Total (Yes) 2 No 5

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Failed

Date: 4/16
Roll Call Vote #: 4

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1521

Senate Ethics Committee

☐ Subcommittee

Amendment LC# or Description:

Retain 3 definitions (02010) of Influence State Government Action, Lobby & Lobbyist

Recommendation:

- ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions:

☐ Reconsider

☐

Motion Made By

Unruh

Seconded By

Poolman

Senators	Yes	No	Senators	Yes	No
Chairman D. Hogue	✓		Senator Oban		✓
Vice Chair J. Unruh	✓		Senator Mathern		✓
Senator H. Anderson	✓				
Senator D. Dever	✓				
Senator N. Poolman	✓				

Total

(Yes)

5

No

2

Absent

0

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Carried

$$\frac{4}{5}$$

1521

Committee

Part of Amendment . 02024 on page 9

Part of Amendment . 02024 on page 9

☐ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

☐ Reconsider ☐

Mathematik

Oban

Voice Vote
motion Carried

Absent _____

Floor Assignment

Only Adopting Section 25
in The amendment page 9

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1521

Senate Ethics Committee

☐ Subcommittee

Amendment LC# or Description: Pg 48 Line 23 . 02016

Recommendation: ☒ Adopt Amendment

☐ Do Pass

☐ Do Not Pass

☐ Without Committee Recommendation

☐ As Amended

☐ Rerefer to Appropriations

☐ Place on Consent Calendar

Other Actions:

☐ Reconsider

☐

Motion Made By Unruh Seconded By Poolman

Senators	Yes	No	Senators	Yes	No
Chairman D. Hogue	✓		Senator Oban		✓
Vice Chair J. Unruh	✓		Senator Mathern		✓
Senator H. Anderson		✓			
Senator D. Dever	✓				
Senator N. Poolman	✓				

Total (Yes) 4 No 3

Absent 0

Floor Assignment Carrie

If the vote is on an amendment, briefly indicate intent:

replace "consensus" w/ "majority"

Date: 4/16
Roll Call Vote #: 7

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1521

Senate Ethics Committee

☐ Subcommittee

Amendment LC# or Description: *See Below

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐

Motion Made By Poolman Seconded By Unruh

Senators	Yes	No	Senators	Yes	No
Chairman D. Hogue	X		Senator Oban		X
Vice Chair J. Unruh	X		Senator Mathern		X
Senator H. Anderson	X				
Senator D. Dever	X				
Senator N. Poolman	X				

Total (Yes) 5 No 2

Absent 0

Floor Assignment Senator Oban

If the vote is on an amendment, briefly indicate intent:

- .02016 version
- .02025 into .02016
- Definition of "Ultimate and True Source" from .02010
- Definition of "Influencing State Government Action", "Lobby", & "Lobbyist" from .02010
- Section 25 from .02024
- Page 48, Line 23 of .02016 - Replace "consensus" w/ "majority"

REPORT OF STANDING COMMITTEE

HB 1521, as engrossed: Special Committee on Ethics (Sen. Hogue, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1521 was placed on the Sixth order on the calendar.

Page 1, line 4, replace "section" with "sections"

Page 1, line 5, remove "subsection 4 of section 16.1-08.1-02.1, sections 16.1-08.1-02.3, 16.1-08.1-02.4,"

Page 1, line 6, replace "16.1-08.1-03.1" with "16.1-08.1-03.7"

Page 1, line 6, remove "28-32-02,"

Page 1, line 7, remove "28-32-14,"

Page 1, line 8, remove "28-32-17, 28-32-18,"

Page 1, line 9, remove "28-32-27,"

Page 1, line 10, remove "disqualification of agency heads in quasi-judicial proceedings,"

Page 1, line 12, after the first semicolon insert "to provide for a legislative management study,"

Page 1, line 13, remove "to provide an expiration date;"

Page 1, line 19, remove "Adjusted for inflation" means adjusted on January first of each year by the change in

Page 1, remove lines 20 and 21

Page 1, line 22, remove "2."

Page 2, line 6, remove the overstrike over "~~2.~~"

Page 2, line 6, remove "3."

Page 2, line 13, remove the overstrike over "~~3.~~"

Page 2, line 13, remove "4."

Page 2, line 26, remove the overstrike over "~~4.~~"

Page 2, line 26, remove "5."

Page 3, line 3, remove the overstrike over "~~5.~~"

Page 3, line 3, remove "6."

Page 3, line 29, remove the overstrike over "~~6.~~"

Page 3, line 29, remove "7."

Page 4, line 4, remove the overstrike over "~~7.~~"

Page 4, line 4, remove "8."

Page 4, line 14, remove the overstrike over "~~8.~~"

Page 4, line 14, remove "9."

Page 4, line 21, remove the overstrike over "9."

Page 4, line 21, remove "10."

Page 4, line 26, remove the overstrike over "10."

Page 4, line 26, remove "11."

Page 4, line 28, remove the overstrike over "11."

Page 4, line 28, remove "12."

Page 5, line 1, remove the overstrike over "12."

Page 5, line 1, remove "13."

Page 5, line 4, remove the overstrike over "13."

Page 5, line 4, remove "14."

Page 5, line 26, remove the overstrike over "14."

Page 5, line 26, remove "15."

Page 5, line 30, remove the overstrike over "15."

Page 5, line 30, remove "16."

Page 6, line 10, remove the overstrike over "16."

Page 6, line 10, remove "17."

Page 6, line 12, remove the overstrike over "17."

Page 6, line 12, remove "18."

Page 6, line 14, replace "19." with "18."

Page 6, line 14, replace "who" with "that"

Page 6, line 15, remove ", adjusted for inflation,

Page 6, remove lines 17 through 30

Page 7, remove lines 1 through 31

Page 8, remove lines 1 through 31

Page 9, remove lines 1 through 29

Page 10, remove lines 1 through 31

Page 11, remove lines 1 through 31

Page 12, remove lines 1 through 31

Page 13, replace lines 1 through 6 with:

"SECTION 2. AMENDMENT. Section 16.1-08.1-03.7 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-03.7. Political committees that organize and register according to federal law that make independent expenditures or disbursements to nonfederal candidates, political parties, and political committees.

A political committee that organizes and registers according to federal law and makes an independent expenditure or makes a disbursement in excess of two hundred dollars to a nonfederal candidate seeking public office or to a political party or political committee in this state shall file a copy of that portion of the committee's federal report detailing the independent expenditure or the disbursement made. The political committee shall file a copy of the committee's federal report, and supplementary information as necessary under this section, with the secretary of state at the time of filing the report with the applicable federal agency. The report and supplementary information must include:

1. The name, mailing address, and treasurer of the political committee;
2. The recipient's name and mailing address; ~~and~~
3. The date and amount of the independent expenditure or disbursement; and
4. The ultimate and true source of funds listed by contributor and subcontributor of any amount over two hundred dollars collected or used to make the independent expenditure or disbursement including:
 - a. The name and address of the contributor;
 - b. The total amount of the contribution; and
 - c. The date the last contribution was received."

Page 13, line 17, remove "For the first violation, the secretary of state shall assess a civil penalty of five hundred"

Page 13, replace lines 18 through 21 with "The secretary of state shall assess a civil penalty upon any person that knowingly violates this section.

- a. If the contribution used in violation of this section has a value of two thousand five hundred dollars or more, the civil penalty must be two times the value of the contribution.
- b. If the contribution used in violation of this section has a value of less than two thousand five hundred dollars, the civil penalty must be at least two times the value of the contribution and may be up to five thousand dollars.
3. The assessment of a civil penalty may be appealed to the district court of the county where the candidate resides."

Page 13, line 24, remove "- Penalty"

Page 13, line 25, remove "1."

Page 13, line 25, replace "report" with "statement"

Page 13, remove lines 27 through 31

Page 18, remove lines 16 through 29

Page 19, remove lines 1 through 3

Page 19, line 7, remove "commission or an"

Page 19, line 7, after the second comma insert "or the commission"

Page 20, line 13, remove ", or"

Page 20, line 14, remove "the Constitution of North Dakota is amended to eliminate the authority"

Page 22, line 14, remove "or the commission"

Page 22, line 16, remove "or commission"

Page 22, line 18, remove "or commission"

Page 23, line 2, remove "or the commission"

Page 23, line 13, remove "or commission"

Page 23, line 14, remove "or commission"

Page 23, line 16, remove "or commission"

Page 23, line 17, after "to" insert "the ethics commission,"

Page 23, line 18, overstrike "nor does this section apply to" and insert immediately thereafter "and"

Page 24, line 7, remove "or the commission"

Page 26, line 11, remove "enacted during the most recent session of the"

Page 26, line 12, replace "legislative assembly which" with "that"

Page 28, remove lines 17 through 31

Page 29, line 6, after "rule" insert ", if any,"

Page 30, remove lines 9 through 31

Page 31, remove lines 1 through 31

Page 32, remove lines 1 through 31

Page 33, remove lines 1 and 2

Page 34, remove lines 11 through 30

Page 35, remove lines 1 through 24

Page 37, line 17, replace "government ethics" with "transparency, corruption, elections, or lobbying"

Page 37, line 18, remove "Adjusted for inflation means adjusted on January first of each year by the change in"

Page 37, remove lines 19 and 20

Page 37, line 21, remove "3."

Page 37, line 23, replace "4." with "3."

Page 37, line 25, replace "government ethics" with "transparency, corruption, elections, or lobbying"

Page 37, line 26, replace "5." with "4."

Page 37, line 28, replace "6." with "5."

Page 37, line 29, after "recreation" insert ", except:

- a. Purely informational material;
- b. A campaign contribution; and
- c. An item, service, or thing of value given under conditions that do not raise ethical concerns, as set forth in rules adopted by the ethics commission, to advance opportunities for state residents to meet with public officials in educational and social settings in the state"

Page 37, line 30, replace "7." with "6."

Page 37, line 30, remove "final"

Page 38, line 1, replace "8." with "7."

Page 38, line 2, replace "9." with "8."

Page 38, line 3, replace "10." with "9."

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Page 38, line 12, remove ", adjusted for"

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Page 38, line 16, replace "who" with "that"

Page 38, line 16, remove "adjusted for"

Page 38, line 17, replace "inflation" with "not including the individual's own travel expenses and membership dues"

Page 38, line 18, replace "The" with "A"

Page 38, line 19, after "report" insert "under this subsection"

Page 38, line 26, remove "within forty days after the deadlines"

Page 38, line 27, remove "by which the reports must be filed"

Page 38, remove lines 28 through 31

Page 39, remove lines 1 through 15

Page 39, line 18, remove "with a value over sixty dollars per"

Page 39, line 19, remove "individual per event, adjusted for inflation,"

Page 39, line 19, remove ", except to"

Page 39, remove lines 20 through 31

Page 40, remove line 1

Page 40, line 2, remove "by the ethics commission"

Page 40, line 4, remove the underscored colon

Page 40, line 5, replace "a. A" with "a"

Page 40, line 5, remove the underscored semicolon

Page 40, remove line 6

Page 40, line 7, remove "c. A campaign contribution"

Page 40, line 8, remove "For the first violation, the secretary of state shall assess a civil penalty of five hundred"

Page 40, replace lines 9 through 12 with "The secretary of state shall assess a civil penalty upon any individual who violates this section."

- a. If the gift has a value of five hundred dollars or more, the civil penalty must be two times the value of the gift.
- b. If the gift has a value of less than five hundred dollars, the civil penalty must be no less than two times the value of the gift and may be up to one thousand dollars.

Page 40, line 14, replace "Investigator" with "Office"

Page 40, line 19, remove "The ethics commission shall meet as necessary to address each complaint the"

Page 40, line 20, remove "commission receives."

Page 40, line 20, after "in" insert "a public hearing or"

Page 40, line 21, remove "or referral for enforcement under section 54-66-10"

Page 41, line 6, remove "Commission members shall hire or otherwise engage a part-time administrative"

Page 41, replace lines 7 through 10 with "The director of the office of management and budget shall allocate office space in the state capitol for the ethics commission, or, if office space in the capitol is unavailable, shall negotiate for, contract for, and obtain office space for the ethics commission in the city of Bismarck or in the Bismarck area. The ethics commission's office space may not be located in the office space of any other government agency, board, commission, or other governmental entity, and must provide sufficient privacy and security for the ethics commission to conduct its business. The director shall charge the ethics commission an amount equal to the fair value of the office space and related services the office of management and budget renders to the ethics commission."

Page 41, line 11, remove "- Identifying information - False complaints"

Page 41, line 12, remove "1."

Page 41, line 12, remove "When making a"

Page 41, remove lines 13 through 30

Page 42, remove lines 1 through 29

Page 43, replace lines 1 through 21 with:

"54-66-06. Informal resolution - Investigation - Referrals.

After receiving a complaint, the ethics commission may:

1. Attempt to negotiate or mediate an informal resolution between the accused individual and the complainant.
2. Investigate the allegations in the complaint.
3. Refer a matter described in or arising from a complaint to the bureau of criminal investigation or other appropriate law enforcement agency if a majority of the ethics commission members reasonably believes a crime was committed or the safety of the complainant is at risk.
4. Refer a complaint alleging a violation of open meetings or open records requirements to the attorney general, and the attorney general shall review the allegation under section 44-04-21.1 if the complaint was submitted to the ethics commission by the relevant deadline in section 44-04-21.1.

54-66-07. Ethics commission complaint - Informing the accused individual.

If, after investigating a complaint, the ethics commission decides to charge the accused individual with a violation of law, the ethics commission shall serve an ethics commission complaint against the accused individual and give the accused individual no less than twenty days to respond.

54-66-08. Informal resolutions - Public hearings - Referrals.

After serving an ethics commission complaint, the ethics commission may:

1. Resolve the charges in the ethics commission complaint informally with the accused individual; or
2. Hold a public hearing regarding the charges in the ethics commission complaint. The accused individual must be afforded due process, including an opportunity to respond to the charges.

54-66-09. Hearing findings - Penalties.

1. At the conclusion of a hearing, the ethics commission shall issue and make public its written findings of fact, conclusions of law, and any penalty authorized by law which the ethics commission imposes.
2. The written findings of fact must state whether the ethics commission believes, based on a preponderance of the evidence, as viewed by a reasonable person, 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.

54-66-10. Appeals.

An accused individual or complainant may appeal a finding of the ethics commission to the district court of the county where the accused individual resides."

Page 43, line 24, remove "determined the accused individual violated article XIV of"

Page 43, remove line 25

Page 43, line 26, replace "government ethics, and a court affirmed the determination if appealed" with "issued an ethics commission complaint"

Page 44, line 2, replace "54-66-07" with "54-66-06"

Page 44, line 10, replace "Willful publication" with "Publication"

Page 44, line 10, replace "who" with "that"

Page 44, line 11, replace "criminal defamation under section 12.1-15-01" with "a class B misdemeanor"

Page 44, line 12, replace "A public official who violates this section is guilty of a class C felony." with "The information deemed confidential in this section may be disclosed by the ethics commission if the accused individual agrees to the disclosure."

Page 44, replace lines 14 through 17 with "A knowing violation of subsection 2 of section 2 of article XIV of the Constitution of North Dakota is a class A misdemeanor. The ethics commission shall assess a civil penalty of up to one thousand dollars on any individual who knowingly violates the subsection."

Page 44, line 19, after "commission" insert "unless the commission objects to representation by the attorney general in a specific matter"

Page 44, line 27, replace "person" with "individual"

Page 44, line 27, remove "and may revoke the lobbyist's registration"

Page 44, line 29, after "misdemeanor" insert ", and, if the lobbyist is a registered lobbyist, the secretary of state may revoke the lobbyist's registration"

Page 44, after line 29, insert:

"54-66-15. Removal of ethics commission members.

1. An ethics commission member may be removed from office for:
 - a. Substantial neglect of duty;
 - b. Gross misconduct in office;
 - c. Violation of the commission's code of ethics; or
 - d. Willful or habitual neglect or refusal to perform the duties of the member.
2. Removal of an ethics commission member under subsection 1 requires agreement by a majority of:
 - a. The governor;
 - b. The majority leader of the senate; and

c. The minority leader of the senate.

SECTION 25. LEGISLATIVE MANAGEMENT STUDY - ETHICS COMMISSION AND LEGISLATIVE ASSEMBLY RESPONSIBILITIES. During the 2019-20 interim, the legislative management shall consider studying subsection 2 of section 1 of article XIV and subsections 1 through 5 of section 2 of article XIV of the Constitution of North Dakota, and the responsibilities of the legislative assembly and ethics commission under the subsections. The study committee must include members of the ethics commission as selected by the ethics commission. The study must include consideration of whether the civil and criminal sanctions for violations of the constitutional provisions are appropriate; whether additional authority is needed by the entity vested to implement, interpret, and enforce section 1 of article XIV; and effective means to educate public officials, lobbyists, and the public on the requirements of article XIV and other laws regarding government ethics. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-seventh legislative assembly."

Page 44, line 31, replace "\$300,000" with "\$517,155"

Page 45, line 3, replace "one and one-half" with "two"

Page 45, line 4, replace "1, 2, 3, 4, 5, and 7" with "1, 3, and 4"

Page 45, line 4, replace "section" with "sections"

Page 45, line 5, after "54-66-02" insert "and 54-66-03"

Page 45, line 5, replace "32" with "24"

Page 45, line 6, replace "2022" with "2021"

Page 45, remove lines 7 through 11

Page 45, line 12, after "Sections" insert "5, 6, 7,"

Page 45, line 13, after the first comma insert "and"

Page 45, line 13, remove ", 24, 25, 26, 27, 28, 29, 30, and 31"

Renumber accordingly

2019 CONFERENCE COMMITTEE

HB 1521

2019 HOUSE STANDING COMMITTEE MINUTES

Ethics Committee
Pioneer Room, State Capitol

HB 1521
4/22/2019
Job #34892

☐ Subcommittee
☒ Conference Committee

Committee Clerk Signature ReMae Kuehn

Explanation or reason for introduction of bill/resolution:

Relating to reporting campaign contributions, restrictions on public officials and lobbyists, investigations of ethics violations and to rulemaking procedures, disqualification of hearing officers, requirements for ND ethics commission.

Minutes:

Attachment #1

Version #19.1078.02038 (Attachment #1)

Senator Hogue: Page 1, “adjusted for inflation” is struck out. The threshold amounts will be adjusted anytime the inflation index requires a \$10 or more adjustment to that index.

Pages 6-12 are related to “adjusted for inflation” which why it is overstruck.

Page 13 was in the Senate version that went back to the House. It is a proposal that Senator Mathern brought forward that says we are requiring political committees to report expenditures. Why wouldn't we require them to report contributions/receipts.

Page 14, use of civil penalties. We set out a separate penalty which is substantially more than some of the other violations for using political contributions for personal gain.

Representative Mock: Is there still a criminal penalty associated with personal use of campaign contributions?

Chairman Jim Kasper: On line 13 it says a civil penalty.

Representative Mock: The way it passed the House was we had a civil penalty but subsequent offenses would be eligible for a class B misdemeanor which was consistent with current code.

Senator Hogue: I will check into that.

On the bottom of page 14, adjusting the reporting requirements, whether the amount is \$200 to \$250 is not a discretionary act. It is a ministerial act because someone has to figure out what the threshold should be. I don't think the legislature should be constantly putting in a bill to adjust the threshold. We are giving the Secretary of State the direction to do that as a ministerial task. That is new language. It was not in Version #.02030.

Senator Oban: If we keep it at \$200 and inflation goes to \$250, we are disclosing more than the constitution requires of us.

Senator Hogue: You "shall" adjust with inflation. If the discretion is gone, it is not a policy decision.

Chairman Jim Kasper: The measure says "adjust for inflation" and that is why you put this procedure in.

Senator Hogue: Page 15, the overstruck language about the resident taxpayer—I don't think should be removed. That provision is backed by Article XIV. I don't see the harm in including it when the constitution affords that right.

Page 19 and top of page 20 is consistent within the Senate. We are not permitting the legislative assembly to reserve the power to strike down whatever rules the Ethics Commission would pass.

Page 29 and top of page 30, the Attorney General also provides oversight into the executive branch rulemaking process. The Senate position is that the Attorney General should not be part of that. So we have stricken that.

Page 31 at the bottom--that is the authority for the legislative branch's administrative rules committee to strike down an executive branch rule outside the authority of the agency. The Senate struck that.

Page 35 at the bottom—we struck the language about the disqualification of a hearing officer. We need to give some guidance to the Ethics Commission. It is added in later.

Page 38, line 29 is a Senate position to provide clarity of what is government ethics. The constitution provides transparency, corruption, elections, or lobbying. It does not include open meetings and open records issues dealt with by the Attorney General's office.

Page 39, we kept the Senate's version of a "gift." The Senate feels we should just defer to the Ethics Commission for a definition. We don't want a dollar threshold.

On page 40, we have removed language concerning reporting requirements for what would be considered a gift.

Page 41, we have the Secretary of State making the adjustment for inflation. This is new. The gifts for lobbyists on the bottom of page 41, the Senate kept their definition with no threshold for dollars.

Senator Dever: Part of the rationale is the determination should be made by the Ethics Commission in their rules.

Chairman Jim Kasper: Can they change what is in the constitution?

Senator Dever: The constitution leaves that definition to them.

Senator Hogue: Page 42, we continue to adhere to the penalty for accepting a gift in violation of the gift prohibition.

Chairman Jim Kasper: The House had \$500 for the first offense and this is a multiple of \$500. So the Senate version is higher.

Senator Hogue: Page 43 is Senate language where we thought the Ethics Commission could secure its own office space and FTEs. We authorized the commission to contract through the Office of Management and Budget to lease their own space.

On the bottom of page 43, the constitution provides for a confidential hotline. The accused would not know who is making a complaint. I think that violates due process. I am proposing that we put that in. The complainant's identity should be known at the point the Ethics Commission decides to go ahead.

(24:20)

Page 46 provides protections for the accused. Knowing who the accuser is and the address would require the commission to make findings. Findings is what every administrative agency does when presented with a disputed case.

Page 47, subsection 3, added some from an earlier version. We make it clear that the Ethics Commission does not have jurisdiction to start terminating public officials or removing from office. Their job is to identify and sanction ethical violations.

Page 47, subsection 4, if the Ethics Commission identifies a violation by a department head, that will come after a hearing officer has made a decision in an adjudicated case. We don't want the Ethics Commission setting aside agency decisions.

Chairman Jim Kasper: Lines 13-15 have the appeal process?

Senator Hogue: Yes. Lines 17 and 18 when rules are adopted, they do so according to Chapter 28-32 of the Century Code.

Chairman Jim Kasper: This doesn't give the administrative rules committee the power to overrule the rules that the Ethics Commission adopts. They just follow the process.

Senator Hogue: Correct. On page 48, lines 9-11 is the amendment brought by Jack McDonald in the interest of transparency. Why should it be confidential if the accused doesn't object?

Page 48, lines 21-22, the Senate has always thought the Ethics Commission should be represented by Attorney General but if they object, they may hire their own attorney.

Page 49, the Senate thought we ought to have a way to remove Ethics Commission members. Since there is an appointment process there should be one for removal. This would be a removal-for-cause provision. The removal happens on the vote of two of the three appointing authorities.

The new section in lines 14-20 was not in the Senate version. It was in a committee amendment. We have ways in which a hearing officer should be disqualified for bias. What we added on line 17 is they should not be disqualified because of an investment in a mutual fund. That covers people who may have a retirement account.

Page 49 retained the Senate appropriation of \$517,155. This agency needs to be funded and equipped.

We tried to reduce the number of different expiration dates. It couldn't be done because Article XIV contains multiple dates.

Representative Louser: In Section 4, page 14, line 23, why would we adjust up from the \$200. We should just leave it there.

Senator Dever: At some point it needs to be adjusted for inflation. \$200 has not been adjusted since 1994.

Representative Louser: If the \$200 value becomes \$250 or more, according to the constitution we have to measure if inflation has exceeded that new proposed amount going back to January of 2019.

Senator Hogue: Looking at Article XIV, we have the discretion as long as the threshold is not over \$200. We could lower it if we so choose.

Chairman Jim Kasper: Adjourned.

2019 HOUSE STANDING COMMITTEE MINUTES

Ethics Committee
Pioneer Room, State Capitol

HB 1521
4/23/2019 a.m.
Job #34930

☐ Subcommittee
☒ Conference Committee

Committee Clerk Signature ReMae Kuehn

Explanation or reason for introduction of bill/resolution:

Relating to reporting campaign contributions, restrictions on public officials and lobbyists, investigations of ethics violations and to rulemaking procedures, disqualification of hearing officers, requirements for ND ethics commission.

Minutes:

Attachment #1

Version #19.1078.02039 (Attachment #1)

Chairman Jim Kasper: This version is mirroring Version #.02038. It adds four amendments.

1. Page 15, lines 11-15 are added back in.
 - a. It was originally in the House version sent to the Senate.
 - i. Senate overstruck House version.
 - b. Put back in to give taxpayers clarification. If a taxpayer took action, it would go to a preponderance of evidence. That is a lesser level of having to prove an occurrence.
2. Page 39, adding to definition of a complaint on line 6.
3. Page 41, lines 8 & 9 struck out.
 - a. Reduces the level that the taxpayer would have to prove
4. Page 49, line 4 is adding language from the constitution when a lobbyist "delivers"
 - a. From Measure 1 in the constitution

Senator Hogue: These are good amendments that make it easier for the reader in pursuing a remedy. We have taken Article XIV and put it into statute.

Page 15, Section 5, we will have to look at session to session. The underlying policy is extreme. It is in the constitution. There is nothing we can do about it. But when we draft laws, we try to exclude giving legal standing to any citizen to challenge an action of an administrative agency. That is what the Ethics Commission is. They will decide these ethical violations. This provision says anyone else can replicate what the Ethics Commission is doing. Article XIV did just the opposite. It has potential for lawsuits for people with resources. We will be revisiting this issue.

Senator Oban: I still believe we should remove Section 4 of Version #.02039. That would be on pages 14 and 15. Also page 41, lines 10-17.

Chairman Jim Kasper: That is the section that deals with adjusted for inflation. The measure in the constitution says “adjusted for inflation.” Is your concern that it is in this legislation or is it your concern that you believe it should be up to the Ethics Commission?

Senator Oban: I don’t believe it should be up to the Ethics Commission. It says in the constitution “at least \$200.” I think leave it at \$200 until we make a policy decision. If inflation takes us higher, that is fine. By leaving it at \$200, we are disclosing more than what the constitution requires.

Senator Oban: Moved to strike Section 4 and page 41, lines 10-17.

Representative Louser: Seconded the motion.

(12:43)

Senator Dever: Whether it is determined in this bill or down the road. Someone charged with a violation may argue the value isn’t the same as when this was adopted. It provides direction in the future. I will resist the motion.

Senator Hogue: I will also resist the motion. We don’t need to come back to keep introducing bills.

Chairman Jim Kasper: Reads #2 of Section 1 of Article XIV.
It appears the people who brought the measure wanted the “adjusted for inflation.” They gave the legislative body the authority to set the rules.

A Roll Call vote was taken: Yes 3, No 3, Absent 0.

Motion to amend failed due to a 3-3 tie.

Representative Mock: The Senate in HB 1521 did remove the “making a complaint” section regarding confidentiality for whistleblower. It is restored in version #.02039.

Senator Oban: It isn’t the Senate’s position and I disagree with it.

Chairman Jim Kasper: It is the House’s contention that we should have the due process in the bill. This doesn’t limit the Ethics Commission to using other means.

Language identifying the individual making a complaint.
Page 43 on Version #.02039, line 27
Page 44, line 13
Page 46, line 10, line 15, line 21
Page 47, lines 1-17

Once the person makes the complaint and meets with the accused, they are now out of the picture.

Senator Dever: I don't act on anything that I receive that is anonymous.

Representative Mock: The Senate removed all of that language. Section 3, subsection 2 of Article XIV, "The ethics commission shall maintain a confidential whistleblower hotline through which any person acting in good faith may submit relevant information."

I am concerned that it does require that we have a confidential whistleblower hotline. The language in the bill doesn't allow for a confidential hotline. It needs to be addressed

Chairman Jim Kasper: Version #.02039, bottom of page 47, your concern is addressed. It is confidential. This can't prohibit the whistleblower from revealing who they are.

Senator Dever: There is a difference between "confidential" and the word "anonymous." "Confidential" means the people that need to know do know who. But, they are prohibited from sharing that information.

Chairman Jim Kasper: Adjourned

2019 HOUSE STANDING COMMITTEE MINUTES

Ethics Committee
Pioneer Room, State Capitol

HB 1521
4/23/2019 p.m.
Job #34947

☐ Subcommittee
☒ Conference Committee

Committee Clerk Signature ReMae Kuehn

Explanation or reason for introduction of bill/resolution:

Relating to reporting campaign contributions, restrictions on public officials and lobbyists, investigations of ethics violations and to rulemaking procedures, disqualification of hearing officers, requirements for ND ethics commission.

Minutes:

Attachment #1

Version #19.1078.02041 (Attachment #1)

Chairman Jim Kasper: Page 48, lines 11-17 has one addition to Version #.02039. We had concern about protecting the identity of the person who files a complaint. The effort is to protect the person who files a complaint from that person's name being divulged to the public. The name would be disclosed with a criminal investigation but still confidential.

Senator Oban: The Ethics Commission will still be forced to disregard any complaint without name, address, and phone number?

Chairman Jim Kasper: Correct. The person making the complaint must identify themselves to the Ethics Commission.

Senator Oban: The complainant would be identified to the accused?

Chairman Jim Kasper: The accused would get a copy of the complaint and would know where it came from. There is a possibility for an informal hearing.

Representative Mock: I still have the concern that without the ability to call a tip line and raise a concern and do it anonymously. I am not comfortable with us dismissing any tip because they will not disclose their name. Police receive tips and even if anonymous they still investigate. It is not exclusively about criminal activity. It may be about concerns of impropriety or an interpretation of behavior. This pushes everything to hit a criminal threshold or not at all. That is the only thing holding me back on this bill.

Senator Dever: It might just be some indiscretion or some misunderstanding. It could be worked out between the accuser and the accused. In order to do that, it would be necessary to know who they are.

Senator Hogue: These confidential informants never work. You want to be able to cross examine and determine if there is bias. I get to confront my accuser where you attach a criminal sanction to my conduct. This entire bill imposes criminal sanctions on various ethical violations. Measure 1 has incorporated an unconstitutional provision within our state constitution. Even though Article XIV says you get a confidential whistleblower hotline doesn't mean that accuser gets to stay confidential.

Chairman Jim Kasper: Refers to the Constitution of U.S. Reads the following:
--Fifth Amendment. "No person shall be held to answer for a capital or otherwise infamous crime . . ."
--Sixth Amendment. "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial . . ."

--Article XIV of the North Dakota Constitution. "No state shall make or enforce any law . . ."

Someone being accused is able to face their accuser.

Senator Oban: The Ethics Commission would come to that conclusion on their own. We wouldn't have to tell them to disregard an anonymous tip that comes in.

Chairman Jim Kasper: We don't know who the five commissioners are and they can adopt their own rules. This would be a guideline.

Representative Mock: On page 43, "making a complaint", when you removed the language in that section and it was left only to a complaint that may be made orally or in writing. How did the Senate envision due process?

Senator Hogue: The Senate Ethics Committee was divided on that. I have maintained that the Ethics Commission needs to adopt its own rules. I believe we should have some guidance. We need something in place until they adopt their rules. I am alright with what the House is urging.

Representative Mock: What was the effective date of the commission and complaint line?

Senator Hogue: It leaves it to the legislature to do it within a couple years of the effective date of Article XIV. I don't support a delayed effective date though the article does authorize it.

Representative Mock: What happens where a complainant would have a name, but no address or phone number?

Senator Hogue: Those cases are never brought without a witness.

Representative Mock: What if you just don't have a telephone number?

Representative Louser: Moved that the Senate recede from Senate amendments and amend by adopting Version #.02041.

Senator Dever: Seconded the motion.

Representative Mock: I will resist the motion because of the identifiable information and confidential tip. I want that part to be correct. We may be discouraging people from pointing out areas that we need to address.

Senator Dever: This is a work in progress. When we come back next session, we can make adjustments based on how the Ethics Commission dealt with it.

Chairman Jim Kasper: We try to do the right things for the right reasons.

A Roll Call vote was taken: Yes 4, No 2, Absent 0.

Motion passed.

Representative Kasper is the House Carrier.

Senator Dever is the Senate Carrier.

1 **16.1-08.1-04.1. Personal use of contributions prohibited.**

2 1. A candidate may not use any contribution received by the candidate, the candidate's
3 candidate committee, or a multicandidate political committee to:

- 4 1- a. Give a personal benefit to the candidate or another person;
5 2- b. Make a loan to another person;
6 3- c. Knowingly pay more than the fair market value for goods or services purchased
7 for the campaign; or
8 4- d. Pay a criminal fine or civil penalty.

9 2. ~~For the first violation, the secretary of state shall assess a civil penalty of five hundred~~
10 ~~dollars upon any person who knowingly violates this section. The assessment of a civil~~
11 ~~penalty may be appealed to the district court of Burleigh County. For a second and~~
12 ~~subsequent knowing violation of this section, the person is guilty of a class B~~
13 ~~misdemeanor.~~ The secretary of state shall assess a civil penalty upon any person that
14 knowingly violates this section.

15 a. If the contribution used in violation of this section has a value of two thousand
16 five hundred dollars or more, the civil penalty must be two times the value of the
17 contribution.

18 b. If the contribution used in violation of this section has a value of less than two
19 thousand five hundred dollars, the civil penalty must be at least two times the
20 value of the contribution and may be up to five thousand dollars.

21 3. The assessment of a civil penalty may be appealed to the district court of the county
22 where the candidate resides.

23 **SECTION 4. AMENDMENT.** Section 16.1-08.1-06.2 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **16.1-08.1-06.2. Secretary of state to provide instructions, make adjustments for**
26 **inflation, and conduct training.**

27 The secretary of state shall provide instructions and conduct training for the purpose of
28 promoting uniform application of campaign finance and disclosure requirements and the uniform
29 filing of statements, registrations, or reports according to this chapter. The secretary also shall
30 determine adjustments for inflation of the reporting thresholds in this chapter and instruct
31 persons submitting reports under this chapter of the adjustments. On January first of each year,

1 the secretary shall determine whether the accumulated change in the consumer price index for
2 all urban consumers (all items, United States city average), as applied to each reporting
3 threshold in this chapter, would result in an adjustment of at least ten dollars of the threshold in
4 effect on that date. If so, the secretary shall deem the reporting threshold adjusted by ten
5 dollars.

6 **SECTION 5.** A new section to chapter 16.1-08.1 of the North Dakota Century Code is
7 created and enacted as follows:

8 **Ultimate and true source of funds - Required identification - Penalty.**

- 9 1. In any ~~report~~ statement under this chapter which requires the identification of a
10 contributor or subcontributor, the ultimate and true source of funds must be identified.
11 2. A resident taxpayer may commence an action in a district court of this state against a
12 person required to comply with this section to compel compliance if all other
13 enforcement measures under this chapter have been exhausted and the taxpayer
14 reasonably believes the person has failed to comply with this section. A failure to
15 comply with this section must be proved by clear and convincing evidence.

16 **SECTION 6. AMENDMENT.** Section 28-32-01 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **28-32-01. Definitions.**

19 In this chapter, unless the context or subject matter otherwise provides:

- 20 1. "Adjudicative proceeding" means an administrative matter resulting in an agency
21 issuing an order after an opportunity for hearing is provided or required. An
22 adjudicative proceeding includes administrative matters involving a hearing on a
23 complaint against a specific-named respondent; a hearing on an application seeking a
24 right, privilege, or an authorization from an agency, such as a ratemaking or licensing
25 hearing; or a hearing on an appeal to an agency. An adjudicative proceeding includes
26 reconsideration, rehearing, or reopening. Once an adjudicative proceeding has begun,
27 the adjudicative proceeding includes any informal disposition of the administrative
28 matter under section 28-32-22 or another specific statute or rule, unless the matter
29 has been specifically converted to another type of proceeding under section 28-32-22.
30 An adjudicative proceeding does not include a decision or order to file or not to file a
31 complaint, or to initiate an investigation, an adjudicative proceeding, or any other

1 ~~e. Providing an educational or social setting in the state to provide an opportunity~~
2 ~~for individuals to meet with public officials; and~~

3 ~~f. A good or service determined not to raise ethical concerns under rules adopted~~
4 ~~by the ethics commission.~~

5 ~~5. A resident taxpayer may commence an action in a district court of this state against a~~
6 ~~person required to comply with this section to compel compliance if all other~~
7 ~~enforcement measures under this chapter have been exhausted and the taxpayer~~
8 ~~reasonably believes the person has failed to comply with this section. A failure to~~
9 ~~comply with this section must be proved by clear and convincing evidence.~~

10 5. The secretary of state shall determine adjustments for inflation of the reporting
11 thresholds in this section and instruct persons submitting reports under this section of
12 the adjustments. On January first of each year, the secretary shall determine whether
13 the accumulated change in the consumer price index for all urban consumers (all
14 items, United States city average), as applied to each reporting threshold in this
15 section, would result in an adjustment of at least ten dollars of the threshold in effect
16 on that date. If so, the secretary of state shall deem the reporting threshold adjusted
17 by ten dollars.

18 **54-66-03. Lobbyist gifts - Penalty.**

19 1. A lobbyist may not give, offer, solicit, initiate, or facilitate a gift knowingly to a public
20 official, and a public official may not accept a gift with a value over sixty dollars per
21 individual per event, adjusted for inflation, from a lobbyist knowingly, except to
22 advance opportunities for state residents to meet with public officials in educational
23 and social settings in the state under conditions that do not raise ethical concerns,
24 including:

25 ~~a. Reimbursement for travel, meal, and refreshment expenses incurred to, from, or~~
26 ~~during a conference, seminar, or other legitimate educational opportunity for the~~
27 ~~public official if the conference, seminar, or educational opportunity concerns~~
28 ~~issues germane to the official duties of the public official;~~

29 ~~b. Providing information, advice, or education to a public official;~~

30 ~~c. Providing meals and refreshments while informing, advising, or educating a~~
31 ~~public official about issues germane to the official duties of the public official;~~

DO 4/23/19
1 of 1

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1521

That the Senate recede from its amendments as printed on pages 1899-1907 of the House Journal and pages 1660-1668 of the Senate Journal and that Engrossed House Bill No. 1521 be amended as follows:

Page 1, line 4, replace "section" with "sections"

Page 1, line 5, remove "subsection 4 of section 16.1-08.1-02.1, sections 16.1-08.1-02.3, 16.1-08.1-02.4,"

Page 1, line 6, replace "16.1-08.1-03.1" with "16.1-08.1-03.7"

Page 1, line 6, after "16.1-08.1-04.1" insert "16.1-08.1-06.2"

Page 1, line 6, remove "28-32-02,"

Page 1, line 7, remove "28-32-14,"

Page 1, line 8, remove "28-32-17, 28-32-18,"

Page 1, line 9, remove "28-32-27,"

Page 1, line 10, remove "disqualification of agency heads in quasi-judicial proceedings,"

Page 1, line 12, after the first semicolon insert "to provide for a legislative management study;"

Page 1, line 13, remove "to provide an expiration date;"

Page 1, line 19, remove ""Adjusted for inflation" means adjusted on January first of each year by the change in"

Page 1, remove lines 20 and 21

Page 1, line 22, remove "2."

Page 2, line 6, remove the overstrike over "2."

Page 2, line 6, remove "3."

Page 2, line 13, remove the overstrike over "3."

Page 2, line 13, remove "4."

Page 2, line 26, remove the overstrike over "4."

Page 2, line 26, remove "5."

Page 3, line 3, remove the overstrike over "5."

Page 3, line 3, remove "6."

Page 3, line 29, remove the overstrike over "6."

Page 3, line 29, remove "7."

Page 4, line 4, remove the overstrike over "7."

Page 4, line 4, remove "8."

Page 4, line 14, remove the overstrike over "~~8.~~"

Page 4, line 14, remove "9."

Page 4, line 21, remove the overstrike over "~~9.~~"

Page 4, line 21, remove "10."

Page 4, line 26, remove the overstrike over "~~10.~~"

Page 4, line 26, remove "11."

Page 4, line 28, remove the overstrike over "~~11.~~"

Page 4, line 28, remove "12."

Page 5, line 1, remove the overstrike over "~~12.~~"

Page 5, line 1, remove "13."

Page 5, line 4, remove the overstrike over "~~13.~~"

Page 5, line 4, remove "14."

Page 5, line 26, remove the overstrike over "~~14.~~"

Page 5, line 26, remove "15."

Page 5, line 30, remove the overstrike over "~~15.~~"

Page 5, line 30, remove "16."

Page 6, line 10, remove the overstrike over "~~16.~~"

Page 6, line 10, remove "17."

Page 6, line 12, remove the overstrike over "~~17.~~"

Page 6, line 12, remove "18."

Page 6, line 14, replace "19." with "18."

Page 6, line 14, replace "who" with "that"

Page 6, line 15, remove ", adjusted for inflation,"

Page 6, remove lines 17 through 30

Page 7, remove lines 1 through 31

Page 8, remove lines 1 through 31

Page 9, remove lines 1 through 29

Page 10, remove lines 1 through 31

Page 11, remove lines 1 through 31

Page 12, remove lines 1 through 31

Page 13, replace lines 1 through 6 with:

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"SECTION 2. AMENDMENT. Section 16.1-08.1-03.7 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-03.7. Political committees that organize and register according to federal law that make independent expenditures or disbursements to nonfederal candidates, political parties, and political committees.

A political committee that organizes and registers according to federal law and makes an independent expenditure or makes a disbursement in excess of two hundred dollars to a nonfederal candidate seeking public office or to a political party or political committee in this state shall file a copy of that portion of the committee's federal report detailing the independent expenditure or the disbursement made. The political committee shall file a copy of the committee's federal report, and supplementary information as necessary under this section, with the secretary of state at the time of filing the report with the applicable federal agency. The report and supplementary information must include:

1. The name, mailing address, and treasurer of the political committee;
2. The recipient's name and mailing address; ~~and~~
3. The date and amount of the independent expenditure or disbursement; and
4. The ultimate and true source of funds listed by contributor and subcontributor of any amount over two hundred dollars collected or used to make the independent expenditure or disbursement including:
 - a. The name and address of the contributor;
 - b. The total amount of the contribution; and
 - c. The date the last contribution was received."

Page 13, line 17, remove "For the first violation, the secretary of state shall assess a civil penalty of five hundred"

Page 13, replace lines 18 through 21 with "The secretary of state shall assess a civil penalty upon any person that knowingly violates this section.

- a. If the contribution used in violation of this section has a value of two thousand five hundred dollars or more, the civil penalty must be two times the value of the contribution.
- b. If the contribution used in violation of this section has a value of less than two thousand five hundred dollars, the civil penalty must be at least two times the value of the contribution and may be up to five thousand dollars.
3. The assessment of a civil penalty may be appealed to the district court of the county where the candidate resides.

SECTION 4. AMENDMENT. Section 16.1-08.1-06.2 of the North Dakota Century Code is amended and reenacted as follows:

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16.1-08.1-06.2. Secretary of state to provide instructions, make adjustments for inflation, and conduct training.

The secretary of state shall provide instructions and conduct training for the purpose of promoting uniform application of campaign finance and disclosure requirements and the uniform filing of statements, registrations, or reports according to this chapter. The secretary also shall determine adjustments for inflation of the reporting thresholds in this chapter and instruct persons submitting reports under this chapter of the adjustments. On January first of each year, the secretary shall determine whether the accumulated change in the consumer price index for all urban consumers (all items, United States city average), as applied to each reporting threshold in this chapter, would result in an adjustment of at least ten dollars of the threshold in effect on that date. If so, the secretary shall deem the reporting threshold adjusted by ten dollars."

Page 13, line 24, remove "**- Penalty**"

Page 13, line 25, replace "report" with "statement"

Page 13, line 30, remove "A failure to"

Page 13, remove line 31

Page 18, remove lines 16 through 29

Page 19, remove lines 1 through 3

Page 19, line 7, remove "commission or an"

Page 19, line 7, after the second comma insert "or the commission"

Page 20, line 13, remove ", or"

Page 20, line 14, remove "the Constitution of North Dakota is amended to eliminate the authority"

Page 22, line 14, remove "or the commission"

Page 22, line 16, remove "or commission"

Page 22, line 18, remove "or commission"

Page 23, line 2, remove "or the commission"

Page 23, line 13, remove "or commission"

Page 23, line 14, remove "or commission"

Page 23, line 16, remove "or commission"

Page 23, line 17, after "to" insert "the ethics commission,"

Page 23, line 18, overstrike "nor does this section apply to" and insert immediately thereafter "and"

Page 24, line 7, remove "or the commission"

Page 26, line 11, remove "enacted during the most recent session of the"

Page 26, line 12, replace "legislative assembly which" with "that"

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Page 28, remove lines 17 through 31

Page 29, line 6, after "rule" insert ", if any,"

Page 30, remove lines 9 through 31

Page 31, remove lines 1 through 31

Page 32, remove lines 1 through 31

Page 33, remove lines 1 and 2

Page 34, remove lines 11 through 30

Page 35, remove lines 1 through 24

Page 37, line 15, replace "an individual" with "a lobbyist, public official, candidate for public office, political committee, or contributor"

Page 37, line 17, replace "government ethics" with "transparency, corruption, elections, or lobbying"

Page 37, line 18, remove "Adjusted for inflation" means adjusted on January first of each year by the change in"

Page 37, remove lines 19 and 20

Page 37, line 21, remove "3."

Page 37, line 23, replace "4." with "3."

Page 37, line 23, after "that" insert "a lobbyist, public official, candidate for public office, political committee, or contributor has violated"

Page 37, line 25, replace "government ethics has been violated" with "transparency, corruption, elections, or lobbying"

Page 37, line 26, replace "5." with "4."

Page 37, line 28, replace "6." with "5."

Page 37, line 29, after "recreation" insert ", except:"

- a. Purely informational material;
- b. A campaign contribution; and
- c. An item, service, or thing of value given under conditions that do not raise ethical concerns, as set forth in rules adopted by the ethics commission, to advance opportunities for state residents to meet with public officials in educational and social settings in the state"

Page 37, line 30, replace "7." with "6."

Page 37, line 30, remove "final"

Page 38, line 1, replace "8." with "7."

Page 38, line 2, replace "9." with "8."

Page 38, line 3, replace "10." with "9."

Page 38, line 6, replace "11." with "10."

Page 38, line 8, replace "12." with "11."

Page 38, line 9, remove ", adjusted for inflation,"

Page 38, line 12, remove ", adjusted for"

Page 38, line 13, remove "inflation,"

Page 38, line 16, replace "who" with "that"

Page 38, line 16, remove "adjusted for"

Page 38, line 17, replace "inflation" with "not including the individual's own travel expenses and membership dues"

Page 38, line 18, replace "The" with "A"

Page 38, line 19, after "report" insert "under this subsection"

Page 38, line 26, remove "within forty days after the deadlines"

Page 38, line 27, remove "by which the reports must be filed"

Page 38, line 28, remove "This section does not require a person to report the ultimate and true source of funds"

Page 38, remove lines 29 through 31

Page 39, remove lines 1 through 10

Page 39, line 11, remove "5."

Page 39, line 14, remove "A failure to"

Page 39, replace line 15 with:

"5. The secretary of state shall determine adjustments for inflation of the reporting thresholds in this section and instruct persons submitting reports under this section of the adjustments. On January first of each year, the secretary shall determine whether the accumulated change in the consumer price index for all urban consumers (all items, United States city average), as applied to each reporting threshold in this section, would result in an adjustment of at least ten dollars of the threshold in effect on that date. If so, the secretary of state shall deem the reporting threshold adjusted by ten dollars."

Page 39, line 18, remove "with a value over sixty dollars per"

Page 39, line 19, remove "individual per event, adjusted for inflation,"

Page 39, line 19, remove ", except to"

Page 39, remove lines 20 through 31

Page 40, remove lines 1

Page 40, line 2, remove "by the ethics commission"

Page 40, line 4, remove the underscored colon

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Page 40, line 5, replace "a. A" with "a"

Page 40, line 5, remove the underscored semicolon

Page 40, remove line 6

Page 40, line 7, remove "c. A campaign contribution"

Page 40, line 8, remove "For the first violation, the secretary of state shall assess a civil penalty of five hundred"

Page 40, replace lines 9 through 12 with "The secretary of state shall assess a civil penalty upon any individual who violates this section."

a. If the gift has a value of five hundred dollars or more, the civil penalty must be two times the value of the gift.

b. If the gift has a value of less than five hundred dollars, the civil penalty must be no less than two times the value of the gift and may be up to one thousand dollars."

Page 40, line 14, replace "Investigator" with "Office"

Page 40, line 19, remove "The ethics commission shall meet as necessary to address each complaint the"

Page 40, line 20, remove "commission receives."

Page 40, line 21, replace "54-66-10" with "54-66-09"

Page 41, line 6, remove "Commission members shall hire or otherwise engage a part-time administrative"

Page 41, replace lines 7 through 10 with "The director of the office of management and budget shall allocate office space in the state capitol for the ethics commission, or, if office space in the capitol is unavailable, shall negotiate for, contract for, and obtain office space for the ethics commission in the city of Bismarck or in the Bismarck area. The ethics commission's office space may not be located in the office space of any other government agency, board, commission, or other governmental entity, and must provide sufficient privacy and security for the ethics commission to conduct its business. The director shall charge the ethics commission an amount equal to the fair value of the office space and related services the office of management and budget renders to the ethics commission."

Page 41, line 11, remove "- Identifying information - False complaints"

Page 41, line 12, remove "1."

Page 41, line 12, after "writing" insert ". If a complainant does not provide the complainant's name, address, and telephone number with the complaint, the ethics commission may not investigate, refer, or take other action regarding the complaint. The commission shall summarize each oral complaint in writing unless the complaint must be disregarded under this section"

Page 41, line 12, remove "When making a"

Page 41, remove lines 13 through 23

Page 41, line 28, replace "ten" with "twenty"

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Page 41, line 29, replace "ten" with "twenty"

Page 42, line 2, replace "may" with "shall"

Page 42, line 3, after "complainant" insert "unless the commission disregards the complaint pursuant to section 54-66-05 or for any other reason. The accused individual may be accompanied by legal counsel in a negotiation or mediation"

Page 42, remove lines 4 through 29

Page 43, replace lines 1 through 21 with:

"54-66-08. Investigations - Referrals.

1. If an informal resolution is not reached under section 54-66-07, the ethics commission may:
 - a. Disregard the complaint;
 - b. Require ethics commission staff to investigate the allegations in the complaint; or
 - c. Engage an outside investigator to investigate allegations in the complaint.
2. If the commission believes a complaint contains allegations of criminal conduct, the ethics commission shall refer the allegations of criminal conduct to the bureau of criminal investigations or other law enforcement agency and may not take further action on the referred allegations. The commission shall inform the accused individual by registered mail of a referral under this section and the nature of the referred allegations as soon as reasonably possible.

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

1. An investigator, other than a law enforcement agency, of a complaint shall provide written findings of the investigation to the ethics commission within a reasonable amount of time. The ethics commission shall provide copies of the written findings to the accused individual, who may respond to the commission in person or in writing within a reasonable time. If the accused individual responds in person, no fewer than three members of the commission shall meet in a closed meeting with the accused individual. An accused individual may be accompanied by legal counsel when responding to the commission in person.
2. After providing a reasonable time for an accused individual 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 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.

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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.

54-66-10. Appeals.

An accused individual may appeal a finding of the ethics commission to the district court of the county where the accused individual resides.

54-66-11. Rulemaking.

When adopting rules, the ethics commission shall follow the provisions in chapter 28-32 which are specifically applicable to the commission."

Page 43, line 22, replace "**54-66-11.**" with "**54-66-12.**"

Page 43, line 22, remove "**- Penalty**"

Page 43, line 26, replace "government ethics" with "transparency, corruption, elections, or lobbying."

Page 43, line 30, remove "or"

Page 43, line 31, remove "complainant"

Page 44, line 5, remove "or"

Page 44, line 6, remove "complainant"

Page 44, line 10, remove "Willful publication of information included in subsections 1 and 2 by a person who"

Page 44, line 11, replace "knows the information to be false is criminal defamation under section 12.1-15-01" with "Information that reasonably may be used to identify the complainant is confidential unless the complainant waives confidentiality, authorizes its disclosure, or divulges information that reasonably would identify the complainant. However, the ethics commission shall notify an accused individual of the identity of the complainant who made an allegation against the accused individual, and the information deemed confidential under this subsection may be disclosed as required by law or as necessary to conduct an investigation arising from a complaint"

Page 44, line 12, replace "A public official who violates this section is guilty of a class C felony." with "The information deemed confidential in subsections 1 and 2 may be disclosed by the ethics commission if the accused individual agrees to the disclosure."

Page 44, line 13, replace "**54-66-12.**" with "**54-66-13.**"

Page 44, replace lines 14 through 17 with "A knowing violation of subsection 2 of section 2 of article XIV of the Constitution of North Dakota is a class A misdemeanor. The ethics commission shall assess a civil penalty of up to one thousand dollars on any individual who knowingly violates the subsection."

Page 44, line 18, replace "**54-66-13.**" with "**54-66-14.**"

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Page 44, line 19, after "commission" insert "unless the commission objects to representation by the attorney general in a specific matter"

Page 44, line 23, replace "54-66-14." with "54-66-15."

Page 44, line 27, replace "person" with "individual"

Page 44, line 27, remove "and may revoke the lobbyist's registration"

Page 44, line 29, after "misdemeanor" insert ", and, if the lobbyist is a registered lobbyist, the secretary of state may revoke the lobbyist's registration. For purposes of this section, 'deliver' means to transport, transfer, or otherwise transmit, either physically or electronically. This prohibition does not apply to an individual who delivers a campaign contribution to the individual's own campaign or to the campaign of the individual's immediate family member. This prohibition may not be interpreted to prohibit any person from making a campaign contribution, encouraging others to make a campaign contribution, or otherwise supporting or opposing a candidate."

54-66-16. Removal of ethics commission members.

1. An ethics commission member may be removed from office for:
 - a. Substantial neglect of duty;
 - b. Gross misconduct in office;
 - c. Violation of the commission's code of ethics; or
 - d. Willful or habitual neglect or refusal to perform the duties of the member.
2. Removal of an ethics commission member under subsection 1 requires agreement by a majority of:
 - a. The governor;
 - b. The majority leader of the senate; and
 - c. The minority leader of the senate.

54-66-17. Participation in quasi-judicial proceedings.

For purposes of subsection 5 of section 2 of article XIV of the Constitution of North Dakota, an individual is not disqualified from participating in any capacity in a quasi-judicial proceeding, including an adjudicative proceeding under chapter 28-32, due to an investment in a mutual fund, an ownership interest in one of the parties to the proceeding which is shared by the general public, and an investment or ownership interest in a retirement account of one of the parties to the proceeding"

Page 44, line 31, replace "\$300,000" with "\$517,155"

Page 45, line 3, replace "one and one-half" with "two"

Page 45, line 4, replace "1, 2, 3, 4, 5, and 7" with "1, 3, 4, and 5"

Page 45, line 4, replace "section" with "sections"

Page 45, line 5, after "54-66-02" insert "and 54-66-03"

Page 45, line 5, replace "32" with "25"

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Page 45, line 6, replace "2022" with "2021"

Page 45, remove lines 7 through 11

Page 45, line 12, after "Sections" insert "6, 7,"

Page 45, line 13, after the first comma insert "and"

Page 45, line 13, replace ", 24, 25, 26, 27, 28, 29, 30, and 31" with ", and 24"

Renumber accordingly

**2019 HOUSE CONFERENCE COMMITTEE
ROLL CALL VOTES**

BILL/RESOLUTION NO. **HB 1521** as (re) engrossed

House Ethics Committee

- Action Taken**
- ☐ HOUSE accede to Senate Amendments
 - ☐ HOUSE accede to Senate Amendments and further amend
 - ☐ SENATE recede from Senate amendments
 - ☐ SENATE recede from Senate amendments and amend as follows
 - ☒ **Amendment to Version #.02039**
 - ☐ **Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Senator Oban Seconded by: Representative Louser

Representatives				Yes	No	Senators				Yes	No
Representative Kasper					X	Senator Dever					X
Representative Louser				X		Senator Hogue					X
Representative Mock				X		Senator Oban				X	
Total Rep. Vote				2	1	Total Senate Vote				1	2

Vote Count Yes: 3 No: 3 Absent: 0

House Carrier _____ Senate Carrier _____

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

Remove lines dealing with "adjusted for inflation"
Section 4 of Version #.02039 on pages 14 and 15.
Also lines 10-17, page 41.

Motion failed

Date: 4/23/2019
Roll Call Vote #: 2 (p.m.)

**2019 HOUSE CONFERENCE COMMITTEE
ROLL CALL VOTES**

BILL/RESOLUTION NO. **HB 1521** as (re)engrossed

House Ethics Committee

- Action Taken ☐ HOUSE accede to Senate Amendments
☐ HOUSE accede to Senate Amendments and further amend
☐ SENATE recede from Senate amendments
☒ SENATE recede from Senate amendments and amend as follows
- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Representative Louser Seconded by: Senator Dever

Representatives	4/22	4/23 a.m.	4/23 p.m.	Yes	No	Senators	4/22	4/23 a.m.	4/23 p.m.	Yes	No
Representative Kasper	X	X	X	X		Senator Dever	X	X	X	X	
Representative Louser	X	X	X	X		Senator Hogue	X	X	X	X	
Representative Mock	X	X	X		X	Senator Oban	X	X	X		X
Total Rep. Vote				2	1	Total Senate Vote				2	1

Vote Count Yes: 4 No: 2 Absent: 0

House Carrier Representative Kasper Senate Carrier Senator Dever

LC Number 19.1078 . 02041 of amendment

LC Number 19.1078 . 04000 of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

Insert LC: 19.1078.02041
House Carrier: Kasper
Senate Carrier: Dever

REPORT OF CONFERENCE COMMITTEE

HB 1521, as engrossed: Your conference committee (Sens. Dever, Hogue, Oban and Reps. Kasper, Louser, Mock) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ pages 1899-1907, adopt amendments as follows, and place HB 1521 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1899-1907 of the House Journal and pages 1660-1668 of the Senate Journal and that Engrossed House Bill No. 1521 be amended as follows:

Page 1, line 4, replace "section" with "sections"

Page 1, line 5, remove "subsection 4 of section 16.1-08.1-02.1, sections 16.1-08.1-02.3, 16.1-08.1-02.4,"

Page 1, line 6, replace "16.1-08.1-03.1" with "16.1-08.1-03.7"

Page 1, line 6, after "16.1-08.1-04.1" insert "16.1-08.1-06.2"

Page 1, line 6, remove "28-32-02,"

Page 1, line 7, remove "28-32-14,"

Page 1, line 8, remove "28-32-17, 28-32-18,"

Page 1, line 9, remove "28-32-27,"

Page 1, line 10, remove "disqualification of agency heads in quasi-judicial proceedings,"

Page 1, line 12, after the first semicolon insert "to provide for a legislative management study,"

Page 1, line 13, remove "to provide an expiration date;"

Page 1, line 19, remove ""Adjusted for inflation" means adjusted on January first of each year by the change in"

Page 1, remove lines 20 and 21

Page 1, line 22, remove "2."

Page 2, line 6, remove the overstrike over "2."

Page 2, line 6, remove "3."

Page 2, line 13, remove the overstrike over "3."

Page 2, line 13, remove "4."

Page 2, line 26, remove the overstrike over "4."

Page 2, line 26, remove "5."

Page 3, line 3, remove the overstrike over "5."

Page 3, line 3, remove "6."

Page 3, line 29, remove the overstrike over "6."

Page 3, line 29, remove "7."

Page 4, line 4, remove the overstrike over "~~7.~~"

Page 4, line 4, remove "8."

Page 4, line 14, remove the overstrike over "~~8.~~"

Page 4, line 14, remove "9."

Page 4, line 21, remove the overstrike over "~~9.~~"

Page 4, line 21, remove "10."

Page 4, line 26, remove the overstrike over "~~10.~~"

Page 4, line 26, remove "11."

Page 4, line 28, remove the overstrike over "~~11.~~"

Page 4, line 28, remove "12."

Page 5, line 1, remove the overstrike over "~~12.~~"

Page 5, line 1, remove "13."

Page 5, line 4, remove the overstrike over "~~13.~~"

Page 5, line 4, remove "14."

Page 5, line 26, remove the overstrike over "~~14.~~"

Page 5, line 26, remove "15."

Page 5, line 30, remove the overstrike over "~~15.~~"

Page 5, line 30, remove "16."

Page 6, line 10, remove the overstrike over "~~16.~~"

Page 6, line 10, remove "17."

Page 6, line 12, remove the overstrike over "~~17.~~"

Page 6, line 12, remove "18."

Page 6, line 14, replace "19." with "18."

Page 6, line 14, replace "who" with "that"

Page 6, line 15, remove ", adjusted for inflation."

Page 6, remove lines 17 through 30

Page 7, remove lines 1 through 31

Page 8, remove lines 1 through 31

Page 9, remove lines 1 through 29

Insert LC: 19.1078.02041
House Carrier: Kasper
Senate Carrier: Dever

Page 10, remove lines 1 through 31

Page 11, remove lines 1 through 31

Page 12, remove lines 1 through 31

Page 13, replace lines 1 through 6 with:

"SECTION 2. AMENDMENT. Section 16.1-08.1-03.7 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-03.7. Political committees that organize and register according to federal law that make independent expenditures or disbursements to nonfederal candidates, political parties, and political committees.

A political committee that organizes and registers according to federal law and makes an independent expenditure or makes a disbursement in excess of two hundred dollars to a nonfederal candidate seeking public office or to a political party or political committee in this state shall file a copy of that portion of the committee's federal report detailing the independent expenditure or the disbursement made. The political committee shall file a copy of the committee's federal report, and supplementary information as necessary under this section, with the secretary of state at the time of filing the report with the applicable federal agency. The report and supplementary information must include:

1. The name, mailing address, and treasurer of the political committee;
2. The recipient's name and mailing address; ~~and~~
3. The date and amount of the independent expenditure or disbursement; and
4. The ultimate and true source of funds listed by contributor and subcontributor of any amount over two hundred dollars collected or used to make the independent expenditure or disbursement including:
 - a. The name and address of the contributor;
 - b. The total amount of the contribution; and
 - c. The date the last contribution was received."

Page 13, line 17, remove "For the first violation, the secretary of state shall assess a civil penalty of five hundred"

Page 13, replace lines 18 through 21 with "The secretary of state shall assess a civil penalty upon any person that knowingly violates this section.

- a. If the contribution used in violation of this section has a value of two thousand five hundred dollars or more, the civil penalty must be two times the value of the contribution.
- b. If the contribution used in violation of this section has a value of less than two thousand five hundred dollars, the civil penalty must be at least two times the value of the contribution and may be up to five thousand dollars.
3. The assessment of a civil penalty may be appealed to the district court of the county where the candidate resides.

Insert LC: 19.1078.02041
House Carrier: Kasper
Senate Carrier: Dever

SECTION 4. AMENDMENT. Section 16.1-08.1-06.2 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-06.2. Secretary of state to provide instructions, make adjustments for inflation, and conduct training.

The secretary of state shall provide instructions and conduct training for the purpose of promoting uniform application of campaign finance and disclosure requirements and the uniform filing of statements, registrations, or reports according to this chapter. The secretary also shall determine adjustments for inflation of the reporting thresholds in this chapter and instruct persons submitting reports under this chapter of the adjustments. On January first of each year, the secretary shall determine whether the accumulated change in the consumer price index for all urban consumers (all items, United States city average), as applied to each reporting threshold in this chapter, would result in an adjustment of at least ten dollars of the threshold in effect on that date. If so, the secretary shall deem the reporting threshold adjusted by ten dollars.

Page 13, line 24, remove "**- Penalty**"

Page 13, line 25, replace "report" with "statement"

Page 13, line 30, remove "A failure to"

Page 13, remove line 31

Page 18, remove lines 16 through 29

Page 19, remove lines 1 through 3

Page 19, line 7, remove "commission or an"

Page 19, line 7, after the second comma insert "or the commission"

Page 20, line 13, remove ", or"

Page 20, line 14, remove "the Constitution of North Dakota is amended to eliminate the authority"

Page 22, line 14, remove "or the commission"

Page 22, line 16, remove "or commission"

Page 22, line 18, remove "or commission"

Page 23, line 2, remove "or the commission"

Page 23, line 13, remove "or commission"

Page 23, line 14, remove "or commission"

Page 23, line 16, remove "or commission"

Page 23, line 17, after "to" insert "the ethics commission,"

Page 23, line 18, overstrike "nor does this section apply to" and insert immediately thereafter "and"

Page 24, line 7, remove "or the commission"

Page 26, line 11, remove "enacted during the most recent session of the"

Page 26, line 12, replace "legislative assembly which" with "that"

Page 28, remove lines 17 through 31

Page 29, line 6, after "rule" insert ", if any."

Page 30, remove lines 9 through 31

Page 31, remove lines 1 through 31

Page 32, remove lines 1 through 31

Page 33, remove lines 1 and 2

Page 34, remove lines 11 through 30

Page 35, remove lines 1 through 24

Page 37, line 15, replace "an individual" with "a lobbyist, public official, candidate for public office, political committee, or contributor"

Page 37, line 17, replace "government ethics" with "transparency, corruption, elections, or lobbying"

Page 37, line 18, remove ""Adjusted for inflation" means adjusted on January first of each year by the change in"

Page 37, remove lines 19 and 20

Page 37, line 21, remove "3."

Page 37, line 23, replace "4." with "3."

Page 37, line 23, after "that" insert "a lobbyist, public official, candidate for public office, political committee, or contributor has violated"

Page 37, line 25, replace "government ethics has been violated" with "transparency, corruption, elections, or lobbying"

Page 37, line 26, replace "5." with "4."

Page 37, line 28, replace "6." with "5."

Page 37, line 29, after "recreation" insert ", except:

- a. Purely informational material;
- b. A campaign contribution; and
- c. An item, service, or thing of value given under conditions that do not raise ethical concerns, as set forth in rules adopted by the ethics commission, to advance opportunities for state residents to meet with public officials in educational and social settings in the state"

Page 37, line 30, replace "7." with "6."

Page 37, line 30, remove "final"

Insert LC: 19.1078.02041
House Carrier: Kasper
Senate Carrier: Dever

Page 38, line 1, replace "8." with "7."

Page 38, line 2, replace "9." with "8."

Page 38, line 3, replace "10." with "9."

Page 38, line 6, replace "11." with "10."

Page 38, line 8, replace "12." with "11."

Page 38, line 9, remove ", adjusted for inflation,"

Page 38, line 12, remove ", adjusted for"

Page 38, line 13, remove "inflation,"

Page 38, line 16, replace "who" with "that"

Page 38, line 16, remove "adjusted for"

Page 38, line 17, replace "inflation" with "not including the individual's own travel expenses and membership dues"

Page 38, line 18, replace "The" with "A"

Page 38, line 19, after "report" insert "under this subsection"

Page 38, line 26, remove "within forty days after the deadlines"

Page 38, line 27, remove "by which the reports must be filed"

Page 38, line 28, remove "This section does not require a person to report the ultimate and true source of funds"

Page 38, remove lines 29 through 31

Page 39, remove lines 1 through 10

Page 39, line 11, remove "5."

Page 39, line 14, remove "A failure to"

Page 39, replace line 15 with:

"5. The secretary of state shall determine adjustments for inflation of the reporting thresholds in this section and instruct persons submitting reports under this section of the adjustments. On January first of each year, the secretary shall determine whether the accumulated change in the consumer price index for all urban consumers (all items, United States city average), as applied to each reporting threshold in this section, would result in an adjustment of at least ten dollars of the threshold in effect on that date. If so, the secretary of state shall deem the reporting threshold adjusted by ten dollars."

Page 39, line 18, remove "with a value over sixty dollars per"

Page 39, line 19, remove "individual per event, adjusted for inflation,"

Page 39, line 19, remove ", except to"

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Page 39, remove lines 20 through 31

Page 40, remove lines 1

Page 40, line 2, remove "by the ethics commission"

Page 40, line 4, remove the underscored colon

Page 40, line 5, replace "a. A" with "a"

Page 40, line 5, remove the underscored semicolon

Page 40, remove line 6

Page 40, line 7, remove "c. A campaign contribution"

Page 40, line 8, remove "For the first violation, the secretary of state shall assess a civil penalty of five hundred"

Page 40, replace lines 9 through 12 with "The secretary of state shall assess a civil penalty upon any individual who violates this section."

- a. If the gift has a value of five hundred dollars or more, the civil penalty must be two times the value of the gift.
- b. If the gift has a value of less than five hundred dollars, the civil penalty must be no less than two times the value of the gift and may be up to one thousand dollars."

Page 40, line 14, replace "Investigator" with "Office"

Page 40, line 19, remove "The ethics commission shall meet as necessary to address each complaint the"

Page 40, line 20, remove "commission receives."

Page 40, line 21, replace "54-66-10" with "54-66-09"

Page 41, line 6, remove "Commission members shall hire or otherwise engage a part-time administrative"

Page 41, replace lines 7 through 10 with "The director of the office of management and budget shall allocate office space in the state capitol for the ethics commission, or, if office space in the capitol is unavailable, shall negotiate for, contract for, and obtain office space for the ethics commission in the city of Bismarck or in the Bismarck area. The ethics commission's office space may not be located in the office space of any other government agency, board, commission, or other governmental entity, and must provide sufficient privacy and security for the ethics commission to conduct its business. The director shall charge the ethics commission an amount equal to the fair value of the office space and related services the office of management and budget renders to the ethics commission."

Page 41, line 11, remove "- Identifying information - False complaints"

Page 41, line 12, remove "1."

Page 41, line 12, after "writing" insert ". If a complainant does not provide the complainant's name, address, and telephone number with the complaint, the ethics commission may not investigate, refer, or take other action regarding the complaint. The"

commission shall summarize each oral complaint in writing unless the complaint must be disregarded under this section"

Page 41, line 12, remove "When making a"

Page 41, remove lines 13 through 23

Page 41, line 28, replace "ten" with "twenty"

Page 41, line 29, replace "ten" with "twenty"

Page 42, line 2, replace "may" with "shall"

Page 42, line 3, after "complainant" insert "unless the commission disregards the complaint pursuant to section 54-66-05 or for any other reason. The accused individual may be accompanied by legal counsel in a negotiation or mediation"

Page 42, remove lines 4 through 29

Page 43, replace lines 1 through 21 with:

"54-66-08. Investigations - Referrals.

1. If an informal resolution is not reached under section 54-66-07, the ethics commission may:
 - a. Disregard the complaint;
 - b. Require ethics commission staff to investigate the allegations in the complaint; or
 - c. Engage an outside investigator to investigate allegations in the complaint.
2. If the commission believes a complaint contains allegations of criminal conduct, the ethics commission shall refer the allegations of criminal conduct to the bureau of criminal investigations or other law enforcement agency and may not take further action on the referred allegations. The commission shall inform the accused individual by registered mail of a referral under this section and the nature of the referred allegations as soon as reasonably possible.

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

1. An investigator, other than a law enforcement agency, of a complaint shall provide written findings of the investigation to the ethics commission within a reasonable amount of time. The ethics commission shall provide copies of the written findings to the accused individual, who may respond to the commission in person or in writing within a reasonable time. If the accused individual responds in person, no fewer than three members of the commission shall meet in a closed meeting with the accused individual. An accused individual may be accompanied by legal counsel when responding to the commission in person.
2. After providing a reasonable time for an accused individual 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

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inform the accused individual 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.

54-66-10. Appeals.

An accused individual may appeal a finding of the ethics commission to the district court of the county where the accused individual resides.

54-66-11. Rulemaking.

When adopting rules, the ethics commission shall follow the provisions in chapter 28-32 which are specifically applicable to the commission."

Page 43, line 22, replace "**54-66-11.**" with "**54-66-12.**"

Page 43, line 22, remove "**- Penalty**"

Page 43, line 26, replace "government ethics" with "transparency, corruption, elections, or lobbying."

Page 43, line 30, remove "or"

Page 43, line 31, remove "complainant"

Page 44, line 5, remove "or"

Page 44, line 6, remove "complainant"

Page 44, line 10, remove "Willful publication of information included in subsections 1 and 2 by a person who"

Page 44, line 11, replace "knows the information to be false is criminal defamation under section 12.1-15-01" with "Information that reasonably may be used to identify the complainant is confidential unless the complainant waives confidentiality, authorizes its disclosure, or divulges information that reasonably would identify the complainant. However, the ethics commission shall notify an accused individual of the identity of the complainant who made an allegation against the accused individual, and the information deemed confidential under this subsection may be disclosed as required by law or as necessary to conduct an investigation arising from a complaint"

Page 44, line 12, replace "A public official who violates this section is guilty of a class C felony." with "The information deemed confidential in subsections 1 and 2 may be disclosed by the ethics commission if the accused individual agrees to the disclosure."

Page 44, line 13, replace "**54-66-12.**" with "**54-66-13.**"

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Page 44, replace lines 14 through 17 with "A knowing violation of subsection 2 of section 2 of article XIV of the Constitution of North Dakota is a class A misdemeanor. The ethics commission shall assess a civil penalty of up to one thousand dollars on any individual who knowingly violates the subsection."

Page 44, line 18, replace "54-66-13." with "54-66-14."

Page 44, line 19, after "commission" insert "unless the commission objects to representation by the attorney general in a specific matter"

Page 44, line 23, replace "54-66-14." with "54-66-15."

Page 44, line 27, replace "person" with "individual"

Page 44, line 27, remove "and may revoke the lobbyist's registration"

Page 44, line 29, after "misdemeanor" insert ", and, if the lobbyist is a registered lobbyist, the secretary of state may revoke the lobbyist's registration. For purposes of this section, 'deliver' means to transport, transfer, or otherwise transmit, either physically or electronically. This prohibition does not apply to an individual who delivers a campaign contribution to the individual's own campaign or to the campaign of the individual's immediate family member. This prohibition may not be interpreted to prohibit any person from making a campaign contribution, encouraging others to make a campaign contribution, or otherwise supporting or opposing a candidate."

54-66-16. Removal of ethics commission members.

1. An ethics commission member may be removed from office for:
 - a. Substantial neglect of duty;
 - b. Gross misconduct in office;
 - c. Violation of the commission's code of ethics; or
 - d. Willful or habitual neglect or refusal to perform the duties of the member.
2. Removal of an ethics commission member under subsection 1 requires agreement by a majority of:
 - a. The governor;
 - b. The majority leader of the senate; and
 - c. The minority leader of the senate.

54-66-17. Participation in quasi-judicial proceedings.

For purposes of subsection 5 of section 2 of article XIV of the Constitution of North Dakota, an individual is not disqualified from participating in any capacity in a quasi-judicial proceeding, including an adjudicative proceeding under chapter 28-32, due to an investment in a mutual fund, an ownership interest in one of the parties to the proceeding which is shared by the general public, and an investment or ownership interest in a retirement account of one of the parties to the proceeding"

Page 44, line 31, replace "\$300,000" with "\$517,155"

Page 45, line 3, replace "one and one-half" with "two"

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Page 45, line 4, replace "1, 2, 3, 4, 5, and 7" with "1, 3, 4, and 5"

Page 45, line 4, replace "section" with "sections"

Page 45, line 5, after "54-66-02" insert "and 54-66-03"

Page 45, line 5, replace "32" with "25"

Page 45, line 6, replace "2022" with "2021"

Page 45, remove lines 7 through 11

Page 45, line 12, after "Sections" insert "6, 7,"

Page 45, line 13, after the first comma insert "and"

Page 45, line 13, replace ", 24, 25, 26, 27, 28, 29, 30, and 31" with ", and 24"

Renumber accordingly

Engrossed HB 1521 was placed on the Seventh order of business on the calendar.

2019 TESTIMONY

HB 1521

#1
HB 1521
1/30/19

Good afternoon. For the record, my name is Chet Pollert and I am the House Majority Leader.

In November of 2018, North Dakota voters passed Measure 1, which added a new article to the North Dakota Constitution establishing a North Dakota Ethics Commission. It is our job as a legislature to implement the will of the voters, and this bill seeks to do that. It addresses each of the parts of the measure: to increase transparency, regulate lobbyists, and create an ethics commission, while also maximizing participation in the political process by the people and organizations that care about the future and direction of North Dakota.

In reading the measure, we see 6 primary provisions, and this bill enacts each of those provisions in a clear, enforceable way.

The first provision we see in the measure is the requirement for more transparency. According to the measure, the “ultimate and true source of funds,” must be disclosed if the amount is greater than \$200 and is spent to influence statewide elections, elections for legislative assembly, statewide ballot issues, or to lobby or otherwise influence state government action.

In accordance with the measure, this bill sets up rules governing transparency in three areas: legislative and statewide elections, lobbying, and the influencing of state government action. It requires the “ultimate and true source of funds” must be disclosed in these areas if an individual contributes more than \$200 to the election or effort. House bill 1521 defines “ultimate and true source of funds” as the “person who knowingly contributed over \$200, adjusted for inflation, solely to influence a statewide election or an election for the legislative assembly.” This definition gives clarification and scope to the required disclosure. The bill provides exceptions for gifts given to a family member or funds used for educational purposes while leaving additional room for rules to be enacted by the ethics commission as they see fit. This part of the bill also establishes penalties for individuals who fail to report the necessary information.

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The second provision we note in the measure is a disqualification of certain executive branch officials in situations where there is a conflict of interest.

In the same manner, this bill requires that officials disqualify themselves in a proceeding if they are biased or have a conflict of interest. The bill also establishes that an official can be fined or prosecuted if they fail to disqualify themselves in such situations.

The measure's third provision states that officials may not use campaign funds for personal use. Of course, this provision was already in Chapter 16.1 of the North Dakota Century Code even before the measure passed.

Out of deference to the measure, however, this bill does add fines and criminal penalties for candidates who use campaign funds for personal purposes. Under the bill, the Secretary of State is to impose a five hundred dollar fine on the person in violation. For a second and any subsequent violations, the candidate would be guilty of a Class A Misdemeanor.

Fourth, the measure regulates people who are lobbyists. It states that a lobbyist may not deliver a campaign contribution by another individual or entity and that an elected public official may not become a lobbyist for two years after their public service.

Correspondingly, the bill specifically outlaws a lobbyist delivering a campaign contribution or acting as a conduit, meaning a lobbyist can't deliver a campaign contribution on behalf of a third party. In the bill, the definition of a lobbyist is kept the same as is currently in the law. The bill also includes a provision stating that an elected official may not become a lobbyist for 2 years after their public service.

Fifth, the measure prohibited lobbyists from giving gifts to public officials unless the lobbyist is a family member, or the gift is purely informational material, a campaign contribution, meant to advance opportunities for North Dakota residents to meet with public officials in educational and social settings inside the state, or

any item, service, or thing of value given under conditions that do not raise ethical concerns.

This bill provides more certainty to the vague wording of the measure. It prohibits lobbyists from giving gifts to public officials if the gift's value is over \$60, unless it is in appropriate educational or social settings. Appropriate educational or social settings are listed in the bill on page 38, lines 3-13. The bill also sets up fines for those who violate this provision.

Finally, the measure establishes the North Dakota Ethics Commission. The measure stipulates that the Commission may adopt rules and investigate violations of those rules, and the the Commission shall consist of five members appointed by consensus agreement of the governor, the majority and minority leaders of the senate.

House Bill 1521 does all this: laying out a specific, clear process for the ethics committee to handle complaints while ensuring impartiality and due process for all parties involved. Additionally, it provides for an appeals process, ensures confidentiality of information produced as a result of an ethics investigation, and specifies penalties for individuals who willfully publish or disclose false information.

The legislature has always taken ethical concerns seriously. In this bill, we have worked hard to establish clear, guidelines so that our citizens, lawmakers, and other parties can stay involved in the political process. The goal of this bill is not to make Measure 1 more palatable for lobbyists and politicians - the people have spoken and it is our job to enact the measure. Rather, the goal of this bill is to clarify the regulations found within the measure so that all North Dakotans can participate freely and ethically in the democratic process.

HB 1521 ETHICS

Senator Rich Wardner

The goal for the Legislature is to find certainty in the Ethics Measure.

- a. Elected Officials
- b. Candidates
- c. Lobbyists
- d. Everyday people who want to be involved in state and local government.

The following are some of the issues in Measure One that need attention.

- a. Ultimate and True Source of funds.
- b. Influencing State Government.
- c. Personal Use of campaign funds
- d. Definition of a lobbyist
- e. Regulation of lobbyists
- f. Definition of Gifts and Financial Disclosure
- g. Ethics Commission
- h. Due Process
- i. Identifying the appropriate civil and criminal sanctions as well as fines.
- j. Proper funding of the to carry out the functions and duties of the commission.

It states in the measure (Section 1. Subsection 2.) The legislative assembly shall have an ongoing duty to revise these laws as necessary to promote the purposes of this section in light of changes in technology and political practices.

In (Section 2. Subsection 5. And Section 3. Subsection 1.) it also gives the Ethics Commission rulemaking authority. In my opinion the Ethics Commission has final say on the rules.

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HB 1521
1/30/19

Comparison of HB 1521, SB 2148 and Measure 1

HB 1521	SB 2148	Measure 1/Art. XIV
Section 1-8: Adds "adjusted for inflation" to every required financial disclosure under Chapter 16.1-08.1 Campaign Contribution Statements	Silent on this issue	Requires implementation of laws that allow for public disclosure of the ultimate and true source of funds used to influence state action in an amount greater than \$200 adjusted for inflation. § 1, cl. 2
Section 6: Imposes a fine of \$500 for the first violations relating to personal use of campaign contributions. Makes a second and subsequent violation a class A misdemeanor.	Silent on this issue	Prohibits the personal use of a campaign contribution. § 2, cl. 4
Section 7: Makes a new section requiring the identification of ultimate and true source of funds. Allows a resident taxpayer to file a claim to compel compliance if all other enforcement measures are exhausted. Burden of proof for violations of "ultimate and true source of funds" disclosure is clear and convincing.	Silent on this issue.	Requires implementation of laws that allow for public disclosure of the ultimate and true source of funds in an amount greater than \$200 adjusted for inflation. § 1, cl. 2
Section 8: Creates a prohibition on a lobbyist acting as a conduit for campaign contributions, unless the contribution is for lobbyist's personal campaign or the campaign of a family member. First violation = \$100 fine. Second and subsequent violation = infraction	Section 21: Makes a violation on the restrictions of a lobbyist delivering a campaign contribution a class A misdemeanor and imposes a fine up to \$50,000 for each violation if there is more than one violation within a year.	Prohibits a lobbyist from acting as a conduit to deliver campaign contributions, unless delivered to the lobbyist's campaign or that of an immediate family member. Requires the legislative assembly to set the penalties. § 2, cl. 3
Section 9: Use and definition of "Commission" as ND Ethics Commission.	Section 1: Use and definition of "Ethics Commission" as ND Ethics Commission.	
Sections 10-29: Establishes the rulemaking procedures under the AAPA, NDCC Ch. 28-32.	Sections 1-20: Establishes the rulemaking procedures under the AAPA NDCC Ch. 28-32.	Requires the legislative assembly vest an entity with the authority to implement, interpret, and

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HB 1521	SB 2148	Measure 1/Art. XIV
		enforce Art. XIV and legislation enacted under it. § 1, cl. 2
Section 14: Requires compliance with § 28-32-08.1, that requires economic impact statements on small entities for proposed rules	Section 7: Exempts compliance with § 28-32-08.1 (no economic impact statement required).	
Section 18: Clarifies that the notice of rulemaking and hearing under §28-32-10 must reference the ND Constitution and/or enabling legislation being implemented by the proposed rules.	Section 10: Requires the ethics commission to reference the ND Constitution or enabling legislation (without stipulating when the bill was passed) that gives the commission the authority to implement a proposed rule in the notice for the proposed rule and hearing.	"The legislative assembly shall vest by law one or more entities with authority to implement, interpret, and enforce this section and legislation enacted thereunder." § 1, cl. 2
Section 30: Includes a definition for "adjusted for inflation," "influence state government action," "lobby," and "ultimate and true source."	Section 21: Adds "attempts to influence decisions regarding official matters made by a public official in the executive branch of state government" to the definition of lobbyist.	
Section 30: Requires disclosure of the known ultimate and true source of funds for lobbying and influencing state government over \$200, adjusted for inflation. § 54-66-02 Creates certain exceptions § 54-66-02.4	Silent on this issue	Requires the legislative assembly to implement laws regarding the public disclosure of the ultimate and true source of funds exceeding \$200 within 3 years. § 1, cl. 2
Section 30: Prohibits the giving of gifts to public officials. Prohibits public officials from knowingly accepting a gift with a value over \$60. Both prohibited unless certain circumstances are present that "do not raise ethical concerns." Imposes a fine of \$100 for the first violation. Second/subsequent violation = infraction. § 54-66-03	Silent on this issue	Prohibits a lobbyist from giving a gift to a public official. Prohibits a public official from knowingly accepting a gift from a lobbyist. Requires the legislative assembly to set appropriate civil and criminal sanctions for violations. § 2, cl 1.
Section 30: Requires closed meetings unless a penalty or referral for enforcement is	Section 21: Reiterates how members are appointed the	

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HB 1521	SB 2148	Measure 1/Art. XIV
imposed. § 54-66-04.2 and requires a code of ethics for the commission to abide by. § 54-66-04.3	same as found in Art. XIV. § 54-66-02.1	
Section 30: Allows the commission to hire a part-time administrative assistant to be placed in an office space within the dept of labor and human rights § 54-66-04.5	Section 21: Requires the commission to appoint an executive director and other staff necessary to assist the commission § 54-66-03. Requires the director of OMB to allocate office space in the capitol or obtain office space. The office space cannot be in the same space as another government entity. § 54-66-04	
Section 30: requires a complainant to provide his or her name, address, and telephone number § 54-66-05.1 Also within 5 days of submitting complaint, the complainant must submit a signed attestation that the complaint is true and accurate. The commission will not investigate if attestation deadline is not met. § 54-66-05.2-05.3. A materially false complaint submitted knowingly or recklessly is defamation. § 54-66-05.	Section 21: States a complaint may be made verbally or writing with no other stipulations. § 54-66-05	Requires the ethics commission to maintain a confidential whistleblower hotline for anyone acting in good faith to submit relevant information. § 3, cl. 2.
Section 30: Requires the identity of the complainant and the written complaint or a summary of the verbal complaint be sent to the accused within 10 days. § 54-66-06	Section 21: Requires the ethics commission inform the accused "as soon as reasonably possible" when a complaint is received against them. A copy of the complaint or information provided verbally must be given to the accused within 20 days. § 54-66-05	
Section 30: An informal resolution may be attempted or negotiated. § 54-66-07	Section 21: An informal resolution may be attempted or negotiated. § 54-66-06	
Section 30: Allows for an investigation for complaints	Section 21: Allows for an investigation when an informal	Allows the ethics commission to investigate

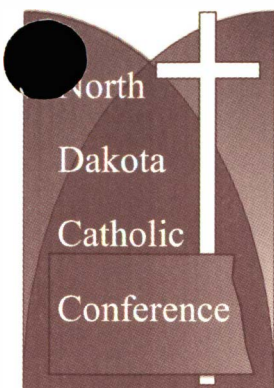
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HB 1521
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HB 1521	SB 2148	Measure 1/Art. XIV
with an attestation by an investigator. An allegation of criminal conduct must be investigated by BCI or another law enforcement agency; the commission can also use a state agency as an investigator. § 54-66-08. Requires interviews of the accused and the complainant. States both people may be accompanied by counsel at the interviews. States investigations may include interviews of potential witnesses and people with relevant info. § 54-66-09	resolution is not reached. Requires interviews of the complainant and the accused. Allows the commission to refer a complaint to law enforcement if a majority of the members reasonably believe a crime was committed or the safety of the complainant is at risk. § 54-66-07 Makes no mention of legal counsel during interviews.	alleged violations of rules, Article XIV, and related state laws. § 3, cl. 2.
Section 30: Sets a time frame for an investigation to 6 months. § 54-66-09.2	Section 21: Has no timeframe for an investigation. See § 54-66-08	
Section 30: Sets no evidentiary standard for a finding of an ethical violation. See § 54-66-10.2	Section 21: Sets a preponderance of the evidence standard for a finding of an ethical violation. § 54-66-08.2	
Section 30: Requires appeals of to the office of administrative hearings. § 54-66-10.3	Section 21: Allows an appeal to the district court of Burleigh County. § 54-66-09	
Section 30: Explicitly states the commission may not terminate the employment of a public official or remove a public official from office. § 54-66-10.4	Silent on this issue	
Section 30: Makes records confidential unless the commission determines there is a violation. Except when disclosure is required by law or is necessary for an investigation. § 54-66-11.1 Makes information relating to an informally resolved complaint confidential. § 54-66-11.2 Makes disclosure of any false information relating to a complaint defamation. § 54-66-	Makes records confidential until the commission issues its findings. Except when disclosure is required by law or is necessary for an investigation. § 54-66-10.1 Imposes a class C felony on a public official who violates the confidentiality section. § 54-66-10.2	

#2
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HB 1521	SB 2148	Measure 1/Art. XIV
11.3–11.4 Imposes a class C felony on a public official who violates the confidentiality section. § 54-66-11.5		
Section 30: Imposes a fine of \$100 on a public official who violates the restriction on lobbying by public officials for the first offense. Makes the second offense an infraction. § 54-66-12.	Section 21: Makes a violation on the restriction on lobbying by public officials a class A misdemeanor and imposes a fine of up to \$10,000. § 54-66-11	Prohibits a public official from being a lobbyist while in office and two years after leaving office. § 2, cl. 2
HCR 3028: Creates a study into transparency or funding sources, lobbyists, conflicts of interest, and the establishment of the ethics commission.	Section 22: Creates a legislative management study of Article XIV §§ 1.2, 2.1, and 2.5	
Section 31: Appropriates \$100,000	Section 23: Appropriates \$961,936	
Sections 32-34 Effective Dates: Makes the sections dealing with campaign fund disclosure ultimate and true source of fund and hearing officer disqualification effective January 5, 2022. Makes the section dealing with lobbyist gifts effective January 5, 2021. Makes the restriction on lobbying by public officials effective until it is no longer part of article XIV.		
Section 35 Emergency: Makes most of the AAPA provisions regarding the commission emergency measures.		

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1/30/19



Representing the Diocese of
 Fargo and the Diocese of
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To: House Ethics Committee
From: Christopher T. Dodson, Executive Director
Subject: House Bill 1521 - Implementation of Article XIV
Date: January 30, 2019

The North Dakota Catholic Conference supports House Bill 1521 as a reasonable step toward implementing the new Article XIV of the North Dakota Constitution. Although it may not be perfect and may not address all the possible constitutional problems with the new article, HB 1521 addresses two of the conference's main concerns about Measure 1. First, it makes clear that individuals who donate to the general operation of a church or charity will not have their privacy unduly infringed. Second, it provides some parameters as to what will be allowed and not allowed, thereby possibly restoring some of the public's confidence that they can participate in the democratic process without unknowingly or wrongly running afoul of the law.

Disclosure/Transparency Provisions

Each year approximately 20,600 Catholics prayerfully choose to give to the Catholic dioceses of Bismarck and Fargo. Their contributions support ministries like education, seminarian formation, communications, and Catholic schools. None of this money is used to support political candidates. None of it goes to contributions to politicians. None of it is used to help political parties.

Like other churches and charities, however, the Catholic Church participates in the public square and expresses opinions on legislation and ballot measures. Doing so typically amounts to spending less than one percent of its total budget.

If Measure 1 was implemented as written, the dioceses or the conference would have to disclose the names of every one of those parishioners whenever we spent over two hundred dollars for lobbying or taking a position on a ballot measure, even if the parishioner gave one dollar. During the campaign, proponents for the measure stated that the legislature would have the authority to make sure this did not occur. HB 1521 adopts the proponents' position and places common sense parameters on the disclosure provisions.

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HB 1521

The definitions of “ultimate and true source” on pages 6 and 36 address the concerns while still implementing letter and spirit of the measure. They state that the “ultimate and true source” of funds means the person who knowingly contributed over two hundred dollars solely to a campaign, to lobby, or to influence state government action.

The definition includes two crucial features. First, it clarifies that people who donate less than two hundred dollars will not be subject to disclosure. This makes sense. Subsection 2 of Section 1 of Article XIV requires disclosure only for expenditures over two hundred dollars. For that reason, it makes sense that the disclosure requirement should only apply to contributions over two hundred dollars.

Second, requiring that the contribution be knowingly and solely for one of the triggering purposes makes it clear that organizations would not have to reveal the names of individuals, such as parishioners, who give toward the general operation of the organization. Churches, like many nonprofits, engage in numerous activities of which legislative advocacy may constitute only a tiny fraction. It would be unduly burdensome and extreme overreach beyond the purpose of Article XIV to require disclosure of all sources of funding merely because some of the money was used for engaging in public policy advocacy.

House Bill 1521 also addresses our concerns about the disclosure provision by using practical definitions for “lobby” and “influence state government action.”

Article XIV does not define “lobby.” During the campaign people raised concerns that the lack of a definition meant that any individual communicating to a legislator could be subject to the disclosure provision. Proponents of the measure, however, claimed that the provisions only encompassed actual lobbyists. Presumably, this means that “lobby” is intended to mean lobbying as defined in the North Dakota Century Code, which applies to advocating or opposing the passage of legislation or a decision by Legislative Management on behalf of someone else. Building on existing law, HB 1521 incorporates that definition for purposes of the disclosure requirement.

Similarly, Measure 1 lacked a definition of “influence state government action.” During the campaign the North Dakota Catholic Conference and others expressed concern that “influence

state government action” could encompass acts such as Catholic Charities discussing and negotiating the contract for the corporate guardianship program or an adoption agency submitting paperwork to be approved as a child placement agency. People also raised questions about seeking professional licenses or permits. Supporters of Measure 1 indicated that the measure was not supposed to encompass those acts and the legislature would be charged with defining “state government action.”

Although Article XIV does not define “influence state government action,” we can conclude as a matter of grammar that it is something different from lobbying or campaign engagement. In other words, it must by elimination refer to executive branch actions. HB 1521 apparently recognizes this by defining “influencing state government action” as promoting or opposing the final adoption of a rule by an administrative agency. It is difficult to imagine what other official executive branch actions exist. If the phrase is not defined as the adoption of a rule by an executive office, “influencing state government action” could encompass practically all communications and interactions with state agencies. In addition to being unnecessarily overbroad and reaching non-official actions, such an open-ended scope would likely be unconstitutional.

To summarize, by defining “lobby” and “influence state government action,” and by defining “ultimate and true source,” HB 1521 addresses our concerns about the potential scope of the disclosure requirement. At the same time, the bill addresses and requires disclosure for all three of the types of activities that require disclosure under Article XIV — campaign contributions, lobbying, and influencing state government actions.

Admittedly, at first glance, the exceptions on page 37 might appear to gut the disclosure requirement. However, closer inspection reveals that the exceptions mostly reflect the directives given by Article XIV itself. The exceptions are mostly just a restatement of the exceptions to the “gifting” prohibition in Section 2(1) of Article XIV. Common sense dictates that if these actions are not problematic “gifts” under the article they should not be considered actions of lobbying, influencing elections, or influencing state government action. That should eliminate subsections (a), (b), (e), and (f) as matters of concern.

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The remaining subsections, (c) and (d), exempt reimbursement for travel, meal, and refreshment for educational opportunities germane to the official duties of the public official. Some could argue that these are activities that should be scrutinized. Perhaps, but nothing in HB 1521 prevents the ethics commission from creating rules related to such activities. What is important to recognize for this particular bill is that these activities are not attempts to secure the passage or defeat of legislation or the adoption of an administrative rule, so they do not, by Article XIV's own language, fall within the disclosure requirements of Section 1(2) of the article.

The disclosure provisions of HB 1521 are reasonable and consistent with purpose of Measure 1. If the national office of the Knights of Columbus gives over two hundred dollars to the North Dakota Catholic Conference for the purpose of helping us pass a ballot measure, we would have to disclose that donation. People can argue whether that requirement is good public policy or constitutional, but the fact remains that the people of North Dakota put that requirement into the state constitution. HB 1521, rather than undermining or delaying the requirement, puts it into statute with clear parameters consistent with the declared intent of the proponents and helps avoid some of the constitutional problems with the measure.

Guidelines and Certainty

The second broad area of concern the North Dakota Catholic Conference had about Measure 1 related to its possible chilling effect on participation in the public square. People have a right to participate in the political process. The measure, in our opinion, contained too many undefined terms, procedures, and areas of confusion that could deter participation in the democratic process, especially by nonprofits, small organizations, and average citizens.

House Bill 1521 addresses many of these concerns without running afoul of the measure's requirements. Some of these have already been discussed as they relate to the disclosure requirements. HB 1521 also:

- Uses existing and already familiar definitions where possible, such as for "lobby" and "campaign contribution," and campaign "conduit;"
- Employs existing mechanisms and time periods for reporting;
- Sets out due process requirements for complaints;

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- Provides definite effective dates;
- Clarifies that organizations like the North Dakota Catholic Conference can have their church service and appreciation dinner for public officials without violating the anti-gifting provisions; and
- Specifies a rulemaking process that gives the public advance notice of meetings and an opportunity to provide public input, just like any other rulemaking body.

These provisions provide the public with some clarity and certainty after a heated campaign marked by differing interpretations of the new provisions. The people of North Dakota have a right to know, now rather than later, that they can participate in the political process without transgressing the new provisions. In addition, by specifying the disclosure requirements now rather than later, individuals can be assured that they can continue to donate to their favorite charity without having to sacrifice their privacy.

The North Dakota Catholic Conference believes that ethical behavior should be the hallmark of our political process. No action by anyone in the process is immune from the command to do what is right and to do it honestly. While we may have disagreed with the proponents of Measure 1 about the measure itself, its implementation, subject to constitutional limitations, should not be in dispute and we do not support intentionally frustrating or unnecessarily delaying its implementation. Although there are portions of HB 1521 about which the conference does not have a position, the bill addresses most of our concerns about the measure in a manner that is consistent with the letter and spirit of the measure itself.

We urge a **Do Pass** recommendation.

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Geoff Simon, Lobbyist #144
Testimony HB 1521
House Ethics Committee
January 30, 2019

Mr. Chairman, members of the Special Ethics Committee, my name is Geoff Simon. I come before this committee as a concerned citizen and former chairman of a coalition called North Dakotans for Sound Government that was formed to defeat the passage of Measure One on the 2018 ballot.

The coalition's primary concern was, and continues to be, that the language of this measure infringes on the Free Speech rights of North Dakota citizens. This measure was carelessly written, its disclosure language is overly broad, and its approval by voters doesn't make it any better. The language in this measure is bad policy for North Dakota, and unfortunately you in the legislature have the unpleasant task of trying to fix the mess.

As I see it, you have two choices: Write a law that fully implements the overly broad disclosure language found in Section 1.2 of what is now Article XIV in our Constitution, and prepare for the inevitable lawsuit that would find it unconstitutional. Or you can implement the law in a way that preserve the Free Speech rights of our citizens, and hopefully avoid a costly legal challenge.

I believe House Bill 1521 takes the common sense approach to implement the Measure in a way that respects the wishes of voters for greater transparency. But by defining the terminology in Section 1.2, this bill assures North Dakota citizens they will be allowed to freely engage with their elected officials, without fear of compliance with a requirement that they report their expenses.

HB 1521 also does an acceptable job of establishing the parameters for the rulemaking authority granted by the measure to the Ethics Commission, including appropriate measures for enforcement.

The \$100,000 appropriation provided in the legislation is a proper amount that will allow the Ethics Commission to complete its initial rulemaking process, with an appropriate measure of staff assistance to complete the task.

Going beyond this amount at this time would not be prudent when honestly, none of us have any idea what sort of workload this ethics commission will have. I seriously doubt North Dakota citizens are anxious to fund a new bureaucracy, when it's quite possible its members will be sitting around with nothing to do but wait for complaints of ethical violations that never come.

I would note the Senate version of the Ethics Commission implementation bill would defer most of the hard decisions to an interim study. I would suggest that an interim study be considered as an addition to this measure. I believe there is one positive outcome that could result from the work of an interim committee. Its members could conclude that we already have adequate disclosure language in the Century Code, and the best thing to do would be to keep the Ethics Commission, but draft a constitutional amendment that would ask voters to repeal everything else.

Thank you for your attention, and I will stand for questions.

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SB2148 & HB1521 - Combined Testimony - In Support of the Spirit Of Higher Ethics
- by Dustin Gawrylow (Lobbyist #266) ND Watchdog Network

The North Dakota Watchdog Network opposed Measure 1 last November (see that message of opposition on back) on the basis that the notion that all dark money is evil is a false narrative, and subjective to the views of whomever is involved on the other side of an issue.

By federal law and rules enacted under the IRS, the North Dakota Watchdog Network is by the terms outlined by the supporters of Measure 1: a "dark money" political operation.

However, with all that said about the unintended and misguided consequences of Measure 1 itself, we support a fair and even handed implementation of the Spirit behind the measure approved by the voters, because one of the things we use our Dark Money donations for is protecting the initiated measure process as well as the will of the people when they vote on ballot measures.

Prior to the launch of their Measure 1 campaign, Ellen Chaffee asked to meet with me and discuss my views of what needs to be addressed ethically.

I told her to address issues such as:

- Taxpayer funded lobbying by entities and their ability to come to the legislature to ask for more taxpayer money.
- Create a way for the public to file claims under the Corrupt Practices Act against elected officials that blatantly violate these rules.
- Address the issue of Out of State money influencing initiated measure campaigns (just as it did on their behalf!)

These ideas were not included in the measure, but I would hope the legislature would address these issues via the enabling legislature that will eventually be passed this session.

In conclusion, while we do not think that some of the issues brought up by the Measure 1 supporters are as big of a deal as they think they are, that does not mean that they are not issues at all.

And it certainly does not measure the legislature should overturn the will of the people on the issue of ethics.

As legislators you are put into these offices by those same people, so it is my hope that you all take the public's vote on this issue as a warning to get your house in order.

...before it is too late.

Thank you!

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How Measure 1 Could Lead To More Corruption, Not Less (Published: Oct. 31st, 2018)

ND Watchdog Network Opposes Measure #1 Due To Chilling Effect On Civic Involvement

Measure #1 on the ballot next Tuesday has been getting a lot of publicity.

I would first like to start by saying that the sponsors of the measure did try to recruit me to be on their side, even before they wrote their measure. I did meet with Ellen Chaffee, one of the organizers for over two hours, prior to their measure being written.

They were not able to incorporate my suggestions into their measure, but I can attest that their measure did have roots in North Dakota. They sought out assistance from national organizations both for legal and financial support, which is what happens in political campaigns. The motives of the North Dakotans involved in Measure 1 were solid and righteous.

The issue of out of state money and influence on their measure is another issue for another time.

Instead of regurgitating the same old lines that the opposition of Measure 1 has made, many of them being wild exaggerations about how the measure will release customer information of corporations to the public, or how everyday people will have to report their gas expenses when they drive to Bismarck to talk to legislators. These are shallow scare tactics.

What is not a scare tactic is the fact that, in their zeal to eliminate corruption and dark money in politics, the backers of Measure 1 have neglected one simple fact: many people, even rich people with money, are afraid to get involved with the political process because it will affect their business and their livelihood.

For example, the North Dakota Watchdog Network focuses on state and local issues primarily. When it comes to local issues in Bismarck, many of our donors regularly have business in front of the city commission. In the last three years, we have focused on reforming the corporate welfare handouts approved by the city commission, with an emphasis on which commissioners are the ones supporting this wasteful use of taxpayer dollars. I know for a fact that of the \$70,000 we have raised and spent in pursuit of reforming the city commission's policy in the last three years, about \$30,000 would have not been available because the people donating that money would not have done so if it wasn't for the delay in IRS disclosure requirements that 501(c)3 organizations such as ours are allowed. Even more than the tax-deductible status that donations receive, the fact that donors know that their donations will be private for a significant amount of time gives them the comfort to know their donations will not immediately result in retribution when their business comes before the city commission (in this example).

And it is that retribution and fear of retribution that is itself a form of corruption. So by taking away the protections afforded groups like the North Dakota Watchdog Network by the IRS, it will dramatically reduce our ability to influence government and educate people on what their elected officials are doing. We cannot overtly campaign in favor of any candidate, but we are fully empowered to shine sunlight on what our elected officials are doing.

By taking away funding tools for groups like ours to do that, local elected will be able to intimidate anyone who dares challenge their use of taxpayer dollars with the implied threat of affecting their business. And that is the real corruption that we should all be working to stop.

The folks behind Measure 1 have their hearts in the right place, but they failed to consider the fact that dark money is not inherently evil. Some of it actually helps to fight the very corruption that they are fighting.

So I will make this pledge, please vote against Measure 1 and the North Dakota Watchdog Network will work with the people behind Measure 1 to introduce a bi-partisan bill next session that everyone can live with, which does not negatively affect the very cause they seek to reform.

**Greater North Dakota Chamber
HB 1521
House Ethics Committee
January 30, 2019**

Mr. Chairman and members of the House Special Ethics Committee, my name is Arik Spencer, President & CEO of the Greater North Dakota Chamber (GNDC). GNDC is North Dakota's largest statewide business advocacy organization.

As many people know, GNDC was part of a coalition of nearly four dozen organizations who opposed measure one because of concerns about the measure's constitutionality, and specifically that of section 1.2 of this amendment to the North Dakota Constitution.

Measure one was passed by the voters last year and while we still have concerns about the constitutionality of the measure at a federal level, we do believe the legislature now has an obligation to implement this new section of the ND Constitution regardless of our opinion.

Our support for HB 1521 is simply because it tackles the policy problems and questions raised by measure one head-on, in an attempt to provide associations, citizens, and business who wish to take part in the public policy process the certainty needed to comply with any applicable rules and laws.

Specifically HB 1521 attempts to define much of the problematic terms used in measure one such as the phrase "ultimate and true source of funds". This provision is especially important to member-based associations and organizations, whose members may see their inclusion on a government database as an intrusion of privacy and don't become members or donors for the passage or defeat of any specific public policy.

HB 1521 also defines the phrase "influence state government action" in a way that recognizes that most business and citizen interactions with state government are not related to public policy and are rather execution of existing policy.

HB 1521 also attempts to bring clarity to what a gift means under measure one. While the bill may require modification in this area, those participating in the public policy process deserve to know what the rules are in a very clear and obvious way.

Finally HB 1521 address the private right of action included measure one, which opens any ND citizen and organization up to lawsuits under section 1.2 of measure one. We think this is a reasonable approach that balances the new rights granted by measure one, while hopefully protecting those who participate in public policy and campaigns from frivolous lawsuits.

In closing we only ask for clarity for those who wish to participate in the public process because without it, our open public policy process will only suffer.

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Matthew Messana
Mandan, ND 58554
701-989-4315
matthew.messana@gmail.com

Wednesday January 30, 2019
3:30 PM
Brynhild Haugland Room

Do Not Pass Recommendation for HB 1521

Good afternoon Chairperson and Committee Members,

My name is Matthew Messana. I am a state employee. I took annual leave, that is to say 'vacation time,' to be here today. I am not on duty. I do not represent my employer or any opinions of my employer. I am not acting in any official capacity. I am here as a concerned citizen of North Dakota. My testimony today is my opinion and mine alone. I say this because I take my service to this state very seriously. I am here today because I find the work of a Legislator immensely more important than my own.

When I was first hired, I was a part-time filing clerk. I was warned on my first day that revealing confidential information was a class C felony under Century Code chapter 12.1-13-01. I have included this law as a supplement to my written testimony. This penalty is rightfully applied. The people of North Dakota deserve to know their government properly handles their information. The possibility of a felony conviction forces me to be extra careful about what information I give out. It's better to be cautious than break the law and betray the trust of those who's information I have access to.

My concern with HB1521 is in certain sections, which I will detail, that determine the penalties for violations of this proposed law.

The first section is listed as "Section 6." This pertains to a rightful prohibition on the use of political contributions for things such as making loans or gifts to others or to pay a criminal fine. I have included the full text in my written testimony, but I will focus on the penalties in part two. Part two reads:

Section 6: Section 16.1-08.1-04.1 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-04.1. Personal use of contributions prohibited. 1. A candidate may not use any contribution received by the candidate, the candidate's candidate committee, or a multicandidate political committee to:

- a. Give a personal benefit to the candidate or another person;

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- b. Make a loan to another person;
- c. Knowingly pay more than the fair market value for goods or services purchased for the campaign; or
- d. Pay a criminal fine or civil penalty.

2. For the first violation, the secretary of state shall impose a fine of five hundred dollars upon any person who violates this section. For a second and subsequent violation of this section, the person is guilty of a class A misdemeanor.

Legislators have the power to change the very laws of North Dakota. Why, then, is a legislator held to a lower standard than a part-time filing clerk? If I had knowingly released confidential information, I would have been rightfully fired and charged with a class C felony. Instead of a small fine of five hundred dollars on the first violation and a charge of a class A misdemeanor on all subsequent violations, legislators should be held to the same standard as any state employee.

Every violation of these prohibitions should be a class C felony and grounds for possible removal from office. Furthermore, what happens to the contributions under this law? As written, this appears to give the opportunity for the offender or recipient to keep misappropriated funds. If a felony conviction is reached, any contributions involved should be seized by the state and added to the legacy fund. In this way, only the people of North Dakota profit from such behavior.

The possibility of being charged with such a penalty will have the same affect it has on me. It will make candidates think twice before acting. It is better to be cautious than to betray the trust of their constituents.

Another section of note is Section 8, which details penalties for breaking a prohibition on acting as a conduit. The penalty reads:

SECTION 8. A new section to chapter 16.1-08.1 of the North Dakota Century Code is created and enacted as follows:

Prohibition on acting as conduit - Penalty. A lobbyist may not act as a conduit unless the lobbyist is delivering a campaign contribution to the lobbyist's campaign or the campaign of the lobbyist's family member. **For a first violation, the secretary of state shall impose a fine of one hundred dollars upon any person who violates this section. For a second and subsequent violation of this section, the person is guilty of an infraction.**

This language is repeated elsewhere in penalties for illegal lobbyists gifts in 54-66-03 and penalties for the restriction of lobbying by public officials in 54-66-12.

54 - 66 - 03. Lobbyist gifts - Penalty.

3. For the first violation, the secretary of state shall impose a fine of one hundred dollars upon any person who violates this section. For a second and subsequent violation of this section, the person is guilty of an infraction.

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54 - 66 - 12. Restriction on lobbying by public officials - Penalty. For the first violation of subsection 2 of section 2 of article XIV of the Constitution of North Dakota, the secretary of state shall impose a fine of one hundred dollars upon the person who commits the violation. For a second and subsequent violation of the subsection, the person is guilty of an infraction.

If the goal is to scare people into not breaking the law, a one hundred dollar fine is woefully insufficient. A smart lobbyist who intends to bribe a public official will simply add one hundred dollars to their budget and call it a day.

An infraction, according to Century Code 12.1-32-01, is a maximum fine of one thousand dollars with the possibility that future infractions may be increased to a class B misdemeanor. A class C felony is "a maximum penalty of five years' imprisonment, a fine of ten thousand dollars, or both." Why would we go easier on lobbyists trying to buy political favors than we would a part-time filing clerk?

The penalties for these offenses should be no less than a class C felony and the individual barred from taking part in lobbying efforts. This kind of penalty would be enough to make a lobbyist think twice before trying to buy political favors.

As written, the penalties in these sections are not prohibitive. A five hundred dollar or one hundred dollar fine is a finder's fee, not a punishment. Penalties should have the affect of making people not want to commit the crime. A politician who misuses campaign funds or a lobbyist who illegally tries to bribe an official should be held to at least the same standard we set for our public servants.

I urge you to recommend a "do not pass" on this bill. The penalties within it are woefully inadequate.

Thank you for your time.

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CHAPTER 12.1-13
CONFIDENTIAL INFORMATION - CONFLICT OF INTEREST - IMPERSONATION

12.1-13-01. Disclosure of confidential information provided to government.

A person is guilty of a class C felony if, in knowing violation of a statutory duty imposed on him as a public servant, he discloses any confidential information which he has acquired as a public servant. "Confidential information" means information made available to the government under a governmental assurance of confidence as provided by statute.

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

1. A person is guilty of a class A misdemeanor if during employment as a public servant, or within one year thereafter, in contemplation of official action by himself as a public servant or by a government agency with which he is or has been associated as a public servant, or in reliance on information to which he has or had access only in his capacity as a public servant, he:
 - a. Acquires a pecuniary interest in any property, transaction, or enterprise which may be affected by such information or official action;
 - b. Speculates or wagers on the basis of such information or official action; or
 - c. Aids another to do any of the foregoing.
2. A person is guilty of a class A misdemeanor if as a public servant he takes official action which is likely to benefit him as a result of an acquisition of a pecuniary interest in any property, transaction, or enterprise, or of a speculation or wager, which he made, or caused or aided another to make, in contemplation of such official action.

12.1-13-03. Public servant's interest in public contracts.

1. Every public servant authorized to sell or lease any property, or to make any contract in his official capacity, alone or in conjunction with other public servants, who voluntarily becomes interested individually in the sale, lease, or contract, directly or indirectly, is guilty of a class A misdemeanor.
2. Subsection 1 shall not apply to:
 - a. Contracts of purchase or employment between a political subdivision and an officer of that subdivision, if the contracts are first unanimously approved by the other members at a meeting of the governing body of the political subdivision, and a unanimous finding is entered in the official minutes of that body that the contract is necessary because the services or property contracted for are not otherwise obtainable at equal cost.
 - b. Sales, leases, or contracts entered into between school boards and school board members or school officers.

12.1-13-04. Impersonating officials.

1. A person is guilty of an offense if he falsely pretends to be:
 - a. A public servant, other than a law enforcement officer, and acts as if to exercise the authority of such public servant.
 - b. A public servant or a former public servant and thereby obtains a thing of value.
 - c. A law enforcement officer.
2. It is no defense to prosecution under this section that the pretended capacity did not exist or the pretended authority could not legally or otherwise have been exercised or conferred.
3. An offense under subdivision b or c of subsection 1 is a class A misdemeanor. An offense under subdivision a of subsection 1 is a class B misdemeanor.

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**CHAPTER 12.1-32
PENALTIES AND SENTENCING**

12.1-32-01. Classification of offenses - Penalties.

Offenses are divided into seven classes, which are denominated and subject to maximum penalties, as follows:

1. Class AA felony, for which a maximum penalty of life imprisonment without parole may be imposed. The court must designate whether the life imprisonment sentence imposed is with or without an opportunity for parole. Notwithstanding the provisions of section 12-59-05, a person found guilty of a class AA felony and who receives a sentence of life imprisonment with parole, shall not be eligible to have that person's sentence considered by the parole board for thirty years, less sentence reduction earned for good conduct, after that person's admission to the penitentiary.
2. Class A felony, for which a maximum penalty of twenty years' imprisonment, a fine of twenty thousand dollars, or both, may be imposed.
3. Class B felony, for which a maximum penalty of ten years' imprisonment, a fine of twenty thousand dollars, or both, may be imposed.
4. Class C felony, for which a maximum penalty of five years' imprisonment, a fine of ten thousand dollars, or both, may be imposed.
5. Class A misdemeanor, for which a maximum penalty of imprisonment for three hundred sixty days, a fine of three thousand dollars, or both, may be imposed.
6. Class B misdemeanor, for which a maximum penalty of thirty days' imprisonment, a fine of one thousand five hundred dollars, or both, may be imposed.
7. Infraction, for which a maximum fine of one thousand dollars may be imposed. Any person convicted of an infraction who has, within one year prior to commission of the infraction of which the person was convicted, been previously convicted of an offense classified as an infraction may be sentenced as though convicted of a class B misdemeanor. If the prosecution contends that the infraction is punishable as a class B misdemeanor, the complaint shall specify that the offense is a misdemeanor.

This section shall not be construed to forbid sentencing under section 12.1-32-09, relating to extended sentences.

12.1-32-01.1. Organizational fines.

Any organization, as defined in section 12.1-03-04, shall, upon conviction, be subject to a maximum fine in accordance with the following classification:

1. For a class A felony, a maximum fine of one hundred thousand dollars.
2. For a class B felony, a maximum fine of seventy thousand dollars.
3. For a class C felony, a maximum fine of fifty thousand dollars.
4. For a class A misdemeanor, a maximum fine of thirty thousand dollars.
5. For a class B misdemeanor, a maximum fine of twenty thousand dollars.

Nothing in this section shall be construed as preventing the imposition of the sanction provided for in section 12.1-32-03, nor as preventing the prosecution of agents of the organization under section 12.1-03-03.

12.1-32-02. Sentencing alternatives - Credit for time in custody - Diagnostic testing.

1. Every person convicted of an offense who is sentenced by the court must be sentenced to one or a combination of the following alternatives, unless the sentencing alternatives are otherwise specifically provided in the statute defining the offense or sentencing is deferred under subsection 4:
 - a. Payment of the reasonable costs of the person's prosecution.
 - b. Probation.
 - c. A term of imprisonment, including intermittent imprisonment:
 - (1) In a state correctional facility in accordance with section 29-27-07, in a regional corrections center, or in a county jail, if convicted of a felony or a class A misdemeanor.

HB 1521 House Committee on Ethics

January 30, 2019

Chairman Kasper and Committee Members,

My name is Gregory Stites. I am a North Dakota attorney and live in District 47. I am here on behalf of North Dakotans for Public Integrity (NDPI) in opposition to HB 1521.

I have practiced law for over 40 years. I have worked in regional and national law firms, as general counsel of the ND Insurance Department, and as an assistant attorney general. I have also worked as senior counsel for the National Association of Insurance Commissioners (NAIC) representing all 50 state commissioners. For the last almost 20 years of my career, I worked as senior counsel and chief compliance officer for a large US-based international software company.

During my years with the NAIC, I filed numerous "friend of the court" briefs in state courts, US courts of appeals and the United States Supreme Court. These briefs often argued issues of constitutional law. I was once honored to have the United States Supreme Court refer to my brief as the basis of its holding in a case.

I was not part of those individuals who sought to enact Article XIV. Rather, I was recently retained by NDPI to analyze Article XIV and determine what specific laws are necessary to implement it.

Article XIV was designed to be implemented over a 3 year period. Certain provisions became effective 60 days after its passage. Certain provisions become effective in 2 years. And certain provisions no later than in 3 years. This was done in order to give the Legislative Assembly 2 sessions to complete its work in a deliberate and measured way.

To aid in your deliberations, I have prepared a document titled "66th Legislative Assembly - Required Implementation of Article XIV to the North Dakota Constitution." This document sets out the actual language of Article XIV - section by section - followed by my analysis of the required actions - if any - to be taken by the Legislative Assembly and in what time frames.

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On page 1 of this handout is a summary of those required actions to be taken by the 66th Legislative Assembly. Of the XIV subsections in Article XIV, only 4 subsections require any action by the 66th Legislative Assembly. Of the XIV subsections, 7 do not ever require Legislative Assembly involvement. 3 of the subsections require an interim study so as to be implemented in a more measured and deliberate way. The actual details regarding implementation of each subsection of Article XIV follow on pages 2 through 6.

The next task given to me by NDPI was to review HB 1521 and determine whether any of its provisions are in conflict with the North Dakota Constitution. Article XIV states that the laws enacted to implement it are required to "facilitate, safeguard, or expand, but not to hamper, restrict, or impair, this article." In my reasoned opinion, HB 1521 clearly hampers, restricts and impairs Article XIV in constitutionally impermissible ways.

To aid you in your deliberations, I have prepared and made available a legal analysis of HB 1521. The cover page is a summary of the major points of conflict followed by a 6 page - section by section - review of HB 1521. Based upon my review of HB 1521, it cannot withstand constitutional muster in the courts. It rushes through issues that are best left to an interim study.

The purpose of this document is to provide you, and your counsel, together with the attorney general, with a starting point on constitutional issues to consider before enacting any legislation. If deemed appropriate, I would be happy to discuss either of my handouts at a later date.

Thank you for your time.

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66th Legislative Assembly Required Implementation of Article XIV to the North Dakota Constitution

This document highlights the steps or actions necessary to implement Article XIV by the 66th Legislative Assembly and addresses those actions to be taken up by the 67th Legislative Assembly. Article XIV was designed to be implemented *over a staggered three year period*. Section 4 of Article XIV requires that laws enacted to implement the article are required to “*facilitate, safeguard, or expand, but not to hamper, restrict, or impair, this article.*”

Summary of Required Actions in Article XIV for the 66th Legislative Assembly. See bolded Subsections below:

Section 1 —Transparency

Subsection 1- No action ever required.

Subsection 2- *With 3 years to implement, no 66th Legislative Assembly actions are necessary. However, it is recommended the 66th Legislative Assembly authorize a 2 year interim study seeking input from all interested parties that would provide meaningful input for the 67th Legislative Assembly to enact new laws that properly vest one or more entities with the authority to implement, interpret and enforce the requirements of Subsection 2.*

Section 2 —Lobbyists and Conflicts of Interest

Subsection 1- *With 2 years before the effective date, no 66th Legislative Assembly actions are necessary. Over the next 2 years, the Ethics Commission is to adopt ethical rules to provide certain exceptions for items of value that do not rise ethical concerns. The 67th Legislative Assembly can then provide for the appropriate civil and criminal sanctions for violations on an emergency basis.*

Subsection 2- *The 66th Legislative Assembly is required to provide for appropriate civil and criminal sanctions for violations on an emergency basis.*

Subsection 3- *The 66th Legislative Assembly is required to provide for appropriate civil and criminal sanctions for violations on an emergency basis.*

Subsection 4- *Because a criminal penalty already exists, the 66th Legislative Assembly is required to provide an appropriate civil sanction for violations on an emergency basis.*

Subsection 5- With 3 years before the effective date, no 66th Legislative Assembly actions are necessary. Over the next 2 years, the Ethics Commission is to adopt definitional rules on bias. The 67th Legislative Assembly can then provide for the appropriate “enforcement penalties”.

Subsection 6- No action ever required.

Section 3 —North Dakota Ethics Commission

Subsection 1- No action ever required.

Subsection 2- *The 66th Legislative Assembly is required to provide for timely and adequate funding of the new Ethics Commission on an emergency basis.*

Subsection 3- No action ever required.

Section 4 —General Provisions

Subsection 1- No action ever required.

Subsection 2- No action ever required.

Subsection 3- No action ever required.

#8 HB 1521
1/32/19

The table below analyzes the steps necessary for the 66th Legislative Assembly to implement Article XIV section by section.

Article XIV	Implementation Dead-lines	Article XIV language set forth below:	Relevant Comments and Legislative Assembly Actions Required to Implement Article XIV (Note: underlining below is for emphasis only.)
Section 1. Transparency			
Subsection 1	Effective Date 1/5/2022	<i>"The people of North Dakota need information to choose candidates for office, vote on ballot measures, and ensure that their representatives are accountable. This transparency must be sufficient to enable the people to make informed decisions and give proper weight to different speakers and messages. The people therefore have the right to know in a timely manner the source, quantity, timing, and nature of resources used to influence any statewide election, election for the legislative assembly, statewide ballot-issue election, and state government action. This right is essential to the rights of free speech, assembly, and petition guaranteed by the First Amendment to the United States Constitution and shall be construed broadly."</i>	<p>Constitutional statement of citizen's right to transparency and accountability. This subsection expands the people's right to timely know the source and nature of resources used to "influence" state elections or state government actions, including action by the executive and legislative branches of government.</p> <p>No Legislative Assembly action ever required.</p>
Subsection 2	Effective Date 1/5/2022	<p><i>"The Legislative Assembly shall implement and enforce this Section by enacting, no more than three years after the effective date of Article XIV, laws that require prompt, electronically accessible, plainly comprehensible, public disclosure of the ultimate and true source 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."</i></p> <p><i>"The legislative Assembly shall have an ongoing duty to revise these laws as necessary to promote the purposes of this Section in light of changes in technology and political practices."</i></p> <p><i>"The Legislative Assembly "shall vest by law one or more entities with authority to implement, interpret and enforce this subsection and legislation enacted thereunder."</i></p> <p><i>"If the laws or rules enacted or an implementation, interpretation, or enforcement action taken under this subsection fail to fully vindicate the rights provided in this subsection, a resident taxpayer may bring suit in the courts of this state to enforce such rights."</i></p>	<p>Within 3 years, requires <u>prompt</u> public disclosure of "ultimate and true source of funds" spent in an amount greater than two hundred dollars, to influence state elections or state government actions. Given the critical importance of this transparency requirement, this Subsection provides <i>up to three years</i> for the Legislative Assembly, the Ethics Commission, and policy makers to seek broad input and to carefully develop laws that properly interpret and fully implement the requirement.</p> <p>Provides resident taxpayers with standing to sue the Legislative Assembly, Ethics Commission or other entity should the rights provided for in this Subsection not be fully vindicated.</p> <p>With 3 years to implement, no 66th Legislative Assembly actions are necessary. However, it is recommended the 66th Legislative Assembly authorize a 2 year interim study seeking input from all interested parties that would provide necessary input for the 67th Legislative Assembly to enact new laws that properly vest one or more entities with the authority to implement, interpret and enforce the requirements of Subsection 2 before its effective date set for no later than 1/5/2022.</p>

#8 HB 521
1/30/19

Section 2. Lobbyists and Conflicts of Interest.

Subsection 1	Effective Date 1/5/2021	<p><i>"A lobbyist may not knowingly give, offer, solicit, initiate, or facilitate a gift to a public official. A public official may not knowingly accept a gift from a lobbyist. These prohibitions do not apply if the lobbyist is an immediate family member of the public official."</i></p> <p><i>"Gift," as used in this Subsection, means any item, service, or thing of value not given in exchange for fair market consideration, including gifts of travel or recreation."</i></p> <p><i>"However, "gift" does not mean any purely informational material or campaign contribution, or, in order to advance opportunities for North Dakota residents to meet with public officials in educational and social settings inside the state, any item, service, or thing of value given under conditions that do not raise ethical concerns, as determined by rules adopted by the ethics commission. Such rules must be adopted within two years after the effective date of this Article. So as to allow for the adoption of these rules, these prohibitions shall take effect two years after the effective date of this Article. Appropriate civil and criminal sanctions for violations of this Subsection shall be set by the Legislative Assembly."</i></p>	<p>Effective after 1/5/2021, lobbyists may not give "gifts" – a defined term - to public officials. Public officials may not accept gifts from a lobbyist. Prohibited "gifts" are unambiguously defined. Exceptions to what are not gifts are plainly provided. The Ethics Commission is required to adopt ethical rules to provide certain exceptions for items of value that do not rise ethical concerns.</p> <p>Public officials are defined in Section 4, Subsection 2 of Article XIV and include "any elected or appointed office or official of the state's executive or legislative branch, including members of the ethics commission, or members of the governor's cabinet, or employees of the legislative branch, and "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency." It is to this expansive list of people that gifts will now be prohibited from being given.</p> <p>"Lobbying" means influencing or attempting to influence public officials on a particular issue. States generally define lobbying as an attempt to influence government action. A "lobbyist" means any person who engages in lobbying. Under this Subsection 1, such persons are prohibited from giving gifts to public officials.</p> <p>The term "lobbyist" in this Subsection 1 is broader than to those lobbyists required to be registered under NDCC Chapter 54-05.1. In fact, Chapter 54-05.1 seeks only to regulate a small number of lobbyists who 1) seek to secure or defeat legislation or the approval or veto of legislation by the governor, or 2) attempts to influence decisions made by legislative management or by an interim committee. The Chapter also provides a long list of exceptions of persons who are lobbyists but are not required to register with the State.</p> <p>This Subsection 1 does not take effect until January 5, 2021.</p> <p>With 2 years before the effective date, no 66th Legislative Assembly actions are necessary. Over the next 2 years, the Ethics Commission is to adopt ethical rules to provide certain exceptions for items of value that do not rise ethical concerns. The 67th Legislative Assembly can then provide for the appropriate civil and criminal</p>
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			sanctions for violations on an emergency basis.
Subsection 2	Effective Date 1/5/19	<p><i>"An elected public official may not be a lobbyist while holding office or for two years after holding office."</i></p> <p><i>"Appropriate civil and criminal sanctions for violations of this Subsection shall be set by the Legislative Assembly."</i></p>	<p>The definitions for "public official" and "lobbyist" are described in Subsection 1 above. This Subsection 2 applies only to "elected" public officials.</p> <p>The 66th Legislative Assembly is required to provide for appropriate civil and criminal sanctions for violations of this Subsection on an <u>emergency basis</u> as the effective date of this Subsection was January 5, 2019.</p>
Subsection 3	Effective Date 1/5/19	<p><i>"A lobbyist may not knowingly deliver a campaign contribution made by another individual or entity. "Deliver," as used in this Subsection, means to transport, transfer, or otherwise transmit, either physically or electronically."</i></p> <p><i>"This prohibition does not apply to a person who delivers a campaign contribution to the person's own campaign, or to the campaign of the person's immediate family member. This prohibition shall not be interpreted to prohibit any person from making a campaign contribution or from encouraging others to make a campaign contribution or to otherwise support or oppose a candidate."</i></p> <p><i>"Appropriate civil and criminal sanctions for violations of this Subsection shall be set by the Legislative Assembly."</i></p>	<p>Except as permitted in this Subsection 3, a lobbyist may not deliver campaign contribution funds from others.</p> <p>The 66th Legislative Assembly is required to provide for appropriate civil and criminal sanctions for violations of this Subsection on an <u>emergency basis</u> as the effective date of this Subsection was January 5, 2019.</p>
Subsection 4	Effective Date 1/5/19	<p><i>"A statewide candidate, candidate for the legislative assembly, or public official may not knowingly use a campaign contribution for personal use or enrichment."</i></p> <p><i>"Appropriate civil and criminal sanctions for violations of this subsection shall be set by the Legislative Assembly."</i></p>	<p>This Subsection 4 makes Constitutional the 2017 Legislative Assembly's ban on personal use or enrichment from campaign contributions.</p> <p>The 66th Legislative Assembly is required to provide for an appropriate civil sanction for a violation of this Subsection on an <u>emergency basis</u> as the effective date of this Subsection was January 5, 2019. It has already provided for a criminal penalty in NDCC 16.1-08.1-07 (Class A misdemeanor).</p>
Subsection 5	Effective Date 1/5/22	<p><i>"Directors, officers, commissioners, heads, or other executives of agencies shall avoid the appearance of bias, and shall disqualify themselves in any quasi-judicial proceeding in which monetary or in-kind support related to that person's election to any office, or a financial interest not shared by the general public as defined by the ethics commission, creates an appearance of bias to a reasonable</i></p>	<p>Effective 1/5/2022, bias and appearance of bias is prohibited in quasi-judicial proceedings within state government. This Subsection requires certain elected and unelected decision-making state officials (directors, officers, commissioners, heads, or other executives of agencies) to disqualify themselves from voting on or making regulatory decisions that are related to their campaign contributors</p>

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		<p>person.</p> <p><i>The Legislative Assembly and the ethics commission shall enforce this provision by appropriate legislation and rules, respectively. So as to allow for the adoption of such legislation or rules, this Subsection shall take effect three years after the effective date this Article."</i></p>	<p>or their financial interest <u>as defined by the ethics commission</u>. This Subsection does not take effect until January 5, 2022.</p> <p>No action required by 66th Legislative Assembly. This Subsection has a three-year delay period that allows time for the Ethics Commission to adopt its definitional rules and then for the 67th Legislative Assembly to provide for appropriate "enforcement penalties".</p>
Subsection 6	Effective Date 1/5/19	<p><i>"Governments of foreign countries, foreign nationals not lawfully admitted for permanent residence in the United States, and corporations organized under the laws of or having their principal place of business in a foreign country, are prohibited from making contributions or expenditures in connection with any statewide election, election for the legislative assembly, or statewide ballot-issue election."</i></p>	<p>This Subsection makes Constitutional the 2017 Legislative Assembly's ban on foreign contributions and expenditures.</p> <p>No Legislative Assembly action ever required.</p>
Section 3. North Dakota Ethics Commission			
Subsection 1	Effective Date 1/5/19	<p><i>"In order to strengthen the confidence of the people of North Dakota in their government, and to support open, ethical, and accountable government, the North Dakota Ethics Commission is hereby established."</i></p>	<p>Establishes the new Ethics Commission as of January 5, 2019. The ethics commissioners should be appointed as soon as possible.</p> <p>No Legislative Assembly action ever required.</p>
Subsection 2	Effective Date 1/5/19	<p><i>"The ethics commission may adopt ethics rules related to transparency, corruption, elections, and lobbying to which any lobbyist, public official, or candidate for public office shall be subject, and may investigate alleged violations of such rules, this Article XIV, and related state laws. The ethics commission shall maintain a confidential whistleblower hotline through which any person acting in good faith may submit relevant information."</i></p> <p><i>"The Legislative Assembly shall provide adequate funds for the proper carrying out of the functions and duties of the ethics commission."</i></p>	<p>Duties, powers and funding of Ethics Commission. This Subsection defines the authority and duties of the new Ethics Commission.</p> <p>The 66th Legislative Assembly is required to provide for timely and adequate funding of the new Ethics Commission on an <u>emergency basis</u> as it was established on January 5, 2019.</p>
Subsection 3	Effective Date 1/5/19	<p><i>"The ethics commission shall consist of five members, appointed for four-year terms by consensus agreement of the governor, the majority leader of the senate, and the minority leader of the senate. No member of the ethics commission may hold other public office or be a lobbyist, candidate for public office, or political party official."</i></p>	<p>Members, appointment and qualifications of Ethics Commission.</p> <p>No Legislative Assembly action ever required.</p>

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Section 4 General Provisions.			
Subsection 1	Effective Date 1/5/19	<i>"This Article is self-executing and all of its provisions are mandatory. Laws may be enacted to facilitate, safeguard, or expand, but not to hamper, restrict, or impair, this article. This Article shall take effect sixty days after approval."</i>	Provides for effective date of Article and protection against harmful laws. All the provisions of Article XIV take effect on January 5, 2019, except those specifically listed with a later effective date. No Legislative Assembly action ever required.
Subsection 2	Effective Date 1/5/19	<i>"For the purposes of this Article, "public office" or "public official" means any elected or appointed office or official of the state's executive or legislative branch, including members of the ethics commission, or members of the governor's cabinet, or employees of the legislative branch, and "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency."</i>	Definitions for "public office" and "public official". No Legislative Assembly action ever required.
Subsection 3	Effective Date 1/5/19	<i>"If any provision of this Article is held to be invalid, either on its face or as applied to any person, entity, or circumstance, the remaining provisions, and the application thereof to any person, entity, or circumstance other than those to which it is held invalid, shall not be affected thereby. In any case of a conflict between any provision of this Article and any other provision contained in the Constitution, the provisions this Article shall control."</i>	Legal construction, severability and Constitutional conflict provision. No Legislative Assembly action ever required.

Major Points in Legal Analysis of HB 1521

The laws enacted to implement Article XIV are required to “*facilitate, safeguard, or expand, but not to hamper, restrict, or impair, this Article.*” See Section 4, Subsection 1 of Article XIV. HB 1521 clearly hampers, restricts and impairs Article XIV in constitutionally impermissible ways. This Summary highlights how HB 1521 acts in direct contravention of Article XIV to the North Dakota Constitution. The attached Legal Analysis details how HB 1521 does that in greater detail section by section.

HB 1521 Inappropriately Amends Chapter 16.1-08.1:

- Provides a definition of “ultimate and true source” of funds and other definitions that are inconsistent with the language of Article XIV.
- Weakens the penalty for “personal use of contributions.”
- Misinterprets the rights of a resident taxpayer to bring suit to enforce Section 1 of Article XIV.
- Provides an impermissibly restrictive definition of “lobbyist.”

HB 1521 Inappropriately Applies the Administrative Agencies Practice Act – Chapter 28-32:

- Impermissibly places the Ethics Commission for rule making purposes within the Administrative Agencies Practice Act.
- Impermissibly allows the Legislative Assembly to void rules lawfully promulgated by the Ethics Commission.
- Provides for disqualification for bias within the Administrative Agencies Practice Act that is inconsistent with Article XIV and usurps the authority of the Ethics Commission to adopt definitional rules regarding disqualification for bias.

HB 1521 Inappropriately Interferes with Ethics Commission and Prohibition Against Gifts:

- Creates a new NDCC Chapter 54-66 that effectively eviscerates the Ethics Commission.
- Provides for numerous impermissibly restrictive definitions, including “influence state government action,” “gift,” “lobby,” “lobbyist,” and “ultimate and true source.”
- Provides an unconstitutional list of funds not to be considered reportable when filing the ultimate and true source of funds expended.
- Provides for inadequate sanctions for illegal and unethical conduct.
- Misinterprets the rights of a resident taxpayer to bring suit to enforce Section 1 of Article XIV.
- Impermissibly usurps the authority of the Ethics Commission to adopt rules for exceptions to the prohibition on gifting.
- Effectively repeals and replaces Article XIV’s definition for prohibited “gifts” and provides an unconstitutional list of exceptions thereby allowing gifts to be continued to be given.
- Impermissibly usurps the authority of the Ethics Commission to make internal policies and procedures and fails to provide it with meaningful enforcement oversight of ethics violations.
- Gives an executive branch OAH ALJ the power to overrule decisions of the Ethics Commission.
- Provides for language that will have a chilling effect on good faith complainants and others regarding the filing of ethics complaints and decisions on ethics complaints.
- Appropriates only \$100,000 for the work of the Ethics Commission, an amount that is grossly inadequate for the carrying out of the functions and duties of the Commission.
- Does not properly provide for those emergency provisions that are required by Article XIV.

Legal Analysis of HB 1521

Article XIV places into the North Dakota Constitution citizen's rights to transparency, integrity, and accountability in state government. It charges the Legislative Assembly, the new Ethics Commission, and the Governor with implementing the requirements over a staggered three year period.

"In the case of a conflict between any provision of this Article [XIV] and any other provision contained in the Constitution, the provisions of this Article shall control." See Section 4, Subsection 3 of Article XIV.

The laws enacted to implement Article XIV are required to *"facilitate, safeguard, or expand, but not to hamper, restrict, or impair, this Article."* See Section 4, Subsection 1 of Article XIV. HB 1521 clearly hampers, restricts and impairs Article XIV in constitutionally impermissible ways as described below.

Analysis of HB 1521 Section by Section:

Section 1 amends NDCC §16.1-08.1-01, Definitions for Campaign Contribution Statements, and creates a new Subsection 19 as a definition for "ultimate and true source", a term used in Subsection 2 of Section 1 of Article XIV. The definition provided is inconsistent with the language in Article XIV and would severely restrict the people's right to know the "ultimate and true source" of funds spent to influence elections and state government actions. The definition inserts limiting words like "knowingly" before the word "contributed" and "solely" before the words "to influence". The changes being proposed in HB 1521 appear intended to at least partially implement Subsection 2 of Section 1 to Article XIV so the definition of "contribution" in §16.1-08.1-01 is inconsistent with Article XIV. As currently defined Chapter 16.1-08.1, "contribution" is too narrowly applied and has inappropriate exclusions. Other definitions in §16.1-08.1-01 are also inconsistent with Article XIV. Subsection 2 of Section 1 plainly states that Article XIV is intended to provide transparency regarding spending on statewide elections, elections for the legislative assembly, statewide ballot-issue elections, lobbying, and otherwise influencing state government action. These are 5 distinct categories of spending covered by Section 1 and not all are encompassed within the Chapter 16.1-08.1. Therefore an attempt to use this Chapter by itself to implement Section 1 of Article XIV is wholly inadequate.

Section 6 amends NDCC §16.1-08.1-04.1 by actually weakening the current penalty for "personal use of contributions". All such violations under current law are a class A misdemeanor (a criminal penalty of up to \$1000 and up to 1 year in confinement). HB 1521 would reduce a first violation of §16.1-08.1-04.1 down from a class A misdemeanor to a civil fine only of \$500. Such penalties would be wholly inadequate to deter illegal and unethical conduct.

Section 7 enacts a new section to §16.1-08.1 to require that "in any report under this chapter that requires the identification of a contributor or subcontributor, the "ultimate and true source" of funds be identified." It does so, however, by using the impermissibly restrictive definition of "ultimate and true source" of funds defined in Section 1 of HB 1521, and by using the terms

“contributor or subcontributor” it fails to capture all funds required to be reported because of the narrow definition of “contribution” in §16.1-08.1-01.

Section 7 also materially misinterprets the rights of a resident taxpayer to bring a suit in the courts to enforce Section 1 of Article XIV. Section 7 would only permit suits against those persons who fail to comply with the reporting requirements for the ultimate and true source of funds, requiring proof by “clear and convincing evidence” after exhaustion of all other enforcement measures but only if the person “remains in violation”. Article XIV, Section 1, Subsection 2 is plainly intended to give a resident taxpayer the standing to sue the Legislative Assembly, Ethics Commission or other entity should the rights provided for in this Subsection be not fully vindicated. Enforcement actions against specific violators of the reporting requirements are expressly reserved to the entity(ies) vested by the Legislative Assembly with the “authority to implement, interpret and enforce” Article XIV, Section 1, Subsection 2, which HB 1521 does not currently provide for.

Section 8 enacts a new section to NDCC §16.1-08.1 that forbids lobbyists from acting as a “conduit” for certain contributions. This new section appears intended to implement Article XIV, Section 2, Subsection 3 that states “a lobbyist may not knowingly deliver a campaign contribution made by another individual or entity.” This Section 8 new section to §16.1-08.1 is impermissibly restrictive to the language in Article XIV. NDCC Chapter §16.1-08.1 does not define “lobbyist” apparently relying upon the definition for lobbyist in Chapter 54-05.1.

The definition of “lobbyist” in Article XIV, Section 2, Subsection 3 is much broader than to those lobbyists required to be registered under NDCC Chapter 54-05.1. In fact, Chapter 54-05.1 only seeks to regulate a small number of lobbyists who, 1) seek to secure or defeat legislation or the approval or veto of legislation by the governor, or 2) attempt to influence decisions made by legislative management or by an interim committee. The Chapter also provides a long list of exceptions of persons who are lobbyists but are not required to register with the State. Article XIV does not permit such exceptions from its definition and use of the word “lobbyist”.

Under Article XIV, “lobbying” means influencing or attempting to influence public officials on a particular issue. States generally define lobbying as an attempt to influence government action. A “lobbyist” for purposes of Article XIV means any person who engages in lobbying.

In summary, Article XIV, Section 2, Subsection 3 requires no further definition and only requires that the Legislative Assembly provide for appropriate civil and criminal sanctions. The sanctions presently contained in Section 8 are inadequate and will not deter illegal conduct. The general provision for a violation of § 16.1-08.1 is a class A misdemeanor yet in Section 8 sanctions have been set at a \$100 civil fine for a first violation and an infraction for subsequent violations. Such penalties would be wholly inadequate to deter illegal and unethical conduct.

Sections 9-28 are inconsistent with Article XIV by requiring the Ethics Commission to adhere to the Administrative Agencies Practice Act (AAPA) for rulemaking purposes. As correctly stated in HB 1521 on page 19, “[t]he authority of the [ethics] commission to adopt rules arises from Article XIV of the Constitution of North Dakota.” While the new Ethics Commission may voluntarily choose to materially follow the AAPA, there is no authority for the Legislative

Assembly to force the Ethics Commission to adhere to the AAPA. It is important to note that numerous other commissions, boards and departments are exempt from following the AAPA. See § 28-32-01(2) for the list. Further, the AAPA contains certain provisions that would require the Ethics Commission not to apply when rulemaking in certain circumstances because those provisions are in direct conflict with Article XIV. Finally, Article XIV does not permit the Legislative Assembly to use the AAPA to void the rules of a Constitutionally established entity like the Ethics Commission.

Section 29 appears intended to implement Article XIV, Section 2, Subsection 5 regarding prohibition of bias. Section 29 is inconsistent with Article XIV and usurps the authority of the Ethics Commission. Under Subsection 5, bias and appearance of bias is prohibited in quasi-judicial proceedings within state government. Subsection 5 requires certain elected and unelected decision-making public officials to disqualify themselves from voting on or making regulatory decisions that are related to their campaign contributors or their financial interest “*as defined by the Ethics Commission*” and not as defined by the Legislative Assembly. Subsection 5 does not take effect until January 5, 2022. Subsection 5 does state that Legislative Assembly and the Ethics Commission shall “*enforce*” this provision by appropriate legislation and rules, respectively. The three-year delay period allows time for the Ethics Commission to adopt its definitional rules and then for the Legislative Assembly to provide for appropriate “*enforcement penalties*” best accomplished in the 2021 session (following the adoption of the Ethics Commission’s rules). The sanctions presently contained in Section 29 are inadequate and will not deter illegal conduct.

Section 30 creates a new Chapter 54-66 to the NDCC (providing certain definitions, attempting to require disclosure of the ultimate and true source of funds, sanctions for improper gifts, controls and procedures over the Ethics Commission, complaints and confidentiality, etc. —13 new sections). The new Chapter’s provisions are in various ways explained below inconsistent with Article XIV or are inadequate, ill-advised, and premature. Many provisions usurp the Constitutional authority of the Ethics Commission to control and engage in its own affairs. Further, neither in this new Chapter, nor otherwise in the HB 1521, does the Legislative Assembly vest an entity(ies) to “implement, interpret, and enforce” Section 1 of Article XIV.

§ 54-66-01 is a “definitions” section that provides numerous impermissibly restrictive definitions in conflict with Article XIV. In direct contravention of Section 1 of Article XIV, Section 30 defines “influence state government action” to mean only matters relating to the final adoption of a rule... under chapter 28-32. Clearly, the plain meaning of to “influence state government action” in Article XIV is to cover all state government actions including inside the legislative and executive branches. Definitions for “gift”, “lobby”, “lobbyist”, and “ultimate and true source” are inconsistent with Article XIV. Other definitions are already either in Article XIV or are to be defined by the Ethics Commission and not the Legislative Assembly.

§ 54-66-02 attempts in part to implement Section 1 of Article XIV on transparency of funds spent to influence state elections and state government action. The Section is in direct contravention of Article XIV. The Section provides a patently unconstitutional laundry list of funds not to be considered reportable when filing the ultimate and true

source of funds expended. The non-reportable list would include such items as reimbursements for travel, meals, refreshments, certain gifts, expenses for social settings, etc. The new § 54-66-02 would also provide wholly inadequate sanctions that will not deter illegal and unethical conduct. It also delays the reporting of funds for up to one year as opposed to meeting the Constitutional requirement for prompt and timely reporting. The new § 54-66-02 would materially misinterpret the rights of a resident taxpayer to bring a suit in the courts to enforce Section 1 of Article XIV. It would only permit suits against those persons who fail to comply with the reporting requirements for the ultimate and true source of funds, requiring proof by "clear and convincing evidence" after exhaustion of all other enforcement measures but only if the person "remains in violation". Subsection 2 of Section 1 to Article XIV is plainly intended to give a resident taxpayer the standing to sue the Legislative Assembly, Ethics Commission or other entity should the rights provided for in this Subsection of Article XIV are not fully vindicated. Enforcement actions against specific violators of the reporting requirements are expressly reserved to the entity(ies) vested by the Legislative Assembly with the "authority to implement, interpret and enforce" Article XIV, Section 1, Subsection 2 (which has not been done in HB 1521).

§ 54-66-03 in effect impermissibly "repeals and replaces" Subsection 1 of Section 2 of Article XIV dealing with prohibited "gifts" to public officials. In direct contravention of Article XIV, the new § 54-66-03 redefines what a "gift" is ignoring the straight-forward and plain words for that definition expressed in Article XIV. This new § 54-66-03 also usurps the authority of the Ethics Commission to adopt rules allowing for North Dakota residents to meet with public officials in educational and social settings inside the state that do not give rise to ethical concerns. It does so by preempting the role and responsibilities of the Ethics Commission. Further, the sanctions contained for illegal gift giving are inadequate and will not deter illegal and unethical conduct.

§ 54-66-04 provides for Ethics Commission member terms and meetings of the commission to address complaints. It also requires the Ethics Commission to adopt a code of ethics in a public meeting and provides for compensation of Ethics Commission members. It allows for the Ethics Commission to hire as staff only a part-time administrative assistant, but no investigator, executive director, or attorney. Article XIV does not grant the Legislative Assembly the power to establish the internal policies and procedures of the Ethics Commission, choosing rather, to vest the Ethics Commission itself with rule making authority over its Constitutional obligations. The Legislative Assembly's role here is to provide adequate funds for the proper carrying out of the functions and duties of the Ethics Commission.

§ 54-66-05 deals with making a complaint to the Ethics Commission, identifying certain information, and setting penalties for false complaints. Article XIV does not grant the Legislative Assembly the power to establish the internal policies and procedures of the Ethics Commission, choosing rather, to vest the Ethics Commission itself with rule making authority over its Constitutional obligations.

§ 54-66-06 requires the commission to inform the accused person of a complaint against them within 10 days of its receipt. Article XIV does not grant the Legislative Assembly the power to establish the internal policies and procedures of the Ethics Commission, choosing rather, to vest the Ethics Commission itself with rule making authority over its Constitutional obligations.

§ 54-66-07 allows for informal resolution of complaints. Article XIV does not grant the Legislative Assembly the power to establish the internal policies and procedures of the Ethics Commission, choosing rather, to vest the Ethics Commission itself with rule making authority over its Constitutional obligations.

§ 54-66-08 requires an investigator with specific knowledge and experience to handle the investigation of complaints but the Commission is given no authority to hire an in-house investigator; rather, it must rely on investigators from another agency or BCI. Article XIV does not grant the Legislative Assembly the power to establish the internal policies and procedures of the Ethics Commission, choosing rather, to vest the Ethics Commission itself with rule making authority over its Constitutional obligations.

§ 54-66-09 deals with the handling of investigations, findings and recommendations and responses. Article XIV does not grant the Legislative Assembly the power to establish the internal policies and procedures of the Ethics Commission, choosing rather, to vest the Ethics Commission itself with rule making authority over its Constitutional obligations.

§ 54-66-10 deals with final determinations, penalties and referrals for enforcement. It impermissibly requires the Ethics Commission to meet again with a complainant and the accused even though an investigation with findings and a recommendation has already been issued by the investigator. Under this new § 54-66-10, appeals of Ethics Commission decision's would be required to go to the executive branch Office of Administrative Hearings (OAH). An OAH ALJ could then overrule the Ethics Commission. Article XIV does not permit this. The new § 54-66-10 also specifies that the Ethics Commission may not terminate a public official or remove them from office even though no such power is given to the Ethics Commission in Article XIV. Article XIV does not grant the Legislative Assembly the power to establish these types of internal policies and procedures of the Ethics Commission, choosing rather, to vest the Ethics Commission itself with rule making authority over its Constitutional obligations. Finally, giving an executive branch OAH ALJ to power to overrule the Ethics Commission is in direct contravention of Article XIV.

§ 54-66-11 provides for the confidentiality of information in certain situations and goes on to provide numerous instances that would have a chilling effect on good faith complainants and others by specifying references to civil and criminal defamation statutes and criminal statutes. Article XIV does not grant the Legislative Assembly the power to establish to the internal policies and procedures of the Ethics Commission, choosing rather, to vest the Ethics Commission itself with rule making authority over its Constitutional obligations.

§ 54-66-12 establishes the civil and criminal sanctions for a violation of Subsection 2 of Section 2 of Article XIV (an elected public official may not be a lobbyist while holding office or for two years after holding office.). It requires the secretary of state to impose a fine for the first violation yet the secretary of state has not been vested with the authority to “implement, interpret, and enforce” the provisions of Subsection 2 of Section 2 of Article XIV. Lastly, the sanctions of a \$100 civil fine for first offense and an infraction for subsequent violations are wholly inadequate and will not deter illegal and unethical conduct.

§ 54-66-13 requires that the attorney general provide legal services for the Ethics Commission; however, until such time as the Legislative Assembly provides adequate funds for the proper carrying out of the functions and duties of the Ethics Commission the Ethics Commission likely cannot afford those services.

Section 31 appropriates only \$100,000 for the work of the Ethics Commission. Amongst other responsibilities, Article XIV empowers the Ethics Commission to “*adopt ethics rules related to transparency, corruption, elections, and lobbying to which any lobbyist, public official, or candidate for public office shall be subject, and may investigate alleged violations of such rules, this Article XIV, and related state laws. The ethics commission shall maintain a confidential whistleblower hotline through which any person acting in good faith may submit relevant information.*” Considering important work given to the Ethics Commission by the people of North Dakota under the Constitution, this amount is grossly inadequate and contrary to Article XIV’s directive to provide adequate funds for the proper carrying out of the functions and duties of the Ethics Commission, and, further, it violates the prohibition against laws that hamper, restrict, or impair Article XIV.

Sections 32 and 33 recognize that Article XIV contains time delays for certain of its provisions.

Section 34 unnecessarily recognizes that laws enacted to implement a Constitutional provision are effective only until such time as the provision remains in the Constitution.

Section 35 does not properly capture those emergency provisions that are required by Article XIV. Effective dates on an emergency basis are needed in reference to Article XIV, Section 2, Subsections 2, 3, and 4, and Article XIV, Section 3, Subsection 2.

#9
HB 1521
1/30/19

House Ethics Committee

January 30, 2019

Testimony of Dina Butcher

Former Deputy Commissioner of Agriculture, former Director of the Division of Community Services,
former Human Rights Director and Lobbyist for numerous commodity organizations and Private
Investigator with WT Butcher and Associates

President of North Dakotans for Public Integrity

In OPPOSITION to HB 1521

Mr. Chairman and Members of the Committee:

Article XIV is in the constitution as determined by the vote of the citizens of North Dakota. As legislators you have taken an oath to uphold the constitution. I respectfully ask that you not pass HB 1521 and pass a bill that is in keeping with your obligation.

To avoid distraction from the major policy and funding issues with which this session is faced, I urge you to sufficiently fund the Ethics Commission and recommend an interim study for those sections which do not go into effect until later. The Ethics Commission, in deliberation with the citizens of this state, as well as the legislative assembly, as was intended, would then adopt the rules and the needed legislation to provide clear guidance for ethical behavior of elected officials, similar to those adhered to by almost every profession represented within this legislative body.

Thank you for all the good work you do and I respectfully ask for your recommendation to rescind and replace HB1521.

#10
HB1521
1/30/19

House Ethics Committee
January 30, 2019
Ellen Chaffee, Ph.D., Vice President
North Dakotans for Public Integrity, Inc.
Bismarck ND - District 8

Testifying in Opposition to HB 1521

Chairman Kasper, Members of the Committee:

My name is Ellen Chaffee. I served the state for 31 years as a leader in the University System office, NDSU, Mayville State, and Valley City State. Now I am a senior consultant with the Association of Governing Boards of Universities and Colleges. My Stanford University Ph.D. is in administration and policy analysis. I am a founder and vice-president of North Dakotans for Public Integrity, the authors of Article XIV.

Today I will speak for the people of North Dakota. It's deathly cold out - they're not here in person. But I can bring you their voices and urge you, on their behalf, not to pass HB 1521.

NDPI began writing the measure nearly two years ago, with plenty of good ideas. After many drafts, we began a series of three "high-test" state-wide polls because initiated measures are very expensive. We wanted to win. Like you at re-election time, we needed to know what the people would vote for. For strategic reasons, our poll results were highly confidential until now.

Measure 1 got a solid 54 percent majority, and it got even more of YOU - 93 legislators were elected in pro-Measure 1 districts. Measure 1 got 54 percent of the votes and 66 percent of the legislators. We took these results very seriously in writing Measure 1, and we strongly recommend that you do the same. Here's what they said.

About legislators:

- The North Dakota State Legislature has only a 39% approval rating from voters.
- More than 80 percent believe political leaders are more interested in protecting their power and perks than doing what is right for North Dakota.
- Nearly 80% of us want greater oversight and accountability from you.
- Seventy percent of us believe you work for the wealthy and powerful, not people like us.
- Nearly two-thirds believe there is widespread corruption and abuse of power among public officials and employees.

About the political system in North Dakota:

#10
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- A striking 85% of us believe money and campaign contributions have too much influence on government.
- Over three-fourths say powerful interests have rigged the system for themselves, undermining the moral foundations of North Dakota.
- Sixty percent believe the political system in North Dakota is broken and needs major changes.
- We support political reform regardless of age, gender, and political party.

Finally, every section of Article XIV speaks for the people:

- Section 1:

76% support prompt, electronically accessible public disclosure of the ultimate, true source of funds spent to influence elections or government actions

- Section 2:

69% support prohibiting gifts from lobbyists to public officials.

73% support prohibitions against public officials deciding when they have a conflict of interest

- Section 3:

82% support the Ethics Commission

Those of us who worked on Article XIV delivered a message to you from the people. They expect you to take them seriously. HB 1521 does not do that. You do that by establishing and funding the ethics commission and pursuing an open, thoughtful process for other key elements.

Thank you for your time and attention.

#10
HB 1521
1/30/19

This bill would gut ethics commission and pervert the will of voters

North Dakota citizens beware: Legislative leaders are taking steps to gut the constitutional amendment that voters approved in the November election to establish an ethics commission. Legislation to implement the measure makes a mockery of what voters intended.

House Bill 1521, introduced by Rep. Chet Pollert, R-New Rockford, the House majority leader, and Sen. Rich Wardner, R-Dickinson, the Senate majority leader, is a maneuver that would severely weaken safeguards intended to keep corruption out of state government.

Candidly, we didn't support the ethics measure because of certain flaws. But the voters have spoken, and this legislation is a perversion of the will of voters. It's also part of a troubling pattern, evident with the legislature's aggressive reworking of the medical marijuana measure, of legislative contempt for voters' wishes.

In a gift to influence peddlers, the ethics implementation bill defines "influence state government action" narrowly to mean "promoting or opposing the final adoption of a rule by an administrative agency or the commission.

Got that? It applies specifically to attempts to promote or oppose "the final adoption of a rule," leaving uncovered the rest of the policy-making process.

OUR VIEW

Under the section dealing with financial disclosure requirements, the bill does not require reporting a gift to or from a family member — the "all in the family" provision.

It also exempts reporting requirements for reimbursement for "travel, meal and refreshment expenses" for attending a conference, seminar or "other legitimate educational opportunity" as long as they involve "issues germane to the official duties of the public official" — an exception so generous that it should be called the "junket preservation provision."

We know how much legislators love to be wined and dined by lobbyists. That won't be a problem. Meals and refreshments provided while "informing, advising or educating a public official" — in other words, lobbying — are exempted from reporting.

How about favors for public officials? Not a problem. A "good or service determined not to raise ethical concerns" can go unreported.

See a pattern here?

If passed, this bill would keep hidden from the public the favors doled out in darkness that influence laws and policies. It would allow business as usual.

Mr. Smith, the James Stewart reformer in the classic movie, "Mr. Smith Goes to Washington,"

needs to go to Bismarck.

Instead, we have Rep. Jim Kasper, R-Fargo, who has been named chairman of the House Ethics Committee. He's famous for taking trips sponsored by the internet gambling industry to places like Montreal, Antigua, and Costa Rica to talk about friendly legislation he tried to pass.

Also named to the House Ethics Committee are a couple of members, Rep. Kim Koppelman, West Fargo, and Rep. Scott Louser, R-Minot, who are behind legislation to allow legislators to override voter-passed constitutional amendments.

Don't forget that Measure 1, which established the ethics commission and transparency requirements, was a constitutional amendment.

See a pattern here? Who do Pollert and Wardner think they're fooling? This legislation is so blatant that its architects must assume that a complacent citizenry will shrug and let this outrage pass without a whimper of protest.

Don't let that happen, voters. Tell your legislators that you want ethical state government, with real reporting requirements to ensure transparency, and no more special favors for legislators and public officials.

And if they ignore you, vote accordingly.

Editorials represent the views of Forum management and the Editorial Board.

#10
HB 1521
1/30/19

Written testimony related to SB 2148 and HB 1521 in the
66th North Dakota Legislative Assembly

January 29, 2019

Submitted by: Eric D. Raile, Ph.D. *Eric D. Raile*
Department of Political Science
Montana State University
Bozeman, Montana

Dear Members of the responsible legislative committees,

I submit this written testimony as a former resident and as a recognized expert who cares about the quality of governance in North Dakota. I was born and grew up in Wishek, North Dakota, and worked at North Dakota State University in the Department of Criminal Justice and Political Science from 2008-2012. Furthermore, I worked for the United States Office of Government Ethics for over a decade on issues of government ethics, accountability, and transparency both domestically and internationally. Since that time, I have published academic work on government ethics and on public views of government corruption. The comments here are my own and do not imply endorsement by any of my previous or current employers.

I am submitting this testimony in general support of the North Dakota Legislative Assembly crafting effective legislation in response to the public's affirmative vote on Constitutional Measure #1 last November. Getting this all right will require work, but many other governments throughout the country and world have supplied examples and experiences that can be very useful.

The core reasons for establishing an effective ethics commission are simple. Governance in a representative democracy relies on the consent of the governed. Citizens want to know that the rule of law is being respected. They also want to know that their public officials and employees are making decisions based on sound principles rather than based on their own personal gain or the influence of hidden outside interests. Further, effective governance requires accountability to those citizens, and such accountability cannot be achieved without transparency. Interested citizens must have the ability to examine the decision making of public officials and employees in order to hold them accountable. Without basic transparency mechanisms, citizens tend to lose confidence in the integrity of government decisions. This loss of confidence erodes the ability of government to perform well and efficiently and complicates the work of elected representatives.

Though constructing an effective ethics commission takes effort, failure to respond to public demand for truly transparent government can produce significant negative consequences. Beyond crafting solid laws and rules, I note that such effectiveness also crucially requires adequate authority and resources for the officials implementing the ethics program.

I urge legislators to see this for what it is – an opportunity to strengthen the relationship between government and the citizenry in North Dakota. Taking this opportunity seriously can have positive consequences for generations of people in North Dakota. Thank you for your consideration.

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#10
HB 1521
1/30/19

Testimony in Support of SB 2148 and in Opposition to HB 1521

North Dakota Senate and House Committees on Ethics

January 30, 2019

Chairman Hogue and Members of the North Dakota Senate Ethics Committee:
Chairman Kasper and Members of the North Dakota House Ethics Committee:

We urge a DO PASS on SB 2148 and a DO NOT PASS on HB 1521.

When we see how many bills legislators have to deal with, we are struck with a certain awe regarding how much thought must go into this lawmaking process. Fortunately, in the case of Article 14 of the constitution, which ND voters have instituted (54% of North Dakota voters voted for Measure 1 in the November 2018 election), there is no reason to take too much time and effort on this.

The constitution now says that the ethics commission must be created and must be funded. Period. Let's do this gracefully; it's time that individual voters have a vote that won't crumble to nothing in the face of big money from big oil and big money from big tobacco. We need to see when big money is trying to influence the votes of legislators, and we need rules of ethics--that's why we worked hard and instituted Article 14.

Get the commission chosen and get it funded properly, this is going to happen anyway one way or another.

We urge a DO PASS on SB 2148 and a DO NOT PASS on HB 1521.

Sharon E. Buhr
Dr. James B. Buhr
613 Chautauqua Blvd
Valley City, ND 58072
701-845-5197

#10
HB1521
1/30/19

January 30, 2019
Senate and House Committees on Ethics
Madeline Luke
Valley City

Mr. Chairman, Members of the Committee:

I urge you to support Senate Bill 2148 and oppose HB 1521.

The passage of Measure 1 with a 53% majority makes it abundantly clear that the citizenry feels there needs to be greater transparency and accountability in Bismarck. The voters fulfilled their responsibility by listening to both sides, making a decision and casting their ballots. Now it is your responsibility to honor our wishes and institute this measure without changing its original intent. Furthermore, you must give the ethics commission adequate funding to carry out its duties. Tax money is our money and we want a share of the communal pot to go towards restoring some faith and honesty in government.

I personally went door to door in Valley City and you should know that people of all ages and party affiliation voiced mistrust in government in general. The catch words "done deal" pretty much expressed their feelings about the decisions made by elected and appointed officials.

Your vote on SB2148 and HB1521 is a gage for your respect for both the people you are supposed to represent and the constitution you are supposed to uphold. Please consider that you serve at the pleasure of the people and for the people and vote accordingly.

Yours truly,
Madeline Luke
701 845 5407

#10
HB1521
1/30/19

January 28, 2019

Mr. Chairman, Members of the Ethics Committees for the House and Senate:

We urge you to support Senate Bill 2148 and oppose HB 1521.

We, the people of North Dakota, voted for Measure 1 in November, and we intend to make our legislators' votes on this issue a central factor when they run for re-election. This issue is important enough to be the only issue for re-election because it measures your respect for both the people you are supposed to represent and the constitution you are supposed to uphold. Why would we re-elect you if you fail both the voters and the constitution?

We do not hold you personally responsible for the damaged culture in which you work, but we do hold you responsible for fixing it.

Please respect the vote of the people and uphold what Measure 1 stands for:
Support 2148 and Oppose HB 1521.

Thank you.

Alan C. Adams 358 3rd St NW 209-658-0439 AI Adams
Valley City, ND 58072
Sharon Adams 358 3rd St NW Sharon Adams
Valley City, ND 58072 701-840-1113
Carol Nelson 250 4th St NW #10
Valley City ND 58072 701-840-2577

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Support 2148 and Oppose HB 1521.

Thank you.

Robert Hether

Robert Hether
921 - 14th Ave. SW
Valley City, ND 58072

Warren Ventech

WARREN VENTECH - 3125 117 Ave SE - Valley City, ND 58072

Cal Lee

Valley City ND

George Dutton

502 4th Ave NW
V.C. ND

George Dutton

George Dutton

108 3rd St. NE
Valley City ND 58072

Bonnie Dutton

Bonnie Dutton

108 3rd St. NE, Valley City ND 58072

Michelle Gould

479 3rd Ave NW Valley City, ND 58072

Michelle Gould

479 3rd Ave. NW Valley City
ND 58072

Andrea Winter

Andrea Winter

660 Chautauqua Blvd
Valley City, ND 58072

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HB1521
1/30/19

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We do not hold you personally responsible for the damaged culture in which you work, but we do hold you responsible for fixing it.

Please respect the vote of the people and uphold what Measure 1 stands for:
Support 2148 and Oppose HB 1521.

Thank you.

Heather Schwehr

Heather Schwehr
10530 29th St SE
Sandborn ND 58480

Theresa Will

Theresa Will
3520 Webster's
Valley City, ND 58072

Carol Knutson

Carol Knutson
1350 4th Ave N.E.
Valley City, ND 58072

Gail Pederson

Gail Pederson
3608-117th Ave SE
Valley City, ND 58072

Kay Kringlie

Kay Kringlie
607 5th Ave. NW
Valley City, ND 58072

#10
HB 1521
1/30/19

January 28, 2019

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Please respect the vote of the people and uphold what Measure 1 stands for:
Support 2148 and Oppose HB 1521.

Thank you.


Carol Perkins

Carol Perkins
3069 Country Mdw
Valley City, ND 58072
Lisa Liebersbach
1247 Central Ave N
Valley City ND 58072

Kirin Baumgartner

Kirin Baumgartner
1281 Central Ave N
Valley City ND 58072

Kay Bostrom

Kay Bostrom
623 3rd St SE
Valley City, ND 58072

Skylar Jensen

Skylar Jensen
1053 E main st
Valley City, ND 58072

Angie Martin

Angie Martin
350 8 Ave. NE
Valley City, ND 58072

#10
HB 1521
1/30/19

January 28, 2019

Mr. Chairman, Members of the Ethics Committees for the North Dakota House and Senate:

We urge a DO PASS for SB 2148 and a DO NOT PASS on HB 1521.

Measure 1 passed in our November election with 54% voting yes in ND, and 57% voting yes in Barnes County and in District 24. It is now titled Article 14 of our ND Constitution. This is a solid foundation that can built upon to make a stronger state.

