

**2019 SENATE ETHICS COMMITTEE**

**SB 2148**

# 2019 SENATE STANDING COMMITTEE MINUTES

**Ethics Committee**  
Pioneer Room, State Capitol

SB 2148  
1/30/2019  
Job # 31833

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature: Carie Winings
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## Explanation or reason for introduction of bill/resolution:

Relating to 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 and requirements for the North Dakota ethics commission; to provide for a legislative management study; to provide a penalty; and to provide an appropriation.

## Minutes:

Attachments: 1-11
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**Chairman Hogue:** Opened the hearing on SB 2148.

**Senator Mathern, District 11:** See Attachment #1 for testimony as sponsor of the bill. See Attachments #2 and #3 for additional information provided to the committee.

**(5:15) Chairman Hogue:** Claire Ness will walk through the bill.

**(5:40) Claire Ness, Attorney, Legislative Council Legal Division:** Testified in neutral capacity on the bill to explain the bill.

Section 1 Definitions

Sections 2-20 Rules

Section 21 Creates new chapter 54-66 incorporate new provisions for ethics commission

Section 22 Study on provisions in Article XIV

Section 23 Provides appropriation for operation

**(15:50) Senator Dever:** Prior to the passage of Measure 1, North Dakota had the most open and accessible government in the country. Necessary to that was the free and open flow of idea and conversation. It is my desire that whatever results from this, we are able to be as open, free, and accessible as we were able to. It seems to me that necessary to that, since ethics is no longer a matter of our discretion, but defined by others, that those rules be black and white and clear. Under the traditional scheme of things, the Constitution stands as a standard, and statute is measured against the Constitution and administrative rules flow from statute; now administrative rules will flow from the Constitution itself. Do they then supersede statute and other administrative rules?

**Claire Ness:** We currently have very little experience with rule making authority delegated directly from the Constitution. Most administrated agencies, the executive branch agencies

get their rule making authority from statute. The closest analogy to what the Ethics Commission has would be the Judiciary Branch. The Supreme Court is allowed to make its own rules and that authority stems from the Constitution directly. That said, I am not aware of any case that directly looks at the weight that would be given to a rule adopted by an agency that is authorized directly from the Constitution to do so and a competing statute. You all are authorized to enact laws under the Constitution as well. I think it would be up to the courts to decide if there was a conflict and if there is, how it would be handled between those two.

**Senator Dever:** If the rules under the Ethics Commission conflict with statute that would need to be decided in court?

**Claire Ness:** I believe that is correct.

**Vice Chair Unruh:** Do we have the authority to require this new Ethics Commission to go through the admin rules process?

**Claire Ness:** That is questionable. One could argue that the Legislative Assembly does not have that authority since the rule making authority for the Ethics Commission does not stem from statutes that you enacted. Normally, you act as a body that would overview an administrative rule because you have given those Executive Branch agencies the authority to adopt them, and in this case the Ethics Commission doesn't need that authority from you. One could argue that the Legislative Assembly cannot put parameters around the process that would be used for those rules. However, the one caveat to that is that you have Subsection 1 of Section 4 that allows you to enact rules to facilitate Article XIV but not to hamper or impair Article XIV. It is unclear how that would be interpreted.

**Chairman Hogue:** Article XIV contains the definition of a gift and then it specifies what is not a gift. When I look at the draft of this bill and I see that the definition of gift was carried forward into the bill but the exclusion was not. I wanted to make sure I understood why.

**Claire Ness:** That would be a question for the sponsor of the bill. I cannot speak to the policy purposes behind the bill.

**Vice Chair Unruh:** On Section 54-66-13 that requires the Attorney General to provide legal services to the Ethics Commission, again with questioning how the authority works here, can the Attorney General provide legal services to the Ethics Commission since they are separate or do they need their own access to legal counsel?

**Claire Ness:** That is another question where there could be a conflict of interest. There is not any authority directly in Article XIV that would allow the Attorney General to provide that service to what might be considered another branch of the government. Typically, the Attorney General provides services to the Executive Branch. Nothing in Article XIV discusses that particular issue.

**Chairman Hogue:** I have invited Kara Erickson to come and explain to us how it works in the Judicial Branch.

**(22:39) Senator Mathern:** I had Claire Ness prepare the amendments to the bill. We do have someone with a chart on how the amendments incorporate into the bill.

**Senator Dever:** It seems to me that 54-66-02 says that commission members will begin their term on July 1<sup>st</sup> and the bill takes effect Aug 1<sup>st</sup>; should that also be included in the emergency clause?

**Claire Ness:** The appointments need to be made by July 1<sup>st</sup>. It does not mean that the bill has to kick in by that date but you may want to add an emergency clause if you want them to be in effect by the time that the commission members are appointed.

**Senator Dever:** I thought it sad that their terms begin on July 1<sup>st</sup>.

**Claire Ness:** You are correct. They would be appointed and they would be in place on July 1<sup>st</sup> but the bill would start Aug 1<sup>st</sup>. You would not have to add an emergency clause, but if you want the provisions in the bill to apply to the first month they are in office, then you would want to change that.

**Senator Dever:** My second question has to do with what I think is unintended consequence. I don't believe that either the sponsoring committee or the legislature would expect that private citizens would be required to report expenditures of over \$200 to influence state government action. I look at Section 1, Subsection 2, and that first full sentence is approximately half of that paragraph and it does not indicate that it applies to lobbyists and it does not provide any exclusions. Is that relieved by the amendment in the bill that says the definition of a lobbyist does not include a private citizen?

**Claire Ness:** The definition of a lobbyist is to inform other provisions in the Article XIV. So there are the prohibition gifts from lobbyists to public officials. There is the prohibition on lobbyists serving to deliver campaign contributions. Where I think you are going to get more information about Subsection 2 of Section 1, with the reporting requirements, would be in a definition of what are the ultimate and true source of funds. That is not addressed in here. That is part of the Legislative Management study.

**Senator Dever:** It says that the Ethics Commission can levy penalties as proposed. You mentioned a \$10,000 fine, and in the same paragraph it talks about a Class A misdemeanor. Can the Ethics Commission also find guilty on that, and then it also talks about on the preponderance of the evidence?

**Claire Ness:** The Ethics Commission would not be able to find someone guilty of a crime, that penalty is in there just as it is worded in other provisions for law enforcement to carry out and for the judicial process to play out. The Ethics Commission would be allowed to impose fines.

**Senator Dever:** So then due process would apply if it went into criminal process?

**Claire Ness:** Correct.



**Senator Poolman:** I just have a clarifying question. 56-66-10, on confidential information, it mentions that the records are confidential until the Ethics Commission issues its findings, so even if there is nothing found, does it all still become public record?

**Claire Ness:** That is correct.

**Chairman Hogue:** We will get into some of the distinctions between this bill and the house bill. The house bill does draw a distinction between complaints that are not regarded by the commission as being substantial and therefore are kept confidential; as opposed to this bill which does not contain that provision. We will get into those distinctions at a later hearing, so don't feel you have to ask about the differences between the bills.

**Vice Chair Unruh:** On the legislative management study, you mentioned that the ultimate and true source of funds definition is proposed to be studied here; do we have enough time to study that and enact legislation before the end of the next legislative session?

**Claire Ness:** We do. The ultimate and true source of funds provision is Subsection 2, of Section 1 of Article XIV and the deadline for implementation and enacting legislation is January 5<sup>th</sup> of 2022 for that provision.

**Vice Chair Unruh:** Does the rest of the study have the same deadline?

**Claire Ness:** The study of Subsection 1 of Section 2 of Article XIV has a deadline for implementation of January 5<sup>th</sup> of 2021. It is highly unlikely the Legislative Assembly would be able to enact anything for that deadline for that subsection.

**Chairman Hogue:** I have asked Kara to come and give us some background on how the judicial conduct commission office functions because that has oversight responsibility for lawyers and judges. They have been doing it well and for a long time.

**(30:05) Kara Erickson, Director, Office of Disciplinary Council:** Testified in a neutral capacity for informational purposes to the committee and at the Chairman's request. I run the Office of Disciplinary Council which handles the Judicial Conduct Commission and the disciplinary board. Basically, I handle judicial ethics. In my office we do the investigations of all complaints that come in and screen those complaints. We also prepare reports based on those complaints and then we are the prosecutors in the event that something arises to a matter where there needs to be a prosecution. At that time, when we do prosecute a case, it becomes public record. All the filings and all the information within that prosecution is public. My office is the closest thing to what you are trying to enact right now. So, I am here for questions you might have as to our processes and how our office runs.

**(31:29) Senator Mathern:** The question I have relates to the appropriation in this bill. The appropriation talks about a director, an attorney, and an administrative assistant. With your system, what staff do you have and what is your appropriation each biennium?

**Kara Erickson:** Each biennium we have a budget of approximately \$1.2 million. We have 2 attorneys, 2 legal assistants, and 1 para legal that is part time. The vast majority of our membership that we work with in the disciplinary system for both the attorneys and judges

are volunteers. There is no appropriation that has been designated to them apart from travel to hearings and things like that.

**Chairman Hogue:** Can you give us some background on the number of individual who are subject to your oversight and the number of complaints that you typically get in a calendar year?

**Kara Erickson:** We tend to see about 180 complaints a year on average for attorneys. Nationally speaking that has gone down and our state has followed. This year we are at about 150 complaints. We currently have 3033 attorneys in North Dakota. Those are all subject to our provisions within the rules for lawyer discipline and the rules of professional conduct for North Dakota. In addition, any attorneys that come into our state that practice when they really shouldn't be, they are also subject to our jurisdiction and can be disciplined. With respect to judges, I have 140 judges that we handle. Additionally, we handle all judicial candidates. So, anyone who puts their name in for an office as well as people to be seated in the disciplinary system for lawyers they are also subject to the code of judicial conduct when they seated in the panels who are issuing decision. This year we are down for judicial conduct complaints. That is in part due to the large changeover we have had in the judiciary.

**Chairman Hogue:** It sounds like 3200 people you are providing oversight to, and you get about 150 to 180 complaints. Can you describe how you separate what you regard as a meritorious complaint verses repeat complainants?

**Kara Erickson:** We handle things differently on the judge side verses the attorney side. On the attorney side, if there is a complaint that comes in and it triggers any of the rules of professional conduct; if there is anything that is implicated that could remotely be seen as a violation. Not something that is an appeal or something that is saying they want a new attorney – those types of cases are investigated by us. In the investigations process, we will receive a complaint from the individual involved, and we are required to have them in writing. Then we will get the response from the attorney and we will do an investigation that will usually consist of calling all those involved, looking at the case records, and putting together an investigative report. That report goes to complainant and the respondent attorney, and they have an opportunity to appear for the first time in front of an inquiry committee (which is our probable cause panel that determines whether lesser discipline should be imposed or if it is something that goes to those public formal hearings. On the judicial side, we screen and we see if there is anything that is implicated for the code of judicial conduct. We have a little bit more discretion on the judicial conduct side of things. We do have to run things past, both the lawyer side and judicial side, to get those summary dismissals. We have no adjudicative authority in our office at all. Any decisions that are being made are being made by one of those two entities. On the judicial comment commission side of things, we will send a letter to the judge asking them to respond to the allegations, and provide any information we may need. Before we send that letter we will often times pull the docket information, transcripts of hearings, and we will go ahead and get that information to minimize the contact and impact on the judge so they can continue to perform their function. Once we get the letter in response from the judge, we prepare a memo for the judicial comment commission to relay what the investigative finding were. Once that happens they make an indetermination list as to how to proceed with any informal discipline or formal discipline.

**Chairman Hogue:** At what point does the complaint made by the complainant become public?

**Kara Erickson:** Typically the complaint does not become public by the calling of it. On occasion, if there is an appeal to the Supreme Court for lawyer discipline, we will stipulate that it needs to become public so that the Supreme Court has adequate information and can assess the underlying issue. Most frequently, if it goes to a public matter, I am the one serving the summons and petition for discipline. My documents are what become public. Part of that is sometimes there are things that individual complain of but it won't rise to the level of discipline so it is a weeding out process.

**(40:25) Gregory Stites, North Dakota Attorney representing North Dakotans for Public Integrity:** See Attachment #4 for testimony in support of SB 2148.

**(48:20) Chairman Hogue:** In your opinion, how do you feel about our disciplinary system for lawyers?

**Greg Stites:** The legal process has been excellent. The system works well. It is fair and appropriate. I believe there is not only safe guards to make sure that complaints that are not meritorious don't somehow get exposed. Then if someone has broken the rules and has become unethical, then I believe the way that they have scheduled their penalties and methodology seems to be fair.

**Senator Anderson:** These initiated measures that effect the Constitution should by in large stand on their own and that we shouldn't be making laws that reinterpret what they already say. However, there are gray areas. Most of the people in the room are not here because they oppose the process or disagree with it, but they are here to make sure that they don't run afoul with it in trying to do the job for their clients. The questions we need to answer are when you talk about a gift? What is a gift? Additionally, the question comes around on reporting. There we are trying to get the true source of the funds? What do I report? That is what we need to answer. (Gave Examples).

**Greg Stites:** I can only say that the way Measure 1 was designed, and then implemented as Article XIV, your concerns are very valid. The way that it is intended to happen; it is so important to have the interim study because that is going to provide the opportunity to answer all of the questions about Section 1, Subsection 2 which is the transparency section. It does not go into effect for 3 years, and would give all interested parties to come and make sense of that and determine what is appropriate under this Article XIV in a logical way. If there is further legislation or new laws that need to define things, you could handle that responsibly in 2 years. In terms of the gift issue, I can tell you that is the role or responsibility of the Ethics Commission. They are to promulgate rules related to gifts and exceptions to gifts. If it says it clearly as to what is appropriate and not appropriate gift, then it should all be taken care of. Rulemaking will require them to have public hearings.

**Senator Anderson:** You just exempted them from the administrative agencies practice act which requires public hearings. There is nothing that says that Ethics Commission as to have public hearings. I did not see anything in the constitutional measure about that.

**Greg Stites:** That is true because of the constitutional authority to do rules. I am saying that I believe the Governor and the Senate will choose the members of the Ethics Commission and they will be subject to public scrutiny and I believe they would only adopt a process that is equal to the Administrative Practices Act or very akin to it. How would they dare not do that?

**Vice Chair Unruh:** I agree with everything you have said. I am trying to understand the legislature's role in this is in bill and Article XIV as we try and enact laws to enable this to move forward. This is a logistical question. Based on the outline of the amendments you gave us, Subsection 2 of Section 1 states that the legislative assembly shall implement and enforce this section by enacting, no more than 3 years after the effective date of this article, and then it continues on and talks about the ultimate and true source of funds. That same language is used saying that the Ethics Commission needs to adopt rules within 2 years of the effective date of the article to define further what a gift is, but if you move to Subsection 5 of Section 2, it says that this subsection shall take effect 3 years after the effective date of this article. I am reading them differently. I think Subsection 5 has the delayed effective date but I am not sure that Subsection 2 of Section 1 and Subsection 1 of Section 2 have that same delayed effective date. I still think that we are possibly all subject to what is written here. We can delay the rule making process for that, but we still need to know what a gift is now, and then what true and ultimate source of funds means because we are subject to those now I believe.

**Chairman Hogue:** Do you agree?

**Greg Stites:** In response to the gifts and when it kicks in, if you look on page 3 of my analysis, it is very clear near the bottom of the last paragraph, where it says that such rules may be adopted within two years after the effective date of this article so as to allow for the adoption of these rules. These prohibitions take effect two years after the effective date of this article. The gift prohibition clearly does not until 1/5/2021. In terms of Subsection 2 of Section 1, that is right in the language at the top where it states the legislative assembly shall implement and enforce this by enacting no more than 3 years after the effective date laws that require the prompt reporting etc. Clearly there is 3 years and nothing between now and then.

**Chairman Hogue:** You had indicated that you had removed the initial portions of the original draft of 2148 based on the direction or the conclusion that since the commission is a constitutional body, it is not appropriate to subject it to the Administrative Agencies Practices Act. I have two related questions about that. One, is there anything in Article XIV that prohibits the commission from having to go through the same process as every other agency? Second, what it is about a constitutional body that would say that the legislature could not put reasonable rules on their manor of operation?

**Greg Stites:** There are very few other constitutionally created entities like the Ethics Commission. There is no question about it. All I can say is if you look at the provisions of Article XIV in Section 4, it is very clear that it says that laws to be enacted by the legislative assembly can facilitate, safeguard, and expand but not hamper, restrict or impair this article. The article clearly says that the Ethics Commission has the authority to make rules. I could see a scenario where so long as whatever parts of the administrative practices act that were attempted to be thrust upon the ethics commission, so long as the court would rule that those

restrictions in no way hampered, restricted, or impaired the intent of this, they could maybe withstand constitutional scrutiny. But, it could go just the other way. They could follow them if they want but don't have to. I think evidence of that would be the fact that there are many commissions and boards that don't follow the Administrative Practices Act.

**(1:01:22) Chairman Hogue:** It does sort of go back and forth between the authority of the legislature to impose fines and criminal sanctions and the authority of the Ethics Commission to adopt rules. The gift one is one that is very specific. It says the commission shall adopt a rule pertaining to gifts. Do you have any thoughts on what that should look like?

**Greg Stites:** My opinion is that they would put together a set of rules that would make it permissible. In other words, Article XIV wants to encourage legislators meeting with members of the public in social and educational settings. They say, let's make rules so that could be done in a manner that doesn't give rise to any ethical concerns. They would have to address the conditions under which meetings would be held.

**Senator Poolman:** I just want to go back to my question regarding Section 3 of Article XIV where it sets up the anonymous whistleblower hotline. Then when we have the section saying that all complaints become public record; do you believe that it is the intent of Article XIV to insure that any anonymous phone call or accusation should become public regardless of merit? It seems to me that would be something that could be very easily used in any campaign ad etc. Is that the intent or not?

**Greg Stites:** I think clearly the hotline is confidential and it would not be subject to the open records or open meetings. The information provided would be confidential and it would not be later disclosed.

**Senator Poolman:** That is where I need some clarification. Under 54-66-10 it is all released later on. Once the investigation is completed it is all released. It appears that it is any complaint regardless of how it comes to the commission. It is just a sincere question. Do you believe that is the intent?

**Greg Stites:** I don't believe it is the intent.

**(1:06:20) Vice Chair Unruh:** In Subsection 2 of Section 1, That is the part that has the delayed date for the legislative assembly to determine what the public disclosure of the ultimate and true source of funds spent, I want to make sure I understand the effective date. If we wait and study this over the next 2 years - in the meantime, how do we determine what ultimate and true source of funds means?

**Greg Stites:** I believe that the 3 years' effective date is clear that the reporting is not required until after that period and that the next 2 years is going to be spent developing what I call the box that this will be put into. There will be legislation required 2 years from now that will vest one or more entities. This really discusses vesting one or more entities with the ability to enforce and manage this process. Clearly there will need to be more definition on what the ultimate and true source means. That will come to you from a variety of interested parties. I can only say that the laws that you will need to promulgate as a result of that you must take

from the intent of Article XIV which is up in Subsection 1. Also, back in Section 4 that talks about not passing any laws to hinder or frustrate the purposes of Article XIV.

**Chairman Hogue:** I have one question on the standing provision. Could your organization, if they did not like what the legislature did, I suppose they would be free to hire you to come in and have the court review what the legislature does. Is that true?

**Greg Stites:** I believe that is broad enough to say that a resident that believes the intent of Article XIV has been frustrated in some way by the legislature or the Ethics Commission or by the Ethics Commission not carrying out its role in enforcement, can do that.

**Vice Chair Unruh:** More questions keep coming to me as keep reading this. Section 4, Subsection 2, defines what a public office or public official means and it is a rather extensive definition and it appears to include all state employees – is that correct?

**Greg Stites:** It does I believe.

**Vice Chair Unruh:** Does that extend down into local government as well?

**Greg Stites:** No.

**(1:11:50) Ellen Chaffee, Senior Consultant, Association of Governing Boards of Universities and Colleges:** See Attachments #5 and #6 for testimony in favor of the bill.

**(1:18:06) Chairman Hogue:** On the financial disclosures that are currently going in the Secretary of State's office – do you see that staying there? Or do you think this measure requires that to be brought under the Ethics Commission's umbrella?

**Ellen Chaffee:** I see that saying in the Secretary of State's office. Exactly how it is implemented; the transparency piece definitely applies. As to how deep the revelation of donors goes I don't know. I foresee some discussion about that in the future.

**Senator Anderson:** Can you answer my question on disclosures?

**Ellen Chaffee:** It is reported in the aggregate and the individual as I understand it. A number of people from around the country contributed to the Measure 1 and as individual people they are identified. Some of them contributed through these national organizations. Most of the money that is reported from the national organizations is actually in kind services – where they provided us with advice. Otherwise it came from the organizations operating funds.