Article 14 will guarantee that everyone has the same opportunity to exercise their right to free equal speech that is not weighted for those with the most money.

Each of us, even the person with the least amount of money should be heard equally with those of greater means.

We urge a DO PASS for SB 2148 and a DO NOT PASS on HB 1521.

Kerry Lee
11776 59th St SE
Fort Ransom, ND 58033

Donna K. Baird
823 10th St NW
Valley City, ND 58072

#10
#B1525
1/30/19

12

Voters want an ethics commission with teeth

By Jay Scott Wieber
Fargo

In a Jan. 15 story, "North Dakota Republican leaders introduce bill to implement ethics measure," The Forum reported that GOP legislators in Bismarck have written a bill to create the voter-mandated ethics commission for the state; but it seems they are attempting to gut it in any way they can.

According to the story, "the bill narrowly defines what it means to influence state government action

to 'promoting or opposing the final adoption of a rule by an administrative agency.'"

So in other words, you can lobby for bills, you can lobby for amendments to bills, you can write bills yourself and lobby for them to be introduced, you can lobby for absolutely anything you like, as long as your bill doesn't directly affect a state agency, and as long as you don't say the magic taboo words, "Please vote yes on the final version of this bill when it

comes to the floor."

Republicans make clear their total corruption and avarice with this proposal. It is a disgusting attempt to thwart the will of North Dakota voters, and it should be defeated.

Please, if you believe in responsible government, write your state senators and representatives to tell them to change this bill or withdraw it.

When we said we wanted an ethics commission, we meant one with teeth.



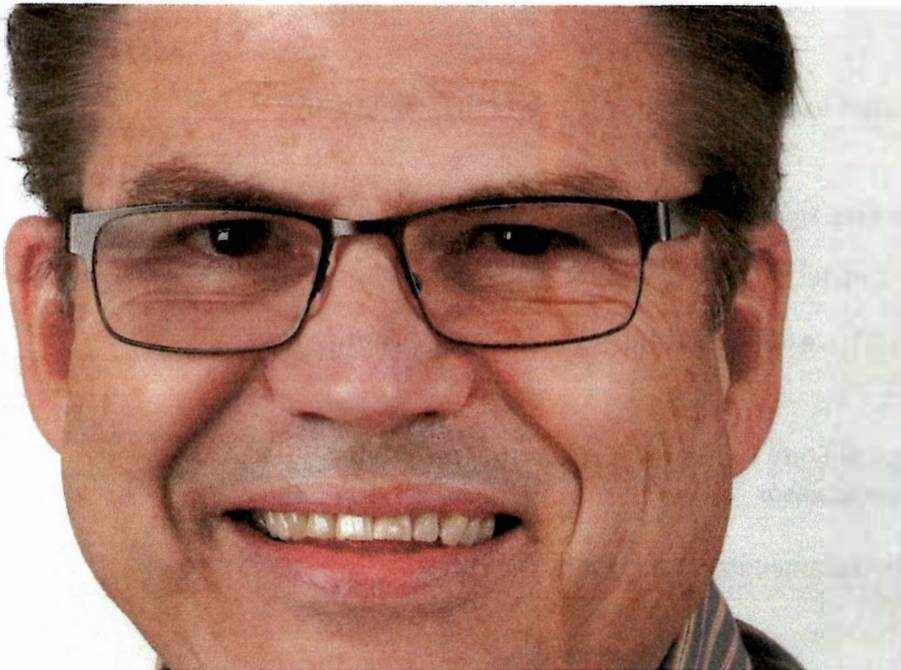
Letter: Of course we're ethical. Ask any of us.

Written By

Cole Carley

Jan 27th 2019 - 1pm.

Share



Most job descriptions usually contain a short phrase that reads roughly: "and other duties as assigned."

As an employee, the duties you're assigned will vary. You may find some are more difficult and that you may not have chosen to do were it not assigned by the boss.

But you are expected to carry out those assignments to the best of your ability. That's why you were hired. You don't get to decide that the boss is wrong and you're

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going to do it your way because the boss just doesn't get it.

Unless you are a leader of the North Dakota Legislature, elected by citizens who had the idea that their vote meant something. Evidently a Constitutional amendment created by a citizen-initiated measure doesn't fit the job description legislative leaders wish to follow. Because we citizens have no business telling the people we've elected (hired) what we want done.

Which brings us to the latest example of legislative lollygagging: the ethics commission. This voter-passed measure was created by an organization led by two North Dakotans, a Republican and a Democrat, both of whom had vast experience working with state government agencies, one of whom spent years as a lobbyist. They knew first-hand what problems can ensue when ethics aren't defined and regularly inspected. Like it or not, they got the vote out and the measure passed.

In several past legislative sessions, citizens or naive legislators have tried to introduce such ideas only to be crushed by leadership. Legislators demand transparency of organizations and people who receive state funds but really don't like it to apply to themselves with regard to campaign funds, lobbyists, little things like that.

"Ethics? We don't need no stinking ethics!"

OK, they didn't say that. What they basically said was "Al, do you think we need an ethics commission?" "No, Jim, I don't. I think we conduct ourselves just fine. Do you agree, Kim?" "You bet, guys. Oh, which lobbyist is buying the drinks and dinner tonight?"

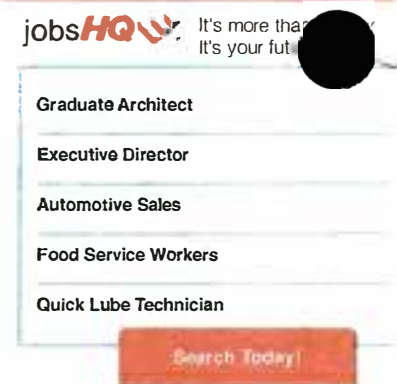
They really don't like being told what to do, especially if it affects their ability to socialize, graze and fundraise

OK, smart guy, what do you think they should do?

Glad I asked. Just for basics, they could:

- Check the 44 other states who have done this already to see what ideas they might glean
- Visit the National Conference of State Legislatures subsection on ethics:
<http://www.ncsl.org/research/ethics.aspx>
- Use the specific provisions in the amendment passed by the voters:
<https://www.ndintegrity.org/xiv>
- Or, drop the whole adversarial attitude (hey, a guy can hope), assume that this might actually be in everyone's best interests and meet with Dina Butcher and Ellen Chaffee, the two North Dakotans who got this initiative started. Ask them what they hoped to achieve, specifically in seeing this ethics commission created, and then listen. Just sayin'...

So, to the members of the North Dakota Legislature: The boss has given you a task. Are you going to take it on with the zeal that the boss expects? Or are you going to decide (again) that you're in charge here and that the boss should just leave you



#10
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1/30/19

The anti-ethics establishment gets all huffy

It didn't take long for the entrenched political establishment to begin a crusade to undermine the wishes of North Dakota voters who in November approved Measure 1, the ethics commission question,

by a strong margin. When I made that point in a Sunday column a few weeks ago, two establishment regulars got their knickers in a knot, and said I was misrepresenting the motivations of the opposition. Christopher Dodson, the highly capable



JACK
ZALESKI
columnist

executive director and general counsel of the North Dakota Catholic Conference, and Bette Grande, a former Republican legislator from Fargo who writes a column of commentary for The Forum, did an intellectually dishonest quick step around the core of the issue, which is this: North Dakotans voted for transparency in government and campaign financing; and they expect the Legislature to carry out the mandate, no matter how difficult it is to get it done. Period.

Dodson complained in a letter to the editor published Nov. 29 that my characterizing his organization as "fat cat" was unfair and inaccurate. He said the Catholic Conference does not contribute money to candidates, does not endorse candidates, and does not so much as buy a candidate or a legislator a cup of coffee during political campaigns or while Dodson is lobbying at the Legislature. He emphasized that the organization's role is moral persuasion on matters that are central to the Catholic tradition. Fair enough.

But it seems a tad incongruous that purveyors of such a noble mission would be against sunshine in government and politics. It seems contradictory that Dodson and the conference would rather see government operate in the dark, would rather not know who is buying influence with campaign contributions, and would resist a mechanism to investigate ethical lapses by elected office holders. You know, ethics – a measure of right and wrong – which, it seems to me, ought to be of primary interest to all religious praxis.

no religious praxis.

Alas, the wretched record of the Catholic Church's decades-long campaign to protect clergy who were guilty of child abuse, suggests advice on ethics and transparency from the church, its surrogates or its defenders is hardly tenable.

In her Dec. 2 Forum column, Grande alleged the measure was poorly written, can't do what it says it will do, and that it will discourage North Dakotans from participating in the political process. That's prattle and hokey.

The bipartisan group that championed the measure was careful to write broad but inviolable principles within which lawmakers have latitude to honor the intent of the measure and legislate pragmatic implementation. If the Legislature's majority members, many of whom advocated a "no" vote, stall or try to change the measure's lucid provisions, all hell will break loose. They will be skewered. Most legislators are not dolts. Most are honorable. They have the smarts to respect the voters. They will cobble together an ethics watchdog system that comports with the spirit and directives of the measure.

As for Grande, she served in the state House of Representatives beginning in 1997. She was booted out in 2014 by the voters of then reliably Republican, Fargo District 41 – where they know her best.

Zaleski, who retired in 2017 after 30 years as The Forum's editorial page editor, is an occasional contributor to the opinion pages. Contact him at jzaleski@forumccn.com or 701-241-5531 or 701-566-3576

#10
HB 1521
1/30/19

Let's work together to frame a trustworthy government

By Dina Butcher,
Ellen Chaffee, Waylon
Hedegaard, Allen Hoberg
and Kathy Tweeten

North Dakotans came together across the spectrum last year to make a significant decision. East or west, regardless of party or ideology, we voted to improve transparency and accountability in state government. It was called Measure 1 before the election; now it is Article XIV of the state constitution.

Implementing Article XIV begins with the Ethics Commission bill in the current legislative session. The bill primarily establishes and funds the Ethics Commission and calls for an interim legislative study to prepare

legislation on the rest of Article XIV for the 2021 session.

Article XIV and the bill have the potential to make North Dakota one of the most trustworthy governments in the nation. Research clearly shows that a trustworthy government helps prevent fraud, waste and abuse, and it attracts and grows strong businesses. The result is more productivity for our tax dollars.

Authors of Article XIV charged our public officials with implementing Article XIV because they trusted the officials to do their jobs wisely and faithfully. Yet a few have said the amendment was badly written by people who did not know what they were

doing. The truth is, those who complain the loudest are those who gained power and perks from the broken system they helped create.

Article XIV is now a fact — a part of the Constitution we live under and public officials swear to uphold. All of us have an opportunity to come together now and craft North Dakota's best response to the principles of government transparency, integrity and accountability. North Dakotans for Public Integrity looks forward to working on it with you and your representatives.

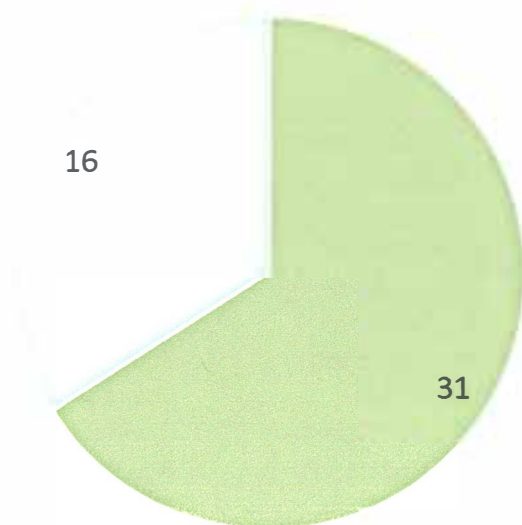
**Butcher, Chaffee, Hedegaard, Hoberg
and Tweeten are members of the
North Dakotans for Public Integrity
Board of Directors.**

Forum of Fargo-Moorhead, Friday, January 4, 2019, page A7

#11
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1/30/19

MAJORITY OF NORTH DAKOTA LEGISLATIVE DISTRICTS VOTE YES ON MEASURE 1

■ YES (66%) ■ NO (34%)



53.63% of North Dakotan voters voted YES on Measure #1 "Pertaining to the Transparency of Funding, Conflicts of Interests and the Establishment of an Ethics Commission." The majority of voters in 66% of ND Legislative Districts voted YES.

Names of legislators and their district vote on reverse side.

#11
HB 1521
1/30/19

Ethics is a NON-Partisan Issue
Legislators from YES districts. (93 legislators)

Richard Marcellais
Tim Mathern
Judy Lee
David Clemens
Scott Meyer
Kathy Hogan
Gary Lee
Kristin Roers
Kyle Davison
Curt Kreun
JoNell Bakke
Merrill Piepkorn
Ronald Sorvaag
Jim Roers
Brad Bekkedahl
Oley Larsen
Jordan Kannianen
Janne Myrdal
John Grabinger
Dave Oehlke
Ray Holmberg
Karen Karls
Randy Schobinger
Bill Devlin

Tracy Boe
Gretchen Dobervich
Austen Schauer
Ben Koppelman
Corey Mock
Mary Schneider
Michael Howe
Thomas Beadle
Pamela Anderson
Jake Blum
Mary Adams
Josh Boschee
Mary Johnson
Jim Kasper
Patrick Hatlestad
Jeff Hoverson
Clayton Fegley
Chuck Damschen
Jim Grueneich
Dennis Johnson
Mark Sanford
Lisa Meier
Nathan Toman

Marvin E Nelson
Ron Guggisberg
Kim Koppelman
Andrew Marschall
Steve Vetter
LaurieBeth Hager
Brandy Pyle
Ruth Buffalo
Michelle Strinden
Emily O'Brien
Matt Eidson
Karla Rose Hanson
Tom Kading
Shannon Roers-Jones
David Richter
Bob Paulson
Terry Jones
David Monson
Bernie Satrom
Greg Westlind
Mark S Owens
Gary Paur
Aaron McWilliams

Robert Fors
Arne Osland
Joan Heckaman
Larry Robinson
Larry Luick
Jim Dotzenrod
Dick Dever
Dwight Cook
Erin Oban
Karen Krebsbach
Wayne Trottier
Richard Holman
Don Vigesaa
Daniel Johnston
Cindy Schreiber-Beck
Sebastian Ertelt
Pat Heinert
Todd Porter
Bob Martinson
Matthew Ruby
Dwight Kiefert
Alisa Mitskog
Kathy Skroch

Chairman Kasper and members of the committee, my name is Liz Anderson and I am here on behalf of Dakota Resource Council. I stand here today in opposition of House Bill 1521.

For 40 years DRC members have worked to increase transparency and have stronger ethics guidelines in Government. This means, at times, taking unpopular positions regarding various energy and agriculture issues and also challenging elected officials that are influenced by out of state and corporate interests.

In recent years, money in politics has become a problem in North Dakota as more and more money flows into our political system from concealed sources (dark money.) There is clear need to reform our system to ensure that politicians are more accountable to the people than to dark money and outside influences. It also allows politicians to show that they truly are working for the people of North Dakota. This is true for all politicians, regardless of party affiliation.

2012-13 Conflict of Interest Lawsuit

In 2012, Dakota Resource Council sued members of the North Dakota Public Service Commission for violating federal conflict of interest laws for taking campaign contributions from coal company executives that had a mining permit decision pending with the PSC. One of the Public Service Commissioners that we named in the case is current United States Senator, Kevin Cramer. Although we lost the case, in the ruling on the conflict of interest case the judge made it clear that he did not approve of the actions of the Public Service Commissioners in taking campaign contributions from a company they were supposed to be regulating.

Specifically, U.S. District Court Judge Daniel Hovland concluded that:

"the authority to undertake an enforcement action of the state program is discretionary and unreviewable, "and as such, the federal court lacks jurisdiction in the matter. However, he added in a footnote: "This order should in no manner be construed as an endorsement of the practice of

PSC Commissioners accepting campaign contributions from individuals or political action committees closely associated with coal companies and coal mining activities. "Although the acceptance of campaign contributions from such entities may be lawful ... the decision to do so is ill-advised, devoid of common sense, and raises legitimate questions as to the appearance of impropriety,".

Public officials, in our view, should not be taking money from the same companies that they have permitting decision with and it was clear that Judge Hovland agrees with our contention in his ruling. We think the majority of North Dakotans agree with DRC and Judge Hovland, which was reflected at the ballot box when 54% of North Dakotans voted to pass Measure 1.

Beyond our case regarding the PSC, DRC also supported efforts in past legislative sessions to install an ethics commission. Unfortunately, the bills pushing for an ethics commission were defeated almost as quickly as they were introduced. Due to our past stances on ethics and transparency, DRC was early endorser of Measure 1, and as a result we support the full implementation of Article 14 of the Constitution.

In conclusion, DRC opposes HB 1521 because it does not implement Article 14 and holds the state Constitution in contempt. We urge this committee to give HB1521 a do not pass recommendation.

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January 30, 2019

Sixty-sixth Legislative Assembly of North Dakota

Bismarck, ND

RE: Public Comment on House Bill No. 1521

Dear Representative Chair and Committee Members,

My name is Lisa DeVille. I am an enrolled member of the Mandan, Hidatsa, and Arikara Nation. My husband and I are lifelong residents of Mandaree, a community on Fort Berthold Reservation.

I am writing to you in opposing of House Bill No. 1521. This bill will weaken the ethics commission and hinder transparency. I feel as an ND elected official should be representing the people of ND interests. I live with oil and gas. I know that with this oil and gas in ND industry is giving campaign contributions to these elected ND elected officials.

I do support an ethics code, reporting campaign contributions, restrictions on public officials and lobbyists, investigations of ethics violations, and implementing requirements of Article 14 as decided by the people of North Dakota who you represent.

If you have any questions, please email me at lisadeville2013@gmail.com. Thank you!

Sincerely,

Lisa DeVille

Mandaree, ND

Email: lisadeville2013@gmail.com

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Opposed to HB 1521

Kathleen Tweeten, Bismarck ND

Retired: NDSU Extension Service, Director of the Center for Community Vitality and
State Specialist for Community Economic and Leadership Development

Specialist Emeritus in the Department of Agribusiness and Applied Economics

Secretary/Treasurer for North Dakotans for Public Integrity

Recommend a do not pass on HB 1521 for the following reasons.

It is not consistent with Article XIV of the North Dakota Constitution.

The majority of voters in North Dakota voted yes on Measure 1 "Pertaining to the Transparency of Funding, Conflicts of Interests and the Establishment of an Ethics Commission." The campaign with all its misperception is over. It will take time, citizen input and constitutional expertise to properly implement all four sections of Article XIV. Up to three years has been provided.

It is important that this not be rushed which appears to be what HB 1521 is attempting to do.

Thank you for your attention.

Please DO NOT pass HB 1521.

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NORTH DAKOTA HOUSE OF REPRESENTATIVES

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



Representative Lawrence R. Klemin

District 47
3929 Valley Drive
Bismarck, ND 58503-1729
R: 701-222-2577
lklemin@nd.gov

Speaker of the House

TESTIMONY OF REP. LAWRENCE R. KLEMIN HOUSE ETHICS COMMITTEE HOUSE BILL NO. 1521 FEBRUARY 7, 2019

Mr. Chairman and members of the House Ethics Committee. I am Lawrence R. Klemin, Representative from District 47 in Bismarck. I am here today to testify in support of House Bill 1521. I am also here to give you my opinion on the bill.

In order for you to know that I am qualified to render an opinion on House Bill 1521, I would like to give you some information about my education and qualifications.

I am an attorney admitted to practice law before the North Dakota Supreme Court and the state district courts. I am also admitted to practice law before the U.S. District Court for the District of North Dakota, the U.S. District Court for the Eastern District of Pennsylvania, the U. S. Court of Appeals for the Eighth Circuit, and the United States Supreme Court. I have practiced law in North Dakota for 41 years. I am an attorney with the Bismarck law firm of Schweigert, Klemin & McBride, P.C.

I graduated from the University of North Dakota with a Bachelor of Arts degree with a major in English and a minor in Russian. I have also studied linguistics, French and German. I also received a Doctor of Jurisprudence Degree with Distinction from the University of North Dakota School of Law. While in law school, I served on the Board of Editors for the North Dakota Law Review and was the Research Editor.

I have represented clients in approximately 1,700 civil and administrative law cases in state and federal courts. Over 100 of those cases have gone to trial in state and federal courts. About 20 civil cases have been appealed to the North Dakota Supreme Court and some have been appealed to the 8th Circuit Court of Appeals. One of those cases in the North Dakota Supreme Court involved the constitutionality of an entire chapter of the North Dakota Century Code. I have represented clients in hundreds of court hearings in state and federal courts and before state and federal administrative agencies. Many more cases have been argued on briefs without a court hearing.

I am the author of Civil Practice of North Dakota 2d, which consists of over 900 pages of civil practice forms and commentary in three volumes, plus a separate volume for a trial notebook. Civil Practice of North Dakota 2d can be found in the State Law Library at the North Dakota Supreme Court, in the law library at the UND School of Law, in many private law libraries throughout North Dakota and in several other states. It is also in

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some public and large private law libraries in several major cities, such as Minneapolis, Chicago and Los Angeles.

I am also the author of "Small Case Litigation Forms," a one volume set of forms and commentary published by James Publishing designed for use by attorneys and paralegals. James Publishing has sold over 3,000 copies of this publication throughout the country.

I have been the Chairman of the Administrative law Committee of the State Bar Association of North Dakota (SBAND) and served on the State Advisory Council for the North Dakota Office of Administrative Hearings. I also served on the state taskforce comprised of members of SBAND and members of the Legislature charged with the responsibility of completely rewriting the Administrative Agency Practices Act. (AAPA).

I have been a Commissioner on the National Uniform Law Commission (ULC) for the past 20 years. I serve as the Chairman of the North Dakota Commission on Uniform State Laws. I have served on many study and drafting committees of the National ULC over the years and also serve as the Legislative Liaison for North Dakota to the National ULC.

I have been a member of the Legislature for the past 20 years and have served as Chairman or Vice Chairman on several standing and interim committees. I have been the House Parliamentarian and also serve on the House Rules Committee. I am currently the Speaker of the House.

One of the issues related to House Bill 1521 is the construction of Article XIV of the North Dakota Constitution and the possible areas where House Bill 1521 may conflict with Article XIV. The North Dakota Supreme Court has provided guidance for constitutional construction.

In *Thompson v. Jaeger*, 2010 ND 174, P 7, 788 N.W.2d 586, a case involving the constitutional construction of an initiated measure, the North Dakota Supreme Court stated:

"Principles of construction applicable to statutes are generally available to construction of the Constitution." *McCarney v. Meier*, 286 N.W.2d 780, 783 (N.D. 1979). In *Kelsh v. Jaeger*, 2002 ND 53, P 7, 641 N.W.2d 100, we outlined several principles for construing constitutional provisions:

When interpreting the state constitution, our overriding objective is to give effect to the intent and purpose of the people adopting the constitutional statement. *City of Bismarck v. Fettig*, 1999 ND 193, P 8, 601 N.W.2d 247. The intent and purpose of a constitutional provision is to be determined, if possible, from the language itself. *State ex rel. Heitkamp v. Hagerty*, 1998 ND 122, P 13, 580 N.W.2d 139. We give words in a constitutional provision their plain, ordinary, and commonly understood meaning. *Tomaschy v. Hjelle*, 210 N.W.2d 100, 102 (N.D. 1973). When interpreting constitutional provisions, we apply general principles of statutory construction. *Hagerty*, at P 13. We must give effect and meaning to every provision and reconcile, if possible, apparently inconsistent provisions. *State ex rel. Sanstead v. Freed*, 251 N.W.2d 898, 908 (N.D. 1977). We presume the people do not intend absurd or ludicrous results in adopting constitutional provisions, and we therefore construe such provisions to avoid those

results. *North Dakota Comm'n on Med. Competency v. Racek*, 527 N.W.2d 262, 266 (N.D. 1995). Thompson, in essence, argues the term "petition" in section 2 has a different meaning than "petition" in section 3. But this Court has recognized a word or a phrase repeated in a statute is given the same meaning throughout the statute. *State v. E.W. Wylie Co.*, 79 N.D. 471, 481, 58 N.W.2d 76, 82 (1953). See generally 82 C.J.S., Statutes § 388 (2009) ("Courts ordinarily presume, in the absence of evidence to the contrary, that identical words used in different parts of the same statute are intended to have the same meaning throughout the act.").

In addition, the North Dakota Century Code contains rules for the interpretation of statutes, which are equally applicable to the construction of constitutional provisions.

1-02-02. Words to be understood in their ordinary sense.

Words used in any statute are to be understood in their ordinary sense, unless a contrary intention plainly appears, but any words explained in this code are to be understood as thus explained.

1-02-07. Particular controls general.

Whenever a general provision in a statute is in conflict with a special provision in the same or in another statute, the two must be construed, if possible, so that effect may be given to both provisions, but if the conflict between the two provisions is irreconcilable the special provision must prevail and must be construed as an exception to the general provision, unless the general provision is enacted later and it is the manifest legislative intent that such general provision shall prevail.

1-02-38. Intentions in the enactment of statutes.

In enacting a statute, it is presumed that:

1. Compliance with the constitutions of the state and of the United States is intended.
2. The entire statute is intended to be effective.
3. A just and reasonable result is intended.
4. A result feasible of execution is intended.
5. Public interest is favored over any private interest.

Article XIV of the North Dakota Constitution, the ethics amendment, which came into effect by means of an initiated constitutional amendment approved by the voters in the 2018 general election, provides a shared responsibility between the Ethics Commission and the Legislature to implement its provisions. In pertinent part, Article XIV provides as follows:

Section 1. Transparency. 1. The people of North Dakota need information to choose candidates for office, vote on ballot measures, and ensure that their representatives are accountable. This transparency must be sufficient to enable the people to make informed decisions and give proper weight to different speakers and messages. **The people therefore have the right to know in a timely manner the source, quantity, timing, and nature of resources used to influence any statewide election, election for the legislative assembly, statewide ballot-issue election, and state**

government action. This right is essential to the rights of free speech, assembly, and petition guaranteed by the First Amendment to the United States Constitution and shall be construed broadly.

2. The legislative assembly shall implement and enforce this section by enacting, no more than three years after the effective date of this article, laws that require prompt, electronically accessible, plainly comprehensible, public disclosure of the ultimate and true source 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. The legislative assembly shall have an ongoing duty to revise these laws as necessary to promote the purposes of this section in light of changes in technology and political practices.

Therefore, Article XIV first provides that it is the Legislature, and not the Ethics Commission, that has the duty to implement and enforce laws relating to campaign finance, public disclosure of the source of funds used to influence elections, and the conduct of lobbyists to influence state government action.

Subsection 2 of Section 1 goes on to provide that **the Legislature "shall vest by law one or more entities with authority to implement, interpret, and enforce this section and legislation enacted thereunder."** The Legislature does this, in part, by vesting campaign finance and lobbyist reporting requirements in the office of the Secretary of State.

However, there is an inconsistency with Section 3 of Article XIV, which creates the Ethics Commission with the authority to adopt ethics rules related to "transparency, corruption, elections, and lobbying," the same subject matter as contained in Section 1.

Section 3 provides as follows:

"Section 3. North Dakota Ethics Commission. 1. In order to strengthen the confidence of the people of North Dakota in their government, and to support open, ethical, and accountable government, the North Dakota Ethics Commission is hereby established.

Is the Ethics Commission created in Section 3 a separate and distinct entity from the "one or more entities" that the Legislature is empowered to vest with "authority to implement, interpret, and enforce" the transparency section, or is the Ethics Commission included within the scope of those "one or more entities"? In my opinion, this is an inconsistency that should be reconciled in House Bill 1521.

There is an **ambiguity and inconsistency** in Article XIV relating to the powers vested in the Ethics Commission and the powers vested in the other "one or more entities" by the Legislature.

In order to reconcile this ambiguity and inconsistency, one must first look to the language of Article XIV itself. A logical construction to resolve the ambiguity and inconsistency is that the Legislature enacts the laws to implement Article XIV and the Ethics Commission investigates and enforces those laws. This is consistent with Article IV, Section 13, of the North Dakota Constitution, relating to the Legislature, which provides, in part, as follows:

"The legislative assembly shall enact all laws necessary to carry into effect the provisions of this constitution."

This is also consistent with several provisions in Article XIV itself. Subsections 1, 2, 3, and 4 of Section 2, related to lobbying, state as follows:

"Appropriate civil and criminal sanctions for violations of this subsection shall be set by the legislative assembly."

Subsection 5 of Section 2, provides:

"The legislative assembly and the ethics commission shall enforce this provision by appropriate legislation and rules, respectively."

Section 3, subsection 2, provides:

2. The ethics commission **may adopt ethics rules** related to **transparency, corruption, elections, and lobbying** to which any lobbyist, public official, or candidate for public office shall be subject, and **may investigate alleged violations** of such rules, this article, and related state laws.

This subsection provides that the Ethics Commission may adopt rules, but it does not specify the procedure by which those rules are to be adopted. This subsection provides that the Ethics Commission may investigate alleged ethics violations, not only of the ethics rules it adopts, but also violations of the **related state laws enacted by the Legislature.**

The ethics rules to be adopted by the Ethics Commission must be consistent with the laws enacted by the Legislature and logically should be rules reasonably related to ethics and the internal operation of the Ethics Commission. The laws enacted by the Legislature and the rules adopted by the Ethics Commission must have a common goal of enforcing Article XIV consistent with procedural due process of law. The Legislature can vest the Ethics Commission as an entity to investigate and enforce the conduct described in Article XIV to further the constitutional goal of "transparency" in public disclosure of campaign finance and other financial contributions and lobbying to influence state government action. The Legislature can also vest the Secretary of State with the ministerial duties related to reporting, as is currently the law.

House Bill 1521, with the amendments I have proposed, does vest the Ethics Commission with the authority I have described to the extent that the reporting requirements are not otherwise vested with the Secretary of State. The bill also comports with procedural due process by setting out the procedures by which the Ethics Commission can adopt its rules and adjudicate violations of the law and rules. The procedures set out in Chapter 28-32, the Administrative Agencies Practice Act., for rulemaking and adjudication, provide the methodology for the Ethics Commission to follow, which are consistent with procedural due process of law as required by Section 1 the 14th Amendment to the United States Constitution, which provides:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, **nor shall any state deprive any person of life, liberty or**

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property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

The violations provided in House Bill 1521 are criminal violations. The requirement in House Bill 1521 that complainants are to be identified is consistent with the confrontation clause in the 5th Amendment to the United States Constitution, which provides:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; **to be confronted with the witnesses against him**; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense."

In my opinion, House Bill 1521, with the amendments I have prepared, is constitutional and is consistent with the spirit and intent of Article XIV. As provided in Section 4 of Article XIV:

"Laws may be enacted to facilitate, safeguard, or expand, but not to hamper, restrict, or impair, this article.

In my opinion, House Bill 1521 facilitates, safeguards, and expands the provisions of Article XIV, and does not hamper, restrict, or impair Article XIV.

House Bill 1521 resolves the ambiguities and inconsistencies contained in Article XIV in a manner which is logical and reasonable. The bill provides for procedural due process of law and protects other important rights under the federal and state Constitutions. If enacted, House Bill 1521 is presumed to be constitutional until otherwise determined in court.

I have provided you with proposed amendments to House Bill 1521. I am available to go through those amendments with you in detail and to answer any questions you may have.

Rep. Lawrence R. Klemin

19.1078.01004
Title.

Prepared by the Legislative Council staff for
Representative Klemm

February 7, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1521

Page 1, line 1, replace "two" with "a"

Page 1, line 1, replace "sections" with "section"

Page 1, line 2, replace "campaign contributions" with "expenditures"

Page 1, line 6, remove "28-32-07, 28-32-08, 28-32-08.1,"

Page 1, line 7, remove "28-32-08.2, 28-32-09,"

Page 1, line 7, after the seventh comma insert "and"

Page 1, line 7, remove "28-32-17,"

Page 1, line 8, remove "28-32-18, and 28-32-18.1,"

Page 1, line 8, replace "28-32-27" with "28-32-47"

Page 1, line 9, remove "hearing"

Page 1, line 10, replace "officers" with "agency heads in quasi-judicial proceedings,
implementing article XIV of the Constitution of North Dakota"

Page 6, line 15, remove "solely"

Page 13, line 17, replace "impose a fine" with "assess a civil penalty"

Page 13, line 18, after the underscored period insert "The assessment of a civil penalty may be
appealed to the district court of Burleigh County."

Page 13, line 25, replace "file a claim" with "bring suit"

Page 13, line 25, remove "with competent"

Page 13, line 26, remove "jurisdiction"

Page 13, line 28, replace "remains in violation of" with "has failed to comply with"

Page 13, line 28, remove the second "violation"

Page 13, line 29, replace "of" with "failure to comply with"

Page 13, remove lines 30 and 31

Page 14, remove lines 1 through 6

Page 20, line 13, after the first comma insert "or"

Page 20, line 13, overstrike ", suspended" and insert immediately thereafter ". Rules of an
agency may be suspended"

Page 20, line 15, remove ", or"

Page 20, line 16, remove "the Constitution of North Dakota is amended to eliminate the
authority"

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Page 20, remove lines 17 through 30

Page 21, remove lines 1 through 30

Page 22, remove lines 1 through 31

Page 23, remove lines 1 through 31

Page 24, remove lines 1 through 31

Page 25, remove lines 1 through 20

Page 28, line 2, remove "or commission"

Page 28, line 3, remove "or commission"

Page 30, remove lines 9 through 31

Page 31, remove lines 1 through 31

Page 32, remove lines 1 through 31

Page 33, remove lines 1 through 23

Page 34, remove lines 11 through 31

Page 35, replace lines 1 through 21 with:

"SECTION 20. AMENDMENT. Section 28-32-47 of the North Dakota Century Code is amended and reenacted as follows:

28-32-47. Scope of and procedure on appeal from agency rulemaking.

1. A judge of the district court shall review an appeal from an administrative agency's or ethics commission's rulemaking action based only on the record filed with the court. If an appellant requests documents to be included in the record but the agency or commission does not include them, the court, upon application by the appellant, may compel their inclusion. After a hearing, the filing of briefs, or other disposition of the matter as the judge may reasonably require, the court shall affirm the agency's rulemaking action unless it finds that any of the following are present:
 1. a. The provisions of this chapter have not been substantially complied with in the agency's rulemaking actions.
 2. b. A rule published as a result of the rulemaking action appealed is unconstitutional on the face of the language adopted.
 3. c. A rule published as a result of the rulemaking action appealed is beyond the scope of the agency's or commission's authority to adopt.
 4. d. A rule published as a result of the rulemaking action appealed is on the face of the language adopted an arbitrary or capricious application of authority granted by statute.
2. If the rulemaking action of the agency or commission is not affirmed by the court, the rulemaking action must be remanded to the agency or commission for disposition in accordance with the order of the court, or the rule or a portion of the rule resulting from the rulemaking action of the

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agency or commission must be declared invalid for reasons stated by the court."

Page 36, line 20, remove "solely"

Page 37, line 22, replace "file a claim" with "bring suit"

Page 37, line 22, remove "with competent"

Page 37, line 23, remove "jurisdiction"

Page 37, line 25, replace "remains in violation of" with "has failed to comply with"

Page 37, line 25, remove the second "violation"

Page 37, line 26, replace "of" with "failure to comply with"

Page 37, line 29, remove "knowingly"

Page 37, line 29, after "accept" insert "knowingly"

Page 38, line 19, replace "impose a fine" with "assess a civil penalty"

Page 38, line 20, after "section" insert "and, if the person is a lobbyist, the secretary of state may revoke the lobbyist's registration under chapter 54-05.1"

Page 39, line 19, replace "verbally" with "orally"

Page 39, line 27, replace "verbally" with "orally"

Page 39, line 31, replace "14-02" with "12.1-15"

Page 40, line 4, replace "verbal" with "oral"

Page 40, line 6, after "writing" insert "within ten calendar days of receipt of the complaint or summary of the complaint"

Page 40, line 31, remove "and recommendations"

Page 41, line 1, remove "and recommendations"

Page 41, line 3, remove "and recommendations"

Page 41, line 4, remove "and recommendations"

Page 41, line 4, remove the underscored comma

Page 41, line 5, remove "recommendations,"

Page 41, line 7, remove "and recommendations"

Page 41, line 9, remove the underscored comma

Page 41, line 10, remove "recommendations,"

Page 41, line 12, remove "their"

Page 41, line 17, replace "impose a" with "assess a civil"

Page 41, line 18, replace "impose a" with "assess a civil"

Page 41, line 19, after "appeal" insert "and request judicial review of"

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Page 41, line 20, remove "the office of administrative hearings, which shall"

Page 41, line 21, replace "designate an administrative law judge to hear the appeal. An appeal" with "the district court in the county in which the accused individual resides. A request for judicial review"

Page 41, line 22, after the underscored period insert "The scope of review and procedure on appeal from a determination of the commission must comply with section 28-32-47."

Page 41, line 29, replace "an administrative law judge" with "a court"

Page 42, line 13, remove "Disclosure of information included in subsections 1 and 2 by a person who knows the"

Page 42, remove line 14

Page 42, line 15, remove "4."

Page 42, line 17, replace "5." with "4."

Page 42, line 20, replace "impose a fine" with "assess a civil penalty"

Page 42, after line 27, insert:

"54-66-14. Prohibition on delivering campaign contributions - Penalty.

A lobbyist may not deliver knowingly a campaign contribution made by another person in violation of subsection 3 of section 2 of article XIV of the Constitution of North Dakota. For a first violation, the secretary of state shall assess a civil penalty of one hundred dollars upon any person who violates this section and may revoke the lobbyist's registration. For a second and subsequent violation of this section, the person is guilty of an infraction.

54-66-15. Mandatory disqualification in quasi-judicial proceedings.

A director, officer, commissioner, head, or other executive of an agency shall self-disqualify in any quasi-judicial proceeding in which a reasonable, disinterested observer would believe the hearing officer is biased due to:

1. Monetary or in-kind support related to the election of the director, officer, commissioner, head, or other executive of an agency to public office; or
2. A financial interest of the director, officer, commissioner, head, or other executive of an agency which is not shared by the general public, as defined by the ethics commission.

54-66-16. Disclosure requirements - Delegation of limited authority.

Under subsection 2 of section 1 of article XIV of the Constitution of North Dakota, the legislative assembly vests authority to implement, interpret, and enforce section 1 of article XIV and laws enacted under the section to the ethics commission, but only to the extent the authority is not vested with the secretary of state. The authority vested in the ethics commission under this section is subject to the provisions of this chapter and chapter 16.1-08.1."

Page 43, line 3, after the fifth comma insert "and"

Page 43, line 3, remove ", and 29"

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Page 43, line 3, replace "section" with "sections"

Page 43, line 4, after "54-66-02" insert "and 54-66-15"

Page 43, line 4, replace "30" with "21"

Page 43, line 7, replace "30" with "21"

Page 43, line 9, replace "30" with "21"

Renumber accordingly

Kathryn Dunlap
208 W Rosser Ave
Bismarck, ND 58501

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February 7, 2019

Chairman, members of the Committee:

My name is Kathryn Dunlap and I am a resident of District 32 here in Bismarck. I am also an Adjunct Instructor in English at Bismarck State College. Before I was employed there I taught as a Graduate student at NDSU and while I attended an Interdisciplinary Humanities PhD program at the University of Central Florida. I have over 10 years experience teaching first-year students writing skills with an emphasis on rhetoric. I teach my students that rhetoric is the study of how language does work in the world; how words can shape reality and our understanding of it. Most of them are pretty skeptical, but I imagine that I don't have to convince you, members of this committee, of the grave importance of language and our need to carefully consider each word.

I attended the previous hearing on HB 1521 in the hope that I could learn more about it. More specifically, I wanted to see what work the language of the bill would do, how it fit the new constitutional amendment, and, more importantly, how it reflected the will of the North Dakota citizens who voted the amendment in just a few short months ago. Unfortunately, I was disappointed when the language of this proposed bill predominantly focused not on the concerns of the citizens but on the concerns of legislators and lobbyists.

I want to speak on some important issues regarding the language of HB 1521 and the consequences of passing this bill as it exists. During the previous hearing it was suggested that any dictates from this bill could be superseded by rulings from the Ethics Commission. That everything here could be easily undone. That is not how language works, especially language that is given power by the North Dakota State Government to change our Century Code. Language like that doesn't just disappear. I am not a legal scholar but I feel that making law that you know, or at least strongly suspect, will need to be removed as constitutionally unsound is not reflective of the careful and thoughtful use of language that typically exemplifies our legislative process. That kind of sloshed about messy rhetoric is unbecoming of elected officials who can do better.

I do not pretend to know the minds of others and so I will not presume to suppose the intentions behind this bill, but I can speak to what the impact of the language of this bill would be. If it is intended to act as guidelines as suggested during the previous hearing that would undoubtedly violate the constitutional guarantee promised to the Ethics Commission, the promise that their duties would not be interfered with by the actions of the legislature. The existence of this

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language provides an anchor that will massively impact any future decisions made by the Ethics Commission. Anchoring, for those who may not be familiar, is the psychological phenomena wherein preexisting information is relied upon in making subsequent decisions. For example, imagine if a fine of 500 dollars was proposed for a certain infraction and a reasonable person suggests that is too low and doubles the amount to 1000 dollars. Then say if in an alternate reality a fine of 10,000 dollars is proposed that same reasonable person could suggest that is too high halves it to 5000 dollars. The difference between 1000 and 5000 dollars is anchoring in action. Anchoring doesn't just impact numbers but all sorts of decisions and is almost impossible to avoid. Even when you are aware of the effect it still shapes your decisions. These guidelines, despite any good intentions, will interfere with the Ethics Commission. It's just human nature.

I am sympathetic to the position this amendment has put you in, believe me. The language that you once relied upon as the rule of law is obsolete and you can no longer control the language that will shape your reality and elected officials. And that is hard. I can't say in your place I would be tempted to do the same; to exert control wherever I could. But ultimately the solution is not to dictate that language yourself, and in doing so stepping beyond the scope of the constitution and the will of the people. In the last committee hearing it was suggested that the people who would eventually make up the Ethics Commission, people decided upon by the Governor and Majority and Minority leaders, would not be familiar enough with the process of legislation to do this important work correctly. I would disagree. I have spent most of my adult life teaching the young people of North Dakota how important language is and that it is to be respected. The North Dakota educational system has produced reasonable, intelligent and moral people. I imagine that many in this room today are products of that system. You need to trust the process, trust the Ethics Commission and trust the people of North Dakota.

Thank you,

Kathryn Dunlap



Office of the
State Auditor

TESTIMONY TO HOUSE ETHICS COMMITTEE
SB 2148 & HB 1521 Creation of Ethics Commission
2/6/19 & 2/7/2019

Good afternoon, Chairman Hogue/Kasper and members of the committee, my name is Joshua Gallion and I serve as the State Auditor. I'm here today to discuss the State Auditor's Office, providing information regarding our efforts to fulfill our statutory obligations while improving accountability and promoting transparency of our state's government.

As you are aware, the State Auditor is a constitutional state official elected by the citizens of North Dakota. My job is to lead the way in providing truthful, objective and independent information to you and the citizens of North Dakota. Our mission is to produce informative audits to improve government through our vision of a diverse team committed to generating greater value for our taxpayers.

North Dakota Constitution, Article V, Section 2

Section 2, paragraph 2. **The powers and duties of the** agriculture commissioner, attorney general, **auditor**, insurance commissioner, public service commissioners, secretary of state, superintendent of public instruction, tax commissioner, and treasurer **must be prescribed by law.** If the legislative assembly establishes a labor department, the powers and duties of the officer administering that department must be prescribed by law.

North Dakota Century Code 54-10

Government Auditing Standards are referred to 6 times.

U.S. Government Accountability Office, Government Auditing Standards 2018 Revision

Chapter 1: Foundation and Principles for Use and Application of Government Auditing Standards

1.02 – Effective, Efficient, Economical, Ethical

1.05 – Government auditing is essential in providing accountability to legislators, oversight bodies, those charged with governance, and the public.

1.07 – ...When auditors conduct their work in this manner and comply with GAGAS in reporting the results, their work can lead to improved government management, better decision making and oversight, effective and efficient operations, and accountability and transparency for resources and results.

Chapter 3: Ethics, Independence, and Professional Judgement (38 Pages)

Chapter 8: Fieldwork Standards for Performance Audits

Ethical issues can be viewed as wasteful or abuse. Section 8.120

Most recent example

Performance Audit of Governor's Travel and use of Resources. We questioned the use of the state plane for out-of-state trips when less expensive commercial flights were available.

Concern for your consideration

How will the Ethics Commission's Rulemaking affect the statutory duties of the State Auditor's Office?

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Chapter 1: Foundation and Principles for the Use and Application of Government Auditing Standards

1.01 This chapter provides guidance for engagements conducted in accordance with generally accepted government auditing standards (GAGAS). This chapter also

- a. explains the types of auditors and audit organizations that may employ GAGAS to conduct their work,
- b. identifies the types of engagements that may be conducted in accordance with GAGAS, and
- c. explains terminology that is commonly used in GAGAS.

Introduction

1.02 The concept of accountability for use of public resources and government authority is key to our nation's governing processes. Management and officials entrusted with public resources are responsible for carrying out public functions and providing service to the public **effectively, efficiently, economically, and ethically** within the context of the statutory boundaries of the specific government program.

1.03 As reflected in applicable laws, regulations, agreements, and standards, management and officials of government programs are responsible for providing reliable, useful, and timely information for transparency and accountability of these programs and their operations. Legislators, oversight bodies, those charged with governance, and the public need to know whether (1) management and officials manage government resources and use their authority properly and in compliance with laws and regulations; (2) government programs are achieving their objectives and desired outcomes; and (3) government services are provided effectively, efficiently, economically, and ethically.

1.04 "Those charged with governance" refers to the individuals responsible for overseeing the strategic direction of the entity and obligations related to the accountability of the entity. This includes overseeing the financial reporting process, subject matter, or program under audit, including related internal controls. Those charged with governance may also be part of the entity's management. In some audited entities, multiple parties may be charged with governance, including oversight bodies, members or staff of legislative committees, boards of directors, audit committees, or parties contracting for the engagement.

1.05 Government auditing is essential in providing accountability to legislators, oversight bodies, those charged with governance, and the public. GAGAS engagements provide an independent, objective, nonpartisan assessment of the stewardship, performance, or cost of government policies, programs, or operations, depending upon the type and scope of the engagement.

1.06 The professional standards and guidance contained in this document provide a framework for conducting high-quality engagements with competence, integrity, objectivity, and independence. Auditors of government entities, entities that receive government awards, and other entities, as required by law or regulation or as they elect, may use these standards. Overall, GAGAS contains standards for engagements comprising individual requirements that are identified by terminology as discussed in paragraphs 2.02 through 2.10. GAGAS contains requirements and guidance dealing with ethics, independence, auditors' professional judgment and competence, quality control, peer review, conducting the engagement, and reporting.

1.07 Engagements conducted in accordance with GAGAS provide information used for oversight, accountability, transparency, and improvements of government programs and operations. GAGAS contains requirements and guidance to assist auditors in objectively obtaining and evaluating sufficient, appropriate evidence and reporting the results. When auditors conduct their work in this manner and comply with GAGAS in reporting the results, their work can lead to improved government management, better decision making and oversight, effective and efficient operations, and accountability and transparency for resources and results.

1.08 Laws, regulations, contracts, grant agreements, and policies frequently require that engagements be conducted in accordance with GAGAS. In addition, many auditors and audit organizations voluntarily choose to conduct their work in accordance with GAGAS. The requirements and guidance in GAGAS in totality apply to engagements pertaining to government entities, programs, activities, and functions, and to government assistance administered by contractors, nonprofit entities, and other nongovernmental entities when the use of GAGAS is required or voluntarily adopted.

1.09 The following are some of the laws, regulations, and other authoritative sources that require the use of GAGAS:

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evaluation of identified findings when developing the cause element of the identified findings when internal control is significant to the audit objectives.

Application Guidance: Findings

8.118 Findings may involve deficiencies in internal control; noncompliance with provisions of laws, regulations, contracts, and grant agreements; or instances of fraud.

8.119 Given the concept of accountability for use of public resources and government authority, evaluating internal control in a government environment may also include considering internal control deficiencies that result in waste or abuse. Because the determination of waste and abuse is subjective, auditors are not required to perform specific procedures to detect waste or abuse in performance audits. However, auditors may consider whether and how to communicate such matters if they become aware of them. Auditors may also discover that waste or abuse are indicative of fraud or noncompliance with provisions of laws, regulations, contracts, and grant agreements.

8.120 Waste is the act of using or expending resources carelessly, extravagantly, or to no purpose. Importantly, waste can include activities that do not include abuse and does not necessarily involve a violation of law. Rather, waste relates primarily to mismanagement, inappropriate actions, and inadequate oversight.

8.121 The following are examples of waste, depending on the facts and circumstances:

- a. Making travel choices that are contrary to existing travel policies or are unnecessarily extravagant or expensive.
- b. Making procurement or vendor selections that are contrary to existing policies or are unnecessarily extravagant or expensive.

8.122 Abuse is behavior that is deficient or improper when compared with behavior that a prudent person would consider reasonable and necessary business practice given the facts and circumstances, but excludes fraud and noncompliance with provisions of laws, regulations, contracts, and grant agreements. Abuse also includes misuse of authority or position for

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personal financial interests or those of an immediate or close family member or business associate.

8.123 The following are examples of abuse, depending on the facts and circumstances:

- a. Creating unneeded overtime.
- b. Requesting staff to perform personal errands or work tasks for a supervisor or manager.
- c. Misusing the official's position for personal gain (including actions that could be perceived by an objective third party with knowledge of the relevant information as improperly benefiting an official's personal financial interests or those of an immediate or close family member; a general partner; an organization for which the official serves as an officer, director, trustee, or employee; or an organization with which the official is negotiating concerning future employment).

8.124 Criteria: To develop findings, criteria may include the laws, regulations, contracts, grant agreements, standards, measures, expected performance, defined business practices, and benchmarks against which performance is compared or evaluated. Criteria identify the required or desired state or expectation with respect to the program or operation. The term program includes processes, projects, studies, policies, operations, activities, entities, and functions. Criteria provide a context for evaluating evidence and understanding the findings, conclusions, and recommendations in the report.

8.125 Condition: Condition is a situation that exists. The condition is determined and documented during the audit.

8.126 Cause: The cause is the factor or factors responsible for the difference between the condition and the criteria, and may also serve as a basis for recommendations for corrective actions. Common factors include poorly designed policies, procedures, or criteria; inconsistent, incomplete, or incorrect implementation; or factors beyond the control of program management. Auditors may assess whether the evidence provides a reasonable and convincing argument for why the stated cause is the key factor contributing to the difference between the condition and the criteria.

Opposed to HB 1521

February 7, 2019

Mr. Chairman and members of the committee,

My name is Kathleen Tweeten from Bismarck ND. I am retired from the NDSU Extension Service where I was the Director of the Center for Community Vitality and State Specialist for Community Economic and Leadership Development. Prior to that I was an Area Leadership Specialist and before that an Extension Agent in Stutsman County for a total of a little over 30 years. I now have the title of Specialist Emeritus in the Department of Agribusiness and Applied Economics at NDSU. I am also the Secretary/Treasurer for North Dakotans for Public Integrity

I recommend a do not pass on HB 1521.

HB 1521 is not consistent with Article XIV of the North Dakota Constitution.

The majority of voters in North Dakota voted yes on Measure 1 "Pertaining to the Transparency of Funding, Conflicts of Interests and the Establishment of an Ethics Commission." The campaign with all its misperception is over. It will take time, citizen input and constitutional expertise to properly implement all four sections of Article XIV. Up to three years has been provided.

It is important that this not be rushed which appears to be what HB 1521 is attempting to do.

I also want to clear up a major misunderstanding that is being alleged about the intent of Article XIV. Article XIV clearly recognizes the benefits that lobbyists make to good government. If I didn't believe that to be true, I wouldn't be wearing this lobbyist badge. Article XIV confirms this by excluding in the definition of prohibited gifts any and all "purely informational materials" given to public officials. See Section 2 Subsection 1. Subsection 1 also promotes and advances opportunities for ND residents including lobbyists to meet with public officials in educational and social settings, like the Extension Rural Leadership North Dakota (RLND) social that we had last month. We had a wonderful turnout from both our participants and the legislators. Thank you for attending. It means a lot to us that many of you were interested in what RLND is and does. These types of socials will continue if they do not give rise to ethical concerns (to be as defined by the new Ethics Commission by 1/5/2021). This timeline gives us the opportunity to make our case that the RLND social will not raise ethical concerns. Just like every other social and public event where legislators and state officials are invited, the Ethics Commission will within 2 years disseminate rules as to what is allowed in such circumstances. Otherwise, Article XIV will prohibit gifts to public officials meant to eliminate undue influence and favoritism in the legislature, the governor's office and by other state officials.

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What Article XIV does is to try and stop a public perspective that some lobbyists have "unfair or undue influence" upon state government. Right or wrong, many ND residents believe that "some" lobbyists - not all - use "gifts" in various forms to corral and dominate public officials' time and minds by providing those gifts that were allowed by law prior to passage of Article XIV. Remember that the prohibition of gifts to public officials in Article XIV does not go into effect until 1/5/2021 and only after the legislature provides for sanctions.

Everyone should be able to agree that lobbyists nor those they represent should be able to pay for, or arrange to pay for through others, public officials to travel to and attend "conferences, seminars or other opportunities" as currently allowed (including associated meals, refreshments, etc.). And this would continue to be allowed under HB 1521. After all, I'm a true believer that if public officials need to go and learn about something of benefit or value to their job then the state should pay for that and it should be publicly known and should include all associated expenses. Allowing lobbyists or anyone else for that matter to pay for such trips and expenses is promoting undue influence of public officials. After all, one person's idea of what is "educational" is another person's idea of a strictly political and partisan event. The oil industry for example is not going to send a legislator to a Sierra Club sponsored environmental seminar. It will only pay to send that legislator to a seminar friendly and "educational" to its own benefit. The reverse is also true. I expect my public officials to learn from unbiased and balanced sources, nonpartisan in nature and blue ribbon in assembly.

All lobbyists, just like ordinary citizens should more properly influence and advocate from their presence here in front of legislative committees and hearings and offer testimony and informational documents and materials on the record and certainly not be able to send public officials on trips around the world to rub shoulders with other people seeking to gain unfair advantage of the time and minds of those public officials.

HB 1521 does not give the proper time and attention to the implementation of Article XIV so that it can be done correctly.

Thank you for your attention. I recommend a do not pass on HB1521.

February 12, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1521

Page 1, line 1, replace "two" with "a"

Page 1, line 1, replace "sections" with "section"

Page 1, line 2, replace "campaign contributions" with "expenditures"

Page 1, line 6, remove "28-32-07, 28-32-08, 28-32-08.1,"

Page 1, line 7, remove "28-32-08.2, 28-32-09,"

Page 1, line 7, after the seventh comma insert "and"

Page 1, line 7, remove "28-32-17,"

Page 1, line 8, remove "28-32-18, and 28-32-18.1,"

Page 1, line 8, replace the second "section" with "sections"

Page 1, line 8, after "28-32-27" insert ", 28-32-47, 28-32-48, and 28-32-49"

Page 1, line 9, after the second comma insert "appeals from rulemaking actions,"

Page 1, line 10, after "officers" insert "and agency heads in quasi-judicial proceedings,
implementing article XIV of the Constitution of North Dakota"

Page 6, line 15, remove "solely"

Page 13, line 17, replace "impose a fine" with "assess a civil penalty"

Page 13, line 18, after the underscored period insert "The assessment of a civil penalty may be
appealed to the district court of Burleigh County."

Page 13, line 25, replace "file a claim" with "commence an action"

Page 13, line 25, remove "with competent"

Page 13, line 26, remove "jurisdiction"

Page 13, line 28, replace "remains in violation of" with "has failed to comply with"

Page 13, line 28, remove the second "violation"

Page 13, line 29, replace "of" with "failure to comply with"

Page 13, remove lines 30 and 31

Page 14, remove lines 1 through 6

Page 20, line 13, after the first comma insert "or"

Page 20, line 13, overstrike ", suspended" and insert immediately thereafter ". Rules of an
agency may be suspended"

Page 20, line 15, remove ", or"

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Page 20, line 16, remove "the Constitution of North Dakota is amended to eliminate the authority"

Page 20, remove lines 17 through 30

Page 21, remove lines 1 through 30

Page 22, remove lines 1 through 31

Page 23, remove lines 1 through 31

Page 24, remove lines 1 through 31

Page 25, remove lines 1 through 20

Page 28, line 2, remove "or commission"

Page 28, line 3, remove "or commission"

Page 30, remove lines 9 through 31

Page 31, remove lines 1 through 31

Page 32, remove lines 1 through 31

Page 33, remove lines 1 through 23

Page 35, after line 21, insert:

"SECTION 20. AMENDMENT. Section 28-32-47 of the North Dakota Century Code is amended and reenacted as follows:

28-32-47. Scope of and procedure on appeal from agency rulemaking.

1. A judge of the district court shall review an appeal from an administrative agency's or ethics commission's rulemaking action based only on the record filed with the court. If an appellant requests documents to be included in the record but the agency or commission does not include them, the court, upon application by the appellant, may compel their inclusion. After a hearing, the filing of briefs, or other disposition of the matter as the judge may reasonably require, the court shall affirm the agency's rulemaking action unless it finds that any of the following are present:
 1. a. The provisions of this chapter have not been substantially complied with in the agency's rulemaking actions.
 2. b. A rule published as a result of the rulemaking action appealed is unconstitutional on the face of the language adopted.
 3. c. A rule published as a result of the rulemaking action appealed is beyond the scope of the agency's or commission's authority to adopt.
 4. d. A rule published as a result of the rulemaking action appealed is on the face of the language adopted an arbitrary or capricious application of authority granted by statute.
2. If the rulemaking action of the agency or commission is not affirmed by the court, ~~it~~the rulemaking action must be remanded to the agency or commission for disposition in accordance with the order of the court, or the

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rule or a portion of the rule resulting from the rulemaking action of the agency or commission must be declared invalid for reasons stated by the court.

SECTION 22. AMENDMENT. Section 28-32-48 of the North Dakota Century Code is amended and reenacted as follows:

28-32-48. Appeal - Stay of proceedings.

An appeal from an order or the rulemaking action of an administrative agency or the ethics commission does not stay the enforcement of the order or the effect of a published rule unless the court to which the appeal is taken, upon application and after a hearing or the submission of briefs, orders a stay. The court may impose terms and conditions for a stay of the enforcement of the order or for a stay in the effect of a published rule. This section does not prohibit the operation of an automatic stay upon the enforcement of an administrative order or ethics commission order as may be required by another statute.

SECTION 23. AMENDMENT. Section 28-32-49 of the North Dakota Century Code is amended and reenacted as follows:

28-32-49. Review in supreme court.

The judgment of the district court in an appeal from an order or rulemaking action of an administrative agency or the ethics commission may be reviewed in the supreme court on appeal in the same manner as provided in section 28-32-46 or 28-32-47, except that the appeal to the supreme court must be taken within sixty days after the service of the notice of entry of judgment in the district court. Any party of record, including the agency or ethics commission, may take an appeal from the final judgment of the district court to the supreme court. If an appeal from the judgment of the district court is taken by an agency or the ethics commission, the agency or ethics commission may not be required to pay a docket fee or file a bond for costs or equivalent security."

Page 36, line 20, remove "solely"

Page 37, line 22, replace "file a claim" with "commence an action"

Page 37, line 22, remove "with competent"

Page 37, line 23, remove "jurisdiction"

Page 37, line 25, replace "remains in violation of" with "has failed to comply with"

Page 37, line 25, remove the second "violation"

Page 37, line 26, replace "of" with "failure to comply with"

Page 37, line 29, remove "knowingly"

Page 37, line 29, after "accept" insert "knowingly"

Page 38, line 19, replace "impose a fine" with "assess a civil penalty"

Page 38, line 20, after "section" insert "and, if the person is a lobbyist, the secretary of state may revoke the lobbyist's registration under chapter 54-05.1"

Page 39, line 19, replace "verbally" with "orally"

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Page 39, line 27, replace "verbally" with "orally"

Page 39, line 31, replace "14-02" with "12.1-15"

Page 40, line 4, replace "verbal" with "oral"

Page 40, line 6, after "writing" insert "within ten calendar days of receipt of the complaint or summary of the complaint"

Page 40, line 31, remove "and recommendations"

Page 41, line 1, remove "and recommendations"

Page 41, line 3, remove "and recommendations"

Page 41, line 4, remove "and recommendations"

Page 41, line 4, remove the underscored comma

Page 41, line 5, remove "recommendations."

Page 41, line 7, remove "and recommendations"

Page 41, line 9, remove the underscored comma

Page 41, line 10, remove "recommendations."

Page 41, line 12, remove "their"

Page 41, line 17, replace "impose a" with "assess a civil"

Page 41, line 18, replace "impose a" with "assess a civil"

Page 41, line 19, after "appeal" insert "and request judicial review of"

Page 41, line 20, remove "the office of administrative hearings, which shall"

Page 41, line 21, replace "designate an administrative law judge to hear the appeal. An appeal" with "the district court in the county in which the accused individual resides. A request for judicial review"

Page 41, line 22, replace "the requirements for adjudicative proceedings under chapter 28-32" with "sections 28-32-42 through 28-32-46 and sections 28-32-50 and 28-32-51."

Page 41, line 29, replace "an administrative law judge" with "a court"

Page 42, line 13, remove "Disclosure of information included in subsections 1 and 2 by a person who knows the"

Page 42, remove line 14

Page 42, line 15, remove "4."

Page 42, line 17, replace "5." with "4."

Page 42, line 20, replace "impose a fine" with "assess a civil penalty"

Page 42, after line 27, insert:

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"54-66-14. Prohibition on delivering campaign contributions - Penalty.

A lobbyist may not deliver knowingly a campaign contribution made by another person in violation of subsection 3 of section 2 of article XIV of the Constitution of North Dakota. For a first violation, the secretary of state shall assess a civil penalty of one hundred dollars upon any person who violates this section and may revoke the lobbyist's registration. For a second and subsequent violation of this section, the person is guilty of an infraction.

54-66-15. Mandatory disqualification in quasi-judicial proceedings.

A director, officer, commissioner, head, or other executive of an agency shall self-disqualify in any quasi-judicial proceeding in which a reasonable, disinterested observer would believe the hearing officer is biased due to:

1. Monetary or in-kind support related to the election of the director, officer, commissioner, head, or other executive of an agency to public office; or
2. A financial interest of the director, officer, commissioner, head, or other executive of an agency which is not shared by the general public, as defined by the ethics commission.

54-66-16. Disclosure requirements - Delegation of limited authority.

Under subsection 2 of section 1 of article XIV of the Constitution of North Dakota, the legislative assembly vests authority to implement, interpret, and enforce section 1 of article XIV and laws enacted under the section to the ethics commission, but only to the extent the authority is not vested with the secretary of state. The authority vested in the ethics commission under this section is subject to the provisions of this chapter and chapter 16.1-08.1."

Page 43, line 3, after the fifth comma insert "and"

Page 43, line 3, remove ", and 29"

Page 43, line 3, replace "section" with "sections"

Page 43, line 4, after "54-66-02" insert "and 54-66-15"

Page 43, line 4, replace "30" with "24"

Page 43, line 7, replace "30" with "24"

Page 43, line 9, replace "30" with "24"

Renumber accordingly

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19.1078.01005

Sixty-sixth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1521

Introduced by

Representative Pollert

Senator Wardner

1 A BILL for an Act to create and enact ~~two~~ a new section to chapter 16.1-08.1 and
2 chapter 54-66 of the North Dakota Century Code, relating to reporting ~~campaign~~
3 ~~contributions~~ expenditures, restrictions on public officials and lobbyists, investigations of ethics
4 violations, and implementing requirements of article XIV of the Constitution of North Dakota; to
5 amend and reenact section 16.1-08.1-01, subsection 4 of section 16.1-08.1-02.1, sections
6 16.1-08.1-02.3, 16.1-08.1-02.4, 16.1-08.1-03.1, 16.1-08.1-04.1, 28-32-01, 28-32-02, 28-32-03,
7 28-32-06, ~~28-32-07, 28-32-08, 28-32-08.1, 28-32-08.2, 28-32-09, 28-32-10, 28-32-11, 28-32-12,~~
8 28-32-14, 28-32-15, and 28-32-16, 28-32-17, 28-32-18, and 28-32-18.1, subsections 2 and 4 of
9 section 28-32-19, and ~~section~~ sections 28-32-27, 28-32-47, 28-32-48, and 28-32-49 of the North
10 Dakota Century Code, relating to rulemaking procedures, appeals from rulemaking actions,
11 disqualification of hearing officers and agency heads in quasi-judicial proceedings,
12 implementing article XIV of the Constitution of North Dakota, and requirements for the North
13 Dakota ethics commission; to provide for a penalty; to provide an appropriation; to provide an
14 effective date; to provide an expiration date; and to declare an emergency.

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

16 **SECTION 1. AMENDMENT.** Section 16.1-08.1-01 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **16.1-08.1-01. Definitions.**

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

- 20 1. "Adjusted for inflation" means adjusted on January first of each year by the change in
21 the consumer price index for all urban consumers (all items, United States city
22 average), as identified by the secretary of state.
23 2. "Affiliate" means an organization that controls, is controlled by, or is under common
24 control with another organization. For purposes of this definition, control means the

1 possession, direct or indirect, of the power to direct or cause the direction of the
2 management and policies of an organization, whether through the ownership of voting
3 securities, by contract other than a commercial contract for goods or nonmanagement
4 services, or otherwise. Control is presumed to exist if an organization, directly or
5 indirectly, owns, controls, holds with the power to vote, or holds proxies representing
6 fifty percent or more of the voting securities of any other organization.

7 ~~2-3.~~ "Association" means any club, association, union, brotherhood, fraternity, organization,
8 or group of any kind of two or more persons, including labor unions, trade
9 associations, professional associations, or governmental associations, which is united
10 for any purpose, business, or object and which assesses any dues, membership fees,
11 or license fees in any amount, or which maintains a treasury fund in any amount. The
12 term does not include corporations, cooperative corporations, limited liability
13 companies, political committees, or political parties.

14 ~~3-4.~~ "Candidate" means an individual who seeks nomination for election or election to
15 public office, and includes:
16 a. An individual holding public office;
17 b. An individual who has publicly declared that individual's candidacy for nomination
18 for election or election to public office or has filed or accepted a nomination for
19 public office;
20 c. An individual who has formed a campaign or other committee for that individual's
21 candidacy for public office;
22 d. An individual who has circulated a nominating petition to have that individual's
23 name placed on the ballot; and
24 e. An individual who has, in any manner, solicited or received a contribution for that
25 individual's candidacy for public office, whether before or after the election for
26 that office.

27 ~~4-5.~~ "Conduit" means a person that is not a political party, political committee, or candidate
28 and which receives a contribution of money and transfers the contribution to a
29 candidate, political party, or political committee when the contribution is designated
30 specifically for the candidate, political party, or political committee and the person has
31 no discretion as to the recipient and the amount transferred. The term includes a

- 1 transactional intermediary, including a credit card company or a money transfer
2 service that pays or transfers money to a candidate on behalf of another person.
- 3 ~~5-6.~~ "Contribution" means a gift, transfer, conveyance, provision, receipt, subscription,
4 loan, advance, deposit of money, or anything of value, made for the purpose of
5 influencing the nomination for election, or election, of any person to public office or
6 aiding or opposing the circulation or passage of a statewide initiative or referendum
7 petition or measure. The term also means a contract, promise, or agreement, express
8 or implied, whether or not legally enforceable, to make a contribution for any of the
9 above purposes. The term includes funds received by a candidate for public office or a
10 political party or committee which are transferred or signed over to that candidate,
11 party, or committee from another candidate, party, or political committee or other
12 source including a conduit. The term "anything of value" includes any good or service
13 of more than a nominal value. The term "nominal value" means the cost, price, or
14 worth of the good or service is trivial, token, or of no appreciable value. The term
15 "contribution" does not include:
- 16 a. A loan of money from a bank or other lending institution made in the regular
17 course of business.
 - 18 b. Time spent by volunteer campaign or political party workers.
 - 19 c. Money or anything of value received for commercial transactions, including rents,
20 advertising, or sponsorships made as a part of a fair market value bargained-for
21 exchange.
 - 22 d. Money or anything of value received for anything other than a political purpose.
 - 23 e. Products or services for which the actual cost or fair market value are reimbursed
24 by a payment of money.
 - 25 f. An independent expenditure.
 - 26 g. The value of advertising paid by a political party, multicandidate political
27 committee, or caucus which is in support of a candidate.
 - 28 h. In-kind contributions from a candidate to the candidate's campaign.
- 29 ~~6-7.~~ "Cooperative corporations", "corporations", and "limited liability companies" are as
30 defined in this code, and for purposes of this chapter "corporations" includes nonprofit
31 corporations. However, if a political committee, the only purpose of which is accepting

1 contributions and making expenditures for a political purpose, incorporates for liability
2 purposes only, the committee is not considered a corporation for the purposes of this
3 chapter.

4 ~~7-8.~~ "Expenditure" means:

5 a. A gift, transfer, conveyance, provision, loan, advance, payment, distribution,
6 disbursement, outlay, or deposit of money or anything of value, except a loan of
7 money from a bank or other lending institution made in the regular course of
8 business, made for a political purpose or for the purpose of influencing the
9 passage or defeat of a measure.

10 b. A contract, promise, or agreement, express or implied, whether or not legally
11 enforceable, to make any expenditure.

12 c. The transfer of funds by a political committee to another political committee.

13 d. An independent expenditure.

14 ~~8-9.~~ "Expenditure categories" means the categories into which expenditures must be
15 grouped for reports under this chapter. The expenditure categories are:

16 a. Advertising;

17 b. Campaign loan repayment;

18 c. Operations;

19 d. Travel; and

20 e. Miscellaneous.

21 ~~9-10.~~ "Independent expenditure" means an expenditure made for a political purpose or for
22 the purpose of influencing the passage or defeat of a measure if the expenditure is
23 made without the express or implied consent, authorization, or cooperation of, and not
24 in concert with or at the request or suggestion of, any candidate, committee, or
25 political party.

26 ~~10-11.~~ "Patron" means a person who owns equity interest in the form of stock, shares, or
27 membership or maintains similar financial rights in a cooperative corporation.

28 ~~11-12.~~ "Person" means an individual, partnership, political committee, association,
29 corporation, cooperative corporation, limited liability company, or other organization or
30 group of persons.

- 1 ~~12-13.~~ "Personal benefit" means a benefit to the candidate or another person which is not for
2 a political purpose or related to a candidate's responsibilities as a public officeholder,
3 and any other benefit that would convert a contribution to personal income.
- 4 ~~13-14.~~ "Political committee" means any committee, club, association, or other group of
5 persons which receives contributions or makes expenditures for political purposes and
6 includes:
- 7 a. A political action committee not connected to another organization and free to
8 solicit funds from the general public, or derived from a corporation, cooperative
9 corporation, limited liability company, affiliate, subsidiary, or an association that
10 solicits or receives contributions from its employees or members or makes
11 expenditures for political purposes on behalf of its employees or members;
- 12 b. A candidate committee established to support an individual candidate seeking
13 public office which solicits or receives contributions for political purposes;
- 14 c. A political organization registered with the federal election commission, which
15 solicits or receives contributions or makes expenditures for political purposes;
- 16 d. A multicandidate political committee, including a caucus, established to support
17 multiple groups or slates of candidates seeking public office, which solicits or
18 receives contributions for political purposes; and
- 19 e. A measure committee, including an initiative or referendum sponsoring
20 committee at any stage of its organization, which solicits or receives contributions
21 or makes expenditures for the purpose of aiding or opposing a measure sought
22 to be voted upon by the voters of the state, including any activities undertaken for
23 the purpose of drafting an initiative or referendum petition, seeking approval of
24 the secretary of state for the circulation of a petition, or seeking approval of the
25 submitted petitions.
- 26 ~~14-15.~~ "Political party" means any association, committee, or organization which nominates a
27 candidate for election to any office which may be filled by a vote of the electors of this
28 state or any of its political subdivisions and whose name appears on the election ballot
29 as the candidate of such association, committee, or organization.
- 30 ~~15-16.~~ "Political purpose" means any activity undertaken in support of or in opposition to the
31 election or nomination of a candidate to public office and includes using "vote for",

1 "oppose", or any similar support or opposition language in any advertisement whether
2 the activity is undertaken by a candidate, a political committee, a political party, or any
3 person. In the period thirty days before a primary election and sixty days before a
4 special or general election, "political purpose" also means any activity in which a
5 candidate's name, office, district, or any term meaning the same as "incumbent" or
6 "challenger" is used in support of or in opposition to the election or nomination of a
7 candidate to public office. The term does not include activities undertaken in the
8 performance of a duty of a public office or any position taken in any bona fide news
9 story, commentary, or editorial.

10 ~~46.17.~~ "Public office" means every office to which an individual can be elected by vote of the
11 people under the laws of this state.

12 ~~47.18.~~ "Subsidiary" means an affiliate of a corporation under the control of the corporation
13 directly or indirectly through one or more intermediaries.

14 19. "Ultimate and true source" means the person who knowingly contributed over two
15 hundred dollars, adjusted for inflation, ~~solely~~ to influence a statewide election or an
16 election for the legislative assembly.

17 **SECTION 2. AMENDMENT.** Subsection 4 of section 16.1-08.1-02.1 of the North Dakota
18 Century Code is amended and reenacted as follows:

- 19 4. The statement filed according to this section must show the following:
- 20 a. The balance of the filer's convention accounts at the start and close of the
21 reporting period;
- 22 b. The total of all revenue received and expenditures made of two hundred dollars,
23 adjusted for inflation, or less;
- 24 c. The total of all revenue received and expenditures made in excess of two
25 hundred dollars, adjusted for inflation;
- 26 d. For each aggregated revenue received from a person in excess of two hundred
27 dollars, adjusted for inflation:
- 28 (1) The name of each person;
- 29 (2) The mailing address of each person;
- 30 (3) The date of the most recent receipt of revenue from each person; and

- 1 (4) The purpose or purposes for which the aggregated revenue total was
2 received from each person;
- 3 e. For each aggregated expenditure made to a person in excess of two hundred
4 dollars, adjusted for inflation:
- 5 (1) The name of each person or entity;
6 (2) The mailing address of each person or entity;
7 (3) The date of the most recent expense made to each person or entity; and
8 (4) The purpose or purposes for which the aggregated expenditure total was
9 disbursed to each person or entity; and
- 10 f. For each aggregated revenue from an individual which totals five thousand
11 dollars, adjusted for inflation, or more during the reporting period, the occupation,
12 employer, and principal place of business of the individual must be disclosed.

13 **SECTION 3. AMENDMENT.** Section 16.1-08.1-02.3 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **16.1-08.1-02.3. Pre-election, supplemental, and year-end campaign disclosure**
16 **statement requirements for candidates, candidate committees, multicandidate**
17 **committees, and nonstatewide political parties.**

- 18 1. Prior to the thirty-first day before a primary, general, or special election, a candidate or
19 candidate committee formed on behalf of the candidate, a multicandidate political
20 committee, or a political party other than a statewide political party soliciting or
21 accepting contributions shall file a campaign disclosure statement that includes all
22 contributions received from January first through the fortieth day before the election. A
23 candidate whose name is not on the ballot and who is not seeking election through
24 write-in votes, the candidate's candidate committee, and a political party that has not
25 endorsed or nominated any candidate in the election is not required to file a statement
26 under this subsection. The statement may be submitted for filing beginning on the
27 thirty-ninth day before the election. The statement must include:
- 28 a. For each aggregated contribution from a contributor which totals in excess of two
29 hundred dollars, adjusted for inflation, received during the reporting period:
- 30 (1) The name and mailing address of the contributor;
31 (2) The total amount of the contribution; and

- 1 (3) The date the last contributed amount was received;
- 2 b. The total of all aggregated contributions from contributors which total in excess of
- 3 two hundred dollars, adjusted for inflation, during the reporting period;
- 4 c. The total of all contributions received from contributors that contributed two
- 5 hundred dollars, adjusted for inflation, or less each during the reporting period;
- 6 and
- 7 d. For a statewide candidate, a candidate committee formed on behalf of a
- 8 statewide candidate, and a statewide multicandidate committee, the balance of
- 9 the campaign fund on the fortieth day before the election and the balance of the
- 10 campaign fund on January first.
- 11 2. Beginning on the thirty-ninth day before the election through the day before the
- 12 election, a person that files a statement under subsection 1 must file a supplemental
- 13 statement within forty-eight hours of the start of the day following the receipt of a
- 14 contribution or aggregate contribution from a contributor which is in excess of five
- 15 hundred dollars, adjusted for inflation. The statement must include:
- 16 a. The name and mailing address of the contributor;
- 17 b. The total amount of the contribution received during the reporting period; and
- 18 c. The date the last contributed amount was received.
- 19 3. Prior to February first, a candidate or candidate committee, a multicandidate political
- 20 committee, or a nonstatewide political party soliciting or accepting contributions shall
- 21 file a campaign disclosure statement that includes all contributions received and
- 22 expenditures, by expenditure category, made from January first through December
- 23 thirty-first of the previous year. The statement may be submitted for filing beginning on
- 24 January first. The statement must include:
- 25 a. For a statewide candidate, a candidate committee formed on behalf of a
- 26 statewide candidate, and a statewide multicandidate committee, the balance of
- 27 the campaign fund on January first and on December thirty-first;
- 28 b. For each aggregated contribution from a contributor which totals in excess of two
- 29 hundred dollars, adjusted for inflation, received during the reporting period:
- 30 (1) The name and mailing address of the contributor;
- 31 (2) The total amount of the contribution; and

- 1 (3) The date the last contributed amount was received;
- 2 c. The total of all aggregated contributions from contributors which total in excess of
- 3 two hundred dollars, adjusted for inflation, during the reporting period;
- 4 d. The total of all contributions received from contributors that contributed two
- 5 hundred dollars, adjusted for inflation, or less each during the reporting period;
- 6 and
- 7 e. The total of all other expenditures made during the previous year, separated into
- 8 expenditure categories.
- 9 4. A person required to file a statement under this section, other than a candidate for
- 10 judicial office, county office, or city office, or a candidate committee for a candidate
- 11 exempted under this subsection, shall report each aggregated contribution from a
- 12 contributor which totals five thousand dollars, adjusted for inflation, or more during the
- 13 reporting period. For these contributions from individuals, the statement must include
- 14 the contributor's occupation, employer, and the employer's principal place of business.
- 15 5. A candidate for city office in a city with a population under five thousand and a
- 16 candidate committee for the candidate are exempt from this section.
- 17 6. A candidate for county office and a candidate committee for a candidate for county
- 18 office shall file statements under this chapter with the county auditor. A candidate for
- 19 city office who is required to file a statement under this chapter and a candidate
- 20 committee for such a candidate shall file statements with the city auditor. Any other
- 21 person required to file a statement under this section shall file the statement with the
- 22 secretary of state.
- 23 7. The filing officer shall assess and collect fees for any reports filed after the filing
- 24 deadline.
- 25 8. To ensure accurate reporting and avoid commingling of campaign and personal funds,
- 26 candidates shall use dedicated campaign accounts that are separate from any
- 27 personal accounts.

28 **SECTION 4. AMENDMENT.** Section 16.1-08.1-02.4 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 **16.1-08.1-02.4. Pre-election, supplemental, and year-end campaign disclosure**
2 **statement requirements for statewide political parties and certain political committees.**

- 3 1. Prior to the thirty-first day before a primary, general, or special election, a statewide
4 political party or a political committee not required to file statements under section
5 16.1-08.1-02.3 which is soliciting or accepting contributions shall file a campaign
6 disclosure statement that includes all contributions received and expenditures made
7 from January first through the fortieth day before the election. A political party that has
8 not endorsed or nominated a candidate in an election is not required to file a
9 statement under this subsection. A statement required to be filed under this subsection
10 may be submitted for filing beginning on the thirty-ninth day before the election. The
11 statement must include:
- 12 a. For each aggregated contribution from a contributor which totals in excess of two
13 hundred dollars, adjusted for inflation, received during the reporting period:
- 14 (1) The name and mailing address of the contributor;
15 (2) The total amount of the contribution; and
16 (3) The date the last contributed amount was received;
- 17 b. The total of all aggregated contributions from contributors which total in excess of
18 two hundred dollars, adjusted for inflation, during the reporting period;
- 19 c. The total of all contributions received from contributors that contributed two
20 hundred dollars, adjusted for inflation, or less each during the reporting period;
- 21 d. For each recipient of an expenditure from campaign funds in excess of two
22 hundred dollars, adjusted for inflation, in the aggregate:
- 23 (1) The name and mailing address of the recipient;
24 (2) The total amount of the expenditure made to the recipient; and
25 (3) The date the last expended amount was made to the recipient;
- 26 e. The aggregate total of all expenditures from campaign funds in excess of two
27 hundred dollars, adjusted for inflation;
- 28 f. The aggregate total of all expenditures from campaign funds of two hundred
29 dollars, adjusted for inflation, or less; and
- 30 g. The balance of the campaign fund on the fortieth day before the election and
31 balance of the campaign fund on January first.

- 1 2. Beginning on the thirty-ninth day before the election through the day before the
- 2 election, a person that files a statement under subsection 1 must file a supplemental
- 3 statement within forty-eight hours of the start of the day following the receipt of a
- 4 contribution or aggregate contribution from a contributor which is in excess of five
- 5 hundred dollars, adjusted for inflation. The statement must include:
- 6 a. The name and mailing address of the contributor;
- 7 b. The total amount of the contribution received during the reporting period; and
- 8 c. The date the last contributed amount was received.
- 9 3. Prior to February first, a statewide political party or a political committee that is not
- 10 required to file a statement under section 16.1-08.1-2.3 shall file a campaign
- 11 disclosure statement that includes all contributions received and expenditures made
- 12 from January first through December thirty-first of the previous year. The statement
- 13 may be submitted for filing beginning on January first. The statement must include:
- 14 a. For each aggregated contribution from a contributor which totals in excess of two
- 15 hundred dollars, adjusted for inflation, received during the reporting period:
- 16 (1) The name and mailing address of the contributor;
- 17 (2) The total amount of the contribution; and
- 18 (3) The date the last contributed amount was received;
- 19 b. The total of all aggregated contributions from contributors which total in excess of
- 20 two hundred dollars, adjusted for inflation, during the reporting period;
- 21 c. The total of all contributions received from contributors that contributed two
- 22 hundred dollars, adjusted for inflation, or less each during the reporting period;
- 23 d. For each recipient of an expenditure from campaign funds in excess of two
- 24 hundred dollars, adjusted for inflation, in the aggregate:
- 25 (1) The name and mailing address of the recipient;
- 26 (2) The total amount of the expenditure made to the recipient; and
- 27 (3) The date the last expended amount was made to the recipient;
- 28 e. The aggregate total of all expenditures from campaign funds in excess of two
- 29 hundred dollars, adjusted for inflation;
- 30 f. The aggregate total of all expenditures from campaign funds of two hundred
- 31 dollars, adjusted for inflation, or less; and

- 1 g. The balance of the campaign fund on January first and December thirty-first.
- 2 4. A person required to file a statement under this section shall disclose each aggregated
- 3 contribution from a contributor which totals five thousand dollars, adjusted for inflation,
- 4 or more during the reporting period. For these contributions from individuals, the
- 5 statement must include the contributor's occupation, employer, and the employer's
- 6 principal place of business.
- 7 5. Statements under this section must be filed with the secretary of state.
- 8 6. The secretary of state shall assess and collect fees for any reports filed after the filing
- 9 deadline.

10 **SECTION 5. AMENDMENT.** Section 16.1-08.1-03.1 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **16.1-08.1-03.1. Special requirements for statements required of persons engaged in**
13 **activities regarding ballot measures.**

- 14 1. For each reportable contribution and expenditure under section 16.1-08.1-02.4, the
- 15 threshold for reporting is one hundred dollars, adjusted for inflation, for any person
- 16 engaged in activities described in subdivision e of subsection ~~4314~~ of section
- 17 16.1-08.1-01.
- 18 2. For contributions received from an out-of-state contributor, a person engaged in
- 19 activities described in subdivision e of subsection ~~4314~~ of section 16.1-08.1-01 shall
- 20 include the following information regarding each subcontributor that has stated a
- 21 contribution is for the express purpose of furthering the passage or defeat of a ballot
- 22 measure in the statements required under section 16.1-08.1-02.4:
 - 23 a. A designation as to whether any person contributed in excess of one hundred
 - 24 dollars, adjusted for inflation, of the total contribution;
 - 25 b. The name and mailing address of each subcontributor that contributed in excess
 - 26 of one hundred dollars, adjusted for inflation, of the total contribution;
 - 27 c. The contribution amounts of each disclosed subcontributor; and
 - 28 d. The occupation, employer, and address for the employer's principal place of
 - 29 business of each disclosed subcontributor.
- 30 3. An initiative and referendum sponsoring committee also shall file a disclosure
- 31 statement by the date the secretary of state approves the petition for circulation, and

1 shall file an additional statement on the date the petitions containing the required
2 number of signatures are submitted to the secretary of state for review. The
3 statements required under this subsection must be in the same form as the year-end
4 statements under section 16.1-08.1-02.4.

5 4. A sponsoring committee shall file a statement regarding its intent to compensate
6 circulators before paying for petitions to be circulated.

7 **SECTION 6. AMENDMENT.** Section 16.1-08.1-04.1 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **16.1-08.1-04.1. Personal use of contributions prohibited.**

10 1. A candidate may not use any contribution received by the candidate, the candidate's
11 candidate committee, or a multicandidate political committee to:

- 12 4. a. Give a personal benefit to the candidate or another person;
13 2. b. Make a loan to another person;
14 3. c. Knowingly pay more than the fair market value for goods or services purchased
15 for the campaign; or
16 4. d. Pay a criminal fine or civil penalty.

17 2. For the first violation, the secretary of state shall ~~impose a fine~~ assess a civil penalty of
18 five hundred dollars upon any person who violates this section. The assessment of a
19 civil penalty may be appealed to the district court of Burleigh County. For a second
20 and subsequent violation of this section, the person is guilty of a class A misdemeanor.

21 **SECTION 7.** A new section to chapter 16.1-08.1 of the North Dakota Century Code is
22 created and enacted as follows:

23 **Ultimate and true source of funds - Required identification - Penalty.**

- 24 1. In any report under this chapter which requires the identification of a contributor or
25 subcontributor, the ultimate and true source of funds must be identified.
26 2. A resident taxpayer may file a claim ~~commence an action~~ in a district court of this state
27 ~~with competent jurisdiction~~ against a person required to comply with this section to
28 compel compliance if all other enforcement measures under this chapter have been
29 exhausted and the taxpayer reasonably believes the person remains in violation of ~~has~~
30 failed to comply with this section. A violation of ~~failure to comply with~~ this section must
31 be proved by clear and convincing evidence.

1 ~~SECTION 8. A new section to chapter 16.1-08.1 of the North Dakota Century Code is~~
2 ~~created and enacted as follows:~~

3 ~~Prohibition on acting as conduit - Penalty.~~

4 ~~A lobbyist may not act as a conduit unless the lobbyist is delivering a campaign contribution~~
5 ~~to the lobbyist's campaign or the campaign of the lobbyist's family member. For a first violation,~~
6 ~~the secretary of state shall impose a fine of one hundred dollars upon any person who violates~~
7 ~~this section. For a second and subsequent violation of this section, the person is guilty of an~~
8 ~~infraction.~~

9 **SECTION 8. AMENDMENT.** Section 28-32-01 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **28-32-01. Definitions.**

12 In this chapter, unless the context or subject matter otherwise provides:

- 13 1. "Adjudicative proceeding" means an administrative matter resulting in an agency
14 issuing an order after an opportunity for hearing is provided or required. An
15 adjudicative proceeding includes administrative matters involving a hearing on a
16 complaint against a specific-named respondent; a hearing on an application seeking a
17 right, privilege, or an authorization from an agency, such as a ratemaking or licensing
18 hearing; or a hearing on an appeal to an agency. An adjudicative proceeding includes
19 reconsideration, rehearing, or reopening. Once an adjudicative proceeding has begun,
20 the adjudicative proceeding includes any informal disposition of the administrative
21 matter under section 28-32-22 or another specific statute or rule, unless the matter
22 has been specifically converted to another type of proceeding under section 28-32-22.
23 An adjudicative proceeding does not include a decision or order to file or not to file a
24 complaint, or to initiate an investigation, an adjudicative proceeding, or any other
25 proceeding before the agency, or another agency, or a court. An adjudicative
26 proceeding does not include a decision or order to issue, reconsider, or reopen an
27 order that precedes an opportunity for hearing or that under another section of this
28 code is not subject to review in an adjudicative proceeding. An adjudicative proceeding
29 does not include rulemaking under this chapter.
- 30 2. "Administrative agency" or "agency" means each board, bureau, commission,
31 department, or other administrative unit of the executive branch of state government,

- 1 including one or more officers, employees, or other persons directly or indirectly
2 purporting to act on behalf or under authority of the agency. An administrative unit
3 located within or subordinate to an administrative agency must be treated as part of
4 that agency to the extent it purports to exercise authority subject to this chapter. The
5 term administrative agency does not include:
- 6 a. The office of management and budget except with respect to rules made under
7 section 32-12.2-14, rules relating to conduct on the capitol grounds and in
8 buildings located on the capitol grounds under section 54-21-18, rules relating to
9 the classified service as authorized under section 54-44.3-07, and rules relating
10 to state purchasing practices as required under section 54-44.4-04.
 - 11 b. The adjutant general with respect to the department of emergency services.
 - 12 c. The council on the arts.
 - 13 d. The state auditor.
 - 14 e. The department of commerce with respect to the division of economic
15 development and finance.
 - 16 f. The dairy promotion commission.
 - 17 g. The education factfinding commission.
 - 18 h. The educational technology council.
 - 19 i. The board of equalization.
 - 20 j. The board of higher education.
 - 21 k. The Indian affairs commission.
 - 22 l. The industrial commission with respect to the activities of the Bank of North
23 Dakota, North Dakota housing finance agency, public finance authority, North
24 Dakota mill and elevator association, North Dakota farm finance agency, the
25 North Dakota transmission authority, and the North Dakota pipeline authority.
 - 26 m. The department of corrections and rehabilitation except with respect to the
27 activities of the division of adult services under chapter 54-23.4.
 - 28 n. The pardon advisory board.
 - 29 o. The parks and recreation department.
 - 30 p. The parole board.
 - 31 q. The state fair association.

- 1 r. The attorney general with respect to activities of the state toxicologist and the
2 state crime laboratory.
- 3 s. The administrative committee on veterans' affairs except with respect to rules
4 relating to the supervision and government of the veterans' home and the
5 implementation of programs or services provided by the veterans' home.
- 6 t. The industrial commission with respect to the lignite research fund except as
7 required under section 57-61-01.5.
- 8 u. The attorney general with respect to guidelines adopted under section 12.1-32-15
9 for the risk assessment of sexual offenders, the risk level review process, and
10 public disclosure of information under section 12.1-32-15.
- 11 v. The commission on legal counsel for indigents.
- 12 w. The attorney general with respect to twenty-four seven sobriety program
13 guidelines and program fees.
- 14 x. The industrial commission with respect to approving or setting water rates under
15 chapter 61-40.
- 16 3. "Agency head" means an individual or body of individuals in whom the ultimate legal
17 authority of the agency is vested by law.
- 18 4. "Commission" means the North Dakota ethics commission established by article XIV
19 of the Constitution of North Dakota.
- 20 5. "Complainant" means any person who files a complaint before an administrative
21 agency pursuant to section 28-32-21 and any administrative agency that, when
22 authorized by law, files such a complaint before such agency or any other agency.
- 23 5-6. "Hearing officer" means any agency head or one or more members of the agency
24 head when presiding in an administrative proceeding, or, unless prohibited by law, one
25 or more other persons designated by the agency head to preside in an administrative
26 proceeding, an administrative law judge from the office of administrative hearings, or
27 any other person duly assigned, appointed, or designated to preside in an
28 administrative proceeding pursuant to statute or rule.
- 29 6-7. "License" means a franchise, permit, certification, approval, registration, charter, or
30 similar form of authorization required by law.

- 1 ~~7-8.~~ "Order" means any agency action of particular applicability which determines the legal
2 rights, duties, privileges, immunities, or other legal interests of one or more specific
3 persons. The term does not include an executive order issued by the governor.
- 4 ~~8-9.~~ "Party" means each person named or admitted as a party or properly seeking and
5 entitled as of right to be admitted as a party. An administrative agency may be a party.
6 In a hearing for the suspension, revocation, or disqualification of an operator's license
7 under title 39, the term may include each city and each county in which the alleged
8 conduct occurred, but the city or county may not appeal the decision of the hearing
9 officer.
- 10 ~~9-10.~~ "Person" includes an individual, association, partnership, corporation, limited liability
11 company, the commission, a state governmental agency or governmental subdivision,
12 or an agency of such governmental subdivision.
- 13 ~~10-11.~~ "Relevant evidence" means evidence having any tendency to make the existence of
14 any fact that is of consequence to the determination of the administrative action more
15 probable or less probable than it would be without the evidence.
- 16 ~~11-12.~~ "Rule" means the whole or a part of an agency or commission statement of general
17 applicability which implements or prescribes law or policy or the organization,
18 procedure, or practice requirements of the agency or commission. The term includes
19 the adoption of new rules and the amendment, repeal, or suspension of an existing
20 rule. The term does not include:
- 21 a. A rule concerning only the internal management of an agency or the commission
22 which does not directly or substantially affect the substantive or procedural rights
23 or duties of any segment of the public.
- 24 b. A rule that sets forth criteria or guidelines to be used by the staff of an agency or
25 the commission in the performance of audits, investigations, inspections, and
26 settling commercial disputes or negotiating commercial arrangements, or in the
27 defense, prosecution, or settlement of cases, if the disclosure of the
28 ~~statement~~ rule would:
- 29 (1) Enable law violators to avoid detection;
- 30 (2) Facilitate disregard of requirements imposed by law; or

- 1 (3) Give a clearly improper advantage to persons who are in an adverse
- 2 position to the state.
- 3 c. A rule establishing specific prices to be charged for particular goods or services
- 4 sold by an agency.
- 5 d. A rule concerning only the physical servicing, maintenance, or care of
- 6 agency-owned ~~or~~ agency-operated, commission-owned, or
- 7 commission-operated facilities or property.
- 8 e. A rule relating only to the use of a particular facility or property owned, operated,
- 9 or maintained by the state or any of its subdivisions, if the substance of the rule is
- 10 adequately indicated by means of signs or signals to persons who use the facility
- 11 or property.
- 12 f. A rule concerning only inmates of a correctional or detention facility, students
- 13 enrolled in an educational institution, or patients admitted to a hospital, if adopted
- 14 by that facility, institution, or hospital.
- 15 g. A form whose contents or substantive requirements are prescribed by rule or
- 16 statute or are instructions for the execution or use of the form.
- 17 h. An agency or commission budget.
- 18 i. An opinion of the attorney general.
- 19 j. A rule adopted by an agency selection committee under section 54-44.7-03.
- 20 k. Any material, including a guideline, interpretive statement, statement of general
- 21 policy, manual, brochure, or pamphlet, which is explanatory and not intended to
- 22 have the force and effect of law.

23 **SECTION 9. AMENDMENT.** Section 28-32-02 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **28-32-02. Rulemaking ~~power of agency authority~~ - Organizational rule.**

- 26 1. The authority of an administrative agency to adopt administrative rules is authority
- 27 delegated by the legislative assembly. As part of that delegation, the legislative
- 28 assembly reserves to itself the authority to determine when and if rules of
- 29 administrative agencies are effective. Every administrative agency may adopt, amend,
- 30 or repeal reasonable rules in conformity with this chapter and any statute administered
- 31 or enforced by the agency.

1 2. In addition to other rulemaking requirements imposed by law, each agency may
2 include in its rules a description of that portion of its organization and functions subject
3 to this chapter and may include a statement of the general course and method of its
4 operations and how the public may obtain information or make submissions or
5 requests.

6 3. The authority of the commission to adopt rules arises from article XIV of the
7 Constitution of North Dakota. The commission shall follow the process, and meet the
8 requirements, in this chapter to adopt, amend, or repeal its rules.

9 **SECTION 10. AMENDMENT.** Section 28-32-03 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **28-32-03. Emergency rules.**

12 1. If the commission or an agency, with the approval of the governor, finds that
13 emergency rulemaking is necessary, the commission or agency may declare the
14 proposed rule to be an interim final rule effective on a date no earlier than the date of
15 filing with the legislative council of the notice required by section 28-32-10.

16 2. A proposed rule may be given effect on an emergency basis under this section if any
17 of the following grounds exists regarding that rule:

18 a. Imminent peril threatens public health, safety, or welfare, which would be abated
19 by emergency effectiveness;

20 b. A delay in the effective date of the rule is likely to cause a loss of funds
21 appropriated to support a duty imposed by law upon the commission or agency;

22 c. Emergency effectiveness is reasonably necessary to avoid a delay in
23 implementing an appropriations measure; or

24 d. Emergency effectiveness is necessary to meet a mandate of federal law.

25 3. A final rule adopted after consideration of all written and oral submissions respecting
26 the interim final rule, which is substantially similar to the interim final rule, is effective
27 as of the declared effective date of the interim final rule.

28 4. The commission's or agency's finding, and a brief statement of the commission's or
29 agency's reasons for the finding, must be filed with the legislative council with the final
30 adopted emergency rule.

- 1 5. The commission or agency shall attempt to make interim final rules known to persons
2 who the commission or agency can reasonably be expected to believe may have a
3 substantial interest in them. As used in this subsection, "substantial interest" means an
4 interest in the effect of the rules which surpasses the common interest of all citizens.
5 ~~An~~The commission or an agency adopting emergency rules shall comply with the
6 notice requirements of section 28-32-10 which relate to emergency rules and shall
7 provide notice to the chairman of the administrative rules committee of the emergency
8 status, declared effective date, and grounds for emergency status of the rules under
9 subsection 2. When notice of emergency rule adoption is received, the legislative
10 council shall publish the notice and emergency rules on its website.
11 6. An interim final rule is ineffective one hundred eighty days after its declared effective
12 date unless first adopted as a final rule.

13 **SECTION 11. AMENDMENT.** Section 28-32-06 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **28-32-06. Force and effect of rules.**

16 Upon becoming effective, rules have the force and effect of law until amended or repealed
17 by the agency or commission, or declared invalid by a final court decision, ~~suspended~~. Rules of
18 an agency may be suspended or found to be void by the administrative rules committee, or
19 determined repealed by the legislative council because the authority for adoption of the rules is
20 repealed or transferred to another ~~agency, or the Constitution of North Dakota is amended to~~
21 ~~eliminate the authority~~.

22 ~~— **SECTION 12. AMENDMENT.** Section 28-32-07 of the North Dakota Century Code is~~
23 ~~amended and reenacted as follows:~~

24 ~~— **28-32-07. Deadline for rules to implement statutory change.**~~

25 ~~— Any rule change, including a creation, amendment, or repeal, made to implement a~~
26 ~~statutory change must be adopted and filed with the legislative council within nine months of the~~
27 ~~effective date of the statutory change. If an agency or the commission needs additional time for~~
28 ~~the rule change, a request for additional time must be made to the legislative council. The~~
29 ~~legislative council may extend the time within which the agency or commission must adopt the~~
30 ~~rule change if the request by the agency or commission is supported by evidence that the~~
31 ~~agency or commission needs more time through no deliberate fault of its own.~~

1 ~~SECTION 13. AMENDMENT.~~ Section 28-32-08 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 ~~28-32-08. Regulatory analysis.~~

4 ~~1. An agency or the commission shall issue a regulatory analysis of a proposed rule if:~~

5 ~~a. Within twenty days after the last published notice date of a proposed rule~~
6 ~~hearing, a written request for the analysis is filed by the governor or a member of~~
7 ~~the legislative assembly; or~~

8 ~~b. The proposed rule is expected to have an impact on the regulated community in~~
9 ~~excess of fifty thousand dollars. The analysis under this subdivision must be~~
10 ~~available on or before the first date of public notice as provided for in section~~
11 ~~28-32-10.~~

12 ~~2. The regulatory analysis must contain:~~

13 ~~a. A description of the classes of persons who probably will be affected by the~~
14 ~~proposed rule, including classes that will bear the costs of the proposed rule and~~
15 ~~classes that will benefit from the proposed rule;~~

16 ~~b. A description of the probable impact, including economic impact, of the proposed~~
17 ~~rule;~~

18 ~~c. The probable costs to the agency or commission of the implementation and~~
19 ~~enforcement of the proposed rule and any anticipated effect on state revenues;~~
20 ~~and~~

21 ~~d. A description of any alternative methods for achieving the purpose of the~~
22 ~~proposed rule that were seriously considered by the agency or commission and~~
23 ~~the reasons why the methods were rejected in favor of the proposed rule.~~

24 ~~3. Each regulatory analysis must include quantification of the data to the extent~~
25 ~~practicable.~~

26 ~~4. The agency or commission shall mail or deliver a copy of the regulatory analysis to~~
27 ~~any person who requests a copy of the regulatory analysis. The agency or commission~~
28 ~~may charge a fee for a copy of the regulatory analysis as allowed under section~~
29 ~~44-04-18.~~

30 ~~5. If required under subsection 1, the preparation and issuance of a regulatory analysis is~~
31 ~~a mandatory duty of the agency or commission proposing a rule. Errors in a regulatory~~

analysis, including erroneous determinations concerning the impact of the proposed rule on the regulated community, are not a ground upon which the invalidity of a rule may be asserted or declared.

SECTION 14. AMENDMENT. Section 28-32-08.1 of the North Dakota Century Code is amended and reenacted as follows:

28-32-08.1. Rules affecting small entities - Analysis - Economic impact statements - Judicial review.

1. As used in this section:

a. "Small business" means a business entity, including its affiliates, which:

(1) Is independently owned and operated; and

(2) Employs fewer than twenty-five full-time employees or has gross annual sales of less than two million five hundred thousand dollars;

b. "Small entity" includes small business, small organization, and small political subdivision;

c. "Small organization" means any not-for-profit enterprise that is independently owned and operated and is not dominant in its field; and

d. "Small political subdivision" means a political subdivision with a population of less than five thousand.

2. Before adoption of any proposed rule, the adopting agency or the commission shall prepare a regulatory analysis in which, consistent with public health, safety, and welfare, the agency or commission considers utilizing regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small entities. The agency or commission shall consider each of the following methods of reducing impact of the proposed rule on small entities:

a. Establishment of less stringent compliance or reporting requirements for small entities;

b. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities;

c. Consolidation or simplification of compliance or reporting requirements for small entities;

- 1 ~~d. Establishment of performance standards for small entities to replace design or~~
- 2 ~~operational standards required in the proposed rule; and~~
- 3 ~~e. Exemption of small entities from all or any part of the requirements contained in~~
- 4 ~~the proposed rule.~~
- 5 ~~3. Before adoption of any proposed rule that may have an adverse impact on small~~
- 6 ~~entities, the adopting agency or the commission shall prepare an economic impact~~
- 7 ~~statement that includes consideration of:~~
- 8 ~~a. The small entities subject to the proposed rule;~~
- 9 ~~b. The administrative and other costs required for compliance with the proposed~~
- 10 ~~rule;~~
- 11 ~~c. The probable cost and benefit to private persons and consumers who are~~
- 12 ~~affected by the proposed rule;~~
- 13 ~~d. The probable effect of the proposed rule on state revenues; and~~
- 14 ~~e. Any less intrusive or less costly alternative methods of achieving the purpose of~~
- 15 ~~the proposed rule.~~
- 16 ~~4. For any rule subject to this section, a small entity that is adversely affected or~~
- 17 ~~aggrieved by final agency or commission action is entitled to judicial review of agency~~
- 18 ~~or commission compliance with the requirements of this section. A small entity seeking~~
- 19 ~~judicial review under this section must file a petition for judicial review within one year~~
- 20 ~~from the date of final agency or commission action.~~
- 21 ~~5. This section does not apply to any agency that is an occupational or professional~~
- 22 ~~licensing authority, nor does this section apply to the following agencies or divisions of~~
- 23 ~~agencies:~~
- 24 ~~a. Council on the arts.~~
- 25 ~~b. Beef commission.~~
- 26 ~~c. Dairy promotion commission.~~
- 27 ~~d. Dry bean council.~~
- 28 ~~e. Highway patrolmen's retirement board.~~
- 29 ~~f. Indian affairs commission.~~
- 30 ~~g. Board for Indian scholarships.~~
- 31 ~~h. State personnel board.~~

- 1 — i. Potato council.
- 2 — j. Board of public school education.
- 3 — k. Real estate trust account committee.
- 4 — l. Seed commission.
- 5 — m. Soil conservation committee.
- 6 — n. Oilseed council.
- 7 — o. Wheat commission.
- 8 — p. State seed arbitration board.
- 9 — q. North Dakota lottery.
- 10 — 6. This section does not apply to rules mandated by federal law.
- 11 — 7. The adopting agency or the commission shall provide the administrative rules
- 12 committee copies of any regulatory analysis or economic impact statement, or both,
- 13 prepared under this section when the committee is considering the associated rules.
- 14 — **SECTION 15. AMENDMENT.** Section 28-32-08.2 of the North Dakota Century Code is
- 15 amended and reenacted as follows:
- 16 — **28-32-08.2. Fiscal notes for administrative rules.**
- 17 — When an agency or the commission presents rules for administrative rules committee
- 18 consideration, the agency or commission shall provide a fiscal note or a statement in its
- 19 testimony that the rules have no fiscal effect. A fiscal note must reflect the effect of the rules
- 20 changes on state revenues and expenditures, including any effect on funds controlled by the
- 21 agency or commission.
- 22 — **SECTION 16. AMENDMENT.** Section 28-32-09 of the North Dakota Century Code is
- 23 amended and reenacted as follows:
- 24 — **28-32-09. Takings assessment.**
- 25 — 1. An agency or the commission shall prepare a written assessment of the constitutional
- 26 takings implications of a proposed rule that may limit the use of private real property.
- 27 The agency's assessment must:
- 28 — a. Assess the likelihood that the proposed rule may result in a taking or regulatory
- 29 taking.
- 30 — b. Clearly and specifically identify the purpose of the proposed rule.

- 1 ~~e. Explain why the proposed rule is necessary to substantially advance that purpose~~
- 2 ~~and why no alternative action is available that would achieve the agency's or~~
- 3 ~~commission's goals while reducing the impact on private property owners.~~
- 4 ~~d. Estimate the potential cost to the government if a court determines that the~~
- 5 ~~proposed rule constitutes a taking or regulatory taking.~~
- 6 ~~e. Identify the source of payment within the agency's or commission's budget for~~
- 7 ~~any compensation that may be ordered.~~
- 8 ~~f. Certify that the benefits of the proposed rule exceed the estimated compensation~~
- 9 ~~costs.~~
- 10 ~~2. Any private landowner who is or may be affected by a rule that limits the use of the~~
- 11 ~~landowner's private real property may request in writing that the agency or~~
- 12 ~~commission reconsider the application or need for the rule. Within thirty days of~~
- 13 ~~receiving the request, the agency or commission shall consider the request and shall~~
- 14 ~~in writing inform the landowner whether the agency or commission intends to keep the~~
- 15 ~~rule in place, modify application of the rule, or repeal the rule.~~
- 16 ~~3. In an agency's analysis of the takings implications of a proposed rule, "taking" means~~
- 17 ~~the taking of private real property, as defined in section 47-01-03, by government~~
- 18 ~~action which requires compensation to the owner of that property by the fifth or~~
- 19 ~~fourteenth amendment to the Constitution of the United States or section 16 of article I~~
- 20 ~~of the Constitution of North Dakota. "Regulatory taking" means a taking of real~~
- 21 ~~property through the exercise of the police and regulatory powers of the state which~~
- 22 ~~reduces the value of the real property by more than fifty percent. However, the~~
- 23 ~~exercise of a police or regulatory power does not effect a taking if it substantially~~
- 24 ~~advances legitimate state interests, does not deny an owner economically viable use~~
- 25 ~~of the owner's land, or is in accordance with applicable state or federal law.~~

26 **SECTION 12. AMENDMENT.** Section 28-32-10 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **28-32-10. Notice of rulemaking - Hearing date.**

- 29 1. An agency or the commission shall prepare a full notice and an abbreviated notice of
30 rulemaking.

- 1 a. The ~~agency's~~ full notice of the proposed adoption, amendment, or repeal of a rule
2 must include a short, specific explanation of the proposed rule and the purpose of
3 the proposed rule, identify the emergency status and declared effective date of
4 any emergency rules, include a determination of whether the proposed
5 rulemaking is expected to have an impact on the regulated community in excess
6 of fifty thousand dollars, identify at least one location where interested persons
7 may review the text of the proposed rule, provide the address to which written
8 comments concerning the proposed rule may be sent, provide the deadline for
9 submission of written comments, provide a telephone number and post-office or
10 electronic mail address at which a copy of the rules and regulatory analysis may
11 be requested, and, in the case of a substantive rule, provide the time and place
12 set for each oral hearing. ~~The An~~ agency's full notice must include a statement of
13 the bill number and general subject matter of any legislation, enacted during the
14 most recent session of the legislative assembly, which is being implemented by
15 the proposed rule. The commission's full notice must include a statement of the
16 provision of the Constitution of North Dakota or the bill number and general
17 subject matter of any legislation enacted during the most recent session of the
18 legislative assembly which is being implemented by the proposed rule. The
19 ~~agency's~~ full notice must be filed with the legislative council, accompanied by a
20 copy of the proposed rules.
- 21 b. The agency or commission shall request publication of an abbreviated
22 newspaper publication notice at least once in each official county newspaper
23 published in this state. The abbreviated newspaper publication of notice must be
24 in a display-type format with a minimum width of one column of approximately
25 two inches [5.08 centimeters] and a minimum depth of approximately three
26 inches [7.62 centimeters] and with a headline describing the general topic of the
27 proposed rules. The notice must also include the telephone number or address to
28 use to obtain a copy of the proposed rules, identification of the emergency status
29 and declared effective date of any emergency rules, the address to use and the
30 deadline to submit written comments, and the location, date, and time of the
31 public hearing on the rules.

- 1 2. The agency or commission shall mail or deliver by electronic mail a copy of the
2 ~~agency's~~ full notice and proposed rule to each member of the legislative assembly
3 whose name appeared as a sponsor or cosponsor of legislation, enacted during the
4 most recent session of the legislative assembly, which is being implemented by the
5 proposed rule and to each person who has made a timely request to the agency or
6 commission for a copy of the notice and proposed rule. The agency or commission
7 may mail or otherwise provide a copy of the ~~agency's~~ full notice to any person who is
8 likely to be an interested person. The agency or commission may charge persons who
9 are not members of the legislative assembly fees for copies of the proposed rule as
10 allowed under section 44-04-18.
- 11 3. In addition to the other notice requirements of this subsection, the superintendent of
12 public instruction shall provide notice of any proposed rulemaking by the
13 superintendent of public instruction to each association with statewide membership
14 whose primary focus is elementary and secondary education issues which has
15 requested to receive notice from the superintendent under this subsection and to the
16 superintendent of each public school district in this state, or the president of the school
17 board for school districts that have no superintendent, at least twenty days before the
18 date of the hearing described in the notice. Notice provided by the superintendent of
19 public instruction under this section must be by first-class mail. However, upon request
20 of a group or person entitled to notice under this section, the superintendent of public
21 instruction shall provide the group or person notice by electronic mail.
- 22 4. The legislative council shall establish standard procedures for the commission and all
23 agencies to follow in complying with the provisions of this section and a procedure to
24 allow any person to request and receive mailed copies of all filings made by agencies
25 and the commission pursuant to this section. The legislative council may charge an
26 annual fee as established by the administrative rules committee for providing copies of
27 the filings.
- 28 5. At least twenty days must elapse between the date of the publication of the notice and
29 the date of the hearing. Within fifteen business days after receipt of a notice under this
30 section, a copy of the notice must be mailed by the legislative council to any person
31 who has paid the annual fee established under subsection 4.

1 **SECTION 13. AMENDMENT.** Section 28-32-11 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **28-32-11. Conduct of hearings - Notice of administrative rules committee**
4 **consideration - Consideration and written record of comments.**

5 The agency or commission shall adopt a procedure whereby all interested persons are
6 afforded reasonable opportunity to submit data, views, or arguments, orally or in writing,
7 concerning the proposed rule, including data respecting the impact of the proposed rule. The
8 agency ~~or commission~~ shall adopt a procedure to allow interested parties to request and
9 receive notice from the agency ~~or commission~~ of the date and place the rule will be reviewed by
10 the administrative rules committee. In case of substantive rules, the agency or commission shall
11 conduct an oral hearing. The agency or commission shall consider fully all written and oral
12 submissions respecting a proposed rule prior to the adoption, amendment, or repeal of any rule
13 not of an emergency nature. The agency or commission shall make a written record of its
14 consideration of all written and oral submissions contained in the rulemaking record respecting
15 a proposed rule.

16 **SECTION 14. AMENDMENT.** Section 28-32-12 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **28-32-12. Comment period.**

19 The agency or commission shall allow, after the conclusion of any rulemaking hearing, a
20 comment period of at least ten days during which data, views, or arguments concerning the
21 proposed rulemaking will be received by the agency or commission and made a part of the
22 rulemaking record to be considered by the agency or commission.

23 **SECTION 15. AMENDMENT.** Section 28-32-14 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **28-32-14. Attorney general review of rules.**

26 Every proposed rule ~~proposed by any administrative agency~~ must be submitted to the
27 attorney general for an opinion as to its legality before final adoption, and the attorney general
28 promptly shall furnish each such opinion. The attorney general may not approve any rule as to
29 legality, and shall advise the agency or commission of any necessary rewording or revision of
30 the rule, when the:

- 1 1. The rule exceeds the statutory authority of the agency, or the statutory or constitutional
- 2 authority of the commission;
- 3 2. The rule is written in a manner that is not concise or easily understandable; or ~~when~~
- 4 ~~the~~
- 5 3. The procedural requirements for adoption of the rule in this chapter are not
- 6 substantially met. ~~The attorney general shall advise an agency of any revision or~~
- 7 ~~rewording of a rule necessary to correct objections as to legality.~~

8 **SECTION 16. AMENDMENT.** Section 28-32-15 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **28-32-15. Filing of rules for publication - Effective date of rules.**

- 11 1. A copy of each rule adopted by an administrative agency or the commission, a copy of
- 12 each written comment and a written summary of each oral comment on the rule, and
- 13 the attorney general's opinion on the rule must be filed by the adopting agency or
- 14 commission with the legislative council for publication of the rule in the North Dakota
- 15 Administrative Code.
- 16 2. a. Nonemergency rules approved by the attorney general as to legality, adopted by
- 17 an administrative agency or the commission, ~~and~~ filed with the legislative council,
- 18 and not voided or held for consideration by the administrative rules committee
- 19 become effective according to the following schedule:
- 20 (1) Rules filed with the legislative council from August second through
- 21 November first become effective on the immediately succeeding January
- 22 first.
- 23 (2) Rules filed with the legislative council from November second through
- 24 February first become effective on the immediately succeeding April first.
- 25 (3) Rules filed with the legislative council from February second through May
- 26 first become effective on the immediately succeeding July first.
- 27 (4) Rules filed with the legislative council from May second through August first
- 28 become effective on the immediately succeeding October first.
- 29 b. If publication is delayed for any reason other than action of the administrative
- 30 rules committee, nonemergency rules, unless otherwise provided, become
- 31 effective when publication would have occurred but for the delay.

- 1 c. A rule held for consideration by the administrative rules committee becomes
2 effective on the first effective date of rules under the schedule in subdivision a
3 following the meeting at which that rule is reconsidered by the committee.

4 **SECTION 17. AMENDMENT.** Section 28-32-16 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **28-32-16. Petition for reconsideration of rule - Hearing by agency.**

7 Any person substantially interested in the effect of a rule adopted by an administrative
8 agency or the commission may petition ~~such~~the agency or commission for a reconsideration of
9 ~~any such~~the rule or for an amendment or repeal ~~thereof~~. Suchof the rule. The petition must
10 state clearly and concisely the petitioners' alleged grounds for ~~such~~ reconsideration or ~~for~~ the
11 proposed repeal or amendment of ~~such~~the rule. The agency or commission may grant the
12 petitioner a public hearing ~~upon such~~on the terms and conditions as the agency ~~may~~
13 ~~prescribe~~prescribes.

14 ~~— SECTION 23. AMENDMENT.~~ Section 28-32-17 of the North Dakota Century Code is
15 ~~amended and reenacted as follows:~~

16 ~~— 28-32-17. Administrative rules committee objection.~~

17 ~~— If the legislative management's administrative rules committee objects to all or any portion~~
18 ~~of a rule because the committee deems it to be unreasonable, arbitrary, capricious, or beyond~~
19 ~~the authority delegated to the adopting agency or commission, the committee may file that~~
20 ~~objection in certified form with the legislative council. The filed objection must contain a concise~~
21 ~~statement of the committee's reasons for its action.~~

22 ~~— 1. The legislative council shall attach to each objection a certification of the time and date~~
23 ~~of its filing and, as soon as possible, shall transmit a copy of the objection and the~~
24 ~~certification to the agency or commission adopting the rule in question. The legislative~~
25 ~~council also shall maintain a permanent register of all committee objections.~~

26 ~~— 2. The legislative council shall publish an objection filed pursuant to this section in~~
27 ~~the next issue of the code supplement. In case of a filed committee objection to a rule~~
28 ~~subject to the exceptions of the definition of rule in section 28-32-01, the agency or~~
29 ~~commission shall indicate the existence of that objection adjacent to the rule in any~~
30 ~~compilation containing that rule.~~

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- 1 — 3. Within fourteen days after the filing of a committee objection to a rule, the adopting
2 agency or commission shall respond in writing to the committee. After receipt of the
3 response, the committee may withdraw or modify its objection.
- 4 — 4. After the filing of a committee objection, the burden of persuasion is upon the agency
5 or commission in any action for judicial review or for enforcement of the rule to
6 establish that the whole or portion thereof of the rule objected to is within the
7 procedural and substantive authority delegated to the agency or commission. If the
8 agency or commission fails to meet its burden of persuasion, the court shall declare
9 the whole or portion of the rule objected to invalid and judgment must be rendered
10 against the agency or commission for court costs. These court costs must include a
11 reasonable attorney's fee and must be payable from the appropriation of the agency or
12 commission which adopted the rule in question.

13 — **SECTION 24. AMENDMENT.** Section 28-32-18 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 — **28-32-18. Administrative rules committee may void rule — Grounds — Amendment by**
16 **agreement of agency and committee.**

- 17 — 1. The legislative management's administrative rules committee may find that all or any
18 portion of a rule is void if that rule is initially considered by the committee not later than
19 the fifteenth day of the month before the date of the administrative code supplement in
20 which the rule change is scheduled to appear. The administrative rules committee may
21 find a rule or portion of a rule void if the committee makes the specific finding that, with
22 regard to that rule or portion of a rule, there is:
- 23 — a. An absence of statutory authority under statute or the constitution.
- 24 — b. An emergency relating to public health, safety, or welfare.
- 25 — c. AFor rules proposed by an agency, a failure to comply with express legislative
26 intent or to substantially meet the procedural requirements of this chapter for
27 adoption of the rule.
- 28 — d. For rules proposed by the commission, a failure to substantially meet the
29 procedural requirements for this chapter for adoption of the rule.
- 30 — e. A conflict with state law.
- 31 — e.f. Arbitrariness and capriciousness.

- 1 ~~f.g. A failure to make a written record of its consideration of written and oral~~
2 ~~submissions respecting the rule under section 28-32-11.~~
- 3 ~~2. The administrative rules committee may find a rule void at the meeting at which the~~
4 ~~rule is initially considered by the committee or may hold consideration of that rule for~~
5 ~~one subsequent meeting. If no representative of the agency or commission appears~~
6 ~~before the administrative rules committee when rules are scheduled for committee~~
7 ~~consideration, those rules are held over for consideration at the next subsequent~~
8 ~~committee meeting. Rules are not considered initially considered by the committee~~
9 ~~under this subsection until a representative of the agency or commission appears~~
10 ~~before the administrative rules committee when the rules are scheduled for committee~~
11 ~~consideration. If no representative of the agency or commission appears before the~~
12 ~~administrative rules committee meeting to which rules are held over for consideration,~~
13 ~~the rules are void if the rules were adopted as emergency rules and for rules not~~
14 ~~adopted as emergency rules the administrative rules committee may void the rules,~~
15 ~~allow the rules to become effective, or hold over consideration of the rules to the next~~
16 ~~subsequent committee meeting. Within three business days after the administrative~~
17 ~~rules committee finds that a rule is void, the legislative council shall provide written~~
18 ~~notice of that finding and the committee's specific finding under subdivisions a through~~
19 ~~f of subsection 1 to the adopting agency or commission and to the chairman of the~~
20 ~~legislative management. Within fourteen days after receipt of the notice, the adopting~~
21 ~~agency or commission may file a petition with the chairman of the legislative~~
22 ~~management for review by the legislative management of the decision of the~~
23 ~~administrative rules committee. If the adopting agency or commission does not file a~~
24 ~~petition for review, the rule becomes void on the fifteenth day after the notice from the~~
25 ~~legislative council to the adopting agency or commission. If within sixty days after~~
26 ~~receipt of the petition from the adopting agency or commission the legislative~~
27 ~~management has not disapproved by motion the finding of the administrative rules~~
28 ~~committee, the rule is void.~~
- 29 ~~3. An agency or the commission may amend or repeal a rule or create a related rule if,~~
30 ~~after consideration of rules by the administrative rules committee, the agency or~~
31 ~~commission and the committee agree that the rule amendment, repeal, or creation is~~

1 necessary to address any of the considerations under subsection 1. A rule amended,
2 repealed, or created under this subsection is not subject to the other requirements of
3 this chapter relating to adoption of administrative rules and may be published by the
4 legislative council as amended, repealed, or created. If requested by the agency,
5 commission, or any interested party, a rule amended, repealed, or created under this
6 subsection must be reconsidered by the administrative rules committee at a
7 subsequent meeting at which public comment on the agreed rule change must be
8 allowed.

9 ~~SECTION 25. AMENDMENT.~~ Section 28-32-18.1 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 ~~28-32-18.1. Administrative rules committee review of existing administrative rules.~~

12 ~~1. Upon request by the administrative rules committee, an administrative agency or the~~
13 ~~commission shall brief the committee on its existing administrative rules and point out~~
14 ~~any provisions that appear to be obsolete and any areas in which statutory or~~
15 ~~constitutional authority has changed or been repealed since the rules were adopted or~~
16 ~~amended.~~

17 ~~2. An agency or the commission may amend or repeal a rule without complying with the~~
18 ~~other requirements of this chapter relating to adoption of administrative rules and may~~
19 ~~resubmit the change to the legislative council for publication provided:~~

20 ~~a. The agency or commission initiates the request to the administrative rules~~
21 ~~committee for consideration of the amendment or repeal;~~

22 ~~b. The agency or commission provides notice to the regulated community, in a~~
23 ~~manner reasonably calculated to provide notice to those persons interested in the~~
24 ~~rule, of the time and place the administrative rules committee will consider the~~
25 ~~request for amendment or repeal of the rule; and~~

26 ~~c. The agency or commission and the administrative rules committee agree~~
27 ~~the rule amendment or repeal eliminates a provision that is obsolete or no longer~~
28 ~~in compliance with law and that no detriment would result to the substantive~~
29 ~~rights of the regulated community from the amendment or repeal.~~

30 **SECTION 18. AMENDMENT.** Subsection 2 of section 28-32-19 of the North Dakota
31 Century Code is amended and reenacted as follows:

- 1 2. The legislative council may prescribe ~~at the~~ format, style, and arrangement for rules
2 ~~which are~~ to be published in the code and may refuse to accept the filing of any rule
3 that is not in substantial compliance ~~therewith with the format, style, and arrangement.~~
4 In arranging rules for publication, the legislative council may make ~~such~~ corrections in
5 spelling, grammatical construction, format, and punctuation of the rules as
6 ~~determined the legislative council determines are~~ proper. The legislative council shall
7 keep and maintain a permanent code of all rules filed, including superseded and
8 repealed rules, which must be open to public inspection during office hours.

9 **SECTION 19. AMENDMENT.** Subsection 4 of section 28-32-19 of the North Dakota
10 Century Code is amended and reenacted as follows:

- 11 4. The legislative council, with the consent of the adopting agency or commission, may
12 omit from the code or code supplement any rule the publication of which would be
13 unduly cumbersome, expensive, or otherwise inexpedient, if the rule in printed or
14 duplicated form is made available on application to the agency or commission, and if
15 the code or code supplement contains a notice stating the general subject matter of
16 the omitted rule and ~~stating~~ how a copy may be obtained.

17 **SECTION 20. AMENDMENT.** Section 28-32-27 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **28-32-27. Hearing officer - Disqualification - Substitution.**

- 20 1. Any person or persons presiding for the agency in an administrative proceeding must
21 be referred to individually or collectively as hearing officer. Any person from the office
22 of administrative hearings presiding for the agency as a hearing officer in an
23 administrative proceeding must be referred to as an administrative law judge.
24 2. Any hearing officer is subject to disqualification for good cause shown and shall
25 self-disqualify in a proceeding in which a reasonable, disinterested observer would
26 believe the hearing officer is biased due to:
27 a. A contribution by one of the parties supporting the hearing officer's most recent
28 campaign for public office; or
29 b. An ownership interest, other than investment in a mutual fund, of the
30 hearing officer in one of the parties to the proceeding if the ownership interest is
31 not shared by the general public.

- 1 3. Any party may petition for the disqualification of any person presiding as a hearing
- 2 officer upon discovering facts establishing grounds for disqualification.
- 3 4. A person whose disqualification is requested shall determine whether to grant the
- 4 petition, stating facts and reasons for the determination.
- 5 5. If a substitute is required for a person who is disqualified or becomes unavailable for
- 6 any other reason, the substitute may be appointed by:
- 7 a. The attorney general, if the disqualified or unavailable person is an assistant
- 8 attorney general;
- 9 b. The agency head, if the disqualified or unavailable person is one or more
- 10 members of the agency head or one or more other persons designated by the
- 11 agency head;
- 12 c. A supervising hearing officer, if the disqualified or unavailable person is a hearing
- 13 officer designated from an office, pool, panel, or division of hearing officers; or
- 14 d. The governor, in all other cases.
- 15 6. Any action taken by a duly appointed substitute for a disqualified or unavailable person
- 16 is as effective as if taken by the disqualified or unavailable person.
- 17 7. Any hearing officer in an administrative proceeding, from the time of appointment or
- 18 designation, may exercise any authority granted by law or rule. A hearing officer may
- 19 be designated to preside over the entire administrative proceeding and may issue
- 20 orders accordingly. A procedural hearing officer may only issue orders in regard to the
- 21 course and conduct of the hearing under statute or rule and to otherwise effect an
- 22 orderly hearing. If a procedural hearing officer is designated, the agency head must be
- 23 present at the hearing and the agency head shall issue findings of fact and
- 24 conclusions of law, as well as any order resulting from the hearing.
- 25 8. The North Dakota ethics commission shall impose upon any hearing officer who
- 26 violates this section a fine of one hundred dollars for the first violation. For a second
- 27 and subsequent violation of this section, the hearing officer is guilty of an infraction.

28 **SECTION 21. AMENDMENT.** Section 28-32-47 of the North Dakota Century Code is
29 amended and reenacted as follows:

28-32-47. Scope of and procedure on appeal from agency rulemaking.

1. A judge of the district court shall review an appeal from an administrative agency's or ethics commission's rulemaking action based only on the record filed with the court. If an appellant requests documents to be included in the record but the agency or commission does not include them, the court, upon application by the appellant, may compel their inclusion. After a hearing, the filing of briefs, or other disposition of the matter as the judge may reasonably require, the court shall affirm the ~~agency's~~ rulemaking action unless it finds that any of the following are present:

1. a. The provisions of this chapter have not been substantially complied with in the ~~agency's~~ rulemaking actions.

2. b. A rule published as a result of the rulemaking action appealed is unconstitutional on the face of the language adopted.

3. c. A rule published as a result of the rulemaking action appealed is beyond the scope of the agency's or commission's authority to adopt.

4. d. A rule published as a result of the rulemaking action appealed is on the face of the language adopted an arbitrary or capricious application of authority granted by statute.

2. If the rulemaking action of the agency or commission is not affirmed by the court, ~~the~~ rulemaking action must be remanded to the agency or commission for disposition in accordance with the order of the court, or the rule or a portion of the rule resulting from the rulemaking action of the agency or commission must be declared invalid for reasons stated by the court.

SECTION 22. AMENDMENT. Section 28-32-48 of the North Dakota Century Code is amended and reenacted as follows:

28-32-48. Appeal - Stay of proceedings.

An appeal from an order or the rulemaking action of an administrative agency or the ethics commission does not stay the enforcement of the order or the effect of a published rule unless the court to which the appeal is taken, upon application and after a hearing or the submission of briefs, orders a stay. The court may impose terms and conditions for a stay of the enforcement of the order or for a stay in the effect of a published rule. This section does not prohibit the

operation of an automatic stay upon the enforcement of an administrative order or ethics commission order as may be required by another statute.

SECTION 23. AMENDMENT. Section 28-32-49 of the North Dakota Century Code is amended and reenacted as follows:

28-32-49. Review in supreme court.

The judgment of the district court in an appeal from an order or rulemaking action of an administrative agency or the ethics commission may be reviewed in the supreme court on appeal in the same manner as provided in section 28-32-46 or 28-32-47, except that the appeal to the supreme court must be taken within sixty days after the service of the notice of entry of judgment in the district court. Any party of record, including the agency or ethics commission, may take an appeal from the final judgment of the district court to the supreme court. If an appeal from the judgment of the district court is taken by an agency or the ethics commission, the agency or ethics commission may not be required to pay a docket fee or file a bond for costs or equivalent security.

SECTION 24. Chapter 54-66 of the North Dakota Century Code is created and enacted as follows:

54-66-01. Definitions.

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

1. "Accused individual" means an individual who is alleged to have violated article XIV of the Constitution of North Dakota, this chapter, or another law or rule regarding government ethics.
2. "Adjusted for inflation" means adjusted on January first of each year by the change in the consumer price index for all urban consumers (all items, United States city average), as identified by the secretary of state.
3. "Complainant" means an individual who, in writing or verbally, submits a complaint to the commission.
4. "Complaint" means a verbal or written allegation to the commission that article XIV of the Constitution of North Dakota, this chapter, or another law or rule regarding government ethics has been violated.
5. "Ethics commission" or "commission" means the North Dakota ethics commission established by article XIV of the Constitution of North Dakota.

- 1 6. "Gift" means any item, service, or thing of value not given in exchange for fair market
2 consideration including travel and recreation.
- 3 7. "Influence state government action" means promoting or opposing the final adoption of
4 a rule by an administrative agency or the commission under chapter 28-32.
- 5 8. "Lobby" means an activity listed in subsection 1 of section 54-05.1-02.
- 6 9. "Lobbyist" means an individual required to register under section 54-05.1-03.
- 7 10. "Public official" means an elected or appointed official of the state's executive or
8 legislative branch, members of the commission, members of the governor's cabinet,
9 and employees of the legislative branch.
- 10 11. "Receives the complaint" means one or more members of the commission learn of the
11 complaint.
- 12 12. "Ultimate and true source" means the person that knowingly contributed over two
13 hundred dollars, adjusted for inflation, ~~solely~~ to lobby or influence state government
14 action.
- 15 **54-66-02. Disclosure of ultimate and true source of funds.**
- 16 1. A lobbyist who expends an amount greater than two hundred dollars, adjusted for
17 inflation, to lobby shall file with the secretary of state a report that includes the known
18 ultimate and true source of funds for the expenditure. The report must be filed with the
19 lobbyist expenditure report required under subsection 2 of section 54-05.1-03.
- 20 2. A person who expends an amount greater than two hundred dollars, adjusted for
21 inflation, to influence state government action shall file with the secretary of state a
22 report including the known ultimate and true source of funds for the expenditure. The
23 report must be filed on or before the August first following the date of the expenditure.
24 The secretary of state shall provide a form for reports under this subsection and make
25 the form electronically accessible to the public. The secretary of state also shall
26 charge and collect fees for late filing of the reports as follows:
- 27 a. Twenty-five dollars for a report filed within sixty days after the deadline; or
28 b. Fifty dollars for a report filed more than sixty days after the deadline.
- 29 3. The secretary of state shall compile the reports required under this section and make
30 the reports electronically accessible to the public within forty days after the deadlines
31 by which the reports must be filed.

- 1 4. This section does not require a person to report the ultimate and true source of funds
2 expended on:
3 a. A gift to or from a family member;
4 b. Purely informational material, advice, or education;
5 c. Reimbursement for travel, meal, and refreshment expenses incurred to, from, or
6 during a conference, seminar, or other legitimate educational opportunity for a
7 public official if the conference, seminar, or educational opportunity concerns
8 issues germane to the official duties of the public official;
9 d. Meals and refreshments provided while informing, advising, or educating a public
10 official about issues germane to the official duties of the public official;
11 e. Providing an educational or social setting in the state to provide an opportunity
12 for individuals to meet with public officials; and
13 f. A good or service determined not to raise ethical concerns under rules adopted
14 by the ethics commission.
15 5. A resident taxpayer may ~~file a claim~~ commence an action in a district court of this state
16 ~~with competent jurisdiction~~ against a person required to comply with this section to
17 compel compliance if all other enforcement measures under this chapter have been
18 exhausted and the taxpayer reasonably believes the person ~~remains in violation of~~ has
19 ~~failed to comply with~~ this section. A ~~violation of~~ failure to comply with this section must
20 be proved by clear and convincing evidence.

21 **54-66-03. Lobbyist gifts - Penalty.**

- 22 1. A lobbyist may not give, offer, solicit, initiate, or facilitate a gift to a public official, and a
23 public official ~~knowingly~~ may not accept knowingly a gift with a value over sixty dollars
24 per individual per event, adjusted for inflation, from a lobbyist, except to advance
25 opportunities for state residents to meet with public officials in educational and social
26 settings in the state under conditions that do not raise ethical concerns, including:
27 a. Reimbursement for travel, meal, and refreshment expenses incurred to, from, or
28 during a conference, seminar, or other legitimate educational opportunity for the
29 public official if the conference, seminar, or educational opportunity concerns
30 issues germane to the official duties of the public official;
31 b. Providing information, advice, or education to a public official;

- 1 c. Providing meals and refreshments while informing, advising, or educating a
- 2 public official about issues germane to the official duties of the public official;
- 3 d. Items with a fair market value of ten dollars per individual per event, adjusted for
- 4 inflation, or less per individual; and
- 5 e. A good or service determined not to raise ethical concerns under rules adopted
- 6 by the ethics commission.
- 7 2. The prohibition in subsection 1 does not apply when a lobbyist gives, offers, solicits,
- 8 initiates, or facilitates, or a public official accepts:
- 9 a. A gift to or from a family member;
- 10 b. Purely informational material; or
- 11 c. A campaign contribution.
- 12 3. For the first violation, the secretary of state shall ~~impose a fine~~ assess a civil penalty of
- 13 one hundred dollars upon any person who violates this section and, if the person is a
- 14 lobbyist, the secretary of state may revoke the lobbyist's registration under chapter
- 15 54-05.1. For a second and subsequent violation of this section, the person is guilty of
- 16 an infraction.

17 **54-66-04. Ethics commission member terms - Meetings - Code of ethics -**

18 **Compensation - Investigator.**

- 19 1. The terms of the initial members of the ethics commission must be staggered to
- 20 ensure no more than two members' terms expire in one year. The terms of the initial
- 21 members may be less than four years to accommodate the required staggering of
- 22 terms.
- 23 2. The ethics commission shall meet as necessary to address each complaint the
- 24 commission receives. Unless the complaint at issue has resulted in the imposition of a
- 25 penalty or referral for enforcement under section 54-66-10, any portion of a meeting
- 26 during which commission members discuss complaints, informal resolutions, attempts
- 27 to informally resolve complaints, investigations, or referrals under this chapter, the
- 28 identity of an accused individual or complainant, or any other matter arising from a
- 29 complaint are closed meetings.

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

4 4. Ethics commission members are entitled to:

5 a. Compensation for each day necessarily spent conducting commission business
6 in the amount provided for members of the legislative management under section
7 54-35-10; and

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

10 5. Commission members shall hire or otherwise engage a part-time administrative
11 assistant. The administrative assistant must be provided an office within the office
12 space for the department of labor and human rights. The commission shall
13 compensate the department of labor and human rights for the office in an amount
14 equal to the fair value of the office.

15 **54-66-05. Making a complaint - Identifying information - False complaints.**

16 1. A complaint may be made to the commission ~~verbally~~ orally or in writing. When making
17 a complaint, a complainant shall provide the name, address, and telephone number of
18 the complainant.

19 2. Within five days after making a complaint, the complainant shall submit a signed
20 statement attesting the complaint is true and accurate to the best of the complainant's
21 knowledge. The commission shall develop an attestation form for this purpose and
22 make it electronically accessible to the public. After receiving the attestation, the
23 commission shall summarize the complaint in writing if the complaint was made
24 ~~verbally~~ orally.

25 3. If the complainant does not submit the signed attestation by the deadline, the
26 commission may not investigate or take other action on the complaint.

27 4. Knowingly or recklessly making a complaint that is materially false is defamation under
28 chapter ~~14-02~~ 12.1-15.

29 **54-66-06. Informing the accused individual - Written response permitted.**

30 The commission shall inform an accused individual by registered mail of the identity of the
31 complainant who made the allegation against the accused individual and include the written

1 complaint or written summary of the ~~verbal~~oral complaint as soon as reasonably possible but no
2 later than ten calendar days after the commission receives the complaint. The accused
3 individual may respond to the complaint in writing within ten calendar days of receipt of the
4 complaint or summary of the complaint.

5 **54-66-07. Informal resolution.**

6 The commission may attempt to negotiate or mediate an informal resolution between the
7 accused individual and the complainant.

8 **54-66-08. Referrals to investigators - Exception for criminal allegations.**

9 For each complaint with an attestation, the commission shall engage an investigator with
10 the appropriate knowledge and experience regarding the Constitution of North Dakota,
11 ethics-related statutes, and ethics investigations, and refer the complaint to the investigator
12 within thirty calendar days of receiving the complaint. However, if a complaint with an attestation
13 includes an allegation of criminal conduct, the commission shall refer the allegation of criminal
14 conduct to the bureau of criminal investigation or other law enforcement agency. The
15 commission may engage a state agency as an investigator. If the accused individual provided a
16 written response to the complaint, the commission shall provide the written response with the
17 referred complaint.

18 **54-66-09. Investigations - Findings and Recommendations - Responses.**

- 19 1. The investigator engaged under section 54-66-08 shall investigate the complaint
20 referred to it by the ethics commission. Investigations must include separate interviews
21 with the accused individual and the complainant, unless the accused individual or
22 complainant refuses to be interviewed, and consideration of the circumstances
23 surrounding the allegations. The accused individual and complainant may be
24 accompanied by legal counsel during the interviews of each. Investigations may
25 include interviews of potential witnesses and other individuals believed to have
26 relevant information.
- 27 2. At the conclusion of the investigation, but no later than six months after the
28 investigator received the complaint, the investigator shall submit its written findings
29 and recommendations from the investigation to the commission. The commission shall
30 provide written copies of the findings and recommendations to the accused individual
31 and complainant. The accused individual and complainant may respond in writing to

1 ~~the findings and recommendations~~ within thirty calendar days of receiving the findings
2 ~~and recommendations~~. The commission shall maintain copies of the findings,
3 ~~recommendations~~, and any written response to the findings.

4 **54-66-10. Final determinations - Penalties - Referrals for enforcement.**

- 5 1. ~~After reviewing the findings and recommendations~~ from the investigator and any
6 ~~written response from the accused individual or complainant~~, the ethics commission
7 ~~shall meet with the accused individual and complainant to discuss the findings,~~
8 ~~recommendations~~, and written responses. A meeting under this subsection is a closed
9 ~~meeting as defined in section 44-04-17.1, although the accused individual and~~
10 ~~complainant may have their legal counsel attend and participate.~~
- 11 2. ~~After the meeting with the accused individual and complainant~~, the commission shall
12 ~~issue written findings, including a determination whether a violation of article XIV of the~~
13 ~~Constitution of North Dakota, this chapter, or another law or rule regarding government~~
14 ~~ethics occurred. If the commission finds a violation occurred, the commission may~~
15 ~~impose a~~ assess a civil penalty if authorized by law or refer the matter to the entity
16 ~~authorized by law to impose a~~ assess a civil penalty for the violation.
- 17 3. ~~The accused individual and the complainant may appeal~~ and request judicial review of
18 ~~a determination made or penalty imposed under this section to the office of~~
19 ~~administrative hearings, which shall designate an administrative law judge to hear the~~
20 ~~appeal. An appeal~~ the district court in the county in which the accused individual
21 resides. A request for judicial review under this section must comply with ~~the~~
22 ~~requirements for adjudicative proceedings under chapter 28-32~~ sections 28-32-42
23 through 28-32-46 and sections 28-32-50 and 28-32-51.
- 24 4. ~~The commission may not terminate the employment of a public official or otherwise~~
25 ~~remove a public official from the public official's public office.~~

26 **54-66-11. Confidential information - Penalty.**

- 27 1. ~~The following information is a confidential record as defined in section 44-04-17.1,~~
28 ~~unless the commission has determined the accused individual violated article XIV of~~
29 ~~the Constitution of North Dakota, this chapter, or another law or rule regarding~~
30 ~~government ethics, and an administrative law judge~~ a court affirmed the determination

- 1 if appealed, except the information may be disclosed as required by law or as
2 necessary to conduct an investigation arising from a complaint:
3 a. Information revealing the contents of a complaint;
4 b. Information that reasonably may be used to identify an accused individual or
5 complainant; and
6 c. Information relating to or created as part of an investigation of a complaint.
7 2. If a complaint is informally resolved under section 54-66-07, the following information
8 is a confidential record as defined in section 44-04-17.1:
9 a. Information revealing the contents of the complaint;
10 b. Information that reasonably may be used to identify the accused individual or
11 complainant;
12 c. Information relating to or created as part of the process leading to the informal
13 resolution; and
14 d. Information revealing the informal resolution.
15 3. Disclosure of information included in subsections 1 and 2 by a person who knows the
16 information to be false is defamation under chapter 14-02.
17 ~~4.~~ Willful publication of information included in subsections 1 and 2 by a person who
18 knows the information to be false is criminal defamation under section 12.1-15-01.
19 ~~5.4.~~ A public official who violates this section is guilty of a class C felony.
20 **54-66-12. Restriction on lobbying by public officials - Penalty.**
21 For the first violation of subsection 2 of section 2 of article XIV of the Constitution of North
22 Dakota, the secretary of state shall ~~impose a fine~~ assess a civil penalty of one hundred dollars
23 upon the person who commits the violation. For a second and subsequent violation of the
24 subsection, the person is guilty of an infraction.
25 **54-66-13. Attorney general to provide legal services.**
26 The attorney general shall serve as legal counsel for the commission. When a conflict of
27 interest prevents the attorney general from providing legal services to the commission, the
28 attorney general may appoint a special assistant attorney general to serve as legal counsel for
29 the commission.

54-66-14. Prohibition on delivering campaign contributions - Penalty.

A lobbyist may not deliver knowingly a campaign contribution made by another person in violation of subsection 3 of section 2 of article XIV of the Constitution of North Dakota. For a first violation, the secretary of state shall assess a civil penalty of one hundred dollars upon any person who violates this section and may revoke the lobbyist's registration. For a second and subsequent violation of this section, the person is guilty of an infraction.

54-66-15. Mandatory disqualification in quasi-judicial proceedings.

A director, officer, commissioner, head, or other executive of an agency shall self-disqualify in any quasi-judicial proceeding in which a reasonable, disinterested observer would believe the hearing officer is biased due to:

1. Monetary or in-kind support related to the election of the director, officer, commissioner, head, or other executive of an agency to public office; or
2. A financial interest of the director, officer, commissioner, head, or other executive of an agency which is not shared by the general public, as defined by the ethics commission.

54-66-16. Disclosure requirements - Delegation of limited authority.

Under subsection 2 of section 1 of article XIV of the Constitution of North Dakota, the legislative assembly vests authority to implement, interpret, and enforce section 1 of article XIV and laws enacted under the section to the ethics commission, but only to the extent the authority is not vested with the secretary of state. The authority vested in the ethics commission under this section is subject to the provisions of this chapter and chapter 16.1-08.1.

SECTION 25. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$100,000, or so much of the sum as may be necessary, to the ethics commission for the purpose of the operations of the commission, for the biennium beginning July 1, 2019, and ending June 30, 2021. The ethics commission is authorized one-half of a full-time equivalent position for an administrative assistant for this purpose.

SECTION 26. EFFECTIVE DATE. Sections 1, 2, 3, 4, 5, and 7, ~~and 29~~ of this Act, and ~~section~~sections 54-66-02 and 54-66-15 of the North Dakota Century Code, as created by section ~~3024~~ of this Act, become effective January 5, 2022.

#2
HB 1521
2/12/19

1 **SECTION 27. EFFECTIVE DATE.** North Dakota Century Code section 54-66-03, as
2 | created by section ~~30~~24 of this Act, becomes effective January 5, 2021.

3 **SECTION 28. EXPIRATION DATE.** North Dakota Century Code section 54-66-12, as
4 | created by section ~~30~~24 of this Act, is effective until subsection 2 of section 2 of article XIV of
5 the Constitution of North Dakota is no longer part of the Constitution of North Dakota.

6 **SECTION 29. EMERGENCY.** Sections 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20 of
7 this Act are declared to be an emergency measure.

Opposed to HB 1521

February 12, 2019

Mr. Chairman and members of the committee,

My name is Kathleen Tweeten from NDPI. I am here at the Chairman's request to follow-up on questions and a comment as well as to take further questions.

- 1- It occurred to me that at least a couple of the committee members were not aware of the fact that ballot language is not written by the measure committee but rather by the Secretary of State's office with input from the Attorney General's office staff. There is also a very tight timeline to even be able to ask for edits or changes. The ballot committee has very little control over what is written. There were several comments from the committee about it being too short so follow-up should be done with those two offices if there are concerns.
- 2- There was a question from Representative Lefor about whether I was proud of Measure #1. Again yes, because we had three different versions of Measure #1. We felt the last one did a better job of providing the guiding principles rather than details which is more appropriate for a constitutional amendment. It gave greater discretion to the Ethics Commission.
- 3- There was a question from Representative Rohr about the definition of Ethics. I answered the question with my personal definition "it is about doing the right thing." That answer is based, of course, on my personal values and morals. Everyone in this room has their own personal definition of what is right and what is wrong. I should have answered in the context of Article 14. Article 14 provides for rules or standards of behavior for a body of people (public officials) that are acceptable. In most professional associations it is called a code of conduct. The Ethics Commission is charged with creating those rules.
- 4- Representative Louser detailed in some length his accusations that NDPI not only spent its funds inappropriately by making donations but was partisan and that no other measure committee had ever done this before, etc. For the record, I was confused and did not answer because I knew that we had NEVER donated funds to anyone. We were looking for donations. Regardless, Geoff Simon cleared it up for me in the hallway when I asked him what Rep. Louser was talking about. Not sure how Geoff knew but again, for the record NDPI did not donate to anyone or party. The payment to the Democratic Party was for access to their statewide voter list. It is our understanding that the Republican Party either does not have this list or does not make it available to others. The payment to ActBlue was for refunds and fees. ActBlue is a donation-processing service, they provide the online infrastructure to donate. Some of the payment to them is for services and transaction fees or credit card fees, and the rest is refunds to donors who make mistakes in the process of donating.

Mr. Chairman I believe that many of the questions ended up focusing on NDPI and our committee, rather than the language of HB 1521. I am willing to try and answer questions about 1521 and NDPI's position on the language of the legislation.

Chairman Kasper & Committee Members,

I'm B. R. Bale

Woo-hoo! It's 2021 & I'm just expanding my successfully thriving new business (or organization) into ND, & now I'm wondering what the "rules of the road" are ~~here~~. Stopping at red octagonal street signs – even WITH a white border isn't "optional" here? Okay (it isn't back home, either). You have guard rails where appropriate, to prevent us from straying. And don't cross over that bright, solid yellow centerline, on dangerous corners, busy intersections or when approaching the unforeseen. Brand new government Ethics Commission & Rules? That's nothing new to my outfit – same as over four of five (⁴/₅ths, or 43 – 86%, actually) of the rest of the states we already operate in. So probably no real, difficult, imponderable hardships for us there either.

Measure One's **sponsoring committee** was headed by two talented and very capable women, seasoned and experienced in governing and ND government. That committee **busted their aspirations**, carefully toiling over this. As a presidential candidate once observed, "Don't leave it to the "experts; educate yourself and learn what's going on, and become involved." [my paraphrasing] Although I had no hand in carefully considering and crafting it (or working toward its passage, sorry to say), Still: *GREAT!* ND has now joined, in up-to-date Ethics Rules, and can fill an earnest Commission to fairly and impartially oversee them.

I can understand some *slight* "annoyance" among a few of our honest lawmakers, who might rather continue undisturbed by these few, newly added requirements. "We, lobbyists & constituents never had to monkey with these concerns and recordkeeping before – why now?" Plus, we already had scattered sprinklings of "ethics something" tucked away here & there. So, compliance seems far less burdensome than might appear at first blush. Plus, *too* much resentment could cause some to wonder whether one has something to hide? Or that some of these rules might interfere with activities you'd like to pursue, as lawmakers? But as they say, "If it's worth the word, it's worth putting in writing." Lawmakers' already good conscience, integrity & reputations are easily backed up by clear, fair ethics rules they can all rely and stand on.

Also, while *your* district's voters can replace *you* if they disapprove of your conduct, what about a legislator from *another* far flung district, whose voters aren't quite so astute, perceptive, aware or intrepid? Plus, where's one encouraged to go, to report what at least *appears on first blush* to be arguably *questionable* ethical behavior? Without Article 14, is such reporting fostered? What remedies or corrections are promoted?

To speak to the committee hearing on the companion Senate bill 2148, another member of the ND public, on his own, rented a vehicle in Fargo (\$199), drove all the way to Bismarck to briefly participate and speak at *that* hearing, paid his own gas (\$28) and food (\$19), said his piece, then dashed off to drive all the way back, hopefully avoiding a severe storm. At least 7 hours & \$246. It *must* be important to him. He works at something like developing those with disabilities to productively, & rewardingly, enter our workforce. *He* sees the new Ethics article as an "abuse prevention plan" – for those who are "vulnerable." He seemed Very earnest and sincere. (And for one commenting like him, many more ND voters are out there. He might have added, "I am Spartacus.") I'd *thank* him for his efforts.

For some, it may be a little extra work: Ever fill out expense reports, or track your time? Keep records, for taxes, investments or investors, or for your banker? Your constituents – U.S. citizens residing in your ND districts – are invested in their government, & in this.

I heard, "We don't need to look to outsiders to determine what's right for ND-ans." Not in this, if it suits view, maybe. Bu what of the U.C.C. – the Uniform Commercial Code? And other Uniform model laws, for Wills, Trusts & Estates; Guardianship; & many others? Does a medical Dr. ever seek a second opinion,

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cially from recognized specialists in a novel area? Sometimes they can contribute to helping you out of a jumpy thicket. Ever seek & adopt or polish "model language" here, provided by someone like ALEC – the American Legislative Exchange Council? When it seemed suitable, maybe? So too, hearing from those well-served, with the National Conference of State Legislatures ("NCSL") – who may be interested in coming here to talk with you – couldn't hurt. The NCSL is the first entity shown on the ND's Legislature's website, saying: "The NCSL is a bipartisan organization dedicated to serving the legislators & legislative staffs of the nation's 50 states, its commonwealth and territories. [It] provides comprehensive legislative information and links to other state legislatures and government sites." Why reinvent the wheel? ~~Among~~ ^{research page} other sources, one great (partial) template to consider can be found at the Minnesota Resource Guides – Legislative Ethics – GREAT! See Some copied text, below (next page.) It spells out their rules, by chamber, quite clearly. www.leg.state.mn.us/lrl/guides/guides?issue=ethics I imagine they have another website for their executive branch.

I've heard that three carefully constructed and conducted polls surveyed ND-ans statewide about their perceptions *and suspicions*? – about whose interests their elected representatives and government officials and employees ~~really~~ have foremost, and devote the greatest time to, in these times of widely ranging journalistic integrity and instant, unchecked social media publication. Are too many meals, gifts, money, "favors" or lobbyist "access" crowding out once more plentiful constituent contact and attention? Is policy unfairly favoring the attentive few, while ignoring the rest, and other, more important needs? As I heard, those surveys weren't conducted to shape opinion or run to the media and inflame voters. Instead, they were carried out to determine the level of concern & possible degree of support for mounting a costly, time-consuming effort, aimed at adopting a decent set of state government ethics rules & a commission.

Might any public suspicion be well-harbored? For the casual observer, it IS easy enough to confuse what goes on [happens / transpires] at a state legislature with Congress. But in recent memory, has any state experienced questionable chicanery, bias or impropriety? Say, a state's Secretary of State presiding over his own gubernatorial election? Or a Texas Railroad Commission finding reasons to let *some* new oil producers in its Permian Basin operate with a free hand, backsliding by ~~increasing its~~ needlessly increasing their flaring rates? If you think not, I may have a bridge on the NJ turnpike I just might want to slow you down on.

What could produce or fuel *some* public apprehension of possibly questionable behavior here?

- I'll utter a four-letter word, with an added "i-n-g," starting with "f." Flar-ing. Needlessly wasteful; destructive to our climate and environment; earlier rampant, unchecked; and harmful to the health and quiet enjoyment of at least its immediate neighbors.
- ~~Survive~~ of us here today sat near another interested observer, during a "public" Industrial Commission "hearing" attended by a good gathering of ND oil producers, who'd even designated a spokesman, to hear the then-governor announce the newly reduced, acceptable flaring level, set for the near future, as a "goal." But over time, that goal appeared to be more aspirational than real, with any fines being quickly erased or abandoned. When one observer asked if he could ask a question, the governor told him no.
- Pipeline construction: reports of some "impolite" acquisitions, and eminent domain takings
- A governor and spouse accepting \$37,000 tickets to a pro sports event, into the sponsor's skybox luxury seats, to hobnob with them? No ND rules prevented this?, but the value was repaid.
- Tragedy of the Commons, or Unregulated Commons, where each of us uses too much of a resource.
- ~~oil~~ production ...]
- Five or so CEOs of large, U.S. tobacco companies swore under oath before Congress that they and their companies knew of no connection or studies by them indicating any link between cancer and their products.
- When ~~met~~ another extraction company eyed gold mining in the Paradise Valley just north of Yellowstone, ^{most} of Montana and Wyoming's state and federal lawmakers and governors quickly discouraged that. Yet when a newly-formed California company proceeded to play around with the PSC's oversight threshold and started constructing an industrial oil refinery two miles outside the gates to ND's only National Park, hardly

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deep was heard here. Additionally, tens of thousands of recently wild grasslands surrounding that Park have been given over to drilling and production. A whole way of life is being disrupted there.

- How far are we going to go, to allow **radioactive storage waste burial** here? What's its long-term effect on the underground aquifer, the water table and ND-ans?
- Much of the concern is about Money in our government and political process. How much Money *is* there in ND? Was it around \$30 million in the 2012 election? [Ben Hanson 2012?] And subtracting the campaign financing for the Heitkamp / Cramer race and Initiative measures, how much still flowed during the 2018 election? *Senate* *freely*
- *ND-ans*
Some *here* may even feel that "Your state representatives and government have chosen (or been kept in office by?) *their* favored groups, and you (*everyone else*) aren't in them." Why should "we" / "the public" get any better government than we "deserve," through how we ask our government to behave?

And many, more serious, examples exist from other states; some can be found at the website <https://publicintegrity.org/accountability>, under "Accountability." But plenty of positive examples also appear there. So, it can be done! – even in states with otherwise largely still dismal records.

Obviously, I wasn't around a hundred and ten years ago (or *anywhere* [else] I know of), but *back then* in this, then-fully farming (*that's* "g-a-m-b-l-i-n-g." farming) state, *some* chamber of commerce here seemed to side with the terms of eastern grain buyers, rail transport and bankers, to the detriment of those farmers – giving rise to an NPL which for a time took over the Republican party here and made some changes. However, those were long ago, much different times. And a horde of domineering grain cartels isn't the concern today. ...

Those seeking to influence includes our poor, bewildered lobbyists and *their* employers. But don't *they* work in other states *WITH* workable government Ethics rules? [And how do those states manage to maintain workable ethics rules that don't melt down their constitutions?] Or have friends, industry group associations or a client mother ship who do? I think the argument that these rules would confuse them speaks poorly of otherwise intelligent, informative and adept lobbyists, and is plainly hard [~~very difficult~~] to believe. Meanwhile, those 43 states' Ethics rules keep steadily working right along. Are the rest of this nation's legislators any less trustworthy, conscientious or more prone to lapses in good judgment, that they benefit more from or require ethics rules, that we can do without? Seems doubtful.

*• You could call them Rules of Legislative Conduct
Professionalism*

Bright-line ethics rules!, and an **office** tasked with guidance and oversight, investigation and enforcement, or an advance opinion, for the occasional if not rare odd, unclear situation? *Oh joy! Oh rapture!* **Internal controls***: one opens the mail, another writes up check deposit slips, an accountant records them, a clerk makes the deposits, and the controller signs the checks and reviews it all. *(Plus management review and auditors. The affected are protected and doubts drop. Most professionals comply with their own Ethics rules: CPAs (under the AICPA & the ND State Board of Accountancy), Attorneys (under the ABA, NDStBarAssn, & for "outsiders" here, their own state bars' rules), Judges, Medical doctors, nurses, Certified Financial Planners, bioethicists, Professors, insurance salesmen and realtors, and a host of others. They have the highest and enforceable fiduciary duty, to put their clients' or patients' interests first.*

** Every accountant & financial auditor knows: Good, well-enforced internal controls protect both the business' or organization's owners or shareholders and its employees and officers. Annie opens the mail, Betty writes up the bank deposit slip, Chet takes the checks to the bank, then Ralph reconciles the bank accounts for Alice the accountant. And the Controller, Cal, signs the checks and reviews it all. Similarly, the federal Foreign Corrupt Practices Act requires recordkeeping and reporting of various transactions with foreign firms, governments and customers, to prevent breaking corruption-barring rules. ¶*

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rules protect the public and the members of those professions themselves, and keep everyone honest, and living by the same set of rules. Rules which aim to avoid even the *Appearance* of Conflict, Bias, Unfairness or Propriety. And *not* "the Golden Rule," of "he who has the gold makes the rules." The good guys (which is nearly all of them) welcome and embrace complying with them. Same for laws like the federal Foreign Corrupt Practices Act. It keeps the profit-motivated from engaging in shady dealings across the waters, "just because the other kids do it" – disadvantage or not. Although YOU are "only" *supposed* to be part-time citizen-legislators, you still approach this work as professionals (*I hope*).

And these rules can't be that complex, either. They're not as numerous or precarious as the Rules of Professional Conduct for, say, attorneys: over dual representation; shifting, situational conflicts of interest; judgment calls over disclosures to the court, and others; of clients' potential criminal activity; handling client's funds in a trust account or in their trusts themselves; or dealing with infirm clients, for instance. If the enabling language is drafted well, they needn't leave "traps for the unwary."

Have ^{the Legislature} ~~you~~ had three chances to pass an Ethics Commission & Rules Statute, but passed on those opportunities? Well, it seems there was enough sentiment out there to vote in a Constitutional amendment, and here it is.

ND-ans' public perceptions and trust – the old: "Who's policing the police?" Our legislators & others in government decide, make laws and regulate much affecting many others. How about who's impartially keeping an eye on you?

As for concern over the rules themselves, I've heard several slippery slopes, parade of horrors, and illogical extensions offered. Fret, worry and handwringing. This isn't really all that hard!

First, this ^{have been} *is* serious business. So penalties (or "assessments") and sanctions shouldn't be toothless, or slight enough that violating or ignoring them brings only a slight slap on the wrist and becomes just another cost of doing business in ND. They have real bite, get your attention before contemplating the questionable, and well they should, if someone's tampering with the public trust or promoting unfair advantage.

The wording on "true source of funds" to influence legislation or toward gaining unfair enforcement? How about a supplemental ^{guidance} provision prohibiting any attempt to obscure or conceal their original source, which doesn't allow one to "funnel" through "straw" persons or entities, as defined? But probably that's best left to the Ethics Commissioners themselves.

A **regular ND lobbyist**, saying he's appearing in his individual capacity, may wonder how he'll be treated under the ethics rules. Well, that's easy: when he's here on his own, he falls under the rules as they apply to the general public; and when he acts as a paid lobbyist, those portions of the ethics rules engage.

Cultural, social, fraternal, affilial, interest and religious groups and organizations should have their rights to privacy, without interference in how they self-identify, while enjoying the privilege of engaging & participating in government affairs. BUT When they want to jump into the government sphere and influence legislation *or* funding choices that affect everyone, then **YOU BET**, ... the rest of us have a right to know the Source of their funds *and* how it's Used to influence What. That also involves the *flip* side of our U.S. Constitutional First Amendment rights, in addition to unrestrained free speech & association, *that is*, freedom both of & from religion.

One way to "Solomon" or parse this: As you probably know, it's very common with donations or dues to professional associations which lobby on their members' or constituents' professional behalf, to identify, compile and report a percentage of their total contribution "to the overall good of the whole organization" as non-tax-deductible political donations, based on how that organization spends its funds. Easy. From there, if the regulated threshold or floor for reporting and oversight was \$100, simply identify the percentage of anyone's

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donations “to the general good” of the entity which go to properly influence legislation or “government affairs.” So: for anyone donating over, say \$1,000, the 10% which the organization spends for lobbying just hits the \$100 mark, and those more prosperous or generous donor’s names are properly reported. Little unnecessary intrusion. No one can’t have their cake and eat it, too. And what’s good for the corporate goose is good for the non-profit gander. Then little Suzy or Sammy can donate their \$5 or \$10 unreported, resting assured of sound, un-interfered sleep. Among those on our two ethics committees alone, you’re surely smart enough – if you set yourself to it – to devise several satisfactory solutions and allay legitimate concerns. And who knows what even better answers the rest of our ND-ans and specialists more expert in this area can provide [supply furnish deliver.

Some have voiced concern over **litigation** here. Well, ND hasn’t seemed overly concerned about further restraining private reproductive rights, for instance, arguably the state using its power to promote a few religious groups’ agendas. I believe that did reach the U.S. Supreme Court, and cost a pretty penny, to lose. But that didn’t stop the legislature from enacting it in the first place. That’s why you continue to duly exercise perspicacity over carefully discerning legislation, and not unnecessarily court judicial review. Also, the U.S. Supreme Court exercises certiorari – review – in only a tiny fraction of cases appealed to it.

I am concerned that what’s *seemingly* okay for merely “social or educational” gatherings could stray. That is, Meetings which “invite a minimum of 25 legislators,” and are advertised for the public to attend more than three days in advance.” ~~[do what? Need a verb/subject?]~~ 1.) 25 could be a highly interested – or interesting – target caucus from either party, OR they could include 10 ideal subjects likely to appear, and 15 other likely no-shows from unrelated committees, districts or interests; 2.) Is the meeting in a remote or influencer-controlled facility, meeting place or setting – designed to showcase the sponsor’s many virtuous advantages and desirable causes?; and 3.) Is the topic or purpose quietly billed (so as not to call much attention to itself) in a more obscure publication of little circulation among the general public, and called something like, for instance, “Fun Facts on Older, Stratified Clay and Underlying Sedimentary Formations in Northwestern North Dakota and Related Topics”? When it’s *really* about obtaining favorable oil leases or pipeline rights-of-way IN those formations? And where even one or two legislators might speak?
(I don’t even have all the *questions* today, I certainly won’t pretend to have ~~all~~ the answers!)

Also, we want our representatives to have good, frequent, fair and equal contact with ALL Their constituents. If the poorest, most disadvantaged and deprived among us – who are most in need – can’t afford to supply gifts, meals, coffee, etc. or throw elegant, paper ~~plant~~ soirées, then why should the more affluent or those with more economic backup resources and power have leeway and preference to exercise such generous but self-interested and self-promoting exchanges? Given, that such events at least garner more “access,” and a freer hand to at least attempt to influence – which is a lobbyist’s job after all.

a veritable cornucopia
“We all want everything from our politics, but nobody wants to pay for any of it.” *joke* Adequate **funding** to budget for the commission to start, should cover a capable, relevantly experienced attorney, a seasoned administrator and a staff person, and be granted ~~[allowed]~~ their own space to perform their expected duties. Also, Article 14 regulates many more individuals than around the 3,000 ND attorneys, 150 judges and some candidates regulated by the state bar. Among the executive offices, legislature and others it’s closer to 20,000 ~~all told~~ ^{up} ~~[state] employees~~. Additionally, ~~comparing to~~ attorneys and judges are less likely to commit ethical breaches, since not only is their behavior part of their very full-time livelihood, and failures can result in public censure, suspension of their licenses to practice or even disbarment, but they *should* also know the rules well because: they’re schooled in them and fulfill continuing education requirements; they deal in more ^{highly} ~~fraught~~ matters that regularly involve ethics rules, ~~and~~ ~~[shorten?]~~ Despite *sometimes* well intentioned wishes to run our government as leanly as humanly possible, while that may *feel* like the “right” thing to do, we deserve [merit, ~~valuable~~, worthy of] sufficient financing to at least provide, then perform, the basic requirements of a well-run, advanced government, in spite of the time required [it ~~may~~ take] to *reach* sufficient rules.

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Not to chase *too* many rabbits down their holes, but a question arose about the Citizens United decision *being* the current supreme law of the land. Sometimes a rule isn't law until the Supremes say it is, but then, it is – *ed* law. But *(quoting a news report)* “[A] 1944 decision upholding the forcible internment of Japanese-Americans during World War II has long stood out as a stain that is almost universally recognized as a shameful mistake. Yet that notorious precedent, Korematsu v. United States, 323 U.S. 214 (1944), remained law because no case gave justices a good opportunity to overrule it. But *[in late June (19 or 26?), 2018]* when the Supreme Court’s conservative **majority upheld** President Trump’s ban on travel into the U.S. by citizens of several predominantly Muslim countries, Chief Justice John G. Roberts Jr. also seized the moment to finally overrule Korematsu. Justice Roberts added, “Korematsu was gravely wrong the day it was decided, has been overruled in the court of history, and – to be clear – ‘has no place in law under the Constitution.’ ” ”

www.nytimes.com/2018/06/26/us/korematsu-supreme-court-ruling.html The law *can* and *does* change.

Offhand, I’m unaware of holdings affecting our Native American citizens. *But similarly*, in the past, U.S. S. Ct. Justice *either* Holmes (or Hughes?) once upheld the then-acceptable view that employees had fully “equal” bargaining powers, in a “level” contract setting: they could take the employer’s terms or walk and find work elsewhere. But questions persist of this being *un*-level, or the presence of duress or unconscionability, among other important considerations. *For instance*, The Myth of Equality in the Employment Relation, Aditi Bagchi¹, 2009 Mich. St. L. Rev. 579. ¹Assistnt Law Prof., Univ. of PA Law School.

https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1255&context=faculty_scholarship

It also seems ludicrous to suggest this could somehow give rise to the specter of a fourth branch of government. It hasn’t elsewhere. It’s a watchdog, a guardian of rules, a referee.