**Senator Anderson:** My point is this. If the true and actual source of funds means that we need to find out the individual who gave that money or if the checks are adequate? That is the question all these people need to know because every one of them worked for some organization that gives campaign contributions toward measures, and when the public says they believe too much out of state money influences what goes on in North Dakota; 80% of the money for Measure 1 came from out of state. So, the perception that the public has is valid. Out of state money is effecting North Dakota. The corporation that many of these people work from might be based in some other state but they are here doing business and

are trying to effect what goes on in North Dakota. They have that concern about how we accurately report where the money for Measure 1 came from?

**Ellen Chaffee:** As of Nov. 6<sup>th</sup>, I have no standing to answer any of those questions. I can give you opinions about things. Article XIV belongs to the people of North Dakota, and what it says is that certain people, the right people, are supposed to be deciding those things. The legislature is supposed to be deciding some of them and the Ethics Commission is supposed to be deciding others of them. I know it is frustrating to have these uncertainties, but if we view them as opportunities to do the right thing and to make it turn out in a way that is ethical and honest and transparent and has integrity for the state of North Dakota, the legislators and people, then we can hang onto those things and go ahead and make the right things happen. Rather than worrying about who is looking over my shoulder when I don't know what to do. Let's just figure out what is to be done.

**Vice Chair Unruh:** I agree and I hope that we are all here to make sure that we can do what the people wanted us to do with the measure. To build a little bit on the question that Senator Anderson asked. We talked about how after the election you did not have the standing to help us try to and interpret this, but I would like to know what you had in your mind as for the gifting clause going forward. What is your vision for what that looks like going forward?

**Ellen Chaffee:** I think I have the same vision you have. We want that open contact between legislators and the people. Frankly, that is one of the motivating forces for those of us that worked on this. A lot of times the legislators are too busy with interest groups and industries to have time for the people. I know it is a tremendous challenge, but we don't want to restrict public access to their legislators.

**Senator Mathern:** Are you supportive of the amendments I brought forward, and is that the preference of the North Dakota group to adopt those amendments?

**Ellen Chaffee:** Yes. We support it.

**(1:25:35) Arik Spencer, President and CEO, Greater North Dakota Chamber:** See Attachment #7 for testimony in opposition of the bill.

**(1:29:35) Senator Anderson:** I sense that your interest here, even though some of these things don't start for 2 years, is to do the right thing and get ahead of what will be required if you can.

**Arik Spencer:** That is correct.

**Senator Mathern:** I echo that comment. That really is the intent of the citizen committee. They want to clarify too. They are just outlining a process. The amendments I proposed are available. We learned in the process that there are ways to make it better.

**Chairman Hogue:** Closed the hearing on SB 2148.

See Attachments #8 to #11 for additional testimony provided to the committee.

# 2019 SENATE STANDING COMMITTEE MINUTES

**Ethics Committee**  
Pioneer Room, State Capitol

SB 2148  
2/6/2019  
Job # 32316

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature: Carie Winings
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## Explanation or reason for introduction of bill/resolution:

Relating to restrictions on public officials and lobbyists, investigations of ethics violations, and implementing requirements of article XIV of the Constitution of North Dakota; and subsections 2 and 4 of section 28-32-19 of the North Dakota Century Code, relating to rulemaking procedures and requirements for the North Dakota ethics commission; to provide for a legislative management study; to provide a penalty; and to provide an appropriation.

## Minutes:

Attachments 1-10
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**Chairman Hogue:** Opened the hearing for SB 2148.

**Senator Dever, District 32:** See Attachment #1 for testimony.

**(7:40) Senator Mathern:** You brought up the national conference of state legislatures, and they have a robust section of staff materials that are available to our states regarding ethics and the different commissions around the country; I am wondering if you met with Mr. Birdsong or anyone at NCSL? Have you discussed this legislation with them?

**Senator Dever:** I have not but I did see your e-mail that you extended an invitation for them to come to North Dakota, and that may not be a bad idea.

**Senator Mathern:** See Attachment #2 for handout for a letter from those willing to come. Their views might be helpful to us at some point.

**Senator Dever:** I did say that I try to listen to anyone and everyone, and I have a great respect for the NCSL.

**Senator Oban:** I am sure I could ask this in committee discussion, but since you decided to step up to the podium, why not ask the question with regard to some of your comments here? I get the distinct impression that, as the bill was introduced, you don't necessarily agree with it and that the amendment that was already shared with the committee you don't agree with that either. Are you going to be sharing with us any proposals to make the bill better?



**Senator Dever:** I suspect that those things will be part of our discussion and will come about. As the bill was introduced and as it is proposed to be amended, it seems to be to be taking a big hammer after a problem that is not nearly so extensive as would be represented.

**(11:05) Geoff Simon, former Chairman, Coalition of North Dakotans for Sound Government:** See Attachment #3 for testimony in opposition of the bill.

**(18:30) Senator Mathern:** You note in your testimony the concern about the ethics commission and its authority, and I agree with you that it does have authority and the Constitution does in fact require us to have an Ethics Commission. I am wondering if you have thought of who you would like to be on the Ethics Commission, and have you submitted their names? That is one of the processes that this bill tries to bring forward is to find out who the people will be and get them to start making some of the decisions as the Constitution now requires.

**Geoff Simon:** We have developed that list of names, and it has been shared with those that make that decision. We are looking for the wise and veterans that understand the policy making process and who would make good decisions here. Frankly, I would have preferred a measure on the ballot that would have stated that the legislature “shall” create an ethics commission so that you have some idea what it’s responsibility and its limitations may be.

**Senator Mathern:** You have put together a list; would you trust those people to address your concerns that you have raised in your testimony today?

**Geoff Simon:** I would trust them but I don’t think they will have very much to do.

**Chairman Hogue:** The ultimate and true source term that is found in Section 1.2 of Article XIV; I know that is defined in the House bill, do you think that definition is adequate, or do you have a different definition in mind?

**Geoff Simon:** That is a difficult question. I have no idea what that term means. The ultimate and true source of funds– it is probably the US Treasury. That is where the bills are printed aren’t they? I don’t know what it means. I think in their zeal to get after whatever “dark money” they felt was out there, the sponsoring committee wrote language that they felt was as broad as possible. Now, it is up to legislature to determine just what those words mean.

**Senator Oban:** I have a hard time understanding if one of your largest shared concerns, with the number of the members who opposed the measure, is specifically about the language in Section 1, Subsection 2, why would you be opposed to, when the effective date does not go into effect for 3 years, not support an interim study to have a thoughtful discussion and try to bring people together about what that means?

**Geoff Simon:** I believe the concern is that those reporting requirements are going to be in effect retroactive – that the activities and activities that we perform and whatever gifts that we might give in the previous two years, any of those activities would be reported upon implementation or the effective date of the language. So, we have to know if we are doing things right today because we are going to have to report those activities down the road. That is the concern of the organization and why we would like to know. What is the expectation?

**(23:18) Kathy Tweeten, retired from NDSU Extension Service, and Director, Center for Community Vitality and State Specialist for Community Economic and Leadership Development:** See Attachment #4 for testimony in favor of the bill.

**(31:50) Senator Oban:** I would like to ask how you would respond to the claim and concern that was provided by Jeff about the timing. Do you feel or is it retroactive? Do they have a reason to be concerned about what their actions are now verses what may come if there was an interim study to try to flesh out those issues?

**Kathleen Tweeten:** No, I do not believe so. I would like Mr. Stipes as a person who knows the legal ins and outs to respond to that as well.

**Chairman Hogue:** I want to make sure I understand your position. You support SB 2148 as amended with Senator Mathern's amendments?

**Kathleen Tweeten:** Yes, but there are some more amendments that you have not seen that I think you need to see.

**Chairman Hogue:** Those are Senator Mathern's?

**Kathleen Tweeten:** Yes.

**Senator Anderson:** Most of the lobbyist that are here are trying to get their act together so that they do things right now that Article XIV is in place. They have said they would like to start tomorrow. For example, in regards of gifts, some think that we eat and drink at expense of lobbyists. Most of the time it is not more than \$50 they give someone in an evening, but it is a perception that the public has. Whether it is accurate or not we don't know, but if I should not be letting people buy me dinner, I would like to know that tomorrow if it is what is stated in Article XIV. Those are the questions that are left unanswered right now. Obviously we can appoint the Ethics Commission and wait and then next session we have one more year to do this stuff. What were you thinking when you were working on this committee? Another question is the true and ultimate source of funds. We talked about NCSL, I recently went and they reimbursed me for the travel room while I was there. If you really look at the true source of funds, many of those activities were sponsored by some organization. It was not the government paying for me to go. What is the true and direct source of funds you were looking for? Those are the questions that we are trying to answer here. I would have thought that the organizing committee would have set the example for us and exposed the true and direct source of funds. The last question I have is about the whistle blower line. It states that is confidential, but it also says as long as the person is acting in good faith. How do we determine if they are acting in good faith if we don't know who they are? You can write that down and get it back to the committee, or you can respond now if you like.

**Kathleen Tweeten:** I appreciate you saying that you can write the answers down. I do want to respond to the last part. There is a clarification of the confidentiality piece. I know that will be brought up here. On the true source of funds, that is part of that question of really digging in and making sure that we do it right. And that we identify what we mean by that. (Gave example of churches and reporting money given etc.) It takes time and energy and thought

and Constitutional expertise to explain. We don't want to hurry this. We don't want to put a bunch of stuff in the books to have to go back and clean up all the garbage. That is not the intent of this. In regard to the gifts, that is not in effect right now. We want to get it right, and that is what the interim study is for. There is nothing more than that intended. The information needs to be gathered and a plan needs to be derived. The Ethics Commission will be there to answer questions. It is not to penalize. They will have a much bigger job than taking complaints.

**(42:30) Vice Chair Unruh:** You mentioned a couple of things that I am curious about. You mentioned taking a look at and studying the gifts clause to see what it means and you also mentioned the hotline and explaining what confidential means a bit further. As I read the measure, it looks to me like the Ethics Commission is responsible for adopting those rules, not the legislature. Do you expect the legislature to address those issues or the Ethics Commission to address those issues?

**Kathleen Tweeten:** I believe it is the Ethics Commission that will be writing the rules.

**Vice Chair Unruh:** I ask that because you mentioned some amendments that Senator Mathern will be bringing forward on the confidential piece. I am trying to figure out our role moving forward.

**Kathleen Tweeten:** I guess we will wait till Senator Mathern has time to tell you about those.

**(44:32) Christopher Dodson, Executive Director, North Dakota Catholic Conference:** See Attachment #5 for testimony in a neutral capacity on the bill.

**(56:02) Vice Chair Unruh:** You talked about the effective date on the ultimate and true source of funds; I think it can be read two different ways. I cannot help but wonder if those words are already in effect as of January 2019, but we are required to implement laws to take them a step further before 2021.

**Christopher Dodson:** That is correct. The measure is effective now. Meaning that the clock began ticking for that particular provision and the other ones have different effective dates.

**Vice Chair Unruh:** I think that Section 1.2 effective date reads differently than the gift Section 2.1 which does clearly state that we have 2 years before that section goes into effect. Section 1.2 appears to be in effective now.

**Christopher Dodson:** In regard to Section 1.2, you have to implement the rules to enforce the disclosure triggers. What is subject to those triggers is revealing the ultimate and true source of funds? If that money that is spent after January 5, 2022, was given in 2019, that is the name of the person that has to be revealed after 2022. That is our main concern in regards to giving. We don't know what the rules are now. If you implement it without any parameters, we would have to reveal all of those parishioners.

**Senator Anderson:** I like your idea of using the definitions we have in Century Code now as well as the ethics provisions we currently have. Apparently, 54% of the public did not think

that what we do now, and that is why we have Article XVI. Do you agree or disagree with that?

**Christopher Dodson:** In part yes, but I have gotten to the point where we never know why a voter votes the way they do. The fact is that it has been adopted and you have a job to implement it. Keep in mind something else, there is this question about implementing and also there is a question about the word usurp – usurping the role of the ethic commission. You certainly cannot do that with 1.2, but also, you have plenary power. You could enact legislation regarding ethics now. You don't have to wait for any implementation. If you think these are good rules now, you can do that. You don't have to wait for an interim study and you don't have to wait for the Ethics Commission. Maybe that is what the people wanted you to do. There is no reason to wait if you want certainty now.

**Senator Anderson:** We do have those things now. The difference is that we are asked to report what we spent that on in detail. My question is if what we are doing now not adequate, and what legislation do we have to put forward to remedy that?

**Christopher Dodson:** You have obligations under the Constitution now to implement this according to the measure. Everything I am suggesting is consistent with the new constitutional provisions.

**Senator Mathern:** You speak about this person putting the money in, and the Catholic Church does raise a lot of money. What about the alternative of a widow that may give her \$5 and wants it to be used to feed children and not used for lobbying? Does the Catholic Church have a provision wherein it can assure her that her \$5 is used in the charitable act of feeding children?

**Christopher Dodson:** You might know that better than I do. It may be possible. I will say this; that requiring a segregation of funds like that really interferes with the religious identity of an organization. You were there with the establishment of the Catholic Conference for a reason because it was an essential and integral part of who we are as Catholics. Not to be separate from the rest of the mission. You could identify and put money into a certain thing, but when you give to the general purpose, it would be wrong for the state to say that you need to segregate that money because it would be interfering with how we identify ourselves and our own religious identity.

**(1:03:02) Richard Jensen, Fargo Resident:** Testified in favor of the bill. I worked on this campaign quite heavily. You have a hard job and I am learning that. I have respect for your job. Speak to some truths here. The role of a lobbyist is to persuade and influence. I am here to get you to open your minds. I don't think the people think there is a lot of corruption, but that there is potential for it and we are seeing that across the nation. I come from the place of developing the workforce for individuals who support folks with disability. We are always looking at understanding what is a mandated reporter who can cross the lines of what is abuse. And defining abuse is important. Here we are talking about some very mature lines. We need to get the commission going and let them start the work to get things certain. I know it is your job to put certainty in the situation. We are seeing that we need this so people understand the parameters. I want to impress upon you the importance of slowing things down and make sure we are doing things right. I see you are being pulled to make some

things defined now and you need to slow own and do this right. The people have spoken but please take no offense.

**(1:09:07) Chairman Hogue:** We are pulled in two different directions. My question is what information or knowledge do we not have today that we will acquire in the interim that prevents us from acting now?

**Richard Jensen:** I think you do a lot of writing on laws that affect the state.

**Chairman Hogue:** Yes, I am on the Uniform Law Commission.

**Richard Jensen:** Making sure that it is constitutionally sound. That would be the key.

**Senator Anderson:** When you talk that we should not worry about this hammer that is coming. We had provisions in place and if you listened to Senator Dever earlier, we thought that we were doing a pretty good job, but now are being told we are not. I understand when you say, let's just take it to court, but someone has to pay the bill for that. We are defending a lawsuit on a board that I am associated with now for two pieces of legislation that we passed last time. We are at about \$750,000 now and we haven't even gotten to court yet. You could imagine the cost if we have to go all the way to court. The people of North Dakota have to pay the bill.

**Richard Jensen:** I would say that we would not see that ultimately. Hopefully we get it right the first time. Providing the constitutionality. I don't want to see it go that far. In the end it is not one united people if that happens. I do not know what has pushed the people forward. I have not been able to pull back any curtains. There were no big rumors being spread during the campaign. I think it is more of recognizing that there is potential danger and we have seen this through history. A lot of it is driven by big business. I am asking for honesty and truthfulness.

**(1:16:18) Joshua Gallion, State Auditor:** See Attachment #6 for testimony in a neutral position on the bill.

**(1:22:10) Senator Anderson:** All of your money gets appropriated by the legislature that you spend in your office. Have you ever felt constrained in your activities by the fact that these 47 senators might not vote for your budget if you did not do what they individually or collectively said?

**Joshua Gallion:** We will do our job down to the best of our ability within the appropriations that we are given. We have never felt fear of retribution.

**Senator Anderson:** I thought that might be your answer. The inference here is that if you get the money from someone, you might do just what we say or the chairman says because we have control over your budget.

**Chairman Hogue:** I want to make sure I understand. Your concern is that the state's Ethics Commission gets up and established, it will either overlap or it would potentially preempt your

statutory and constitutional authority to investigate state agencies and public officials what you regard as ethical rules that are established. Is that your concern?

**Joshua Gallion:** Somewhat. There is so much is not known on how this will impact state government and what they define as ethics may be different than what we define as ethics. Is this going to create a scenario where now we have to report our findings to the ethics commission? That could negatively impact our ability to work with state government agencies and some of the independence we hold important. Again, making sure we have the ability to draw those boundaries is important for the independence and the authority of the auditor's office.

**(1:25:30) Senator Mathern:** See Attachment #7 for amendments proposed to the committee. I believe we need to do the prior set of amendments that I already handed out but I am offering these in addition to address some of the concerns. Essentially, the first set deals with confidentiality. I tried to address 3 issues; source of funds, gifts and bias. Clarifies gifts not effective till 2021. (Gave a summary).

**(1:34:00) Senator Anderson:** My question is why do you think it will be clearer 2 years down the road? I am not sure how it is going to be much clearer 2 years from today.

**Senator Mathern:** I have heard each of you articulate a point of view that I did not hear before. You all add something to this discussion. All of us together can make a better decision together. A major piece of this is creating an Ethics Commission and I believe these will be people that we generally respect. Maybe people who have experience in being Sampson. These will be people that the citizens will see as out of the fray of these tough dilemmas that you and I have about these. The Ethics Commission itself adds that value that we can take part in. I have an idea of who these people might be. It is up to Governor and the majority and minority leaders. I think that process will bring people forward that will help us in the dilemma you suggest.

**Senator Anderson:** I think those 5 people will be no more capable than the ones that are sitting here. The difference will be that they will have the authority.

**(1:37:15) Chairman Hogue:** See Attachment #8 for amendments proposed to the committee. These amendments go off the original bill. There were a couple of philosophical things that drove my amendments. One is the debate on whether we wait for an interim study committee, or do we invite people from outside North Dakota to tell us, or do we try to implement something now? For a number of policy reasons, I think we should fully implement now and if the Ethics Commission disagrees they have the prerogative to do so. But there is value in creating certainty both for public officials and lobbyists affected by this. I share the concern of Senator Anderson. You can punt this to an interim committee but they are not going to be imbued with any greater knowledge or facts or developments that is going to guide them anymore than what we are. The majority leader of the Senate appointed all of us to this committee because he felt we were senior legislators that have wrestled with these issues, both in our own campaigns and so there is no deference to holding off and hoping some interim committee is going to find a greater solution than what we can achieve while we are here hearing testimony and accessing Legislative Council for amendments. The 2<sup>nd</sup> thing is, if the Ethics Commission, when they are established, if they do not agree with us

they will have the prerogative to say something different. (Gave an example of a gift.) Both the House and Senate bill versions require the Ethics Commission to proceed with the administrative process to be represented by the Attorney General and to require them to get approval from our Administrative Rules Committee before they passed any further rules. I split that in half. I think they should have to go through the administrative process like any other agency to adopt their rules but should be their prerogative if they wish to be represented by the Attorney General or not. I think it should be their prerogative if the rules they adopt do not comply with the Constitution, this constitutional measure has a measure in it that will remedy that. Anybody can walk into court and say they don't agree with it. It is a highly unusual provision in Article XIV that says that you can do that. Typically, what would be provided is that either the administrative agency or the party that is being regulated can go in and challenge a regulation, but this says that anyone in the state of North Dakota can. I am not concerned about the legislature exceeding its authority relative to the commission, or the commission not having the authority to push back. I think that is abundantly clear that they do have that authority.

**(1:42:30)** Walked through the amendments.

Doesn't support a study

Gift Clarity

Ultimate and True Source Addressed

Complaints that are determined of no substance and resolved to be confidential

Criminal Sanctions reduced

Appropriation changed to \$422,000

**(1:52:30) Senator Anderson:** On Section, Page 1, where you talk about ultimate and true source, a person would be construed in state law to mean corporation, individuals etc.

**Chairman Hogue:** A person would a natural person like you or I or it would be an entity. If they are incorporated, either as a LLC or a corporation. (Briefly discussed a couple of examples of who would have to disclose the information.)

**Senator Mathern:** (Explained where he got the appropriation dollar amount from.) The amount of persons that would be in their purview is dramatically higher than the Judicial Ethics Commission. There you have about 3000 people and here you have about 10,000 to 20,000 people. However, I do appreciate that you have brought forward these amendments and that you requested the christmas tree version and I would ask if we could have two christmas tree versions – one with your amendments and one with mine.

**Chairman Hogue:** I think that is a good suggestion. We will do that. I do not think that all state employees are covered. Legislative employees are covered; which includes everyone from Legislative Council and temporary staff during the session. Rank and file state employees are not covered. That is my opinion, but if you see something different, I would like to know about that.