You’re busy right now, if not overwhelmed and overtaxed (plus tired of shoveling all that snow?), with lots *of to* on top of and consider, all at once, as usual. Some are pushing to rush forward, to get it all decided and in *a.s.a.p.* Sure, let’s get going and underway – but let’s do it Right. Some are voicing concerns and questions, so pausing long enough to carefully consider and fully weigh these *is* in order. [And “we need ‘certainty’ ” – has become another useless, hackneyed phrase for the dust heap, seeming to demand finalized snap decisions and pronouncements where unneeded.]

New Ethics Rules have to start somewhere, and those serving on Measure One’s sponsoring committee certainly didn’t pretend to have a corner on ethics expertise. Now, what’s “the public say” in this? Did the ND legislature three times have a chance but decline reasonable attempts to get a good set of government ethics rules and a commission. (South Dakota voters *did* pass an initiated statute, but then their own legislature killed it for them – state government ethics – What’s *WITH* these Dakotans anyhow?)

So now it’s an Article in our Constitution. Good. Done. There’s *been* some bellyaching over *what could be construed as* how “dumb” the people you’re here representing are, or at least of limited or distracted understanding. (“Did they know or understand what they were voting for?”) We shouldn’t lower ourselves to Alexander Hamilton’s *undemocratic* view of the elite, better *for them* to rule the rest. Also, ND state government is run in a representative manner, but it isn’t a republic. Yet.

Secretary of State reviewed *the ballot language didn’t that put the voters on notice?*

What’s lost with a little more time? The legislature’s had since at least 2011 to contemplate effective ethics rules. Trust your public – they’ve entrusted you – to listen, learn and lead. And what motivated the majority of them to vote this in? Well, as you’re far more aware than the rest of us, that’s how it works.

have the **almost unbelievable advantage of 43 sister** states already experiencing this before us. Just how have these *43* fellow states *lived* with their various state ethics rules and commissions, and not become cripplingly bogged down and ground to a halt? Why not make it the best, latest, cutting edge, it can be? Now,

wear the “deliberative body” hat a bit longer, considering this not so “immense, unexpected” “tidal” change? Also, as already described in Article 14 and enabling bills themselves (at least in the Senate bill?), any “uncertainty” or “ambiguity” mostly doesn’t affect anyone or any donations, “gifts,” etc. for the next two years. No need to hastily rush in, pell mell, head over heels to hurriedly close the book on this. Haste makes waste, which easily avoidable litigation certainly qualifies as. As another election arrives, could the Ethics Commission vigorously *wade* into its role, and get up to speed by clarifying the rules’ applicability – educating and issuing comments for most questions, without generally engaging in the harshest, first-time enforcement – even if discretely directed to specific instances? Give it a little time, some appropriate public hearings, maybe a tad more comparative consideration – what’s working well (and not) elsewhere? Plenty more good ideas can bubble up. Arrive at a model that all agree ^{our legislature} you and all ND-ans can really be proud of when you’re done, no different from this great capitol building our sturdy predecessors finished in 1934, during the depths of the Great Depression.

Businesses regularly cite “uncertainty” of changing, shifting or unclear rules, and rules unevenly enforced. Doesn’t proper implementation of these ethics rules – all in one place, applicable to all – and an even-handed commission with adequate resources greatly reduce this? This gives certainty and clarity: all the rules clearly spelled out and fairly, evenly enforced. What’s to fear?

Also, some trepidation has been expressed, over **delegating rulemaking to** Ethics Commissioners; but they aren’t irretrievably appointed for life, and have constraining parameters around their rulemaking authority, *restrained* by Article 14. *Notte good people trustworthiness*

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Committee members are possibly benefitting by their newly heightened exposure to and appreciation of well-compared ethics rules. As Mrs. *Do As You Would Be Done By* might remind us, while we can request, insist, demand or enforce **respect**, it’s best obtained by earning it, as you all are, here.

Ethics rules ain't

^ Avoid even the appearance of bias or impropriety....

A question arose of “Whether anyone on the [group] that crafted the Measure wasn’t thoroughly schooled in Ethics.” I don’t believe this calls for a Doctorate of Philosophy, or a Masters in Debate. It’s really pretty simple.

We All have a piece of the puzzle.

How are you, the legislature, getting your good message out? There’s a phenomenon of a segment of people who say to government eavesdroppers, go ahead, listen in – we have nothing to hide, we’re good, law-abiding people. They mean it, and they have nothing to hide or fear. That’s not how you’re coming off here.

Part of Conclusion:

Seize the day. Don’t ND-ans deserve a good faith implementation after they’ve voted in support of it? Capitalize on this opportunity to fit [enactment of] outstanding legislation to enable the unchallengeable implementation of an Ethics Commission and Rules that will not only make all ND-ans rightfully proud, but one that can stand up to the very *best* of *any* other state’s Rules. And stand us all in good stead, to sturdily [robustly; durably] weather future challenges as mere trifles. Resist [Soften] any discreditable urge [notion] to ~~and~~ guessing your constituents and neighbors by watering down its provisions, taking oversight away from where it properly belongs, or weakening assessments or penalties for infractions. Honor the confidence your district’s citizens have placed in you. And silence [your critics’] [*any* misplaced] complaints.

LEGISLATIVE ETHICS - LAWS AND RULES

INTRODUCTION

There is a difference between ethical behavior and legal behavior. Everyone has the duty to obey the law. Ethical behavior is a higher standard of conduct than merely not violating the law. Ethical behavior is following standards of moral duty and virtue in accordance with the accepted principles of conduct that govern in certain circumstances. In the circumstances of service as a member of the North Dakota Legislative Assembly, many of the accepted principles have been set in law or rules. This memorandum reviews constitutional and statutory provisions that apply particularly to legal and ethical behavior of legislators. This memorandum also reviews legislative rules that the Legislative Assembly has established as standards of ethical conduct that legislators are expected to meet.

NORTH DAKOTA LAWS RELATING TO LEGAL BEHAVIOR AND ETHICS OF LEGISLATORS

Constitutional Provisions

A number of provisions of the Constitution of North Dakota relate to behavior in legislative activities.

Section 6 of Article IV provides:

While serving in the legislative assembly, no member may hold any full-time appointive state office established by this constitution or designated by law. During the term for which elected, no member of the legislative assembly may be appointed to any full-time office that has been created by the legislative assembly. During the term for which elected, no member of the legislative assembly may be appointed to any full-time office for which the legislative assembly has increased the compensation in an amount greater than the general rate of increase provided to full-time state employees.

Section 9 of Article IV provides:

If any person elected to either house of the legislative assembly shall offer or promise to give his vote or influence, in favor of, or against any measure or proposition pending or proposed to be introduced into the legislative assembly, in consideration, or upon conditions, that any other person elected to the same legislative assembly will give, or will promise or assent to give, his vote or influence in favor of or against any other measure or proposition, pending or proposed to be introduced into such legislative assembly, the person making such offer or promise shall be deemed guilty of solicitation of bribery. If any member of the legislative assembly, shall give his vote or influence for or against any measure or proposition, pending or proposed to be introduced into such legislative assembly, or offer, promise or assent so to do upon condition that any other member will give, promise or assent to give his vote or influence in favor of or against any other such measure or proposition pending or proposed to be introduced into such legislative assembly, or in consideration that any other member hath given his vote or influence, for or against any other measure or proposition in such legislative assembly, he shall be deemed guilty of bribery. And any person, member of the legislative assembly or person elected thereto, who shall be guilty of either such offenses, shall be expelled, and shall not thereafter be eligible to the legislative assembly, and, on the conviction thereof in the civil courts, shall be liable to such further penalty as may be prescribed by law.

Sections 10 and 12 of Article IV contain indirect references to ethical standards. Section 10 provides:

No member of the legislative assembly, expelled for **corruption**, and no person convicted of bribery, perjury or other infamous crime shall be eligible to the legislative assembly, or to any office in either branch thereof. (**emphasis supplied**)

Section 12 of Article IV refers to ethical standards and also provides for the legislative authority to expel members. Section 12 provides, in part:

Each house shall determine its rules of procedure, and may punish its members or other persons for **contempt or disorderly behavior in its presence**. With the concurrence of two-thirds of its elected members, either house may expel a member. (**emphasis supplied**)

Statutory Provisions

Several provisions of the North Dakota Century Code govern general activities of individuals and public officials.

Tampering With Public Records

Section 12.1-11-05 provides that it is a Class C felony if a public servant who has custody of a government record knowingly makes a false entry in or knowingly, without lawful authority, destroys the verity or availability of

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a government record. "Government record" is defined as any record, document, or thing belonging to, or received or kept by the government for information or record, or any other record, document, or thing required to be kept by law pursuant to a statute that expressly invokes the penalty in that section.

Bribery - Unlawful Influence

Section 12.1-12-01 makes it a Class C felony to knowingly offer, give, or agree to give to another, or solicit, accept, or agree to accept a thing of value as consideration for the recipient's official action as a public servant or the recipient's violation of a known legal duty as a public servant.

Section 12.1-12-02 provides that any person who violates Section 9 of Article IV (giving vote or influence) or Section 10 of Article V (actions of Governor) of the Constitution of North Dakota is guilty of a Class C felony.

Section 12.1-12-03 makes it a Class A misdemeanor for a public servant to solicit, accept, or agree to accept a thing of pecuniary value from a nongovernmental source as compensation for advice or other assistance in preparing or promoting a matter that is or is likely to be subject to the public servant's official action, or for omitting or delaying official action.

Section 12.1-12-04 makes it a Class A misdemeanor to solicit, accept, or agree to accept, or offer, give, or agree to give, a thing of pecuniary value as consideration for approval or disapproval by a public servant or party official of a person for appointment, employment, advancement, or retention as a public servant or for designation or nomination as a candidate for elective office.

Section 12.1-12-05 makes it a Class A misdemeanor to knowingly offer, give, or agree to give, or solicit, accept, or agree to accept, a thing of pecuniary value for exerting, or procuring another to exert, special influence upon a public servant with respect to the public servant's legal duty or official action as a public servant.

Confidential Information - Conflict of Interest

Section 12.1-13-01 makes it a Class C felony for a public servant, in knowing violation of a public duty, to disclose any confidential information acquired as a public servant.

Section 12.1-13-02 makes it a Class A misdemeanor if during employment as a public servant, or within one year thereafter, in contemplation of official action by that person as a public servant or in reliance on information to which that person had access only in that person's capacity as a public servant, a public servant acquires a pecuniary interest in any property or enterprise which may be affected by such information or official action, speculates on the basis of such information or official action, or aids another to do any of these activities.

Section 12.1-13-03 makes it a Class A misdemeanor for a public servant who is authorized to sell or lease property to enter a contract to become interested individually in the sale or lease of that property or in that contract.

Interference with Elections

Sections 12.1-14-02 and 12.1-14-03 make it a Class A misdemeanor to interfere with another because that person is or has been voting for any candidate or issue or to make or induce any false voting registration or give a thing of pecuniary value to another as consideration for the recipient's voting or withholding the recipient's vote for or against any candidate or issue.

Theft

Section 12.1-23-03 provides that it is theft to intentionally obtain services, known to be available only for compensation, by deception, threat, false token, or other means to avoid payment for the services, or to permit another to use those services. Under Section 12.1-23-05, if a public servant violates Section 12.1-23-03 and the services exceed \$50 in value or is a government file or paper, the offense is a Class C felony.

Section 12.1-23-07 makes it a Class B misdemeanor to use property entrusted to a public servant in a manner that the user "knows is not authorized and that [the user] knows to involve a risk of loss or detriment to the owner of the property or to the government." The criminal offense classification increases as the value of the misapplied property increases.

Campaign Contribution Statements

Title 16.1 governs elections. In addition to general requirements for election to office, several provisions apply to the conduct of legislators and public employees.

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Section 16.1-08.1-02 requires any candidate committee or candidate for legislative office soliciting or accepting contributions for any political purpose to make and file with the Secretary of State a detailed statement of all contributions received from each individual or political committee which exceed \$200 in the aggregate for the calendar year. Sections 16.1-08.1-03 and 16.1-08.1-03.8 contain similar requirements for contributions and expenditures for political parties and multicandidate political committees, respectively.

Statements of Interest

Section 16.1-09-02 requires every candidate for elective office to file a statement of interest along with the certificate of nomination or endorsement or the petition of nomination. Section 16.1-09-03 lists the requirements for the contents of the statement. Basically, the candidate must identify the principal source of income, entities in which the candidate or candidate's spouse has a financial interest, entities with which the candidate and candidate's spouse are closely associated and which may be affected by legislative action, and the identity of business relationships held by the candidate or candidate's spouse during the preceding calendar year.

Doing Business with the State

A statute that prohibited legislators and their spouses from doing business of more than \$10,000 in a calendar year with the state was held unconstitutional by the North Dakota Supreme Court in *Melland v. Johanneson*, 160 N.W.2d 107 (1968).

Title 12.1 governs crimes and identifies general criminal activities. Several provisions may have direct application to the conduct of legislators.

Corrupt Election Practices

Chapter 16.1-10 identifies corrupt practices.

Section 16.1-10-01 makes it a corrupt practice for any person to expend any money for election purposes contrary to the provisions of Chapter 16.1-10, engage in any of the practices prohibited by Section 12.1-14-02 or 12.1-14-03 (interference with elections, or use state or political subdivision services or property for political purposes).

Section 16.1-10-02 prohibits any person from using any property belonging to or leased by, or any service that is provided to or carried on by, the state or a political subdivision for any political purpose.

"Property" is defined as including motor vehicles, telephones, typewriters, adding machines, postage or postage meters, money, and buildings. (Although this definition is somewhat dated, e.g., typewriters and adding machines, the definition does not exclude computers, cell phones, and smartphones.)

"Services" is defined as including the use of employees during regular working hours for which the employees have not taken annual or sick leave or other compensatory leave. (Although the definition specifically identifies one type of service, the definition does not exclude any type of service, e.g., Internet service, which also could be considered a type of property.)

"Political purpose" is defined as any activity undertaken in support of or in opposition to a **statewide initiated or referred measure, a constitutional amendment or measure, a political subdivision ballot measure**, or the election or nomination of a candidate for public office whether the activity is undertaken by a candidate, political committee, political party, or any other person, but does not include the activities undertaken in the performance of a duty of state or political subdivision office. **Factual information may be presented regarding a ballot question solely for the purpose of educating voters if the information does not advocate for or against or otherwise reflect a position on the adoption or rejection of the ballot question.** (emphasis supplied)

Political Activities - State Cars - Mileage Expense

Section 39-01-03 prohibits an officer or employee of the state from using or driving any motor vehicle belonging to the state or any agency of the state for private use or while engaged in any political activity.

Section 39-01-04 defines political activity as "any form of campaigning or electioneering, such as attending or arranging for political meetings; transporting candidates or workers engaged in campaigning or electioneering; distributing campaign literature, political guide cards, or placards; soliciting or canvassing for campaign funds; transporting electors to the polls on election day; and any other form of political work usually and ordinarily engaged in by state officers and employees during primary and general election campaigns."

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Section 39-01-05 prohibits any state officer or state employee who uses or drives any privately owned motor vehicle while engaged in political activity to collect or receive from the state any expense money for the use or operation of the motor vehicle while engaged in the political activity. The section also prohibits any state officer or employee from receiving any traveling expense reimbursement from the state for any time spent engaging in any political activity.

Public Officers Generally - Political Activities

Title 44 contains provisions generally applicable to public officers or employees.

Section 44-08-19 prohibits a public employee from engaging in political activities (as defined in Section 39-01-04) while on duty or in uniform.

Nepotism

Section 44-04-09 prohibits a state official or employee from serving in a supervisory capacity over, or enter a personal service contract with, that individual's parent, spouse, son, daughter, stepchild, brother, sister, brother-in-law, sister-in-law, son-in-law, or daughter-in-law. "Supervisory capacity" means the authority to appoint, employ, hire, assign, transfer, promote, evaluate, reward, discipline, demote, or terminate.

Public Records Generally

Article XI, Section 6, of the Constitution of North Dakota, provides that unless otherwise provided by law, "all records of public or governmental bodies, boards, bureaus, commissions, or agencies of the state or any political subdivision of the state, or organizations or agencies supported in whole or in part by public funds, or expending public funds, shall be public records, open and accessible for inspection during reasonable office hours."

Section 44-04-18 provides that unless otherwise specifically provided by law, all records of a public entity are public records, open and accessible for inspection during reasonable office hours. Section 44-04-17.1 defines a record as "recorded information of any kind, regardless of the physical form or characteristic by which the information is stored, recorded, or reproduced, which is in the possession or custody of a public entity or its agent and which has been received or prepared for use in connection with public business or contains information relating to public business." Section 44-04-17.1 further provides that a record includes preliminary drafts and working papers.

Legislative Records

Section 44-04-18.6 provides that certain legislative records (records of or relating to the Legislative Council, Legislative Management, Legislative Assembly, House of Representatives, Senate, or a member of the Legislative Assembly), regardless of form or characteristic, are not subject to the open records laws. Specifically identified are:

- A record of a purely personal or private nature;
- A record that is Legislative Council work product or is Legislative Council-client communication;
- A record that reveals the content of private communications between a member of the Legislative Assembly and any person; and
- Except with respect to a governmental entity determining the proper use of telephone service, a record of telephone usage which identifies the parties or lists the telephone numbers of the parties involved.

Specifically excluded from Section 44-04-18.6 are records distributed at a meeting subject to Section 44-04-19 and Article XI, Section 5, of the Constitution of North Dakota.

Public Meetings

Article XI, Section 5, of the Constitution of North Dakota, provides that unless otherwise provided by law, "all meetings of public or governmental bodies, boards, bureaus, commissions, or agencies of the state or any political subdivision of the state, or organizations or agencies supported in whole or in part by public funds, or expending public funds, shall be open to the public."

Section 44-04-19 provides that except as otherwise specifically provided by law, all meetings of a public entity must be open to the public. Under Section 44-04-17.1, "meeting" is defined as including a formal or informal gathering of a quorum of the members of the governing body of a public entity regarding public business. "Public business" is defined as including all matters that relate or may foreseeably relate in any way to the performance of the public entity's governmental functions.

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Note that the Attorney General has opined that the open meetings law is violated when a quorum of members of the Dickinson City Commission and of the South Heart City Council attended a presentation by Great Northern Power about its proposed coal gasification plant in Stark County. (Opinion 2008-O-11, Dickinson City Commission; South Heart City Council). The opinion discusses what constitutes public business and points out that information shared by Great Northern Power at the presentation concerned personnel requirements and likely economic impact of the proposed plant on the area which in turn could have a significant effect on the infrastructure needs that could foreseeably be brought before the governing bodies and thus related to public business.

Public Improvement Contracts

Section 48-01.2-08 prohibits a governing body or any member, employee, or appointee of a governing body from being pecuniarily interested or concerned in a contract for a public improvement entered by the governing body. A public improvement is defined as including any improvement for the good of the public and which is paid for with public funds.

Use of Great Seal

Section 54-02-01 makes it a Class B misdemeanor for any person to place the Great Seal of the state on any political badge, button insignia, pamphlet, folder, display card, sign, poster, billboard, or on any other public advertisement, or to otherwise use the Great Seal for any political purpose, as defined in Section 16.1-10-02. The Great Seal appears on legislative stationery. In a letter to Senator Bryce Streibel dated June 8, 1993, the Attorney General said it was her opinion that use of the Great Seal as a part of a letterhead or otherwise in a campaign constitutes a corrupt practice under Section 16.1-10-01.

Section 54-02-01 was amended in 1997 to allow use of the Great Seal on business calling cards of state officials and employees, regardless of whether the cards are paid for by the person or the state.

Legislative Lobbying

Chapter 54-05.1 governs legislative lobbying.

Section 54-05.1-02 defines lobbying as (1) attempts to secure the passage, amendment, or defeat of any legislation by the Legislative Assembly or the approval or veto of any legislation by the Governor, or (2) attempts to influence decisions made by the Legislative Management or by an interim committee of the Legislative Management.

Section 54-05.1-03(2) requires registered lobbyists to file annual expenditure reports by August 1 of each year (the annual registration period for lobbyists goes from July 1 through June 30). The report must include a statement as to each expenditure of **\$60 or more expended on any single occasion on any individual**, including a legislator's spouse or other family member, in carrying out the lobbyist's work. If the lobbyist does not make any such expenditures, the report must include a statement that no reportable expenditures were made during the reporting period.

Section 54-05.1-05 requires a lobbyist, on request of a legislator, to supply the legislator with the estimated cost of a non-information-bearing gift provided to the legislator or of a function sponsored by the lobbyist and allow the legislator to accept the gift or attend the function and pay the legislator's own share of the expense.

State Officials - Restrictions

Section 54-06-12 makes it a Class C felony for any state official to publish willfully any false statement in regard to any state department, institution, or industry which tends to deceive the public and create a distrust of any state official or employee in charge of such department, institution, or industry, or which tends to obstruct, hinder, and delay the various departments, institutions, and industries of the state.

Section 54-06-26 permits state officials and employees to use state telephones for local calls for essential personal purposes to the extent that use does not interfere with official functions. The section also allows limited long-distance telephone calls when an official or employee is away on state business.

Chapters 54-52 and 54-52.1 relate to public employee retirement and health insurance and contain several provisions making records on those subjects confidential. Some of those records are also confidential under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

Section 54-35-02.8 provides that the Legislative Management is to appoint an ethics committee each biennium to consider or prepare a code of ethics. The Legislative Management has named the Legislative Procedure and

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Arrangements Committee as the ethics committee. In 1997 that committee recommended the adoption of Joint Rules 1001 through 1004, which establish a legislative ethics policy.

LEGISLATIVE RULES AFFECTING ETHICS

House and Senate Rules 321 provide that any member who has a personal or private interest in any measure or bill must disclose the fact to the House or Senate and may not vote thereon without the consent of the House or Senate. The rules define "personal or private interest" as an interest that affects the member directly, individually, uniquely, and substantially.

House and Senate Rules 322 provide that when a member asks to be excused, or declines to vote, the member is required to state the member's reasons. Upon motion, the question must be put to the House or Senate "Shall the member, for the reasons stated, be permitted to vote?" The question is to be decided without debate, and the proceedings must occur before the taking of the vote.

Joint Rule 901 declares that the Legislative Assembly is committed to providing a healthy and appropriate work environment and that sexual harassment in any manner will not be tolerated.

Joint Rules 1001 through 1004, relating to ethics, provide as follows:

1001. Legislative ethics policy.

1. The Legislative Assembly always seeks a high reputation for progressive accomplishment where its members are public officers of integrity and dedication, maintaining high standards of ethical conduct.
2. The public interest is best served by attracting and retaining in the Legislative Assembly citizens of high caliber and attainment. The public interest will suffer if unduly stringent requirements deprive government of the services of well-qualified citizens.
3. Membership in the Legislative Assembly is not a full-time occupation and is not compensated on that basis. Continued membership is on an elected-term basis, requiring each member to recognize and contemplate that election will not provide any career tenure. These characteristics ensure that each member is rooted to a community and that legislation reflects the needs and values of citizens.
4. A member such as a teacher, administrator, state employee, farmer, labor leader, lawyer, independent business person, or any salaried employee must look to a source of income from other than legislative compensation for sustenance and support; moreover, every member must plan for return to that individual's regular employment, business, or profession.
5. The increasing complexity of public policy at all levels, with intervention into private affairs, makes conflicts of interest almost inevitable for every part-time public official, and particularly for a member who must vote on measures affecting the life of every citizen or resident of the state. Consequently, the adoption of standards of ethics does not impugn a member's integrity or dedication; rather, it recognizes the increasing complexity of government and private life and provides members with helpful advice and guidance when confronted with difficult problems in that gray area involving action that is neither clearly right nor clearly wrong.
6. Ethical conduct is expected of all who participate in the legislative process, including lobbyists, legislative staff, government employees, interest groups, the media, and others. All participants in the legislative process should recognize the importance of their role to support each member's ethical duty to make independent judgments.
7. If public confidence in the Legislative Assembly is to be maintained and enhanced, it is not enough that members avoid acts of misconduct. They also must avoid acts that may create an appearance of misconduct.

1002. Recognition of ethical standards. The resolution of ethical problems must rest largely in the individual conscience. The Legislative Assembly may and should, however, define ethical standards, as most professions have done, to chart the areas of real or apparent impropriety. Unless otherwise provided by law, no criminal penalty applies to a member who engages in conduct that is inconsistent with this section. However, in striving to maintain ethical standards, each member should recognize the importance of:

1. Complying with all other rules relating to ethics, including Joint Rule 901 regarding sexual harassment and Senate and House Rules 321 regarding disclosure of personal or private interest when voting.

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2. Acknowledging that the public trust requires each member to make a consistent effort to be well-informed about legislative issues and legislative proposals and to resist influences that may bias the member's independent judgment.
3. Acknowledging that accountability requires members to maintain communication with constituents, to remain open to constructive comment, and to exercise leadership in helping constituents understand legislative issues.
4. Acknowledging that institutional responsibility requires members to remain committed to the integrity and maintenance of the legislative branch.
5. Not using or attempting to use the member's influence in any matter involving a substantial conflict between the member's personal interest and duties in the public interest.
6. Not using the member's official position to obtain financial gain for the member, the member's family, or a business associate or to secure privileges or exemptions in direct contravention of the public interest.

1003. Recognition of constitutional and statutory provisions. Members should apprise themselves of constitutional provisions and statutes that prohibit conduct for which criminal penalties may apply, including Article IV, Section 9, of the Constitution of North Dakota, which prohibits vote trading; Article IV, Section 10, of the Constitution of North Dakota, which provides for expulsion for corruption, bribery, perjury, or other infamous crimes; Article IV, Section 12, of the Constitution of North Dakota, which prohibits contempt or disorderly behavior; North Dakota Century Code Chapter 12.1-12, which prohibits bribery and unlawful influence of public servants; North Dakota Century Code Section 12.1-13-01, which prohibits disclosure of confidential information; North Dakota Century Code Section 12.1-13-02, which prohibits acquisition of a pecuniary interest in property or an enterprise in contemplation of official action or in reliance on information accessed as a public servant; North Dakota Century Code Section 12.1-13-03, which prohibits a public servant from becoming interested individually in the sale or lease of property or a contract for which the public servant is authorized to transact; North Dakota Century Code Sections 12.1-14-02 and 12.1-14-03, which prohibit interference with voting; North Dakota Century Code Sections 12.1-23-03 and 12.1-23-05, which prohibit theft to obtain services while a public servant; North Dakota Century Code Section 12.1-23-07, which relates to the use of property entrusted to a public servant; North Dakota Century Code Chapter 16.1-08.1, which relates to campaign contributions and campaign contributing statements; North Dakota Century Code Chapter 16.1-09, which relates to statements of interest; North Dakota Century Code Chapter 16.1-10, which relates to corrupt practices; North Dakota Century Code Sections 39-01-03 and 39-01-05, which prohibit the private or political use of state motor vehicles; North Dakota Century Code Section 44-08-19, which relates to political activities by public employees; North Dakota Century Code Section 48-01.2-08, which prohibits the interest in public contracts by a member of a governing board; North Dakota Century Code Section 54-02-01, which governs the use of the Great Seal; North Dakota Century Code Chapter 54-05.1, which relates to legislative lobbying; and North Dakota Century Code Section 54-06-12, which prohibits false statements regarding state departments, institutions, or industries.

1004. Legislative ethics classes - Publication of information relating to ethics. During each organizational session and at other times as deemed appropriate, the Legislative Council shall conduct classes on legislative ethics and laws governing the activities and conduct of public officials, including criminal laws, election practices, and conflicts of interest. Before each regular legislative session, the Legislative Council shall distribute a document to all members which includes constitutional provisions, statutes, legislative rules, and other pertinent information regarding ethical conduct in the legislative process.

2015 Legislative Rules Changes

It appears none of the legislative rules changes recommended by the Legislative Procedure and Arrangements Committee affect any provisions directly related to legislative ethics issues. However, the Legislative Process and Arrangements Committee adopted a revised *Policy on Use of Personal Computers by Legislators*. Because this policy sets out accepted principles of legislative conduct, it appears members of the Legislative Assembly are ethically obligated to comply.

Introduced by

Representative Pollert

Senator Wardner

1 A BILL for an Act to create and enact ~~two~~ a new section to chapter 16.1-08.1 and
2 chapter 54-66 of the North Dakota Century Code, relating to reporting campaign contributions
3 and expenditures, restrictions on public officials and lobbyists, investigations of ethics violations,
4 and implementing requirements of article XIV of the Constitution of North Dakota; to amend and
5 reenact section 16.1-08.1-01, subsection 4 of section 16.1-08.1-02.1, sections 16.1-08.1-02.3,
6 16.1-08.1-02.4, 16.1-08.1-03.1, 16.1-08.1-04.1, 28-32-01, 28-32-02, 28-32-03, 28-32-06,
7 28-32-07, 28-32-08, 28-32-08.1, 28-32-08.2, 28-32-09, 28-32-10, 28-32-11, 28-32-12, 28-32-14,
8 28-32-15, 28-32-16, 28-32-17, 28-32-18, and 28-32-18.1, subsections 2 and 4 of section
9 28-32-19, and ~~section~~ sections 28-32-27, 28-32-47, 28-32-48, and 28-32-49 of the North Dakota
10 Century Code, relating to rulemaking procedures, disqualification of ~~hearing officers~~ agency
11 heads in quasi-judicial proceedings, implementing article XIV of the Constitution of North
12 Dakota, and requirements for the North Dakota ethics commission; to provide for a penalty; to
13 provide an appropriation; to provide an effective date; to provide an expiration date; and to
14 declare an emergency.

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

16 **SECTION 1. AMENDMENT.** Section 16.1-08.1-01 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **16.1-08.1-01. Definitions.**

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

- 20 1. "Adjusted for inflation" means adjusted on January first of each year by the change in
21 the consumer price index for all urban consumers (all items, United States city
22 average), as identified by the secretary of state.
- 23 2. "Affiliate" means an organization that controls, is controlled by, or is under common
24 control with another organization. For purposes of this definition, control means the

1 possession, direct or indirect, of the power to direct or cause the direction of the
2 management and policies of an organization, whether through the ownership of voting
3 securities, by contract other than a commercial contract for goods or nonmanagement
4 services, or otherwise. Control is presumed to exist if an organization, directly or
5 indirectly, owns, controls, holds with the power to vote, or holds proxies representing
6 fifty percent or more of the voting securities of any other organization.

7 ~~2-3.~~ "Association" means any club, association, union, brotherhood, fraternity, organization,
8 or group of any kind of two or more persons, including labor unions, trade
9 associations, professional associations, or governmental associations, which is united
10 for any purpose, business, or object and which assesses any dues, membership fees,
11 or license fees in any amount, or which maintains a treasury fund in any amount. The
12 term does not include corporations, cooperative corporations, limited liability
13 companies, political committees, or political parties.

14 ~~3-4.~~ "Candidate" means an individual who seeks nomination for election or election to
15 public office, and includes:
16 a. An individual holding public office;
17 b. An individual who has publicly declared that individual's candidacy for nomination
18 for election or election to public office or has filed or accepted a nomination for
19 public office;
20 c. An individual who has formed a campaign or other committee for that individual's
21 candidacy for public office;
22 d. An individual who has circulated a nominating petition to have that individual's
23 name placed on the ballot; and
24 e. An individual who has, in any manner, solicited or received a contribution for that
25 individual's candidacy for public office, whether before or after the election for
26 that office.

27 ~~4-5.~~ "Conduit" means a person that is not a political party, political committee, or candidate
28 and which receives a contribution of money and transfers the contribution to a
29 candidate, political party, or political committee when the contribution is designated
30 specifically for the candidate, political party, or political committee and the person has
31 no discretion as to the recipient and the amount transferred. The term includes a

- 1 transactional intermediary, including a credit card company or a money transfer
2 service that pays or transfers money to a candidate on behalf of another person.
- 3 5-6. "Contribution" means a gift, transfer, conveyance, provision, receipt, subscription,
4 loan, advance, deposit of money, or anything of value, made for the purpose of
5 influencing the nomination for election, or election, of any person to public office or
6 aiding or opposing the circulation or passage of a statewide initiative or referendum
7 petition or measure. The term also means a contract, promise, or agreement, express
8 or implied, whether or not legally enforceable, to make a contribution for any of the
9 above purposes. The term includes funds received by a candidate for public office or a
10 political party or committee which are transferred or signed over to that candidate,
11 party, or committee from another candidate, party, or political committee or other
12 source including a conduit. The term "anything of value" includes any good or service
13 of more than a nominal value. The term "nominal value" means the cost, price, or
14 worth of the good or service is trivial, token, or of no appreciable value. The term
15 "contribution" does not include:
- 16 a. A loan of money from a bank or other lending institution made in the regular
17 course of business.
 - 18 b. Time spent by volunteer campaign or political party workers.
 - 19 c. Money or anything of value received for commercial transactions, including rents,
20 advertising, or sponsorships made as a part of a fair market value bargained-for
21 exchange.
 - 22 d. Money or anything of value received for anything other than a political purpose.
 - 23 e. Products or services for which the actual cost or fair market value are reimbursed
24 by a payment of money.
 - 25 f. An independent expenditure.
 - 26 g. The value of advertising paid by a political party, multicandidate political
27 committee, or caucus which is in support of a candidate.
 - 28 h. In-kind contributions from a candidate to the candidate's campaign.
- 29 6-7. "Cooperative corporations", "corporations", and "limited liability companies" are as
30 defined in this code, and for purposes of this chapter "corporations" includes nonprofit
31 corporations. However, if a political committee, the only purpose of which is accepting

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- 1 contributions and making expenditures for a political purpose, incorporates for liability
2 purposes only, the committee is not considered a corporation for the purposes of this
3 chapter.
- 4 ~~7-8.~~ "Expenditure" means:
- 5 a. A gift, transfer, conveyance, provision, loan, advance, payment, distribution,
6 disbursement, outlay, or deposit of money or anything of value, except a loan of
7 money from a bank or other lending institution made in the regular course of
8 business, made for a political purpose or for the purpose of influencing the
9 passage or defeat of a measure.
- 10 b. A contract, promise, or agreement, express or implied, whether or not legally
11 enforceable, to make any expenditure.
- 12 c. The transfer of funds by a political committee to another political committee.
- 13 d. An independent expenditure.
- 14 ~~8-9.~~ "Expenditure categories" means the categories into which expenditures must be
15 grouped for reports under this chapter. The expenditure categories are:
- 16 a. Advertising;
17 b. Campaign loan repayment;
18 c. Operations;
19 d. Travel; and
20 e. Miscellaneous.
- 21 ~~9-10.~~ "Independent expenditure" means an expenditure made for a political purpose or for
22 the purpose of influencing the passage or defeat of a measure if the expenditure is
23 made without the express or implied consent, authorization, or cooperation of, and not
24 in concert with or at the request or suggestion of, any candidate, committee, or
25 political party.
- 26 ~~10-11.~~ "Patron" means a person who owns equity interest in the form of stock, shares, or
27 membership or maintains similar financial rights in a cooperative corporation.
- 28 ~~11-12.~~ "Person" means an individual, partnership, political committee, association,
29 corporation, cooperative corporation, limited liability company, or other organization or
30 group of persons.

- 1 ~~42.13.~~ "Personal benefit" means a benefit to the candidate or another person which is not for
2 a political purpose or related to a candidate's responsibilities as a public officeholder,
3 and any other benefit that would convert a contribution to personal income.
- 4 ~~43.14.~~ "Political committee" means any committee, club, association, or other group of
5 persons which receives contributions or makes expenditures for political purposes and
6 includes:
- 7 a. A political action committee not connected to another organization and free to
8 solicit funds from the general public, or derived from a corporation, cooperative
9 corporation, limited liability company, affiliate, subsidiary, or an association that
10 solicits or receives contributions from its employees or members or makes
11 expenditures for political purposes on behalf of its employees or members;
- 12 b. A candidate committee established to support an individual candidate seeking
13 public office which solicits or receives contributions for political purposes;
- 14 c. A political organization registered with the federal election commission, which
15 solicits or receives contributions or makes expenditures for political purposes;
- 16 d. A multicandidate political committee, including a caucus, established to support
17 multiple groups or slates of candidates seeking public office, which solicits or
18 receives contributions for political purposes; and
- 19 e. A measure committee, including an initiative or referendum sponsoring
20 committee at any stage of its organization, which solicits or receives contributions
21 or makes expenditures for the purpose of aiding or opposing a measure sought
22 to be voted upon by the voters of the state, including any activities undertaken for
23 the purpose of drafting an initiative or referendum petition, seeking approval of
24 the secretary of state for the circulation of a petition, or seeking approval of the
25 submitted petitions.
- 26 ~~44.15.~~ "Political party" means any association, committee, or organization which nominates a
27 candidate for election to any office which may be filled by a vote of the electors of this
28 state or any of its political subdivisions and whose name appears on the election ballot
29 as the candidate of such association, committee, or organization.
- 30 ~~45.16.~~ "Political purpose" means any activity undertaken in support of or in opposition to the
31 election or nomination of a candidate to public office and includes using "vote for",

1 "oppose", or any similar support or opposition language in any advertisement whether
2 the activity is undertaken by a candidate, a political committee, a political party, or any
3 person. In the period thirty days before a primary election and sixty days before a
4 special or general election, "political purpose" also means any activity in which a
5 candidate's name, office, district, or any term meaning the same as "incumbent" or
6 "challenger" is used in support of or in opposition to the election or nomination of a
7 candidate to public office. The term does not include activities undertaken in the
8 performance of a duty of a public office or any position taken in any bona fide news
9 story, commentary, or editorial.

10 ~~16.17.~~ "Public office" means every office to which an individual can be elected by vote of the
11 people under the laws of this state.

12 ~~17.18.~~ "Subsidiary" means an affiliate of a corporation under the control of the corporation
13 directly or indirectly through one or more intermediaries.

14 19. "Ultimate and true source" means the person who knowingly contributed over two
15 hundred dollars, adjusted for inflation, solely to influence a statewide election or an
16 election for the legislative assembly.

17 **SECTION 2. AMENDMENT.** Subsection 4 of section 16.1-08.1-02.1 of the North Dakota
18 Century Code is amended and reenacted as follows:

- 19 4. The statement filed according to this section must show the following:
- 20 a. The balance of the filer's convention accounts at the start and close of the
21 reporting period;
- 22 b. The total of all revenue received and expenditures made of two hundred dollars,
23 adjusted for inflation, or less;
- 24 c. The total of all revenue received and expenditures made in excess of two
25 hundred dollars, adjusted for inflation;
- 26 d. For each aggregated revenue received from a person in excess of two hundred
27 dollars, adjusted for inflation:
- 28 (1) The name of each person;
- 29 (2) The mailing address of each person;
- 30 (3) The date of the most recent receipt of revenue from each person; and

- 1 (4) The purpose or purposes for which the aggregated revenue total was
2 received from each person;
- 3 e. For each aggregated expenditure made to a person in excess of two hundred
4 dollars, adjusted for inflation;
- 5 (1) The name of each person or entity;
- 6 (2) The mailing address of each person or entity;
- 7 (3) The date of the most recent expense made to each person or entity; and
- 8 (4) The purpose or purposes for which the aggregated expenditure total was
9 disbursed to each person or entity; and
- 10 f. For each aggregated revenue from an individual which totals five thousand
11 dollars, adjusted for inflation, or more during the reporting period, the occupation,
12 employer, and principal place of business of the individual must be disclosed.

13 **SECTION 3. AMENDMENT.** Section 16.1-08.1-02.3 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **16.1-08.1-02.3. Pre-election, supplemental, and year-end campaign disclosure**
16 **statement requirements for candidates, candidate committees, multicandidate**
17 **committees, and nonstatewide political parties.**

- 18 1. Prior to the thirty-first day before a primary, general, or special election, a candidate or
19 candidate committee formed on behalf of the candidate, a multicandidate political
20 committee, or a political party other than a statewide political party soliciting or
21 accepting contributions shall file a campaign disclosure statement that includes all
22 contributions received from January first through the fortieth day before the election. A
23 candidate whose name is not on the ballot and who is not seeking election through
24 write-in votes, the candidate's candidate committee, and a political party that has not
25 endorsed or nominated any candidate in the election is not required to file a statement
26 under this subsection. The statement may be submitted for filing beginning on the
27 thirty-ninth day before the election. The statement must include:
- 28 a. For each aggregated contribution from a contributor which totals in excess of two
29 hundred dollars, adjusted for inflation, received during the reporting period:
- 30 (1) The name and mailing address of the contributor;
- 31 (2) The total amount of the contribution; and

- 1 (3) The date the last contributed amount was received;
- 2 b. The total of all aggregated contributions from contributors which total in excess of
- 3 two hundred dollars, adjusted for inflation, during the reporting period;
- 4 c. The total of all contributions received from contributors that contributed two
- 5 hundred dollars, adjusted for inflation, or less each during the reporting period;
- 6 and
- 7 d. For a statewide candidate, a candidate committee formed on behalf of a
- 8 statewide candidate, and a statewide multicandidate committee, the balance of
- 9 the campaign fund on the fortieth day before the election and the balance of the
- 10 campaign fund on January first.
- 11 2. Beginning on the thirty-ninth day before the election through the day before the
- 12 election, a person that files a statement under subsection 1 must file a supplemental
- 13 statement within forty-eight hours of the start of the day following the receipt of a
- 14 contribution or aggregate contribution from a contributor which is in excess of five
- 15 hundred dollars, adjusted for inflation. The statement must include:
- 16 a. The name and mailing address of the contributor;
- 17 b. The total amount of the contribution received during the reporting period; and
- 18 c. The date the last contributed amount was received.
- 19 3. Prior to February first, a candidate or candidate committee, a multicandidate political
- 20 committee, or a nonstatewide political party soliciting or accepting contributions shall
- 21 file a campaign disclosure statement that includes all contributions received and
- 22 expenditures, by expenditure category, made from January first through December
- 23 thirty-first of the previous year. The statement may be submitted for filing beginning on
- 24 January first. The statement must include:
- 25 a. For a statewide candidate, a candidate committee formed on behalf of a
- 26 statewide candidate, and a statewide multicandidate committee, the balance of
- 27 the campaign fund on January first and on December thirty-first;
- 28 b. For each aggregated contribution from a contributor which totals in excess of two
- 29 hundred dollars, adjusted for inflation, received during the reporting period:
- 30 (1) The name and mailing address of the contributor;
- 31 (2) The total amount of the contribution; and

- 1 (3) The date the last contributed amount was received;
- 2 c. The total of all aggregated contributions from contributors which total in excess of
- 3 two hundred dollars, adjusted for inflation, during the reporting period;
- 4 d. The total of all contributions received from contributors that contributed two
- 5 hundred dollars, adjusted for inflation, or less each during the reporting period;
- 6 and
- 7 e. The total of all other expenditures made during the previous year, separated into
- 8 expenditure categories.
- 9 4. A person required to file a statement under this section, other than a candidate for
- 10 judicial office, county office, or city office, or a candidate committee for a candidate
- 11 exempted under this subsection, shall report each aggregated contribution from a
- 12 contributor which totals five thousand dollars, adjusted for inflation, or more during the
- 13 reporting period. For these contributions from individuals, the statement must include
- 14 the contributor's occupation, employer, and the employer's principal place of business.
- 15 5. A candidate for city office in a city with a population under five thousand and a
- 16 candidate committee for the candidate are exempt from this section.
- 17 6. A candidate for county office and a candidate committee for a candidate for county
- 18 office shall file statements under this chapter with the county auditor. A candidate for
- 19 city office who is required to file a statement under this chapter and a candidate
- 20 committee for such a candidate shall file statements with the city auditor. Any other
- 21 person required to file a statement under this section shall file the statement with the
- 22 secretary of state.
- 23 7. The filing officer shall assess and collect fees for any reports filed after the filing
- 24 deadline.
- 25 8. To ensure accurate reporting and avoid commingling of campaign and personal funds,
- 26 candidates shall use dedicated campaign accounts that are separate from any
- 27 personal accounts.

28 **SECTION 4. AMENDMENT.** Section 16.1-08.1-02.4 of the North Dakota Century Code is
29 amended and reenacted as follows:

**16.1-08.1-02.4. Pre-election, supplemental, and year-end campaign disclosure
statement requirements for statewide political parties and certain political committees.**

1. Prior to the thirty-first day before a primary, general, or special election, a statewide political party or a political committee not required to file statements under section 16.1-08.1-02.3 which is soliciting or accepting contributions shall file a campaign disclosure statement that includes all contributions received and expenditures made from January first through the fortieth day before the election. A political party that has not endorsed or nominated a candidate in an election is not required to file a statement under this subsection. A statement required to be filed under this subsection may be submitted for filing beginning on the thirty-ninth day before the election. The statement must include:

a. For each aggregated contribution from a contributor which totals in excess of two hundred dollars, adjusted for inflation, received during the reporting period:

- (1) The name and mailing address of the contributor;
- (2) The total amount of the contribution; and
- (3) The date the last contributed amount was received;

b. The total of all aggregated contributions from contributors which total in excess of two hundred dollars, adjusted for inflation, during the reporting period;

c. The total of all contributions received from contributors that contributed two hundred dollars, adjusted for inflation, or less each during the reporting period;

d. For each recipient of an expenditure from campaign funds in excess of two hundred dollars, adjusted for inflation, in the aggregate:

- (1) The name and mailing address of the recipient;
- (2) The total amount of the expenditure made to the recipient; and
- (3) The date the last expended amount was made to the recipient;

e. The aggregate total of all expenditures from campaign funds in excess of two hundred dollars, adjusted for inflation;

f. The aggregate total of all expenditures from campaign funds of two hundred dollars, adjusted for inflation, or less; and

g. The balance of the campaign fund on the fortieth day before the election and balance of the campaign fund on January first.

- 1 2. Beginning on the thirty-ninth day before the election through the day before the
- 2 election, a person that files a statement under subsection 1 must file a supplemental
- 3 statement within forty-eight hours of the start of the day following the receipt of a
- 4 contribution or aggregate contribution from a contributor which is in excess of five
- 5 hundred dollars, adjusted for inflation. The statement must include:
- 6 a. The name and mailing address of the contributor;
- 7 b. The total amount of the contribution received during the reporting period; and
- 8 c. The date the last contributed amount was received.
- 9 3. Prior to February first, a statewide political party or a political committee that is not
- 10 required to file a statement under section 16.1-08.1-2.3 shall file a campaign
- 11 disclosure statement that includes all contributions received and expenditures made
- 12 from January first through December thirty-first of the previous year. The statement
- 13 may be submitted for filing beginning on January first. The statement must include:
- 14 a. For each aggregated contribution from a contributor which totals in excess of two
- 15 hundred dollars, adjusted for inflation, received during the reporting period:
- 16 (1) The name and mailing address of the contributor;
- 17 (2) The total amount of the contribution; and
- 18 (3) The date the last contributed amount was received;
- 19 b. The total of all aggregated contributions from contributors which total in excess of
- 20 two hundred dollars, adjusted for inflation, during the reporting period;
- 21 c. The total of all contributions received from contributors that contributed two
- 22 hundred dollars, adjusted for inflation, or less each during the reporting period;
- 23 d. For each recipient of an expenditure from campaign funds in excess of two
- 24 hundred dollars, adjusted for inflation, in the aggregate:
- 25 (1) The name and mailing address of the recipient;
- 26 (2) The total amount of the expenditure made to the recipient; and
- 27 (3) The date the last expended amount was made to the recipient;
- 28 e. The aggregate total of all expenditures from campaign funds in excess of two
- 29 hundred dollars, adjusted for inflation;
- 30 f. The aggregate total of all expenditures from campaign funds of two hundred
- 31 dollars, adjusted for inflation, or less; and

- 1 g. The balance of the campaign fund on January first and December thirty-first.
- 2 4. A person required to file a statement under this section shall disclose each aggregated
- 3 contribution from a contributor which totals five thousand dollars, adjusted for inflation,
- 4 or more during the reporting period. For these contributions from individuals, the
- 5 statement must include the contributor's occupation, employer, and the employer's
- 6 principal place of business.
- 7 5. Statements under this section must be filed with the secretary of state.
- 8 6. The secretary of state shall assess and collect fees for any reports filed after the filing
- 9 deadline.

10 **SECTION 5. AMENDMENT.** Section 16.1-08.1-03.1 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **16.1-08.1-03.1. Special requirements for statements required of persons engaged in**
13 **activities regarding ballot measures.**

- 14 1. For each reportable contribution and expenditure under section 16.1-08.1-02.4, the
- 15 threshold for reporting is one hundred dollars, adjusted for inflation, for any person
- 16 engaged in activities described in subdivision e of subsection ~~4314~~ of section
- 17 16.1-08.1-01.
- 18 2. For contributions received from an out-of-state contributor, a person engaged in
- 19 activities described in subdivision e of subsection ~~4314~~ of section 16.1-08.1-01 shall
- 20 include the following information regarding each subcontributor that has stated a
- 21 contribution is for the express purpose of furthering the passage or defeat of a ballot
- 22 measure in the statements required under section 16.1-08.1-02.4:
 - 23 a. A designation as to whether any person contributed in excess of one hundred
 - 24 dollars, adjusted for inflation, of the total contribution;
 - 25 b. The name and mailing address of each subcontributor that contributed in excess
 - 26 of one hundred dollars, adjusted for inflation, of the total contribution;
 - 27 c. The contribution amounts of each disclosed subcontributor; and
 - 28 d. The occupation, employer, and address for the employer's principal place of
 - 29 business of each disclosed subcontributor.
- 30 3. An initiative and referendum sponsoring committee also shall file a disclosure
- 31 statement by the date the secretary of state approves the petition for circulation, and

1 shall file an additional statement on the date the petitions containing the required
2 number of signatures are submitted to the secretary of state for review. The
3 statements required under this subsection must be in the same form as the year-end
4 statements under section 16.1-08.1-02.4.

5 4. A sponsoring committee shall file a statement regarding its intent to compensate
6 circulators before paying for petitions to be circulated.

7 **SECTION 6. AMENDMENT.** Section 16.1-08.1-04.1 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **16.1-08.1-04.1. Personal use of contributions prohibited.**

10 1. A candidate may not use any contribution received by the candidate, the candidate's
11 candidate committee, or a multicandidate political committee to:

12 1- a. Give a personal benefit to the candidate or another person;

13 2- b. Make a loan to another person;

14 3- c. Knowingly pay more than the fair market value for goods or services purchased
15 for the campaign; or

16 4- d. Pay a criminal fine or civil penalty.

17 2. For the first violation, the secretary of state shall ~~impose a fine~~ assess a civil penalty of
18 five hundred dollars upon any person who knowingly violates this section. The
19 assessment of a civil penalty may be appealed to the district court of Burleigh County.
20 For a second and subsequent knowing violation of this section, the person is guilty of
21 ~~a class A misdemeanor~~ an infraction.

22 **SECTION 7.** A new section to chapter 16.1-08.1 of the North Dakota Century Code is
23 created and enacted as follows:

24 **Ultimate and true source of funds - Required identification - Penalty.**

25 1. In any report under this chapter which requires the identification of a contributor or
26 subcontributor, the ultimate and true source of funds must be identified.

27 2. A resident taxpayer may ~~file a claim~~ commence an action in a district court of this state
28 ~~with competent jurisdiction~~ against a person required to comply with this section to
29 compel compliance if all other enforcement measures under this chapter have been
30 exhausted and the taxpayer reasonably believes the person ~~remains in violation of~~ has

1 failed to comply with this section. A ~~violation of~~ failure to comply with this section must
2 be proved by clear and convincing evidence.

3 ~~SECTION 8. A new section to chapter 16.1-08.1 of the North Dakota Century Code is~~
4 ~~created and enacted as follows:~~

5 ~~Prohibition on acting as conduit - Penalty.~~

6 ~~A lobbyist may not act as a conduit unless the lobbyist is delivering a campaign contribution~~
7 ~~to the lobbyist's campaign or the campaign of the lobbyist's family member. For a first violation,~~
8 ~~the secretary of state shall impose a fine of one hundred dollars upon any person who violates~~
9 ~~this section. For a second and subsequent violation of this section, the person is guilty of an~~
10 ~~infraction.~~

11 **SECTION 8. AMENDMENT.** Section 28-32-01 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **28-32-01. Definitions.**

14 In this chapter, unless the context or subject matter otherwise provides:

15 1. "Adjudicative proceeding" means an administrative matter resulting in an agency
16 issuing an order after an opportunity for hearing is provided or required. An
17 adjudicative proceeding includes administrative matters involving a hearing on a
18 complaint against a specific-named respondent; a hearing on an application seeking a
19 right, privilege, or an authorization from an agency, such as a ratemaking or licensing
20 hearing; or a hearing on an appeal to an agency. An adjudicative proceeding includes
21 reconsideration, rehearing, or reopening. Once an adjudicative proceeding has begun,
22 the adjudicative proceeding includes any informal disposition of the administrative
23 matter under section 28-32-22 or another specific statute or rule, unless the matter
24 has been specifically converted to another type of proceeding under section 28-32-22.
25 An adjudicative proceeding does not include a decision or order to file or not to file a
26 complaint, or to initiate an investigation, an adjudicative proceeding, or any other
27 proceeding before the agency, or another agency, or a court. An adjudicative
28 proceeding does not include a decision or order to issue, reconsider, or reopen an
29 order that precedes an opportunity for hearing or that under another section of this
30 code is not subject to review in an adjudicative proceeding. An adjudicative proceeding
31 does not include rulemaking under this chapter.

- 1 2. "Administrative agency" or "agency" means each board, bureau, commission,
2 department, or other administrative unit of the executive branch of state government,
3 including one or more officers, employees, or other persons directly or indirectly
4 purporting to act on behalf or under authority of the agency. An administrative unit
5 located within or subordinate to an administrative agency must be treated as part of
6 that agency to the extent it purports to exercise authority subject to this chapter. The
7 term administrative agency does not include:
- 8 a. The office of management and budget except with respect to rules made under
9 section 32-12.2-14, rules relating to conduct on the capitol grounds and in
10 buildings located on the capitol grounds under section 54-21-18, rules relating to
11 the classified service as authorized under section 54-44.3-07, and rules relating
12 to state purchasing practices as required under section 54-44.4-04.
- 13 b. The adjutant general with respect to the department of emergency services.
- 14 c. The council on the arts.
- 15 d. The state auditor.
- 16 e. The department of commerce with respect to the division of economic
17 development and finance.
- 18 f. The dairy promotion commission.
- 19 g. The education factfinding commission.
- 20 h. The educational technology council.
- 21 i. The board of equalization.
- 22 j. The board of higher education.
- 23 k. The Indian affairs commission.
- 24 l. The industrial commission with respect to the activities of the Bank of North
25 Dakota, North Dakota housing finance agency, public finance authority, North
26 Dakota mill and elevator association, North Dakota farm finance agency, the
27 North Dakota transmission authority, and the North Dakota pipeline authority.
- 28 m. The department of corrections and rehabilitation except with respect to the
29 activities of the division of adult services under chapter 54-23.4.
- 30 n. The pardon advisory board.
- 31 o. The parks and recreation department.

- 1 p. The parole board.
- 2 q. The state fair association.
- 3 r. The attorney general with respect to activities of the state toxicologist and the
- 4 state crime laboratory.
- 5 s. The administrative committee on veterans' affairs except with respect to rules
- 6 relating to the supervision and government of the veterans' home and the
- 7 implementation of programs or services provided by the veterans' home.
- 8 t. The industrial commission with respect to the lignite research fund except as
- 9 required under section 57-61-01.5.
- 10 u. The attorney general with respect to guidelines adopted under section 12.1-32-15
- 11 for the risk assessment of sexual offenders, the risk level review process, and
- 12 public disclosure of information under section 12.1-32-15.
- 13 v. The commission on legal counsel for indigents.
- 14 w. The attorney general with respect to twenty-four seven sobriety program
- 15 guidelines and program fees.
- 16 x. The industrial commission with respect to approving or setting water rates under
- 17 chapter 61-40.
- 18 3. "Agency head" means an individual or body of individuals in whom the ultimate legal
- 19 authority of the agency is vested by law.
- 20 4. "Commission" means the North Dakota ethics commission established by article XIV
- 21 of the Constitution of North Dakota.
- 22 5. "Complainant" means any person who files a complaint before an administrative
- 23 agency pursuant to section 28-32-21 and any administrative agency that, when
- 24 authorized by law, files such a complaint before such agency or any other agency.
- 25 5-6. "Hearing officer" means any agency head or one or more members of the agency
- 26 head when presiding in an administrative proceeding, or, unless prohibited by law, one
- 27 or more other persons designated by the agency head to preside in an administrative
- 28 proceeding, an administrative law judge from the office of administrative hearings, or
- 29 any other person duly assigned, appointed, or designated to preside in an
- 30 administrative proceeding pursuant to statute or rule.

- 1 ~~6-7.~~ "License" means a franchise, permit, certification, approval, registration, charter, or
2 similar form of authorization required by law.
- 3 ~~7-8.~~ "Order" means any agency action of particular applicability which determines the legal
4 rights, duties, privileges, immunities, or other legal interests of one or more specific
5 persons. The term does not include an executive order issued by the governor.
- 6 ~~8-9.~~ "Party" means each person named or admitted as a party or properly seeking and
7 entitled as of right to be admitted as a party. An administrative agency may be a party.
8 In a hearing for the suspension, revocation, or disqualification of an operator's license
9 under title 39, the term may include each city and each county in which the alleged
10 conduct occurred, but the city or county may not appeal the decision of the hearing
11 officer.
- 12 ~~9-10.~~ "Person" includes an individual, association, partnership, corporation, limited liability
13 company, the commission, a state governmental agency or governmental subdivision,
14 or an agency of such governmental subdivision.
- 15 ~~10-11.~~ "Relevant evidence" means evidence having any tendency to make the existence of
16 any fact that is of consequence to the determination of the administrative action more
17 probable or less probable than it would be without the evidence.
- 18 ~~11-12.~~ "Rule" means the whole or a part of an agency or commission statement of general
19 applicability which implements or prescribes law or policy or the organization,
20 procedure, or practice requirements of the agency or commission. The term includes
21 the adoption of new rules and the amendment, repeal, or suspension of an existing
22 rule. The term does not include:
- 23 a. A rule concerning only the internal management of an agency or the commission
24 which does not directly or substantially affect the substantive or procedural rights
25 or duties of any segment of the public.
- 26 b. A rule that sets forth criteria or guidelines to be used by the staff of an agency or
27 the commission in the performance of audits, investigations, inspections, and
28 settling commercial disputes or negotiating commercial arrangements, or in the
29 defense, prosecution, or settlement of cases, if the disclosure of the
30 ~~statement~~rule would:
- 31 (1) Enable law violators to avoid detection;

- 1 (2) Facilitate disregard of requirements imposed by law; or
- 2 (3) Give a clearly improper advantage to persons who are in an adverse
- 3 position to the state.
- 4 c. A rule establishing specific prices to be charged for particular goods or services
- 5 sold by an agency.
- 6 d. A rule concerning only the physical servicing, maintenance, or care of
- 7 agency-owned ~~or~~ agency-operated, commission-owned, or
- 8 commission-operated facilities or property.
- 9 e. A rule relating only to the use of a particular facility or property owned, operated,
- 10 or maintained by the state or any of its subdivisions, if the substance of the rule is
- 11 adequately indicated by means of signs or signals to persons who use the facility
- 12 or property.
- 13 f. A rule concerning only inmates of a correctional or detention facility, students
- 14 enrolled in an educational institution, or patients admitted to a hospital, if adopted
- 15 by that facility, institution, or hospital.
- 16 g. A form whose contents or substantive requirements are prescribed by rule or
- 17 statute or are instructions for the execution or use of the form.
- 18 h. An agency or commission budget.
- 19 i. An opinion of the attorney general.
- 20 j. A rule adopted by an agency selection committee under section 54-44.7-03.
- 21 k. Any material, including a guideline, interpretive statement, statement of general
- 22 policy, manual, brochure, or pamphlet, which is explanatory and not intended to
- 23 have the force and effect of law.

24 **SECTION 9. AMENDMENT.** Section 28-32-02 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **28-32-02. Rulemaking ~~power of agency authority~~ - Organizational rule.**

- 27 1. The authority of an administrative agency to adopt administrative rules is authority
- 28 delegated by the legislative assembly. As part of that delegation, the legislative
- 29 assembly reserves to itself the authority to determine when and if rules of
- 30 administrative agencies are effective. Every administrative agency may adopt, amend,

1 or repeal reasonable rules in conformity with this chapter and any statute administered
2 or enforced by the agency.

3 2. In addition to other rulemaking requirements imposed by law, each agency may
4 include in its rules a description of that portion of its organization and functions subject
5 to this chapter and may include a statement of the general course and method of its
6 operations and how the public may obtain information or make submissions or
7 requests.

8 3. The authority of the commission to adopt rules arises from article XIV of the
9 Constitution of North Dakota. The commission shall follow the process, and meet the
10 requirements, as specified in this chapter to adopt, amend, or repeal its rules.

11 **SECTION 10. AMENDMENT.** Section 28-32-03 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **28-32-03. Emergency rules.**

14 1. If the commission or an agency, with the approval of the governor, finds that
15 emergency rulemaking is necessary, the commission or agency may declare the
16 proposed rule to be an interim final rule effective on a date no earlier than the date of
17 filing with the legislative council of the notice required by section 28-32-10.

18 2. A proposed rule may be given effect on an emergency basis under this section if any
19 of the following grounds exists regarding that rule:

20 a. Imminent peril threatens public health, safety, or welfare, which would be abated
21 by emergency effectiveness;

22 b. A delay in the effective date of the rule is likely to cause a loss of funds
23 appropriated to support a duty imposed by law upon the commission or agency;

24 c. Emergency effectiveness is reasonably necessary to avoid a delay in
25 implementing an appropriations measure; or

26 d. Emergency effectiveness is necessary to meet a mandate of federal law.

27 3. A final rule adopted after consideration of all written and oral submissions respecting
28 the interim final rule, which is substantially similar to the interim final rule, is effective
29 as of the declared effective date of the interim final rule.

- 1 4. The commission's or agency's finding, and a brief statement of the commission's or
2 agency's reasons for the finding, must be filed with the legislative council with the final
3 adopted emergency rule.
- 4 5. The commission or agency shall attempt to make interim final rules known to persons
5 who the commission or agency can reasonably be expected to believe may have a
6 substantial interest in them. As used in this subsection, "substantial interest" means an
7 interest in the effect of the rules which surpasses the common interest of all citizens.
- 8 ~~An~~The commission or an agency adopting emergency rules shall comply with the
9 notice requirements of section 28-32-10 which relate to emergency rules and shall
10 provide notice to the chairman of the administrative rules committee of the emergency
11 status, declared effective date, and grounds for emergency status of the rules under
12 subsection 2. When notice of emergency rule adoption is received, the legislative
13 council shall publish the notice and emergency rules on its website.
- 14 6. An interim final rule is ineffective one hundred eighty days after its declared effective
15 date unless first adopted as a final rule.

16 **SECTION 11. AMENDMENT.** Section 28-32-06 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **28-32-06. Force and effect of rules.**

19 Upon becoming effective, rules have the force and effect of law until amended or repealed
20 by the agency or commission, declared invalid by a final court decision, suspended or found to
21 be void by the administrative rules committee, or determined repealed by the legislative council
22 because the authority for adoption of the rules is repealed or transferred to another agency, or
23 the Constitution of North Dakota is amended to eliminate the authority.

24 **SECTION 12. AMENDMENT.** Section 28-32-07 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **28-32-07. Deadline for rules to implement statutory change.**

27 Any rule change, including a creation, amendment, or repeal, made to implement a
28 statutory change must be adopted and filed with the legislative council within nine months of the
29 effective date of the statutory change. If an agency or the commission needs additional time for
30 the rule change, a request for additional time must be made to the legislative council. The
31 legislative council may extend the time within which the agency or commission must adopt the

1 rule change if the request by the agency or commission is supported by evidence that the
2 agency or commission needs more time through no deliberate fault of its own.

3 **SECTION 13. AMENDMENT.** Section 28-32-08 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **28-32-08. Regulatory analysis.**

- 6 1. An agency or the commission shall issue a regulatory analysis of a proposed rule if:
- 7 a. Within twenty days after the last published notice date of a proposed rule
8 hearing, a written request for the analysis is filed by the governor or a member of
9 the legislative assembly; or
- 10 b. The proposed rule is expected to have an impact on the regulated community in
11 excess of fifty thousand dollars. The analysis under this subdivision must be
12 available on or before the first date of public notice as provided for in section
13 28-32-10.
- 14 2. The regulatory analysis must contain:
- 15 a. A description of the classes of persons who probably will be affected by the
16 proposed rule, including classes that will bear the costs of the proposed rule and
17 classes that will benefit from the proposed rule;
- 18 b. A description of the probable impact, including economic impact, of the proposed
19 rule;
- 20 c. The probable costs to the agency or commission of the implementation and
21 enforcement of the proposed rule and any anticipated effect on state revenues;
22 and
- 23 d. A description of any alternative methods for achieving the purpose of the
24 proposed rule that were seriously considered by the agency or commission and
25 the reasons why the methods were rejected in favor of the proposed rule.
- 26 3. Each regulatory analysis must include quantification of the data to the extent
27 practicable.
- 28 4. The agency or commission shall mail or deliver a copy of the regulatory analysis to
29 any person who requests a copy of the regulatory analysis. The agency or commission
30 may charge a fee for a copy of the regulatory analysis as allowed under section
31 44-04-18.

- 1 5. If required under subsection 1, the preparation and issuance of a regulatory analysis is
2 a mandatory duty of the agency or commission proposing a rule. Errors in a regulatory
3 analysis, including erroneous determinations concerning the impact of the proposed
4 rule on the regulated community, are not a ground upon which the invalidity of a rule
5 may be asserted or declared.

6 **SECTION 14. AMENDMENT.** Section 28-32-08.1 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **28-32-08.1. Rules affecting small entities - Analysis - Economic impact statements -**
9 **Judicial review.**

- 10 1. As used in this section:
- 11 a. "Small business" means a business entity, including its affiliates, which:
- 12 (1) Is independently owned and operated; and
- 13 (2) Employs fewer than twenty-five full-time employees or has gross annual
- 14 sales of less than two million five hundred thousand dollars;
- 15 b. "Small entity" includes small business, small organization, and small political
- 16 subdivision;
- 17 c. "Small organization" means any not-for-profit enterprise that is independently
- 18 owned and operated and is not dominant in its field; and
- 19 d. "Small political subdivision" means a political subdivision with a population of less
- 20 than five thousand.
- 21 2. Before adoption of any proposed rule, the adopting agency or the commission shall
- 22 prepare a regulatory analysis in which, consistent with public health, safety, and
- 23 welfare, the agency or commission considers utilizing regulatory methods that will
- 24 accomplish the objectives of applicable statutes while minimizing adverse impact on
- 25 small entities. The agency or commission shall consider each of the following methods
- 26 of reducing impact of the proposed rule on small entities:
- 27 a. Establishment of less stringent compliance or reporting requirements for small
- 28 entities;
- 29 b. Establishment of less stringent schedules or deadlines for compliance or
- 30 reporting requirements for small entities;

- 1 c. Consolidation or simplification of compliance or reporting requirements for small
- 2 entities;
- 3 d. Establishment of performance standards for small entities to replace design or
- 4 operational standards required in the proposed rule; and
- 5 e. Exemption of small entities from all or any part of the requirements contained in
- 6 the proposed rule.
- 7 3. Before adoption of any proposed rule that may have an adverse impact on small
- 8 entities, the adopting agency or the commission shall prepare an economic impact
- 9 statement that includes consideration of:
- 10 a. The small entities subject to the proposed rule;
- 11 b. The administrative and other costs required for compliance with the proposed
- 12 rule;
- 13 c. The probable cost and benefit to private persons and consumers who are
- 14 affected by the proposed rule;
- 15 d. The probable effect of the proposed rule on state revenues; and
- 16 e. Any less intrusive or less costly alternative methods of achieving the purpose of
- 17 the proposed rule.
- 18 4. For any rule subject to this section, a small entity that is adversely affected or
- 19 aggrieved by final agency or commission action is entitled to judicial review of agency
- 20 or commission compliance with the requirements of this section. A small entity seeking
- 21 judicial review under this section must file a petition for judicial review within one year
- 22 from the date of final agency or commission action.
- 23 5. This section does not apply to any agency that is an occupational or professional
- 24 licensing authority, nor does this section apply to the following agencies or divisions of
- 25 agencies:
- 26 a. Council on the arts.
- 27 b. Beef commission.
- 28 c. Dairy promotion commission.
- 29 d. Dry bean council.
- 30 e. Highway patrolmen's retirement board.
- 31 f. Indian affairs commission.

- 1 g. Board for Indian scholarships.
- 2 h. State personnel board.
- 3 i. Potato council.
- 4 j. Board of public school education.
- 5 k. Real estate trust account committee.
- 6 l. Seed commission.
- 7 m. Soil conservation committee.
- 8 n. Oilseed council.
- 9 o. Wheat commission.
- 10 p. State seed arbitration board.
- 11 q. North Dakota lottery.

- 12 6. This section does not apply to rules mandated by federal law.
- 13 7. The adopting agency or the commission shall provide the administrative rules
- 14 committee copies of any regulatory analysis or economic impact statement, or both,
- 15 prepared under this section when the committee is considering the associated rules.

16 **SECTION 15. AMENDMENT.** Section 28-32-08.2 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **28-32-08.2. Fiscal notes for administrative rules.**

19 When an agency or the commission presents rules for administrative rules committee
20 consideration, the agency or commission shall provide a fiscal note or a statement in its
21 testimony that the rules have no fiscal effect. A fiscal note must reflect the effect of the rules
22 changes on state revenues and expenditures, including any effect on funds controlled by the
23 agency or commission.

24 **SECTION 16. AMENDMENT.** Section 28-32-09 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **28-32-09. Takings assessment.**

- 27 1. An agency or the commission shall prepare a written assessment of the constitutional
- 28 takings implications of a proposed rule that may limit the use of private real property.
- 29 The ~~agency's~~ assessment must:
- 30 a. Assess the likelihood that the proposed rule may result in a taking or regulatory
- 31 taking.

- 1 b. Clearly and specifically identify the purpose of the proposed rule.
- 2 c. Explain why the proposed rule is necessary to substantially advance that purpose
- 3 and why no alternative action is available that would achieve the agency's or
- 4 commission's goals while reducing the impact on private property owners.
- 5 d. Estimate the potential cost to the government if a court determines that the
- 6 proposed rule constitutes a taking or regulatory taking.
- 7 e. Identify the source of payment within the agency's or commission's budget for
- 8 any compensation that may be ordered.
- 9 f. Certify that the benefits of the proposed rule exceed the estimated compensation
- 10 costs.
- 11 2. Any private landowner who is or may be affected by a rule that limits the use of the
- 12 landowner's private real property may request in writing that the agency or
- 13 commission reconsider the application or need for the rule. Within thirty days of
- 14 receiving the request, the agency or commission shall consider the request and shall
- 15 in writing inform the landowner whether the agency or commission intends to keep the
- 16 rule in place, modify application of the rule, or repeal the rule.
- 17 3. In an ~~agency's~~ analysis of the takings implications of a proposed rule, "taking" means
- 18 the taking of private real property, as defined in section 47-01-03, by government
- 19 action which requires compensation to the owner of that property by the fifth or
- 20 fourteenth amendment to the Constitution of the United States or section 16 of article I
- 21 of the Constitution of North Dakota. "Regulatory taking" means a taking of real
- 22 property through the exercise of the police and regulatory powers of the state which
- 23 reduces the value of the real property by more than fifty percent. However, the
- 24 exercise of a police or regulatory power does not effect a taking if it substantially
- 25 advances legitimate state interests, does not deny an owner economically viable use
- 26 of the owner's land, or is in accordance with applicable state or federal law.

27 **SECTION 17. AMENDMENT.** Section 28-32-10 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **28-32-10. Notice of rulemaking - Hearing date.**

- 30 1. An agency or the commission shall prepare a full notice and an abbreviated notice of
- 31 rulemaking.

- 1 a. The ~~agency's~~ full notice of the proposed adoption, amendment, or repeal of a rule
2 must include a short, specific explanation of the proposed rule and the purpose of
3 the proposed rule, identify the emergency status and declared effective date of
4 any emergency rules, include a determination of whether the proposed
5 rulemaking is expected to have an impact on the regulated community in excess
6 of fifty thousand dollars, identify at least one location where interested persons
7 may review the text of the proposed rule, provide the address to which written
8 comments concerning the proposed rule may be sent, provide the deadline for
9 submission of written comments, provide a telephone number and post-office or
10 electronic mail address at which a copy of the rules and regulatory analysis may
11 be requested, and, in the case of a substantive rule, provide the time and place
12 set for each oral hearing. ~~The~~An agency's full notice must include a statement of
13 the bill number and general subject matter of any legislation, enacted during the
14 most recent session of the legislative assembly, which is being implemented by
15 the proposed rule. The commission's full notice must include a statement of the
16 provision of the Constitution of North Dakota or the bill number and general
17 subject matter of any legislation enacted during the most recent session of the
18 legislative assembly which is being implemented by the proposed rule. The
19 ~~agency's~~ full notice must be filed with the legislative council, accompanied by a
20 copy of the proposed rules.
- 21 b. The agency or commission shall request publication of an abbreviated
22 newspaper publication notice at least once in each official county newspaper
23 published in this state. The abbreviated newspaper publication of notice must be
24 in a display-type format with a minimum width of one column of approximately
25 two inches [5.08 centimeters] and a minimum depth of approximately three
26 inches [7.62 centimeters] and with a headline describing the general topic of the
27 proposed rules. The notice must also include the telephone number or address to
28 use to obtain a copy of the proposed rules, identification of the emergency status
29 and declared effective date of any emergency rules, the address to use and the
30 deadline to submit written comments, and the location, date, and time of the
31 public hearing on the rules.

- 1 2. The agency or commission shall mail or deliver by electronic mail a copy of the
2 ~~agency's~~ full notice and proposed rule to each member of the legislative assembly
3 whose name appeared as a sponsor or cosponsor of legislation, enacted during the
4 most recent session of the legislative assembly, which is being implemented by the
5 proposed rule and to each person who has made a timely request to the agency or
6 commission for a copy of the notice and proposed rule. The agency or commission
7 may mail or otherwise provide a copy of the ~~agency's~~ full notice to any person who is
8 likely to be an interested person. The agency or commission may charge persons who
9 are not members of the legislative assembly fees for copies of the proposed rule as
10 allowed under section 44-04-18.
- 11 3. In addition to the other notice requirements of this subsection, the superintendent of
12 public instruction shall provide notice of any proposed rulemaking by the
13 superintendent of public instruction to each association with statewide membership
14 whose primary focus is elementary and secondary education issues which has
15 requested to receive notice from the superintendent under this subsection and to the
16 superintendent of each public school district in this state, or the president of the school
17 board for school districts that have no superintendent, at least twenty days before the
18 date of the hearing described in the notice. Notice provided by the superintendent of
19 public instruction under this section must be by first-class mail. However, upon request
20 of a group or person entitled to notice under this section, the superintendent of public
21 instruction shall provide the group or person notice by electronic mail.
- 22 4. The legislative council shall establish standard procedures for the commission and all
23 agencies to follow in complying with the provisions of this section and a procedure to
24 allow any person to request and receive mailed copies of all filings made by agencies
25 and the commission pursuant to this section. The legislative council may charge an
26 annual fee as established by the administrative rules committee for providing copies of
27 the filings.
- 28 5. At least twenty days must elapse between the date of the publication of the notice and
29 the date of the hearing. Within fifteen business days after receipt of a notice under this
30 section, a copy of the notice must be mailed by the legislative council to any person
31 who has paid the annual fee established under subsection 4.

1 **SECTION 18. AMENDMENT.** Section 28-32-11 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **28-32-11. Conduct of hearings - Notice of administrative rules committee**
4 **consideration - Consideration and written record of comments.**

5 The agency or commission shall adopt a procedure whereby all interested persons are
6 afforded reasonable opportunity to submit data, views, or arguments, orally or in writing,
7 concerning the proposed rule, including data respecting the impact of the proposed rule. The
8 agency or commission shall adopt a procedure to allow interested parties to request and
9 receive notice from the agency or commission of the date and place the rule will be reviewed by
10 the administrative rules committee. In case of substantive rules, the agency or commission shall
11 conduct an oral hearing. The agency or commission shall consider fully all written and oral
12 submissions respecting a proposed rule prior to the adoption, amendment, or repeal of any rule
13 not of an emergency nature. The agency or commission shall make a written record of its
14 consideration of all written and oral submissions contained in the rulemaking record respecting
15 a proposed rule.

16 **SECTION 19. AMENDMENT.** Section 28-32-12 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **28-32-12. Comment period.**

19 The agency or commission shall allow, after the conclusion of any rulemaking hearing, a
20 comment period of at least ten days during which data, views, or arguments concerning the
21 proposed rulemaking will be received by the agency or commission and made a part of the
22 rulemaking record to be considered by the agency or commission.

23 **SECTION 20. AMENDMENT.** Section 28-32-14 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **28-32-14. Attorney general review of rules.**

26 Every proposed rule ~~proposed by any administrative agency~~ must be submitted to the
27 attorney general for an opinion as to its legality before final adoption, and the attorney general
28 promptly shall furnish each ~~such~~ opinion. The attorney general may not approve any rule as to
29 legality, and shall advise the agency or commission of any necessary rewording or revision of
30 the rule, when the:

1. The rule exceeds the statutory authority of the agency, or the statutory or constitutional authority of the commission;
2. The rule is written in a manner that is not concise or easily understandable; or when the
3. The procedural requirements for adoption of the rule in this chapter are not substantially met. The attorney general shall advise an agency of any revision or rewording of a rule necessary to correct objections as to legality.

SECTION 21. AMENDMENT. Section 28-32-15 of the North Dakota Century Code is amended and reenacted as follows:

28-32-15. Filing of rules for publication - Effective date of rules.

1. A copy of each rule adopted by an administrative agency or the commission, a copy of each written comment and a written summary of each oral comment on the rule, and the attorney general's opinion on the rule must be filed by the adopting agency or commission with the legislative council for publication of the rule in the North Dakota Administrative Code.
2. a. Nonemergency rules approved by the attorney general as to legality, adopted by an administrative agency or the commission, ~~and~~ filed with the legislative council, and not voided or held for consideration by the administrative rules committee become effective according to the following schedule:
 - (1) Rules filed with the legislative council from August second through November first become effective on the immediately succeeding January first.
 - (2) Rules filed with the legislative council from November second through February first become effective on the immediately succeeding April first.
 - (3) Rules filed with the legislative council from February second through May first become effective on the immediately succeeding July first.
 - (4) Rules filed with the legislative council from May second through August first become effective on the immediately succeeding October first.
- b. If publication is delayed for any reason other than action of the administrative rules committee, nonemergency rules, unless otherwise provided, become effective when publication would have occurred but for the delay.

- 1 c. A rule held for consideration by the administrative rules committee becomes
2 effective on the first effective date of rules under the schedule in subdivision a
3 following the meeting at which that rule is reconsidered by the committee.

4 **SECTION 22. AMENDMENT.** Section 28-32-16 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **28-32-16. Petition for reconsideration of rule - Hearing by agency.**

7 Any person substantially interested in the effect of a rule adopted by an administrative
8 agency or the commission may petition ~~such~~ the agency or commission for a reconsideration of
9 ~~any such~~ the rule or for an amendment or repeal ~~thereof. Such~~ of the rule. The petition must
10 state clearly and concisely the petitioners' alleged grounds for ~~such~~ reconsideration or ~~for the~~
11 proposed repeal or amendment of ~~such~~ the rule. The agency or commission may grant the
12 petitioner a public hearing ~~upon such~~ on the terms and conditions as the agency ~~may~~
13 ~~prescribe~~ prescribes.

14 **SECTION 23. AMENDMENT.** Section 28-32-17 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **28-32-17. Administrative rules committee objection.**

17 If the legislative management's administrative rules committee objects to all or any portion
18 of a rule because the committee deems it to be unreasonable, arbitrary, capricious, or beyond
19 the authority delegated to the adopting agency or commission, the committee may file that
20 objection in certified form with the legislative council. The filed objection must contain a concise
21 statement of the committee's reasons for its action.

- 22 1. The legislative council shall attach to each objection a certification of the time and date
23 of its filing and, as soon as possible, shall transmit a copy of the objection and the
24 certification to the agency or commission adopting the rule in question. The legislative
25 council also shall maintain a permanent register of all committee objections.
- 26 2. The legislative council shall publish an objection filed pursuant to this section in
27 the next issue of the code supplement. In case of a filed committee objection to a rule
28 subject to the exceptions of the definition of rule in section 28-32-01, the agency or
29 commission shall indicate the existence of that objection adjacent to the rule in any
30 compilation containing that rule.

- 1 3. Within fourteen days after the filing of a committee objection to a rule, the adopting
2 agency or commission shall respond in writing to the committee. After receipt of the
3 response, the committee may withdraw or modify its objection.
- 4 4. After the filing of a committee objection, the burden of persuasion is upon the agency
5 or commission in any action for judicial review or for enforcement of the rule to
6 establish that the whole or portion ~~thereof~~ of the rule objected to is within the
7 procedural and substantive authority delegated to the agency or commission. If the
8 agency or commission fails to meet its burden of persuasion, the court shall declare
9 the whole or portion of the rule objected to invalid and judgment must be rendered
10 against the agency or commission for court costs. These court costs must include a
11 reasonable attorney's fee and must be payable from the appropriation of the agency or
12 commission which adopted the rule in question.

13 **SECTION 24. AMENDMENT.** Section 28-32-18 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **28-32-18. Administrative rules committee may void rule - Grounds - Amendment by**
16 **agreement of agency and committee.**

- 17 1. The legislative management's administrative rules committee may find that all or any
18 portion of a rule is void if that rule is initially considered by the committee not later than
19 the fifteenth day of the month before the date of the administrative code supplement in
20 which the rule change is scheduled to appear. The administrative rules committee may
21 find a rule or portion of a rule void if the committee makes the specific finding that, with
22 regard to that rule or portion of a rule, there is:
- 23 a. An absence of ~~statutory~~ authority under statute or the constitution.
 - 24 b. An emergency relating to public health, safety, or welfare.
 - 25 c. For rules proposed by an agency, a failure to comply with express legislative
26 intent or to substantially meet the procedural requirements of this chapter for
27 adoption of the rule.
 - 28 d. For rules proposed by the commission, a failure to substantially meet the
29 procedural requirements for this chapter for adoption of the rule.
 - 30 e. A conflict with state law.
 - 31 e-f. Arbitrariness and capriciousness.

- 1 f.g. A failure to make a written record of its consideration of written and oral
2 submissions respecting the rule under section 28-32-11.
- 3 2. The administrative rules committee may find a rule void at the meeting at which the
4 rule is initially considered by the committee or may hold consideration of that rule for
5 one subsequent meeting. If no representative of the agency or commission appears
6 before the administrative rules committee when rules are scheduled for committee
7 consideration, those rules are held over for consideration at the next subsequent
8 committee meeting. Rules are not considered initially considered by the committee
9 under this subsection until a representative of the agency or commission appears
10 before the administrative rules committee when the rules are scheduled for committee
11 consideration. If no representative of the agency or commission appears before the
12 administrative rules committee meeting to which rules are held over for consideration,
13 the rules are void if the rules were adopted as emergency rules and for rules not
14 adopted as emergency rules the administrative rules committee may void the rules,
15 allow the rules to become effective, or hold over consideration of the rules to the next
16 subsequent committee meeting. Within three business days after the administrative
17 rules committee finds that a rule is void, the legislative council shall provide written
18 notice of that finding and the committee's specific finding under subdivisions a through
19 f of subsection 1 to the adopting agency or commission and to the chairman of the
20 legislative management. Within fourteen days after receipt of the notice, the adopting
21 agency or commission may file a petition with the chairman of the legislative
22 management for review by the legislative management of the decision of the
23 administrative rules committee. If the adopting agency or commission does not file a
24 petition for review, the rule becomes void on the fifteenth day after the notice from the
25 legislative council to the adopting agency or commission. If within sixty days after
26 receipt of the petition from the adopting agency or commission the legislative
27 management has not disapproved by motion the finding of the administrative rules
28 committee, the rule is void.
- 29 3. An agency or the commission may amend or repeal a rule or create a related rule if,
30 after consideration of rules by the administrative rules committee, the agency or
31 commission and the committee agree ~~that~~ the rule amendment, repeal, or creation is

1 necessary to address any of the considerations under subsection 1. A rule amended,
2 repealed, or created under this subsection is not subject to the other requirements of
3 this chapter relating to adoption of administrative rules and may be published by the
4 legislative council as amended, repealed, or created. If requested by the agency,
5 commission, or any interested party, a rule amended, repealed, or created under this
6 subsection must be reconsidered by the administrative rules committee at a
7 subsequent meeting at which public comment on the agreed rule change must be
8 allowed.

9 **SECTION 25. AMENDMENT.** Section 28-32-18.1 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **28-32-18.1. Administrative rules committee review of existing administrative rules.**

- 12 1. Upon request by the administrative rules committee, an administrative agency or the
13 commission shall brief the committee on its existing ~~administrative~~ rules and point out
14 any provisions that appear to be obsolete and any areas in which statutory or
15 constitutional authority has changed or been repealed since the rules were adopted or
16 amended.
- 17 2. An agency or the commission may amend or repeal a rule without complying with the
18 other requirements of this chapter relating to adoption of ~~administrative~~ rules and may
19 resubmit the change to the legislative council for publication provided:
- 20 a. The agency or commission initiates the request to the administrative rules
21 committee for consideration of the amendment or repeal;
- 22 b. The agency or commission provides notice to the regulated community, in a
23 manner reasonably calculated to provide notice to those persons interested in the
24 rule, of the time and place the administrative rules committee will consider the
25 request for amendment or repeal of the rule; and
- 26 c. The agency or commission and the administrative rules committee agree
27 the rule amendment or repeal eliminates a provision that is obsolete or no longer
28 in compliance with law and that no detriment would result to the substantive
29 rights of the regulated community from the amendment or repeal.

30 **SECTION 26. AMENDMENT.** Subsection 2 of section 28-32-19 of the North Dakota
31 Century Code is amended and reenacted as follows:

2. The legislative council may prescribe ~~at the~~ format, style, and arrangement for rules which are to be published in the code and may refuse to accept the filing of any rule that is not in substantial compliance ~~therewith with the format, style, and arrangement.~~ In arranging rules for publication, the legislative council may make ~~such~~ corrections in spelling, grammatical construction, format, and punctuation of the rules as ~~determined the legislative council determines are~~ proper. The legislative council shall keep and maintain a permanent code of all rules filed, including superseded and repealed rules, which must be open to public inspection during office hours.

SECTION 27. AMENDMENT. Subsection 4 of section 28-32-19 of the North Dakota Century Code is amended and reenacted as follows:

4. The legislative council, with the consent of the adopting agency or commission, may omit from the code or code supplement any rule the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the rule in printed or duplicated form is made available on application to the agency or commission, and if the code or code supplement contains a notice stating the general subject matter of the omitted rule and ~~stating~~ how a copy may be obtained.

SECTION 28. AMENDMENT. Section 28-32-27 of the North Dakota Century Code is amended and reenacted as follows:

28-32-27. Hearing officer - Disqualification - Substitution.

1. Any person or persons presiding for the agency in an administrative proceeding must be referred to individually or collectively as hearing officer. Any person from the office of administrative hearings presiding for the agency as a hearing officer in an administrative proceeding must be referred to as an administrative law judge.

2. Any hearing officer is subject to disqualification for good cause shown ~~and shall self-disqualify in a proceeding in which a reasonable, disinterested observer would believe the hearing officer is biased due to:~~

~~a. A contribution by one of the parties supporting the hearing officer's most recent campaign for public office; or~~

~~b. An ownership interest, other than investment in a mutual fund, of the hearing officer in one of the parties to the proceeding if the ownership interest is not shared by the general public.~~

- 1 3. A hearing officer who is a director, officer, commissioner, head, or other executive of
2 an agency shall self-disqualify in a proceeding in which a reasonable, disinterested
3 observer would believe the hearing officer is biased due to:
4 a. A contribution by one of the parties supporting the hearing officer's most recent
5 campaign for public office; or
6 b. An ownership interest, other than investment in a mutual fund, of the hearing
7 officer in one of the parties to the proceeding if the ownership interest is not
8 shared by the general public.
9 4. Any party may petition for the disqualification of any person presiding as a hearing
10 officer upon discovering facts establishing grounds for disqualification.
11 ~~4.5.~~ A person whose disqualification is requested shall determine whether to grant the
12 petition, stating facts and reasons for the determination.
13 ~~5.6.~~ If a substitute is required for a person who is disqualified or becomes unavailable for
14 any other reason, the substitute may be appointed by:
15 a. The attorney general, if the disqualified or unavailable person is an assistant
16 attorney general;
17 b. The agency head, if the disqualified or unavailable person is one or more
18 members of the agency head or one or more other persons designated by the
19 agency head;
20 c. A supervising hearing officer, if the disqualified or unavailable person is a hearing
21 officer designated from an office, pool, panel, or division of hearing officers; or
22 d. The governor, in all other cases.
23 ~~6.7.~~ Any action taken by a duly appointed substitute for a disqualified or unavailable person
24 is as effective as if taken by the disqualified or unavailable person.
25 ~~7.8.~~ Any hearing officer in an administrative proceeding, from the time of appointment or
26 designation, may exercise any authority granted by law or rule. A hearing officer may
27 be designated to preside over the entire administrative proceeding and may issue
28 orders accordingly. A procedural hearing officer may only issue orders in regard to the
29 course and conduct of the hearing under statute or rule and to otherwise effect an
30 orderly hearing. If a procedural hearing officer is designated, the agency head must be

1 present at the hearing and the agency head shall issue findings of fact and
2 conclusions of law, as well as any order resulting from the hearing.
3 ~~8.9.~~ The North Dakota ethics commission shall ~~impose upon~~ assess any hearing officer
4 who knowingly violates ~~this section~~ subsection 3 a ~~fine of one~~ civil penalty of five
5 hundred dollars for the first violation. For a second and subsequent knowing violation
6 of this section, the hearing officer is guilty of an infraction.

7 **SECTION 29. AMENDMENT.** Section 28-32-47 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **28-32-47. Scope of and procedure on appeal from agency rulemaking.**

10 1. A judge of the district court shall review an appeal from an administrative agency's or
11 ethics commission's rulemaking action based only on the record filed with the court. If
12 an appellant requests documents to be included in the record but the agency or
13 commission does not include them, the court, upon application by the appellant, may
14 compel their inclusion. After a hearing, the filing of briefs, or other disposition of the
15 matter as the judge may reasonably require, the court shall affirm the ~~agency's~~
16 rulemaking action unless it finds that any of the following are present:

17 ~~1.~~ a. The provisions of this chapter have not been substantially complied with in the
18 ~~agency's~~ rulemaking actions.

19 ~~2.~~ b. A rule published as a result of the rulemaking action appealed is unconstitutional
20 on the face of the language adopted.

21 ~~3.~~ c. A rule published as a result of the rulemaking action appealed is beyond the
22 scope of the agency's or commission's authority to adopt.

23 ~~4.~~ d. A rule published as a result of the rulemaking action appealed is on the face of
24 the language adopted an arbitrary or capricious application of authority granted
25 by statute.

26 2. If the rulemaking action of the agency or commission is not affirmed by the court, ~~it the~~
27 rulemaking action must be remanded to the agency or commission for disposition in
28 accordance with the order of the court, or the rule or a portion of the rule resulting from
29 the rulemaking action of the agency or commission must be declared invalid for
30 reasons stated by the court.

1 **SECTION 30. AMENDMENT.** Section 28-32-48 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **28-32-48. Appeal - Stay of proceedings.**

4 An appeal from an order or the rulemaking action of an administrative agency or the
5 commission does not stay the enforcement of the order or the effect of a published rule unless
6 the court to which the appeal is taken, upon application and after a hearing or the submission of
7 briefs, orders a stay. The court may impose terms and conditions for a stay of the enforcement
8 of the order or for a stay in the effect of a published rule. This section does not prohibit the
9 operation of an automatic stay upon the enforcement of an administrative order or commission
10 order as may be required by another statute.

11 **SECTION 31. AMENDMENT.** Section 28-32-49 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **28-32-49. Review in supreme court.**

14 The judgment of the district court in an appeal from an order or rulemaking action of an
15 administrative agency or the commission may be reviewed in the supreme court on appeal in
16 the same manner as provided in section 28-32-46 or 28-32-47, except that the appeal to the
17 supreme court must be taken within sixty days after the service of the notice of entry of
18 judgment in the district court. Any party of record, including the agency or commission, may
19 take an appeal from the final judgment of the district court to the supreme court. If an appeal
20 from the judgment of the district court is taken by an agency or the commission, the agency or
21 commission may not be required to pay a docket fee or file a bond for costs or equivalent
22 security.

23 **SECTION 32.** Chapter 54-66 of the North Dakota Century Code is created and enacted as
24 follows:

25 **54-66-01. Definitions.**

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

- 27 1. "Accused individual" means an individual who is alleged to have violated article XIV of
28 the Constitution of North Dakota, this chapter, or another law or rule regarding
29 government ethics.

- 1 2. "Adjusted for inflation" means adjusted on January first of each year by the change in
- 2 the consumer price index for all urban consumers (all items, United States city
- 3 average), as identified by the secretary of state.
- 4 3. "Complainant" means an individual who, in writing or verbally, submits a complaint to
- 5 the commission.
- 6 4. "Complaint" means a verbal or written allegation to the commission that article XIV of
- 7 the Constitution of North Dakota, this chapter, or another law or rule regarding
- 8 government ethics has been violated.
- 9 5. "Ethics commission" or "commission" means the North Dakota ethics commission
- 10 established by article XIV of the Constitution of North Dakota.
- 11 6. "Gift" means any item, service, or thing of value not given in exchange for fair market
- 12 consideration including travel and recreation.
- 13 7. "Influence state government action" means promoting or opposing the final adoption of
- 14 a rule by an administrative agency or the commission under chapter 28-32.
- 15 8. "Lobby" means an activity listed in subsection 1 of section 54-05.1-02.
- 16 9. "Lobbyist" means an individual required to register under section 54-05.1-03.
- 17 10. "Public official" means an elected or appointed official of the state's executive or
- 18 legislative branch, members of the commission, members of the governor's cabinet,
- 19 and employees of the legislative branch.
- 20 11. "Receives the complaint" means one or more members of the commission learn of the
- 21 complaint.
- 22 12. "Ultimate and true source" means the person that knowingly contributed over two
- 23 hundred dollars, adjusted for inflation, solely to lobby or influence state government
- 24 action.

25 **54-66-02. Disclosure of ultimate and true source of funds.**

- 26 1. A lobbyist who expends an amount greater than two hundred dollars, adjusted for
- 27 inflation, to lobby shall file with the secretary of state a report that includes the known
- 28 ultimate and true source of funds for the expenditure. The report must be filed with the
- 29 lobbyist expenditure report required under subsection 2 of section 54-05.1-03.
- 30 2. A person who expends an amount greater than two hundred dollars, adjusted for
- 31 inflation, to influence state government action shall file with the secretary of state a

- 1 report including the known ultimate and true source of funds for the expenditure. The
2 report must be filed on or before the August first following the date of the expenditure.
3 The secretary of state shall provide a form for reports under this subsection and make
4 the form electronically accessible to the public. The secretary of state also shall
5 charge and collect fees for late filing of the reports as follows:
6 a. Twenty-five dollars for a report filed within sixty days after the deadline; or
7 b. Fifty dollars for a report filed more than sixty days after the deadline.
8 3. The secretary of state shall compile the reports required under this section and make
9 the reports electronically accessible to the public within forty days after the deadlines
10 by which the reports must be filed.
11 4. This section does not require a person to report the ultimate and true source of funds
12 expended on:
13 a. A gift to or from a family member;
14 b. Purely informational material, advice, or education;
15 c. Reimbursement for travel, meal, and refreshment expenses incurred to, from, or
16 during a conference, seminar, or other legitimate educational opportunity for a
17 public official if the conference, seminar, or educational opportunity concerns
18 issues germane to the official duties of the public official;
19 d. Meals and refreshments provided while informing, advising, or educating a public
20 official about issues germane to the official duties of the public official;
21 e. Providing an educational or social setting in the state to provide an opportunity
22 for individuals to meet with public officials; and
23 f. A good or service determined not to raise ethical concerns under rules adopted
24 by the ethics commission.
25 5. A resident taxpayer may ~~file a claim~~ commence an action in a district court of this state
26 ~~with competent jurisdiction~~ against a person required to comply with this section to
27 compel compliance if all other enforcement measures under this chapter have been
28 exhausted and the taxpayer reasonably believes the person ~~remains in violation of~~ has
29 ~~failed to comply with~~ this section. A ~~violation of~~ failure to comply with this section must
30 be proved by clear and convincing evidence.

1 **54-66-03. Lobbyist gifts - Penalty.**

- 2 1. A lobbyist may not give, offer, solicit, initiate, or facilitate a gift knowingly to a public
- 3 official, and a public official ~~knowingly~~ may not accept a gift with a value over sixty
- 4 dollars per individual per event, adjusted for inflation, from a lobbyist knowingly, except
- 5 to advance opportunities for state residents to meet with public officials in educational
- 6 and social settings in the state under conditions that do not raise ethical concerns,
- 7 including:
- 8 a. Reimbursement for travel, meal, and refreshment expenses incurred to, from, or
- 9 during a conference, seminar, or other legitimate educational opportunity for the
- 10 public official if the conference, seminar, or educational opportunity concerns
- 11 issues germane to the official duties of the public official;
- 12 b. Providing information, advice, or education to a public official;
- 13 c. Providing meals and refreshments while informing, advising, or educating a
- 14 public official about issues germane to the official duties of the public official;
- 15 d. Items with a fair market value of ten dollars per individual per event, adjusted for
- 16 inflation, or less per individual; and
- 17 e. A good or service determined not to raise ethical concerns under rules adopted
- 18 by the ethics commission.
- 19 2. The prohibition in subsection 1 does not apply when a lobbyist gives, offers, solicits,
- 20 initiates, or facilitates, or a public official accepts:
- 21 a. A gift to or from a family member;
- 22 b. Purely informational material; or
- 23 c. A campaign contribution.
- 24 3. For the first violation, the secretary of state shall ~~impose a fine~~ assess a civil penalty of
- 25 ~~one~~ five hundred dollars upon any person who knowingly violates this section and, if
- 26 the person is a lobbyist, the secretary of state may revoke the lobbyist's registration
- 27 under chapter 54-05.1. For a second and subsequent knowing violation of this section,
- 28 the person is guilty of an infraction.

1 **54-66-04. Ethics commission member terms - Meetings - Code of ethics -**

2 **Compensation - Investigator.**

- 3 1. The terms of the initial members of the ethics commission must be staggered to
4 ensure no more than two members' terms expire in one year. The terms of the initial
5 members may be less than four years to accommodate the required staggering of
6 terms.
- 7 2. The ethics commission shall meet as necessary to address each complaint the
8 commission receives. Unless the complaint at issue has resulted in the imposition of a
9 penalty or referral for enforcement under section 54-66-10, any portion of a meeting
10 during which commission members discuss complaints, informal resolutions, attempts
11 to informally resolve complaints, investigations, or referrals under this chapter, the
12 identity of an accused individual or complainant, or any other matter arising from a
13 complaint are closed meetings.
- 14 3. The commission shall abide by a code of ethics adopted in a public meeting. The code
15 of ethics must specify when a commission member is disqualified from participating in
16 matters before the commission.
- 17 4. Ethics commission members are entitled to:
- 18 a. Compensation for each day necessarily spent conducting commission business
19 in the amount provided for members of the legislative management under section
20 54-35-10; and
- 21 b. Payment for mileage and travel expenses necessarily incurred in the conduct of
22 commission business as provided under sections 44-08-04 and 54-06-09.
- 23 5. Commission members shall hire or otherwise engage a part-time administrative
24 assistant. The administrative assistant must be provided an office within the office
25 space for the department of labor and human rights. The commission shall
26 compensate the department of labor and human rights for the office in an amount
27 equal to the fair value of the office.

28 **54-66-05. Making a complaint - Identifying information - False complaints.**

- 29 1. A complaint may be made to the commission verbally or in writing. When making
30 a complaint, a complainant shall provide the name, address, and telephone number of
31 the complainant.

1 2. Within five days after making a complaint, the complainant shall submit a signed
2 statement attesting the complaint is true and accurate to the best of the complainant's
3 knowledge. The commission shall develop an attestation form for this purpose and
4 make it electronically accessible to the public. After receiving the attestation, the
5 commission shall summarize the complaint in writing if the complaint was made
6 ~~verbally~~ orally.

7 3. If the complainant does not submit the signed attestation by the deadline, the
8 commission may not investigate or take other action on the complaint.

9 4. Knowingly or recklessly making a complaint that is materially false is defamation under
10 chapter ~~14-02~~ 12.1-15.

11 **54-66-06. Informing the accused individual - Written response permitted.**

12 The commission shall inform an accused individual by registered mail of the identity of the
13 complainant who made the allegation against the accused individual and include the written
14 complaint or written summary of the ~~verbal~~ oral complaint as soon as reasonably possible but no
15 later than ten calendar days after the commission receives the complaint. The accused
16 individual may respond to the complaint in writing within ten calendar days of receipt of the
17 complaint or summary of the complaint.

18 **54-66-07. Informal resolution.**

19 The commission may attempt to negotiate or mediate an informal resolution between the
20 accused individual and the complainant.

21 **54-66-08. Referrals to investigators - Exception for criminal allegations.**

22 For each complaint with an attestation, the commission shall engage an investigator with
23 the appropriate knowledge and experience regarding the Constitution of North Dakota,
24 ethics-related statutes, and ethics investigations, and refer the complaint to the investigator
25 within thirty calendar days of receiving the complaint. However, if a complaint with an attestation
26 includes an allegation of criminal conduct, the commission shall refer the allegation of criminal
27 conduct to the bureau of criminal investigation or other law enforcement agency. The
28 commission may engage a state agency as an investigator. If the accused individual provided a
29 written response to the complaint, the commission shall provide the written response with the
30 referred complaint.

1 **54-66-09. Investigations - Findings and Recommendations - Responses.**

- 2 1. The investigator engaged under section 54-66-08 shall investigate the complaint
3 referred to it by the ethics commission. Investigations must include separate interviews
4 with the accused individual and the complainant, unless the accused individual or
5 complainant refuses to be interviewed, and consideration of the circumstances
6 surrounding the allegations. The accused individual and complainant may be
7 accompanied by legal counsel during the interviews of each. Investigations may
8 include interviews of potential witnesses and other individuals believed to have
9 relevant information.
- 10 2. At the conclusion of the investigation, but no later than six months after the
11 investigator received the complaint, the investigator shall submit its written findings
12 and recommendations from the investigation to the commission. The commission shall
13 provide written copies of the findings and recommendations to the accused individual
14 and complainant. The accused individual and complainant may respond in writing to
15 the findings and recommendations within thirty calendar days of receiving the findings
16 and recommendations. The commission shall maintain copies of the findings,
17 recommendations, and any written response to the findings.

18 **54-66-10. Final determinations - Penalties - Referrals for enforcement.**

- 19 1. After reviewing the findings and recommendations from the investigator and any
20 written response from the accused individual or complainant, the ethics commission
21 shall meet with the accused individual and complainant to discuss the findings,
22 recommendations, and written responses. A meeting under this subsection is a closed
23 meeting as defined in section 44-04-17.1, although the accused individual and
24 complainant may have their legal counsel attend and participate.
- 25 2. After the meeting with the accused individual and complainant, the commission shall
26 issue written findings, including a determination whether a violation of article XIV of the
27 Constitution of North Dakota, this chapter, or another law or rule regarding government
28 ethics occurred. If the commission finds a violation occurred, the commission may
29 impose a assess a civil penalty if authorized by law or refer the matter to the entity
30 authorized by law to impose a assess a civil penalty for the violation.

1 3. The accused individual and the complainant may appeal and request judicial review of
2 a determination made or penalty imposed under this section to the office of
3 administrative hearings, which shall designate an administrative law judge to hear the
4 appeal. An appeal the district court in the county in which the accused individual
5 resides. A request for judicial review under this section must comply with the
6 requirements for adjudicative proceedings an appeal of a determination of an agency
7 under chapter 28-32. The scope of review and procedure on appeal from a
8 determination of the commission must comply with section 28-32-47.

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

11 **54-66-11. Confidential information - Penalty.**

12 1. The following information is a confidential record as defined in section 44-04-17.1,
13 unless the commission has determined the accused individual violated article XIV of
14 the Constitution of North Dakota, this chapter, or another law or rule regarding
15 government ethics, and an administrative law judge a court affirmed the determination
16 if appealed, except the information may be disclosed as required by law or as
17 necessary to conduct an investigation arising from a complaint:

- 18 a. Information revealing the contents of a complaint;
19 b. Information that reasonably may be used to identify an accused individual or
20 complainant; and
21 c. Information relating to or created as part of an investigation of a complaint.

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

- 24 a. Information revealing the contents of the complaint;
25 b. Information that reasonably may be used to identify the accused individual or
26 complainant;
27 c. Information relating to or created as part of the process leading to the informal
28 resolution; and
29 d. Information revealing the informal resolution.

30 3. Disclosure of information included in subsections 1 and 2 by a person who knows the
31 information to be false is defamation under chapter 14-02.

1 ~~4.~~ Willful publication of information included in subsections 1 and 2 by a person who
2 knows the information to be false is criminal defamation under section 12.1-15-01.

3 ~~5.4.~~ A public official who violates this section is guilty of a class C felony.

4 **54-66-12. Restriction on lobbying by public officials - Penalty.**

5 For the first violation of subsection 2 of section 2 of article XIV of the Constitution of North
6 Dakota, the secretary of state shall ~~impose a fine~~ assess a civil penalty of ~~one~~ five hundred
7 dollars upon the person who knowingly commits the violation. For a second and subsequent
8 knowing violation of the subsection, the person is guilty of an infraction.

9 **54-66-13. Attorney general to provide legal services.**

10 The attorney general shall serve as legal counsel for the commission. When a conflict of
11 interest prevents the attorney general from providing legal services to the commission, the
12 attorney general may appoint a special assistant attorney general to serve as legal counsel for
13 the commission.

14 **54-66-14. Prohibition on delivering campaign contributions - Penalty.**

15 A lobbyist may not deliver knowingly a campaign contribution made by another person in
16 violation of subsection 3 of section 2 of article XIV of the Constitution of North Dakota. For a first
17 violation, the secretary of state shall assess a civil penalty of five hundred dollars upon any
18 person who knowingly violates this section and may revoke the lobbyist's registration. For a
19 second and subsequent knowing violation of this section, the person is guilty of an infraction.

20 **SECTION 33. APPROPRIATION.** There is appropriated out of any moneys in the general
21 fund in the state treasury, not otherwise appropriated, the sum of ~~\$100,000~~ \$300,000, or so
22 much of the sum as may be necessary, to the ethics commission for the purpose of the
23 operations of the commission, for the biennium beginning July 1, 2019, and ending June 30,
24 2021. The ethics commission is authorized one and one-half of a full-time equivalent position for
25 ~~an administrative assistant~~ positions for this purpose.

26 **SECTION 34. EFFECTIVE DATE.** Sections 1, 2, 3, 4, 5, and 7, ~~and 29~~ of this Act, and
27 section 54-66-02 of the North Dakota Century Code, as created by section ~~3032~~ of this Act,
28 become effective January 5, 2022.

29 **SECTION 35. EFFECTIVE DATE.** North Dakota Century Code section 54-66-03, as
30 created by section ~~3032~~ of this Act, becomes effective January 5, 2021.

1 **SECTION 36. EXPIRATION DATE.** North Dakota Century Code section 54-66-12, as
2 created by section ~~30~~32 of this Act, is effective until subsection 2 of section 2 of article XIV of
3 the Constitution of North Dakota is no longer part of the Constitution of North Dakota.

4 **SECTION 37. EMERGENCY.** Sections 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20,
5 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31 of this Act are declared to be an emergency
6 measure.

3/12/19 Att. #1
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HB 1521 First Engrossment
Senate Committee on Ethics

March 12, 2019

Chairman Hogue and Committee Members,

My name is Gregory Stites. I am a North Dakota attorney and live in District 47. I am here on behalf of North Dakotans for Public Integrity (NDPI) in opposition to HB 1521 First Engrossment.

I have practiced law for over 40 years. I have worked in regional and national law firms, as general counsel of the ND Insurance Department, and as an assistant attorney general. I have also worked as senior counsel for the National Association of Insurance Commissioners (NAIC) representing all 50 state commissioners. For the last almost 20 years of my career, I worked as senior counsel and chief compliance officer for a large US-based international software company.

During my years with the NAIC, I filed numerous "friend of the court" briefs in state courts, US courts of appeals and the United States Supreme Court. These briefs often argued issues of constitutional law. I was once honored to have the United States Supreme Court refer to my brief as the basis of its holding in a case.

I was not part of those individuals who sought to enact Article XIV. Rather, I was recently retained by NDPI to analyze Article XIV and determine what specific laws are necessary to implement it.

Article XIV was designed to be implemented over a 3 year period. Certain provisions became effective 60 days after its passage. Certain provisions become effective in 2 years. And certain provisions no later than in 3 years. This was done in order to give the Legislative Assembly 2 sessions to complete its work in a deliberate and measured way.

To aid in your deliberations, I have prepared a document titled "Legislative Assembly Required Implementation of Article XIV to the North Dakota Constitution." This document sets out the actual language of Article XIV - section by section - followed by my analysis of the required actions - if any – to be taken by the Legislative Assembly and in what time frames.

On pages 1 and 2 of this handout is a Summary of those required actions to be taken by the Legislative Assembly. Of the 14 subsections in Article XIV, 7 do not ever require Legislative Assembly involvement.

Pages 3 through 7 are a Table that sets out the actual language of Article XIV subsection by subsection. Next to each subsection appears a column of relevant comments and the Legislative Assembly actions required to implement Article XIV. I trust that this Summary and Table will aid you in your deliberations of HB 1521.

The next task given to me by NDPI was to review HB 1521 and determine whether any of its provisions are in conflict with the North Dakota Constitution. In my reasoned opinion, HB 1521 clearly hampers, restricts and impairs Article XIV in constitutionally impermissible ways.

The next document I have prepared for you is a Summary of HB 1521 First Engrossment. I have chosen to highlight the 10 most significant provisions of Article XIV followed by comments on how HB 1521 often improperly addresses those requirements in ways that conflict with the ND Constitution:

- At a high level, HB 1521 currently inappropriately amends NDCC Chapter 16.1-08.1.
- HB 1521 provides a number of definitions for material terms that are inconsistent with the language of Article XIV.
- HB 1521 inappropriately applies portions of the Administrative Agencies Practice Act to the Ethics Commission.
- HB 1521 inappropriately interferes with the internal affairs of the Ethics Commission.
- HB 1521 inappropriately interferes with the new prohibition against gifts.
- HB 1521 provides for inadequate sanctions for illegal and unethical conduct.

- HB 1521 underfunds the Ethics Commission and does not provide adequate staff.

Based upon my review of HB 1521, it cannot withstand constitutional muster in the courts.

In summary, HB 1521 materially interferes with the mandate given to the Legislative Assembly by the North Dakota Constitution. HB 1521 does not implement the requirements of Article XIV in a manner intended to facilitate, safeguard, or expand the substance of Article XIV, but rather in ways intended to hamper, restrict, or impair Article XIV which, if passed in its current form, will give rise to constitutional challenges.

So what to do with HB 1521? Should the Committee decide to move forward with amending HB 1521, I have prepared for your consideration a document titled Suggested Amendments to HB 1521 First Engrossment 19.1078.02000.

These amendments would incorporate changes into HB 1521 using SB 2148 Second Engrossment as a model. These amendments would bring HB 1521 in line with the ND Constitution and in particular the provisions of Article XIV.

I would be happy to answer any question regarding the Summary of HB 1521 First Engrossment or the suggested amendments.

Thank you for your time and consideration.

Summary of HB 1521 First Engrossment

Article XIV to the North Dakota Constitution was passed by the people in November 2018 and became effective on January 5, 2019. Article XIV was designed to be implemented over a staggered three-year period. Article XIV requires the Legislative Assembly to implement the article by passage of laws intended to facilitate, safeguard, or expand, but not to hamper, restrict, or impair the substance of the article. In case of a conflict between a provision of Article XIV and any other provision contained in the Constitution, the provisions of Article XIV control.

The language in Article XIV is consistent with other provisions in the North Dakota Constitution. For example, Section 24 of Article I of the Constitution provides that “the provisions of this constitution are mandatory and prohibitory unless, by express words, they are declared to be otherwise.” In recognition that Article XIV was a constitutional amendment passed by an initiative of the people, Section 1 of Article III states “while the legislative power of this state shall be vested in a legislative assembly . . . the people reserve the power . . . to propose and adopt constitutional amendments by the initiative. . . . Laws [passed by the legislative assembly] may be enacted to facilitate and safeguard, but not to hamper, restrict, or impair these powers.” In other words, the Legislative Assembly must be careful not to enact laws that go against the intent or plain wording of a constitutional provision.

In further describing the role of the Legislative Assembly in such matters, Section 13 of Article IV states, “the legislative assembly shall enact all laws necessary to carry into effect the provisions of this constitution.” And when enacting “laws necessary to carry into effect” a provision of the constitution, a rule of constitutional construction is that words are to be given their plain, ordinary and commonly understood meaning. Verry v. Trenbeath, 148 N.W.2d 567, 574 (N.D. 1967). The intent and purpose of a constitutional provision is to be determined, if possible, from the language itself. Bulman v. Hulstrand Constr. Co., Inc., 521 N.W.2d 632, 636 (N.D. 1994).

What Article XIV provides for is in *italics* below followed by comments on how HB 1521 addresses those requirements:

- 1. *Article XIV, Section 1 requires prompt, electronically accessible, plainly comprehensible, public disclosure of the ultimate and true source of funds spent in any medium, in an amount greater than two hundred dollars, adjusted for inflation, to influence any, 1) statewide election, 2) election for the legislative assembly, 3) statewide ballot-issue election, or 4) to lobby or 5) otherwise influence state government action. Provision goes into effect no later than January 5, 2022.***

Constitutional Issues in HB 1521: Contrary to Article XIV, HB 1521 (a) limits disclosure to only contributions made “knowingly” and “solely,” which provides opportunities to hide contributors, (b) omits “political committees” as entities that must disclose, (c) misinterprets the citizen’s right to sue regarding the transparency disclosure requirements, (d) assigns only untimely annual data collection to the Secretary of State (SOS) and (e) does not grant any entity the power to investigate and meaningfully sanction persons who fail to report.

HB 1521 seeks to diminish the constitutional disclosure requirements of Section 1 to Article XIV by only requiring reports from persons who “knowingly” have contributed funds “solely” to influence any of the five categories listed above. These added words of “knowingly” and “solely” are in direct conflict with the constitutional language used in Article XIV.

To partially implement Section 1 of Article XIV, the Legislative Assembly seeks to amend Chapter 16.1-08.1 for the purpose of disclosure of the ultimate and true source of funds (contributors and subcontributors) used to influence statewide elections and elections to the legislative assembly. However, HB 1521 completely omits the “political committees” regulated under 16.1-08.1-03.7 from such contribution disclosures. This omission would allow these political committees that make independent expenditures or disbursements to state candidates, political parties and other political committees to continue to hide all contributions from public scrutiny in contravention of Article XIV.

Section 1 of Article XIV has a unique provision that gives any resident taxpayer the right to bring suit against the legislative assembly, someone in the executive branch or the ethics commission if they believe the laws or rules enacted or an implementation, interpretation, or enforcement action taken under Section 1 fails to fully vindicate the rights provided to the people on transparency. HB 1521 misreads this right by giving a resident taxpayer the right to become, in effect, the government enforcer against an alleged violator of Section 1. The right provided to a resident taxpayer in Article XIV is intended to force the government to do its job under the Constitution, not to make a private citizen a government enforcer.

Under Article XIV, the Legislative Assembly must vest one or more entities with authority to implement, interpret and enforce Section 1. While HB 1521 does require the SOS to collect and make this data publicly available, it does not give the SOS or any other entity the express authority to implement, interpret and enforce Section 1, meaning the power to investigate and meaningfully sanction persons who do not report. It also has not provided for the “prompt”, plainly comprehensible public disclosure of the data, choosing only untimely yearly reporting and disclosure.

2. ***Article XIV, Section 2 stops lobbyists from giving gifts to state public officials and stops state public officials from accepting gifts from lobbyists. Prohibited "gifts" means anything of value including travel or recreation. The new Ethics Commission may enact rules to allow for limited exceptions. Goes into effect on January 5, 2021.***

Constitutional Issues in HB 1521: Contrary to Article XIV, HB 1521 (a) usurps the sole authority of the Ethics Commission to define exceptions to what constitutes a prohibited gift, (b) creates a definition for “gift” that violates the constitutional definition, and (c) creates an extremely narrow definition of “lobbyist” that does not conform to constitutional requirements.

Effective after January 5, 2021, lobbyists may not give a “gift” – an unambiguous term clearly defined in Article XIV – to public officials. Public officials may not accept a gift from a lobbyist. Article XIV states that a prohibited “gift” means “any item, service, or thing of value not given in exchange for fair market consideration, including gifts of travel or recreation.” Article XIV states that a “gift” does not mean any “purely informational material” or “campaign contribution”, or, “in order to advance opportunities for North Dakota residents to meet with public officials in educational and social settings inside the state, any item, service, or thing of value given under conditions that do not raise ethical concerns, as determined by rules adopted by the ethics commission”. Article XIV does not give the Legislative Assembly the authority to redefine what a gift is and what a gift is not, and there is no need to do so because the words defining gift in Article XIV have a plain, ordinary and commonly understood meaning. Only the new Ethics Commission may adopt rules regarding exceptions that do not raise ethical concerns.

March 11, 2019

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Additionally, and in clear contravention of Article XIV, HB 1521 disregards the constitutional prohibition on giving and receiving gifts, and arbitrarily provides that a lobbyist may give and a public official may receive gifts with a value up to \$60 per individual per event, adjusted for inflation, with no limit on the number of events a public official may attend in a day. HB 1521 goes on to provide that a public official may also receive gifts for basically any amount of money or items of value when in their view they are advancing opportunities for state residents to meet with public officials in educational and social settings in the state under conditions that do not raise ethical concerns [with no definition of what gives rise to an ethical concern], including unconstitutional gifts of:

1. Reimbursement for travel, meal, and refreshment expenses incurred to, from, or during a conference, seminar, or other legitimate educational opportunity for the public official if the conference, seminar, or educational opportunity concerns issues germane to the official duties of the public official ;
2. Providing information, advice, or education to a public official beyond the amount necessary for the preparation of purely informational material which is not a gift, and beyond an amount that would not give rise to ethical concerns as defined by the Ethics Commission which will not be considered a gift;
3. Providing meals and refreshments while informing, advising, or educating a public official about issues germane to the official duties of the public official ; and
4. Items with a fair market value of ten dollars per individual per event, adjusted for inflation, or less per individual.

Gifts from lobbyists are prohibited to any “public officials”. Article XIV defines a “public official” as any person occupying one of these categories: “any elected or appointed office or official of the state’s executive or legislative branch, including members of the ethics commission, or members of the governor’s cabinet, or employees of the legislative branch.” “Lobbyist” in this context means any person who is seeking to influence or attempting to influence any person occupying one of those categories. “Influence” in this context means to cause the public official to act or respond in their official capacity in a certain way.

HB 1521 seeks to unconstitutionally diminish the number of lobbyists who will be prohibited from giving gifts to public officials after January 5, 2021. HB 1521 defines “lobbyist” as only those individuals who are required to be “registered” under NDCC Chapter 54-05.1. Chapter 54-05.1 only requires registration by a small subset of persons who are: 1) seeking to secure or defeat legislation or the approval or veto of legislation by the governor, or 2) attempting to influence decisions made by legislative management or by an interim committee. Additionally, Chapter 54-05.1 provides a long list of exceptions of persons who are actually lobbying legislators and the governor but then are not required to be registered with the state. Clearly Article XIV seeks to prohibit gifts to public officials not only from registered lobbyists but from all persons seeking to influence any public official as defined in Article XIV. Under HB 1521, any person not required to be registered is free to continue to give gifts to public officials, which is contrary to the prohibition against gift giving in Article XIV.

3. ***Article XIV, Section 2 stops an elected state public official from being a lobbyist while in office and stops an elected state public official from becoming a lobbyist for two years after leaving state government.***

HB 1521 fails to set meaningful penalties for violators. HB 1521 provides a civil penalty of only \$500 for a first offense. For a subsequent violation, the person is guilty of a class B misdemeanor. Article XIV requires the Legislative Assembly to enact "appropriate civil and criminal penalties for violators". A \$500 civil penalty for a first offense with no associated criminal penalty will not be a deterrent when compared to the compensation given to paid lobbyists.

4. *Article XIV, Section 2 stops a lobbyist from delivering a campaign contribution made by another individual or entity.*

HB 1521 fails to set meaningful penalties for violators and too narrowly defines the term "lobbyist". HB 1521 provides a civil penalty of only \$500 for a first offense and the SOS may revoke the lobbyist's registration. For a subsequent violation, the person is guilty of a class B misdemeanor. Article XIV requires the Legislative Assembly to enact "appropriate civil and criminal penalties for violators". A \$500 civil penalty for a first offense with no associated criminal penalty will not be a deterrent to stop violators. Finally, as already discussed above, HB 1521 defines "lobbyist" as only those individuals who are required to be "registered" under NDCC Chapter 54-05.1. The term "lobbyist" under Article XIV applies to a much larger group of persons as discussed in **Section 2** above.

5. *Article XIV, Section 2 stops a statewide candidate, candidate for the legislative assembly, or state public official from using campaign contributions for personal use or enrichment.*

HB 1521 fails to set meaningful penalties for violators. HB 1521 provides a civil penalty of only \$500 for the first offense. For a subsequent violation, the person is guilty of a class B misdemeanor. Article XIV requires the Legislative Assembly to enact "appropriate civil and criminal penalties for violators". A \$500 civil penalty for a first offense with no associated criminal penalty will not be a reasonable deterrent were an unsuccessful candidate to decide to transfer all of the remaining funds in his or her campaign account into their personal checking account. Statewide candidates could conceivably have thousands of dollars left over from a campaign and simply convert it to personal use. NDCC Section 16.1-08.1-04.1 already prohibits this conduct and makes all violations a class A misdemeanor. See 16.1-08.1-07 for penalty. Why does HB 1521 seek to weaken the penalty?

6. *Article XIV, Section 2 requires all directors, officers, commissioners, heads, or other executives of agencies to avoid the appearance of bias in their work and requires that they disqualify themselves in any quasi-judicial proceedings in which they have a financial interest not shared by the general public as defined by the new Ethics Commission. Goes into effect on January 5, 2022.*

Constitutional Issues in HB 1521: Contrary to Article XIV, HB 1521 usurps the authority of the Ethics Commission to define "appearance of bias" and define the conditions under which the listed decision-makers will be required or not required to disqualify themselves from quasi-judicial proceedings.

HB 1521 unconstitutionally usurps the authority given to the new Ethics Commission by attempting to address these requirements in Section 28 by amending § 28-32-27. HB 1521 would only require an agency "hearing officer" who is also a director, officer, commissioner, head, or other executive of an agency to self-disqualify in a proceeding in which a reasonable, disinterested observer would believe the hearing officer is biased due to either 1) receipt of a contribution to the hearing officer's most recent campaign, or 2) an ownership interest by the hearing officer in one of the parties to the proceeding if the ownership interest is not shared by the general public or is in a mutual fund.

The Legislative Assembly has no role under Article XIV in defining what the appearance of bias means or what conditions will require disqualification from a quasi-judicial proceeding. Under Article XIV, the Ethics Commission is given that authority. Under Article XIV, the scope of these rules on bias as adopted by the Ethics Commission will apply to “each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency.”

The only role provided to the Legislative Assembly related to bias is in enforcement, to define appropriate penalties once the Ethics Commission has adopted the definitional rules on bias and disqualification. The Ethics Commission is to adopt those rules before the 67th Legislative Assembly meets. Section 28 of HB 1521 is inconsistent with Article XIV. The 67th Legislative Assembly can address the appropriate penalties for bias once defined by the Ethics Commission since the bias provisions do not go into effect until January 5, 2022.

7. ***Article XIV, Section 2 stops governments of foreign countries, foreign nationals not lawfully admitted for permanent residence in the US, and corporations organized under the laws of or having their principal place of business in a foreign country, from making contributions or expenditures in connection with any statewide election, election for the legislative assembly, or statewide ballot-issue election.***

No 66th Legislative Assembly action was required. This ban on foreign contributions and expenditures was already prohibited by statute and has now been made part of the ND Constitution.

8. ***Article XIV, Section 3 establishes an Ethics Commission — independent from either the Legislative Assembly or the state executive — to support an open, ethical, and accountable state government. Requires the Legislative Assembly to provide adequate funds for the proper carrying out of the functions and duties of the Ethics Commission.***

Constitutional Issues in HB 1521: HB 1521 creates a new Chapter 54-66 to the ND Century Code for laws to implement certain parts of Article XIV and to control the Ethics Commission. Unfortunately, many of the laws in this new chapter unconstitutionally “hamper, restrict, or impair” the substance of Article XIV as explained in greater detail below.

Article XIV created a new Ethics Commission in the Constitution independent from either the Legislative Assembly or the state’s executive branch. It requires the Legislative Assembly to provide adequate funds for the proper carrying out of the functions and duties of the Ethics Commission. It requires the Legislative Assembly to implement the article by passage of laws intended to “facilitate, safeguard, or expand, but not to hamper, restrict, or impair”, the substance of the article. In case of a conflict between any provision of Article XIV and any other provision contained in the Constitution [or state law], the provisions of Article XIV control.

Section 1 of Article XIV requires the disclosure of the ultimate and true source of funds expended “. . . to lobby or otherwise influence state government action”. HB 1521 too narrowly defines the terms to “lobby” and “otherwise influence state government”. It defines “lobby” to mean only an activity listed in subsection 1 of § 54-05.1-03, and it defined “influence state government” to mean only the

promoting or opposing the final adoption of a rule by an administrative agency or the Ethic Commission. "Lobbying" under subsection 1 of § 54-05.1-03 is defined to mean only activities related to legislators and the governor's consideration of legislation. As discussed in **Section 2** above, lobbying captures many more activities than just affecting legislation.

HB 1521 also unconstitutionally excludes certain funds intended to be reported by lobbyists and others in accordance with Section 1 of Article XIV. Section 54-66-02(4) would, contrary to Article XIV, not require a person to report the ultimate and true source of funds expended on:

1. Purely informational material, advice, or education;
2. Reimbursement for travel, meal, and refreshment expenses incurred to, from, or during a conference, seminar, or other legitimate educational opportunity for a public official if the conference, seminar, or educational opportunity concerns issues germane to the official duties of the public official;
3. Meals and refreshments provided while informing, advising, or educating a public official about issues germane to the official duties of the public official ;
4. Providing an educational or social setting in the state to provide an opportunity for individuals to meet with public officials; and
5. A good or service determined not to raise ethical concerns under rules adopted by the ethics commission.

Section 1 of Article XIV requires "prompt" public disclosure of funds spent. HB 1521 only requires the SOS to collect this data once per year by August 1 and then make it electronically available to the public within 40 days of August 1. This is hardly prompt disclosure. The entire purpose of the disclosures required by Section 1 of Article XIV is to "enable the people to make informed decisions and give proper weight to different speakers and messages. . . . This right is essential to the rights of free speech, assembly, and petition guaranteed by the First Amendment to the United States Constitution and shall be construed broadly." HB 1521 clearly frustrates this right to know in a prompt and timely manner and severely hampers, restricts, and impairs Section 1 of Article XIV.

Section 54-66-02 of HB 1521 misreads for the second time the right of a resident taxpayer to bring a suit to enforce the rights given to the people in Section 1 of Article XIV and noted in greater detail in **Section 1** above.

Article XIV requires the Legislative Assembly to provide adequate funds for the proper carrying out of the functions and duties of the Ethics Commission. HB 1521 does not adequately fund the new Ethics Commission. HB 1521 only provides one and one half employees to be housed inside an executive branch government office. The Ethics Commission has not been adequately funded for a director and/or attorney and/or investigator and has been instructed to buy those services as necessary from the attorney general's office or other state agencies. As a constitutionally created legal entity, the Ethics Commission is entitled to its own identity and independence from other state agencies. HB 1521 appears designed to financially suppress and frustrate the activities of the Ethics Commission.

9. ***Article XIV, Section 3 provides legal authority to the Ethics Commission to adopt ethics rules related to 1) transparency, 2) corruption, 3) elections, and 4) lobbying to which any lobbyist, state public official, or candidate for state office must comply with.***

Constitutional Issues in HB 1521: Contrary to Article XIV, HB 1521 unconstitutionally gives authority for oversight of the Ethics Commission's work to the governor, the attorney general, and the legislature.

Article XIV empowers the Ethics Commission to adopt ethics rules related to transparency, corruption, elections, and lobbying to which any lobbyist, public official, or candidate for public office shall be subject. As a constitutionally independent legal entity, Article XIV gives the Ethics Commission the authority to adopt ethics rules that will control the conduct of all "public officials" meaning "any elected or appointed office or official of the state's executive or legislative branch, including members of the ethics commission, or members of the governor's cabinet, or employees of the legislative branch". Because of this broad mandate, it is constitutionally impermissible to give the legislature or the attorney general or the governor the power to stop or void or otherwise interfere with the rule making process of the Ethics Commission. Only the citizens and the courts have the power to review the rules of the Ethics Commission. HB 1521 seeks to "hamper, restrict, or impair" the rule making authority of the Ethics Commission in the following sections:

Section 10 by requiring the Ethics Commission to get the approval of the governor for emergency rule making.

Section 14 by requiring the Ethics Commission to comply with 28-32-08.1 requiring a small entities analysis for purposes of excluding small entities. The Ethics Commission needs to be an exempt legal entity as those other entities are in 28-32-08.1(5).

Section 20 by requiring the attorney general's review of rules being proposed.

Section 23 by requiring oversight by the legislative management's administrative rules committee.

Section 24 by permitting the legislative management's administrative rules committee to void rules of the Ethic Commission.

Section 25 by permitting the legislative management's administrative rules committee to review existing rules of the Ethic Commission.

10. Article XIV, Section 3 provides legal authority for the Ethics Commission to investigate alleged violations of its ethics rules, any of the provisions of Article XIV, and any related state laws.

Constitutional Issues in HB 1521: Contrary to Article XIV, HB 1521 improperly requires specific and excessive procedures regarding an individual who files a complaint with the Ethics Commission, interferes with other procedural matters regarding the Ethics Commission, and would unconstitutionally deny the Ethics Commission the right to investigate anonymous or unattested to complaints.

Article XIV empowers the Ethics Commission to investigate alleged violations of the rules adopted by the Ethics Commission, violations of Article XIV, and violations of related state laws. The Legislative Assembly may enact laws that facilitate, safeguard, or expand, but not hamper, restrict, or impair this authority to investigate alleged violations. HB 1521 seeks to "hamper, restrict, or impair" the authority of the Ethics Commission to investigate in the following ways:

1. In Section 32, § 54-66-05(1) requires a complainant to provide a name, address and telephone number; § 54-66-05(2) requires a complainant to submit a signed attestation under oath; § 54-66-05(3) requires that unless the complainant signs the attestation within 5 days, the Ethics Commission may not investigate or take other action on the complaint, and, unlike any other complaint reporting process in state government; § 54-66-05(4) subjects a complainant to criminal defamation under Chapter 12.1-15 if the complaint is knowingly or recklessly false. Article XIV does

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not give the Legislative Assembly the authority to place such restrictions on the filing of complaints and complainants. Most, if not all, state agencies are permitted to investigate anonymous complaints. Law enforcement is entitled to investigate anonymous complaints. Certainly a constitutionally created legal entity can be allowed to investigate anonymous complaints in a proper and confidential way. If the investigation reveals no wrongdoing then all records will be kept strictly confidential. The Ethics Commission is empowered to adopt rules to assure due process is afforded to violators of Article XIV as required under the 14th Amendment to the United States Constitution.

2. In Section 32, §§'s 54-66-09, 54-66-10 and 54-66-11 similarly interfere with the independence of the Ethics Commission to proscribe its own processes over complaints and complainants in order to assure due process is afforded to violators of Article XIV as required under the 14th Amendment to the United States Constitution.

In summary, HB 1521 materially interferes with the mandate given to the Legislative Assembly by the North Dakota Constitution. HB 1521 does not implement the requirements of Article XIV in a manner intended to facilitate, safeguard, or expand the substance of Article XIV, but rather in ways intended to hamper, restrict, or impair Article XIV which, if passed in its current form, will give rise to constitutional challenges.

Legislative Assembly Required Implementation of Article XIV to the North Dakota Constitution

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Article XIV to the North Dakota Constitution was passed by the people in November 2018 and became effective on January 5, 2019. Article XIV was designed to be implemented over a staggered three-year period. Article XIV requires the Legislative Assembly to implement the article by passage of laws intended to facilitate, safeguard, or expand, but not to hamper, restrict, or impair the substance of the article. In case of a conflict between a provision of Article XIV and any other provision contained in the Constitution, the provisions of Article XIV control.

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The language in Article XIV is consistent with other provisions in the North Dakota Constitution. For example, Section 24 of Article I of the Constitution provides that "the provisions of this constitution are mandatory and prohibitory unless, by express words, they are declared to be otherwise." In recognition that Article XIV was a constitutional amendment passed by an initiative of the people, Section 1 of Article III states "while the legislative power of this state shall be vested in a legislative assembly . . . the people reserve the power . . . to propose and adopt constitutional amendments by the initiative. . . . Laws [by the Legislative Assembly] may be enacted to facilitate and safeguard, but not to hamper, restrict, or impair these powers." In other words, the Legislative Assembly must be careful not to enact laws that go against the intent or plain wording of a constitutional provision.

In further describing the role of the Legislative Assembly in such matters, Section 13 of Article IV states, "the legislative assembly shall enact all laws necessary to carry into effect the provisions of this constitution." And when enacting "laws necessary to carry into effect" a provision of the constitution, a rule of constitutional construction is that words are to be given their plain, ordinary and commonly understood meaning. Verry v. Trenbeath, 148 N.W.2d 567, 574 (N.D. 1967). The intent and purpose of a constitutional provision is to be determined, if possible, from the language itself. Bulman v. Hulstrand Constr. Co., Inc., 521 N.W.2d 632, 636 (N.D. 1994).

This document highlights the steps or actions necessary to implement Article XIV by the Legislative Assembly. It is interesting to note that only seven of the 14 subsections contained in Article XIV require any actions to be taken by the Legislative Assembly.

Summary of required actions by the Legislative Assembly to implement Article XIV. See bolded >Subsection numbers below:

Article XIV

Section 1 —Transparency

Subsection 1- No action ever required.

>Subsection 2- *Within three years of January 5, 2019, the Legislative Assembly must enact laws that properly vest one or more entities with the authority to implement, interpret and enforce this subsection that requires prompt public disclosure of the "ultimate and true source of funds" spent in an amount greater than two hundred dollars, to influence statewide elections, elections to the Legislative Assembly or to lobby or otherwise influence state government action. The Legislative Assembly then has an ongoing duty over time to revise these laws as necessary in light of changes in technology and political practices.*

Section 2 —Lobbyists and Conflicts of Interest

>Subsection 1- *Gifts to public officials will be prohibited after January 5, 2021. Over the next 2 years, the Ethics Commission is to adopt ethical rules to provide certain exceptions for items of value that do not rise ethical concerns. The Legislative Assembly is required to provide for appropriate civil and criminal sanctions for violations of this subsection.*

>Subsection 2- *Prohibits elected public officials from being a lobbyist while holding office or for two years after holding office. The Legislative Assembly is required to provide for appropriate civil and criminal sanctions for violations on an emergency basis.*

>Subsection 3- Lobbyist may not deliver certain campaign contributions to public officials. The Legislative Assembly is required to provide for appropriate civil and criminal sanctions for violations on an emergency basis.

>Subsection 4- Certain candidates and public officials may not use campaign contributions for personal use. Because a criminal penalty already exists, the Legislative Assembly is required to provide an appropriate civil sanction for violations on an emergency basis.

>Subsection 5- Becoming effective after January 5, 2022, this subsection prohibits bias by certain decision-makers in state government. Over the next 2 years, the Ethics Commission is to adopt definitional rules for what constitutes the appearance of bias and the conditions under which these decision-makers must remove themselves from quasi-judicial proceedings in which they have a financial interest. The Legislative Assembly is to provide for appropriate "enforcement penalties" only as the Ethics Commission is to define the definitional terms.

Subsection 6- Foreign entities are prohibited from making contributions or expenditures in ND elections. No action ever required.

Section 3 —North Dakota Ethics Commission

Subsection 1- No action ever required.

>Subsection 2- The Legislative Assembly is required to provide for timely and adequate funding of the Ethics Commission on an emergency basis.

Subsection 3- No action ever required.

Section 4 —General Provisions

Subsection 1- No action ever required.

Subsection 2- No action ever required.

Subsection 3- No action ever required.

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The table below analyzes the steps necessary for the Legislative Assembly to implement Article XIV section by section.

Article XIV	Implementation Dead-lines	Article XIV language set forth below:	Relevant comments and Legislative Assembly actions required to implement Article XIV (Note: underlining below is for emphasis only.)
Section 1. Transparency			
Subsection 1	Effective Date 1/5/2022	<i>"The people of North Dakota need information to choose candidates for office, vote on ballot measures, and ensure that their representatives are accountable. This transparency must be sufficient to enable the people to make informed decisions and give proper weight to different speakers and messages. The people therefore have the right to know in a timely manner the source, quantity, timing, and nature of resources used to influence any statewide election, election for the legislative assembly, statewide ballot-issue election, and state government action. This right is essential to the rights of free speech, assembly, and petition guaranteed by the First Amendment to the United States Constitution and shall be construed broadly."</i>	Provides a constitutional statement of citizen's right to transparency and accountability. This subsection expands the people's right to <u>timely</u> know the source and nature of resources used to "influence" state elections or state government actions, including action by the executive and legislative branches of government. No Legislative Assembly action ever required.
Subsection 2	Effective Date 1/5/2022	<i>"The Legislative Assembly shall implement and enforce this Section by enacting, no more than three years after the effective date of Article XIV, laws that require prompt, electronically accessible, plainly comprehensible, public disclosure of the ultimate and true source 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."</i> <i>"The legislative Assembly shall have an ongoing duty to revise these laws as necessary to promote the purposes of this Section in light of changes in technology and political practices."</i> <i>"The Legislative Assembly "shall vest by law one or more entities with authority to implement, interpret and enforce this subsection and legislation enacted thereunder."</i> <i>"If the laws or rules enacted or an implementation, interpretation, or enforcement action taken under this subsection fail to fully vindicate the rights provided in this subsection, a resident taxpayer may bring suit in the courts of this state to enforce such rights."</i>	Within 3 years, requires <u>prompt</u> public disclosure of "ultimate and true source of funds" spent in an amount greater than two hundred dollars, to influence statewide elections, elections to Legislative Assembly, lobby or otherwise influence state government actions. Given the critical importance of this transparency requirement, this subsection provides <i>up to three years</i> for the Legislative Assembly, the Ethics Commission, and policy makers to seek broad input and to carefully develop laws now and in the future that properly interpret and fully implement the requirement. Provides resident taxpayers with standing to sue the Legislative Assembly, Ethics Commission or other entity should the rights provided for in this subsection not be fully vindicated. With 3 years to implement, the Legislative Assembly must enact laws that properly vest one or more entities with the authority to implement, interpret and enforce the requirements of this subsection. The Legislative Assembly then has an ongoing duty to revise these laws as necessary in light of changes in technology and political practices.

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Section 2. Lobbyists and Conflicts of Interest.			
Subsection 1	Effective Date 1/5/2021	<p><i>"A lobbyist may not knowingly give, offer, solicit, initiate, or facilitate a gift to a public official. A public official may not knowingly accept a gift from a lobbyist. These prohibitions do not apply if the lobbyist is an immediate family member of the public official."</i></p> <p><i>"Gift," as used in this Subsection, means any item, service, or thing of value not given in exchange for fair market consideration, including gifts of travel or recreation."</i></p> <p><i>"However, "gift" does not mean any purely informational material or campaign contribution, or, in order to advance opportunities for North Dakota residents to meet with public officials in educational and social settings inside the state, any item, service, or thing of value given under conditions that do not raise ethical concerns, as determined by rules adopted by the ethics commission. Such rules must be adopted within two years after the effective date of this Article. So as to allow for the adoption of these rules, these prohibitions shall take effect two years after the effective date of this Article. Appropriate civil and criminal sanctions for violations of this Subsection shall be set by the Legislative Assembly."</i></p>	<p>Effective after 1/5/2021, lobbyists may not give "gifts" – a defined term - to public officials. Public officials may not accept gifts from a lobbyist. Prohibited "gifts" are unambiguously defined. Exceptions to what are not gifts are plainly provided. The Ethics Commission is required to adopt ethical rules to provide certain exceptions for items of value that do not rise ethical concerns.</p> <p>Public officials are defined in Section 4, Subsection 2 of Article XIV and include "any elected or appointed office or official of the state's executive or legislative branch, including members of the Ethics Commission, or members of the governor's cabinet, or employees of the legislative branch." It is to this expansive list of people that gifts from lobbyists will now be prohibited.</p> <p>"Lobbying" means influencing or attempting to influence public officials on a particular issue. States generally define lobbying as an attempt to influence government action. A "lobbyist" means any person who engages in lobbying. Under this subsection, such persons are prohibited from giving gifts to public officials.</p> <p>The term "lobbyist" in this subsection is broader than to those lobbyists required to be registered under NDCC Chapter 54-05.1. In fact, Chapter 54-05.1 seeks only to regulate a small number of lobbyists who 1) seek to secure or defeat legislation or the approval or veto of legislation by the governor, or 2) attempts to influence decisions made by legislative management or by an interim committee. Chapter 54-05.1 also provides a long list of exceptions of persons who are lobbyists but are not required to register with the State.</p> <p>This Subsection 1 does not take effect until January 5, 2021.</p> <p>Over the next 2 years, the Ethics Commission is to adopt ethical rules to provide certain exceptions for items of value that do not rise ethical concerns. The Legislative Assembly is required to provide for the appropriate civil and criminal sanctions for violations.</p>
Subsection 2	Effective Date 1/5/19	<p><i>"An elected public official may not be a lobbyist while holding office or for two years after holding office."</i></p> <p><i>"Appropriate civil and criminal sanctions for violations of this</i></p>	<p>The definitions for "public official" and "lobbyist" are described in the commentary to subsection 1 above. This subsection applies only to "elected" public officials.</p>

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		<i>Subsection shall be set by the Legislative Assembly."</i>	The Legislative Assembly is required to provide for appropriate civil and criminal sanctions for violations of this subsection on an <u>emergency basis</u> as the effective date of this subsection was January 5, 2019.
Subsection 3	Effective Date 1/5/19	<p><i>"A lobbyist may not knowingly deliver a campaign contribution made by another individual or entity. "Deliver," as used in this Subsection, means to transport, transfer, or otherwise transmit, either physically or electronically."</i></p> <p><i>"This prohibition does not apply to a person who delivers a campaign contribution to the person's own campaign, or to the campaign of the person's immediate family member. This prohibition shall not be interpreted to prohibit any person from making a campaign contribution or from encouraging others to make a campaign contribution or to otherwise support or oppose a candidate."</i></p> <p><i>"Appropriate civil and criminal sanctions for violations of this Subsection shall be set by the Legislative Assembly."</i></p>	<p>Except as permitted in this subsection, a lobbyist may not deliver campaign contribution funds from others.</p> <p>The Legislative Assembly is required to provide for appropriate civil and criminal sanctions for violations of this subsection on an <u>emergency basis</u> as the effective date of this Subsection was January 5, 2019.</p>
Subsection 4	Effective Date 1/5/19	<p><i>"A statewide candidate, candidate for the legislative assembly, or public official may not knowingly use a campaign contribution for personal use or enrichment."</i></p> <p><i>"Appropriate civil and criminal sanctions for violations of this subsection shall be set by the Legislative Assembly."</i></p>	<p>This subsection makes Constitutional the 2017 Legislative Assembly's ban on personal use or enrichment from campaign contributions.</p> <p>The Legislative Assembly is required to provide for an appropriate civil sanction for a violation of this Subsection on an <u>emergency basis</u> as the effective date of this Subsection was January 5, 2019. It has already provided for a criminal penalty in NDCC 16.1-08.1-07 (Class A misdemeanor).</p>
Subsection 5	Effective Date 1/5/22	<p><i>"Directors, officers, commissioners, heads, or other executives of agencies shall avoid the appearance of bias, and shall disqualify themselves in any quasi-judicial proceeding in which monetary or in-kind support related to that person's election to any office, or a financial interest not shared by the general public as defined by the ethics commission, creates an appearance of bias to a reasonable person."</i></p> <p><i>The Legislative Assembly and the ethics commission shall enforce this provision by appropriate legislation and rules, respectively. So as to allow for the adoption of such legislation or rules, this Subsection shall take effect three years after the effective date this Article."</i></p>	<p>Effective 1/5/2022, bias and appearance of bias is prohibited in quasi-judicial proceedings within state government. This subsection requires certain elected and unelected decision-making state officials (directors, officers, commissioners, heads, or other executives of agencies) to disqualify themselves from voting on or making regulatory decisions that are related to their campaign contributors or their financial interest as defined by the <u>Ethics Commission</u>. This subsection does not take effect until January 5, 2022.</p> <p>This subsection has a three-year delay period that allows time for the Ethics Commission to adopt its definitional rules and then for the Legislative Assembly to provide for appropriate "enforcement penalties" only.</p>

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Subsection 6	Effective Date 1/5/19	<i>"Governments of foreign countries, foreign nationals not lawfully admitted for permanent residence in the United States, and corporations organized under the laws of or having their principal place of business in a foreign country, are prohibited from making contributions or expenditures in connection with any statewide election, election for the legislative assembly, or statewide ballot-issue election."</i>	<p>This subsection makes constitutional the 2017 Legislative Assembly's ban on foreign contributions and expenditures.</p> <p>No Legislative Assembly action ever required.</p>
Section 3. North Dakota Ethics Commission			
Subsection 1	Effective Date 1/5/19	<i>"In order to strengthen the confidence of the people of North Dakota in their government, and to support open, ethical, and accountable government, the North Dakota Ethics Commission is hereby established."</i>	<p>As of January 5, 2019, establishes a new, constitutional Ethics Commission independent from either the legislative or executive branches of government. The ethics commissioners are be appointed as soon as possible.</p> <p>No Legislative Assembly action ever required.</p>
Subsection 2	Effective Date 1/5/19	<i>"The ethics commission may adopt ethics rules related to transparency, corruption, elections, and lobbying to which any lobbyist, public official, or candidate for public office shall be subject, and may investigate alleged violations of such rules, this Article XIV, and related state laws. The ethics commission shall maintain a confidential whistleblower hotline through which any person acting in good faith may submit relevant information."</i> <i>"The Legislative Assembly shall provide adequate funds for the proper carrying out of the functions and duties of the ethics commission."</i>	<p>This subsection defines the authority and duties of the new Ethics Commission, and requires adequate funding.</p> <p>The Legislative Assembly is required to provide for timely and adequate funding of the new Ethics Commission on an <u>emergency basis</u> as it was established on January 5, 2019.</p>
Subsection 3	Effective Date 1/5/19	<i>"The ethics commission shall consist of five members, appointed for four-year terms by consensus agreement of the governor, the majority leader of the senate, and the minority leader of the senate. No member of the ethics commission may hold other public office or be a lobbyist, candidate for public office, or political party official."</i>	<p>Provides for appointment and qualifications of members of the Ethics Commission.</p> <p>No Legislative Assembly action ever required.</p>
Section 4. General Provisions.			
Subsection 1	Effective Date 1/5/19	<i>"This Article is self-executing and all of its provisions are mandatory. Laws may be enacted to facilitate, safeguard, or expand, but not to hamper, restrict, or impair, this article. This Article shall take effect sixty days after approval."</i>	<p>Provides for the effective date of Article XIV and provides for protection against unconstitutional laws being enacted. All the provisions of Article XIV take effect on January 5, 2019, except those specifically listed with a later effective date.</p> <p>No Legislative Assembly action ever required.</p>

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Subsection 2	Effective Date 1/5/19	<i>"For the purposes of this Article, "public office" or "public official" means any elected or appointed office or official of the state's executive or legislative branch, including members of the ethics commission, or members of the governor's cabinet, or employees of the legislative branch, and "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency."</i>	Definitions for "public office," "public official" and "agency". No Legislative Assembly action ever required.
Subsection 3	Effective Date 1/5/19	<i>"If any provision of this Article is held to be invalid, either on its face or as applied to any person, entity, or circumstance, the remaining provisions, and the application thereof to any person, entity, or circumstance other than those to which it is held invalid, shall not be affected thereby. In any case of a conflict between any provision of this Article and any other provision contained in the Constitution, the provisions this Article shall control."</i>	Provides a statement of legal construction, severability and constitutional conflict. No Legislative Assembly action ever required.

19.1078.02003
Title.

Prepared by the Legislative Council staff for
Senator Mathern

March 12, 2019

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1521

Page 1, line 6, after the first comma insert "16.1-08.1-03.7,"

Page 1, line 7, remove "28-32-14,"

Page 1, line 7, after the eighth comma insert "and"

Page 1, line 8, remove "28-32-17, 28-32-18, and 28-32-18.1,"

Page 1, line 9, remove "28-32-27,"

Page 1, line 10, remove "disqualification of agency heads in quasi-judicial proceedings,"

Page 6, line 15, remove "solely"

Page 13, after line 6, insert:

"SECTION 6. AMENDMENT. Section 16.1-08.1-03.7 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-03.7. Political committees that organize and register according to federal law that make independent expenditures or disbursements to nonfederal candidates, political parties, and political committees.

A political committee that organizes and registers according to federal law and makes an independent expenditure or makes a disbursement in excess of two hundred dollars to a nonfederal candidate seeking public office or to a political party or political committee in this state shall file a copy of that portion of the committee's federal report detailing the independent expenditure or the disbursement made. The political committee shall file a copy of the committee's federal report, and supplementary information as necessary under this section, with the secretary of state at the time of filing the report with the applicable federal agency. The report must include:

1. The name, mailing address, and treasurer of the political committee;
2. The recipient's name and mailing address; ~~and~~
3. The date and amount of the independent expenditure or disbursement; and
4. The ultimate and true source of funds listed by contributor and subcontributor of any amount over two hundred dollars, adjusted for inflation, collected or used to make the independent expenditure or disbursement, including:
 - a. The name and address of the contributor;
 - b. The total amount of the contribution; and
 - c. The date the last contribution was received."

Page 13, line 17, replace "For the first violation, the" with "The"

Page 13, line 17, remove "assess a civil penalty of five hundred"

Page 13, replace lines 18 through 21 with "impose a fine of up to five thousand dollars or two times the value of the contribution used in violation of this section, whichever is greater, upon any person who knowingly violates this section"

Page 13, line 25, remove "1."

Page 13, remove lines 27 through 31

Page 19, line 7, remove "commission or an"

Page 19, line 7, after "governor" insert ", or the ethics commission"

Page 20, line 13, remove ", or"

Page 20, line 14, remove "the Constitution of North Dakota is amended to eliminate the authority"

Page 22, line 14, remove "or the commission"

Page 22, line 16, remove "or commission"

Page 22, line 18, remove "or commission"

Page 23, line 2, remove "or the commission"

Page 23, line 13, remove "or commission"

Page 23, line 14, remove "or commission"

Page 23, line 16, remove "or commission"

Page 23, line 17, after "to" insert "the ethics commission,"

Page 23, line 18, overstrike "nor does this section apply to" and insert immediately thereafter "or"

Page 26, line 11, remove "enacted during the most recent session of the"

Page 26, line 12, remove "legislative assembly which is"

Page 28, remove lines 17 through 31

Page 30, remove lines 9 through 31

Page 31, remove lines 1 through 31

Page 32, remove lines 1 through 31

Page 33, removes line 1 through 23

Page 34, remove lines 11 through 30

Page 35, remove lines 1 through 24

Page 37, line 29, after "recreation" insert: ". The term does not mean:

- a. Purely information material;
- b. A campaign contribution; and

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

Page 37, line 30, remove "Influence state government action" means promoting or opposing the final adoption of"

Page 37, remove line 31

Page 38, remove line 1

Page 38, line 2, remove "9."

Page 38, line 2, replace "means an individual required to register under section 54-05.1-03" with ":

a. Means a person who directly or indirectly:

- (1) Attempts to secure the passage, amendment, or defeat of any legislation by the legislative assembly;
- (2) Attempts to secure the approval or veto of any legislation by the governor;
- (3) Attempts to influence decisions regarding legislative matters made by the legislative management or a legislative committee;
or
- (4) Attempts to influence decisions regarding official matters made by a public official in the executive branch of state government;
and

b. Does not mean:

- (1) A private citizen appearing on the citizen's own behalf;
- (2) A public official or an employee, officer, board member, volunteer, or agent of the state or a political subdivision of the state acting in the individual's official capacity"

Page 38, line 3, replace "10." with "8."

Page 38, line 6, replace "11." with "9."

Page 38, line 8, replace "12." with "10."

Page 38, line 9, remove "solely"

Page 38, line 14, remove "The report must be filed with the"

Page 38, remove line 15

Page 38, line 18, remove "The"

Page 38, remove line 19

Page 38, line 26, remove "within forty days after the deadlines"

Page 38, remove lines 27 through 31

Page 39, remove lines 1 through 15

Page 39, line 18, remove "with a value over sixty dollars per"

Page 39, line 19, remove "individual per event, adjusted for inflation,"

Page 39, line 19, remove ", except to"

Page 39, remove lines 20 through 31

Page 40, remove lines 1 and 2

Page 40, line 3, remove "The prohibition in subsection 1 does not apply when a lobbyist gives, offers, solicits,"

Page 40, remove lines 4 through 7

Page 40, line 8, remove "3."

Page 40, line 8, replace "five hundred" with "up to one thousand"

Page 40, line 9, after "dollars" insert "or twice the amount of the gift, whichever is greater,"

Page 40, line 9, remove "knowingly"

Page 40, line 9, remove "and, if the person is a"

Page 40, remove line 10

Page 40, line 11, remove "54-05.1"

Page 40, line 11, remove "knowing"

Page 40, line 12, replace "B" with "A"

Page 41, line 6, replace "a part-time" with "an"

Page 41, line 7, remove "administrative assistant must be provided an office within the office"

Page 41, replace lines 8 through 10 with "director of the office of management and budget shall allocate office space in the state capitol for the ethics commission, or, if office space in the capitol is unavailable, shall negotiate for, contract for, and obtain office space for the ethics commission in the city of Bismarck or in the Bismarck area. The ethics commission's office space may not be located in the office space of any other government agency, board, commission, or other governmental entity, and must provide sufficient privacy and security for the ethics commission to conduct business. The director shall charge the ethics commission an amount equal to the fair value of the office space and related services the office of management and budget renders to the ethics commission."

Page 41, line 11, replace "Identifying information - False complaints" with "Informing the accused individual"

Page 41, line 12, remove "1."

Page 41, line 12, remove "When making a"

Page 41, remove lines 13 through 24

Page 41, line 25, remove "by registered mail of the identity of the"

Page 41, line 26, replace "complainant who made the allegation" with "the ethics commission received a complaint"

Page 41, line 26, remove "and include the written"

Page 41, line 27, remove "complaint or written summary of the oral complaint"

Page 41, line 27, remove "but no later"

Page 41, replace lines 28 through 30 with "If the complaint was made in writing, the ethics commission shall provide a copy of the complaint to the accused individual no later than twenty calendar days after the commission receives the complaint. If the complaint was made orally, the ethics commission shall inform the accused individual of the allegations and other information provided in the complaint no later than twenty calendar days after the ethics commission receives the complaint."

Page 42, line 1, replace "54-66-07" with "54-66-06"

Page 42, remove lines 4 through 13

Page 42, line 14, replace "54-66-09" with "54-66-07"

Page 42, line 14, replace "- Findings and Recommendations - Responses" with "and referrals"

Page 42, line 15, remove "investigator engaged under section 54-66-08 shall investigate the complaint"

Page 42, line 16, replace "referred to it by the ethics commission. Investigations" with "commission may investigate a complaint if the accused individual and the complainant have not agreed on an informal resolution. An investigation"

Page 42, line 19, remove "The accused individual and complainant may be"

Page 42, remove lines 20 through 22

Page 42, line 23, after the "2." insert "The commission may refer a matter described in or arising from a complaint to the bureau of criminal investigation or other appropriate law enforcement agency if a majority of the commission members reasonably believes a crime was committed or the safety of the complainant is at risk."

54-66-08. Investigation findings - Penalties.

1."

Page 42, line 23, remove "but no later than six months after the"

Page 42, remove lines 24 through 29

Page 43, remove lines 1 through 7

Page 43, line 8, remove:

"2. After the meeting with the accused individual and complainant,"

Page 43, line 9, replace ", including a determination" with "to the complainant and accused individual."

2. The findings must state"

Page 43, line 9, after "whether" insert "the commission believes, based on a preponderance of the evidence as viewed by a reasonable person,"

Page 43, line 11, after the underscored period insert "The accused individual and complainant may respond in writing to the findings within twenty calendar days of receiving the findings. The commission shall maintain copies of the findings and any written response to the findings."

3."

Page 43, line 12, replace "assess a civil" with "impose a"

Page 43, line 12, remove "if authorized by law or refer the matter to the entity authorized by"

Page 43, line 13, replace "law to assess a civil penalty" with "specified by law"

Page 43, replace lines 14 through 21 with:

"54-66-09. Appeals.

An accused individual or complainant may appeal a finding of the commission to the district court of the county where the accused individual resides.

54-66-10. Lobbyist requirements.

A person who meets the definition of a lobbyist under this chapter is not required to comply with the requirements of chapter 54-05.1 unless the person also meets the definition of a lobbyist under section 54-05.1-02."

Page 44, line 10, replace "Willful publication" with "Publication"

Page 44, line 11, remove "criminal defamation under section 12.1-15-01."

Page 44, replace line 12 with "a class B misdemeanor."

Page 44, line 14, replace "For the first" with "A knowing"

Page 44, line 15, replace ", the secretary of state shall assess a civil penalty of five hundred" with "is a class A misdemeanor. The commission shall impose a fine of up to one thousand"

Page 44, line 15, replace the second "the" with "a"

Page 44, line 16, remove "commits the violation. For a second and subsequent knowing violation of"

Page 44, line 17, replace "the subsection, the person is guilty of a class B misdemeanor" with "violates the subsection"

Page 44, line 19, after "commission" insert ", unless the commission objects to the representation by the attorney general in a specific matter"

Page 44, line 24, replace "lobbyist may not deliver knowingly a campaign contribution made by another person in" with "knowing"

Page 44, line 25, remove ". For a first"

Page 44, line 26, replace "violation, the secretary of state shall assess a civil penalty of five hundred" with "is a class A misdemeanor. The commission shall impose a fine of up to one thousand"

Page 44, line 27, replace "this section and may revoke the lobbyist's registration. For" with "the subsection. The commission may impose a fine of up to one thousand dollars upon any person for"

Page 44, line 28, remove "this section, the person is guilty of a class B"

Page 44, line 29, replace "misdemeanor" with "the subsection"

Page 44, line 31, replace "\$300,000" with "\$517,155"

Page 45, line 3, replace "one and one-half" with "two"

Page 45, line 4, after the fifth comma insert "6,"

Page 45, line 4, replace "7" with "8"

Page 45, line 5, replace "32" with "28"

Page 45, line 8, replace "32" with "28"

Page 45, line 10, replace "32" with "28"

Page 45, line 12, remove "8,"

Page 45, line 13, after the fifth comma insert "and"

Page 45, line 13, remove ", 28, 29, 30, and 31"

Renumber accordingly

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Senate Special Committee on Ethics
Testimony regarding HB 1521
Ellen Chaffee, Ph.D.
April 9, 2019

Mr. Chairman, Members of the Committee:

My name is Ellen Chaffee, vice-president of North Dakotans for Public Integrity.

First, thank you for your thoughtful, respectful approach to Senate Bill 2148. We look forward to your continuing care in addressing HB 1521.

Voters approved Article XIV to highlight North Dakota's commitment to historic values like openness, respect, fairness, and integrity. The culture of North Dakota has been based on trust. You could leave the keys in the pickup in case somebody needed to use it.

Times have changed. Trust is no longer automatic, even here. Now we need frameworks like Article XIV to define trustworthy behavior and hold people accountable. The voters are looking to you for leadership in defining that framework further.

Unfortunately, HB 1521 as introduced needs your attention. The challenge that we hope you will continue to accept and fulfill is to finish the session with a high-functioning, adequately funded Ethics Commission and no need for judicial review.

To implement Article XIV in fact and in spirit is to be on the right side of history and leave a legacy of integrity.

Thank you.

ALVIN A. JAEGER
SECRETARY OF STATE

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SECRETARY OF STATE

STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

April 9, 2019

TO: Chairman David Hogue and Members of the Senate Ethics Committee

FR: Jim Silrum, Deputy Secretary of State, on behalf of Secretary of State Al Jaeger

RE: HB 1521 – Transparency and the Ethics Commission

The following describes the amendments we are offering to HB 1521 for your consideration:

- **“Adjusted for inflation”** page 1, lines 19 through 21:
 - Campaign filers are already confused about what must be disclosed even with fixed amounts of greater than \$100 for anything to do with Measures and greater than \$200 for everything else. It is my understanding that the law can require additional disclosure than what is required in Article XIV; it just can't require less.
 - The amendment removes all new references to “adjusted for inflation” within the bill. This means that Sections 2 through 4 are being removed since adding that phrase were the only changes made to those sections.
 - It should be noted that because of the wording in Article XIV, if we were ever to experience significant deflation, the legislature would need to adjust the \$100 and \$200 amounts accordingly. However, that is highly unlikely.
 - This will eliminate the necessity for a fiscal note for this item to enhance ND Campaign Finance Online (ND CFO).
- **“Subcontributors”** page 12, line 12 through page 13, line 6:
 - Under current law, Sponsoring Committees for Initiated and Referred Measures and Measure Committees of any kind (whether initiated, referred, or placed on the ballot by the legislature) are the **only** campaign disclosure filers that must disclose subcontributors.
 - Since the intent of adding “ultimate and true source of funds” is to make every filer disclose subcontributors, this section must be amended to make subcontributors a requirement for every filer when receiving contributions that include subcontributors.
 - This enhancement would cost an estimated \$10,000 and a fiscal note should be requested of the Secretary of State.
 - The amendment necessary to NDCC 16.1-08.1-03.1 (currently Section 5 of the bill) is suggested as follows: (see next page)

16.1-08.1-03.1. Special requirements for statements required of persons engaged in activities regarding ballot measures – disclosure of subcontributors for all contributions.

1. For each reportable contribution and expenditure under section 16.1-08.1-02.4, the threshold for reporting is one hundred dollars, adjusted for inflation, for any person engaged in activities described in subdivision e of subsection 1344 of section 16.1-08.1-01.
2. For contributions received from an out-of-state contributor, a person engaged in activities described in subdivision e of subsection 1344 of section 16.1-08.1-01 shall include the following information regarding each subcontributor that has stated a contribution is for the express purpose of furthering the passage or defeat of a ballot measure in the statements required under section 16.1-08.1-02.4:
 - a. A designation as to whether any person contributed in excess of one hundred dollars, adjusted for inflation, of the total contribution;
 - b. The name and mailing address of each subcontributor that contributed in excess of one hundred dollars, adjusted for inflation, of the total contribution;
 - c. The contribution amounts of each disclosed subcontributor; and
 - d. The occupation, employer, and address for the employer's principal place of business of each disclosed subcontributor who is an individual.
3. An initiative and referendum sponsoring committee also shall file a disclosure statement by the date the secretary of state approves the petition for circulation, and shall file an additional statement on the date the petitions containing the required number of signatures are submitted to the secretary of state for review. The statements required under this subsection must be in the same form as the year-end statements under section 16.1-08.1-02.4.
4. A sponsoring committee shall file a statement regarding its intent to compensate circulators before paying for petitions to be circulated.
5. For all other reportable contributions under sections 16.1-08.1-02.3 and 16.1-08.1-02.4, the following information regarding each subcontributor that has stated a contribution is for the express purpose of being included with the total contribution shall be included:
 - a. A designation as to whether any person contributed in excess of two hundred dollars of the total contribution;
 - b. The name and mailing address of each subcontributor that contributed in excess of two hundred dollars of the total contribution;
 - c. The contribution amounts of each disclosed subcontributor; and
 - d. The occupation, employer, and address for the employer's principal place of business of each disclosed subcontributor who is an individual.

Notes about the amendment above:

- a. Subsections 1-4 apply to all committees dealing with measures
- b. The removal of the overstrike on "13" and the overstrike added to "14" in subsections 1 and 2 are due to the fact that the definition for "Adjusted for Inflation" has been removed from Section 1 of the bill.
- c. Subsection 5 is added to require subcontributors of every other filer.
- d. "who is an individual" has been added in (2)(d) and (5)(d) for the simple reason that an organization would not have an occupation, employer, or employer address. These data elements are only applicable to individuals.

Continuing with the bill:

- "**Report vs. Statement**" page 13 (now 14 in the marked version), line 25 (now 36). The campaign disclosure filings are consistently referred to as "statements" in this chapter rather than "reports."

- **"Subsections 1 through 4 of section 54-66-02. Disclosure of ultimate and true source of funds"** page 38, lines 13 and 17. Adding "during the reporting period of July 1 through June 30" to make it the reporting period clear.
- Page 45, changing the references to the various sections of the bill with regard to the listed effective dates, expiration date, and the emergency clause due to the deletion of Sections two through four of the bill.

Thank you for your consideration of the amendments offered that will allow the Secretary of State's office to carry out the policies established by the legislature on these matters, for the filers to comply with the new requirements, and for the public to better understand the additional transparency that is being given to them.

It should be noted that the Secretary of State will need an additional appropriation of \$10,000 to incorporate the enhancements to the North Dakota Campaign Finance Online (ND CFO) and to FirstStop that will be required by the new campaign disclosure and lobbyist registration and reporting. A fiscal note will need to be requested of our office.

It should also be noted that it is the Secretary of State's intent to present a request for consideration by the Governor and the 2021 Legislative Assembly to overhaul or replace ND CFO so that it will accommodate all new requirements, enhance the intuitive nature for filers, and to make it web-responsive so that filers and viewers can better use the system on mobile devices.

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PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1521

Page 1, line 4, replace "section" with "sections"

Page 1, line 5, overstrike "subsection 4 of section 16.1-08.1-02.1, sections 16.1-08.1-02.3, 16.1-08.1-02.4,"

Page 1, line 19, remove "Adjusted for inflation" means adjusted on January first of each year by the change in

Page 1, remove lines 20 and 21

Page 1, line 22, overstrike "2."

Page 2, line 6, remove the overstrike on "2." and overstrike "3."

Page 2, line 13, remove the overstrike on "3." and overstrike "4."

Page 2, line 26, remove the overstrike on "4." and overstrike "5."

Page 3, line 3, remove the overstrike on "5." and overstrike "6."

Page 3, line 29, remove the overstrike on "6." and overstrike "7."

Page 4, line 4, remove the overstrike on "7." and overstrike "8."

Page 4, line 14, remove the overstrike on "8." and overstrike "9."

Page 4, line 21, remove the overstrike on "9." and overstrike "10."

Page 4, line 26, remove the overstrike on "10." and overstrike "11."

Page 4, line 28, remove the overstrike on "11." and overstrike "12."

Page 5, line 1, remove the overstrike on "12." and overstrike "13."

Page 5, line 4, remove the overstrike on "13." and overstrike "14."

Page 5, line 26, remove the overstrike on "14." and overstrike "15."

Page 5, line 30, remove the overstrike on "15." and overstrike "16."

Page 6, line 10, remove the overstrike on "16." and overstrike "17."

Page 6, line 12, remove the overstrike on "17." and overstrike "18."

Page 6, line 14, replace "19." with "18." and replace "who" with "that"

Page 6, line 15, remove “, adjusted for inflation,”

Page 6, remove lines 17 through 30

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Page 7, remove lines 1 through 31

Page 8, remove lines 1 through 31

Page 9, remove lines 1 through 29

Page 10, remove lines 1 through 31

Page 11, remove lines 1 through 31

Page 12, remove lines 1 through 9

Page 12, line 10, replace "5." with "2."

Page 12, line 13, after "measures" insert " – **disclosure of subcontributors for all contributions**"

Page 12, line 15, remove ", adjusted for inflation,"

Page 12, line 16, remove the overstrike on "13" and remove "14"

Page 12, line 19, remove the overstrike on "13" and remove "14"

Page 12, line 24, remove ", adjusted for inflation,"

Page 12, line 26, remove ", adjusted for inflation,"

Page 12, line 29, after "subcontributor" insert "who is an individual"

Page 13, after line 6, insert:

5. For all other reportable contributions under sections 16.1-08.1-02.3 and 16.1-08.1-02.4, the following information regarding each subcontributor that has stated a contribution is for the express purpose of being included with the total contribution shall be included:
 - a. A designation as to whether any person contributed in excess of two hundred dollars of the total contribution;
 - b. The name and mailing address of each subcontributor that contributed in excess of two hundred dollars of the total contribution;
 - c. The contribution amounts of each disclosed subcontributor; and
 - d. The occupation, employer, and address for the employer's principal place of business of each disclosed subcontributor who is an individual.

Page 13, line 7, replace "6." with "3."

Page 13, line 22, replace "7." with "4."

Page 13, line 25, replace "report" with "statement"

Page 14, line 1, replace "8." with "5."

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Page 18, line 16, replace "9." with "6."

Page 19, line 4, replace "10." with "7."

Page 20, line 7, replace "11." with "8."

Page 20, line 15, replace "12." with "9."

Page 20, line 25, replace "13." with "10."

Page 21, line 28, replace "14." with "11."

Page 24, line 10, replace "15." with "12."

Page 24, line 18, replace "16." with "13."

Page 25, line 21, replace "17." with "14."

Page 27, line 26, replace "18." with "15."

Page 28, line 10, replace "19." with "16."

Page 28, line 17, replace "20." with "17."

Page 29, line 1, replace "21." with "18."

Page 29, line 28, replace "22." with "19."

Page 30, line 9, replace "23." with "20."

Page 31, line 7, replace "24." with "21."

Page 33, line 3, replace "25." with "22."

Page 33, line 24, replace "26." with "23."

Page 34, line 3, replace "27." with "24."

Page 34, line 11, replace "28." with "25."

Page 35, line 25, replace "29." with "26."

Page 36, line 18, replace "30." with "27."

Page 36, line 28, replace "31." with "28."

Page 37, line 11, replace "32." with "29."

Page 37, remove "Adjusted for inflation" means adjusted on January first of each year by the change in

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Page 37, remove lines 19 and 20

Page 37, line 21, remove "3."

Page 37, line 23, replace "4." with "3."

Page 37, line 26, replace "5." with "4."

Page 37, line 28, replace "6." with "5."

Page 37, line 30, replace "7." with "6."

Page 38, line 1, replace "8." with "7."

Page 38, line 2, replace "9." with "8."

Page 38, line 3, replace "10." with "9."

Page 38, line 6, replace "11." with "10."

Page 38, line 8, replace "12." with "11."

Page 38, line 9, remove ", adjusted for inflation,"

Page 38, line 12, remove ", adjusted for"

Page 38, line 13, replace "inflation," with "during the reporting period of July 1 through June 30"

Page 38, line 16, remove ", adjusted for"

Page 38, line 17, replace "inflation," with "during the reporting period of July 1 through June 30"

Page 39, line 19, remove ", adjusted for inflation,"

Page 39, line 30, remove ", adjusted for"

Page 39, line 31, remove "inflation,"

Page 45, line 4, replace "3," with "and" and remove "5, and 7"

Page 45, line 5, replace "32" with "29"

Page 45, line 8, replace "32" with "29"

Page 45, line 10, replace "32" with "29"

Page 45, line 12, after "sections" insert "5, 6, 7,"

Page 45, line 13, after "27," insert "and" and remove ", 29, 30, and 31"

Renumber accordingly

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**Suggested Amendment to HB 1521 First Engrossment 19.1078.02000.
For deletion of "adjusted for inflation"**

Page 1, lines 1-13, [revise as necessary to conform to these amendments].

Page 1, remove lines 19 through 21

Page 6, line 15, remove ", adjusted for inflation,"

Page 6, line 22, after dollars, remove ","

Page 6, line 23, remove "adjusted for inflation,"

Page 6, line 25, remove ", adjusted for inflation"

Page 6, line 27, remove ", adjusted for inflation"

Page 7, line 4, remove ", adjusted for inflation"

Page 7, line 11, remove ", adjusted for inflation,"

Page 7, line 29, remove ", adjusted for inflation,"

Page 8, line 3, remove ", adjusted for inflation,"

Page 8, line 5, remove ", adjusted for inflation,"

Page 8, line 15, remove ", adjusted for inflation,"

Page 8, line 29, remove ", adjusted for inflation,"

Page 9, line 3, remove ", adjusted for inflation,"

Page 9, line 5, remove ", adjusted for inflation,"

Page 9, line 12, remove ", adjusted for inflation,"

Page 10, line 13, remove ", adjusted for inflation,"

Page 10, line 13, remove ", adjusted for inflation,"

Page 10, line 18, remove ", adjusted for inflation,"

Page 10, line 20, remove ", adjusted for inflation,"

Page 10, line 22, remove ", adjusted for inflation,"

Page 10, line 27, remove ", adjusted for inflation,"

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Page 10, line 29, remove “, adjusted for inflation,”

Page 11, line 5, remove “, adjusted for inflation,”

Page 11, line 15, remove “, adjusted for inflation,”

Page 11, line 20, remove “, adjusted for inflation,”

Page 11, line 22, remove “, adjusted for inflation,”

Page 11, line 24, remove “, adjusted for inflation,”

Page 11, line 29, remove “, adjusted for inflation,”

Page 11, line 31, remove “, adjusted for inflation,”

Page 12, line 3, remove “, adjusted for inflation,”

Page 12, line 15, remove “, adjusted for inflation,”

Page 12, line 24, remove “, adjusted for inflation,”

Page 12, line 26, remove “, adjusted for inflation,”

Page 37, remove lines 18 through 20

Page 38, line 9, remove “, adjusted for inflation,”

Page 38, line 12, remove “, adjusted for”

Page 38, line 13, remove “inflation,”

Page 38, line 16, remove “, adjusted for”

Page 38, line 17, remove “inflation,”

Page 39, line 19, remove “, adjusted for inflation,”

Page 39, line 30, remove “, adjusted for”

Page 39, line 31, remove “inflation,”

Senator Tim Mathern April 9, 2019

Matherne HB 1521
4/9/19

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19.1078.02005

FIRST ENGROSSMENT

Sixty-sixth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1521

Introduced by

Representative Pollert

Senator Wardner

1 A BILL for an Act to create and enact a new section to chapter 16.1-08.1 and chapter 54-66 of
2 the North Dakota Century Code, relating to reporting campaign contributions and expenditures,
3 restrictions on public officials and lobbyists, investigations of ethics violations, and implementing
4 requirements of article XIV of the Constitution of North Dakota; to amend and reenact section
5 16.1-08.1-01, subsection 4 of section 16.1-08.1-02.1, sections 16.1-08.1-02.3, 16.1-08.1-02.4,
6 16.1-08.1-03.1, 16.1-08.1-03.7, 16.1-08.1-04.1, 28-32-01, 28-32-02, 28-32-03, 28-32-06,
7 28-32-07, 28-32-08, 28-32-08.1, 28-32-08.2, 28-32-09, 28-32-10, 28-32-11, 28-32-12, ~~28-32-14~~,
8 28-32-15, and 28-32-16, ~~28-32-17, 28-32-18, and 28-32-18.1~~, subsections 2 and 4 of section
9 28-32-19, and sections ~~28-32-27~~, 28-32-47, 28-32-48, and 28-32-49 of the North Dakota
10 Century Code, relating to rulemaking procedures, ~~disqualification of agency heads in~~
11 ~~quasi-judicial proceedings~~, implementing article XIV of the Constitution of North Dakota, and
12 requirements for the North Dakota ethics commission; to provide for a penalty; to provide an
13 appropriation; to provide an effective date; to provide an expiration date; and to declare an
14 emergency.

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

16 **SECTION 1. AMENDMENT.** Section 16.1-08.1-01 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **16.1-08.1-01. Definitions.**

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

- 20 1. "Adjusted for inflation" means adjusted on January first of each year by the change in
21 the consumer price index for all urban consumers (all items, United States city
22 average), as identified by the secretary of state.
23 2. "Affiliate" means an organization that controls, is controlled by, or is under common
24 control with another organization. For purposes of this definition, control means the

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- 1 possession, direct or indirect, of the power to direct or cause the direction of the
2 management and policies of an organization, whether through the ownership of voting
3 securities, by contract other than a commercial contract for goods or nonmanagement
4 services, or otherwise. Control is presumed to exist if an organization, directly or
5 indirectly, owns, controls, holds with the power to vote, or holds proxies representing
6 fifty percent or more of the voting securities of any other organization.
- 7 2.3. "Association" means any club, association, union, brotherhood, fraternity, organization,
8 or group of any kind of two or more persons, including labor unions, trade
9 associations, professional associations, or governmental associations, which is united
10 for any purpose, business, or object and which assesses any dues, membership fees,
11 or license fees in any amount, or which maintains a treasury fund in any amount. The
12 term does not include corporations, cooperative corporations, limited liability
13 companies, political committees, or political parties.
- 14 3.4. "Candidate" means an individual who seeks nomination for election or election to
15 public office, and includes:
16 a. An individual holding public office;
17 b. An individual who has publicly declared that individual's candidacy for nomination
18 for election or election to public office or has filed or accepted a nomination for
19 public office;
20 c. An individual who has formed a campaign or other committee for that individual's
21 candidacy for public office;
22 d. An individual who has circulated a nominating petition to have that individual's
23 name placed on the ballot; and
24 e. An individual who has, in any manner, solicited or received a contribution for that
25 individual's candidacy for public office, whether before or after the election for
26 that office.
- 27 4.5. "Conduit" means a person that is not a political party, political committee, or candidate
28 and which receives a contribution of money and transfers the contribution to a
29 candidate, political party, or political committee when the contribution is designated
30 specifically for the candidate, political party, or political committee and the person has
31 no discretion as to the recipient and the amount transferred. The term includes a

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- 1 transactional intermediary, including a credit card company or a money transfer
2 service that pays or transfers money to a candidate on behalf of another person.
- 3 5-6. "Contribution" means a gift, transfer, conveyance, provision, receipt, subscription,
4 loan, advance, deposit of money, or anything of value, made for the purpose of
5 influencing the nomination for election, or election, of any person to public office or
6 aiding or opposing the circulation or passage of a statewide initiative or referendum
7 petition or measure. The term also means a contract, promise, or agreement, express
8 or implied, whether or not legally enforceable, to make a contribution for any of the
9 above purposes. The term includes funds received by a candidate for public office or a
10 political party or committee which are transferred or signed over to that candidate,
11 party, or committee from another candidate, party, or political committee or other
12 source including a conduit. The term "anything of value" includes any good or service
13 of more than a nominal value. The term "nominal value" means the cost, price, or
14 worth of the good or service is trivial, token, or of no appreciable value. The term
15 "contribution" does not include:
- 16 a. A loan of money from a bank or other lending institution made in the regular
17 course of business.
 - 18 b. Time spent by volunteer campaign or political party workers.
 - 19 c. Money or anything of value received for commercial transactions, including rents,
20 advertising, or sponsorships made as a part of a fair market value bargained-for
21 exchange.
 - 22 d. Money or anything of value received for anything other than a political purpose.
 - 23 e. Products or services for which the actual cost or fair market value are reimbursed
24 by a payment of money.
 - 25 f. An independent expenditure.
 - 26 g. The value of advertising paid by a political party, multicandidate political
27 committee, or caucus which is in support of a candidate.
 - 28 h. In-kind contributions from a candidate to the candidate's campaign.
- 29 6-7. "Cooperative corporations", "corporations", and "limited liability companies" are as
30 defined in this code, and for purposes of this chapter "corporations" includes nonprofit
31 corporations. However, if a political committee, the only purpose of which is accepting

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- 1 contributions and making expenditures for a political purpose, incorporates for liability
2 purposes only, the committee is not considered a corporation for the purposes of this
3 chapter.
- 4 ~~7-8.~~ "Expenditure" means:
- 5 a. A gift, transfer, conveyance, provision, loan, advance, payment, distribution,
6 disbursement, outlay, or deposit of money or anything of value, except a loan of
7 money from a bank or other lending institution made in the regular course of
8 business, made for a political purpose or for the purpose of influencing the
9 passage or defeat of a measure.
- 10 b. A contract, promise, or agreement, express or implied, whether or not legally
11 enforceable, to make any expenditure.
- 12 c. The transfer of funds by a political committee to another political committee.
- 13 d. An independent expenditure.
- 14 ~~8-9.~~ "Expenditure categories" means the categories into which expenditures must be
15 grouped for reports under this chapter. The expenditure categories are:
- 16 a. Advertising;
17 b. Campaign loan repayment;
18 c. Operations;
19 d. Travel; and
20 e. Miscellaneous.
- 21 ~~9-10.~~ "Independent expenditure" means an expenditure made for a political purpose or for
22 the purpose of influencing the passage or defeat of a measure if the expenditure is
23 made without the express or implied consent, authorization, or cooperation of, and not
24 in concert with or at the request or suggestion of, any candidate, committee, or
25 political party.
- 26 ~~10-11.~~ "Patron" means a person who owns equity interest in the form of stock, shares, or
27 membership or maintains similar financial rights in a cooperative corporation.
- 28 ~~11-12.~~ "Person" means an individual, partnership, political committee, association,
29 corporation, cooperative corporation, limited liability company, or other organization or
30 group of persons.

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- 1 ~~42.13.~~ "Personal benefit" means a benefit to the candidate or another person which is not for
2 a political purpose or related to a candidate's responsibilities as a public officeholder,
3 and any other benefit that would convert a contribution to personal income.
- 4 ~~43.14.~~ "Political committee" means any committee, club, association, or other group of
5 persons which receives contributions or makes expenditures for political purposes and
6 includes:
- 7 a. A political action committee not connected to another organization and free to
8 solicit funds from the general public, or derived from a corporation, cooperative
9 corporation, limited liability company, affiliate, subsidiary, or an association that
10 solicits or receives contributions from its employees or members or makes
11 expenditures for political purposes on behalf of its employees or members;
- 12 b. A candidate committee established to support an individual candidate seeking
13 public office which solicits or receives contributions for political purposes;
- 14 c. A political organization registered with the federal election commission, which
15 solicits or receives contributions or makes expenditures for political purposes;
- 16 d. A multicandidate political committee, including a caucus, established to support
17 multiple groups or slates of candidates seeking public office, which solicits or
18 receives contributions for political purposes; and
- 19 e. A measure committee, including an initiative or referendum sponsoring
20 committee at any stage of its organization, which solicits or receives contributions
21 or makes expenditures for the purpose of aiding or opposing a measure sought
22 to be voted upon by the voters of the state, including any activities undertaken for
23 the purpose of drafting an initiative or referendum petition, seeking approval of
24 the secretary of state for the circulation of a petition, or seeking approval of the
25 submitted petitions.
- 26 ~~44.15.~~ "Political party" means any association, committee, or organization which nominates a
27 candidate for election to any office which may be filled by a vote of the electors of this
28 state or any of its political subdivisions and whose name appears on the election ballot
29 as the candidate of such association, committee, or organization.
- 30 ~~45.16.~~ "Political purpose" means any activity undertaken in support of or in opposition to the
31 election or nomination of a candidate to public office and includes using "vote for",

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1 "oppose", or any similar support or opposition language in any advertisement whether
2 the activity is undertaken by a candidate, a political committee, a political party, or any
3 person. In the period thirty days before a primary election and sixty days before a
4 special or general election, "political purpose" also means any activity in which a
5 candidate's name, office, district, or any term meaning the same as "incumbent" or
6 "challenger" is used in support of or in opposition to the election or nomination of a
7 candidate to public office. The term does not include activities undertaken in the
8 performance of a duty of a public office or any position taken in any bona fide news
9 story, commentary, or editorial.

10 ~~16-17.~~ "Public office" means every office to which an individual can be elected by vote of the
11 people under the laws of this state.

12 ~~17-18.~~ "Subsidiary" means an affiliate of a corporation under the control of the corporation
13 directly or indirectly through one or more intermediaries.

14 19. "Ultimate and true source" means the person who knowingly contributed over two
15 hundred dollars, adjusted for inflation, ~~solely~~ to influence a statewide election or an
16 election for the legislative assembly. The term does not include an individual who is a
17 member of an organization that is not substantially engaged in lobbying or influencing
18 statewide elections or elections for the legislative assembly, if:

19 a. The member provided only a donation or membership fee to the organization;

20 b. The member did not designate the donation or membership fee to be used to
21 influence a statewide election or an election for the legislative assembly; and

22 c. A substantial portion of the donation or membership fee was not used to
23 influence a statewide election or an election for the legislative assembly.

24 **SECTION 2. AMENDMENT.** Subsection 4 of section 16.1-08.1-02.1 of the North Dakota
25 Century Code is amended and reenacted as follows:

26 4. The statement filed according to this section must show the following:

27 a. The balance of the filer's convention accounts at the start and close of the
28 reporting period;

29 b. The total of all revenue received and expenditures made of two hundred dollars,
30 adjusted for inflation, or less;

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- 1 c. The total of all revenue received and expenditures made in excess of two
- 2 hundred dollars, adjusted for inflation;
- 3 d. For each aggregated revenue received from a person in excess of two hundred
- 4 dollars, adjusted for inflation:
- 5 (1) The name of each person;
- 6 (2) The mailing address of each person;
- 7 (3) The date of the most recent receipt of revenue from each person; and
- 8 (4) The purpose or purposes for which the aggregated revenue total was
- 9 received from each person;
- 10 e. For each aggregated expenditure made to a person in excess of two hundred
- 11 dollars, adjusted for inflation:
- 12 (1) The name of each person or entity;
- 13 (2) The mailing address of each person or entity;
- 14 (3) The date of the most recent expense made to each person or entity; and
- 15 (4) The purpose or purposes for which the aggregated expenditure total was
- 16 disbursed to each person or entity; and
- 17 f. For each aggregated revenue from an individual which totals five thousand
- 18 dollars, adjusted for inflation, or more during the reporting period, the occupation,
- 19 employer, and principal place of business of the individual must be disclosed.

20 **SECTION 3. AMENDMENT.** Section 16.1-08.1-02.3 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **16.1-08.1-02.3. Pre-election, supplemental, and year-end campaign disclosure**
23 **statement requirements for candidates, candidate committees, multicandidate**
24 **committees, and nonstatewide political parties.**

- 25 1. Prior to the thirty-first day before a primary, general, or special election, a candidate or
- 26 candidate committee formed on behalf of the candidate, a multicandidate political
- 27 committee, or a political party other than a statewide political party soliciting or
- 28 accepting contributions shall file a campaign disclosure statement that includes all
- 29 contributions received from January first through the fortieth day before the election. A
- 30 candidate whose name is not on the ballot and who is not seeking election through
- 31 write-in votes, the candidate's candidate committee, and a political party that has not

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- 1 endorsed or nominated any candidate in the election is not required to file a statement
2 under this subsection. The statement may be submitted for filing beginning on the
3 thirty-ninth day before the election. The statement must include:
- 4 a. For each aggregated contribution from a contributor which totals in excess of two
5 hundred dollars, adjusted for inflation, received during the reporting period:
- 6 (1) The name and mailing address of the contributor;
7 (2) The total amount of the contribution; and
8 (3) The date the last contributed amount was received;
- 9 b. The total of all aggregated contributions from contributors which total in excess of
10 two hundred dollars, adjusted for inflation, during the reporting period;
- 11 c. The total of all contributions received from contributors that contributed two
12 hundred dollars, adjusted for inflation, or less each during the reporting period;
13 and
- 14 d. For a statewide candidate, a candidate committee formed on behalf of a
15 statewide candidate, and a statewide multicandidate committee, the balance of
16 the campaign fund on the fortieth day before the election and the balance of the
17 campaign fund on January first.
- 18 2. Beginning on the thirty-ninth day before the election through the day before the
19 election, a person that files a statement under subsection 1 must file a supplemental
20 statement within forty-eight hours of the start of the day following the receipt of a
21 contribution or aggregate contribution from a contributor which is in excess of five
22 hundred dollars, adjusted for inflation. The statement must include:
- 23 a. The name and mailing address of the contributor;
24 b. The total amount of the contribution received during the reporting period; and
25 c. The date the last contributed amount was received.
- 26 3. Prior to February first, a candidate or candidate committee, a multicandidate political
27 committee, or a nonstatewide political party soliciting or accepting contributions shall
28 file a campaign disclosure statement that includes all contributions received and
29 expenditures, by expenditure category, made from January first through December
30 thirty-first of the previous year. The statement may be submitted for filing beginning on
31 January first. The statement must include:

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- 1 a. For a statewide candidate, a candidate committee formed on behalf of a
- 2 statewide candidate, and a statewide multicandidate committee, the balance of
- 3 the campaign fund on January first and on December thirty-first;
- 4 b. For each aggregated contribution from a contributor which totals in excess of two
- 5 hundred dollars, adjusted for inflation, received during the reporting period:
- 6 (1) The name and mailing address of the contributor;
- 7 (2) The total amount of the contribution; and
- 8 (3) The date the last contributed amount was received;
- 9 c. The total of all aggregated contributions from contributors which total in excess of
- 10 two hundred dollars, adjusted for inflation, during the reporting period;
- 11 d. The total of all contributions received from contributors that contributed two
- 12 hundred dollars, adjusted for inflation, or less each during the reporting period;
- 13 and
- 14 e. The total of all other expenditures made during the previous year, separated into
- 15 expenditure categories.
- 16 4. A person required to file a statement under this section, other than a candidate for
- 17 judicial office, county office, or city office, or a candidate committee for a candidate
- 18 exempted under this subsection, shall report each aggregated contribution from a
- 19 contributor which totals five thousand dollars, adjusted for inflation, or more during the
- 20 reporting period. For these contributions from individuals, the statement must include
- 21 the contributor's occupation, employer, and the employer's principal place of business.
- 22 5. A candidate for city office in a city with a population under five thousand and a
- 23 candidate committee for the candidate are exempt from this section.
- 24 6. A candidate for county office and a candidate committee for a candidate for county
- 25 office shall file statements under this chapter with the county auditor. A candidate for
- 26 city office who is required to file a statement under this chapter and a candidate
- 27 committee for such a candidate shall file statements with the city auditor. Any other
- 28 person required to file a statement under this section shall file the statement with the
- 29 secretary of state.
- 30 7. The filing officer shall assess and collect fees for any reports filed after the filing
- 31 deadline.

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- 1 8. To ensure accurate reporting and avoid commingling of campaign and personal funds,
2 candidates shall use dedicated campaign accounts that are separate from any
3 personal accounts.

4 **SECTION 4. AMENDMENT.** Section 16.1-08.1-02.4 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **16.1-08.1-02.4. Pre-election, supplemental, and year-end campaign disclosure**
7 **statement requirements for statewide political parties and certain political committees.**

8 1. Prior to the thirty-first day before a primary, general, or special election, a statewide
9 political party or a political committee not required to file statements under section
10 16.1-08.1-02.3 which is soliciting or accepting contributions shall file a campaign
11 disclosure statement that includes all contributions received and expenditures made
12 from January first through the fortieth day before the election. A political party that has
13 not endorsed or nominated a candidate in an election is not required to file a
14 statement under this subsection. A statement required to be filed under this subsection
15 may be submitted for filing beginning on the thirty-ninth day before the election. The
16 statement must include:

- 17 a. For each aggregated contribution from a contributor which totals in excess of two
18 hundred dollars, adjusted for inflation, received during the reporting period:
19 (1) The name and mailing address of the contributor;
20 (2) The total amount of the contribution; and
21 (3) The date the last contributed amount was received;
22 b. The total of all aggregated contributions from contributors which total in excess of
23 two hundred dollars, adjusted for inflation, during the reporting period;
24 c. The total of all contributions received from contributors that contributed two
25 hundred dollars, adjusted for inflation, or less each during the reporting period;
26 d. For each recipient of an expenditure from campaign funds in excess of two
27 hundred dollars, adjusted for inflation, in the aggregate:
28 (1) The name and mailing address of the recipient;
29 (2) The total amount of the expenditure made to the recipient; and
30 (3) The date the last expended amount was made to the recipient;

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- 1 e. The aggregate total of all expenditures from campaign funds in excess of two
- 2 hundred dollars, adjusted for inflation;
- 3 f. The aggregate total of all expenditures from campaign funds of two hundred
- 4 dollars, adjusted for inflation, or less; and
- 5 g. The balance of the campaign fund on the fortieth day before the election and
- 6 balance of the campaign fund on January first.
- 7 2. Beginning on the thirty-ninth day before the election through the day before the
- 8 election, a person that files a statement under subsection 1 must file a supplemental
- 9 statement within forty-eight hours of the start of the day following the receipt of a
- 10 contribution or aggregate contribution from a contributor which is in excess of five
- 11 hundred dollars, adjusted for inflation. The statement must include:
- 12 a. The name and mailing address of the contributor;
- 13 b. The total amount of the contribution received during the reporting period; and
- 14 c. The date the last contributed amount was received.
- 15 3. Prior to February first, a statewide political party or a political committee that is not
- 16 required to file a statement under section 16.1-08.1-2.3 shall file a campaign
- 17 disclosure statement that includes all contributions received and expenditures made
- 18 from January first through December thirty-first of the previous year. The statement
- 19 may be submitted for filing beginning on January first. The statement must include:
- 20 a. For each aggregated contribution from a contributor which totals in excess of two
- 21 hundred dollars, adjusted for inflation, received during the reporting period:
- 22 (1) The name and mailing address of the contributor;
- 23 (2) The total amount of the contribution; and
- 24 (3) The date the last contributed amount was received;
- 25 b. The total of all aggregated contributions from contributors which total in excess of
- 26 two hundred dollars, adjusted for inflation, during the reporting period;
- 27 c. The total of all contributions received from contributors that contributed two
- 28 hundred dollars, adjusted for inflation, or less each during the reporting period;
- 29 d. For each recipient of an expenditure from campaign funds in excess of two
- 30 hundred dollars, adjusted for inflation, in the aggregate:
- 31 (1) The name and mailing address of the recipient;

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- 1 (2) The total amount of the expenditure made to the recipient; and
- 2 (3) The date the last expended amount was made to the recipient;
- 3 e. The aggregate total of all expenditures from campaign funds in excess of two
- 4 hundred dollars, adjusted for inflation;
- 5 f. The aggregate total of all expenditures from campaign funds of two hundred
- 6 dollars, adjusted for inflation, or less; and
- 7 g. The balance of the campaign fund on January first and December thirty-first.
- 8 4. A person required to file a statement under this section shall disclose each aggregated
- 9 contribution from a contributor which totals five thousand dollars, adjusted for inflation,
- 10 or more during the reporting period. For these contributions from individuals, the
- 11 statement must include the contributor's occupation, employer, and the employer's
- 12 principal place of business.
- 13 5. Statements under this section must be filed with the secretary of state.
- 14 6. The secretary of state shall assess and collect fees for any reports filed after the filing
- 15 deadline.

16 **SECTION 5. AMENDMENT.** Section 16.1-08.1-03.1 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **16.1-08.1-03.1. Special requirements for statements required of persons engaged in**
19 **activities regarding ballot measures.**

- 20 1. For each reportable contribution and expenditure under section 16.1-08.1-02.4, the
- 21 threshold for reporting is one hundred dollars, adjusted for inflation, for any person
- 22 engaged in activities described in subdivision e of subsection ~~4314~~ of section
- 23 16.1-08.1-01.
- 24 2. For contributions received from an out-of-state contributor, a person engaged in
- 25 activities described in subdivision e of subsection ~~4314~~ of section 16.1-08.1-01 shall
- 26 include the following information regarding each subcontributor that has stated a
- 27 contribution is for the express purpose of furthering the passage or defeat of a ballot
- 28 measure in the statements required under section 16.1-08.1-02.4:
- 29 a. A designation as to whether any person contributed in excess of one hundred
- 30 dollars, adjusted for inflation, of the total contribution;

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- 1 b. The name and mailing address of each subcontributor that contributed in excess
- 2 of one hundred dollars, adjusted for inflation, of the total contribution;
- 3 c. The contribution amounts of each disclosed subcontributor; and
- 4 d. The occupation, employer, and address for the employer's principal place of
- 5 business of each disclosed subcontributor.
- 6 3. An initiative and referendum sponsoring committee also shall file a disclosure
- 7 statement by the date the secretary of state approves the petition for circulation, and
- 8 shall file an additional statement on the date the petitions containing the required
- 9 number of signatures are submitted to the secretary of state for review. The
- 10 statements required under this subsection must be in the same form as the year-end
- 11 statements under section 16.1-08.1-02.4.
- 12 4. A sponsoring committee shall file a statement regarding its intent to compensate
- 13 circulators before paying for petitions to be circulated.

14 **SECTION 6. AMENDMENT.** Section 16.1-08.1-03.7 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **16.1-08.1-03.7. Political committees that organize and register according to federal**
17 **law that make independent expenditures or disbursements to nonfederal candidates,**
18 **political parties, and political committees.**

19 A political committee that organizes and registers according to federal law and makes an
20 independent expenditure or makes a disbursement in excess of two hundred dollars to a
21 nonfederal candidate seeking public office or to a political party or political committee in this
22 state shall file a copy of that portion of the committee's federal report detailing the independent
23 expenditure or the disbursement made. The political committee shall file a copy of the
24 committee's federal report, and supplementary information as necessary under this section, with
25 the secretary of state at the time of filing the report with the applicable federal agency. The
26 report must include:

- 27 1. The name, mailing address, and treasurer of the political committee;
- 28 2. The recipient's name and mailing address; **and**
- 29 3. The date and amount of the independent expenditure or disbursement; and

4. The ultimate and true source of funds listed by contributor and subcontributor of any amount over two hundred dollars, adjusted for inflation, collected or used to make the independent expenditure or disbursement, including:
 - a. The name and address of the contributor;
 - b. The total amount of the contribution; and
 - c. The date the last contribution was received.

SECTION 7. AMENDMENT. Section 16.1-08.1-04.1 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-04.1. Personal use of contributions prohibited.

1. A candidate may not use any contribution received by the candidate, the candidate's candidate committee, or a multicandidate political committee to:
 - a. Give a personal benefit to the candidate or another person;
 - b. Make a loan to another person;
 - c. Knowingly pay more than the fair market value for goods or services purchased for the campaign; or
 - d. Pay a criminal fine or civil penalty.
2. ~~For the first violation, the~~ The secretary of state shall ~~assess a civil penalty of five hundred dollars upon any person who knowingly violates this section. The assessment of a civil penalty may be appealed to the district court of Burleigh County. For a second and subsequent knowing violation of this section, the person is guilty of a class B misdemeanor.~~ impose a fine of up to five thousand dollars or two times the value of the contribution used in violation of this section, whichever is greater, upon any person who knowingly violates this section.

SECTION 8. A new section to chapter 16.1-08.1 of the North Dakota Century Code is created and enacted as follows:

Ultimate and true source of funds - Required identification - Penalty.

- ~~1. In any report under this chapter which requires the identification of a contributor or subcontributor, the ultimate and true source of funds must be identified.~~
- ~~2. A resident taxpayer may commence an action in a district court of this state against a person required to comply with this section to compel compliance if all other enforcement measures under this chapter have been exhausted and the taxpayer~~

1 ~~reasonably believes the person has failed to comply with this section. A failure to~~
2 ~~comply with this section must be proved by clear and convincing evidence.~~

3 **SECTION 9. AMENDMENT.** Section 28-32-01 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **28-32-01. Definitions.**

6 In this chapter, unless the context or subject matter otherwise provides:

- 7 1. "Adjudicative proceeding" means an administrative matter resulting in an agency
8 issuing an order after an opportunity for hearing is provided or required. An
9 adjudicative proceeding includes administrative matters involving a hearing on a
10 complaint against a specific-named respondent; a hearing on an application seeking a
11 right, privilege, or an authorization from an agency, such as a ratemaking or licensing
12 hearing; or a hearing on an appeal to an agency. An adjudicative proceeding includes
13 reconsideration, rehearing, or reopening. Once an adjudicative proceeding has begun,
14 the adjudicative proceeding includes any informal disposition of the administrative
15 matter under section 28-32-22 or another specific statute or rule, unless the matter
16 has been specifically converted to another type of proceeding under section 28-32-22.
17 An adjudicative proceeding does not include a decision or order to file or not to file a
18 complaint, or to initiate an investigation, an adjudicative proceeding, or any other
19 proceeding before the agency, or another agency, or a court. An adjudicative
20 proceeding does not include a decision or order to issue, reconsider, or reopen an
21 order that precedes an opportunity for hearing or that under another section of this
22 code is not subject to review in an adjudicative proceeding. An adjudicative proceeding
23 does not include rulemaking under this chapter.
- 24 2. "Administrative agency" or "agency" means each board, bureau, commission,
25 department, or other administrative unit of the executive branch of state government,
26 including one or more officers, employees, or other persons directly or indirectly
27 purporting to act on behalf or under authority of the agency. An administrative unit
28 located within or subordinate to an administrative agency must be treated as part of
29 that agency to the extent it purports to exercise authority subject to this chapter. The
30 term administrative agency does not include:

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- 1 a. The office of management and budget except with respect to rules made under
- 2 section 32-12.2-14, rules relating to conduct on the capitol grounds and in
- 3 buildings located on the capitol grounds under section 54-21-18, rules relating to
- 4 the classified service as authorized under section 54-44.3-07, and rules relating
- 5 to state purchasing practices as required under section 54-44.4-04.
- 6 b. The adjutant general with respect to the department of emergency services.
- 7 c. The council on the arts.
- 8 d. The state auditor.
- 9 e. The department of commerce with respect to the division of economic
- 10 development and finance.
- 11 f. The dairy promotion commission.
- 12 g. The education factfinding commission.
- 13 h. The educational technology council.
- 14 i. The board of equalization.
- 15 j. The board of higher education.
- 16 k. The Indian affairs commission.
- 17 l. The industrial commission with respect to the activities of the Bank of North
- 18 Dakota, North Dakota housing finance agency, public finance authority, North
- 19 Dakota mill and elevator association, North Dakota farm finance agency, the
- 20 North Dakota transmission authority, and the North Dakota pipeline authority.
- 21 m. The department of corrections and rehabilitation except with respect to the
- 22 activities of the division of adult services under chapter 54-23.4.
- 23 n. The pardon advisory board.
- 24 o. The parks and recreation department.
- 25 p. The parole board.
- 26 q. The state fair association.
- 27 r. The attorney general with respect to activities of the state toxicologist and the
- 28 state crime laboratory.
- 29 s. The administrative committee on veterans' affairs except with respect to rules
- 30 relating to the supervision and government of the veterans' home and the
- 31 implementation of programs or services provided by the veterans' home.

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- 1 t. The industrial commission with respect to the lignite research fund except as
2 required under section 57-61-01.5.
- 3 u. The attorney general with respect to guidelines adopted under section 12.1-32-15
4 for the risk assessment of sexual offenders, the risk level review process, and
5 public disclosure of information under section 12.1-32-15.
- 6 v. The commission on legal counsel for indigents.
- 7 w. The attorney general with respect to twenty-four seven sobriety program
8 guidelines and program fees.
- 9 x. The industrial commission with respect to approving or setting water rates under
10 chapter 61-40.
- 11 3. "Agency head" means an individual or body of individuals in whom the ultimate legal
12 authority of the agency is vested by law.
- 13 4. "Commission" means the North Dakota ethics commission established by article XIV
14 of the Constitution of North Dakota.
- 15 5. "Complainant" means any person who files a complaint before an administrative
16 agency pursuant to section 28-32-21 and any administrative agency that, when
17 authorized by law, files such a complaint before such agency or any other agency.
- 18 ~~5-6.~~ "Hearing officer" means any agency head or one or more members of the agency
19 head when presiding in an administrative proceeding, or, unless prohibited by law, one
20 or more other persons designated by the agency head to preside in an administrative
21 proceeding, an administrative law judge from the office of administrative hearings, or
22 any other person duly assigned, appointed, or designated to preside in an
23 administrative proceeding pursuant to statute or rule.
- 24 ~~6-7.~~ "License" means a franchise, permit, certification, approval, registration, charter, or
25 similar form of authorization required by law.
- 26 ~~7-8.~~ "Order" means any agency action of particular applicability which determines the legal
27 rights, duties, privileges, immunities, or other legal interests of one or more specific
28 persons. The term does not include an executive order issued by the governor.
- 29 ~~8-9.~~ "Party" means each person named or admitted as a party or properly seeking and
30 entitled as of right to be admitted as a party. An administrative agency may be a party.
31 In a hearing for the suspension, revocation, or disqualification of an operator's license

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- 1 under title 39, the term may include each city and each county in which the alleged
2 conduct occurred, but the city or county may not appeal the decision of the hearing
3 officer.
- 4 ~~9-10.~~ "Person" includes an individual, association, partnership, corporation, limited liability
5 company, the commission, a state governmental agency or governmental subdivision,
6 or an agency of such governmental subdivision.
- 7 ~~10-11.~~ "Relevant evidence" means evidence having any tendency to make the existence of
8 any fact that is of consequence to the determination of the administrative action more
9 probable or less probable than it would be without the evidence.
- 10 ~~11-12.~~ "Rule" means the whole or a part of an agency or commission statement of general
11 applicability which implements or prescribes law or policy or the organization,
12 procedure, or practice requirements of the agency or commission. The term includes
13 the adoption of new rules and the amendment, repeal, or suspension of an existing
14 rule. The term does not include:
- 15 a. A rule concerning only the internal management of an agency or the commission
16 which does not directly or substantially affect the substantive or procedural rights
17 or duties of any segment of the public.
- 18 b. A rule that sets forth criteria or guidelines to be used by the staff of an agency or
19 the commission in the performance of audits, investigations, inspections, and
20 settling commercial disputes or negotiating commercial arrangements, or in the
21 defense, prosecution, or settlement of cases, if the disclosure of the
22 ~~statement~~rule would:
- 23 (1) Enable law violators to avoid detection;
24 (2) Facilitate disregard of requirements imposed by law; or
25 (3) Give a clearly improper advantage to persons who are in an adverse
26 position to the state.
- 27 c. A rule establishing specific prices to be charged for particular goods or services
28 sold by an agency.
- 29 d. A rule concerning only the physical servicing, maintenance, or care of
30 agency-owned ~~or~~ agency-operated, commission-owned, or
31 commission-operated facilities or property.

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- 1 e. A rule relating only to the use of a particular facility or property owned, operated,
2 or maintained by the state or any of its subdivisions, if the substance of the rule is
3 adequately indicated by means of signs or signals to persons who use the facility
4 or property.
- 5 f. A rule concerning only inmates of a correctional or detention facility, students
6 enrolled in an educational institution, or patients admitted to a hospital, if adopted
7 by that facility, institution, or hospital.
- 8 g. A form whose contents or substantive requirements are prescribed by rule or
9 statute or are instructions for the execution or use of the form.
- 10 h. An agency or commission budget.
- 11 i. An opinion of the attorney general.
- 12 j. A rule adopted by an agency selection committee under section 54-44.7-03.
- 13 k. Any material, including a guideline, interpretive statement, statement of general
14 policy, manual, brochure, or pamphlet, which is explanatory and not intended to
15 have the force and effect of law.

16 **SECTION 10. AMENDMENT.** Section 28-32-02 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **28-32-02. Rulemaking ~~power of agency authority~~ - Organizational rule.**

- 19 1. The authority of an administrative agency to adopt administrative rules is authority
20 delegated by the legislative assembly. As part of that delegation, the legislative
21 assembly reserves to itself the authority to determine when and if rules of
22 administrative agencies are effective. Every administrative agency may adopt, amend,
23 or repeal reasonable rules in conformity with this chapter and any statute administered
24 or enforced by the agency.
- 25 2. In addition to other rulemaking requirements imposed by law, each agency may
26 include in its rules a description of that portion of its organization and functions subject
27 to this chapter and may include a statement of the general course and method of its
28 operations and how the public may obtain information or make submissions or
29 requests.

- 1 3. The authority of the commission to adopt rules arises from article XIV of the
 2 Constitution of North Dakota. The commission shall follow the process, and meet the
 3 requirements, as specified in this chapter to adopt, amend, or repeal its rules.

4 **SECTION 11. AMENDMENT.** Section 28-32-03 of the North Dakota Century Code is
 5 amended and reenacted as follows:

6 **28-32-03. Emergency rules.**

- 7 1. If the ~~commission or an~~ agency, with the approval of the governor, or the ethics
 8 commission, finds that emergency rulemaking is necessary, the commission or agency
 9 may declare the proposed rule to be an interim final rule effective on a date no earlier
 10 than the date of filing with the legislative council of the notice required by section
 11 28-32-10.
- 12 2. A proposed rule may be given effect on an emergency basis under this section if any
 13 of the following grounds exists regarding that rule:
- 14 a. Imminent peril threatens public health, safety, or welfare, which would be abated
 15 by emergency effectiveness;
- 16 b. A delay in the effective date of the rule is likely to cause a loss of funds
 17 appropriated to support a duty imposed by law upon the commission or agency;
- 18 c. Emergency effectiveness is reasonably necessary to avoid a delay in
 19 implementing an appropriations measure; or
- 20 d. Emergency effectiveness is necessary to meet a mandate of federal law.
- 21 3. A final rule adopted after consideration of all written and oral submissions respecting
 22 the interim final rule, which is substantially similar to the interim final rule, is effective
 23 as of the declared effective date of the interim final rule.
- 24 4. The commission's or agency's finding, and a brief statement of the commission's or
 25 agency's reasons for the finding, must be filed with the legislative council with the final
 26 adopted emergency rule.
- 27 5. The commission or agency shall attempt to make interim final rules known to persons
 28 who the commission or agency can reasonably be expected to believe may have a
 29 substantial interest in them. As used in this subsection, "substantial interest" means an
 30 interest in the effect of the rules which surpasses the common interest of all citizens.
- 31 ~~An~~ The commission or an agency adopting emergency rules shall comply with the

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1 notice requirements of section 28-32-10 which relate to emergency rules and shall
2 provide notice to the chairman of the administrative rules committee of the emergency
3 status, declared effective date, and grounds for emergency status of the rules under
4 subsection 2. When notice of emergency rule adoption is received, the legislative
5 council shall publish the notice and emergency rules on its website.

6 6. An interim final rule is ineffective one hundred eighty days after its declared effective
7 date unless first adopted as a final rule.

8 **SECTION 12. AMENDMENT.** Section 28-32-06 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **28-32-06. Force and effect of rules.**

11 Upon becoming effective, rules have the force and effect of law until amended or repealed
12 by the agency or commission, declared invalid by a final court decision, suspended or found to
13 be void by the administrative rules committee, or determined repealed by the legislative council
14 because the authority for adoption of the rules is repealed or transferred to another agency, or
15 ~~the Constitution of North Dakota is amended to eliminate the authority.~~

16 **SECTION 13. AMENDMENT.** Section 28-32-07 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **28-32-07. Deadline for rules to implement statutory change.**

19 Any rule change, including a creation, amendment, or repeal, made to implement a
20 statutory change must be adopted and filed with the legislative council within nine months of the
21 effective date of the statutory change. If an agency or the commission needs additional time for
22 the rule change, a request for additional time must be made to the legislative council. The
23 legislative council may extend the time within which the agency or commission must adopt the
24 rule change if the request by the agency or commission is supported by evidence that the
25 agency or commission needs more time through no deliberate fault of its own.

26 **SECTION 14. AMENDMENT.** Section 28-32-08 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **28-32-08. Regulatory analysis.**

29 1. An agency or the commission shall issue a regulatory analysis of a proposed rule if:

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- 1 a. Within twenty days after the last published notice date of a proposed rule
- 2 hearing, a written request for the analysis is filed by the governor or a member of
- 3 the legislative assembly; or
- 4 b. The proposed rule is expected to have an impact on the regulated community in
- 5 excess of fifty thousand dollars. The analysis under this subdivision must be
- 6 available on or before the first date of public notice as provided for in section
- 7 28-32-10.
- 8 2. The regulatory analysis must contain:
- 9 a. A description of the classes of persons who probably will be affected by the
- 10 proposed rule, including classes that will bear the costs of the proposed rule and
- 11 classes that will benefit from the proposed rule;
- 12 b. A description of the probable impact, including economic impact, of the proposed
- 13 rule;
- 14 c. The probable costs to the agency or commission of the implementation and
- 15 enforcement of the proposed rule and any anticipated effect on state revenues;
- 16 and
- 17 d. A description of any alternative methods for achieving the purpose of the
- 18 proposed rule that were seriously considered by the agency or commission and
- 19 the reasons why the methods were rejected in favor of the proposed rule.
- 20 3. Each regulatory analysis must include quantification of the data to the extent
- 21 practicable.
- 22 4. The agency or commission shall mail or deliver a copy of the regulatory analysis to
- 23 any person who requests a copy of the regulatory analysis. The agency or commission
- 24 may charge a fee for a copy of the regulatory analysis as allowed under section
- 25 44-04-18.
- 26 5. If required under subsection 1, the preparation and issuance of a regulatory analysis is
- 27 a mandatory duty of the agency or commission proposing a rule. Errors in a regulatory
- 28 analysis, including erroneous determinations concerning the impact of the proposed
- 29 rule on the regulated community, are not a ground upon which the invalidity of a rule
- 30 may be asserted or declared.

1 **SECTION 15. AMENDMENT.** Section 28-32-08.1 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **28-32-08.1. Rules affecting small entities - Analysis - Economic impact statements -**
4 **Judicial review.**

5 1. As used in this section:

6 a. "Small business" means a business entity, including its affiliates, which:

7 (1) Is independently owned and operated; and

8 (2) Employs fewer than twenty-five full-time employees or has gross annual
9 sales of less than two million five hundred thousand dollars;

10 b. "Small entity" includes small business, small organization, and small political
11 subdivision;

12 c. "Small organization" means any not-for-profit enterprise that is independently
13 owned and operated and is not dominant in its field; and

14 d. "Small political subdivision" means a political subdivision with a population of less
15 than five thousand.

16 2. Before adoption of any proposed rule, the adopting agency ~~or the commission~~ shall
17 prepare a regulatory analysis in which, consistent with public health, safety, and
18 welfare, the agency ~~or commission~~ considers utilizing regulatory methods that will
19 accomplish the objectives of applicable statutes while minimizing adverse impact on
20 small entities. The agency ~~or commission~~ shall consider each of the following methods
21 of reducing impact of the proposed rule on small entities:

22 a. Establishment of less stringent compliance or reporting requirements for small
23 entities;

24 b. Establishment of less stringent schedules or deadlines for compliance or
25 reporting requirements for small entities;

26 c. Consolidation or simplification of compliance or reporting requirements for small
27 entities;

28 d. Establishment of performance standards for small entities to replace design or
29 operational standards required in the proposed rule; and

30 e. Exemption of small entities from all or any part of the requirements contained in
31 the proposed rule.

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- 1 3. Before adoption of any proposed rule that may have an adverse impact on small
2 entities, the adopting agency ~~or the commission~~ shall prepare an economic impact
3 statement that includes consideration of:
 - 4 a. The small entities subject to the proposed rule;
 - 5 b. The administrative and other costs required for compliance with the proposed
6 rule;
 - 7 c. The probable cost and benefit to private persons and consumers who are
8 affected by the proposed rule;
 - 9 d. The probable effect of the proposed rule on state revenues; and
 - 10 e. Any less intrusive or less costly alternative methods of achieving the purpose of
11 the proposed rule.
- 12 4. For any rule subject to this section, a small entity that is adversely affected or
13 aggrieved by final agency ~~or commission~~ action is entitled to judicial review of agency
14 ~~or commission~~ compliance with the requirements of this section. A small entity seeking
15 judicial review under this section must file a petition for judicial review within one year
16 from the date of final agency ~~or commission~~ action.
- 17 5. This section does not apply to the ethics commission, any agency that is an
18 occupational or professional licensing authority, ~~nor does this section apply to~~ the
19 following agencies or divisions of agencies:
 - 20 a. Council on the arts.
 - 21 b. Beef commission.
 - 22 c. Dairy promotion commission.
 - 23 d. Dry bean council.
 - 24 e. Highway patrolmen's retirement board.
 - 25 f. Indian affairs commission.
 - 26 g. Board for Indian scholarships.
 - 27 h. State personnel board.
 - 28 i. Potato council.
 - 29 j. Board of public school education.
 - 30 k. Real estate trust account committee.
 - 31 l. Seed commission.

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- 1 m. Soil conservation committee.
- 2 n. Oilseed council.
- 3 o. Wheat commission.
- 4 p. State seed arbitration board.
- 5 q. North Dakota lottery.

6 6. This section does not apply to rules mandated by federal law.

7 7. The adopting agency or the commission shall provide the administrative rules
8 committee copies of any regulatory analysis or economic impact statement, or both,
9 prepared under this section when the committee is considering the associated rules.

10 **SECTION 16. AMENDMENT.** Section 28-32-08.2 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **28-32-08.2. Fiscal notes for administrative rules.**

13 When an agency or the commission presents rules for administrative rules committee
14 consideration, the agency or commission shall provide a fiscal note or a statement in its
15 testimony that the rules have no fiscal effect. A fiscal note must reflect the effect of the rules
16 changes on state revenues and expenditures, including any effect on funds controlled by the
17 agency or commission.

18 **SECTION 17. AMENDMENT.** Section 28-32-09 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **28-32-09. Takings assessment.**

21 1. An agency or the commission shall prepare a written assessment of the constitutional
22 takings implications of a proposed rule that may limit the use of private real property.

23 The ~~agency's~~ assessment must:

- 24 a. Assess the likelihood that the proposed rule may result in a taking or regulatory
25 taking.
- 26 b. Clearly and specifically identify the purpose of the proposed rule.
- 27 c. Explain why the proposed rule is necessary to substantially advance that purpose
28 and why no alternative action is available that would achieve the agency's or
29 commission's goals while reducing the impact on private property owners.
- 30 d. Estimate the potential cost to the government if a court determines that the
31 proposed rule constitutes a taking or regulatory taking.

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- 1 e. Identify the source of payment within the agency's or commission's budget for
- 2 any compensation that may be ordered.
- 3 f. Certify that the benefits of the proposed rule exceed the estimated compensation
- 4 costs.
- 5 2. Any private landowner who is or may be affected by a rule that limits the use of the
- 6 landowner's private real property may request in writing that the agency or
- 7 commission reconsider the application or need for the rule. Within thirty days of
- 8 receiving the request, the agency or commission shall consider the request and shall
- 9 in writing inform the landowner whether the agency or commission intends to keep the
- 10 rule in place, modify application of the rule, or repeal the rule.
- 11 3. In an ~~agency's~~ analysis of the takings implications of a proposed rule, "taking" means
- 12 the taking of private real property, as defined in section 47-01-03, by government
- 13 action which requires compensation to the owner of that property by the fifth or
- 14 fourteenth amendment to the Constitution of the United States or section 16 of article I
- 15 of the Constitution of North Dakota. "Regulatory taking" means a taking of real
- 16 property through the exercise of the police and regulatory powers of the state which
- 17 reduces the value of the real property by more than fifty percent. However, the
- 18 exercise of a police or regulatory power does not effect a taking if it substantially
- 19 advances legitimate state interests, does not deny an owner economically viable use
- 20 of the owner's land, or is in accordance with applicable state or federal law.

21 **SECTION 18. AMENDMENT.** Section 28-32-10 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **28-32-10. Notice of rulemaking - Hearing date.**

- 24 1. An agency or the commission shall prepare a full notice and an abbreviated notice of
- 25 rulemaking.
- 26 a. The ~~agency's~~ full notice of the proposed adoption, amendment, or repeal of a rule
- 27 must include a short, specific explanation of the proposed rule and the purpose of
- 28 the proposed rule, identify the emergency status and declared effective date of
- 29 any emergency rules, include a determination of whether the proposed
- 30 rulemaking is expected to have an impact on the regulated community in excess
- 31 of fifty thousand dollars, identify at least one location where interested persons

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- 1 may review the text of the proposed rule, provide the address to which written
2 comments concerning the proposed rule may be sent, provide the deadline for
3 submission of written comments, provide a telephone number and post-office or
4 electronic mail address at which a copy of the rules and regulatory analysis may
5 be requested, and, in the case of a substantive rule, provide the time and place
6 set for each oral hearing. ~~The~~An agency's full notice must include a statement of
7 the bill number and general subject matter of any legislation, enacted during the
8 most recent session of the legislative assembly, which is being implemented by
9 the proposed rule. The commission's full notice must include a statement of the
10 provision of the Constitution of North Dakota or the bill number and general
11 subject matter of any legislation enacted during the most recent session of the
12 legislative assembly which is being implemented by the proposed rule. The
13 agency's full notice must be filed with the legislative council, accompanied by a
14 copy of the proposed rules.
- 15 b. The agency or commission shall request publication of an abbreviated
16 newspaper publication notice at least once in each official county newspaper
17 published in this state. The abbreviated newspaper publication of notice must be
18 in a display-type format with a minimum width of one column of approximately
19 two inches [5.08 centimeters] and a minimum depth of approximately three
20 inches [7.62 centimeters] and with a headline describing the general topic of the
21 proposed rules. The notice must also include the telephone number or address to
22 use to obtain a copy of the proposed rules, identification of the emergency status
23 and declared effective date of any emergency rules, the address to use and the
24 deadline to submit written comments, and the location, date, and time of the
25 public hearing on the rules.
- 26 2. The agency or commission shall mail or deliver by electronic mail a copy of the
27 agency's full notice and proposed rule to each member of the legislative assembly
28 whose name appeared as a sponsor or cosponsor of legislation, enacted during the
29 most recent session of the legislative assembly, which is being implemented by the
30 proposed rule and to each person who has made a timely request to the agency or
31 commission for a copy of the notice and proposed rule. The agency or commission

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1 may mail or otherwise provide a copy of the ~~agency's~~ full notice to any person who is
2 likely to be an interested person. The agency or commission may charge persons who
3 are not members of the legislative assembly fees for copies of the proposed rule as
4 allowed under section 44-04-18.

5 3. In addition to the other notice requirements of this subsection, the superintendent of
6 public instruction shall provide notice of any proposed rulemaking by the
7 superintendent of public instruction to each association with statewide membership
8 whose primary focus is elementary and secondary education issues which has
9 requested to receive notice from the superintendent under this subsection and to the
10 superintendent of each public school district in this state, or the president of the school
11 board for school districts that have no superintendent, at least twenty days before the
12 date of the hearing described in the notice. Notice provided by the superintendent of
13 public instruction under this section must be by first-class mail. However, upon request
14 of a group or person entitled to notice under this section, the superintendent of public
15 instruction shall provide the group or person notice by electronic mail.

16 4. The legislative council shall establish standard procedures for the commission and all
17 agencies to follow in complying with the provisions of this section and a procedure to
18 allow any person to request and receive mailed copies of all filings made by agencies
19 and the commission pursuant to this section. The legislative council may charge an
20 annual fee as established by the administrative rules committee for providing copies of
21 the filings.

22 5. At least twenty days must elapse between the date of the publication of the notice and
23 the date of the hearing. Within fifteen business days after receipt of a notice under this
24 section, a copy of the notice must be mailed by the legislative council to any person
25 who has paid the annual fee established under subsection 4.

26 **SECTION 19. AMENDMENT.** Section 28-32-11 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **28-32-11. Conduct of hearings - Notice of administrative rules committee**
29 **consideration - Consideration and written record of comments.**

30 The agency or commission shall adopt a procedure whereby all interested persons are
31 afforded reasonable opportunity to submit data, views, or arguments, orally or in writing,

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1 concerning the proposed rule, including data respecting the impact of the proposed rule. The
2 agency or commission shall adopt a procedure to allow interested parties to request and
3 receive notice from the agency or commission of the date and place the rule will be reviewed by
4 the administrative rules committee. In case of substantive rules, the agency or commission shall
5 conduct an oral hearing. The agency or commission shall consider fully all written and oral
6 submissions respecting a proposed rule prior to the adoption, amendment, or repeal of any rule
7 not of an emergency nature. The agency or commission shall make a written record of its
8 consideration of all written and oral submissions contained in the rulemaking record respecting
9 a proposed rule.

10 **SECTION 20. AMENDMENT.** Section 28-32-12 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **28-32-12. Comment period.**

13 The agency or commission shall allow, after the conclusion of any rulemaking hearing, a
14 comment period of at least ten days during which data, views, or arguments concerning the
15 proposed rulemaking will be received by the agency or commission and made a part of the
16 rulemaking record to be considered by the agency or commission.

17 ~~**SECTION 21. AMENDMENT.** Section 28-32-14 of the North Dakota Century Code is~~
18 ~~amended and reenacted as follows:~~

19 ~~**28-32-14. Attorney general review of rules.**~~

20 ~~Every proposed rule proposed by any administrative agency must be submitted to the~~
21 ~~attorney general for an opinion as to its legality before final adoption, and the attorney general~~
22 ~~promptly shall furnish each such opinion. The attorney general may not approve any rule as to~~
23 ~~legality, and shall advise the agency or commission of any necessary rewording or revision of~~
24 ~~the rule, when the:~~

25 ~~1. The rule exceeds the statutory authority of the agency, or the statutory or constitutional~~
26 ~~authority of the commission;~~

27 ~~2. The rule is written in a manner that is not concise or easily understandable; or when~~
28 ~~the~~

29 ~~3. The procedural requirements for adoption of the rule in this chapter are not~~
30 ~~substantially met. The attorney general shall advise an agency of any revision or~~
31 ~~rewording of a rule necessary to correct objections as to legality.~~

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1 **SECTION 21. AMENDMENT.** Section 28-32-15 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **28-32-15. Filing of rules for publication - Effective date of rules.**

- 4 1. A copy of each rule adopted by an administrative agency or the commission, a copy of
5 each written comment and a written summary of each oral comment on the rule, and
6 the attorney general's opinion on the rule must be filed by the adopting agency or
7 commission with the legislative council for publication of the rule in the North Dakota
8 Administrative Code.
- 9 2. a. Nonemergency rules approved by the attorney general as to legality, adopted by
10 an administrative agency or the commission, ~~and~~ filed with the legislative council,
11 and not voided or held for consideration by the administrative rules committee
12 become effective according to the following schedule:
- 13 (1) Rules filed with the legislative council from August second through
14 November first become effective on the immediately succeeding January
15 first.
- 16 (2) Rules filed with the legislative council from November second through
17 February first become effective on the immediately succeeding April first.
- 18 (3) Rules filed with the legislative council from February second through May
19 first become effective on the immediately succeeding July first.
- 20 (4) Rules filed with the legislative council from May second through August first
21 become effective on the immediately succeeding October first.
- 22 b. If publication is delayed for any reason other than action of the administrative
23 rules committee, nonemergency rules, unless otherwise provided, become
24 effective when publication would have occurred but for the delay.
- 25 c. A rule held for consideration by the administrative rules committee becomes
26 effective on the first effective date of rules under the schedule in subdivision a
27 following the meeting at which that rule is reconsidered by the committee.

28 **SECTION 22. AMENDMENT.** Section 28-32-16 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 **28-32-16. Petition for reconsideration of rule - Hearing by agency.**

2 Any person substantially interested in the effect of a rule adopted by an administrative
 3 agency or the commission may petition ~~such~~ the agency or commission for a reconsideration of
 4 ~~any such~~ the rule or for an amendment or repeal ~~thereof~~. ~~Such~~ of the rule. The petition must
 5 state clearly and concisely the petitioners' alleged grounds for ~~such~~ reconsideration or for the
 6 proposed repeal or amendment of ~~such~~ the rule. The agency or commission may grant the
 7 petitioner a public hearing ~~upon such~~ on the terms and conditions as the agency ~~may~~
 8 prescribe.

9 **~~SECTION 24. AMENDMENT.~~** ~~Section 28-32-17 of the North Dakota Century Code is~~
 10 ~~amended and reenacted as follows:~~

11 ~~**28-32-17. Administrative rules committee objection.**~~

12 ~~— If the legislative management's administrative rules committee objects to all or any portion~~
 13 ~~of a rule because the committee deems it to be unreasonable, arbitrary, capricious, or beyond~~
 14 ~~the authority delegated to the adopting agency or commission, the committee may file that~~
 15 ~~objection in certified form with the legislative council. The filed objection must contain a concise~~
 16 ~~statement of the committee's reasons for its action.~~

17 ~~— 1. The legislative council shall attach to each objection a certification of the time and date~~
 18 ~~of its filing and, as soon as possible, shall transmit a copy of the objection and the~~
 19 ~~certification to the agency or commission adopting the rule in question. The legislative~~
 20 ~~council also shall maintain a permanent register of all committee objections.~~

21 ~~— 2. The legislative council shall publish an objection filed pursuant to this section in the~~
 22 ~~next issue of the code supplement. In case of a filed committee objection to a rule~~
 23 ~~subject to the exceptions of the definition of rule in section 28-32-01, the agency or~~
 24 ~~commission shall indicate the existence of that objection adjacent to the rule in any~~
 25 ~~compilation containing that rule.~~

26 ~~— 3. Within fourteen days after the filing of a committee objection to a rule, the adopting~~
 27 ~~agency or commission shall respond in writing to the committee. After receipt of the~~
 28 ~~response, the committee may withdraw or modify its objection.~~

29 ~~— 4. After the filing of a committee objection, the burden of persuasion is upon the agency~~
 30 ~~or commission in any action for judicial review or for enforcement of the rule to~~
 31 ~~establish that the whole or portion thereof of the rule objected to is within the~~

procedural and substantive authority delegated to the agency or commission. If the agency or commission fails to meet its burden of persuasion, the court shall declare the whole or portion of the rule objected to invalid and judgment must be rendered against the agency or commission for court costs. These court costs must include a reasonable attorney's fee and must be payable from the appropriation of the agency or commission which adopted the rule in question.

SECTION 25. AMENDMENT. Section 28-32-18 of the North Dakota Century Code is amended and reenacted as follows:

28-32-18. Administrative rules committee may void rule - Grounds - Amendment by agreement of agency and committee.

1. The legislative management's administrative rules committee may find that all or any portion of a rule is void if that rule is initially considered by the committee not later than the fifteenth day of the month before the date of the administrative code supplement in which the rule change is scheduled to appear. The administrative rules committee may find a rule or portion of a rule void if the committee makes the specific finding that, with regard to that rule or portion of a rule, there is:

a. An absence of statutory authority under statute or the constitution.

b. An emergency relating to public health, safety, or welfare.

c. For rules proposed by an agency, a failure to comply with express legislative intent or to substantially meet the procedural requirements of this chapter for adoption of the rule.

d. For rules proposed by the commission, a failure to substantially meet the procedural requirements for this chapter for adoption of the rule.

e. A conflict with state law.

f. Arbitrariness and capriciousness.

g. A failure to make a written record of its consideration of written and oral submissions respecting the rule under section 28-32-11.

2. The administrative rules committee may find a rule void at the meeting at which the rule is initially considered by the committee or may hold consideration of that rule for one subsequent meeting. If no representative of the agency or commission appears before the administrative rules committee when rules are scheduled for committee

1 consideration, those rules are held over for consideration at the next subsequent
2 committee meeting. Rules are not considered initially considered by the committee
3 under this subsection until a representative of the agency or commission appears
4 before the administrative rules committee when the rules are scheduled for committee
5 consideration. If no representative of the agency or commission appears before the
6 administrative rules committee meeting to which rules are held over for consideration,
7 the rules are void if the rules were adopted as emergency rules and for rules not
8 adopted as emergency rules the administrative rules committee may void the rules,
9 allow the rules to become effective, or hold over consideration of the rules to the next
10 subsequent committee meeting. Within three business days after the administrative
11 rules committee finds that a rule is void, the legislative council shall provide written
12 notice of that finding and the committee's specific finding under subdivisions a through
13 f of subsection 1 to the adopting agency or commission and to the chairman of the
14 legislative management. Within fourteen days after receipt of the notice, the adopting
15 agency or commission may file a petition with the chairman of the legislative
16 management for review by the legislative management of the decision of the
17 administrative rules committee. If the adopting agency or commission does not file a
18 petition for review, the rule becomes void on the fifteenth day after the notice from the
19 legislative council to the adopting agency or commission. If within sixty days after
20 receipt of the petition from the adopting agency or commission the legislative
21 management has not disapproved by motion the finding of the administrative rules
22 committee, the rule is void.

23 3. An agency or the commission may amend or repeal a rule or create a related rule if,
24 after consideration of rules by the administrative rules committee, the agency or
25 commission and the committee agree that the rule amendment, repeal, or creation is
26 necessary to address any of the considerations under subsection 1. A rule amended,
27 repealed, or created under this subsection is not subject to the other requirements of
28 this chapter relating to adoption of administrative rules and may be published by the
29 legislative council as amended, repealed, or created. If requested by the agency,
30 commission, or any interested party, a rule amended, repealed, or created under this
31 subsection must be reconsidered by the administrative rules committee at a

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subsequent meeting at which public comment on the agreed rule change must be allowed.

SECTION 26. AMENDMENT. Section 28-32-18.1 of the North Dakota Century Code is amended and reenacted as follows:

28-32-18.1. Administrative rules committee review of existing administrative rules.

1. Upon request by the administrative rules committee, an administrative agency or the commission shall brief the committee on its existing administrative rules and point out any provisions that appear to be obsolete and any areas in which statutory or constitutional authority has changed or been repealed since the rules were adopted or amended.

2. An agency or the commission may amend or repeal a rule without complying with the other requirements of this chapter relating to adoption of administrative rules and may resubmit the change to the legislative council for publication provided:

a. The agency or commission initiates the request to the administrative rules committee for consideration of the amendment or repeal;

b. The agency or commission provides notice to the regulated community, in a manner reasonably calculated to provide notice to those persons interested in the rule, of the time and place the administrative rules committee will consider the request for amendment or repeal of the rule; and

c. The agency or commission and the administrative rules committee agree the rule amendment or repeal eliminates a provision that is obsolete or no longer in compliance with law and that no detriment would result to the substantive rights of the regulated community from the amendment or repeal.

SECTION 23. AMENDMENT. Subsection 2 of section 28-32-19 of the North Dakota Century Code is amended and reenacted as follows:

2. The legislative council may prescribe the format, style, and arrangement for rules which are to be published in the code and may refuse to accept the filing of any rule that is not in substantial compliance therewith with the format, style, and arrangement. In arranging rules for publication, the legislative council may make such corrections in spelling, grammatical construction, format, and punctuation of the rules as determined the legislative council determines are proper. The legislative council shall

1 keep and maintain a permanent code of all rules filed, including superseded and
2 repealed rules, which must be open to public inspection during office hours.

3 **SECTION 24. AMENDMENT.** Subsection 4 of section 28-32-19 of the North Dakota
4 Century Code is amended and reenacted as follows:

5 4. The legislative council, with the consent of the adopting agency or commission, may
6 omit from the code or code supplement any rule the publication of which would be
7 unduly cumbersome, expensive, or otherwise inexpedient, if the rule in printed or
8 duplicated form is made available on application to the agency or commission, and if
9 the code or code supplement contains a notice stating the general subject matter of
10 the omitted rule and ~~stating~~ how a copy may be obtained.

11 **~~SECTION 29. AMENDMENT.~~** ~~Section 28-32-27 of the North Dakota Century Code is~~
12 ~~amended and reenacted as follows:~~

13 ~~**28-32-27. Hearing officer - Disqualification - Substitution.**~~

14 ~~1. Any person or persons presiding for the agency in an administrative proceeding must~~
15 ~~be referred to individually or collectively as hearing officer. Any person from the office~~
16 ~~of administrative hearings presiding for the agency as a hearing officer in an~~
17 ~~administrative proceeding must be referred to as an administrative law judge.~~

18 ~~2. Any hearing officer is subject to disqualification for good cause shown.~~

19 ~~3. A hearing officer who is a director, officer, commissioner, head, or other executive of~~
20 ~~an agency shall self-disqualify in a proceeding in which a reasonable, disinterested~~
21 ~~observer would believe the hearing officer is biased due to:~~

22 ~~a. A contribution by one of the parties supporting the hearing officer's most recent~~
23 ~~campaign for public office; or~~

24 ~~b. An ownership interest, other than investment in a mutual fund, of the hearing~~
25 ~~officer in one of the parties to the proceeding if the ownership interest is not~~
26 ~~shared by the general public.~~

27 ~~4. Any party may petition for the disqualification of any person presiding as a hearing~~
28 ~~officer upon discovering facts establishing grounds for disqualification.~~

29 ~~4.5. A person whose disqualification is requested shall determine whether to grant the~~
30 ~~petition, stating facts and reasons for the determination.~~

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- 1 ~~5.6.~~ If a substitute is required for a person who is disqualified or becomes unavailable for
2 any other reason, the substitute may be appointed by:
- 3 ~~a.~~ The attorney general, if the disqualified or unavailable person is an assistant
4 attorney general;
- 5 ~~b.~~ The agency head, if the disqualified or unavailable person is one or more
6 members of the agency head or one or more other persons designated by the
7 agency head;
- 8 ~~c.~~ A supervising hearing officer, if the disqualified or unavailable person is a
9 hearing officer designated from an office, pool, panel, or division of hearing
10 officers; or
- 11 ~~d.~~ The governor, in all other cases.
- 12 ~~6.7.~~ Any action taken by a duly appointed substitute for a disqualified or unavailable person
13 is as effective as if taken by the disqualified or unavailable person.
- 14 ~~7.8.~~ Any hearing officer in an administrative proceeding, from the time of appointment or
15 designation, may exercise any authority granted by law or rule. A hearing officer may
16 be designated to preside over the entire administrative proceeding and may issue
17 orders accordingly. A procedural hearing officer may only issue orders in regard to the
18 course and conduct of the hearing under statute or rule and to otherwise effect an
19 orderly hearing. If a procedural hearing officer is designated, the agency head must be
20 present at the hearing and the agency head shall issue findings of fact and
21 conclusions of law, as well as any order resulting from the hearing.
- 22 ~~9.~~ The North Dakota ethics commission shall assess any hearing officer who knowingly
23 violates subsection 3 a civil penalty of five hundred dollars for the first violation. For a
24 second and subsequent knowing violation of this section, the hearing officer is guilty of
25 a class B misdemeanor.

26 **SECTION 25. AMENDMENT.** Section 28-32-47 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **28-32-47. Scope of and procedure on appeal from agency rulemaking.**

- 29 1. A judge of the district court shall review an appeal from an administrative agency's or
30 ethics commission's rulemaking action based only on the record filed with the court. If
31 an appellant requests documents to be included in the record but the agency or

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- 1 commission does not include them, the court, upon application by the appellant, may
2 compel their inclusion. After a hearing, the filing of briefs, or other disposition of the
3 matter as the judge may reasonably require, the court shall affirm the ~~agency's~~
4 rulemaking action unless it finds that any of the following are present:
- 5 4- a. The provisions of this chapter have not been substantially complied with in the
6 ~~agency's~~ rulemaking actions.
- 7 2- b. A rule published as a result of the rulemaking action appealed is unconstitutional
8 on the face of the language adopted.
- 9 3- c. A rule published as a result of the rulemaking action appealed is beyond the
10 scope of the agency's or commission's authority to adopt.
- 11 4- d. A rule published as a result of the rulemaking action appealed is on the face of
12 the language adopted an arbitrary or capricious application of authority granted
13 by statute.
- 14 2. If the rulemaking action of the agency or commission is not affirmed by the court, ~~the~~
15 rulemaking action must be remanded to the agency or commission for disposition in
16 accordance with the order of the court, or the rule or a portion of the rule resulting from
17 the rulemaking action of the agency or commission must be declared invalid for
18 reasons stated by the court.

19 **SECTION 26. AMENDMENT.** Section 28-32-48 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **28-32-48. Appeal - Stay of proceedings.**

22 An appeal from an order or the rulemaking action of an administrative agency or the
23 commission does not stay the enforcement of the order or the effect of a published rule unless
24 the court to which the appeal is taken, upon application and after a hearing or the submission of
25 briefs, orders a stay. The court may impose terms and conditions for a stay of the enforcement
26 of the order or for a stay in the effect of a published rule. This section does not prohibit the
27 operation of an automatic stay upon the enforcement of an administrative order or commission
28 order as may be required by another statute.

29 **SECTION 27. AMENDMENT.** Section 28-32-49 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **28-32-49. Review in supreme court.**

2 The judgment of the district court in an appeal from an order or rulemaking action of an
3 administrative agency or the commission may be reviewed in the supreme court on appeal in
4 the same manner as provided in section 28-32-46 or 28-32-47, except that the appeal to the
5 supreme court must be taken within sixty days after the service of the notice of entry of
6 judgment in the district court. Any party of record, including the agency or commission, may
7 take an appeal from the final judgment of the district court to the supreme court. If an appeal
8 from the judgment of the district court is taken by an agency or the commission, the agency or
9 commission may not be required to pay a docket fee or file a bond for costs or equivalent
10 security.

11 **SECTION 28.** Chapter 54-66 of the North Dakota Century Code is created and enacted as
12 follows:

13 **54-66-01. Definitions.**

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

- 15 1. "Accused individual" means an individual who is alleged to have violated article XIV of
16 the Constitution of North Dakota, this chapter, or another law or rule regarding
17 government ethics.
- 18 2. "Adjusted for inflation" means adjusted on January first of each year by the change in
19 the consumer price index for all urban consumers (all items, United States city
20 average), as identified by the secretary of state.
- 21 3. "Complainant" means an individual who, in writing or verbally, submits a complaint to
22 the commission.
- 23 4. "Complaint" means a verbal or written allegation to the commission that article XIV of
24 the Constitution of North Dakota, this chapter, or another law or rule regarding
25 government ethics has been violated.
- 26 5. "Ethics commission" or "commission" means the North Dakota ethics commission
27 established by article XIV of the Constitution of North Dakota.
- 28 6. "Gift" means any item, service, or thing of value not given in exchange for fair market
29 consideration including travel and recreation. The term does not mean:
30 a. Purely information material;
31 b. A campaign contribution; and

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- 1 c. To advance opportunities for state residents to meet with public officials in
- 2 educational and social settings in the state, any item, service, or thing of value
- 3 given under conditions that do not raise ethics concerns as set forth in rules
- 4 adopted by the ethics commission.
- 5 ~~7. "Influence state government action" means promoting or opposing the final adoption of~~
- 6 ~~a rule by an administrative agency or the commission under chapter 28 32.~~
- 7 ~~8. "Lobby" means an activity listed in subsection 1 of section 54 05.1 02.~~
- 8 ~~9. "Lobbyist" means an individual required to register under section 54 05.1 03:~~
- 9 a. Means a person who directly or indirectly:
- 10 (1) Attempts to secure the passage, amendment, or defeat of any legislation by
- 11 the legislative assembly;
- 12 (2) Attempts to secure the approval or veto of any legislation by the governor;
- 13 (3) Attempts to influence decisions regarding legislative matters made by the
- 14 legislative management or a legislative committee; or
- 15 (4) Attempts to influence decisions regarding official matters made by a public
- 16 official in the executive branch of state government; and
- 17 b. Does not mean:
- 18 (1) A private citizen appearing on the citizen's own behalf;
- 19 (2) A public official or an employee, officer, board member, volunteer, or agent
- 20 of the state or a political subdivision of the state acting in the individual's
- 21 official capacity.
- 22 ~~10.8.~~ "Public official" means an elected or appointed official of the state's executive or
- 23 legislative branch, members of the commission, members of the governor's cabinet,
- 24 and employees of the legislative branch.
- 25 ~~11.9.~~ "Receives the complaint" means one or more members of the commission learn of the
- 26 complaint.
- 27 ~~12.10.~~ "Ultimate and true source" means the person that knowingly contributed over two
- 28 hundred dollars, adjusted for inflation, solely to lobby or influence state government
- 29 action. The term does not include an individual who is a member of an organization
- 30 that is not substantially engaged in lobbying or influencing state government, if:
- 31 a. The member provided only a donation or membership fee to the organization;

- 1 b. The member did not designate the donation or membership fee to be used to
 2 lobby or influence state government; and
 3 c. A substantial portion of the donation or membership fee was not used to lobby or
 4 influence state government.

54-66-02. Disclosure of ultimate and true source of funds.

- 6 1. A lobbyist who expends an amount greater than two hundred dollars, adjusted for
 7 inflation, to lobby shall file with the secretary of state a report that includes the known
 8 ultimate and true source of funds for the expenditure. ~~The report must be filed with the~~
 9 ~~lobbyist expenditure report required under subsection 2 of section 54-05.1-03.~~
- 10 2. A person who expends an amount greater than two hundred dollars, adjusted for
 11 inflation, to influence state government action shall file with the secretary of state a
 12 report including the known ultimate and true source of funds for the expenditure. ~~The~~
 13 ~~report must be filed on or before the August first following the date of the expenditure.~~
 14 The secretary of state shall provide a form for reports under this subsection and make
 15 the form electronically accessible to the public. The secretary of state also shall
 16 charge and collect fees for late filing of the reports as follows:
- 17 a. Twenty-five dollars for a report filed within sixty days after the deadline; or
 18 b. Fifty dollars for a report filed more than sixty days after the deadline.
- 19 3. The secretary of state shall compile the reports required under this section and make
 20 the reports electronically accessible to the public ~~within forty days after the deadlines~~
 21 ~~by which the reports must be filed.~~
- 22 ~~4. This section does not require a person to report the ultimate and true source of funds~~
 23 ~~expended on:~~
- 24 ~~a. A gift to or from a family member;~~
 25 ~~b. Purely informational material, advice, or education;~~
 26 ~~c. Reimbursement for travel, meal, and refreshment expenses incurred to, from, or~~
 27 ~~during a conference, seminar, or other legitimate educational opportunity for a~~
 28 ~~public official if the conference, seminar, or educational opportunity concerns~~
 29 ~~issues germane to the official duties of the public official;~~
- 30 ~~d. Meals and refreshments provided while informing, advising, or educating a public~~
 31 ~~official about issues germane to the official duties of the public official;~~

- 1 ~~e. Providing an educational or social setting in the state to provide an opportunity~~
 2 ~~for individuals to meet with public officials; and~~
 3 ~~f. A good or service determined not to raise ethical concerns under rules adopted~~
 4 ~~by the ethics commission.~~
 5 ~~5. A resident taxpayer may commence an action in a district court of this state against a~~
 6 ~~person required to comply with this section to compel compliance if all other~~
 7 ~~enforcement measures under this chapter have been exhausted and the taxpayer~~
 8 ~~reasonably believes the person has failed to comply with this section. A failure to~~
 9 ~~comply with this section must be proved by clear and convincing evidence.~~

10 **54-66-03. Lobbyist gifts - Penalty.**

- 11 1. ~~A lobbyist may not give, offer, solicit, initiate, or facilitate a gift knowingly to a public~~
 12 ~~official, and a public official may not accept a gift with a value over sixty dollars per~~
 13 ~~individual per event, adjusted for inflation, from a lobbyist knowingly, except to~~
 14 ~~advance opportunities for state residents to meet with public officials in educational~~
 15 ~~and social settings in the state under conditions that do not raise ethical concerns,~~
 16 ~~including:~~
 17 ~~a. Reimbursement for travel, meal, and refreshment expenses incurred to, from, or~~
 18 ~~during a conference, seminar, or other legitimate educational opportunity for the~~
 19 ~~public official if the conference, seminar, or educational opportunity concerns~~
 20 ~~issues germane to the official duties of the public official;~~
 21 ~~b. Providing information, advice, or education to a public official;~~
 22 ~~c. Providing meals and refreshments while informing, advising, or educating a~~
 23 ~~public official about issues germane to the official duties of the public official;~~
 24 ~~d. Items with a fair market value of ten dollars per individual per event, adjusted for~~
 25 ~~inflation, or less per individual; and~~
 26 ~~e. A good or service determined not to raise ethical concerns under rules adopted~~
 27 ~~by the ethics commission.~~
 28 2. ~~The prohibition in subsection 1 does not apply when a lobbyist gives, offers, solicits,~~
 29 ~~initiates, or facilitates, or a public official accepts:~~
 30 ~~a. A gift to or from a family member;~~
 31 ~~b. Purely informational material; or~~

- 1 ~~e. A campaign contribution.~~
- 2 ~~3. For the first violation, the secretary of state shall assess a civil penalty of five~~
- 3 ~~hundred up to one thousand dollars or twice the amount of the gift, whichever is~~
- 4 ~~greater, upon any person who knowingly violates this section and, if the person is a~~
- 5 ~~lobbyist, the secretary of state may revoke the lobbyist's registration under chapter~~
- 6 ~~54-05.1. For a second and subsequent knowing violation of this section, the person is~~
- 7 ~~guilty of a class B misdemeanor.~~

8 **54-66-04. Ethics commission member terms - Meetings - Code of ethics -**

9 **Compensation - Investigator.**

- 10 1. The terms of the initial members of the ethics commission must be staggered to
- 11 ensure no more than two members' terms expire in one year. The terms of the initial
- 12 members may be less than four years to accommodate the required staggering of
- 13 terms.
- 14 2. The ethics commission shall meet as necessary to address each complaint the
- 15 commission receives. Unless the complaint at issue has resulted in the imposition of a
- 16 penalty or referral for enforcement under section 54-66-10, any portion of a meeting
- 17 during which commission members discuss complaints, informal resolutions, attempts
- 18 to informally resolve complaints, investigations, or referrals under this chapter, the
- 19 identity of an accused individual or complainant, or any other matter arising from a
- 20 complaint are closed meetings.
- 21 3. The commission shall abide by a code of ethics adopted in a public meeting. The code
- 22 of ethics must specify when a commission member is disqualified from participating in
- 23 matters before the commission.
- 24 4. Ethics commission members are entitled to:
- 25 a. Compensation for each day necessarily spent conducting commission business
- 26 in the amount provided for members of the legislative management under section
- 27 54-35-10; and
- 28 b. Payment for mileage and travel expenses necessarily incurred in the conduct of
- 29 commission business as provided under sections 44-08-04 and 54-06-09.
- 30 5. Commission members shall hire or otherwise engage a part-time administrative
- 31 assistant. The administrative assistant must be provided an office within the office

~~space for the department of labor and human rights. The commission shall~~
~~compensate the department of labor and human rights for the office in an amount~~
~~equal to the fair value of the office.~~ director of the office of management and budget
shall allocate office space in the state capitol for the ethics commission, or, if office
space in the capitol is unavailable, shall negotiate for, contract for, and obtain office
space for the ethics commission in the city of Bismarck or in the Bismarck area. The
ethics commission's office space may not be located in the office space of any other
government agency, board, commission, or other governmental entity, and must
provide sufficient privacy and security for the ethics commission to conduct business.
The director shall charge the ethics commission an amount equal to the fair value of
the office space and related services the office of management and budget renders to
the ethics commission.

~~54-66-05. Making a complaint - Identifying information - False complaints~~ Informing
the accused individual.

- ~~1. A complaint may be made to the commission orally or in writing. When making a~~
~~complaint, a complainant shall provide the name, address, and telephone number of~~
~~the complainant.~~
- ~~2. Within five days after making a complaint, the complainant shall submit a signed~~
~~statement attesting the complaint is true and accurate to the best of the complainant's~~
~~knowledge. The commission shall develop an attestation form for this purpose and~~
~~make it electronically accessible to the public. After receiving the attestation, the~~
~~commission shall summarize the complaint in writing if the complaint was made orally.~~
- ~~3. If the complainant does not submit the signed attestation by the deadline, the~~
~~commission may not investigate or take other action on the complaint.~~
- ~~4. Knowingly or recklessly making a complaint that is materially false is defamation under~~
~~chapter 12.1-15.~~

~~54-66-06. Informing the accused individual - Written response permitted.~~

~~The commission shall inform an accused individual by registered mail of the identity of the~~
~~complainant who made the allegation~~ the ethics commission received a complaint against the
~~accused individual and include the written complaint or written summary of the oral complaint as~~
~~soon as reasonably possible but no later than ten calendar days after the commission receives~~

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1 ~~the complaint. The accused individual may respond to the complaint in writing within ten~~
2 ~~calendar days of receipt of the complaint or summary of the complaint. If the complaint was~~
3 ~~made in writing, the ethics commission shall provide a copy of the complaint to the accused~~
4 ~~individual no later than twenty calendar days after the commission receives the complaint. If the~~
5 ~~complaint was made orally, the ethics commission shall inform the accused individual of the~~
6 ~~allegations and other information provided in the complaint no later than twenty calendar days~~
7 ~~after the ethics commission receives the complaint.~~

8 ~~54-66-07~~ **54-66-06. Informal resolution.**

9 The commission may attempt to negotiate or mediate an informal resolution between the
10 accused individual and the complainant, ~~provided the informal resolution is satisfactory to the~~
11 ~~commission.~~

12 ~~54-66-08. Referrals to investigators – Exception for criminal allegations.~~

13 ~~For each complaint with an attestation, the commission shall engage an investigator with~~
14 ~~the appropriate knowledge and experience regarding the Constitution of North Dakota,~~
15 ~~ethics related statutes, and ethics investigations, and refer the complaint to the investigator~~
16 ~~within thirty calendar days of receiving the complaint. However, if a complaint with an attestation~~
17 ~~includes an allegation of criminal conduct, the commission shall refer the allegation of criminal~~
18 ~~conduct to the bureau of criminal investigation or other law enforcement agency. The~~
19 ~~commission may engage a state agency as an investigator. If the accused individual provided a~~
20 ~~written response to the complaint, the commission shall provide the written response with the~~
21 ~~referred complaint.~~

22 ~~54-66-09~~ **54-66-07. Investigations – Findings and Recommendations – Responses and**
23 **referrals.**

- 24 1. ~~The investigator engaged under section 54-66-08 shall investigate the complaint~~
25 ~~referred to it by the ethics commission. Investigations~~ ~~commission may investigate a~~
26 ~~complaint if an informal resolution has not be achieved. An investigation must include~~
27 ~~separate interviews with the accused individual and the complainant, unless the~~
28 ~~accused individual or complainant refuses to be interviewed, and consideration of the~~
29 ~~circumstances surrounding the allegations. The accused individual and complainant~~
30 ~~may be accompanied by legal counsel during the interviews of each. Investigations~~

1 ~~may include interviews of potential witnesses and other individuals believed to have~~
2 ~~relevant information.~~

3 2. ~~The commission may refer a matter described in or arising from a complaint to the~~
4 ~~bureau of criminal investigation or other appropriate law enforcement agency if a~~
5 ~~majority of the commission members reasonably believes a crime was committed or~~
6 ~~the safety of the complainant is at risk.~~

7 **54-66-08. Investigation findings - Penalties.**

8 1. ~~At the conclusion of the investigation, but no later than six months after the~~
9 ~~investigator received the complaint, the investigator shall submit its written findings~~
10 ~~from the investigation to the commission. The commission shall provide written copies~~
11 ~~of the findings to the accused individual and complainant. The accused individual and~~
12 ~~complainant may respond in writing to the findings within thirty calendar days of~~
13 ~~receiving the findings. The commission shall maintain copies of the findings and any~~
14 ~~written response to the findings.~~

15 ~~**54-66-10. Final determinations - Penalties - Referrals for enforcement.**~~

16 1. ~~After reviewing the findings from the investigator and any written response from the~~
17 ~~accused individual or complainant, the ethics commission shall meet with the accused~~
18 ~~individual and complainant to discuss the findings and written responses. A meeting~~
19 ~~under this subsection is a closed meeting as defined in section 44-04-17.1, although~~
20 ~~the accused individual and complainant may have legal counsel attend and~~
21 ~~participate.~~

22 2. ~~After the meeting with the accused individual and complainant, the commission shall~~
23 ~~issue written findings, including a determination to the accused individual.~~

24 2. ~~The findings must state whether the commission believes, based on a preponderance~~
25 ~~of the evidence as viewed by a reasonable person, a violation of article XIV of the~~
26 ~~Constitution of North Dakota, this chapter, or another law or rule regarding government~~
27 ~~ethics occurred. The accused individual may respond in writing to the findings within~~
28 ~~twenty calendar days of receiving the findings. The commission shall maintain copies~~
29 ~~of the findings and any written response to the findings.~~

- 1 3. If the commission finds a violation occurred, the commission may ~~assess a civil~~impose
 2 a penalty if authorized by law or refer the matter to the entity authorized by law to
 3 ~~assess a civil penalty~~specified by law for the violation.
- 4 ~~3. The accused individual and the complainant may appeal and request judicial review of~~
 5 ~~a determination made or penalty imposed under this section to the district court in the~~
 6 ~~county in which the accused individual resides. A request for judicial review under this~~
 7 ~~section must comply with the requirements for an appeal of a determination of an~~
 8 ~~agency under chapter 28-32. The scope of review and procedure on appeal from a~~
 9 ~~determination of the commission must comply with section 28-32-47.~~
- 10 ~~4. The commission may not terminate the employment of a public official or otherwise~~
 11 ~~remove a public official from the public official's public office.~~

54-66-09. Appeals.

13 An accused individual may appeal a finding of the commission to the district court of the
 14 county where the accused individual resides.

54-66-10. Lobbyist requirements.

16 A person who meets the definition of a lobbyist under this chapter is not required to comply
 17 with the requirements of chapter 54-05.1 unless the person also meets the definition of a
 18 lobbyist under section 54-05.1-02.

54-66-11. Confidential information - Penalty.

- 20 1. The following information is a confidential record as defined in section 44-04-17.1,
 21 unless the commission has determined the accused individual violated article XIV of
 22 the Constitution of North Dakota, this chapter, or another law or rule regarding
 23 government ethics, and a court affirmed the determination if appealed, except the
 24 information may be disclosed as required by law or as necessary to conduct an
 25 investigation arising from a complaint:
- 26 a. Information revealing the contents of a complaint;
 27 b. Information that reasonably may be used to identify an accused individual or
 28 complainant; and
 29 c. Information relating to or created as part of an investigation of a complaint.
- 30 2. If a complaint is informally resolved under section 54-66-07, the following information
 31 is a confidential record as defined in section 44-04-17.1;

- 1 a. Information revealing the contents of the complaint;
- 2 b. Information that reasonably may be used to identify the accused individual or
- 3 complainant;
- 4 c. Information relating to or created as part of the process leading to the informal
- 5 resolution; and
- 6 d. Information revealing the informal resolution.

7 3. ~~Willful publication~~ Publication of information included in subsections 1 and 2 by a
8 person who knows the information to be false is ~~criminal defamation under~~
9 ~~section 12.1-15-01.~~

10 ~~4. A public official who violates this section is guilty of a class C felony.~~ a class B
11 misdemeanor.

12 **54-66-12. Restriction on lobbying by public officials - Penalty.**

13 ~~For the first~~ A knowing violation of subsection 2 of section 2 of article XIV of the Constitution
14 of North Dakota, ~~the secretary of state shall assess a civil penalty of five hundred~~ is a class A
15 misdemeanor. The commission shall impose a fine of up to one thousand dollars upon the
16 person who knowingly commits the violation. ~~For a second and subsequent knowing violation of~~
17 ~~the subsection, the person is guilty of a class B misdemeanor.~~ violates the subsection.

18 **54-66-13. Attorney general to provide legal services.**

19 The attorney general shall serve as legal counsel for the commission, ~~unless the~~
20 ~~commission objects to the representation by the attorney general in a specific matter.~~ When a
21 conflict of interest prevents the attorney general from providing legal services to the
22 commission, the attorney general may appoint a special assistant attorney general to serve as
23 legal counsel for the commission.

24 **54-66-14. Prohibition on delivering campaign contributions - Penalty.**

25 A lobbyist may not deliver knowingly a campaign contribution made by another person
26 ~~in~~ knowing violation of subsection 3 of section 2 of article XIV of the Constitution of North
27 Dakota. ~~For a first violation, the secretary of state shall assess a civil penalty of five hundred~~ is
28 a class A misdemeanor. The commission shall impose a fine of up to one thousand dollars upon
29 any person who knowingly violates this section and may revoke the lobbyist's registration.
30 ~~For the subsection, The commission may impose a fine of up to one thousand dollars upon any~~

1 person for a second and subsequent knowing violation of this section, the person is guilty of a
2 class B misdemeanor the subsection.

3 **SECTION 29. APPROPRIATION.** There is appropriated out of any moneys in the general
4 fund in the state treasury, not otherwise appropriated, the sum of ~~\$300,000~~ \$517,155, or so
5 much of the sum as may be necessary, to the ethics commission for the purpose of the
6 operations of the commission, for the biennium beginning July 1, 2019, and ending June 30,
7 2021. The ethics commission is authorized ~~one and one-half~~ two full-time equivalent positions
8 for this purpose.

9 **SECTION 30. EFFECTIVE DATE.** Sections 1, 2, 3, 4, 5, 6, and 7 of this Act, and section
10 54-66-02 of the North Dakota Century Code, as created by section 3228 of this Act, become
11 effective January 5, 2022.

12 **SECTION 31. EFFECTIVE DATE.** North Dakota Century Code section 54-66-03, as
13 created by section 3228 of this Act, becomes effective January 5, 2021.

14 **SECTION 32. EXPIRATION DATE.** North Dakota Century Code section 54-66-12, as
15 created by section 3228 of this Act, is effective until subsection 2 of section 2 of article XIV of
16 the Constitution of North Dakota is no longer part of the Constitution of North Dakota.

17 **SECTION 33. EMERGENCY.** Sections ~~8~~, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21,
18 22, 23, 24, 25, 26, and 27, ~~28, 29, 30, and 31~~ of this Act are declared to be an emergency
19 measure.

HB 1521
4/9/19

#6

Suggested study amendment to HB 1521 as now before the Senate.

SECTION XX. LEGISLATIVE MANAGEMENT STUDY - ETHICS. During the 2019-2020 interim, the legislative management shall consider studying subsection 2 of section 1 of article XIV, and subsections 1 through 5 of section 2 of article XIV of the Constitution of North Dakota, and the responsibilities of the legislative assembly and ethics commission under those provisions. The study committee must include two members of the ethic commission selected by the ethics commission. The study must include whether the civil and criminal sanctions are appropriate, whether additional authority is needed by the entity vested to implement, interpret and enforce section 1 of article XIV, and consideration of effective means to educate public officials, lobbyists, and the public on the requirements of article XIV and other laws regarding government ethics. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-seventh legislative assembly.

Senator Tim Mathern, April 9, 2019

HB 1521
4/9/19

#7

Suggested Amendment to HB 1521 First Engrossment 19.1078.02000. For uniform definition of "lobbyist"

SECTION 1. AMENDMENT. Section 54-05.1-02 of the North Dakota Century Code is amended and reenacted as follows:

54-05.1-02. Applicability – Meaning of lobbyist.

1. This chapter applies to any person who, in any manner whatsoever, directly or indirectly, performs any of the following activities:
 - a. Attempts to secure the passage, amendment, or defeat of any legislation by the legislative assembly or the approval or veto of any legislation by the governor of the state;
 - b. Attempts to influence decisions regarding legislative matters made by the legislative management or ~~by an interim~~ a legislative committee of the legislative management; or
 - c. Attempts to influence decisions regarding official matters made by a public official in the executive branch of state government.
2. This chapter does not apply to any person who is:
 - a. ~~A legislator.~~
 - b. ~~A private citizen appearing on the citizen's own behalf.~~
 - c. ~~An employee, officer, board member, volunteer, or agent of the state or its political subdivisions whether elected or appointed and whether or not compensated, who is acting in that person's official capacity.~~
 - d. ~~Invited by the chairman of the legislative management, an interim committee of the legislative management, or a standing committee of the legislative assembly to appear before the legislative management, interim committee, or standing committee for the purpose of providing information.~~
 - e. ~~An individual who appears before a legislative committee for the sole purpose of presenting testimony on behalf of a trade or professional organization or a business or industry if the individual is introduced to the committee by the registered lobbyist for the trade or professional organization or the business or industry.~~ A public official or an employee, officer, board member, volunteer, or agent of the state or a political subdivision of the state acting in the individual's official capacity.
3. For the purposes of this chapter, persons required to register under this chapter because of the performance of the activities described in subsection 1 must be known as "lobbyists".

Senator Tim Mathern, April 9, 2019

Sixty-sixth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1521

Introduced by

Representative Pollert

Senator Wardner

A BILL for an Act to create and enact a new section to chapter 16.1-08.1 and chapter 54-66 of the North Dakota Century Code, relating to reporting campaign contributions and expenditures, restrictions on public officials and lobbyists, investigations of ethics violations, and implementing requirements of article XIV of the Constitution of North Dakota; to amend and reenact ~~section~~sections 16.1-08.1-01, ~~subsection 4 of section 16.1-08.1-02.1, sections 16.1-08.1-02.3, 16.1-08.1-02.4, 16.1-08.1-03.1,~~ 16.1-08.1-04.1, 16.1-08.1-06.2, 28-32-01, ~~28-32-02~~, 28-32-03, 28-32-06, 28-32-07, 28-32-08, 28-32-08.1, 28-32-08.2, 28-32-09, 28-32-10, 28-32-11, 28-32-12, ~~28-32-14~~, 28-32-15, 28-32-16, ~~28-32-17, 28-32-18,~~ and 28-32-18.1, subsections 2 and 4 of section 28-32-19, and sections 28-32-27, 28-32-47, 28-32-48, and 28-32-49 of the North Dakota Century Code, relating to rulemaking procedures, disqualification of agency heads in quasi-judicial proceedings, implementing article XIV of the Constitution of North Dakota, and requirements for the North Dakota ethics commission; to provide for a penalty; to provide an appropriation; to provide an effective date; ~~to provide an expiration date;~~ and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-08.1-01 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-01. Definitions.

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

1. "Adjusted for inflation" means adjusted on January first of each year by the change in the consumer price index for all urban consumers (all items, United States city average), as identified by the secretary of state.

- ~~2.~~ "Affiliate" means an organization that controls, is controlled by, or is under common control with another organization. For purposes of this definition, control means the

possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an organization, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise. Control is presumed to exist if an organization, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing fifty percent or more of the voting securities of any other organization.

2.3. "Association" means any club, association, union, brotherhood, fraternity, organization, or group of any kind of two or more persons, including labor unions, trade associations, professional associations, or governmental associations, which is united for any purpose, business, or object and which assesses any dues, membership fees, or license fees in any amount, or which maintains a treasury fund in any amount. The term does not include corporations, cooperative corporations, limited liability companies, political committees, or political parties.

3.4. "Candidate" means an individual who seeks nomination for election or election to public office, and includes:

- a. An individual holding public office;
- b. An individual who has publicly declared that individual's candidacy for nomination for election or election to public office or has filed or accepted a nomination for public office;
- c. An individual who has formed a campaign or other committee for that individual's candidacy for public office;
- d. An individual who has circulated a nominating petition to have that individual's name placed on the ballot; and
- e. An individual who has, in any manner, solicited or received a contribution for that individual's candidacy for public office, whether before or after the election for that office.

4.5. "Conduit" means a person that is not a political party, political committee, or candidate and which receives a contribution of money and transfers the contribution to a candidate, political party, or political committee when the contribution is designated specifically for the candidate, political party, or political committee and the person has no discretion as to the recipient and the amount transferred. The term includes a

transactional intermediary, including a credit card company or a money transfer service that pays or transfers money to a candidate on behalf of another person.

5.6. "Contribution" means a gift, transfer, conveyance, provision, receipt, subscription, loan, advance, deposit of money, or anything of value, made for the purpose of influencing the nomination for election, or election, of any person to public office or aiding or opposing the circulation or passage of a statewide initiative or referendum petition or measure. The term also means a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for any of the above purposes. The term includes funds received by a candidate for public office or a political party or committee which are transferred or signed over to that candidate, party, or committee from another candidate, party, or political committee or other source including a conduit. The term "anything of value" includes any good or service of more than a nominal value. The term "nominal value" means the cost, price, or worth of the good or service is trivial, token, or of no appreciable value. The term "contribution" does not include:

- a. A loan of money from a bank or other lending institution made in the regular course of business.
- b. Time spent by volunteer campaign or political party workers.
- c. Money or anything of value received for commercial transactions, including rents, advertising, or sponsorships made as a part of a fair market value bargained-for exchange.
- d. Money or anything of value received for anything other than a political purpose.
- e. Products or services for which the actual cost or fair market value are reimbursed by a payment of money.
- f. An independent expenditure.
- g. The value of advertising paid by a political party, multicandidate political committee, or caucus which is in support of a candidate.
- h. In-kind contributions from a candidate to the candidate's campaign.

6.7. "Cooperative corporations", "corporations", and "limited liability companies" are as defined in this code, and for purposes of this chapter "corporations" includes nonprofit corporations. However, if a political committee, the only purpose of which is accepting

contributions and making expenditures for a political purpose, incorporates for liability purposes only, the committee is not considered a corporation for the purposes of this chapter.

7.8. "Expenditure" means:

- a. A gift, transfer, conveyance, provision, loan, advance, payment, distribution, disbursement, outlay, or deposit of money or anything of value, except a loan of money from a bank or other lending institution made in the regular course of business, made for a political purpose or for the purpose of influencing the passage or defeat of a measure.
- b. A contract, promise, or agreement, express or implied, whether or not legally enforceable, to make any expenditure.
- c. The transfer of funds by a political committee to another political committee.
- d. An independent expenditure.

8.9. "Expenditure categories" means the categories into which expenditures must be grouped for reports under this chapter. The expenditure categories are:

- a. Advertising;
- b. Campaign loan repayment;
- c. Operations;
- d. Travel; and
- e. Miscellaneous.

9.10. "Independent expenditure" means an expenditure made for a political purpose or for the purpose of influencing the passage or defeat of a measure if the expenditure is made without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of, any candidate, committee, or political party.

10.11. "Patron" means a person who owns equity interest in the form of stock, shares, or membership or maintains similar financial rights in a cooperative corporation.

11.12. "Person" means an individual, partnership, political committee, association, corporation, cooperative corporation, limited liability company, or other organization or group of persons.

1 ~~12.13.~~ "Personal benefit" means a benefit to the candidate or another person which is not for
2 a political purpose or related to a candidate's responsibilities as a public officeholder,
3 and any other benefit that would convert a contribution to personal income.

4 ~~13.14.~~ "Political committee" means any committee, club, association, or other group of
5 persons which receives contributions or makes expenditures for political purposes and
6 includes:

- 7 a. A political action committee not connected to another organization and free to
8 solicit funds from the general public, or derived from a corporation, cooperative
9 corporation, limited liability company, affiliate, subsidiary, or an association that
10 solicits or receives contributions from its employees or members or makes
11 expenditures for political purposes on behalf of its employees or members;
12 b. A candidate committee established to support an individual candidate seeking
13 public office which solicits or receives contributions for political purposes;
14 c. A political organization registered with the federal election commission, which
15 solicits or receives contributions or makes expenditures for political purposes;
16 d. A multicandidate political committee, including a caucus, established to support
17 multiple groups or slates of candidates seeking public office, which solicits or
18 receives contributions for political purposes; and
19 e. A measure committee, including an initiative or referendum sponsoring
20 committee at any stage of its organization, which solicits or receives contributions
21 or makes expenditures for the purpose of aiding or opposing a measure sought
22 to be voted upon by the voters of the state, including any activities undertaken for
23 the purpose of drafting an initiative or referendum petition, seeking approval of
24 the secretary of state for the circulation of a petition, or seeking approval of the
25 submitted petitions.

26 ~~14.15.~~ "Political party" means any association, committee, or organization which nominates a
27 candidate for election to any office which may be filled by a vote of the electors of this
28 state or any of its political subdivisions and whose name appears on the election ballot
29 as the candidate of such association, committee, or organization.

30 ~~15.16.~~ "Political purpose" means any activity undertaken in support of or in opposition to the
31 election or nomination of a candidate to public office and includes using "vote for",

"oppose", or any similar support or opposition language in any advertisement whether the activity is undertaken by a candidate, a political committee, a political party, or any person. In the period thirty days before a primary election and sixty days before a special or general election, "political purpose" also means any activity in which a candidate's name, office, district, or any term meaning the same as "incumbent" or "challenger" is used in support of or in opposition to the election or nomination of a candidate to public office. The term does not include activities undertaken in the performance of a duty of a public office or any position taken in any bona fide news story, commentary, or editorial.

16.17. "Public office" means every office to which an individual can be elected by vote of the people under the laws of this state.

17.18. "Subsidiary" means an affiliate of a corporation under the control of the corporation directly or indirectly through one or more intermediaries.

19.18. "Ultimate and true source" means the person who knowingly contributed over two hundred dollars, adjusted for inflation, solely to influence a statewide election or an election for the legislative assembly.

SECTION 2. AMENDMENT. Subsection 4 of section 16.1-08.1-02.1 of the North Dakota Century Code is amended and reenacted as follows:

4. The statement filed according to this section must show the following:

a. The balance of the filer's convention accounts at the start and close of the reporting period;

b. The total of all revenue received and expenditures made of two hundred dollars, adjusted for inflation, or less;

c. The total of all revenue received and expenditures made in excess of two hundred dollars, adjusted for inflation;

d. For each aggregated revenue received from a person in excess of two hundred dollars, adjusted for inflation:

(1) The name of each person;

(2) The mailing address of each person;

(3) The date of the most recent receipt of revenue from each person; and

- 1 (4) The purpose or purposes for which the aggregated revenue total was
2 received from each person;
- 3 e. For each aggregated expenditure made to a person in excess of two hundred
4 dollars, adjusted for inflation;
- 5 (1) The name of each person or entity;
6 (2) The mailing address of each person or entity;
7 (3) The date of the most recent expense made to each person or entity; and
8 (4) The purpose or purposes for which the aggregated expenditure total was
9 disbursed to each person or entity; and
- 10 f. For each aggregated revenue from an individual which totals five thousand
11 dollars, adjusted for inflation, or more during the reporting period, the occupation,
12 employer, and principal place of business of the individual must be disclosed.
- 13 **SECTION 3. AMENDMENT.** Section 16.1 08.1 02.3 of the North Dakota Century Code is
14 amended and reenacted as follows:
- 15 **16.1 08.1 02.3. Pre election, supplemental, and year-end campaign disclosure**
16 **statement requirements for candidates, candidate committees, multicandidate**
17 **committees, and nonstatewide political parties.**
- 18 1. Prior to the thirty first day before a primary, general, or special election, a candidate or
19 candidate committee formed on behalf of the candidate, a multicandidate political
20 committee, or a political party other than a statewide political party soliciting or
21 accepting contributions shall file a campaign disclosure statement that includes all
22 contributions received from January first through the fortieth day before the election. A
23 candidate whose name is not on the ballot and who is not seeking election through
24 write-in votes, the candidate's candidate committee, and a political party that has not
25 endorsed or nominated any candidate in the election is not required to file a statement
26 under this subsection. The statement may be submitted for filing beginning on the
27 thirty-ninth day before the election. The statement must include:
- 28 a. For each aggregated contribution from a contributor which totals in excess of two
29 hundred dollars, adjusted for inflation, received during the reporting period:
- 30 (1) The name and mailing address of the contributor;
31 (2) The total amount of the contribution; and

- 1 ~~(3) The date the last contributed amount was received;~~
- 2 ~~b. The total of all aggregated contributions from contributors which total in excess of~~
- 3 ~~two hundred dollars, adjusted for inflation, during the reporting period;~~
- 4 ~~c. The total of all contributions received from contributors that contributed two~~
- 5 ~~hundred dollars, adjusted for inflation, or less each during the reporting period;~~
- 6 ~~and~~
- 7 ~~d. For a statewide candidate, a candidate committee formed on behalf of a~~
- 8 ~~statewide candidate, and a statewide multicandidate committee, the balance of~~
- 9 ~~the campaign fund on the fortieth day before the election and the balance of the~~
- 10 ~~campaign fund on January first.~~
- 11 ~~2. Beginning on the thirty-ninth day before the election through the day before the~~
- 12 ~~election, a person that files a statement under subsection 1 must file a supplemental~~
- 13 ~~statement within forty-eight hours of the start of the day following the receipt of a~~
- 14 ~~contribution or aggregate contribution from a contributor which is in excess of five~~
- 15 ~~hundred dollars, adjusted for inflation. The statement must include:~~
- 16 ~~a. The name and mailing address of the contributor;~~
- 17 ~~b. The total amount of the contribution received during the reporting period; and~~
- 18 ~~c. The date the last contributed amount was received.~~
- 19 ~~3. Prior to February first, a candidate or candidate committee, a multicandidate political~~
- 20 ~~committee, or a nonstatewide political party soliciting or accepting contributions shall~~
- 21 ~~file a campaign disclosure statement that includes all contributions received and~~
- 22 ~~expenditures, by expenditure category, made from January first through December~~
- 23 ~~thirty-first of the previous year. The statement may be submitted for filing beginning on~~
- 24 ~~January first. The statement must include:~~
- 25 ~~a. For a statewide candidate, a candidate committee formed on behalf of a~~
- 26 ~~statewide candidate, and a statewide multicandidate committee, the balance of~~
- 27 ~~the campaign fund on January first and on December thirty-first;~~
- 28 ~~b. For each aggregated contribution from a contributor which totals in excess of two~~
- 29 ~~hundred dollars, adjusted for inflation, received during the reporting period:~~
- 30 ~~(1) The name and mailing address of the contributor;~~
- 31 ~~(2) The total amount of the contribution; and~~

- 1 ~~(3) The date the last contributed amount was received;~~
- 2 ~~e. The total of all aggregated contributions from contributors which total in excess of~~
- 3 ~~two hundred dollars, adjusted for inflation, during the reporting period;~~
- 4 ~~d. The total of all contributions received from contributors that contributed two~~
- 5 ~~hundred dollars, adjusted for inflation, or less each during the reporting period;~~
- 6 ~~and~~
- 7 ~~e. The total of all other expenditures made during the previous year, separated into~~
- 8 ~~expenditure categories.~~
- 9 ~~4. A person required to file a statement under this section, other than a candidate for~~
- 10 ~~judicial office, county office, or city office, or a candidate committee for a candidate~~
- 11 ~~exempted under this subsection, shall report each aggregated contribution from a~~
- 12 ~~contributor which totals five thousand dollars, adjusted for inflation, or more during the~~
- 13 ~~reporting period. For these contributions from individuals, the statement must include~~
- 14 ~~the contributor's occupation, employer, and the employer's principal place of business.~~
- 15 ~~5. A candidate for city office in a city with a population under five thousand and a~~
- 16 ~~candidate committee for the candidate are exempt from this section.~~
- 17 ~~6. A candidate for county office and a candidate committee for a candidate for county~~
- 18 ~~office shall file statements under this chapter with the county auditor. A candidate for~~
- 19 ~~city office who is required to file a statement under this chapter and a candidate~~
- 20 ~~committee for such a candidate shall file statements with the city auditor. Any other~~
- 21 ~~person required to file a statement under this section shall file the statement with the~~
- 22 ~~secretary of state.~~
- 23 ~~7. The filing officer shall assess and collect fees for any reports filed after the filing~~
- 24 ~~deadline.~~
- 25 ~~8. To ensure accurate reporting and avoid commingling of campaign and personal funds,~~
- 26 ~~candidates shall use dedicated campaign accounts that are separate from any~~
- 27 ~~personal accounts.~~

28 **SECTION 4. AMENDMENT.** Section 16.1-08.1-02.4 of the North Dakota Century Code is
29 amended and reenacted as follows:

**~~16.1 08.1 02.4. Pre election, supplemental, and year-end campaign disclosure
statement requirements for statewide political parties and certain political committees.~~**

~~1. Prior to the thirty first day before a primary, general, or special election, a statewide political party or a political committee not required to file statements under section 16.1 08.1 02.3 which is soliciting or accepting contributions shall file a campaign disclosure statement that includes all contributions received and expenditures made from January first through the fortieth day before the election. A political party that has not endorsed or nominated a candidate in an election is not required to file a statement under this subsection. A statement required to be filed under this subsection may be submitted for filing beginning on the thirty ninth day before the election. The statement must include:~~

~~a. For each aggregated contribution from a contributor which totals in excess of two hundred dollars, adjusted for inflation, received during the reporting period:~~

~~(1) The name and mailing address of the contributor;~~

~~(2) The total amount of the contribution; and~~

~~(3) The date the last contributed amount was received;~~

~~b. The total of all aggregated contributions from contributors which total in excess of two hundred dollars, adjusted for inflation, during the reporting period;~~

~~c. The total of all contributions received from contributors that contributed two hundred dollars, adjusted for inflation, or less each during the reporting period;~~

~~d. For each recipient of an expenditure from campaign funds in excess of two hundred dollars, adjusted for inflation, in the aggregate:~~

~~(1) The name and mailing address of the recipient;~~

~~(2) The total amount of the expenditure made to the recipient; and~~

~~(3) The date the last expended amount was made to the recipient;~~

~~e. The aggregate total of all expenditures from campaign funds in excess of two hundred dollars, adjusted for inflation;~~

~~f. The aggregate total of all expenditures from campaign funds of two hundred dollars, adjusted for inflation, or less; and~~

~~g. The balance of the campaign fund on the fortieth day before the election and balance of the campaign fund on January first.~~

- 1 — 2. ~~Beginning on the thirty ninth day before the election through the day before the~~
2 ~~election, a person that files a statement under subsection 1 must file a supplemental~~
3 ~~statement within forty eight hours of the start of the day following the receipt of a~~
4 ~~contribution or aggregate contribution from a contributor which is in excess of five~~
5 ~~hundred dollars, adjusted for inflation. The statement must include:~~
- 6 — a. ~~The name and mailing address of the contributor;~~
7 — b. ~~The total amount of the contribution received during the reporting period; and~~
8 — c. ~~The date the last contributed amount was received.~~
- 9 — 3. ~~Prior to February first, a statewide political party or a political committee that is not~~
10 ~~required to file a statement under section 16.1 08.1 2.3 shall file a campaign~~
11 ~~disclosure statement that includes all contributions received and expenditures made~~
12 ~~from January first through December thirty first of the previous year. The statement~~
13 ~~may be submitted for filing beginning on January first. The statement must include:~~
- 14 — a. ~~For each aggregated contribution from a contributor which totals in excess of two~~
15 ~~hundred dollars, adjusted for inflation, received during the reporting period:~~
- 16 — (1) ~~The name and mailing address of the contributor;~~
17 — (2) ~~The total amount of the contribution; and~~
18 — (3) ~~The date the last contributed amount was received;~~
- 19 — b. ~~The total of all aggregated contributions from contributors which total in excess of~~
20 ~~two hundred dollars, adjusted for inflation, during the reporting period;~~
- 21 — c. ~~The total of all contributions received from contributors that contributed two~~
22 ~~hundred dollars, adjusted for inflation, or less each during the reporting period;~~
- 23 — d. ~~For each recipient of an expenditure from campaign funds in excess of two~~
24 ~~hundred dollars, adjusted for inflation, in the aggregate:~~
- 25 — (1) ~~The name and mailing address of the recipient;~~
26 — (2) ~~The total amount of the expenditure made to the recipient; and~~
27 — (3) ~~The date the last expended amount was made to the recipient;~~
- 28 — e. ~~The aggregate total of all expenditures from campaign funds in excess of two~~
29 ~~hundred dollars, adjusted for inflation;~~
- 30 — f. ~~The aggregate total of all expenditures from campaign funds of two hundred~~
31 ~~dollars, adjusted for inflation, or less; and~~

- 1 ~~g. The balance of the campaign fund on January first and December thirty first.~~
- 2 ~~4. A person required to file a statement under this section shall disclose each aggregated~~
- 3 ~~contribution from a contributor which totals five thousand dollars, adjusted for inflation,~~
- 4 ~~or more during the reporting period. For these contributions from individuals, the~~
- 5 ~~statement must include the contributor's occupation, employer, and the employer's~~
- 6 ~~principal place of business.~~
- 7 ~~5. Statements under this section must be filed with the secretary of state.~~
- 8 ~~6. The secretary of state shall assess and collect fees for any reports filed after the filing~~
- 9 ~~deadline.~~

10 **SECTION 5. AMENDMENT.** Section 16.1-08.1-03.1 of the North Dakota Century Code is

11 amended and reenacted as follows:

12 ~~**16.1-08.1-03.1. Special requirements for statements required of persons engaged in**~~

13 ~~**activities regarding ballot measures.**~~

- 14 ~~1. For each reportable contribution and expenditure under section 16.1-08.1-02.4, the~~
- 15 ~~threshold for reporting is one hundred dollars, adjusted for inflation, for any person~~
- 16 ~~engaged in activities described in subdivision e of subsection 1314 of section~~
- 17 ~~16.1-08.1-01.~~
- 18 ~~2. For contributions received from an out of state contributor, a person engaged in~~
- 19 ~~activities described in subdivision e of subsection 1314 of section 16.1-08.1-01 shall~~
- 20 ~~include the following information regarding each subcontributor that has stated a~~
- 21 ~~contribution is for the express purpose of furthering the passage or defeat of a ballot~~
- 22 ~~measure in the statements required under section 16.1-08.1-02.4:~~
- 23 ~~a. A designation as to whether any person contributed in excess of one hundred~~
- 24 ~~dollars, adjusted for inflation, of the total contribution;~~
- 25 ~~b. The name and mailing address of each subcontributor that contributed in excess~~
- 26 ~~of one hundred dollars, adjusted for inflation, of the total contribution;~~
- 27 ~~c. The contribution amounts of each disclosed subcontributor; and~~
- 28 ~~d. The occupation, employer, and address for the employer's principal place of~~
- 29 ~~business of each disclosed subcontributor.~~
- 30 ~~3. An initiative and referendum sponsoring committee also shall file a disclosure~~
- 31 ~~statement by the date the secretary of state approves the petition for circulation, and~~

shall file an additional statement on the date the petitions containing the required number of signatures are submitted to the secretary of state for review. The statements required under this subsection must be in the same form as the year end statements under section 16.1-08.1-02.4.

~~4. A sponsoring committee shall file a statement regarding its intent to compensate circulators before paying for petitions to be circulated.~~

SECTION 2. AMENDMENT. Section 16.1-08.1-04.1 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-04.1. Personal use of contributions prohibited.

1. A candidate may not use any contribution received by the candidate, the candidate's candidate committee, or a multicandidate political committee to:

1. a. Give a personal benefit to the candidate or another person;

2. b. Make a loan to another person;

3. c. Knowingly pay more than the fair market value for goods or services purchased for the campaign; or

4. d. Pay a criminal fine or civil penalty.

2. For the first violation, the secretary of state shall assess a civil penalty of five hundred dollars upon any person who knowingly violates this section. The assessment of a civil penalty may be appealed to the district court of Burleigh County the county where the candidate resides. For a second and subsequent knowing violation of this section, the person is guilty of a class B misdemeanor.

SECTION 3. A new section to chapter 16.1-08.1 of the North Dakota Century Code is created and enacted as follows:

Ultimate and true source of funds - Required identification - Penalty.

1. In any report under this chapter which requires the identification of a contributor or subcontributor, the ultimate and true source of funds must be identified.

2. A resident taxpayer may commence an action in a district court of this state against a person required to comply with this section in the district court of the county where the person required to comply with this section resides to compel compliance if all other enforcement measures under this chapter have been exhausted and the taxpayer

1 reasonably believes the person has failed to comply with this section. A failure to
2 comply with this section must be proved by clear and convincing evidence.

3 **SECTION 4. AMENDMENT.** Section 16.1-08.1-06.2 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **16.1-08.1-06.2. Secretary of state to provide instructions, make adjustments for**
6 **inflation, and conduct training.**

7 The secretary of state shall provide instructions and conduct training for the purpose of
8 promoting uniform application of campaign finance and disclosure requirements and the uniform
9 filing of statements, registrations, or reports according to this chapter. The secretary also shall
10 determine adjustments for inflation of the reporting thresholds in this chapter and instruct
11 persons submitting reports under this chapter of the adjustments. On January first of each year,
12 the secretary shall determine whether the accumulated change in the consumer price index for
13 all urban consumers (all items, United States city average), as applied to each reporting
14 threshold in this chapter, would result in an adjustment of at least ten dollars of the threshold in
15 effect on that date. If so, the secretary shall deem the reporting threshold adjusted by ten
16 dollars.

17 **SECTION 5. AMENDMENT.** Section 28-32-01 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **28-32-01. Definitions.**

20 In this chapter, unless the context or subject matter otherwise provides:

- 21 1. "Adjudicative proceeding" means an administrative matter resulting in an agency
22 issuing an order after an opportunity for hearing is provided or required. An
23 adjudicative proceeding includes administrative matters involving a hearing on a
24 complaint against a specific-named respondent; a hearing on an application seeking a
25 right, privilege, or an authorization from an agency, such as a ratemaking or licensing
26 hearing; or a hearing on an appeal to an agency. An adjudicative proceeding includes
27 reconsideration, rehearing, or reopening. Once an adjudicative proceeding has begun,
28 the adjudicative proceeding includes any informal disposition of the administrative
29 matter under section 28-32-22 or another specific statute or rule, unless the matter
30 has been specifically converted to another type of proceeding under section 28-32-22.
31 An adjudicative proceeding does not include a decision or order to file or not to file a

complaint, or to initiate an investigation, an adjudicative proceeding, or any other proceeding before the agency, or another agency, or a court. An adjudicative proceeding does not include a decision or order to issue, reconsider, or reopen an order that precedes an opportunity for hearing or that under another section of this code is not subject to review in an adjudicative proceeding. An adjudicative proceeding does not include rulemaking under this chapter.

2. "Administrative agency" or "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an administrative agency must be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:

- a. The office of management and budget except with respect to rules made under section 32-12.2-14, rules relating to conduct on the capitol grounds and in buildings located on the capitol grounds under section 54-21-18, rules relating to the classified service as authorized under section 54-44.3-07, and rules relating to state purchasing practices as required under section 54-44.4-04.
- b. The adjutant general with respect to the department of emergency services.
- c. The council on the arts.
- d. The state auditor.
- e. The department of commerce with respect to the division of economic development and finance.
- f. The dairy promotion commission.
- g. The education factfinding commission.
- h. The educational technology council.
- i. The board of equalization.
- j. The board of higher education.
- k. The Indian affairs commission.
- l. The industrial commission with respect to the activities of the Bank of North Dakota, North Dakota housing finance agency, public finance authority, North

- 1 Dakota mill and elevator association, North Dakota farm finance agency, the
2 North Dakota transmission authority, and the North Dakota pipeline authority.
- 3 m. The department of corrections and rehabilitation except with respect to the
4 activities of the division of adult services under chapter 54-23.4.
- 5 n. The pardon advisory board.
- 6 o. The parks and recreation department.
- 7 p. The parole board.
- 8 q. The state fair association.
- 9 r. The attorney general with respect to activities of the state toxicologist and the
10 state crime laboratory.
- 11 s. The administrative committee on veterans' affairs except with respect to rules
12 relating to the supervision and government of the veterans' home and the
13 implementation of programs or services provided by the veterans' home.
- 14 t. The industrial commission with respect to the lignite research fund except as
15 required under section 57-61-01.5.
- 16 u. The attorney general with respect to guidelines adopted under section 12.1-32-15
17 for the risk assessment of sexual offenders, the risk level review process, and
18 public disclosure of information under section 12.1-32-15.
- 19 v. The commission on legal counsel for indigents.
- 20 w. The attorney general with respect to twenty-four seven sobriety program
21 guidelines and program fees.
- 22 x. The industrial commission with respect to approving or setting water rates under
23 chapter 61-40.
- 24 3. "Agency head" means an individual or body of individuals in whom the ultimate legal
25 authority of the agency is vested by law.
- 26 4. "Commission" means the North Dakota ethics commission established by article XIV
27 of the Constitution of North Dakota.
- 28 5. "Complainant" means any person who files a complaint before an administrative
29 agency pursuant to section 28-32-21 and any administrative agency that, when
30 authorized by law, files such a complaint before such agency or any other agency.

- 1 ~~5.6.~~ "Hearing officer" means any agency head or one or more members of the agency
2 head when presiding in an administrative proceeding, or, unless prohibited by law, one
3 or more other persons designated by the agency head to preside in an administrative
4 proceeding, an administrative law judge from the office of administrative hearings, or
5 any other person duly assigned, appointed, or designated to preside in an
6 administrative proceeding pursuant to statute or rule.
- 7 ~~6.7.~~ "License" means a franchise, permit, certification, approval, registration, charter, or
8 similar form of authorization required by law.
- 9 ~~7.8.~~ "Order" means any agency action of particular applicability which determines the legal
10 rights, duties, privileges, immunities, or other legal interests of one or more specific
11 persons. The term does not include an executive order issued by the governor.
- 12 ~~8.9.~~ "Party" means each person named or admitted as a party or properly seeking and
13 entitled as of right to be admitted as a party. An administrative agency may be a party.
14 In a hearing for the suspension, revocation, or disqualification of an operator's license
15 under title 39, the term may include each city and each county in which the alleged
16 conduct occurred, but the city or county may not appeal the decision of the hearing
17 officer.
- 18 ~~9.10.~~ "Person" includes an individual, association, partnership, corporation, limited liability
19 company, the commission, a state governmental agency or governmental subdivision,
20 or an agency of such governmental subdivision.
- 21 ~~10.11.~~ "Relevant evidence" means evidence having any tendency to make the existence of
22 any fact that is of consequence to the determination of the administrative action more
23 probable or less probable than it would be without the evidence.
- 24 ~~11.12.~~ "Rule" means the whole or a part of an agency or commission statement of general
25 applicability which implements or prescribes law or policy or the organization,
26 procedure, or practice requirements of the agency or commission. The term includes
27 the adoption of new rules and the amendment, repeal, or suspension of an existing
28 rule. The term does not include:
- 29 a. A rule concerning only the internal management of an agency or the commission
30 which does not directly or substantially affect the substantive or procedural rights
31 or duties of any segment of the public.

- 1 b. A rule that sets forth criteria or guidelines to be used by the staff of an agency or
2 the commission in the performance of audits, investigations, inspections, and
3 settling commercial disputes or negotiating commercial arrangements, or in the
4 defense, prosecution, or settlement of cases, if the disclosure of the
5 statementrule would:
6 (1) Enable law violators to avoid detection;
7 (2) Facilitate disregard of requirements imposed by law; or
8 (3) Give a clearly improper advantage to persons who are in an adverse
9 position to the state.
10 c. A rule establishing specific prices to be charged for particular goods or services
11 sold by an agency.
12 d. A rule concerning only the physical servicing, maintenance, or care of
13 agency-owned ~~or~~ agency-operated, commission-owned, or
14 commission-operated facilities or property.
15 e. A rule relating only to the use of a particular facility or property owned, operated,
16 or maintained by the state or any of its subdivisions, if the substance of the rule is
17 adequately indicated by means of signs or signals to persons who use the facility
18 or property.
19 f. A rule concerning only inmates of a correctional or detention facility, students
20 enrolled in an educational institution, or patients admitted to a hospital, if adopted
21 by that facility, institution, or hospital.
22 g. A form whose contents or substantive requirements are prescribed by rule or
23 statute or are instructions for the execution or use of the form.
24 h. An agency or commission budget.
25 i. An opinion of the attorney general.
26 j. A rule adopted by an agency selection committee under section 54-44.7-03.
27 k. Any material, including a guideline, interpretive statement, statement of general
28 policy, manual, brochure, or pamphlet, which is explanatory and not intended to
29 have the force and effect of law.

30 **~~SECTION 6. AMENDMENT. Section 28-32-02 of the North Dakota Century Code is~~**
31 **~~amended and reenacted as follows:~~**

~~28-32-02. Rulemaking power of agency authority – Organizational rule.~~

~~1. The authority of an administrative agency to adopt administrative rules is authority delegated by the legislative assembly. As part of that delegation, the legislative assembly reserves to itself the authority to determine when and if rules of administrative agencies are effective. Every administrative agency may adopt, amend, or repeal reasonable rules in conformity with this chapter and any statute administered or enforced by the agency.~~

~~2. In addition to other rulemaking requirements imposed by law, each agency may include in its rules a description of that portion of its organization and functions subject to this chapter and may include a statement of the general course and method of its operations and how the public may obtain information or make submissions or requests.~~

~~3. The authority of the commission to adopt rules arises from article XIV of the Constitution of North Dakota. The commission shall follow the process, and meet the requirements, as specified in this chapter to adopt, amend, or repeal its rules.~~

SECTION 6. AMENDMENT. Section 28-32-03 of the North Dakota Century Code is amended and reenacted as follows:

28-32-03. Emergency rules.

1. If the ~~commission or an~~ agency, with the approval of the governor, or the commission finds that emergency rulemaking is necessary, the commission or agency may declare the proposed rule to be an interim final rule effective on a date no earlier than the date of filing with the legislative council of the notice required by section 28-32-10.
2. A proposed rule may be given effect on an emergency basis under this section if any of the following grounds exists regarding that rule:
 - a. Imminent peril threatens public health, safety, or welfare, which would be abated by emergency effectiveness;
 - b. A delay in the effective date of the rule is likely to cause a loss of funds appropriated to support a duty imposed by law upon the commission or agency;
 - c. Emergency effectiveness is reasonably necessary to avoid a delay in implementing an appropriations measure; or
 - d. Emergency effectiveness is necessary to meet a mandate of federal law.

- 1 3. A final rule adopted after consideration of all written and oral submissions respecting
2 the interim final rule, which is substantially similar to the interim final rule, is effective
3 as of the declared effective date of the interim final rule.
- 4 4. The commission's or agency's finding, and a brief statement of the commission's or
5 agency's reasons for the finding, must be filed with the legislative council with the final
6 adopted emergency rule.
- 7 5. The commission or agency shall attempt to make interim final rules known to persons
8 who the commission or agency can reasonably be expected to believe may have a
9 substantial interest in them. As used in this subsection, "substantial interest" means an
10 interest in the effect of the rules which surpasses the common interest of all citizens.
- 11 ~~An~~ The commission or an agency adopting emergency rules shall comply with the
12 notice requirements of section 28-32-10 which relate to emergency rules and shall
13 provide notice to the chairman of the administrative rules committee of the emergency
14 status, declared effective date, and grounds for emergency status of the rules under
15 subsection 2. When notice of emergency rule adoption is received, the legislative
16 council shall publish the notice and emergency rules on its website.
- 17 6. An interim final rule is ineffective one hundred eighty days after its declared effective
18 date unless first adopted as a final rule.

19 **SECTION 7. AMENDMENT.** Section 28-32-06 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **28-32-06. Force and effect of rules.**

22 Upon becoming effective, rules have the force and effect of law until amended or repealed
23 by the agency or commission, declared invalid by a final court decision, suspended or found to
24 be void by the administrative rules committee, or determined repealed by the legislative council
25 because the authority for adoption of the rules is repealed or transferred to another agency, or
26 the Constitution of North Dakota is amended to eliminate the authority.

27 **SECTION 8. AMENDMENT.** Section 28-32-07 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **28-32-07. Deadline for rules to implement statutory change.**

30 Any rule change, including a creation, amendment, or repeal, made to implement a
31 statutory change must be adopted and filed with the legislative council within nine months of the

1 effective date of the statutory change. If an agency or the commission needs additional time for
2 the rule change, a request for additional time must be made to the legislative council. The
3 legislative council may extend the time within which the agency or commission must adopt the
4 rule change if the request by the agency or commission is supported by evidence that the
5 agency or commission needs more time through no deliberate fault of its own.

6 **SECTION 9. AMENDMENT.** Section 28-32-08 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **28-32-08. Regulatory analysis.**

- 9 1. An agency or the commission shall issue a regulatory analysis of a proposed rule if:
 - 10 a. Within twenty days after the last published notice date of a proposed rule
11 hearing, a written request for the analysis is filed by the governor or a member of
12 the legislative assembly; or
 - 13 b. The proposed rule is expected to have an impact on the regulated community in
14 excess of fifty thousand dollars. The analysis under this subdivision must be
15 available on or before the first date of public notice as provided for in section
16 28-32-10.
- 17 2. The regulatory analysis must contain:
 - 18 a. A description of the classes of persons who probably will be affected by the
19 proposed rule, including classes that will bear the costs of the proposed rule and
20 classes that will benefit from the proposed rule;
 - 21 b. A description of the probable impact, including economic impact, of the proposed
22 rule;
 - 23 c. The probable costs to the agency or commission of the implementation and
24 enforcement of the proposed rule and any anticipated effect on state revenues;
25 and
 - 26 d. A description of any alternative methods for achieving the purpose of the
27 proposed rule that were seriously considered by the agency or commission and
28 the reasons why the methods were rejected in favor of the proposed rule.
- 29 3. Each regulatory analysis must include quantification of the data to the extent
30 practicable.

1 4. The agency or commission shall mail or deliver a copy of the regulatory analysis to
2 any person who requests a copy of the regulatory analysis. The agency or commission
3 may charge a fee for a copy of the regulatory analysis as allowed under section
4 44-04-18.

5 5. If required under subsection 1, the preparation and issuance of a regulatory analysis is
6 a mandatory duty of the agency or commission proposing a rule. Errors in a regulatory
7 analysis, including erroneous determinations concerning the impact of the proposed
8 rule on the regulated community, are not a ground upon which the invalidity of a rule
9 may be asserted or declared.

10 **SECTION 10. AMENDMENT.** Section 28-32-08.1 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **28-32-08.1. Rules affecting small entities - Analysis - Economic impact statements -**
13 **Judicial review.**

14 1. As used in this section:

15 a. "Small business" means a business entity, including its affiliates, which:

16 (1) Is independently owned and operated; and

17 (2) Employs fewer than twenty-five full-time employees or has gross annual
18 sales of less than two million five hundred thousand dollars;

19 b. "Small entity" includes small business, small organization, and small political
20 subdivision;

21 c. "Small organization" means any not-for-profit enterprise that is independently
22 owned and operated and is not dominant in its field; and

23 d. "Small political subdivision" means a political subdivision with a population of less
24 than five thousand.

25 2. Before adoption of any proposed rule, the adopting agency or the commission shall
26 prepare a regulatory analysis in which, consistent with public health, safety, and
27 welfare, the agency or commission considers utilizing regulatory methods that will
28 accomplish the objectives of applicable statutes while minimizing adverse impact on
29 small entities. The agency or commission shall consider each of the following methods
30 of reducing impact of the proposed rule on small entities:

- 1 a. Establishment of less stringent compliance or reporting requirements for small
- 2 entities;
- 3 b. Establishment of less stringent schedules or deadlines for compliance or
- 4 reporting requirements for small entities;
- 5 c. Consolidation or simplification of compliance or reporting requirements for small
- 6 entities;
- 7 d. Establishment of performance standards for small entities to replace design or
- 8 operational standards required in the proposed rule; and
- 9 e. Exemption of small entities from all or any part of the requirements contained in
- 10 the proposed rule.
- 11 3. Before adoption of any proposed rule that may have an adverse impact on small
- 12 entities, the adopting agency or the commission shall prepare an economic impact
- 13 statement that includes consideration of:
- 14 a. The small entities subject to the proposed rule;
- 15 b. The administrative and other costs required for compliance with the proposed
- 16 rule;
- 17 c. The probable cost and benefit to private persons and consumers who are
- 18 affected by the proposed rule;
- 19 d. The probable effect of the proposed rule on state revenues; and
- 20 e. Any less intrusive or less costly alternative methods of achieving the purpose of
- 21 the proposed rule.
- 22 4. For any rule subject to this section, a small entity that is adversely affected or
- 23 aggrieved by final agency or commission action is entitled to judicial review of agency
- 24 or commission compliance with the requirements of this section. A small entity seeking
- 25 judicial review under this section must file a petition for judicial review within one year
- 26 from the date of final agency or commission action.
- 27 5. This section does not apply to any agency that is an occupational or professional
- 28 licensing authority, nor does this section apply to the following agencies or divisions of
- 29 agencies:
- 30 a. Council on the arts.
- 31 b. Beef commission.

- 1 c. Dairy promotion commission.
- 2 d. Dry bean council.
- 3 e. Highway patrolmen's retirement board.
- 4 f. Indian affairs commission.
- 5 g. Board for Indian scholarships.
- 6 h. State personnel board.
- 7 i. Potato council.
- 8 j. Board of public school education.
- 9 k. Real estate trust account committee.
- 10 l. Seed commission.
- 11 m. Soil conservation committee.
- 12 n. Oilseed council.
- 13 o. Wheat commission.
- 14 p. State seed arbitration board.
- 15 q. North Dakota lottery.

16 6. This section does not apply to rules mandated by federal law.

17 7. The adopting agency or the commission shall provide the administrative rules
18 committee copies of any regulatory analysis or economic impact statement, or both,
19 prepared under this section when the committee is considering the associated rules.

20 **SECTION 11. AMENDMENT.** Section 28-32-08.2 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **28-32-08.2. Fiscal notes for administrative rules.**

23 When an agency or the commission presents rules for administrative rules committee
24 consideration, the agency or commission shall provide a fiscal note or a statement in its
25 testimony that the rules have no fiscal effect. A fiscal note must reflect the effect of the rules
26 changes on state revenues and expenditures, including any effect on funds controlled by the
27 agency or commission.

28 **SECTION 12. AMENDMENT.** Section 28-32-09 of the North Dakota Century Code is
29 amended and reenacted as follows:

28-32-09. Takings assessment.

1. An agency or the commission shall prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private real property. The agency's assessment must:
 - a. Assess the likelihood that the proposed rule may result in a taking or regulatory taking.
 - b. Clearly and specifically identify the purpose of the proposed rule.
 - c. Explain why the proposed rule is necessary to substantially advance that purpose and why no alternative action is available that would achieve the agency's or commission's goals while reducing the impact on private property owners.
 - d. Estimate the potential cost to the government if a court determines that the proposed rule constitutes a taking or regulatory taking.
 - e. Identify the source of payment within the agency's or commission's budget for any compensation that may be ordered.
 - f. Certify that the benefits of the proposed rule exceed the estimated compensation costs.
2. Any private landowner who is or may be affected by a rule that limits the use of the landowner's private real property may request in writing that the agency or commission reconsider the application or need for the rule. Within thirty days of receiving the request, the agency or commission shall consider the request and shall in writing inform the landowner whether the agency or commission intends to keep the rule in place, modify application of the rule, or repeal the rule.
3. In an agency's analysis of the takings implications of a proposed rule, "taking" means the taking of private real property, as defined in section 47-01-03, by government action which requires compensation to the owner of that property by the fifth or fourteenth amendment to the Constitution of the United States or section 16 of article I of the Constitution of North Dakota. "Regulatory taking" means a taking of real property through the exercise of the police and regulatory powers of the state which reduces the value of the real property by more than fifty percent. However, the exercise of a police or regulatory power does not effect a taking if it substantially

1 advances legitimate state interests, does not deny an owner economically viable use
2 of the owner's land, or is in accordance with applicable state or federal law.

3 **SECTION 13. AMENDMENT.** Section 28-32-10 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **28-32-10. Notice of rulemaking - Hearing date.**

6 1. An agency or the commission shall prepare a full notice and an abbreviated notice of
7 rulemaking.

8 a. The agency's full notice of the proposed adoption, amendment, or repeal of a rule
9 must include a short, specific explanation of the proposed rule and the purpose of
10 the proposed rule, identify the emergency status and declared effective date of
11 any emergency rules, include a determination of whether the proposed
12 rulemaking is expected to have an impact on the regulated community in excess
13 of fifty thousand dollars, identify at least one location where interested persons
14 may review the text of the proposed rule, provide the address to which written
15 comments concerning the proposed rule may be sent, provide the deadline for
16 submission of written comments, provide a telephone number and post-office or
17 electronic mail address at which a copy of the rules and regulatory analysis may
18 be requested, and, in the case of a substantive rule, provide the time and place
19 set for each oral hearing. ~~The~~An agency's full notice must include a statement of
20 the bill number and general subject matter of any legislation, enacted during the
21 most recent session of the legislative assembly, which is being implemented by
22 the proposed rule. The commission's full notice must include a statement of the
23 provision of the Constitution of North Dakota or the bill number and general
24 subject matter of any legislation enacted during the most recent session of the
25 legislative assembly which is being implemented by the proposed rule. The
26 agency's full notice must be filed with the legislative council, accompanied by a
27 copy of the proposed rules.

28 b. The agency or commission shall request publication of an abbreviated
29 newspaper publication notice at least once in each official county newspaper
30 published in this state. The abbreviated newspaper publication of notice must be
31 in a display-type format with a minimum width of one column of approximately

1 two inches [5.08 centimeters] and a minimum depth of approximately three
2 inches [7.62 centimeters] and with a headline describing the general topic of the
3 proposed rules. The notice must also include the telephone number or address to
4 use to obtain a copy of the proposed rules, identification of the emergency status
5 and declared effective date of any emergency rules, the address to use and the
6 deadline to submit written comments, and the location, date, and time of the
7 public hearing on the rules.

8 2. The agency or commission shall mail or deliver by electronic mail a copy of the
9 agency's full notice and proposed rule to each member of the legislative assembly
10 whose name appeared as a sponsor or cosponsor of legislation, enacted during the
11 most recent session of the legislative assembly, which is being implemented by the
12 proposed rule and to each person who has made a timely request to the agency or
13 commission for a copy of the notice and proposed rule. The agency or commission
14 may mail or otherwise provide a copy of the agency's full notice to any person who is
15 likely to be an interested person. The agency or commission may charge persons who
16 are not members of the legislative assembly fees for copies of the proposed rule as
17 allowed under section 44-04-18.

18 3. In addition to the other notice requirements of this subsection, the superintendent of
19 public instruction shall provide notice of any proposed rulemaking by the
20 superintendent of public instruction to each association with statewide membership
21 whose primary focus is elementary and secondary education issues which has
22 requested to receive notice from the superintendent under this subsection and to the
23 superintendent of each public school district in this state, or the president of the school
24 board for school districts that have no superintendent, at least twenty days before the
25 date of the hearing described in the notice. Notice provided by the superintendent of
26 public instruction under this section must be by first-class mail. However, upon request
27 of a group or person entitled to notice under this section, the superintendent of public
28 instruction shall provide the group or person notice by electronic mail.

29 4. The legislative council shall establish standard procedures for the commission and all
30 agencies to follow in complying with the provisions of this section and a procedure to
31 allow any person to request and receive mailed copies of all filings made by agencies

1 and the commission pursuant to this section. The legislative council may charge an
2 annual fee as established by the administrative rules committee for providing copies of
3 the filings.

4 5. At least twenty days must elapse between the date of the publication of the notice and
5 the date of the hearing. Within fifteen business days after receipt of a notice under this
6 section, a copy of the notice must be mailed by the legislative council to any person
7 who has paid the annual fee established under subsection 4.

8 **SECTION 14. AMENDMENT.** Section 28-32-11 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **28-32-11. Conduct of hearings - Notice of administrative rules committee**
11 **consideration - Consideration and written record of comments.**

12 The agency or commission shall adopt a procedure whereby all interested persons are
13 afforded reasonable opportunity to submit data, views, or arguments, orally or in writing,
14 concerning the proposed rule, including data respecting the impact of the proposed rule. The
15 agency or commission shall adopt a procedure to allow interested parties to request and
16 receive notice from the agency or commission of the date and place the rule will be reviewed by
17 the administrative rules committee. In case of substantive rules, the agency or commission shall
18 conduct an oral hearing. The agency or commission shall consider fully all written and oral
19 submissions respecting a proposed rule prior to the adoption, amendment, or repeal of any rule
20 not of an emergency nature. The agency or commission shall make a written record of its
21 consideration of all written and oral submissions contained in the rulemaking record respecting
22 a proposed rule.

23 **SECTION 15. AMENDMENT.** Section 28-32-12 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **28-32-12. Comment period.**

26 The agency or commission shall allow, after the conclusion of any rulemaking hearing, a
27 comment period of at least ten days during which data, views, or arguments concerning the
28 proposed rulemaking will be received by the agency or commission and made a part of the
29 rulemaking record to be considered by the agency or commission.

30 ~~**SECTION 17. AMENDMENT. Section 28-32-14 of the North Dakota Century Code is**~~
31 ~~**amended and reenacted as follows:**~~

~~28-32-14. Attorney general review of rules.~~

~~Every proposed rule proposed by any administrative agency must be submitted to the attorney general for an opinion as to its legality before final adoption, and the attorney general promptly shall furnish each such opinion. The attorney general may not approve any rule as to legality, and shall advise the agency or commission of any necessary rewording or revision of the rule, when the:~~

~~1. The rule exceeds the statutory authority of the agency, or the statutory or constitutional authority of the commission;~~

~~2. The rule is written in a manner that is not concise or easily understandable; or when the~~

~~3. The procedural requirements for adoption of the rule in this chapter are not substantially met. The attorney general shall advise an agency of any revision or rewording of a rule necessary to correct objections as to legality.~~

SECTION 16. AMENDMENT. Section 28-32-15 of the North Dakota Century Code is amended and reenacted as follows:

28-32-15. Filing of rules for publication - Effective date of rules.

1. A copy of each rule adopted by an administrative agency or the commission, a copy of each written comment and a written summary of each oral comment on the rule, and the attorney general's opinion on the rule, if any, must be filed by the adopting agency or commission with the legislative council for publication of the rule in the North Dakota Administrative Code.

2. a. Nonemergency rules approved by the attorney general as to legality, adopted by an administrative agency or the commission, and filed with the legislative council, and not voided or held for consideration by the administrative rules committee become effective according to the following schedule:

(1) Rules filed with the legislative council from August second through November first become effective on the immediately succeeding January first.

(2) Rules filed with the legislative council from November second through February first become effective on the immediately succeeding April first.

- 1 (3) Rules filed with the legislative council from February second through May
2 first become effective on the immediately succeeding July first.
- 3 (4) Rules filed with the legislative council from May second through August first
4 become effective on the immediately succeeding October first.
- 5 b. If publication is delayed for any reason other than action of the administrative
6 rules committee, nonemergency rules, unless otherwise provided, become
7 effective when publication would have occurred but for the delay.
- 8 c. A rule held for consideration by the administrative rules committee becomes
9 effective on the first effective date of rules under the schedule in subdivision a
10 following the meeting at which that rule is reconsidered by the committee.

11 **SECTION 17. AMENDMENT.** Section 28-32-16 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **28-32-16. Petition for reconsideration of rule - Hearing by agency.**

14 Any person substantially interested in the effect of a rule adopted by an administrative
15 agency or the commission may petition ~~such~~the agency or commission for a reconsideration of
16 ~~any such~~the rule or for an amendment or repeal ~~thereof. Such~~of the rule. The petition must
17 state clearly and concisely the petitioners' alleged grounds for ~~such~~ reconsideration or ~~for~~ the
18 proposed repeal or amendment of ~~such~~the rule. The agency or commission may grant the
19 petitioner a public hearing ~~upon such~~on the terms and conditions as the agency ~~may~~
20 ~~prescribe~~prescribes.

21 ~~**SECTION 20. AMENDMENT.** Section 28-32-17 of the North Dakota Century Code is~~
22 ~~amended and reenacted as follows:~~

23 ~~**28-32-17. Administrative rules committee objection.**~~

24 ~~If the legislative management's administrative rules committee objects to all or any portion~~
25 ~~of a rule because the committee deems it to be unreasonable, arbitrary, capricious, or beyond~~
26 ~~the authority delegated to the adopting agency or commission, the committee may file that~~
27 ~~objection in certified form with the legislative council. The filed objection must contain a concise~~
28 ~~statement of the committee's reasons for its action.~~

- 29 ~~1. The legislative council shall attach to each objection a certification of the time and date~~
30 ~~of its filing and, as soon as possible, shall transmit a copy of the objection and the~~

certification to the agency or commission adopting the rule in question. The legislative council also shall maintain a permanent register of all committee objections.

2. The legislative council shall publish an objection filed pursuant to this section in the next issue of the code supplement. In case of a filed committee objection to a rule subject to the exceptions of the definition of rule in section 28-32-01, the agency or commission shall indicate the existence of that objection adjacent to the rule in any compilation containing that rule.

3. Within fourteen days after the filing of a committee objection to a rule, the adopting agency or commission shall respond in writing to the committee. After receipt of the response, the committee may withdraw or modify its objection.

4. After the filing of a committee objection, the burden of persuasion is upon the agency or commission in any action for judicial review or for enforcement of the rule to establish that the whole or portion thereof of the rule objected to is within the procedural and substantive authority delegated to the agency or commission. If the agency or commission fails to meet its burden of persuasion, the court shall declare the whole or portion of the rule objected to invalid and judgment must be rendered against the agency or commission for court costs. These court costs must include a reasonable attorney's fee and must be payable from the appropriation of the agency or commission which adopted the rule in question.

SECTION 21. AMENDMENT. Section 28-32-18 of the North Dakota Century Code is amended and reenacted as follows:

28-32-18. Administrative rules committee may void rule - Grounds - Amendment by agreement of agency and committee.

1. The legislative management's administrative rules committee may find that all or any portion of a rule is void if that rule is initially considered by the committee not later than the fifteenth day of the month before the date of the administrative code supplement in which the rule change is scheduled to appear. The administrative rules committee may find a rule or portion of a rule void if the committee makes the specific finding that, with regard to that rule or portion of a rule, there is:

a. An absence of statutory authority under statute or the constitution.

b. An emergency relating to public health, safety, or welfare.

~~c. For rules proposed by an agency, a failure to comply with express legislative intent or to substantially meet the procedural requirements of this chapter for adoption of the rule.~~

~~d. For rules proposed by the commission, a failure to substantially meet the procedural requirements for this chapter for adoption of the rule.~~

~~e. A conflict with state law.~~

~~e.f. Arbitrariness and capriciousness.~~

~~f.g. A failure to make a written record of its consideration of written and oral submissions respecting the rule under section 28-32-11.~~

~~2. The administrative rules committee may find a rule void at the meeting at which the rule is initially considered by the committee or may hold consideration of that rule for one subsequent meeting. If no representative of the agency or commission appears before the administrative rules committee when rules are scheduled for committee consideration, those rules are held over for consideration at the next subsequent committee meeting. Rules are not considered initially considered by the committee under this subsection until a representative of the agency or commission appears before the administrative rules committee when the rules are scheduled for committee consideration. If no representative of the agency or commission appears before the administrative rules committee meeting to which rules are held over for consideration, the rules are void if the rules were adopted as emergency rules and for rules not adopted as emergency rules the administrative rules committee may void the rules, allow the rules to become effective, or hold over consideration of the rules to the next subsequent committee meeting. Within three business days after the administrative rules committee finds that a rule is void, the legislative council shall provide written notice of that finding and the committee's specific finding under subdivisions a through f of subsection 1 to the adopting agency or commission and to the chairman of the legislative management. Within fourteen days after receipt of the notice, the adopting agency or commission may file a petition with the chairman of the legislative management for review by the legislative management of the decision of the administrative rules committee. If the adopting agency or commission does not file a petition for review, the rule becomes void on the fifteenth day after the notice from the~~

legislative council to the adopting agency or commission. If within sixty days after receipt of the petition from the adopting agency or commission the legislative management has not disapproved by motion the finding of the administrative rules committee, the rule is void.

~~3. An agency or the commission may amend or repeal a rule or create a related rule if, after consideration of rules by the administrative rules committee, the agency or commission and the committee agree that the rule amendment, repeal, or creation is necessary to address any of the considerations under subsection 1. A rule amended, repealed, or created under this subsection is not subject to the other requirements of this chapter relating to adoption of administrative rules and may be published by the legislative council as amended, repealed, or created. If requested by the agency, commission, or any interested party, a rule amended, repealed, or created under this subsection must be reconsidered by the administrative rules committee at a subsequent meeting at which public comment on the agreed rule change must be allowed.~~

SECTION 18. AMENDMENT. Section 28-32-18.1 of the North Dakota Century Code is amended and reenacted as follows:

28-32-18.1. Administrative rules committee review of existing administrative rules.

1. Upon request by the administrative rules committee, an administrative agency or the commission shall brief the committee on its existing administrative rules and point out any provisions that appear to be obsolete and any areas in which statutory or constitutional authority has changed or been repealed since the rules were adopted or amended.
2. An agency or the commission may amend or repeal a rule without complying with the other requirements of this chapter relating to adoption of administrative rules and may resubmit the change to the legislative council for publication provided:
 - a. The agency or commission initiates the request to the administrative rules committee for consideration of the amendment or repeal;
 - b. The agency or commission provides notice to the regulated community, in a manner reasonably calculated to provide notice to those persons interested in the

1 rule, of the time and place the administrative rules committee will consider the
2 request for amendment or repeal of the rule; and

3 c. The agency or commission and the administrative rules committee agree
4 the rule amendment or repeal eliminates a provision that is obsolete or no longer
5 in compliance with law and that no detriment would result to the substantive
6 rights of the regulated community from the amendment or repeal.

7 **SECTION 19. AMENDMENT.** Subsection 2 of section 28-32-19 of the North Dakota
8 Century Code is amended and reenacted as follows:

9 2. The legislative council may prescribe the format, style, and arrangement for rules
10 ~~which are~~ to be published in the code and may refuse to accept the filing of any rule
11 that is not in substantial compliance therewith with the format, style, and arrangement.
12 In arranging rules for publication, the legislative council may make ~~such~~ corrections in
13 spelling, grammatical construction, format, and punctuation of the rules as
14 determined the legislative council determines are proper. The legislative council shall
15 keep and maintain a permanent code of all rules filed, including superseded and
16 repealed rules, which must be open to public inspection during office hours.

17 **SECTION 20. AMENDMENT.** Subsection 4 of section 28-32-19 of the North Dakota
18 Century Code is amended and reenacted as follows:

19 4. The legislative council, with the consent of the adopting agency or commission, may
20 omit from the code or code supplement any rule the publication of which would be
21 unduly cumbersome, expensive, or otherwise inexpedient, if the rule in printed or
22 duplicated form is made available on application to the agency or commission, and if
23 the code or code supplement contains a notice stating the general subject matter of
24 the omitted rule and ~~stating~~ how a copy may be obtained.

25 **SECTION 21. AMENDMENT.** Section 28-32-27 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **28-32-27. Hearing officer - Disqualification - Substitution.**

28 1. Any person or persons presiding for the agency in an administrative proceeding must
29 be referred to individually or collectively as hearing officer. Any person from the office
30 of administrative hearings presiding for the agency as a hearing officer in an
31 administrative proceeding must be referred to as an administrative law judge.

- 1 2. Any hearing officer is subject to disqualification for good cause shown.
- 2 3. A hearing officer who is a director, officer, commissioner, head, or other executive of
- 3 an agency shall self-disqualify in a proceeding in which a reasonable, disinterested
- 4 observer would believe the hearing officer is biased due to:
- 5 a. A contribution by one of the parties supporting the hearing officer's most recent
- 6 campaign for public office; or
- 7 b. An ownership interest, other than investment in a mutual fund or retirement
- 8 account, of the hearing officer in one of the parties to the proceeding if the
- 9 ownership interest is not shared by the general public.
- 10 4. Any party may petition for the disqualification of any person presiding as a hearing
- 11 officer upon discovering facts establishing grounds for disqualification.
- 12 4.5. A person whose disqualification is requested shall determine whether to grant the
- 13 petition, stating facts and reasons for the determination.
- 14 5.6. If a substitute is required for a person who is disqualified or becomes unavailable for
- 15 any other reason, the substitute may be appointed by:
- 16 a. The attorney general, if the disqualified or unavailable person is an assistant
- 17 attorney general;
- 18 b. The agency head, if the disqualified or unavailable person is one or more
- 19 members of the agency head or one or more other persons designated by the
- 20 agency head;
- 21 c. A supervising hearing officer, if the disqualified or unavailable person is a hearing
- 22 officer designated from an office, pool, panel, or division of hearing officers; or
- 23 d. The governor, in all other cases.
- 24 6.7. Any action taken by a duly appointed substitute for a disqualified or unavailable person
- 25 is as effective as if taken by the disqualified or unavailable person.
- 26 7.8. Any hearing officer in an administrative proceeding, from the time of appointment or
- 27 designation, may exercise any authority granted by law or rule. A hearing officer may
- 28 be designated to preside over the entire administrative proceeding and may issue
- 29 orders accordingly. A procedural hearing officer may only issue orders in regard to the
- 30 course and conduct of the hearing under statute or rule and to otherwise effect an
- 31 orderly hearing. If a procedural hearing officer is designated, the agency head must be

present at the hearing and the agency head shall issue findings of fact and conclusions of law, as well as any order resulting from the hearing.

9. The North Dakota ethics commission shall assess any hearing officer who knowingly violates subsection 3 a civil penalty of five hundred dollars for the first violation. For a second and subsequent knowing violation of this section, the hearing officer is guilty of a class B misdemeanor.

10. A decision, ruling, recommended finding of fact, recommended conclusion of law, finding of fact, conclusion of law, or order by a hearing officer may not be reconsidered, invalidated, or overturned on the grounds the hearing officer failed to self-disqualify under subsection 3, except by a court if the court finds, based on clear and convincing evidence, the hearing officer was required to self-disqualify.

SECTION 22. AMENDMENT. Section 28-32-47 of the North Dakota Century Code is amended and reenacted as follows:

28-32-47. Scope of and procedure on appeal from agency rulemaking.

1. A judge of the district court shall review an appeal from an administrative agency's or ethics commission's rulemaking action based only on the record filed with the court. If an appellant requests documents to be included in the record but the agency or commission does not include them, the court, upon application by the appellant, may compel their inclusion. After a hearing, the filing of briefs, or other disposition of the matter as the judge may reasonably require, the court shall affirm the agency's rulemaking action unless it finds that any of the following are present:

4. a. The provisions of this chapter have not been substantially complied with in the agency's rulemaking actions.
2. b. A rule published as a result of the rulemaking action appealed is unconstitutional on the face of the language adopted.
3. c. A rule published as a result of the rulemaking action appealed is beyond the scope of the agency's or commission's authority to adopt.
4. d. A rule published as a result of the rulemaking action appealed is on the face of the language adopted an arbitrary or capricious application of authority granted by statute.

1 2. If the rulemaking action of the agency or commission is not affirmed by the court, ~~it~~the
2 rulemaking action must be remanded to the agency or commission for disposition in
3 accordance with the order of the court, or the rule or a portion of the rule resulting from
4 the rulemaking action of the agency or commission must be declared invalid for
5 reasons stated by the court.

6 **SECTION 23. AMENDMENT.** Section 28-32-48 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **28-32-48. Appeal - Stay of proceedings.**

9 An appeal from an order or the rulemaking action of an administrative agency or the
10 commission does not stay the enforcement of the order or the effect of a published rule unless
11 the court to which the appeal is taken, upon application and after a hearing or the submission of
12 briefs, orders a stay. The court may impose terms and conditions for a stay of the enforcement
13 of the order or for a stay in the effect of a published rule. This section does not prohibit the
14 operation of an automatic stay upon the enforcement of an administrative order or commission
15 order as may be required by another statute.

16 **SECTION 24. AMENDMENT.** Section 28-32-49 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **28-32-49. Review in supreme court.**

19 The judgment of the district court in an appeal from an order or rulemaking action of an
20 administrative agency or the commission may be reviewed in the supreme court on appeal in
21 the same manner as provided in section 28-32-46 or 28-32-47, except that the appeal to the
22 supreme court must be taken within sixty days after the service of the notice of entry of
23 judgment in the district court. Any party of record, including the agency or commission, may
24 take an appeal from the final judgment of the district court to the supreme court. If an appeal
25 from the judgment of the district court is taken by an agency or the commission, the agency or
26 commission may not be required to pay a docket fee or file a bond for costs or equivalent
27 security.

28 **SECTION 25.** Chapter 54-66 of the North Dakota Century Code is created and enacted as
29 follows:

30 **54-66-01. Definitions.**

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

Sixty-sixth
Legislative Assembly

- 1 1. "Accused individual" means an individual who is alleged to have violated article XIV of
2 the Constitution of North Dakota, this chapter, or another law or rule regarding
3 government ethics transparency, corruption, elections, or lobbying.
- 4 2. "Adjusted for inflation" means adjusted on January first of each year by the change in
5 the consumer price index for all urban consumers (all items, United States city
6 average), as identified by the secretary of state.
- 7 ~~3.~~ "Complainant" means an individual who, in writing or verbally, submits a complaint to
8 the commission.
- 9 ~~4.3.~~ "Complaint" means a verbal or written allegation to the commission that article XIV of
10 the Constitution of North Dakota, this chapter, or another law or rule regarding
11 government ethics transparency, corruption, elections, or lobbying has been violated.
- 12 ~~5.4.~~ "Ethics commission" or "commission" means the North Dakota ethics commission
13 established by article XIV of the Constitution of North Dakota.
- 14 ~~6.5.~~ "Gift" means any item, service, or thing of value not given in exchange for fair market
15 consideration including travel and recreation. The term does not include an item,
16 service, or thing with a value of twenty dollars or less; an item, service, or thing given
17 to or received from a family member; purely informational material; or a campaign
18 contribution.
- 19 ~~7.6.~~ "Influence state government action" means promoting or opposing the final adoption of
20 a rule by an administrative agency or the commission under chapter 28-32.
- 21 ~~8.7.~~ "Lobby" means an activity listed in subsection 1 of section 54-05.1-02.
- 22 ~~9.8.~~ "Lobbyist" means an individual required to register under section 54-05.1-03.
- 23 ~~10.9.~~ "Public official" means an elected or appointed official of the state's executive or
24 legislative branch, members of the commission, members of the governor's cabinet,
25 and employees of the legislative branch.
- 26 ~~11.10.~~ "Receives the complaint" means one or more members of the commission learn of the
27 complaint.
- 28 ~~12.11.~~ "Ultimate and true source" means the person that knowingly contributed over two
29 hundred dollars, adjusted for inflation, solely to lobby or influence state government
30 action.

54-66-02. Disclosure of ultimate and true source of funds.

1. A lobbyist who expends an amount greater than two hundred dollars, adjusted for inflation, to lobby shall file with the secretary of state a report that includes the known ultimate and true source of funds for the expenditure. The report must be filed with the lobbyist expenditure report required under subsection 2 of section 54-05.1-03.
2. A person who expends an amount greater than two hundred dollars, adjusted for inflation, to influence state government action shall file with the secretary of state a report including the known ultimate and true source of funds for the expenditure. The report must be filed on or before the August first following the date of the expenditure. The secretary of state shall provide a form for reports under this subsection and make the form electronically accessible to the public. The secretary of state also shall charge and collect fees for late filing of the reports as follows:
 - a. Twenty-five dollars for a report filed within sixty days after the deadline; or
 - b. Fifty dollars for a report filed more than sixty days after the deadline.
3. The secretary of state shall compile the reports required under this section and make the reports electronically accessible to the public within forty days after the deadlines by which the reports must be filed.
4. This section does not require a person to report the ultimate and true source of funds expended on:
 - a. A gift to or from a family member;
 - b. Purely informational material, advice, or education;
 - c. Reimbursement for travel, meal, and refreshment expenses incurred to, from, or during a conference, seminar, or other legitimate educational opportunity for a public official if the conference, seminar, or educational opportunity concerns issues germane to the official duties of the public official;
 - d. Meals and refreshments provided while informing, advising, or educating a public official about issues germane to the official duties of the public official;
 - e. Providing an educational or social setting in the state to provide an opportunity for individuals to meet with public officials; and
 - f. A good or service determined not to raise ethical concerns under rules adopted by the ethics commission.

5. A resident taxpayer may commence an action in a district court of this state against a person required to comply with this section in the district court of the county where the person required to comply with this section resides to compel compliance if all other enforcement measures under this chapter have been exhausted and the taxpayer reasonably believes the person has failed to comply with this section. A failure to comply with this section must be proved by clear and convincing evidence.

6. The secretary also shall determine adjustments for inflation of the reporting threshold in this section and instruct persons submitting reports under this section of the adjustments. On January first of each year, the secretary shall determine whether the accumulated change in the consumer price index for all urban consumers (all items, United States city average), as applied to the reporting threshold, would result in an adjustment of at least ten dollars of the threshold in effect on that date. If so, the secretary shall deem the reporting threshold adjusted by ten dollars.

54-66-03. Lobbyist gifts - Penalty.

1. A lobbyist may not give, offer, solicit, initiate, or facilitate a gift knowingly to a public official, and a public official may not accept a gift with a value over ~~sixty~~twenty dollars per individual per event, adjusted for inflation, from a lobbyist knowingly, except to advance opportunities for state residents to meet with public officials in educational and social settings in the state under conditions that do not raise ethical concerns, including:

a. Reimbursement for travel, meal, and refreshment expenses incurred to, from, or during a conference, seminar, or other legitimate educational opportunity for the public official if the conference, seminar, or educational opportunity concerns issues germane to the official duties of the public official;

b. Providing information, advice, or education to a public official;

c. Providing meals and refreshments while informing, advising, or educating a public official about issues germane to the official duties of the public official;

d. Items with a fair market value of ten dollars per individual per event, adjusted for inflation, or less per individual; and

e. A good or service determined not to raise ethical concerns under rules adopted by the ethics commission.

2. The prohibition in subsection 1 does not apply when a lobbyist gives, offers, solicits, initiates, or facilitates, or a public official accepts:
 - a. A gift to or from a family member;
 - b. Purely informational material; or
 - c. A campaign contribution.
3. For the first violation, the secretary of state shall assess a civil penalty of five hundred dollars upon any person who knowingly violates this section and, if the person is a lobbyist, the secretary of state may revoke the lobbyist's registration under chapter 54-05.1. For a second and subsequent knowing violation of this section, the person is guilty of a class B misdemeanor.

54-66-04. Ethics commission member terms - Meetings - Code of ethics -

Compensation - Investigator.

1. The terms of the initial members of the ethics commission must be staggered to ensure no more than two members' terms expire in one year. The terms of the initial members may be less than four years to accommodate the required staggering of terms.
2. ~~The ethics commission shall meet as necessary to address each complaint the commission receives.~~ Unless the complaint at issue has resulted in the imposition of a penalty or referral for enforcement under section 54-66-10, any portion of a meeting during which commission members discuss complaints, informal resolutions, attempts to informally resolve complaints, investigations, or referrals under this chapter, the identity of an accused individual or complainant, or any other matter arising from a complaint are closed meetings.
3. The commission shall abide by a code of ethics adopted in a public meeting. The code of ethics must specify when a commission member is disqualified from participating in matters before the commission.
4. Ethics commission members are entitled to:
 - a. Compensation for each day necessarily spent conducting commission business in the amount provided for members of the legislative management under section 54-35-10; and

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

~~5. Commission members shall hire or otherwise engage a part-time administrative assistant. The administrative assistant must be provided an office within the office space for the department of labor and human rights. The commission shall compensate the department of labor and human rights for the office in an amount equal to the fair value of the office.~~

54-66-05. Making a complaint - Identifying information - False complaints.

1. A complaint may be made to the commission orally or in writing. When making a complaint, a complainant shall provide the name, address, and telephone number of the complainant.
2. Within five days after making a complaint, the complainant shall submit a signed statement attesting the complaint is true and accurate to the best of the complainant's knowledge. The commission shall develop an attestation form for this purpose and make it electronically accessible to the public. After receiving the attestation, the commission shall summarize the complaint in writing if the complaint was made orally.
3. If the complainant does not submit the signed attestation by the deadline, the commission may not investigate or take other action on the complaint.
4. Knowingly or recklessly making a complaint that is materially false is defamation under chapter 12.1-15.