**Senator Dever:** I often find that I am the only person in the room that is not being paid to be there. Those are working committees. (Gave an example of a Long Term Care Association meeting put together to consider long term care rate setting.) There were several meetings and we were only provided lunch, but that would be included in this discussion. I think we

need to think about all of those kinds of things. These are things that we can put in place and adjust them going forward as we encounter situations that we fail to contemplate.

**Senator Anderson:** I would like to think about construing the measure strictly. No meals, no food, no nothing, and the same we can do for gifts. I would suggest we think about that. It would save the lobbyists a lot of money.

**Senator Mathern:** Mr. Stites is available any time for questions.

**Chairman Hogue:** Adjourned the committee discussion on SB 2148.

See Attachments #9 and #10 for additional testimony provided to the committee.



# 2019 SENATE STANDING COMMITTEE MINUTES

**Ethics Committee**  
Pioneer Room, State Capitol

SB 2148  
2/12/2019  
Job # 32626

☐ Subcommittee  
☐ Conference Committee

Committee Clerk: Carie Winings
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## Explanation or reason for introduction of bill/resolution:

Relating to 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 and requirements for the North Dakota ethics commission; to provide for a legislative management study; to provide a penalty; and to provide an appropriation.

## Minutes:

Attachments: 1-4
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**Chairman Hogue:** Opened SB 2148 for committee discussion. Reminded the committee that two sets of amendments were distributed last time the committee met. I Made a request for the Christmas Tree version of Hogue amendments. See Attachment #1 for that copy.

**Senator Mathern:** See Attachment #2 for amendments proposed (A combination of the two prior amendments given to the committee.)  
Moved Amendments #2.

**Senator Oban:** Seconded.

**Senator Mathern:**

**Senator Dever:** I am not sure exactly what we are doing here. You said to remove the rulemaking authority?

**Senator Mathern:** In the first set of the amendments, I offered an amendment that you will note on here to be the first page, that eliminated the present rule making authority and therefore omitting the Ethics Commission to determine their own rulemaking authority. It was the original amendment I offered at our first meeting and the second amendments that are on page 2 and 3 of this document. There is nothing new here you have not seen.

**Senator Dever:** In our first hearing, I asked the question on whether the rules established by the ethics commission overruled the rules established by the legislature and council said that would be for the courts to decide. I have a real problem with not having any check at all on the work of the Ethics Commission. Not by the legislature through the administrative rule

process. When we pass bills into statute the Governor can veto it and the people can refer it, and now we have a constitutional set of five constitutional officers that can make any laws they want without any check on it. Not even by the people.

**(6:30) Senator Mathern:** I think you just explained why one might vote “no” on these amendments. I think it was important you have this opportunity to address the amendments and work through this process in an orderly and deliberate manner. I suspect that after this motion is dealt with, we would be looking at other amendments.

**Senator Dever:** I appreciate that Senator Mathern just suggested that we will be dealing with this by disposing of it. I agree.

Chairman Hogue: Any further discussion on adopting 19.0422.02005?

**Senator Poolman:** I wish we had more time to look at these in comparison. I reluctant to vote at this time just because I have not seen everything, or all of our options.

**A Roll Call Vote Was Taken: 2 yeas, 4 nays, 1 absent.  
Motion failed.**

**Chairman Hogue:** Going to walk through Hogue amendments in Christmas tree version handed out. (Attachment #1 – Hogue amendments applied to original bill.) (12:00) Reminded the committee that all amendments proposed, including ones that Senator Unruh had drawn up, will be looked at and discussed before the committee will finish up with the bill.

**(13:20) Senator Anderson:** Just to be sure now, that when you say the person in regard to gift giving, that is probably means any corporation, LLC, or any person under the law.

**Chairman Hogue:** Anybody who has making the contribution.

**Senator Anderson:** But it is not an individual?

**Chairman Hogue:** No, it is an individual or any entity.

**Senator Anderson:** My second question directly related to that. Legally, how do we determine what the burden of proof is for “knowingly contributed”?

**Chairman Hogue:** “Knowingly” means that you have specific knowledge. That what you are doing is making a contribution for the purposes of influencing a statewide election or an election for the legislative assembly. (Gave an example.)

**Senator Anderson:** if I give money to a political action committee, I don’t know specifically where they are going to spend that money. I didn’t knowingly contribute that money because they were going to support a specific campaign. So I didn’t knowingly support.

**Chairman Hogue:** Correct. So the key there would be to give it to me directly.

**Senator Dever:** Would this apply to supporter opposition to a measure?

**Chairman Hogue:** Yes, it is a statewide election. The Article XIV, mentioned statewide ballot measure, but they are statewide elections.

**Senator Oban:** Can I have clarification on Senator Anderson's point. Currently, if you give over \$200 to a PAC, is that reportable right now?

**Chairman Hogue:** Yes.

**Senator Oban:** so, this changes nothing in regard to that question.

**Chairman Hogue:** Correct. Many of the provisions that are in Article XIV are already in existing law. Including the contributions. They adjusted for inflation. (Returned to walking through amendments.)

(17:00) page 2 of Christmas tree version

(18:00) page 11 to page 15

(19:00) page 15 – overstrike section 16 of the bill (Attorney General issue)

**(21:09) Senator Dever:** I understand intent. I am wondering if the effect of overstriking this removes it as it applies to other agencies.

**Chairman Hogue:** I do not think so. (Claire Ness of LC indicated No.)

(21:45) Page 17 of amendment (reviewing Ethics Commission rules)

Page 21 – Inserted for clarity of what is not a gift and added the definition of a lobbyist.

Page 24 – Appeals on line 28 (Commission has to be in Bismarck but the appeal could be venue in the county where they reside.)

Page 25 – Lines 7-9 increased what is considered confidential. (not time of filing of complaint)

- Lines 23-25 attorney general to act as lawyer (added unless they object)
- Section 22 – study removed

Page 26 - Appropriation of \$422,000 - 1.5 FTEs

**(30:55) Senator Mathern:** I would like to comment on your amendments. I think these are very workable amendments in the context we are in. That context includes the fact that any citizen can question anything we have done. Some citizens might. I also think between now and the next legislative session the Ethics Commission will be in place. They might weigh in. One of your amendments might need some touch up. That is the study. I wish there was a study. If there is not a formal process of a study, I think people will informally study it anyway. Next session it might be addressed. We are dealing with legislation now and not a constitutional measure. I do have a concern on the ultimate and true source of funds in terms of when someone is providing that contribution and I believe there should be a further amendment in 16.1.

See Attachment #3 for additional amendment for section 16.1 to add to Chairman Hogue amendments. I think Senator Hogue take a very pragmatic approach to the question of alternate and true source of funds. If his amendments are adopted, that we include in the other section of law that deals with political committees that organize and register according to the federal law, that make independent expenditures. It is to carry that concept of ultimate and true source of funds to the other activity; which has become very active in North Dakota.

So there would be a way of some way accounting for those contributors in these political committees that are organized. I think these are amendments that we can work with and I look forward to Vice Chair Unruh's amendments.

**(35:55) Claire Ness, Legislative Council:** Testified in neutral capacity. Under Senator Mathern's amendment, there is a section 16.1-08.1-03.7 that is currently in the Century Code. That provision requires certain political committees that file reports under federal law to also provide a copy of that federal report to the Secretary of State. The amendment would also require those political committees to supplement the information in that report with information on the ultimate and true source of funds for contributors that contribute more than \$200 adjusted for inflation according to the language in Article XIV used to make an independent expenditure or disbursement. They would have to prepare on a different format a supplement to that federal report that they share with the Secretary of State.

**(37:42) Senator Anderson:** Is the Ethics Commissioner who is responsible for publishing the updates of the \$200 adjusted for inflation?

**Claire Ness:** That is not specified in bill.

**Senator Anderson:** Under Subsection 4, we talk about the sub-contributor now too. What is that?

**Claire Ness:** That is not defined in that chapter. It is used in other places. There are some sections in that chapter that require sub-contributor information to be provided. Generally speaking, I believe that has been interpreted as people whose combined contributions are included in one bundle contribution.

**Senator Anderson:** In regard to the true source of funds, that is going to just be the person under the law – whatever group, and we are not going to get to the sub-contributor. The question is whether we want to know who the sub-contributor is if a large contribution comes in and it is made up of various people's money who may or may not have known that they gave it for that specific purpose.

**Claire Ness:** That would be a policy decision and that would turn largely on the definition of true and ultimate source.

**Chairman Hogue:** (Example) – amount over \$200 for the year and then have to disclose?

**Claire Ness:** That is in a different definition. The definition of a contributor is someone who, in the aggregate, would provide more than the threshold amount of contributions. A sub-contributor would (it depends of course on the definition of ultimate and true source of funds); but what you could considerate it as is if you have multiple people who provide you \$210 in contributions and those are bundled together into say a couple of thousand dollars – the contribution of a couple thousand dollars is made; then depending on the definition you may have to identify the individuals who provided over \$200 to make up that total contribution.

**Senator Anderson:** To be more specific. This has nothing to do with what I give to a particular senator, but what I am trying to get at is if the Association of Telephone

Cooperative, for example, is an association of a whole bunch of telephone cooperatives who each put money into their association who then comes to lobby, and the question is if we need to know those individual associations that gave money to the larger association or not?

**Claire Ness:** It is a policy decision if you want to dig into that level of contributors. The way that you make that determination will play into how you define the ultimate and true source of funds. It is something for committee to determine.

**Senator Anderson:** that is what I asked of everyone who came here and testified and I still am waiting to hear the answer of what they meant by that.

**Senator Poolman:** In Senator Mathern's amendment that ultimate and true source of funds listed by contributor and sub-contributor – he is saying, yes, we are going to put everyone who donated to this organization on the list and they are all going to be reported, right?

**Claire Ness:** For this particular subsection that is correct.

**Senator Poolman:** So, this would pertain to any sort of organization? Is it just restricted only to PACs? So they have to be a registered PAC in order for it to kick in?

**Claire Ness:** A political committee is a defined term in Chapter 16.108.1. If they organize and register under federal law and make an independent expenditure or a disbursement that meets that threshold amount. That is when this requirement to disclose the sub-contributor would kick in under this subsection. It is a limited subset of a political committee.

**Chairman Hogue:** See Attachment #4 for Senator Unruh's amendment.

**(44:50) Claire Ness:** Walked through Senator Unruh's amendments (Attachment #4) Compares the amendment to Senator Hogue's amendment. It is very similar with a few changes.

**(50:40) Senator Dever:** I am confused about where the rules of the Ethics Commission fits. Are they amendments to Century Code, or are they considered to be administrative rules? Are they subject to any kind of modification but the legislature?

**Claire Ness:** Those are good questions because there really isn't solid case law that we have found on that. Our position is that, no, they would not be amendments to the Century Code under Article XIV of the Constitution. Only you have the authority to pass legislation, which is what is codified in the Century Code. They are not administrative rules because administrative rules are those that are passed by administrative agencies which are part of the executive branch. Instead we have this direct constitutional authority for an entity that does not reside in the legislative, judicial, or executive branches of government. They are kind of their own entity, and their rules are distinct from what we currently have as statutes or rules.

**Senator Dever:** But they have the force of law?

**Claire Ness:** That would be a commonly understood interpretation, but again we don't have case law on that.

**Senator Dever:** On the first page of Senator Unruh's amendment, I saw that the Secretary of State "shall" impose a fine of \$5000. It does not say may impose and does not say "up to" \$5000. So, there is no flexibility on that.

**Claire Ness:** If it says "shall" and doesn't have the language saying "up to", that is correct.

**Senator Dever:** And then, is that as determined by the Ethics Commission or by the Secretary of State?

**Claire Ness:** That is correct. The Secretary of State would have authority to determine a violation. Also, if the Ethics Commission adopts a rule under Article XIV, potentially they could investigate and have an investigative finding that that there is a violation of that provision because it relates to Article XIV.

**Chairman Hogue:** Do you know what Senator Unruh's intent is? Why she has the Secretary of State imposing the fine as opposed to the Ethics Commission?

**Claire Ness:** I cannot speak to the policy, but I believe, based on the reading of it, that it is because it is in Chapter 16.108.1; which is a chapter that the Secretary of State currently administers.

**Senator Mathern:** As you finalized your comments, you noted it would increase the appropriation – is this set of amendments considered in addition to Chairman Hogue's amendments?

**Claire Ness:** I misspoke. It decreases the appropriation from the original bill.

**Senator Anderson:** It seems to me that on your proposed amendments, on Page 2, Sub section 2, you have exactly the same language about the Secretary of State imposing the fine.

**Chairman Hogue:** That is bad policy.

**(55:55) Senator Oban:** With regard to that, in the Article, doesn't it actually specifically say that the legislative assembly shall appropriate civil and criminal sanctions for violations of knowingly using a campaign contribution for personal use?

**Chairman Hogue:** It does, but what I was alluding to when I said bad policy is this idea that the Secretary "shall" impose \$5000 and it can't be up to \$5000. (Gave an example of where a small infraction where it would seem excessive to impose a \$5000 fine.) I am glad Senator Anderson caught that, and if that scenario plays out I would not want to be fined \$5000. If these amendments are adopted, then I would put "up to".

**Senator Dever:** It says whichever is higher.

**Chairman Hogue:** Under its current draft.

**(58:00) Senator Anderson:** As I was reading through your amendments, that same language was used throughout, so we would need to change that in several places. (Clarified that it was Page 26, Line 11 that was one instance that “shall” needed to be changed.)

**Chairman Hogue:** The policy behind “up to” – if you want it to be a mandatory minimum the “shall” should be in there, but for these types of violations, I think that whoever is imposing the fine should have the discretion to adjust that.

**Senator Poolman:** Just to clarify, especially toward the end of the Unruh amendments, she basically says that the Ethics Commission will set up all of the rules, so they determine all of that. Is that an accurate assessment of the last part?

**Claire Ness:** That is correct.

**Chairman Hogue:** It appeared to me that Senator Unruh’s amendments would say, no, they don’t have to go through Administrative Agencies Practices Act to make their rules. What they would do is they would make their rules, announce their rules, and tell us how they made their rules after they were adopted. Is that true?

**Claire Ness:** That is mostly true. She does retain several provisions requiring them to go through the public notice and hearing process and some of those. The provisions that were removed were those that required either the Attorney General review or the Administrative Rules Committee review and the possibility of voiding those rules. So, taking out the legislative or executive ability to influence those rules or to oversee them.

**Senator Anderson:** On Page 7 of Unruh’s suggested rules, under 54.66.10, it reads – a person who expends an amount greater than \$200 adjusted for inflation to lobby or influence state government or than to influence the statewide election or election for the legislative assembly; can you tell me why that exclusion is in there?

**Claire Ness:** That is because those parts that are excluded are covered back in Chapter 16.108.1. If you look at the new section to 16.108.1 at the very beginning of her amendments, and Section 3 of her amendments, both of those cover that reporting requirement that is excluded from the provision that you just mentioned.

**Senator Mathern:** In these amendments, there are directions given to the Ethics Commission – take an example of page 5, in light of the fact that the Ethics Commission is established by Article XIV of the Constitution, are there constitutional questions raised by directing them to do something by the legislature? Is that really a constitutionally acceptable act or does it raise the questions that it is unconstitutional?

**(1:03:55) Claire Ness:** There are a couple of ways to analyze that with regard to these amendments, especially that provision you just cited. The first is that language in that provision is stemming from Article XIV itself. Article XIV really imposes those particular requirements and then reiterates them for purposes of that chapter. The second way to think about that is that there is that provision in Article XIV, Section 4 that says that the Legislative

Assembly can enact laws to facilitate that article. There would be an argument that perhaps this is facilitating that argument, but again, those particular ones are taken from the obligations on the Ethics Commission from the article of the Constitution. The larger point is that, yes, however there are unanswered questions about the interplay between the Legislative Assembly's authority and the Ethic Commission's authority.

**Senator Anderson:** In Section 4 of Article XIV, it says that this is self-executing, which I wish were true. (Lists several references to where the Legislative Assembly is mentioned in Article XIV.) So, obviously the article says the legislative assembly needs to do those things, and I think most of us are feeling like we should do that this session rather than waiting two years when we only have one shot at it.

**Chairman Hogue:** Any further question for Claire?

**Senator Dever:** We know when the legislative session meets, we know when the laws take effect – the rulemaking process for the commission is likely to be taking place throughout the next two years. Statewide officials will begin announcing intentions to run for office, and they will be raising money. They will be doing all the things that campaigns do. When do the rules take effect, and if we file a report that shows activity that goes back to the first of the year that by some subsequent rule is illegal, then how do we know?

**Claire Ness:** Laws and rules cannot retroactively make activity illegal. If you conduct an activity in January and in June a law or rule were passed that said that activity was illegal, it cannot retroactively apply. That would be a concern under the due process clause in the federal Constitution.

**Senator Dever:** If it is reported in the year end or the general report, the timing of the activity is critical. Then do the rules become effective immediately when they vote in the commission to say what the rule is?

**Claire Ness:** That is going to depend on either the rules the Ethics Commission sets for itself. The effective date of the rule will depend on the rules that the Ethics Commission sets or the legislation that you pass – if the Ethics Commission ends up following legislation. So I don't have an answer regarding the effective date. Reporting requirements however, they can look back.

**Senator Dever:** So then the effective date of the rule might be when they make their report to the Administrative Rules Committee?

**Claire Ness:** That is a policy decision that you could include in the bill.

**Senator Mathern:** In terms of the appropriation, I know there is no noting of an FTE – the original bill had salaries and expenses spelled out that were related to positions, operating expenses, etc. This does not have that. I think the reality of the work is closer to this dollar amount, but I am wondering if you are aware of a problem with funding the provisions if we don't list FTE's? What does that mean when no FTE's are in the amendment?



**Claire Ness:** If there will be FTE's working for the commission, you would want FTE's spelled out in the bill, and give the commission the authority to hire.

**(1:11:00) Chairman Hogue:** We have a number of opportunities here with amendments. What are the committee's wishes?

**Senator Anderson:** I think one of the first things we need to solve is if we want the sub-contributor or just the contributor. When I read your amendment, I think it says the person who contributes and that does not include the sub-contributor. Senator Mathern's and Senator Unruh's includes the sub-contributor. Once we resolve that it will be easier to move forward.

**Senator Mathern:** I think that is a positive point. I believe we should address the issue of sub-contributors. It is one of the reasons Article XIV came about. There was this interest on the part of the citizens wanting more information. My amendment takes the concept that the Hogue amendments have in terms of the threshold of the \$200, but it identifies a sub-contributor. I would encourage that we take that amendment and put it on the Hogue amendments. There are certainly others from Senator Unruh that maybe have merit that we should include.

**Senator Anderson:** (Gave an examples of contributors and sub-contributors.) Do we need to know those sub-contributors or not? Those are specific answers that we need to decide.

**Chairman Hogue:** I thought about that and I think my answer is that we do not need that. If you have an association that the money came from – I do not think we need the sub-contributors. If I know the objective of the organization, I think that is enough. The practical side is – how would you compel that? I just don't know how you would do it.

**Senator Oban:** I do not think that you could make an educated decision about this specific amendment of Senator Mathern's unless you pull out the definitions in this section of code for what a political committee is, what a political purpose is etc. I think every member needs to look at those in order to make a decision. The crux of this is not the situations that are being described right now. It is if you have a measure and you have a group that has decided to be a spokesperson for or against it, and that group accepts a bunch of contributions from a bunch of people that are never disclosed and then that group reports that they have spent \$500,000 to support or defeat a measure – that is what this is getting to. If you think that is ok, then that is on you, but if you think that should be disclosed – that is what this would do. Until you look at those definitions that are already provided, I do not think we are making an educated decision on this.

**Senator Mathern:** I believe that is true and I believe it is the intent of the supporters of Article XIV. To actually know the sub-contributors. I think it is a pretty crucial amendment. The citizens might want it further than this amendment suggests.

**(1:19:04) Senator Poolman:** I like the Unruh amendments because it talks about the sub-contributor. I would agree that the citizens intent was to get to every single person who has put any money into these organizations. They want to see that. I think we keep talking about what the intent of the proponents of the measure were, and I get very nervous about us trying

to negotiate and interpret what intent was because I think that any group from here on out is going to say they need to get it into the Constitution and then they get to negotiate as to what it means. The Unruh amendments puts exactly the language from the article into the rules. The Ethics Commission is on their own and they can make all of the rules. I appreciate that part of her amendments that it clearly takes exactly what the article stated and it puts the authority to the Ethics Commission. With all of my frustration with this from the very beginning, I think that gets to the heart of the matter.

**Senator Dever:** I appreciate Senator Poolman expressing her piece and I would like to share mine. Historically, the people that ever checked any of those contribution reports were called opponents. Now all of the sudden, there is a large interest in it. I think it was the pre-general contribution report on North Dakotans for Public Integrity that I printed about 40 pages, and it was interesting the know that individuals had an interest in the ethics of North Dakota. I found it very confusing, and I guess that one of the concerns that I have is that it was so much information that most people will not bother to go through it. It was confusing, because in addition to that report, if an organization made contributions to them, then they had a report also that had all of that information.