54-66-06. Informing the accused individual - Written response permitted.

The commission shall inform an accused individual by registered mail of the identity of the complainant who made the allegation against the accused individual and include the written complaint or written summary of the oral complaint as soon as reasonably possible but no later than ten calendar days after the commission receives the complaint. The accused individual may respond to the complaint in writing within ten calendar days of receipt of the complaint or summary of the complaint.

54-66-07. Informal resolution.

The commission may attempt to negotiate or mediate an informal resolution between the accused individual and the complainant.

1 **54-66-08. Referrals of criminal allegations to investigators - Exception for criminal**
2 **allegationsto law enforcement.**

3 For each complaint with an attestation, the commission shall engage an investigator with
4 the appropriate knowledge and experience regarding the Constitution of North Dakota,
5 ethics-related statutes, and ethics investigations, and refer the complaint to the investigator
6 within thirty calendar days of receiving the complaint. However, if a complaint with an
7 attestation includes an allegation of criminal conduct, the commission shallmay refer the
8 allegation of criminal conduct to the bureau of criminal investigation or other law enforcement
9 agency. The commission may engage a state agency as an investigator. If the accused
10 individual provided a written response to the complaint, the commission shall provide the written
11 response with the referred complaint.

12 **54-66-09. Investigations - Findings and RecommendationsRecommended**
13 **findings - Responses.**

- 14 1. The investigator engaged under section 54-66-08ethics commission staff shall
15 investigate theeach complaint referred to it by the ethics commissionwith an
16 attestation. Investigations must include separate interviews with the accused individual
17 and the complainant, unless the accused individual or complainant refuses to be
18 interviewed, and consideration of the circumstances surrounding the allegations. The
19 accused individual and complainant may be accompanied by legal counsel during the
20 interviews of each. Investigations may include interviews of potential witnesses and
21 other individuals believed to have relevant information.
- 22 2. At the conclusion of the investigation, but no laterAn investigation must conclude no
23 more than six months after the investigatorethics commission received the complaint,
24 the investigator. The ethics commission staff shall submit its writtenrecommended
25 findings from the investigation to the commission at the conclusion of the investigation.
26 The commission shall provide written copies of the findings to the accused individual
27 and complainant. The accused individual and complainant may respond in writing to
28 the recommended findings within thirty calendar days of receiving the recommended
29 findings. The commission shall maintain copies of the recommended findings and any
30 written response to the recommended findings.

54-66-10. Final determinations - Penalties - Referrals for enforcement.

1. After reviewing the recommended findings from the investigator ethics commission staff and any written response from the accused individual or complainant, the ethics commission shall meet with the accused individual and complainant to discuss the recommended findings and written responses. A meeting under this subsection is a closed meeting as defined in section 44-04-17.1, although the accused individual and complainant may have legal counsel attend and participate.
2. After the meeting with the accused individual and complainant, the commission shall issue written findings, including a determination whether a violation of article XIV of the Constitution of North Dakota, this chapter, or another law or rule regarding government ethics transparency, corruption, elections, or lobbying occurred. If the commission finds a violation occurred, the commission may assess a civil penalty if authorized by law or refer the matter to the entity authorized by law to assess a civil penalty for the violation.
3. The accused individual and the complainant may appeal and request judicial review of a determination made or penalty imposed under this section to the district court in the county in which the accused individual resides. A request for judicial review under this section must comply with the requirements for an appeal of a determination of an agency under chapter 28-32. The scope of review and procedure on appeal from a determination of the commission must comply with section 28-32-47.
4. The commission may not terminate the employment of a public official or otherwise remove a public official from the public official's public office.

54-66-11. Confidential information - Penalty.

1. The following information is a confidential record as defined in section 44-04-17.1, unless the commission has determined the accused individual violated article XIV of the Constitution of North Dakota, this chapter, or another law or rule regarding government ethics transparency, corruption, elections, or lobbying, and a court affirmed the determination if appealed, except the information may be disclosed as required by law or as necessary to conduct an investigation arising from a complaint:
 - a. Information revealing the contents of a complaint;

- 1 b. Information that reasonably may be used to identify an accused individual or
- 2 complainant; and
- 3 c. Information relating to or created as part of an investigation of a complaint.
- 4 2. If a complaint is informally resolved under section 54-66-07, the following information
- 5 is a confidential record as defined in section 44-04-17.1:
- 6 a. Information revealing the contents of the complaint;
- 7 b. Information that reasonably may be used to identify the accused individual or
- 8 complainant;
- 9 c. Information relating to or created as part of the process leading to the informal
- 10 resolution; and
- 11 d. Information revealing the informal resolution.
- 12 3. Willful publication of information included in subsections 1 and 2 by a person who
- 13 knows the information to be false is criminal defamation under section 12.1-15-01.
- 14 4. A public official who violates this section is guilty of a class C felony.

15 **54-66-12. Restriction on lobbying by public officials - Penalty.**

16 For the first violation of subsection 2 of section 2 of article XIV of the Constitution of North
17 Dakota, the secretary of state shall assess a civil penalty of five hundred dollars upon the
18 person who knowingly commits the violation. For a second and subsequent knowing violation of
19 the subsection, the person is guilty of a class B misdemeanor.

20 **54-66-13. Attorney general to provide legal services.**

21 The attorney general shall serve as legal counsel for the ethics commission, unless the
22 ethics commission objects to the representation by the attorney general in a specific matter.
23 When a conflict of interest prevents the attorney general from providing legal services to the
24 commission, the attorney general may appoint a special assistant attorney general to serve as
25 legal counsel for the commission.

26 **54-66-14. Prohibition on delivering campaign contributions - Penalty.**

27 A lobbyist may not deliver knowingly a campaign contribution made by another person in
28 violation of subsection 3 of section 2 of article XIV of the Constitution of North Dakota. For a first
29 violation, the secretary of state shall assess a civil penalty of five hundred dollars upon any
30 person who knowingly violates this section and may revoke the lobbyist's registration. For a

second and subsequent knowing violation of this section, the person is guilty of a class B misdemeanor.

54-66-15. Removal of ethics commission members.

1. An ethics commission member may be removed from office for:

a. Substantial neglect of duty;

b. Gross misconduct in office;

c. Violation of the commission's code of ethics; or

d. Willful or habitual neglect or refusal to perform the duties of the member.

2. Removal of an ethics commission member requires agreement by two of the following individuals that grounds for removal under subsection 1 exist:

a. The governor;

b. The majority leader of the senate; and

c. The minority leader of the senate.

SECTION 26. APPROPRIATION. ~~There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$300,000, or so much of the sum as may be necessary, to the ethics commission for the purpose of the operations of the commission, for the biennium beginning July 1, 2019, and ending June 30, 2021. The ethics commission is authorized one and one-half full-time equivalent positions for this purpose. 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 North Dakota ethics commission for the purpose of defraying the expenses of the commission, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

Ethics commission	\$517,155
Total general fund	\$517,155
Full-time equivalent positions	2.00

SECTION 27. EFFECTIVE DATE. Sections 1, 2, 3, 4, ~~5,~~ and ~~7~~21 of this Act, and ~~section~~sections 54-66-02, 54-66-03, and 54-66-13 of the North Dakota Century Code, as created by section ~~32~~25 of this Act, become effective January 5, ~~2022~~2021.

SECTION 28. EFFECTIVE DATE. North Dakota Century Code section 54-66-03, as created by section 32 of this Act, becomes effective January 5, 2021.

1 ~~SECTION 29. EXPIRATION DATE.~~ North Dakota Century Code section 54-66-12, as
2 ~~created by section 32 of this Act, is effective until subsection 2 of section 2 of article XIV of the~~
3 ~~Constitution of North Dakota is no longer part of the Constitution of North Dakota.~~

4 **SECTION 28. EMERGENCY.** Sections 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19,
5 20, ~~21~~, 22, 23, 24, 25, ~~and~~ 26, ~~27, 28, 29, 30, and 31~~ of this Act are declared to be an
6 emergency measure.

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Nothing in this Chapter shall be construed to limit the ability of an employee of any corporation or non-profit organization to participate or engage in functions related to the Political Action Committee of the company or non-profit organization.

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Version 2 (add lobbyist)

Nothing in this Chapter shall be construed to limit the ability of a lobbyist who is an employee of any corporation or non-profit organization to participate or engage in functions related to the Political Action Committee of the company or non-profit organization.

Sixty-sixth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1521

Introduced by

Representative Pollert

Senator Wardner

A BILL for an Act to create and enact a new section to chapter 16.1-08.1 and chapter 54-66 of the North Dakota Century Code, relating to reporting campaign contributions and expenditures, restrictions on public officials and lobbyists, investigations of ethics violations, and implementing requirements of article XIV of the Constitution of North Dakota; to amend and reenact ~~section~~sections 16.1-08.1-01, ~~subsection 4 of section 16.1-08.1-02.1, sections 16.1-08.1-02.3, 16.1-08.1-02.4, 16.1-08.1-03.1~~16.1-08.1-03.7, 16.1-08.1-04.1, 16.1-08.1-06.2, 28-32-01, ~~28-32-02~~, 28-32-03, 28-32-06, 28-32-07, 28-32-08, 28-32-08.1, 28-32-08.2, 28-32-09, 28-32-10, 28-32-11, 28-32-12, ~~28-32-14~~, 28-32-15, 28-32-16, ~~28-32-17, 28-32-18~~, and 28-32-18.1, subsections 2 and 4 of section 28-32-19, and sections 28-32-27, 28-32-47, 28-32-48, and 28-32-49 of the North Dakota Century Code, relating to rulemaking procedures, disqualification of agency heads in quasi-judicial proceedings, implementing article XIV of the Constitution of North Dakota, and requirements for the North Dakota ethics commission; to provide for a penalty; to provide an appropriation; to provide an effective date; ~~to provide an expiration date~~; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-08.1-01 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-01. Definitions.

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

1. ~~"Adjusted for inflation" means adjusted on January first of each year by the change in the consumer price index for all urban consumers (all items, United States city average), as identified by the secretary of state.~~

- ~~2.~~ "Affiliate" means an organization that controls, is controlled by, or is under common control with another organization. For purposes of this definition, control means the

possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an organization, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise. Control is presumed to exist if an organization, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing fifty percent or more of the voting securities of any other organization.

2.3. "Association" means any club, association, union, brotherhood, fraternity, organization, or group of any kind of two or more persons, including labor unions, trade associations, professional associations, or governmental associations, which is united for any purpose, business, or object and which assesses any dues, membership fees, or license fees in any amount, or which maintains a treasury fund in any amount. The term does not include corporations, cooperative corporations, limited liability companies, political committees, or political parties.

3.4. "Candidate" means an individual who seeks nomination for election or election to public office, and includes:

- a. An individual holding public office;
- b. An individual who has publicly declared that individual's candidacy for nomination for election or election to public office or has filed or accepted a nomination for public office;
- c. An individual who has formed a campaign or other committee for that individual's candidacy for public office;
- d. An individual who has circulated a nominating petition to have that individual's name placed on the ballot; and
- e. An individual who has, in any manner, solicited or received a contribution for that individual's candidacy for public office, whether before or after the election for that office.

4.5. "Conduit" means a person that is not a political party, political committee, or candidate and which receives a contribution of money and transfers the contribution to a candidate, political party, or political committee when the contribution is designated specifically for the candidate, political party, or political committee and the person has no discretion as to the recipient and the amount transferred. The term includes a

transactional intermediary, including a credit card company or a money transfer service that pays or transfers money to a candidate on behalf of another person.

5.6. "Contribution" means a gift, transfer, conveyance, provision, receipt, subscription, loan, advance, deposit of money, or anything of value, made for the purpose of influencing the nomination for election, or election, of any person to public office or aiding or opposing the circulation or passage of a statewide initiative or referendum petition or measure. The term also means a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for any of the above purposes. The term includes funds received by a candidate for public office or a political party or committee which are transferred or signed over to that candidate, party, or committee from another candidate, party, or political committee or other source including a conduit. The term "anything of value" includes any good or service of more than a nominal value. The term "nominal value" means the cost, price, or worth of the good or service is trivial, token, or of no appreciable value. The term "contribution" does not include:

- a. A loan of money from a bank or other lending institution made in the regular course of business.
- b. Time spent by volunteer campaign or political party workers.
- c. Money or anything of value received for commercial transactions, including rents, advertising, or sponsorships made as a part of a fair market value bargained-for exchange.
- d. Money or anything of value received for anything other than a political purpose.
- e. Products or services for which the actual cost or fair market value are reimbursed by a payment of money.
- f. An independent expenditure.
- g. The value of advertising paid by a political party, multicandidate political committee, or caucus which is in support of a candidate.
- h. In-kind contributions from a candidate to the candidate's campaign.

6.7. "Cooperative corporations", "corporations", and "limited liability companies" are as defined in this code, and for purposes of this chapter "corporations" includes nonprofit corporations. However, if a political committee, the only purpose of which is accepting

contributions and making expenditures for a political purpose, incorporates for liability purposes only, the committee is not considered a corporation for the purposes of this chapter.

7.8. "Expenditure" means:

- a. A gift, transfer, conveyance, provision, loan, advance, payment, distribution, disbursement, outlay, or deposit of money or anything of value, except a loan of money from a bank or other lending institution made in the regular course of business, made for a political purpose or for the purpose of influencing the passage or defeat of a measure.
- b. A contract, promise, or agreement, express or implied, whether or not legally enforceable, to make any expenditure.
- c. The transfer of funds by a political committee to another political committee.
- d. An independent expenditure.

8.9. "Expenditure categories" means the categories into which expenditures must be grouped for reports under this chapter. The expenditure categories are:

- a. Advertising;
- b. Campaign loan repayment;
- c. Operations;
- d. Travel; and
- e. Miscellaneous.

9.10. "Independent expenditure" means an expenditure made for a political purpose or for the purpose of influencing the passage or defeat of a measure if the expenditure is made without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of, any candidate, committee, or political party.

10.11. "Patron" means a person who owns equity interest in the form of stock, shares, or membership or maintains similar financial rights in a cooperative corporation.

11.12. "Person" means an individual, partnership, political committee, association, corporation, cooperative corporation, limited liability company, or other organization or group of persons.

1 ~~12.13.~~ "Personal benefit" means a benefit to the candidate or another person which is not for
2 a political purpose or related to a candidate's responsibilities as a public officeholder,
3 and any other benefit that would convert a contribution to personal income.

4 ~~13.14.~~ "Political committee" means any committee, club, association, or other group of
5 persons which receives contributions or makes expenditures for political purposes and
6 includes:

- 7 a. A political action committee not connected to another organization and free to
8 solicit funds from the general public, or derived from a corporation, cooperative
9 corporation, limited liability company, affiliate, subsidiary, or an association that
10 solicits or receives contributions from its employees or members or makes
11 expenditures for political purposes on behalf of its employees or members;
- 12 b. A candidate committee established to support an individual candidate seeking
13 public office which solicits or receives contributions for political purposes;
- 14 c. A political organization registered with the federal election commission, which
15 solicits or receives contributions or makes expenditures for political purposes;
- 16 d. A multicandidate political committee, including a caucus, established to support
17 multiple groups or slates of candidates seeking public office, which solicits or
18 receives contributions for political purposes; and
- 19 e. A measure committee, including an initiative or referendum sponsoring
20 committee at any stage of its organization, which solicits or receives contributions
21 or makes expenditures for the purpose of aiding or opposing a measure sought
22 to be voted upon by the voters of the state, including any activities undertaken for
23 the purpose of drafting an initiative or referendum petition, seeking approval of
24 the secretary of state for the circulation of a petition, or seeking approval of the
25 submitted petitions.

26 ~~14.15.~~ "Political party" means any association, committee, or organization which nominates a
27 candidate for election to any office which may be filled by a vote of the electors of this
28 state or any of its political subdivisions and whose name appears on the election ballot
29 as the candidate of such association, committee, or organization.

30 ~~15.16.~~ "Political purpose" means any activity undertaken in support of or in opposition to the
31 election or nomination of a candidate to public office and includes using "vote for",

"oppose", or any similar support or opposition language in any advertisement whether the activity is undertaken by a candidate, a political committee, a political party, or any person. In the period thirty days before a primary election and sixty days before a special or general election, "political purpose" also means any activity in which a candidate's name, office, district, or any term meaning the same as "incumbent" or "challenger" is used in support of or in opposition to the election or nomination of a candidate to public office. The term does not include activities undertaken in the performance of a duty of a public office or any position taken in any bona fide news story, commentary, or editorial.

16.17. "Public office" means every office to which an individual can be elected by vote of the people under the laws of this state.

17.18. "Subsidiary" means an affiliate of a corporation under the control of the corporation directly or indirectly through one or more intermediaries.

19.18. "Ultimate and true source" means the person who knowingly contributed over two hundred dollars, adjusted for inflation, solely to influence a statewide election or an election for the legislative assembly.

~~SECTION 2. AMENDMENT. Subsection 4 of section 16.1-08.1-02.1 of the North Dakota Century Code is amended and reenacted as follows:~~

~~4. The statement filed according to this section must show the following:~~

~~a. The balance of the filer's convention accounts at the start and close of the reporting period;~~

~~b. The total of all revenue received and expenditures made of two hundred dollars, adjusted for inflation, or less;~~

~~c. The total of all revenue received and expenditures made in excess of two hundred dollars, adjusted for inflation;~~

~~d. For each aggregated revenue received from a person in excess of two hundred dollars, adjusted for inflation:~~

~~(1) The name of each person;~~

~~(2) The mailing address of each person;~~

~~(3) The date of the most recent receipt of revenue from each person; and~~

- 1 — (4) The purpose or purposes for which the aggregated revenue total was
2 received from each person;
- 3 — e. For each aggregated expenditure made to a person in excess of two hundred
4 dollars, adjusted for inflation:
- 5 — (1) The name of each person or entity;
- 6 — (2) The mailing address of each person or entity;
- 7 — (3) The date of the most recent expense made to each person or entity; and
- 8 — (4) The purpose or purposes for which the aggregated expenditure total was
9 disbursed to each person or entity; and
- 10 — f. For each aggregated revenue from an individual which totals five thousand
11 dollars, adjusted for inflation, or more during the reporting period, the occupation,
12 employer, and principal place of business of the individual must be disclosed.
- 13 — **SECTION 3. AMENDMENT.** Section 16.1 08.1 02.3 of the North Dakota Century Code is
14 amended and reenacted as follows:
- 15 — **16.1 08.1 02.3. Pre-election, supplemental, and year-end campaign disclosure**
16 **statement requirements for candidates, candidate committees, multicandidate**
17 **committees, and nonstatewide political parties.**
- 18 — 1. Prior to the thirty first day before a primary, general, or special election, a candidate or
19 candidate committee formed on behalf of the candidate, a multicandidate political
20 committee, or a political party other than a statewide political party soliciting or
21 accepting contributions shall file a campaign disclosure statement that includes all
22 contributions received from January first through the fortieth day before the election. A
23 candidate whose name is not on the ballot and who is not seeking election through
24 write in votes, the candidate's candidate committee, and a political party that has not
25 endorsed or nominated any candidate in the election is not required to file a statement
26 under this subsection. The statement may be submitted for filing beginning on the
27 thirty ninth day before the election. The statement must include:
- 28 — a. For each aggregated contribution from a contributor which totals in excess of two
29 hundred dollars, adjusted for inflation, received during the reporting period:
- 30 — (1) The name and mailing address of the contributor;
- 31 — (2) The total amount of the contribution; and

- 1 ~~(3) The date the last contributed amount was received;~~
- 2 ~~b. The total of all aggregated contributions from contributors which total in excess of~~
- 3 ~~two hundred dollars, adjusted for inflation, during the reporting period;~~
- 4 ~~c. The total of all contributions received from contributors that contributed two~~
- 5 ~~hundred dollars, adjusted for inflation, or less each during the reporting period;~~
- 6 ~~and~~
- 7 ~~d. For a statewide candidate, a candidate committee formed on behalf of a~~
- 8 ~~statewide candidate, and a statewide multicandidate committee, the balance of~~
- 9 ~~the campaign fund on the fortieth day before the election and the balance of the~~
- 10 ~~campaign fund on January first.~~
- 11 ~~2. Beginning on the thirty ninth day before the election through the day before the~~
- 12 ~~election, a person that files a statement under subsection 1 must file a supplemental~~
- 13 ~~statement within forty eight hours of the start of the day following the receipt of a~~
- 14 ~~contribution or aggregate contribution from a contributor which is in excess of five~~
- 15 ~~hundred dollars, adjusted for inflation. The statement must include:~~
- 16 ~~a. The name and mailing address of the contributor;~~
- 17 ~~b. The total amount of the contribution received during the reporting period; and~~
- 18 ~~c. The date the last contributed amount was received.~~
- 19 ~~3. Prior to February first, a candidate or candidate committee, a multicandidate political~~
- 20 ~~committee, or a nonstatewide political party soliciting or accepting contributions shall~~
- 21 ~~file a campaign disclosure statement that includes all contributions received and~~
- 22 ~~expenditures, by expenditure category, made from January first through December~~
- 23 ~~thirty first of the previous year. The statement may be submitted for filing beginning on~~
- 24 ~~January first. The statement must include:~~
- 25 ~~a. For a statewide candidate, a candidate committee formed on behalf of a~~
- 26 ~~statewide candidate, and a statewide multicandidate committee, the balance of~~
- 27 ~~the campaign fund on January first and on December thirty first;~~
- 28 ~~b. For each aggregated contribution from a contributor which totals in excess of two~~
- 29 ~~hundred dollars, adjusted for inflation, received during the reporting period:~~
- 30 ~~(1) The name and mailing address of the contributor;~~
- 31 ~~(2) The total amount of the contribution; and~~

- 1 ~~_____ (3) The date the last contributed amount was received;~~
- 2 ~~_____ e. The total of all aggregated contributions from contributors which total in excess of~~
- 3 ~~two hundred dollars, adjusted for inflation, during the reporting period;~~
- 4 ~~_____ d. The total of all contributions received from contributors that contributed two~~
- 5 ~~hundred dollars, adjusted for inflation, or less each during the reporting period;~~
- 6 ~~and~~
- 7 ~~_____ e. The total of all other expenditures made during the previous year, separated into~~
- 8 ~~expenditure categories.~~
- 9 ~~_____ 4. A person required to file a statement under this section, other than a candidate for~~
- 10 ~~judicial office, county office, or city office, or a candidate committee for a candidate~~
- 11 ~~exempted under this subsection, shall report each aggregated contribution from a~~
- 12 ~~contributor which totals five thousand dollars, adjusted for inflation, or more during the~~
- 13 ~~reporting period. For these contributions from individuals, the statement must include~~
- 14 ~~the contributor's occupation, employer, and the employer's principal place of business.~~
- 15 ~~_____ 5. A candidate for city office in a city with a population under five thousand and a~~
- 16 ~~candidate committee for the candidate are exempt from this section.~~
- 17 ~~_____ 6. A candidate for county office and a candidate committee for a candidate for county~~
- 18 ~~office shall file statements under this chapter with the county auditor. A candidate for~~
- 19 ~~city office who is required to file a statement under this chapter and a candidate~~
- 20 ~~committee for such a candidate shall file statements with the city auditor. Any other~~
- 21 ~~person required to file a statement under this section shall file the statement with the~~
- 22 ~~secretary of state.~~
- 23 ~~_____ 7. The filing officer shall assess and collect fees for any reports filed after the filing~~
- 24 ~~deadline.~~
- 25 ~~_____ 8. To ensure accurate reporting and avoid commingling of campaign and personal funds,~~
- 26 ~~candidates shall use dedicated campaign accounts that are separate from any~~
- 27 ~~personal accounts.~~
- 28 ~~_____ **SECTION 4. AMENDMENT.** Section 16.1-08.1-02.4 of the North Dakota Century Code is~~
- 29 ~~amended and reenacted as follows:~~

**~~16.1 08.1 02.4. Pre election, supplemental, and year end campaign disclosure
statement requirements for statewide political parties and certain political committees.~~**

~~1. Prior to the thirty first day before a primary, general, or special election, a statewide political party or a political committee not required to file statements under section 16.1 08.1 02.3 which is soliciting or accepting contributions shall file a campaign disclosure statement that includes all contributions received and expenditures made from January first through the fortieth day before the election. A political party that has not endorsed or nominated a candidate in an election is not required to file a statement under this subsection. A statement required to be filed under this subsection may be submitted for filing beginning on the thirty ninth day before the election. The statement must include:~~

~~a. For each aggregated contribution from a contributor which totals in excess of two hundred dollars, adjusted for inflation, received during the reporting period:~~

~~(1) The name and mailing address of the contributor;~~

~~(2) The total amount of the contribution; and~~

~~(3) The date the last contributed amount was received;~~

~~b. The total of all aggregated contributions from contributors which total in excess of two hundred dollars, adjusted for inflation, during the reporting period;~~

~~c. The total of all contributions received from contributors that contributed two hundred dollars, adjusted for inflation, or less each during the reporting period;~~

~~d. For each recipient of an expenditure from campaign funds in excess of two hundred dollars, adjusted for inflation, in the aggregate:~~

~~(1) The name and mailing address of the recipient;~~

~~(2) The total amount of the expenditure made to the recipient; and~~

~~(3) The date the last expended amount was made to the recipient;~~

~~e. The aggregate total of all expenditures from campaign funds in excess of two hundred dollars, adjusted for inflation;~~

~~f. The aggregate total of all expenditures from campaign funds of two hundred dollars, adjusted for inflation, or less; and~~

~~g. The balance of the campaign fund on the fortieth day before the election and balance of the campaign fund on January first.~~

- 1 ~~2. Beginning on the thirty ninth day before the election through the day before the~~
2 ~~election, a person that files a statement under subsection 1 must file a supplemental~~
3 ~~statement within forty eight hours of the start of the day following the receipt of a~~
4 ~~contribution or aggregate contribution from a contributor which is in excess of five~~
5 ~~hundred dollars, adjusted for inflation. The statement must include:~~
6 ~~a. The name and mailing address of the contributor;~~
7 ~~b. The total amount of the contribution received during the reporting period; and~~
8 ~~c. The date the last contributed amount was received.~~
9 ~~3. Prior to February first, a statewide political party or a political committee that is not~~
10 ~~required to file a statement under section 16.1 08.1 2.3 shall file a campaign~~
11 ~~disclosure statement that includes all contributions received and expenditures made~~
12 ~~from January first through December thirty first of the previous year. The statement~~
13 ~~may be submitted for filing beginning on January first. The statement must include:~~
14 ~~a. For each aggregated contribution from a contributor which totals in excess of two~~
15 ~~hundred dollars, adjusted for inflation, received during the reporting period:~~
16 ~~(1) The name and mailing address of the contributor;~~
17 ~~(2) The total amount of the contribution; and~~
18 ~~(3) The date the last contributed amount was received;~~
19 ~~b. The total of all aggregated contributions from contributors which total in excess of~~
20 ~~two hundred dollars, adjusted for inflation, during the reporting period;~~
21 ~~c. The total of all contributions received from contributors that contributed two~~
22 ~~hundred dollars, adjusted for inflation, or less each during the reporting period;~~
23 ~~d. For each recipient of an expenditure from campaign funds in excess of two~~
24 ~~hundred dollars, adjusted for inflation, in the aggregate:~~
25 ~~(1) The name and mailing address of the recipient;~~
26 ~~(2) The total amount of the expenditure made to the recipient; and~~
27 ~~(3) The date the last expended amount was made to the recipient;~~
28 ~~e. The aggregate total of all expenditures from campaign funds in excess of two~~
29 ~~hundred dollars, adjusted for inflation;~~
30 ~~f. The aggregate total of all expenditures from campaign funds of two hundred~~
31 ~~dollars, adjusted for inflation, or less; and~~

- 1 ~~g. The balance of the campaign fund on January first and December thirty first.~~
- 2 ~~4. A person required to file a statement under this section shall disclose each aggregated~~
- 3 ~~contribution from a contributor which totals five thousand dollars, adjusted for inflation,~~
- 4 ~~or more during the reporting period. For these contributions from individuals, the~~
- 5 ~~statement must include the contributor's occupation, employer, and the employer's~~
- 6 ~~principal place of business.~~
- 7 ~~5. Statements under this section must be filed with the secretary of state.~~
- 8 ~~6. The secretary of state shall assess and collect fees for any reports filed after the filing~~
- 9 ~~deadline.~~

10 **SECTION 5. AMENDMENT.** Section 16.1-08.1-03.1 of the North Dakota Century Code is

11 amended and reenacted as follows:

12 ~~**16.1-08.1-03.1. Special requirements for statements required of persons engaged in**~~

13 ~~**activities regarding ballot measures.**~~

- 14 ~~1. For each reportable contribution and expenditure under section 16.1-08.1-02.4, the~~
- 15 ~~threshold for reporting is one hundred dollars, adjusted for inflation, for any person~~
- 16 ~~engaged in activities described in subdivision e of subsection 1314 of section~~
- 17 ~~16.1-08.1-01.~~
- 18 ~~2. For contributions received from an out of state contributor, a person engaged in~~
- 19 ~~activities described in subdivision e of subsection 1314 of section 16.1-08.1-01 shall~~
- 20 ~~include the following information regarding each subcontributor that has stated a~~
- 21 ~~contribution is for the express purpose of furthering the passage or defeat of a ballot~~
- 22 ~~measure in the statements required under section 16.1-08.1-02.4:~~
- 23 ~~a. A designation as to whether any person contributed in excess of one hundred~~
- 24 ~~dollars, adjusted for inflation, of the total contribution;~~
- 25 ~~b. The name and mailing address of each subcontributor that contributed in excess~~
- 26 ~~of one hundred dollars, adjusted for inflation, of the total contribution;~~
- 27 ~~c. The contribution amounts of each disclosed subcontributor; and~~
- 28 ~~d. The occupation, employer, and address for the employer's principal place of~~
- 29 ~~business of each disclosed subcontributor.~~
- 30 ~~3. An initiative and referendum sponsoring committee also shall file a disclosure~~
- 31 ~~statement by the date the secretary of state approves the petition for circulation, and~~

shall file an additional statement on the date the petitions containing the required number of signatures are submitted to the secretary of state for review. The statements required under this subsection must be in the same form as the year end statements under section 16.1-08.1-02.4.

~~4. A sponsoring committee shall file a statement regarding its intent to compensate circulators before paying for petitions to be circulated.~~

SECTION 2. AMENDMENT. Section 16.1-08.1-03.7 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-03.7. Political committees that organize and register according to federal law that make independent expenditures or disbursements to nonfederal candidates, political parties, and political committees.

A political committee that organizes and registers according to federal law and makes an independent expenditure or makes a disbursement in excess of two hundred dollars to a nonfederal candidate seeking public office or to a political party or political committee in this state shall file a copy of that portion of the committee's federal report, and supplementary information as necessary under this section, detailing the independent expenditure or the disbursement made. The political committee shall file a copy of the committee's federal report with the secretary of state at the time of filing the report with the applicable federal agency. The report must include:

1. The name, mailing address, and treasurer of the political committee;
2. The recipient's name and mailing address; ~~and~~
3. The date and amount of the independent expenditure or disbursement; and
4. The ultimate and true source of funds listed by contributor and subcontributor of any amount over two hundred dollars collected or used to make the independent expenditure or disbursement, including:
 - a. The name and address of the contributor;
 - b. The total amount of the contribution; and
 - c. The date the last contribution was received.

SECTION 3. AMENDMENT. Section 16.1-08.1-04.1 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-04.1. Personal use of contributions prohibited.

1. A candidate may not use any contribution received by the candidate, the candidate's candidate committee, or a multicandidate political committee to:
 - a. Give a personal benefit to the candidate or another person;
 - b. Make a loan to another person;
 - c. Knowingly pay more than the fair market value for goods or services purchased for the campaign; or
 - d. Pay a criminal fine or civil penalty.
2. For the first violation, the secretary of state shall assess a civil penalty of five hundred dollars upon any person who knowingly violates this section. The assessment of a civil penalty may be appealed to the district court of ~~Burleigh County~~ the county where the candidate resides. For a second and subsequent knowing violation of this section, the person is guilty of a class B misdemeanor.

SECTION 4. A new section to chapter 16.1-08.1 of the North Dakota Century Code is created and enacted as follows:

Ultimate and true source of funds - Required identification - Penalty.

1. In any report under this chapter which requires the identification of a contributor or subcontributor, the ultimate and true source of funds must be identified.
2. A resident taxpayer may commence an action ~~in a district court of this state~~ against a person required to comply with this section ~~in the district court of the county where the person required to comply with this section resides~~ to compel compliance if all other enforcement measures under this chapter have been exhausted and the taxpayer reasonably believes the person has failed to comply with this section. A failure to comply with this section must be proved by clear and convincing evidence.

SECTION 5. AMENDMENT. Section 16.1-08.1-06.2 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-06.2. Secretary of state to provide instructions, make adjustments for inflation, and conduct training.

The secretary of state shall provide instructions and conduct training for the purpose of promoting uniform application of campaign finance and disclosure requirements and the uniform filing of statements, registrations, or reports according to this chapter. The secretary also shall

1 determine adjustments for inflation of the reporting thresholds in this chapter and instruct
2 persons submitting reports under this chapter of the adjustments. On January first of each year,
3 the secretary shall determine whether the accumulated change in the consumer price index for
4 all urban consumers (all items, United States city average), as applied to each reporting
5 threshold in this chapter, would result in an adjustment of at least ten dollars of the threshold in
6 effect on that date. If so, the secretary shall deem the reporting threshold adjusted by ten
7 dollars.

8 **SECTION 6. AMENDMENT.** Section 28-32-01 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **28-32-01. Definitions.**

11 In this chapter, unless the context or subject matter otherwise provides:

- 12 1. "Adjudicative proceeding" means an administrative matter resulting in an agency
13 issuing an order after an opportunity for hearing is provided or required. An
14 adjudicative proceeding includes administrative matters involving a hearing on a
15 complaint against a specific-named respondent; a hearing on an application seeking a
16 right, privilege, or an authorization from an agency, such as a ratemaking or licensing
17 hearing; or a hearing on an appeal to an agency. An adjudicative proceeding includes
18 reconsideration, rehearing, or reopening. Once an adjudicative proceeding has begun,
19 the adjudicative proceeding includes any informal disposition of the administrative
20 matter under section 28-32-22 or another specific statute or rule, unless the matter
21 has been specifically converted to another type of proceeding under section 28-32-22.
22 An adjudicative proceeding does not include a decision or order to file or not to file a
23 complaint, or to initiate an investigation, an adjudicative proceeding, or any other
24 proceeding before the agency, or another agency, or a court. An adjudicative
25 proceeding does not include a decision or order to issue, reconsider, or reopen an
26 order that precedes an opportunity for hearing or that under another section of this
27 code is not subject to review in an adjudicative proceeding. An adjudicative proceeding
28 does not include rulemaking under this chapter.
- 29 2. "Administrative agency" or "agency" means each board, bureau, commission,
30 department, or other administrative unit of the executive branch of state government,
31 including one or more officers, employees, or other persons directly or indirectly

purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an administrative agency must be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:

- a. The office of management and budget except with respect to rules made under section 32-12.2-14, rules relating to conduct on the capitol grounds and in buildings located on the capitol grounds under section 54-21-18, rules relating to the classified service as authorized under section 54-44.3-07, and rules relating to state purchasing practices as required under section 54-44.4-04.
- b. The adjutant general with respect to the department of emergency services.
- c. The council on the arts.
- d. The state auditor.
- e. The department of commerce with respect to the division of economic development and finance.
- f. The dairy promotion commission.
- g. The education factfinding commission.
- h. The educational technology council.
- i. The board of equalization.
- j. The board of higher education.
- k. The Indian affairs commission.
- l. The industrial commission with respect to the activities of the Bank of North Dakota, North Dakota housing finance agency, public finance authority, North Dakota mill and elevator association, North Dakota farm finance agency, the North Dakota transmission authority, and the North Dakota pipeline authority.
- m. The department of corrections and rehabilitation except with respect to the activities of the division of adult services under chapter 54-23.4.
- n. The pardon advisory board.
- o. The parks and recreation department.
- p. The parole board.
- q. The state fair association.

- 1 r. The attorney general with respect to activities of the state toxicologist and the
- 2 state crime laboratory.
- 3 s. The administrative committee on veterans' affairs except with respect to rules
- 4 relating to the supervision and government of the veterans' home and the
- 5 implementation of programs or services provided by the veterans' home.
- 6 t. The industrial commission with respect to the lignite research fund except as
- 7 required under section 57-61-01.5.
- 8 u. The attorney general with respect to guidelines adopted under section 12.1-32-15
- 9 for the risk assessment of sexual offenders, the risk level review process, and
- 10 public disclosure of information under section 12.1-32-15.
- 11 v. The commission on legal counsel for indigents.
- 12 w. The attorney general with respect to twenty-four seven sobriety program
- 13 guidelines and program fees.
- 14 x. The industrial commission with respect to approving or setting water rates under
- 15 chapter 61-40.
- 16 3. "Agency head" means an individual or body of individuals in whom the ultimate legal
- 17 authority of the agency is vested by law.
- 18 4. "Commission" means the North Dakota ethics commission established by article XIV
- 19 of the Constitution of North Dakota.
- 20 5. "Complainant" means any person who files a complaint before an administrative
- 21 agency pursuant to section 28-32-21 and any administrative agency that, when
- 22 authorized by law, files such a complaint before such agency or any other agency.
- 23 5-6. "Hearing officer" means any agency head or one or more members of the agency
- 24 head when presiding in an administrative proceeding, or, unless prohibited by law, one
- 25 or more other persons designated by the agency head to preside in an administrative
- 26 proceeding, an administrative law judge from the office of administrative hearings, or
- 27 any other person duly assigned, appointed, or designated to preside in an
- 28 administrative proceeding pursuant to statute or rule.
- 29 6-7. "License" means a franchise, permit, certification, approval, registration, charter, or
- 30 similar form of authorization required by law.

1 ~~7-8.~~ "Order" means any agency action of particular applicability which determines the legal
2 rights, duties, privileges, immunities, or other legal interests of one or more specific
3 persons. The term does not include an executive order issued by the governor.

4 ~~8-9.~~ "Party" means each person named or admitted as a party or properly seeking and
5 entitled as of right to be admitted as a party. An administrative agency may be a party.
6 In a hearing for the suspension, revocation, or disqualification of an operator's license
7 under title 39, the term may include each city and each county in which the alleged
8 conduct occurred, but the city or county may not appeal the decision of the hearing
9 officer.

10 ~~9-10.~~ "Person" includes an individual, association, partnership, corporation, limited liability
11 company, the commission, a state governmental agency or governmental subdivision,
12 or an agency of such governmental subdivision.

13 ~~10-11.~~ "Relevant evidence" means evidence having any tendency to make the existence of
14 any fact that is of consequence to the determination of the administrative action more
15 probable or less probable than it would be without the evidence.

16 ~~11-12.~~ "Rule" means the whole or a part of an agency or commission statement of general
17 applicability which implements or prescribes law or policy or the organization,
18 procedure, or practice requirements of the agency or commission. The term includes
19 the adoption of new rules and the amendment, repeal, or suspension of an existing
20 rule. The term does not include:

21 a. A rule concerning only the internal management of an agency or the commission
22 which does not directly or substantially affect the substantive or procedural rights
23 or duties of any segment of the public.

24 b. A rule that sets forth criteria or guidelines to be used by the staff of an agency or
25 the commission in the performance of audits, investigations, inspections, and
26 settling commercial disputes or negotiating commercial arrangements, or in the
27 defense, prosecution, or settlement of cases, if the disclosure of the
28 ~~statement~~rule would:

29 (1) Enable law violators to avoid detection;

30 (2) Facilitate disregard of requirements imposed by law; or

- 1 (3) Give a clearly improper advantage to persons who are in an adverse
2 position to the state.
- 3 c. A rule establishing specific prices to be charged for particular goods or services
4 sold by an agency.
- 5 d. A rule concerning only the physical servicing, maintenance, or care of
6 agency-owned or agency-operated, commission-owned, or
7 commission-operated facilities or property.
- 8 e. A rule relating only to the use of a particular facility or property owned, operated,
9 or maintained by the state or any of its subdivisions, if the substance of the rule is
10 adequately indicated by means of signs or signals to persons who use the facility
11 or property.
- 12 f. A rule concerning only inmates of a correctional or detention facility, students
13 enrolled in an educational institution, or patients admitted to a hospital, if adopted
14 by that facility, institution, or hospital.
- 15 g. A form whose contents or substantive requirements are prescribed by rule or
16 statute or are instructions for the execution or use of the form.
- 17 h. An agency or commission budget.
- 18 i. An opinion of the attorney general.
- 19 j. A rule adopted by an agency selection committee under section 54-44.7-03.
- 20 k. Any material, including a guideline, interpretive statement, statement of general
21 policy, manual, brochure, or pamphlet, which is explanatory and not intended to
22 have the force and effect of law.

23 ~~SECTION 6. AMENDMENT. Section 28-32-02 of the North Dakota Century Code is~~
24 ~~amended and reenacted as follows:~~

25 ~~28-32-02. Rulemaking power of agency authority Organizational rule.~~

- 26 ~~1. The authority of an administrative agency to adopt administrative rules is authority~~
27 ~~delegated by the legislative assembly. As part of that delegation, the legislative~~
28 ~~assembly reserves to itself the authority to determine when and if rules of~~
29 ~~administrative agencies are effective. Every administrative agency may adopt, amend,~~
30 ~~or repeal reasonable rules in conformity with this chapter and any statute administered~~
31 ~~or enforced by the agency.~~

- ~~2. In addition to other rulemaking requirements imposed by law, each agency may include in its rules a description of that portion of its organization and functions subject to this chapter and may include a statement of the general course and method of its operations and how the public may obtain information or make submissions or requests.~~
- ~~3. The authority of the commission to adopt rules arises from article XIV of the Constitution of North Dakota. The commission shall follow the process, and meet the requirements, as specified in this chapter to adopt, amend, or repeal its rules.~~

SECTION 7. AMENDMENT. Section 28-32-03 of the North Dakota Century Code is amended and reenacted as follows:

28-32-03. Emergency rules.

1. If the ~~commission or an~~ agency, with the approval of the governor, or the commission finds that emergency rulemaking is necessary, the commission or agency may declare the proposed rule to be an interim final rule effective on a date no earlier than the date of filing with the legislative council of the notice required by section 28-32-10.
2. A proposed rule may be given effect on an emergency basis under this section if any of the following grounds exists regarding that rule:
 - a. Imminent peril threatens public health, safety, or welfare, which would be abated by emergency effectiveness;
 - b. A delay in the effective date of the rule is likely to cause a loss of funds appropriated to support a duty imposed by law upon the commission or agency;
 - c. Emergency effectiveness is reasonably necessary to avoid a delay in implementing an appropriations measure; or
 - d. Emergency effectiveness is necessary to meet a mandate of federal law.
3. A final rule adopted after consideration of all written and oral submissions respecting the interim final rule, which is substantially similar to the interim final rule, is effective as of the declared effective date of the interim final rule.
4. The commission's or agency's finding, and a brief statement of the commission's or agency's reasons for the finding, must be filed with the legislative council with the final adopted emergency rule.

1 5. The commission or agency shall attempt to make interim final rules known to persons
2 who the commission or agency can reasonably be expected to believe may have a
3 substantial interest in them. As used in this subsection, "substantial interest" means an
4 interest in the effect of the rules which surpasses the common interest of all citizens.

5 ~~An~~ The commission or an agency adopting emergency rules shall comply with the
6 notice requirements of section 28-32-10 which relate to emergency rules and shall
7 provide notice to the chairman of the administrative rules committee of the emergency
8 status, declared effective date, and grounds for emergency status of the rules under
9 subsection 2. When notice of emergency rule adoption is received, the legislative
10 council shall publish the notice and emergency rules on its website.

11 6. An interim final rule is ineffective one hundred eighty days after its declared effective
12 date unless first adopted as a final rule.

13 **SECTION 8. AMENDMENT.** Section 28-32-06 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **28-32-06. Force and effect of rules.**

16 Upon becoming effective, rules have the force and effect of law until amended or repealed
17 by the agency or commission, declared invalid by a final court decision, suspended or found to
18 be void by the administrative rules committee, or determined repealed by the legislative council
19 because the authority for adoption of the rules is repealed or transferred to another agency, or
20 the Constitution of North Dakota is amended to eliminate the authority.

21 **SECTION 9. AMENDMENT.** Section 28-32-07 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **28-32-07. Deadline for rules to implement statutory change.**

24 Any rule change, including a creation, amendment, or repeal, made to implement a
25 statutory change must be adopted and filed with the legislative council within nine months of the
26 effective date of the statutory change. If an agency or the commission needs additional time for
27 the rule change, a request for additional time must be made to the legislative council. The
28 legislative council may extend the time within which the agency or commission must adopt the
29 rule change if the request by the agency or commission is supported by evidence that the
30 agency or commission needs more time through no deliberate fault of its own.

SECTION 10. AMENDMENT. Section 28-32-08 of the North Dakota Century Code is amended and reenacted as follows:

28-32-08. Regulatory analysis.

1. An agency or the commission shall issue a regulatory analysis of a proposed rule if:
 - a. Within twenty days after the last published notice date of a proposed rule hearing, a written request for the analysis is filed by the governor or a member of the legislative assembly; or
 - b. The proposed rule is expected to have an impact on the regulated community in excess of fifty thousand dollars. The analysis under this subdivision must be available on or before the first date of public notice as provided for in section 28-32-10.
2. The regulatory analysis must contain:
 - a. A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;
 - b. A description of the probable impact, including economic impact, of the proposed rule;
 - c. The probable costs to the agency or commission of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues; and
 - d. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency or commission and the reasons why the methods were rejected in favor of the proposed rule.
3. Each regulatory analysis must include quantification of the data to the extent practicable.
4. The agency or commission shall mail or deliver a copy of the regulatory analysis to any person who requests a copy of the regulatory analysis. The agency or commission may charge a fee for a copy of the regulatory analysis as allowed under section 44-04-18.
5. If required under subsection 1, the preparation and issuance of a regulatory analysis is a mandatory duty of the agency or commission proposing a rule. Errors in a regulatory

analysis, including erroneous determinations concerning the impact of the proposed rule on the regulated community, are not a ground upon which the invalidity of a rule may be asserted or declared.

SECTION 11. AMENDMENT. Section 28-32-08.1 of the North Dakota Century Code is amended and reenacted as follows:

28-32-08.1. Rules affecting small entities - Analysis - Economic impact statements - Judicial review.

1. As used in this section:

a. "Small business" means a business entity, including its affiliates, which:

(1) Is independently owned and operated; and

(2) Employs fewer than twenty-five full-time employees or has gross annual sales of less than two million five hundred thousand dollars;

b. "Small entity" includes small business, small organization, and small political subdivision;

c. "Small organization" means any not-for-profit enterprise that is independently owned and operated and is not dominant in its field; and

d. "Small political subdivision" means a political subdivision with a population of less than five thousand.

2. Before adoption of any proposed rule, the adopting agency or the commission shall prepare a regulatory analysis in which, consistent with public health, safety, and welfare, the agency or commission considers utilizing regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small entities. The agency or commission shall consider each of the following methods of reducing impact of the proposed rule on small entities:

a. Establishment of less stringent compliance or reporting requirements for small entities;

b. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities;

c. Consolidation or simplification of compliance or reporting requirements for small entities;

- 1 d. Establishment of performance standards for small entities to replace design or
- 2 operational standards required in the proposed rule; and
- 3 e. Exemption of small entities from all or any part of the requirements contained in
- 4 the proposed rule.
- 5 3. Before adoption of any proposed rule that may have an adverse impact on small
- 6 entities, the adopting agency or the commission shall prepare an economic impact
- 7 statement that includes consideration of:
- 8 a. The small entities subject to the proposed rule;
- 9 b. The administrative and other costs required for compliance with the proposed
- 10 rule;
- 11 c. The probable cost and benefit to private persons and consumers who are
- 12 affected by the proposed rule;
- 13 d. The probable effect of the proposed rule on state revenues; and
- 14 e. Any less intrusive or less costly alternative methods of achieving the purpose of
- 15 the proposed rule.
- 16 4. For any rule subject to this section, a small entity that is adversely affected or
- 17 aggrieved by final agency or commission action is entitled to judicial review of agency
- 18 or commission compliance with the requirements of this section. A small entity seeking
- 19 judicial review under this section must file a petition for judicial review within one year
- 20 from the date of final agency or commission action.
- 21 5. This section does not apply to any agency that is an occupational or professional
- 22 licensing authority, nor does this section apply to the following agencies or divisions of
- 23 agencies:
- 24 a. Council on the arts.
- 25 b. Beef commission.
- 26 c. Dairy promotion commission.
- 27 d. Dry bean council.
- 28 e. Highway patrolmen's retirement board.
- 29 f. Indian affairs commission.
- 30 g. Board for Indian scholarships.
- 31 h. State personnel board.

- 1 i. Potato council.
- 2 j. Board of public school education.
- 3 k. Real estate trust account committee.
- 4 l. Seed commission.
- 5 m. Soil conservation committee.
- 6 n. Oilseed council.
- 7 o. Wheat commission.
- 8 p. State seed arbitration board.
- 9 q. North Dakota lottery.
- 10 6. This section does not apply to rules mandated by federal law.
- 11 7. The adopting agency or the commission shall provide the administrative rules
- 12 committee copies of any regulatory analysis or economic impact statement, or both,
- 13 prepared under this section when the committee is considering the associated rules.

14 **SECTION 12. AMENDMENT.** Section 28-32-08.2 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **28-32-08.2. Fiscal notes for administrative rules.**

17 When an agency or the commission presents rules for administrative rules committee
18 consideration, the agency or commission shall provide a fiscal note or a statement in its
19 testimony that the rules have no fiscal effect. A fiscal note must reflect the effect of the rules
20 changes on state revenues and expenditures, including any effect on funds controlled by the
21 agency or commission.

22 **SECTION 13. AMENDMENT.** Section 28-32-09 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **28-32-09. Takings assessment.**

- 25 1. An agency or the commission shall prepare a written assessment of the constitutional
- 26 takings implications of a proposed rule that may limit the use of private real property.
- 27 The agency's assessment must:
- 28 a. Assess the likelihood that the proposed rule may result in a taking or regulatory
- 29 taking.
- 30 b. Clearly and specifically identify the purpose of the proposed rule.

- 1 c. Explain why the proposed rule is necessary to substantially advance that purpose
- 2 and why no alternative action is available that would achieve the agency's or
- 3 commission's goals while reducing the impact on private property owners.
- 4 d. Estimate the potential cost to the government if a court determines that the
- 5 proposed rule constitutes a taking or regulatory taking.
- 6 e. Identify the source of payment within the agency's or commission's budget for
- 7 any compensation that may be ordered.
- 8 f. Certify that the benefits of the proposed rule exceed the estimated compensation
- 9 costs.

10 2. Any private landowner who is or may be affected by a rule that limits the use of the
11 landowner's private real property may request in writing that the agency or
12 commission reconsider the application or need for the rule. Within thirty days of
13 receiving the request, the agency or commission shall consider the request and shall
14 in writing inform the landowner whether the agency or commission intends to keep the
15 rule in place, modify application of the rule, or repeal the rule.

16 3. In an agency's analysis of the takings implications of a proposed rule, "taking" means
17 the taking of private real property, as defined in section 47-01-03, by government
18 action which requires compensation to the owner of that property by the fifth or
19 fourteenth amendment to the Constitution of the United States or section 16 of article I
20 of the Constitution of North Dakota. "Regulatory taking" means a taking of real
21 property through the exercise of the police and regulatory powers of the state which
22 reduces the value of the real property by more than fifty percent. However, the
23 exercise of a police or regulatory power does not effect a taking if it substantially
24 advances legitimate state interests, does not deny an owner economically viable use
25 of the owner's land, or is in accordance with applicable state or federal law.

26 **SECTION 14. AMENDMENT.** Section 28-32-10 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **28-32-10. Notice of rulemaking - Hearing date.**

- 29 1. An agency or the commission shall prepare a full notice and an abbreviated notice of
30 rulemaking.

- 1 a. The agency's full notice of the proposed adoption, amendment, or repeal of a rule
2 must include a short, specific explanation of the proposed rule and the purpose of
3 the proposed rule, identify the emergency status and declared effective date of
4 any emergency rules, include a determination of whether the proposed
5 rulemaking is expected to have an impact on the regulated community in excess
6 of fifty thousand dollars, identify at least one location where interested persons
7 may review the text of the proposed rule, provide the address to which written
8 comments concerning the proposed rule may be sent, provide the deadline for
9 submission of written comments, provide a telephone number and post-office or
10 electronic mail address at which a copy of the rules and regulatory analysis may
11 be requested, and, in the case of a substantive rule, provide the time and place
12 set for each oral hearing. ~~The An~~ agency's full notice must include a statement of
13 the bill number and general subject matter of any legislation, enacted during the
14 most recent session of the legislative assembly, which is being implemented by
15 the proposed rule. The commission's full notice must include a statement of the
16 provision of the Constitution of North Dakota or the bill number and general
17 subject matter of any legislation enacted during the most recent session of the
18 legislative assembly which is being implemented by the proposed rule. The
19 agency's full notice must be filed with the legislative council, accompanied by a
20 copy of the proposed rules.
- 21 b. The agency or commission shall request publication of an abbreviated
22 newspaper publication notice at least once in each official county newspaper
23 published in this state. The abbreviated newspaper publication of notice must be
24 in a display-type format with a minimum width of one column of approximately
25 two inches [5.08 centimeters] and a minimum depth of approximately three
26 inches [7.62 centimeters] and with a headline describing the general topic of the
27 proposed rules. The notice must also include the telephone number or address to
28 use to obtain a copy of the proposed rules, identification of the emergency status
29 and declared effective date of any emergency rules, the address to use and the
30 deadline to submit written comments, and the location, date, and time of the
31 public hearing on the rules.

2. The agency or commission shall mail or deliver by electronic mail a copy of the agency's full notice and proposed rule to each member of the legislative assembly whose name appeared as a sponsor or cosponsor of legislation, enacted during the most recent session of the legislative assembly, which is being implemented by the proposed rule and to each person who has made a timely request to the agency or commission for a copy of the notice and proposed rule. The agency or commission may mail or otherwise provide a copy of the agency's full notice to any person who is likely to be an interested person. The agency or commission may charge persons who are not members of the legislative assembly fees for copies of the proposed rule as allowed under section 44-04-18.
3. In addition to the other notice requirements of this subsection, the superintendent of public instruction shall provide notice of any proposed rulemaking by the superintendent of public instruction to each association with statewide membership whose primary focus is elementary and secondary education issues which has requested to receive notice from the superintendent under this subsection and to the superintendent of each public school district in this state, or the president of the school board for school districts that have no superintendent, at least twenty days before the date of the hearing described in the notice. Notice provided by the superintendent of public instruction under this section must be by first-class mail. However, upon request of a group or person entitled to notice under this section, the superintendent of public instruction shall provide the group or person notice by electronic mail.
4. The legislative council shall establish standard procedures for the commission and all agencies to follow in complying with the provisions of this section and a procedure to allow any person to request and receive mailed copies of all filings made by agencies and the commission pursuant to this section. The legislative council may charge an annual fee as established by the administrative rules committee for providing copies of the filings.
5. At least twenty days must elapse between the date of the publication of the notice and the date of the hearing. Within fifteen business days after receipt of a notice under this section, a copy of the notice must be mailed by the legislative council to any person who has paid the annual fee established under subsection 4.

1 **SECTION 15. AMENDMENT.** Section 28-32-11 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **28-32-11. Conduct of hearings - Notice of administrative rules committee**
4 **consideration - Consideration and written record of comments.**

5 The agency or commission shall adopt a procedure whereby all interested persons are
6 afforded reasonable opportunity to submit data, views, or arguments, orally or in writing,
7 concerning the proposed rule, including data respecting the impact of the proposed rule. The
8 agency or commission shall adopt a procedure to allow interested parties to request and
9 receive notice from the agency or commission of the date and place the rule will be reviewed by
10 the administrative rules committee. In case of substantive rules, the agency or commission shall
11 conduct an oral hearing. The agency or commission shall consider fully all written and oral
12 submissions respecting a proposed rule prior to the adoption, amendment, or repeal of any rule
13 not of an emergency nature. The agency or commission shall make a written record of its
14 consideration of all written and oral submissions contained in the rulemaking record respecting
15 a proposed rule.

16 **SECTION 16. AMENDMENT.** Section 28-32-12 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **28-32-12. Comment period.**

19 The agency or commission shall allow, after the conclusion of any rulemaking hearing, a
20 comment period of at least ten days during which data, views, or arguments concerning the
21 proposed rulemaking will be received by the agency or commission and made a part of the
22 rulemaking record to be considered by the agency or commission.

23 ~~**SECTION 17. AMENDMENT. Section 28-32-14 of the North Dakota Century Code is**~~
24 ~~**amended and reenacted as follows:**~~

25 ~~**28-32-14. Attorney general review of rules.**~~

26 ~~Every proposed rule proposed by any administrative agency must be submitted to the~~
27 ~~attorney general for an opinion as to its legality before final adoption, and the attorney general~~
28 ~~promptly shall furnish each such opinion. The attorney general may not approve any rule as to~~
29 ~~legality, and shall advise the agency or commission of any necessary rewording or revision of~~
30 ~~the rule, when the:~~

- ~~1. The rule exceeds the statutory authority of the agency, or the statutory or constitutional authority of the commission;~~
- ~~2. The rule is written in a manner that is not concise or easily understandable; or when the~~
- ~~3. The procedural requirements for adoption of the rule in this chapter are not substantially met. The attorney general shall advise an agency of any revision or rewording of a rule necessary to correct objections as to legality.~~

SECTION 17. AMENDMENT. Section 28-32-15 of the North Dakota Century Code is amended and reenacted as follows:

28-32-15. Filing of rules for publication - Effective date of rules.

1. A copy of each rule adopted by an administrative agency or the commission, a copy of each written comment and a written summary of each oral comment on the rule, and the attorney general's opinion on the rule, if any, must be filed by the adopting agency or commission with the legislative council for publication of the rule in the North Dakota Administrative Code.
2. a. Nonemergency rules approved by the attorney general as to legality, adopted by an administrative agency or the commission, ~~and~~ filed with the legislative council, and not voided or held for consideration by the administrative rules committee become effective according to the following schedule:
 - (1) Rules filed with the legislative council from August second through November first become effective on the immediately succeeding January first.
 - (2) Rules filed with the legislative council from November second through February first become effective on the immediately succeeding April first.
 - (3) Rules filed with the legislative council from February second through May first become effective on the immediately succeeding July first.
 - (4) Rules filed with the legislative council from May second through August first become effective on the immediately succeeding October first.
- b. If publication is delayed for any reason other than action of the administrative rules committee, nonemergency rules, unless otherwise provided, become effective when publication would have occurred but for the delay.

- c. A rule held for consideration by the administrative rules committee becomes effective on the first effective date of rules under the schedule in subdivision a following the meeting at which that rule is reconsidered by the committee.

SECTION 18. AMENDMENT. Section 28-32-16 of the North Dakota Century Code is amended and reenacted as follows:

28-32-16. Petition for reconsideration of rule - Hearing by agency.

Any person substantially interested in the effect of a rule adopted by an administrative agency or the commission may petition ~~such~~ the agency or commission for a reconsideration of ~~any such~~ the rule or for an amendment or repeal ~~thereof. Such of the rule.~~ The petition must state clearly and concisely the petitioners' alleged grounds for ~~such~~ reconsideration or ~~for the~~ proposed repeal or amendment of ~~such the~~ rule. The agency or commission may grant the petitioner a public hearing ~~upon such~~ on the terms and conditions ~~as the agency may~~ prescribe.

~~**SECTION 20. AMENDMENT.** Section 28-32-17 of the North Dakota Century Code is amended and reenacted as follows:~~

~~**28-32-17. Administrative rules committee objection.**~~

~~If the legislative management's administrative rules committee objects to all or any portion of a rule because the committee deems it to be unreasonable, arbitrary, capricious, or beyond the authority delegated to the adopting agency or commission, the committee may file that objection in certified form with the legislative council. The filed objection must contain a concise statement of the committee's reasons for its action.~~

~~1. The legislative council shall attach to each objection a certification of the time and date of its filing and, as soon as possible, shall transmit a copy of the objection and the certification to the agency or commission adopting the rule in question. The legislative council also shall maintain a permanent register of all committee objections.~~

~~2. The legislative council shall publish an objection filed pursuant to this section in the next issue of the code supplement. In case of a filed committee objection to a rule subject to the exceptions of the definition of rule in section 28-32-01, the agency or commission shall indicate the existence of that objection adjacent to the rule in any compilation containing that rule.~~

3. Within fourteen days after the filing of a committee objection to a rule, the adopting agency or commission shall respond in writing to the committee. After receipt of the response, the committee may withdraw or modify its objection.

4. After the filing of a committee objection, the burden of persuasion is upon the agency or commission in any action for judicial review or for enforcement of the rule to establish that the whole or portion thereof of the rule objected to is within the procedural and substantive authority delegated to the agency or commission. If the agency or commission fails to meet its burden of persuasion, the court shall declare the whole or portion of the rule objected to invalid and judgment must be rendered against the agency or commission for court costs. These court costs must include a reasonable attorney's fee and must be payable from the appropriation of the agency or commission which adopted the rule in question.

SECTION 21. AMENDMENT. Section 28-32-18 of the North Dakota Century Code is amended and reenacted as follows:

~~28-32-18. Administrative rules committee may void rule~~ Grounds Amendment by agreement of agency and committee.

1. The legislative management's administrative rules committee may find that all or any portion of a rule is void if that rule is initially considered by the committee not later than the fifteenth day of the month before the date of the administrative code supplement in which the rule change is scheduled to appear. The administrative rules committee may find a rule or portion of a rule void if the committee makes the specific finding that, with regard to that rule or portion of a rule, there is:

a. An absence of statutory authority under statute or the constitution.

b. An emergency relating to public health, safety, or welfare.

e. ~~A~~For rules proposed by an agency, a failure to comply with express legislative intent or to substantially meet the procedural requirements of this chapter for adoption of the rule.

d. For rules proposed by the commission, a failure to substantially meet the procedural requirements for this chapter for adoption of the rule.

e. A conflict with state law.

e.f. Arbitrariness and capriciousness.

1 ~~f.g. A failure to make a written record of its consideration of written and oral~~
2 ~~submissions respecting the rule under section 28-32-11.~~

3 ~~2. The administrative rules committee may find a rule void at the meeting at which the~~
4 ~~rule is initially considered by the committee or may hold consideration of that rule for~~
5 ~~one subsequent meeting. If no representative of the agency or commission appears~~
6 ~~before the administrative rules committee when rules are scheduled for committee~~
7 ~~consideration, those rules are held over for consideration at the next subsequent~~
8 ~~committee meeting. Rules are not considered initially considered by the committee~~
9 ~~under this subsection until a representative of the agency or commission appears~~
10 ~~before the administrative rules committee when the rules are scheduled for committee~~
11 ~~consideration. If no representative of the agency or commission appears before the~~
12 ~~administrative rules committee meeting to which rules are held over for consideration,~~
13 ~~the rules are void if the rules were adopted as emergency rules and for rules not~~
14 ~~adopted as emergency rules the administrative rules committee may void the rules,~~
15 ~~allow the rules to become effective, or hold over consideration of the rules to the next~~
16 ~~subsequent committee meeting. Within three business days after the administrative~~
17 ~~rules committee finds that a rule is void, the legislative council shall provide written~~
18 ~~notice of that finding and the committee's specific finding under subdivisions a through~~
19 ~~f of subsection 1 to the adopting agency or commission and to the chairman of the~~
20 ~~legislative management. Within fourteen days after receipt of the notice, the adopting~~
21 ~~agency or commission may file a petition with the chairman of the legislative~~
22 ~~management for review by the legislative management of the decision of the~~
23 ~~administrative rules committee. If the adopting agency or commission does not file a~~
24 ~~petition for review, the rule becomes void on the fifteenth day after the notice from the~~
25 ~~legislative council to the adopting agency or commission. If within sixty days after~~
26 ~~receipt of the petition from the adopting agency or commission the legislative~~
27 ~~management has not disapproved by motion the finding of the administrative rules~~
28 ~~committee, the rule is void.~~

29 ~~3. An agency or the commission may amend or repeal a rule or create a related rule~~
30 ~~if, after consideration of rules by the administrative rules committee, the agency or~~
31 ~~commission and the committee agree that the rule amendment, repeal, or creation is~~

~~necessary to address any of the considerations under subsection 1. A rule amended, repealed, or created under this subsection is not subject to the other requirements of this chapter relating to adoption of administrative rules and may be published by the legislative council as amended, repealed, or created. If requested by the agency, commission, or any interested party, a rule amended, repealed, or created under this subsection must be reconsidered by the administrative rules committee at a subsequent meeting at which public comment on the agreed rule change must be allowed.~~

SECTION 19. AMENDMENT. Section 28-32-18.1 of the North Dakota Century Code is amended and reenacted as follows:

28-32-18.1. Administrative rules committee review of existing administrative rules.

1. Upon request by the administrative rules committee, an administrative agency or the commission shall brief the committee on its existing administrative rules and point out any provisions that appear to be obsolete and any areas in which statutory or constitutional authority has changed or been repealed since the rules were adopted or amended.
2. An agency or the commission may amend or repeal a rule without complying with the other requirements of this chapter relating to adoption of administrative rules and may resubmit the change to the legislative council for publication provided:
 - a. The agency or commission initiates the request to the administrative rules committee for consideration of the amendment or repeal;
 - b. The agency or commission provides notice to the regulated community, in a manner reasonably calculated to provide notice to those persons interested in the rule, of the time and place the administrative rules committee will consider the request for amendment or repeal of the rule; and
 - c. The agency or commission and the administrative rules committee agree the rule amendment or repeal eliminates a provision that is obsolete or no longer in compliance with law and that no detriment would result to the substantive rights of the regulated community from the amendment or repeal.

SECTION 20. AMENDMENT. Subsection 2 of section 28-32-19 of the North Dakota Century Code is amended and reenacted as follows:

2. The legislative council may prescribe at the format, style, and arrangement for rules which are to be published in the code and may refuse to accept the filing of any rule that is not in substantial compliance therewith with the format, style, and arrangement. In arranging rules for publication, the legislative council may make ~~such~~ corrections in spelling, grammatical construction, format, and punctuation of the rules as determined the legislative council determines are proper. The legislative council shall keep and maintain a permanent code of all rules filed, including superseded and repealed rules, which must be open to public inspection during office hours.

SECTION 21. AMENDMENT. Subsection 4 of section 28-32-19 of the North Dakota Century Code is amended and reenacted as follows:

4. The legislative council, with the consent of the adopting agency or commission, may omit from the code or code supplement any rule the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the rule in printed or duplicated form is made available on application to the agency or commission, and if the code or code supplement contains a notice stating the general subject matter of the omitted rule and ~~stating~~ how a copy may be obtained.

SECTION 22. AMENDMENT. Section 28-32-27 of the North Dakota Century Code is amended and reenacted as follows:

28-32-27. Hearing officer - Disqualification - Substitution.

1. Any person or persons presiding for the agency in an administrative proceeding must be referred to individually or collectively as hearing officer. Any person from the office of administrative hearings presiding for the agency as a hearing officer in an administrative proceeding must be referred to as an administrative law judge.
2. Any hearing officer is subject to disqualification for good cause shown.
3. A hearing officer who is a director, officer, commissioner, head, or other executive of an agency shall self-disqualify in a proceeding in which a reasonable, disinterested observer would believe the hearing officer is biased due to:
 - a. A contribution by one of the parties supporting the hearing officer's most recent campaign for public office; or

- 1 b. An ownership interest, other than investment in a mutual fund or retirement
2 account, of the hearing officer in one of the parties to the proceeding if the
3 ownership interest is not shared by the general public.
- 4 4. Any party may petition for the disqualification of any person presiding as a hearing
5 officer upon discovering facts establishing grounds for disqualification.
- 6 4.5. A person whose disqualification is requested shall determine whether to grant the
7 petition, stating facts and reasons for the determination.
- 8 5-6. If a substitute is required for a person who is disqualified or becomes unavailable for
9 any other reason, the substitute may be appointed by:
- 10 a. The attorney general, if the disqualified or unavailable person is an assistant
11 attorney general;
- 12 b. The agency head, if the disqualified or unavailable person is one or more
13 members of the agency head or one or more other persons designated by the
14 agency head;
- 15 c. A supervising hearing officer, if the disqualified or unavailable person is a hearing
16 officer designated from an office, pool, panel, or division of hearing officers; or
17 d. The governor, in all other cases.
- 18 6-7. Any action taken by a duly appointed substitute for a disqualified or unavailable person
19 is as effective as if taken by the disqualified or unavailable person.
- 20 7-8. Any hearing officer in an administrative proceeding, from the time of appointment or
21 designation, may exercise any authority granted by law or rule. A hearing officer may
22 be designated to preside over the entire administrative proceeding and may issue
23 orders accordingly. A procedural hearing officer may only issue orders in regard to the
24 course and conduct of the hearing under statute or rule and to otherwise effect an
25 orderly hearing. If a procedural hearing officer is designated, the agency head must be
26 present at the hearing and the agency head shall issue findings of fact and
27 conclusions of law, as well as any order resulting from the hearing.
- 28 9. The North Dakota ethics commission shall assess any hearing officer who knowingly
29 violates subsection 3 a civil penalty of five hundred dollars for the first violation. For a
30 second and subsequent knowing violation of this section, the hearing officer is guilty of
31 a class B misdemeanor.

10. A decision, ruling, recommended finding of fact, recommended conclusion of law, finding of fact, conclusion of law, or order by a hearing officer may not be reconsidered, invalidated, or overturned on the grounds the hearing officer failed to self-disqualify under subsection 3, except by a court if the court finds, based on clear and convincing evidence, the hearing officer was required to self-disqualify.

SECTION 23. AMENDMENT. Section 28-32-47 of the North Dakota Century Code is amended and reenacted as follows:

28-32-47. Scope of and procedure on appeal from agency rulemaking.

1. A judge of the district court shall review an appeal from an administrative agency's or ethics commission's rulemaking action based only on the record filed with the court. If an appellant requests documents to be included in the record but the agency or commission does not include them, the court, upon application by the appellant, may compel their inclusion. After a hearing, the filing of briefs, or other disposition of the matter as the judge may reasonably require, the court shall affirm the ~~agency's~~ rulemaking action unless it finds that any of the following are present:

1. a. The provisions of this chapter have not been substantially complied with in the ~~agency's~~ rulemaking actions.
 2. b. A rule published as a result of the rulemaking action appealed is unconstitutional on the face of the language adopted.
 3. c. A rule published as a result of the rulemaking action appealed is beyond the scope of the agency's or commission's authority to adopt.
 4. d. A rule published as a result of the rulemaking action appealed is on the face of the language adopted an arbitrary or capricious application of authority granted by statute.
2. If the rulemaking action of the agency or commission is not affirmed by the court, ~~the~~ rulemaking action must be remanded to the agency or commission for disposition in accordance with the order of the court, or the rule or a portion of the rule resulting from the rulemaking action of the agency or commission must be declared invalid for reasons stated by the court.

SECTION 24. AMENDMENT. Section 28-32-48 of the North Dakota Century Code is amended and reenacted as follows:

28-32-48. Appeal - Stay of proceedings.

An appeal from an order or the rulemaking action of an administrative agency or the commission does not stay the enforcement of the order or the effect of a published rule unless the court to which the appeal is taken, upon application and after a hearing or the submission of briefs, orders a stay. The court may impose terms and conditions for a stay of the enforcement of the order or for a stay in the effect of a published rule. This section does not prohibit the operation of an automatic stay upon the enforcement of an administrative order or commission order as may be required by another statute.

SECTION 25. AMENDMENT. Section 28-32-49 of the North Dakota Century Code is amended and reenacted as follows:

28-32-49. Review in supreme court.

The judgment of the district court in an appeal from an order or rulemaking action of an administrative agency or the commission may be reviewed in the supreme court on appeal in the same manner as provided in section 28-32-46 or 28-32-47, except that the appeal to the supreme court must be taken within sixty days after the service of the notice of entry of judgment in the district court. Any party of record, including the agency or commission, may take an appeal from the final judgment of the district court to the supreme court. If an appeal from the judgment of the district court is taken by an agency or the commission, the agency or commission may not be required to pay a docket fee or file a bond for costs or equivalent security.

SECTION 26. Chapter 54-66 of the North Dakota Century Code is created and enacted as follows:

54-66-01. Definitions.

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

1. "Accused individual" means an individual who is alleged to have violated article XIV of the Constitution of North Dakota, this chapter, or another law or rule regarding ~~government ethics~~ transparency, corruption, elections, or lobbying.
2. "Adjusted for inflation" means adjusted on January first of each year by the change in the consumer price index for all urban consumers (all items, United States city average), as identified by the secretary of state.

- 1 ~~3.~~ "Complainant" means an individual who, in writing or verbally, submits a complaint to
2 the commission.
- 3 ~~4.3.~~ "Complaint" means a verbal or written allegation to the commission that article XIV of
4 the Constitution of North Dakota, this chapter, or another law or rule regarding
5 ~~government ethics~~ transparency, corruption, elections, or lobbying has been violated.
- 6 ~~5.4.~~ "Ethics commission" or "commission" means the North Dakota ethics commission
7 established by article XIV of the Constitution of North Dakota.
- 8 ~~6.5.~~ "Gift" means any item, service, or thing of value not given in exchange for fair market
9 consideration including travel and recreation. ~~The term does not include an item,~~
10 ~~service, or thing with a value of twenty dollars or less; an item, service, or thing given~~
11 ~~to or received from a family member; purely informational material; or a campaign~~
12 ~~contribution.~~
- 13 ~~7.6.~~ "Influence state government action" means promoting or opposing the final adoption of
14 a rule by an administrative agency or the commission under chapter 28-32.
- 15 ~~8.7.~~ "Lobby" means an activity listed in subsection 1 of section 54-05.1-02.
- 16 ~~9.8.~~ "Lobbyist" means an individual required to register under section 54-05.1-03.
- 17 ~~10.9.~~ "Public official" means an elected or appointed official of the state's executive or
18 legislative branch, members of the commission, members of the governor's cabinet,
19 and employees of the legislative branch.
- 20 ~~11.10.~~ "Receives the complaint" means one or more members of the commission learn of the
21 complaint.
- 22 ~~12.11.~~ "Ultimate and true source" means the person that knowingly contributed over two
23 hundred dollars, ~~adjusted for inflation,~~ solely to lobby or influence state government
24 action.
- 25 **54-66-02. Disclosure of ultimate and true source of funds.**
- 26 1. A lobbyist who expends an amount greater than two hundred dollars, adjusted for
27 inflation, to lobby shall file with the secretary of state a report that includes the known
28 ultimate and true source of funds for the expenditure. The report must be filed with the
29 lobbyist expenditure report required under subsection 2 of section 54-05.1-03.
- 30 2. A person who expends an amount greater than two hundred dollars, adjusted for
31 inflation, to influence state government action shall file with the secretary of state a

- 1 report including the known ultimate and true source of funds for the expenditure. The
- 2 report must be filed on or before the August first following the date of the expenditure.
- 3 The secretary of state shall provide a form for reports under this subsection and make
- 4 the form electronically accessible to the public. The secretary of state also shall
- 5 charge and collect fees for late filing of the reports as follows:
- 6 a. Twenty-five dollars for a report filed within sixty days after the deadline; or
- 7 b. Fifty dollars for a report filed more than sixty days after the deadline.
- 8 3. The secretary of state shall compile the reports required under this section and make
- 9 the reports electronically accessible to the public within forty days after the deadlines
- 10 by which the reports must be filed.
- 11 4. This section does not require a person to report the ultimate and true source of funds
- 12 expended on:
- 13 a. A gift to or from a family member;
- 14 b. Purely informational material, advice, or education;
- 15 c. Reimbursement for travel, meal, and refreshment expenses incurred to, from, or
- 16 during a conference, seminar, or other legitimate educational opportunity for a
- 17 public official if the conference, seminar, or educational opportunity concerns
- 18 issues germane to the official duties of the public official;
- 19 d. Meals and refreshments provided while informing, advising, or educating a public
- 20 official about issues germane to the official duties of the public official;
- 21 e. Providing an educational or social setting in the state to provide an opportunity
- 22 for individuals to meet with public officials; and
- 23 f. A good or service determined not to raise ethical concerns under rules adopted
- 24 by the ethics commission.
- 25 5. A resident taxpayer may commence an action ~~in a district court of this state~~ against a
- 26 person required to comply with this section ~~in the district court of the county where the~~
- 27 ~~person required to comply with this section resides~~ to compel compliance if all other
- 28 enforcement measures under this chapter have been exhausted and the taxpayer
- 29 reasonably believes the person has failed to comply with this section. A failure to
- 30 comply with this section must be proved by clear and convincing evidence.

6. The secretary also shall determine adjustments for inflation of the reporting threshold in this section and instruct persons submitting reports under this section of the adjustments. On January first of each year, the secretary shall determine whether the accumulated change in the consumer price index for all urban consumers (all items, United States city average), as applied to the reporting threshold, would result in an adjustment of at least ten dollars of the threshold in effect on that date. If so, the secretary shall deem the reporting threshold adjusted by ten dollars.

54-66-03. Lobbyist gifts - Penalty.

1. A lobbyist may not give, offer, solicit, initiate, or facilitate a gift knowingly to a public official, and a public official may not accept a gift with a value over ~~sixty~~twenty dollars per individual per event, ~~adjusted for inflation~~, from a lobbyist knowingly, except to advance opportunities for state residents to meet with public officials in educational and social settings in the state under conditions that do not raise ethical concerns, including:
 - a. Reimbursement for travel, meal, and refreshment expenses incurred to, from, or during a conference, seminar, or other legitimate educational opportunity for the public official if the conference, seminar, or educational opportunity concerns issues germane to the official duties of the public official;
 - b. Providing information, advice, or education to a public official;
 - c. Providing meals and refreshments while informing, advising, or educating a public official about issues germane to the official duties of the public official;
 - d. Items with a fair market value of ten dollars per individual per event, adjusted for inflation, or less per individual; and
 - e. A good or service determined not to raise ethical concerns under rules adopted by the ethics commission.
2. The prohibition in subsection 1 does not apply when a lobbyist gives, offers, solicits, initiates, or facilitates, or a public official accepts:
 - a. A gift to or from a family member;
 - b. Purely informational material; or
 - c. A campaign contribution.

3. For the first violation, the secretary of state shall assess a civil penalty of five hundred dollars upon any person who knowingly violates this section and, if the person is a lobbyist, the secretary of state may revoke the lobbyist's registration under chapter 54-05.1. For a second and subsequent knowing violation of this section, the person is guilty of a class B misdemeanor.

54-66-04. Ethics commission member terms - Meetings - Code of ethics -

Compensation - Investigator.

1. The terms of the initial members of the ethics commission must be staggered to ensure no more than two members' terms expire in one year. The terms of the initial members may be less than four years to accommodate the required staggering of terms.
2. ~~The ethics commission shall meet as necessary to address each complaint the commission receives.~~ Unless the complaint at issue has resulted in the imposition of a penalty or referral for enforcement under section 54-66-10, any portion of a meeting during which commission members discuss complaints, informal resolutions, attempts to informally resolve complaints, investigations, or referrals under this chapter, the identity of an accused individual or complainant, or any other matter arising from a complaint are closed meetings.
3. The commission shall abide by a code of ethics adopted in a public meeting. The code of ethics must specify when a commission member is disqualified from participating in matters before the commission.
4. Ethics commission members are entitled to:
 - a. Compensation for each day necessarily spent conducting commission business in the amount provided for members of the legislative management under section 54-35-10; and
 - b. Payment for mileage and travel expenses necessarily incurred in the conduct of commission business as provided under sections 44-08-04 and 54-06-09.
5. ~~Commission members shall hire or otherwise engage a part time administrative assistant. The administrative assistant must be provided an office within the office space for the department of labor and human rights. The commission shall~~

compensate the department of labor and human rights for the office in an amount equal to the fair value of the office.

54-66-05. Making a complaint - Identifying information - False complaints.

1. A complaint may be made to the commission orally or in writing. When making a complaint, a complainant shall provide the name, address, and telephone number of the complainant.
2. Within five days after making a complaint, the complainant shall submit a signed statement attesting the complaint is true and accurate to the best of the complainant's knowledge. The commission shall develop an attestation form for this purpose and make it electronically accessible to the public. After receiving the attestation, the commission shall summarize the complaint in writing if the complaint was made orally.
3. If the complainant does not submit the signed attestation by the deadline, the commission may not investigate or take other action on the complaint.
4. Knowingly or recklessly making a complaint that is materially false is defamation under chapter 12.1-15.

54-66-06. Informing the accused individual - Written response permitted.

The commission shall inform an accused individual by registered mail of the identity of the complainant who made the allegation against the accused individual and include the written complaint or written summary of the oral complaint as soon as reasonably possible but no later than ten calendar days after the commission receives the complaint. The accused individual may respond to the complaint in writing within ten calendar days of receipt of the complaint or summary of the complaint.

54-66-07. Informal resolution.

The commission may attempt to negotiate or mediate an informal resolution between the accused individual and the complainant.

54-66-08. Referrals of certain allegations to investigators - Exception for criminal allegations attorney general or law enforcement.

For each complaint with an attestation, the commission shall engage an investigator with the appropriate knowledge and experience regarding the Constitution of North Dakota, ethics related statutes, and ethics investigations, and refer the complaint to the investigator within thirty calendar days of receiving the complaint. However, if a complaint with an

1 attestation includes an allegation of criminal conduct, the commission ~~shall~~ may refer the
2 allegation of criminal conduct to the bureau of criminal investigation or other law enforcement
3 agency. ~~The commission may engage a state agency as an investigator.~~ If a complaint with an
4 attestation includes an allegation of a violation of open meetings or open records requirements,
5 the commission shall refer the allegation to the attorney general, and the attorney general shall
6 review the allegation under section 44-04-21.1 if the complaint was submitted to the
7 commission by the relevant deadline in section 44-04-21.1. If the accused individual provided a
8 written response to the complaint, the commission shall provide the written response with the
9 referred complaint.

10 **54-66-09. Investigations - ~~Findings and Recommendations~~ Recommended**
11 **~~findings~~ - Responses.**

- 12 1. The ~~investigator engaged under section 54-66-08~~ ethics commission staff shall
13 investigate ~~the each~~ complaint ~~referred to it by the ethics commission~~ with an
14 attestation. Investigations must include separate interviews with the accused individual
15 and the complainant, unless the accused individual or complainant refuses to be
16 interviewed, and consideration of the circumstances surrounding the allegations. The
17 accused individual and complainant may be accompanied by legal counsel during the
18 interviews of each. Investigations may include interviews of potential witnesses and
19 other individuals believed to have relevant information.
- 20 2. ~~At the conclusion of the investigation, but no later~~ An investigation must conclude no
21 more than six months after the ~~investigator~~ ethics commission received the complaint;
22 ~~the investigator.~~ The ethics commission staff shall submit ~~its written~~ recommended
23 findings from the investigation to the commission ~~at the conclusion of the investigation.~~
24 The commission shall provide written copies of the findings to the accused individual
25 and complainant. The accused individual and complainant may respond in writing to
26 the recommended findings within thirty calendar days of receiving the recommended
27 findings. The commission shall maintain copies of the recommended findings and any
28 written response to the recommended findings.

29 **54-66-10. Final determinations - Penalties - Referrals for enforcement.**

- 30 1. After reviewing the recommended findings from the ~~investigator~~ ethics commission
31 staff and any written response from the accused individual or complainant, the ethics

- 1 commission shall meet with the accused individual and complainant to discuss the
2 recommended findings and written responses. A meeting under this subsection is a
3 closed meeting as defined in section 44-04-17.1, although the accused individual and
4 complainant may have legal counsel attend and participate.
- 5 2. After the meeting with the accused individual and complainant, the commission shall
6 issue written findings, including a determination whether a violation of article XIV of the
7 Constitution of North Dakota, this chapter, or another law or rule regarding government
8 ethics transparency, corruption, elections, or lobbying occurred. If the commission finds
9 a violation occurred, the commission may assess a civil penalty if authorized by law or
10 refer the matter to the entity authorized by law to assess a civil penalty for the
11 violation.
- 12 3. The accused individual and the complainant may appeal and request judicial review of
13 a determination made or penalty imposed under this section to the district court in the
14 county in which the accused individual resides. A request for judicial review under this
15 section must comply with the requirements for an appeal of a determination of an
16 agency under chapter 28-32. The scope of review and procedure on appeal from a
17 determination of the commission must comply with section 28-32-47.
- 18 4. The commission may not terminate the employment of a public official or otherwise
19 remove a public official from the public official's public office.

20 **54-66-11. Confidential information - Penalty.**

- 21 1. The following information is a confidential record as defined in section 44-04-17.1,
22 unless the commission has determined the accused individual violated article XIV of
23 the Constitution of North Dakota, this chapter, or another law or rule regarding
24 government ethics transparency, corruption, elections, or lobbying, and a court affirmed
25 the determination if appealed, except the information may be disclosed as required by
26 law or as necessary to conduct an investigation arising from a complaint:
- 27 a. Information revealing the contents of a complaint;
28 b. Information that reasonably may be used to identify an accused individual or
29 complainant; and
30 c. Information 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:

3 a. Information revealing the contents of the complaint;

4 b. Information that reasonably may be used to identify the accused individual or
5 complainant;

6 c. Information relating to or created as part of the process leading to the informal
7 resolution; and

8 d. Information revealing the informal resolution.

9 3. Willful publication of information included in subsections 1 and 2 by a person who
10 knows the information to be false is criminal defamation under section 12.1-15-01.

11 4. A public official who violates this section is guilty of a class C felony.

12 **54-66-12. Restriction on lobbying by public officials - Penalty.**

13 For the first violation of subsection 2 of section 2 of article XIV of the Constitution of North
14 Dakota, the secretary of state shall assess a civil penalty of five hundred dollars upon the
15 person who knowingly commits the violation. For a second and subsequent knowing violation of
16 the subsection, the person is guilty of a class B misdemeanor.

17 **54-66-13. Attorney general to provide legal services.**

18 The attorney general shall serve as legal counsel for the ethics commission, unless the
19 ethics commission objects to the representation by the attorney general in a specific matter.

20 When a conflict of interest prevents the attorney general from providing legal services to the
21 commission, the attorney general may appoint a special assistant attorney general to serve as
22 legal counsel for the commission.

23 **54-66-14. Prohibition on delivering campaign contributions - Penalty.**

24 A lobbyist may not deliver knowingly a campaign contribution made by another person in
25 violation of subsection 3 of section 2 of article XIV of the Constitution of North Dakota. For a first
26 violation, the secretary of state shall assess a civil penalty of five hundred dollars upon any
27 person who knowingly violates this section and may revoke the lobbyist's registration. For a
28 second and subsequent knowing violation of this section, the person is guilty of a class B
29 misdemeanor.

30 **54-66-15. Removal of ethics commission members.**

31 1. An ethics commission member may be removed from office for:

- 1 a. Substantial neglect of duty;
- 2 b. Gross misconduct in office;
- 3 c. Violation of the commission's code of ethics; or
- 4 d. Willful or habitual neglect or refusal to perform the duties of the member.
- 5 2. Removal of an ethics commission member requires agreement by two of the following
- 6 individuals that grounds for removal under subsection 1 exist:
- 7 a. The governor;
- 8 b. The majority leader of the senate; and
- 9 c. The minority leader of the senate.

10 **SECTION 27. APPROPRIATION.** ~~There is appropriated out of any moneys in the general~~
11 ~~fund in the state treasury, not otherwise appropriated, the sum of \$300,000, or so much of the~~
12 ~~sum as may be necessary, to the ethics commission for the purpose of the operations of the~~
13 ~~commission, for the biennium beginning July 1, 2019, and ending June 30, 2021. The ethics~~
14 ~~commission is authorized one and one half full time equivalent positions for this purpose.~~The
15 funds provided in this section, or so much of the funds as may be necessary, are appropriated
16 out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the
17 North Dakota ethics commission for the purpose of defraying the expenses of the commission,
18 for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

19 Ethics commission	\$517,155
20 Total general fund	\$517,155
21 Full-time equivalent positions	2.00

22 **SECTION 28. EFFECTIVE DATE.** Sections 1, ~~2~~, 3, 4, 5, and ~~722~~ of this Act, and
23 ~~section~~sections 54-66-02, 54-66-03, and 54-66-13 of the North Dakota Century Code, as
24 created by section ~~32~~26 of this Act, become effective January 5, ~~2022~~2021.

25 ~~**SECTION 28. EFFECTIVE DATE.** North Dakota Century Code section 54-66-03, as~~
26 ~~created by section 32 of this Act, becomes effective January 5, 2021.~~

27 ~~**SECTION 29. EXPIRATION DATE.** North Dakota Century Code section 54-66-12, as~~
28 ~~created by section 32 of this Act, is effective until subsection 2 of section 2 of article XIV of the~~
29 ~~Constitution of North Dakota is no longer part of the Constitution of North Dakota.~~

- 1 **SECTION 29. EMERGENCY.** Sections 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20,
2 21, ~~22~~, 23, 24, 25, ~~26~~, and 27, ~~28, 29, 30, and 31~~ of this Act are declared to be an emergency
3 measure.

19.1078.02008
Title.

Prepared by the Legislative Council staff for
Senator Unruh

April 9, 2019

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1521

Page 39, line 1, remove "Reimbursement for travel, meal, and refreshment expenses incurred to, from, or"

Page 39, remove lines 2 through 6

Page 39, line 7, remove "e."

Page 39, line 9, replace "f." with "d."

Page 39, line 18, remove "with a value over sixty dollars per"

Page 39, line 19, remove "individual per event, adjusted for inflation,"

Page 39, line 19, remove ", except to"

Page 39, remove lines 20 through 31

Page 40, remove line 1

Page 40, line 2, remove "by the ethics commission"

Page 40, line 6, remove "or"

Page 40, line 7, after "contribution" insert: "; or

- d. An item, service, or thing of value given under conditions that do not raise ethics concerns, as determined by rules adopted by the ethics commission, in order to advance opportunities for North Dakota residents to meet with public officials in educational and social settings in the state"

Renumber accordingly



STATE OF NORTH DAKOTA COURTS

Home / Legal Resources / Rules / North Dakota Rules for Lawyer Discipline

HB 1521
4/11/19

#4

RULE 6.1.RECORDS.

Effective Date: 3/1/2017

A. Confidentiality. Before the filing of the petition with the board by counsel, all proceedings involving an allegation of misconduct or disability of a lawyer and all associated records, including the complaint, investigative report, and recommendation, are confidential, except that the pendency, subject matter, status of an investigation, and final disposition, if any, may be disclosed by the chair of the board if:

- (1) The lawyer has waived confidentiality;
- (2) The proceedings are based upon conviction of a crime;
- (3) The proceedings are based upon allegations that have become generally known to the public; or
- (4) It involves matters alleging any form of disability and the court enters an order transferring the lawyer to disability inactive or incapacitated status.

All officials and employees of the board, hearing panels, or district inquiry committees in the proceedings shall maintain the confidentiality of the proceedings. This rule does not deny access to relevant information to authorized agencies investigating qualifications for admission to practice, to the client protection fund operated by the association investigating the validity of a client's claim, to law enforcement agencies investigating qualifications for government employment, or to any judicial nominating committee. Upon the filing of a formal petition with the board, counsel shall inform the appropriate local prosecutor, by mailing a copy of the petition to the local prosecutor, if counsel determines the facts alleged in the petition may constitute a criminal violation.

The confidentiality established by this rule does not apply to the dissemination or exchange of information concerning any proceeding involving an allegation of misconduct or disability between district inquiry committees or between district inquiry committees and the board.

This rule does not require the disclosure of any records concerning a lawyer's screening for or participation in the lawyer assistance program.

B. Public Proceedings. Upon filing of the petition with the board by counsel, the proceedings are public, except for:

- (1) Deliberations of the hearing panel, the board, and the court;
- (2) Information with respect to which the hearing panel has issued a protective order, after showing of good cause by the lawyer; and
- (3) The work product of counsel, hearing panels, inquiry committees, and the board.

C. Expungement of Records. The secretary or disciplinary counsel, as applicable, shall expunge records relating to dismissed complaints as follows:

- (1) *Destruction Schedule.* All records or other evidence of the existence of a dismissed complaint must be destroyed three years after the dismissal.
- (2) *Retention of Records.* Upon application to the board by counsel, for good cause shown and with notice to the lawyer and opportunity to be heard, records that should otherwise be expunged under this rule may be retained for additional time not exceeding three years as the board directs. Counsel may, for good cause shown and with notice to the lawyer and opportunity to be heard, seek a further extension of the period for which retention of the records is authorized whenever a previous application has been granted for the maximum period of three years permitted under this paragraph.

Sixty-sixth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1521

Introduced by

Representative Pollert

Senator Wardner

A BILL for an Act to create and enact a new section to chapter 16.1-08.1 and chapter 54-66 of the North Dakota Century Code, relating to reporting campaign contributions and expenditures, restrictions on public officials and lobbyists, investigations of ethics violations, and implementing requirements of article XIV of the Constitution of North Dakota; to amend and reenact ~~section~~sections 16.1-08.1-01, ~~subsection 4 of section 16.1-08.1-02.1, sections 16.1-08.1-02.3, 16.1-08.1-02.4, 16.1-08.1-03.1~~16.1-08.1-03.7, 16.1-08.1-04.1, 16.1-08.1-06.2, 28-32-01, ~~28-32-02~~, 28-32-03, 28-32-06, 28-32-07, 28-32-08, 28-32-08.1, 28-32-08.2, 28-32-09, 28-32-10, 28-32-11, 28-32-12, ~~28-32-14~~, 28-32-15, 28-32-16, ~~28-32-17, 28-32-18~~, and 28-32-18.1, subsections 2 and 4 of section 28-32-19, and sections 28-32-27, 28-32-47, 28-32-48, and 28-32-49 of the North Dakota Century Code, relating to rulemaking procedures, disqualification of agency heads in quasi-judicial proceedings, implementing article XIV of the Constitution of North Dakota, and requirements for the North Dakota ethics commission; to provide for a penalty; to provide an appropriation; to provide an effective date; ~~to provide an expiration date;~~ and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-08.1-01 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-01. Definitions.

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

1. ~~"Adjusted for inflation" means adjusted on January first of each year by the change in the consumer price index for all urban consumers (all items, United States city average), as identified by the secretary of state.~~

~~2.~~ "Affiliate" means an organization that controls, is controlled by, or is under common control with another organization. For purposes of this definition, control means the

possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an organization, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise. Control is presumed to exist if an organization, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing fifty percent or more of the voting securities of any other organization.

2.3. "Association" means any club, association, union, brotherhood, fraternity, organization, or group of any kind of two or more persons, including labor unions, trade associations, professional associations, or governmental associations, which is united for any purpose, business, or object and which assesses any dues, membership fees, or license fees in any amount, or which maintains a treasury fund in any amount. The term does not include corporations, cooperative corporations, limited liability companies, political committees, or political parties.

3.4. "Candidate" means an individual who seeks nomination for election or election to public office, and includes:

- a. An individual holding public office;
- b. An individual who has publicly declared that individual's candidacy for nomination for election or election to public office or has filed or accepted a nomination for public office;
- c. An individual who has formed a campaign or other committee for that individual's candidacy for public office;
- d. An individual who has circulated a nominating petition to have that individual's name placed on the ballot; and
- e. An individual who has, in any manner, solicited or received a contribution for that individual's candidacy for public office, whether before or after the election for that office.

4.5. "Conduit" means a person that is not a political party, political committee, or candidate and which receives a contribution of money and transfers the contribution to a candidate, political party, or political committee when the contribution is designated specifically for the candidate, political party, or political committee and the person has no discretion as to the recipient and the amount transferred. The term includes a

transactional intermediary, including a credit card company or a money transfer service that pays or transfers money to a candidate on behalf of another person.

5.6. "Contribution" means a gift, transfer, conveyance, provision, receipt, subscription, loan, advance, deposit of money, or anything of value, made for the purpose of influencing the nomination for election, or election, of any person to public office or aiding or opposing the circulation or passage of a statewide initiative or referendum petition or measure. The term also means a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for any of the above purposes. The term includes funds received by a candidate for public office or a political party or committee which are transferred or signed over to that candidate, party, or committee from another candidate, party, or political committee or other source including a conduit. The term "anything of value" includes any good or service of more than a nominal value. The term "nominal value" means the cost, price, or worth of the good or service is trivial, token, or of no appreciable value. The term "contribution" does not include:

- a. A loan of money from a bank or other lending institution made in the regular course of business.
- b. Time spent by volunteer campaign or political party workers.
- c. Money or anything of value received for commercial transactions, including rents, advertising, or sponsorships made as a part of a fair market value bargained-for exchange.
- d. Money or anything of value received for anything other than a political purpose.
- e. Products or services for which the actual cost or fair market value are reimbursed by a payment of money.
- f. An independent expenditure.
- g. The value of advertising paid by a political party, multicandidate political committee, or caucus which is in support of a candidate.
- h. In-kind contributions from a candidate to the candidate's campaign.

6.7. "Cooperative corporations", "corporations", and "limited liability companies" are as defined in this code, and for purposes of this chapter "corporations" includes nonprofit corporations. However, if a political committee, the only purpose of which is accepting

contributions and making expenditures for a political purpose, incorporates for liability purposes only, the committee is not considered a corporation for the purposes of this chapter.

7.8. "Expenditure" means:

- a. A gift, transfer, conveyance, provision, loan, advance, payment, distribution, disbursement, outlay, or deposit of money or anything of value, except a loan of money from a bank or other lending institution made in the regular course of business, made for a political purpose or for the purpose of influencing the passage or defeat of a measure.
- b. A contract, promise, or agreement, express or implied, whether or not legally enforceable, to make any expenditure.
- c. The transfer of funds by a political committee to another political committee.
- d. An independent expenditure.

8.9. "Expenditure categories" means the categories into which expenditures must be grouped for reports under this chapter. The expenditure categories are:

- a. Advertising;
- b. Campaign loan repayment;
- c. Operations;
- d. Travel; and
- e. Miscellaneous.

9.10. "Independent expenditure" means an expenditure made for a political purpose or for the purpose of influencing the passage or defeat of a measure if the expenditure is made without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of, any candidate, committee, or political party.

10.11. "Patron" means a person who owns equity interest in the form of stock, shares, or membership or maintains similar financial rights in a cooperative corporation.

11.12. "Person" means an individual, partnership, political committee, association, corporation, cooperative corporation, limited liability company, or other organization or group of persons.

1 12.13. "Personal benefit" means a benefit to the candidate or another person which is not for
2 a political purpose or related to a candidate's responsibilities as a public officeholder,
3 and any other benefit that would convert a contribution to personal income.

4 13.14. "Political committee" means any committee, club, association, or other group of
5 persons which receives contributions or makes expenditures for political purposes and
6 includes:

- 7 a. A political action committee not connected to another organization and free to
8 solicit funds from the general public, or derived from a corporation, cooperative
9 corporation, limited liability company, affiliate, subsidiary, or an association that
10 solicits or receives contributions from its employees or members or makes
11 expenditures for political purposes on behalf of its employees or members;
12 b. A candidate committee established to support an individual candidate seeking
13 public office which solicits or receives contributions for political purposes;
14 c. A political organization registered with the federal election commission, which
15 solicits or receives contributions or makes expenditures for political purposes;
16 d. A multicandidate political committee, including a caucus, established to support
17 multiple groups or slates of candidates seeking public office, which solicits or
18 receives contributions for political purposes; and
19 e. A measure committee, including an initiative or referendum sponsoring
20 committee at any stage of its organization, which solicits or receives contributions
21 or makes expenditures for the purpose of aiding or opposing a measure sought
22 to be voted upon by the voters of the state, including any activities undertaken for
23 the purpose of drafting an initiative or referendum petition, seeking approval of
24 the secretary of state for the circulation of a petition, or seeking approval of the
25 submitted petitions.

26 14.15. "Political party" means any association, committee, or organization which nominates a
27 candidate for election to any office which may be filled by a vote of the electors of this
28 state or any of its political subdivisions and whose name appears on the election ballot
29 as the candidate of such association, committee, or organization.

30 15.16. "Political purpose" means any activity undertaken in support of or in opposition to the
31 election or nomination of a candidate to public office and includes using "vote for",

"oppose", or any similar support or opposition language in any advertisement whether the activity is undertaken by a candidate, a political committee, a political party, or any person. In the period thirty days before a primary election and sixty days before a special or general election, "political purpose" also means any activity in which a candidate's name, office, district, or any term meaning the same as "incumbent" or "challenger" is used in support of or in opposition to the election or nomination of a candidate to public office. The term does not include activities undertaken in the performance of a duty of a public office or any position taken in any bona fide news story, commentary, or editorial.

16.17. "Public office" means every office to which an individual can be elected by vote of the people under the laws of this state.

17.18. "Subsidiary" means an affiliate of a corporation under the control of the corporation directly or indirectly through one or more intermediaries.

19.18. "Ultimate and true source" means the person who knowingly contributed over two hundred dollars, adjusted for inflation, solely to influence a statewide election or an election for the legislative assembly.

SECTION 2. AMENDMENT. Subsection 4 of section 16.1-08.1-02.1 of the North Dakota Century Code is amended and reenacted as follows:

~~4.~~ The statement filed according to this section must show the following:

~~a.~~ The balance of the filer's convention accounts at the start and close of the reporting period;

~~b.~~ The total of all revenue received and expenditures made of two hundred dollars, adjusted for inflation, or less;

~~c.~~ The total of all revenue received and expenditures made in excess of two hundred dollars, adjusted for inflation;

~~d.~~ For each aggregated revenue received from a person in excess of two hundred dollars, adjusted for inflation:

~~(1)~~ The name of each person;

~~(2)~~ The mailing address of each person;

~~(3)~~ The date of the most recent receipt of revenue from each person; and

- 1 (4) The purpose or purposes for which the aggregated revenue total was
- 2 received from each person;
- 3 e. For each aggregated expenditure made to a person in excess of two hundred
- 4 dollars, adjusted for inflation;
- 5 (1) The name of each person or entity;
- 6 (2) The mailing address of each person or entity;
- 7 (3) The date of the most recent expense made to each person or entity; and
- 8 (4) The purpose or purposes for ~~which the aggregated expenditure~~ total was
- 9 disbursed to each person or entity; and
- 10 f. For each aggregated revenue from an individual which totals five thousand
- 11 dollars, adjusted for inflation, or more during the reporting period, the occupation,
- 12 employer, and principal place of business of the individual must be disclosed.

13 **SECTION 3. AMENDMENT.** Section 16.1 08.1 02.3 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **~~16.1 08.1 02.3. Pre-election, supplemental, and year-end campaign disclosure~~**
16 **~~statement requirements for candidates, candidate committees, multicandidate~~**
17 **~~committees, and nonstatewide political parties.~~**

- 18 1. Prior to the thirty first day before a primary, general, or special election, a candidate or
- 19 candidate committee formed on behalf of the candidate, a multicandidate political
- 20 committee, or a political party other than a statewide political party soliciting or
- 21 accepting contributions shall file a campaign disclosure statement that includes all
- 22 contributions received from January first through the fortieth day before the election. A
- 23 candidate whose name is not on the ballot and who is not seeking election through
- 24 write in votes, the candidate's candidate committee, and a political party that has not
- 25 endorsed or nominated any candidate in the election is not required to file a statement
- 26 under this subsection. The statement may be submitted for filing beginning on the
- 27 thirty ninth day before the election. The statement must include:
- 28 a. For each aggregated contribution from a contributor which totals in excess of two
- 29 hundred dollars, adjusted for inflation, received during the reporting period;
- 30 (1) The name and mailing address of the contributor;
- 31 (2) The total amount of the contribution; and

- 1 ~~_____ (3) The date the last contributed amount was received;~~
- 2 ~~_____ b. The total of all aggregated contributions from contributors which total in excess of~~
- 3 ~~two hundred dollars, adjusted for inflation, during the reporting period;~~
- 4 ~~_____ c. The total of all contributions received from contributors that contributed two~~
- 5 ~~hundred dollars, adjusted for inflation, or less each during the reporting period;~~
- 6 ~~and~~
- 7 ~~_____ d. For a statewide candidate, a candidate committee formed on behalf of a~~
- 8 ~~statewide candidate, and a statewide multicandidate committee, the balance of~~
- 9 ~~the campaign fund on the fortieth day before the election and the balance of the~~
- 10 ~~campaign fund on January first.~~
- 11 ~~_____ 2. Beginning on the thirty-ninth day before the election through the day before the~~
- 12 ~~election, a person that files a statement under subsection 1 must file a supplemental~~
- 13 ~~statement within forty-eight hours of the start of the day following the receipt of a~~
- 14 ~~contribution or aggregate contribution from a contributor which is in excess of five~~
- 15 ~~hundred dollars, adjusted for inflation. The statement must include:~~
- 16 ~~_____ a. The name and mailing address of the contributor; _____~~
- 17 ~~_____ b. The total amount of the contribution received during the reporting period; and~~
- 18 ~~_____ c. The date the last contributed amount was received.~~
- 19 ~~_____ 3. Prior to February first, a candidate or candidate committee, a multicandidate political~~
- 20 ~~committee, or a nonstatewide political party soliciting or accepting contributions shall~~
- 21 ~~file a campaign disclosure statement that includes all contributions received and~~
- 22 ~~expenditures, by expenditure category, made from January first through December~~
- 23 ~~thirty-first of the previous year. The statement may be submitted for filing beginning on~~
- 24 ~~January first. The statement must include:~~
- 25 ~~_____ a. For a statewide candidate, a candidate committee formed on behalf of a~~
- 26 ~~statewide candidate, and a statewide multicandidate committee, the balance of~~
- 27 ~~the campaign fund on January first and on December thirty-first;~~
- 28 ~~_____ b. For each aggregated contribution from a contributor which totals in excess of two~~
- 29 ~~hundred dollars, adjusted for inflation, received during the reporting period;~~
- 30 ~~_____ (1) The name and mailing address of the contributor;~~
- 31 ~~_____ (2) The total amount of the contribution; and~~

- 1 ~~_____ (3) The date the last contributed amount was received;~~
- 2 ~~_____ c. The total of all aggregated contributions from contributors which total in excess of~~
- 3 ~~two hundred dollars, adjusted for inflation, during the reporting period;~~
- 4 ~~_____ d. The total of all contributions received from contributors that contributed two~~
- 5 ~~hundred dollars, adjusted for inflation, or less each during the reporting period;~~
- 6 ~~and~~
- 7 ~~_____ e. The total of all other expenditures made during the previous year, separated into~~
- 8 ~~expenditure categories.~~
- 9 ~~_____ 4. A person required to file a statement under this section, other than a candidate for~~
- 10 ~~judicial office, county office, or city office, or a candidate committee for a candidate~~
- 11 ~~exempted under this subsection, shall report each aggregated contribution from a~~
- 12 ~~contributor which totals five thousand dollars, adjusted for inflation, or more during the~~
- 13 ~~reporting period. For these contributions from individuals, the statement must include~~
- 14 ~~the contributor's occupation, employer, and the employer's principal place of business.~~
- 15 ~~_____ 5. A candidate for city office in a city with a population under five thousand and a~~
- 16 ~~candidate committee for the candidate are exempt from this section.~~
- 17 ~~_____ 6. A candidate for county office and a candidate committee for a candidate for county~~
- 18 ~~office shall file statements under this chapter with the county auditor. A candidate for~~
- 19 ~~city office who is required to file a statement under this chapter and a candidate~~
- 20 ~~committee for such a candidate shall file statements with the city auditor. Any other~~
- 21 ~~person required to file a statement under this section shall file the statement with the~~
- 22 ~~secretary of state.~~
- 23 ~~_____ 7. The filing officer shall assess and collect fees for any reports filed after the filing~~
- 24 ~~deadline.~~
- 25 ~~_____ 8. To ensure accurate reporting and avoid commingling of campaign and personal funds,~~
- 26 ~~candidates shall use dedicated campaign accounts that are separate from any~~
- 27 ~~personal accounts.~~
- 28 ~~_____ **SECTION 4. AMENDMENT.** Section 16.1 08.1 02.4 of the North Dakota Century Code is~~
- 29 ~~amended and reenacted as follows:~~

**~~16.1 08.1 02.4. Pre election, supplemental, and year-end campaign disclosure
statement requirements for statewide political parties and certain political committees.~~**

~~1. Prior to the thirty first day before a primary, general, or special election, a statewide political party or a political committee not required to file statements under section 16.1 08.1 02.3 which is soliciting or accepting contributions shall file a campaign disclosure statement that includes all contributions received and expenditures made from January first through the fortieth day before the election. A political party that has not endorsed or nominated a candidate in an election is not required to file a statement under this subsection. A statement required to be filed under this subsection may be submitted for filing beginning on the thirty ninth day before the election. The statement must include:~~

~~a. For each aggregated contribution from a contributor which totals in excess of two hundred dollars, adjusted for inflation, received during the reporting period:~~

~~(1) The name and mailing address of the contributor;~~

~~(2) The total amount of the contribution; and~~

~~(3) The date the last contributed amount was received;~~

~~b. The total of all aggregated contributions from contributors which total in excess of two hundred dollars, adjusted for inflation, during the reporting period;~~

~~c. The total of all contributions received from contributors that contributed two hundred dollars, adjusted for inflation, or less each during the reporting period;~~

~~d. For each recipient of an expenditure from campaign funds in excess of two hundred dollars, adjusted for inflation, in the aggregate:~~

~~(1) The name and mailing address of the recipient;~~

~~(2) The total amount of the expenditure made to the recipient; and~~

~~(3) The date the last expended amount was made to the recipient;~~

~~e. The aggregate total of all expenditures from campaign funds in excess of two hundred dollars, adjusted for inflation;~~

~~f. The aggregate total of all expenditures from campaign funds of two hundred dollars, adjusted for inflation, or less; and~~

~~g. The balance of the campaign fund on the fortieth day before the election and balance of the campaign fund on January first.~~

- 1 — 2. Beginning on the thirty-ninth day before the election through the day before the
2 election, a person that files a statement under subsection 1 must file a supplemental
3 statement within forty-eight hours of the start of the day following the receipt of a
4 contribution or aggregate contribution from a contributor which is in excess of five
5 hundred dollars, adjusted for inflation. The statement must include:
 - 6 — a. The name and mailing address of the contributor;
 - 7 — b. The total amount of the contribution received during the reporting period; and
 - 8 — c. The date the last contributed amount was received.
- 9 — 3. Prior to February first, a statewide political party or a political committee that is not
10 required to file a statement under section 16.1-08.1-2.3 shall file a campaign
11 disclosure statement that includes all contributions received and expenditures made
12 from January first through December thirty-first of the previous year. The statement
13 may be submitted for filing beginning on January first. The statement must include:
 - 14 — a. For each aggregated contribution from a contributor which totals in excess of two
15 hundred dollars, adjusted for inflation, received during the reporting period:
 - 16 — (1) The name and mailing address of the contributor;
 - 17 — (2) The total amount of the contribution; and
 - 18 — (3) The date the last contributed amount was received;
 - 19 — b. The total of all aggregated contributions from contributors which total in excess of
20 two hundred dollars, adjusted for inflation, during the reporting period;
 - 21 — c. The total of all contributions received from contributors that contributed two
22 hundred dollars, adjusted for inflation, or less each during the reporting period;
 - 23 — d. For each recipient of an expenditure from campaign funds in excess of two
24 hundred dollars, adjusted for inflation, in the aggregate:
 - 25 — (1) The name and mailing address of the recipient;
 - 26 — (2) The total amount of the expenditure made to the recipient; and
 - 27 — (3) The date the last expended amount was made to the recipient;
 - 28 — e. The aggregate total of all expenditures from campaign funds in excess of two
29 hundred dollars, adjusted for inflation;
 - 30 — f. The aggregate total of all expenditures from campaign funds of two hundred
31 dollars, adjusted for inflation, or less; and

- 1 ~~g. The balance of the campaign fund on January first and December thirty first.~~
- 2 ~~4. A person required to file a statement under this section shall disclose each aggregated~~
- 3 ~~contribution from a contributor which totals five thousand dollars, adjusted for inflation,~~
- 4 ~~or more during the reporting period. For these contributions from individuals, the~~
- 5 ~~statement must include the contributor's occupation, employer, and the employer's~~
- 6 ~~principal place of business.~~
- 7 ~~5. Statements under this section must be filed with the secretary of state.~~
- 8 ~~6. The secretary of state shall assess and collect fees for any reports filed after the filing~~
- 9 ~~deadline.~~

10 **SECTION 5. AMENDMENT.** Section ~~16.1 08.1 03.1~~ of the North Dakota Century Code is

11 amended and reenacted as follows:

12 ~~**16.1 08.1 03.1. Special requirements for statements required of persons engaged in**~~

13 ~~**activities regarding ballot measures.**~~

- 14 ~~1. For each reportable contribution and expenditure under section 16.1 08.1 02.4, the~~
- 15 ~~threshold for reporting is one hundred dollars, adjusted for inflation, for any person~~
- 16 ~~engaged in activities described in subdivision e of subsection 1314 of section~~
- 17 ~~16.1 08.1 01.~~
- 18 ~~2. For contributions received from an out of state contributor, a person engaged in~~
- 19 ~~activities described in subdivision e of subsection 1314 of section 16.1 08.1 01 shall~~
- 20 ~~include the following information regarding each subcontributor that has stated a~~
- 21 ~~contribution is for the express purpose of furthering the passage or defeat of a ballot~~
- 22 ~~measure in the statements required under section 16.1 08.1 02.4:~~
- 23 ~~a. A designation as to whether any person contributed in excess of one hundred~~
- 24 ~~dollars, adjusted for inflation, of the total contribution;~~
- 25 ~~b. The name and mailing address of each subcontributor that contributed in excess~~
- 26 ~~of one hundred dollars, adjusted for inflation, of the total contribution;~~
- 27 ~~c. The contribution amounts of each disclosed subcontributor; and~~
- 28 ~~d. The occupation, employer, and address for the employer's principal place of~~
- 29 ~~business of each disclosed subcontributor.~~
- 30 ~~3. An initiative and referendum sponsoring committee also shall file a disclosure~~
- 31 ~~statement by the date the secretary of state approves the petition for circulation, and~~

shall file an additional statement on the date the petitions containing the required number of signatures are submitted to the secretary of state for review. The statements required under this subsection must be in the same form as the year end statements under section 16.1-08.1-02.4.

~~4. A sponsoring committee shall file a statement regarding its intent to compensate circulators before paying for petitions to be circulated.~~

SECTION 2. AMENDMENT. Section 16.1-08.1-03.7 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-03.7. Political committees that organize and register according to federal law that make independent expenditures or disbursements to nonfederal candidates, political parties, and political committees.

A political committee that organizes and registers according to federal law and makes an independent expenditure or makes a disbursement in excess of two hundred dollars to a nonfederal candidate seeking public office or to a political party or political committee in this state shall file a copy of that portion of the committee's federal report, and supplementary information as necessary under this section, detailing the independent expenditure or the disbursement made. The political committee shall file a copy of the committee's federal report with the secretary of state at the time of filing the report with the applicable federal agency. The report must include:

1. The name, mailing address, and treasurer of the political committee;
2. The recipient's name and mailing address; ~~and~~
3. The date and amount of the independent expenditure or disbursement; and
4. The ultimate and true source of funds listed by contributor and subcontributor of any amount over two hundred dollars collected or used to make the independent expenditure or disbursement, including:
 - a. The name and address of the contributor;
 - b. The total amount of the contribution; and
 - c. The date the last contribution was received.

SECTION 3. AMENDMENT. Section 16.1-08.1-04.1 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-04.1. Personal use of contributions prohibited.

1. A candidate may not use any contribution received by the candidate, the candidate's candidate committee, or a multicandidate political committee to:
 - a. Give a personal benefit to the candidate or another person;
 - b. Make a loan to another person;
 - c. Knowingly pay more than the fair market value for goods or services purchased for the campaign; or
 - d. Pay a criminal fine or civil penalty.
2. For the first violation, the secretary of state shall assess a civil penalty of five hundred dollars upon any person who knowingly violates this section. The assessment of a civil penalty may be appealed to the district court of ~~Burleigh County~~ the county where the candidate resides. For a second and subsequent knowing violation of this section, the person is guilty of a class B misdemeanor.

SECTION 4. A new section to chapter 16.1-08.1 of the North Dakota Century Code is created and enacted as follows:

Ultimate and true source of funds - Required identification - Penalty.

1. In any report under this chapter which requires the identification of a contributor or subcontributor, the ultimate and true source of funds must be identified.
2. A resident taxpayer may commence an action ~~in a district court of this state~~ against a person required to comply with this section ~~in the district court of the county where the person required to comply with this section resides~~ to compel compliance if all other enforcement measures under this chapter have been exhausted and the taxpayer reasonably believes the person has failed to comply with this section. A failure to comply with this section must be proved by clear and convincing evidence.

SECTION 5. AMENDMENT. Section 16.1-08.1-06.2 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-06.2. Secretary of state to provide instructions, make adjustments for inflation, and conduct training.

The secretary of state shall provide instructions and conduct training for the purpose of promoting uniform application of campaign finance and disclosure requirements and the uniform filing of statements, registrations, or reports according to this chapter. The secretary also shall

determine adjustments for inflation of the reporting thresholds in this chapter and instruct persons submitting reports under this chapter of the adjustments. On January first of each year, the secretary shall determine whether the accumulated change in the consumer price index for all urban consumers (all items, United States city average), as applied to each reporting threshold in this chapter, would result in an adjustment of at least ten dollars of the threshold in effect on that date. If so, the secretary shall deem the reporting threshold adjusted by ten dollars.

SECTION 6. AMENDMENT. Section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

28-32-01. Definitions.

In this chapter, unless the context or subject matter otherwise provides:

1. "Adjudicative proceeding" means an administrative matter resulting in an agency issuing an order after an opportunity for hearing is provided or required. An adjudicative proceeding includes administrative matters involving a hearing on a complaint against a specific-named respondent; a hearing on an application seeking a right, privilege, or an authorization from an agency, such as a ratemaking or licensing hearing; or a hearing on an appeal to an agency. An adjudicative proceeding includes reconsideration, rehearing, or reopening. Once an adjudicative proceeding has begun, the adjudicative proceeding includes any informal disposition of the administrative matter under section 28-32-22 or another specific statute or rule, unless the matter has been specifically converted to another type of proceeding under section 28-32-22. An adjudicative proceeding does not include a decision or order to file or not to file a complaint, or to initiate an investigation, an adjudicative proceeding, or any other proceeding before the agency, or another agency, or a court. An adjudicative proceeding does not include a decision or order to issue, reconsider, or reopen an order that precedes an opportunity for hearing or that under another section of this code is not subject to review in an adjudicative proceeding. An adjudicative proceeding does not include rulemaking under this chapter.
2. "Administrative agency" or "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, employees, or other persons directly or indirectly

purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an administrative agency must be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:

- a. The office of management and budget except with respect to rules made under section 32-12.2-14, rules relating to conduct on the capitol grounds and in buildings located on the capitol grounds under section 54-21-18, rules relating to the classified service as authorized under section 54-44.3-07, and rules relating to state purchasing practices as required under section 54-44.4-04.
- b. The adjutant general with respect to the department of emergency services.
- c. The council on the arts.
- d. The state auditor.
- e. The department of commerce with respect to the division of economic development and finance.
- f. The dairy promotion commission.
- g. The education factfinding commission.
- h. The educational technology council.
- i. The board of equalization.
- j. The board of higher education.
- k. The Indian affairs commission.
- l. The industrial commission with respect to the activities of the Bank of North Dakota, North Dakota housing finance agency, public finance authority, North Dakota mill and elevator association, North Dakota farm finance agency, the North Dakota transmission authority, and the North Dakota pipeline authority.
- m. The department of corrections and rehabilitation except with respect to the activities of the division of adult services under chapter 54-23.4.
- n. The pardon advisory board.
- o. The parks and recreation department.
- p. The parole board.
- q. The state fair association.

- 1 r. The attorney general with respect to activities of the state toxicologist and the
- 2 state crime laboratory.
- 3 s. The administrative committee on veterans' affairs except with respect to rules
- 4 relating to the supervision and government of the veterans' home and the
- 5 implementation of programs or services provided by the veterans' home.
- 6 t. The industrial commission with respect to the lignite research fund except as
- 7 required under section 57-61-01.5.
- 8 u. The attorney general with respect to guidelines adopted under section 12.1-32-15
- 9 for the risk assessment of sexual offenders, the risk level review process, and
- 10 public disclosure of information under section 12.1-32-15.
- 11 v. The commission on legal counsel for indigents.
- 12 w. The attorney general with respect to twenty-four seven sobriety program
- 13 guidelines and program fees.
- 14 x. The industrial commission with respect to approving or setting water rates under
- 15 chapter 61-40.
- 16 3. "Agency head" means an individual or body of individuals in whom the ultimate legal
- 17 authority of the agency is vested by law.
- 18 4. "Commission" means the North Dakota ethics commission established by article XIV
- 19 of the Constitution of North Dakota.
- 20 5. "Complainant" means any person who files a complaint before an administrative
- 21 agency pursuant to section 28-32-21 and any administrative agency that, when
- 22 authorized by law, files such a complaint before such agency or any other agency.
- 23 5.6. "Hearing officer" means any agency head or one or more members of the agency
- 24 head when presiding in an administrative proceeding, or, unless prohibited by law, one
- 25 or more other persons designated by the agency head to preside in an administrative
- 26 proceeding, an administrative law judge from the office of administrative hearings, or
- 27 any other person duly assigned, appointed, or designated to preside in an
- 28 administrative proceeding pursuant to statute or rule.
- 29 6.7. "License" means a franchise, permit, certification, approval, registration, charter, or
- 30 similar form of authorization required by law.

1 ~~7-8.~~ "Order" means any agency action of particular applicability which determines the legal
2 rights, duties, privileges, immunities, or other legal interests of one or more specific
3 persons. The term does not include an executive order issued by the governor.

4 ~~8-9.~~ "Party" means each person named or admitted as a party or properly seeking and
5 entitled as of right to be admitted as a party. An administrative agency may be a party.
6 In a hearing for the suspension, revocation, or disqualification of an operator's license
7 under title 39, the term may include each city and each county in which the alleged
8 conduct occurred, but the city or county may not appeal the decision of the hearing
9 officer.

10 ~~9-10.~~ "Person" includes an individual, association, partnership, corporation, limited liability
11 company, the commission, a state governmental agency or governmental subdivision,
12 or an agency of such governmental subdivision.

13 ~~10-11.~~ "Relevant evidence" means evidence having any tendency to make the existence of
14 any fact that is of consequence to the determination of the administrative action more
15 probable or less probable than it would be without the evidence.

16 ~~11-12.~~ "Rule" means the whole or a part of an agency or commission statement of general
17 applicability which implements or prescribes law or policy or the organization,
18 procedure, or practice requirements of the agency or commission. The term includes
19 the adoption of new rules and the amendment, repeal, or suspension of an existing
20 rule. The term does not include:

21 a. A rule concerning only the internal management of an agency or the commission
22 which does not directly or substantially affect the substantive or procedural rights
23 or duties of any segment of the public.

24 b. A rule that sets forth criteria or guidelines to be used by the staff of an agency or
25 the commission in the performance of audits, investigations, inspections, and
26 settling commercial disputes or negotiating commercial arrangements, or in the
27 defense, prosecution, or settlement of cases, if the disclosure of the
28 ~~statement~~rule would:

29 (1) Enable law violators to avoid detection;

30 (2) Facilitate disregard of requirements imposed by law; or

- (3) Give a clearly improper advantage to persons who are in an adverse position to the state.
- c. A rule establishing specific prices to be charged for particular goods or services sold by an agency.
- d. A rule concerning only the physical servicing, maintenance, or care of agency-owned ~~or, agency-operated, commission-owned, or~~ commission-operated facilities or property.
- e. A rule relating only to the use of a particular facility or property owned, operated, or maintained by the state or any of its subdivisions, if the substance of the rule is adequately indicated by means of signs or signals to persons who use the facility or property.
- f. A rule concerning only inmates of a correctional or detention facility, students enrolled in an educational institution, or patients admitted to a hospital, if adopted by that facility, institution, or hospital.
- g. A form whose contents or substantive requirements are prescribed by rule or statute or are instructions for the execution or use of the form.
- h. An agency or commission budget.
- i. An opinion of the attorney general.
- j. A rule adopted by an agency selection committee under section 54-44.7-03.
- k. Any material, including a guideline, interpretive statement, statement of general policy, manual, brochure, or pamphlet, which is explanatory and not intended to have the force and effect of law.

~~SECTION 6. AMENDMENT. Section 28-32-02 of the North Dakota Century Code is amended and reenacted as follows:~~

~~28-32-02. Rulemaking power of agency authority — Organizational rule.~~

~~1. The authority of an administrative agency to adopt administrative rules is authority delegated by the legislative assembly. As part of that delegation, the legislative assembly reserves to itself the authority to determine when and if rules of administrative agencies are effective. Every administrative agency may adopt, amend, or repeal reasonable rules in conformity with this chapter and any statute administered or enforced by the agency.~~

~~2. In addition to other rulemaking requirements imposed by law, each agency may include in its rules a description of that portion of its organization and functions subject to this chapter and may include a statement of the general course and method of its operations and how the public may obtain information or make submissions or requests.~~

~~3. The authority of the commission to adopt rules arises from article XIV of the Constitution of North Dakota. The commission shall follow the process, and meet the requirements, as specified in this chapter to adopt, amend, or repeal its rules.~~

SECTION 7. AMENDMENT. Section 28-32-03 of the North Dakota Century Code is amended and reenacted as follows:

28-32-03. Emergency rules.

1. If the ~~commission or an~~ agency, with the approval of the governor, or the commission finds that emergency rulemaking is necessary, the commission or agency may declare the proposed rule to be an interim final rule effective on a date no earlier than the date of filing with the legislative council of the notice required by section 28-32-10.
2. A proposed rule may be given effect on an emergency basis under this section if any of the following grounds exists regarding that rule:
 - a. Imminent peril threatens public health, safety, or welfare, which would be abated by emergency effectiveness;
 - b. A delay in the effective date of the rule is likely to cause a loss of funds appropriated to support a duty imposed by law upon the commission or agency;
 - c. Emergency effectiveness is reasonably necessary to avoid a delay in implementing an appropriations measure; or
 - d. Emergency effectiveness is necessary to meet a mandate of federal law.
3. A final rule adopted after consideration of all written and oral submissions respecting the interim final rule, which is substantially similar to the interim final rule, is effective as of the declared effective date of the interim final rule.
4. The commission's or agency's finding, and a brief statement of the commission's or agency's reasons for the finding, must be filed with the legislative council with the final adopted emergency rule.

1 5. The commission or agency shall attempt to make interim final rules known to persons
2 who the commission or agency can reasonably be expected to believe may have a
3 substantial interest in them. As used in this subsection, "substantial interest" means an
4 interest in the effect of the rules which surpasses the common interest of all citizens.

5 ~~An~~The commission or an agency adopting emergency rules shall comply with the
6 notice requirements of section 28-32-10 which relate to emergency rules and shall
7 provide notice to the chairman of the administrative rules committee of the emergency
8 status, declared effective date, and grounds for emergency status of the rules under
9 subsection 2. When notice of emergency rule adoption is received, the legislative
10 council shall publish the notice and emergency rules on its website.

11 6. An interim final rule is ineffective one hundred eighty days after its declared effective
12 date unless first adopted as a final rule.

13 **SECTION 8. AMENDMENT.** Section 28-32-06 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **28-32-06. Force and effect of rules.**

16 Upon becoming effective, rules have the force and effect of law until amended or repealed
17 by the agency or commission, declared invalid by a final court decision, suspended or found to
18 be void by the administrative rules committee, or determined repealed by the legislative council
19 because the authority for adoption of the rules is repealed or transferred to another agency, or
20 the Constitution of North Dakota is amended to eliminate the authority.

21 **SECTION 9. AMENDMENT.** Section 28-32-07 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **28-32-07. Deadline for rules to implement statutory change.**

24 Any rule change, including a creation, amendment, or repeal, made to implement a
25 statutory change must be adopted and filed with the legislative council within nine months of the
26 effective date of the statutory change. If an agency or the commission needs additional time for
27 the rule change, a request for additional time must be made to the legislative council. The
28 legislative council may extend the time within which the agency or commission must adopt the
29 rule change if the request by the agency or commission is supported by evidence that the
30 agency or commission needs more time through no deliberate fault of its own.

SECTION 10. AMENDMENT. Section 28-32-08 of the North Dakota Century Code is amended and reenacted as follows:

28-32-08. Regulatory analysis.

1. An agency or the commission shall issue a regulatory analysis of a proposed rule if:
 - a. Within twenty days after the last published notice date of a proposed rule hearing, a written request for the analysis is filed by the governor or a member of the legislative assembly; or
 - b. The proposed rule is expected to have an impact on the regulated community in excess of fifty thousand dollars. The analysis under this subdivision must be available on or before the first date of public notice as provided for in section 28-32-10.
2. The regulatory analysis must contain:
 - a. A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;
 - b. A description of the probable impact, including economic impact, of the proposed rule;
 - c. The probable costs to the agency or commission of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues; and
 - d. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency or commission and the reasons why the methods were rejected in favor of the proposed rule.
3. Each regulatory analysis must include quantification of the data to the extent practicable.
4. The agency or commission shall mail or deliver a copy of the regulatory analysis to any person who requests a copy of the regulatory analysis. The agency or commission may charge a fee for a copy of the regulatory analysis as allowed under section 44-04-18.
5. If required under subsection 1, the preparation and issuance of a regulatory analysis is a mandatory duty of the agency or commission proposing a rule. Errors in a regulatory

analysis, including erroneous determinations concerning the impact of the proposed rule on the regulated community, are not a ground upon which the invalidity of a rule may be asserted or declared.

SECTION 11. AMENDMENT. Section 28-32-08.1 of the North Dakota Century Code is amended and reenacted as follows:

28-32-08.1. Rules affecting small entities - Analysis - Economic impact statements - Judicial review.

1. As used in this section:

a. "Small business" means a business entity, including its affiliates, which:

(1) Is independently owned and operated; and

(2) Employs fewer than twenty-five full-time employees or has gross annual sales of less than two million five hundred thousand dollars;

b. "Small entity" includes small business, small organization, and small political subdivision;

c. "Small organization" means any not-for-profit enterprise that is independently owned and operated and is not dominant in its field; and

d. "Small political subdivision" means a political subdivision with a population of less than five thousand.

2. Before adoption of any proposed rule, the adopting agency or the commission shall prepare a regulatory analysis in which, consistent with public health, safety, and welfare, the agency or commission considers utilizing regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small entities. The agency or commission shall consider each of the following methods of reducing impact of the proposed rule on small entities:

a. Establishment of less stringent compliance or reporting requirements for small entities;

b. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities;

c. Consolidation or simplification of compliance or reporting requirements for small entities;

- 1 d. Establishment of performance standards for small entities to replace design or
- 2 operational standards required in the proposed rule; and
- 3 e. Exemption of small entities from all or any part of the requirements contained in
- 4 the proposed rule.
- 5 3. Before adoption of any proposed rule that may have an adverse impact on small
- 6 entities, the adopting agency or the commission shall prepare an economic impact
- 7 statement that includes consideration of:
- 8 a. The small entities subject to the proposed rule;
- 9 b. The administrative and other costs required for compliance with the proposed
- 10 rule;
- 11 c. The probable cost and benefit to private persons and consumers who are
- 12 affected by the proposed rule;
- 13 d. The probable effect of the proposed rule on state revenues; and
- 14 e. Any less intrusive or less costly alternative methods of achieving the purpose of
- 15 the proposed rule.
- 16 4. For any rule subject to this section, a small entity that is adversely affected or
- 17 aggrieved by final agency or commission action is entitled to judicial review of agency
- 18 or commission compliance with the requirements of this section. A small entity seeking
- 19 judicial review under this section must file a petition for judicial review within one year
- 20 from the date of final agency or commission action.
- 21 5. This section does not apply to any agency that is an occupational or professional
- 22 licensing authority, nor does this section apply to the following agencies or divisions of
- 23 agencies:
- 24 a. Council on the arts.
- 25 b. Beef commission.
- 26 c. Dairy promotion commission.
- 27 d. Dry bean council.
- 28 e. Highway patrolmen's retirement board.
- 29 f. Indian affairs commission.
- 30 g. Board for Indian scholarships.
- 31 h. State personnel board.

- 1 i. Potato council.
- 2 j. Board of public school education.
- 3 k. Real estate trust account committee.
- 4 l. Seed commission.
- 5 m. Soil conservation committee.
- 6 n. Oilseed council.
- 7 o. Wheat commission.
- 8 p. State seed arbitration board.
- 9 q. North Dakota lottery.

10 6. This section does not apply to rules mandated by federal law.

11 7. The adopting agency or the commission shall provide the administrative rules
12 committee copies of any regulatory analysis or economic impact statement, or both,
13 prepared under this section when the committee is considering the associated rules.

14 **SECTION 12. AMENDMENT.** Section 28-32-08.2 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **28-32-08.2. Fiscal notes for administrative rules.**

17 When an agency or the commission presents rules for administrative rules committee
18 consideration, the agency or commission shall provide a fiscal note or a statement in its
19 testimony that the rules have no fiscal effect. A fiscal note must reflect the effect of the rules
20 changes on state revenues and expenditures, including any effect on funds controlled by the
21 agency or commission.

22 **SECTION 13. AMENDMENT.** Section 28-32-09 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **28-32-09. Takings assessment.**

- 25 1. An agency or the commission shall prepare a written assessment of the constitutional
26 takings implications of a proposed rule that may limit the use of private real property.
27 The ~~agency's~~ assessment must:
 - 28 a. Assess the likelihood that the proposed rule may result in a taking or regulatory
29 taking.
 - 30 b. Clearly and specifically identify the purpose of the proposed rule.

- 1 c. Explain why the proposed rule is necessary to substantially advance that purpose
- 2 and why no alternative action is available that would achieve the agency's or
- 3 commission's goals while reducing the impact on private property owners.
- 4 d. Estimate the potential cost to the government if a court determines that the
- 5 proposed rule constitutes a taking or regulatory taking.
- 6 e. Identify the source of payment within the agency's or commission's budget for
- 7 any compensation that may be ordered.
- 8 f. Certify that the benefits of the proposed rule exceed the estimated compensation
- 9 costs.
- 10 2. Any private landowner who is or may be affected by a rule that limits the use of the
- 11 landowner's private real property may request in writing that the agency or
- 12 commission reconsider the application or need for the rule. Within thirty days of
- 13 receiving the request, the agency or commission shall consider the request and shall
- 14 in writing inform the landowner whether the agency or commission intends to keep the
- 15 rule in place, modify application of the rule, or repeal the rule.
- 16 3. In an agency's analysis of the takings implications of a proposed rule, "taking" means
- 17 the taking of private real property, as defined in section 47-01-03, by government
- 18 action which requires compensation to the owner of that property by the fifth or
- 19 fourteenth amendment to the Constitution of the United States or section 16 of article I
- 20 of the Constitution of North Dakota. "Regulatory taking" means a taking of real
- 21 property through the exercise of the police and regulatory powers of the state which
- 22 reduces the value of the real property by more than fifty percent. However, the
- 23 exercise of a police or regulatory power does not effect a taking if it substantially
- 24 advances legitimate state interests, does not deny an owner economically viable use
- 25 of the owner's land, or is in accordance with applicable state or federal law.

26 **SECTION 14. AMENDMENT.** Section 28-32-10 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **28-32-10. Notice of rulemaking - Hearing date.**

- 29 1. An agency or the commission shall prepare a full notice and an abbreviated notice of
- 30 rulemaking.

- 1 a. The agency's full notice of the proposed adoption, amendment, or repeal of a rule
2 must include a short, specific explanation of the proposed rule and the purpose of
3 the proposed rule, identify the emergency status and declared effective date of
4 any emergency rules, include a determination of whether the proposed
5 rulemaking is expected to have an impact on the regulated community in excess
6 of fifty thousand dollars, identify at least one location where interested persons
7 may review the text of the proposed rule, provide the address to which written
8 comments concerning the proposed rule may be sent, provide the deadline for
9 submission of written comments, provide a telephone number and post-office or
10 electronic mail address at which a copy of the rules and regulatory analysis may
11 be requested, and, in the case of a substantive rule, provide the time and place
12 set for each oral hearing. ~~The~~An agency's full notice must include a statement of
13 the bill number and general subject matter of any legislation, enacted during the
14 most recent session of the legislative assembly, which is being implemented by
15 the proposed rule. The commission's full notice must include a statement of the
16 provision of the Constitution of North Dakota or the bill number and general
17 subject matter of any legislation enacted during the most recent session of the
18 legislative assembly which is being implemented by the proposed rule. The
19 agency's full notice must be filed with the legislative council, accompanied by a
20 copy of the proposed rules.
- 21 b. The agency or commission shall request publication of an abbreviated
22 newspaper publication notice at least once in each official county newspaper
23 published in this state. The abbreviated newspaper publication of notice must be
24 in a display-type format with a minimum width of one column of approximately
25 two inches [5.08 centimeters] and a minimum depth of approximately three
26 inches [7.62 centimeters] and with a headline describing the general topic of the
27 proposed rules. The notice must also include the telephone number or address to
28 use to obtain a copy of the proposed rules, identification of the emergency status
29 and declared effective date of any emergency rules, the address to use and the
30 deadline to submit written comments, and the location, date, and time of the
31 public hearing on the rules.

2. The agency or commission shall mail or deliver by electronic mail a copy of the agency's full notice and proposed rule to each member of the legislative assembly whose name appeared as a sponsor or cosponsor of legislation, enacted during the most recent session of the legislative assembly, which is being implemented by the proposed rule and to each person who has made a timely request to the agency or commission for a copy of the notice and proposed rule. The agency or commission may mail or otherwise provide a copy of the agency's full notice to any person who is likely to be an interested person. The agency or commission may charge persons who are not members of the legislative assembly fees for copies of the proposed rule as allowed under section 44-04-18.
3. In addition to the other notice requirements of this subsection, the superintendent of public instruction shall provide notice of any proposed rulemaking by the superintendent of public instruction to each association with statewide membership whose primary focus is elementary and secondary education issues which has requested to receive notice from the superintendent under this subsection and to the superintendent of each public school district in this state, or the president of the school board for school districts that have no superintendent, at least twenty days before the date of the hearing described in the notice. Notice provided by the superintendent of public instruction under this section must be by first-class mail. However, upon request of a group or person entitled to notice under this section, the superintendent of public instruction shall provide the group or person notice by electronic mail.
4. The legislative council shall establish standard procedures for the commission and all agencies to follow in complying with the provisions of this section and a procedure to allow any person to request and receive mailed copies of all filings made by agencies and the commission pursuant to this section. The legislative council may charge an annual fee as established by the administrative rules committee for providing copies of the filings.
5. At least twenty days must elapse between the date of the publication of the notice and the date of the hearing. Within fifteen business days after receipt of a notice under this section, a copy of the notice must be mailed by the legislative council to any person who has paid the annual fee established under subsection 4.

1 **SECTION 15. AMENDMENT.** Section 28-32-11 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **28-32-11. Conduct of hearings - Notice of administrative rules committee**
4 **consideration - Consideration and written record of comments.**

5 The agency or commission shall adopt a procedure whereby all interested persons are
6 afforded reasonable opportunity to submit data, views, or arguments, orally or in writing,
7 concerning the proposed rule, including data respecting the impact of the proposed rule. The
8 agency or commission shall adopt a procedure to allow interested parties to request and
9 receive notice from the agency or commission of the date and place the rule will be reviewed by
10 the administrative rules committee. In case of substantive rules, the agency or commission shall
11 conduct an oral hearing. The agency or commission shall consider fully all written and oral
12 submissions respecting a proposed rule prior to the adoption, amendment, or repeal of any rule
13 not of an emergency nature. The agency or commission shall make a written record of its
14 consideration of all written and oral submissions contained in the rulemaking record respecting
15 a proposed rule.

16 **SECTION 16. AMENDMENT.** Section 28-32-12 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **28-32-12. Comment period.**

19 The agency or commission shall allow, after the conclusion of any rulemaking hearing, a
20 comment period of at least ten days during which data, views, or arguments concerning the
21 proposed rulemaking will be received by the agency or commission and made a part of the
22 rulemaking record to be considered by the agency or commission.

23 ~~**SECTION 17. AMENDMENT. Section 28-32-14 of the North Dakota Century Code is**~~
24 ~~**amended and reenacted as follows:**~~

25 ~~**28-32-14. Attorney general review of rules.**~~

26 ~~Every proposed rule proposed by any administrative agency must be submitted to the~~
27 ~~attorney general for an opinion as to its legality before final adoption, and the attorney general~~
28 ~~promptly shall furnish each such opinion. The attorney general may not approve any rule as to~~
29 ~~legality, and shall advise the agency or commission of any necessary rewording or revision of~~
30 ~~the rule, when the:~~

- 1 ~~1. The rule exceeds the statutory authority of the agency, or the statutory or constitutional~~
- 2 ~~authority of the commission;~~
- 3 ~~2. The rule is written in a manner that is not concise or easily understandable; or when~~
- 4 ~~the~~
- 5 ~~3. The procedural requirements for adoption of the rule in this chapter are not~~
- 6 ~~substantially met. The attorney general shall advise an agency of any revision or~~
- 7 ~~rewording of a rule necessary to correct objections as to legality.~~

8 **SECTION 17. AMENDMENT.** Section 28-32-15 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **28-32-15. Filing of rules for publication - Effective date of rules.**

- 11 1. A copy of each rule adopted by an administrative agency or the commission, a copy of
- 12 each written comment and a written summary of each oral comment on the rule, and
- 13 the attorney general's opinion on the rule, if any, must be filed by the adopting agency
- 14 or commission with the legislative council for publication of the rule in the North
- 15 Dakota Administrative Code.
- 16 2. a. Nonemergency rules approved by the attorney general as to legality, adopted by
- 17 an administrative agency or the commission, ~~and~~ filed with the legislative council,
- 18 and not voided or held for consideration by the administrative rules committee
- 19 become effective according to the following schedule:
 - 20 (1) Rules filed with the legislative council from August second through
 - 21 November first become effective on the immediately succeeding January
 - 22 first.
 - 23 (2) Rules filed with the legislative council from November second through
 - 24 February first become effective on the immediately succeeding April first.
 - 25 (3) Rules filed with the legislative council from February second through May
 - 26 first become effective on the immediately succeeding July first.
 - 27 (4) Rules filed with the legislative council from May second through August first
 - 28 become effective on the immediately succeeding October first.
- 29 b. If publication is delayed for any reason other than action of the administrative
- 30 rules committee, nonemergency rules, unless otherwise provided, become
- 31 effective when publication would have occurred but for the delay.

- 1 c. A rule held for consideration by the administrative rules committee becomes
2 effective on the first effective date of rules under the schedule in subdivision a
3 following the meeting at which that rule is reconsidered by the committee.

4 **SECTION 18. AMENDMENT.** Section 28-32-16 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **28-32-16. Petition for reconsideration of rule - Hearing by agency.**

7 Any person substantially interested in the effect of a rule adopted by an administrative
8 agency or the commission may petition ~~such~~ the agency or commission for a reconsideration of
9 any ~~such~~ the rule or for an amendment or repeal ~~thereof. Such of the rule.~~ The petition must
10 state clearly and concisely the petitioners' alleged grounds for ~~such~~ reconsideration or ~~for~~ the
11 proposed repeal or amendment of ~~such~~ the rule. The agency or commission may grant the
12 petitioner a public hearing ~~upon such~~ on the terms and conditions as the agency may
13 ~~prescribe~~ prescribes.

14 ~~SECTION 20. AMENDMENT.~~ Section ~~28-32-17~~ of the North Dakota Century Code is
15 amended and reenacted as follows:

16 ~~28-32-17. Administrative rules committee objection.~~

17 ~~If the legislative management's administrative rules committee objects to all or any portion~~
18 ~~of a rule because the committee deems it to be unreasonable, arbitrary, capricious, or beyond~~
19 ~~the authority delegated to the adopting agency or commission, the committee may file that~~
20 ~~objection in certified form with the legislative council. The filed objection must contain a concise~~
21 ~~statement of the committee's reasons for its action.~~

22 ~~1. The legislative council shall attach to each objection a certification of the time and date~~
23 ~~of its filing and, as soon as possible, shall transmit a copy of the objection and the~~
24 ~~certification to the agency or commission adopting the rule in question. The legislative~~
25 ~~council also shall maintain a permanent register of all committee objections.~~

26 ~~2. The legislative council shall publish an objection filed pursuant to this section in~~
27 ~~the next issue of the code supplement. In case of a filed committee objection to a rule~~
28 ~~subject to the exceptions of the definition of rule in section 28-32-01, the agency or~~
29 ~~commission shall indicate the existence of that objection adjacent to the rule in any~~
30 ~~compilation containing that rule.~~

3. Within fourteen days after the filing of a committee objection to a rule, the adopting agency or commission shall respond in writing to the committee. After receipt of the response, the committee may withdraw or modify its objection.

4. After the filing of a committee objection, the burden of persuasion is upon the agency or commission in any action for judicial review or for enforcement of the rule to establish that the whole or portion thereof the rule objected to is within the procedural and substantive authority delegated to the agency or commission. If the agency or commission fails to meet its burden of persuasion, the court shall declare the whole or portion of the rule objected to invalid and judgment must be rendered against the agency or commission for court costs. These court costs must include a reasonable attorney's fee and must be payable from the appropriation of the agency or commission which adopted the rule in question.

SECTION 21. AMENDMENT. Section 28-32-18 of the North Dakota Century Code is amended and reenacted as follows:

28-32-18. Administrative rules committee may void rule - Grounds - Amendment by agreement of agency and committee.

1. The legislative management's administrative rules committee may find that all or any portion of a rule is void if that rule is initially considered by the committee not later than the fifteenth day of the month before the date of the administrative code supplement in which the rule change is scheduled to appear. The administrative rules committee may find a rule or portion of a rule void if the committee makes the specific finding that, with regard to that rule or portion of a rule, there is:

a. An absence of statutory authority under statute or the constitution.

b. An emergency relating to public health, safety, or welfare.

c. For rules proposed by an agency, a failure to comply with express legislative intent or to substantially meet the procedural requirements of this chapter for adoption of the rule.

d. For rules proposed by the commission, a failure to substantially meet the procedural requirements for this chapter for adoption of the rule.

e. A conflict with state law.

e.f. Arbitrariness and capriciousness.

~~f.g. A failure to make a written record of its consideration of written and oral submissions respecting the rule under section 28-32-11.~~

~~2. The administrative rules committee may find a rule void at the meeting at which the rule is initially considered by the committee or may hold consideration of that rule for one subsequent meeting. If no representative of the agency or commission appears before the administrative rules committee when rules are scheduled for committee consideration, those rules are held over for consideration at the next subsequent committee meeting. Rules are not considered initially considered by the committee under this subsection until a representative of the agency or commission appears before the administrative rules committee when the rules are scheduled for committee consideration. If no representative of the agency or commission appears before the administrative rules committee meeting to which rules are held over for consideration, the rules are void if the rules were adopted as emergency rules and for rules not adopted as emergency rules the administrative rules committee may void the rules, allow the rules to become effective, or hold over consideration of the rules to the next subsequent committee meeting. Within three business days after the administrative rules committee finds that a rule is void, the legislative council shall provide written notice of that finding and the committee's specific finding under subdivisions a through f of subsection 1 to the adopting agency or commission and to the chairman of the legislative management. Within fourteen days after receipt of the notice, the adopting agency or commission may file a petition with the chairman of the legislative management for review by the legislative management of the decision of the administrative rules committee. If the adopting agency or commission does not file a petition for review, the rule becomes void on the fifteenth day after the notice from the legislative council to the adopting agency or commission. If within sixty days after receipt of the petition from the adopting agency or commission the legislative management has not disapproved by motion the finding of the administrative rules committee, the rule is void.~~

~~3. An agency or the commission may amend or repeal a rule or create a related rule if, after consideration of rules by the administrative rules committee, the agency or commission and the committee agree that the rule amendment, repeal, or creation is~~

~~necessary to address any of the considerations under subsection 1. A rule amended, repealed, or created under this subsection is not subject to the other requirements of this chapter relating to adoption of administrative rules and may be published by the legislative council as amended, repealed, or created. If requested by the agency, commission, or any interested party, a rule amended, repealed, or created under this subsection must be reconsidered by the administrative rules committee at a subsequent meeting at which public comment on the agreed rule change must be allowed.~~

SECTION 19. AMENDMENT. Section 28-32-18.1 of the North Dakota Century Code is amended and reenacted as follows:

28-32-18.1. Administrative rules committee review of existing administrative rules.

1. Upon request by the administrative rules committee, an administrative agency or the commission shall brief the committee on its existing administrative rules and point out any provisions that appear to be obsolete and any areas in which statutory or constitutional authority has changed or been repealed since the rules were adopted or amended.
2. An agency or the commission may amend or repeal a rule without complying with the other requirements of this chapter relating to adoption of administrative rules and may resubmit the change to the legislative council for publication provided:
 - a. The agency or commission initiates the request to the administrative rules committee for consideration of the amendment or repeal;
 - b. The agency or commission provides notice to the regulated community, in a manner reasonably calculated to provide notice to those persons interested in the rule, of the time and place the administrative rules committee will consider the request for amendment or repeal of the rule; and
 - c. The agency or commission and the administrative rules committee agree the rule amendment or repeal eliminates a provision that is obsolete or no longer in compliance with law and that no detriment would result to the substantive rights of the regulated community from the amendment or repeal.

SECTION 20. AMENDMENT. Subsection 2 of section 28-32-19 of the North Dakota Century Code is amended and reenacted as follows:

- 1 2. The legislative council may prescribe at the format, style, and arrangement for rules
2 ~~which are~~ to be published in the code and may refuse to accept the filing of any rule
3 that is not in substantial compliance therewith with the format, style, and arrangement.
4 In arranging rules for publication, the legislative council may make ~~such~~ corrections in
5 spelling, grammatical construction, format, and punctuation of the rules as
6 ~~determined~~ the legislative council determines are proper. The legislative council shall
7 keep and maintain a permanent code of all rules filed, including superseded and
8 repealed rules, which must be open to public inspection during office hours.

9 **SECTION 21. AMENDMENT.** Subsection 4 of section 28-32-19 of the North Dakota
10 Century Code is amended and reenacted as follows:

- 11 4. The legislative council, with the consent of the adopting agency or commission, may
12 omit from the code or code supplement any rule the publication of which would be
13 unduly cumbersome, expensive, or otherwise inexpedient, if the rule in printed or
14 duplicated form is made available on application to the agency or commission, and if
15 the code or code supplement contains a notice stating the general subject matter of
16 the omitted rule and ~~stating~~ how a copy may be obtained.

17 **SECTION 22. AMENDMENT.** Section 28-32-27 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **28-32-27. Hearing officer - Disqualification - Substitution.**

- 20 1. Any person or persons presiding for the agency in an administrative proceeding must
21 be referred to individually or collectively as hearing officer. Any person from the office
22 of administrative hearings presiding for the agency as a hearing officer in an
23 administrative proceeding must be referred to as an administrative law judge.
24 2. Any hearing officer is subject to disqualification for good cause shown.
25 3. A hearing officer who is a director, officer, commissioner, head, or other executive of
26 an agency shall self-disqualify in a proceeding in which a reasonable, disinterested
27 observer would believe the hearing officer is biased due to:
28 a. A contribution by one of the parties supporting the hearing officer's most recent
29 campaign for public office; or

- 1 b. An ownership interest, other than investment in a mutual fund or retirement
2 account, of the hearing officer in one of the parties to the proceeding if the
3 ownership interest is not shared by the general public.
- 4 4. Any party may petition for the disqualification of any person presiding as a hearing
5 officer upon discovering facts establishing grounds for disqualification.
- 6 4.5. A person whose disqualification is requested shall determine whether to grant the
7 petition, stating facts and reasons for the determination.
- 8 5.6. If a substitute is required for a person who is disqualified or becomes unavailable for
9 any other reason, the substitute may be appointed by:
- 10 a. The attorney general, if the disqualified or unavailable person is an assistant
11 attorney general;
- 12 b. The agency head, if the disqualified or unavailable person is one or more
13 members of the agency head or one or more other persons designated by the
14 agency head;
- 15 c. A supervising hearing officer, if the disqualified or unavailable person is a hearing
16 officer designated from an office, pool, panel, or division of hearing officers; or
17 d. The governor, in all other cases.
- 18 6.7. Any action taken by a duly appointed substitute for a disqualified or unavailable person
19 is as effective as if taken by the disqualified or unavailable person.
- 20 7.8. Any hearing officer in an administrative proceeding, from the time of appointment or
21 designation, may exercise any authority granted by law or rule. A hearing officer may
22 be designated to preside over the entire administrative proceeding and may issue
23 orders accordingly. A procedural hearing officer may only issue orders in regard to the
24 course and conduct of the hearing under statute or rule and to otherwise effect an
25 orderly hearing. If a procedural hearing officer is designated, the agency head must be
26 present at the hearing and the agency head shall issue findings of fact and
27 conclusions of law, as well as any order resulting from the hearing.
- 28 9. The North Dakota ethics commission shall assess any hearing officer who knowingly
29 violates subsection 3 a civil penalty of five hundred dollars for the first violation. For a
30 second and subsequent knowing violation of this section, the hearing officer is guilty of
31 a class B misdemeanor.

10. A decision, ruling, recommended finding of fact, recommended conclusion of law, finding of fact, conclusion of law, or order by a hearing officer may not be reconsidered, invalidated, or overturned on the grounds the hearing officer failed to self-disqualify under subsection 3, except by a court if the court finds, based on clear and convincing evidence, the hearing officer was required to self-disqualify.

SECTION 23. AMENDMENT. Section 28-32-47 of the North Dakota Century Code is amended and reenacted as follows:

28-32-47. Scope of and procedure on appeal from agency rulemaking.

1. A judge of the district court shall review an appeal from an administrative agency's or ethics commission's rulemaking action based only on the record filed with the court. If an appellant requests documents to be included in the record but the agency or commission does not include them, the court, upon application by the appellant, may compel their inclusion. After a hearing, the filing of briefs, or other disposition of the matter as the judge may reasonably require, the court shall affirm the agency's rulemaking action unless it finds that any of the following are present:

1. a. The provisions of this chapter have not been substantially complied with in the agency's rulemaking actions.
 2. b. A rule published as a result of the rulemaking action appealed is unconstitutional on the face of the language adopted.
 3. c. A rule published as a result of the rulemaking action appealed is beyond the scope of the agency's or commission's authority to adopt.
 4. d. A rule published as a result of the rulemaking action appealed is on the face of the language adopted an arbitrary or capricious application of authority granted by statute.
2. If the rulemaking action of the agency or commission is not affirmed by the court, ~~the~~ rulemaking action must be remanded to the agency or commission for disposition in accordance with the order of the court, or the rule or a portion of the rule resulting from the rulemaking action of the agency or commission must be declared invalid for reasons stated by the court.

SECTION 24. AMENDMENT. Section 28-32-48 of the North Dakota Century Code is amended and reenacted as follows:

28-32-48. Appeal - Stay of proceedings.

An appeal from an order or the rulemaking action of an administrative agency or the commission does not stay the enforcement of the order or the effect of a published rule unless the court to which the appeal is taken, upon application and after a hearing or the submission of briefs, orders a stay. The court may impose terms and conditions for a stay of the enforcement of the order or for a stay in the effect of a published rule. This section does not prohibit the operation of an automatic stay upon the enforcement of an administrative order or commission order as may be required by another statute.

SECTION 25. AMENDMENT. Section 28-32-49 of the North Dakota Century Code is amended and reenacted as follows:

28-32-49. Review in supreme court.

The judgment of the district court in an appeal from an order or rulemaking action of an administrative agency or the commission may be reviewed in the supreme court on appeal in the same manner as provided in section 28-32-46 or 28-32-47, except that the appeal to the supreme court must be taken within sixty days after the service of the notice of entry of judgment in the district court. Any party of record, including the agency or commission, may take an appeal from the final judgment of the district court to the supreme court. If an appeal from the judgment of the district court is taken by an agency or the commission, the agency or commission may not be required to pay a docket fee or file a bond for costs or equivalent security.

SECTION 26. Chapter 54-66 of the North Dakota Century Code is created and enacted as follows:

54-66-01. Definitions.

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

1. "Accused individual" means an individual who is alleged to have violated article XIV of the Constitution of North Dakota, this chapter, or another law or rule regarding ~~government ethics~~ transparency, corruption, elections, or lobbying.
2. "Adjusted for inflation" means adjusted on January first of each year by the change in the consumer price index for all urban consumers (all items, United States city average), as identified by the secretary of state.

- 1 ~~3.~~ "Complainant" means an individual who, in writing or verbally, submits a complaint to
2 the commission.
- 3 ~~4.3.~~ "Complaint" means a verbal or written allegation to the commission that article XIV of
4 the Constitution of North Dakota, this chapter, or another law or rule regarding
5 ~~government ethics~~ transparency, corruption, elections, or lobbying has been violated.
- 6 ~~5.4.~~ "Ethics commission" or "commission" means the North Dakota ethics commission
7 established by article XIV of the Constitution of North Dakota.
- 8 ~~6.5.~~ "Gift" means any item, service, or thing of value not given in exchange for fair market
9 consideration including travel and recreation. ~~The term does not include an item,~~
10 ~~service, or thing with a value of twenty dollars or less; an item, service, or thing given~~
11 ~~to or received from a family member; purely informational material; or a campaign~~
12 ~~contribution.~~
- 13 ~~7.6.~~ "Influence state government action" means promoting or opposing the ~~final~~ adoption of
14 a rule by an administrative agency or the commission under chapter 28-32.
- 15 ~~8.7.~~ "Lobby" means an activity listed in subsection 1 of section 54-05.1-02.
- 16 ~~9.8.~~ "Lobbyist" means an individual required to register under section 54-05.1-03.
- 17 ~~10.9.~~ "Public official" means an elected or appointed official of the state's executive or
18 legislative branch, members of the commission, members of the governor's cabinet,
19 and employees of the legislative branch.
- 20 ~~11.10.~~ "Receives the complaint" means one or more members of the commission learn of the
21 complaint.
- 22 ~~12.11.~~ "Ultimate and true source" means the person that knowingly contributed over two
23 hundred dollars, ~~adjusted for inflation,~~ solely to lobby or influence state government
24 action.
- 25 **54-66-02. Disclosure of ultimate and true source of funds.**
- 26 1. A lobbyist who expends an amount greater than two hundred dollars, adjusted for
27 inflation, to lobby shall file with the secretary of state a report that includes the known
28 ultimate and true source of funds for the expenditure. The report must be filed with the
29 lobbyist expenditure report required under subsection 2 of section 54-05.1-03.
- 30 2. A person who expends an amount greater than two hundred dollars, adjusted for
31 inflation, to influence state government action shall file with the secretary of state a

- 1 report including the known ultimate and true source of funds for the expenditure. The
2 report must be filed on or before the August first following the date of the expenditure.
3 The secretary of state shall provide a form for reports under this subsection and make
4 the form electronically accessible to the public. The secretary of state also shall
5 charge and collect fees for late filing of the reports as follows:
6 a. Twenty-five dollars for a report filed within sixty days after the deadline; or
7 b. Fifty dollars for a report filed more than sixty days after the deadline.
8 3. The secretary of state shall compile the reports required under this section and make
9 the reports electronically accessible to the public within forty days after the deadlines
10 by which the reports must be filed.
11 4. This section does not require a person to report the ultimate and true source of funds
12 expended on:
13 a. A gift to or from a family member;
14 b. Purely informational material, advice, or education;
15 c. ~~Reimbursement for travel, meal, and refreshment expenses incurred to, from, or~~
16 ~~during a conference, seminar, or other legitimate educational opportunity for a~~
17 ~~public official if the conference, seminar, or educational opportunity concerns~~
18 ~~issues germane to the official duties of the public official;~~
19 ~~d. Meals and refreshments provided while informing, advising, or educating a public~~
20 ~~official about issues germane to the official duties of the public official;~~
21 ~~e. Providing an educational or social setting in the state to provide an opportunity~~
22 ~~for individuals to meet with public officials; and~~
23 ~~f.d. A good or service determined not to raise ethical concerns under rules adopted~~
24 ~~by the ethics commission.~~
25 5. A resident taxpayer may commence an action ~~in a district court of this state~~ against a
26 person required to comply with this section ~~in the district court of the county where the~~
27 ~~person required to comply with this section resides~~ to compel compliance if all other
28 enforcement measures under this chapter have been exhausted and the taxpayer
29 reasonably believes the person has failed to comply with this section. A failure to
30 comply with this section must be proved by clear and convincing evidence.

6. The secretary also shall determine adjustments for inflation of the reporting threshold in this section and instruct persons submitting reports under this section of the adjustments. On January first of each year, the secretary shall determine whether the accumulated change in the consumer price index for all urban consumers (all items, United States city average), as applied to the reporting threshold, would result in an adjustment of at least ten dollars of the threshold in effect on that date. If so, the secretary shall deem the reporting threshold adjusted by ten dollars.

54-66-03. Lobbyist gifts - Penalty.

1. A lobbyist may not give, offer, solicit, initiate, or facilitate a gift knowingly to a public official, and a public official may not accept a gift with a value over sixty dollars per individual per event, adjusted for inflation, from a lobbyist knowingly, except to advance opportunities for state residents to meet with public officials in educational and social settings in the state under conditions that do not raise ethical concerns, including:
 - a. Reimbursement for travel, meal, and refreshment expenses incurred to, from, or during a conference, seminar, or other legitimate educational opportunity for the public official if the conference, seminar, or educational opportunity concerns issues germane to the official duties of the public official;
 - b. Providing information, advice, or education to a public official;
 - c. Providing meals and refreshments while informing, advising, or educating a public official about issues germane to the official duties of the public official;
 - d. Items with a fair market value of ten dollars per individual per event, adjusted for inflation, or less per individual; and
 - e. A good or service determined not to raise ethical concerns under rules adopted by the ethics commission.
2. The prohibition in subsection 1 does not apply when a lobbyist gives, offers, solicits, initiates, or facilitates, or a public official accepts:
 - a. A gift to or from a family member;
 - b. Purely informational material; or
 - c. A campaign contribution; or

d. An item, service, or thing of value given under conditions that do not raise ethics concerns, as determined by rules adopted by the ethics commission, in order to advance opportunities for North Dakota residents to meet with public officials in educational and social settings in the state.

3. For the first violation, the secretary of state shall assess a civil penalty of five hundred dollars upon any person who knowingly violates this section ~~and, if the person is a lobbyist, the secretary of state may revoke the lobbyist's registration under chapter 54-05.1.~~ For a second and subsequent knowing violation of this section, the person is guilty of a class B misdemeanor, and, if the person is a lobbyist, the secretary of state may revoke the lobbyist's registration under chapter 54-05.1.

54-66-04. Ethics commission member terms - Meetings - Code of ethics -

Compensation - ~~Investigator.~~

1. The terms of the initial members of the ethics commission must be staggered to ensure no more than two members' terms expire in one year. The terms of the initial members may be less than four years to accommodate the required staggering of terms.
2. ~~The ethics commission shall meet as necessary to address each complaint the commission receives.~~ Unless the complaint at issue has resulted in the imposition of a penalty or referral for enforcement under section 54-66-10, any portion of a meeting during which commission members discuss complaints, informal resolutions, attempts to informally resolve complaints, investigations, or referrals under this chapter, the identity of an accused individual or complainant, or any other matter arising from a complaint are closed meetings.
3. The commission shall abide by a code of ethics adopted in a public meeting. The code of ethics must specify when a commission member is disqualified from participating in matters before the commission.
4. Ethics commission members are entitled to:
 - a. Compensation for each day necessarily spent conducting commission business in the amount provided for members of the legislative management under section 54-35-10; and

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

~~5. Commission members shall hire or otherwise engage a part time administrative assistant. The administrative assistant must be provided an office within the office space for the department of labor and human rights. The commission shall compensate the department of labor and human rights for the office in an amount equal to the fair value of the office.~~

54-66-05. Making a complaint - Identifying information - False complaints.

1. A complaint may be made to the commission orally or in writing. When making a complaint, a complainant shall provide the name, address, and telephone number of the complainant.

2. Within five days after making a complaint, the complainant shall submit a signed statement attesting the complaint is true and accurate to the best of the complainant's knowledge. The commission shall develop an attestation form for this purpose and make it electronically accessible to the public. After receiving the attestation, the commission shall summarize the complaint in writing if the complaint was made orally.

3. If the complainant does not submit the signed attestation by the deadline, the commission may not investigate or take other action on the complaint.

~~4. Knowingly or recklessly making a complaint that is materially false is defamation under chapter 12.1-15.~~

54-66-06. Informing the accused individual - Written response permitted.

The commission shall inform an accused individual by registered mail of the identity of the complainant who made the allegation against the accused individual and include the written complaint or written summary of the oral complaint as soon as reasonably possible but no later than ten calendar days after the commission receives the complaint. The accused individual may respond to the complaint in writing within ten calendar days of receipt of the complaint or summary of the complaint.

54-66-07. Informal resolution.

The commission may attempt to negotiate or mediate an informal resolution between the accused individual and the complainant.

1 **54-66-08. Referrals of certain allegations to investigators - Exception for criminal**
2 **allegations attorney general or law enforcement.**

3 For each complaint with an attestation, the commission shall engage an investigator with
4 the appropriate knowledge and experience regarding the Constitution of North Dakota,
5 ethics-related statutes, and ethics investigations, and refer the complaint to the investigator
6 within thirty calendar days of receiving the complaint. However, if a complaint with an
7 attestation includes an allegation of criminal conduct, the commission shall may refer the
8 allegation of criminal conduct to the bureau of criminal investigation or other law enforcement
9 agency. The commission may engage a state agency as an investigator. If a complaint with an
10 attestation includes an allegation of a violation of open meetings or open records requirements,
11 the commission shall refer the allegation to the attorney general, and the attorney general shall
12 review the allegation under section 44-04-21.1 if the complaint was submitted to the
13 commission by the relevant deadline in section 44-04-21.1. If the accused individual provided a
14 written response to the complaint, the commission shall provide the written response with the
15 referred complaint.

16 **54-66-09. Investigations - Findings and Recommendations Recommended**
17 **findings - Responses.**

- 18 1. The investigator engaged under section 54-66-08 ethics commission staff shall
19 investigate the each complaint referred to it by the ethics commission with an
20 attestation. Investigations must include separate interviews with the accused individual
21 and the complainant, unless the accused individual or complainant refuses to be
22 interviewed, and consideration of the circumstances surrounding the allegations. The
23 accused individual and complainant may be accompanied by legal counsel during the
24 interviews of each. Investigations may include interviews of potential witnesses and
25 other individuals believed to have relevant information.
- 26 2. At the conclusion of the investigation, but no later An investigation must conclude no
27 more than six months after the investigator ethics commission received the complaint,
28 the investigator. The ethics commission staff shall submit its written recommended
29 findings from the investigation to the commission at the conclusion of the investigation.
30 The commission shall provide written copies of the findings to the accused individual
31 and complainant. The accused individual and complainant may respond in writing to

the recommended findings within thirty calendar days of receiving the recommended findings. The commission shall maintain copies of the recommended findings and any written response to the recommended findings.

54-66-10. Final determinations - Penalties - Referrals for enforcement.