**Senator Poolman:** Please don't misinterpret my comments, that I think this is practical. Or that the reporting requirements would be practical under the way that it is written in the Constitution. It says what it says. Let the courts and the commission decide what it says.

**Senator Dever:** Or at some point to exhaust the storage capacity of the computer system.

**Senator Mathern:** You all highlight the rational for the study commission. Each of these questions were confusing to address and that was the rational for the interim study. However, we have made some progress. I believe we would have had 3 sets of amendments here, but now we have 2. I want everyone to know that part of that is pretty pragmatic on my part as far as who is on this committee. If there are any provision of the original amendments that I offered that still make sense, I hope we adopt them either on the Hogue or Unruh amendments. It is important for us to realize that it is a big deal here in terms of the money. Whether we fund or under fund it is a big deal. I don't think any final action today would mean it is the final bill.

**Chairman Hogue:** Senator Poolman I would respectfully disagree with your preference of Senator Unruh 's amendments. The fundamental problem I have with hers is that, when I come at it as a lawyer, I have been under ethical rules for 30 years and it does not matter where the line is drawn as long as I know where the line is. I come at it with certainty, and I want it as soon as possible. If there is a change down the road that is fine, but I should like to know. The question of just having the Ethics Commission adopt all the rules; I think that is fine except for the next 2 years we ought to know what the rules are. Everyone can adhere to the rules if they know what they are. I don't have any heartburn over the legislature deciding what the rules are until the Ethics Commission make rules. Frankly, they can do that. But, not knowing who is going to be on this commission and what their level of expertise is – I contend the experts are in this room. We need certainty and I cannot abide putting it off for 2 years. I think we should move forward if we can, because of the appropriation process.

**Senator Mathern:** Would you care to address the sub-contributor issue? As an amendment I would offer to be in addition to your amendments.

**Chairman Hogue:** I think that would be proper as neither I or Senator Unruh's amendments addresses this particular reporting requirement.

**Senator Mathern:** Moved to add .02010 to .02009 version of the bill (Hogue amendments).

**Senator Oban:** Seconded.

**Senator Mathern:** I think we are in some way tainted in North Dakota by what is going on outside of North Dakota. I think this is just an attempt to make sure we have some sort of transparency and reporting of who is putting money into those accounts. These political committees have to keep track of that and then report it.

**Chairman Hogue:** I have a slight concern that Senator Oban shared – that do we know what we are doing here. I know a little bit of what we are doing. I know the committees that I interact with. This does not apply to them because they are not federal committees. I don't know an example of a federal committee.

**Senator Oban:** The Secretary of State's office is here. They might be able to give us an idea.

**(1:29:55) Jim Silrum, Deputy Secretary of State:** You are asking about what are the federal committees? Or an example of a federally registered committee?

**Senator Oban:** Do you have a copy of the amendment so you can read it?

**Senator Dever:** Wouldn't that be the state parties and congressional candidates?

**Jim Silrum:** No, that would not be true. There are political action committees that are definitely registered with the federal election commission. Under current law, they just submit those portions of their report to our office. They also submit to the FEC, that shows North Dakota activity. Whether that be contributions or expenditures made. As I would read this, the question would be if they would have to show the name of any individual who gave a portion of that contribution to the overall contribution. As Claire Ness stated previously, whether or not that is all of the contributors who ever gave to that PAC or not, or just those who gave a check that they specifically wanted to go to a certain measure or particular cause. That would then be considered a sub-contributor. Or, if it is established by policy where it is all of the member of that association. That would be something for the legislature or the Ethics Commission to decide.

**Senator Dever:** We just had a big Senate race that took in a lot of money from across the country, and a lot of that money sits in an account somewhere. If it is used in support of candidates or a party in the next election, then this would require that each of those contributors be listed?

**Jim Silrum:** I don't know if I can answer, because I don't believe that it is clarified in here.

**Senator Mathern:** On this measure, there is some clarification. Tell me what portion is unclear?

**Jim Silrum:** It depends on how it is interpreted. Where it says in Subsection 4, "collected or used to make the independent expenditure or disbursement including", it would have to be determined if I am a member of a PAC and it contributes to a candidate or measure etc. that I specifically say I want to contribute to, if that is the case, then all of the contributors need to be listed. If not, then it has to be determined whether it is just those that say they want a portion of their contribution to go to a specific area. I am not sure how I would understand that. I would have to turn to our legal counsel to determine the understanding of that.

**Chairman Hogue:** Asked for further discussion on the motion.

**Senator Anderson:** Clarifies the motion. I think we have enough problems to solve with working out the details of Article XIV and we ought not to get into this federal PAC business.

**A Roll Call Vote Was Taken: 2 yeas, 4 nays, 1 absent.**

**Motion failed.**

**Senator Anderson:** Do sense that you want to get this out of committee today rather than have another meeting?

**Chairman Hogue:** This has a long way to go. We could have another meeting if we thought that there was a lot of heavy lifting to do on either version. My thought is on my amendment that I would like to take out the "shall impose" and get it "up to" for the decision maker to have that discretion. I think the smart people in appropriations can handle the FTE issue.

**(1:37:50) Senator Poolman: Moved amendments 19.0422.02008 (Unruh amendments).**

**Senator Oban: Seconded** for purposes of discussion.

**Senator Poolman:** Asked for any committee discussion.

**Senator Anderson:** I agree with Senator Poolman on measure 1 and getting to the true and direct source of funds, however, I think the language that we have and the solution is impractical. I don't think we are going to get there. I will oppose the Unruh amendment for that reason.

**Senator Dever:** I kind of like the language that you put in including the gift. I would like to see that included in whatever bill we put forward. If this is one at the exclusion of the other, then that is not included. For that reason, I will not support the motion.

**A Roll Call Vote Was Taken: 1 yea, 5 nays, 1 absent.**

**Motion failed.**

Senator Anderson: Would you like to proceed with your amendments and make the corrections later?

**Chairman Hogue:** I think what I would like is for the committee to direct that wherever there is a “shall impose” that we change it to an “up to” so that the decision maker has that discretion. I don’t know where the committee is at on the FTE’s. I know that is something that will garner the attention of the appropriations committee.

**Senator Oban:** I would rather leave that to the appropriations committee to adjust. I think those changes can appropriately be made at the next step in this process.

**Senator Dever:** Regarding the definition of a gift, which begins on Page 21 of the amendments, where it says gift does not mean; I would like to add a small amendment. I think there should be some dollar amount included in the definition. (Gave an example as to why.) **Motion:** To make a couple of changes to Hogue amendment - Page 22 Line 4 after notice add “for” meals or related items with a value less than \$30. I am thinking \$30 because it is in Century Code it is at \$60. I do not believe that anyone could argue that raises an ethical concern.

**Chairman Hogue:** That would have to be a section F because that is another way to say something is not a gift. Is that your intent?

**Senator Dever:** That is true and I also said last time that often times I am the only one in the room that is not being paid to be there. I know that is true of a lot of other people. I don’t think that getting a free lunch as part of an event that I attend is a problem, but if my attendance at one of those puts me under an ethical cloud, then I am going to have to quit doing that. I would say that a lot of legislators do the same thing.

**Chairman Hogue:** The measure doesn’t talk about dollars. It just defines gifts in terms of “doesn’t raise ethical concerns”, but the more I think about it, I like your amendment because it provides that certainty.

**Senator Mathern:** I hope we don’t put that dollar amount in there. I think this is an evolutionary process we are in. I with the Ethics Commission would struggle with that. I wish we would until the next session. When you set that amount, you are also acknowledging a situation where there are people who don’t have \$30 and they still want to meet with us. It raises that issue about if it is really appropriate? I wish other people were involved in that decision. I understand the need for certainty but I think the amendments here that Senator Hogue has come up with are such that it lets us struggle with that yet, and gets the Ethics Commission in place so the ownership is not just on us. It is on who the people said should be establishing rules. That is what the measure calls for. That those people help us make those decisions.

**Senator Poolman:** I think it says very clearly in the Constitution now that “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. It very

specifically says that they are the ones who should be deciding what a gift is. I think we should get their money appropriated as soon as possible, and get the Ethics Commission appointed and they can provide the certainty. It very clearly states in the Constitution that we don't have the authority to do that. There are plenty of things that I wish it didn't say, but I think it says that. If the voters wanted it this way, then I think we have to stick to what the voters wanted.

**Senator Oban:** I am with Senator Poolman on that one. I don't like the arbitrary choosing 25 people or more either. Those things are best left up to the Ethics Commission.

**Senator Mathern:** Seconded for purpose of discussion.

**Chairman Hogue:** Clarified the motion.

**A Roll Call Vote Was Taken: 3 yeas, 3 nays, 1 absent.**

**Motion failed.**

**Chairman Hogue:** What about giving the fine imposer the right to exercise discretion? We should have a formal sense of where the committee is on that?

**Senator Anderson:** Can we meet tomorrow after we get it fixed. That would satisfy Senator Oban's concern.

**Chairman Hogue:** We should act on one of these amendments with some guidance to get further amendments.

**(1:49:30) Senator Anderson:** Moved to amend with 19.0422.02009, and take out "shall" in regard to fines and make it an optional penalty "up to" that amount. It is at least two places and maybe more.

**Chairman Hogue:** That is on page 2, line 4 of the 2009 version and it is also on page 26, line 11.

**Senator Oban:** If we are doing that I would also ask for the committee's consideration to remove, on page 22, D and E as well.

**Chairman Hogue:** That is a separate motion. Let's deal with that separately. Let's deal with the motion that the fines should be discretionary.

**Senator Poolman:** That it should be up to \$5000.

**Senator Dever:** Do I understand correctly that it is to adopt the full amendment with those changes. I am good with that.

**Senator Mathern:** I would rather we did not do that with regard to fines. To only have it "up to" when we don't know the commissioners – it could be a meaningless fine. I understand the process we are in here. I don't have any problem with proceeding to get consensus.

**Chairman Hogue:** Why don't we vote on that and we will take up Oban's separate suggested amendment. We will vote to move 2009 with the idea that the fines will be discretionary and not mandatory.

**Senator Oban: Seconded.**

**A Roll Call Vote Was Taken: 5 yeas, 1 nay, 1 absent.**

**Motion carried.**

**Chairman Hogue:** Are there further motions?

**(1:53:50) Senator Oban: Moved to further amend by removing sections D and E on the top of Page 22.**

**Senator Mathern: Seconded.**

**Chairman Hogue:** Clarified the amendment. Asked for any further discussion.

**Senator Dever:** Throughout this session, I think that there are many organizations that would be conducting social events, except, they don't know what the rules. The proponents of this at our first hearing said that they recognize that the social events are important because those organizations bring their members from across the state to meet with legislators. I think this is well in keeping with that intent.

**A Roll Call Vote Was Taken: 4 yeas, 2 nays, 1 absent.**

**Motion carried.**

**Chairman Hogue:** Asked the committees if they would like to get the bill out of committee today or hold onto it another day.

**Senator Poolman:** I thought that was the point of going through all of these amendments today. Since we did all of this without Senator Unruh here. I think we better move it out.

**Chairman Hogue:** If any committee member wants to hold this over, we will do so.

**Senator Dever:** I would prefer to do that because we have talked about the amendments to the bill but we have not had any conversation about anything else that is in the bill today. That would be my preference. I would accede to the wisdom of the rest of the committee.

**Senator Mathern:** we have a bill before us that I think reflects a clear advance notice of the amendments by Senator Hogue. It represents clear votes regarding the issues of the dollar amounts for meals, regarding the issues of the amount of meals and those items that Senator Oban brought forward, and I think we ought to move the bill to the appropriations committee.

**Senator Poolman: Moved a Do Pass As Amended and Re-Refer to Appropriations.**

**Senator Mathern: Seconded.**

**A Roll Call Vote Was Taken: 6 yeas, 0 nays, 1 absent.**

**Motion Carried.**

**Chairman Hogue: Will carry the bill.**



PROPOSED AMENDMENTS TO SENATE BILL NO. 2148

Page 1, line 3, remove "to amend and"

Page 1, remove lines 4 through 7

Page 1, line 8, replace "rulemaking procedures and requirements for the North Dakota ethics commission" with "to provide a statement of legislative intent"

Page 1, line 9, remove "and"

Page 1, line 9, after "appropriation" insert "; and to declare an emergency"

Page 1, remove lines 11 through 24

Page 2, remove lines 1 through 30

Page 3, remove lines 1 through 30

Page 4, remove lines 1 through 30

Page 5, remove lines 1 through 29

Page 6, remove lines 1 through 31

Page 7, remove lines 1 through 31

Page 8, remove lines 1 through 31

Page 9, remove lines 1 through 31

Page 10, remove lines 1 through 30

Page 11, remove lines 1 through 31

Page 12, remove lines 1 through 31

Page 13, remove lines 1 through 31

Page 14, remove lines 1 through 30

Page 15, remove lines 1 through 29

Page 16, remove lines 1 through 31

Page 17, remove lines 1 through 31

Page 18, remove lines 1 through 31

Page 19, remove lines 1 through 31

Page 20, removes lines 1 through 11

Page 20, line 15, after "1." insert "For purposes of this chapter, unless the context otherwise requires:

a."

Page 20, line 18, replace "2." with "b."

Page 20, line 20, replace "3." with "c."

Page 20, line 23, replace "4." with "d."

Page 20, remove lines 25 through 31

Page 21, remove lines 1 through 12

Page 21, line 13, replace "8." with "e."

Page 21, after line 14, insert:

"2. For purposes of article XIV of the Constitution of North Dakota, "lobbyist":

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.

b. Does not mean:

- (1) A private citizen appearing on the citizen's own behalf; or
- (2) A public official or an employee, officer, board member, volunteer, or agent of the state or its political subdivisions acting in the individual's official capacity."

Page 23, line 17, replace "until" with "unless"

Page 23, line 18, replace "issues its findings regarding the relevant complaint" with "has determined the accused individual violated article XIV of the Constitution of North Dakota, this chapter, or another law or rule regarding government ethics"

Page 23, line 25, after "2." insert "If a complaint is informally resolved under section 54-66-06, the following information is a confidential record as defined in section 44-04-17.1, except the information may be disclosed as required by law:

- 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."

Page 24, after line 11, insert:

**"54-66-14. Personal use of contributions prohibited - Penalty.**

The ethics commission shall impose a fine of up to ten thousand dollars upon any person that violates section 16.1-08.1-04.1. The ethics commission may impose a fine of up to fifty thousand dollars per violation upon any person who violates section 16.1-08.1-04.1 more than once in a twelve-month period. Fines imposed under this section are in addition to any fines imposed under section 16.1-08.1-07 for a violation of section 16.1-08.1-04.1.

**SECTION 2. LEGISLATIVE INTENT STATEMENT - CONSTITUTIONAL  
EFFECTIVE DATES - PENALTIES.**

1. Subsection 2 of section 1 of article XIV of the Constitution of North Dakota requires the legislative assembly to implement and enforce the subsection by enacting laws by January 5, 2022, which will require disclosure of funds spent for identified purposes and vest an entity with authority to administer the disclosure requirements. The subsection does not take effect or impose disclosure requirements or other obligations until the legislation is enacted. Penalties may not be imposed under subsection 2 of section 1 of article XIV until the legislative assembly enacts laws to implement and enforce the subsection. However, the requirements and penalties under chapters 16.1-08.1 and 54-05.1 remain in effect.
2. Subsection 1 of section 2 of article XIV of the Constitution of North Dakota declares the prohibition on certain gifts under the subsection is not effective until January 5, 2021. The subsection requires the ethics committee to adopt rules providing additional guidance regarding the prohibition and requires the legislative assembly to provide penalties for violations of the prohibition. Penalties may not be imposed under subsection 1 of section 2 of article XIV until the legislative assembly enacts laws establishing the penalties for violations of the subsection.
3. Subsection 5 of section 2 of article XIV of the Constitution of North Dakota declares the requirement for certain executive branch officials, and employees to avoid the appearance of bias and be disqualified from quasi-judicial proceedings is not effective until January 5, 2022. The subsection requires the ethics commission and legislative assembly to enforce the subsection by adopting rules and enacting laws. Penalties may not be imposed under subsection 5 of section 2 of article XIV until the legislative assembly enacts laws establishing the penalties for violations of the subsection."

Page 24, line 21, replace "biennium" with "period"

Page 24, line 21, replace "July 1, 2019," with "with the effective date of this Act"

Page 24, after line 27, insert:

**"SECTION 5. EMERGENCY.** Section 2 through 4 of this Act and North Dakota Century Code sections 54-66-11, 54-66-12, and 54-66-14, as created by section 1 of this Act, are declared to be emergency measures."

Renumber accordingly

PROPOSED AMENDMENTS TO SENATE BILL NO. 2148

Page 1, line 4, after "sections" insert "16.1-08.1-03.7,"

Page 1, line 7, after "to" insert "reports of contributions and"

Page 1, after line 10, insert:

**"SECTION 1. 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, 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 14, line 1, remove "or ethics commission"

Page 14, line 2, remove "or ethics commission"

Renumber accordingly

PROPOSED AMENDMENTS TO SENATE BILL NO. 2148

Page 1, line 1, after "enact" insert "a new subsection to section 16.1-08.1-01, a new section to chapter 16.1-08.1, and"

Page 1, line 2, after "to" insert "disclosures of expenditures,"

Page 1, line 4, after "sections" insert "16.1-08.1-04.1,"

Page 1, line 6, remove "28-32-14,"

Page 1, line 6, after the third comma insert "and"

Page 1, line 6, remove "28-32-17, 28-32-18, and 28-32-18.1,"

Page 1, line 7, after "to" insert "the prohibition on personal use of campaign contributions and the"

Page 1, line 8, remove "to provide for"

Page 1, line 9, remove "a legislative management study;"

Page 1, after line 10, insert:

**"SECTION 1.** A new subsection to section 16.1-08.1-01 of the North Dakota Century Code is created and enacted as follows:

"Ultimate and true source" means the person who knowingly contributed over two hundred dollars, adjusted for inflation, to influence a statewide election or an election for the legislative assembly.

**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. The secretary of state shall impose a fine of five thousand dollars or two times the value of the contribution used in violation of this section, whichever is higher, upon any person who violates this section.

**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.**

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."

Page 6, line 24, remove "ethics commission or an"

Page 6, line 24, after the second comma insert "or the ethics commission"

Page 14, remove lines 16 through 30

Page 16, remove lines 9 through 31

Page 17, remove lines 1 through 31

Page 18, remove lines 1 through 31

Page 19, remove lines 1 through 24

Page 20, after line 14, insert:

"For purposes of this chapter and article XIV of the Constitution of North Dakota, unless the context otherwise requires:"

Page 20, line 26, after the underscored period insert "Gift" does not mean:

- a. Purely informational material;
- b. A campaign contribution;
- 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 ethical concerns as set forth in rules adopted by the ethics commission;
- d. Meals and other items provided in social settings to which twenty-five or more public officials were invited; and
- e. Meals and other items provided in social settings to which the general public is invited with at least seventy-two hours of advance notice."

Page 21, after line 14, insert:

- "9. "Ultimate and true source" means the person that knowingly contributed over two hundred dollars, adjusted for inflation, to lobby or influence state government action."

Page 23, line 15, replace "Burleigh County" with "the county where the accused individual resides"

Page 23, line 25, after "2." insert "Information relating to or created as part of an informal resolution of a complaint is confidential except the information may be disclosed by the complainant and the accused individual."

3.

Page 23, line 25, after "who" insert "knowingly"

Page 23, line 27, after "A" insert "knowing"



Page 23, line 28, replace "ten" with "one"

Page 23, line 29, after "that" insert "knowingly"

Page 24, line 2, after "A" insert "knowing"

Page 24, line 3, replace "ten thousand" with "five hundred"

Page 24, line 4, after "that" insert "knowingly"

Page 24, line 5, replace "fifty" with "one"

Page 24, line 5, remove "for each violation of the subsection"

Page 24, line 5, replace "that violates" with "for a second or subsequent knowing violation of"

Page 24, line 6, remove "more than once within a twelve-month period"

Page 24, line 8, after "commission" insert ", unless the ethics commission objects to the representation by the attorney general in a specific matter"

Page 24, replace lines 12 through 17 with:

**54-66-14. Disclosure of ultimate and true source of funds.**

A person who expends an amount greater than two hundred dollars, adjusted for inflation, to lobby or influence state government, other than to influence a statewide election or election for the legislative assembly, shall report the ultimate and true source of funds for the expenditure to the secretary of state.

**54-66-15. Lobbyist gifts - Penalty.**

A lobbyist may not give, offer, solicit, initiate, or facilitate a gift to a public official knowingly, and a public official may not accept a gift from a lobbyist knowingly. 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 an infraction.

**54-66-16. Lobbyist requirements.**

A person who meets the definition of a lobbyist under this chapter and article XIV of the Constitution of North Dakota 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 24, replace line 24, with:

"Salaries and expenses	\$214,800"
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Page 24, replace line 26, with:

"Total general fund	\$422,000"
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Renumber accordingly

February 12, 2019

PROPOSED AMENDMENTS TO SENATE BILL NO. 2148

Page 1, line 1, after "enact" insert "a new subsection to section 16.1-08.1-01, a new section to chapter 16.1-08.1, a new section to chapter 28-32, and"

Page 1, line 2, after "to" insert "disclosures of expenditures,"

Page 1, line 4, after "sections" insert "16.1-08.1-04.1,"

Page 1, line 6, remove "28-32-14, 28-32-15,"

Page 1, line 6, remove "and 28-32-18.1,"

Page 1, line 7, remove "subsections 2 and 4 of section"

Page 1, line 7, after "to" insert "the prohibition on personal use of campaign contributions and the"

Page 1, line 8, remove "to provide for"

Page 1, line 9, remove "a legislative management study;"

Page 1, after line 10, insert:

**"SECTION 1.** A new subsection to section 16.1-08.1-01 of the North Dakota Century Code is created and enacted as follows:

"Ultimate and true source" means the person who knowingly contributed over two hundred dollars, adjusted for inflation, to influence a statewide election or an election for the legislative assembly.

**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. The secretary of state shall impose a fine of five thousand dollars or two times the value of the contribution used in violation of this section, whichever is higher, upon any person who violates this section.

**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.**

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."

Page 6, line 20, after "chapter" insert ", as specified,"

Page 6, line 24, remove "ethics commission or an"

Page 6, line 24, after the second comma insert "or the ethics commission"

Page 7, line 30, overstrike the first comma and insert immediately thereafter "or"

Page 7, line 30, overstrike the second comma and insert immediately thereafter "; or, for an administrative agency rule, until"

Page 7, line 31, overstrike the comma

Page 8, line 2, remove ", or the Constitution of North Dakota is amended to eliminate the authority"

Page 10, line 12, remove "or the ethics commission"

Page 10, line 13, remove "or ethics commission"

Page 10, line 14, after the period insert "The ethics commission shall develop a fiscal note for each ethics commission rule prior to adoption unless the ethics commission finds the rule has no fiscal effect."

Page 12, line 29, after "rule" insert ", if applicable,"

Page 14, remove lines 16 through 30

Page 15, remove lines 1 through 27

Page 16, line 13, after "rule" insert "other than an ethics commission rule"

Page 16, line 14, remove "or ethics commission"

Page 16, line 19, remove "or ethics commission"

Page 16, line 23, remove "or"

Page 16, line 24, remove "ethics commission"

Page 16, line 27, remove "or ethics commission"

Page 16, line 30, remove "or ethics commission"

Page 17, line 1, remove "or ethics commission"

Page 17, line 2, remove "or ethics commission"

Page 17, line 4, remove "or ethics commission"

Page 17, line 6, remove "or ethics commission"

Page 17, line 10, remove the overstrike over "~~of agency and committee~~"

Page 17, line 12, after the first "rule" insert "other than an ethics commission rule"

Page 17, line 17, remove the overstrike over "~~statutory~~"

Page 17, line 17, remove "under statute or the constitution"

Page 17, line 19, remove the overstrike over "A"

Page 17, line 19, remove "For rules proposed by an agency, a"

Page 17, line 22, remove "For rules proposed by the ethics commission, a failure to substantially meet the"

Page 17, remove line 23

Page 17, line 24, remove "e."

Page 17, line 25, remove the overstrike over "e."

Page 17, line 25, remove "f."

Page 17, line 26, remove the overstrike over "f."

Page 17, line 26, remove "g."

Page 17, line 28, overstrike "a" and insert immediately thereafter "an administrative agency"

Page 17, line 30, remove "or ethics commission"

Page 18, line 3, remove "or ethics"

Page 18, line 4, remove "commission"

Page 18, line 5, remove "or ethics"

Page 18, line 6, remove "commission"

Page 18, line 14, remove "or ethics commission"

Page 18, line 15, remove "or ethics commission"

Page 18, line 18, remove "or ethics commission"

Page 18, line 20, remove "or ethics commission"

Page 18, line 21, remove "or ethics commission"

Page 18, line 24, remove "or the ethics commission"

Page 18, line 25, remove "or"

Page 18, line 26, remove "ethics commission"

Page 18, line 31, remove ", ethics commission"

Page 19, remove lines 4 through 31

Page 20, replace lines 1 through 11 with:

**"SECTION 19.** A new section to chapter 28-32 of the North Dakota Century Code is created and enacted as follows:

### **Final report to administrative rules committee.**

For each rule the ethics commission adopts, the ethics commission shall provide to the administrative rules committee a copy of the rule and a final report summarizing the rule and the procedures followed to adopt the rule.

**SECTION 20. AMENDMENT.** Section 28-32-19 of the North Dakota Century Code is amended and reenacted as follows:

#### **28-32-19. Publication of administrative code and code supplement.**

1. The legislative council shall compile, index, and publish all rules filed by administrative agencies pursuant to this chapter in a publication which must be known as the North Dakota Administrative Code, in this chapter referred to as the code. The code also must contain all objections filed with the legislative council by the administrative rules committee pursuant to section 28-32-17. The legislative council shall revise all or part of the code as often as the legislative council determines necessary.
2. The legislative council may prescribe a 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 legislative council requirements. In arranging rules for publication, the legislative council may make ~~such~~ corrections in spelling, grammatical construction, format, and punctuation of the rules as determined proper. The legislative council shall keep and maintain a permanent code of all rules filed, including superseded and repealed rules, ~~which and the~~ administrative agency rules must be open to public inspection during office hours.
3. The legislative council shall compile and publish the North Dakota Administrative Code supplement according to the schedule of effective dates of rules in section 28-32-15.
  - a. The code supplement must contain all rules that have been filed with the legislative council or which have become effective since the compilation and publication of the preceding issue of the code supplement.
  - b. The code supplement must contain all objections filed with the legislative council by the administrative rules committee pursuant to section 28-32-17.
4. The legislative council, with the consent of the adopting administrative agency, 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, 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.
5. The code must be arranged, indexed, and printed or duplicated in a manner to permit separate publication of portions ~~thereof~~ of the code relating to individual agencies. An agency may print as many copies of such separate portions of the code as it may require. If the legislative

council does not publish the code supplement due to technological problems or lack of funds, the agency whose rules would have been published in the code supplement shall provide a copy of the rules to any person upon request. The agency may charge a fee for a copy of the rules as allowed under section 44-04-18.

6. The ethics commission shall consult with the legislative council regarding the publication of the rules of the ethics commission in conjunction with the North Dakota Century Code."

Page 20, after line 14, insert:

"For purposes of this chapter, unless the context otherwise requires:"

Page 20, line 26, after the underscored period insert: "Gift" does not mean:

- a. Purely informational material;
- b. A campaign contribution;
- c. Any item, service, or thing of value given under conditions that do not raise ethical concerns in order to advance opportunities for state residents to meet with public officials in educational and social settings in the state, as defined in rules adopted by the ethics commission."

Page 21, after line 14, insert:

9. "Ultimate and true source" means the person that knowingly contributed over two hundred dollars, adjusted for inflation, to lobby or influence state government action."

Page 22, remove lines 10 through 31

Page 23, replace lines 1 through 25 with:

**"54-66-05. Ethics commission rules.**

The ethics commission shall adopt rules:

1. To identify any item, service, or thing of value given under conditions that do not raise ethical concerns in order to advance opportunities for North Dakota residents to meet with public officials in educational and social settings inside the state, for purposes of subsection 1 of section 2 of article XIV of the Constitution of North Dakota;
2. To enforce the requirements for a director, officer, commissioner, head, or other executive of an agency to avoid the appearance of bias and self-disqualify in quasi-judicial proceedings in which monetary or in-kind support related to the individual's election for any office or in which the individual's financial interest, not shared by the general public, creates an appearance of bias to a reasonable person, for purposes of subsection 5 of section 2 of article XIV of the Constitution of North Dakota;
3. To define "financial interest not shared by the general public" under subsection 2;

4. Regarding the confidential whistleblower hotline maintained by the ethics commission;
5. Related to transparency, corruption, elections, and lobbying, applicable to any lobbyist, public official, or candidate for public office; and
6. Governing complaints to the ethics commission, informal resolutions of the complaints, investigations of the complaints, referrals of the complaints to other governmental agencies, investigative findings, impositions of penalties established by the legislative assembly, and appeals.

**54-66-06. Ethics commission duty and authority.**

1. The ethics commission shall maintain a confidential whistleblower hotline through which any person acting in good faith may submit relevant information.
2. The ethics commission may investigate any alleged violation of an ethics commission rule, article XIV of the Constitution of North Dakota, or related statutes.
3. If the ethics commission finds a violation of an ethics commission rule, article XIV of the Constitution of North Dakota, or a related statute occurred, the ethics commission may impose a penalty authorized by law for the violation."

Page 23, line 26, replace "**54-66-11**" with "**54-66-07**"

Page 23, line 27, after "A" insert "knowing"

Page 23, line 28, replace "ten" with "one"

Page 23, line 29, after "that" insert "knowingly"

Page 24, line 1, replace "**54-66-12**" with "**54-66-08**"

Page 24, line 2, after "A" insert "knowing"

Page 24, line 3, replace "ten thousand" with "five hundred"

Page 24, line 4, after "that" insert "knowingly"

Page 24, line 5, replace "fifty" with "one"

Page 24, line 5, remove "for each violation of the subsection"

Page 24, line 5, replace "that violates" with "for a second or subsequent knowing violation of"

Page 24, line 6, remove "more than once within a twelve-month period"

Page 24, line 7, replace "**54-66-13**" with "**54-66-09**"

Page 24, line 8, after "commission" insert ", unless the ethics commission objects to the representation by the attorney general"

Page 24, replace lines 12 through 17 with:

**"54-66-10. Disclosure of ultimate and true source of funds.**

A person who expends an amount greater than two hundred dollars, adjusted for inflation, to lobby or influence state government, other than to influence a statewide election or election for the legislative assembly, shall report the ultimate and true source of funds for the expenditure to the secretary of state.

**54-66-11. Lobbyist gifts - Penalty.**

A lobbyist may not give, offer, solicit, initiate, or facilitate a gift to a public official knowingly, and a public official may not accept a gift from a lobbyist knowingly. 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 an infraction."

Page 24, replace lines 24 through 26 with:

Salaries and wages	\$450,000
Operating expenses	350,000
Total general fund	\$800,000"

Renumber accordingly



sk/103

PROPOSED AMENDMENTS TO SENATE BILL NO. 2148

Page 1, line 1, after "enact" insert "a new subsection to section 16.1-08.1-01, a new section to chapter 16.1-08.1, and"

Page 1, line 2, after "to" insert "disclosures of expenditures,"

Page 1, line 4, after "sections" insert "16.1-08.1-04.1,"

Page 1, line 6, remove "28-32-14,"

Page 1, line 6, after the third comma insert "and"

Page 1, line 6, remove "28-32-17, 28-32-18, and 28-32-18.1,"

Page 1, line 7, after "to" insert "the prohibition on personal use of campaign contributions and the"

Page 1, line 8, remove "to provide for"

Page 1, line 9, remove "a legislative management study;"

Page 1, after line 10, insert:

**"SECTION 1.** A new subsection to section 16.1-08.1-01 of the North Dakota Century Code is created and enacted as follows:

"Ultimate and true source" means the person who knowingly contributed over two hundred dollars, adjusted for inflation, to influence a statewide election or an election for the legislative assembly.

**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. The secretary of state may 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 higher, upon any person who violates this section.

**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.**

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."

Page 6, line 24, remove "ethics commission or an"

Page 6, line 24, after the second comma insert "or the ethics commission"

Page 14, remove lines 16 through 30

Page 16, remove lines 9 through 31

Page 17, remove lines 1 through 31

Page 18, remove lines 1 through 31

Page 19, remove lines 1 through 24

Page 20, after line 14, insert:

"For purposes of this chapter and article XIV of the Constitution of North Dakota, unless the context otherwise requires:"

Page 20, line 26, after the underscored period insert "Gift" does not mean:

- a. Purely informational 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 ethical concerns as set forth in rules adopted by the ethics commission."

Page 21, after line 14, insert:

- "9. "Ultimate and true source" means the person that knowingly contributed over two hundred dollars, adjusted for inflation, to lobby or influence state government action."

Page 23, line 15, replace "Burleigh County" with "the county where the accused individual resides"

Page 23, line 25, after "2." insert "Information relating to or created as part of an informal resolution of a complaint is confidential except the information may be disclosed by the complainant and the accused individual."

3."

Page 23, line 25, after "who" insert "knowingly"

Page 23, line 27, after "A" insert "knowing"

Page 23, line 28, replace "ten" with "one"

Page 23, line 29, after "that" insert "knowingly"

Page 24, line 2, after "A" insert "knowing"



302

Page 24, line 3, replace "ten thousand" with "five hundred"

Page 24, line 4, after "that" insert "knowingly"

Page 24, line 5, replace "fifty" with "one"

Page 24, line 5, remove "for each violation of the subsection"

Page 24, line 5, replace "that violates" with "for a second or subsequent knowing violation of"

Page 24, line 6, remove "more than once within a twelve-month period"

Page 24, line 8, after "commission" insert ", unless the ethics commission objects to the representation by the attorney general in a specific matter"

Page 24, replace lines 12 through 17 with:

**"54-66-14. Disclosure of ultimate and true source of funds.**

A person who expends an amount greater than two hundred dollars, adjusted for inflation, to lobby or influence state government, other than to influence a statewide election or election for the legislative assembly, shall report the ultimate and true source of funds for the expenditure to the secretary of state.

**54-66-15. Lobbyist gifts - Penalty.**

A lobbyist may not give, offer, solicit, initiate, or facilitate a gift to a public official knowingly, and a public official may not accept a gift from a lobbyist knowingly. For the first violation, the secretary of state may impose a fine of up to five 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.

**54-66-16. Lobbyist requirements.**

A person who meets the definition of a lobbyist under this chapter and article XIV of the Constitution of North Dakota 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 24, replace line 24, with:

"Salaries and expenses \$214,800"

Page 24, replace line 26, with:

"Total general fund \$422,000"

Renumber accordingly

2019 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2148

Senate Ethics Committee

☐ Subcommittee

Amendment LC# or Description: 19. 0422 . 02005 (Attachment #2)

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 Mathern Seconded By Oban

Senators	Yes	No	Senators	Yes	No
Chairman D. Hogue		X	Senator Oban	X	
Vice Chair J. Unruh	A		Senator Mathern	X	
Senator H. Anderson		X			
Senator D. Dever		X			
Senator N. Poolman		X			

Total (Yes) 2 No 4

Absent 1

Floor Assignment Motion Failed

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

Date: 2/12  
Roll Call Vote #: 2

2019 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2148

Senate Ethics Committee

☐ Subcommittee

Amendment LC# or Description: Add 19.0422.02010 to 19.0422.02009

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 Mathern Seconded By Oban

Senators	Yes	No	Senators	Yes	No
Chairman D. Hogue		X	Senator Oban	X	
Vice Chair J. Unruh Absent			Senator Mathern	X	
Senator H. Anderson		X			
Senator D. Dever		X			
Senator N. Poolman		X			

Total (Yes) 2 No 4

Absent 1

Floor Assignment Motion Failed

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

2019 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2148

Senate Ethics Committee

☐ Subcommittee

Amendment LC# or Description: .02008 (Unruh)

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 Oban

Senators	Yes	No	Senators	Yes	No
Chairman D. Hogue		<input checked="" type="checkbox"/>	Senator Oban		<input checked="" type="checkbox"/>
Vice Chair J. Unruh <u>Absent</u>			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) 1 No 5

Absent 1

Floor Assignment Motion Fails

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

Date: 2/12  
Roll Call Vote #: 4

2019 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2148

Senate Ethics Committee

☐ Subcommittee

Amendment LC# or Description: Add Subsection F

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 Dever Seconded By Mathern

Senators	Yes	No	Senators	Yes	No
Chairman D. Hogue	X		Senator Oban		X
Vice Chair J. Unruh <u>Absent</u>			Senator Mathern		X
Senator H. Anderson	X				
Senator D. Dever	X				
Senator N. Poolman		X			

Total (Yes) 3 No 3

Absent 1

Floor Assignment Motion Failed

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

Pg 22, line 4 after notice add:  
for meals or related item with  
a value less than \$30.

2019 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2148

Senate Ethics Committee

☐ Subcommittee

Amendment LC# or Description: 19.0422.02009

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	X		Senator Oban	X	
Vice Chair J. Unruh <u>Absent</u>			Senator Mathern		X
Senator H. Anderson	X				
Senator D. Dever	X				
Senator N. Poolman	X				

Total (Yes) 5

No 1

Absent 1

Floor Assignment

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

Fines are to be discretionary

Date: 2/12  
Roll Call Vote #: 6

2019 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2148

Senate Ethics Committee

☐ Subcommittee

Amendment LC# or Description: Remove D+E top of Page 22

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		X	Senator Oban	X	
Vice Chair J. Unruh <u>Absent</u>			Senator Mathern	X	
Senator H. Anderson	X				
Senator D. Dever		X			
Senator N. Poolman	X				

Total (Yes) 4 No 2

Absent 1

Floor Assignment \_\_\_\_\_

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



Date: 2/12  
Roll Call Vote #: 7

2019 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2148

Senate Ethics Committee

☐ Subcommittee

Amendment LC# or Description: 19.0422.02 011

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 Mather

Senators	Yes	No	Senators	Yes	No
Chairman D. Hogue	<input checked="" type="checkbox"/>		Senator Oban	<input checked="" type="checkbox"/>	
Vice Chair J. Unruh <u>Absent</u>			Senator Mather	<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) 6 No 0

Absent 1

Floor Assignment Hogue

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



**REPORT OF STANDING COMMITTEE**

**SB 2148: Special Committee on Ethics (Sen. Hogue, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2148 was placed on the Sixth order on the calendar.

Page 1, line 1, after "enact" insert "a new subsection to section 16.1-08.1-01, a new section to chapter 16.1-08.1, and"

Page 1, line 2, after "to" insert "disclosures of expenditures,"

Page 1, line 4, after "sections" insert "16.1-08.1-04.1,"

Page 1, line 6, remove "28-32-14,"

Page 1, line 6, after the third comma insert "and"

Page 1, line 6, remove "28-32-17, 28-32-18, and 28-32-18.1,"

Page 1, line 7, after "to" insert "the prohibition on personal use of campaign contributions and the"

Page 1, line 8, remove "to provide for"

Page 1, line 9, remove "a legislative management study;"

Page 1, after line 10, insert:

**"SECTION 1.** A new subsection to section 16.1-08.1-01 of the North Dakota Century Code is created and enacted as follows:

"Ultimate and true source" means the person who knowingly contributed over two hundred dollars, adjusted for inflation, to influence a statewide election or an election for the legislative assembly.

**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. The secretary of state may 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 higher, upon any person who violates this section.

**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.**

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."

Page 6, line 24, remove "ethics commission or an"

Page 6, line 24, after the second comma insert "or the ethics commission"

Page 14, remove lines 16 through 30

Page 16, remove lines 9 through 31

Page 17, remove lines 1 through 31

Page 18, remove lines 1 through 31

Page 19, remove lines 1 through 24

Page 20, after line 14, insert:

"For purposes of this chapter and article XIV of the Constitution of North Dakota, unless the context otherwise requires:"

Page 20, line 26, after the underscored period insert ""Gift" does not mean:

- a. Purely informational 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 ethical concerns as set forth in rules adopted by the ethics commission."

Page 21, after line 14, insert:

"9. "Ultimate and true source" means the person that knowingly contributed over two hundred dollars, adjusted for inflation, to lobby or influence state government action."

Page 23, line 15, replace "Burleigh County" with "the county where the accused individual resides"

Page 23, line 25, after "2." insert "Information relating to or created as part of an informal resolution of a complaint is confidential except the information may be disclosed by the complainant and the accused individual."

3."

Page 23, line 25, after "who" insert "knowingly"

Page 23, line 27, after "A" insert "knowing"

Page 23, line 28, replace "ten" with "one"

Page 23, line 29, after "that" insert "knowingly"

Page 24, line 2, after "A" insert "knowing"

Page 24, line 3, replace "ten thousand" with "five hundred"

Page 24, line 4, after "that" insert "knowingly"

Page 24, line 5, replace "fifty" with "one"

Page 24, line 5, remove "for each violation of the subsection"

Page 24, line 5, replace "that violates" with "for a second or subsequent knowing violation of"

Page 24, line 6, remove "more than once within a twelve-month period"

Page 24, line 8, after "commission" insert ", unless the ethics commission objects to the representation by the attorney general in a specific matter"

Page 24, replace lines 12 through 17 with:

**"54-66-14. Disclosure of ultimate and true source of funds.**

A person who expends an amount greater than two hundred dollars, adjusted for inflation, to lobby or influence state government, other than to influence a statewide election or election for the legislative assembly, shall report the ultimate and true source of funds for the expenditure to the secretary of state.