1. After reviewing the recommended findings from the investigatorethics commission staff and any written response from the accused individual or complainant, the ethics commission shall meet with the accused individual and complainant to discuss the recommended findings and written responses. A meeting under this subsection is a closed meeting as defined in section 44-04-17.1, although the accused individual and complainant may have legal counsel attend and participate.
2. After the meeting with the accused individual and complainant, the commission shall issue written findings, including a determination whether a violation of article XIV of the Constitution of North Dakota, this chapter, or another law or rule regarding government ethics transparency, corruption, elections, or lobbying occurred. If the commission finds a violation occurred, the commission may assess a civil penalty if authorized by law or refer the matter to the entity authorized by law to assess a civil penalty for the violation.
3. The accused individual and the complainant may appeal and request judicial review of a determination made or penalty imposed under this section to the district court in the county in which the accused individual resides. A request for judicial review under this section must comply with the requirements for an appeal of a determination of an agency under chapter 28-32. The scope of review and procedure on appeal from a determination of the commission must comply with section 28-32-47.
4. The commission may not terminate the employment of a public official or otherwise remove a public official from the public official's public office.

54-66-11. Confidential information - Penalty.

1. The following information is a confidential record as defined in section 44-04-17.1, unless the commission has determined the accused individual violated article XIV of the Constitution of North Dakota, this chapter, or another law or rule regarding government ethics transparency, corruption, elections, or lobbying, and a court affirmed

1 the determination if appealed, except the information may be disclosed as required by
2 law or as necessary to conduct an investigation arising from a complaint;

3 a. Information revealing the contents of a complaint;

4 b. Information that reasonably may be used to identify an accused individual or
5 complainant; and

6 c. Information relating to or created as part of an investigation of a complaint.

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

9 a. Information revealing the contents of the complaint;

10 b. Information that reasonably may be used to identify the accused individual or
11 complainant;

12 c. Information relating to or created as part of the process leading to the informal
13 resolution; and

14 d. Information revealing the informal resolution.

15 3. Willful publication of information included in subsections 1 and 2 by a person who
16 knows the information to be false is criminal defamation under section 12.1-15-01.

17 4. A public official who violates this section is guilty of a class C felony.

18 **54-66-12. Restriction on lobbying by public officials - Penalty.**

19 For the first violation of subsection 2 of section 2 of article XIV of the Constitution of North
20 Dakota, the secretary of state shall assess a civil penalty of five hundred dollars upon the
21 person who knowingly commits the violation. For a second and subsequent knowing violation of
22 the subsection, the person is guilty of a class B misdemeanor.

23 **54-66-13. Attorney general to provide legal services.**

24 The attorney general shall serve as legal counsel for the ethics commission, unless the
25 ethics commission objects to the representation by the attorney general in a specific matter.

26 When a conflict of interest prevents the attorney general from providing legal services to the
27 commission, the attorney general may appoint a special assistant attorney general to serve as
28 legal counsel for the commission.

29 **54-66-14. Prohibition on delivering campaign contributions - Penalty.**

30 A lobbyist may not deliver knowingly a campaign contribution made by another person in
31 violation of subsection 3 of section 2 of article XIV of the Constitution of North Dakota. For a first

1 violation, the secretary of state shall assess a civil penalty of five hundred dollars upon any
2 person who knowingly violates this section ~~and may revoke the lobbyist's registration~~. For a
3 second and subsequent knowing violation of this section, the person is guilty of a class B
4 misdemeanor, and the secretary of state may revoke the lobbyist's registration.

5 **54-66-15. Removal of ethics commission members.**

6 1. An ethics commission member may be removed from office for:

7 a. Substantial neglect of duty;

8 b. Gross misconduct in office;

9 c. Violation of the commission's code of ethics; or

10 d. Willful or habitual neglect or refusal to perform the duties of the member.

11 2. Removal of an ethics commission member requires agreement by two of the following
12 individuals that grounds for removal under subsection 1 exist:

13 a. The governor;

14 b. The majority leader of the senate; and

15 c. The minority leader of the senate.

16 **SECTION 27. APPROPRIATION.** ~~There is appropriated out of any moneys in the general~~
17 ~~fund in the state treasury, not otherwise appropriated, the sum of \$300,000, or so much of the~~
18 ~~sum as may be necessary, to the ethics commission for the purpose of the operations of the~~
19 ~~commission, for the biennium beginning July 1, 2019, and ending June 30, 2021. The ethics~~
20 ~~commission is authorized one and one-half full-time equivalent positions for this purpose. The~~
21 funds provided in this section, or so much of the funds as may be necessary, are appropriated
22 out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the
23 North Dakota ethics commission for the purpose of defraying the expenses of the commission,
24 for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

25 <u>Ethics commission</u>	<u>\$517,155</u>
26 <u>Total general fund</u>	<u>\$517,155</u>
27 <u>Full-time equivalent positions</u>	<u>2.00</u>

28 **SECTION 28. EFFECTIVE DATE.** Sections 1, ~~2~~, 3, 4, 5, and ~~722~~ of this Act, and
29 ~~section~~sections 54-66-02, 54-66-03, and 54-66-13 of the North Dakota Century Code, as
30 created by section ~~3226~~ of this Act, become effective January 5, ~~2022~~2021.

1 ~~SECTION 28. EFFECTIVE DATE.~~ North Dakota Century Code section 54-66-03, as
2 created by section 32 of this Act, becomes effective January 5, 2021.

3 ~~SECTION 29. EXPIRATION DATE.~~ North Dakota Century Code section 54-66-12, as
4 created by section 32 of this Act, is effective until subsection 2 of section 2 of article XIV of the
5 Constitution of North Dakota is no longer part of the Constitution of North Dakota.

6 **SECTION 29. EMERGENCY.** Sections 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20,
7 21, ~~22,~~ 23, 24, 25, 26, and 27, ~~28, 29, 30, and 31~~ of this Act are declared to be an emergency
8 measure.

19.1078.02014
Title.

Prepared by the Legislative Council staff for
Senator Unruh

April 15, 2019

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1521

Page 40, line 13, remove "**Meetings**"

Page 40, line 14, remove "**Investigator**"

Page 40, line 19, remove "The ethics commission shall meet as necessary to address each complaint the"

Page 40, remove lines 20 through 25

Page 40, line 26, remove "3."

Page 40, line 29, replace "4." with "3."

Page 41, remove lines 6 through 10

Page 41, line 15, remove "Within five days after making a complaint, the complainant shall submit a signed"

Page 41, remove lines 16 through 21

Page 41, line 22, remove "4."

Page 41, line 25, remove "the identity of the"

Page 41, line 26, remove "complainant who made"

Page 41, line 27, remove "but no later"

Page 41, line 28, remove "than ten calendar days"

Page 41, line 29, remove "within ten calendar days of receipt of the complaint or"

Page 41, line 30, remove "summary of the complaint"

Page 42, line 4, after "**Referrals**" insert "**of certain allegations**"

Page 42, line 4, replace "**investigators - Exception for criminal allegations**" with "**the attorney general or law enforcement**"

Page 42, remove lines 5 through 7

Page 42, line 8, replace "within thirty calendar days of receiving the complaint. However, if" with "If"

Page 42, line 8, remove "with an attestation"

Page 42, line 9, replace "shall" with "may"

Page 42, line 10, remove "The"

Page 42, line 11, replace "commission may engage a state agency as an investigator." with "If a complaint includes an allegation of a violation of open meetings or open records requirements, the commission shall refer the allegation to the attorney general, and the attorney general shall review the allegation under section 44-04-21.1 if the complaint was submitted to the commission by the relevant deadline in section 44-04-21.1."

Page 42, line 14, replace "**- Findings and Recommendations - Responses**" with "**and Referrals**"

Page 42, replace lines 15 through 29 with:

"The ethics commission may investigate a complaint if the accused individual and the complainant have not agreed on an informal resolution. An investigation must include separate interviews with the accused individual and the complainant, unless the accused individual or complainant refuses to be interviewed, and consideration of the circumstances surrounding the allegations."

Page 43, line 1, replace "**Final determinations**" with "**Investigation findings**"

Page 43, line 1, remove "**- Referrals for enforcement**"

Page 43, replace lines 2 through 21 with:

- "1. At the conclusion of an investigation, the ethics commission shall issue its written findings to the accused individual and complainant.
2. The findings must state whether the ethics commission believes, based on a preponderance of the evidence as viewed by a reasonable person, a violation of article XIV of the Constitution of North Dakota, this chapter, or another law or rule regarding government ethics occurred. The accused individual and complainant may respond in writing to the findings within twenty calendar days of receiving the findings. The ethics commission shall maintain copies of the findings and any written response to the findings.
3. If the ethics commission finds a violation occurred, the ethics commission may impose a penalty specified by law for the violation.

54-66-11. Appeals.

An accused individual or complainant may appeal a finding of the ethics commission to the district court of the county where the accused individual resides."

Page 43, line 22, replace "**54-66-11.**" with "**54-66-12.**"

Page 44, line 13, replace "**54-66-12.**" with "**54-66-13.**"

Page 44, line 18, replace "**54-66-13.**" with "**54-66-14.**"

Page 44, line 23, replace "**54-66-14.**" with "**54-66-15.**"

Page 45, line 9, replace "54-66-12" with "54-66-13"

Renumber accordingly

19.1078.02016
Title.

Prepared by the Legislative Council staff for
Senator Oban

April 15, 2019

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1521

- Page 1, line 4, replace "section" with "sections"
- Page 1, line 5, remove "subsection 4 of section 16.1-08.1-02.1, sections 16.1-08.1-02.3, 16.1-08.1-02.4,"
- Page 1, line 6, replace "16.1-08.1-03.1" with "16.1-08.1-03.7"
- Page 1, line 6, remove "28-32-02,"
- Page 1, line 7, remove "28-32-14,"
- Page 1, line 7, after the eighth comma insert "and"
- Page 1, line 8, remove "28-32-17, 28-32-18, and 28-32-18.1,"
- Page 1, line 9, remove "28-32-27,"
- Page 1, line 10, remove "disqualification of agency heads in quasi-judicial proceedings,"
- Page 1, line 19, remove ""Adjusted for inflation" means adjusted on January first of each year by the change in"
- Page 1, remove lines 20 and 21
- Page 1, line 22, remove "2."
- Page 2, line 6, remove the overstrike over "~~2.~~"
- Page 2, line 6, remove "3."
- Page 2, line 13, remove the overstrike over "~~3.~~"
- Page 2, line 13, remove "4."
- Page 2, line 26, remove the overstrike over "~~4.~~"
- Page 2, line 26, remove "5."
- Page 3, line 3, remove the overstrike over "~~5.~~"
- Page 3, line 3, remove "6."
- Page 3, line 29, remove the overstrike over "~~6.~~"
- Page 3, line 29, remove "7."
- Page 4, line 4, remove the overstrike over "~~7.~~"
- Page 4, line 4, remove "8."
- Page 4, line 14, remove the overstrike over "~~8.~~"
- Page 4, line 14, remove "9."
- Page 4, line 21, remove the overstrike over "~~9.~~"

Page 4, line 21, remove "10."

Page 4, line 26, remove the overstrike over "10."

Page 4, line 26, remove "11."

Page 4, line 28, remove the overstrike over "11."

Page 4, line 28, remove "12."

Page 5, line 1, remove the overstrike over "12."

Page 5, line 1, remove "13."

Page 5, line 4, remove the overstrike over "13."

Page 5, line 4, remove "14."

Page 5, line 26, remove the overstrike over "14."

Page 5, line 26, remove "15."

Page 5, line 30, remove the overstrike over "15."

Page 5, line 30, remove "16."

Page 6, line 10, remove the overstrike over "16."

Page 6, line 10, remove "17."

Page 6, line 12, remove the overstrike over "17."

Page 6, line 12, remove "18."

Page 6, line 14, replace "19." with "18."

Page 6, line 14, replace "who" with "that"

Page 6, line 15, remove ", adjusted for inflation, solely"

Page 6, line 16, after "assembly" insert ", and may be defined further by the ethics commission"

Page 6, remove lines 17 through 30

Page 7, remove lines 1 through 31

Page 8, remove lines 1 through 31

Page 9, remove lines 1 through 29

Page 10, remove lines 1 through 31

Page 11, remove lines 1 through 31

Page 12, remove lines 1 through 31

Page 13, replace lines 1 through 6 with:

"SECTION 2. AMENDMENT. Section 16.1-08.1-03.7 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-03.7. Political committees that organize and register according to federal law that make independent expenditures or disbursements to nonfederal candidates, political parties, and political committees.

A political committee that organizes and registers according to federal law and makes an independent expenditure or makes a disbursement in excess of two hundred dollars to a nonfederal candidate seeking public office or to a political party or political committee in this state shall file a copy of that portion of the committee's federal report detailing the independent expenditure or the disbursement made. The political committee shall file a copy of the committee's federal report, and supplementary information as necessary under this section, with the secretary of state at the time of filing the report with the applicable federal agency. The report must include:

1. The name, mailing address, and treasurer of the political committee;
2. The recipient's name and mailing address; ~~and~~
3. The date and amount of the independent expenditure or disbursement; and
4. The ultimate and true source of funds listed by contributor and subcontributor of any amount over two hundred dollars collected or used to make the independent expenditure or disbursement including:
 - a. The name and address of the contributor;
 - b. The total amount of the contribution; and
 - c. The date the last contribution was received."

Page 13, line 17, remove "For the first violation, the secretary of state shall assess a civil penalty of five hundred"

Page 13, replace lines 18 through 21 with "The secretary of state shall assess a civil penalty upon any person that knowingly violates this section.

- a. If the contribution used in violation of this section has a value of two thousand five hundred dollars or more, the civil penalty must be two times the value of the contribution.
- b. If the contribution used in violation of this section has a value of less than two thousand five hundred dollars, the civil penalty must be at least two times the value of the contribution and may be up to five thousand dollars.
3. The assessment of a civil penalty may be appealed to the district court of the county where the candidate resides."

Page 13, line 25, remove "1."

Page 13, line 25, replace "report" with "statement"

Page 13, remove lines 27 through 31

Page 18, remove lines 16 through 29

Page 19, remove lines 1 through 3

Page 19, line 7, remove "commission or an"

Page 19, line 7, after the second comma insert "or the commission"

Page 20, line 13, remove ", or"

Page 20, line 14, remove "the Constitution of North Dakota is amended to eliminate the authority"

Page 22, line 14, remove "or the commission"

Page 22, line 16, remove "or commission"

Page 22, line 18, remove "or commission"

Page 23, line 2, remove "or the commission"

Page 23, line 13, remove "or commission"

Page 23, line 14, remove "or commission"

Page 23, line 16, remove "or commission"

Page 23, line 17, after "to" insert "the ethics commission,"

Page 23, line 18, overstrike "nor does this section apply to" and insert immediately thereafter "and"

Page 24, line 7, remove "or the commission"

Page 26, line 11, remove "enacted during the most recent session of the"

Page 26, line 12, remove "legislative assembly"

Page 28, remove lines 17 through 31

Page 30, remove lines 9 through 31

Page 31, remove lines 1 through 31

Page 32, remove lines 1 through 31

Page 33, remove lines 1 through 23

Page 34, remove lines 11 through 30

Page 35, remove lines 1 through 24

Page 37, line 17, replace "government ethics" with "transparency, corruption, elections, or lobbying"

Page 37, line 18, remove "Adjusted for inflation" means adjusted on January first of each year by the change in"

Page 37, remove lines 19 and 20

Page 37, line 21, remove "3."

Page 37, line 23, replace "4." with "3."

Page 37, line 25, replace "government ethics" with "transparency, corruption, elections, or lobbying"

Page 37, line 26, replace "5." with "4."

Page 37, line 28, replace "6." with "5."

Page 37, line 29, after "recreation" insert ", except:

- a. Purely informational material;
- b. A campaign contribution; and
- c. An item, service, or thing of value given under conditions that do not raise ethical concerns, as set forth in rules adopted by the ethics commission, to advance opportunities for state residents to meet with public officials in educational and social settings in the state"

Page 37, line 30, replace "7." with "6."

Page 37, line 30, remove "promoting or opposing the final adoption of"

Page 37, line 31, replace "a rule by an administrative agency or the commission under chapter 28-32" with "an attempt to influence state administrative action by communicating or urging others to communicate with public officials or state employees, unless the attempt is made by a public official or state employee acting in an official capacity, and may be defined further by ethics commission rule"

Page 38, line 1, replace "8." with "7."

Page 38, line 1, replace "an" with ":

- a. Engage in an"

Page 38, line 1, after "54-05.1-02" insert "; and

- b. Influence state government action"

Page 38, line 2, replace "9." with "8."

Page 38, line 2, replace "an individual required to register under section 54-05.1-03" with ":

- a. A registered lobbyist; and
- b. Any other individual who spends more than two hundred dollars, not including the individual's own travel expenses and membership dues, in any calendar year to lobby"

Page 38, line 3, replace "10." with "9."

Page 38, line 6, replace "11." with "10."

Page 38, after line 7, insert:

- "11. "Registered lobbyist" means an individual required to register under section 54-05.1-03."

Page 38, line 9, remove ", adjusted for inflation, solely"

Page 38, line 10, after "action" insert ", and may be defined further by ethics commission rule"

Page 38, line 12, after "A" insert "registered"

Page 38, line 12, remove ", adjusted for"

Page 38, line 13, remove "inflation,"

Page 38, line 16, replace "person" with "lobbyist other than a registered lobbyist"

Page 38, line 16, remove "adjusted for"

Page 38, line 17, replace "inflation" with "not including the individual's own travel expenses and membership dues"

Page 38, line 17, replace "influence state government action" with "lobby"

Page 38, line 18, replace "The" with "A"

Page 38, line 19, after "report" insert "under this subsection"

Page 38, line 26, remove "within forty days after the deadlines"

Page 38, line 27, remove "by which the reports must be filed"

Page 38, remove lines 28 through 31

Page 39, remove lines 1 through 15

Page 39, line 18, remove "with a value over sixty dollars per"

Page 39, line 19, remove "individual per event, adjusted for inflation,"

Page 39, line 19, remove ", except to"

Page 39, remove lines 20 through 31

Page 40, remove line 1

Page 40, line 2, remove "by the ethics commission"

Page 40, line 4, remove the underscored colon

Page 40, line 5, replace "a. A" with "a"

Page 40, line 5, remove the underscored semicolon

Page 40, remove line 6

Page 40, line 7, remove "c. A campaign contribution"

Page 40, line 8, remove "For the first violation, the secretary of state shall assess a civil penalty of five hundred"

Page 40, replace lines 9 through 12 with "The secretary of state shall assess a civil penalty upon any person that violates this section."

a. If the gift has a value of five hundred dollars or more, the civil penalty must be two times the value of the gift.

b. If the gift has a value of less than five hundred dollars, the civil penalty must be no less than two times the value of the gift and may be up to one thousand dollars.

Page 40, line 14, replace "Investigator" with "Office"

Page 40, line 19, remove "The ethics commission shall meet as necessary to address each complaint the"

Page 40, line 20, remove "commission receives."

Page 40, line 20, after "in" insert "a public hearing or"

Page 40, line 21, remove "or referral for enforcement under section 54-66-10"

Page 41, line 6, remove "Commission members shall hire or otherwise engage a part-time administrative"

Page 41, replace lines 7 through 10 with "The director of the office of management and budget shall allocate office space in the state capitol for the ethics commission, or, if office space in the capitol is unavailable, shall negotiate for, contract for, and obtain office space for the ethics commission in the city of Bismarck or in the Bismarck area. The ethics commission's office space may not be located in the office space of any other government agency, board, commission, or other governmental entity, and must provide sufficient privacy and security for the ethics commission to conduct its business. The director shall charge the ethics commission an amount equal to the fair value of the office space and related services the office of management and budget renders to the ethics commission."

Page 41, line 11, remove "- Identifying information - False complaints"

Page 41, line 12, remove "1."

Page 41, line 12, remove "When making a"

Page 41, remove lines 13 through 30

Page 42, remove lines 1 through 29

Page 43, replace lines 1 through 21 with:

"54-66-06. Informal resolution - Investigation - Referrals.

After receiving a complaint, the ethics commission may:

1. Attempt to negotiate or mediate an informal resolution between the accused individual and the complainant.
2. Investigate the allegations in the complaint.
3. Refer a matter described in or arising from a complaint to the bureau of criminal investigation or other appropriate law enforcement agency if a majority of the ethics commission members reasonably believes a crime was committed or the safety of the complainant is at risk.
4. Refer a complaint alleging a violation of open meetings or open records requirements to the attorney general, and the attorney general shall review the allegation under section 44-04-21.1 if the complaint was submitted to the ethics commission by the relevant deadline in section 44-04-21.1.

54-66-07. Ethics commission complaint - Informing the accused individual.

If, after investigating a complaint, the ethics commission decides to charge the accused individual with a violation of law, the ethics commission shall serve an ethics commission complaint against the accused individual and give the accused individual no less than twenty days to respond.

54-66-08. Informal resolutions - Public hearings - Referrals.

After serving an ethics commission complaint, the ethics commission may:

1. Resolve the charges in the ethics commission complaint informally with the accused individual; or
2. Hold a public hearing regarding the charges in the ethics commission complaint. The accused individual must be afforded due process, including an opportunity to respond to the charges.

54-66-09. Hearing findings - Penalties.

1. At the conclusion of a hearing, the ethics commission shall issue and make public its written findings of fact, conclusions of law, and any penalty authorized by law which the ethics commission imposes.
2. The written findings of fact must state whether the ethics commission believes, based on a preponderance of the evidence, as viewed by a reasonable person, 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.

54-66-10. Appeals.

An accused individual or complainant may appeal a finding of the ethics commission to the district court of the county where the accused individual resides."

Page 43, line 24, remove "determined the accused individual violated article XIV of"

Page 43, remove line 25

Page 43, line 26, replace "government ethics, and a court affirmed the determination if appealed" with "issued an ethics commission complaint"

Page 44, line 2, replace "54-66-07" with "54-66-06"

Page 44, line 10, replace "Willful publication" with "Publication"

Page 44, line 11, replace "criminal defamation under section 12.1-15-01" with "a class B misdemeanor"

Page 44, line 12, replace "A public official who violates this section is guilty of a class C felony." with "The information deemed confidential in this section may be disclosed by the ethics commission if the accused individual agrees to the disclosure."

Page 44, replace lines 14 through 17 with "A knowing violation of subsection 2 of section 2 of article XIV of the Constitution of North Dakota is a class A misdemeanor. The ethics commission shall assess a civil penalty of up to one thousand dollars on any person that knowingly violates the subsection."

Page 44, line 19, after "commission" insert "unless the commission objects to representation by the attorney general in a specific matter"

Page 44, line 27, remove "and may revoke the lobbyist's registration"

Page 44, line 29, after "misdemeanor" insert ", and, if the lobbyist is a registered lobbyist, the secretary of state may revoke the lobbyist's registration"

Page 44, after line 29, insert:

"54-66-15. Removal of ethics commission members.

1. An ethics commission member may be removed from office for:
 - a. Substantial neglect of duty;
 - b. Gross misconduct in office;
 - c. Violation of the commission's code of ethics; or
 - d. Willful or habitual neglect or refusal to perform the duties of the member.
2. Removal of an ethics commission member under subsection 1 requires consensus agreement by:
 - a. The governor;
 - b. The majority leader of the senate; and
 - c. The minority leader of the senate."

Page 44, line 31, replace "\$300,000" with "\$517,155"

Page 45, line 3, replace "one and one-half" with "two"

Page 45, line 4, after the third comma insert "and"

Page 45, line 4, remove ", 5, and 7"

Page 45, line 5, replace "32" with "23"

Page 45, line 8, replace "32" with "23"

Page 45, line 10, replace "32" with "23"

Page 45, line 12, after "Sections" insert "5, 6, 7,"

Page 45, line 12, after the fourteenth comma insert "and"

Page 45, line 13, remove ", 23, 24, 25, 26, 27, 28, 29, 30, and 31"

Renumber accordingly

19.1078.02016

FIRST ENGROSSMENT

Sixty-sixth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1521

Introduced by

Representative Pollert

Senator Wardner

1 A BILL for an Act to create and enact a new section to chapter 16.1-08.1 and chapter 54-66 of
2 the North Dakota Century Code, relating to reporting campaign contributions and expenditures,
3 restrictions on public officials and lobbyists, investigations of ethics violations, and implementing
4 requirements of article XIV of the Constitution of North Dakota; to amend and reenact
5 ~~section~~sections 16.1-08.1-01, ~~subsection 4 of section 16.1-08.1-02.1, sections 16.1-08.1-02.3,~~
6 ~~16.1-08.1-02.4, 16.1-08.1-03.1, 16.1-08.1-03.7,~~ 16.1-08.1-04.1, 28-32-01, ~~28-32-02,~~ 28-32-03,
7 28-32-06, 28-32-07, 28-32-08, 28-32-08.1, 28-32-08.2, 28-32-09, 28-32-10, 28-32-11, 28-32-12,
8 ~~28-32-14,~~ 28-32-15, ~~and~~ 28-32-16, ~~28-32-17, 28-32-18, and 28-32-18.1,~~ subsections 2 and 4 of
9 section 28-32-19, and sections ~~28-32-27,~~ 28-32-47, 28-32-48, and 28-32-49 of the North
10 Dakota Century Code, relating to rulemaking procedures, ~~disqualification of agency heads in~~
11 ~~quasi-judicial proceedings,~~ implementing article XIV of the Constitution of North Dakota, and
12 requirements for the North Dakota ethics commission; to provide for a penalty; to provide an
13 appropriation; to provide an effective date; to provide an expiration date; and to declare an
14 emergency.

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

16 **SECTION 1. AMENDMENT.** Section 16.1-08.1-01 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **16.1-08.1-01. Definitions.**

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

20 1. ~~"Adjusted for inflation" means adjusted on January first of each year by the change in~~
21 ~~the consumer price index for all urban consumers (all items, United States city~~
22 ~~average), as identified by the secretary of state.~~

23 ~~2.~~ "Affiliate" means an organization that controls, is controlled by, or is under common
24 control with another organization. For purposes of this definition, control means the

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1 possession, direct or indirect, of the power to direct or cause the direction of the
2 management and policies of an organization, whether through the ownership of voting
3 securities, by contract other than a commercial contract for goods or nonmanagement
4 services, or otherwise. Control is presumed to exist if an organization, directly or
5 indirectly, owns, controls, holds with the power to vote, or holds proxies representing
6 fifty percent or more of the voting securities of any other organization.

7 ~~2.3.~~ "Association" means any club, association, union, brotherhood, fraternity, organization,
8 or group of any kind of two or more persons, including labor unions, trade
9 associations, professional associations, or governmental associations, which is united
10 for any purpose, business, or object and which assesses any dues, membership fees,
11 or license fees in any amount, or which maintains a treasury fund in any amount. The
12 term does not include corporations, cooperative corporations, limited liability
13 companies, political committees, or political parties.

14 ~~3.4.~~ "Candidate" means an individual who seeks nomination for election or election to
15 public office, and includes:
16 a. An individual holding public office;
17 b. An individual who has publicly declared that individual's candidacy for nomination
18 for election or election to public office or has filed or accepted a nomination for
19 public office;
20 c. An individual who has formed a campaign or other committee for that individual's
21 candidacy for public office;
22 d. An individual who has circulated a nominating petition to have that individual's
23 name placed on the ballot; and
24 e. An individual who has, in any manner, solicited or received a contribution for that
25 individual's candidacy for public office, whether before or after the election for
26 that office.

27 ~~4.5.~~ "Conduit" means a person that is not a political party, political committee, or candidate
28 and which receives a contribution of money and transfers the contribution to a
29 candidate, political party, or political committee when the contribution is designated
30 specifically for the candidate, political party, or political committee and the person has
31 no discretion as to the recipient and the amount transferred. The term includes a

1 transactional intermediary, including a credit card company or a money transfer
2 service that pays or transfers money to a candidate on behalf of another person.

3 5.6. "Contribution" means a gift, transfer, conveyance, provision, receipt, subscription,
4 loan, advance, deposit of money, or anything of value, made for the purpose of
5 influencing the nomination for election, or election, of any person to public office or
6 aiding or opposing the circulation or passage of a statewide initiative or referendum
7 petition or measure. The term also means a contract, promise, or agreement, express
8 or implied, whether or not legally enforceable, to make a contribution for any of the
9 above purposes. The term includes funds received by a candidate for public office or a
10 political party or committee which are transferred or signed over to that candidate,
11 party, or committee from another candidate, party, or political committee or other
12 source including a conduit. The term "anything of value" includes any good or service
13 of more than a nominal value. The term "nominal value" means the cost, price, or
14 worth of the good or service is trivial, token, or of no appreciable value. The term
15 "contribution" does not include:

- 16 a. A loan of money from a bank or other lending institution made in the regular
17 course of business.
18 b. Time spent by volunteer campaign or political party workers.
19 c. Money or anything of value received for commercial transactions, including rents,
20 advertising, or sponsorships made as a part of a fair market value bargained-for
21 exchange.
22 d. Money or anything of value received for anything other than a political purpose.
23 e. Products or services for which the actual cost or fair market value are reimbursed
24 by a payment of money.
25 f. An independent expenditure.
26 g. The value of advertising paid by a political party, multicandidate political
27 committee, or caucus which is in support of a candidate.
28 h. In-kind contributions from a candidate to the candidate's campaign.

29 6.7. "Cooperative corporations", "corporations", and "limited liability companies" are as
30 defined in this code, and for purposes of this chapter "corporations" includes nonprofit
31 corporations. However, if a political committee, the only purpose of which is accepting

1 contributions and making expenditures for a political purpose, incorporates for liability
2 purposes only, the committee is not considered a corporation for the purposes of this
3 chapter.

4 ~~7.8.~~ "Expenditure" means:

- 5 a. A gift, transfer, conveyance, provision, loan, advance, payment, distribution,
6 disbursement, outlay, or deposit of money or anything of value, except a loan of
7 money from a bank or other lending institution made in the regular course of
8 business, made for a political purpose or for the purpose of influencing the
9 passage or defeat of a measure.
- 10 b. A contract, promise, or agreement, express or implied, whether or not legally
11 enforceable, to make any expenditure.
- 12 c. The transfer of funds by a political committee to another political committee.
- 13 d. An independent expenditure.

14 ~~8.9.~~ "Expenditure categories" means the categories into which expenditures must be
15 grouped for reports under this chapter. The expenditure categories are:

- 16 a. Advertising;
17 b. Campaign loan repayment;
18 c. Operations;
19 d. Travel; and
20 e. Miscellaneous.

21 ~~9.10.~~ "Independent expenditure" means an expenditure made for a political purpose or for
22 the purpose of influencing the passage or defeat of a measure if the expenditure is
23 made without the express or implied consent, authorization, or cooperation of, and not
24 in concert with or at the request or suggestion of, any candidate, committee, or
25 political party.

26 ~~10.44.~~ "Patron" means a person who owns equity interest in the form of stock, shares, or
27 membership or maintains similar financial rights in a cooperative corporation.

28 ~~11.42.~~ "Person" means an individual, partnership, political committee, association,
29 corporation, cooperative corporation, limited liability company, or other organization or
30 group of persons.

1 ~~12.13.~~ "Personal benefit" means a benefit to the candidate or another person which is not for
2 a political purpose or related to a candidate's responsibilities as a public officeholder,
3 and any other benefit that would convert a contribution to personal income.

4 ~~13.14.~~ "Political committee" means any committee, club, association, or other group of
5 persons which receives contributions or makes expenditures for political purposes and
6 includes:

- 7 a. A political action committee not connected to another organization and free to
8 solicit funds from the general public, or derived from a corporation, cooperative
9 corporation, limited liability company, affiliate, subsidiary, or an association that
10 solicits or receives contributions from its employees or members or makes
11 expenditures for political purposes on behalf of its employees or members;
12 b. A candidate committee established to support an individual candidate seeking
13 public office which solicits or receives contributions for political purposes;
14 c. A political organization registered with the federal election commission, which
15 solicits or receives contributions or makes expenditures for political purposes;
16 d. A multicandidate political committee, including a caucus, established to support
17 multiple groups or slates of candidates seeking public office, which solicits or
18 receives contributions for political purposes; and
19 e. A measure committee, including an initiative or referendum sponsoring
20 committee at any stage of its organization, which solicits or receives contributions
21 or makes expenditures for the purpose of aiding or opposing a measure sought
22 to be voted upon by the voters of the state, including any activities undertaken for
23 the purpose of drafting an initiative or referendum petition, seeking approval of
24 the secretary of state for the circulation of a petition, or seeking approval of the
25 submitted petitions.

26 ~~14.15.~~ "Political party" means any association, committee, or organization which nominates a
27 candidate for election to any office which may be filled by a vote of the electors of this
28 state or any of its political subdivisions and whose name appears on the election ballot
29 as the candidate of such association, committee, or organization.

30 ~~15.16.~~ "Political purpose" means any activity undertaken in support of or in opposition to the
31 election or nomination of a candidate to public office and includes using "vote for",

1 "oppose", or any similar support or opposition language in any advertisement whether
2 the activity is undertaken by a candidate, a political committee, a political party, or any
3 person. In the period thirty days before a primary election and sixty days before a
4 special or general election, "political purpose" also means any activity in which a
5 candidate's name, office, district, or any term meaning the same as "incumbent" or
6 "challenger" is used in support of or in opposition to the election or nomination of a
7 candidate to public office. The term does not include activities undertaken in the
8 performance of a duty of a public office or any position taken in any bona fide news
9 story, commentary, or editorial.

10 ~~16.17.~~ "Public office" means every office to which an individual can be elected by vote of the
11 people under the laws of this state.

12 ~~17.18.~~ "Subsidiary" means an affiliate of a corporation under the control of the corporation
13 directly or indirectly through one or more intermediaries.

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14 ~~19.18.~~ "Ultimate and true source" means the person ~~who~~that knowingly contributed over two
15 hundred dollars, ~~adjusted for inflation, solely~~ to influence a statewide election or an
16 election for the legislative assembly, and may be defined further by the ethics
17 commission.

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18 ~~SECTION 2. AMENDMENT. Subsection 4 of section 16.1-08.1-02.1 of the North Dakota~~
19 ~~Century Code is amended and reenacted as follows:~~

20 ~~4. The statement filed according to this section must show the following:~~

21 ~~a. The balance of the filer's convention accounts at the start and close of the~~
22 ~~reporting period;~~

23 ~~b. The total of all revenue received and expenditures made of two hundred dollars,~~
24 ~~adjusted for inflation, or less;~~

25 ~~c. The total of all revenue received and expenditures made in excess of two~~
26 ~~hundred dollars, adjusted for inflation;~~

27 ~~d. For each aggregated revenue received from a person in excess of two hundred~~
28 ~~dollars, adjusted for inflation;~~

29 ~~(1) The name of each person;~~

30 ~~(2) The mailing address of each person;~~

1 ~~(3) The date of the most recent receipt of revenue from each~~
2 ~~person; and~~

3 ~~(4) The purpose or purposes for which the aggregated revenue total was~~
4 ~~received from each person;~~

5 ~~e. For each aggregated expenditure made to a person in excess of two hundred~~
6 ~~dollars, adjusted for inflation:~~

7 ~~(1) The name of each person or entity;~~

8 ~~(2) The mailing address of each person or entity;~~

9 ~~(3) The date of the most recent expense made to each person or entity; and~~

10 ~~(4) The purpose or purposes for which the aggregated expenditure total was~~
11 ~~disbursed to each person or entity; and~~

12 ~~f. For each aggregated revenue from an individual which totals five thousand~~
13 ~~dollars, adjusted for inflation, or more during the reporting period, the occupation,~~
14 ~~employer, and principal place of business of the individual must be disclosed.~~

15 ~~**SECTION 3. AMENDMENT.** Section 16.1-08.1-02.3 of the North Dakota Century Code is~~
16 ~~amended and reenacted as follows:~~

17 ~~**16.1-08.1-02.3. Pre election, supplemental, and year end campaign disclosure**~~
18 ~~**statement requirements for candidates, candidate committees, multicandidate**~~
19 ~~**committees, and nonstatewide political parties.**~~

20 ~~1. Prior to the thirty first day before a primary, general, or special election, a candidate or~~
21 ~~candidate committee formed on behalf of the candidate, a multicandidate political~~
22 ~~committee, or a political party other than a statewide political party soliciting or~~
23 ~~accepting contributions shall file a campaign disclosure statement that includes all~~
24 ~~contributions received from January first through the fortieth day before the election. A~~
25 ~~candidate whose name is not on the ballot and who is not seeking election through~~
26 ~~write-in votes, the candidate's candidate committee, and a political party that has not~~
27 ~~endorsed or nominated any candidate in the election is not required to file a statement~~
28 ~~under this subsection. The statement may be submitted for filing beginning on the~~
29 ~~thirty ninth day before the election. The statement must include:~~

30 ~~a. For each aggregated contribution from a contributor which totals in excess of two~~
31 ~~hundred dollars, adjusted for inflation, received during the reporting period:~~

- 1 ~~_____ (1) The name and mailing address of the contributor;~~
- 2 ~~_____ (2) The total amount of the contribution; and~~
- 3 ~~_____ (3) The date the last contributed amount was received;~~
- 4 ~~_____ b. The total of all aggregated contributions from contributors which total in excess of~~
- 5 ~~two hundred dollars, adjusted for inflation, during the reporting period; _____~~
- 6 ~~_____ e. The total of all contributions received from contributors that contributed two~~
- 7 ~~hundred dollars, adjusted for inflation, or less each during the reporting period;~~
- 8 ~~and~~
- 9 ~~_____ d. For a statewide candidate, a candidate committee formed on behalf of a~~
- 10 ~~_____ statewide candidate, and a statewide multicandidate committee, the balance of~~
- 11 ~~the campaign fund on the fortieth day before the election and the balance of the~~
- 12 ~~campaign fund on January first.~~
- 13 ~~_____ 2. Beginning on the thirty ninth day before the election through the day before the~~
- 14 ~~election, a person that files a statement under subsection 1 must file a supplemental~~
- 15 ~~statement within forty eight hours of the start of the day following the receipt of a~~
- 16 ~~contribution or aggregate contribution from a contributor which is in excess of five~~
- 17 ~~hundred dollars, adjusted for inflation. The statement must include:~~
- 18 ~~_____ a. The name and mailing address of the contributor;~~
- 19 ~~_____ b. The total amount of the contribution received during the reporting period; and~~
- 20 ~~_____ c. The date the last contributed amount was received.~~
- 21 ~~_____ 3. Prior to February first, a candidate or candidate committee, a multicandidate political~~
- 22 ~~committee, or a nonstatewide political party soliciting or accepting contributions shall~~
- 23 ~~file a campaign disclosure statement that includes all contributions received and~~
- 24 ~~expenditures, by expenditure category, made from January first through December~~
- 25 ~~thirty first of the previous year. The statement may be submitted for filing beginning on~~
- 26 ~~January first. The statement must include:~~
- 27 ~~_____ a. For a statewide candidate, a candidate committee formed on behalf of a~~
- 28 ~~_____ statewide candidate, and a statewide multicandidate committee, the balance of~~
- 29 ~~the campaign fund on January first and on December thirty first;~~
- 30 ~~_____ b. For each aggregated contribution from a contributor which totals in excess of two~~
- 31 ~~hundred dollars, adjusted for inflation, received during the reporting period:~~

- 1 ~~_____ (1) The name and mailing address of the contributor;~~
- 2 ~~_____ (2) The total amount of the contribution; and~~
- 3 ~~_____ (3) The date the last contributed amount was received;~~
- 4 ~~_____ e. The total of all aggregated contributions from contributors which total in excess of~~
- 5 ~~two hundred dollars, adjusted for inflation, during the reporting period;~~
- 6 ~~_____ d. The total of all contributions received from contributors that contributed two~~
- 7 ~~hundred dollars, adjusted for inflation, or less each during the reporting period;~~
- 8 ~~and~~
- 9 ~~_____ e. The total of all other expenditures made during the previous year, separated into~~
- 10 ~~expenditure categories.~~
- 11 ~~_____ 4. A person required to file a statement under this section, other than a candidate for~~
- 12 ~~judicial office, county office, or city office, or a candidate committee for a candidate~~
- 13 ~~exempted under this subsection, shall report each aggregated contribution from a~~
- 14 ~~contributor which totals five thousand dollars, adjusted for inflation, or more during the~~
- 15 ~~reporting period. For these contributions from individuals, the statement must include~~
- 16 ~~the contributor's occupation, employer, and the employer's principal place of business.~~
- 17 ~~_____ 5. A candidate for city office in a city with a population under five thousand and a~~
- 18 ~~candidate committee for the candidate are exempt from this section.~~
- 19 ~~_____ 6. A candidate for county office and a candidate committee for a candidate for county~~
- 20 ~~office shall file statements under this chapter with the county auditor. A candidate for~~
- 21 ~~city office who is required to file a statement under this chapter and a candidate~~
- 22 ~~committee for such a candidate shall file statements with the city auditor. Any other~~
- 23 ~~person required to file a statement under this section shall file the statement with the~~
- 24 ~~secretary of state.~~
- 25 ~~_____ 7. The filing officer shall assess and collect fees for any reports filed after the filing~~
- 26 ~~deadline.~~
- 27 ~~_____ 8. To ensure accurate reporting and avoid commingling of campaign and personal funds,~~
- 28 ~~candidates shall use dedicated campaign accounts that are separate from any personal~~
- 29 ~~accounts.~~
- 30 ~~_____ **SECTION 4. AMENDMENT.** Section 16.1-08.1-02.4 of the North Dakota Century Code is~~
- 31 ~~amended and reenacted as follows:~~

~~16.1 08.1 02.4. Pre election, supplemental, and year-end campaign disclosure
statement requirements for statewide political parties and certain political committees.~~

~~1. Prior to the thirty first day before a primary, general, or special election, a statewide
political party or a political committee not required to file statements under section
16.1 08.1 02.3 which is soliciting or accepting contributions shall file a campaign
disclosure statement that includes all contributions received and expenditures made
from January first through the fortieth day before the election. A political party that has
not endorsed or nominated a candidate in an election is not required to file a
statement under this subsection. A statement required to be filed under this subsection
may be submitted for filing beginning on the thirty ninth day before the election. The
statement must include:~~

~~a. For each aggregated contribution from a contributor which totals in excess of two
hundred dollars, adjusted for inflation, received during the reporting period:~~

~~(1) The name and mailing address of the contributor;~~

~~(2) The total amount of the contribution; and~~

~~(3) The date the last contributed amount was received;~~

~~b. The total of all aggregated contributions from contributors which total in excess of
two hundred dollars, adjusted for inflation, during the reporting period;~~

~~c. The total of all contributions received from contributors that contributed two
hundred dollars, adjusted for inflation, or less each during the reporting period;~~

~~d. For each recipient of an expenditure from campaign funds in excess of two
hundred dollars, adjusted for inflation, in the aggregate:~~

~~(1) The name and mailing address of the recipient;~~

~~(2) The total amount of the expenditure made to the recipient; and~~

~~(3) The date the last expended amount was made to the recipient;~~

~~e. The aggregate total of all expenditures from campaign funds in excess of two
hundred dollars, adjusted for inflation;~~

~~f. The aggregate total of all expenditures from campaign funds of two hundred
dollars, adjusted for inflation, or less; and~~

~~g. The balance of the campaign fund on the fortieth day before the election and
balance of the campaign fund on January first~~

- 1 — 2. ~~Beginning on the thirty-ninth day before the election through the day before the~~
2 ~~election, a person that files a statement under subsection 1 must file a supplemental~~
3 ~~statement within forty-eight hours of the start of the day following the receipt of a~~
4 ~~contribution or aggregate contribution from a contributor which is in excess of five~~
5 ~~hundred dollars, adjusted for inflation. The statement must include:~~
- 6 — a. ~~The name and mailing address of the contributor;~~
7 — b. ~~The total amount of the contribution received during the reporting period; and~~
8 — c. ~~The date the last contributed amount was received.~~
- 9 — 3. ~~Prior to February first, a statewide political party or a political committee that is not~~
10 ~~required to file a statement under section 16.1-08.1-2.3 shall file a campaign-~~
11 ~~disclosure statement that includes all contributions received and expenditures made~~
12 ~~from January first through December thirty-first of the previous year. The statement~~
13 ~~may be submitted for filing beginning on January first. The statement must include:~~
- 14 — a. ~~For each aggregated contribution from a contributor which totals in excess of two~~
15 ~~hundred dollars, adjusted for inflation, received during the reporting period:~~
- 16 — (1) ~~The name and mailing address of the contributor;~~
17 — (2) ~~The total amount of the contribution; and~~
18 — (3) ~~The date the last contributed amount was received;~~
- 19 — b. ~~The total of all aggregated contributions from contributors which total in excess of~~
20 ~~two hundred dollars, adjusted for inflation, during the reporting period;~~
- 21 — c. ~~The total of all contributions received from contributors that contributed two~~
22 ~~hundred dollars, adjusted for inflation, or less each during the reporting period;~~
- 23 — d. ~~For each recipient of an expenditure from campaign funds in excess of two~~
24 ~~hundred dollars, adjusted for inflation, in the aggregate:~~
- 25 — (1) ~~The name and mailing address of the recipient;~~
26 — (2) ~~The total amount of the expenditure made to the recipient; and~~
27 — (3) ~~The date the last expended amount was made to the recipient;~~
- 28 — e. ~~The aggregate total of all expenditures from campaign funds in excess of two~~
29 ~~hundred dollars, adjusted for inflation;~~
- 30 — f. ~~The aggregate total of all expenditures from campaign funds of two hundred~~
31 ~~dollars, adjusted for inflation, or less; and~~

- 1 ~~g. The balance of the campaign fund on January first and December thirty first.~~
- 2 ~~4. A person required to file a statement under this section shall disclose each aggregated~~
- 3 ~~contribution from a contributor which totals five thousand dollars, adjusted for inflation~~
- 4 ~~or more during the reporting period. For these contributions from individuals, the~~
- 5 ~~statement must include the contributor's occupation, employer, and the employer's~~
- 6 ~~principal place of business.~~
- 7 ~~5. Statements under this section must be filed with the secretary of state.~~
- 8 ~~6. The secretary of state shall assess and collect fees for any reports filed after the filing~~
- 9 ~~deadline.~~ **SECTION 5. AMENDMENT.** Section 16.1-08.1-03.1 of the North Dakota
- 10 Century Code is amended and reenacted as follows:
- 11 ~~16.1-08.1-03.1. Special requirements for statements required of persons engaged in~~
- 12 ~~activities regarding ballot measures.~~
- 13 ~~1. For each reportable contribution and expenditure under section 16.1-08.1-02.4, the~~
- 14 ~~threshold for reporting is one hundred dollars, adjusted for inflation, for any person~~
- 15 ~~engaged in activities described in subdivision e of subsection 13.14 of section~~
- 16 ~~16.1-08.1-01.~~
- 17 ~~2. For contributions received from an out of state contributor, a person engaged in~~
- 18 ~~activities described in subdivision e of subsection 13.14 of section 16.1-08.1-01 shall~~
- 19 ~~include the following information regarding each subcontributor that has stated a~~
- 20 ~~contribution is for the express purpose of furthering the passage or defeat of a ballot~~
- 21 ~~measure in the statements required under section 16.1-08.1-02.4:~~
- 22 ~~a. A designation as to whether any person contributed in excess of one hundred~~
- 23 ~~dollars, adjusted for inflation, of the total contribution;~~
- 24 ~~b. The name and mailing address of each subcontributor that contributed in excess~~
- 25 ~~of one hundred dollars, adjusted for inflation, of the total contribution;~~
- 26 ~~c. The contribution amounts of each disclosed subcontributor; and~~
- 27 ~~d. The occupation, employer, and address for the employer's principal place of~~
- 28 ~~business of each disclosed subcontributor.~~
- 29 ~~3. An initiative and referendum sponsoring committee also shall file a disclosure~~
- 30 ~~statement by the date the secretary of state approves the petition for circulation, and~~
- 31 ~~shall file an additional statement on the date the petitions containing the required~~

number of signatures are submitted to the secretary of state for review. The statements required under this subsection must be in the same form as the year-end statements under section 16.1-08.1-02.4.

4. A sponsoring committee shall file a statement regarding its intent to compensate circulators before paying for petitions to be circulated.

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SECTION 2. AMENDMENT. Section 16.1-08.1-03.7 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-03.7. Political committees that organize and register according to federal law that make independent expenditures or disbursements to nonfederal candidates, political parties, and political committees.

A political committee that organizes and registers according to federal law and makes an independent expenditure or makes a disbursement in excess of two hundred dollars to a nonfederal candidate seeking public office or to a political party or political committee in this state shall file a copy of that portion of the committee's federal report detailing the independent expenditure or the disbursement made. The political committee shall file a copy of the committee's federal report, and supplementary information as necessary under this section, with the secretary of state at the time of filing the report with the applicable federal agency. The report must include:

1. The name, mailing address, and treasurer of the political committee;
2. The recipient's name and mailing address; ~~and~~
3. The date and amount of the independent expenditure or disbursement; and
4. The ultimate and true source of funds listed by contributor and subcontributor of any amount over two hundred dollars collected or used to make the independent expenditure or disbursement including:
 - a. The name and address of the contributor;
 - b. The total amount of the contribution; and
 - c. The date the last contribution was received.

SECTION 3. AMENDMENT. Section 16.1-08.1-04.1 of the North Dakota Century Code is amended and reenacted as follows:

1 **16.1-08.1-04.1. Personal use of contributions prohibited.**

2 1. A candidate may not use any contribution received by the candidate, the candidate's
3 candidate committee, or a multicandidate political committee to:

- 4 1. a. Give a personal benefit to the candidate or another person;
5 2. b. Make a loan to another person;
6 3. c. Knowingly pay more than the fair market value for goods or services purchased
7 for the campaign; or
8 4. d. Pay a criminal fine or civil penalty.

9 2. ~~For the first violation, the secretary of state shall assess a civil penalty of five hundred~~
10 ~~dollars upon any person who knowingly violates this section. The assessment of a civil~~
11 ~~penalty may be appealed to the district court of Burleigh County. For a second and~~
12 ~~subsequent knowing violation of this section, the person is guilty of a class B~~
13 ~~misdemeanor. The secretary of state shall assess a civil penalty upon any person that~~
14 ~~knowingly violates this section.~~

15 a. If the contribution used in violation of this section has a value of two thousand
16 five hundred dollars or more, the civil penalty must be two times the value of the
17 contribution.

18 b. If the contribution used in violation of this section has a value of less than two
19 thousand five hundred dollars, the civil penalty must be at least two times the
20 value of the contribution and may be up to five thousand dollars.

21 3. The assessment of a civil penalty may be appealed to the district court of the county
22 where the candidate resides.

23 **SECTION 4.** A new section to chapter 16.1-08.1 of the North Dakota Century Code is
24 created and enacted as follows:

25 **Ultimate and true source of funds - Required identification - Penalty.**

26 1. In any ~~report~~ statement under this chapter which requires the identification of a
27 contributor or subcontributor, the ultimate and true source of funds must be identified.

28 2. ~~A resident taxpayer may commence an action in a district court of this state against a~~
29 ~~person required to comply with this section to compel compliance if all other~~
30 ~~enforcement measures under this chapter have been exhausted and the taxpayer~~

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~~reasonably believes the person has failed to comply with this section. A failure to
comply with this section must be proved by clear and convincing evidence.~~

SECTION 5. AMENDMENT. Section 28-32-01 of the North Dakota Century Code is
amended and reenacted as follows:

28-32-01. Definitions.

In this chapter, unless the context or subject matter otherwise provides:

1. "Adjudicative proceeding" means an administrative matter resulting in an agency issuing an order after an opportunity for hearing is provided or required. An adjudicative proceeding includes administrative matters involving a hearing on a complaint against a specific-named respondent; a hearing on an application seeking a right, privilege, or an authorization from an agency, such as a ratemaking or licensing hearing; or a hearing on an appeal to an agency. An adjudicative proceeding includes reconsideration, rehearing, or reopening. Once an adjudicative proceeding has begun, the adjudicative proceeding includes any informal disposition of the administrative matter under section 28-32-22 or another specific statute or rule, unless the matter has been specifically converted to another type of proceeding under section 28-32-22. An adjudicative proceeding does not include a decision or order to file or not to file a complaint, or to initiate an investigation, an adjudicative proceeding, or any other proceeding before the agency, or another agency, or a court. An adjudicative proceeding does not include a decision or order to issue, reconsider, or reopen an order that precedes an opportunity for hearing or that under another section of this code is not subject to review in an adjudicative proceeding. An adjudicative proceeding does not include rulemaking under this chapter.
2. "Administrative agency" or "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an administrative agency must be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:

- 1 a. The office of management and budget except with respect to rules made under
- 2 section 32-12.2-14, rules relating to conduct on the capitol grounds and in
- 3 buildings located on the capitol grounds under section 54-21-18, rules relating to
- 4 the classified service as authorized under section 54-44.3-07, and rules relating
- 5 to state purchasing practices as required under section 54-44.4-04.
- 6 b. The adjutant general with respect to the department of emergency services.
- 7 c. The council on the arts.
- 8 d. The state auditor.
- 9 e. The department of commerce with respect to the division of economic
- 10 development and finance.
- 11 f. The dairy promotion commission.
- 12 g. The education factfinding commission.
- 13 h. The educational technology council.
- 14 i. The board of equalization.
- 15 j. The board of higher education.
- 16 k. The Indian affairs commission.
- 17 l. The industrial commission with respect to the activities of the Bank of North
- 18 Dakota, North Dakota housing finance agency, public finance authority, North
- 19 Dakota mill and elevator association, North Dakota farm finance agency, the
- 20 North Dakota transmission authority, and the North Dakota pipeline authority.
- 21 m. The department of corrections and rehabilitation except with respect to the
- 22 activities of the division of adult services under chapter 54-23.4.
- 23 n. The pardon advisory board.
- 24 o. The parks and recreation department.
- 25 p. The parole board.
- 26 q. The state fair association.
- 27 r. The attorney general with respect to activities of the state toxicologist and the
- 28 state crime laboratory.
- 29 s. The administrative committee on veterans' affairs except with respect to rules
- 30 relating to the supervision and government of the veterans' home and the
- 31 implementation of programs or services provided by the veterans' home.

- 1 t. The industrial commission with respect to the lignite research fund except as
2 required under section 57-61-01.5.
- 3 u. The attorney general with respect to guidelines adopted under section 12.1-32-15
4 for the risk assessment of sexual offenders, the risk level review process, and
5 public disclosure of information under section 12.1-32-15.
- 6 v. The commission on legal counsel for indigents.
- 7 w. The attorney general with respect to twenty-four seven sobriety program
8 guidelines and program fees.
- 9 x. The industrial commission with respect to approving or setting water rates under
10 chapter 61-40.
- 11 3. "Agency head" means an individual or body of individuals in whom the ultimate legal
12 authority of the agency is vested by law.
- 13 4. "Commission" means the North Dakota ethics commission established by article XIV
14 of the Constitution of North Dakota.
- 15 5. "Complainant" means any person who files a complaint before an administrative
16 agency pursuant to section 28-32-21 and any administrative agency that, when
17 authorized by law, files such a complaint before such agency or any other agency.
- 18 5-6. "Hearing officer" means any agency head or one or more members of the agency
19 head when presiding in an administrative proceeding, or, unless prohibited by law, one
20 or more other persons designated by the agency head to preside in an administrative
21 proceeding, an administrative law judge from the office of administrative hearings, or
22 any other person duly assigned, appointed, or designated to preside in an
23 administrative proceeding pursuant to statute or rule.
- 24 6-7. "License" means a franchise, permit, certification, approval, registration, charter, or
25 similar form of authorization required by law.
- 26 7-8. "Order" means any agency action of particular applicability which determines the legal
27 rights, duties, privileges, immunities, or other legal interests of one or more specific
28 persons. The term does not include an executive order issued by the governor.
- 29 8-9. "Party" means each person named or admitted as a party or properly seeking and
30 entitled as of right to be admitted as a party. An administrative agency may be a party.
31 In a hearing for the suspension, revocation, or disqualification of an operator's license

1 under title 39, the term may include each city and each county in which the alleged
2 conduct occurred, but the city or county may not appeal the decision of the hearing
3 officer.

4 ~~9-10.~~ "Person" includes an individual, association, partnership, corporation, limited liability
5 company, the commission, a state governmental agency or governmental subdivision,
6 or an agency of such governmental subdivision.

7 ~~10-11.~~ "Relevant evidence" means evidence having any tendency to make the existence of
8 any fact that is of consequence to the determination of the administrative action more
9 probable or less probable than it would be without the evidence.

10 ~~11-12.~~ "Rule" means the whole or a part of an agency or commission statement of general
11 applicability which implements or prescribes law or policy or the organization,
12 procedure, or practice requirements of the agency or commission. The term includes
13 the adoption of new rules and the amendment, repeal, or suspension of an existing
14 rule. The term does not include:

15 a. A rule concerning only the internal management of an agency or the commission
16 which does not directly or substantially affect the substantive or procedural rights
17 or duties of any segment of the public.

18 b. A rule that sets forth criteria or guidelines to be used by the staff of an agency or
19 the commission in the performance of audits, investigations, inspections, and
20 settling commercial disputes or negotiating commercial arrangements, or in the
21 defense, prosecution, or settlement of cases, if the disclosure of the
22 ~~statement~~rule would:

23 (1) Enable law violators to avoid detection;

24 (2) Facilitate disregard of requirements imposed by law; or

25 (3) Give a clearly improper advantage to persons who are in an adverse
26 position to the state.

27 c. A rule establishing specific prices to be charged for particular goods or services
28 sold by an agency.

29 d. A rule concerning only the physical servicing, maintenance, or care of
30 agency-owned ~~or~~ agency-operated, commission-owned, or
31 commission-operated facilities or property.

- e. A rule relating only to the use of a particular facility or property owned, operated, or maintained by the state or any of its subdivisions, if the substance of the rule is adequately indicated by means of signs or signals to persons who use the facility or property.
- f. A rule concerning only inmates of a correctional or detention facility, students enrolled in an educational institution, or patients admitted to a hospital, if adopted by that facility, institution, or hospital.
- g. A form whose contents or substantive requirements are prescribed by rule or statute or are instructions for the execution or use of the form.
- h. An agency or commission budget.
- i. An opinion of the attorney general.
- j. A rule adopted by an agency selection committee under section 54-44.7-03.
- k. Any material, including a guideline, interpretive statement, statement of general policy, manual, brochure, or pamphlet, which is explanatory and not intended to have the force and effect of law.

SECTION 6. AMENDMENT. ~~Section 28-32-02 of the North Dakota Century Code is amended and reenacted as follows:~~

~~**28-32-02. Rulemaking power of agency authority - Organizational rule.**~~

- ~~1. The authority of an administrative agency to adopt administrative rules is authority delegated by the legislative assembly. As part of that delegation, the legislative assembly reserves to itself the authority to determine when and if rules of administrative agencies are effective. Every administrative agency may adopt, amend, or repeal reasonable rules in conformity with this chapter and any statute administered or enforced by the agency.~~
- ~~2. In addition to other rulemaking requirements imposed by law, each agency may include in its rules a description of that portion of its organization and functions subject to this chapter and may include a statement of the general course and method of its operations and how the public may obtain information or make submissions or requests.~~

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1 ~~3. The authority of the commission to adopt rules arises from article XIV of the~~
2 ~~Constitution of North Dakota. The commission shall follow the process, and meet the~~
3 ~~requirements, as specified in this chapter to adopt, amend, or repeal its rules.~~

4 **SECTION 6. AMENDMENT.** Section 28-32-03 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **28-32-03. Emergency rules.**

- 7 1. If the ~~commission or an~~ agency, with the approval of the governor, or the commission
8 finds that emergency rulemaking is necessary, the commission or agency may declare
9 the proposed rule to be an interim final rule effective on a date no earlier than the date
10 of filing with the legislative council of the notice required by section 28-32-10.
- 11 2. A proposed rule may be given effect on an emergency basis under this section if any
12 of the following grounds exists regarding that rule:
- 13 a. Imminent peril threatens public health, safety, or welfare, which would be abated
14 by emergency effectiveness;
- 15 b. A delay in the effective date of the rule is likely to cause a loss of funds
16 appropriated to support a duty imposed by law upon the commission or agency;
- 17 c. Emergency effectiveness is reasonably necessary to avoid a delay in
18 implementing an appropriations measure; or
- 19 d. Emergency effectiveness is necessary to meet a mandate of federal law.
- 20 3. A final rule adopted after consideration of all written and oral submissions respecting
21 the interim final rule, which is substantially similar to the interim final rule, is effective
22 as of the declared effective date of the interim final rule.
- 23 4. The commission's or agency's finding, and a brief statement of the commission's or
24 agency's reasons for the finding, must be filed with the legislative council with the final
25 adopted emergency rule.
- 26 5. The commission or agency shall attempt to make interim final rules known to persons
27 who the commission or agency can reasonably be expected to believe may have a
28 substantial interest in them. As used in this subsection, "substantial interest" means an
29 interest in the effect of the rules which surpasses the common interest of all citizens.
- 30 ~~An~~ The commission or an agency adopting emergency rules shall comply with the
31 notice requirements of section 28-32-10 which relate to emergency rules and shall

1 provide notice to the chairman of the administrative rules committee of the emergency
2 status, declared effective date, and grounds for emergency status of the rules under
3 subsection 2. When notice of emergency rule adoption is received, the legislative
4 council shall publish the notice and emergency rules on its website.

- 5 6. An interim final rule is ineffective one hundred eighty days after its declared effective
6 date unless first adopted as a final rule.

rather 7 **SECTION 7. AMENDMENT.** Section 28-32-06 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **28-32-06. Force and effect of rules.**

10 Upon becoming effective, rules have the force and effect of law until amended or repealed
11 by the agency or commission, declared invalid by a final court decision, suspended or found to
12 be void by the administrative rules committee, or determined repealed by the legislative council
13 because the authority for adoption of the rules is repealed or transferred to another agency, or
14 the Constitution of North Dakota is amended to eliminate the authority.

15 **SECTION 8. AMENDMENT.** Section 28-32-07 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **28-32-07. Deadline for rules to implement statutory change.**

18 Any rule change, including a creation, amendment, or repeal, made to implement a
19 statutory change must be adopted and filed with the legislative council within nine months of the
20 effective date of the statutory change. If an agency or the commission needs additional time for
21 the rule change, a request for additional time must be made to the legislative council. The
22 legislative council may extend the time within which the agency or commission must adopt the
23 rule change if the request by the agency or commission is supported by evidence that the
24 agency or commission needs more time through no deliberate fault of its own.

25 **SECTION 9. AMENDMENT.** Section 28-32-08 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **28-32-08. Regulatory analysis.**

- 28 1. An agency or the commission shall issue a regulatory analysis of a proposed rule if:
29 a. Within twenty days after the last published notice date of a proposed rule
30 hearing, a written request for the analysis is filed by the governor or a member of
31 the legislative assembly; or

- 1 b. The proposed rule is expected to have an impact on the regulated community in
2 excess of fifty thousand dollars. The analysis under this subdivision must be
3 available on or before the first date of public notice as provided for in section
4 28-32-10.
- 5 2. The regulatory analysis must contain:
 - 6 a. A description of the classes of persons who probably will be affected by the
7 proposed rule, including classes that will bear the costs of the proposed rule and
8 classes that will benefit from the proposed rule;
 - 9 b. A description of the probable impact, including economic impact, of the proposed
10 rule;
 - 11 c. The probable costs to the agency or commission of the implementation and
12 enforcement of the proposed rule and any anticipated effect on state revenues;
13 and
 - 14 d. A description of any alternative methods for achieving the purpose of the
15 proposed rule that were seriously considered by the agency or commission and
16 the reasons why the methods were rejected in favor of the proposed rule.
- 17 3. Each regulatory analysis must include quantification of the data to the extent
18 practicable.
- 19 4. The agency or commission shall mail or deliver a copy of the regulatory analysis to
20 any person who requests a copy of the regulatory analysis. The agency or commission
21 may charge a fee for a copy of the regulatory analysis as allowed under section
22 44-04-18.
- 23 5. If required under subsection 1, the preparation and issuance of a regulatory analysis is
24 a mandatory duty of the agency or commission proposing a rule. Errors in a regulatory
25 analysis, including erroneous determinations concerning the impact of the proposed
26 rule on the regulated community, are not a ground upon which the invalidity of a rule
27 may be asserted or declared.

28 **SECTION 10. AMENDMENT.** Section 28-32-08.1 of the North Dakota Century Code is
29 amended and reenacted as follows:

28-32-08.1. Rules affecting small entities - Analysis - Economic impact statements -

Judicial review.

1. As used in this section:

- a. "Small business" means a business entity, including its affiliates, which:
 - (1) Is independently owned and operated; and
 - (2) Employs fewer than twenty-five full-time employees or has gross annual sales of less than two million five hundred thousand dollars;
- b. "Small entity" includes small business, small organization, and small political subdivision;
- c. "Small organization" means any not-for-profit enterprise that is independently owned and operated and is not dominant in its field; and
- d. "Small political subdivision" means a political subdivision with a population of less than five thousand.

2. Before adoption of any proposed rule, the adopting agency ~~or the commission~~ shall prepare a regulatory analysis in which, consistent with public health, safety, and welfare, the agency ~~or commission~~ considers utilizing regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small entities. The agency ~~or commission~~ shall consider each of the following methods of reducing impact of the proposed rule on small entities:

- a. Establishment of less stringent compliance or reporting requirements for small entities;
- b. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities;
- c. Consolidation or simplification of compliance or reporting requirements for small entities;
- d. Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule; and
- e. Exemption of small entities from all or any part of the requirements contained in the proposed rule.

- 1 3. Before adoption of any proposed rule that may have an adverse impact on small
2 entities, the adopting agency ~~or the commission~~ shall prepare an economic impact
3 statement that includes consideration of:
 - 4 a. The small entities subject to the proposed rule;
 - 5 b. The administrative and other costs required for compliance with the proposed
6 rule;
 - 7 c. The probable cost and benefit to private persons and consumers who are
8 affected by the proposed rule;
 - 9 d. The probable effect of the proposed rule on state revenues; and
 - 10 e. Any less intrusive or less costly alternative methods of achieving the purpose of
11 the proposed rule.
- 12 4. For any rule subject to this section, a small entity that is adversely affected or
13 aggrieved by final agency ~~or commission~~ action is entitled to judicial review of agency
14 ~~or commission~~ compliance with the requirements of this section. A small entity seeking
15 judicial review under this section must file a petition for judicial review within one year
16 from the date of final agency ~~or commission~~ action.
- 17 5. This section does not apply to the ethics commission, any agency that is an
18 occupational or professional licensing authority, ~~nor does this section apply to~~ and the
19 following agencies or divisions of agencies:
 - 20 a. Council on the arts.
 - 21 b. Beef commission.
 - 22 c. Dairy promotion commission.
 - 23 d. Dry bean council.
 - 24 e. Highway patrolmen's retirement board.
 - 25 f. Indian affairs commission.
 - 26 g. Board for Indian scholarships.
 - 27 h. State personnel board.
 - 28 i. Potato council.
 - 29 j. Board of public school education.
 - 30 k. Real estate trust account committee.
 - 31 l. Seed commission.

- 1 m. Soil conservation committee.
- 2 n. Oilseed council.
- 3 o. Wheat commission.
- 4 p. State seed arbitration board.
- 5 q. North Dakota lottery.

6 6. This section does not apply to rules mandated by federal law.

7 7. The adopting agency ~~or the commission~~ shall provide the administrative rules
8 committee copies of any regulatory analysis or economic impact statement, or both,
9 prepared under this section when the committee is considering the associated rules.

10 **SECTION 11. AMENDMENT.** Section 28-32-08.2 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **28-32-08.2. Fiscal notes for administrative rules.**

13 When an agency or the commission presents rules for administrative rules committee
14 consideration, the agency or commission shall provide a fiscal note or a statement in its
15 testimony that the rules have no fiscal effect. A fiscal note must reflect the effect of the rules
16 changes on state revenues and expenditures, including any effect on funds controlled by the
17 agency or commission.

18 **SECTION 12. AMENDMENT.** Section 28-32-09 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **28-32-09. Takings assessment.**

- 21 1. An agency or the commission shall prepare a written assessment of the constitutional
22 takings implications of a proposed rule that may limit the use of private real property.

23 The ~~agency's~~ assessment must:

- 24 a. Assess the likelihood that the proposed rule may result in a taking or regulatory
25 taking.
- 26 b. Clearly and specifically identify the purpose of the proposed rule.
- 27 c. Explain why the proposed rule is necessary to substantially advance that purpose
28 and why no alternative action is available that would achieve the agency's or
29 commission's goals while reducing the impact on private property owners.
- 30 d. Estimate the potential cost to the government if a court determines that the
31 proposed rule constitutes a taking or regulatory taking.

- 1 e. Identify the source of payment within the agency's or commission's budget for
- 2 any compensation that may be ordered.
- 3 f. Certify that the benefits of the proposed rule exceed the estimated compensation
- 4 costs.
- 5 2. Any private landowner who is or may be affected by a rule that limits the use of the
- 6 landowner's private real property may request in writing that the agency or
- 7 commission reconsider the application or need for the rule. Within thirty days of
- 8 receiving the request, the agency or commission shall consider the request and shall
- 9 in writing inform the landowner whether the agency or commission intends to keep the
- 10 rule in place, modify application of the rule, or repeal the rule.
- 11 3. In an agency's analysis of the takings implications of a proposed rule, "taking" means
- 12 the taking of private real property, as defined in section 47-01-03, by government
- 13 action which requires compensation to the owner of that property by the fifth or
- 14 fourteenth amendment to the Constitution of the United States or section 16 of article I
- 15 of the Constitution of North Dakota. "Regulatory taking" means a taking of real
- 16 property through the exercise of the police and regulatory powers of the state which
- 17 reduces the value of the real property by more than fifty percent. However, the
- 18 exercise of a police or regulatory power does not effect a taking if it substantially
- 19 advances legitimate state interests, does not deny an owner economically viable use
- 20 of the owner's land, or is in accordance with applicable state or federal law.

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21 **SECTION 13. AMENDMENT.** Section 28-32-10 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **28-32-10. Notice of rulemaking - Hearing date.**

- 24 1. An agency or the commission shall prepare a full notice and an abbreviated notice of
- 25 rulemaking.
- 26 a. The agency's full notice of the proposed adoption, amendment, or repeal of a rule
- 27 must include a short, specific explanation of the proposed rule and the purpose of
- 28 the proposed rule, identify the emergency status and declared effective date of
- 29 any emergency rules, include a determination of whether the proposed
- 30 rulemaking is expected to have an impact on the regulated community in excess
- 31 of fifty thousand dollars, identify at least one location where interested persons

1 may review the text of the proposed rule, provide the address to which written
2 comments concerning the proposed rule may be sent, provide the deadline for
3 submission of written comments, provide a telephone number and post-office or
4 electronic mail address at which a copy of the rules and regulatory analysis may
5 be requested, and, in the case of a substantive rule, provide the time and place
6 set for each oral hearing. ~~The~~An agency's full notice must include a statement of
7 the bill number and general subject matter of any legislation, enacted during the
8 most recent session of the legislative assembly, which is being implemented by
9 the proposed rule. The commission's full notice must include a statement of the
10 provision of the Constitution of North Dakota or the bill number and general
11 subject matter of any legislation enacted during the most recent session of the
12 legislative assembly which is being implemented by the proposed rule. The
13 agency's full notice must be filed with the legislative council, accompanied by a
14 copy of the proposed rules.

15 b. The agency or commission shall request publication of an abbreviated
16 newspaper publication notice at least once in each official county newspaper
17 published in this state. The abbreviated newspaper publication of notice must be
18 in a display-type format with a minimum width of one column of approximately
19 two inches [5.08 centimeters] and a minimum depth of approximately three
20 inches [7.62 centimeters] and with a headline describing the general topic of the
21 proposed rules. The notice must also include the telephone number or address to
22 use to obtain a copy of the proposed rules, identification of the emergency status
23 and declared effective date of any emergency rules, the address to use and the
24 deadline to submit written comments, and the location, date, and time of the
25 public hearing on the rules.

26 2. The agency or commission shall mail or deliver by electronic mail a copy of the
27 ~~agency's~~ full notice and proposed rule to each member of the legislative assembly
28 whose name appeared as a sponsor or cosponsor of legislation, enacted during the
29 most recent session of the legislative assembly, which is being implemented by the
30 proposed rule and to each person who has made a timely request to the agency or
31 commission for a copy of the notice and proposed rule. The agency or commission

1 may mail or otherwise provide a copy of the ~~agency's~~ full notice to any person who is
2 likely to be an interested person. The agency or commission may charge persons who
3 are not members of the legislative assembly fees for copies of the proposed rule as
4 allowed under section 44-04-18.

5 3. In addition to the other notice requirements of this subsection, the superintendent of
6 public instruction shall provide notice of any proposed rulemaking by the
7 superintendent of public instruction to each association with statewide membership
8 whose primary focus is elementary and secondary education issues which has
9 requested to receive notice from the superintendent under this subsection and to the
10 superintendent of each public school district in this state, or the president of the school
11 board for school districts that have no superintendent, at least twenty days before the
12 date of the hearing described in the notice. Notice provided by the superintendent of
13 public instruction under this section must be by first-class mail. However, upon request
14 of a group or person entitled to notice under this section, the superintendent of public
15 instruction shall provide the group or person notice by electronic mail.

16 4. The legislative council shall establish standard procedures for the commission and all
17 agencies to follow in complying with the provisions of this section and a procedure to
18 allow any person to request and receive mailed copies of all filings made by agencies
19 and the commission pursuant to this section. The legislative council may charge an
20 annual fee as established by the administrative rules committee for providing copies of
21 the filings.

22 5. At least twenty days must elapse between the date of the publication of the notice and
23 the date of the hearing. Within fifteen business days after receipt of a notice under this
24 section, a copy of the notice must be mailed by the legislative council to any person
25 who has paid the annual fee established under subsection 4.

26 **SECTION 14. AMENDMENT.** Section 28-32-11 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **28-32-11. Conduct of hearings - Notice of administrative rules committee**
29 **consideration - Consideration and written record of comments.**

30 The agency or commission shall adopt a procedure whereby all interested persons are
31 afforded reasonable opportunity to submit data, views, or arguments, orally or in writing,

1 concerning the proposed rule, including data respecting the impact of the proposed rule. The
2 agency or commission shall adopt a procedure to allow interested parties to request and
3 receive notice from the agency or commission of the date and place the rule will be reviewed by
4 the administrative rules committee. In case of substantive rules, the agency or commission shall
5 conduct an oral hearing. The agency or commission shall consider fully all written and oral
6 submissions respecting a proposed rule prior to the adoption, amendment, or repeal of any rule
7 not of an emergency nature. The agency or commission shall make a written record of its
8 consideration of all written and oral submissions contained in the rulemaking record respecting
9 a proposed rule.

10 **SECTION 15. AMENDMENT.** Section 28-32-12 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **28-32-12. Comment period.**

13 The agency or commission shall allow, after the conclusion of any rulemaking hearing, a
14 comment period of at least ten days during which data, views, or arguments concerning the
15 proposed rulemaking will be received by the agency or commission and made a part of the
16 rulemaking record to be considered by the agency or commission.

17 ~~**SECTION 17. AMENDMENT.** Section 28-32-14 of the North Dakota Century Code is~~
18 ~~amended and reenacted as follows:~~

19 ~~**28-32-14. Attorney general review of rules.**~~

20 ~~Every proposed rule proposed by any administrative agency must be submitted to the~~
21 ~~attorney general for an opinion as to its legality before final adoption, and the attorney general~~
22 ~~promptly shall furnish each such opinion. The attorney general may not approve any rule as to~~
23 ~~legality, and shall advise the agency or commission of any necessary rewording or revision of~~
24 ~~the rule, when the:~~

25 ~~1. The rule exceeds the statutory authority of the agency, or the statutory or constitutional~~
26 ~~authority of the commission;~~

27 ~~2. The rule is written in a manner that is not concise or easily understandable; or when~~
28 ~~the~~

29 ~~3. The procedural requirements for adoption of the rule in this chapter are not~~
30 ~~substantially met. The attorney general shall advise an agency of any revision or~~
31 ~~rewording of a rule necessary to correct objections as to legality.~~

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1 **SECTION 16. AMENDMENT.** Section 28-32-15 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **28-32-15. Filing of rules for publication - Effective date of rules.**

4 1. A copy of each rule adopted by an administrative agency or the commission, a copy of
5 each written comment and a written summary of each oral comment on the rule, and
6 the attorney general's opinion on the rule, ^{if any,} must be filed by the adopting agency or
7 commission with the legislative council for publication of the rule in the North Dakota
8 Administrative Code.

9 2. a. Nonemergency rules approved by the attorney general as to legality, adopted by
10 an administrative agency or the commission, ~~and~~ filed with the legislative council,
11 and not voided or held for consideration by the administrative rules committee
12 become effective according to the following schedule:

13 (1) Rules filed with the legislative council from August second through
14 November first become effective on the immediately succeeding January
15 first.

16 (2) Rules filed with the legislative council from November second through
17 February first become effective on the immediately succeeding April first.

18 (3) Rules filed with the legislative council from February second through May
19 first become effective on the immediately succeeding July first.

20 (4) Rules filed with the legislative council from May second through August first
21 become effective on the immediately succeeding October first.

22 b. If publication is delayed for any reason other than action of the administrative
23 rules committee, nonemergency rules, unless otherwise provided, become
24 effective when publication would have occurred but for the delay.

25 c. A rule held for consideration by the administrative rules committee becomes
26 effective on the first effective date of rules under the schedule in subdivision a
27 following the meeting at which that rule is reconsidered by the committee.

28 **SECTION 17. AMENDMENT.** Section 28-32-16 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 **28-32-16. Petition for reconsideration of rule - Hearing by agency.**

2 Any person substantially interested in the effect of a rule adopted by an administrative
3 agency or the commission may petition ~~such the~~ agency or commission for a reconsideration of
4 ~~any such the~~ rule or for an amendment or repeal ~~thereof. Such of the rule.~~ The petition must
5 state clearly and concisely the petitioners' alleged grounds for ~~such~~ reconsideration or for the
6 proposed repeal or amendment of ~~such the~~ rule. The agency or commission may grant the
7 petitioner a public hearing ~~upon such on~~ the terms and conditions as the agency ~~may~~
8 ~~prescribe~~prescribes.

9 ~~SECTION 20. AMENDMENT. Section 28-32-17 of the North Dakota Century Code is~~
10 ~~amended and reenacted as follows:~~

11 ~~28-32-17. Administrative rules committee objection.~~

12 ~~If the legislative management's administrative rules committee objects to all or any portion~~
13 ~~of a rule because the committee deems it to be unreasonable, arbitrary, capricious, or beyond~~
14 ~~the authority delegated to the adopting agency or commission, the committee may file that~~
15 ~~objection in certified form with the legislative council. The filed objection must contain a concise~~
16 ~~statement of the committee's reasons for its action.~~

17 ~~1. The legislative council shall attach to each objection a certification of the time and date~~
18 ~~of its filing and, as soon as possible, shall transmit a copy of the objection and the~~
19 ~~certification to the agency or commission adopting the rule in question. The legislative~~
20 ~~council also shall maintain a permanent register of all committee objections.~~

21 ~~2. The legislative council shall publish an objection filed pursuant to this section in~~
22 ~~the next issue of the code supplement. In case of a filed committee objection to a rule~~
23 ~~subject to the exceptions of the definition of rule in section 28-32-01, the agency or~~
24 ~~commission shall indicate the existence of that objection adjacent to the rule in any~~
25 ~~compilation containing that rule.~~

26 ~~3. Within fourteen days after the filing of a committee objection to a rule, the adopting~~
27 ~~agency or commission shall respond in writing to the committee. After receipt of the~~
28 ~~response, the committee may withdraw or modify its objection.~~

29 ~~4. After the filing of a committee objection, the burden of persuasion is upon the agency~~
30 ~~or commission in any action for judicial review or for enforcement of the rule to~~
31 ~~establish that the whole or portion thereof of the rule objected to is within the~~

procedural and substantive authority delegated to the agency or commission. If the agency or commission fails to meet its burden of persuasion, the court shall declare the whole or portion of the rule objected to invalid and judgment must be rendered against the agency or commission for court costs. These court costs must include a reasonable attorney's fee and must be payable from the appropriation of the agency or commission which adopted the rule in question.

SECTION 21. AMENDMENT. Section 28-32-18 of the North Dakota Century Code is amended and reenacted as follows:

~~28-32-18. Administrative rules committee may void rule~~ Grounds Amendment by agreement of agency and committee.

1. The legislative management's administrative rules committee may find that all or any portion of a rule is void if that rule is initially considered by the committee not later than the fifteenth day of the month before the date of the administrative code supplement in which the rule change is scheduled to appear. The administrative rules committee may find a rule or portion of a rule void if the committee makes the specific finding that, with regard to that rule or portion of a rule, there is:

- a. An absence of statutory authority under statute or the constitution.
- b. An emergency relating to public health, safety, or welfare.
- c. ~~A~~For rules proposed by an agency, a failure to comply with express legislative intent or to substantially meet the procedural requirements of this chapter for adoption of the rule.
- d. For rules proposed by the commission, a failure to substantially meet the procedural requirements for this chapter for adoption of the rule.
- e. A conflict with state law.
- f. Arbitrariness and capriciousness.
- g. A failure to make a written record of its consideration of written and oral submissions respecting the rule under section 28-32-11.

2. The administrative rules committee may find a rule void at the meeting at which the rule is initially considered by the committee or may hold consideration of that rule for one subsequent meeting. If no representative of the agency or commission appears before the administrative rules committee when rules are scheduled for committee

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1 consideration, those rules are held over for consideration at the next subsequent
2 committee meeting. Rules are not considered initially considered by the committee
3 under this subsection until a representative of the agency or commission appears
4 before the administrative rules committee when the rules are scheduled for committee
5 consideration. If no representative of the agency or commission appears before the
6 administrative rules committee meeting to which rules are held over for consideration,
7 the rules are void if the rules were adopted as emergency rules and for rules not
8 adopted as emergency rules the administrative rules committee may void the rules,
9 allow the rules to become effective, or hold over consideration of the rules to the next
10 subsequent committee meeting. Within three business days after the administrative
11 rules committee finds that a rule is void, the legislative council shall provide written
12 notice of that finding and the committee's specific finding under subdivisions a through
13 f of subsection 1 to the adopting agency or commission and to the chairman of the
14 legislative management. Within fourteen days after receipt of the notice, the adopting
15 agency or commission may file a petition with the chairman of the legislative
16 management for review by the legislative management of the decision of the
17 administrative rules committee. If the adopting agency or commission does not file a
18 petition for review, the rule becomes void on the fifteenth day after the notice from the
19 legislative council to the adopting agency or commission. If within sixty days after
20 receipt of the petition from the adopting agency or commission the legislative
21 management has not disapproved by motion the finding of the administrative rules
22 committee, the rule is void.

23 3. An agency or the commission may amend or repeal a rule or create a related rule
24 if, after consideration of rules by the administrative rules committee, the agency or
25 commission and the committee agree that the rule amendment, repeal, or creation is
26 necessary to address any of the considerations under subsection 1. A rule amended,
27 repealed, or created under this subsection is not subject to the other requirements of
28 this chapter relating to adoption of administrative rules and may be published by the
29 legislative council as amended, repealed, or created. If requested by the agency,
30 commission, or any interested party, a rule amended, repealed, or created under this
31 subsection must be reconsidered by the administrative rules committee at a

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1 subsequent meeting at which public comment on the agreed rule change must be
2 allowed.

3 ~~SECTION 22. AMENDMENT.~~ Section 28-32-18.1 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 ~~28-32-18.1. Administrative rules committee review of existing administrative rules.~~

6 ~~1. Upon request by the administrative rules committee, an administrative agency or the~~
7 ~~commission shall brief the committee on its existing administrative rules and point out~~
8 ~~any provisions that appear to be obsolete and any areas in which statutory or~~
9 ~~constitutional authority has changed or been repealed since the rules were adopted or~~
10 ~~amended.~~

11 ~~2. An agency or the commission may amend or repeal a rule without complying with the~~
12 ~~other requirements of this chapter relating to adoption of administrative rules and may~~
13 ~~resubmit the change to the legislative council for publication provided:~~

14 ~~a. The agency or commission initiates the request to the administrative rules~~
15 ~~committee for consideration of the amendment or repeal;~~

16 ~~b. The agency or commission provides notice to the regulated community, in a~~
17 ~~manner reasonably calculated to provide notice to those persons interested in the~~
18 ~~rule, of the time and place the administrative rules committee will consider the~~
19 ~~request for amendment or repeal of the rule; and~~

20 ~~c. The agency or commission and the administrative rules committee agree~~
21 ~~the rule amendment or repeal eliminates a provision that is obsolete or no longer~~
22 ~~in compliance with law and that no detriment would result to the substantive~~
23 ~~rights of the regulated community from the amendment or repeal.~~

24 **SECTION 18. AMENDMENT.** Subsection 2 of section 28-32-19 of the North Dakota
25 Century Code is amended and reenacted as follows:

26 2. The legislative council may prescribe ~~at~~the format, style, and arrangement for rules
27 ~~which~~ are to be published in the code and may refuse to accept the filing of any rule
28 that is not in substantial compliance ~~therewith~~with the format, style, and arrangement.
29 In arranging rules for publication, the legislative council may make ~~such~~ corrections in
30 spelling, grammatical construction, format, and punctuation of the rules as
31 ~~determined~~the legislative council determines are proper. The legislative council shall

1 keep and maintain a permanent code of all rules filed, including superseded and
2 repealed rules, which must be open to public inspection during office hours.

3 **SECTION 19. AMENDMENT.** Subsection 4 of section 28-32-19 of the North Dakota
4 Century Code is amended and reenacted as follows:

- 5 4. The legislative council, with the consent of the adopting agency or commission, may
6 omit from the code or code supplement any rule the publication of which would be
7 unduly cumbersome, expensive, or otherwise inexpedient, if the rule in printed or
8 duplicated form is made available on application to the agency or commission, and if
9 the code or code supplement contains a notice stating the general subject matter of
10 the omitted rule and ~~stating~~ how a copy may be obtained.

11 ~~**SECTION 25. AMENDMENT.** Section 28 32-27 of the North Dakota Century Code is~~
12 ~~amended and reenacted as follows:~~

13 ~~**28 32-27. Hearing officer - Disqualification - Substitution.**~~

14 ~~1. Any person or persons presiding for the agency in an administrative proceeding must~~
15 ~~be referred to individually or collectively as hearing officer. Any person from the office~~
16 ~~of administrative hearings presiding for the agency as a hearing officer in an~~
17 ~~administrative proceeding must be referred to as an administrative law judge.~~

18 ~~2. Any hearing officer is subject to disqualification for good cause shown.~~

19 ~~3. A hearing officer who is a director, officer, commissioner, head, or other executive of~~
20 ~~an agency shall self disqualify in a proceeding in which a reasonable, disinterested~~
21 ~~observer would believe the hearing officer is biased due to:~~

22 ~~a. A contribution by one of the parties supporting the hearing officer's most recent~~
23 ~~campaign for public office; or~~

24 ~~b. An ownership interest, other than investment in a mutual fund, of the hearing~~
25 ~~officer in one of the parties to the proceeding if the ownership interest is not~~
26 ~~shared by the general public.~~

27 ~~4. Any party may petition for the disqualification of any person presiding as a hearing~~
28 ~~officer upon discovering facts establishing grounds for disqualification.~~

29 ~~4.5. A person whose disqualification is requested shall determine whether to grant the~~
30 ~~petition, stating facts and reasons for the determination.~~

- 1 ~~5.6.~~ If a substitute is required for a person who is disqualified or becomes unavailable for
2 any other reason, the substitute may be appointed by:
- 3 ~~a.~~ The attorney general, if the disqualified or unavailable person is an assistant
4 attorney general;
- 5 ~~b.~~ The agency head, if the disqualified or unavailable person is one or more
6 members of the agency head or one or more other persons designated by the
7 agency head;
- 8 ~~c.~~ A supervising hearing officer, if the disqualified or unavailable person is a hearing
9 officer designated from an office, pool, panel, or division of hearing officers; or
- 10 ~~d.~~ The governor, in all other cases.
- 11 ~~6.7.~~ Any action taken by a duly appointed substitute for a disqualified or unavailable person
12 is as effective as if taken by the disqualified or unavailable person.
- 13 ~~7.8.~~ Any hearing officer in an administrative proceeding, from the time of appointment or
14 designation, may exercise any authority granted by law or rule. A hearing officer may
15 be designated to preside over the entire administrative proceeding and may issue
16 orders accordingly. A procedural hearing officer may only issue orders in regard to the
17 course and conduct of the hearing under statute or rule and to otherwise effect an
18 orderly hearing. If a procedural hearing officer is designated, the agency head must be
19 present at the hearing and the agency head shall issue findings of fact and
20 conclusions of law, as well as any order resulting from the hearing.
- 21 ~~9.~~ The North Dakota ethics commission shall assess any hearing officer who
22 knowingly violates subsection 3 a civil penalty of five hundred dollars for the first
23 violation. For a second and subsequent knowing violation of this section, the hearing
24 officer is guilty of a class B misdemeanor.

25 **SECTION 20. AMENDMENT.** Section 28-32-47 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **28-32-47. Scope of and procedure on appeal from agency rulemaking.**

- 28 1. A judge of the district court shall review an appeal from an administrative agency's or
29 ethics commission's rulemaking action based only on the record filed with the court. If
30 an appellant requests documents to be included in the record but the agency or
31 commission does not include them, the court, upon application by the appellant, may

1 compel their inclusion. After a hearing, the filing of briefs, or other disposition of the
2 matter as the judge may reasonably require, the court shall affirm the ~~agency's~~
3 rulemaking action unless it finds that any of the following are present:

- 4 1. a. The provisions of this chapter have not been substantially complied with in the
5 ~~agency's~~ rulemaking actions.
- 6 2. b. A rule published as a result of the rulemaking action appealed is unconstitutional
7 on the face of the language adopted.
- 8 3. c. A rule published as a result of the rulemaking action appealed is beyond the
9 scope of the agency's or commission's authority to adopt.
- 10 4. d. A rule published as a result of the rulemaking action appealed is on the face of
11 the language adopted an arbitrary or capricious application of authority granted
12 by statute.
- 13 2. If the rulemaking action of the agency or commission is not affirmed by the court, ~~if the~~
14 rulemaking action must be remanded to the agency or commission for disposition in
15 accordance with the order of the court, or the rule or a portion of the rule resulting from
16 the rulemaking action of the agency or commission must be declared invalid for
17 reasons stated by the court.

18 **SECTION 21. AMENDMENT.** Section 28-32-48 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **28-32-48. Appeal - Stay of proceedings.**

21 An appeal from an order or the rulemaking action of an administrative agency or the
22 commission does not stay the enforcement of the order or the effect of a published rule unless
23 the court to which the appeal is taken, upon application and after a hearing or the submission of
24 briefs, orders a stay. The court may impose terms and conditions for a stay of the enforcement
25 of the order or for a stay in the effect of a published rule. This section does not prohibit the
26 operation of an automatic stay upon the enforcement of an administrative order or commission
27 order as may be required by another statute.

28 **SECTION 22. AMENDMENT.** Section 28-32-49 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 **28-32-49. Review in supreme court.**

2 The judgment of the district court in an appeal from an order or rulemaking action of an
3 administrative agency or the commission may be reviewed in the supreme court on appeal in
4 the same manner as provided in section 28-32-46 or 28-32-47, except that the appeal to the
5 supreme court must be taken within sixty days after the service of the notice of entry of
6 judgment in the district court. Any party of record, including the agency or commission, may
7 take an appeal from the final judgment of the district court to the supreme court. If an appeal
8 from the judgment of the district court is taken by an agency or the commission, the agency or
9 commission may not be required to pay a docket fee or file a bond for costs or equivalent
10 security.

11 **SECTION 23.** Chapter 54-66 of the North Dakota Century Code is created and enacted as
12 follows:

13 **54-66-01. Definitions.**

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

15 1. "Accused individual" means an individual who is alleged to have violated article XIV of
16 the Constitution of North Dakota, this chapter, or another law or rule regarding
17 government ethics transparency, corruption, elections, or lobbying.

18 2. "Adjusted for inflation" means adjusted on January first of each year by the change in
19 the consumer price index for all urban consumers (all items, United States city
20 average), as identified by the secretary of state.

21 ~~3.~~ "Complainant" means an individual who, in writing or verbally, submits a complaint to
22 the commission.

23 ~~4.3.~~ "Complaint" means a verbal or written allegation to the commission that article XIV of
24 the Constitution of North Dakota, this chapter, or another law or rule regarding
25 government ethics transparency, corruption, elections, or lobbying has been violated.

26 ~~5.4.~~ "Ethics commission" or "commission" means the North Dakota ethics commission
27 established by article XIV of the Constitution of North Dakota.

28 ~~6.5.~~ "Gift" means any item, service, or thing of value not given in exchange for fair market
29 consideration including travel and recreation, except

30 a. Purely informational material;

31 b. A campaign contribution; and

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

7.6. "Influence state government action" means ~~promoting or opposing the final adoption of a rule by an administrative agency or the commission under chapter 28-32~~ an attempt to influence state administrative action by communicating or urging others to communicate with public officials or state employees, unless the attempt is made by a public official or state employee acting in an official capacity, and may be defined further by ethics commission rule.

8.7. "Lobby" means ~~an~~:

a. Engage in an activity listed in subsection 1 of section 54-05.1-02; and

b. Influence state government action.

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

a. A registered lobbyist; and

b. Any other individual who spends more than two hundred dollars, not including the individual's own travel expenses and membership dues, in any calendar year to lobby.

10.9. "Public official" means an elected or appointed official of the state's executive or legislative branch, members of the commission, members of the governor's cabinet, and employees of the legislative branch.

11.10. "Receives the complaint" means one or more members of the commission learn of the complaint.

11. "Registered lobbyist" means an individual required to register under section 54-05.1-03.

12. "Ultimate and true source" means the person that knowingly contributed over two hundred dollars, ~~adjusted for inflation, solely~~ to lobby or influence state government action, and may be defined further by ethics commission rule.

54-66-02. Disclosure of ultimate and true source of funds.

1. A registered lobbyist who expends an amount greater than two hundred dollars, ~~adjusted for inflation,~~ to lobby shall file with the secretary of state a report that includes

1 the known ultimate and true source of funds for the expenditure. The report must be
2 filed with the lobbyist expenditure report required under subsection 2 of section
3 54-05.1-03.

4 2. A ~~person~~ lobbyist other than a registered lobbyist who expends an amount greater than
5 two hundred dollars, ~~adjusted for inflation not including the individual's own travel~~
6 ~~expenses and membership dues, to influence state government action~~ lobbyist shall file
7 with the secretary of state a report including the known ultimate and true source of
8 funds for the expenditure. ~~The A report under this subsection~~ must be filed on or
9 before the August first following the date of the expenditure. The secretary of state
10 shall provide a form for reports under this subsection and make the form electronically
11 accessible to the public. The secretary of state also shall charge and collect fees for
12 late filing of the reports as follows:

- 13 a. Twenty-five dollars for a report filed within sixty days after the deadline; or
14 b. Fifty dollars for a report filed more than sixty days after the deadline.

15 3. The secretary of state shall compile the reports required under this section and make
16 the reports electronically accessible to the public ~~within forty days after the deadlines~~
17 ~~by which the reports must be filed.~~

18 4. ~~This section does not require a person to report the ultimate and true source of funds~~
19 ~~expended on:~~

- 20 ~~a. A gift to or from a family member;~~
21 ~~b. Purely informational material, advice, or education;~~
22 ~~c. Reimbursement for travel, meal, and refreshment expenses incurred to, from, or~~
23 ~~during a conference, seminar, or other legitimate educational opportunity for a~~
24 ~~public official if the conference, seminar, or educational opportunity concerns~~
25 ~~issues germane to the official duties of the public official;~~
26 ~~d. Meals and refreshments provided while informing, advising, or educating a public~~
27 ~~official about issues germane to the official duties of the public official;~~
28 ~~e. Providing an educational or social setting in the state to provide an opportunity~~
29 ~~for individuals to meet with public officials; and~~
30 ~~f. A good or service determined not to raise ethical concerns under rules adopted~~
31 ~~by the ethics commission.~~

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~~5. A resident taxpayer may commence an action in a district court of this state against a person required to comply with this section to compel compliance if all other enforcement measures under this chapter have been exhausted and the taxpayer reasonably believes the person has failed to comply with this section. A failure to comply with this section must be proved by clear and convincing evidence.~~

54-66-03. Lobbyist gifts - Penalty.

1. ~~A lobbyist may not give, offer, solicit, initiate, or facilitate a gift knowingly to a public official, and a public official may not accept a gift with a value over sixty dollars per individual per event, adjusted for inflation, from a lobbyist knowingly, except to advance opportunities for state residents to meet with public officials in educational and social settings in the state under conditions that do not raise ethical concerns, including:~~

~~a. Reimbursement for travel, meal, and refreshment expenses incurred to, from, or during a conference, seminar, or other legitimate educational opportunity for the public official if the conference, seminar, or educational opportunity concerns issues germane to the official duties of the public official;~~

~~b. Providing information, advice, or education to a public official;~~

~~c. Providing meals and refreshments while informing, advising, or educating a public official about issues germane to the official duties of the public official;~~

~~d. Items with a fair market value of ten dollars per individual per event, adjusted for inflation, or less per individual; and~~

~~e. A good or service determined not to raise ethical concerns under rules adopted by the ethics commission.~~

2. ~~The prohibition in subsection 1 does not apply when a lobbyist gives, offers, solicits, initiates, or facilitates, or a public official accepts:~~

~~a. A gift to or from a family member;~~

~~b. Purely informational material; or~~

~~c. A campaign contribution.~~

3. ~~For the first violation, the secretary of state shall assess a civil penalty of five hundred dollars upon any person who knowingly violates this section and, if the person is a lobbyist, the secretary of state may revoke the lobbyist's registration under chapter~~

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- 1 ~~54-05.1. For a second and subsequent knowing violation of this section, the person is~~
2 ~~guilty of a class B misdemeanor. The secretary of state shall assess a civil penalty~~
3 ~~upon any person that violates this section.~~
4 a. If the gift has a value of five hundred dollars or more, the civil penalty must be
5 two times the value of the gift.
6 b. If the gift has a value of less than five hundred dollars, the civil penalty must be
7 no less than two times the value of the gift and may be up to one thousand
8 dollars.
- 9 **54-66-04. Ethics commission member terms - Meetings - Code of ethics -**
10 **Compensation - Investigator Office.**
- 11 1. The terms of the initial members of the ethics commission must be staggered to
12 ensure no more than two members' terms expire in one year. The terms of the initial
13 members may be less than four years to accommodate the required staggering of
14 terms.
- 15 2. ~~The ethics commission shall meet as necessary to address each complaint the~~
16 ~~commission receives.~~ Unless the complaint at issue has resulted in a public hearing or
17 the imposition of a penalty or referral for enforcement under section 54-66-10, any
18 portion of a meeting during which commission members discuss complaints, informal
19 resolutions, attempts to informally resolve complaints, investigations, or referrals under
20 this chapter, the identity of an accused individual or complainant, or any other matter
21 arising from a complaint are closed meetings.
- 22 3. The commission shall abide by a code of ethics adopted in a public meeting. The code
23 of ethics must specify when a commission member is disqualified from participating in
24 matters before the commission.
- 25 4. Ethics commission members are entitled to:
- 26 a. Compensation for each day necessarily spent conducting commission business
27 in the amount provided for members of the legislative management under section
28 54-35-10; and
- 29 b. Payment for mileage and travel expenses necessarily incurred in the conduct of
30 commission business as provided under sections 44-08-04 and 54-06-09.

5. ~~Commission members shall hire or otherwise engage a part time administrative assistant. The administrative assistant must be provided an office within the office space for the department of labor and human rights. The commission shall compensate the department of labor and human rights for the office in an amount equal to the fair value of the office. The director of the office of management and budget shall allocate office space in the state capitol for the ethics commission, or, if office space in the capitol is unavailable, shall negotiate for, contract for, and obtain office space for the ethics commission in the city of Bismarck or in the Bismarck area. The ethics commission's office space may not be located in the office space of any other government agency, board, commission, or other governmental entity, and must provide sufficient privacy and security for the ethics commission to conduct its business. The director shall charge the ethics commission an amount equal to the fair value of the office space and related services the office of management and budget renders to the ethics commission.~~

~~54-66-05. Making a complaint - Identifying information - False complaints.~~

- ~~1. A complaint may be made to the commission orally or in writing. When making a complaint, a complainant shall provide the name, address, and telephone number of the complainant.~~
- ~~2. Within five days after making a complaint, the complainant shall submit a signed statement attesting the complaint is true and accurate to the best of the complainant's knowledge. The commission shall develop an attestation form for this purpose and make it electronically accessible to the public. After receiving the attestation, the commission shall summarize the complaint in writing if the complaint was made orally.~~
- ~~3. If the complainant does not submit the signed attestation by the deadline, the commission may not investigate or take other action on the complaint.~~
- ~~4. Knowingly or recklessly making a complaint that is materially false is defamation under chapter 12.1-15.~~

~~54-66-06. Informing the accused individual - Written response permitted.~~

~~The commission shall inform an accused individual by registered mail of the identity of the complainant who made the allegation against the accused individual and include the written complaint or written summary of the oral complaint as soon as reasonably possible but no later~~

1 ~~than ten calendar days after the commission receives the complaint. The accused individual~~
2 ~~may respond to the complaint in writing within ten calendar days of receipt of the complaint or~~
3 ~~summary of the complaint.~~

4 ~~**54 66 07. Informal resolution.**~~

5 ~~The commission may attempt to negotiate or mediate an informal resolution between the~~
6 ~~accused individual and the complainant.~~

7 ~~**54 66 08. Referrals to investigators - Exception for criminal allegations.**~~

8 ~~For each complaint with an attestation, the commission shall engage an investigator with~~
9 ~~the appropriate knowledge and experience regarding the Constitution of North Dakota,~~
10 ~~ethics related statutes, and ethics investigations, and refer the complaint to the investigator~~
11 ~~within thirty calendar days of receiving the complaint. However, if a complaint with an attestation~~
12 ~~includes an allegation of criminal conduct, the commission shall refer the allegation of criminal~~
13 ~~conduct to the bureau of criminal investigation or other law enforcement agency. The~~
14 ~~commission may engage a state agency as an investigator. If the accused individual provided a~~
15 ~~written response to the complaint, the commission shall provide the written response with the~~
16 ~~referred complaint.~~

17 ~~**54 66 09. Investigations - Findings and Recommendations - Responses.**~~

18 ~~1. The investigator engaged under section 54 66 08 shall investigate the complaint~~
19 ~~referred to it by the ethics commission. Investigations must include separate interviews~~
20 ~~with the accused individual and the complainant, unless the accused individual or~~
21 ~~complainant refuses to be interviewed, and consideration of the circumstances~~
22 ~~surrounding the allegations. The accused individual and complainant may be~~
23 ~~accompanied by legal counsel during the interviews of each. Investigations may~~
24 ~~include interviews of potential witnesses and other individuals believed to have~~
25 ~~relevant information.~~

26 ~~2. At the conclusion of the investigation, but no later than six months after the~~
27 ~~investigator received the complaint, the investigator shall submit its written findings~~
28 ~~from the investigation to the commission. The commission shall provide written copies~~
29 ~~of the findings to the accused individual and complainant. The accused individual and~~
30 ~~complainant may respond in writing to the findings within thirty calendar days of~~

1 ~~receiving the findings. The commission shall maintain copies of the findings and any~~
2 ~~written response to the findings.~~

3 ~~**54-66-10. Final determinations - Penalties - Referrals for enforcement.**~~

4 ~~1. After reviewing the findings from the investigator and any written response from the~~
5 ~~accused individual or complainant, the ethics commission shall meet with the accused~~
6 ~~individual and complainant to discuss the findings and written responses. A meeting~~
7 ~~under this subsection is a closed meeting as defined in section 44-04-17.1, although~~
8 ~~the accused individual and complainant may have legal counsel attend and~~
9 ~~participate.~~

10 ~~2. After the meeting with the accused individual and complainant, the commission shall~~
11 ~~issue written findings, including a determination whether a violation of article XIV of the~~
12 ~~Constitution of North Dakota, this chapter, or another law or rule regarding government~~
13 ~~ethics occurred. If the commission finds a violation occurred, the commission may~~
14 ~~assess a civil penalty if authorized by law or refer the matter to the entity authorized by~~
15 ~~law to assess a civil penalty for the violation.~~

16 ~~3. The accused individual and the complainant may appeal and request judicial review of~~
17 ~~a determination made or penalty imposed under this section to the district court in the~~
18 ~~county in which the accused individual resides. A request for judicial review under this~~
19 ~~section must comply with the requirements for an appeal of a determination of an~~
20 ~~agency under chapter 28-32. The scope of review and procedure on appeal from a~~
21 ~~determination of the commission must comply with section 28-32-47.~~

22 ~~4. The commission may not terminate the employment of a public official or otherwise~~
23 ~~remove a public official from the public official's public office.~~

24 **54-66-06. Informal resolution - Investigation - Referrals.**

25 After receiving a complaint, the ethics commission may:

- 26 1. Attempt to negotiate or mediate an informal resolution between the accused individual
27 and the complainant.
28 2. Investigate the allegations in the complaint.
29 3. Refer a matter described in or arising from a complaint to the bureau of criminal
30 investigation or other appropriate law enforcement agency if a majority of the ethics

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- 1 commission members reasonably believes a crime was committed or the safety of the
- 2 complainant is at risk.
- 3 4. Refer a complaint alleging a violation of open meetings or open records requirements
- 4 to the attorney general, and the attorney general shall review the allegation under
- 5 section 44-04-21.1 if the complaint was submitted to the ethics commission by the
- 6 relevant deadline in section 44-04-21.1.
- 7 **54-66-07. Ethics commission complaint - Informing the accused individual.**
- 8 If, after investigating a complaint, the ethics commission decides to charge the accused
- 9 individual with a violation of law, the ethics commission shall serve an ethics commission
- 10 complaint against the accused individual and give the accused individual no less than twenty
- 11 days to respond.
- 12 **54-66-08. Informal resolutions - Public hearings - Referrals.**
- 13 After serving an ethics commission complaint, the ethics commission may:
- 14 1. Resolve the charges in the ethics commission complaint informally with the accused
- 15 individual; or
- 16 2. Hold a public hearing regarding the charges in the ethics commission complaint. The
- 17 accused individual must be afforded due process, including an opportunity to respond
- 18 to the charges.
- 19 **54-66-09. Hearing findings - Penalties.**
- 20 1. At the conclusion of a hearing, the ethics commission shall issue and make public its
- 21 written findings of fact, conclusions of law, and any penalty authorized by law which
- 22 the ethics commission imposes.
- 23 2. The written findings of fact must state whether the ethics commission believes, based
- 24 on a preponderance of the evidence, as viewed by a reasonable person, a violation of
- 25 article XIV of the Constitution of North Dakota, this chapter, or another law or rule
- 26 regarding transparency, corruption, elections, or lobbying occurred.
- 27 **54-66-10. Appeals.**
- 28 An accused individual or complainant may appeal a finding of the ethics commission to the
- 29 district court of the county where the accused individual resides.

1 **54-66-11. Confidential information - Penalty.**

2 1. The following information is a confidential record as defined in section 44-04-17.1,
3 unless the commission has ~~determined the accused individual violated article XIV of~~
4 ~~the Constitution of North Dakota, this chapter, or another law or rule regarding~~
5 ~~government ethics, and a court affirmed the determination if appealed~~ issued an ethics
6 commission complaint, except the information may be disclosed as required by law or
7 as necessary to conduct an investigation arising from a complaint:

8 a. Information revealing the contents of a complaint;

9 b. Information that reasonably may be used to identify an accused individual or
10 complainant; and

11 c. Information relating to or created as part of an investigation of a complaint.

12 2. If a complaint is informally resolved under section ~~54-66-07~~ 54-66-06, the following
13 information is a confidential record as defined in section 44-04-17.1:

14 a. Information revealing the contents of the complaint;

15 b. Information that reasonably may be used to identify the accused individual or
16 complainant;

17 c. Information relating to or created as part of the process leading to the informal
18 resolution; and

19 d. Information revealing the informal resolution.

20 3. ~~Willful publication~~ Publication of information included in subsections 1 and 2 by a
21 person who knows the information to be false is ~~criminal defamation under~~
22 ~~section 12-1-15-01~~ a class B misdemeanor.

23 4. ~~A public official who violates this section is guilty of a class C felony.~~ The information
24 deemed confidential in this section may be disclosed by the ethics commission if the
25 accused individual agrees to the disclosure.

26 **54-66-12. Restriction on lobbying by public officials - Penalty.**

27 ~~For the first violation of subsection 2 of section 2 of article XIV of the Constitution of North~~
28 ~~Dakota, the secretary of state shall assess a civil penalty of five hundred dollars upon the~~
29 ~~person who knowingly commits the violation. For a second and subsequent knowing violation of~~
30 ~~the subsection, the person is guilty of a class B misdemeanor.~~ A knowing violation of
31 subsection 2 of section 2 of article XIV of the Constitution of North Dakota is a class A

1 misdemeanor. The ethics commission shall assess a civil penalty of up to one thousand dollars
2 on any person that knowingly violates the subsection.

3 **54-66-13. Attorney general to provide legal services.**

4 The attorney general shall serve as legal counsel for the commission unless the
5 commission objects to representation by the attorney general in a specific matter. When a
6 conflict of interest prevents the attorney general from providing legal services to the
7 commission, the attorney general may appoint a special assistant attorney general to serve as
8 legal counsel for the commission.

9 **54-66-14. Prohibition on delivering campaign contributions - Penalty.**

10 A lobbyist may not deliver knowingly a campaign contribution made by another person in
11 violation of subsection 3 of section 2 of article XIV of the Constitution of North Dakota. For a first
12 violation, the secretary of state shall assess a civil penalty of five hundred dollars upon any
13 person who knowingly violates this section ~~and may revoke the lobbyist's registration.~~ For a
14 second and subsequent knowing violation of this section, the person is guilty of a class B
15 misdemeanor, and, if the lobbyist is a registered lobbyist, the secretary of state may revoke the
16 lobbyist's registration.

17 **54-66-15. Removal of ethics commission members.**

18 1. An ethics commission member may be removed from office for:

- 19 a. Substantial neglect of duty;
- 20 b. Gross misconduct in office;
- 21 c. Violation of the commission's code of ethics; or
- 22 d. Willful or habitual neglect or refusal to perform the duties of the member.

23 2. Removal of an ethics commission member under subsection 1 requires consensus
24 agreement by:

- 25 a. The governor;
- 26 b. The majority leader of the senate; and
- 27 c. The minority leader of the senate.

28 **SECTION 24. APPROPRIATION.** There is appropriated out of any moneys in the general
29 fund in the state treasury, not otherwise appropriated, the sum of ~~\$300,000~~ \$517,155, or so
30 much of the sum as may be necessary, to the ethics commission for the purpose of the
31 operations of the commission, for the biennium beginning July 1, 2019, and ending June 30,

1 | 2021. The ethics commission is authorized ~~one and one half~~two full-time equivalent positions
2 | for this purpose.

3 | **SECTION 25. EFFECTIVE DATE.** Sections 1, 2, 3, and 4, 5, and 7 of this Act, and section
4 | 54-66-02 of the North Dakota Century Code, as created by section 3223 of this Act, become
5 | effective January 5, 2022.

6 | **SECTION 26. EFFECTIVE DATE.** North Dakota Century Code section 54-66-03, as
7 | created by section 3223 of this Act, becomes effective January 5, 2021.

8 | **SECTION 27. EXPIRATION DATE.** North Dakota Century Code section 54-66-12, as
9 | created by section 3223 of this Act, is effective until subsection 2 of section 2 of article XIV of
10 | the Constitution of North Dakota is no longer part of the Constitution of North Dakota.

11 | **SECTION 28. EMERGENCY.** Sections 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19,
12 | 20, 21, and 22, ~~23, 24, 25, 26, 27, 28, 29, 30, and 31~~ of this Act are declared to be an
13 | emergency measure.

HB 1521
4/15/19 #5

Sixty-sixth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1521

Introduced by

Representative Pollert

Senator Wardner

A BILL for an Act to create and enact a new section to chapter 16.1-08.1 and chapter 54-66 of the North Dakota Century Code, relating to reporting campaign contributions and expenditures, restrictions on public officials and lobbyists, investigations of ethics violations, and implementing requirements of article XIV of the Constitution of North Dakota; to amend and reenact section 16.1-08.1-01, subsection 4 of section 16.1-08.1-02.1, sections 16.1-08.1-02.3, 16.1-08.1-02.4, 16.1-08.1-03.1, 16.1-08.1-04.1, 28-32-01, 28-32-02, 28-32-03, 28-32-06, 28-32-07, 28-32-08, 28-32-08.1, 28-32-08.2, 28-32-09, 28-32-10, 28-32-11, 28-32-12, 28-32-14, 28-32-15, 28-32-16, 28-32-17, 28-32-18, and 28-32-18.1, subsections 2 and 4 of section 28-32-19, and sections 28-32-27, 28-32-47, 28-32-48, and 28-32-49 of the North Dakota Century Code, relating to rulemaking procedures, disqualification of agency heads in quasi-judicial proceedings, implementing article XIV of the Constitution of North Dakota, and requirements for the North Dakota ethics commission; to provide for a penalty; to provide an appropriation; to provide an effective date; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-08.1-01 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-01. Definitions.

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

1. "Adjusted for inflation" means adjusted on January first of each year by the change in the consumer price index for all urban consumers (all items, United States city average), as identified by the secretary of state.
2. "Affiliate" means an organization that controls, is controlled by, or is under common control with another organization. For purposes of this definition, control means the possession, direct or indirect, of the power to direct or cause the direction of the

management and policies of an organization, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise. Control is presumed to exist if an organization, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing fifty percent or more of the voting securities of any other organization.

~~2.3.~~ "Association" means any club, association, union, brotherhood, fraternity, organization, or group of any kind of two or more persons, including labor unions, trade associations, professional associations, or governmental associations, which is united for any purpose, business, or object and which assesses any dues, membership fees, or license fees in any amount, or which maintains a treasury fund in any amount. The term does not include corporations, cooperative corporations, limited liability companies, political committees, or political parties.

~~3.4.~~ "Candidate" means an individual who seeks nomination for election or election to public office, and includes:

- a. An individual holding public office;
- b. An individual who has publicly declared that individual's candidacy for nomination for election or election to public office or has filed or accepted a nomination for public office;
- c. An individual who has formed a campaign or other committee for that individual's candidacy for public office;
- d. An individual who has circulated a nominating petition to have that individual's name placed on the ballot; and
- e. An individual who has, in any manner, solicited or received a contribution for that individual's candidacy for public office, whether before or after the election for that office.

~~4.5.~~ "Conduit" means a person that is not a political party, political committee, or candidate and which receives a contribution of money and transfers the contribution to a candidate, political party, or political committee when the contribution is designated specifically for the candidate, political party, or political committee and the person has no discretion as to the recipient and the amount transferred. The term includes a

1 transactional intermediary, including a credit card company or a money transfer
2 service that pays or transfers money to a candidate on behalf of another person.

3 ~~5-6.~~ "Contribution" means a gift, transfer, conveyance, provision, receipt, subscription,
4 loan, advance, deposit of money, or anything of value, made for the purpose of
5 influencing the nomination for election, or election, of any person to public office or
6 aiding or opposing the circulation or passage of a statewide initiative or referendum
7 petition or measure. The term also means a contract, promise, or agreement, express
8 or implied, whether or not legally enforceable, to make a contribution for any of the
9 above purposes. The term includes funds received by a candidate for public office or a
10 political party or committee which are transferred or signed over to that candidate,
11 party, or committee from another candidate, party, or political committee or other
12 source including a conduit. The term "anything of value" includes any good or service
13 of more than a nominal value. The term "nominal value" means the cost, price, or
14 worth of the good or service is trivial, token, or of no appreciable value. The term
15 "contribution" does not include:

- 16 a. A loan of money from a bank or other lending institution made in the regular
17 course of business.
- 18 b. Time spent by volunteer campaign or political party workers.
- 19 c. Money or anything of value received for commercial transactions, including rents,
20 advertising, or sponsorships made as a part of a fair market value bargained-for
21 exchange.
- 22 d. Money or anything of value received for anything other than a political purpose.
- 23 e. Products or services for which the actual cost or fair market value are reimbursed
24 by a payment of money.
- 25 f. An independent expenditure.
- 26 g. The value of advertising paid by a political party, multicandidate political
27 committee, or caucus which is in support of a candidate.
- 28 h. In-kind contributions from a candidate to the candidate's campaign.

29 ~~6-7.~~ "Cooperative corporations", "corporations", and "limited liability companies" are as
30 defined in this code, and for purposes of this chapter "corporations" includes nonprofit
31 corporations. However, if a political committee, the only purpose of which is accepting

contributions and making expenditures for a political purpose, incorporates for liability purposes only, the committee is not considered a corporation for the purposes of this chapter.

~~7.8.~~ "Expenditure" means:

- a. A gift, transfer, conveyance, provision, loan, advance, payment, distribution, disbursement, outlay, or deposit of money or anything of value, except a loan of money from a bank or other lending institution made in the regular course of business, made for a political purpose or for the purpose of influencing the passage or defeat of a measure.
- b. A contract, promise, or agreement, express or implied, whether or not legally enforceable, to make any expenditure.
- c. The transfer of funds by a political committee to another political committee.
- d. An independent expenditure.

~~8.9.~~ "Expenditure categories" means the categories into which expenditures must be grouped for reports under this chapter. The expenditure categories are:

- a. Advertising;
- b. Campaign loan repayment;
- c. Operations;
- d. Travel; and
- e. Miscellaneous.

~~9.10.~~ "Independent expenditure" means an expenditure made for a political purpose or for the purpose of influencing the passage or defeat of a measure if the expenditure is made without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of, any candidate, committee, or political party.

~~10.11.~~ "Patron" means a person who owns equity interest in the form of stock, shares, or membership or maintains similar financial rights in a cooperative corporation.

~~11.12.~~ "Person" means an individual, partnership, political committee, association, corporation, cooperative corporation, limited liability company, or other organization or group of persons.

- 1 ~~42.13.~~ "Personal benefit" means a benefit to the candidate or another person which is not for
2 a political purpose or related to a candidate's responsibilities as a public officeholder,
3 and any other benefit that would convert a contribution to personal income.
- 4 ~~43.14.~~ "Political committee" means any committee, club, association, or other group of
5 persons which receives contributions or makes expenditures for political purposes and
6 includes:
- 7 a. A political action committee not connected to another organization and free to
8 solicit funds from the general public, or derived from a corporation, cooperative
9 corporation, limited liability company, affiliate, subsidiary, or an association that
10 solicits or receives contributions from its employees or members or makes
11 expenditures for political purposes on behalf of its employees or members;
 - 12 b. A candidate committee established to support an individual candidate seeking
13 public office which solicits or receives contributions for political purposes;
 - 14 c. A political organization registered with the federal election commission, which
15 solicits or receives contributions or makes expenditures for political purposes;
 - 16 d. A multicandidate political committee, including a caucus, established to support
17 multiple groups or slates of candidates seeking public office, which solicits or
18 receives contributions for political purposes; and
 - 19 e. A measure committee, including an initiative or referendum sponsoring
20 committee at any stage of its organization, which solicits or receives contributions
21 or makes expenditures for the purpose of aiding or opposing a measure sought
22 to be voted upon by the voters of the state, including any activities undertaken for
23 the purpose of drafting an initiative or referendum petition, seeking approval of
24 the secretary of state for the circulation of a petition, or seeking approval of the
25 submitted petitions.
- 26 ~~44.15.~~ "Political party" means any association, committee, or organization which nominates a
27 candidate for election to any office which may be filled by a vote of the electors of this
28 state or any of its political subdivisions and whose name appears on the election ballot
29 as the candidate of such association, committee, or organization.
- 30 ~~45.16.~~ "Political purpose" means any activity undertaken in support of or in opposition to the
31 election or nomination of a candidate to public office and includes using "vote for",

"oppose", or any similar support or opposition language in any advertisement whether the activity is undertaken by a candidate, a political committee, a political party, or any person. In the period thirty days before a primary election and sixty days before a special or general election, "political purpose" also means any activity in which a candidate's name, office, district, or any term meaning the same as "incumbent" or "challenger" is used in support of or in opposition to the election or nomination of a candidate to public office. The term does not include activities undertaken in the performance of a duty of a public office or any position taken in any bona fide news story, commentary, or editorial.

~~16-17.~~ "Public office" means every office to which an individual can be elected by vote of the people under the laws of this state.

~~17-18.~~ "Subsidiary" means an affiliate of a corporation under the control of the corporation directly or indirectly through one or more intermediaries.

19. "Ultimate and true source" means the person who knowingly contributed over two hundred dollars, adjusted for inflation, solely to influence a statewide election or an election for the legislative assembly.

SECTION 2. AMENDMENT. Subsection 4 of section 16.1-08.1-02.1 of the North Dakota Century Code is amended and reenacted as follows:

4. The statement filed according to this section must show the following:
 - a. The balance of the filer's convention accounts at the start and close of the reporting period;
 - b. The total of all revenue received and expenditures made of two hundred dollars, adjusted for inflation, or less;
 - c. The total of all revenue received and expenditures made in excess of two hundred dollars, adjusted for inflation;
 - d. For each aggregated revenue received from a person in excess of two hundred dollars, adjusted for inflation:
 - (1) The name of each person;
 - (2) The mailing address of each person;
 - (3) The date of the most recent receipt of revenue from each person; and

- (4) The purpose or purposes for which the aggregated revenue total was received from each person;
- e. For each aggregated expenditure made to a person in excess of two hundred dollars, adjusted for inflation:
 - (1) The name of each person or entity;
 - (2) The mailing address of each person or entity;
 - (3) The date of the most recent expense made to each person or entity; and
 - (4) The purpose or purposes for which the aggregated expenditure total was disbursed to each person or entity; and
- f. For each aggregated revenue from an individual which totals five thousand dollars, adjusted for inflation, or more during the reporting period, the occupation, employer, and principal place of business of the individual must be disclosed.

SECTION 3. AMENDMENT. Section 16.1-08.1-02.3 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-02.3. Pre-election, supplemental, and year-end campaign disclosure statement requirements for candidates, candidate committees, multicandidate committees, and nonstatewide political parties.

1. Prior to the thirty-first day before a primary, general, or special election, a candidate or candidate committee formed on behalf of the candidate, a multicandidate political committee, or a political party other than a statewide political party soliciting or accepting contributions shall file a campaign disclosure statement that includes all contributions received from January first through the fortieth day before the election. A candidate whose name is not on the ballot and who is not seeking election through write-in votes, the candidate's candidate committee, and a political party that has not endorsed or nominated any candidate in the election is not required to file a statement under this subsection. The statement may be submitted for filing beginning on the thirty-ninth day before the election. The statement must include:
 - a. For each aggregated contribution from a contributor which totals in excess of two hundred dollars, adjusted for inflation, received during the reporting period:
 - (1) The name and mailing address of the contributor;
 - (2) The total amount of the contribution; and

- 1 (3) The date the last contributed amount was received;
- 2 b. The total of all aggregated contributions from contributors which total in excess of
- 3 two hundred dollars, adjusted for inflation, during the reporting period;
- 4 c. The total of all contributions received from contributors that contributed two
- 5 hundred dollars, adjusted for inflation, or less each during the reporting period;
- 6 and
- 7 d. For a statewide candidate, a candidate committee formed on behalf of a
- 8 statewide candidate, and a statewide multicandidate committee, the balance of
- 9 the campaign fund on the fortieth day before the election and the balance of the
- 10 campaign fund on January first.
- 11 2. Beginning on the thirty-ninth day before the election through the day before the
- 12 election, a person that files a statement under subsection 1 must file a supplemental
- 13 statement within forty-eight hours of the start of the day following the receipt of a
- 14 contribution or aggregate contribution from a contributor which is in excess of five
- 15 hundred dollars, adjusted for inflation. The statement must include:
- 16 a. The name and mailing address of the contributor;
- 17 b. The total amount of the contribution received during the reporting period; and
- 18 c. The date the last contributed amount was received.
- 19 3. Prior to February first, a candidate or candidate committee, a multicandidate political
- 20 committee, or a nonstatewide political party soliciting or accepting contributions shall
- 21 file a campaign disclosure statement that includes all contributions received and
- 22 expenditures, by expenditure category, made from January first through December
- 23 thirty-first of the previous year. The statement may be submitted for filing beginning on
- 24 January first. The statement must include:
- 25 a. For a statewide candidate, a candidate committee formed on behalf of a
- 26 statewide candidate, and a statewide multicandidate committee, the balance of
- 27 the campaign fund on January first and on December thirty-first;
- 28 b. For each aggregated contribution from a contributor which totals in excess of two
- 29 hundred dollars, adjusted for inflation, received during the reporting period:
- 30 (1) The name and mailing address of the contributor;
- 31 (2) The total amount of the contribution; and

- 1 (3) The date the last contributed amount was received;
- 2 c. The total of all aggregated contributions from contributors which total in excess of
- 3 two hundred dollars, adjusted for inflation, during the reporting period;
- 4 d. The total of all contributions received from contributors that contributed two
- 5 hundred dollars, adjusted for inflation, or less each during the reporting period;
- 6 and
- 7 e. The total of all other expenditures made during the previous year, separated into
- 8 expenditure categories.
- 9 4. A person required to file a statement under this section, other than a candidate for
- 10 judicial office, county office, or city office, or a candidate committee for a candidate
- 11 exempted under this subsection, shall report each aggregated contribution from a
- 12 contributor which totals five thousand dollars, adjusted for inflation, or more during the
- 13 reporting period. For these contributions from individuals, the statement must include
- 14 the contributor's occupation, employer, and the employer's principal place of business.
- 15 5. A candidate for city office in a city with a population under five thousand and a
- 16 candidate committee for the candidate are exempt from this section.
- 17 6. A candidate for county office and a candidate committee for a candidate for county
- 18 office shall file statements under this chapter with the county auditor. A candidate for
- 19 city office who is required to file a statement under this chapter and a candidate
- 20 committee for such a candidate shall file statements with the city auditor. Any other
- 21 person required to file a statement under this section shall file the statement with the
- 22 secretary of state.
- 23 7. The filing officer shall assess and collect fees for any reports filed after the filing
- 24 deadline.
- 25 8. To ensure accurate reporting and avoid commingling of campaign and personal funds,
- 26 candidates shall use dedicated campaign accounts that are separate from any
- 27 personal accounts.

28 **SECTION 4. AMENDMENT.** Section 16.1-08.1-02.4 of the North Dakota Century Code is
29 amended and reenacted as follows:

**16.1-08.1-02.4. Pre-election, supplemental, and year-end campaign disclosure
statement requirements for statewide political parties and certain political committees.**

1. Prior to the thirty-first day before a primary, general, or special election, a statewide political party or a political committee not required to file statements under section 16.1-08.1-02.3 which is soliciting or accepting contributions shall file a campaign disclosure statement that includes all contributions received and expenditures made from January first through the fortieth day before the election. A political party that has not endorsed or nominated a candidate in an election is not required to file a statement under this subsection. A statement required to be filed under this subsection may be submitted for filing beginning on the thirty-ninth day before the election. The statement must include:
 - a. For each aggregated contribution from a contributor which totals in excess of two hundred dollars, adjusted for inflation, received during the reporting period:
 - (1) The name and mailing address of the contributor;
 - (2) The total amount of the contribution; and
 - (3) The date the last contributed amount was received;
 - b. The total of all aggregated contributions from contributors which total in excess of two hundred dollars, adjusted for inflation, during the reporting period;
 - c. The total of all contributions received from contributors that contributed two hundred dollars, adjusted for inflation, or less each during the reporting period;
 - d. For each recipient of an expenditure from campaign funds in excess of two hundred dollars, adjusted for inflation, in the aggregate:
 - (1) The name and mailing address of the recipient;
 - (2) The total amount of the expenditure made to the recipient; and
 - (3) The date the last expended amount was made to the recipient;
 - e. The aggregate total of all expenditures from campaign funds in excess of two hundred dollars, adjusted for inflation;
 - f. The aggregate total of all expenditures from campaign funds of two hundred dollars, adjusted for inflation, or less; and
 - g. The balance of the campaign fund on the fortieth day before the election and balance of the campaign fund on January first.

2. Beginning on the thirty-ninth day before the election through the day before the election, a person that files a statement under subsection 1 must file a supplemental statement within forty-eight hours of the start of the day following the receipt of a contribution or aggregate contribution from a contributor which is in excess of five hundred dollars, adjusted for inflation. The statement must include:
 - a. The name and mailing address of the contributor;
 - b. The total amount of the contribution received during the reporting period; and
 - c. The date the last contributed amount was received.
3. Prior to February first, a statewide political party or a political committee that is not required to file a statement under section 16.1-08.1-2.3 shall file a campaign disclosure statement that includes all contributions received and expenditures made from January first through December thirty-first of the previous year. The statement may be submitted for filing beginning on January first. The statement must include:
 - a. For each aggregated contribution from a contributor which totals in excess of two hundred dollars, adjusted for inflation, received during the reporting period:
 - (1) The name and mailing address of the contributor;
 - (2) The total amount of the contribution; and
 - (3) The date the last contributed amount was received;
 - b. The total of all aggregated contributions from contributors which total in excess of two hundred dollars, adjusted for inflation, during the reporting period;
 - c. The total of all contributions received from contributors that contributed two hundred dollars, adjusted for inflation, or less each during the reporting period;
 - d. For each recipient of an expenditure from campaign funds in excess of two hundred dollars, adjusted for inflation, in the aggregate:
 - (1) The name and mailing address of the recipient;
 - (2) The total amount of the expenditure made to the recipient; and
 - (3) The date the last expended amount was made to the recipient;
 - e. The aggregate total of all expenditures from campaign funds in excess of two hundred dollars, adjusted for inflation;
 - f. The aggregate total of all expenditures from campaign funds of two hundred dollars, adjusted for inflation, or less; and

- 1 g. The balance of the campaign fund on January first and December thirty-first.
- 2 4. A person required to file a statement under this section shall disclose each aggregated
- 3 contribution from a contributor which totals five thousand dollars, adjusted for inflation,
- 4 or more during the reporting period. For these contributions from individuals, the
- 5 statement must include the contributor's occupation, employer, and the employer's
- 6 principal place of business.
- 7 5. Statements under this section must be filed with the secretary of state.
- 8 6. The secretary of state shall assess and collect fees for any reports filed after the filing
- 9 deadline.

10 **SECTION 5. AMENDMENT.** Section 16.1-08.1-03.1 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **16.1-08.1-03.1. Special requirements for statements required of persons engaged in**
13 **activities regarding ballot measures.**

- 14 1. For each reportable contribution and expenditure under section 16.1-08.1-02.4, the
- 15 threshold for reporting is one hundred dollars, adjusted for inflation, for any person
- 16 engaged in activities described in subdivision e of subsection ~~13~~14 of section
- 17 16.1-08.1-01.
- 18 2. For contributions received from an out-of-state contributor, a person engaged in
- 19 activities described in subdivision e of subsection ~~13~~14 of section 16.1-08.1-01 shall
- 20 include the following information regarding each subcontributor that has stated a
- 21 contribution is for the express purpose of furthering the passage or defeat of a ballot
- 22 measure in the statements required under section 16.1-08.1-02.4:
 - 23 a. A designation as to whether any person contributed in excess of one hundred
 - 24 dollars, adjusted for inflation, of the total contribution;
 - 25 b. The name and mailing address of each subcontributor that contributed in excess
 - 26 of one hundred dollars, adjusted for inflation, of the total contribution;
 - 27 c. The contribution amounts of each disclosed subcontributor; and
 - 28 d. The occupation, employer, and address for the employer's principal place of
 - 29 business of each disclosed subcontributor.
- 30 3. An initiative and referendum sponsoring committee also shall file a disclosure
- 31 statement by the date the secretary of state approves the petition for circulation, and

1 shall file an additional statement on the date the petitions containing the required
2 number of signatures are submitted to the secretary of state for review. The
3 statements required under this subsection must be in the same form as the year-end
4 statements under section 16.1-08.1-02.4.

- 5 4. A sponsoring committee shall file a statement regarding its intent to compensate
6 circulators before paying for petitions to be circulated.

7 **SECTION 6. AMENDMENT.** Section 16.1-08.1-04.1 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **16.1-08.1-04.1. Personal use of contributions prohibited.**

- 10 1. A candidate may not use any contribution received by the candidate, the candidate's
11 candidate committee, or a multicandidate political committee to:
- 12 1. a. Give a personal benefit to the candidate or another person;
- 13 2. b. Make a loan to another person;
- 14 3. c. Knowingly pay more than the fair market value for goods or services purchased
15 for the campaign; or
- 16 4. d. Pay a criminal fine or civil penalty.
- 17 2. For the first violation, the secretary of state shall assess a civil penalty of five hundred
18 dollars upon any person who knowingly violates this section. The assessment of a civil
19 penalty may be appealed to the district court of Burleigh County. For a second and
20 subsequent knowing violation of this section, the person is guilty of a class B
21 misdemeanor.

22 **SECTION 7.** A new section to chapter 16.1-08.1 of the North Dakota Century Code is
23 created and enacted as follows:

24 **Ultimate and true source of funds - Required identification - Penalty.**

- 25 1. In any report under this chapter which requires the identification of a contributor or
26 subcontributor, the ultimate and true source of funds must be identified.
- 27 2. A resident taxpayer may commence an action in a district court of this state against a
28 person required to comply with this section to compel compliance if all other
29 enforcement measures under this chapter have been exhausted and the taxpayer
30 reasonably believes the person has failed to comply with this section. A failure to
31 comply with this section must be proved by clear and convincing evidence.

SECTION 8. AMENDMENT. Section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

28-32-01. Definitions.

In this chapter, unless the context or subject matter otherwise provides:

1. "Adjudicative proceeding" means an administrative matter resulting in an agency issuing an order after an opportunity for hearing is provided or required. An adjudicative proceeding includes administrative matters involving a hearing on a complaint against a specific-named respondent; a hearing on an application seeking a right, privilege, or an authorization from an agency, such as a ratemaking or licensing hearing; or a hearing on an appeal to an agency. An adjudicative proceeding includes reconsideration, rehearing, or reopening. Once an adjudicative proceeding has begun, the adjudicative proceeding includes any informal disposition of the administrative matter under section 28-32-22 or another specific statute or rule, unless the matter has been specifically converted to another type of proceeding under section 28-32-22. An adjudicative proceeding does not include a decision or order to file or not to file a complaint, or to initiate an investigation, an adjudicative proceeding, or any other proceeding before the agency, or another agency, or a court. An adjudicative proceeding does not include a decision or order to issue, reconsider, or reopen an order that precedes an opportunity for hearing or that under another section of this code is not subject to review in an adjudicative proceeding. An adjudicative proceeding does not include rulemaking under this chapter.
2. "Administrative agency" or "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an administrative agency must be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:
 - a. The office of management and budget except with respect to rules made under section 32-12.2-14, rules relating to conduct on the capitol grounds and in buildings located on the capitol grounds under section 54-21-18, rules relating to

- 1 the classified service as authorized under section 54-44.3-07, and rules relating
- 2 to state purchasing practices as required under section 54-44.4-04.
- 3 b. The adjutant general with respect to the department of emergency services.
- 4 c. The council on the arts.
- 5 d. The state auditor.
- 6 e. The department of commerce with respect to the division of economic
- 7 development and finance.
- 8 f. The dairy promotion commission.
- 9 g. The education factfinding commission.
- 10 h. The educational technology council.
- 11 i. The board of equalization.
- 12 j. The board of higher education.
- 13 k. The Indian affairs commission.
- 14 l. The industrial commission with respect to the activities of the Bank of North
- 15 Dakota, North Dakota housing finance agency, public finance authority, North
- 16 Dakota mill and elevator association, North Dakota farm finance agency, the
- 17 North Dakota transmission authority, and the North Dakota pipeline authority.
- 18 m. The department of corrections and rehabilitation except with respect to the
- 19 activities of the division of adult services under chapter 54-23.4.
- 20 n. The pardon advisory board.
- 21 o. The parks and recreation department.
- 22 p. The parole board.
- 23 q. The state fair association.
- 24 r. The attorney general with respect to activities of the state toxicologist and the
- 25 state crime laboratory.
- 26 s. The administrative committee on veterans' affairs except with respect to rules
- 27 relating to the supervision and government of the veterans' home and the
- 28 implementation of programs or services provided by the veterans' home.
- 29 t. The industrial commission with respect to the lignite research fund except as
- 30 required under section 57-61-01.5.

- 1 u. The attorney general with respect to guidelines adopted under section 12.1-32-15
- 2 for the risk assessment of sexual offenders, the risk level review process, and
- 3 public disclosure of information under section 12.1-32-15.
- 4 v. The commission on legal counsel for indigents.
- 5 w. The attorney general with respect to twenty-four seven sobriety program
- 6 guidelines and program fees.
- 7 x. The industrial commission with respect to approving or setting water rates under
- 8 chapter 61-40.
- 9 3. "Agency head" means an individual or body of individuals in whom the ultimate legal
- 10 authority of the agency is vested by law.
- 11 4. "Commission" means the North Dakota ethics commission established by article XIV
- 12 of the Constitution of North Dakota.
- 13 5. "Complainant" means any person who files a complaint before an administrative
- 14 agency pursuant to section 28-32-21 and any administrative agency that, when
- 15 authorized by law, files such a complaint before such agency or any other agency.
- 16 5-6. "Hearing officer" means any agency head or one or more members of the agency
- 17 head when presiding in an administrative proceeding, or, unless prohibited by law, one
- 18 or more other persons designated by the agency head to preside in an administrative
- 19 proceeding, an administrative law judge from the office of administrative hearings, or
- 20 any other person duly assigned, appointed, or designated to preside in an
- 21 administrative proceeding pursuant to statute or rule.
- 22 6-7. "License" means a franchise, permit, certification, approval, registration, charter, or
- 23 similar form of authorization required by law.
- 24 7-8. "Order" means any agency action of particular applicability which determines the legal
- 25 rights, duties, privileges, immunities, or other legal interests of one or more specific
- 26 persons. The term does not include an executive order issued by the governor.
- 27 8-9. "Party" means each person named or admitted as a party or properly seeking and
- 28 entitled as of right to be admitted as a party. An administrative agency may be a party.
- 29 In a hearing for the suspension, revocation, or disqualification of an operator's license
- 30 under title 39, the term may include each city and each county in which the alleged

1 conduct occurred, but the city or county may not appeal the decision of the hearing
2 officer.

3 ~~9-10.~~ "Person" includes an individual, association, partnership, corporation, limited liability
4 company, the commission, a state governmental agency or governmental subdivision,
5 or an agency of such governmental subdivision.

6 ~~10-11.~~ "Relevant evidence" means evidence having any tendency to make the existence of
7 any fact that is of consequence to the determination of the administrative action more
8 probable or less probable than it would be without the evidence.

9 ~~11-12.~~ "Rule" means the whole or a part of an agency or commission statement of general
10 applicability which implements or prescribes law or policy or the organization,
11 procedure, or practice requirements of the agency or commission. The term includes
12 the adoption of new rules and the amendment, repeal, or suspension of an existing
13 rule. The term does not include:

14 a. A rule concerning only the internal management of an agency or the commission
15 which does not directly or substantially affect the substantive or procedural rights
16 or duties of any segment of the public.

17 b. A rule that sets forth criteria or guidelines to be used by the staff of an agency or
18 the commission in the performance of audits, investigations, inspections, and
19 settling commercial disputes or negotiating commercial arrangements, or in the
20 defense, prosecution, or settlement of cases, if the disclosure of the
21 ~~statement~~rule would:

22 (1) Enable law violators to avoid detection;

23 (2) Facilitate disregard of requirements imposed by law; or

24 (3) Give a clearly improper advantage to persons who are in an adverse
25 position to the state.

26 c. A rule establishing specific prices to be charged for particular goods or services
27 sold by an agency.

28 d. A rule concerning only the physical servicing, maintenance, or care of
29 agency-owned ~~or~~ agency-operated, commission-owned, or
30 commission-operated facilities or property.

- 1 e. A rule relating only to the use of a particular facility or property owned, operated,
2 or maintained by the state or any of its subdivisions, if the substance of the rule is
3 adequately indicated by means of signs or signals to persons who use the facility
4 or property.
- 5 f. A rule concerning only inmates of a correctional or detention facility, students
6 enrolled in an educational institution, or patients admitted to a hospital, if adopted
7 by that facility, institution, or hospital.
- 8 g. A form whose contents or substantive requirements are prescribed by rule or
9 statute or are instructions for the execution or use of the form.
- 10 h. An agency or commission budget.
- 11 i. An opinion of the attorney general.
- 12 j. A rule adopted by an agency selection committee under section 54-44.7-03.
- 13 k. Any material, including a guideline, interpretive statement, statement of general
14 policy, manual, brochure, or pamphlet, which is explanatory and not intended to
15 have the force and effect of law.

16 **SECTION 9. AMENDMENT.** Section 28-32-02 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **28-32-02. Rulemaking ~~power of agency~~authority - Organizational rule.**

- 19 1. The authority of an administrative agency to adopt administrative rules is authority
20 delegated by the legislative assembly. As part of that delegation, the legislative
21 assembly reserves to itself the authority to determine when and if rules of
22 administrative agencies are effective. Every administrative agency may adopt, amend,
23 or repeal reasonable rules in conformity with this chapter and any statute administered
24 or enforced by the agency.
- 25 2. In addition to other rulemaking requirements imposed by law, each agency may
26 include in its rules a description of that portion of its organization and functions subject
27 to this chapter and may include a statement of the general course and method of its
28 operations and how the public may obtain information or make submissions or
29 requests.

- 1 3. The authority of the commission to adopt rules arises from article XIV of the
2 Constitution of North Dakota. The commission shall follow the process, and meet the
3 requirements, as specified in this chapter to adopt, amend, or repeal its rules.

4 **SECTION 10. AMENDMENT.** Section 28-32-03 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **28-32-03. Emergency rules.**

- 7 1. If the commission or an agency, with the approval of the governor, finds that
8 emergency rulemaking is necessary, the commission or agency may declare the
9 proposed rule to be an interim final rule effective on a date no earlier than the date of
10 filing with the legislative council of the notice required by section 28-32-10.
11 2. A proposed rule may be given effect on an emergency basis under this section if any
12 of the following grounds exists regarding that rule:
13 a. Imminent peril threatens public health, safety, or welfare, which would be abated
14 by emergency effectiveness;
15 b. A delay in the effective date of the rule is likely to cause a loss of funds
16 appropriated to support a duty imposed by law upon the commission or agency;
17 c. Emergency effectiveness is reasonably necessary to avoid a delay in
18 implementing an appropriations measure; or
19 d. Emergency effectiveness is necessary to meet a mandate of federal law.
20 3. A final rule adopted after consideration of all written and oral submissions respecting
21 the interim final rule, which is substantially similar to the interim final rule, is effective
22 as of the declared effective date of the interim final rule.
23 4. The commission's or agency's finding, and a brief statement of the commission's or
24 agency's reasons for the finding, must be filed with the legislative council with the final
25 adopted emergency rule.
26 5. The commission or agency shall attempt to make interim final rules known to persons
27 who the commission or agency can reasonably be expected to believe may have a
28 substantial interest in them. As used in this subsection, "substantial interest" means an
29 interest in the effect of the rules which surpasses the common interest of all citizens.
30 ~~At~~ The commission or an agency adopting emergency rules shall comply with the
31 notice requirements of section 28-32-10 which relate to emergency rules and shall

1 provide notice to the chairman of the administrative rules committee of the emergency
2 status, declared effective date, and grounds for emergency status of the rules under
3 subsection 2. When notice of emergency rule adoption is received, the legislative
4 council shall publish the notice and emergency rules on its website.

5 6. An interim final rule is ineffective one hundred eighty days after its declared effective
6 date unless first adopted as a final rule.

7 **SECTION 11. AMENDMENT.** Section 28-32-06 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **28-32-06. Force and effect of rules.**

10 Upon becoming effective, rules have the force and effect of law until amended or repealed
11 by the agency or commission, declared invalid by a final court decision, suspended or found to
12 be void by the administrative rules committee, or determined repealed by the legislative council
13 because the authority for adoption of the rules is repealed or transferred to another agency, or
14 the Constitution of North Dakota is amended to eliminate the authority.

15 **SECTION 12. AMENDMENT.** Section 28-32-07 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **28-32-07. Deadline for rules to implement statutory change.**

18 Any rule change, including a creation, amendment, or repeal, made to implement a
19 statutory change must be adopted and filed with the legislative council within nine months of the
20 effective date of the statutory change. If an agency or the commission needs additional time for
21 the rule change, a request for additional time must be made to the legislative council. The
22 legislative council may extend the time within which the agency or commission must adopt the
23 rule change if the request by the agency or commission is supported by evidence that the
24 agency or commission needs more time through no deliberate fault of its own.

25 **SECTION 13. AMENDMENT.** Section 28-32-08 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **28-32-08. Regulatory analysis.**

28 1. An agency or the commission shall issue a regulatory analysis of a proposed rule if:
29 a. Within twenty days after the last published notice date of a proposed rule
30 hearing, a written request for the analysis is filed by the governor or a member of
31 the legislative assembly; or

- 1 b. The proposed rule is expected to have an impact on the regulated community in
- 2 excess of fifty thousand dollars. The analysis under this subdivision must be
- 3 available on or before the first date of public notice as provided for in section
- 4 28-32-10.
- 5 2. The regulatory analysis must contain:
- 6 a. A description of the classes of persons who probably will be affected by the
- 7 proposed rule, including classes that will bear the costs of the proposed rule and
- 8 classes that will benefit from the proposed rule;
- 9 b. A description of the probable impact, including economic impact, of the proposed
- 10 rule;
- 11 c. The probable costs to the agency or commission of the implementation and
- 12 enforcement of the proposed rule and any anticipated effect on state revenues;
- 13 and
- 14 d. A description of any alternative methods for achieving the purpose of the
- 15 proposed rule that were seriously considered by the agency or commission and
- 16 the reasons why the methods were rejected in favor of the proposed rule.
- 17 3. Each regulatory analysis must include quantification of the data to the extent
- 18 practicable.
- 19 4. The agency or commission shall mail or deliver a copy of the regulatory analysis to
- 20 any person who requests a copy of the regulatory analysis. The agency or commission
- 21 may charge a fee for a copy of the regulatory analysis as allowed under section
- 22 44-04-18.
- 23 5. If required under subsection 1, the preparation and issuance of a regulatory analysis is
- 24 a mandatory duty of the agency or commission proposing a rule. Errors in a regulatory
- 25 analysis, including erroneous determinations concerning the impact of the proposed
- 26 rule on the regulated community, are not a ground upon which the invalidity of a rule
- 27 may be asserted or declared.

28 **SECTION 14. AMENDMENT.** Section 28-32-08.1 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 **28-32-08.1. Rules affecting small entities - Analysis - Economic impact statements -**

2 **Judicial review.**

3 1. As used in this section:

4 a. "Small business" means a business entity, including its affiliates, which:

5 (1) Is independently owned and operated; and

6 (2) Employs fewer than twenty-five full-time employees or has gross annual
7 sales of less than two million five hundred thousand dollars;

8 b. "Small entity" includes small business, small organization, and small political
9 subdivision;

10 c. "Small organization" means any not-for-profit enterprise that is independently
11 owned and operated and is not dominant in its field; and

12 d. "Small political subdivision" means a political subdivision with a population of less
13 than five thousand.

14 2. Before adoption of any proposed rule, the adopting agency or the commission shall
15 prepare a regulatory analysis in which, consistent with public health, safety, and
16 welfare, the agency or commission considers utilizing regulatory methods that will
17 accomplish the objectives of applicable statutes while minimizing adverse impact on
18 small entities. The agency or commission shall consider each of the following methods
19 of reducing impact of the proposed rule on small entities:

20 a. Establishment of less stringent compliance or reporting requirements for small
21 entities;

22 b. Establishment of less stringent schedules or deadlines for compliance or
23 reporting requirements for small entities;

24 c. Consolidation or simplification of compliance or reporting requirements for small
25 entities;

26 d. Establishment of performance standards for small entities to replace design or
27 operational standards required in the proposed rule; and

28 e. Exemption of small entities from all or any part of the requirements contained in
29 the proposed rule.

- 1 3. Before adoption of any proposed rule that may have an adverse impact on small
- 2 entities, the adopting agency or the commission shall prepare an economic impact
- 3 statement that includes consideration of:
- 4 a. The small entities subject to the proposed rule;
- 5 b. The administrative and other costs required for compliance with the proposed
- 6 rule;
- 7 c. The probable cost and benefit to private persons and consumers who are
- 8 affected by the proposed rule;
- 9 d. The probable effect of the proposed rule on state revenues; and
- 10 e. Any less intrusive or less costly alternative methods of achieving the purpose of
- 11 the proposed rule.
- 12 4. For any rule subject to this section, a small entity that is adversely affected or
- 13 aggrieved by final agency or commission action is entitled to judicial review of agency
- 14 or commission compliance with the requirements of this section. A small entity seeking
- 15 judicial review under this section must file a petition for judicial review within one year
- 16 from the date of final agency or commission action.
- 17 5. This section does not apply to any agency that is an occupational or professional
- 18 licensing authority, nor does this section apply to the following agencies or divisions of
- 19 agencies:
- 20 a. Council on the arts.
- 21 b. Beef commission.
- 22 c. Dairy promotion commission.
- 23 d. Dry bean council.
- 24 e. Highway patrolmen's retirement board.
- 25 f. Indian affairs commission.
- 26 g. Board for Indian scholarships.
- 27 h. State personnel board.
- 28 i. Potato council.
- 29 j. Board of public school education.
- 30 k. Real estate trust account committee.
- 31 l. Seed commission.

- 1 m. Soil conservation committee.
- 2 n. Oilseed council.
- 3 o. Wheat commission.
- 4 p. State seed arbitration board.
- 5 q. North Dakota lottery.
- 6 6. This section does not apply to rules mandated by federal law.
- 7 7. The adopting agency or the commission shall provide the administrative rules
- 8 committee copies of any regulatory analysis or economic impact statement, or both,
- 9 prepared under this section when the committee is considering the associated rules.

10 **SECTION 15. AMENDMENT.** Section 28-32-08.2 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **28-32-08.2. Fiscal notes for administrative rules.**

13 When an agency or the commission presents rules for administrative rules committee
14 consideration, the agency or commission shall provide a fiscal note or a statement in its
15 testimony that the rules have no fiscal effect. A fiscal note must reflect the effect of the rules
16 changes on state revenues and expenditures, including any effect on funds controlled by the
17 agency or commission.

18 **SECTION 16. AMENDMENT.** Section 28-32-09 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **28-32-09. Takings assessment.**

- 21 1. An agency or the commission shall prepare a written assessment of the constitutional
22 takings implications of a proposed rule that may limit the use of private real property.
23 The agency's assessment must:
 - 24 a. Assess the likelihood that the proposed rule may result in a taking or regulatory
25 taking.
 - 26 b. Clearly and specifically identify the purpose of the proposed rule.
 - 27 c. Explain why the proposed rule is necessary to substantially advance that purpose
28 and why no alternative action is available that would achieve the agency's or
29 commission's goals while reducing the impact on private property owners.
 - 30 d. Estimate the potential cost to the government if a court determines that the
31 proposed rule constitutes a taking or regulatory taking.

- 1 e. Identify the source of payment within the agency's or commission's budget for
- 2 any compensation that may be ordered.
- 3 f. Certify that the benefits of the proposed rule exceed the estimated compensation
- 4 costs.
- 5 2. Any private landowner who is or may be affected by a rule that limits the use of the
- 6 landowner's private real property may request in writing that the agency or
- 7 commission reconsider the application or need for the rule. Within thirty days of
- 8 receiving the request, the agency or commission shall consider the request and shall
- 9 in writing inform the landowner whether the agency or commission intends to keep the
- 10 rule in place, modify application of the rule, or repeal the rule.
- 11 3. In an agency's analysis of the takings implications of a proposed rule, "taking" means
- 12 the taking of private real property, as defined in section 47-01-03, by government
- 13 action which requires compensation to the owner of that property by the fifth or
- 14 fourteenth amendment to the Constitution of the United States or section 16 of article I
- 15 of the Constitution of North Dakota. "Regulatory taking" means a taking of real
- 16 property through the exercise of the police and regulatory powers of the state which
- 17 reduces the value of the real property by more than fifty percent. However, the
- 18 exercise of a police or regulatory power does not effect a taking if it substantially
- 19 advances legitimate state interests, does not deny an owner economically viable use
- 20 of the owner's land, or is in accordance with applicable state or federal law.

21 **SECTION 17. AMENDMENT.** Section 28-32-10 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **28-32-10. Notice of rulemaking - Hearing date.**

- 24 1. An agency or the commission shall prepare a full notice and an abbreviated notice of
- 25 rulemaking.
- 26 a. The agency's full notice of the proposed adoption, amendment, or repeal of a rule
- 27 must include a short, specific explanation of the proposed rule and the purpose of
- 28 the proposed rule, identify the emergency status and declared effective date of
- 29 any emergency rules, include a determination of whether the proposed
- 30 rulemaking is expected to have an impact on the regulated community in excess
- 31 of fifty thousand dollars, identify at least one location where interested persons

may review the text of the proposed rule, provide the address to which written comments concerning the proposed rule may be sent, provide the deadline for submission of written comments, provide a telephone number and post-office or electronic mail address at which a copy of the rules and regulatory analysis may be requested, and, in the case of a substantive rule, provide the time and place set for each oral hearing. ~~The~~An agency's full notice must include a statement of the bill number and general subject matter of any legislation, enacted during the most recent session of the legislative assembly, which is being implemented by the proposed rule. The commission's full notice must include a statement of the provision of the Constitution of North Dakota or the bill number and general subject matter of any legislation enacted during the most recent session of the legislative assembly which is being implemented by the proposed rule. The agency's full notice must be filed with the legislative council, accompanied by a copy of the proposed rules.

b. The agency or commission shall request publication of an abbreviated newspaper publication notice at least once in each official county newspaper published in this state. The abbreviated newspaper publication of notice must be in a display-type format with a minimum width of one column of approximately two inches [5.08 centimeters] and a minimum depth of approximately three inches [7.62 centimeters] and with a headline describing the general topic of the proposed rules. The notice must also include the telephone number or address to use to obtain a copy of the proposed rules, identification of the emergency status and declared effective date of any emergency rules, the address to use and the deadline to submit written comments, and the location, date, and time of the public hearing on the rules.

2. The agency or commission shall mail or deliver by electronic mail a copy of the ~~agency's~~ full notice and proposed rule to each member of the legislative assembly whose name appeared as a sponsor or cosponsor of legislation, enacted during the most recent session of the legislative assembly, which is being implemented by the proposed rule and to each person who has made a timely request to the agency or commission for a copy of the notice and proposed rule. The agency or commission

1 may mail or otherwise provide a copy of the agency's full notice to any person who is
2 likely to be an interested person. The agency or commission may charge persons who
3 are not members of the legislative assembly fees for copies of the proposed rule as
4 allowed under section 44-04-18.

5 3. In addition to the other notice requirements of this subsection, the superintendent of
6 public instruction shall provide notice of any proposed rulemaking by the
7 superintendent of public instruction to each association with statewide membership
8 whose primary focus is elementary and secondary education issues which has
9 requested to receive notice from the superintendent under this subsection and to the
10 superintendent of each public school district in this state, or the president of the school
11 board for school districts that have no superintendent, at least twenty days before the
12 date of the hearing described in the notice. Notice provided by the superintendent of
13 public instruction under this section must be by first-class mail. However, upon request
14 of a group or person entitled to notice under this section, the superintendent of public
15 instruction shall provide the group or person notice by electronic mail.

16 4. The legislative council shall establish standard procedures for the commission and all
17 agencies to follow in complying with the provisions of this section and a procedure to
18 allow any person to request and receive mailed copies of all filings made by agencies
19 and the commission pursuant to this section. The legislative council may charge an
20 annual fee as established by the administrative rules committee for providing copies of
21 the filings.

22 5. At least twenty days must elapse between the date of the publication of the notice and
23 the date of the hearing. Within fifteen business days after receipt of a notice under this
24 section, a copy of the notice must be mailed by the legislative council to any person
25 who has paid the annual fee established under subsection 4.

26 **SECTION 18. AMENDMENT.** Section 28-32-11 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **28-32-11. Conduct of hearings - Notice of administrative rules committee**
29 **consideration - Consideration and written record of comments.**

30 The agency or commission shall adopt a procedure whereby all interested persons are
31 afforded reasonable opportunity to submit data, views, or arguments, orally or in writing,

concerning the proposed rule, including data respecting the impact of the proposed rule. The agency or commission shall adopt a procedure to allow interested parties to request and receive notice from the agency or commission of the date and place the rule will be reviewed by the administrative rules committee. In case of substantive rules, the agency or commission shall conduct an oral hearing. The agency or commission shall consider fully all written and oral submissions respecting a proposed rule prior to the adoption, amendment, or repeal of any rule not of an emergency nature. The agency or commission shall make a written record of its consideration of all written and oral submissions contained in the rulemaking record respecting a proposed rule.

SECTION 19. AMENDMENT. Section 28-32-12 of the North Dakota Century Code is amended and reenacted as follows:

28-32-12. Comment period.

The agency or commission shall allow, after the conclusion of any rulemaking hearing, a comment period of at least ten days during which data, views, or arguments concerning the proposed rulemaking will be received by the agency or commission and made a part of the rulemaking record to be considered by the agency or commission.

SECTION 20. AMENDMENT. Section 28-32-14 of the North Dakota Century Code is amended and reenacted as follows:

28-32-14. Attorney general review of rules.

Every proposed rule ~~proposed by any administrative agency~~ must be submitted to the attorney general for an opinion as to its legality before final adoption, and the attorney general promptly shall furnish each ~~such~~ opinion. The attorney general may not approve any rule as to legality, and shall advise the agency or commission of any necessary rewording or revision of the rule, when the:

1. The rule exceeds the statutory authority of the agency, or the statutory or constitutional authority of the commission;
2. The rule is written in a manner that is not concise or easily understandable; ~~or when the~~
3. The procedural requirements for adoption of the rule in this chapter are not substantially met. ~~The attorney general shall advise an agency of any revision or rewording of a rule necessary to correct objections as to legality.~~

1 **SECTION 21. AMENDMENT.** Section 28-32-15 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **28-32-15. Filing of rules for publication - Effective date of rules.**

- 4 1. A copy of each rule adopted by an administrative agency or the commission, a copy of
5 each written comment and a written summary of each oral comment on the rule, and
6 the attorney general's opinion on the rule must be filed by the adopting agency or
7 commission with the legislative council for publication of the rule in the North Dakota
8 Administrative Code.
- 9 2. a. Nonemergency rules approved by the attorney general as to legality, adopted by
10 an administrative agency or the commission, ~~and~~ filed with the legislative council,
11 and not voided or held for consideration by the administrative rules committee
12 become effective according to the following schedule:
- 13 (1) Rules filed with the legislative council from August second through
14 November first become effective on the immediately succeeding January
15 first.
- 16 (2) Rules filed with the legislative council from November second through
17 February first become effective on the immediately succeeding April first.
- 18 (3) Rules filed with the legislative council from February second through May
19 first become effective on the immediately succeeding July first.
- 20 (4) Rules filed with the legislative council from May second through August first
21 become effective on the immediately succeeding October first.
- 22 b. If publication is delayed for any reason other than action of the administrative
23 rules committee, nonemergency rules, unless otherwise provided, become
24 effective when publication would have occurred but for the delay.
- 25 c. A rule held for consideration by the administrative rules committee becomes
26 effective on the first effective date of rules under the schedule in subdivision a
27 following the meeting at which that rule is reconsidered by the committee.

28 **SECTION 22. AMENDMENT.** Section 28-32-16 of the North Dakota Century Code is
29 amended and reenacted as follows:

28-32-16. Petition for reconsideration of rule - Hearing by agency.

Any person substantially interested in the effect of a rule adopted by an administrative agency or the commission may petition ~~such~~ the agency or commission for a reconsideration of ~~any such~~ the rule or for an amendment or repeal ~~thereof~~. ~~Such~~ of the rule. The petition must state clearly and concisely the petitioners' alleged grounds for ~~such~~ reconsideration or ~~for~~ the proposed repeal or amendment of ~~such~~ the rule. The agency or commission may grant the petitioner a public hearing ~~upon such~~ on the terms and conditions as the agency ~~may~~ prescribe.

SECTION 23. AMENDMENT. Section 28-32-17 of the North Dakota Century Code is amended and reenacted as follows:

28-32-17. Administrative rules committee objection.

If the legislative management's administrative rules committee objects to all or any portion of a rule because the committee deems it to be unreasonable, arbitrary, capricious, or beyond the authority delegated to the adopting agency or commission, the committee may file that objection in certified form with the legislative council. The filed objection must contain a concise statement of the committee's reasons for its action.

1. The legislative council shall attach to each objection a certification of the time and date of its filing and, as soon as possible, shall transmit a copy of the objection and the certification to the agency or commission adopting the rule in question. The legislative council also shall maintain a permanent register of all committee objections.
2. The legislative council shall publish an objection filed pursuant to this section in the next issue of the code supplement. In case of a filed committee objection to a rule subject to the exceptions of the definition of rule in section 28-32-01, the agency or commission shall indicate the existence of that objection adjacent to the rule in any compilation containing that rule.
3. Within fourteen days after the filing of a committee objection to a rule, the adopting agency or commission shall respond in writing to the committee. After receipt of the response, the committee may withdraw or modify its objection.
4. After the filing of a committee objection, the burden of persuasion is upon the agency or commission in any action for judicial review or for enforcement of the rule to establish that the whole or portion ~~thereof~~ of the rule objected to is within the

procedural and substantive authority delegated to the agency or commission. If the agency or commission fails to meet its burden of persuasion, the court shall declare the whole or portion of the rule objected to invalid and judgment must be rendered against the agency or commission for court costs. These court costs must include a reasonable attorney's fee and must be payable from the appropriation of the agency or commission which adopted the rule in question.

SECTION 24. AMENDMENT. Section 28-32-18 of the North Dakota Century Code is amended and reenacted as follows:

28-32-18. Administrative rules committee may void rule - Grounds - Amendment by agreement of agency and committee.

1. The legislative management's administrative rules committee may find that all or any portion of a rule is void if that rule is initially considered by the committee not later than the fifteenth day of the month before the date of the administrative code supplement in which the rule change is scheduled to appear. The administrative rules committee may find a rule or portion of a rule void if the committee makes the specific finding that, with regard to that rule or portion of a rule, there is:
 - a. An absence of ~~statutory~~ authority under statute or the constitution.
 - b. An emergency relating to public health, safety, or welfare.
 - c. For rules proposed by an agency, a failure to comply with express legislative intent or to substantially meet the procedural requirements of this chapter for adoption of the rule.
 - d. For rules proposed by the commission, a failure to substantially meet the procedural requirements for this chapter for adoption of the rule.
 - e. A conflict with state law.
 - e-f. Arbitrariness and capriciousness.
 - f-g. A failure to make a written record of its consideration of written and oral submissions respecting the rule under section 28-32-11.
2. The administrative rules committee may find a rule void at the meeting at which the rule is initially considered by the committee or may hold consideration of that rule for one subsequent meeting. If no representative of the agency or commission appears before the administrative rules committee when rules are scheduled for committee

1 consideration, those rules are held over for consideration at the next subsequent
2 committee meeting. Rules are not considered initially considered by the committee
3 under this subsection until a representative of the agency or commission appears
4 before the administrative rules committee when the rules are scheduled for committee
5 consideration. If no representative of the agency or commission appears before the
6 administrative rules committee meeting to which rules are held over for consideration,
7 the rules are void if the rules were adopted as emergency rules and for rules not
8 adopted as emergency rules the administrative rules committee may void the rules,
9 allow the rules to become effective, or hold over consideration of the rules to the next
10 subsequent committee meeting. Within three business days after the administrative
11 rules committee finds that a rule is void, the legislative council shall provide written
12 notice of that finding and the committee's specific finding under subdivisions a through
13 f of subsection 1 to the adopting agency or commission and to the chairman of the
14 legislative management. Within fourteen days after receipt of the notice, the adopting
15 agency or commission may file a petition with the chairman of the legislative
16 management for review by the legislative management of the decision of the
17 administrative rules committee. If the adopting agency or commission does not file a
18 petition for review, the rule becomes void on the fifteenth day after the notice from the
19 legislative council to the adopting agency or commission. If within sixty days after
20 receipt of the petition from the adopting agency or commission the legislative
21 management has not disapproved by motion the finding of the administrative rules
22 committee, the rule is void.

- 23 3. An agency or the commission may amend or repeal a rule or create a related rule if,
24 after consideration of rules by the administrative rules committee, the agency or
25 commission and the committee agree ~~that~~ the rule amendment, repeal, or creation is
26 necessary to address any of the considerations under subsection 1. A rule amended,
27 repealed, or created under this subsection is not subject to the other requirements of
28 this chapter relating to adoption of administrative rules and may be published by the
29 legislative council as amended, repealed, or created. If requested by the agency,
30 commission, or any interested party, a rule amended, repealed, or created under this
31 subsection must be reconsidered by the administrative rules committee at a

1 subsequent meeting at which public comment on the agreed rule change must be
2 allowed.

3 **SECTION 25. AMENDMENT.** Section 28-32-18.1 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **28-32-18.1. Administrative rules committee review of existing administrative rules.**

6 1. Upon request by the administrative rules committee, an administrative agency or the
7 commission shall brief the committee on its existing administrative rules and point out
8 any provisions that appear to be obsolete and any areas in which statutory or
9 constitutional authority has changed or been repealed since the rules were adopted or
10 amended.

11 2. An agency or the commission may amend or repeal a rule without complying with the
12 other requirements of this chapter relating to adoption of administrative rules and may
13 resubmit the change to the legislative council for publication provided:

14 a. The agency or commission initiates the request to the administrative rules
15 committee for consideration of the amendment or repeal;

16 b. The agency or commission provides notice to the regulated community, in a
17 manner reasonably calculated to provide notice to those persons interested in the
18 rule, of the time and place the administrative rules committee will consider the
19 request for amendment or repeal of the rule; and

20 c. The agency or commission and the administrative rules committee agree
21 the rule amendment or repeal eliminates a provision that is obsolete or no longer
22 in compliance with law and that no detriment would result to the substantive
23 rights of the regulated community from the amendment or repeal.

24 **SECTION 26. AMENDMENT.** Subsection 2 of section 28-32-19 of the North Dakota
25 Century Code is amended and reenacted as follows:

26 2. The legislative council may prescribe at the format, style, and arrangement for rules
27 ~~which are~~ to be published in the code and may refuse to accept the filing of any rule
28 that is not in substantial compliance ~~therewith~~ with the format, style, and arrangement.
29 In arranging rules for publication, the legislative council may make ~~such~~ corrections in
30 spelling, grammatical construction, format, and punctuation of the rules as
31 ~~determined~~ the legislative council determines are proper. The legislative council shall

keep and maintain a permanent code of all rules filed, including superseded and repealed rules, which must be open to public inspection during office hours.

SECTION 27. AMENDMENT. Subsection 4 of section 28-32-19 of the North Dakota Century Code is amended and reenacted as follows:

4. The legislative council, with the consent of the adopting agency or commission, may omit from the code or code supplement any rule the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the rule in printed or duplicated form is made available on application to the agency or commission, and if the code or code supplement contains a notice stating the general subject matter of the omitted rule and ~~stating~~ how a copy may be obtained.

SECTION 28. AMENDMENT. Section 28-32-27 of the North Dakota Century Code is amended and reenacted as follows:

28-32-27. Hearing officer - Disqualification - Substitution.