**54-66-15. Lobbyist gifts - Penalty.**

A lobbyist may not give, offer, solicit, initiate, or facilitate a gift to a public official knowingly, and a public official may not accept a gift from a lobbyist knowingly. For the first violation, the secretary of state may impose a fine of up to five 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.

**54-66-16. Lobbyist requirements.**

A person who meets the definition of a lobbyist under this chapter and article XIV of the Constitution of North Dakota 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 24, replace line 24, with:

"Salaries and expenses	\$214,800"
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Page 24, replace line 26, with:

"Total general fund	\$422,000"
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Renumber accordingly

**2019 SENATE APPROPRIATIONS**

**SB 2148**

# 2019 SENATE STANDING COMMITTEE MINUTES

## Appropriations Committee Harvest Room, State Capitol

SB 2148  
2/18/2019  
Job # 32879

☐ Subcommittee  
☐ Conference Committee

Committee Clerk: Rose Laning
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### Explanation or reason for introduction of bill/resolution:

Relating to the prohibition on personal use of campaign contributions and the rulemaking procedures and requirements for the North Dakota ethics commission; to provide a penalty; and to provide an appropriation.

### Minutes:

Amendment 19.0422.04001
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Legislative Council: Brady Larson  
OMB: Becky Deichert

**Chairman Holmberg** called the committee to order on SB 2148. Roll call was taken. We will be looking at financial aspect of SB 2148 - the ethics bill.

### **Senator Tim Mathern, District 11, Fargo, Bill Sponsor**

Amendment # 19.0422.04001 - Attached # 1.

We have an ethics committee which has reviewed the bill and has adopted amendments to the bill that were offered by Senator Hogue. One of the amendments deal with the appropriation. If you look at the bottom two lines of the amendment, you will note the number \$667,155. That is the recommended appropriation for the implementation of Article 14 of the constitution. This amount is essentially a compromise between Senator Hogue's amendments and what was in the original bill. The amount was arrived at by looking at some research which you will see on the second page. It suggests for three staff; an attorney who is also the executive director, an administrative assistant and an investigator. That comes out to \$485,000 for the biennium. The startup costs and operating costs are \$212,768. As this is a new entity, the data was gleaned from similar activities that are noted in OMB. The duties of the ethics commission and staff are on the third page which outlines the adopting of rules that must be done regarding transparency, corruption issues, lobbying issues, adopting rules regarding gifts and the rules and context of defining issues regarding bias.

On the fourth page is further elaboration of the job description of the staff. These items describe the need for an appropriation of \$667,155.

Another piece of the amendment is technical. On page 14, line 29 & 30, we would be removing the words "or ethics commission". This would make it consistent with Senator

Hogue's amendments. The original bill had the ethics commission using our administrative practices act in its full execution and oversight by the Attorney General and the legislature. The amendments removed oversight by the AG and the legislature. These two words need to be taken out to be made consistent. The bill and the Senator Hogue amendments are attempting to make sure that this whole activity will be constitutional.

The third part of the amendment is section 2. In the ethics committee discussion, we generally adopted the principal of reporting contributions in various sections of law when it was over \$200 which was a change from the original bill. We, however, did not include this section of century code which are committees that organize and register according to federal law and that make independent expenditures or disbursements to non-federal candidates, political parties and political committees. Within that, there were disputes. Some organization puts \$100,000 into a campaign activity in ND, the goal was within article 14 of the constitution, they would not only have to report that they put in \$100,000, but they would also have to report the individual contributors to that \$100,000. In our committee, we couldn't agree to that amount. Not having any reporting criteria for that kind of committee leaves a big hole in terms of reporting political contributions. We discussed what amount might make sense in sub-reporting so that individuals of that \$100,000 would have to be reported. In that conversation, we came to this number. If this amount was being donated, they would have to report to the SOS just like in the past, but in addition they would have to give a supplemental report of all the individuals who gave money over \$1000. That is the section 2 amendment.

Would this meet muster in terms of the constitutional provision of section 14? Some would say it does not. It should be the same and it should be \$200 like we have for all these contributions. A court of law would have to determine if this is adequate. In the spirit of moving a bill through the legislature and the inevitable compromises that come about in that process. This is the suggestion.

There are three pieces; 1) the appropriation, 2) the technical correction, 3) adding the provision of contributions in this specific kind of fund must include a list of sub-contributors who give \$1000 or more.

**Chairman Holmberg:** You list the ethics commission director as being an attorney III. Does that person have a relationship with the AG office as an assistant attorney general or would he/she be an independent attorney working for this board?

**Senator Mathern:** The way the bill is standing right now, this would be an independent staff person. It is really an attorney because it seems like that is the skill that would be needed, however the bill as it is before us, permits the ethics commission to use the AG for assistance if they want. This person would be a staff person first and not an attorney general.

**Senator Oehlke:** This mythical \$100,000 donation that's contributed to some thing or some person – must it have that disclosure on it when the recipient receives it? Is the recipient not allowed to do anything with it until he knows for sure all those criteria be met? Or must it be returned because the disclosure is not there? If they accept it and the disclosure doesn't happen, are they in violation - individually or the organization that gave the money? Who gets hung out to dry?

(14:50) **Senator Mathern:** It is my belief that this outlines the responsibility of the contributor. And also in further sections of the law for the SOS to receive and file that report. In this session of the legislature or the next, the legislature could assign a further penalty. This is not directing a requirement to the recipient but to the contributor.

**Senator Hogue:** If I get \$100,000, I'd have to run for higher office. I don't see that much money involved in our legislative races. There are distinct duties for the contributor and for the recipient of that contribution. As the recipient, my obligation is to disclose who it came from and I'd deduce that by looking at the payer on the check or the cover letter that describes who it came from. That's my obligation, but I have no obligation to report who the sub-contributors are because I don't know who they are.

**Senator Poolman:** Why would anyone give directly to a candidate then – because if they can remain anonymous by giving a PAC \$1000 knowing that \$1000 would go directly to that candidate. Why would they give directly anymore to the candidate? If you want to give \$800 to a candidate and you don't want anybody to know you've given it, isn't the way to do it then under this is to give it to a PAC and ask that PAC to give it to them.

**Senator Mathern:** This provision addresses only this kind of committee. There are other committees and there are other ways for people to give. Those stay in the category of over \$200 and there are other provisions presently in law which permit and regulate those types of contributions. That would continue. This only refers to this type of committee which presently in law only refers to expenditures. This would take this section of law and expand it to include contributions. This does not erase other possibilities, but adds criteria to this type of political contributions. The intent of measure 1 is to have more transparency. The constitution directs us to create the rules of transparency.

**Senator Poolman:** In a different section of code, that \$800 contribution would be reported anyway?

**Senator Mathern:** In THIS section of code, it would be required. For the other ones, the present rules stay in place. This one has special category of listing sub-contributors, the large out of state money coming into our state for political campaigns.

**Senator Dever:** In the normal course of events, we would've started this hearing with the bill as it came out of committee. Are you suggesting we replace those amendments with this amendment or do we factor this amendment into that.

**Senator Mathern:** This would be to amend the activity of the ethics committee work by this further amendment. I support the amendments that came out of committee and in the process learned that there are 3 different issues that need to be addressed.

**Senator Dever:** You're talking about a criminal investigator investigating ethical complaints. You're talking about an attorney on staff similar to a special prosecutor. I'm not aware of any ethical violations that would justify that kind of an organization, but then it occurs to me that if someone wanted to unduly influence a legislator or another official, that they would not target somebody who would not be vulnerable to that like most of us here so I'm curious what kinds of violations you may have seen that rise to that level.

**Senator Mathern:** The only amendment I'm suggesting is the \$667,000 and the additional data about the attorney. The Ethics Commission may decide they don't want an attorney or they don't need an investigator. That is not in the amendment. It's only to demonstrate why this amount would be necessary. We've looked at other places around the country and what kind of investigator skills they have. It is so important that it be done correctly and there be no missteps. However, that is up to the Ethics Commission. This just shows what kind of staff they may want.

The entire article 14 is the establishment of the Ethics Commission. That is not done yet, and then they decide what kind of people they want to hire and what skills they have.

In terms of your request for an example, I have none. My interest in this is we don't have violations. This is what we, as elected officials, should be looking at in our time going forward. There was a study in the bill too, but the amendments take that out. I'm looking at making sure we all know what the rules are going forward.

**Senator Bekkedahl:** Will the commission be prospective from the date of the bill passage or retrospective to any complaints that are filed before the bill?

**Senator Mathern:** All of the activity that the Ethics Commission would determine as being within the scope of their rules would be prospective, not retrospective.

**Senator Bekkedahl:** I understand what you did with the budget, but it looks like you're anticipating some rash of penalties or complaints coming in by the level of activity you're supporting with the budget here. The criminal investigator here says to me that there must be a lot of things that are going to hit the table right away or we wouldn't have that position specifically. And then the operating of \$40,000 for each position, I understand that's a figure from NDSU that you just picked up. The commission travel and per diem, I believe the original intent was for them to meet quarterly which would be eight meetings in a biennium, but it's \$10,000 each for travel and per diem, expenses. I appreciate the time you've put into it, but it still looks like the numbers I've seen in the original bill would better mirror what I think will be adequate for the commission to start with.

**Senator Mathern:** This actually comes from looking at many ethics commissions around the country. The NCSL (National Conference of State Legislatures) has a very complete list of these commissions around the country. The sponsors of the measure 1 committee originally had a budget of \$1M and believed that it would take five staff people to do this right.

This takes what other state are doing and paring it down to 3 staff people. There are a lot of rules to come up with. Every one of these questions you have has a number of details to go through. The start-up work is considerable and we are saying you need to come up with all these rules, however I think it would wonderful if they got done with all the rules and had no complaints. We'd come back and say there is no way they would need three staff. I would not move this motion now, but we can talk about this as a committee.

**Chairman Holmberg:** anyone else want to talk about the fiscal effect of this bill. The executive budget had put \$100,000 in the budget for OMB as kind of a placeholder, but our sub-committee has removed that. Talking to the chairman of the special committee on ethics, the money will be in here rather than the OMB budget.



**Chairman Holmberg:** Closed the hearing on SB 2148.

(31:33) **Chairman Holmberg:** Let's try to come to some resolution as to what we're going to recommend to the Senate on the financial portion of SB 2148. He asked Senator Hogue, as chairman, on reflections of what he just heard.

**Senator Hogue:** I looked at the engrossed version of SB 2148 so Senator Mathern is correct about removing the words "or ethics commission" on page 14, lines 29 & 30. Those are good amendments and fall under the category of technical amendments.

As far as the appropriation, the committee recommended \$422 and I see the amendments would take it up to \$697. The bulk of the increase in the engrossed version to Senator Mathern's proposal is the inclusion of the criminal investigator on page 2, that's \$104,000 plus the 35% for benefits. That's \$140,000. I would be troubled putting that as an FTE in this new agency. A lot of the agencies that regulate various professions, they typically have 1 ½ FTEs and they are charged with a number of hats. #1 – implementing and amending their regulations that govern their profession. They put on continuing education seminars which we put into statute which require members of the profession to participate in that continuing education. They also do investigation of complaints. They range from the ethical complaints to complaints about competency of a certain individual. They're able to do all of those without a criminal investigator. At times when they feel they need that expertise, they are able to turn to the BCI or the local state's attorney, but generally they don't have a full time person on staff whose characterized as a criminal investigator. My thought would be to not support that, so that would take \$140,000 out of Senator Mathern's proposal.

The full committee didn't look at the cost of a hotline. The committee definitely felt the ethics commission should have its own office space so they would have to incur some rent and enter into a triple net lease because I'm not sure where they'd get space from the OMB.

The first amendment was presented to the full Senate ethics committee. We did vote on it and reject it, however it was set at the \$200 in the proposal by Senator Mathern. This amendment relates to very specialized political committees which register under federal law. If you and I have our campaigns, we don't register under federal law, so this is one of the specialized agencies. The policy question is do you want to capture who their sub contributors are? Side bar discussion – seems like \$200 is too low of a threshold because some of those organizations can have thousands of contributors, so is it helpful to know who they are? So my rationale was maybe we should increase that threshold to \$1000 or some other number.

My recommendations would be to accept the amendments – the two that appear on the bottom of the amendment regarding the removal of the words "or ethics commission". I think I would be ok with the appropriation amount if we removed the \$140,000 for the criminal investigator. Since the policy committee did reject the 1<sup>st</sup> amendment on this page, I would be reluctant to have the appropriations committee adopt it. Those would be my thoughts.

**Chairman Holmberg:** Divide the amendment into three sections.

Vote 1 –

Section A - Page 14, lines 29 & 30, removing “or ethics commission”.

**Senator Mathern: Moved section A.**

**Senator Hogue: seconded the motion.**

**Voice vote carried.**

**Section A passes.**

Vote 2 -

Section B – reducing the general fund appropriation by \$180,000 which would be \$487,155.

**Senator Mathern: Moved section B.**

**No second.**

**Section B fails.**

Vote 3 -

**Senator Hogue: Moved \$697,868.00 less the funding for the criminal investigator 1 for an appropriation of \$517,155.**

**Senator Oehlke: seconded the motion.**

**Voice vote carried.**

Vote 4 –

Section C - Insert proposed section 2 (page 1, after line 16, insert section 2).

**Senator Mathern: Moved section C.**

**Senator Hogue: seconded the motion.**

**Chairman Holmberg:** Said **Senator Mathern** has done a lot of work on this but is he is always a little uncomfortable when the committee is asked to overturn what the policy committee did.

**A Roll Call Vote Was Taken: 3 yeas, 11 nays, 0 absent.**

**Section C fails.**

Vote 5 –

**Senator Hogue: Moved to adopt revised amendments.**

**Senator Mathern: seconded the motion.**

**Voice vote carries.**

Vote 6 -

**Senator Mathern: Moved Do Pass on SB 2148 as Amended.**

**Senator Dever: Seconded the motion.**

**A Roll Call Vote Was Taken: 14 yeas, 0 nays, 0 absent.**

**Motion carried.**

**Senator Hogue will carry the bill.**

SK  
2/19 WOI

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2148

Page 14, line 29, remove "or ethics commission"

Page 14, line 30, remove "or ethics commission"

Page 22, replace lines 11 through 14 with:

"Ethics commission	\$517,155
Total general fund	\$517,155
Full-time equivalent positions	2.00"

Renumber accordingly

**STATEMENT OF PURPOSE OF AMENDMENT:**

This amendment increases the appropriation for the Ethics Commission from \$422,000 to \$517,155 from the general fund and reduces the number of FTE positions from 3 to 2.

Date: 2-18-2019Roll Call Vote #: 1

**2019 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2148**

Senate Appropriations

Committee

☐ Subcommittee

Amendment LC# or Description:

Section A - removing "or ethics Commission"  
from pg 14, lines 29+30.

Recommendation:

☐ Adopt Amendment☐ Do Pass☐ Do Not Pass☐ Without Committee Recommendation☐ As Amended☐ Rerefer to Appropriations☐ Place on Consent Calendar

Other Actions:

☐ Reconsider☒ Vote on Section A

Motion Made By

Mathern

Seconded By

Hogue

Senators	Yes	No	Senators	Yes	No
Senator Holmberg			Senator Mathern		
Senator Krebsbach			Senator Grabinger		
Senator Wanzek			Senator Robinson		
Senator Erbele					
Senator Poolman					
Senator Bekkedahl					
Senator G. Lee					
Senator Dever					
Senator Sorvaag					
Senator Oehlke					
Senator Hogue					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

*Voice Vote  
Carried*

Date: 2-18-2019Roll Call Vote #: 2

**2019 SENATE STANDING COMMITTEE**  
**ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2148**

Senate Appropriations

Committee

☐ SubcommitteeAmendment LC# or Description: Section B - reducing approp. to \$487,155

Recommendation: ☐ Adopt Amendment  
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☐ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☒ reduce approp.

Motion Made By Mather Seconded By none

Senators	Yes	No	Senators	Yes	No
Senator Holmberg			Senator Mathern		
Senator Krebsbach			Senator Grabinger		
Senator Wanzek			Senator Robinson		
Senator Erbele					
Senator Poolman					
Senator Bekkedahl					
Senator G. Lee					
Senator Dever					
Senator Sorvaag					
Senator Oehlke					
Senator Hogue					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

*fails*

Date: 2-18-2019Roll Call Vote #: 3

**2019 SENATE STANDING COMMITTEE  
ROLL CALL VOTES**  
BILL/RESOLUTION NO. 2148

Senate 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~~#~~ approp of \$ 517,155Motion Made By Hogue Seconded By Oehlke

Senators	Yes	No	Senators	Yes	No
Senator Holmberg			Senator Mathern		
Senator Krebsbach			Senator Grabinger		
Senator Wanzek			Senator Robinson		
Senator Erbele					
Senator Poolman					
Senator Bekkedahl					
Senator G. Lee					
Senator Dever					
Senator Sorvaag					
Senator Oehlke					
Senator Hogue					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

*Voice Vote  
Carries*

Date: 2-18-2019Roll Call Vote #: 4

**2019 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2148**

Senate Appropriations

Committee

☐ Subcommittee

Amendment LC# or Description:

Section C - insert proposed section 2

Recommendation:

☐ Adopt Amendment☐ Do Pass☐ Do Not Pass☐ Without Committee Recommendation☐ As Amended☐ Rerefer to Appropriations☐ Place on Consent Calendar

Other Actions:

☐ Reconsider☒ insert section 2

Motion Made By

Mathern

Seconded By

Hogue

Senators	Yes	No	Senators	Yes	No
Senator Holmberg		X	Senator Mathern	X	
Senator Krebsbach		X	Senator Grabinger	X	
Senator Wanzek		X	Senator Robinson	X	
Senator Erbele		X			
Senator Poolman		X			
Senator Bekkedahl		X			
Senator G. Lee		X			
Senator Dever		X			
Senator Sorvaag		X			
Senator Oehlke		X			
Senator Hogue		X			

Total (Yes) 3 No 11Absent 0

Floor Assignment \_\_\_\_\_

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

Section C fails

Date: 2-18-2019Roll Call Vote # 5

**2019 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2148**

Senate 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*\* adopt revised amendment*

Motion Made By

*Hogue*

Seconded By

*Mathern*

Senators	Yes	No	Senators	Yes	No
Senator Holmberg			Senator Mathern		
Senator Krebsbach			Senator Grabinger		
Senator Wanzek			Senator Robinson		
Senator Erbele					
Senator Poolman					
Senator Bekkedahl					
Senator G. Lee					
Senator Dever					
Senator Sorvaag					
Senator Oehlke					
Senator Hogue					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

*Voice Vote  
Carries*



Date: 2-18-2019Roll Call Vote #: 6

**2019 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2148**

Senate 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 Mathern Seconded By Dever

Senators	Yes	No	Senators	Yes	No
Senator Holmberg	✓		Senator Mathern	✓	
Senator Krebsbach	✓		Senator Grabinger	✓	
Senator Wanzek	✓		Senator Robinson	✓	
Senator Erbele	✓				
Senator Poolman	✓				
Senator Bekkedahl	✓				
Senator G. Lee	✓				
Senator Dever	✓				
Senator Sorvaag	✓				
Senator Oehlke	✓				
Senator Hogue	✓				

Total (Yes) 14 No 0Absent 0Floor Assignment Hogue

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

**REPORT OF STANDING COMMITTEE**

**SB 2148, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman)**  
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends  
**DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2148  
was placed on the Sixth order on the calendar.

Page 14, line 29, remove "or ethics commission"

Page 14, line 30, remove "or ethics commission"

Page 22, replace lines 11 through 14 with:

"Ethics commission	\$517,155
Total general fund	\$517,155
Full-time equivalent positions	2.00"

Renumber accordingly

**STATEMENT OF PURPOSE OF AMENDMENT:**

This amendment increases the appropriation for the Ethics Commission from \$422,000 to \$517,155 from the general fund and reduces the number of FTE positions from 3 to 2.

**2019 HOUSE ETHICS**

**SB 2148**

# 2019 HOUSE STANDING COMMITTEE MINUTES

**Ethics Committee**  
Pioneer Room, State Capitol

SB 2148  
3/12/2019  
Job #33596

☐ Subcommittee  
☐ Conference Committee

Committee Clerk: ReMae Kuehn by Ellen LeTang
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## Explanation or reason for introduction of bill/resolution:

Relating to disclosures of expenditures, restrictions on public officials and lobbyists, investigations of ethics violations and implementing requirements of Article XIV of the Constitution of North Dakota; the prohibition on personal use of campaign contributions and the rulemaking procedures and requirements for the North Dakota Ethics Commission.

## Minutes:

Attachments #1-3
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**Chairman Kasper:** Opened the hearing on SB 2184.