1. Any person or persons presiding for the agency in an administrative proceeding must be referred to individually or collectively as hearing officer. Any person from the office of administrative hearings presiding for the agency as a hearing officer in an administrative proceeding must be referred to as an administrative law judge.
2. Any hearing officer is subject to disqualification for good cause shown.
3. A hearing officer who is a director, officer, commissioner, head, or other executive of an agency shall self-disqualify in a proceeding in which a reasonable, disinterested observer would believe the hearing officer is biased due to:
 - a. A contribution by one of the parties supporting the hearing officer's most recent campaign for public office; or
 - b. An ownership interest, other than investment in a mutual fund, of the hearing officer in one of the parties to the proceeding if the ownership interest is not shared by the general public.
4. Any party may petition for the disqualification of any person presiding as a hearing officer upon discovering facts establishing grounds for disqualification.
- 4-5. A person whose disqualification is requested shall determine whether to grant the petition, stating facts and reasons for the determination.

- 1 ~~5-6.~~ If a substitute is required for a person who is disqualified or becomes unavailable for
2 any other reason, the substitute may be appointed by:
- 3 a. The attorney general, if the disqualified or unavailable person is an assistant
4 attorney general;
- 5 b. The agency head, if the disqualified or unavailable person is one or more
6 members of the agency head or one or more other persons designated by the
7 agency head;
- 8 c. A supervising hearing officer, if the disqualified or unavailable person is a hearing
9 officer designated from an office, pool, panel, or division of hearing officers; or
- 10 d. The governor, in all other cases.
- 11 ~~6-7.~~ Any action taken by a duly appointed substitute for a disqualified or unavailable person
12 is as effective as if taken by the disqualified or unavailable person.
- 13 ~~7-8.~~ Any hearing officer in an administrative proceeding, from the time of appointment or
14 designation, may exercise any authority granted by law or rule. A hearing officer may
15 be designated to preside over the entire administrative proceeding and may issue
16 orders accordingly. A procedural hearing officer may only issue orders in regard to the
17 course and conduct of the hearing under statute or rule and to otherwise effect an
18 orderly hearing. If a procedural hearing officer is designated, the agency head must be
19 present at the hearing and the agency head shall issue findings of fact and
20 conclusions of law, as well as any order resulting from the hearing.
- 21 9. The North Dakota ethics commission shall assess any hearing officer who knowingly
22 violates subsection 3 a civil penalty of five hundred dollars for the first violation. For a
23 second and subsequent knowing violation of this section, the hearing officer is guilty of
24 a class B misdemeanor.

25 **SECTION 29. AMENDMENT.** Section 28-32-47 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **28-32-47. Scope of and procedure on appeal from agency rulemaking.**

- 28 1. A judge of the district court shall review an appeal from an administrative agency's or
29 ethics commission's rulemaking action based only on the record filed with the court. If
30 an appellant requests documents to be included in the record but the agency or
31 commission does not include them, the court, upon application by the appellant, may

1 compel their inclusion. After a hearing, the filing of briefs, or other disposition of the
2 matter as the judge may reasonably require, the court shall affirm the agency's
3 rulemaking action unless it finds that any of the following are present:

- 4 1- a. The provisions of this chapter have not been substantially complied with in the
5 agency's rulemaking actions.
6 2- b. A rule published as a result of the rulemaking action appealed is unconstitutional
7 on the face of the language adopted.
8 3- c. A rule published as a result of the rulemaking action appealed is beyond the
9 scope of the agency's or commission's authority to adopt.
10 4- d. A rule published as a result of the rulemaking action appealed is on the face of
11 the language adopted an arbitrary or capricious application of authority granted
12 by statute.

13 2. If the rulemaking action of the agency or commission is not affirmed by the court, ~~the~~
14 rulemaking action must be remanded to the agency or commission for disposition in
15 accordance with the order of the court, or the rule or a portion of the rule resulting from
16 the rulemaking action of the agency or commission must be declared invalid for
17 reasons stated by the court.

18 **SECTION 30. AMENDMENT.** Section 28-32-48 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **28-32-48. Appeal - Stay of proceedings.**

21 An appeal from an order or the rulemaking action of an administrative agency or the
22 commission does not stay the enforcement of the order or the effect of a published rule unless
23 the court to which the appeal is taken, upon application and after a hearing or the submission of
24 briefs, orders a stay. The court may impose terms and conditions for a stay of the enforcement
25 of the order or for a stay in the effect of a published rule. This section does not prohibit the
26 operation of an automatic stay upon the enforcement of an administrative order or commission
27 order as may be required by another statute.

28 **SECTION 31. AMENDMENT.** Section 28-32-49 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 **28-32-49. Review in supreme court.**

2 The judgment of the district court in an appeal from an order or rulemaking action of an
3 administrative agency or the commission may be reviewed in the supreme court on appeal in
4 the same manner as provided in section 28-32-46 or 28-32-47, except that the appeal to the
5 supreme court must be taken within sixty days after the service of the notice of entry of
6 judgment in the district court. Any party of record, including the agency or commission, may
7 take an appeal from the final judgment of the district court to the supreme court. If an appeal
8 from the judgment of the district court is taken by an agency or the commission, the agency or
9 commission may not be required to pay a docket fee or file a bond for costs or equivalent
10 security.

11 **SECTION 32.** Chapter 54-66 of the North Dakota Century Code is created and enacted as
12 follows:

13 **54-66-01. Definitions.**

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

- 15 1. "Accused individual" means an individual who is alleged to have violated article XIV of
16 the Constitution of North Dakota, this chapter, or another law or rule regarding
17 government ethics.
- 18 2. "Adjusted for inflation" means adjusted on January first of each year by the change in
19 the consumer price index for all urban consumers (all items, United States city
20 average), as identified by the secretary of state.
- 21 3. "Complainant" means an individual who, in writing or verbally, submits a complaint to
22 the commission.
- 23 4. "Complaint" means a verbal or written allegation to the commission that article XIV of
24 the Constitution of North Dakota, this chapter, or another law or rule regarding
25 government ethics has been violated.
- 26 5. "Ethics commission" or "commission" means the North Dakota ethics commission
27 established by article XIV of the Constitution of North Dakota.
- 28 6. "Gift" means any item, service, or thing of value not given in exchange for fair market
29 consideration including travel and recreation.
- 30 7. "Influence state government action" means promoting or opposing the final adoption of
31 a rule by an administrative agency or the commission under chapter 28-32.

- 1 8. "Lobby" means an activity listed in subsection 1 of section 54-05.1-02.
- 2 9. "Lobbyist" means an individual required to register under section 54-05.1-03.
- 3 10. "Public official" means an elected or appointed official of the state's executive or
4 legislative branch, members of the commission, members of the governor's cabinet,
5 and employees of the legislative branch.
- 6 11. "Receives the complaint" means one or more members of the commission learn of the
7 complaint.
- 8 12. "Ultimate and true source" means the person that knowingly contributed over two
9 hundred dollars, adjusted for inflation, solely to lobby or influence state government
10 action.

11 **54-66-02. Disclosure of ultimate and true source of funds.**

- 12 1. A lobbyist who expends an amount greater than two hundred dollars, adjusted for
13 inflation, to lobby shall file with the secretary of state a report that includes the known
14 ultimate and true source of funds for the expenditure. The report must be filed with the
15 lobbyist expenditure report required under subsection 2 of section 54-05.1-03.
- 16 2. A person who expends an amount greater than two hundred dollars, adjusted for
17 inflation, to influence state government action shall file with the secretary of state a
18 report including the known ultimate and true source of funds for the expenditure. The
19 report must be filed on or before the August first following the date of the expenditure.
20 The secretary of state shall provide a form for reports under this subsection and make
21 the form electronically accessible to the public. The secretary of state also shall
22 charge and collect fees for late filing of the reports as follows:
 - 23 a. Twenty-five dollars for a report filed within sixty days after the deadline; or
 - 24 b. Fifty dollars for a report filed more than sixty days after the deadline.
- 25 3. The secretary of state shall compile the reports required under this section and make
26 the reports electronically accessible to the public within forty days after the deadlines
27 by which the reports must be filed.
- 28 4. This section does not require a person to report the ultimate and true source of funds
29 expended on:
 - 30 a. A gift to or from a family member;
 - 31 b. Purely informational material, advice, or education;

- c. Reimbursement for travel, meal, and refreshment expenses incurred to, from, or during a conference, seminar, or other legitimate educational opportunity for a public official if the conference, seminar, or educational opportunity concerns issues germane to the official duties of the public official;
- d. Meals and refreshments provided while informing, advising, or educating a public official about issues germane to the official duties of the public official;
- e. Providing an educational or social setting in the state to provide an opportunity for individuals to meet with public officials; and
- f. A good or service determined not to raise ethical concerns under rules adopted by the ethics commission.

5. A resident taxpayer may commence an action in a district court of this state against a person required to comply with this section to compel compliance if all other enforcement measures under this chapter have been exhausted and the taxpayer reasonably believes the person has failed to comply with this section. A failure to comply with this section must be proved by clear and convincing evidence.

54-66-03. Lobbyist gifts - Penalty.

1. A lobbyist may not give, offer, solicit, initiate, or facilitate a gift knowingly to a public official, and a public official may not accept a gift with a value over sixty dollars per individual per event, adjusted for inflation, from a lobbyist knowingly, except to advance opportunities for state residents to meet with public officials in educational and social settings in the state under conditions that do not raise ethical concerns, including:
 - a. Reimbursement for travel, meal, and refreshment expenses incurred to, from, or during a conference, seminar, or other legitimate educational opportunity for the public official if the conference, seminar, or educational opportunity concerns issues germane to the official duties of the public official;
 - b. Providing information, advice, or education to a public official;
 - c. Providing meals and refreshments while informing, advising, or educating a public official about issues germane to the official duties of the public official;
 - d. Items with a fair market value of ten dollars per individual per event, adjusted for inflation, or less per individual; and

1 e. A good or service determined not to raise ethical concerns under rules adopted
2 by the ethics commission.

3 2. The prohibition in subsection 1 does not apply when a lobbyist gives, offers, solicits,
4 initiates, or facilitates, or a public official accepts:

5 a. A gift to or from a family member;

6 b. Purely informational material; or

7 c. A campaign contribution.

8 3. For the first violation, the secretary of state shall assess a civil penalty of five hundred
9 dollars upon any person who knowingly violates this section and, if the person is a
10 lobbyist, the secretary of state may revoke the lobbyist's registration under chapter
11 54-05.1. For a second and subsequent knowing violation of this section, the person is
12 guilty of a class B misdemeanor.

13 **54-66-04. Ethics commission member terms – Meetings - Code of ethics -**

14 **Compensation – Investigator.**

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

19 2. ~~The ethics commission shall meet as necessary to address each complaint the~~
20 ~~commission receives. Unless the complaint at issue has resulted in the imposition of a~~
21 ~~penalty or referral for enforcement under section 54-66-10, any portion of a meeting~~
22 ~~during which commission members discuss complaints, informal resolutions, attempts~~
23 ~~to informally resolve complaints, investigations, or referrals under this chapter, the~~
24 ~~identity of an accused individual 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 ~~4.3.~~ 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. Commission members shall hire or otherwise engage a part time administrative~~
7 ~~assistant. The administrative assistant must be provided an office within the office~~
8 ~~space for the department of labor and human rights. The commission shall~~
9 ~~compensate the department of labor and human rights for the office in an amount~~
10 ~~equal to the fair value of the office.~~

11 54-66-05. Making a complaint - Identifying information - False complaints.

12 1. A complaint may be made to the commission orally or in writing. When making a
13 complaint, a complainant shall provide the name, address, and telephone number of
14 the complainant.

15 2. Within five days after making a complaint, the complainant shall submit a signed
16 statement attesting the complaint is true and accurate to the best of the complainant's
17 knowledge. The commission shall develop an attestation form for this purpose and
18 make it electronically accessible to the public. After receiving the attestation, the
19 commission shall summarize the complaint in writing if the complaint was made orally.

20 ~~3. If the complainant does not submit the signed attestation by the deadline, the~~
21 ~~commission may not investigate or take other action on the complaint.~~

22 ~~4. Knowingly or recklessly making a complaint that is materially false is defamation under~~
23 ~~chapter 12.1-15.~~

24 **54-66-06. Informing the accused individual - Written response permitted.**

25 The commission shall inform an accused individual by registered mail of the identity of the
26 ~~complainant who made~~ the allegation against the accused individual and include the written
27 complaint or written summary of the oral complaint as soon as reasonably possible but no later
28 ~~than ten calendar days~~ after the commission receives the complaint. The accused individual
29 may respond to the complaint in writing within ten calendar days of receipt of the complaint or
30 ~~summary of the complaint.~~

1 **54-66-07. Informal resolution.**

2 The commission may attempt to negotiate or mediate an informal resolution between the
3 accused individual and the complainant.

4 **54-66-08. Referrals of certain allegations to investigators - Exception for criminal**
5 **allegations the attorney general or law enforcement.**

6 ~~For each complaint with an attestation, the commission shall engage an investigator with~~
7 ~~the appropriate knowledge and experience regarding the Constitution of North Dakota,~~
8 ~~ethics related statutes, and ethics investigations, and refer the complaint to the investigator~~
9 ~~within thirty calendar days of receiving the complaint. However, if a complaint with an~~
10 ~~attestation~~ includes an allegation of criminal conduct, the commission ~~shall~~ may refer the
11 allegation of criminal conduct to the bureau of criminal investigation or other law enforcement
12 agency. ~~The commission may engage a state agency as an investigator. If a complaint includes~~
13 ~~an allegation of a violation of open meetings or open records requirements, the commission~~
14 ~~shall refer the allegation to the attorney general, and the attorney general shall review the~~
15 ~~allegation under section 44-04-21.1 if the complaint was submitted to the commission by the~~
16 ~~relevant deadline in section 44-04-21.1. If the accused individual provided a written response to~~
17 ~~the complaint, the commission shall provide the written response with the referred complaint.~~

18 **54-66-09. Investigations - Findings and Recommendations - Responses and**
19 **Referrals.**

- 20 ~~1. The investigator engaged under section 54-66-08 shall investigate the complaint~~
21 ~~referred to it by the ethics commission. Investigations must include separate interviews~~
22 ~~with the accused individual and the complainant, unless the accused individual or~~
23 ~~complainant refuses to be interviewed, and consideration of the circumstances~~
24 ~~surrounding the allegations. The accused individual and complainant may be~~
25 ~~accompanied by legal counsel during the interviews of each. Investigations may~~
26 ~~include interviews of potential witnesses and other individuals believed to have~~
27 ~~relevant information.~~
- 28 ~~2. At the conclusion of the investigation, but no later than six months after the~~
29 ~~investigator received the complaint, the investigator shall submit its written findings~~
30 ~~from the investigation to the commission. The commission shall provide written copies~~
31 ~~of the findings to the accused individual and complainant. The accused individual and~~

complainant may respond in writing to the findings within thirty calendar days of receiving the findings. The commission shall maintain copies of the findings and any written response to the findings.

The ethics commission may investigate a complaint if the accused individual and the complainant have not agreed on an informal resolution. An investigation must include separate interviews with the accused individual and the complainant, unless the accused individual or complainant refuses to be interviewed, and consideration of the circumstances surrounding the allegations.

54-66-10. Final determinations Investigation findings - Penalties - Referrals for enforcement.

1. After reviewing the findings from the investigator and any written response from the accused individual or complainant, the ethics commission shall meet with the accused individual and complainant to discuss the findings and written responses. A meeting under this subsection is a closed meeting as defined in section 44-04-17.1, although the accused individual and complainant may have legal counsel attend and participate.

2. After the meeting with the accused individual and complainant, the commission shall issue written findings, including a determination whether a violation of article XIV of the Constitution of North Dakota, this chapter, or another law or rule regarding government ethics occurred. If the commission finds a violation occurred, the commission may assess a civil penalty if authorized by law or refer the matter to the entity authorized by law to assess a civil penalty for the violation.

3. The accused individual and the complainant may appeal and request judicial review of a determination made or penalty imposed under this section to the district court in the county in which the accused individual resides. A request for judicial review under this section must comply with the requirements for an appeal of a determination of an agency under chapter 28-32. The scope of review and procedure on appeal from a determination of the commission must comply with section 28-32-47.

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

1. At the conclusion of an investigation, the ethics commission shall issue its written findings to the accused individual and complainant.

2. The findings must state whether the ethics commission believes, based on a preponderance of the evidence as viewed by a reasonable person, a violation of article XIV of the Constitution of North Dakota, this chapter, or another law or rule regarding government ethics occurred. The accused individual and complainant may respond in writing to the findings within twenty calendar days of receiving the findings. The ethics commission shall maintain copies of the findings and any written response to the findings.

3. If the ethics commission finds a violation occurred, the ethics commission may impose a penalty specified by law for the violation.

54-66-11. Appeals.

An accused individual or complainant may appeal a finding of the ethics commission to the district court of the county where the accused individual resides.

~~54-66-11.~~ 54-66-12. Confidential information - Penalty.

1. The following information is a confidential record as defined in section 44-04-17.1, unless the commission has determined the accused individual violated article XIV of the Constitution of North Dakota, this chapter, or another law or rule regarding government ethics, and a court affirmed the determination if appealed, except the information may be disclosed as required by law or as necessary to conduct an investigation arising from a complaint:

a. Information revealing the contents of a complaint;

b. Information that reasonably may be used to identify an accused individual or complainant; and

c. Information relating to or created as part of an investigation of a complaint.

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

a. Information revealing the contents of the complaint;

b. Information that reasonably may be used to identify the accused individual or complainant;

1 c. Information relating to or created as part of the process leading to the informal
2 resolution; and

3 d. Information revealing the informal resolution.

4 3. Willful publication of information included in subsections 1 and 2 by a person who
5 knows the information to be false is criminal defamation under section 12.1-15-01.

6 4. A public official who violates this section is guilty of a class C felony.

7 **54-66-12.54-66-13. Restriction on lobbying by public officials - Penalty.**

8 For the first violation of subsection 2 of section 2 of article XIV of the Constitution of North
9 Dakota, the secretary of state shall assess a civil penalty of five hundred dollars upon the
10 person who knowingly commits the violation. For a second and subsequent knowing violation of
11 the subsection, the person is guilty of a class B misdemeanor.

12 **54-66-13.54-66-14. Attorney general to provide legal services.**

13 The attorney general shall serve as legal counsel for the commission. When a conflict of
14 interest prevents the attorney general from providing legal services to the commission, the
15 attorney general may appoint a special assistant attorney general to serve as legal counsel for
16 the commission.

17 **54-66-14.54-66-15. Prohibition on delivering campaign contributions - Penalty.**

18 A lobbyist may not deliver knowingly a campaign contribution made by another person in
19 violation of subsection 3 of section 2 of article XIV of the Constitution of North Dakota. For a first
20 violation, the secretary of state shall assess a civil penalty of five hundred dollars upon any
21 person who knowingly violates this section and may revoke the lobbyist's registration. For a
22 second and subsequent knowing violation of this section, the person is guilty of a class B
23 misdemeanor.

24 **SECTION 33. APPROPRIATION.** There is appropriated out of any moneys in the general
25 fund in the state treasury, not otherwise appropriated, the sum of \$300,000, or so much of the
26 sum as may be necessary, to the ethics commission for the purpose of the operations of the
27 commission, for the biennium beginning July 1, 2019, and ending June 30, 2021. The ethics
28 commission is authorized one and one-half full-time equivalent positions for this purpose.

29 **SECTION 34. EFFECTIVE DATE.** Sections 1, 2, 3, 4, 5, and 7 of this Act, and section
30 54-66-02 of the North Dakota Century Code, as created by section 32 of this Act, become
31 effective January 5, 2022.

1 **SECTION 35. EFFECTIVE DATE.** North Dakota Century Code section 54-66-03, as
2 created by section 32 of this Act, becomes effective January 5, 2021.

3 **SECTION 36. EXPIRATION DATE.** North Dakota Century Code section ~~54-66-12~~54-66-13,
4 as created by section 32 of this Act, is effective until subsection 2 of section 2 of article XIV of
5 the Constitution of North Dakota is no longer part of the Constitution of North Dakota.

6 **SECTION 37. EMERGENCY.** Sections 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21,
7 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31 of this Act are declared to be an emergency measure.

A - .02025 - amendments as discussed in 4/15/19 meeting:

- Adds "if any" to Page 30, Line 6 of .02016 version (Hogue)
- Removes overstrike of Sec. 22 of .02016 version (re-instates Hogue position)
- Adjusts/reflects Effective Dates and removal of Expiration Dates of .02016 version (reflects Hogue)

Options for "Ultimate and True Source"

B - .02028 - Option 1: Removes "solely" and "and may be defined further by the ethics commission" from .02016 version

C - .02027 - Option 2: Removes "solely" and replaces with "substantially" and removes "and may be defined further by the ethics commission" from .02016 version

D - .02029 - Option 3: Replaces .02016 version with Mathern definition/exceptions

E - .02026 (includes Christmas tree copy):

- Amends definition of "influence state government action" in .02016 version
- Removes new definition of "lobbyist" used in .02016 version
 - Adjusts/removes references accordingly
- Expands "disclosure of ultimate and true source" and "gifting" prohibition to "any person who lobbies" instead of "lobbyist"

April 16, 2019

A - 19.1078.02025
Title.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1521

Page 1, line 4, replace "section" with "sections"

Page 1, line 5, remove "subsection 4 of section 16.1-08.1-02.1, sections 16.1-08.1-02.3, 16.1-08.1-02.4,"

Page 1, line 6, replace "16.1-08.1-03.1" with "16.1-08.1-03.7"

Page 1, line 6, remove "28-32-02,"

Page 1, line 7, remove "28-32-14,"

Page 1, line 7, after the eighth comma insert "and"

Page 1, line 8, remove "28-32-17, 28-32-18,"

Page 1, line 9, remove "28-32-27,"

Page 1, line 10, remove "disqualification of agency heads in quasi-judicial proceedings,"

Page 1, line 13, remove "to provide an expiration date;"

Page 1, line 19, remove "Adjusted for inflation" means adjusted on January first of each year by the change in

Page 1, remove lines 20 and 21

Page 1, line 22, remove "2."

Page 2, line 6, remove the overstrike over "2."

Page 2, line 6, remove "3."

Page 2, line 13, remove the overstrike over "3."

Page 2, line 13, remove "4."

Page 2, line 26, remove the overstrike over "4."

Page 2, line 26, remove "5."

Page 3, line 3, remove the overstrike over "5."

Page 3, line 3, remove "6."

Page 3, line 29, remove the overstrike over "6."

Page 3, line 29, remove "7."

Page 4, line 4, remove the overstrike over "7."

Page 4, line 4, remove "8."

Page 4, line 14, remove the overstrike over "8."

Page 4, line 14, remove "9."

Page 4, line 21, remove the overstrike over "9."

Page 4, line 21, remove "10."

Page 4, line 26, remove the overstrike over "10."

Page 4, line 26, remove "11."

Page 4, line 28, remove the overstrike over "11."

Page 4, line 28, remove "12."

Page 5, line 1, remove the overstrike over "12."

Page 5, line 1, remove "13."

Page 5, line 4, remove the overstrike over "13."

Page 5, line 4, remove "14."

Page 5, line 26, remove the overstrike over "14."

Page 5, line 26, remove "15."

Page 5, line 30, remove the overstrike over "15."

Page 5, line 30, remove "16."

Page 6, line 10, remove the overstrike over "16."

Page 6, line 10, remove "17."

Page 6, line 12, remove the overstrike over "17."

Page 6, line 12, remove "18."

Page 6, line 14, replace "19." with "18."

Page 6, line 14, replace "who" with "that"

Page 6, line 15, remove ", adjusted for inflation, solely"

Page 6, line 16, after "assembly" insert ", and may be defined further by the ethics commission"

Page 6, remove lines 17 through 30

Page 7, remove lines 1 through 31

Page 8, remove lines 1 through 31

Page 9, remove lines 1 through 29

Page 10, remove lines 1 through 31

Page 11, remove lines 1 through 31

Page 12, remove lines 1 through 31

Page 13, replace lines 1 through 6 with:

"SECTION 2. AMENDMENT. Section 16.1-08.1-03.7 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-03.7. Political committees that organize and register according to federal law that make independent expenditures or disbursements to nonfederal candidates, political parties, and political committees.

A political committee that organizes and registers according to federal law and makes an independent expenditure or makes a disbursement in excess of two hundred dollars to a nonfederal candidate seeking public office or to a political party or political committee in this state shall file a copy of that portion of the committee's federal report detailing the independent expenditure or the disbursement made. The political committee shall file a copy of the committee's federal report, and supplementary information as necessary under this section, with the secretary of state at the time of filing the report with the applicable federal agency. The report must include:

1. The name, mailing address, and treasurer of the political committee;
2. The recipient's name and mailing address; ~~and~~
3. The date and amount of the independent expenditure or disbursement; and
4. The ultimate and true source of funds listed by contributor and subcontributor of any amount over two hundred dollars collected or used to make the independent expenditure or disbursement including:
 - a. The name and address of the contributor;
 - b. The total amount of the contribution; and
 - c. The date the last contribution was received."

Page 13, line 17, remove "For the first violation, the secretary of state shall assess a civil penalty of five hundred"

Page 13, replace lines 18 through 21 with "The secretary of state shall assess a civil penalty upon any person that knowingly violates this section.

- a. If the contribution used in violation of this section has a value of two thousand five hundred dollars or more, the civil penalty must be two times the value of the contribution.
- b. If the contribution used in violation of this section has a value of less than two thousand five hundred dollars, the civil penalty must be at least two times the value of the contribution and may be up to five thousand dollars.
3. The assessment of a civil penalty may be appealed to the district court of the county where the candidate resides."

Page 13, line 25, remove "1."

Page 13, line 25, replace "report" with "statement"

Page 13, remove lines 27 through 31

Page 18, remove lines 16 through 29

Page 19, remove lines 1 through 3

Page 19, line 7, remove "commission or an"

Page 19, line 7, after the second comma insert "or the commission"

Page 20, line 13, remove ", or"

Page 20, line 14, remove "the Constitution of North Dakota is amended to eliminate the authority"

Page 22, line 14, remove "or the commission"

Page 22, line 16, remove "or commission"

Page 22, line 18, remove "or commission"

Page 23, line 2, remove "or the commission"

Page 23, line 13, remove "or commission"

Page 23, line 14, remove "or commission"

Page 23, line 16, remove "or commission"

Page 23, line 17, after "to" insert "the ethics commission,"

Page 23, line 18, overstrike "nor does this section apply to" and insert immediately thereafter "and"

Page 24, line 7, remove "or the commission"

Page 26, line 11, remove "enacted during the most recent session of the"

Page 26, line 12, remove "legislative assembly"

Page 28, remove lines 17 through 31

Page 29, line 6, after "rule" insert ", if any,"

Page 30, remove lines 9 through 31

Page 31, remove lines 1 through 31

Page 32, remove lines 1 through 31

Page 33, remove lines 1 and 2

Page 34, remove lines 11 through 30

Page 35, remove lines 1 through 24

Page 37, line 17, replace "government ethics" with "transparency, corruption, elections, or lobbying"

Page 37, line 18, remove "Adjusted for inflation" means adjusted on January first of each year by the change in"

Page 37, remove lines 19 and 20

Page 37, line 21, remove "3."

Page 37, line 23, replace "4." with "3."

Page 37, line 25, replace "government ethics" with "transparency, corruption, elections, or lobbying"

Page 37, line 26, replace "5." with "4."

Page 37, line 28, replace "6." with "5."

Page 37, line 29, after "recreation" insert ", except:

- a. Purely informational material;
- b. A campaign contribution; and
- c. An item, service, or thing of value given under conditions that do not raise ethical concerns, as set forth in rules adopted by the ethics commission, to advance opportunities for state residents to meet with public officials in educational and social settings in the state"

Page 37, line 30, replace "7." with "6."

Page 37, line 30, remove "promoting or opposing the final adoption of"

Page 37, line 31, replace "a rule by an administrative agency or the commission under chapter 28-32" with "an attempt to influence state administrative action by communicating or urging others to communicate with public officials or state employees, unless the attempt is made by a public official or state employee acting in an official capacity, and may be defined further by ethics commission rule"

Page 38, line 1, replace "8." with "7."

Page 38, line 1, replace "an" with ";

- a. Engage in an"

Page 38, line 1, after "54-05.1-02" insert "; and

- b. Influence state government action"

Page 38, line 2, replace "9." with "8."

Page 38, line 2, replace "an individual required to register under section 54-05.1-03" with ";

- a. A registered lobbyist; and
- b. Any other individual who spends more than two hundred dollars, not including the individual's own travel expenses and membership dues, in any calendar year to lobby"

Page 38, line 3, replace "10." with "9."

Page 38, line 6, replace "11." with "10."

Page 38, after line 7, insert:

- "11. "Registered lobbyist" means an individual required to register under section 54-05.1-03."

Page 38, line 9, remove ", adjusted for inflation, solely"

Page 38, line 10, after "action" insert ", and may be defined further by ethics commission rule"

Page 38, line 12, after "A" insert "registered"

Page 38, line 12, remove ", adjusted for"

Page 38, line 13, remove "inflation,"

Page 38, line 16, replace "person" with "lobbyist other than a registered lobbyist"

Page 38, line 16, remove "adjusted for"

Page 38, line 17, replace "inflation" with "not including the individual's own travel expenses and membership dues"

Page 38, line 17, replace "influence state government action" with "lobby"

Page 38, line 18, replace "The" with "A"

Page 38, line 19, after "report" insert "under this subsection"

Page 38, line 26, remove "within forty days after the deadlines"

Page 38, line 27, remove "by which the reports must be filed"

Page 38, remove lines 28 through 31

Page 39, remove lines 1 through 15

Page 39, line 18, remove "with a value over sixty dollars per"

Page 39, line 19, remove "individual per event, adjusted for inflation,"

Page 39, line 19, remove ", except to"

Page 39, remove lines 20 through 31

Page 40, remove line 1

Page 40, line 2, remove "by the ethics commission"

Page 40, line 4, remove the underscored colon

Page 40, line 5, replace "a. A" with "a"

Page 40, line 5, remove the underscored semicolon

Page 40, remove line 6

Page 40, line 7, remove "c. A campaign contribution"

Page 40, line 8, remove "For the first violation, the secretary of state shall assess a civil penalty of five hundred"

Page 40, replace lines 9 through 12 with "The secretary of state shall assess a civil penalty upon any person that violates this section."

a. If the gift has a value of five hundred dollars or more, the civil penalty must be two times the value of the gift.

b. If the gift has a value of less than five hundred dollars, the civil penalty must be no less than two times the value of the gift and may be up to one thousand dollars."

Page 40, line 14, replace "Investigator" with "Office"

Page 40, line 19, remove "The ethics commission shall meet as necessary to address each complaint the"

Page 40, line 20, remove "commission receives."

Page 40, line 20, after "in" insert "a public hearing or"

Page 40, line 21, remove "or referral for enforcement under section 54-66-10"

Page 41, line 6, remove "Commission members shall hire or otherwise engage a part-time administrative"

Page 41, replace lines 7 through 10 with "The director of the office of management and budget shall allocate office space in the state capitol for the ethics commission, or, if office space in the capitol is unavailable, shall negotiate for, contract for, and obtain office space for the ethics commission in the city of Bismarck or in the Bismarck area. The ethics commission's office space may not be located in the office space of any other government agency, board, commission, or other governmental entity, and must provide sufficient privacy and security for the ethics commission to conduct its business. The director shall charge the ethics commission an amount equal to the fair value of the office space and related services the office of management and budget renders to the ethics commission."

Page 41, line 11, remove "**- Identifying information - False complaints**"

Page 41, line 12, remove "1."

Page 41, line 12, remove "When making a"

Page 41, remove lines 13 through 30

Page 42, remove lines 1 through 29

Page 43, replace lines 1 through 21 with:

54-66-06. Informal resolution - Investigation - Referrals.

After receiving a complaint, the ethics commission may:

1. Attempt to negotiate or mediate an informal resolution between the accused individual and the complainant.
2. Investigate the allegations in the complaint.
3. Refer a matter described in or arising from a complaint to the bureau of criminal investigation or other appropriate law enforcement agency if a majority of the ethics commission members reasonably believes a crime was committed or the safety of the complainant is at risk.
4. Refer a complaint alleging a violation of open meetings or open records requirements to the attorney general, and the attorney general shall review the allegation under section 44-04-21.1 if the complaint was submitted to the ethics commission by the relevant deadline in section 44-04-21.1.

54-66-07. Ethics commission complaint - Informing the accused individual.

If, after investigating a complaint, the ethics commission decides to charge the accused individual with a violation of law, the ethics commission shall serve an ethics

commission complaint against the accused individual and give the accused individual no less than twenty days to respond.

54-66-08. Informal resolutions - Public hearings - Referrals.

After serving an ethics commission complaint, the ethics commission may:

1. Resolve the charges in the ethics commission complaint informally with the accused individual; or
2. Hold a public hearing regarding the charges in the ethics commission complaint. The accused individual must be afforded due process, including an opportunity to respond to the charges.

54-66-09. Hearing findings - Penalties.

1. At the conclusion of a hearing, the ethics commission shall issue and make public its written findings of fact, conclusions of law, and any penalty authorized by law which the ethics commission imposes.
2. The written findings of fact must state whether the ethics commission believes, based on a preponderance of the evidence, as viewed by a reasonable person, 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.

54-66-10. Appeals.

An accused individual or complainant may appeal a finding of the ethics commission to the district court of the county where the accused individual resides."

Page 43, line 24, remove "determined the accused individual violated article XIV of"

Page 43, remove line 25

Page 43, line 26, replace "government ethics, and a court affirmed the determination if appealed" with "issued an ethics commission complaint"

Page 44, line 2, replace "54-66-07" with "54-66-06"

Page 44, line 10, replace "Willful publication" with "Publication"

Page 44, line 11, replace "criminal defamation under section 12.1-15-01" with "a class B misdemeanor"

Page 44, line 12, replace "A public official who violates this section is guilty of a class C felony." with "The information deemed confidential in this section may be disclosed by the ethics commission if the accused individual agrees to the disclosure."

Page 44, replace lines 14 through 17 with "A knowing violation of subsection 2 of section 2 of article XIV of the Constitution of North Dakota is a class A misdemeanor. The ethics commission shall assess a civil penalty of up to one thousand dollars on any person that knowingly violates the subsection."

Page 44, line 19, after "commission" insert "unless the commission objects to representation by the attorney general in a specific matter"

Page 44, line 27, remove "and may revoke the lobbyist's registration"

Page 44, line 29, after "misdemeanor" insert ", and, if the lobbyist is a registered lobbyist, the secretary of state may revoke the lobbyist's registration"

Page 44, after line 29, insert:

"54-66-15. Removal of ethics commission members.

1. An ethics commission member may be removed from office for:
 - a. Substantial neglect of duty;
 - b. Gross misconduct in office;
 - c. Violation of the commission's code of ethics; or
 - d. Willful or habitual neglect or refusal to perform the duties of the member.
2. Removal of an ethics commission member under subsection 1 requires consensus agreement by:
 - a. The governor;
 - b. The majority leader of the senate; and
 - c. The minority leader of the senate."

Page 44, line 31, replace "\$300,000" with "\$517,155"

Page 45, line 3, replace "one and one-half" with "two"

Page 45, line 4, replace "1, 2, 3, 4, 5, and 7" with "1, 3, and 4"

Page 45, line 4, replace "section" with "sections"

Page 45, line 5, after "54-66-02" insert "and 54-66-03"

Page 45, line 5, replace "32" with "24"

Page 45, line 6, replace "2022" with "2021"

Page 45, remove lines 7 through 11

Page 45, line 12, after "Sections" insert "5, 6, 7,"

Page 45, line 13, after the first comma insert "and"

Page 45, line 13, remove ", 24, 25, 26, 27, 28, 29, 30, and 31"

Renumber accordingly

April 16, 2019

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1521

Page 1, line 4, replace "section" with "sections"

Page 1, line 5, remove "subsection 4 of section 16.1-08.1-02.1, sections 16.1-08.1-02.3, 16.1-08.1-02.4,"

Page 1, line 6, replace "16.1-08.1-03.1" with "16.1-08.1-03.7"

Page 1, line 6, remove "28-32-02,"

Page 1, line 7, remove "28-32-14,"

Page 1, line 7, after the eighth comma insert "and"

Page 1, line 8, remove "28-32-17, 28-32-18, and 28-32-18.1,"

Page 1, line 9, remove "28-32-27,"

Page 1, line 10, remove "disqualification of agency heads in quasi-judicial proceedings,"

Page 1, line 19, remove ""Adjusted for inflation" means adjusted on January first of each year by the change in"

Page 1, remove lines 20 and 21

Page 1, line 22, remove "2."

Page 2, line 6, remove the overstrike over "2."

Page 2, line 6, remove "3."

Page 2, line 13, remove the overstrike over "3."

Page 2, line 13, remove "4."

Page 2, line 26, remove the overstrike over "4."

Page 2, line 26, remove "5."

Page 3, line 3, remove the overstrike over "5."

Page 3, line 3, remove "6."

Page 3, line 29, remove the overstrike over "6."

Page 3, line 29, remove "7."

Page 4, line 4, remove the overstrike over "7."

Page 4, line 4, remove "8."

Page 4, line 14, remove the overstrike over "8."

Page 4, line 14, remove "9."

Page 4, line 21, remove the overstrike over "9."

Page 4, line 21, remove "10."

Page 4, line 26, remove the overstrike over "10."

Page 4, line 26, remove "11."

Page 4, line 28, remove the overstrike over "11."

Page 4, line 28, remove "12."

Page 5, line 1, remove the overstrike over "12."

Page 5, line 1, remove "13."

Page 5, line 4, remove the overstrike over "13."

Page 5, line 4, remove "14."

Page 5, line 26, remove the overstrike over "14."

Page 5, line 26, remove "15."

Page 5, line 30, remove the overstrike over "15."

Page 5, line 30, remove "16."

Page 6, line 10, remove the overstrike over "16."

Page 6, line 10, remove "17."

Page 6, line 12, remove the overstrike over "17."

Page 6, line 12, remove "18."

Page 6, line 14, replace "19." with "18."

Page 6, line 14, replace "who" with "that"

Page 6, line 15, remove ", adjusted for inflation, solely"

Page 6, line 16, after the underscored period insert "The term does not include an individual who is a member of an organization that is not substantially engaged in lobbying or influencing statewide elections or elections for the legislative assembly, if:

- a. The member provided only a donation or membership fee to the organization;
- b. The member did not designate the donation or membership fee to be used to influence a statewide election or an election for the legislative assembly; and
- c. A substantial portion of the donation or membership fee was not used to influence a statewide election or an election for the legislative assembly."

Page 6, remove lines 17 through 30

Page 7, remove lines 1 through 31

Page 8, remove lines 1 through 31

Page 9, remove lines 1 through 29

Page 10, remove lines 1 through 31

Page 11, remove lines 1 through 31

Page 12, remove lines 1 through 31

Page 13, replace lines 1 through 6 with:

"SECTION 2. AMENDMENT. Section 16.1-08.1-03.7 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-03.7. Political committees that organize and register according to federal law that make independent expenditures or disbursements to nonfederal candidates, political parties, and political committees.

A political committee that organizes and registers according to federal law and makes an independent expenditure or makes a disbursement in excess of two hundred dollars to a nonfederal candidate seeking public office or to a political party or political committee in this state shall file a copy of that portion of the committee's federal report detailing the independent expenditure or the disbursement made. The political committee shall file a copy of the committee's federal report, and supplementary information as necessary under this section, with the secretary of state at the time of filing the report with the applicable federal agency. The report must include:

1. The name, mailing address, and treasurer of the political committee;
2. The recipient's name and mailing address; ~~and~~
3. The date and amount of the independent expenditure or disbursement; and
4. The ultimate and true source of funds listed by contributor and subcontributor of any amount over two hundred dollars collected or used to make the independent expenditure or disbursement including:
 - a. The name and address of the contributor;
 - b. The total amount of the contribution; and
 - c. The date the last contribution was received."

Page 13, line 17, remove "For the first violation, the secretary of state shall assess a civil penalty of five hundred"

Page 13, replace lines 18 through 21 with "The secretary of state shall assess a civil penalty upon any person that knowingly violates this section.

- a. If the contribution used in violation of this section has a value of two thousand five hundred dollars or more, the civil penalty must be two times the value of the contribution.
- b. If the contribution used in violation of this section has a value of less than two thousand five hundred dollars, the civil penalty must be at least two times the value of the contribution and may be up to five thousand dollars.
3. The assessment of a civil penalty may be appealed to the district court of the county where the candidate resides."

Page 13, line 25, remove "1."

Page 13, line 25, replace "report" with "statement"

Page 13, remove lines 27 through 31

Page 18, remove lines 16 through 29

Page 19, remove lines 1 through 3

Page 19, line 7, remove "commission or an"

Page 19, line 7, after the second comma insert "or the commission"

Page 20, line 13, remove ", or"

Page 20, line 14, remove "the Constitution of North Dakota is amended to eliminate the authority"

Page 22, line 14, remove "or the commission"

Page 22, line 16, remove "or commission"

Page 22, line 18, remove "or commission"

Page 23, line 2, remove "or the commission"

Page 23, line 13, remove "or commission"

Page 23, line 14, remove "or commission"

Page 23, line 16, remove "or commission"

Page 23, line 17, after "to" insert "the ethics commission,"

Page 23, line 18, overstrike "nor does this section apply to" and insert immediately thereafter "and"

Page 24, line 7, remove "or the commission"

Page 26, line 11, remove "enacted during the most recent session of the"

Page 26, line 12, remove "legislative assembly"

Page 28, remove lines 17 through 31

Page 30, remove lines 9 through 31

Page 31, remove lines 1 through 31

Page 32, remove lines 1 through 31

Page 33, remove lines 1 through 23

Page 34, remove lines 11 through 30

Page 35, remove lines 1 through 24

Page 37, line 17, replace "government ethics" with "transparency, corruption, elections, or lobbying"

Page 37, line 18, remove "Adjusted for inflation" means adjusted on January first of each year by the change in"

Page 37, remove lines 19 and 20

Page 37, line 21, remove "3."

Page 37, line 23, replace "4." with "3."

Page 37, line 25, replace "government ethics" with "transparency, corruption, elections, or lobbying"

Page 37, line 26, replace "5." with "4."

Page 37, line 28, replace "6." with "5."

Page 37, line 29, after "recreation" insert ", except:

- a. Purely informational material;
- b. A campaign contribution; and
- c. An item, service, or thing of value given under conditions that do not raise ethical concerns, as set forth in rules adopted by the ethics commission, to advance opportunities for state residents to meet with public officials in educational and social settings in the state"

Page 37, line 30, replace "7." with "6."

Page 37, line 30, remove "promoting or opposing the final adoption of"

Page 37, line 31, replace "a rule by an administrative agency or the commission under chapter 28-32" with "an attempt to influence state administrative action by communicating or urging others to communicate with public officials or state employees, unless the attempt is made by a public official or state employee acting in an official capacity, and may be defined further by ethics commission rule"

Page 38, line 1, replace "8." with "7."

Page 38, line 1, replace "an" with ":

- a. Engage in an"

Page 38, line 1, after "54-05.1-02" insert ": and

- b. Influence state government action"

Page 38, line 2, replace "9." with "8."

Page 38, line 2, replace "an individual required to register under section 54-05.1-03" with ":

- a. A registered lobbyist; and
- b. Any other individual who spends more than two hundred dollars, not including the individual's own travel expenses and membership dues, in any calendar year to lobby"

Page 38, line 3, replace "10." with "9."

Page 38, line 6, replace "11." with "10."

Page 38, after line 7, insert:

"11. "Registered lobbyist" means an individual required to register under section 54-05.1-03."

Page 38, line 9, remove ", adjusted for inflation, solely"

Page 38, line 10, after the underscored period insert "The term does not include an individual who is a member of an organization that is not substantially engaged in lobbying or influencing statewide elections or elections for the legislative assembly, if:

- a. The member provided only a donation or membership fee to the organization;
- b. The member did not designate the donation or membership fee to be used to influence a statewide election or an election for the legislative assembly; and
- c. A substantial portion of the donation or membership fee was not used to influence a statewide election or an election for the legislative assembly."

Page 38, line 12, after "A" insert "registered"

Page 38, line 12, remove ", adjusted for"

Page 38, line 13, remove "inflation,"

Page 38, line 16, replace "person" with "lobbyist other than a registered lobbyist"

Page 38, line 16, remove "adjusted for"

Page 38, line 17, replace "inflation" with "not including the individual's own travel expenses and membership dues"

Page 38, line 17, replace "influence state government action" with "lobby"

Page 38, line 18, replace "The" with "A"

Page 38, line 19, after "report" insert "under this subsection"

Page 38, line 26, remove "within forty days after the deadlines"

Page 38, line 27, remove "by which the reports must be filed"

Page 38, remove lines 28 through 31

Page 39, remove lines 1 through 15

Page 39, line 18, remove "with a value over sixty dollars per"

Page 39, line 19, remove "individual per event, adjusted for inflation,"

Page 39, line 19, remove ", except to"

Page 39, remove lines 20 through 31

Page 40, remove line 1

Page 40, line 2, remove "by the ethics commission"

Page 40, line 4, remove the underscored colon

Page 40, line 5, replace "a. A" with "a"

Page 40, line 5, remove the underscored semicolon

Page 40, remove line 6

Page 40, line 7, remove "c. A campaign contribution"

Page 40, line 8, remove "For the first violation, the secretary of state shall assess a civil penalty of five hundred"

Page 40, replace lines 9 through 12 with "The secretary of state shall assess a civil penalty upon any person that violates this section."

a. If the gift has a value of five hundred dollars or more, the civil penalty must be two times the value of the gift.

b. If the gift has a value of less than five hundred dollars, the civil penalty must be no less than two times the value of the gift and may be up to one thousand dollars.

Page 40, line 14, replace "Investigator" with "Office"

Page 40, line 19, remove "The ethics commission shall meet as necessary to address each complaint the"

Page 40, line 20, remove "commission receives."

Page 40, line 20, after "in" insert "a public hearing or"

Page 40, line 21, remove "or referral for enforcement under section 54-66-10"

Page 41, line 6, remove "Commission members shall hire or otherwise engage a part-time administrative"

Page 41, replace lines 7 through 10 with "The director of the office of management and budget shall allocate office space in the state capitol for the ethics commission, or, if office space in the capitol is unavailable, shall negotiate for, contract for, and obtain office space for the ethics commission in the city of Bismarck or in the Bismarck area. The ethics commission's office space may not be located in the office space of any other government agency, board, commission, or other governmental entity, and must provide sufficient privacy and security for the ethics commission to conduct its business. The director shall charge the ethics commission an amount equal to the fair value of the office space and related services the office of management and budget renders to the ethics commission."

Page 41, line 11, remove "- Identifying information - False complaints"

Page 41, line 12, remove "1."

Page 41, line 12, remove "When making a"

Page 41, remove lines 13 through 30

Page 42, remove lines 1 through 29

Page 43, replace lines 1 through 21 with:

"54-66-06. Informal resolution - Investigation - Referrals.

After receiving a complaint, the ethics commission may:

1. Attempt to negotiate or mediate an informal resolution between the accused individual and the complainant.
2. Investigate the allegations in the complaint.
3. Refer a matter described in or arising from a complaint to the bureau of criminal investigation or other appropriate law enforcement agency if a majority of the ethics commission members reasonably believes a crime was committed or the safety of the complainant is at risk.
4. Refer a complaint alleging a violation of open meetings or open records requirements to the attorney general, and the attorney general shall review the allegation under section 44-04-21.1 if the complaint was submitted to the ethics commission by the relevant deadline in section 44-04-21.1.

54-66-07. Ethics commission complaint - Informing the accused individual.

If, after investigating a complaint, the ethics commission decides to charge the accused individual with a violation of law, the ethics commission shall serve an ethics commission complaint against the accused individual and give the accused individual no less than twenty days to respond.

54-66-08. Informal resolutions - Public hearings - Referrals.

After serving an ethics commission complaint, the ethics commission may:

1. Resolve the charges in the ethics commission complaint informally with the accused individual; or
2. Hold a public hearing regarding the charges in the ethics commission complaint. The accused individual must be afforded due process, including an opportunity to respond to the charges.

54-66-09. Hearing findings - Penalties.

1. At the conclusion of a hearing, the ethics commission shall issue and make public its written findings of fact, conclusions of law, and any penalty authorized by law which the ethics commission imposes.
2. The written findings of fact must state whether the ethics commission believes, based on a preponderance of the evidence, as viewed by a reasonable person, 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.

54-66-10. Appeals.

An accused individual or complainant may appeal a finding of the ethics commission to the district court of the county where the accused individual resides."

Page 43, line 24, remove "determined the accused individual violated article XIV of"

Page 43, remove line 25

Page 43, line 26, replace "government ethics, and a court affirmed the determination if appealed" with "issued an ethics commission complaint"

Page 44, line 2, replace "54-66-07" with "54-66-06"

Page 44, line 10, replace "Willful publication" with "Publication"

Page 44, line 11, replace "criminal defamation under section 12.1-15-01" with "a class B misdemeanor"

Page 44, line 12, replace "A public official who violates this section is guilty of a class C felony." with "The information deemed confidential in this section may be disclosed by the ethics commission if the accused individual agrees to the disclosure."

Page 44, replace lines 14 through 17 with "A knowing violation of subsection 2 of section 2 of article XIV of the Constitution of North Dakota is a class A misdemeanor. The ethics commission shall assess a civil penalty of up to one thousand dollars on any person that knowingly violates the subsection."

Page 44, line 19, after "commission" insert "unless the commission objects to representation by the attorney general in a specific matter"

Page 44, line 27, remove "and may revoke the lobbyist's registration"

Page 44, line 29, after "misdemeanor" insert ", and, if the lobbyist is a registered lobbyist, the secretary of state may revoke the lobbyist's registration"

Page 44, after line 29, insert:

"54-66-15. Removal of ethics commission members.

1. An ethics commission member may be removed from office for:
 - a. Substantial neglect of duty;
 - b. Gross misconduct in office;
 - c. Violation of the commission's code of ethics; or
 - d. Willful or habitual neglect or refusal to perform the duties of the member.
2. Removal of an ethics commission member under subsection 1 requires consensus agreement by:
 - a. The governor;
 - b. The majority leader of the senate; and
 - c. The minority leader of the senate."

Page 44, line 31, replace "\$300,000" with "\$517,155"

Page 45, line 3, replace "one and one-half" with "two"

Page 45, line 4, after the third comma insert "and"

Page 45, line 4, remove ", 5, and 7"

Page 45, line 5, replace "32" with "23"

Page 45, line 8, replace "32" with "23"

Page 45, line 10, replace "32" with "23"

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Page 45, line 12, after "Sections" insert "5, 6, 7,"

Page 45, line 12, after the fourteenth comma insert "and"

Page 45, line 13, remove ", 23, 24, 25, 26, 27, 28, 29, 30, and 31"

Renumber accordingly

April 16, 2019

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1521

Page 1, line 4, replace "section" with "sections"

Page 1, line 5, remove "subsection 4 of section 16.1-08.1-02.1, sections 16.1-08.1-02.3, 16.1-08.1-02.4,"

Page 1, line 6, replace "16.1-08.1-03.1" with "16.1-08.1-03.7"

Page 1, line 6, remove "28-32-02,"

Page 1, line 7, remove "28-32-14,"

Page 1, line 7, after the eighth comma insert "and"

Page 1, line 8, remove "28-32-17, 28-32-18, and 28-32-18.1,"

Page 1, line 9, remove "28-32-27,"

Page 1, line 10, remove "disqualification of agency heads in quasi-judicial proceedings,"

Page 1, line 19, remove ""Adjusted for inflation" means adjusted on January first of each year by the change in"

Page 1, remove lines 20 and 21

Page 1, line 22, remove "2."

Page 2, line 6, remove the overstrike over "2."

Page 2, line 6, remove "3."

Page 2, line 13, remove the overstrike over "3."

Page 2, line 13, remove "4."

Page 2, line 26, remove the overstrike over "4."

Page 2, line 26, remove "5."

Page 3, line 3, remove the overstrike over "5."

Page 3, line 3, remove "6."

Page 3, line 29, remove the overstrike over "6."

Page 3, line 29, remove "7."

Page 4, line 4, remove the overstrike over "7."

Page 4, line 4, remove "8."

Page 4, line 14, remove the overstrike over "8."

Page 4, line 14, remove "9."

Page 4, line 21, remove the overstrike over "9."

Page 4, line 21, remove "10."

Page 4, line 26, remove the overstrike over "10."

Page 4, line 26, remove "11."

Page 4, line 28, remove the overstrike over "11."

Page 4, line 28, remove "12."

Page 5, line 1, remove the overstrike over "12."

Page 5, line 1, remove "13."

Page 5, line 4, remove the overstrike over "13."

Page 5, line 4, remove "14."

Page 5, line 26, remove the overstrike over "14."

Page 5, line 26, remove "15."

Page 5, line 30, remove the overstrike over "15."

Page 5, line 30, remove "16."

Page 6, line 10, remove the overstrike over "16."

Page 6, line 10, remove "17."

Page 6, line 12, remove the overstrike over "17."

Page 6, line 12, remove "18."

Page 6, line 14, replace "19." with "18."

Page 6, line 14, replace "who" with "that"

Page 6, line 15, remove ", adjusted for inflation, solely"

Page 6, line 16, after "assembly" insert ", and may be defined further by the ethics commission"

Page 6, remove lines 17 through 30

Page 7, remove lines 1 through 31

Page 8, remove lines 1 through 31

Page 9, remove lines 1 through 29

Page 10, remove lines 1 through 31

Page 11, remove lines 1 through 31

Page 12, remove lines 1 through 31

Page 13, replace lines 1 through 6 with:

"SECTION 2. AMENDMENT. Section 16.1-08.1-03.7 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-03.7. Political committees that organize and register according to federal law that make independent expenditures or disbursements to nonfederal candidates, political parties, and political committees.

A political committee that organizes and registers according to federal law and makes an independent expenditure or makes a disbursement in excess of two hundred dollars to a nonfederal candidate seeking public office or to a political party or political committee in this state shall file a copy of that portion of the committee's federal report detailing the independent expenditure or the disbursement made. The political committee shall file a copy of the committee's federal report, and supplementary information as necessary under this section, with the secretary of state at the time of filing the report with the applicable federal agency. The report must include:

1. The name, mailing address, and treasurer of the political committee;
2. The recipient's name and mailing address; ~~and~~
3. The date and amount of the independent expenditure or disbursement; and
4. The ultimate and true source of funds listed by contributor and subcontributor of any amount over two hundred dollars collected or used to make the independent expenditure or disbursement including:
 - a. The name and address of the contributor;
 - b. The total amount of the contribution; and
 - c. The date the last contribution was received."

Page 13, line 17, remove "For the first violation, the secretary of state shall assess a civil penalty of five hundred"

Page 13, replace lines 18 through 21 with "The secretary of state shall assess a civil penalty upon any person that knowingly violates this section."

- a. If the contribution used in violation of this section has a value of two thousand five hundred dollars or more, the civil penalty must be two times the value of the contribution.
- b. If the contribution used in violation of this section has a value of less than two thousand five hundred dollars, the civil penalty must be at least two times the value of the contribution and may be up to five thousand dollars.
3. The assessment of a civil penalty may be appealed to the district court of the county where the candidate resides."

Page 13, line 25, remove "1."

Page 13, line 25, replace "report" with "statement"

Page 13, remove lines 27 through 31

Page 18, remove lines 16 through 29

Page 19, remove lines 1 through 3

Page 19, line 7, remove "commission or an"

Page 19, line 7, after the second comma insert "or the commission"

Page 20, line 13, remove ", or"

Page 20, line 14, remove "the Constitution of North Dakota is amended to eliminate the authority"

Page 22, line 14, remove "or the commission"

Page 22, line 16, remove "or commission"

Page 22, line 18, remove "or commission"

Page 23, line 2, remove "or the commission"

Page 23, line 13, remove "or commission"

Page 23, line 14, remove "or commission"

Page 23, line 16, remove "or commission"

Page 23, line 17, after "to" insert "the ethics commission,"

Page 23, line 18, overstrike "nor does this section apply to" and insert immediately thereafter "and"

Page 24, line 7, remove "or the commission"

Page 26, line 11, remove "enacted during the most recent session of the"

Page 26, line 12, remove "legislative assembly"

Page 28, remove lines 17 through 31

Page 30, remove lines 9 through 31

Page 31, remove lines 1 through 31

Page 32, remove lines 1 through 31

Page 33, remove lines 1 through 23

Page 34, remove lines 11 through 30

Page 35, remove lines 1 through 24

Page 37, line 17, replace "government ethics" with "transparency, corruption, elections, or lobbying"

Page 37, line 18, remove "Adjusted for inflation" means adjusted on January first of each year by the change in"

Page 37, remove lines 19 and 20

Page 37, line 21, remove "3."

Page 37, line 23, replace "4." with "3."

Page 37, line 25, replace "government ethics" with "transparency, corruption, elections, or lobbying"

Page 37, line 26, replace "5." with "4."

Page 37, line 28, replace "6." with "5."

Page 37, line 29, after "recreation" insert ", except:

- a. Purely informational material;
- b. A campaign contribution; and
- c. An item, service, or thing of value given under conditions that do not raise ethical concerns, as set forth in rules adopted by the ethics commission, to advance opportunities for state residents to meet with public officials in educational and social settings in the state"

Page 37, line 30, replace "7." with "6."

Page 37, line 30, remove "final"

Page 37, line 31, after "28-32" insert "and means attempting to influence a public official's execution of a power or duty under title 54, unless the promotion, opposition, or attempt is made by a public official or public employee acting in an official capacity. "Influence state government action" may be defined further by ethics commission rule"

Page 38, line 1, replace "8." with "7."

Page 38, line 1, replace "an" with ";

- a. Engage in an"

Page 38, line 1, after "54-05.1-02" insert "; and

- b. Influence state government action"

Page 38, line 2, replace "9." with "8."

Page 38, line 3, replace "10." with "9."

Page 38, line 6, replace "11." with "10."

Page 38, line 8, replace "12." with "11."

Page 38, line 9, remove ", adjusted for inflation, solely"

Page 38, line 10, after "action" insert ", and may be defined further by ethics commission rule"

Page 38, line 12, remove ", adjusted for"

Page 38, line 13, remove "inflation,"

Page 38, line 16, remove "adjusted for"

Page 38, line 17, replace "inflation" with "not including the individual's own travel expenses and membership dues"

Page 38, line 17, replace "influence state government action" with "lobby"

Page 38, line 18, replace "The" with "A"

Page 38, line 19, after "report" insert "under this subsection"

Page 38, line 26, remove "within forty days after the deadlines"

Page 38, line 27, remove "by which the reports must be filed"

Page 38, remove lines 28 through 31

Page 39, remove lines 1 through 15

Page 39, line 17, replace "lobbyist" with "person who lobbies"

Page 39, line 18, remove "with a value over sixty dollars per"

Page 39, remove lines 19 through 31

Page 40, remove line 1

Page 40, line 2, replace "by the ethics commission" with "knowingly from a person who lobbies"

Page 40, line 3, replace "lobbyist" with "person who lobbies"

Page 40, line 4, remove the underscored colon

Page 40, line 5, replace "a. A" with "a"

Page 40, line 5, remove the underscored semicolon

Page 40, remove line 6

Page 40, line 7, remove "c. A campaign contribution"

Page 40, line 8, remove "For the first violation, the secretary of state shall assess a civil penalty of five hundred"

Page 40, replace lines 9 through 12 with "The secretary of state shall assess a civil penalty upon any person that violates this section."

a. If the gift has a value of five hundred dollars or more, the civil penalty must be two times the value of the gift.

b. If the gift has a value of less than five hundred dollars, the civil penalty must be no less than two times the value of the gift and may be up to one thousand dollars."

Page 40, line 14, replace "Investigator" with "Office"

Page 40, line 19, remove "The ethics commission shall meet as necessary to address each complaint the"

Page 40, line 20, remove "commission receives."

Page 40, line 20, after "in" insert "a public hearing or"

Page 40, line 21, remove "or referral for enforcement under section 54-66-10"

Page 41, line 6, remove "Commission members shall hire or otherwise engage a part-time administrative"

Page 41, replace lines 7 through 10 with "The director of the office of management and budget shall allocate office space in the state capitol for the ethics commission, or, if office space in the capitol is unavailable, shall negotiate for, contract for, and obtain office space for the ethics commission in the city of Bismarck or in the Bismarck area. The ethics commission's office space may not be located in the office space of any other government agency, board, commission, or other governmental entity, and must

provide sufficient privacy and security for the ethics commission to conduct its business. The director shall charge the ethics commission an amount equal to the fair value of the office space and related services the office of management and budget renders to the ethics commission."

Page 41, line 11, remove "**- Identifying information - False complaints**"

Page 41, line 12, remove "1."

Page 41, line 12, remove "When making a"

Page 41, remove lines 13 through 30

Page 42, remove lines 1 through 29

Page 43, replace lines 1 through 21 with:

"54-66-06. Informal resolution - Investigation - Referrals.

After receiving a complaint, the ethics commission may:

1. Attempt to negotiate or mediate an informal resolution between the accused individual and the complainant.
2. Investigate the allegations in the complaint.
3. Refer a matter described in or arising from a complaint to the bureau of criminal investigation or other appropriate law enforcement agency if a majority of the ethics commission members reasonably believes a crime was committed or the safety of the complainant is at risk.
4. Refer a complaint alleging a violation of open meetings or open records requirements to the attorney general, and the attorney general shall review the allegation under section 44-04-21.1 if the complaint was submitted to the ethics commission by the relevant deadline in section 44-04-21.1.

54-66-07. Ethics commission complaint - Informing the accused individual.

If, after investigating a complaint, the ethics commission decides to charge the accused individual with a violation of law, the ethics commission shall serve an ethics commission complaint against the accused individual and give the accused individual no less than twenty days to respond.

54-66-08. Informal resolutions - Public hearings - Referrals.

After serving an ethics commission complaint, the ethics commission may:

1. Resolve the charges in the ethics commission complaint informally with the accused individual; or
2. Hold a public hearing regarding the charges in the ethics commission complaint. The accused individual must be afforded due process, including an opportunity to respond to the charges.

54-66-09. Hearing findings - Penalties.

1. At the conclusion of a hearing, the ethics commission shall issue and make public its written findings of fact, conclusions of law, and any penalty authorized by law which the ethics commission imposes.
2. The written findings of fact must state whether the ethics commission believes, based on a preponderance of the evidence, as viewed by a reasonable person, 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.

54-66-10. Appeals.

An accused individual or complainant may appeal a finding of the ethics commission to the district court of the county where the accused individual resides."

Page 43, line 24, remove "determined the accused individual violated article XIV of"

Page 43, remove line 25

Page 43, line 26, replace "government ethics, and a court affirmed the determination if appealed" with "issued an ethics commission complaint"

Page 44, line 2, replace "54-66-07" with "54-66-06"

Page 44, line 10, replace "Willful publication" with "Publication"

Page 44, line 11, replace "criminal defamation under section 12.1-15-01" with "a class B misdemeanor"

Page 44, line 12, replace "A public official who violates this section is guilty of a class C felony." with "The information deemed confidential in this section may be disclosed by the ethics commission if the accused individual agrees to the disclosure."

Page 44, replace lines 14 through 17 with "A knowing violation of subsection 2 of section 2 of article XIV of the Constitution of North Dakota is a class A misdemeanor. The ethics commission shall assess a civil penalty of up to one thousand dollars on any person that knowingly violates the subsection."

Page 44, line 19, after "commission" insert "unless the commission objects to representation by the attorney general in a specific matter"

Page 44, line 27, remove "and may revoke the lobbyist's registration"

Page 44, line 29, after "misdemeanor" insert ", and, if the lobbyist is a registered lobbyist, the secretary of state may revoke the lobbyist's registration"

Page 44, after line 29, insert:

"54-66-15. Removal of ethics commission members.

1. An ethics commission member may be removed from office for:
 - a. Substantial neglect of duty;
 - b. Gross misconduct in office;

- c. Violation of the commission's code of ethics; or
- d. Willful or habitual neglect or refusal to perform the duties of the member.
- 2. Removal of an ethics commission member under subsection 1 requires consensus agreement by:
 - a. The governor;
 - b. The majority leader of the senate; and
 - c. The minority leader of the senate."

Page 44, line 31, replace "\$300,000" with "\$517,155"

Page 45, line 3, replace "one and one-half" with "two"

Page 45, line 4, after the third comma insert "and"

Page 45, line 4, remove ", 5, and 7"

Page 45, line 5, replace "32" with "23"

Page 45, line 8, replace "32" with "23"

Page 45, line 10, replace "32" with "23"

Page 45, line 12, after "Sections" insert "5, 6, 7,"

Page 45, line 12, after the fourteenth comma insert "and"

Page 45, line 13, remove ", 23, 24, 25, 26, 27, 28, 29, 30, and 31"

Renumber accordingly

19.1078.02024
Title.

Prepared by the Legislative Council staff for
Senator Mathern

April 16, 2019

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1521

Page 1, line 4, replace "section" with "sections"

Page 1, line 5, remove "subsection 4 of section 16.1-08.1-02.1, sections 16.1-08.1-02.3, 16.1-08.1-02.4,"

Page 1, line 6, replace "16.1-08.1-03.1" with "16.1-08.1-03.7"

Page 1, line 6, remove "28-32-02,"

Page 1, line 7, remove "28-32-14,"

Page 1, line 7, after the eighth comma insert "and"

Page 1, line 8, remove "28-32-17, 28-32-18, and 28-32-18.1,"

Page 1, line 9, remove "28-32-27,"

Page 1, line 10, remove "disqualification of agency heads in quasi-judicial proceedings,"

Page 1, line 12, after the first semicolon insert "to provide for a legislative management study"

Page 1, line 19, remove ""Adjusted for inflation" means adjusted on January first of each year by the change in"

Page 1, remove lines 20 and 21

Page 1, line 22, remove "2."

Page 2, line 6, remove the overstrike over "2."

Page 2, line 6, remove "3."

Page 2, line 13, remove the overstrike over "3."

Page 2, line 13, remove "4."

Page 2, line 26, remove the overstrike over "4."

Page 2, line 26, remove "5."

Page 3, line 3, remove the overstrike over "5."

Page 3, line 3, remove "6."

Page 3, line 29, remove the overstrike over "6."

Page 3, line 29, remove "7."

Page 4, line 4, remove the overstrike over "7."

Page 4, line 4, remove "8."

Page 4, line 14, remove the overstrike over "8."

Page 4, line 14, remove "9."

Page 4, line 21, remove the overstrike over "9."

Page 4, line 21, remove "10."

Page 4, line 26, remove the overstrike over "10."

Page 4, line 26, remove "11."

Page 4, line 28, remove the overstrike over "11."

Page 4, line 28, remove "12."

Page 5, line 1, remove the overstrike over "12."

Page 5, line 1, remove "13."

Page 5, line 4, remove the overstrike over "13."

Page 5, line 4, remove "14."

Page 5, line 26, remove the overstrike over "14."

Page 5, line 26, remove "15."

Page 5, line 30, remove the overstrike over "15."

Page 5, line 30, remove "16."

Page 6, line 10, remove the overstrike over "16."

Page 6, line 10, remove "17."

Page 6, line 12, remove the overstrike over "17."

Page 6, line 12, remove "18."

Page 6, line 14, replace "19." with "18."

Page 6, line 14, replace "who" with "that"

Page 6, line 15, remove ", adjusted for inflation, solely"

Page 6, line 16, after "assembly" insert ", and may be defined further by the ethics commission"

Page 6, remove lines 17 through 30

Page 7, remove lines 1 through 31

Page 8, remove lines 1 through 31

Page 9, remove lines 1 through 29

Page 10, remove lines 1 through 31

Page 11, remove lines 1 through 31

Page 12, remove lines 1 through 31

Page 13, replace lines 1 through 6 with:

"SECTION 2. AMENDMENT. Section 16.1-08.1-03.7 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-03.7. Political committees that organize and register according to federal law that make independent expenditures or disbursements to nonfederal candidates, political parties, and political committees.

A political committee that organizes and registers according to federal law and makes an independent expenditure or makes a disbursement in excess of two hundred dollars to a nonfederal candidate seeking public office or to a political party or political committee in this state shall file a copy of that portion of the committee's federal report detailing the independent expenditure or the disbursement made. The political committee shall file a copy of the committee's federal report, and supplementary information as necessary under this section, with the secretary of state at the time of filing the report with the applicable federal agency. The report must include:

1. The name, mailing address, and treasurer of the political committee;
2. The recipient's name and mailing address; ~~and~~
3. The date and amount of the independent expenditure or disbursement; and
4. The ultimate and true source of funds listed by contributor and subcontributor of any amount over two hundred dollars collected or used to make the independent expenditure or disbursement including:
 - a. The name and address of the contributor;
 - b. The total amount of the contribution; and
 - c. The date the last contribution was received."

Page 13, line 17, remove "For the first violation, the secretary of state shall assess a civil penalty of five hundred"

Page 13, replace lines 18 through 21 with "The secretary of state shall assess a civil penalty upon any person that knowingly violates this section.

- a. If the contribution used in violation of this section has a value of two thousand five hundred dollars or more, the civil penalty must be two times the value of the contribution.
- b. If the contribution used in violation of this section has a value of less than two thousand five hundred dollars, the civil penalty must be at least two times the value of the contribution and may be up to five thousand dollars.
3. The assessment of a civil penalty may be appealed to the district court of the county where the candidate resides."

Page 13, line 25, remove "1."

Page 13, line 25, replace "report" with "statement"

Page 13, remove lines 27 through 31

Page 18, remove lines 16 through 29

Page 19, remove lines 1 through 3

Page 19, line 7, remove "commission or an"

Page 19, line 7, after the second comma insert "or the commission"

Page 20, line 13, remove ", or"

Page 20, line 14, remove "the Constitution of North Dakota is amended to eliminate the authority"

Page 22, line 14, remove "or the commission"

Page 22, line 16, remove "or commission"

Page 22, line 18, remove "or commission"

Page 23, line 2, remove "or the commission"

Page 23, line 13, remove "or commission"

Page 23, line 14, remove "or commission"

Page 23, line 16, remove "or commission"

Page 23, line 17, after "to" insert "the ethics commission,"

Page 23, line 18, overstrike "nor does this section apply to" and insert immediately thereafter "and"

Page 24, line 7, remove "or the commission"

Page 26, line 11, remove "enacted during the most recent session of the"

Page 26, line 12, remove "legislative assembly"

Page 28, remove lines 17 through 31

Page 30, remove lines 9 through 31

Page 31, remove lines 1 through 31

Page 32, remove lines 1 through 31

Page 33, remove lines 1 through 23

Page 34, remove lines 11 through 30

Page 35, remove lines 1 through 24

Page 37, line 17, replace "government ethics" with "transparency, corruption, elections, or lobbying"

Page 37, line 18, remove "Adjusted for inflation" means adjusted on January first of each year by the change in"

Page 37, remove lines 19 and 20

Page 37, line 21, remove "3."

Page 37, line 23, replace "4." with "3."

Page 37, line 25, replace "government ethics" with "transparency, corruption, elections, or lobbying"

Page 37, line 26, replace "5." with "4."

Page 37, line 28, replace "6." with "5."

Page 37, line 29, after "recreation" insert ", except:

- a. Purely informational material;
- b. A campaign contribution; and
- c. An item, service, or thing of value given under conditions that do not raise ethical concerns, as set forth in rules adopted by the ethics commission, to advance opportunities for state residents to meet with public officials in educational and social settings in the state"

Page 37, line 30, replace "7." with "6."

Page 37, line 30, remove "promoting or opposing the final adoption of"

Page 37, line 31, replace "a rule by an administrative agency or the commission under chapter 28-32" with "an attempt to influence state administrative action by communicating or urging others to communicate with public officials or state employees, unless the attempt is made by a public official or state employee acting in an official capacity, and may be defined further by ethics commission rule"

Page 38, line 1, replace "8." with "7."

Page 38, line 1, replace "an" with ";

- a. Engage in an"

Page 38, line 1, after "54-05.1-02" insert "; and

- b. Influence state government action"

Page 38, line 2, replace "9." with "8."

Page 38, line 2, replace "an individual required to register under section 54-05.1-03" with ";

- a. A registered lobbyist; and
- b. Any other individual who spends more than two hundred dollars, not including the individual's own travel expenses and membership dues, in any calendar year to lobby"

Page 38, line 3, replace "10." with "9."

Page 38, line 6, replace "11." with "10."

Page 38, after line 7, insert:

- "11. "Registered lobbyist" means an individual required to register under section 54-05.1-03."

Page 38, line 9, remove ", adjusted for inflation, solely"

Page 38, line 10, after "action" insert ", and may be defined further by ethics commission rule"

Page 38, line 12, after "A" insert "registered"

Page 38, line 12, remove ", adjusted for"

Page 38, line 13, remove "inflation,"

Page 38, line 16, replace "person" with "lobbyist other than a registered lobbyist"

Page 38, line 16, remove "adjusted for"

Page 38, line 17, replace "inflation" with "not including the individual's own travel expenses and membership dues"

Page 38, line 17, replace "influence state government action" with "lobby"

Page 38, line 18, replace "The" with "A"

Page 38, line 19, after "report" insert "under this subsection"

Page 38, line 26, remove "within forty days after the deadlines"

Page 38, line 27, remove "by which the reports must be filed"

Page 38, remove lines 28 through 31

Page 39, remove lines 1 through 15

Page 39, line 18, remove "with a value over sixty dollars per"

Page 39, line 19, remove "individual per event, adjusted for inflation,"

Page 39, line 19, remove ", except to"

Page 39, remove lines 20 through 31

Page 40, remove line 1

Page 40, line 2, remove "by the ethics commission"

Page 40, line 4, remove the underscored colon

Page 40, line 5, replace "a. A" with "a"

Page 40, line 5, remove the underscored semicolon

Page 40, remove line 6

Page 40, line 7, remove "c. A campaign contribution"

Page 40, line 8, remove "For the first violation, the secretary of state shall assess a civil penalty of five hundred"

Page 40, replace lines 9 through 12 with "The secretary of state shall assess a civil penalty upon any person that violates this section."

a. If the gift has a value of five hundred dollars or more, the civil penalty must be two times the value of the gift.

b. If the gift has a value of less than five hundred dollars, the civil penalty must be no less than two times the value of the gift and may be up to one thousand dollars."

Page 40, line 14, replace "Investigator" with "Office"

Page 40, line 19, remove "The ethics commission shall meet as necessary to address each complaint the"

Page 40, line 20, remove "commission receives."

Page 40, line 20, after "in" insert "a public hearing or"

Page 40, line 21, remove "or referral for enforcement under section 54-66-10"

Page 41, line 6, remove "Commission members shall hire or otherwise engage a part-time administrative"

Page 41, replace lines 7 through 10 with "The director of the office of management and budget shall allocate office space in the state capitol for the ethics commission, or, if office space in the capitol is unavailable, shall negotiate for, contract for, and obtain office space for the ethics commission in the city of Bismarck or in the Bismarck area. The ethics commission's office space may not be located in the office space of any other government agency, board, commission, or other governmental entity, and must provide sufficient privacy and security for the ethics commission to conduct its business. The director shall charge the ethics commission an amount equal to the fair value of the office space and related services the office of management and budget renders to the ethics commission."

Page 41, line 11, remove "- Identifying information - False complaints"

Page 41, line 12, remove "1."

Page 41, line 12, remove "When making a"

Page 41, remove lines 13 through 30

Page 42, remove lines 1 through 29

Page 43, replace lines 1 through 21 with:

"54-66-06. Informal resolution - Investigation - Referrals.

After receiving a complaint, the ethics commission may:

1. Attempt to negotiate or mediate an informal resolution between the accused individual and the complainant.
2. Investigate the allegations in the complaint.
3. Refer a matter described in or arising from a complaint to the bureau of criminal investigation or other appropriate law enforcement agency if a majority of the ethics commission members reasonably believes a crime was committed or the safety of the complainant is at risk.
4. Refer a complaint alleging a violation of open meetings or open records requirements to the attorney general, and the attorney general shall review the allegation under section 44-04-21.1 if the complaint was submitted to the ethics commission by the relevant deadline in section 44-04-21.1.

54-66-07. Ethics commission complaint - Informing the accused individual.

If, after investigating a complaint, the ethics commission decides to charge the accused individual with a violation of law, the ethics commission shall serve an ethics commission complaint against the accused individual and give the accused individual no less than twenty days to respond.

54-66-08. Informal resolutions - Public hearings - Referrals.

After serving an ethics commission complaint, the ethics commission may:

1. Resolve the charges in the ethics commission complaint informally with the accused individual; or
2. Hold a public hearing regarding the charges in the ethics commission complaint. The accused individual must be afforded due process, including an opportunity to respond to the charges.

54-66-09. Hearing findings - Penalties.

1. At the conclusion of a hearing, the ethics commission shall issue and make public its written findings of fact, conclusions of law, and any penalty authorized by law which the ethics commission imposes.
2. The written findings of fact must state whether the ethics commission believes, based on a preponderance of the evidence, as viewed by a reasonable person, 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.

54-66-10. Appeals.

An accused individual or complainant may appeal a finding of the ethics commission to the district court of the county where the accused individual resides."

Page 43, line 24, remove "determined the accused individual violated article XIV of"

Page 43, remove line 25

Page 43, line 26, replace "government ethics, and a court affirmed the determination if appealed" with "issued an ethics commission complaint"

Page 44, line 2, replace "54-66-07" with "54-66-06"

Page 44, line 10, replace "Willful publication" with "Publication"

Page 44, line 11, replace "criminal defamation under section 12.1-15-01" with "a class B misdemeanor"

Page 44, line 12, replace "A public official who violates this section is guilty of a class C felony." with "The information deemed confidential in this section may be disclosed by the ethics commission if the accused individual agrees to the disclosure."

Page 44, replace lines 14 through 17 with "A knowing violation of subsection 2 of section 2 of article XIV of the Constitution of North Dakota is a class A misdemeanor. The ethics commission shall assess a civil penalty of up to one thousand dollars on any person that knowingly violates the subsection."

Page 44, line 19, after "commission" insert "unless the commission objects to representation by the attorney general in a specific matter"

Page 44, line 27, remove "and may revoke the lobbyist's registration"

Page 44, line 29, after "misdemeanor" insert ", and, if the lobbyist is a registered lobbyist, the secretary of state may revoke the lobbyist's registration"

Page 44, after line 29, insert:

"54-66-15. Removal of ethics commission members.

1. An ethics commission member may be removed from office for:
 - a. Substantial neglect of duty;
 - b. Gross misconduct in office;
 - c. Violation of the commission's code of ethics; or
 - d. Willful or habitual neglect or refusal to perform the duties of the member.
2. Removal of an ethics commission member under subsection 1 requires consensus agreement by:
 - a. The governor;
 - b. The majority leader of the senate; and
 - c. The minority leader of the senate."

Page 44, line 31, replace "\$300,000" with "\$517,155"

Page 45, line 3, replace "one and one-half" with "two"

Page 45, after line 3, insert:

"SECTION 25. LEGISLATIVE MANAGEMENT STUDY - ETHICS COMMISSION AND LEGISLATIVE ASSEMBLY RESPONSIBILITIES. During the 2019-20 interim, the legislative management shall consider studying subsection 2 of section 1 of article XIV and subsections 1 through 5 of section 2 of article XIV of the Constitution of North Dakota, and the responsibilities of the legislative assembly and ethics commission under the subsections. The study committee must include members of the ethics commission as selected by the ethics commission. The study must include consideration of whether the civil and criminal sanctions for violations of the constitutional provisions are appropriate; whether additional authority is needed by the entity vested to implement, interpret, and enforce section 1 of article XIV; and effective means to educate public officials, lobbyists, and the public on the requirements of article XIV and other laws regarding government ethics. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-seventh legislative assembly."

Page 45, line 4, after the third comma insert "and"

Page 45, line 4, remove ", 5, and 7"

Page 45, line 5, replace "32" with "23"

Page 45, line 8, replace "32" with "23"

Page 45, line 10, replace "32" with "23"

Page 45, line 12, after "Sections" insert "5, 6, 7,"

Page 45, line 12, after the fourteenth comma insert "and"

Page 45, line 13, remove ", 23, 24, 25, 26, 27, 28, 29, 30, and 31"

Renumber accordingly

Sixty-sixth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1521

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Introduced by

Representative Pollert

Senator Wardner

A BILL for an Act to create and enact a new section to chapter 16.1-08.1 and chapter 54-66 of the North Dakota Century Code, relating to reporting campaign contributions and expenditures, restrictions on public officials and lobbyists, investigations of ethics violations, and implementing requirements of article XIV of the Constitution of North Dakota; to amend and reenact ~~section~~sections 16.1-08.1-01, ~~subsection 4 of section 16.1-08.1-02.1, sections 16.1-08.1-02.3, 16.1-08.1-02.4, 16.1-08.1-03.1~~16.1-08.1-03.7, 16.1-08.1-04.1, 16.1-08.1-06.2, 28-32-01, ~~28-32-02~~, 28-32-03, 28-32-06, 28-32-07, 28-32-08, 28-32-08.1, 28-32-08.2, 28-32-09, 28-32-10, 28-32-11, 28-32-12, ~~28-32-14~~, 28-32-15, 28-32-16, ~~28-32-17, 28-32-18~~, and 28-32-18.1, subsections 2 and 4 of section 28-32-19, and sections ~~28-32-27~~, 28-32-47, 28-32-48, and 28-32-49 of the North Dakota Century Code, relating to rulemaking procedures, ~~disqualification of agency heads in quasi-judicial proceedings~~, implementing article XIV of the Constitution of North Dakota, and requirements for the North Dakota ethics commission; to provide for a penalty; to provide an appropriation; to provide an effective date; ~~to provide an expiration date~~; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-08.1-01 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-01. Definitions.

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

1. ~~"Adjusted for inflation" means adjusted on January first of each year by the change in the consumer price index for all urban consumers (all items, United States city average), as identified by the secretary of state.~~
2. "Affiliate" means an organization that controls, is controlled by, or is under common control with another organization. For purposes of this definition, control means the

possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an organization, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise. Control is presumed to exist if an organization, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing fifty percent or more of the voting securities of any other organization.

2.3. "Association" means any club, association, union, brotherhood, fraternity, organization, or group of any kind of two or more persons, including labor unions, trade associations, professional associations, or governmental associations, which is united for any purpose, business, or object and which assesses any dues, membership fees, or license fees in any amount, or which maintains a treasury fund in any amount. The term does not include corporations, cooperative corporations, limited liability companies, political committees, or political parties.

3.4. "Candidate" means an individual who seeks nomination for election or election to public office, and includes:

- a. An individual holding public office;
- b. An individual who has publicly declared that individual's candidacy for nomination for election or election to public office or has filed or accepted a nomination for public office;
- c. An individual who has formed a campaign or other committee for that individual's candidacy for public office;
- d. An individual who has circulated a nominating petition to have that individual's name placed on the ballot; and
- e. An individual who has, in any manner, solicited or received a contribution for that individual's candidacy for public office, whether before or after the election for that office.

4.5. "Conduit" means a person that is not a political party, political committee, or candidate and which receives a contribution of money and transfers the contribution to a candidate, political party, or political committee when the contribution is designated specifically for the candidate, political party, or political committee and the person has no discretion as to the recipient and the amount transferred. The term includes a

transactional intermediary, including a credit card company or a money transfer service that pays or transfers money to a candidate on behalf of another person.

5.6. "Contribution" means a gift, transfer, conveyance, provision, receipt, subscription, loan, advance, deposit of money, or anything of value, made for the purpose of influencing the nomination for election, or election, of any person to public office or aiding or opposing the circulation or passage of a statewide initiative or referendum petition or measure. The term also means a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for any of the above purposes. The term includes funds received by a candidate for public office or a political party or committee which are transferred or signed over to that candidate, party, or committee from another candidate, party, or political committee or other source including a conduit. The term "anything of value" includes any good or service of more than a nominal value. The term "nominal value" means the cost, price, or worth of the good or service is trivial, token, or of no appreciable value. The term "contribution" does not include:

- a. A loan of money from a bank or other lending institution made in the regular course of business.
- b. Time spent by volunteer campaign or political party workers.
- c. Money or anything of value received for commercial transactions, including rents, advertising, or sponsorships made as a part of a fair market value bargained-for exchange.
- d. Money or anything of value received for anything other than a political purpose.
- e. Products or services for which the actual cost or fair market value are reimbursed by a payment of money.
- f. An independent expenditure.
- g. The value of advertising paid by a political party, multicandidate political committee, or caucus which is in support of a candidate.
- h. In-kind contributions from a candidate to the candidate's campaign.

6.7. "Cooperative corporations", "corporations", and "limited liability companies" are as defined in this code, and for purposes of this chapter "corporations" includes nonprofit corporations. However, if a political committee, the only purpose of which is accepting

contributions and making expenditures for a political purpose, incorporates for liability purposes only, the committee is not considered a corporation for the purposes of this chapter.

7.8. "Expenditure" means:

- a. A gift, transfer, conveyance, provision, loan, advance, payment, distribution, disbursement, outlay, or deposit of money or anything of value, except a loan of money from a bank or other lending institution made in the regular course of business, made for a political purpose or for the purpose of influencing the passage or defeat of a measure.
- b. A contract, promise, or agreement, express or implied, whether or not legally enforceable, to make any expenditure.
- c. The transfer of funds by a political committee to another political committee.
- d. An independent expenditure.

8.9. "Expenditure categories" means the categories into which expenditures must be grouped for reports under this chapter. The expenditure categories are:

- a. Advertising;
- b. Campaign loan repayment;
- c. Operations;
- d. Travel; and
- e. Miscellaneous.

9.10. "Independent expenditure" means an expenditure made for a political purpose or for the purpose of influencing the passage or defeat of a measure if the expenditure is made without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of, any candidate, committee, or political party.

10.11. "Patron" means a person who owns equity interest in the form of stock, shares, or membership or maintains similar financial rights in a cooperative corporation.

11.12. "Person" means an individual, partnership, political committee, association, corporation, cooperative corporation, limited liability company, or other organization or group of persons.

- 1 ~~12.13.~~ "Personal benefit" means a benefit to the candidate or another person which is not for
2 a political purpose or related to a candidate's responsibilities as a public officeholder,
3 and any other benefit that would convert a contribution to personal income.
- 4 ~~13.14.~~ "Political committee" means any committee, club, association, or other group of
5 persons which receives contributions or makes expenditures for political purposes and
6 includes:
- 7 a. A political action committee not connected to another organization and free to
8 solicit funds from the general public, or derived from a corporation, cooperative
9 corporation, limited liability company, affiliate, subsidiary, or an association that
10 solicits or receives contributions from its employees or members or makes
11 expenditures for political purposes on behalf of its employees or members;
 - 12 b. A candidate committee established to support an individual candidate seeking
13 public office which solicits or receives contributions for political purposes;
 - 14 c. A political organization registered with the federal election commission, which
15 solicits or receives contributions or makes expenditures for political purposes;
 - 16 d. A multicandidate political committee, including a caucus, established to support
17 multiple groups or slates of candidates seeking public office, which solicits or
18 receives contributions for political purposes; and
 - 19 e. A measure committee, including an initiative or referendum sponsoring
20 committee at any stage of its organization, which solicits or receives contributions
21 or makes expenditures for the purpose of aiding or opposing a measure sought
22 to be voted upon by the voters of the state, including any activities undertaken for
23 the purpose of drafting an initiative or referendum petition, seeking approval of
24 the secretary of state for the circulation of a petition, or seeking approval of the
25 submitted petitions.
- 26 ~~14.15.~~ "Political party" means any association, committee, or organization which nominates a
27 candidate for election to any office which may be filled by a vote of the electors of this
28 state or any of its political subdivisions and whose name appears on the election ballot
29 as the candidate of such association, committee, or organization.
- 30 ~~15.16.~~ "Political purpose" means any activity undertaken in support of or in opposition to the
31 election or nomination of a candidate to public office and includes using "vote for",

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"oppose", or any similar support or opposition language in any advertisement whether the activity is undertaken by a candidate, a political committee, a political party, or any person. In the period thirty days before a primary election and sixty days before a special or general election, "political purpose" also means any activity in which a candidate's name, office, district, or any term meaning the same as "incumbent" or "challenger" is used in support of or in opposition to the election or nomination of a candidate to public office. The term does not include activities undertaken in the performance of a duty of a public office or any position taken in any bona fide news story, commentary, or editorial.

16.17. "Public office" means every office to which an individual can be elected by vote of the people under the laws of this state.

17.18. "Subsidiary" means an affiliate of a corporation under the control of the corporation directly or indirectly through one or more intermediaries.

19.18. "Ultimate and true source" means the person ~~who~~that knowingly contributed over two hundred dollars, adjusted for inflation, solely to influence a statewide election or an election for the legislative assembly.

SECTION 2. AMENDMENT. Subsection 4 of section 16.1-08.1-02.1 of the North Dakota Century Code is amended and reenacted as follows:

~~4.~~ The statement filed according to this section must show the following:

~~a.~~ The balance of the filer's convention accounts at the start and close of the reporting period;

~~b.~~ The total of all revenue received and expenditures made of two hundred dollars, adjusted for inflation, or less;

~~c.~~ The total of all revenue received and expenditures made in excess of two hundred dollars, adjusted for inflation;

~~d.~~ For each aggregated revenue received from a person in excess of two hundred dollars, adjusted for inflation:

~~(1)~~ The name of each person;

~~(2)~~ The mailing address of each person;

~~(3)~~ The date of the most recent receipt of revenue from each person; and

- 1 (4) The purpose or purposes for which the aggregated revenue total was
2 received from each person;
- 3 e. For each aggregated expenditure made to a person in excess of two hundred
4 dollars, adjusted for inflation:
- 5 (1) The name of each person or entity;
- 6 (2) The mailing address of each person or entity;
- 7 (3) The date of the most recent expense made to each person or entity; and
- 8 (4) The purpose or purposes for which the aggregated expenditure total was
9 disbursed to each person or entity; and
- 10 f. For each aggregated revenue from an individual which totals five thousand
11 dollars, adjusted for inflation, or more during the reporting period, the occupation,
12 employer, and principal place of business of the individual must be disclosed.
- 13 **SECTION 3. AMENDMENT.** Section 16.1 08.1 02.3 of the North Dakota Century Code is
14 amended and reenacted as follows:
- 15 **~~16.1 08.1 02.3. Pre election, supplemental, and year end campaign disclosure~~**
16 **~~statement requirements for candidates, candidate committees, multicandidate~~**
17 **~~committees, and nonstatewide political parties.~~**
- 18 1. Prior to the thirty first day before a primary, general, or special election, a candidate or
19 candidate committee formed on behalf of the candidate, a multicandidate political
20 committee, or a political party other than a statewide political party soliciting or
21 accepting contributions shall file a campaign disclosure statement that includes all
22 contributions received from January first through the fortieth day before the election. A
23 candidate whose name is not on the ballot and who is not seeking election through
24 write in votes, the candidate's candidate committee, and a political party that has not
25 endorsed or nominated any candidate in the election is not required to file a statement
26 under this subsection. The statement may be submitted for filing beginning on the
27 thirty ninth day before the election. The statement must include:
- 28 a. For each aggregated contribution from a contributor which totals in excess of two
29 hundred dollars, adjusted for inflation, received during the reporting period:
- 30 (1) The name and mailing address of the contributor;
- 31 (2) The total amount of the contribution; and

- 1 ~~(3) The date the last contributed amount was received;~~
- 2 ~~b. The total of all aggregated contributions from contributors which total in excess of~~
- 3 ~~two hundred dollars, adjusted for inflation, during the reporting period;~~
- 4 ~~c. The total of all contributions received from contributors that contributed two~~
- 5 ~~hundred dollars, adjusted for inflation, or less each during the reporting period;~~
- 6 ~~and~~
- 7 ~~d. For a statewide candidate, a candidate committee formed on behalf of a~~
- 8 ~~statewide candidate, and a statewide multicandidate committee, the balance of~~
- 9 ~~the campaign fund on the fortieth day before the election and the balance of the~~
- 10 ~~campaign fund on January first.~~
- 11 ~~2. Beginning on the thirty ninth day before the election through the day before the~~
- 12 ~~election, a person that files a statement under subsection 1 must file a supplemental~~
- 13 ~~statement within forty eight hours of the start of the day following the receipt of a~~
- 14 ~~contribution or aggregate contribution from a contributor which is in excess of five~~
- 15 ~~hundred dollars, adjusted for inflation. The statement must include:~~
- 16 ~~a. The name and mailing address of the contributor;~~
- 17 ~~b. The total amount of the contribution received during the reporting period; and~~
- 18 ~~c. The date the last contributed amount was received.~~
- 19 ~~3. Prior to February first, a candidate or candidate committee, a multicandidate political~~
- 20 ~~committee, or a nonstatewide political party soliciting or accepting contributions shall~~
- 21 ~~file a campaign disclosure statement that includes all contributions received and~~
- 22 ~~expenditures, by expenditure category, made from January first through December~~
- 23 ~~thirty first of the previous year. The statement may be submitted for filing beginning on~~
- 24 ~~January first. The statement must include:~~
- 25 ~~a. For a statewide candidate, a candidate committee formed on behalf of a~~
- 26 ~~statewide candidate, and a statewide multicandidate committee, the balance of~~
- 27 ~~the campaign fund on January first and on December thirty first;~~
- 28 ~~b. For each aggregated contribution from a contributor which totals in excess of two~~
- 29 ~~hundred dollars, adjusted for inflation, received during the reporting period:~~
- 30 ~~(1) The name and mailing address of the contributor;~~
- 31 ~~(2) The total amount of the contribution; and~~

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- 1 ~~_____ (3) The date the last contributed amount was received;~~
- 2 ~~_____ e. The total of all aggregated contributions from contributors which total in excess of~~
- 3 ~~two hundred dollars, adjusted for inflation, during the reporting period;~~
- 4 ~~_____ d. The total of all contributions received from contributors that contributed two~~
- 5 ~~hundred dollars, adjusted for inflation, or less each during the reporting period;~~
- 6 ~~and~~
- 7 ~~_____ e. The total of all other expenditures made during the previous year, separated into~~
- 8 ~~expenditure categories.~~
- 9 ~~_____ 4. A person required to file a statement under this section, other than a candidate for~~
- 10 ~~judicial office, county office, or city office, or a candidate committee for a candidate~~
- 11 ~~exempted under this subsection, shall report each aggregated contribution from a~~
- 12 ~~contributor which totals five thousand dollars, adjusted for inflation, or more during the~~
- 13 ~~reporting period. For these contributions from individuals, the statement must include~~
- 14 ~~the contributor's occupation, employer, and the employer's principal place of business.~~
- 15 ~~_____ 5. A candidate for city office in a city with a population under five thousand and a~~
- 16 ~~candidate committee for the candidate are exempt from this section.~~
- 17 ~~_____ 6. A candidate for county office and a candidate committee for a candidate for county~~
- 18 ~~office shall file statements under this chapter with the county auditor. A candidate for~~
- 19 ~~city office who is required to file a statement under this chapter and a candidate~~
- 20 ~~committee for such a candidate shall file statements with the city auditor. Any other~~
- 21 ~~person required to file a statement under this section shall file the statement with the~~
- 22 ~~secretary of state.~~
- 23 ~~_____ 7. The filing officer shall assess and collect fees for any reports filed after the filing~~
- 24 ~~deadline.~~
- 25 ~~_____ 8. To ensure accurate reporting and avoid commingling of campaign and personal funds,~~
- 26 ~~candidates shall use dedicated campaign accounts that are separate from any personal~~
- 27 ~~accounts.~~
- 28 ~~_____ **SECTION 4. AMENDMENT.** Section 16.1-08.1-02.4 of the North Dakota Century Code is~~
- 29 ~~amended and reenacted as follows:~~

**~~16.1-08.1-02.4. Pre election, supplemental, and year-end campaign disclosure
statement requirements for statewide political parties and certain political committees.~~**

~~1. Prior to the thirty first day before a primary, general, or special election, a statewide political party or a political committee not required to file statements under section 16.1-08.1-02.3 which is soliciting or accepting contributions shall file a campaign disclosure statement that includes all contributions received and expenditures made from January first through the fortieth day before the election. A political party that has not endorsed or nominated a candidate in an election is not required to file a statement under this subsection. A statement required to be filed under this subsection may be submitted for filing beginning on the thirty ninth day before the election. The statement must include:~~

- ~~a. For each aggregated contribution from a contributor which totals in excess of two hundred dollars, adjusted for inflation, received during the reporting period:
 - ~~(1) The name and mailing address of the contributor;~~
 - ~~(2) The total amount of the contribution; and~~
 - ~~(3) The date the last contributed amount was received;~~~~
- ~~b. The total of all aggregated contributions from contributors which total in excess of two hundred dollars, adjusted for inflation, during the reporting period;~~
- ~~c. The total of all contributions received from contributors that contributed two hundred dollars, adjusted for inflation, or less each during the reporting period;~~
- ~~d. For each recipient of an expenditure from campaign funds in excess of two hundred dollars, adjusted for inflation, in the aggregate:
 - ~~(1) The name and mailing address of the recipient;~~
 - ~~(2) The total amount of the expenditure made to the recipient; and~~
 - ~~(3) The date the last expended amount was made to the recipient;~~~~
- ~~e. The aggregate total of all expenditures from campaign funds in excess of two hundred dollars, adjusted for inflation;~~
- ~~f. The aggregate total of all expenditures from campaign funds of two hundred dollars, adjusted for inflation, or less; and~~
- ~~g. The balance of the campaign fund on the fortieth day before the election and balance of the campaign fund on January first.~~

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- 1 — 2. Beginning on the thirty ninth day before the election through the day before the
- 2 election, a person that files a statement under subsection 1 must file a supplemental
- 3 statement within forty eight hours of the start of the day following the receipt of a
- 4 contribution or aggregate contribution from a contributor which is in excess of five
- 5 hundred dollars, adjusted for inflation. The statement must include:
- 6 — a. The name and mailing address of the contributor;
- 7 — b. The total amount of the contribution received during the reporting period; and
- 8 — c. The date the last contributed amount was received.
- 9 — 3. Prior to February first, a statewide political party or a political committee that is not
- 10 required to file a statement under section 16.1 08.1 2.3 shall file a campaign
- 11 disclosure statement that includes all contributions received and expenditures made
- 12 from January first through December thirty first of the previous year. The statement
- 13 may be submitted for filing beginning on January first. The statement must include:
- 14 — a. For each aggregated contribution from a contributor which totals in excess of two
- 15 hundred dollars, adjusted for inflation, received during the reporting period:
- 16 — (1) The name and mailing address of the contributor;
- 17 — (2) The total amount of the contribution; and
- 18 — (3) The date the last contributed amount was received;
- 19 — b. The total of all aggregated contributions from contributors which total in excess of
- 20 two hundred dollars, adjusted for inflation, during the reporting period;
- 21 — c. The total of all contributions received from contributors that contributed two
- 22 hundred dollars, adjusted for inflation, or less each during the reporting period;
- 23 — d. For each recipient of an expenditure from campaign funds in excess of two
- 24 hundred dollars, adjusted for inflation, in the aggregate:
- 25 — (1) The name and mailing address of the recipient;
- 26 — (2) The total amount of the expenditure made to the recipient; and
- 27 — (3) The date the last expended amount was made to the recipient;
- 28 — e. The aggregate total of all expenditures from campaign funds in excess of two
- 29 hundred dollars, adjusted for inflation;
- 30 — f. The aggregate total of all expenditures from campaign funds of two hundred
- 31 dollars, adjusted for inflation, or less; and

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- 1 ~~g. The balance of the campaign fund on January first and December thirty first.~~
- 2 ~~4. A person required to file a statement under this section shall disclose each aggregated~~
- 3 ~~contribution from a contributor which totals five thousand dollars, adjusted for inflation,~~
- 4 ~~or more during the reporting period. For these contributions from individuals, the~~
- 5 ~~statement must include the contributor's occupation, employer, and the employer's~~
- 6 ~~principal place of business.~~
- 7 ~~5. Statements under this section must be filed with the secretary of state.~~
- 8 ~~6. The secretary of state shall assess and collect fees for any reports filed after the filing~~
- 9 ~~deadline.~~
- 10 ~~**SECTION 5. AMENDMENT.** Section 16.1-08.1-03.1 of the North Dakota Century Code is~~
- 11 ~~amended and reenacted as follows:~~
- 12 ~~**16.1-08.1-03.1. Special requirements for statements required of persons engaged in**~~
- 13 ~~**activities regarding ballot measures.**~~
- 14 ~~1. For each reportable contribution and expenditure under section 16.1-08.1-02.4, the~~
- 15 ~~threshold for reporting is one hundred dollars, adjusted for inflation, for any person~~
- 16 ~~engaged in activities described in subdivision e of subsection 1314 of section~~
- 17 ~~16.1-08.1-01.~~
- 18 ~~2. For contributions received from an out of state contributor, a person engaged in~~
- 19 ~~activities described in subdivision e of subsection 1314 of section 16.1-08.1-01 shall~~
- 20 ~~include the following information regarding each subcontributor that has stated a~~
- 21 ~~contribution is for the express purpose of furthering the passage or defeat of a ballot~~
- 22 ~~measure in the statements required under section 16.1-08.1-02.4:~~
- 23 ~~a. A designation as to whether any person contributed in excess of one hundred~~
- 24 ~~dollars, adjusted for inflation, of the total contribution;~~
- 25 ~~b. The name and mailing address of each subcontributor that contributed in excess~~
- 26 ~~of one hundred dollars, adjusted for inflation, of the total contribution;~~
- 27 ~~c. The contribution amounts of each disclosed subcontributor; and~~
- 28 ~~d. The occupation, employer, and address for the employer's principal place of~~
- 29 ~~business of each disclosed subcontributor.~~
- 30 ~~3. An initiative and referendum sponsoring committee also shall file a disclosure~~
- 31 ~~statement by the date the secretary of state approves the petition for circulation, and~~

1 shall file an additional statement on the date the petitions containing the required
2 number of signatures are submitted to the secretary of state for review. The
3 statements required under this subsection must be in the same form as the year end
4 statements under section 16.1-08.1-02.4.

5 ~~4. A sponsoring committee shall file a statement regarding its intent to compensate~~
6 ~~circulators before paying for petitions to be circulated.~~

7 **SECTION 2. AMENDMENT.** Section 16.1-08.1-03.7 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **16.1-08.1-03.7. Political committees that organize and register according to federal**
10 **law that make independent expenditures or disbursements to nonfederal candidates,**
11 **political parties, and political committees.**

12 A political committee that organizes and registers according to federal law and makes an
13 independent expenditure or makes a disbursement in excess of two hundred dollars to a
14 nonfederal candidate seeking public office or to a political party or political committee in this
15 state shall file a copy of that portion of the committee's federal report detailing the independent
16 expenditure or the disbursement made. The political committee shall file a copy of the
17 committee's federal report, and supplementary information as necessary under this section, with
18 the secretary of state at the time of filing the report with the applicable federal agency. The
19 report and supplementary information must include:

- 20 1. The name, mailing address, and treasurer of the political committee;
- 21 2. The recipient's name and mailing address; ~~and~~
- 22 3. The date and amount of the independent expenditure or disbursement; and
- 23 4. The ultimate and true source of funds listed by contributor and subcontributor of any
24 amount over two hundred dollars collected or used to make the independent
25 expenditure or disbursement including:
 - 26 a. The name and address of the contributor;
 - 27 b. The total amount of the contribution; and
 - 28 c. The date the last contribution was received.

29 **SECTION 3. AMENDMENT.** Section 16.1-08.1-04.1 of the North Dakota Century Code is
30 amended and reenacted as follows:

16.1-08.1-04.1. Personal use of contributions prohibited.

1. A candidate may not use any contribution received by the candidate, the candidate's candidate committee, or a multicandidate political committee to:

- 1- a. Give a personal benefit to the candidate or another person;
- 2- b. Make a loan to another person;
- 3- c. Knowingly pay more than the fair market value for goods or services purchased for the campaign; or
- 4- d. Pay a criminal fine or civil penalty.

2. ~~For the first violation, the secretary of state shall assess a civil penalty of five hundred dollars upon any person who knowingly violates this section. The assessment of a civil penalty may be appealed to the district court of Burleigh County. For a second and subsequent knowing violation of this section, the person is guilty of a class B misdemeanor.~~ The secretary of state shall assess a civil penalty upon any person that knowingly violates this section.

a. If the contribution used in violation of this section has a value of two thousand five hundred dollars or more, the civil penalty must be two times the value of the contribution.

b. If the contribution used in violation of this section has a value of less than two thousand five hundred dollars, the civil penalty must be at least two times the value of the contribution and may be up to five thousand dollars.

3. The assessment of a civil penalty may be appealed to the district court of the county where the candidate resides.

SECTION 4. AMENDMENT. Section 16.1-08.1-06.2 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-06.2. Secretary of state to provide instructions, make adjustments for inflation, and conduct training.

The secretary of state shall provide instructions and conduct training for the purpose of promoting uniform application of campaign finance and disclosure requirements and the uniform filing of statements, registrations, or reports according to this chapter. The secretary also shall determine adjustments for inflation of the reporting thresholds in this chapter and instruct persons submitting reports under this chapter of the adjustments. On January first of each year,

the secretary shall determine whether the accumulated change in the consumer price index for all urban consumers (all items, United States city average), as applied to each reporting threshold in this chapter, would result in an adjustment of at least ten dollars of the threshold in effect on that date. If so, the secretary shall deem the reporting threshold adjusted by ten dollars.

SECTION 5. A new section to chapter 16.1-08.1 of the North Dakota Century Code is created and enacted as follows:

Ultimate and true source of funds - Required identification - ~~Penalty.~~

1.—In any ~~report~~statement under this chapter which requires the identification of a contributor or subcontributor, the ultimate and true source of funds must be identified.

~~2.— A resident taxpayer may commence an action in a district court of this state against a person required to comply with this section to compel compliance if all other enforcement measures under this chapter have been exhausted and the taxpayer reasonably believes the person has failed to comply with this section. A failure to comply with this section must be proved by clear and convincing evidence.~~

SECTION 6. AMENDMENT. Section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

28-32-01. Definitions.

In this chapter, unless the context or subject matter otherwise provides:

1. "Adjudicative proceeding" means an administrative matter resulting in an agency issuing an order after an opportunity for hearing is provided or required. An adjudicative proceeding includes administrative matters involving a hearing on a complaint against a specific-named respondent; a hearing on an application seeking a right, privilege, or an authorization from an agency, such as a ratemaking or licensing hearing; or a hearing on an appeal to an agency. An adjudicative proceeding includes reconsideration, rehearing, or reopening. Once an adjudicative proceeding has begun, the adjudicative proceeding includes any informal disposition of the administrative matter under section 28-32-22 or another specific statute or rule, unless the matter has been specifically converted to another type of proceeding under section 28-32-22. An adjudicative proceeding does not include a decision or order to file or not to file a complaint, or to initiate an investigation, an adjudicative proceeding, or any other

proceeding before the agency, or another agency, or a court. An adjudicative proceeding does not include a decision or order to issue, reconsider, or reopen an order that precedes an opportunity for hearing or that under another section of this code is not subject to review in an adjudicative proceeding. An adjudicative proceeding does not include rulemaking under this chapter.

2. "Administrative agency" or "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an administrative agency must be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:

- a. The office of management and budget except with respect to rules made under section 32-12.2-14, rules relating to conduct on the capitol grounds and in buildings located on the capitol grounds under section 54-21-18, rules relating to the classified service as authorized under section 54-44.3-07, and rules relating to state purchasing practices as required under section 54-44.4-04.
- b. The adjutant general with respect to the department of emergency services.
- c. The council on the arts.
- d. The state auditor.
- e. The department of commerce with respect to the division of economic development and finance.
- f. The dairy promotion commission.
- g. The education factfinding commission.
- h. The educational technology council.
- i. The board of equalization.
- j. The board of higher education.
- k. The Indian affairs commission.
- l. The industrial commission with respect to the activities of the Bank of North Dakota, North Dakota housing finance agency, public finance authority, North

- 1 Dakota mill and elevator association, North Dakota farm finance agency, the
2 North Dakota transmission authority, and the North Dakota pipeline authority.
- 3 m. The department of corrections and rehabilitation except with respect to the
4 activities of the division of adult services under chapter 54-23.4.
- 5 n. The pardon advisory board.
- 6 o. The parks and recreation department.
- 7 p. The parole board.
- 8 q. The state fair association.
- 9 r. The attorney general with respect to activities of the state toxicologist and the
10 state crime laboratory.
- 11 s. The administrative committee on veterans' affairs except with respect to rules
12 relating to the supervision and government of the veterans' home and the
13 implementation of programs or services provided by the veterans' home.
- 14 t. The industrial commission with respect to the lignite research fund except as
15 required under section 57-61-01.5.
- 16 u. The attorney general with respect to guidelines adopted under section 12.1-32-15
17 for the risk assessment of sexual offenders, the risk level review process, and
18 public disclosure of information under section 12.1-32-15.
- 19 v. The commission on legal counsel for indigents.
- 20 w. The attorney general with respect to twenty-four seven sobriety program
21 guidelines and program fees.
- 22 x. The industrial commission with respect to approving or setting water rates under
23 chapter 61-40.
- 24 3. "Agency head" means an individual or body of individuals in whom the ultimate legal
25 authority of the agency is vested by law.
- 26 4. "Commission" means the North Dakota ethics commission established by article XIV
27 of the Constitution of North Dakota.
- 28 5. "Complainant" means any person who files a complaint before an administrative
29 agency pursuant to section 28-32-21 and any administrative agency that, when
30 authorized by law, files such a complaint before such agency or any other agency.

1 ~~5-6.~~ "Hearing officer" means any agency head or one or more members of the agency
2 head when presiding in an administrative proceeding, or, unless prohibited by law, one
3 or more other persons designated by the agency head to preside in an administrative
4 proceeding, an administrative law judge from the office of administrative hearings, or
5 any other person duly assigned, appointed, or designated to preside in an
6 administrative proceeding pursuant to statute or rule.

7 ~~6-7.~~ "License" means a franchise, permit, certification, approval, registration, charter, or
8 similar form of authorization required by law.

9 ~~7-8.~~ "Order" means any agency action of particular applicability which determines the legal
10 rights, duties, privileges, immunities, or other legal interests of one or more specific
11 persons. The term does not include an executive order issued by the governor.

12 ~~8-9.~~ "Party" means each person named or admitted as a party or properly seeking and
13 entitled as of right to be admitted as a party. An administrative agency may be a party.
14 In a hearing for the suspension, revocation, or disqualification of an operator's license
15 under title 39, the term may include each city and each county in which the alleged
16 conduct occurred, but the city or county may not appeal the decision of the hearing
17 officer.

18 ~~9-10.~~ "Person" includes an individual, association, partnership, corporation, limited liability
19 company, the commission, a state governmental agency or governmental subdivision,
20 or an agency of such governmental subdivision.

21 ~~10-11.~~ "Relevant evidence" means evidence having any tendency to make the existence of
22 any fact that is of consequence to the determination of the administrative action more
23 probable or less probable than it would be without the evidence.

24 ~~11-12.~~ "Rule" means the whole or a part of an agency or commission statement of general
25 applicability which implements or prescribes law or policy or the organization,
26 procedure, or practice requirements of the agency or commission. The term includes
27 the adoption of new rules and the amendment, repeal, or suspension of an existing
28 rule. The term does not include:

29 a. A rule concerning only the internal management of an agency or the commission
30 which does not directly or substantially affect the substantive or procedural rights
31 or duties of any segment of the public.

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- 1 b. A rule that sets forth criteria or guidelines to be used by the staff of an agency or
2 the commission in the performance of audits, investigations, inspections, and
3 settling commercial disputes or negotiating commercial arrangements, or in the
4 defense, prosecution, or settlement of cases, if the disclosure of the
5 statementrule would:
- 6 (1) Enable law violators to avoid detection;
7 (2) Facilitate disregard of requirements imposed by law; or
8 (3) Give a clearly improper advantage to persons who are in an adverse
9 position to the state.
- 10 c. A rule establishing specific prices to be charged for particular goods or services
11 sold by an agency.
- 12 d. A rule concerning only the physical servicing, maintenance, or care of
13 agency-owned ~~or~~ agency-operated, commission-owned, or
14 commission-operated facilities or property.
- 15 e. A rule relating only to the use of a particular facility or property owned, operated,
16 or maintained by the state or any of its subdivisions, if the substance of the rule is
17 adequately indicated by means of signs or signals to persons who use the facility
18 or property.
- 19 f. A rule concerning only inmates of a correctional or detention facility, students
20 enrolled in an educational institution, or patients admitted to a hospital, if adopted
21 by that facility, institution, or hospital.
- 22 g. A form whose contents or substantive requirements are prescribed by rule or
23 statute or are instructions for the execution or use of the form.
- 24 h. An agency or commission budget.
- 25 i. An opinion of the attorney general.
- 26 j. A rule adopted by an agency selection committee under section 54-44.7-03.
- 27 k. Any material, including a guideline, interpretive statement, statement of general
28 policy, manual, brochure, or pamphlet, which is explanatory and not intended to
29 have the force and effect of law.

30 **SECTION 6. AMENDMENT. Section 28-32-02 of the North Dakota Century Code is**
31 **amended and reenacted as follows:**

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~~28-32-02. Rulemaking power of agency authority~~ — Organizational rule.

~~1. The authority of an administrative agency to adopt administrative rules is authority delegated by the legislative assembly. As part of that delegation, the legislative assembly reserves to itself the authority to determine when and if rules of administrative agencies are effective. Every administrative agency may adopt, amend, or repeal reasonable rules in conformity with this chapter and any statute administered or enforced by the agency.~~

~~2. In addition to other rulemaking requirements imposed by law, each agency may include in its rules a description of that portion of its organization and functions subject to this chapter and may include a statement of the general course and method of its operations and how the public may obtain information or make submissions or requests.~~

~~3. The authority of the commission to adopt rules arises from article XIV of the Constitution of North Dakota. The commission shall follow the process, and meet the requirements, as specified in this chapter to adopt, amend, or repeal its rules.~~

SECTION 7. AMENDMENT. Section 28-32-03 of the North Dakota Century Code is amended and reenacted as follows:

28-32-03. Emergency rules.

1. If the ~~commission or an~~ agency, with the approval of the governor, or the commission finds that emergency rulemaking is necessary, the commission or agency may declare the proposed rule to be an interim final rule effective on a date no earlier than the date of filing with the legislative council of the notice required by section 28-32-10.
2. A proposed rule may be given effect on an emergency basis under this section if any of the following grounds exists regarding that rule:
 - a. Imminent peril threatens public health, safety, or welfare, which would be abated by emergency effectiveness;
 - b. A delay in the effective date of the rule is likely to cause a loss of funds appropriated to support a duty imposed by law upon the commission or agency;
 - c. Emergency effectiveness is reasonably necessary to avoid a delay in implementing an appropriations measure; or
 - d. Emergency effectiveness is necessary to meet a mandate of federal law.

3. A final rule adopted after consideration of all written and oral submissions respecting the interim final rule, which is substantially similar to the interim final rule, is effective as of the declared effective date of the interim final rule.
4. The commission's or agency's finding, and a brief statement of the commission's or agency's reasons for the finding, must be filed with the legislative council with the final adopted emergency rule.
5. The commission or agency shall attempt to make interim final rules known to persons who the commission or agency can reasonably be expected to believe may have a substantial interest in them. As used in this subsection, "substantial interest" means an interest in the effect of the rules which surpasses the common interest of all citizens. ~~An~~ The commission or an agency adopting emergency rules shall comply with the notice requirements of section 28-32-10 which relate to emergency rules and shall provide notice to the chairman of the administrative rules committee of the emergency status, declared effective date, and grounds for emergency status of the rules under subsection 2. When notice of emergency rule adoption is received, the legislative council shall publish the notice and emergency rules on its website.
6. An interim final rule is ineffective one hundred eighty days after its declared effective date unless first adopted as a final rule.

SECTION 8. AMENDMENT. Section 28-32-06 of the North Dakota Century Code is amended and reenacted as follows:

28-32-06. Force and effect of rules.

Upon becoming effective, rules have the force and effect of law until amended or repealed by the agency or commission, declared invalid by a final court decision, suspended or found to be void by the administrative rules committee, or determined repealed by the legislative council because the authority for adoption of the rules is repealed or transferred to another agency, ~~or the Constitution of North Dakota is amended to eliminate the authority.~~

SECTION 9. AMENDMENT. Section 28-32-07 of the North Dakota Century Code is amended and reenacted as follows:

28-32-07. Deadline for rules to implement statutory change.

Any rule change, including a creation, amendment, or repeal, made to implement a statutory change must be adopted and filed with the legislative council within nine months of the

effective date of the statutory change. If an agency or the commission needs additional time for the rule change, a request for additional time must be made to the legislative council. The legislative council may extend the time within which the agency or commission must adopt the rule change if the request by the agency or commission is supported by evidence that the agency or commission needs more time through no deliberate fault of its own.

SECTION 10. AMENDMENT. Section 28-32-08 of the North Dakota Century Code is amended and reenacted as follows:

28-32-08. Regulatory analysis.

1. An agency or the commission shall issue a regulatory analysis of a proposed rule if:
 - a. Within twenty days after the last published notice date of a proposed rule hearing, a written request for the analysis is filed by the governor or a member of the legislative assembly; or
 - b. The proposed rule is expected to have an impact on the regulated community in excess of fifty thousand dollars. The analysis under this subdivision must be available on or before the first date of public notice as provided for in section 28-32-10.
2. The regulatory analysis must contain:
 - a. A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;
 - b. A description of the probable impact, including economic impact, of the proposed rule;
 - c. The probable costs to the agency or commission of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues; and
 - d. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency or commission and the reasons why the methods were rejected in favor of the proposed rule.
3. Each regulatory analysis must include quantification of the data to the extent practicable.

1 4. The agency or commission shall mail or deliver a copy of the regulatory analysis to
2 any person who requests a copy of the regulatory analysis. The agency or commission
3 may charge a fee for a copy of the regulatory analysis as allowed under section
4 44-04-18.

5 5. If required under subsection 1, the preparation and issuance of a regulatory analysis is
6 a mandatory duty of the agency or commission proposing a rule. Errors in a regulatory
7 analysis, including erroneous determinations concerning the impact of the proposed
8 rule on the regulated community, are not a ground upon which the invalidity of a rule
9 may be asserted or declared.

10 **SECTION 11. AMENDMENT.** Section 28-32-08.1 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **28-32-08.1. Rules affecting small entities - Analysis - Economic impact statements -**
13 **Judicial review.**

- 14 1. As used in this section:
- 15 a. "Small business" means a business entity, including its affiliates, which:
- 16 (1) Is independently owned and operated; and
- 17 (2) Employs fewer than twenty-five full-time employees or has gross annual
- 18 sales of less than two million five hundred thousand dollars;
- 19 b. "Small entity" includes small business, small organization, and small political
- 20 subdivision;
- 21 c. "Small organization" means any not-for-profit enterprise that is independently
- 22 owned and operated and is not dominant in its field; and
- 23 d. "Small political subdivision" means a political subdivision with a population of less
- 24 than five thousand.
- 25 2. Before adoption of any proposed rule, the adopting agency ~~or the commission~~ shall
- 26 prepare a regulatory analysis in which, consistent with public health, safety, and
- 27 welfare, the agency ~~or commission~~ considers utilizing regulatory methods that will
- 28 accomplish the objectives of applicable statutes while minimizing adverse impact on
- 29 small entities. The agency ~~or commission~~ shall consider each of the following methods
- 30 of reducing impact of the proposed rule on small entities:

- 1 a. Establishment of less stringent compliance or reporting requirements for small
2 entities;
- 3 b. Establishment of less stringent schedules or deadlines for compliance or
4 reporting requirements for small entities;
- 5 c. Consolidation or simplification of compliance or reporting requirements for small
6 entities;
- 7 d. Establishment of performance standards for small entities to replace design or
8 operational standards required in the proposed rule; and
- 9 e. Exemption of small entities from all or any part of the requirements contained in
10 the proposed rule.
- 11 3. Before adoption of any proposed rule that may have an adverse impact on small
12 entities, the adopting agency ~~or the commission~~ shall prepare an economic impact
13 statement that includes consideration of:
 - 14 a. The small entities subject to the proposed rule;
 - 15 b. The administrative and other costs required for compliance with the proposed
16 rule;
 - 17 c. The probable cost and benefit to private persons and consumers who are
18 affected by the proposed rule;
 - 19 d. The probable effect of the proposed rule on state revenues; and
 - 20 e. Any less intrusive or less costly alternative methods of achieving the purpose of
21 the proposed rule.
- 22 4. For any rule subject to this section, a small entity that is adversely affected or
23 aggrieved by final agency ~~or commission~~ action is entitled to judicial review of agency
24 ~~or commission~~ compliance with the requirements of this section. A small entity seeking
25 judicial review under this section must file a petition for judicial review within one year
26 from the date of final agency ~~or commission~~ action.
- 27 5. This section does not apply to the ethics commission, any agency that is an
28 occupational or professional licensing authority, ~~nor does this section apply to~~ and the
29 following agencies or divisions of agencies:
 - 30 a. Council on the arts.
 - 31 b. Beef commission.

- 1 c. Dairy promotion commission.
- 2 d. Dry bean council.
- 3 e. Highway patrolmen's retirement board.
- 4 f. Indian affairs commission.
- 5 g. Board for Indian scholarships.
- 6 h. State personnel board.
- 7 i. Potato council.
- 8 j. Board of public school education.
- 9 k. Real estate trust account committee.
- 10 l. Seed commission.
- 11 m. Soil conservation committee.
- 12 n. Oilseed council.
- 13 o. Wheat commission.
- 14 p. State seed arbitration board.
- 15 q. North Dakota lottery.
- 16 6. This section does not apply to rules mandated by federal law.
- 17 7. The adopting agency ~~or the commission~~ shall provide the administrative rules
- 18 committee copies of any regulatory analysis or economic impact statement, or both,
- 19 prepared under this section when the committee is considering the associated rules.

20 **SECTION 12. AMENDMENT.** Section 28-32-08.2 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **28-32-08.2. Fiscal notes for administrative rules.**

23 When an agency or the commission presents rules for administrative rules committee
24 consideration, the agency or commission shall provide a fiscal note or a statement in its
25 testimony that the rules have no fiscal effect. A fiscal note must reflect the effect of the rules
26 changes on state revenues and expenditures, including any effect on funds controlled by the
27 agency or commission.

28 **SECTION 13. AMENDMENT.** Section 28-32-09 of the North Dakota Century Code is
29 amended and reenacted as follows:

28-32-09. Takings assessment.

1. An agency or the commission shall prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private real property. The agency's assessment must:
 - a. Assess the likelihood that the proposed rule may result in a taking or regulatory taking.
 - b. Clearly and specifically identify the purpose of the proposed rule.
 - c. Explain why the proposed rule is necessary to substantially advance that purpose and why no alternative action is available that would achieve the agency's or commission's goals while reducing the impact on private property owners.
 - d. Estimate the potential cost to the government if a court determines that the proposed rule constitutes a taking or regulatory taking.
 - e. Identify the source of payment within the agency's or commission's budget for any compensation that may be ordered.
 - f. Certify that the benefits of the proposed rule exceed the estimated compensation costs.
2. Any private landowner who is or may be affected by a rule that limits the use of the landowner's private real property may request in writing that the agency or commission reconsider the application or need for the rule. Within thirty days of receiving the request, the agency or commission shall consider the request and shall in writing inform the landowner whether the agency or commission intends to keep the rule in place, modify application of the rule, or repeal the rule.
3. In an agency's analysis of the takings implications of a proposed rule, "taking" means the taking of private real property, as defined in section 47-01-03, by government action which requires compensation to the owner of that property by the fifth or fourteenth amendment to the Constitution of the United States or section 16 of article I of the Constitution of North Dakota. "Regulatory taking" means a taking of real property through the exercise of the police and regulatory powers of the state which reduces the value of the real property by more than fifty percent. However, the exercise of a police or regulatory power does not effect a taking if it substantially

advances legitimate state interests, does not deny an owner economically viable use of the owner's land, or is in accordance with applicable state or federal law.

SECTION 14. AMENDMENT. Section 28-32-10 of the North Dakota Century Code is amended and reenacted as follows:

28-32-10. Notice of rulemaking - Hearing date.

1. An agency or the commission shall prepare a full notice and an abbreviated notice of rulemaking.
 - a. The ~~agency's~~ full notice of the proposed adoption, amendment, or repeal of a rule must include a short, specific explanation of the proposed rule and the purpose of the proposed rule, identify the emergency status and declared effective date of any emergency rules, include a determination of whether the proposed rulemaking is expected to have an impact on the regulated community in excess of fifty thousand dollars, identify at least one location where interested persons may review the text of the proposed rule, provide the address to which written comments concerning the proposed rule may be sent, provide the deadline for submission of written comments, provide a telephone number and post-office or electronic mail address at which a copy of the rules and regulatory analysis may be requested, and, in the case of a substantive rule, provide the time and place set for each oral hearing. ~~The~~ An agency's full notice must include a statement of the bill number and general subject matter of any legislation, enacted during the most recent session of the legislative assembly, which is being implemented by the proposed rule. The commission's full notice must include a statement of the provision of the Constitution of North Dakota or the bill number and general subject matter of any legislation enacted during the most recent session of the legislative assembly which that is being implemented by the proposed rule. The ~~agency's~~ full notice must be filed with the legislative council, accompanied by a copy of the proposed rules.
 - b. The agency or commission shall request publication of an abbreviated newspaper publication notice at least once in each official county newspaper published in this state. The abbreviated newspaper publication of notice must be in a display-type format with a minimum width of one column of approximately

1 two inches [5.08 centimeters] and a minimum depth of approximately three
2 inches [7.62 centimeters] and with a headline describing the general topic of the
3 proposed rules. The notice must also include the telephone number or address to
4 use to obtain a copy of the proposed rules, identification of the emergency status
5 and declared effective date of any emergency rules, the address to use and the
6 deadline to submit written comments, and the location, date, and time of the
7 public hearing on the rules.

8 2. The agency or commission shall mail or deliver by electronic mail a copy of the
9 agency's full notice and proposed rule to each member of the legislative assembly
10 whose name appeared as a sponsor or cosponsor of legislation, enacted during the
11 most recent session of the legislative assembly, which is being implemented by the
12 proposed rule and to each person who has made a timely request to the agency or
13 commission for a copy of the notice and proposed rule. The agency or commission
14 may mail or otherwise provide a copy of the agency's full notice to any person who is
15 likely to be an interested person. The agency or commission may charge persons who
16 are not members of the legislative assembly fees for copies of the proposed rule as
17 allowed under section 44-04-18.

18 3. In addition to the other notice requirements of this subsection, the superintendent of
19 public instruction shall provide notice of any proposed rulemaking by the
20 superintendent of public instruction to each association with statewide membership
21 whose primary focus is elementary and secondary education issues which has
22 requested to receive notice from the superintendent under this subsection and to the
23 superintendent of each public school district in this state, or the president of the school
24 board for school districts that have no superintendent, at least twenty days before the
25 date of the hearing described in the notice. Notice provided by the superintendent of
26 public instruction under this section must be by first-class mail. However, upon request
27 of a group or person entitled to notice under this section, the superintendent of public
28 instruction shall provide the group or person notice by electronic mail.

29 4. The legislative council shall establish standard procedures for the commission and all
30 agencies to follow in complying with the provisions of this section and a procedure to
31 allow any person to request and receive mailed copies of all filings made by agencies

1 and the commission pursuant to this section. The legislative council may charge an
2 annual fee as established by the administrative rules committee for providing copies of
3 the filings.

4 5. At least twenty days must elapse between the date of the publication of the notice and
5 the date of the hearing. Within fifteen business days after receipt of a notice under this
6 section, a copy of the notice must be mailed by the legislative council to any person
7 who has paid the annual fee established under subsection 4.

8 **SECTION 15. AMENDMENT.** Section 28-32-11 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **28-32-11. Conduct of hearings - Notice of administrative rules committee**
11 **consideration - Consideration and written record of comments.**

12 The agency or commission shall adopt a procedure whereby all interested persons are
13 afforded reasonable opportunity to submit data, views, or arguments, orally or in writing,
14 concerning the proposed rule, including data respecting the impact of the proposed rule. The
15 agency or commission shall adopt a procedure to allow interested parties to request and
16 receive notice from the agency or commission of the date and place the rule will be reviewed by
17 the administrative rules committee. In case of substantive rules, the agency or commission shall
18 conduct an oral hearing. The agency or commission shall consider fully all written and oral
19 submissions respecting a proposed rule prior to the adoption, amendment, or repeal of any rule
20 not of an emergency nature. The agency or commission shall make a written record of its
21 consideration of all written and oral submissions contained in the rulemaking record respecting
22 a proposed rule.

23 **SECTION 16. AMENDMENT.** Section 28-32-12 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **28-32-12. Comment period.**

26 The agency or commission shall allow, after the conclusion of any rulemaking hearing, a
27 comment period of at least ten days during which data, views, or arguments concerning the
28 proposed rulemaking will be received by the agency or commission and made a part of the
29 rulemaking record to be considered by the agency or commission.

30 ~~**SECTION 16. AMENDMENT.** Section 28-32-14 of the North Dakota Century Code is~~
31 ~~amended and reenacted as follows:~~

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~~28-32-14. Attorney general review of rules.~~

~~Every proposed rule proposed by any administrative agency must be submitted to the attorney general for an opinion as to its legality before final adoption, and the attorney general promptly shall furnish each such opinion. The attorney general may not approve any rule as to legality, and shall advise the agency or commission of any necessary rewording or revision of the rule, when the:~~

~~1. The rule exceeds the statutory authority of the agency, or the statutory or constitutional authority of the commission;~~

~~2. The rule is written in a manner that is not concise or easily understandable; or when the~~

~~3. The procedural requirements for adoption of the rule in this chapter are not substantially met. The attorney general shall advise an agency of any revision or rewording of a rule necessary to correct objections as to legality.~~

SECTION 17. AMENDMENT. Section 28-32-15 of the North Dakota Century Code is amended and reenacted as follows:

28-32-15. Filing of rules for publication - Effective date of rules.

1. A copy of each rule adopted by an administrative agency or the commission, a copy of each written comment and a written summary of each oral comment on the rule, and the attorney general's opinion on the rule, if any, must be filed by the adopting agency or commission with the legislative council for publication of the rule in the North Dakota Administrative Code.

2. a. Nonemergency rules approved by the attorney general as to legality, adopted by an administrative agency or the commission, ~~and~~ filed with the legislative council, and not voided or held for consideration by the administrative rules committee become effective according to the following schedule:

(1) Rules filed with the legislative council from August second through November first become effective on the immediately succeeding January first.

(2) Rules filed with the legislative council from November second through February first become effective on the immediately succeeding April first.

(3) Rules filed with the legislative council from February second through May first become effective on the immediately succeeding July first.

(4) Rules filed with the legislative council from May second through August first become effective on the immediately succeeding October first.

b. If publication is delayed for any reason other than action of the administrative rules committee, nonemergency rules, unless otherwise provided, become effective when publication would have occurred but for the delay.

c. A rule held for consideration by the administrative rules committee becomes effective on the first effective date of rules under the schedule in subdivision a following the meeting at which that rule is reconsidered by the committee.

SECTION 18. AMENDMENT. Section 28-32-16 of the North Dakota Century Code is amended and reenacted as follows:

28-32-16. Petition for reconsideration of rule - Hearing by agency.

Any person substantially interested in the effect of a rule adopted by an administrative agency or the commission may petition ~~such~~ the agency or commission for a reconsideration of ~~any such~~ the rule or for an amendment or repeal ~~thereof. Such of the rule.~~ The petition must state clearly and concisely the petitioners' alleged grounds for ~~such~~ reconsideration or ~~for~~ the proposed repeal or amendment of ~~such~~ the rule. The agency or commission may grant the petitioner a public hearing ~~upon such~~ on the terms and conditions as the agency ~~may~~ prescribe.

~~SECTION 20. AMENDMENT.~~ Section 28-32-17 of the North Dakota Century Code is ~~amended and reenacted as follows:~~

~~28-32-17. Administrative rules committee objection.~~

~~If the legislative management's administrative rules committee objects to all or any portion of a rule because the committee deems it to be unreasonable, arbitrary, capricious, or beyond the authority delegated to the adopting agency or commission, the committee may file that objection in certified form with the legislative council. The filed objection must contain a concise statement of the committee's reasons for its action.~~

~~1. The legislative council shall attach to each objection a certification of the time and date of its filing and, as soon as possible, shall transmit a copy of the objection and the~~

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certification to the agency or commission adopting the rule in question. The legislative council also shall maintain a permanent register of all committee objections.

2. The legislative council shall publish an objection filed pursuant to this section in the next issue of the code supplement. In case of a filed committee objection to a rule subject to the exceptions of the definition of rule in section 28-32-01, the agency or commission shall indicate the existence of that objection adjacent to the rule in any compilation containing that rule.

3. Within fourteen days after the filing of a committee objection to a rule, the adopting agency or commission shall respond in writing to the committee. After receipt of the response, the committee may withdraw or modify its objection.

4. After the filing of a committee objection, the burden of persuasion is upon the agency or commission in any action for judicial review or for enforcement of the rule to establish that the whole or portion thereof the rule objected to is within the procedural and substantive authority delegated to the agency or commission. If the agency or commission fails to meet its burden of persuasion, the court shall declare the whole or portion of the rule objected to invalid and judgment must be rendered against the agency or commission for court costs. These court costs must include a reasonable attorney's fee and must be payable from the appropriation of the agency or commission which adopted the rule in question.

SECTION 21. AMENDMENT. Section 28-32-18 of the North Dakota Century Code is amended and reenacted as follows:

~~28-32-18. Administrative rules committee may void rule - Grounds - Amendment by agreement of agency and committee.~~

1. The legislative management's administrative rules committee may find that all or any portion of a rule is void if that rule is initially considered by the committee not later than the fifteenth day of the month before the date of the administrative code supplement in which the rule change is scheduled to appear. The administrative rules committee may find a rule or portion of a rule void if the committee makes the specific finding that, with regard to that rule or portion of a rule, there is:

a. An absence of statutory authority under statute or the constitution.

b. An emergency relating to public health, safety, or welfare.

- 1 ~~e. For rules proposed by an agency, a failure to comply with express legislative~~
- 2 ~~intent or to substantially meet the procedural requirements of this chapter for~~
- 3 ~~adoption of the rule.~~
- 4 ~~d. For rules proposed by the commission, a failure to substantially meet the~~
- 5 ~~procedural requirements for this chapter for adoption of the rule.~~
- 6 ~~e. A conflict with state law.~~
- 7 ~~e.f. Arbitrariness and capriciousness.~~
- 8 ~~f.g. A failure to make a written record of its consideration of written and oral~~
- 9 ~~submissions respecting the rule under section 28-32-11.~~
- 10 ~~2. The administrative rules committee may find a rule void at the meeting at which the~~
- 11 ~~rule is initially considered by the committee or may hold consideration of that rule for~~
- 12 ~~one subsequent meeting. If no representative of the agency or commission appears~~
- 13 ~~before the administrative rules committee when rules are scheduled for committee~~
- 14 ~~consideration, those rules are held over for consideration at the next subsequent~~
- 15 ~~committee meeting. Rules are not considered initially considered by the committee~~
- 16 ~~under this subsection until a representative of the agency or commission appears~~
- 17 ~~before the administrative rules committee when the rules are scheduled for committee~~
- 18 ~~consideration. If no representative of the agency or commission appears before the~~
- 19 ~~administrative rules committee meeting to which rules are held over for consideration,~~
- 20 ~~the rules are void if the rules were adopted as emergency rules and for rules not~~
- 21 ~~adopted as emergency rules the administrative rules committee may void the rules,~~
- 22 ~~allow the rules to become effective, or hold over consideration of the rules to the next~~
- 23 ~~subsequent committee meeting. Within three business days after the administrative~~
- 24 ~~rules committee finds that a rule is void, the legislative council shall provide written~~
- 25 ~~notice of that finding and the committee's specific finding under subdivisions a through~~
- 26 ~~f of subsection 1 to the adopting agency or commission and to the chairman of the~~
- 27 ~~legislative management. Within fourteen days after receipt of the notice, the adopting~~
- 28 ~~agency or commission may file a petition with the chairman of the legislative~~
- 29 ~~management for review by the legislative management of the decision of the~~
- 30 ~~administrative rules committee. If the adopting agency or commission does not file a~~
- 31 ~~petition for review, the rule becomes void on the fifteenth day after the notice from the~~

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legislative council to the adopting agency or commission. If within sixty days after receipt of the petition from the adopting agency or commission the legislative management has not disapproved by motion the finding of the administrative rules committee, the rule is void.

~~3. An agency or the commission may amend or repeal a rule or create a related rule if, after consideration of rules by the administrative rules committee, the agency or commission and the committee agree that the rule amendment, repeal, or creation is necessary to address any of the considerations under subsection 1. A rule amended, repealed, or created under this subsection is not subject to the other requirements of this chapter relating to adoption of administrative rules and may be published by the legislative council as amended, repealed, or created. If requested by the agency, commission, or any interested party, a rule amended, repealed, or created under this subsection must be reconsidered by the administrative rules committee at a subsequent meeting at which public comment on the agreed rule change must be allowed.~~

SECTION 19. AMENDMENT. Section 28-32-18.1 of the North Dakota Century Code is amended and reenacted as follows:

28-32-18.1. Administrative rules committee review of existing administrative rules.

1. Upon request by the administrative rules committee, an administrative agency or the commission shall brief the committee on its existing administrative rules and point out any provisions that appear to be obsolete and any areas in which statutory or constitutional authority has changed or been repealed since the rules were adopted or amended.
2. An agency or the commission may amend or repeal a rule without complying with the other requirements of this chapter relating to adoption of administrative rules and may resubmit the change to the legislative council for publication provided:
 - a. The agency or commission initiates the request to the administrative rules committee for consideration of the amendment or repeal;
 - b. The agency or commission provides notice to the regulated community, in a manner reasonably calculated to provide notice to those persons interested in the

1 rule, of the time and place the administrative rules committee will consider the
2 request for amendment or repeal of the rule; and

3 c. The agency or commission and the administrative rules committee agree the rule
4 amendment or repeal eliminates a provision that is obsolete or no longer in
5 compliance with law and that no detriment would result to the substantive rights
6 of the regulated community from the amendment or repeal.

7 **SECTION 20. AMENDMENT.** Subsection 2 of section 28-32-19 of the North Dakota
8 Century Code is amended and reenacted as follows:

9 2. The legislative council may prescribe at the format, style, and arrangement for rules
10 ~~which are~~ to be published in the code and may refuse to accept the filing of any rule
11 that is not in substantial compliance ~~therewith~~ with the format, style, and arrangement.
12 In arranging rules for publication, the legislative council may make ~~such~~ corrections in
13 spelling, grammatical construction, format, and punctuation of the rules as
14 ~~determined~~ the legislative council determines are proper. The legislative council shall
15 keep and maintain a permanent code of all rules filed, including superseded and
16 repealed rules, which must be open to public inspection during office hours.

17 **SECTION 21. AMENDMENT.** Subsection 4 of section 28-32-19 of the North Dakota
18 Century Code is amended and reenacted as follows:

19 4. The legislative council, with the consent of the adopting agency or commission, may
20 omit from the code or code supplement any rule the publication of which would be
21 unduly cumbersome, expensive, or otherwise inexpedient, if the rule in printed or
22 duplicated form is made available on application to the agency or commission, and if
23 the code or code supplement contains a notice stating the general subject matter of
24 the omitted rule and ~~stating~~ how a copy may be obtained.

25 ~~**SECTION 25. AMENDMENT.** Section 28-32-27 of the North Dakota Century Code is~~
26 ~~amended and reenacted as follows:~~

27 ~~**28-32-27. Hearing officer Disqualification Substitution.**~~

28 ~~1. Any person or persons presiding for the agency in an administrative proceeding must~~
29 ~~be referred to individually or collectively as hearing officer. Any person from the office~~
30 ~~of administrative hearings presiding for the agency as a hearing officer in an~~
31 ~~administrative proceeding must be referred to as an administrative law judge.~~

- 1 ~~2. Any hearing officer is subject to disqualification for good cause shown.~~
- 2 ~~3. A hearing officer who is a director, officer, commissioner, head, or other executive of~~
- 3 ~~an agency shall self disqualify in a proceeding in which a reasonable, disinterested~~
- 4 ~~observer would believe the hearing officer is biased due to:~~
- 5 ~~a. A contribution by one of the parties supporting the hearing officer's most recent~~
- 6 ~~campaign for public office; or~~
- 7 ~~b. An ownership interest, other than investment in a mutual fund, of the hearing~~
- 8 ~~officer in one of the parties to the proceeding if the ownership interest is not~~
- 9 ~~shared by the general public.~~
- 10 ~~4. Any party may petition for the disqualification of any person presiding as a hearing~~
- 11 ~~officer upon discovering facts establishing grounds for disqualification.~~
- 12 ~~4.5. A person whose disqualification is requested shall determine whether to grant the~~
- 13 ~~petition, stating facts and reasons for the determination.~~
- 14 ~~5.6. If a substitute is required for a person who is disqualified or becomes unavailable for~~
- 15 ~~any other reason, the substitute may be appointed by:~~
- 16 ~~a. The attorney general, if the disqualified or unavailable person is an assistant~~
- 17 ~~attorney general;~~
- 18 ~~b. The agency head, if the disqualified or unavailable person is one or more~~
- 19 ~~members of the agency head or one or more other persons designated by the~~
- 20 ~~agency head;~~
- 21 ~~c. A supervising hearing officer, if the disqualified or unavailable person is a hearing~~
- 22 ~~officer designated from an office, pool, panel, or division of hearing officers; or~~
- 23 ~~d. The governor, in all other cases.~~
- 24 ~~6.7. Any action taken by a duly appointed substitute for a disqualified or unavailable person~~
- 25 ~~is as effective as if taken by the disqualified or unavailable person.~~
- 26 ~~7.8. Any hearing officer in an administrative proceeding, from the time of appointment or~~
- 27 ~~designation, may exercise any authority granted by law or rule. A hearing officer may~~
- 28 ~~be designated to preside over the entire administrative proceeding and may issue~~
- 29 ~~orders accordingly. A procedural hearing officer may only issue orders in regard to the~~
- 30 ~~course and conduct of the hearing under statute or rule and to otherwise effect an~~
- 31 ~~orderly hearing. If a procedural hearing officer is designated, the agency head must be~~

present at the hearing and the agency head shall issue findings of fact and conclusions of law, as well as any order resulting from the hearing.

~~9. The North Dakota ethics commission shall assess any hearing officer who knowingly violates subsection 3 a civil penalty of five hundred dollars for the first violation. For a second and subsequent knowing violation of this section, the hearing officer is guilty of a class B misdemeanor.~~

SECTION 22. AMENDMENT. Section 28-32-47 of the North Dakota Century Code is amended and reenacted as follows:

28-32-47. Scope of and procedure on appeal from agency rulemaking.

1. A judge of the district court shall review an appeal from an administrative agency's or ethics commission's rulemaking action based only on the record filed with the court. If an appellant requests documents to be included in the record but the agency or commission does not include them, the court, upon application by the appellant, may compel their inclusion. After a hearing, the filing of briefs, or other disposition of the matter as the judge may reasonably require, the court shall affirm the agency's rulemaking action unless it finds that any of the following are present:
 - a. The provisions of this chapter have not been substantially complied with in the agency's rulemaking actions.
 - b. A rule published as a result of the rulemaking action appealed is unconstitutional on the face of the language adopted.
 - c. A rule published as a result of the rulemaking action appealed is beyond the scope of the agency's or commission's authority to adopt.
 - d. A rule published as a result of the rulemaking action appealed is on the face of the language adopted an arbitrary or capricious application of authority granted by statute.
2. If the rulemaking action of the agency or commission is not affirmed by the court, ~~it~~the rulemaking action must be remanded to the agency or commission for disposition in accordance with the order of the court, or the rule or a portion of the rule resulting from the rulemaking action of the agency or commission must be declared invalid for reasons stated by the court.

1 **SECTION 23. AMENDMENT.** Section 28-32-48 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **28-32-48. Appeal - Stay of proceedings.**

4 An appeal from an order or the rulemaking action of an administrative agency or the
5 commission does not stay the enforcement of the order or the effect of a published rule unless
6 the court to which the appeal is taken, upon application and after a hearing or the submission of
7 briefs, orders a stay. The court may impose terms and conditions for a stay of the enforcement
8 of the order or for a stay in the effect of a published rule. This section does not prohibit the
9 operation of an automatic stay upon the enforcement of an administrative order or commission
10 order as may be required by another statute.

11 **SECTION 24. AMENDMENT.** Section 28-32-49 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **28-32-49. Review in supreme court.**

14 The judgment of the district court in an appeal from an order or rulemaking action of an
15 administrative agency or the commission may be reviewed in the supreme court on appeal in
16 the same manner as provided in section 28-32-46 or 28-32-47, except that the appeal to the
17 supreme court must be taken within sixty days after the service of the notice of entry of
18 judgment in the district court. Any party of record, including the agency or commission, may
19 take an appeal from the final judgment of the district court to the supreme court. If an appeal
20 from the judgment of the district court is taken by an agency or the commission, the agency or
21 commission may not be required to pay a docket fee or file a bond for costs or equivalent
22 security.

23 **SECTION 25.** Chapter 54-66 of the North Dakota Century Code is created and enacted as
24 follows:

25 **54-66-01. Definitions.**

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

- 27 1. "Accused individual" means an individual who is alleged to have violated article XIV of
28 the Constitution of North Dakota, this chapter, or another law or rule regarding
29 government ethics transparency, corruption, elections, or lobbying.

2. "Adjusted for inflation" means adjusted on January first of each year by the change in the consumer price index for all urban consumers (all items, United States city average), as identified by the secretary of state.

~~3.~~ "Complainant" means an individual who, in writing or verbally, submits a complaint to the commission.

~~4.3.~~ "Complaint" means a verbal or written allegation to the commission that article XIV of the Constitution of North Dakota, this chapter, or another law or rule regarding government ethics transparency, corruption, elections, or lobbying has been violated.

~~5.4.~~ "Ethics commission" or "commission" means the North Dakota ethics commission established by article XIV of the Constitution of North Dakota.

~~6.5.~~ "Gift" means any item, service, or thing of value not given in exchange for fair market consideration including travel and recreation, except:

a. Purely informational material;

b. A campaign contribution; and

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

~~7.6.~~ "Influence state government action" means promoting or opposing the ~~final~~ adoption of a rule by an administrative agency or the commission under chapter 28-32.

~~8.7.~~ "Lobby" means an activity listed in subsection 1 of section 54-05.1-02.

~~9.8.~~ "Lobbyist" means an individual required to register under section 54-05.1-03.

~~10.9.~~ "Public official" means an elected or appointed official of the state's executive or legislative branch, members of the commission, members of the governor's cabinet, and employees of the legislative branch.

~~11.10.~~ "Receives the complaint" means one or more members of the commission learn of the complaint.

~~12.11.~~ "Ultimate and true source" means the person that knowingly contributed over two hundred dollars, adjusted for inflation, solely to lobby or influence state government action.

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54-66-02. Disclosure of ultimate and true source of funds.

1. A lobbyist who expends an amount greater than two hundred dollars, ~~adjusted for inflation,~~ to lobby shall file with the secretary of state a report that includes the known ultimate and true source of funds for the expenditure. The report must be filed with the lobbyist expenditure report required under subsection 2 of section 54-05.1-03.
2. A person ~~who~~that expends an amount greater than two hundred dollars, ~~adjusted for inflation~~not including the individual's own travel expenses and membership dues, to influence state government action shall file with the secretary of state a report including the known ultimate and true source of funds for the expenditure. ~~The A~~ report under this subsection must be filed on or before the August first following the date of the expenditure. The secretary of state shall provide a form for reports under this subsection and make the form electronically accessible to the public. The secretary of state also shall charge and collect fees for late filing of the reports as follows:
 - a. Twenty-five dollars for a report filed within sixty days after the deadline; or
 - b. Fifty dollars for a report filed more than sixty days after the deadline.
3. The secretary of state shall compile the reports required under this section and make the reports electronically accessible to the public ~~within forty days after the deadlines by which the reports must be filed.~~
4. ~~This section does not require a person to report the ultimate and true source of funds expended on:~~
 - ~~a. A gift to or from a family member;~~
 - ~~b. Purely informational material, advice, or education;~~
 - ~~c. Reimbursement for travel, meal, and refreshment expenses incurred to, from, or during a conference, seminar, or other legitimate educational opportunity for a public official if the conference, seminar, or educational opportunity concerns issues germane to the official duties of the public official;~~
 - ~~d. Meals and refreshments provided while informing, advising, or educating a public official about issues germane to the official duties of the public official;~~
 - ~~e. Providing an educational or social setting in the state to provide an opportunity for individuals to meet with public officials; and~~

~~f. A good or service determined not to raise ethical concerns under rules adopted by the ethics commission.~~

~~5. A resident taxpayer may commence an action in a district court of this state against a person required to comply with this section to compel compliance if all other enforcement measures under this chapter have been exhausted and the taxpayer reasonably believes the person has failed to comply with this section. A failure to comply with this section must be proved by clear and convincing evidence.~~

5. The secretary of state shall determine adjustments for inflation of the reporting thresholds in this section and instruct persons submitting reports under this section of the adjustments. On January first of each year, the secretary shall determine whether the accumulated change in the consumer price index for all urban consumers (all items, United States city average), as applied to each reporting threshold in this section, would result in an adjustment of at least ten dollars of the threshold in effect on that date. If so, the secretary of state shall deem the reporting threshold adjusted by ten dollars.

54-66-03. Lobbyist gifts - Penalty.

1. A lobbyist may not give, offer, solicit, initiate, or facilitate a gift knowingly to a public official, and a public official may not accept a gift with a value over sixty dollars per individual per event, adjusted for inflation, from a lobbyist knowingly, except to advance opportunities for state residents to meet with public officials in educational and social settings in the state under conditions that do not raise ethical concerns, including:

~~a. Reimbursement for travel, meal, and refreshment expenses incurred to, from, or during a conference, seminar, or other legitimate educational opportunity for the public official if the conference, seminar, or educational opportunity concerns issues germane to the official duties of the public official;~~

~~b. Providing information, advice, or education to a public official;~~

~~c. Providing meals and refreshments while informing, advising, or educating a public official about issues germane to the official duties of the public official;~~

~~d. Items with a fair market value of ten dollars per individual per event, adjusted for inflation, or less per individual; and~~

1 ~~e. A good or service determined not to raise ethical concerns under rules adopted~~
2 ~~by the ethics commission.~~

3 2. The prohibition in subsection 1 does not apply when a lobbyist gives, offers, solicits,
4 initiates, or facilitates, or a public official accepts:

5 ~~a. A gift to or from a family member;~~

6 ~~b. Purely informational material; or~~

7 ~~c. A campaign contribution.~~

8 3. ~~For the first violation, the secretary of state shall assess a civil penalty of five hundred~~
9 ~~dollars upon any person who knowingly violates this section and, if the person is a~~
10 ~~lobbyist, the secretary of state may revoke the lobbyist's registration under chapter~~
11 ~~54-05.1. For a second and subsequent knowing violation of this section, the person is~~
12 ~~guilty of a class B misdemeanor. The secretary of state shall assess a civil penalty~~
13 ~~upon any individual who violates this section.~~

14 a. ~~If the gift has a value of five hundred dollars or more, the civil penalty must be~~
15 ~~two times the value of the gift.~~

16 b. ~~If the gift has a value of less than five hundred dollars, the civil penalty must be~~
17 ~~no less than two times the value of the gift and may be up to one thousand~~
18 ~~dollars.~~

19 **54-66-04. Ethics commission member terms - Meetings - Code of ethics -**

20 **Compensation - ~~Investigator~~Office.**

21 1. ~~The terms of the initial members of the ethics commission must be staggered to~~
22 ~~ensure no more than two members' terms expire in one year. The terms of the initial~~
23 ~~members may be less than four years to accommodate the required staggering of~~
24 ~~terms.~~

25 2. ~~The ethics commission shall meet as necessary to address each complaint the~~
26 ~~commission receives. Unless the complaint at issue has resulted in the imposition of a~~
27 ~~penalty or referral for enforcement under section ~~54-66-10~~54-66-09, any portion of a~~
28 ~~meeting during which commission members discuss complaints, informal resolutions,~~
29 ~~attempts to informally resolve complaints, investigations, or referrals under this~~
30 ~~chapter, the identity of an accused individual or complainant, or any other matter~~
31 ~~arising from a complaint are closed meetings.~~

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

4 4. Ethics commission members are entitled to:

5 a. Compensation for each day necessarily spent conducting commission business
6 in the amount provided for members of the legislative management under section
7 54-35-10; and

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

10 5. ~~Commission members shall hire or otherwise engage a part time administrative~~
11 ~~assistant. The administrative assistant must be provided an office within the office~~
12 ~~space for the department of labor and human rights. The commission shall~~
13 ~~compensate the department of labor and human rights for the office in an amount~~
14 ~~equal to the fair value of the office.~~ The director of the office of management and
15 budget shall allocate office space in the state capitol for the ethics commission, or, if
16 office space in the capitol is unavailable, shall negotiate for, contract for, and obtain
17 office space for the ethics commission in the city of Bismarck or in the Bismarck area.
18 The ethics commission's office space may not be located in the office space of any
19 other government agency, board, commission, or other governmental entity, and must
20 provide sufficient privacy and security for the ethics commission to conduct its
21 business. The director shall charge the ethics commission an amount equal to the fair
22 value of the office space and related services the office of management and budget
23 renders to the ethics commission.

24 **54-66-05. Making a complaint – Identifying information – False complaints.**

25 ~~1.~~ A complaint may be made to the commission orally or in writing. If a complainant does
26 not provide the complainant's name, address, and telephone number with the
27 complaint, the ethics commission may not investigate, refer, or take other action
28 regarding the complaint. The commission shall summarize each oral complaint in
29 writing unless the complaint must be disregarded under this section. When making a
30 complaint, a complainant shall provide the name, address, and telephone number of
31 the complainant.

- ~~2. Within five days after making a complaint, the complainant shall submit a signed statement attesting the complaint is true and accurate to the best of the complainant's knowledge. The commission shall develop an attestation form for this purpose and make it electronically accessible to the public. After receiving the attestation, the commission shall summarize the complaint in writing if the complaint was made orally.~~
- ~~3. If the complainant does not submit the signed attestation by the deadline, the commission may not investigate or take other action on the complaint.~~
- ~~4. Knowingly or recklessly making a complaint that is materially false is defamation under chapter 12.1-15.~~

54-66-06. Informing the accused individual - Written response permitted.

The commission shall inform an accused individual by registered mail of the identity of the complainant who made the allegation against the accused individual and include the written complaint or written summary of the oral complaint as soon as reasonably possible but no later than ~~ten~~twenty calendar days after the commission receives the complaint. The accused individual may respond to the complaint in writing within ~~ten~~twenty calendar days of receipt of the complaint or summary of the complaint.

54-66-07. Informal resolution.

The commission ~~may~~shall attempt to negotiate or mediate an informal resolution between the accused individual and the complainant ~~unless the commission disregards the complaint pursuant to section 54-66-05 or for any other reason. The accused individual may be accompanied by legal counsel in a negotiation or mediation.~~

54-66-08. Referrals to investigators - Exception for criminal allegations.

~~For each complaint with an attestation, the commission shall engage an investigator with the appropriate knowledge and experience regarding the Constitution of North Dakota, ethics-related statutes, and ethics investigations, and refer the complaint to the investigator within thirty calendar days of receiving the complaint. However, if a complaint with an attestation includes an allegation of criminal conduct, the commission shall refer the allegation of criminal conduct to the bureau of criminal investigation or other law enforcement agency. The commission may engage a state agency as an investigator. If the accused individual provided a written response to the complaint, the commission shall provide the written response with the referred complaint.~~

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54-66-09. Investigations - Findings and Recommendations - Responses.

1. The investigator engaged under section 54-66-08 shall investigate the complaint referred to it by the ethics commission. Investigations must include separate interviews with the accused individual and the complainant, unless the accused individual or complainant refuses to be interviewed, and consideration of the circumstances surrounding the allegations. The accused individual and complainant may be accompanied by legal counsel during the interviews of each. Investigations may include interviews of potential witnesses and other individuals believed to have relevant information.

2. At the conclusion of the investigation, but no later than six months after the investigator received the complaint, the investigator shall submit its written findings from the investigation to the commission. The commission shall provide written copies of the findings to the accused individual and complainant. The accused individual and complainant may respond in writing to the findings within thirty calendar days of receiving the findings. The commission shall maintain copies of the findings and any written response to the findings.

54-66-10. Final determinations - Penalties - Referrals for enforcement.

1. After reviewing the findings from the investigator and any written response from the accused individual or complainant, the ethics commission shall meet with the accused individual and complainant to discuss the findings and written responses. A meeting under this subsection is a closed meeting as defined in section 44-04-17.1, although the accused individual and complainant may have legal counsel attend and participate.

2. After the meeting with the accused individual and complainant, the commission shall issue written findings, including a determination whether a violation of article XIV of the Constitution of North Dakota, this chapter, or another law or rule regarding government ethics occurred. If the commission finds a violation occurred, the commission may assess a civil penalty if authorized by law or refer the matter to the entity authorized by law to assess a civil penalty for the violation.

3. The accused individual and the complainant may appeal and request judicial review of a determination made or penalty imposed under this section to the district court in the

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county in which the accused individual resides. A request for judicial review under this section must comply with the requirements for an appeal of a determination of an agency under chapter 28-32. The scope of review and procedure on appeal from a determination of the commission must comply with section 28-32-47.

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

54-66-08. Investigations - Referrals.

1. If an informal resolution is not reached under section 54-66-07, the ethics commission may:

- a. Disregard the complaint;
- b. Require ethics commission staff to investigate the allegations in the complaint; or
- c. Engage an outside investigator to investigate allegations in the complaint.

2. If the commission believes a complaint contains allegations of criminal conduct, the ethics commission shall refer the allegations of criminal conduct to the bureau of criminal investigations or other law enforcement agency and may not take further action on the referred allegations. The commission shall inform the accused individual by registered mail of a referral under this section and the nature of the referred allegations as soon as reasonably possible.

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

1. An investigator, other than a law enforcement agency, of a complaint shall provide written findings of the investigation to the ethics commission within a reasonable amount of time. The ethics commission shall provide copies of the written findings to the accused individual, who may respond to the commission in person or in writing within a reasonable time. If the accused individual responds in person, no fewer than three members of the commission shall meet in a closed meeting with the accused individual. An accused individual may be accompanied by legal counsel when responding to the commission in person.

2. After providing a reasonable time for an accused individual 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 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.

54-66-10. Appeals.

An accused individual may appeal a finding of the ethics commission to the district court of the county where the accused individual resides.

54-66-11. Rulemaking.

When adopting rules, the ethics commission shall follow the provisions in chapter 28-32 which are specifically applicable to the commission.

54-66-11. Confidential information - Penalty.

1. The following information is a confidential record as defined in section 44-04-17.1, unless the commission has determined the accused individual violated article XIV of the Constitution of North Dakota, this chapter, or another law or rule regarding ~~government ethics~~ transparency, corruption, elections, or lobbying, and a court affirmed the determination if appealed, except the information may be disclosed as required by law or as necessary to conduct an investigation arising from a complaint:

a. Information revealing the contents of a complaint;

b. Information that reasonably may be used to identify an accused individual or complainant; and

c. Information relating to or created as part of an investigation of a complaint.

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

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- 1 a. Information revealing the contents of the complaint;
- 2 b. Information that reasonably may be used to identify the accused individual or
- 3 complainant;
- 4 c. Information relating to or created as part of the process leading to the informal
- 5 resolution; and
- 6 d. Information revealing the informal resolution.

7 3. Willful publication of information included in subsections 1 and 2 by a person who
8 knows the information to be false is criminal defamation under section 12.1-15-01.

9 ~~4. A public official who violates this section is guilty of a class C felony.~~ The information
10 deemed confidential in this section may be disclosed by the ethics commission if the
11 accused individual agrees to the disclosure.

12 **54-66-12. Restriction on lobbying by public officials - Penalty.**

13 ~~For the first violation of subsection 2 of section 2 of article XIV of the Constitution of North~~
14 ~~Dakota, the secretary of state shall assess a civil penalty of five hundred dollars upon the~~
15 ~~person who knowingly commits the violation. For a second and subsequent knowing violation of~~
16 ~~the subsection, the person is guilty of a class B misdemeanor.~~ A knowing violation of
17 subsection 2 of section 2 of article XIV of the Constitution of North Dakota is a class A
18 misdemeanor. The ethics commission shall assess a civil penalty of up to one thousand dollars
19 on any individual who knowingly violates the subsection.

20 **54-66-13. Attorney general to provide legal services.**

21 The attorney general shall serve as legal counsel for the commission unless the
22 commission objects to representation by the attorney general in a specific matter. When a
23 conflict of interest prevents the attorney general from providing legal services to the
24 commission, the attorney general may appoint a special assistant attorney general to serve as
25 legal counsel for the commission.

26 **54-66-14. Prohibition on delivering campaign contributions - Penalty.**

27 A lobbyist may not deliver knowingly a campaign contribution made by another person in
28 violation of subsection 3 of section 2 of article XIV of the Constitution of North Dakota. For a first
29 violation, the secretary of state shall assess a civil penalty of five hundred dollars upon any
30 ~~person~~ individual who knowingly violates this section and may revoke the lobbyist's registration.
31 For a second and subsequent knowing violation of this section, the person is guilty of a class B

1 misdemeanor, and, if the lobbyist is a registered lobbyist, the secretary of state may revoke the
2 lobbyist's registration.

3 **54-66-15. Removal of ethics commission members.**

4 1. An ethics commission member may be removed from office for:

5 a. Substantial neglect of duty;

6 b. Gross misconduct in office;

7 c. Violation of the commission's code of ethics; or

8 d. Willful or habitual neglect or refusal to perform the duties of the member.

9 2. Removal of an ethics commission member under subsection 1 requires agreement by
10 a majority of:

11 a. The governor;

12 b. The majority leader of the senate; and

13 c. The minority leader of the senate.

14 **54-66-16. Participation in quasi-judicial proceedings.**

15 For purposes of subsection 5 of section 2 of article XIV of the Constitution of North Dakota,
16 an individual is not disqualified from participating in any capacity in a quasi-judicial proceeding,
17 including an adjudicative proceeding under chapter 28-32, due to an investment in a mutual
18 fund, an ownership interest in one of the parties to the proceeding which is shared by the
19 general public, and an investment or ownership interest in a retirement account of one of the
20 parties to the proceeding.

21 **SECTION 26. APPROPRIATION.** There is appropriated out of any moneys in the general
22 fund in the state treasury, not otherwise appropriated, the sum of ~~\$300,000~~ \$517,155, or so
23 much of the sum as may be necessary, to the ethics commission for the purpose of the
24 operations of the commission, for the biennium beginning July 1, 2019, and ending June 30,
25 2021. The ethics commission is authorized ~~one and one-half~~ two full-time equivalent positions
26 for this purpose.

27 **SECTION 27. EFFECTIVE DATE.** Sections ~~1, 2, 3, 4, 5, and 7~~ 1, 3, 4, and 5 of this Act, and
28 ~~section~~ sections 54-66-02 and 54-66-03 of the North Dakota Century Code, as created by
29 section ~~32~~ 24 of this Act, become effective January 5, ~~2022~~ 2021.

30 ~~**SECTION 35. EFFECTIVE DATE.** North Dakota Century Code section 54-66-03, as~~
31 ~~created by section 32 of this Act, becomes effective January 5, 2021.~~

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1 ~~SECTION 36. EXPIRATION DATE.~~ North Dakota Century Code section 54-66-12, as
2 created by section 32 of this Act, is effective until subsection 2 of section 2 of article XIV of the
3 Constitution of North Dakota is no longer part of the Constitution of North Dakota.

4 **SECTION 28. EMERGENCY.** Sections 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20,
5 21, 22, 23, ~~24, 25, 26, 27, 28, 29, 30, and 31~~, and 24 of this Act are declared to be an
6 emergency measure.

Sixty-sixth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1521

Introduced by

Representative Pollert

Senator Wardner

A BILL for an Act to create and enact a new section to chapter 16.1-08.1 and chapter 54-66 of the North Dakota Century Code, relating to reporting campaign contributions and expenditures, restrictions on public officials and lobbyists, investigations of ethics violations, and implementing requirements of article XIV of the Constitution of North Dakota; to amend and reenact section sections 16.1-08.1-01, ~~subsection 4 of section 16.1-08.1-02.1, sections 16.1-08.1-02.3, 16.1-08.1-02.4, 16.1-08.1-03.1, 16.1-08.1-03.7, 16.1-08.1-04.1, 16.1-08.1-06.2, 28-32-01, 28-32-02, 28-32-03, 28-32-06, 28-32-07, 28-32-08, 28-32-08.1, 28-32-08.2, 28-32-09, 28-32-10, 28-32-11, 28-32-12, 28-32-14, 28-32-15, 28-32-16, 28-32-17, 28-32-18, and 28-32-18.1, subsections 2 and 4 of section 28-32-19, and sections 28-32-27, 28-32-47, 28-32-48, and 28-32-49 of the North Dakota Century Code, relating to rulemaking procedures, disqualification of agency heads in quasi-judicial proceedings, implementing article XIV of the Constitution of North Dakota, and requirements for the North Dakota ethics commission; to provide for a penalty; to provide an appropriation; to provide an effective date; ~~to provide an expiration date;~~ and to declare an emergency.~~

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-08.1-01 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-01. Definitions.

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

1. ~~"Adjusted for inflation" means adjusted on January first of each year by the change in the consumer price index for all urban consumers (all items, United States city average), as identified by the secretary of state.~~

- ~~2.~~ "Affiliate" means an organization that controls, is controlled by, or is under common control with another organization. For purposes of this definition, control means the

possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an organization, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise. Control is presumed to exist if an organization, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing fifty percent or more of the voting securities of any other organization.

~~2.3.~~ "Association" means any club, association, union, brotherhood, fraternity, organization, or group of any kind of two or more persons, including labor unions, trade associations, professional associations, or governmental associations, which is united for any purpose, business, or object and which assesses any dues, membership fees, or license fees in any amount, or which maintains a treasury fund in any amount. The term does not include corporations, cooperative corporations, limited liability companies, political committees, or political parties.

~~3.4.~~ "Candidate" means an individual who seeks nomination for election or election to public office, and includes:

- a. An individual holding public office;
- b. An individual who has publicly declared that individual's candidacy for nomination for election or election to public office or has filed or accepted a nomination for public office;
- c. An individual who has formed a campaign or other committee for that individual's candidacy for public office;
- d. An individual who has circulated a nominating petition to have that individual's name placed on the ballot; and
- e. An individual who has, in any manner, solicited or received a contribution for that individual's candidacy for public office, whether before or after the election for that office.

~~4.5.~~ "Conduit" means a person that is not a political party, political committee, or candidate and which receives a contribution of money and transfers the contribution to a candidate, political party, or political committee when the contribution is designated specifically for the candidate, political party, or political committee and the person has no discretion as to the recipient and the amount transferred. The term includes a

1 transactional intermediary, including a credit card company or a money transfer
2 service that pays or transfers money to a candidate on behalf of another person.