**Chairman Kasper:** Purpose of the hearing is to listen to the comments and discussion on SB 2148, which is Article XIV of the Constitution.

**Senator Mathern~District 11-Prime Sponsor:** (Attachment #1) I encourage the testimony to be more specific to the amendment of this bill and not the general philosophy of the issue before us. The bill seeks to fulfill legislative requirements set out by the article of the ND Constitution. In the 90's, legislation was introduced which morphed into the short educational session in ethics that we hold for legislators during our organizational session.

I provided input to the sponsoring committee on the ballot Measure #1. Republicans and Democrats were involved in the discussions and contents. I have shared all of the working drafts of bills that lead up to this bill with leaders of the Republican and Democratic caucuses. I also shared it with the chairman before we introduced the bill. I also recommended to the speaker of the house.

As I reviewed the backgrounds, it is apparent that each of us has been accountable to codes of ethics. Today we embark on the next step. We are addressing the ethical practices in the public policy aspect of our lives. We are measuring the ethical conduct of legislators, other government officials and lobbyists by passage of SB 2148.

Senator Hogue will explain the bill with the Senate amendments, which he authored and were unanimously adopted by the Senate. Greg Stites, on behalf of the North Dakotans for Public Integrity will address the concerns that we still have and offer an amendment accordingly. I support the amendments and ask for a Do Pass recommendation.

**Senator Hogue~District 38:** I want to talk about the “solely” issue within the definition of “ultimate and true source.” Lobbyists want the word “solely” inserted into the definition. Our first major change was to remove “solely” because when there are fundraisers they will provide meals and drinks. Our caucus has a golf tournament which we pay green fees, meals and refreshments. So the question is, if you insert the word “solely” into the definition, you are introducing the potential for the contributor who paid for the tournament and the recipient which is the caucus to report two different numbers. They gave \$500, but really only \$300 was for the campaign and the other \$200 was for the golf and meals. From the caucus perspective, the caucus is we are going to report \$500. Now you have two different amounts from the same check. It didn’t make any sense. So we kept it clean that it is the amount that you contribute to that event.

Second major change, the penalty for personal use of campaign funds. The .05000 version, the 2<sup>nd</sup> engrossment, Section 2, there is a penalty that we inserted for what happens when you are using contributions that you received for your campaign for personal purposes. We changed that to a fine of up to \$5,000 or 2-times the value of the contribution that was used in violation of that section. The reason for that is we wanted to disincentive use of contributions for personal purposes. The only way to do that is to ratchet that penalty up. So, the public official cannot profit by that. Under the original version of the bill draft, say if I buy a car, a \$500 fine is not much of a penalty for that misappropriations.

The next major change relates to the whole idea of subjecting the Ethic Commission to Chapter 28-32, which is the Administrative Agencies Practices Act. Beginning in Section 4, that was a compromise between the house bill and this bill. The Ethics Commission is a constitutional body and is embedded into the constitution. It should have some dignity apart from an executive agency that has to go through the rulemaking process and be subject to review by the legislative review committee and the Attorney General. We said that the Ethics Committee shouldn’t have to do that. We don’t require the State Board of Higher Education to have their rules reviewed by us. They are a constitutional body. We also don’t require the judicial branch of the government to have their rules reviewed by the legislative branch. We applied that principle to the Ethics Commission.

At the same time, the Ethics Commission is not free to do as it pleases. It is still subject to the due process clause of the XIV amendment of the U.S. Constitution. It says that any time the government acts, it has to do so by providing due process. That means notice and opportunity to be heard by the public. They have to follow administrative rules for all the rules that they make because they have to have some process. This seemed an appropriate one but at the same time they don’t have to come before the legislative branch or the Attorney General for a review of their rules.

Fourth change is the definition of “gift.” We parroted the definition of “gift” that is found in the constitution, Section 20 of the bill. The constitution has a peculiar definition for “gift.” It says that is anything of value including travel. Then it says what is not a gift and it doesn’t further define what is not a gift. There should be a clear line on what a gift is and the dollar amount. The committee did not adopt the dollar amount. What are the wishes of the committee? We ended up inserting into this bill draft the language of the constitution in terms of what is a “gift.”

I disagree with some of my committee members in the authority of the legislature. There is nothing in Article XIV that removed the authority of the legislature to regulate public official's campaign contributions, disclosure statements or any of that. If the legislature decided that a gift of \$40 is the threshold, that would be fine because we have that authority today. If the Ethics Commission comes along later and says you can't, that would not control that. Until such time that it happens, the legislature has unfettered authority to define what a gift is. A number of folks on the Senate Ethics Committee are of the belief that the legislature has no ability to make that definition.

The 5th change is staffing. We made clear that the Ethics Commission is entitled to an independent staff with two FTEs & a separate office. This office is not within an executive branch agency.

The 6<sup>th</sup> change was not referred to.

The 7<sup>th</sup> major change that you see throughout the bill I can't reference to a specific section. Any time the accused is subject to a complaint and wishes to contest that in a court of law, the venue should be where the accused resides. That follows civil law. We wanted to avoid the Attorney General representing the Ethics Commission until they decide they want someone else to represent them. The reason we thought the Attorney General is the most appropriate person now is because the bulk of work will not necessarily be responding and addressing complaints against a public official. It may well be adopting and formulating rules under the Administrative Agency's Practices Act. Who better to steer them through that process than the Attorney General who does that for all the executive branch agencies.

Finally, we made the appropriation of \$517,155. We did that based on the math for 2 FTEs, leasing office space and other logistical items that need to be purchased.

**Chairman Jim Kasper:** On page 19, line 15, making a complaint. It appears to me that if a complaint is made, your bill does not require that the person making the complaint be identified. So the accused is not able to know who is making the complaint against him or her. Is that correct?

**Senator Hogue:** I would not support the idea that the accused not learn the identity of who their complainer is. That runs afoul of fundamental due process and the right to confront because there are criminal penalties attached in both the House and Senate bill. If they stand in jeopardy of criminal sanctions, they get to know who their accuser is.

**Chairman Jim Kasper:** Reads the bill starting on page 19, line 16 and ending on line 23. Nowhere does it state that the accused is given the name of the accuser. It is just that they are given the complaint.

**Senator Hogue:** That's correct. I would support the accused learning the identity of the accuser at the earliest possible stage. If you go to the informal resolution section 54-66-06 and 07, page 19, the accused is going to learn who the complainant is because it involves that the commission do an informal mediation or negotiation between the accused and the complainant. The accused should know who is the accuser at the earliest stage because

that goes to bias and the veracity of the complaint. You have the criminal sanction; you get to know who your accuser is.

(24:43)

**Representative K Koppelman:** I would like to talk about the rules that the commission will make. Also, the comment about your contention that the legislature has the authority to define what a gift is. Do the rules the commission makes have the force and effect of law?

**Senator Hogue:** They do and they will.

**Representative K. Koppelman:** The reason that the administrative rules committee has authority is because constitutionally the legislative branch is the lawmaking branch of government. The legislature has delegated some of that authority to the executive branch like the PSC, elected or not elected. The reason we do what we do is for preserving that legislative authority to make law. When the measure in question was being purposed and advocated, the proponents were making statements that lead the public to persuade them to vote for it, to believe that the rules the commission makes will be reviewed by the legislature. I realize that it doesn't state that clearly but that was the proposal. Was that a misinformed statement, outright untruth, error or an attempt to get votes. I don't know how to process that if we are not going to do that.

**Senator Hogue:** If someone indicated that the legislature is going to review the rules, there is no provision in Article XIV of the constitution that provides for that. In regard to the definition of a "gift", it explicitly provides that the Ethics Commission will promulgate those rules. My point is that we all have to comply with the legislative enactment. I don't know if the proponents were saying that there is dual authority here. Which there is.

**Representative K. Koppelman:** The only reason I brought the gift up is because of your comment. Your comment earlier was because of the legislative article in the constitution and the legislature has not relinquished its authority to make and govern law. You felt that because of the provision in the measure, until that is superseded by a rule they were to make that the legislature has the authority. I agree with that, my only reason for bringing that up and the question is that the legislature does retain its authority to make law. I struggle with that people are voting on what they don't know what they are voting on. When they are told by those proposing and promoting it, this is the way it's going to work and then we read it and say, it's doesn't say that. If it is at all ambiguous, my thought is that we should honor what the proponents intended.

**Senator Hogue:** I can't disagree with that. The other point for not requiring legislative or Attorney General review is a provision in the constitution which is highly unusual that gives any taxpayer in North Dakota the ability to challenge what the Ethic Commission does in terms of enforcing Article XIV. The reason I say that's unusual is the court, congress and the state almost always requires that the people who can challenge a decision of an administrative agency are the ones that comes before that agency. Not just Joe Smith off the street and you very rarely see that provision.

(30:20)

**Representative Steiner:** On page 2, line 11, can you define sub-contributor? How does that impact how we currently do in campaigns? We've had testimony on the house side about certain groups that are 501C4. There is a designation where they don't, by their bylaws, release their sub-contributors. How does that all interact?

**Senator Hogue:** That's an open question and is so called "dark money." 501C4's is an effort to conceal who is contributing to the political cause. I don't know how we will do the sub-contributor; I have a proposal that I'm going to introduce to the House bill.

My proposal is that if your organization doesn't have 25 North Dakota residents, or your organization's board or leadership structure doesn't have more the half North Dakota residents, your advertisements will have to disclose that your organization doesn't have a substantial connection to the State of North Dakota.

I came up with that because trying to run down these sub-contributors is a shell game. It's hard to figure out when you get a postcard in the mail, paid for by the Citizens Who Love Truth and Justice in the American Way. It's intentionally deceptive and vague. It's important to know for North Dakotans that that organization is not a North Dakota based organization.

**Representative K. Koppelman:** Does that apply to any elective process like an initiative?

**Senator Hogue:** Yes, they are intentionally anonymous. So, how do you get at that with these sub-contributor's concept, I'm not sure you can do it.

**Chairman Kasper:** Section 1.2 of the measure--Public disclosure of the "ultimate and true source of funds spent in any medium, an amount greater \$200, adjusted for inflation." How did your committee on SB 2148 address those three words, "adjusted for inflation"?

**Senator Hogue:** I think we would have dealt with that in the definitions. I wanted to find the most appropriate consumer price index and make sure that the amount was always rounded up to the nearest dollar. I don't see that in here.

**Chairman Kasper:** Your definitions start on page 17. That is a concern in talking with the Secretary of State's office. The point made was, first of all you need to define it but then adjust for inflation. Our base is \$200 adjusted for inflation. So we are going to begin to have to report \$201.44 or greater. The Secretary of State's office said "this is going to be very difficult to track as time goes on." It is difficult for both the recipient and the giver.

The Secretary of State's office did ask for an opinion about the amount of the gift. The measure calls for an amount greater than \$200 but I'm sure that you are aware that in our statute, we require a reporting of a \$100 or greater for committees. This is decreasing transparency the way the measure was written.

I guess we can't do anything about it because of what the measure says. It was probably an overlook on part of the Measure 1 committee.



**Senator Hogue:** You are correct. The committee did clarify whether you are in state or out of state contributor.

**George Stites~Attorney for North Dakotans for Public Integrity:** (Attachments #2 & 3)

(47:00)

**Representative Lefor:** Do you believe adjusted for inflation, there should be some formula attached to the consumer price index, for clarity for the Secretary of State's office?

**George Stites:** I believe it would be appropriate to have the definition. It's not currently listed in the definitions. The requirement for adjusting for inflation, in both places that the Senate bill requires the reporting of the "ultimate and true source", it does say adjusted for inflation. It hasn't defined what that is.

That could be handled obviously in 1 of 2 ways. You could provide a definition now or the Ethics Commission could provide that under a rule. Clearly, there should be a set definition because otherwise people could argue that the methodology is incorrect or is not supported in some way.

Article XIV does not eliminate, in any way, the legislature's ability to pass all sorts of additional ethical laws. It doesn't preempt the field. There is still concurrent jurisdiction over ethics by the legislature. I do have one difference of opinion, you do so only to the extent the constitution isn't controlling what it is that you are saying. It is inappropriate, after 2 years from now, for the legislature to set a different definition of gift and allow a laundry list of gifts that would be permissible.

That because you are up against a constitutional provision. If the constitution says something clearly, then the discretion for you to either redefine it or change it (say something different), just isn't there from a constitutional standpoint.

I absolutely agree that Article XIV didn't mean that the legislature just stops looking at whether it bribery, corruption, ethics, etc. The Ethics Commission has it role in those five areas of transparency and rulemaking authority. They will be busy doing that. If the legislature thinks that there is something missing or something done differently, I believe they are free to do so. So long as they are not violating the constitutional provisions.

**Representative Lefor:** When we talk about adding definitions, we have the statutory authority to put it in now. Then the Ethics Commissions meets and they set a rule, they define it. Their definition would take precedence, would it not?

**George Stites:** Yes, no legislature wants to pass a law in conflict with the constitution. If you believe that the constitution defines certain things, then the legislature isn't free to change the definition. Article XIV has prohibited gifts from lobbyists. The exception is that gifts are prohibited except for the Ethics Commission to pass rules as to North Dakota residents getting together and social settings as to what will be not considered a prohibited gift. It would otherwise be a gift.

I would hope that they decide in a rule what is permissible in a public way by the procedures set out by both of these bills.

**Vice Chair Scott Louser:** The “ultimate and true source” and specifically sub-contributors. We have a mess of reports on the Secretary of State’s site right not because of sub-contributors. If we were to pass a law in North Dakota to specifically require the disclosure of sub-contributors. And an out-of-state PAC (Political Action Committee) suggests that they can’t provide that disclosure. Can we impose a penalty or restrict the participation in a measure committee whereby a PAC doesn’t disclose their sub-contributors?

**George Stites:** I do believe that Article XIV says you can and should set appropriate penalties as to all reporting requirements. Section 1 says you should vest one or more entities whether it is the Secretary of State or the Ethics Commission or some other entity you choose. Then give that entity the power to prescribe and enforce the provisions that require the ultimate and true source of reporting.

It ought to include either by them by rulemaking or decide yourself to set the penalties ahead of time. Right now the campaign contributions statement chapter 16.1-08.1 has a penalty of associated where it says “if there isn’t a penalty otherwise provided”, then it’s a class A misdemeanor for someone to violate what these requirements are.

Whether it’s in state or out of state, it going to be irrelevant if they are not reporting appropriately. It should subject them the penalties that you decide.

**Vice Chair Scott Louser:** Who is subject to the penalty after the election has occurred? We have a year-end report that gets submitted in January and the election was in November and there are no sub-contributors reported when they existed, now what?

**George Stites:** I’m not sure what you are asking?

(56:57)

**Vice Chairman Louser:** If you focus on an out-of-state PAC or group that has sub-contributors and our campaign finance laws suggest require disclosure of sub-contributors, we have that authority, and that PAC chooses or doesn’t have the ability or desire to disclose the sub-contributors. What happens? The election has occurred, the contributions are made, the year-end report comes in in January, who gets penalized?

**George Stites:** If the reporting requirement belongs to the PAC, then whoever the officers are of that PAC have violated civil and criminal laws. This happens all the time whether it’s in-state or out-of-state that North Dakota prosecutes for not complying with North Dakota laws. We not trying to change the election. We are trying to enforce the reporting requirement. When these folks don’t report, I would hope that people would be upset enough that they would be made an example of.

**Vice Chair Scott Louser:** The pre-general election report--we’ve heard the term “dark money” and we’ve heard that it may be difficult or impossible to get these disclosures. If our law says that it is required, do we run afoul of free speech if we ban a PAC that doesn’t provide the sub-contributors reports?

**George Stites:** It wouldn't run afoul of the 1<sup>st</sup> amendment. I think that we would have the ability to do that.

**Representative Heinert:** A follow-up on the sub-contributors, do you think that if the state of North Dakota adopted rules that are currently under federal guidelines in reference to sub contributors for the PACs, would that comply with Article XIV?

**George Stites:** I'm not sure because I'm not familiar with the federal reporting mechanism. I believe the answer is "no" because Article XIV is very clear. North Dakota residents have the right to timely information. I disagree that annually reporting is sufficient. The House bill also said the Secretary of State could have 40 days after that to put it up on the website. The reporting has to be quick enough to make a difference.

(1:03)

**Representative Heinert:** Are you giving the same handout for HB 1521 to the Senate like you did for this bill? Can we receive a copy?

**George Stites:** Yes.

**Representative Headland:** Did you say that the legislature can establish definitions but the Ethics Commission would have the ability to change that definition?

**George Stites:** The terms are not defined by Article XIV. The legislature can provide that. We have something new now. We now have a 4<sup>th</sup> branch of government where the Ethics Commission was given certain duties, rulemaking authority. It is equal to what the legislature might be doing. The constitution gives them that job to do.

**Representative Headland:** Would an Ethics Commission have the ability to change the definition just because they wanted to?

**George Stites:** They are constrained the same way you are. The commission can modify the rules down the road. They want stability and transparency.

**Representative Headland:** Would the Ethics Commission have the ability on a political whim to make a change that fits their political agenda just because they could? If they have the authority to change definitions at any time, that is a scary thought.

**George Stites:** Because of the way the process works, they are required to follow the rulemaking process. They could do bad things but that is no different than the legislature could do bad things. It is another part of government that is accountable.

**Representative Ruby:** I have been thinking about your answer to the questions about the disclosure statements and timing. Currently it is pre-primary disclosure and pre-general and year end. After the pre-general, if there is a contribution of \$500 or more, there is a 24-hour requirement. With those guidelines you said people should know the information before they vote. How is that possible with the timelines and with the final report for what happened after the pre-general report?

**George Stites:** Chapter 16.1-08.1 does a good job of making this information available as soon as possible. Article XIV now pushes it more. It is time now to look at this whole chapter to see if the transparency that it offers should be more timely.

Out-of-state super PACs file paper forms. It is not electronically available. I went over to the Secretary of State's office to get a list of the super PACs that report. They have the paper files but not a list. Within four years they ship the paper off to the archives. Section 1 of Article XIV says we have to look at a new way of making this information available in a timely manner.

**Representative Boschee:** Are you saying the 40-day window should be extended from election? Or are you saying that you think a contribution of a certain size should be reported within a certain time period available online.

**George Stites:** The old way of doing things needs to be looked at. It should be easier to submit and easier for people to look at. This is our opportunity because of Article XIV.

**Vice Chair Scott Louser:** Have you seen the amended report as of March on the Secretary of State's site.

**George Stites:** No.

**Vice Chair Scott Louser:** It is confusing and that is under current law. We need a solution. I would appreciate by our next hearing if you could look at that and help interpret what is being reported.

**Representative K. Koppelman:** You are an analyst hired by the proponents to determine what legislative activity is necessary to implement it. You are also advocating for several other items as well.

**George Stites:** Yes.

**Representative K. Koppelman:** Is there any other body in the constitution or government that is not accountable to the people that has this much power?

**George Stites:** I could compare it to the appointed members to the State Board of Higher Education.

**Representative K. Koppelman:** Section 3, subsection 3 you said provides a statement of legal construction, severability and constitutional conflict. I would call it the supremacy clause. Is there anything else in the constitution that gives a body supremacy over all the other state government entities?

**George Stites:** I can't think of one.

**Representative K. Koppelman:** Does a court even have the authority to exercise its constitutional authority in analyzing something that may come up in this measure that might conflict or is the measure going to rule over everything that has ever been done in our state?

**George Stites:** There is no legal basis that would put them so far up that the Supreme Court doesn't have authority over them.

**Representative K. Koppelman:** Reads from Section 4, subsection 3: "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 this constitution, the provisions of this article shall control." That sounds pretty absolute to me.

Groups including the ACLU have indicated that this article is unconstitutional under the federal constitution. What is your opinion on that?

**George Stites:** I disagree with the ACLU. I do believe that there is no question that it is constitutional under federal law. It doesn't infringe on first amendment rights. The case law from the Citizens United case supports the proposition that increased transparency of contributions made to influence government is paramount for the people to be able to know who is influencing their government with money.

**Representative K. Koppelman:** Have you contemplated the idea that the Supreme Court is being asked to deal with an issue like this where we are taking one article in our constitution and placing it in authority over everything else? Is that even constitutional to take a section of the constitution and say that it trumps everything else?

**George Stites:** To me this is not such an onerous provision. It is a new constitutional provision put in place. When a court would consider the weight of a part that has existed for 100 years or this new provision, the scales of justice would balance in favor of Article XIV because it is the newest.

**Chairman Jim Kasper:** Adjourned the meeting.

# 2019 HOUSE STANDING COMMITTEE MINUTES

**Ethics Committee**  
Pioneer Room, State Capitol

SB 2148  
4/10/2019  
Job #34671

☐ Subcommittee  
☐ Conference Committee

Committee Clerk: ReMae Kuehn
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## Explanation or reason for introduction of bill/resolution:

Relating to disclosures of expenditures, restrictions on public officials and lobbyists, investigations of ethics violations and implementing requirements of Article XIV of the Constitution of North Dakota; the prohibition on personal use of campaign contributions and the rulemaking procedures and requirements for the North Dakota Ethics Commission.