3 5.6. "Contribution" means a gift, transfer, conveyance, provision, receipt, subscription,
4 loan, advance, deposit of money, or anything of value, made for the purpose of
5 influencing the nomination for election, or election, of any person to public office or
6 aiding or opposing the circulation or passage of a statewide initiative or referendum
7 petition or measure. The term also means a contract, promise, or agreement, express
8 or implied, whether or not legally enforceable, to make a contribution for any of the
9 above purposes. The term includes funds received by a candidate for public office or a
10 political party or committee which are transferred or signed over to that candidate,
11 party, or committee from another candidate, party, or political committee or other
12 source including a conduit. The term "anything of value" includes any good or service
13 of more than a nominal value. The term "nominal value" means the cost, price, or
14 worth of the good or service is trivial, token, or of no appreciable value. The term
15 "contribution" does not include:

- 16 a. A loan of money from a bank or other lending institution made in the regular
17 course of business.
- 18 b. Time spent by volunteer campaign or political party workers.
- 19 c. Money or anything of value received for commercial transactions, including rents,
20 advertising, or sponsorships made as a part of a fair market value bargained-for
21 exchange.
- 22 d. Money or anything of value received for anything other than a political purpose.
- 23 e. Products or services for which the actual cost or fair market value are reimbursed
24 by a payment of money.
- 25 f. An independent expenditure.
- 26 g. The value of advertising paid by a political party, multicandidate political
27 committee, or caucus which is in support of a candidate.
- 28 h. In-kind contributions from a candidate to the candidate's campaign.

29 6.7. "Cooperative corporations", "corporations", and "limited liability companies" are as
30 defined in this code, and for purposes of this chapter "corporations" includes nonprofit
31 corporations. However, if a political committee, the only purpose of which is accepting

contributions and making expenditures for a political purpose, incorporates for liability purposes only, the committee is not considered a corporation for the purposes of this chapter.

7.8. "Expenditure" means:

- a. A gift, transfer, conveyance, provision, loan, advance, payment, distribution, disbursement, outlay, or deposit of money or anything of value, except a loan of money from a bank or other lending institution made in the regular course of business, made for a political purpose or for the purpose of influencing the passage or defeat of a measure.
- b. A contract, promise, or agreement, express or implied, whether or not legally enforceable, to make any expenditure.
- c. The transfer of funds by a political committee to another political committee.
- d. An independent expenditure.

8.9. "Expenditure categories" means the categories into which expenditures must be grouped for reports under this chapter. The expenditure categories are:

- a. Advertising;
- b. Campaign loan repayment;
- c. Operations;
- d. Travel; and
- e. Miscellaneous.

9.10. "Independent expenditure" means an expenditure made for a political purpose or for the purpose of influencing the passage or defeat of a measure if the expenditure is made without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of, any candidate, committee, or political party.

10.11. "Patron" means a person who owns equity interest in the form of stock, shares, or membership or maintains similar financial rights in a cooperative corporation.

11.12. "Person" means an individual, partnership, political committee, association, corporation, cooperative corporation, limited liability company, or other organization or group of persons.

- 1 12.13: "Personal benefit" means a benefit to the candidate or another person which is not for
2 a political purpose or related to a candidate's responsibilities as a public officeholder,
3 and any other benefit that would convert a contribution to personal income.
- 4 13.14: "Political committee" means any committee, club, association, or other group of
5 persons which receives contributions or makes expenditures for political purposes and
6 includes:
- 7 a. A political action committee not connected to another organization and free to
8 solicit funds from the general public, or derived from a corporation, cooperative
9 corporation, limited liability company, affiliate, subsidiary, or an association that
10 solicits or receives contributions from its employees or members or makes
11 expenditures for political purposes on behalf of its employees or members;
 - 12 b. A candidate committee established to support an individual candidate seeking
13 public office which solicits or receives contributions for political purposes;
 - 14 c. A political organization registered with the federal election commission, which
15 solicits or receives contributions or makes expenditures for political purposes;
 - 16 d. A multicandidate political committee, including a caucus, established to support
17 multiple groups or slates of candidates seeking public office, which solicits or
18 receives contributions for political purposes; and
 - 19 e. A measure committee, including an initiative or referendum sponsoring
20 committee at any stage of its organization, which solicits or receives contributions
21 or makes expenditures for the purpose of aiding or opposing a measure sought
22 to be voted upon by the voters of the state, including any activities undertaken for
23 the purpose of drafting an initiative or referendum petition, seeking approval of
24 the secretary of state for the circulation of a petition, or seeking approval of the
25 submitted petitions.
- 26 14.15: "Political party" means any association, committee, or organization which nominates a
27 candidate for election to any office which may be filled by a vote of the electors of this
28 state or any of its political subdivisions and whose name appears on the election ballot
29 as the candidate of such association, committee, or organization.
- 30 15.16: "Political purpose" means any activity undertaken in support of or in opposition to the
31 election or nomination of a candidate to public office and includes using "vote for",

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"oppose", or any similar support or opposition language in any advertisement whether the activity is undertaken by a candidate, a political committee, a political party, or any person. In the period thirty days before a primary election and sixty days before a special or general election, "political purpose" also means any activity in which a candidate's name, office, district, or any term meaning the same as "incumbent" or "challenger" is used in support of or in opposition to the election or nomination of a candidate to public office. The term does not include activities undertaken in the performance of a duty of a public office or any position taken in any bona fide news story, commentary, or editorial.

16.17. "Public office" means every office to which an individual can be elected by vote of the people under the laws of this state.

17.18. "Subsidiary" means an affiliate of a corporation under the control of the corporation directly or indirectly through one or more intermediaries.

19.18. "Ultimate and true source" means the person ~~who~~that knowingly contributed over two hundred dollars, adjusted for inflation, solely to influence a statewide election or an election for the legislative assembly.

~~SECTION 2. AMENDMENT. Subsection 4 of section 16.1 08.1 02.1 of the North Dakota Century Code is amended and reenacted as follows:~~

~~4. The statement filed according to this section must show the following:~~

~~a. The balance of the filer's convention accounts at the start and close of the reporting period;~~

~~b. The total of all revenue received and expenditures made of two hundred dollars, adjusted for inflation, or less;~~

~~c. The total of all revenue received and expenditures made in excess of two hundred dollars, adjusted for inflation;~~

~~d. For each aggregated revenue received from a person in excess of two hundred dollars, adjusted for inflation:~~

~~(1) The name of each person;~~

~~(2) The mailing address of each person;~~

~~(3) The date of the most recent receipt of revenue from each person; and~~

- 1 — (4) The purpose or purposes for which the aggregated revenue total was
2 received from each person;
- 3 — e. For each aggregated expenditure made to a person in excess of two hundred
4 dollars, adjusted for inflation;
- 5 — (1) The name of each person or entity;
- 6 — (2) The mailing address of each person or entity;
- 7 — (3) The date of the most recent expense made to each person or entity; and
- 8 — (4) The purpose or purposes for which the aggregated expenditure total was
9 disbursed to each person or entity; and
- 10 — f. For each aggregated revenue from an individual which totals five thousand
11 dollars, adjusted for inflation, or more during the reporting period, the occupation,
12 employer, and principal place of business of the individual must be disclosed.
- 13 — **SECTION 3. AMENDMENT.** Section 16.1-08.1-02.3 of the North Dakota Century Code is
14 amended and reenacted as follows:
- 15 — **16.1-08.1-02.3. Pre-election, supplemental, and year-end campaign disclosure**
16 **statement requirements for candidates, candidate committees, multicandidate**
17 **committees, and nonstatewide political parties.**
- 18 — 1. Prior to the thirty first day before a primary, general, or special election, a candidate or
19 candidate committee formed on behalf of the candidate, a multicandidate political
20 committee, or a political party other than a statewide political party soliciting or
21 accepting contributions shall file a campaign disclosure statement that includes all
22 contributions received from January first through the fortieth day before the election. A
23 candidate whose name is not on the ballot and who is not seeking election through
24 write in votes, the candidate's candidate committee, and a political party that has not
25 endorsed or nominated any candidate in the election is not required to file a statement
26 under this subsection. The statement may be submitted for filing beginning on the
27 thirty ninth day before the election. The statement must include:
- 28 — a. For each aggregated contribution from a contributor which totals in excess of two
29 hundred dollars, adjusted for inflation, received during the reporting period:
- 30 — (1) The name and mailing address of the contributor;
- 31 — (2) The total amount of the contribution; and

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- 1 ~~(3) The date the last contributed amount was received;~~
- 2 ~~b. The total of all aggregated contributions from contributors which total in excess of~~
- 3 ~~two hundred dollars, adjusted for inflation, during the reporting period;~~
- 4 ~~c. The total of all contributions received from contributors that contributed two~~
- 5 ~~hundred dollars, adjusted for inflation, or less each during the reporting period;~~
- 6 ~~and~~
- 7 ~~d. For a statewide candidate, a candidate committee formed on behalf of a~~
- 8 ~~statewide candidate, and a statewide multicandidate committee, the balance of~~
- 9 ~~the campaign fund on the fortieth day before the election and the balance of the~~
- 10 ~~campaign fund on January first.~~
- 11 ~~2. Beginning on the thirty ninth day before the election through the day before the~~
- 12 ~~election, a person that files a statement under subsection 1 must file a supplemental~~
- 13 ~~statement within forty eight hours of the start of the day following the receipt of a~~
- 14 ~~contribution or aggregate contribution from a contributor which is in excess of five~~
- 15 ~~hundred dollars, adjusted for inflation. The statement must include:~~
- 16 ~~a. The name and mailing address of the contributor;~~
- 17 ~~b. The total amount of the contribution received during the reporting period; and~~
- 18 ~~c. The date the last contributed amount was received.~~
- 19 ~~3. Prior to February first, a candidate or candidate committee, a multicandidate political~~
- 20 ~~committee, or a nonstatewide political party soliciting or accepting contributions shall~~
- 21 ~~file a campaign disclosure statement that includes all contributions received and~~
- 22 ~~expenditures, by expenditure category, made from January first through December~~
- 23 ~~thirty first of the previous year. The statement may be submitted for filing beginning on~~
- 24 ~~January first. The statement must include:~~
- 25 ~~a. For a statewide candidate, a candidate committee formed on behalf of a~~
- 26 ~~statewide candidate, and a statewide multicandidate committee, the balance of~~
- 27 ~~the campaign fund on January first and on December thirty first;~~
- 28 ~~b. For each aggregated contribution from a contributor which totals in excess of two~~
- 29 ~~hundred dollars, adjusted for inflation, received during the reporting period:~~
- 30 ~~(1) The name and mailing address of the contributor;~~
- 31 ~~(2) The total amount of the contribution; and~~

- 1 ~~(3) The date the last contributed amount was received;~~
- 2 ~~e. The total of all aggregated contributions from contributors which total in excess of~~
- 3 ~~two hundred dollars, adjusted for inflation, during the reporting period;~~
- 4 ~~d. The total of all contributions received from contributors that contributed two~~
- 5 ~~hundred dollars, adjusted for inflation, or less each during the reporting period;~~
- 6 ~~and~~
- 7 ~~e. The total of all other expenditures made during the previous year, separated into~~
- 8 ~~expenditure categories.~~
- 9 ~~4. A person required to file a statement under this section, other than a candidate for~~
- 10 ~~judicial office, county office, or city office, or a candidate committee for a candidate~~
- 11 ~~exempted under this subsection, shall report each aggregated contribution from a~~
- 12 ~~contributor which totals five thousand dollars, adjusted for inflation, or more during the~~
- 13 ~~reporting period. For these contributions from individuals, the statement must include~~
- 14 ~~the contributor's occupation, employer, and the employer's principal place of business.~~
- 15 ~~5. A candidate for city office in a city with a population under five thousand and a~~
- 16 ~~candidate committee for the candidate are exempt from this section.~~
- 17 ~~6. A candidate for county office and a candidate committee for a candidate for county~~
- 18 ~~office shall file statements under this chapter with the county auditor. A candidate for~~
- 19 ~~city office who is required to file a statement under this chapter and a candidate~~
- 20 ~~committee for such a candidate shall file statements with the city auditor. Any other~~
- 21 ~~person required to file a statement under this section shall file the statement with the~~
- 22 ~~secretary of state.~~
- 23 ~~7. The filing officer shall assess and collect fees for any reports filed after the filing~~
- 24 ~~deadline.~~
- 25 ~~8. To ensure accurate reporting and avoid commingling of campaign and personal funds,~~
- 26 ~~candidates shall use dedicated campaign accounts that are separate from any personal~~
- 27 ~~accounts.~~
- 28 ~~**SECTION 4. AMENDMENT.** Section 16.1-08.1-02.4 of the North Dakota Century Code is~~
- 29 ~~amended and reenacted as follows:~~

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~~16.1 08.1 02.4. Pre election, supplemental, and year end campaign disclosure
statement requirements for statewide political parties and certain political committees.~~

~~1. Prior to the thirty first day before a primary, general, or special election, a statewide political party or a political committee not required to file statements under section 16.1 08.1 02.3 which is soliciting or accepting contributions shall file a campaign disclosure statement that includes all contributions received and expenditures made from January first through the fortieth day before the election. A political party that has not endorsed or nominated a candidate in an election is not required to file a statement under this subsection. A statement required to be filed under this subsection may be submitted for filing beginning on the thirty ninth day before the election. The statement must include:~~

~~a. For each aggregated contribution from a contributor which totals in excess of two hundred dollars, adjusted for inflation, received during the reporting period:~~

~~(1) The name and mailing address of the contributor;~~

~~(2) The total amount of the contribution; and~~

~~(3) The date the last contributed amount was received;~~

~~b. The total of all aggregated contributions from contributors which total in excess of two hundred dollars, adjusted for inflation, during the reporting period;~~

~~c. The total of all contributions received from contributors that contributed two hundred dollars, adjusted for inflation, or less each during the reporting period;~~

~~d. For each recipient of an expenditure from campaign funds in excess of two hundred dollars, adjusted for inflation, in the aggregate:~~

~~(1) The name and mailing address of the recipient;~~

~~(2) The total amount of the expenditure made to the recipient; and~~

~~(3) The date the last expended amount was made to the recipient;~~

~~e. The aggregate total of all expenditures from campaign funds in excess of two hundred dollars, adjusted for inflation;~~

~~f. The aggregate total of all expenditures from campaign funds of two hundred dollars, adjusted for inflation, or less; and~~

~~g. The balance of the campaign fund on the fortieth day before the election and balance of the campaign fund on January first.~~

- 1 ~~2. Beginning on the thirty ninth day before the election through the day before the~~
2 ~~election, a person that files a statement under subsection 1 must file a supplemental~~
3 ~~statement within forty eight hours of the start of the day following the receipt of a~~
4 ~~contribution or aggregate contribution from a contributor which is in excess of five~~
5 ~~hundred dollars, adjusted for inflation. The statement must include:~~
6 ~~a. The name and mailing address of the contributor;~~
7 ~~b. The total amount of the contribution received during the reporting period; and~~
8 ~~c. The date the last contributed amount was received.~~
9 ~~3. Prior to February first, a statewide political party or a political committee that is not~~
10 ~~required to file a statement under section 16.1 08.1 2.3 shall file a campaign~~
11 ~~disclosure statement that includes all contributions received and expenditures made~~
12 ~~from January first through December thirty first of the previous year. The statement~~
13 ~~may be submitted for filing beginning on January first. The statement must include:~~
14 ~~a. For each aggregated contribution from a contributor which totals in excess of two~~
15 ~~hundred dollars, adjusted for inflation, received during the reporting period:~~
16 ~~(1) The name and mailing address of the contributor;~~
17 ~~(2) The total amount of the contribution; and~~
18 ~~(3) The date the last contributed amount was received;~~
19 ~~b. The total of all aggregated contributions from contributors which total in excess of~~
20 ~~two hundred dollars, adjusted for inflation, during the reporting period;~~
21 ~~c. The total of all contributions received from contributors that contributed two~~
22 ~~hundred dollars, adjusted for inflation, or less each during the reporting period;~~
23 ~~d. For each recipient of an expenditure from campaign funds in excess of two~~
24 ~~hundred dollars, adjusted for inflation, in the aggregate:~~
25 ~~(1) The name and mailing address of the recipient;~~
26 ~~(2) The total amount of the expenditure made to the recipient; and~~
27 ~~(3) The date the last expended amount was made to the recipient;~~
28 ~~e. The aggregate total of all expenditures from campaign funds in excess of two~~
29 ~~hundred dollars, adjusted for inflation;~~
30 ~~f. The aggregate total of all expenditures from campaign funds of two hundred~~
31 ~~dollars, adjusted for inflation, or less; and~~

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- g. ~~The balance of the campaign fund on January first and December thirty first.~~
4. ~~A person required to file a statement under this section shall disclose each aggregated contribution from a contributor which totals five thousand dollars, adjusted for inflation, or more during the reporting period. For these contributions from individuals, the statement must include the contributor's occupation, employer, and the employer's principal place of business.~~
5. ~~Statements under this section must be filed with the secretary of state.~~
6. ~~The secretary of state shall assess and collect fees for any reports filed after the filing deadline.~~
- SECTION 5. AMENDMENT.** ~~Section 16.1 08.1 03.1 of the North Dakota Century Code is amended and reenacted as follows:~~
- 16.1 08.1 03.1. Special requirements for statements required of persons engaged in activities regarding ballot measures.**
1. ~~For each reportable contribution and expenditure under section 16.1 08.1 02.4, the threshold for reporting is one hundred dollars, adjusted for inflation, for any person engaged in activities described in subdivision e of subsection 1314 of section 16.1 08.1 01.~~
2. ~~For contributions received from an out of state contributor, a person engaged in activities described in subdivision e of subsection 1314 of section 16.1 08.1 01 shall include the following information regarding each subcontributor that has stated a contribution is for the express purpose of furthering the passage or defeat of a ballot measure in the statements required under section 16.1 08.1 02.4:~~
- a. ~~A designation as to whether any person contributed in excess of one hundred dollars, adjusted for inflation, of the total contribution;~~
- b. ~~The name and mailing address of each subcontributor that contributed in excess of one hundred dollars, adjusted for inflation, of the total contribution;~~
- c. ~~The contribution amounts of each disclosed subcontributor; and~~
- d. ~~The occupation, employer, and address for the employer's principal place of business of each disclosed subcontributor.~~
3. ~~An initiative and referendum sponsoring committee also shall file a disclosure statement by the date the secretary of state approves the petition for circulation, and~~

shall file an additional statement on the date the petitions containing the required number of signatures are submitted to the secretary of state for review. The statements required under this subsection must be in the same form as the year end statements under section 16.1-08.1-02.4.

~~4. A sponsoring committee shall file a statement regarding its intent to compensate circulators before paying for petitions to be circulated.~~

SECTION 2. AMENDMENT. Section 16.1-08.1-03.7 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-03.7. Political committees that organize and register according to federal law that make independent expenditures or disbursements to nonfederal candidates, political parties, and political committees.

A political committee that organizes and registers according to federal law and makes an independent expenditure or makes a disbursement in excess of two hundred dollars to a nonfederal candidate seeking public office or to a political party or political committee in this state shall file a copy of that portion of the committee's federal report detailing the independent expenditure or the disbursement made. The political committee shall file a copy of the committee's federal report, and supplementary information as necessary under this section, with the secretary of state at the time of filing the report with the applicable federal agency. The report and supplementary information must include:

1. The name, mailing address, and treasurer of the political committee;
2. The recipient's name and mailing address; ~~and~~
3. The date and amount of the independent expenditure or disbursement; and
4. The ultimate and true source of funds listed by contributor and subcontributor of any amount over two hundred dollars collected or used to make the independent expenditure or disbursement including:
 - a. The name and address of the contributor;
 - b. The total amount of the contribution; and
 - c. The date the last contribution was received.

SECTION 3. AMENDMENT. Section 16.1-08.1-04.1 of the North Dakota Century Code is amended and reenacted as follows:

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16.1-08.1-04.1. Personal use of contributions prohibited.

1. A candidate may not use any contribution received by the candidate, the candidate's candidate committee, or a multicandidate political committee to:

- 1- a. Give a personal benefit to the candidate or another person;
- 2- b. Make a loan to another person;
- 3- c. Knowingly pay more than the fair market value for goods or services purchased for the campaign; or
- 4- d. Pay a criminal fine or civil penalty.

2. ~~For the first violation, the secretary of state shall assess a civil penalty of five hundred dollars upon any person who knowingly violates this section. The assessment of a civil penalty may be appealed to the district court of Burleigh County. For a second and subsequent knowing violation of this section, the person is guilty of a class B misdemeanor. The secretary of state shall assess a civil penalty upon any person that knowingly violates this section.~~

a. If the contribution used in violation of this section has a value of two thousand five hundred dollars or more, the civil penalty must be two times the value of the contribution.

b. If the contribution used in violation of this section has a value of less than two thousand five hundred dollars, the civil penalty must be at least two times the value of the contribution and may be up to five thousand dollars.

3. The assessment of a civil penalty may be appealed to the district court of the county where the candidate resides.

SECTION 4. AMENDMENT. Section 16.1-08.1-06.2 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-06.2. Secretary of state to provide instructions, make adjustments for inflation, and conduct training.

The secretary of state shall provide instructions and conduct training for the purpose of promoting uniform application of campaign finance and disclosure requirements and the uniform filing of statements, registrations, or reports according to this chapter. The secretary also shall determine adjustments for inflation of the reporting thresholds in this chapter and instruct persons submitting reports under this chapter of the adjustments. On January first of each year,

1 the secretary shall determine whether the accumulated change in the consumer price index for
2 all urban consumers (all items, United States city average), as applied to each reporting
3 threshold in this chapter, would result in an adjustment of at least ten dollars of the threshold in
4 effect on that date. If so, the secretary shall deem the reporting threshold adjusted by ten
5 dollars.

6 **SECTION 5.** A new section to chapter 16.1-08.1 of the North Dakota Century Code is
7 created and enacted as follows:

8 **Ultimate and true source of funds - Required identification - ~~Penalty.~~**

- 9 1. In any ~~report~~statement under this chapter which requires the identification of a
10 contributor or subcontributor, the ultimate and true source of funds must be identified.
11 2. A resident taxpayer may commence an action in a district court of this state against a
12 person required to comply with this section to compel compliance if all other
13 enforcement measures under this chapter have been exhausted and the taxpayer
14 reasonably believes the person has failed to comply with this section. ~~A failure to~~
15 ~~comply with this section must be proved by clear and convincing evidence.~~

16 **SECTION 6. AMENDMENT.** Section 28-32-01 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **28-32-01. Definitions.**

19 In this chapter, unless the context or subject matter otherwise provides:

- 20 1. "Adjudicative proceeding" means an administrative matter resulting in an agency
21 issuing an order after an opportunity for hearing is provided or required. An
22 adjudicative proceeding includes administrative matters involving a hearing on a
23 complaint against a specific-named respondent; a hearing on an application seeking a
24 right, privilege, or an authorization from an agency, such as a ratemaking or licensing
25 hearing; or a hearing on an appeal to an agency. An adjudicative proceeding includes
26 reconsideration, rehearing, or reopening. Once an adjudicative proceeding has begun,
27 the adjudicative proceeding includes any informal disposition of the administrative
28 matter under section 28-32-22 or another specific statute or rule, unless the matter
29 has been specifically converted to another type of proceeding under section 28-32-22.
30 An adjudicative proceeding does not include a decision or order to file or not to file a
31 complaint, or to initiate an investigation, an adjudicative proceeding, or any other

proceeding before the agency, or another agency, or a court. An adjudicative proceeding does not include a decision or order to issue, reconsider, or reopen an order that precedes an opportunity for hearing or that under another section of this code is not subject to review in an adjudicative proceeding. An adjudicative proceeding does not include rulemaking under this chapter.

2. "Administrative agency" or "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an administrative agency must be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:
 - a. The office of management and budget except with respect to rules made under section 32-12.2-14, rules relating to conduct on the capitol grounds and in buildings located on the capitol grounds under section 54-21-18, rules relating to the classified service as authorized under section 54-44.3-07, and rules relating to state purchasing practices as required under section 54-44.4-04.
 - b. The adjutant general with respect to the department of emergency services.
 - c. The council on the arts.
 - d. The state auditor.
 - e. The department of commerce with respect to the division of economic development and finance.
 - f. The dairy promotion commission.
 - g. The education factfinding commission.
 - h. The educational technology council.
 - i. The board of equalization.
 - j. The board of higher education.
 - k. The Indian affairs commission.
 - l. The industrial commission with respect to the activities of the Bank of North Dakota, North Dakota housing finance agency, public finance authority, North

- 1 Dakota mill and elevator association, North Dakota farm finance agency, the
2 North Dakota transmission authority, and the North Dakota pipeline authority.
- 3 m. The department of corrections and rehabilitation except with respect to the
4 activities of the division of adult services under chapter 54-23.4.
- 5 n. The pardon advisory board.
- 6 o. The parks and recreation department.
- 7 p. The parole board.
- 8 q. The state fair association.
- 9 r. The attorney general with respect to activities of the state toxicologist and the
10 state crime laboratory.
- 11 s. The administrative committee on veterans' affairs except with respect to rules
12 relating to the supervision and government of the veterans' home and the
13 implementation of programs or services provided by the veterans' home.
- 14 t. The industrial commission with respect to the lignite research fund except as
15 required under section 57-61-01.5.
- 16 u. The attorney general with respect to guidelines adopted under section 12.1-32-15
17 for the risk assessment of sexual offenders, the risk level review process, and
18 public disclosure of information under section 12.1-32-15.
- 19 v. The commission on legal counsel for indigents.
- 20 w. The attorney general with respect to twenty-four seven sobriety program
21 guidelines and program fees.
- 22 x. The industrial commission with respect to approving or setting water rates under
23 chapter 61-40.
- 24 3. "Agency head" means an individual or body of individuals in whom the ultimate legal
25 authority of the agency is vested by law.
- 26 4. "Commission" means the North Dakota ethics commission established by article XIV
27 of the Constitution of North Dakota.
- 28 5. "Complainant" means any person who files a complaint before an administrative
29 agency pursuant to section 28-32-21 and any administrative agency that, when
30 authorized by law, files such a complaint before such agency or any other agency.

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- 1 ~~5-6.~~ "Hearing officer" means any agency head or one or more members of the agency
2 head when presiding in an administrative proceeding, or, unless prohibited by law, one
3 or more other persons designated by the agency head to preside in an administrative
4 proceeding, an administrative law judge from the office of administrative hearings, or
5 any other person duly assigned, appointed, or designated to preside in an
6 administrative proceeding pursuant to statute or rule.
- 7 ~~6-7.~~ "License" means a franchise, permit, certification, approval, registration, charter, or
8 similar form of authorization required by law.
- 9 ~~7-8.~~ "Order" means any agency action of particular applicability which determines the legal
10 rights, duties, privileges, immunities, or other legal interests of one or more specific
11 persons. The term does not include an executive order issued by the governor.
- 12 ~~8-9.~~ "Party" means each person named or admitted as a party or properly seeking and
13 entitled as of right to be admitted as a party. An administrative agency may be a party.
14 In a hearing for the suspension, revocation, or disqualification of an operator's license
15 under title 39, the term may include each city and each county in which the alleged
16 conduct occurred, but the city or county may not appeal the decision of the hearing
17 officer.
- 18 ~~9-10.~~ "Person" includes an individual, association, partnership, corporation, limited liability
19 company, the commission, a state governmental agency or governmental subdivision,
20 or an agency of such governmental subdivision.
- 21 ~~10-11.~~ "Relevant evidence" means evidence having any tendency to make the existence of
22 any fact that is of consequence to the determination of the administrative action more
23 probable or less probable than it would be without the evidence.
- 24 ~~11-12.~~ "Rule" means the whole or a part of an agency or commission statement of general
25 applicability which implements or prescribes law or policy or the organization,
26 procedure, or practice requirements of the agency or commission. The term includes
27 the adoption of new rules and the amendment, repeal, or suspension of an existing
28 rule. The term does not include:
- 29 a. A rule concerning only the internal management of an agency or the commission
30 which does not directly or substantially affect the substantive or procedural rights
31 or duties of any segment of the public.

- 1 b. A rule that sets forth criteria or guidelines to be used by the staff of an agency or
2 the commission in the performance of audits, investigations, inspections, and
3 settling commercial disputes or negotiating commercial arrangements, or in the
4 defense, prosecution, or settlement of cases, if the disclosure of the
5 statementrule would:
- 6 (1) Enable law violators to avoid detection;
7 (2) Facilitate disregard of requirements imposed by law; or
8 (3) Give a clearly improper advantage to persons who are in an adverse
9 position to the state.
- 10 c. A rule establishing specific prices to be charged for particular goods or services
11 sold by an agency.
- 12 d. A rule concerning only the physical servicing, maintenance, or care of
13 agency-owned ~~or~~ agency-operated, commission-owned, or
14 commission-operated facilities or property.
- 15 e. A rule relating only to the use of a particular facility or property owned, operated,
16 or maintained by the state or any of its subdivisions, if the substance of the rule is
17 adequately indicated by means of signs or signals to persons who use the facility
18 or property.
- 19 f. A rule concerning only inmates of a correctional or detention facility, students
20 enrolled in an educational institution, or patients admitted to a hospital, if adopted
21 by that facility, institution, or hospital.
- 22 g. A form whose contents or substantive requirements are prescribed by rule or
23 statute or are instructions for the execution or use of the form.
- 24 h. An agency or commission budget.
- 25 i. An opinion of the attorney general.
- 26 j. A rule adopted by an agency selection committee under section 54-44.7-03.
- 27 k. Any material, including a guideline, interpretive statement, statement of general
28 policy, manual, brochure, or pamphlet, which is explanatory and not intended to
29 have the force and effect of law.

30 ~~**SECTION 6. AMENDMENT.** Section 28 32 02 of the North Dakota Century Code is~~
31 ~~amended and reenacted as follows:~~

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~~28-32-02. Rulemaking power of agency authority - Organizational rule.~~

~~1. The authority of an administrative agency to adopt administrative rules is authority delegated by the legislative assembly. As part of that delegation, the legislative assembly reserves to itself the authority to determine when and if rules of administrative agencies are effective. Every administrative agency may adopt, amend, or repeal reasonable rules in conformity with this chapter and any statute administered or enforced by the agency.~~

~~2. In addition to other rulemaking requirements imposed by law, each agency may include in its rules a description of that portion of its organization and functions subject to this chapter and may include a statement of the general course and method of its operations and how the public may obtain information or make submissions or requests.~~

~~3. The authority of the commission to adopt rules arises from article XIV of the Constitution of North Dakota. The commission shall follow the process, and meet the requirements, as specified in this chapter to adopt, amend, or repeal its rules.~~

SECTION 7. AMENDMENT. Section 28-32-03 of the North Dakota Century Code is amended and reenacted as follows:

28-32-03. Emergency rules.

1. If the ~~commission or an~~ agency, with the approval of the governor, or the commission finds that emergency rulemaking is necessary, the commission or agency may declare the proposed rule to be an interim final rule effective on a date no earlier than the date of filing with the legislative council of the notice required by section 28-32-10.
2. A proposed rule may be given effect on an emergency basis under this section if any of the following grounds exists regarding that rule:
 - a. Imminent peril threatens public health, safety, or welfare, which would be abated by emergency effectiveness;
 - b. A delay in the effective date of the rule is likely to cause a loss of funds appropriated to support a duty imposed by law upon the commission or agency;
 - c. Emergency effectiveness is reasonably necessary to avoid a delay in implementing an appropriations measure; or
 - d. Emergency effectiveness is necessary to meet a mandate of federal law.

- 1 3. A final rule adopted after consideration of all written and oral submissions respecting
2 the interim final rule, which is substantially similar to the interim final rule, is effective
3 as of the declared effective date of the interim final rule.
- 4 4. The commission's or agency's finding, and a brief statement of the commission's or
5 agency's reasons for the finding, must be filed with the legislative council with the final
6 adopted emergency rule.
- 7 5. The commission or agency shall attempt to make interim final rules known to persons
8 who the commission or agency can reasonably be expected to believe may have a
9 substantial interest in them. As used in this subsection, "substantial interest" means an
10 interest in the effect of the rules which surpasses the common interest of all citizens.
- 11 ~~An~~ The commission or an agency adopting emergency rules shall comply with the
12 notice requirements of section 28-32-10 which relate to emergency rules and shall
13 provide notice to the chairman of the administrative rules committee of the emergency
14 status, declared effective date, and grounds for emergency status of the rules under
15 subsection 2. When notice of emergency rule adoption is received, the legislative
16 council shall publish the notice and emergency rules on its website.
- 17 6. An interim final rule is ineffective one hundred eighty days after its declared effective
18 date unless first adopted as a final rule.

19 **SECTION 8. AMENDMENT.** Section 28-32-06 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **28-32-06. Force and effect of rules.**

22 Upon becoming effective, rules have the force and effect of law until amended or repealed
23 by the agency or commission, declared invalid by a final court decision, suspended or found to
24 be void by the administrative rules committee, or determined repealed by the legislative council
25 because the authority for adoption of the rules is repealed or transferred to another agency, or
26 the Constitution of North Dakota is amended to eliminate the authority.

27 **SECTION 9. AMENDMENT.** Section 28-32-07 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **28-32-07. Deadline for rules to implement statutory change.**

30 Any rule change, including a creation, amendment, or repeal, made to implement a
31 statutory change must be adopted and filed with the legislative council within nine months of the

1 effective date of the statutory change. If an agency or the commission needs additional time for
2 the rule change, a request for additional time must be made to the legislative council. The
3 legislative council may extend the time within which the agency or commission must adopt the
4 rule change if the request by the agency or commission is supported by evidence that the
5 agency or commission needs more time through no deliberate fault of its own.

6 **SECTION 10. AMENDMENT.** Section 28-32-08 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **28-32-08. Regulatory analysis.**

- 9 1. An agency or the commission shall issue a regulatory analysis of a proposed rule if:
- 10 a. Within twenty days after the last published notice date of a proposed rule
11 hearing, a written request for the analysis is filed by the governor or a member of
12 the legislative assembly; or
- 13 b. The proposed rule is expected to have an impact on the regulated community in
14 excess of fifty thousand dollars. The analysis under this subdivision must be
15 available on or before the first date of public notice as provided for in section
16 28-32-10.
- 17 2. The regulatory analysis must contain:
- 18 a. A description of the classes of persons who probably will be affected by the
19 proposed rule, including classes that will bear the costs of the proposed rule and
20 classes that will benefit from the proposed rule;
- 21 b. A description of the probable impact, including economic impact, of the proposed
22 rule;
- 23 c. The probable costs to the agency or commission of the implementation and
24 enforcement of the proposed rule and any anticipated effect on state revenues;
25 and
- 26 d. A description of any alternative methods for achieving the purpose of the
27 proposed rule that were seriously considered by the agency or commission and
28 the reasons why the methods were rejected in favor of the proposed rule.
- 29 3. Each regulatory analysis must include quantification of the data to the extent
30 practicable.

1 4. The agency or commission shall mail or deliver a copy of the regulatory analysis to
2 any person who requests a copy of the regulatory analysis. The agency or commission
3 may charge a fee for a copy of the regulatory analysis as allowed under section
4 44-04-18.

5 5. If required under subsection 1, the preparation and issuance of a regulatory analysis is
6 a mandatory duty of the agency or commission proposing a rule. Errors in a regulatory
7 analysis, including erroneous determinations concerning the impact of the proposed
8 rule on the regulated community, are not a ground upon which the invalidity of a rule
9 may be asserted or declared.

10 **SECTION 11. AMENDMENT.** Section 28-32-08.1 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **28-32-08.1. Rules affecting small entities - Analysis - Economic impact statements -**
13 **Judicial review.**

14 1. As used in this section:

15 a. "Small business" means a business entity, including its affiliates, which:

16 (1) Is independently owned and operated; and

17 (2) Employs fewer than twenty-five full-time employees or has gross annual
18 sales of less than two million five hundred thousand dollars;

19 b. "Small entity" includes small business, small organization, and small political
20 subdivision;

21 c. "Small organization" means any not-for-profit enterprise that is independently
22 owned and operated and is not dominant in its field; and

23 d. "Small political subdivision" means a political subdivision with a population of less
24 than five thousand.

25 2. Before adoption of any proposed rule, the adopting agency ~~or the commission~~ shall
26 prepare a regulatory analysis in which, consistent with public health, safety, and
27 welfare, the agency ~~or commission~~ considers utilizing regulatory methods that will
28 accomplish the objectives of applicable statutes while minimizing adverse impact on
29 small entities. The agency ~~or commission~~ shall consider each of the following methods
30 of reducing impact of the proposed rule on small entities:

- 1 a. Establishment of less stringent compliance or reporting requirements for small
- 2 entities;
- 3 b. Establishment of less stringent schedules or deadlines for compliance or
- 4 reporting requirements for small entities;
- 5 c. Consolidation or simplification of compliance or reporting requirements for small
- 6 entities;
- 7 d. Establishment of performance standards for small entities to replace design or
- 8 operational standards required in the proposed rule; and
- 9 e. Exemption of small entities from all or any part of the requirements contained in
- 10 the proposed rule.
- 11 3. Before adoption of any proposed rule that may have an adverse impact on small
- 12 entities, the adopting agency ~~or the commission~~ shall prepare an economic impact
- 13 statement that includes consideration of:
- 14 a. The small entities subject to the proposed rule;
- 15 b. The administrative and other costs required for compliance with the proposed
- 16 rule;
- 17 c. The probable cost and benefit to private persons and consumers who are
- 18 affected by the proposed rule;
- 19 d. The probable effect of the proposed rule on state revenues; and
- 20 e. Any less intrusive or less costly alternative methods of achieving the purpose of
- 21 the proposed rule.
- 22 4. For any rule subject to this section, a small entity that is adversely affected or
- 23 aggrieved by final agency ~~or commission~~ action is entitled to judicial review of agency
- 24 ~~or commission~~ compliance with the requirements of this section. A small entity seeking
- 25 judicial review under this section must file a petition for judicial review within one year
- 26 from the date of final agency ~~or commission~~ action.
- 27 5. This section does not apply to the ethics commission, any agency that is an
- 28 occupational or professional licensing authority, ~~nor does this section apply to~~ and the
- 29 following agencies or divisions of agencies:
- 30 a. Council on the arts.
- 31 b. Beef commission.

- 1 c. Dairy promotion commission.
- 2 d. Dry bean council.
- 3 e. Highway patrolmen's retirement board.
- 4 f. Indian affairs commission.
- 5 g. Board for Indian scholarships.
- 6 h. State personnel board.
- 7 i. Potato council.
- 8 j. Board of public school education.
- 9 k. Real estate trust account committee.
- 10 l. Seed commission.
- 11 m. Soil conservation committee.
- 12 n. Oilseed council.
- 13 o. Wheat commission.
- 14 p. State seed arbitration board.
- 15 q. North Dakota lottery.

16 6. This section does not apply to rules mandated by federal law.

17 7. The adopting agency or the commission shall provide the administrative rules
18 committee copies of any regulatory analysis or economic impact statement, or both,
19 prepared under this section when the committee is considering the associated rules.

20 **SECTION 12. AMENDMENT.** Section 28-32-08.2 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **28-32-08.2. Fiscal notes for administrative rules.**

23 When an agency or the commission presents rules for administrative rules committee
24 consideration, the agency or commission shall provide a fiscal note or a statement in its
25 testimony that the rules have no fiscal effect. A fiscal note must reflect the effect of the rules
26 changes on state revenues and expenditures, including any effect on funds controlled by the
27 agency or commission.

28 **SECTION 13. AMENDMENT.** Section 28-32-09 of the North Dakota Century Code is
29 amended and reenacted as follows:

#1
HB 1521
4/23/19 a.m.

28-32-09. Takings assessment.

1. An agency or the commission shall prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private real property. The agency's assessment must:
 - a. Assess the likelihood that the proposed rule may result in a taking or regulatory taking.
 - b. Clearly and specifically identify the purpose of the proposed rule.
 - c. Explain why the proposed rule is necessary to substantially advance that purpose and why no alternative action is available that would achieve the agency's or commission's goals while reducing the impact on private property owners.
 - d. Estimate the potential cost to the government if a court determines that the proposed rule constitutes a taking or regulatory taking.
 - e. Identify the source of payment within the agency's or commission's budget for any compensation that may be ordered.
 - f. Certify that the benefits of the proposed rule exceed the estimated compensation costs.
2. Any private landowner who is or may be affected by a rule that limits the use of the landowner's private real property may request in writing that the agency or commission reconsider the application or need for the rule. Within thirty days of receiving the request, the agency or commission shall consider the request and shall in writing inform the landowner whether the agency or commission intends to keep the rule in place, modify application of the rule, or repeal the rule.
3. In an agency's analysis of the takings implications of a proposed rule, "taking" means the taking of private real property, as defined in section 47-01-03, by government action which requires compensation to the owner of that property by the fifth or fourteenth amendment to the Constitution of the United States or section 16 of article I of the Constitution of North Dakota. "Regulatory taking" means a taking of real property through the exercise of the police and regulatory powers of the state which reduces the value of the real property by more than fifty percent. However, the exercise of a police or regulatory power does not effect a taking if it substantially

advances legitimate state interests, does not deny an owner economically viable use of the owner's land, or is in accordance with applicable state or federal law.

SECTION 14. AMENDMENT. Section 28-32-10 of the North Dakota Century Code is amended and reenacted as follows:

28-32-10. Notice of rulemaking - Hearing date.

1. An agency or the commission shall prepare a full notice and an abbreviated notice of rulemaking.
 - a. The ~~agency's~~ full notice of the proposed adoption, amendment, or repeal of a rule must include a short, specific explanation of the proposed rule and the purpose of the proposed rule, identify the emergency status and declared effective date of any emergency rules, include a determination of whether the proposed rulemaking is expected to have an impact on the regulated community in excess of fifty thousand dollars, identify at least one location where interested persons may review the text of the proposed rule, provide the address to which written comments concerning the proposed rule may be sent, provide the deadline for submission of written comments, provide a telephone number and post-office or electronic mail address at which a copy of the rules and regulatory analysis may be requested, and, in the case of a substantive rule, provide the time and place set for each oral hearing. ~~The~~An agency's full notice must include a statement of the bill number and general subject matter of any legislation, enacted during the most recent session of the legislative assembly, which is being implemented by the proposed rule. The commission's full notice must include a statement of the provision of the Constitution of North Dakota or the bill number and general subject matter of any legislation enacted during the most recent session of the legislative assembly which ~~that~~ is being implemented by the proposed rule. The ~~agency's~~ full notice must be filed with the legislative council, accompanied by a copy of the proposed rules.
 - b. The agency or commission shall request publication of an abbreviated newspaper publication notice at least once in each official county newspaper published in this state. The abbreviated newspaper publication of notice must be in a display-type format with a minimum width of one column of approximately

1 two inches [5.08 centimeters] and a minimum depth of approximately three
2 inches [7.62 centimeters] and with a headline describing the general topic of the
3 proposed rules. The notice must also include the telephone number or address to
4 use to obtain a copy of the proposed rules, identification of the emergency status
5 and declared effective date of any emergency rules, the address to use and the
6 deadline to submit written comments, and the location, date, and time of the
7 public hearing on the rules.

8 2. The agency or commission shall mail or deliver by electronic mail a copy of the
9 agency's full notice and proposed rule to each member of the legislative assembly
10 whose name appeared as a sponsor or cosponsor of legislation, enacted during the
11 most recent session of the legislative assembly, which is being implemented by the
12 proposed rule and to each person who has made a timely request to the agency or
13 commission for a copy of the notice and proposed rule. The agency or commission
14 may mail or otherwise provide a copy of the agency's full notice to any person who is
15 likely to be an interested person. The agency or commission may charge persons who
16 are not members of the legislative assembly fees for copies of the proposed rule as
17 allowed under section 44-04-18.

18 3. In addition to the other notice requirements of this subsection, the superintendent of
19 public instruction shall provide notice of any proposed rulemaking by the
20 superintendent of public instruction to each association with statewide membership
21 whose primary focus is elementary and secondary education issues which has
22 requested to receive notice from the superintendent under this subsection and to the
23 superintendent of each public school district in this state, or the president of the school
24 board for school districts that have no superintendent, at least twenty days before the
25 date of the hearing described in the notice. Notice provided by the superintendent of
26 public instruction under this section must be by first-class mail. However, upon request
27 of a group or person entitled to notice under this section, the superintendent of public
28 instruction shall provide the group or person notice by electronic mail.

29 4. The legislative council shall establish standard procedures for the commission and all
30 agencies to follow in complying with the provisions of this section and a procedure to
31 allow any person to request and receive mailed copies of all filings made by agencies

1 and the commission pursuant to this section. The legislative council may charge an
2 annual fee as established by the administrative rules committee for providing copies of
3 the filings.

4 5. At least twenty days must elapse between the date of the publication of the notice and
5 the date of the hearing. Within fifteen business days after receipt of a notice under this
6 section, a copy of the notice must be mailed by the legislative council to any person
7 who has paid the annual fee established under subsection 4.

8 **SECTION 15. AMENDMENT.** Section 28-32-11 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **28-32-11. Conduct of hearings - Notice of administrative rules committee**
11 **consideration - Consideration and written record of comments.**

12 The agency or commission shall adopt a procedure whereby all interested persons are
13 afforded reasonable opportunity to submit data, views, or arguments, orally or in writing,
14 concerning the proposed rule, including data respecting the impact of the proposed rule. The
15 agency or commission shall adopt a procedure to allow interested parties to request and
16 receive notice from the agency or commission of the date and place the rule will be reviewed by
17 the administrative rules committee. In case of substantive rules, the agency or commission shall
18 conduct an oral hearing. The agency or commission shall consider fully all written and oral
19 submissions respecting a proposed rule prior to the adoption, amendment, or repeal of any rule
20 not of an emergency nature. The agency or commission shall make a written record of its
21 consideration of all written and oral submissions contained in the rulemaking record respecting
22 a proposed rule.

23 **SECTION 16. AMENDMENT.** Section 28-32-12 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **28-32-12. Comment period.**

26 The agency or commission shall allow, after the conclusion of any rulemaking hearing, a
27 comment period of at least ten days during which data, views, or arguments concerning the
28 proposed rulemaking will be received by the agency or commission and made a part of the
29 rulemaking record to be considered by the agency or commission.

30 ~~**SECTION 16. AMENDMENT.** Section 28-32-14 of the North Dakota Century Code is~~
31 ~~amended and reenacted as follows:~~

~~28-32-14. Attorney general review of rules.~~

~~Every proposed rule proposed by any administrative agency must be submitted to the attorney general for an opinion as to its legality before final adoption, and the attorney general promptly shall furnish each such opinion. The attorney general may not approve any rule as to legality, and shall advise the agency or commission of any necessary rewording or revision of the rule, when the:~~

~~1. The rule exceeds the statutory authority of the agency, or the statutory or constitutional authority of the commission;~~

~~2. The rule is written in a manner that is not concise or easily understandable; or when the~~

~~3. The procedural requirements for adoption of the rule in this chapter are not substantially met. The attorney general shall advise an agency of any revision or rewording of a rule necessary to correct objections as to legality.~~

SECTION 17. AMENDMENT. Section 28-32-15 of the North Dakota Century Code is amended and reenacted as follows:

28-32-15. Filing of rules for publication - Effective date of rules.

1. A copy of each rule adopted by an administrative agency or the commission, a copy of each written comment and a written summary of each oral comment on the rule, and the attorney general's opinion on the rule, if any, must be filed by the adopting agency or commission with the legislative council for publication of the rule in the North Dakota Administrative Code.

2. a. Nonemergency rules approved by the attorney general as to legality, adopted by an administrative agency or the commission, ~~and~~ filed with the legislative council, and not voided or held for consideration by the administrative rules committee become effective according to the following schedule:

(1) Rules filed with the legislative council from August second through November first become effective on the immediately succeeding January first.

(2) Rules filed with the legislative council from November second through February first become effective on the immediately succeeding April first.

(3) Rules filed with the legislative council from February second through May first become effective on the immediately succeeding July first.

(4) Rules filed with the legislative council from May second through August first become effective on the immediately succeeding October first.

b. If publication is delayed for any reason other than action of the administrative rules committee, nonemergency rules, unless otherwise provided, become effective when publication would have occurred but for the delay.

c. A rule held for consideration by the administrative rules committee becomes effective on the first effective date of rules under the schedule in subdivision a following the meeting at which that rule is reconsidered by the committee.

SECTION 18. AMENDMENT. Section 28-32-16 of the North Dakota Century Code is amended and reenacted as follows:

28-32-16. Petition for reconsideration of rule - Hearing by agency.

Any person substantially interested in the effect of a rule adopted by an administrative agency or the commission may petition ~~such~~the agency or commission for a reconsideration of ~~any such~~the rule or for an amendment or repeal ~~thereof~~of the rule. The petition must state clearly and concisely the petitioners' alleged grounds for ~~such~~ reconsideration or ~~for the~~ proposed repeal or amendment of ~~such~~the rule. The agency or commission may grant the petitioner a public hearing ~~upon such~~on the terms and conditions as the agency ~~may~~ prescribe.

~~**SECTION 20. AMENDMENT.** Section 28-32-17 of the North Dakota Century Code is amended and reenacted as follows:~~

~~**28-32-17. Administrative rules committee objection.**~~

~~If the legislative management's administrative rules committee objects to all or any portion of a rule because the committee deems it to be unreasonable, arbitrary, capricious, or beyond the authority delegated to the adopting agency or commission, the committee may file that objection in certified form with the legislative council. The filed objection must contain a concise statement of the committee's reasons for its action.~~

~~1. The legislative council shall attach to each objection a certification of the time and date of its filing and, as soon as possible, shall transmit a copy of the objection and the~~

certification to the agency or commission adopting the rule in question. The legislative council also shall maintain a permanent register of all committee objections.

2. The legislative council shall publish an objection filed pursuant to this section in the next issue of the code supplement. In case of a filed committee objection to a rule subject to the exceptions of the definition of rule in section 28-32-01, the agency or commission shall indicate the existence of that objection adjacent to the rule in any compilation containing that rule.

3. Within fourteen days after the filing of a committee objection to a rule, the adopting agency or commission shall respond in writing to the committee. After receipt of the response, the committee may withdraw or modify its objection.

4. After the filing of a committee objection, the burden of persuasion is upon the agency or commission in any action for judicial review or for enforcement of the rule to establish that the whole or portion thereof of the rule objected to is within the procedural and substantive authority delegated to the agency or commission. If the agency or commission fails to meet its burden of persuasion, the court shall declare the whole or portion of the rule objected to invalid and judgment must be rendered against the agency or commission for court costs. These court costs must include a reasonable attorney's fee and must be payable from the appropriation of the agency or commission which adopted the rule in question.

SECTION 21. AMENDMENT. Section 28-32-18 of the North Dakota Century Code is amended and reenacted as follows:

~~28-32-18. Administrative rules committee may void rule~~ Grounds Amendment by agreement of agency and committee.

1. The legislative management's administrative rules committee may find that all or any portion of a rule is void if that rule is initially considered by the committee not later than the fifteenth day of the month before the date of the administrative code supplement in which the rule change is scheduled to appear. The administrative rules committee may find a rule or portion of a rule void if the committee makes the specific finding that, with regard to that rule or portion of a rule, there is:

a. An absence of statutory authority under statute or the constitution.

b. An emergency relating to public health, safety, or welfare.

- 1 ~~c. For rules proposed by an agency, a failure to comply with express legislative~~
2 ~~intent or to substantially meet the procedural requirements of this chapter for~~
3 ~~adoption of the rule.~~
- 4 ~~d. For rules proposed by the commission, a failure to substantially meet the~~
5 ~~procedural requirements for this chapter for adoption of the rule.~~
- 6 ~~e. A conflict with state law.~~
- 7 ~~e.f. Arbitrariness and capriciousness.~~
- 8 ~~f.g. A failure to make a written record of its consideration of written and oral~~
9 ~~submissions respecting the rule under section 28-32-11.~~
- 10 ~~2. The administrative rules committee may find a rule void at the meeting at which the~~
11 ~~rule is initially considered by the committee or may hold consideration of that rule for~~
12 ~~one subsequent meeting. If no representative of the agency or commission appears~~
13 ~~before the administrative rules committee when rules are scheduled for committee~~
14 ~~consideration, those rules are held over for consideration at the next subsequent~~
15 ~~committee meeting. Rules are not considered initially considered by the committee~~
16 ~~under this subsection until a representative of the agency or commission appears~~
17 ~~before the administrative rules committee when the rules are scheduled for committee~~
18 ~~consideration. If no representative of the agency or commission appears before the~~
19 ~~administrative rules committee meeting to which rules are held over for consideration,~~
20 ~~the rules are void if the rules were adopted as emergency rules and for rules not~~
21 ~~adopted as emergency rules the administrative rules committee may void the rules,~~
22 ~~allow the rules to become effective, or hold over consideration of the rules to the next~~
23 ~~subsequent committee meeting. Within three business days after the administrative~~
24 ~~rules committee finds that a rule is void, the legislative council shall provide written~~
25 ~~notice of that finding and the committee's specific finding under subdivisions a through~~
26 ~~f of subsection 1 to the adopting agency or commission and to the chairman of the~~
27 ~~legislative management. Within fourteen days after receipt of the notice, the adopting~~
28 ~~agency or commission may file a petition with the chairman of the legislative~~
29 ~~management for review by the legislative management of the decision of the~~
30 ~~administrative rules committee. If the adopting agency or commission does not file a~~
31 ~~petition for review, the rule becomes void on the fifteenth day after the notice from the~~

legislative council to the adopting agency or commission. If within sixty days after receipt of the petition from the adopting agency or commission the legislative management has not disapproved by motion the finding of the administrative rules committee, the rule is void.

3. An agency or the commission may amend or repeal a rule or create a related rule if, after consideration of rules by the administrative rules committee, the agency or commission and the committee agree that the rule amendment, repeal, or creation is necessary to address any of the considerations under subsection 1. A rule amended, repealed, or created under this subsection is not subject to the other requirements of this chapter relating to adoption of administrative rules and may be published by the legislative council as amended, repealed, or created. If requested by the agency, commission, or any interested party, a rule amended, repealed, or created under this subsection must be reconsidered by the administrative rules committee at a subsequent meeting at which public comment on the agreed rule change must be allowed.

SECTION 19. AMENDMENT. Section 28-32-18.1 of the North Dakota Century Code is amended and reenacted as follows:

28-32-18.1. Administrative rules committee review of existing administrative rules.

1. Upon request by the administrative rules committee, an administrative agency or the commission shall brief the committee on its existing administrative rules and point out any provisions that appear to be obsolete and any areas in which statutory or constitutional authority has changed or been repealed since the rules were adopted or amended.
2. An agency or the commission may amend or repeal a rule without complying with the other requirements of this chapter relating to adoption of administrative rules and may resubmit the change to the legislative council for publication provided:
 - a. The agency or commission initiates the request to the administrative rules committee for consideration of the amendment or repeal;
 - b. The agency or commission provides notice to the regulated community, in a manner reasonably calculated to provide notice to those persons interested in the

1 rule, of the time and place the administrative rules committee will consider the
2 request for amendment or repeal of the rule; and

3 c. The agency or commission and the administrative rules committee agree the rule
4 amendment or repeal eliminates a provision that is obsolete or no longer in
5 compliance with law and that no detriment would result to the substantive rights
6 of the regulated community from the amendment or repeal.

7 **SECTION 20. AMENDMENT.** Subsection 2 of section 28-32-19 of the North Dakota
8 Century Code is amended and reenacted as follows:

9 2. The legislative council may prescribe the format, style, and arrangement for rules
10 ~~which are~~ to be published in the code and may refuse to accept the filing of any rule
11 that is not in substantial compliance ~~therewith~~ with the format, style, and arrangement.
12 In arranging rules for publication, the legislative council may make ~~such~~ corrections in
13 spelling, grammatical construction, format, and punctuation of the rules as
14 ~~determined~~ the legislative council determines are proper. The legislative council shall
15 keep and maintain a permanent code of all rules filed, including superseded and
16 repealed rules, which must be open to public inspection during office hours.

17 **SECTION 21. AMENDMENT.** Subsection 4 of section 28-32-19 of the North Dakota
18 Century Code is amended and reenacted as follows:

19 4. The legislative council, with the consent of the adopting agency or commission, may
20 omit from the code or code supplement any rule the publication of which would be
21 unduly cumbersome, expensive, or otherwise inexpedient, if the rule in printed or
22 duplicated form is made available on application to the agency or commission, and if
23 the code or code supplement contains a notice stating the general subject matter of
24 the omitted rule and ~~stating~~ how a copy may be obtained.

25 ~~**SECTION 25. AMENDMENT.** Section 28-32-27 of the North Dakota Century Code is~~
26 ~~amended and reenacted as follows:~~

27 ~~**28-32-27. Hearing officer - Disqualification - Substitution.**~~

28 ~~1. Any person or persons presiding for the agency in an administrative proceeding must~~
29 ~~be referred to individually or collectively as hearing officer. Any person from the office~~
30 ~~of administrative hearings presiding for the agency as a hearing officer in an~~
31 ~~administrative proceeding must be referred to as an administrative law judge.~~

- ~~2. Any hearing officer is subject to disqualification for good cause shown.~~
- ~~3. A hearing officer who is a director, officer, commissioner, head, or other executive of an agency shall self disqualify in a proceeding in which a reasonable, disinterested observer would believe the hearing officer is biased due to:~~
 - ~~a. A contribution by one of the parties supporting the hearing officer's most recent campaign for public office; or~~
 - ~~b. An ownership interest, other than investment in a mutual fund, of the hearing officer in one of the parties to the proceeding if the ownership interest is not shared by the general public.~~
- ~~4. Any party may petition for the disqualification of any person presiding as a hearing officer upon discovering facts establishing grounds for disqualification.~~
- ~~4.5. A person whose disqualification is requested shall determine whether to grant the petition, stating facts and reasons for the determination.~~
- ~~5.6. If a substitute is required for a person who is disqualified or becomes unavailable for any other reason, the substitute may be appointed by:~~
 - ~~a. The attorney general, if the disqualified or unavailable person is an assistant attorney general;~~
 - ~~b. The agency head, if the disqualified or unavailable person is one or more members of the agency head or one or more other persons designated by the agency head;~~
 - ~~c. A supervising hearing officer, if the disqualified or unavailable person is a hearing officer designated from an office, pool, panel, or division of hearing officers; or~~
 - ~~d. The governor, in all other cases.~~
- ~~6.7. Any action taken by a duly appointed substitute for a disqualified or unavailable person is as effective as if taken by the disqualified or unavailable person.~~
- ~~7.8. Any hearing officer in an administrative proceeding, from the time of appointment or designation, may exercise any authority granted by law or rule. A hearing officer may be designated to preside over the entire administrative proceeding and may issue orders accordingly. A procedural hearing officer may only issue orders in regard to the course and conduct of the hearing under statute or rule and to otherwise effect an orderly hearing. If a procedural hearing officer is designated, the agency head must be~~

present at the hearing and the agency head shall issue findings of fact and conclusions of law, as well as any order resulting from the hearing.

~~9. The North Dakota ethics commission shall assess any hearing officer who knowingly violates subsection 3 a civil penalty of five hundred dollars for the first violation. For a second and subsequent knowing violation of this section, the hearing officer is guilty of a class B misdemeanor.~~

SECTION 22. AMENDMENT. Section 28-32-47 of the North Dakota Century Code is amended and reenacted as follows:

28-32-47. Scope of and procedure on appeal from agency rulemaking.

1. A judge of the district court shall review an appeal from an administrative agency's or ethics commission's rulemaking action based only on the record filed with the court. If an appellant requests documents to be included in the record but the agency or commission does not include them, the court, upon application by the appellant, may compel their inclusion. After a hearing, the filing of briefs, or other disposition of the matter as the judge may reasonably require, the court shall affirm the agency's rulemaking action unless it finds that any of the following are present:
 - ~~1-~~ a. The provisions of this chapter have not been substantially complied with in the agency's rulemaking actions.
 - 2- b. A rule published as a result of the rulemaking action appealed is unconstitutional on the face of the language adopted.
 - ~~3-~~ c. A rule published as a result of the rulemaking action appealed is beyond the scope of the agency's or commission's authority to adopt.
 - 4- d. A rule published as a result of the rulemaking action appealed is on the face of the language adopted an arbitrary or capricious application of authority granted by statute.
2. If the rulemaking action of the agency or commission is not affirmed by the court, ~~the~~ rulemaking action must be remanded to the agency or commission for disposition in accordance with the order of the court, or the rule or a portion of the rule resulting from the rulemaking action of the agency or commission must be declared invalid for reasons stated by the court.

SECTION 23. AMENDMENT. Section 28-32-48 of the North Dakota Century Code is amended and reenacted as follows:

28-32-48. Appeal - Stay of proceedings.

An appeal from an order or the rulemaking action of an administrative agency or the commission does not stay the enforcement of the order or the effect of a published rule unless the court to which the appeal is taken, upon application and after a hearing or the submission of briefs, orders a stay. The court may impose terms and conditions for a stay of the enforcement of the order or for a stay in the effect of a published rule. This section does not prohibit the operation of an automatic stay upon the enforcement of an administrative order or commission order as may be required by another statute.

SECTION 24. AMENDMENT. Section 28-32-49 of the North Dakota Century Code is amended and reenacted as follows:

28-32-49. Review in supreme court.

The judgment of the district court in an appeal from an order or rulemaking action of an administrative agency or the commission may be reviewed in the supreme court on appeal in the same manner as provided in section 28-32-46 or 28-32-47, except that the appeal to the supreme court must be taken within sixty days after the service of the notice of entry of judgment in the district court. Any party of record, including the agency or commission, may take an appeal from the final judgment of the district court to the supreme court. If an appeal from the judgment of the district court is taken by an agency or the commission, the agency or commission may not be required to pay a docket fee or file a bond for costs or equivalent security.

SECTION 25. Chapter 54-66 of the North Dakota Century Code is created and enacted as follows:

54-66-01. Definitions.

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

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

1 2. "Adjusted for inflation" means adjusted on January first of each year by the change in
2 the consumer price index for all urban consumers (all items, United States city
3 average), as identified by the secretary of state.

4 ~~3.~~ "Complainant" means an individual who, in writing or verbally, submits a complaint to
5 the commission.

6 4.3. "Complaint" means a verbal or written allegation to the commission that a lobbyist,
7 public official, candidate for public office, political committee, or contributor has
8 violated article XIV of the Constitution of North Dakota, this chapter, or another law or
9 rule regarding government ethics has been violated transparency, corruption, elections,
10 or lobbying.

11 5.4. "Ethics commission" or "commission" means the North Dakota ethics commission
12 established by article XIV of the Constitution of North Dakota.

13 6.5. "Gift" means any item, service, or thing of value not given in exchange for fair market
14 consideration including travel and recreation, except:

15 a. Purely informational material;

16 b. A campaign contribution; and

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

21 7.6. "Influence state government action" means promoting or opposing the final adoption of
22 a rule by an administrative agency or the commission under chapter 28-32.

23 8.7. "Lobby" means an activity listed in subsection 1 of section 54-05.1-02.

24 9.8. "Lobbyist" means an individual required to register under section 54-05.1-03.

25 10.9. "Public official" means an elected or appointed official of the state's executive or
26 legislative branch, members of the commission, members of the governor's cabinet,
27 and employees of the legislative branch.

28 11.10. "Receives the complaint" means one or more members of the commission learn of the
29 complaint.

1 12.11. "Ultimate and true source" means the person that knowingly contributed over two
2 hundred dollars, adjusted for inflation, solely to lobby or influence state government
3 action.

4 **54-66-02. Disclosure of ultimate and true source of funds.**

5 1. A lobbyist who expends an amount greater than two hundred dollars, adjusted for
6 inflation, to lobby shall file with the secretary of state a report that includes the known
7 ultimate and true source of funds for the expenditure. The report must be filed with the
8 lobbyist expenditure report required under subsection 2 of section 54-05.1-03.

9 2. A person ~~who~~that expends an amount greater than two hundred dollars, adjusted for
10 inflation not including the individual's own travel expenses and membership dues, to
11 influence state government action shall file with the secretary of state a report
12 including the known ultimate and true source of funds for the expenditure. ~~The A~~ report
13 under this subsection must be filed on or before the August first following the date of
14 the expenditure. The secretary of state shall provide a form for reports under this
15 subsection and make the form electronically accessible to the public. The secretary of
16 state also shall charge and collect fees for late filing of the reports as follows:

- 17 a. Twenty-five dollars for a report filed within sixty days after the deadline; or
18 b. Fifty dollars for a report filed more than sixty days after the deadline.

19 3. The secretary of state shall compile the reports required under this section and make
20 the reports electronically accessible to the public ~~within forty days after the deadlines~~
21 ~~by which the reports must be filed~~.

22 4. ~~This section does not require a person to report the ultimate and true source of funds~~
23 ~~expended on:~~

24 ~~a. A gift to or from a family member;~~

25 ~~b. Purely informational material, advice, or education;~~

26 ~~c. Reimbursement for travel, meal, and refreshment expenses incurred to, from, or~~
27 ~~during a conference, seminar, or other legitimate educational opportunity for a~~
28 ~~public official if the conference, seminar, or educational opportunity concerns~~
29 ~~issues germane to the official duties of the public official;~~

30 ~~d. Meals and refreshments provided while informing, advising, or educating a public~~
31 ~~official about issues germane to the official duties of the public official;~~

- 1 ~~e. Providing an educational or social setting in the state to provide an opportunity~~
2 ~~for individuals to meet with public officials; and~~
3 ~~f. A good or service determined not to raise ethical concerns under rules adopted~~
4 ~~by the ethics commission.~~
5 ~~5. A resident taxpayer may commence an action in a district court of this state against a~~
6 ~~person required to comply with this section to compel compliance if all other~~
7 ~~enforcement measures under this chapter have been exhausted and the taxpayer~~
8 ~~reasonably believes the person has failed to comply with this section. A failure to~~
9 ~~comply with this section must be proved by clear and convincing evidence.~~
10 5. The secretary of state shall determine adjustments for inflation of the reporting
11 thresholds in this section and instruct persons submitting reports under this section of
12 the adjustments. On January first of each year, the secretary shall determine whether
13 the accumulated change in the consumer price index for all urban consumers (all
14 items, United States city average), as applied to each reporting threshold in this
15 section, would result in an adjustment of at least ten dollars of the threshold in effect
16 on that date. If so, the secretary of state shall deem the reporting threshold adjusted
17 by ten dollars.

18 **54-66-03. Lobbyist gifts - Penalty.**

- 19 1. A lobbyist may not give, offer, solicit, initiate, or facilitate a gift knowingly to a public
20 official, and a public official may not accept a gift with a value over sixty dollars per
21 individual per event, adjusted for inflation, from a lobbyist knowingly, except to
22 advance opportunities for state residents to meet with public officials in educational
23 and social settings in the state under conditions that do not raise ethical concerns,
24 including:
25 ~~a. Reimbursement for travel, meal, and refreshment expenses incurred to, from, or~~
26 ~~during a conference, seminar, or other legitimate educational opportunity for the~~
27 ~~public official if the conference, seminar, or educational opportunity concerns~~
28 ~~issues germane to the official duties of the public official;~~
29 ~~b. Providing information, advice, or education to a public official;~~
30 ~~c. Providing meals and refreshments while informing, advising, or educating a~~
31 ~~public official about issues germane to the official duties of the public official;~~

1 ~~d. Items with a fair market value of ten dollars per individual per event, adjusted for~~
2 ~~inflation, or less per individual; and~~

3 ~~e. A good or service determined not to raise ethical concerns under rules adopted~~
4 ~~by the ethics commission.~~

5 2. The prohibition in subsection 1 does not apply when a lobbyist gives, offers, solicits,
6 initiates, or facilitates, or a public official accepts:

7 ~~a. A gift to or from a family member;~~

8 ~~b. Purely informational material; or~~

9 ~~c. A campaign contribution.~~

10 3. ~~For the first violation, the secretary of state shall assess a civil penalty of five hundred~~
11 ~~dollars upon any person who knowingly violates this section and, if the person is a~~
12 ~~lobbyist, the secretary of state may revoke the lobbyist's registration under chapter~~
13 ~~54-05.1. For a second and subsequent knowing violation of this section, the person is~~
14 ~~guilty of a class B misdemeanor. The secretary of state shall assess a civil penalty~~
15 ~~upon any individual who violates this section.~~

16 a. ~~If the gift has a value of five hundred dollars or more, the civil penalty must be~~
17 ~~two times the value of the gift.~~

18 b. ~~If the gift has a value of less than five hundred dollars, the civil penalty must be~~
19 ~~no less than two times the value of the gift and may be up to one thousand~~
20 ~~dollars.~~

21 **54-66-04. Ethics commission member terms - Meetings - Code of ethics -**

22 **Compensation - Investigator Office.**

23 1. ~~The terms of the initial members of the ethics commission must be staggered to~~
24 ~~ensure no more than two members' terms expire in one year. The terms of the initial~~
25 ~~members may be less than four years to accommodate the required staggering of~~
26 ~~terms.~~

27 2. ~~The ethics commission shall meet as necessary to address each complaint the~~
28 ~~commission receives. Unless the complaint at issue has resulted in the imposition of a~~
29 ~~penalty or referral for enforcement under section 54-66-1054-66-09, any portion of a~~
30 ~~meeting during which commission members discuss complaints, informal resolutions,~~
31 ~~attempts to informally resolve complaints, investigations, or referrals under this~~

chapter, the identity of an accused individual or complainant, or any other matter arising from a complaint are closed meetings.

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

4. Ethics commission members are entitled to:

- a. Compensation for each day necessarily spent conducting commission business in the amount provided for members of the legislative management under section 54-35-10; and
- b. Payment for mileage and travel expenses necessarily incurred in the conduct of commission business as provided under sections 44-08-04 and 54-06-09.

~~5. Commission members shall hire or otherwise engage a part time administrative assistant. The administrative assistant must be provided an office within the office space for the department of labor and human rights. The commission shall compensate the department of labor and human rights for the office in an amount equal to the fair value of the office.~~ The director of the office of management and budget shall allocate office space in the state capitol for the ethics commission, or, if office space in the capitol is unavailable, shall negotiate for, contract for, and obtain office space for the ethics commission in the city of Bismarck or in the Bismarck area. The ethics commission's office space may not be located in the office space of any other government agency, board, commission, or other governmental entity, and must provide sufficient privacy and security for the ethics commission to conduct its business. The director shall charge the ethics commission an amount equal to the fair value of the office space and related services the office of management and budget renders to the ethics commission.

54-66-05. Making a complaint – Identifying information – False complaints.

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

complaint, a complainant shall provide the name, address, and telephone number of the complainant.

~~2. Within five days after making a complaint, the complainant shall submit a signed statement attesting the complaint is true and accurate to the best of the complainant's knowledge. The commission shall develop an attestation form for this purpose and make it electronically accessible to the public. After receiving the attestation, the commission shall summarize the complaint in writing if the complaint was made orally.~~

~~3. If the complainant does not submit the signed attestation by the deadline, the commission may not investigate or take other action on the complaint.~~

~~4. Knowingly or recklessly making a complaint that is materially false is defamation under chapter 12.1-15.~~

54-66-06. Informing the accused individual - Written response permitted.

The commission shall inform an accused individual by registered mail of the identity of the complainant who made the allegation against the accused individual and include the written complaint or written summary of the oral complaint as soon as reasonably possible but no later than ~~tentwenty~~ calendar days after the commission receives the complaint. The accused individual may respond to the complaint in writing within ~~tentwenty~~ calendar days of receipt of the complaint or summary of the complaint.

54-66-07. Informal resolution.

The commission ~~may~~shall attempt to negotiate or mediate an informal resolution between the accused individual and the complainant unless the commission disregards the complaint pursuant to section 54-66-05 or for any other reason. The accused individual may be accompanied by legal counsel in a negotiation or mediation.

~~**54-66-08. Referrals to investigators - Exception for criminal allegations.**~~

~~For each complaint with an attestation, the commission shall engage an investigator with the appropriate knowledge and experience regarding the Constitution of North Dakota, ethics related statutes, and ethics investigations, and refer the complaint to the investigator within thirty calendar days of receiving the complaint. However, if a complaint with an attestation includes an allegation of criminal conduct, the commission shall refer the allegation of criminal conduct to the bureau of criminal investigation or other law enforcement agency. The commission may engage a state agency as an investigator. If the accused individual provided a~~

1 written response to the complaint, the commission shall provide the written response with the
2 referred complaint.

3 ~~**54 66-09. Investigations - Findings and Recommendations - Responses.**~~

4 ~~1. The investigator engaged under section 54 66-08 shall investigate the complaint~~
5 ~~referred to it by the ethics commission. Investigations must include separate interviews~~
6 ~~with the accused individual and the complainant, unless the accused individual or~~
7 ~~complainant refuses to be interviewed, and consideration of the circumstances~~
8 ~~surrounding the allegations. The accused individual and complainant may be~~
9 ~~accompanied by legal counsel during the interviews of each. Investigations may~~
10 ~~include interviews of potential witnesses and other individuals believed to have~~
11 ~~relevant information.~~

12 ~~2. At the conclusion of the investigation, but no later than six months after the~~
13 ~~investigator received the complaint, the investigator shall submit its written findings~~
14 ~~from the investigation to the commission. The commission shall provide written copies~~
15 ~~of the findings to the accused individual and complainant. The accused individual and~~
16 ~~complainant may respond in writing to the findings within thirty calendar days of~~
17 ~~receiving the findings. The commission shall maintain copies of the findings and any~~
18 ~~written response to the findings.~~

19 ~~**54 66-10. Final determinations - Penalties - Referrals for enforcement.**~~

20 ~~1. After reviewing the findings from the investigator and any written response from the~~
21 ~~accused individual or complainant, the ethics commission shall meet with the accused~~
22 ~~individual and complainant to discuss the findings and written responses. A meeting~~
23 ~~under this subsection is a closed meeting as defined in section 44-04-17.1, although~~
24 ~~the accused individual and complainant may have legal counsel attend and~~
25 ~~participate.~~

26 ~~2. After the meeting with the accused individual and complainant, the commission shall~~
27 ~~issue written findings, including a determination whether a violation of article XIV of the~~
28 ~~Constitution of North Dakota, this chapter, or another law or rule regarding government~~
29 ~~ethics occurred. If the commission finds a violation occurred, the commission may~~
30 ~~assess a civil penalty if authorized by law or refer the matter to the entity authorized by~~
31 ~~law to assess a civil penalty for the violation.~~

~~3. The accused individual and the complainant may appeal and request judicial review of a determination made or penalty imposed under this section to the district court in the county in which the accused individual resides. A request for judicial review under this section must comply with the requirements for an appeal of a determination of an agency under chapter 28-32. The scope of review and procedure on appeal from a determination of the commission must comply with section 28-32-47.~~

~~4. The commission may not terminate the employment of a public official or otherwise remove a public official from the public official's public office.~~

54-66-08. Investigations - Referrals.

1. If an informal resolution is not reached under section 54-66-07, the ethics commission may:

- a. Disregard the complaint;
- b. Require ethics commission staff to investigate the allegations in the complaint; or
- c. Engage an outside investigator to investigate allegations in the complaint.

2. If the commission believes a complaint contains allegations of criminal conduct, the ethics commission shall refer the allegations of criminal conduct to the bureau of criminal investigations or other law enforcement agency and may not take further action on the referred allegations. The commission shall inform the accused individual by registered mail of a referral under this section and the nature of the referred allegations as soon as reasonably possible.

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

1. An investigator, other than a law enforcement agency, of a complaint shall provide written findings of the investigation to the ethics commission within a reasonable amount of time. The ethics commission shall provide copies of the written findings to the accused individual, who may respond to the commission in person or in writing within a reasonable time. If the accused individual responds in person, no fewer than three members of the commission shall meet in a closed meeting with the accused individual. An accused individual may be accompanied by legal counsel when responding to the commission in person.

2. After providing a reasonable time for an accused individual 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 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.

54-66-10. Appeals.

An accused individual may appeal a finding of the ethics commission to the district court of the county where the accused individual resides.

54-66-11. Rulemaking.

When adopting rules, the ethics commission shall follow the provisions in chapter 28-32 which are specifically applicable to the commission.

54-66-11. Confidential information - Penalty.

1. The following information is a confidential record as defined in section 44-04-17.1, unless the commission has determined the accused individual violated article XIV of the Constitution of North Dakota, this chapter, or another law or rule regarding ~~government ethics~~ transparency, corruption, elections, or lobbying, and a court affirmed the determination if appealed, except the information may be disclosed as required by law or as necessary to conduct an investigation arising from a complaint:
 - a. Information revealing the contents of a complaint;
 - b. Information that reasonably may be used to identify an accused individual or complainant; and
 - c. Information relating to or created as part of an investigation of a complaint.

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

- a. Information revealing the contents of the complaint;
- b. Information that reasonably may be used to identify the accused individual or complainant;
- c. Information relating to or created as part of the process leading to the informal resolution; and
- d. Information revealing the informal resolution.

~~3. Willful publication of information included in subsections 1 and 2 by a person who knows the information to be false is criminal defamation under section 12.1-15-01.~~

~~4. A public official who violates this section is guilty of a class C felony. The information deemed confidential in this section may be disclosed by the ethics commission if the accused individual agrees to the disclosure.~~

54-66-12. Restriction on lobbying by public officials - Penalty.

~~For the first violation of subsection 2 of section 2 of article XIV of the Constitution of North Dakota, the secretary of state shall assess a civil penalty of five hundred dollars upon the person who knowingly commits the violation. For a second and subsequent knowing violation of the subsection, the person is guilty of a class B misdemeanor. A knowing violation of subsection 2 of section 2 of article XIV of the Constitution of North Dakota is a class A misdemeanor. The ethics commission shall assess a civil penalty of up to one thousand dollars on any individual who knowingly violates the subsection.~~

54-66-13. Attorney general to provide legal services.

The attorney general shall serve as legal counsel for the commission unless the commission objects to representation by the attorney general in a specific matter. When a conflict of interest prevents the attorney general from providing legal services to the commission, the attorney general may appoint a special assistant attorney general to serve as legal counsel for the commission.

54-66-14. Prohibition on delivering campaign contributions - Penalty.

A lobbyist may not deliver knowingly a campaign contribution made by another person in violation of subsection 3 of section 2 of article XIV of the Constitution of North Dakota. For a first violation, the secretary of state shall assess a civil penalty of five hundred dollars upon any

1 ~~person~~individual who knowingly violates this section ~~and may revoke the lobbyist's registration.~~
2 For a second and subsequent knowing violation of this section, the person is guilty of a class B
3 misdemeanor, and, if the lobbyist is a registered lobbyist, the secretary of state may revoke the
4 lobbyist's registration. For purposes of this section, "deliver" means to transport, transfer, or
5 otherwise transmit, either physically or electronically. This prohibition does not apply to an
6 individual who delivers a campaign contribution to the individual's own campaign or to the
7 campaign of the individual's immediate family member. This prohibition may not be interpreted
8 to prohibit any person from making a campaign contribution, encouraging others to make a
9 campaign contribution, or otherwise supporting or opposing a candidate.

10 **54-66-15. Removal of ethics commission members.**

11 1. An ethics commission member may be removed from office for:

12 a. Substantial neglect of duty;

13 b. Gross misconduct in office;

14 c. Violation of the commission's code of ethics; or

15 d. Willful or habitual neglect or refusal to perform the duties of the member.

16 2. Removal of an ethics commission member under subsection 1 requires agreement by
17 a majority of:

18 a. The governor;

19 b. The majority leader of the senate; and

20 c. The minority leader of the senate.

21 **54-66-16. Participation in quasi-judicial proceedings.**

22 For purposes of subsection 5 of section 2 of article XIV of the Constitution of North Dakota,
23 an individual is not disqualified from participating in any capacity in a quasi-judicial proceeding,
24 including an adjudicative proceeding under chapter 28-32, due to an investment in a mutual
25 fund, an ownership interest in one of the parties to the proceeding which is shared by the
26 general public, and an investment or ownership interest in a retirement account of one of the
27 parties to the proceeding.

28 **SECTION 26. APPROPRIATION.** There is appropriated out of any moneys in the general
29 fund in the state treasury, not otherwise appropriated, the sum of ~~\$300,000~~\$517,155, or so
30 much of the sum as may be necessary, to the ethics commission for the purpose of the
31 operations of the commission, for the biennium beginning July 1, 2019, and ending June 30,

2021. The ethics commission is authorized ~~one and one half~~two full-time equivalent positions for this purpose.

SECTION 27. EFFECTIVE DATE. Sections ~~1, 2, 3, 4, 5, and 7~~1, 3, 4, and 5 of this Act, and ~~section~~sections 54-66-02 and 54-66-03 of the North Dakota Century Code, as created by section ~~32~~24 of this Act, become effective January 5, ~~2022~~2021.

~~**SECTION 35. EFFECTIVE DATE.** North Dakota Century Code section 54-66-03, as created by section 32 of this Act, becomes effective January 5, 2021.~~

~~**SECTION 36. EXPIRATION DATE.** North Dakota Century Code section 54-66-12, as created by section 32 of this Act, is effective until subsection 2 of section 2 of article XIV of the Constitution of North Dakota is no longer part of the Constitution of North Dakota.~~

SECTION 28. EMERGENCY. Sections 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, ~~24, 25, 26, 27, 28, 29, 30, and 31,~~ and 24 of this Act are declared to be an emergency measure.

Sixty-sixth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE **BILL NO. 1521**

Introduced by

Representative Pollert

Senator Wardner

1 A BILL for an Act to create and enact a new section to chapter 16.1-08.1 and chapter 54-66 of
2 the North Dakota Century Code, relating to reporting campaign contributions and expenditures,
3 restrictions on public officials and lobbyists, investigations of ethics violations, and implementing
4 requirements of article XIV of the Constitution of North Dakota; to amend and reenact
5 ~~section~~sections 16.1-08.1-01, ~~subsection 4 of section 16.1-08.1-02.1, sections 16.1-08.1-02.3,~~
6 ~~16.1-08.1-02.4, 16.1-08.1-03.1~~16.1-08.1-03.7, 16.1-08.1-04.1, ~~16.1-08.1-06.2,~~ 28-32-01,
7 ~~28-32-02,~~ 28-32-03, 28-32-06, 28-32-07, 28-32-08, 28-32-08.1, 28-32-08.2, 28-32-09, 28-32-10,
8 28-32-11, 28-32-12, ~~28-32-14,~~ 28-32-15, 28-32-16, ~~28-32-17, 28-32-18,~~ and 28-32-18.1,
9 subsections 2 and 4 of section 28-32-19, and sections ~~28-32-27,~~ 28-32-47, 28-32-48, and
10 28-32-49 of the North Dakota Century Code, relating to rulemaking procedures, ~~disqualification~~
11 ~~of agency heads in quasi-judicial proceedings,~~ implementing article XIV of the Constitution of
12 North Dakota, and requirements for the North Dakota ethics commission; to provide for a
13 penalty; to provide an appropriation; to provide an effective date; ~~to provide an expiration date;~~
14 and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

16 **SECTION 1. AMENDMENT.** Section 16.1-08.1-01 of the North Dakota Century Code is
17 amended and reenacted as follows:

16.1-08.1-01. Definitions.

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

- 20 1. ~~"Adjusted for inflation" means adjusted on January first of each year by the change in~~
21 ~~the consumer price index for all urban consumers (all items, United States city~~
22 ~~average), as identified by the secretary of state.~~

- 23 ~~2.~~ "Affiliate" means an organization that controls, is controlled by, or is under common
24 control with another organization. For purposes of this definition, control means the

possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an organization, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise. Control is presumed to exist if an organization, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing fifty percent or more of the voting securities of any other organization.

2.3. "Association" means any club, association, union, brotherhood, fraternity, organization, or group of any kind of two or more persons, including labor unions, trade associations, professional associations, or governmental associations, which is united for any purpose, business, or object and which assesses any dues, membership fees, or license fees in any amount, or which maintains a treasury fund in any amount. The term does not include corporations, cooperative corporations, limited liability companies, political committees, or political parties.

3.4. "Candidate" means an individual who seeks nomination for election or election to public office, and includes:

- a. An individual holding public office;
- b. An individual who has publicly declared that individual's candidacy for nomination for election or election to public office or has filed or accepted a nomination for public office;
- c. An individual who has formed a campaign or other committee for that individual's candidacy for public office;
- d. An individual who has circulated a nominating petition to have that individual's name placed on the ballot; and
- e. An individual who has, in any manner, solicited or received a contribution for that individual's candidacy for public office, whether before or after the election for that office.

4.5. "Conduit" means a person that is not a political party, political committee, or candidate and which receives a contribution of money and transfers the contribution to a candidate, political party, or political committee when the contribution is designated specifically for the candidate, political party, or political committee and the person has no discretion as to the recipient and the amount transferred. The term includes a

1 transactional intermediary, including a credit card company or a money transfer
2 service that pays or transfers money to a candidate on behalf of another person.

3 5.6. "Contribution" means a gift, transfer, conveyance, provision, receipt, subscription,
4 loan, advance, deposit of money, or anything of value, made for the purpose of
5 influencing the nomination for election, or election, of any person to public office or
6 aiding or opposing the circulation or passage of a statewide initiative or referendum
7 petition or measure. The term also means a contract, promise, or agreement, express
8 or implied, whether or not legally enforceable, to make a contribution for any of the
9 above purposes. The term includes funds received by a candidate for public office or a
10 political party or committee which are transferred or signed over to that candidate,
11 party, or committee from another candidate, party, or political committee or other
12 source including a conduit. The term "anything of value" includes any good or service
13 of more than a nominal value. The term "nominal value" means the cost, price, or
14 worth of the good or service is trivial, token, or of no appreciable value. The term
15 "contribution" does not include:

- 16 a. A loan of money from a bank or other lending institution made in the regular
17 course of business.
18 b. Time spent by volunteer campaign or political party workers.
19 c. Money or anything of value received for commercial transactions, including rents,
20 advertising, or sponsorships made as a part of a fair market value bargained-for
21 exchange.
22 d. Money or anything of value received for anything other than a political purpose.
23 e. Products or services for which the actual cost or fair market value are reimbursed
24 by a payment of money.
25 f. An independent expenditure.
26 g. The value of advertising paid by a political party, multicandidate political
27 committee, or caucus which is in support of a candidate.
28 h. In-kind contributions from a candidate to the candidate's campaign.

29 6.7. "Cooperative corporations", "corporations", and "limited liability companies" are as
30 defined in this code, and for purposes of this chapter "corporations" includes nonprofit
31 corporations. However, if a political committee, the only purpose of which is accepting

contributions and making expenditures for a political purpose, incorporates for liability purposes only, the committee is not considered a corporation for the purposes of this chapter.

7.8. "Expenditure" means:

- a. A gift, transfer, conveyance, provision, loan, advance, payment, distribution, disbursement, outlay, or deposit of money or anything of value, except a loan of money from a bank or other lending institution made in the regular course of business, made for a political purpose or for the purpose of influencing the passage or defeat of a measure.
- b. A contract, promise, or agreement, express or implied, whether or not legally enforceable, to make any expenditure.
- c. The transfer of funds by a political committee to another political committee.
- d. An independent expenditure.

8.9. "Expenditure categories" means the categories into which expenditures must be grouped for reports under this chapter. The expenditure categories are:

- a. Advertising;
- b. Campaign loan repayment;
- c. Operations;
- d. Travel; and
- e. Miscellaneous.

9.10. "Independent expenditure" means an expenditure made for a political purpose or for the purpose of influencing the passage or defeat of a measure if the expenditure is made without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of, any candidate, committee, or political party.

10.11. "Patron" means a person who owns equity interest in the form of stock, shares, or membership or maintains similar financial rights in a cooperative corporation.

11.12. "Person" means an individual, partnership, political committee, association, corporation, cooperative corporation, limited liability company, or other organization or group of persons.

- 1 12.13. "Personal benefit" means a benefit to the candidate or another person which is not for
2 a political purpose or related to a candidate's responsibilities as a public officeholder,
3 and any other benefit that would convert a contribution to personal income.
- 4 13.14. "Political committee" means any committee, club, association, or other group of
5 persons which receives contributions or makes expenditures for political purposes and
6 includes:
- 7 a. A political action committee not connected to another organization and free to
8 solicit funds from the general public, or derived from a corporation, cooperative
9 corporation, limited liability company, affiliate, subsidiary, or an association that
10 solicits or receives contributions from its employees or members or makes
11 expenditures for political purposes on behalf of its employees or members;
 - 12 b. A candidate committee established to support an individual candidate seeking
13 public office which solicits or receives contributions for political purposes;
 - 14 c. A political organization registered with the federal election commission, which
15 solicits or receives contributions or makes expenditures for political purposes;
 - 16 d. A multicandidate political committee, including a caucus, established to support
17 multiple groups or slates of candidates seeking public office, which solicits or
18 receives contributions for political purposes; and
 - 19 e. A measure committee, including an initiative or referendum sponsoring
20 committee at any stage of its organization, which solicits or receives contributions
21 or makes expenditures for the purpose of aiding or opposing a measure sought
22 to be voted upon by the voters of the state, including any activities undertaken for
23 the purpose of drafting an initiative or referendum petition, seeking approval of
24 the secretary of state for the circulation of a petition, or seeking approval of the
25 submitted petitions.
- 26 14.15. "Political party" means any association, committee, or organization which nominates a
27 candidate for election to any office which may be filled by a vote of the electors of this
28 state or any of its political subdivisions and whose name appears on the election ballot
29 as the candidate of such association, committee, or organization.
- 30 15.16. "Political purpose" means any activity undertaken in support of or in opposition to the
31 election or nomination of a candidate to public office and includes using "vote for",

"oppose", or any similar support or opposition language in any advertisement whether the activity is undertaken by a candidate, a political committee, a political party, or any person. In the period thirty days before a primary election and sixty days before a special or general election, "political purpose" also means any activity in which a candidate's name, office, district, or any term meaning the same as "incumbent" or "challenger" is used in support of or in opposition to the election or nomination of a candidate to public office. The term does not include activities undertaken in the performance of a duty of a public office or any position taken in any bona fide news story, commentary, or editorial.

16.17. "Public office" means every office to which an individual can be elected by vote of the people under the laws of this state.

17.18. "Subsidiary" means an affiliate of a corporation under the control of the corporation directly or indirectly through one or more intermediaries.

19.18. "Ultimate and true source" means the person ~~who~~that knowingly contributed over two hundred dollars, adjusted for inflation, solely to influence a statewide election or an election for the legislative assembly.

SECTION 2. AMENDMENT. Subsection 4 of section ~~16.1~~ ~~08.1~~ ~~02.1~~ of the North Dakota Century Code is amended and reenacted as follows:

~~4.~~ The statement filed according to this section must show the following:

~~a.~~ The balance of the filer's convention accounts at the start and close of the reporting period;

~~b.~~ The total of all revenue received and expenditures made of two hundred dollars, adjusted for inflation, or less;

~~c.~~ The total of all revenue received and expenditures made in excess of two hundred dollars, adjusted for inflation;

~~d.~~ For each aggregated revenue received from a person in excess of two hundred dollars, adjusted for inflation:

~~(1)~~ The name of each person;

~~(2)~~ The mailing address of each person;

~~(3)~~ The date of the most recent receipt of revenue from each person; and

1 ~~_____ (4) The purpose or purposes for which the aggregated revenue total was~~
2 ~~received from each person;~~

3 ~~_____ e. For each aggregated expenditure made to a person in excess of two hundred~~
4 ~~dollars, adjusted for inflation;~~

5 ~~_____ (1) The name of each person or entity;~~

6 ~~_____ (2) The mailing address of each person or entity;~~

7 ~~_____ (3) The date of the most recent expense made to each person or entity; and~~

8 ~~_____ (4) The purpose or purposes for which the aggregated expenditure total was~~
9 ~~disbursed to each person or entity; and~~

10 ~~_____ f. For each aggregated revenue from an individual which totals five thousand~~
11 ~~dollars, adjusted for inflation, or more during the reporting period, the occupation,~~
12 ~~employer, and principal place of business of the individual must be disclosed.~~

13 ~~_____ **SECTION 3. AMENDMENT.** Section 16.1-08.1-02.3 of the North Dakota Century Code is~~
14 ~~amended and reenacted as follows:~~

15 ~~_____ **16.1-08.1-02.3. Pre-election, supplemental, and year-end campaign disclosure**~~
16 ~~**statement requirements for candidates, candidate committees, multicandidate**~~
17 ~~**committees, and nonstatewide political parties.**~~

18 ~~_____ 1. Prior to the thirty first day before a primary, general, or special election, a candidate or~~
19 ~~candidate committee formed on behalf of the candidate, a multicandidate political~~
20 ~~committee, or a political party other than a statewide political party soliciting or~~
21 ~~accepting contributions shall file a campaign disclosure statement that includes all~~
22 ~~contributions received from January first through the fortieth day before the election. A~~
23 ~~candidate whose name is not on the ballot and who is not seeking election through~~
24 ~~write in votes, the candidate's candidate committee, and a political party that has not~~
25 ~~endorsed or nominated any candidate in the election is not required to file a statement~~
26 ~~under this subsection. The statement may be submitted for filing beginning on the~~
27 ~~thirty ninth day before the election. The statement must include:~~

28 ~~_____ a. For each aggregated contribution from a contributor which totals in excess of two~~
29 ~~hundred dollars, adjusted for inflation, received during the reporting period:~~

30 ~~_____ (1) The name and mailing address of the contributor;~~

31 ~~_____ (2) The total amount of the contribution, and~~

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- 1 ~~(3) The date the last contributed amount was received;~~
- 2 ~~b. The total of all aggregated contributions from contributors which total in excess of~~
- 3 ~~two hundred dollars, adjusted for inflation, during the reporting period;~~
- 4 ~~c. The total of all contributions received from contributors that contributed two~~
- 5 ~~hundred dollars, adjusted for inflation, or less each during the reporting period;~~
- 6 ~~and~~
- 7 ~~d. For a statewide candidate, a candidate committee formed on behalf of a~~
- 8 ~~statewide candidate, and a statewide multicandidate committee, the balance of~~
- 9 ~~the campaign fund on the fortieth day before the election and the balance of the~~
- 10 ~~campaign fund on January first.~~
- 11 ~~2. Beginning on the thirty ninth day before the election through the day before the~~
- 12 ~~election, a person that files a statement under subsection 1 must file a supplemental~~
- 13 ~~statement within forty eight hours of the start of the day following the receipt of a~~
- 14 ~~contribution or aggregate contribution from a contributor which is in excess of five~~
- 15 ~~hundred dollars, adjusted for inflation. The statement must include:~~
- 16 ~~a. The name and mailing address of the contributor;~~
- 17 ~~b. The total amount of the contribution received during the reporting period; and~~
- 18 ~~c. The date the last contributed amount was received.~~
- 19 ~~3. Prior to February first, a candidate or candidate committee, a multicandidate political~~
- 20 ~~committee, or a nonstatewide political party soliciting or accepting contributions shall~~
- 21 ~~file a campaign disclosure statement that includes all contributions received and~~
- 22 ~~expenditures, by expenditure category, made from January first through December~~
- 23 ~~thirty first of the previous year. The statement may be submitted for filing beginning on~~
- 24 ~~January first. The statement must include:~~
- 25 ~~a. For a statewide candidate, a candidate committee formed on behalf of a~~
- 26 ~~statewide candidate, and a statewide multicandidate committee, the balance of~~
- 27 ~~the campaign fund on January first and on December thirty first;~~
- 28 ~~b. For each aggregated contribution from a contributor which totals in excess of two~~
- 29 ~~hundred dollars, adjusted for inflation, received during the reporting period:~~
- 30 ~~(1) The name and mailing address of the contributor;~~
- 31 ~~(2) The total amount of the contribution; and~~

- 1 ~~_____ (3) The date the last contributed amount was received;~~
- 2 ~~_____ e. The total of all aggregated contributions from contributors which total in excess of~~
- 3 ~~two hundred dollars, adjusted for inflation, during the reporting period;~~
- 4 ~~_____ d. The total of all contributions received from contributors that contributed two~~
- 5 ~~hundred dollars, adjusted for inflation, or less each during the reporting period;~~
- 6 ~~and~~
- 7 ~~_____ e. The total of all other expenditures made during the previous year, separated into~~
- 8 ~~expenditure categories.~~
- 9 ~~_____ 4. A person required to file a statement under this section, other than a candidate for~~
- 10 ~~judicial office, county office, or city office, or a candidate committee for a candidate~~
- 11 ~~exempted under this subsection, shall report each aggregated contribution from a~~
- 12 ~~contributor which totals five thousand dollars, adjusted for inflation, or more during the~~
- 13 ~~reporting period. For these contributions from individuals, the statement must include~~
- 14 ~~the contributor's occupation, employer, and the employer's principal place of business.~~
- 15 ~~_____ 5. A candidate for city office in a city with a population under five thousand and a~~
- 16 ~~candidate committee for the candidate are exempt from this section. _____~~
- 17 ~~_____ 6. A candidate for county office and a candidate committee for a candidate for county~~
- 18 ~~office shall file statements under this chapter with the county auditor. A candidate for~~
- 19 ~~city office who is required to file a statement under this chapter and a candidate~~
- 20 ~~committee for such a candidate shall file statements with the city auditor. Any other~~
- 21 ~~person required to file a statement under this section shall file the statement with the~~
- 22 ~~secretary of state.~~
- 23 ~~_____ 7. The filing officer shall assess and collect fees for any reports filed after the filing~~
- 24 ~~deadline.~~
- 25 ~~_____ 8. To ensure accurate reporting and avoid commingling of campaign and personal funds,~~
- 26 ~~candidates shall use dedicated campaign accounts that are separate from any personal _____~~
- 27 ~~accounts.~~
- 28 ~~_____ **SECTION 4. AMENDMENT.** Section 16.1-08.1-02.4 of the North Dakota Century Code is~~
- 29 ~~amended and reenacted as follows:~~

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**~~16.1 08.1 02.4. Pre election, supplemental, and year end campaign disclosure
statement requirements for statewide political parties and certain political committees.~~**

~~1. Prior to the thirty first day before a primary, general, or special election, a statewide political party or a political committee not required to file statements under section 16.1 08.1 02.3 which is soliciting or accepting contributions shall file a campaign disclosure statement that includes all contributions received and expenditures made from January first through the fortieth day before the election. A political party that has not endorsed or nominated a candidate in an election is not required to file a statement under this subsection. A statement required to be filed under this subsection may be submitted for filing beginning on the thirty ninth day before the election. The statement must include:~~

~~a. For each aggregated contribution from a contributor which totals in excess of two hundred dollars, adjusted for inflation, received during the reporting period:~~

~~(1) The name and mailing address of the contributor;~~

~~(2) The total amount of the contribution; and~~

~~(3) The date the last contributed amount was received;~~

~~b. The total of all aggregated contributions from contributors which total in excess of two hundred dollars, adjusted for inflation, during the reporting period;~~

~~c. The total of all contributions received from contributors that contributed two hundred dollars, adjusted for inflation, or less each during the reporting period;~~

~~d. For each recipient of an expenditure from campaign funds in excess of two hundred dollars, adjusted for inflation, in the aggregate:~~

~~(1) The name and mailing address of the recipient;~~

~~(2) The total amount of the expenditure made to the recipient; and~~

~~(3) The date the last expended amount was made to the recipient;~~

~~e. The aggregate total of all expenditures from campaign funds in excess of two hundred dollars, adjusted for inflation;~~

~~f. The aggregate total of all expenditures from campaign funds of two hundred dollars, adjusted for inflation, or less; and~~

~~g. The balance of the campaign fund on the fortieth day before the election and balance of the campaign fund on January first.~~

- 1 ~~2. Beginning on the thirty ninth day before the election through the day before the~~
- 2 ~~election, a person that files a statement under subsection 1 must file a supplemental~~
- 3 ~~statement within forty eight hours of the start of the day following the receipt of a~~
- 4 ~~contribution or aggregate contribution from a contributor which is in excess of five~~
- 5 ~~hundred dollars, adjusted for inflation. The statement must include:~~
- 6 ~~a. The name and mailing address of the contributor;~~
- 7 ~~b. The total amount of the contribution received during the reporting period; and~~
- 8 ~~c. The date the last contributed amount was received.~~
- 9 ~~3. Prior to February first, a statewide political party or a political committee that is not~~
- 10 ~~required to file a statement under section 16.1-08.1 2.3 shall file a campaign~~
- 11 ~~disclosure statement that includes all contributions received and expenditures made~~
- 12 ~~from January first through December thirty first of the previous year. The statement~~
- 13 ~~may be submitted for filing beginning on January first. The statement must include:~~
- 14 ~~a. For each aggregated contribution from a contributor which totals in excess of two~~
- 15 ~~hundred dollars, adjusted for inflation, received during the reporting period:~~
- 16 ~~(1) The name and mailing address of the contributor;~~
- 17 ~~(2) The total amount of the contribution; and~~
- 18 ~~(3) The date the last contributed amount was received;~~
- 19 ~~b. The total of all aggregated contributions from contributors which total in excess of~~
- 20 ~~two hundred dollars, adjusted for inflation, during the reporting period;~~
- 21 ~~c. The total of all contributions received from contributors that contributed two~~
- 22 ~~hundred dollars, adjusted for inflation, or less each during the reporting period;~~
- 23 ~~d. For each recipient of an expenditure from campaign funds in excess of two~~
- 24 ~~hundred dollars, adjusted for inflation, in the aggregate:~~
- 25 ~~(1) The name and mailing address of the recipient;~~
- 26 ~~(2) The total amount of the expenditure made to the recipient; and~~
- 27 ~~(3) The date the last expended amount was made to the recipient;~~
- 28 ~~e. The aggregate total of all expenditures from campaign funds in excess of two~~
- 29 ~~hundred dollars, adjusted for inflation;~~
- 30 ~~f. The aggregate total of all expenditures from campaign funds of two hundred~~
- 31 ~~dollars, adjusted for inflation, or less; and~~

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- 1 ~~g. The balance of the campaign fund on January first and December thirty first.~~
- 2 ~~4. A person required to file a statement under this section shall disclose each aggregated~~
- 3 ~~contribution from a contributor which totals five thousand dollars, adjusted for inflation,~~
- 4 ~~or more during the reporting period. For these contributions from individuals, the~~
- 5 ~~statement must include the contributor's occupation, employer, and the employer's~~
- 6 ~~principal place of business.~~
- 7 ~~5. Statements under this section must be filed with the secretary of state.~~
- 8 ~~6. The secretary of state shall assess and collect fees for any reports filed after the filing~~
- 9 ~~deadline.~~
- 10 ~~**SECTION 5. AMENDMENT.** Section 16.1 08.1 03.1 of the North Dakota Century Code is~~
- 11 ~~amended and reenacted as follows:~~
- 12 ~~**16.1 08.1 03.1. Special requirements for statements required of persons engaged in**~~
- 13 ~~**activities regarding ballot measures.**~~
- 14 ~~1. For each reportable contribution and expenditure under section 16.1 08.1 02.4, the~~
- 15 ~~threshold for reporting is one hundred dollars, adjusted for inflation, for any person~~
- 16 ~~engaged in activities described in subdivision e of subsection 1314 of section~~
- 17 ~~16.1 08.1 01.~~
- 18 ~~2. For contributions received from an out of state contributor, a person engaged in~~
- 19 ~~activities described in subdivision e of subsection 1314 of section 16.1 08.1 01 shall~~
- 20 ~~include the following information regarding each subcontributor that has stated a~~
- 21 ~~contribution is for the express purpose of furthering the passage or defeat of a ballot~~
- 22 ~~measure in the statements required under section 16.1 08.1 02.4:~~
- 23 ~~a. A designation as to whether any person contributed in excess of one hundred~~
- 24 ~~dollars, adjusted for inflation, of the total contribution;~~
- 25 ~~b. The name and mailing address of each subcontributor that contributed in excess~~
- 26 ~~of one hundred dollars, adjusted for inflation, of the total contribution;~~
- 27 ~~c. The contribution amounts of each disclosed subcontributor; and~~
- 28 ~~d. The occupation, employer, and address for the employer's principal place of~~
- 29 ~~business of each disclosed subcontributor.~~
- 30 ~~3. An initiative and referendum sponsoring committee also shall file a disclosure~~
- 31 ~~statement by the date the secretary of state approves the petition for circulation, and~~

shall file an additional statement on the date the petitions containing the required number of signatures are submitted to the secretary of state for review. The statements required under this subsection must be in the same form as the year end statements under section 16.1-08.1-02.4.

~~4. A sponsoring committee shall file a statement regarding its intent to compensate circulators before paying for petitions to be circulated.~~

SECTION 2. AMENDMENT. Section 16.1-08.1-03.7 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-03.7. Political committees that organize and register according to federal law that make independent expenditures or disbursements to nonfederal candidates, political parties, and political committees.

A political committee that organizes and registers according to federal law and makes an independent expenditure or makes a disbursement in excess of two hundred dollars to a nonfederal candidate seeking public office or to a political party or political committee in this state shall file a copy of that portion of the committee's federal report detailing the independent expenditure or the disbursement made. The political committee shall file a copy of the committee's federal report, and supplementary information as necessary under this section, with the secretary of state at the time of filing the report with the applicable federal agency. The report and supplementary information must include:

1. The name, mailing address, and treasurer of the political committee;
2. The recipient's name and mailing address; ~~and~~
3. The date and amount of the independent expenditure or disbursement; and
4. The ultimate and true source of funds listed by contributor and subcontributor of any amount over two hundred dollars collected or used to make the independent expenditure or disbursement including:
 - a. The name and address of the contributor;
 - b. The total amount of the contribution; and
 - c. The date the last contribution was received.

SECTION 3. AMENDMENT. Section 16.1-08.1-04.1 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-04.1. Personal use of contributions prohibited.

1. A candidate may not use any contribution received by the candidate, the candidate's candidate committee, or a multicandidate political committee to:

- 1- a. Give a personal benefit to the candidate or another person;
- 2- b. Make a loan to another person;
- 3- c. Knowingly pay more than the fair market value for goods or services purchased for the campaign; or
- 4- d. Pay a criminal fine or civil penalty.

2. ~~For the first violation, the secretary of state shall assess a civil penalty of five hundred dollars upon any person who knowingly violates this section. The assessment of a civil penalty may be appealed to the district court of Burleigh County. For a second and subsequent knowing violation of this section, the person is guilty of a class B misdemeanor. The secretary of state shall assess a civil penalty upon any person that knowingly violates this section.~~

a. If the contribution used in violation of this section has a value of two thousand five hundred dollars or more, the civil penalty must be two times the value of the contribution.

b. If the contribution used in violation of this section has a value of less than two thousand five hundred dollars, the civil penalty must be at least two times the value of the contribution and may be up to five thousand dollars.

3. The assessment of a civil penalty may be appealed to the district court of the county where the candidate resides.

SECTION 4. AMENDMENT. Section 16.1-08.1-06.2 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-06.2. Secretary of state to provide instructions, make adjustments for inflation, and conduct training.

The secretary of state shall provide instructions and conduct training for the purpose of promoting uniform application of campaign finance and disclosure requirements and the uniform filing of statements, registrations, or reports according to this chapter. The secretary also shall determine adjustments for inflation of the reporting thresholds in this chapter and instruct persons submitting reports under this chapter of the adjustments. On January first of each year,

1 the secretary shall determine whether the accumulated change in the consumer price index for
2 all urban consumers (all items, United States city average), as applied to each reporting
3 threshold in this chapter, would result in an adjustment of at least ten dollars of the threshold in
4 effect on that date. If so, the secretary shall deem the reporting threshold adjusted by ten
5 dollars.

6 **SECTION 5.** A new section to chapter 16.1-08.1 of the North Dakota Century Code is
7 created and enacted as follows:

8 **Ultimate and true source of funds - Required identification - Penalty.**

- 9 1. In any ~~report~~statement under this chapter which requires the identification of a
10 contributor or subcontributor, the ultimate and true source of funds must be identified.
11 2. A resident taxpayer may commence an action in a district court of this state against a
12 person required to comply with this section to compel compliance if all other
13 enforcement measures under this chapter have been exhausted and the taxpayer
14 reasonably believes the person has failed to comply with this section. ~~A failure to~~
15 ~~comply with this section must be proved by clear and convincing evidence.~~

16 **SECTION 6. AMENDMENT.** Section 28-32-01 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **28-32-01. Definitions.**

19 In this chapter, unless the context or subject matter otherwise provides:

- 20 1. "Adjudicative proceeding" means an administrative matter resulting in an agency
21 issuing an order after an opportunity for hearing is provided or required. An
22 adjudicative proceeding includes administrative matters involving a hearing on a
23 complaint against a specific-named respondent; a hearing on an application seeking a
24 right, privilege, or an authorization from an agency, such as a ratemaking or licensing
25 hearing; or a hearing on an appeal to an agency. An adjudicative proceeding includes
26 reconsideration, rehearing, or reopening. Once an adjudicative proceeding has begun,
27 the adjudicative proceeding includes any informal disposition of the administrative
28 matter under section 28-32-22 or another specific statute or rule, unless the matter
29 has been specifically converted to another type of proceeding under section 28-32-22.
30 An adjudicative proceeding does not include a decision or order to file or not to file a
31 complaint, or to initiate an investigation, an adjudicative proceeding, or any other

proceeding before the agency, or another agency, or a court. An adjudicative proceeding does not include a decision or order to issue, reconsider, or reopen an order that precedes an opportunity for hearing or that under another section of this code is not subject to review in an adjudicative proceeding. An adjudicative proceeding does not include rulemaking under this chapter.

2. "Administrative agency" or "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an administrative agency must be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:

- a. The office of management and budget except with respect to rules made under section 32-12.2-14, rules relating to conduct on the capitol grounds and in buildings located on the capitol grounds under section 54-21-18, rules relating to the classified service as authorized under section 54-44.3-07, and rules relating to state purchasing practices as required under section 54-44.4-04.
- b. The adjutant general with respect to the department of emergency services.
- c. The council on the arts.
- d. The state auditor.
- e. The department of commerce with respect to the division of economic development and finance.
- f. The dairy promotion commission.
- g. The education factfinding commission.
- h. The educational technology council.
- i. The board of equalization.
- j. The board of higher education.
- k. The Indian affairs commission.
- l. The industrial commission with respect to the activities of the Bank of North Dakota, North Dakota housing finance agency, public finance authority, North

- 1 Dakota mill and elevator association, North Dakota farm finance agency, the
2 North Dakota transmission authority, and the North Dakota pipeline authority.
- 3 m. The department of corrections and rehabilitation except with respect to the
4 activities of the division of adult services under chapter 54-23.4.
- 5 n. The pardon advisory board.
- 6 o. The parks and recreation department.
- 7 p. The parole board.
- 8 q. The state fair association.
- 9 r. The attorney general with respect to activities of the state toxicologist and the
10 state crime laboratory.
- 11 s. The administrative committee on veterans' affairs except with respect to rules
12 relating to the supervision and government of the veterans' home and the
13 implementation of programs or services provided by the veterans' home.
- 14 t. The industrial commission with respect to the lignite research fund except as
15 required under section 57-61-01.5.
- 16 u. The attorney general with respect to guidelines adopted under section 12.1-32-15
17 for the risk assessment of sexual offenders, the risk level review process, and
18 public disclosure of information under section 12.1-32-15.
- 19 v. The commission on legal counsel for indigents.
- 20 w. The attorney general with respect to twenty-four seven sobriety program
21 guidelines and program fees.
- 22 x. The industrial commission with respect to approving or setting water rates under
23 chapter 61-40.
- 24 3. "Agency head" means an individual or body of individuals in whom the ultimate legal
25 authority of the agency is vested by law.
- 26 4. "Commission" means the North Dakota ethics commission established by article XIV
27 of the Constitution of North Dakota.
- 28 5. "Complainant" means any person who files a complaint before an administrative
29 agency pursuant to section 28-32-21 and any administrative agency that, when
30 authorized by law, files such a complaint before such agency or any other agency.

1 ~~5-6.~~ "Hearing officer" means any agency head or one or more members of the agency
2 head when presiding in an administrative proceeding, or, unless prohibited by law, one
3 or more other persons designated by the agency head to preside in an administrative
4 proceeding, an administrative law judge from the office of administrative hearings, or
5 any other person duly assigned, appointed, or designated to preside in an
6 administrative proceeding pursuant to statute or rule.

7 ~~6-7.~~ "License" means a franchise, permit, certification, approval, registration, charter, or
8 similar form of authorization required by law.

9 ~~7-8.~~ "Order" means any agency action of particular applicability which determines the legal
10 rights, duties, privileges, immunities, or other legal interests of one or more specific
11 persons. The term does not include an executive order issued by the governor.

12 ~~8-9.~~ "Party" means each person named or admitted as a party or properly seeking and
13 entitled as of right to be admitted as a party. An administrative agency may be a party.
14 In a hearing for the suspension, revocation, or disqualification of an operator's license
15 under title 39, the term may include each city and each county in which the alleged
16 conduct occurred, but the city or county may not appeal the decision of the hearing
17 officer.

18 ~~9-10.~~ "Person" includes an individual, association, partnership, corporation, limited liability
19 company, the commission, a state governmental agency or governmental subdivision,
20 or an agency of such governmental subdivision.

21 ~~10-11.~~ "Relevant evidence" means evidence having any tendency to make the existence of
22 any fact that is of consequence to the determination of the administrative action more
23 probable or less probable than it would be without the evidence.

24 ~~11-12.~~ "Rule" means the whole or a part of an agency or commission statement of general
25 applicability which implements or prescribes law or policy or the organization,
26 procedure, or practice requirements of the agency or commission. The term includes
27 the adoption of new rules and the amendment, repeal, or suspension of an existing
28 rule. The term does not include:

29 a. A rule concerning only the internal management of an agency or the commission
30 which does not directly or substantially affect the substantive or procedural rights
31 or duties of any segment of the public.

- 1 b. A rule that sets forth criteria or guidelines to be used by the staff of an agency or
2 the commission in the performance of audits, investigations, inspections, and
3 settling commercial disputes or negotiating commercial arrangements, or in the
4 defense, prosecution, or settlement of cases, if the disclosure of the
5 statementrule would:
- 6 (1) Enable law violators to avoid detection;
7 (2) Facilitate disregard of requirements imposed by law; or
8 (3) Give a clearly improper advantage to persons who are in an adverse
9 position to the state.
- 10 c. A rule establishing specific prices to be charged for particular goods or services
11 sold by an agency.
- 12 d. A rule concerning only the physical servicing, maintenance, or care of
13 agency-owned ~~or~~ agency-operated, commission-owned, or commission-operated
14 facilities or property.
- 15 e. A rule relating only to the use of a particular facility or property owned, operated,
16 or maintained by the state or any of its subdivisions, if the substance of the rule is
17 adequately indicated by means of signs or signals to persons who use the facility
18 or property.
- 19 f. A rule concerning only inmates of a correctional or detention facility, students
20 enrolled in an educational institution, or patients admitted to a hospital, if adopted
21 by that facility, institution, or hospital.
- 22 g. A form whose contents or substantive requirements are prescribed by rule or
23 statute or are instructions for the execution or use of the form.
- 24 h. An agency or commission budget.
- 25 i. An opinion of the attorney general.
- 26 j. A rule adopted by an agency selection committee under section 54-44.7-03.
- 27 k. Any material, including a guideline, interpretive statement, statement of general
28 policy, manual, brochure, or pamphlet, which is explanatory and not intended to
29 have the force and effect of law.

30 **SECTION 6. AMENDMENT.** Section 28-32-02 of the North Dakota Century Code is
31 amended and reenacted as follows:

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~~28-32-02. Rulemaking power of agency authority. Organizational rule.~~

~~1. The authority of an administrative agency to adopt administrative rules is authority delegated by the legislative assembly. As part of that delegation, the legislative assembly reserves to itself the authority to determine when and if rules of administrative agencies are effective. Every administrative agency may adopt, amend, or repeal reasonable rules in conformity with this chapter and any statute administered or enforced by the agency.~~

~~2. In addition to other rulemaking requirements imposed by law, each agency may include in its rules a description of that portion of its organization and functions subject to this chapter and may include a statement of the general course and method of its operations and how the public may obtain information or make submissions or requests.~~

~~3. The authority of the commission to adopt rules arises from article XIV of the Constitution of North Dakota. The commission shall follow the process, and meet the requirements, as specified in this chapter to adopt, amend, or repeal its rules.~~

SECTION 7. AMENDMENT. Section 28-32-03 of the North Dakota Century Code is amended and reenacted as follows:

28-32-03. Emergency rules.

1. If the ~~commission or an~~ agency, with the approval of the governor, or the commission finds that emergency rulemaking is necessary, the commission or agency may declare the proposed rule to be an interim final rule effective on a date no earlier than the date of filing with the legislative council of the notice required by section 28-32-10.
2. A proposed rule may be given effect on an emergency basis under this section if any of the following grounds exists regarding that rule:
 - a. Imminent peril threatens public health, safety, or welfare, which would be abated by emergency effectiveness;
 - b. A delay in the effective date of the rule is likely to cause a loss of funds appropriated to support a duty imposed by law upon the commission or agency;
 - c. Emergency effectiveness is reasonably necessary to avoid a delay in implementing an appropriations measure; or
 - d. Emergency effectiveness is necessary to meet a mandate of federal law.

- 1 3. A final rule adopted after consideration of all written and oral submissions respecting
2 the interim final rule, which is substantially similar to the interim final rule, is effective
3 as of the declared effective date of the interim final rule.
- 4 4. The commission's or agency's finding, and a brief statement of the commission's or
5 agency's reasons for the finding, must be filed with the legislative council with the final
6 adopted emergency rule.
- 7 5. The commission or agency shall attempt to make interim final rules known to persons
8 who the commission or agency can reasonably be expected to believe may have a
9 substantial interest in them. As used in this subsection, "substantial interest" means an
10 interest in the effect of the rules which surpasses the common interest of all citizens.
- 11 ~~An~~ The commission or an agency adopting emergency rules shall comply with the
12 notice requirements of section 28-32-10 which relate to emergency rules and shall
13 provide notice to the chairman of the administrative rules committee of the emergency
14 status, declared effective date, and grounds for emergency status of the rules under
15 subsection 2. When notice of emergency rule adoption is received, the legislative
16 council shall publish the notice and emergency rules on its website.
- 17 6. An interim final rule is ineffective one hundred eighty days after its declared effective
18 date unless first adopted as a final rule.

19 **SECTION 8. AMENDMENT.** Section 28-32-06 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **28-32-06. Force and effect of rules.**

22 Upon becoming effective, rules have the force and effect of law until amended or repealed
23 by the agency or commission, declared invalid by a final court decision, suspended or found to
24 be void by the administrative rules committee, or determined repealed by the legislative council
25 because the authority for adoption of the rules is repealed or transferred to another agency, ~~or~~
26 ~~the Constitution of North Dakota is amended to eliminate the authority.~~

27 **SECTION 9. AMENDMENT.** Section 28-32-07 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **28-32-07. Deadline for rules to implement statutory change.**

30 Any rule change, including a creation, amendment, or repeal, made to implement a
31 statutory change must be adopted and filed with the legislative council within nine months of the

1 effective date of the statutory change. If an agency or the commission needs additional time for
2 the rule change, a request for additional time must be made to the legislative council. The
3 legislative council may extend the time within which the agency or commission must adopt the
4 rule change if the request by the agency or commission is supported by evidence that the
5 agency or commission needs more time through no deliberate fault of its own.

6 **SECTION 10. AMENDMENT.** Section 28-32-08 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **28-32-08. Regulatory analysis.**

- 9 1. An agency or the commission shall issue a regulatory analysis of a proposed rule if:
 - 10 a. Within twenty days after the last published notice date of a proposed rule
11 hearing, a written request for the analysis is filed by the governor or a member of
12 the legislative assembly; or
 - 13 b. The proposed rule is expected to have an impact on the regulated community in
14 excess of fifty thousand dollars. The analysis under this subdivision must be
15 available on or before the first date of public notice as provided for in section
16 28-32-10.
- 17 2. The regulatory analysis must contain:
 - 18 a. A description of the classes of persons who probably will be affected by the
19 proposed rule, including classes that will bear the costs of the proposed rule and
20 classes that will benefit from the proposed rule;
 - 21 b. A description of the probable impact, including economic impact, of the proposed
22 rule;
 - 23 c. The probable costs to the agency or commission of the implementation and
24 enforcement of the proposed rule and any anticipated effect on state revenues;
25 and
 - 26 d. A description of any alternative methods for achieving the purpose of the
27 proposed rule that were seriously considered by the agency or commission and
28 the reasons why the methods were rejected in favor of the proposed rule.
- 29 3. Each regulatory analysis must include quantification of the data to the extent
30 practicable.

1 4. The agency or commission shall mail or deliver a copy of the regulatory analysis to
2 any person who requests a copy of the regulatory analysis. The agency or commission
3 may charge a fee for a copy of the regulatory analysis as allowed under section
4 44-04-18.

5 5. If required under subsection 1, the preparation and issuance of a regulatory analysis is
6 a mandatory duty of the agency or commission proposing a rule. Errors in a regulatory
7 analysis, including erroneous determinations concerning the impact of the proposed
8 rule on the regulated community, are not a ground upon which the invalidity of a rule
9 may be asserted or declared.

10 **SECTION 11. AMENDMENT.** Section 28-32-08.1 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **28-32-08.1. Rules affecting small entities - Analysis - Economic impact statements -**
13 **Judicial review.**

14 1. As used in this section:

15 a. "Small business" means a business entity, including its affiliates, which:

16 (1) Is independently owned and operated; and

17 (2) Employs fewer than twenty-five full-time employees or has gross annual
18 sales of less than two million five hundred thousand dollars;

19 b. "Small entity" includes small business, small organization, and small political
20 subdivision;

21 c. "Small organization" means any not-for-profit enterprise that is independently
22 owned and operated and is not dominant in its field; and

23 d. "Small political subdivision" means a political subdivision with a population of less
24 than five thousand.

25 2. Before adoption of any proposed rule, the adopting agency ~~or the commission~~ shall
26 prepare a regulatory analysis in which, consistent with public health, safety, and
27 welfare, the agency ~~or commission~~ considers utilizing regulatory methods that will
28 accomplish the objectives of applicable statutes while minimizing adverse impact on
29 small entities. The agency ~~or commission~~ shall consider each of the following methods
30 of reducing impact of the proposed rule on small entities:

- 1 a. Establishment of less stringent compliance or reporting requirements for small
- 2 entities;
- 3 b. Establishment of less stringent schedules or deadlines for compliance or
- 4 reporting requirements for small entities;
- 5 c. Consolidation or simplification of compliance or reporting requirements for small
- 6 entities;
- 7 d. Establishment of performance standards for small entities to replace design or
- 8 operational standards required in the proposed rule; and
- 9 e. Exemption of small entities from all or any part of the requirements contained in
- 10 the proposed rule.
- 11 3. Before adoption of any proposed rule that may have an adverse impact on small
- 12 entities, the adopting agency ~~or the commission~~ shall prepare an economic impact
- 13 statement that includes consideration of:
- 14 a. The small entities subject to the proposed rule;
- 15 b. The administrative and other costs required for compliance with the proposed
- 16 rule;
- 17 c. The probable cost and benefit to private persons and consumers who are
- 18 affected by the proposed rule;
- 19 d. The probable effect of the proposed rule on state revenues; and
- 20 e. Any less intrusive or less costly alternative methods of achieving the purpose of
- 21 the proposed rule.
- 22 4. For any rule subject to this section, a small entity that is adversely affected or
- 23 aggrieved by final agency ~~or commission~~ action is entitled to judicial review of agency
- 24 ~~or commission~~ compliance with the requirements of this section. A small entity seeking
- 25 judicial review under this section must file a petition for judicial review within one year
- 26 from the date of final agency ~~or commission~~ action.
- 27 5. This section does not apply to the ethics commission, any agency that is an
- 28 occupational or professional licensing authority, ~~nor does this section apply to~~ and the
- 29 following agencies or divisions of agencies:
- 30 a. Council on the arts.
- 31 b. Beef commission.

- 1 c. Dairy promotion commission.
- 2 d. Dry bean council.
- 3 e. Highway patrolmen's retirement board.
- 4 f. Indian affairs commission.
- 5 g. Board for Indian scholarships.
- 6 h. State personnel board.
- 7 i. Potato council.
- 8 j. Board of public school education.
- 9 k. Real estate trust account committee.
- 10 l. Seed commission.
- 11 m. Soil conservation committee.
- 12 n. Oilseed council.
- 13 o. Wheat commission.
- 14 p. State seed arbitration board.
- 15 q. North Dakota lottery.
- 16 6. This section does not apply to rules mandated by federal law.
- 17 7. The adopting agency ~~or the commission~~ shall provide the administrative rules
- 18 committee copies of any regulatory analysis or economic impact statement, or both,
- 19 prepared under this section when the committee is considering the associated rules.

20 **SECTION 12. AMENDMENT.** Section 28-32-08.2 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **28-32-08.2. Fiscal notes for administrative rules.**

23 When an agency or the commission presents rules for administrative rules committee
24 consideration, the agency or commission shall provide a fiscal note or a statement in its
25 testimony that the rules have no fiscal effect. A fiscal note must reflect the effect of the rules
26 changes on state revenues and expenditures, including any effect on funds controlled by the
27 agency or commission.

28 **SECTION 13. AMENDMENT.** Section 28-32-09 of the North Dakota Century Code is
29 amended and reenacted as follows:

28-32-09. Takings assessment.

1. An agency or the commission shall prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private real property. The agency's assessment must:
 - a. Assess the likelihood that the proposed rule may result in a taking or regulatory taking.
 - b. Clearly and specifically identify the purpose of the proposed rule.
 - c. Explain why the proposed rule is necessary to substantially advance that purpose and why no alternative action is available that would achieve the agency's or commission's goals while reducing the impact on private property owners.
 - d. Estimate the potential cost to the government if a court determines that the proposed rule constitutes a taking or regulatory taking.
 - e. Identify the source of payment within the agency's or commission's budget for any compensation that may be ordered.
 - f. Certify that the benefits of the proposed rule exceed the estimated compensation costs.
2. Any private landowner who is or may be affected by a rule that limits the use of the landowner's private real property may request in writing that the agency or commission reconsider the application or need for the rule. Within thirty days of receiving the request, the agency or commission shall consider the request and shall in writing inform the landowner whether the agency or commission intends to keep the rule in place, modify application of the rule, or repeal the rule.
3. In an agency's analysis of the takings implications of a proposed rule, "taking" means the taking of private real property, as defined in section 47-01-03, by government action which requires compensation to the owner of that property by the fifth or fourteenth amendment to the Constitution of the United States or section 16 of article I of the Constitution of North Dakota. "Regulatory taking" means a taking of real property through the exercise of the police and regulatory powers of the state which reduces the value of the real property by more than fifty percent. However, the exercise of a police or regulatory power does not effect a taking if it substantially

advances legitimate state interests, does not deny an owner economically viable use of the owner's land, or is in accordance with applicable state or federal law.

SECTION 14. AMENDMENT. Section 28-32-10 of the North Dakota Century Code is amended and reenacted as follows:

28-32-10. Notice of rulemaking - Hearing date.

1. An agency or the commission shall prepare a full notice and an abbreviated notice of rulemaking.
 - a. The agency's full notice of the proposed adoption, amendment, or repeal of a rule must include a short, specific explanation of the proposed rule and the purpose of the proposed rule, identify the emergency status and declared effective date of any emergency rules, include a determination of whether the proposed rulemaking is expected to have an impact on the regulated community in excess of fifty thousand dollars, identify at least one location where interested persons may review the text of the proposed rule, provide the address to which written comments concerning the proposed rule may be sent, provide the deadline for submission of written comments, provide a telephone number and post-office or electronic mail address at which a copy of the rules and regulatory analysis may be requested, and, in the case of a substantive rule, provide the time and place set for each oral hearing. ~~The~~ An agency's full notice must include a statement of the bill number and general subject matter of any legislation, enacted during the most recent session of the legislative assembly, which is being implemented by the proposed rule. The commission's full notice must include a statement of the provision of the Constitution of North Dakota or the bill number and general subject matter of any legislation enacted during the most recent session of the legislative assembly which that is being implemented by the proposed rule. The agency's full notice must be filed with the legislative council, accompanied by a copy of the proposed rules.
 - b. The agency or commission shall request publication of an abbreviated newspaper publication notice at least once in each official county newspaper published in this state. The abbreviated newspaper publication of notice must be in a display-type format with a minimum width of one column of approximately

1 two inches [5.08 centimeters] and a minimum depth of approximately three
2 inches [7.62 centimeters] and with a headline describing the general topic of the
3 proposed rules. The notice must also include the telephone number or address to
4 use to obtain a copy of the proposed rules, identification of the emergency status
5 and declared effective date of any emergency rules, the address to use and the
6 deadline to submit written comments, and the location, date, and time of the
7 public hearing on the rules.

8 2. The agency or commission shall mail or deliver by electronic mail a copy of the
9 agency's full notice and proposed rule to each member of the legislative assembly
10 whose name appeared as a sponsor or cosponsor of legislation, enacted during the
11 most recent session of the legislative assembly, which is being implemented by the
12 proposed rule and to each person who has made a timely request to the agency or
13 commission for a copy of the notice and proposed rule. The agency or commission
14 may mail or otherwise provide a copy of the agency's full notice to any person who is
15 likely to be an interested person. The agency or commission may charge persons who
16 are not members of the legislative assembly fees for copies of the proposed rule as
17 allowed under section 44-04-18.

18 3. In addition to the other notice requirements of this subsection, the superintendent of
19 public instruction shall provide notice of any proposed rulemaking by the
20 superintendent of public instruction to each association with statewide membership
21 whose primary focus is elementary and secondary education issues which has
22 requested to receive notice from the superintendent under this subsection and to the
23 superintendent of each public school district in this state, or the president of the school
24 board for school districts that have no superintendent, at least twenty days before the
25 date of the hearing described in the notice. Notice provided by the superintendent of
26 public instruction under this section must be by first-class mail. However, upon request
27 of a group or person entitled to notice under this section, the superintendent of public
28 instruction shall provide the group or person notice by electronic mail.

29 4. The legislative council shall establish standard procedures for the commission and all
30 agencies to follow in complying with the provisions of this section and a procedure to
31 allow any person to request and receive mailed copies of all filings made by agencies

1 and the commission pursuant to this section. The legislative council may charge an
2 annual fee as established by the administrative rules committee for providing copies of
3 the filings.

4 5. At least twenty days must elapse between the date of the publication of the notice and
5 the date of the hearing. Within fifteen business days after receipt of a notice under this
6 section, a copy of the notice must be mailed by the legislative council to any person
7 who has paid the annual fee established under subsection 4.

8 **SECTION 15. AMENDMENT.** Section 28-32-11 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **28-32-11. Conduct of hearings - Notice of administrative rules committee**
11 **consideration - Consideration and written record of comments.**

12 The agency or commission shall adopt a procedure whereby all interested persons are
13 afforded reasonable opportunity to submit data, views, or arguments, orally or in writing,
14 concerning the proposed rule, including data respecting the impact of the proposed rule. The
15 agency or commission shall adopt a procedure to allow interested parties to request and
16 receive notice from the agency or commission of the date and place the rule will be reviewed by
17 the administrative rules committee. In case of substantive rules, the agency or commission shall
18 conduct an oral hearing. The agency or commission shall consider fully all written and oral
19 submissions respecting a proposed rule prior to the adoption, amendment, or repeal of any rule
20 not of an emergency nature. The agency or commission shall make a written record of its
21 consideration of all written and oral submissions contained in the rulemaking record respecting
22 a proposed rule.

23 **SECTION 16. AMENDMENT.** Section 28-32-12 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **28-32-12. Comment period.**

26 The agency or commission shall allow, after the conclusion of any rulemaking hearing, a
27 comment period of at least ten days during which data, views, or arguments concerning the
28 proposed rulemaking will be received by the agency or commission and made a part of the
29 rulemaking record to be considered by the agency or commission.

30 ~~**SECTION 16. AMENDMENT.** Section 28-32-14 of the North Dakota Century Code is~~
31 ~~amended and reenacted as follows:~~

~~28-32-14. Attorney general review of rules.~~

~~Every proposed rule proposed by any administrative agency must be submitted to the attorney general for an opinion as to its legality before final adoption, and the attorney general promptly shall furnish each such opinion. The attorney general may not approve any rule as to legality, and shall advise the agency or commission of any necessary rewording or revision of the rule, when the:~~

~~1. The rule exceeds the statutory authority of the agency, or the statutory or constitutional authority of the commission;~~

~~2. The rule is written in a manner that is not concise or easily understandable; or when the~~

~~3. The procedural requirements for adoption of the rule in this chapter are not substantially met. The attorney general shall advise an agency of any revision or rewording of a rule necessary to correct objections as to legality.~~

SECTION 17. AMENDMENT. Section 28-32-15 of the North Dakota Century Code is amended and reenacted as follows:

28-32-15. Filing of rules for publication - Effective date of rules.

1. A copy of each rule adopted by an administrative agency or the commission, a copy of each written comment and a written summary of each oral comment on the rule, and the attorney general's opinion on the rule, if any, must be filed by the adopting agency or commission with the legislative council for publication of the rule in the North Dakota Administrative Code.

2. a. Nonemergency rules approved by the attorney general as to legality, adopted by an administrative agency or the commission, ~~and~~ filed with the legislative council, and not voided or held for consideration by the administrative rules committee become effective according to the following schedule:

(1) Rules filed with the legislative council from August second through November first become effective on the immediately succeeding January first.

(2) Rules filed with the legislative council from November second through February first become effective on the immediately succeeding April first.

- 1 (3) Rules filed with the legislative council from February second through May
2 first become effective on the immediately succeeding July first.
- 3 (4) Rules filed with the legislative council from May second through August first
4 become effective on the immediately succeeding October first.
- 5 b. If publication is delayed for any reason other than action of the administrative
6 rules committee, nonemergency rules, unless otherwise provided, become
7 effective when publication would have occurred but for the delay.
- 8 c. A rule held for consideration by the administrative rules committee becomes
9 effective on the first effective date of rules under the schedule in subdivision a
10 following the meeting at which that rule is reconsidered by the committee.

11 **SECTION 18. AMENDMENT.** Section 28-32-16 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **28-32-16. Petition for reconsideration of rule - Hearing by agency.**

14 Any person substantially interested in the effect of a rule adopted by an administrative
15 agency or the commission may petition ~~such~~ the agency or commission for a reconsideration of
16 ~~any such~~ the rule or for an amendment or repeal ~~thereof. Such~~ of the rule. The petition must state
17 clearly and concisely the petitioners' alleged grounds for ~~such~~ reconsideration or ~~for~~ the
18 proposed repeal or amendment of ~~such~~ the rule. The agency or commission may grant the
19 petitioner a public hearing ~~upon such~~ on the terms and conditions as the agency ~~may~~
20 ~~prescribe~~ prescribes.

21 ~~SECTION 20. AMENDMENT.~~ Section 28-32-17 of the North Dakota Century Code is
22 ~~amended and reenacted as follows:~~

23 ~~28-32-17. Administrative rules committee objection.~~

24 ~~If the legislative management's administrative rules committee objects to all or any portion~~
25 ~~of a rule because the committee deems it to be unreasonable, arbitrary, capricious, or beyond~~
26 ~~the authority delegated to the adopting agency or commission, the committee may file that~~
27 ~~objection in certified form with the legislative council. The filed objection must contain a concise~~
28 ~~statement of the committee's reasons for its action.~~

29 ~~1. The legislative council shall attach to each objection a certification of the time and date~~
30 ~~of its filing and, as soon as possible, shall transmit a copy of the objection and the~~

certification to the agency or commission adopting the rule in question. The legislative council also shall maintain a permanent register of all committee objections.

2. The legislative council shall publish an objection filed pursuant to this section in the next issue of the code supplement. In case of a filed committee objection to a rule subject to the exceptions of the definition of rule in section 28-32-01, the agency or commission shall indicate the existence of that objection adjacent to the rule in any compilation containing that rule.

3. Within fourteen days after the filing of a committee objection to a rule, the adopting agency or commission shall respond in writing to the committee. After receipt of the response, the committee may withdraw or modify its objection.

4. After the filing of a committee objection, the burden of persuasion is upon the agency or commission in any action for judicial review or for enforcement of the rule to establish that the whole or portion thereof of the rule objected to is within the procedural and substantive authority delegated to the agency or commission. If the agency or commission fails to meet its burden of persuasion, the court shall declare the whole or portion of the rule objected to invalid and judgment must be rendered against the agency or commission for court costs. These court costs must include a reasonable attorney's fee and must be payable from the appropriation of the agency or commission which adopted the rule in question.

SECTION 21. AMENDMENT. Section 28-32-18 of the North Dakota Century Code is amended and reenacted as follows:

~~28-32-18. Administrative rules committee may void rule~~ Grounds Amendment by agreement of agency and committee.

1. The legislative management's administrative rules committee may find that all or any portion of a rule is void if that rule is initially considered by the committee not later than the fifteenth day of the month before the date of the administrative code supplement in which the rule change is scheduled to appear. The administrative rules committee may find a rule or portion of a rule void if the committee makes the specific finding that, with regard to that rule or portion of a rule, there is:

a. An absence of statutory authority under statute or the constitution.

b. An emergency relating to public health, safety, or welfare.

- 1 ~~c. For rules proposed by an agency, a failure to comply with express legislative~~
2 ~~intent or to substantially meet the procedural requirements of this chapter for~~
3 ~~adoption of the rule.~~
- 4 ~~d. For rules proposed by the commission, a failure to substantially meet the~~
5 ~~procedural requirements for this chapter for adoption of the rule.~~
- 6 ~~e. A conflict with state law.~~
- 7 ~~e.f. Arbitrariness and capriciousness.~~
- 8 ~~f.g. A failure to make a written record of its consideration of written and oral~~
9 ~~submissions respecting the rule under section 28 32 11.~~
- 10 ~~2. The administrative rules committee may find a rule void at the meeting at which the~~
11 ~~rule is initially considered by the committee or may hold consideration of that rule for~~
12 ~~one subsequent meeting. If no representative of the agency or commission appears~~
13 ~~before the administrative rules committee when rules are scheduled for committee~~
14 ~~consideration, those rules are held over for consideration at the next subsequent~~
15 ~~committee meeting. Rules are not considered initially considered by the committee~~
16 ~~under this subsection until a representative of the agency or commission appears~~
17 ~~before the administrative rules committee when the rules are scheduled for committee~~
18 ~~consideration. If no representative of the agency or commission appears before the~~
19 ~~administrative rules committee meeting to which rules are held over for consideration,~~
20 ~~the rules are void if the rules were adopted as emergency rules and for rules not~~
21 ~~adopted as emergency rules the administrative rules committee may void the rules,~~
22 ~~allow the rules to become effective, or hold over consideration of the rules to the next~~
23 ~~subsequent committee meeting. Within three business days after the administrative~~
24 ~~rules committee finds that a rule is void, the legislative council shall provide written~~
25 ~~notice of that finding and the committee's specific finding under subdivisions a through~~
26 ~~f of subsection 1 to the adopting agency or commission and to the chairman of the~~
27 ~~legislative management. Within fourteen days after receipt of the notice, the adopting~~
28 ~~agency or commission may file a petition with the chairman of the legislative~~
29 ~~management for review by the legislative management of the decision of the~~
30 ~~administrative rules committee. If the adopting agency or commission does not file a~~
31 ~~petition for review, the rule becomes void on the fifteenth day after the notice from the~~

legislative council to the adopting agency or commission. If within sixty days after receipt of the petition from the adopting agency or commission the legislative management has not disapproved by motion the finding of the administrative rules committee, the rule is void.

~~3. An agency or the commission may amend or repeal a rule or create a related rule if, after consideration of rules by the administrative rules committee, the agency or commission and the committee agree that the rule amendment, repeal, or creation is necessary to address any of the considerations under subsection 1. A rule amended, repealed, or created under this subsection is not subject to the other requirements of this chapter relating to adoption of administrative rules and may be published by the legislative council as amended, repealed, or created. If requested by the agency, commission, or any interested party, a rule amended, repealed, or created under this subsection must be reconsidered by the administrative rules committee at a subsequent meeting at which public comment on the agreed rule change must be allowed.~~

SECTION 19. AMENDMENT. Section 28-32-18.1 of the North Dakota Century Code is amended and reenacted as follows:

28-32-18.1. Administrative rules committee review of existing administrative rules.

1. Upon request by the administrative rules committee, an administrative agency or the commission shall brief the committee on its existing administrative rules and point out any provisions that appear to be obsolete and any areas in which statutory or constitutional authority has changed or been repealed since the rules were adopted or amended.
2. An agency or the commission may amend or repeal a rule without complying with the other requirements of this chapter relating to adoption of administrative rules and may resubmit the change to the legislative council for publication provided:
 - a. The agency or commission initiates the request to the administrative rules committee for consideration of the amendment or repeal;
 - b. The agency or commission provides notice to the regulated community, in a manner reasonably calculated to provide notice to those persons interested in the

1 rule, of the time and place the administrative rules committee will consider the
2 request for amendment or repeal of the rule; and

3 c. The agency or commission and the administrative rules committee agree the rule
4 amendment or repeal eliminates a provision that is obsolete or no longer in
5 compliance with law and that no detriment would result to the substantive rights
6 of the regulated community from the amendment or repeal.

7 **SECTION 20. AMENDMENT.** Subsection 2 of section 28-32-19 of the North Dakota
8 Century Code is amended and reenacted as follows:

9 2. The legislative council may prescribe at the format, style, and arrangement for rules
10 ~~which are~~ to be published in the code and may refuse to accept the filing of any rule
11 that is not in substantial compliance therewith with the format, style, and arrangement.
12 In arranging rules for publication, the legislative council may make ~~such~~ corrections in
13 spelling, grammatical construction, format, and punctuation of the rules as
14 ~~determined~~ the legislative council determines are proper. The legislative council shall
15 keep and maintain a permanent code of all rules filed, including superseded and
16 repealed rules, which must be open to public inspection during office hours.

17 **SECTION 21. AMENDMENT.** Subsection 4 of section 28-32-19 of the North Dakota
18 Century Code is amended and reenacted as follows:

19 4. The legislative council, with the consent of the adopting agency or commission, may
20 omit from the code or code supplement any rule the publication of which would be
21 unduly cumbersome, expensive, or otherwise inexpedient, if the rule in printed or
22 duplicated form is made available on application to the agency or commission, and if
23 the code or code supplement contains a notice stating the general subject matter of
24 the omitted rule and ~~stating~~ how a copy may be obtained.

25 ~~**SECTION 25. AMENDMENT.** Section 28-32-27 of the North Dakota Century Code is~~
26 ~~amended and reenacted as follows:~~

27 ~~**28-32-27. Hearing officer Disqualification Substitution.**~~

28 ~~1. Any person or persons presiding for the agency in an administrative proceeding must~~
29 ~~be referred to individually or collectively as hearing officer. Any person from the office~~
30 ~~of administrative hearings presiding for the agency as a hearing officer in an~~
31 ~~administrative proceeding must be referred to as an administrative law judge.~~

- ~~2. Any hearing officer is subject to disqualification for good cause shown.~~
- ~~3. A hearing officer who is a director, officer, commissioner, head, or other executive of an agency shall self disqualify in a proceeding in which a reasonable, disinterested observer would believe the hearing officer is biased due to:~~
 - ~~a. A contribution by one of the parties supporting the hearing officer's most recent campaign for public office; or~~
 - ~~b. An ownership interest, other than investment in a mutual fund, of the hearing officer in one of the parties to the proceeding if the ownership interest is not shared by the general public.~~
- ~~4. Any party may petition for the disqualification of any person presiding as a hearing officer upon discovering facts establishing grounds for disqualification.~~
- ~~4.5. A person whose disqualification is requested shall determine whether to grant the petition, stating facts and reasons for the determination.~~
- ~~5.6. If a substitute is required for a person who is disqualified or becomes unavailable for any other reason, the substitute may be appointed by:~~
 - ~~a. The attorney general, if the disqualified or unavailable person is an assistant attorney general;~~
 - ~~b. The agency head, if the disqualified or unavailable person is one or more members of the agency head or one or more other persons designated by the agency head;~~
 - ~~c. A supervising hearing officer, if the disqualified or unavailable person is a hearing officer designated from an office, pool, panel, or division of hearing officers; or~~
 - ~~d. The governor, in all other cases.~~
- ~~6.7. Any action taken by a duly appointed substitute for a disqualified or unavailable person is as effective as if taken by the disqualified or unavailable person.~~
- ~~7.8. Any hearing officer in an administrative proceeding, from the time of appointment or designation, may exercise any authority granted by law or rule. A hearing officer may be designated to preside over the entire administrative proceeding and may issue orders accordingly. A procedural hearing officer may only issue orders in regard to the course and conduct of the hearing under statute or rule and to otherwise effect an orderly hearing. If a procedural hearing officer is designated, the agency head must be~~

present at the hearing and the agency head shall issue findings of fact and conclusions of law, as well as any order resulting from the hearing.

~~9. The North Dakota ethics commission shall assess any hearing officer who knowingly violates subsection 3 a civil penalty of five hundred dollars for the first violation. For a second and subsequent knowing violation of this section, the hearing officer is guilty of a class B misdemeanor.~~

SECTION 22. AMENDMENT. Section 28-32-47 of the North Dakota Century Code is amended and reenacted as follows:

28-32-47. Scope of and procedure on appeal from agency rulemaking.

1. A judge of the district court shall review an appeal from an administrative agency's or ethics commission's rulemaking action based only on the record filed with the court. If an appellant requests documents to be included in the record but the agency or commission does not include them, the court, upon application by the appellant, may compel their inclusion. After a hearing, the filing of briefs, or other disposition of the matter as the judge may reasonably require, the court shall affirm the agency's rulemaking action unless it finds that any of the following are present:
 1. a. The provisions of this chapter have not been substantially complied with in the agency's rulemaking actions.
 2. b. A rule published as a result of the rulemaking action appealed is unconstitutional on the face of the language adopted.
 3. c. A rule published as a result of the rulemaking action appealed is beyond the scope of the agency's or commission's authority to adopt.
 4. d. A rule published as a result of the rulemaking action appealed is on the face of the language adopted an arbitrary or capricious application of authority granted by statute.
2. If the rulemaking action of the agency or commission is not affirmed by the court, ~~the~~ rulemaking action must be remanded to the agency or commission for disposition in accordance with the order of the court, or the rule or a portion of the rule resulting from the rulemaking action of the agency or commission must be declared invalid for reasons stated by the court.

1 **SECTION 23. AMENDMENT.** Section 28-32-48 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **28-32-48. Appeal - Stay of proceedings.**

4 An appeal from an order or the rulemaking action of an administrative agency or the
5 commission does not stay the enforcement of the order or the effect of a published rule unless
6 the court to which the appeal is taken, upon application and after a hearing or the submission of
7 briefs, orders a stay. The court may impose terms and conditions for a stay of the enforcement
8 of the order or for a stay in the effect of a published rule. This section does not prohibit the
9 operation of an automatic stay upon the enforcement of an administrative order or commission
10 order as may be required by another statute.

11 **SECTION 24. AMENDMENT.** Section 28-32-49 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **28-32-49. Review in supreme court.**

14 The judgment of the district court in an appeal from an order or rulemaking action of an
15 administrative agency or the commission may be reviewed in the supreme court on appeal in
16 the same manner as provided in section 28-32-46 or 28-32-47, except that the appeal to the
17 supreme court must be taken within sixty days after the service of the notice of entry of
18 judgment in the district court. Any party of record, including the agency or commission, may
19 take an appeal from the final judgment of the district court to the supreme court. If an appeal
20 from the judgment of the district court is taken by an agency or the commission, the agency or
21 commission may not be required to pay a docket fee or file a bond for costs or equivalent
22 security.

23 **SECTION 25.** Chapter 54-66 of the North Dakota Century Code is created and enacted as
24 follows:

25 **54-66-01. Definitions.**

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

- 27 1. "Accused individual" means ~~an individual~~ a lobbyist, public official, candidate for public
28 office, political committee, or contributor who is alleged to have violated article XIV of
29 the Constitution of North Dakota, this chapter, or another law or rule regarding
30 government ethics transparency, corruption, elections, or lobbying.

2. "Adjusted for inflation" means adjusted on January first of each year by the change in the consumer price index for all urban consumers (all items, United States city average), as identified by the secretary of state.

~~3.~~ "Complainant" means an individual who, in writing or verbally, submits a complaint to the commission.

~~4.3.~~ "Complaint" means a verbal or written allegation to the commission that a lobbyist, public official, candidate for public office, political committee, or contributor has violated article XIV of the Constitution of North Dakota, this chapter, or another law or rule regarding ~~government ethics has been violated~~ transparency, corruption, elections, or lobbying.

~~5.4.~~ "Ethics commission" or "commission" means the North Dakota ethics commission established by article XIV of the Constitution of North Dakota.

~~6.5.~~ "Gift" means any item, service, or thing of value not given in exchange for fair market consideration including travel and recreation, except:

a. Purely informational material;

b. A campaign contribution; and

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

~~7.6.~~ "Influence state government action" means promoting or opposing the ~~final~~ adoption of a rule by an administrative agency or the commission under chapter 28-32.

~~8.7.~~ "Lobby" means an activity listed in subsection 1 of section 54-05.1-02.

~~9.8.~~ "Lobbyist" means an individual required to register under section 54-05.1-03.

~~10.9.~~ "Public official" means an elected or appointed official of the state's executive or legislative branch, members of the commission, members of the governor's cabinet, and employees of the legislative branch.

~~11.10.~~ "Receives the complaint" means one or more members of the commission learn of the complaint.

1 ~~12.11.~~ "Ultimate and true source" means the person that knowingly contributed over two
2 hundred dollars, ~~adjusted for inflation~~, solely to lobby or influence state government
3 action.

4 **54-66-02. Disclosure of ultimate and true source of funds.**

- 5 1. A lobbyist who expends an amount greater than two hundred dollars, ~~adjusted for~~
6 ~~inflation~~, to lobby shall file with the secretary of state a report that includes the known
7 ultimate and true source of funds for the expenditure. The report must be filed with the
8 lobbyist expenditure report required under subsection 2 of section 54-05.1-03.
- 9 2. A person ~~who~~~~that~~ expends an amount greater than two hundred dollars, ~~adjusted for~~
10 ~~inflation~~ ~~not including the individual's own travel expenses and membership dues~~, to
11 influence state government action shall file with the secretary of state a report
12 including the known ultimate and true source of funds for the expenditure. ~~The A~~ report
13 ~~under this subsection~~ must be filed on or before the August first following the date of
14 the expenditure. The secretary of state shall provide a form for reports under this
15 subsection and make the form electronically accessible to the public. The secretary of
16 state also shall charge and collect fees for late filing of the reports as follows:
- 17 a. Twenty-five dollars for a report filed within sixty days after the deadline; or
18 b. Fifty dollars for a report filed more than sixty days after the deadline.
- 19 3. The secretary of state shall compile the reports required under this section and make
20 the reports electronically accessible to the public ~~within forty days after the deadlines~~
21 ~~by which the reports must be filed~~.
- 22 4. ~~This section does not require a person to report the ultimate and true source of funds~~
23 ~~expended on:~~
- 24 ~~a. A gift to or from a family member;~~
25 ~~b. Purely informational material, advice, or education;~~
26 ~~c. Reimbursement for travel, meal, and refreshment expenses incurred to, from, or~~
27 ~~during a conference, seminar, or other legitimate educational opportunity for a~~
28 ~~public official if the conference, seminar, or educational opportunity concerns~~
29 ~~issues germane to the official duties of the public official;~~
30 ~~d. Meals and refreshments provided while informing, advising, or educating a public~~
31 ~~official about issues germane to the official duties of the public official;~~

- 1 ~~e. Providing an educational or social setting in the state to provide an opportunity~~
2 ~~for individuals to meet with public officials; and~~
- 3 ~~f. A good or service determined not to raise ethical concerns under rules adopted~~
4 ~~by the ethics commission.~~
- 5 ~~5. A resident taxpayer may commence an action in a district court of this state against a~~
6 ~~person required to comply with this section to compel compliance if all other~~
7 ~~enforcement measures under this chapter have been exhausted and the taxpayer~~
8 ~~reasonably believes the person has failed to comply with this section. A failure to~~
9 ~~comply with this section must be proved by clear and convincing evidence.~~
- 10 5. The secretary of state shall determine adjustments for inflation of the reporting
11 thresholds in this section and instruct persons submitting reports under this section of
12 the adjustments. On January first of each year, the secretary shall determine whether
13 the accumulated change in the consumer price index for all urban consumers (all
14 items, United States city average), as applied to each reporting threshold in this
15 section, would result in an adjustment of at least ten dollars of the threshold in effect
16 on that date. If so, the secretary of state shall deem the reporting threshold adjusted
17 by ten dollars.

18 **54-66-03. Lobbyist gifts - Penalty.**

- 19 1. A lobbyist may not give, offer, solicit, initiate, or facilitate a gift knowingly to a public
20 official, and a public official may not accept a gift ~~with a value over sixty dollars per~~
21 ~~individual per event, adjusted for inflation, from a lobbyist knowingly, except to~~
22 ~~advance opportunities for state residents to meet with public officials in educational~~
23 ~~and social settings in the state under conditions that do not raise ethical concerns,~~
24 ~~including:~~
- 25 ~~a. Reimbursement for travel, meal, and refreshment expenses incurred to, from, or~~
26 ~~during a conference, seminar, or other legitimate educational opportunity for the~~
27 ~~public official if the conference, seminar, or educational opportunity concerns~~
28 ~~issues germane to the official duties of the public official;~~
- 29 ~~b. Providing information, advice, or education to a public official;~~
- 30 ~~c. Providing meals and refreshments while informing, advising, or educating a~~
31 ~~public official about issues germane to the official duties of the public official;~~

- 1 ~~d. Items with a fair market value of ten dollars per individual per event, adjusted for~~
2 ~~inflation, or less per individual; and~~
3 ~~e. A good or service determined not to raise ethical concerns under rules adopted~~
4 ~~by the ethics commission.~~
- 5 2. The prohibition in subsection 1 does not apply when a lobbyist gives, offers, solicits,
6 initiates, or facilitates, or a public official accepts:
7 ~~a. A gift to or from a family member;~~
8 ~~b. Purely informational material; or~~
9 ~~c. A campaign contribution.~~
- 10 3. ~~For the first violation, the secretary of state shall assess a civil penalty of five hundred~~
11 ~~dollars upon any person who knowingly violates this section and, if the person is a~~
12 ~~lobbyist, the secretary of state may revoke the lobbyist's registration under chapter~~
13 ~~54-05.1. For a second and subsequent knowing violation of this section, the person is~~
14 ~~guilty of a class B misdemeanor. The secretary of state shall assess a civil penalty~~
15 ~~upon any individual who violates this section.~~
16 ~~a. If the gift has a value of five hundred dollars or more, the civil penalty must be~~
17 ~~two times the value of the gift.~~
18 ~~b. If the gift has a value of less than five hundred dollars, the civil penalty must be~~
19 ~~no less than two times the value of the gift and may be up to one thousand~~
20 ~~dollars.~~

21 **54-66-04. Ethics commission member terms - Meetings - Code of ethics -**

22 **Compensation - Investigator Office.**

- 23 1. The terms of the initial members of the ethics commission must be staggered to
24 ensure no more than two members' terms expire in one year. The terms of the initial
25 members may be less than four years to accommodate the required staggering of
26 terms.
- 27 2. ~~The ethics commission shall meet as necessary to address each complaint the~~
28 ~~commission receives.~~ Unless the complaint at issue has resulted in the imposition of a
29 penalty or referral for enforcement under section ~~54-66-10~~ 54-66-09, any portion of a
30 meeting during which commission members discuss complaints, informal resolutions,
31 attempts to informally resolve complaints, investigations, or referrals under this

chapter, the identity of an accused individual or complainant, or any other matter arising from a complaint are closed meetings.

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

4. Ethics commission members are entitled to:

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

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

~~5. Commission members shall hire or otherwise engage a part time administrative assistant. The administrative assistant must be provided an office within the office space for the department of labor and human rights. The commission shall compensate the department of labor and human rights for the office in an amount equal to the fair value of the office.~~ The director of the office of management and budget shall allocate office space in the state capitol for the ethics commission, or, if office space in the capitol is unavailable, shall negotiate for, contract for, and obtain office space for the ethics commission in the city of Bismarck or in the Bismarck area. The ethics commission's office space may not be located in the office space of any other government agency, board, commission, or other governmental entity, and must provide sufficient privacy and security for the ethics commission to conduct its business. The director shall charge the ethics commission an amount equal to the fair value of the office space and related services the office of management and budget renders to the ethics commission.

54-66-05. Making a complaint - Identifying information - False complaints.

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

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complaint, a complainant shall provide the name, address, and telephone number of the complainant.

~~2. Within five days after making a complaint, the complainant shall submit a signed statement attesting the complaint is true and accurate to the best of the complainant's knowledge. The commission shall develop an attestation form for this purpose and make it electronically accessible to the public. After receiving the attestation, the commission shall summarize the complaint in writing if the complaint was made orally.~~

~~3. If the complainant does not submit the signed attestation by the deadline, the commission may not investigate or take other action on the complaint.~~

~~4. Knowingly or recklessly making a complaint that is materially false is defamation under chapter 12.1-15.~~

54-66-06. Informing the accused individual - Written response permitted.

The commission shall inform an accused individual by registered mail of the identity of the complainant who made the allegation against the accused individual and include the written complaint or written summary of the oral complaint as soon as reasonably possible but no later than ~~tent~~twenty calendar days after the commission receives the complaint. The accused individual may respond to the complaint in writing within ~~tent~~twenty calendar days of receipt of the complaint or summary of the complaint.

54-66-07. Informal resolution.

The commission ~~may~~shall attempt to negotiate or mediate an informal resolution between the accused individual and the complainant ~~unless the commission disregards the complaint pursuant to section 54-66-05 or for any other reason. The accused individual may be accompanied by legal counsel in a negotiation or mediation.~~

~~54-66-08. Referrals to investigators - Exception for criminal allegations.~~

~~For each complaint with an attestation, the commission shall engage an investigator with the appropriate knowledge and experience regarding the Constitution of North Dakota, ethics related statutes, and ethics investigations, and refer the complaint to the investigator within thirty calendar days of receiving the complaint. However, if a complaint with an attestation includes an allegation of criminal conduct, the commission shall refer the allegation of criminal conduct to the bureau of criminal investigation or other law enforcement agency. The commission may engage a state agency as an investigator. If the accused individual provided a~~

1 written response to the complaint, the commission shall provide the written response with the
2 referred complaint.

3 ~~54 66 09. Investigations Findings and Recommendations Responses.~~

4 ~~1. The investigator engaged under section 54 66 08 shall investigate the complaint~~
5 ~~referred to it by the ethics commission. Investigations must include separate interviews~~
6 ~~with the accused individual and the complainant, unless the accused individual or~~
7 ~~complainant refuses to be interviewed, and consideration of the circumstances~~
8 ~~surrounding the allegations. The accused individual and complainant may be~~
9 ~~accompanied by legal counsel during the interviews of each. Investigations may~~
10 ~~include interviews of potential witnesses and other individuals believed to have~~
11 ~~relevant information.~~

12 ~~2. At the conclusion of the investigation, but no later than six months after the~~
13 ~~investigator received the complaint, the investigator shall submit its written findings~~
14 ~~from the investigation to the commission. The commission shall provide written copies~~
15 ~~of the findings to the accused individual and complainant. The accused individual and~~
16 ~~complainant may respond in writing to the findings within thirty calendar days of~~
17 ~~receiving the findings. The commission shall maintain copies of the findings and any~~
18 ~~written response to the findings.~~

19 ~~54 66 10. Final determinations Penalties Referrals for enforcement.~~

20 ~~1. After reviewing the findings from the investigator and any written response from the~~
21 ~~accused individual or complainant, the ethics commission shall meet with the accused~~
22 ~~individual and complainant to discuss the findings and written responses. A meeting~~
23 ~~under this subsection is a closed meeting as defined in section 44 04 17.1, although~~
24 ~~the accused individual and complainant may have legal counsel attend and~~
25 ~~participate.~~

26 ~~2. After the meeting with the accused individual and complainant, the commission shall~~
27 ~~issue written findings, including a determination whether a violation of article XIV of the~~
28 ~~Constitution of North Dakota, this chapter, or another law or rule regarding government~~
29 ~~ethics occurred. If the commission finds a violation occurred, the commission may~~
30 ~~assess a civil penalty if authorized by law or refer the matter to the entity authorized by~~
31 ~~law to assess a civil penalty for the violation.~~

~~3. The accused individual and the complainant may appeal and request judicial review of a determination made or penalty imposed under this section to the district court in the county in which the accused individual resides. A request for judicial review under this section must comply with the requirements for an appeal of a determination of an agency under chapter 28-32. The scope of review and procedure on appeal from a determination of the commission must comply with section 28-32-47.~~

~~4. The commission may not terminate the employment of a public official or otherwise remove a public official from the public official's public office.~~

54-66-08. Investigations - Referrals.

1. If an informal resolution is not reached under section 54-66-07, the ethics commission may:
 - a. Disregard the complaint;
 - b. Require ethics commission staff to investigate the allegations in the complaint; or
 - c. Engage an outside investigator to investigate allegations in the complaint.
2. If the commission believes a complaint contains allegations of criminal conduct, the ethics commission shall refer the allegations of criminal conduct to the bureau of criminal investigations or other law enforcement agency and may not take further action on the referred allegations. The commission shall inform the accused individual by registered mail of a referral under this section and the nature of the referred allegations as soon as reasonably possible.

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

1. An investigator, other than a law enforcement agency, of a complaint shall provide written findings of the investigation to the ethics commission within a reasonable amount of time. The ethics commission shall provide copies of the written findings to the accused individual, who may respond to the commission in person or in writing within a reasonable time. If the accused individual responds in person, no fewer than three members of the commission shall meet in a closed meeting with the accused individual. An accused individual may be accompanied by legal counsel when responding to the commission in person.
2. After providing a reasonable time for an accused individual to respond to the investigation findings and considering any response to the findings, the ethics

1 commission shall determine whether a violation of article XIV of the Constitution of
2 North Dakota, this chapter, or another law or rule regarding transparency, corruption,
3 elections, or lobbying occurred, and inform the accused individual of the
4 determination. If the commission determined a violation occurred, the commission may
5 impose a penalty authorized by law for the violation or refer the matter to the agency
6 with enforcement authority over the violation.

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

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

15 **54-66-10. Appeals.**

16 An accused individual may appeal a finding of the ethics commission to the district court of
17 the county where the accused individual resides.

18 **54-66-11. Rulemaking.**

19 When adopting rules, the ethics commission shall follow the provisions in chapter 28-32
20 which are specifically applicable to the commission.

21 **~~54-66-11.~~54-66-12. Confidential information - Penalty.**

- 22 1. The following information is a confidential record as defined in section 44-04-17.1,
23 unless the commission has determined the accused individual violated article XIV of
24 the Constitution of North Dakota, this chapter, or another law or rule regarding
25 ~~government ethics~~transparency, corruption, elections, or lobbying, and a court affirmed
26 the determination if appealed, except the information may be disclosed as required by
27 law or as necessary to conduct an investigation arising from a complaint:
28 a. Information revealing the contents of a complaint;
29 b. Information that reasonably may be used to identify an accused individual-~~or~~
30 ~~complainant;~~ and
31 c. Information relating to or created as part of an investigation of a complaint.

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

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

3. Willful publication of information included in subsections 1 and 2 by a person who knows the information to be false is criminal defamation under section 12.1-15-01 Information that reasonably may be used to identify the complainant is confidential unless the complainant waives confidentiality, authorizes its disclosure, or divulges information that reasonably would identify the complainant. However, the ethics commission shall notify an accused individual of the identity of the complainant who made an allegation against the accused individual, and the information deemed confidential under this subsection may be disclosed as required by law or as necessary to conduct an investigation arising from a complaint.

4. A public official who violates this section is guilty of a class C felony. The information deemed confidential in subsections 1 and 2 may be disclosed by the ethics commission if the accused individual agrees to the disclosure.

54-66-12.54-66-13. Restriction on lobbying by public officials - Penalty.

For the first violation of subsection 2 of section 2 of article XIV of the Constitution of North Dakota, the secretary of state shall assess a civil penalty of five hundred dollars upon the person who knowingly commits the violation. For a second and subsequent knowing violation of the subsection, the person is guilty of a class B misdemeanor. A knowing violation of subsection 2 of section 2 of article XIV of the Constitution of North Dakota is a class A misdemeanor. The ethics commission shall assess a civil penalty of up to one thousand dollars on any individual who knowingly violates the subsection.

54-66-13.54-66-14. Attorney general to provide legal services.

The attorney general shall serve as legal counsel for the commission unless the commission objects to representation by the attorney general in a specific matter. When a

1 conflict of interest prevents the attorney general from providing legal services to the
2 commission, the attorney general may appoint a special assistant attorney general to serve as
3 legal counsel for the commission.

4 **54-66-14.54-66-15. Prohibition on delivering campaign contributions - Penalty.**

5 A lobbyist may not deliver knowingly a campaign contribution made by another person in
6 violation of subsection 3 of section 2 of article XIV of the Constitution of North Dakota. For a first
7 violation, the secretary of state shall assess a civil penalty of five hundred dollars upon any
8 personindividual who knowingly violates this section and may revoke the lobbyist's registration.
9 For a second and subsequent knowing violation of this section, the person is guilty of a class B
10 misdemeanor, and, if the lobbyist is a registered lobbyist, the secretary of state may revoke the
11 lobbyist's registration. For purposes of this section, "deliver" means to transport, transfer, or
12 otherwise transmit, either physically or electronically. This prohibition does not apply to an
13 individual who delivers a campaign contribution to the individual's own campaign or to the
14 campaign of the individual's immediate family member. This prohibition may not be interpreted
15 to prohibit any person from making a campaign contribution, encouraging others to make a
16 campaign contribution, or otherwise supporting or opposing a candidate.

17 **54-66-16. Removal of ethics commission members.**

18 1. An ethics commission member may be removed from office for:

- 19 a. Substantial neglect of duty;
20 b. Gross misconduct in office;
21 c. Violation of the commission's code of ethics; or
22 d. Willful or habitual neglect or refusal to perform the duties of the member.

23 2. Removal of an ethics commission member under subsection 1 requires agreement by
24 a majority of:

- 25 a. The governor;
26 b. The majority leader of the senate; and
27 c. The minority leader of the senate.

28 **54-66-17. Participation in quasi-judicial proceedings.**

29 For purposes of subsection 5 of section 2 of article XIV of the Constitution of North Dakota,
30 an individual is not disqualified from participating in any capacity in a quasi-judicial proceeding,
31 including an adjudicative proceeding under chapter 28-32, due to an investment in a mutual

1 fund, an ownership interest in one of the parties to the proceeding which is shared by the
2 general public, and an investment or ownership interest in a retirement account of one of the
3 parties to the proceeding.

4 **SECTION 26. APPROPRIATION.** There is appropriated out of any moneys in the general
5 fund in the state treasury, not otherwise appropriated, the sum of ~~\$300,000~~\$517,155, or so
6 much of the sum as may be necessary, to the ethics commission for the purpose of the
7 operations of the commission, for the biennium beginning July 1, 2019, and ending June 30,
8 2021. The ethics commission is authorized ~~one and one half~~two full-time equivalent positions
9 for this purpose.

10 **SECTION 27. EFFECTIVE DATE.** Sections ~~1, 2, 3, 4, 5, and 7~~1, 3, 4, and 5 of this Act, and
11 ~~section~~sections 54-66-02 and 54-66-03 of the North Dakota Century Code, as created by
12 section ~~32~~24 of this Act, become effective January 5, ~~2022~~2021.

13 ~~SECTION 35. EFFECTIVE DATE.~~ North Dakota Century Code section 54-66-03, as
14 ~~created by section 32 of this Act, becomes effective January 5, 2021.~~

15 ~~SECTION 36. EXPIRATION DATE.~~ North Dakota Century Code section 54-66-12, as
16 ~~created by section 32 of this Act, is effective until subsection 2 of section 2 of article XIV of the~~
17 ~~Constitution of North Dakota is no longer part of the Constitution of North Dakota.~~

18 **SECTION 28. EMERGENCY.** Sections 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20,
19 21, 22, 23, ~~24, 25, 26, 27, 28, 29, 30, and 31,~~ and 24 of this Act are declared to be an
20 emergency measure.