## Minutes:

Attachments #1-3
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**Chairman Kasper:** Called to order

**Senator Mathern, Sponsor:** (Attachment #1) Definition of lobbyist.

A definition that could be common is combining the intent of Article XIV and what we already have in Century Code. Senate Bill 2148 did not have that definition.

There has been confusion about an amount adjusted for inflation. The adjustment for inflation would relate to contributions. It could be left to the Ethics Commission. I worked on an amendment for inflation. Then I learned that the Secretary of State also worked on an amendment. If you are interested in simplifying that you can look at his. One idea is just authorizing. We just don't do anything with the inflationary rate or set it once a year.

(Attachment #2) Amendment #19.0422.05009

The House started with a bill regarding a study and so did the Senate. We are all learning in this process. We are going to have five commissioners that are also learning. Consider putting a study resolution in bill. It covers three areas:

1. Gives additional time for implementation and law making. If you intend to not take that time, it would still be helpful to study those areas.
2. Develop a mechanism where the legislature and the Ethics Commissioners collaborate in implementing Article XIV. The commissioners would sit at the table with you as legislators. I suggest having two commissioners. Then there isn't an issue about having a quorum and giving notice.
3. The interim committee develop ways of educating the public and legislators on how to carry out the request of Article XIV. That could be a workshop, a manual, an online course, etc.

Also I want to remind you of the amendment handed out March 12 which is #19.0422.05003 for "ultimate and true source." That relates to the concept of sub contributors.

**Representative Lefor:** Your first amendment (Attachment #1) given today, #2 with all of the lines deleted, is it your intent that the last sentence replaces the other verbiage?

**Senator Mathern:** The intent is that they are combined by that one sentence. If you wanted letters e. or d. and have a further elaboration of people exempt, but it appeared that they all fit that definition.

**Representative Lefor:** It wasn't your intent to move these out of that chapter? It was to change the wording in subsection 2 where you are putting it to a different definition. Is that correct?

**Senator Mathern:** Yes. The goal is to make it consistent with Article XIV. It would take investigation by Legislative Council.

(14:30)

**Representative K. Koppelman:** Your suggested amendment (Attachment #1) in # 2 does restate subdivision c. But it doesn't seem to capture what is listed under d. and e. You would be talking about exempting public officials. There are other people defined. Yet you said you were restating the language that is there.

**Senator Mathern:** Letter a. is a private citizen appearing on the citizen's own behalf. Some of the ones listed in the crossed out language are really there as a private citizen. So they are covered there already. Or they are a board member or a volunteer. That would apply to being involved in a trade or a professional association. The attempt is to bring them together.

**Representative K. Koppelman:** The last sentence of #2 seems to be referencing the state or political subdivisions, excluding public officials.

**Senator Mathern:** I saw them also as being in the role of a citizen. The idea is to create one definition.

(17:50)

**Representative Steiner:** part d under #2 (Attachment #1) "Invited by the chairman . . ." Sometimes we have people on the national level who are invited by the chairman to speak to an interim committee. Sometimes they work for a group. Under your change are they included as you consolidated to that one sentence or did you want them excluded?

**Senator Mathern:** They are coming as a citizen with a special passion that represents all with the same passion. They are not regularly here. If you would like to keep it in there, that is alright.

**Representative Steiner:** We sometimes ask a specialist, is he required to register as a lobbyist? Is that person considered a citizen?

**Senator Mathern:** I think that person would normally have other requirements and may be involved in campaign contributions or hiring lobbyists. Other provisions of this bill would be applicable. If you think that is a loophole, it would need some attention.

**Representative D. Anderson:** Could we leave (Attachment #1) part e in there?

**Senator Mathern:** I could see leaving part d in. Part e needs a little more work, so I would take that out. Part e is getting close to some of the other provisions of the law.

**Representative D. Anderson:** Instead of saying “presenting testimony”, could we say “educating the committee.”

**Senator Mathern:** The intent is to make sure that there is a way that everyone is accounted for. If that person has more influence than the standard citizen, there should be more requirements. That is related to making this consistent with Article XIV.

**Representative D. Anderson:** When we develop policy, it is important to receive all the education we can get to make good decisions

**Senator Mathern:** I agree. That is why #1 applies and #2 we grant the exceptions. That doesn't mean we don't want those people.

**Representative Boschee:** This is more about disclosing who is engaging with us. That is what voters were looking for as far as transparency. We depend on professionals all the time to help us make good policy.

**Chairman Jim Kasper:** When you make the statements that they should be held to a higher standard of disclosure because of who they are, I get worried. The U.S. Constitution grants the right of all people to have the freedom of speech.

You want more disclosure. You are getting into other areas that are already disclosed such as a campaign contribution. It is disclosed. They have to be identified with name, address, where they live, position, etc. The identification is received in the committee when the person makes their points about the legislation.

Another area of concern, on your amendment (Attachment #1) you are crossing off the words “a legislator.” We are legislators and we aren't subject to the lobbyist requirement in the statute. With your striking of “a legislator”, it appears now we become also a lobbyist. We are lobbying each other every day. I am concerned about that part of your amendment.

**Senator Mathern:** The attempt to simplify was to have the legislator be noted as a public official. In the language in #2, I would define you as a public official which exempts us from this role as lobbyists. You would be here as a public official. Article XIV isn't just about us. It is also about the executive branch and other government officials.

**Chairman Jim Kasper:** It takes away clarity and makes it more ambiguous. What is wrong with keeping it in?



We have in code, Chapter 54-05.1, the definition of lobbyist and what you cited in your amendment. This has been in code and amended over time. Everyone is used to that. Measure 1 did not define lobbyist. It gives the legislature discretion to make legislation to clarify Measure 1. If we do not define lobbyist, we have defined it from the perspective that it is already in code. The people filing campaign reports for years are used to that terminology. What is wrong with the definition that we have in code?

**Senator Mathern:** It appears the definition in code is more limited to the activity of the legislative process. A lobbyist according to Article XIV is a person who engages in that activity in more ways than our legislature. The goal is to take what we have in place and make sure it is applicable to other areas of government which Article XIV requires. Our statute was developed to regulate the activity in these halls. Article XIV expands that to regulating activity beyond the halls of the legislature into the tower of the executive branch.

**Representative Steiner:** For example, an oil executive is only coming in because of a change of a regulation. He is coming on behalf of his company. You are suggesting he comes for that one time and he has to buy a \$25 tag for the one day? When he testifies he signs the board and identifies himself. How is the public not seeing the transparency? It is a public meeting.

**Senator Mathern:** Yes. It would be easier for the citizens to know he is there if he is registered. It is easier for the citizens to go to the Secretary of State's list of registered lobbyists than to go to every executive office to determine who has been there to lobby them regarding a public policy matter. Yes, it another \$25.

(36:19)

**Representative Heinert:** Just registering only gives the name and they are here to lobby. It doesn't tell who they talked to. Where is the transparency?

**Senator Mathern:** We are trying to move to more transparency. If you want to have them identify who they went to see, when, and what they said is another level. Article XIV doesn't require that level of transparency. But we can add that.

**Chairman Jim Kasper:** Sounds like everyone has to wear a tracking device so anyone can go online and find out where you have been. It is approaching scariness to me.

**Representative Heinert:** Where in Article XIV does it say they have to register if they want to talk to a group at the capitol?

**Senator Mathern:** "Lobbyist" is used in Article XIV a number of times. There is no specific definition. The intent is to have the legislature make that definition. Article XIV does give the legislature the ability to do some of these things.

**Representative Heinert:** The commissioners may weigh in on the definition. If the legislature develops the definition, can the commission change it?

**Senator Mathern:** The commission will consider what the legislature has done and determine if we have met the minimum requirements. That is why I suggest the study committee and to have commissioners on it.

**Representative Headland:** With the example where an executive comes in to testify and we require him to register as a lobbyist, are we going to find they will come in as a private citizen?

**Senator Mathern:** There are other provisions in the statute and Article XIV that addresses that. If they are representing a specific activity that they want us to do in government, that is their work or business, it would not be above board to claim to be a citizen. That would be a violation of Article XIV.

**Representative Headland:** I am a farmer and I testify as a citizen.

**Senator Mathern:** If you came as a farmer, you would be exempt. But if you represent all farmers with an organization, you would not be exempt. The Ethics Commission would further clarify that. We do that now in state agencies.

**Representative R. Becker:** Could one say they are an individual when everyone knows they are not?

**Senator Mathern:** You just said “everyone knows.” They would need to register.

**Representative R. Becker:** If you are affiliated with an organization, can you be here in your own capacity?

**Senator Mathern:** No. The degree that you outlined is further than what is in Article XIV. We all have different hats. Look at the primary role of that person.

**Chairman Jim Kasper:** Reads the first amendment to 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.”

This discussion in trying to micromanage people’s thoughts and intentions is impossible. If someone identifies themselves, what more do we need? The Constitution guarantees they have the right to speak. Some of the discussion on these amendments appears there is an attempt to build barriers between the citizens and the first amendment. That is very frightening.

**Senator Mathern:** Since that was placed in our constitution, there have thousands of cases in court to implement and apply it.

I think it would be simpler to have a consistent definition. What is consistent is up to you. I am bringing the concept that I think would be helpful.

**Representative Mock:** What is the reason for the change? Is it because they may have been politically active and you want the declaration of their involvement?

**Senator Mathern:** Under 1c (Attachment #1), the goal is to assure that the definition applies to more than the legislative branch. The other intent is to simply it for the citizens, lobbyists, etc.

**Representative Mock:** 2d and 2e is the invitation to come for informational purposes. What is the concern with that individual speaking and not registering as a lobbyist?

**Senator Mathern:** You could keep 2d in there.

**Representative Mock:** Expanding to all branches is a good purpose. The title of law is listed. It is 54-05.1—Legislative Lobbying. While we are changing the definition, do we need to change the title of that statute or create a new statute?

**Senator Mathern:** We don't legislate titles of code. If we pass this, that would be up to legislative council. There may be other sections of that chapter that we should be looking at. We can only do so much. That is why Article XIV has the three-year time frame.

**Representative Lefor:** In looking at the amendment on the study (Attachment #2), my understanding is the Ethics Commission can promulgate rules without the legislature. The only way that can be changed is if it is judicial and a case is brought forth. If we put something in definition, the Ethics Committee can change it. Why do you feel a study is important?

**Senator Mathern:** I see interim studies as opportunities for education including the commissioners. The commissioners are going to be citizens. They also need education.

The intent is to promote collaboration and education. There has been a lot of tension about this. It would create the atmosphere of avoiding conflicts in the future.

**Tracey L. Wilkie:** (Attachment #3)  
Supports SB 2148 in its current form.

**Representative Boschee:** What happens if a lobbyist doesn't register? How does your office administer those complaints?

**Jim Silrum, Deputy Secretary of State:** We reach out to the individual and explain the requirements. If they refuse, those are in place by a court of law and would engage the Attorney General to bring charges.

**Representative Boschee:** You would administer the complaint but the action is with the court system?

**Jim Silrum:** We are not given the enforcement authority. We can impose fines as specified in law. In this instance it would have to be a court that would say they are guilty of an infraction.

**Representative Boschee:** How do you see Article XIV and the definition of lobbyists?

**Jim Silrum:** There is campaign finance and there is legislative lobbying. Even under Article XIV, we believe the separation between the two still remains. Article XIV says a lobbyist cannot deliver campaign contributions on behalf of someone else. That doesn't prevent a lobbyist from making a campaign contribution on their own.

**Representative Boschee:** Article XIV, Section 2, subsection 1 "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." So it would have an impact on people who register as a lobbyist whether we define it under legislative code or SB 2148.

**Jim Silrum:** That is in the gray area of the statute. What is a gift? It is defined, but we see it different from a campaign contribution.

**Representative Boschee:** Yes, it does say that a gift is not a campaign contribution

**Chairman Jim Kasper:** Further comments that would help?

**Jim Silrum:** The amendments we prepared were on HB 1521. In those amendments we are proposing that all references to "adjusted for inflation" be removed from the bill. If you are a measure committee, you need to disclose any contribution in excess of \$100. Any others like a candidate or political party, you are to disclose the name of an individual who gave more than \$200. It is our understanding that even though Article XIV says adjusted for inflation, the law can require more disclosure than the constitution requires. We think it is simpler to leave the reporting thresholds at \$100 and \$200 so we are not changing them to some odd amount. Contributions of \$200 or less need to be reported; but you don't have to report the name of the individual who gave a contribution until it is one cent over \$200. Then their name and address must be disclosed. If we start changing it for inflation, it will promote confusion? The only time it would need to be changed is if we have a drastic situation with deflation that what is worth \$200 now is worth less.

There should be reporting of sub contributors whenever someone gives a contribution to a candidate or party. We are suggesting an amendment to 16.1-08.1 and 03.1 to make it clear that all filers of campaign contribution statements need to report sub contributors. That is the only section that requires sub contributors and that section only deals with measure committees.

**Representative Boschee:** Is there a reason those same amendments aren't added to SB 2148 which has similar language?

**Jim Silrum:** I will submit them to this bill also.

**Representative Ruby:** I agree "adjusted for inflation" would have odd dollars and cents amounts. It would be good to make those adjustments over several years. I hope your

amendment would make the incremental jumps after the inflationary levels have reached a certain threshold.

**Jim Silrum:** We offered our suggestion but we recognize you are the policy setting branch of government.

**Representative K. Koppelman:** In this case the people have made a policy by passing a measure that includes an inflationary increase. That is broader than current law. Periodic adjustments would make sense.

**Jim Silrum:** We looked at the measure that was submitted for approval to circulate. We also wondered because here was a measure that was intended to provide for greater transparency and it provides less transparency because those amounts go up. It applies to any filer. It exposes one of the difficulties with initiated measures. Once we give the approval for circulation, there is no way to change it.

**Representative Ruby:** There was some recognition that over a period of years there are inflationary levels. It hasn't been changed since I have been in the legislature. By doing the incremental where we don't change it until the inflation has reached a threshold, we are being more transparent.

**John Olson, Lobbyist:** I am bothered by the loose definitions we attach to lobbyists. We as citizens have a right to express our opinions. Up until Measure 1, I knew what the rules were under the lobbyist's chapter. In that chapter everyone that comes before you and expresses an opinion is a lobbyist. There are certain exemptions. A citizen is exempt from registration along with those requested by the chair. The rules were understood.

Does Article XIV relate to the definitions in Chapter 54? I would be more comfortable if you would have an exclusionary definition and take out the citizen that appears on their own behalf. That person is not a lobbyist.

(1:29:05)

**Chairman Jim Kasper:** Chapter 54-05.1-02, subsection 2--we do have that exemption for a private citizen in current statute. The ambiguity is what is the definition because of Article XIV.

**John Olson:** 54-05.1-02, subsection 1 says "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."

So everyone is a lobbyist. The problem is we have definitions of lobbyists now that cover private citizens exercising their first amendment rights. The lobbyist term is incorporated into Article XIV. That is where my confusion lies.

**Geoff Simon, Lobbyist:** The answer lies with the federal government. As a former federal registered lobbyist, all three of the following have to apply to the individual required to register:

1. The individual must make more than one lobbying contact on behalf of their employer
2. Spend more than 20% of their time lobbying over a three-month period
3. The organization must spend more than \$13,000 on lobbying in any given quarter

Again, all three must apply before an individual is required to register. That lobbying contact does not include testimony before a committee or appearance before a regulatory body to comment on a rule.

**Representative Steiner:** (question to Representative Boschee) You made a statement “that if you use a loophole.” Are you concerned about a loophole?

**Representative Boschee:** My reference to “loophole” is the decision someone has to make in terms of whether to register as a lobbyist or not. Some may try to come as a citizen to use that as a loophole when they are from a company.

**Chairman Jim Kasper:** As a legislator have you had any situations where you did not know when you were talking to a person whether they were a citizen or a lobbyist in hiding as a citizen?

**Representative Boschee:** It was someone that was testifying.

**Chairman Jim Kasper:** Closed the hearing.

# 2019 HOUSE STANDING COMMITTEE MINUTES

## Ethics Committee

Pioneer Room, State Capitol

SB 2148—Committee Work

4/18/2019

Job #34843

☐ Subcommittee

☐ Conference Committee

Committee Clerk: ReMae Kuehn
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### Explanation or reason for introduction of bill/resolution:

Relating to disclosures of expenditures, restrictions on public officials and lobbyists, investigations of ethics violations and implementing requirements of Article XIV of the Constitution of North Dakota; the prohibition on personal use of campaign contributions and the rulemaking procedures and requirements for the North Dakota Ethics Commission.

### Minutes:

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**Chairman Kasper:** Called to order

**Chairman Jim Kasper:** The Senate passed HB 1521 yesterday. They did amend it dramatically.

### Appointed a Conference Committee:

Representative Louser

Representative Mock

Representative Kasper

It is premature to act on SB 2148 until we have a feel for where HB 1521 is going.

**Chairman Jim Kasper:** Adjourned

# 2019 HOUSE STANDING COMMITTEE MINUTES

## Ethics Committee

Pioneer Room, State Capitol

SB 2148—Committee Work

4/22/2019

Job #34899

☐ Subcommittee

☐ Conference Committee

Committee Clerk: ReMae Kuehn
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### Explanation or reason for introduction of bill/resolution:

Relating to disclosures of expenditures, restrictions on public officials and lobbyists, investigations of ethics violations and implementing requirements of Article XIV of the Constitution of North Dakota; the prohibition on personal use of campaign contributions and the rulemaking procedures and requirements for the North Dakota Ethics Commission.

### Minutes:

**Chairman Jim Kasper:** Gave update from Conference Committee for HB 1521.

Proposed amendment from Senator Hogue 1521 adopted most of what the Senate amended into with additional amendments. The version from the Senate didn't require the person who made the complaint to identify themselves or require it to be in writing. It didn't protect the confidentiality of a complaint. Anyone could make a phone call from anywhere and lodge a complaint. It does put the due process back in and simplify what we had sent to the Senate originally. It also did increase the budget from what we sent.

Senator Mathern wants a study. There is no study in that version

**Representative Steiner:** I have an idea for more disclosure. It would be for travel accommodations, meals, or refreshments. The public official submits a report to the Secretary of State detailing the purpose and costs of the travel provided by the lobbyist within 30 days of returning. With transparency it would be of value to constituents. It is a suggestion to the Ethics Commission for out-of-state travel.

**Chairman Jim Kasper:** I would suggest adding that to HB 1521 tomorrow at the conference committee.

**Chairman Jim Kasper:** Adjourned



# 2019 HOUSE STANDING COMMITTEE MINUTES

## Ethics Committee

Pioneer Room, State Capitol

SB 2148—Committee Work

4/23/2019

Job #34948

☐ Subcommittee

☐ Conference Committee

Committee Clerk: ReMae Kuehn
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### Explanation or reason for introduction of bill/resolution:

Relating to disclosures of expenditures, restrictions on public officials and lobbyists, investigations of ethics violations and implementing requirements of Article XIV of the Constitution of North Dakota; the prohibition on personal use of campaign contributions and the rulemaking procedures and requirements for the North Dakota Ethics Commission.

### Minutes:

Attachments #1 & 2
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**Chairman Jim Kasper:** Reviewed Conference Committee results for HB 1521.

**Speaker Klemin:** Amendment for a study #19.0422.05013 (Attachment #1)  
Questions that could be studied. (Attachment #2)

Amendment for a study not the same as what was in House Concurrent Resolution 3028.

The members of the Ethics Commission would be participating on the study committee as nonvoting members. They could ask questions and become better informed.

SB 2148 won't be needed in its original for when HB 1521 passes.

Transparency would be looked at along with funding sources, lobbyists, conflicts of interest, responsibilities of the legislative assembly, responsibilities of the Ethics Commission, and issues between the North Dakota and U.S. Constitution. Article XIV has a supremacy clause that seems to supersede everything in the rest of the constitution. Are the sanctions appropriate? How can everyone be better educated?

**Representative Mock:** Moved to adopt amendment #.05013

**Representative Steiner:** Seconded the motion.

**Speaker Klemin:** This is a mandatory study.

**Chairman Jim Kasper:** The process that we have gone through is like what is outlined in SCR 4001. That resolution states that if a constitutional amendment is passed, the amendment will be presented to the next legislative session for debate and discussion. Then the legislature will support the constitutional amendment as written or vote to put it back on the ballot. The process we used here is that we have been vetting a bill with the difference being that it is already in the constitution.

**Voice Vote taken.** Motion passed to adopt the amendment.

**Representative Mock:** Moved Do Pass as amended.

**Representative K. Koppelman:** Seconded the motion.

**A Roll Call vote was taken:** Yes 12, No 0, Absent 2.

**Do Pass as amended** carries.

**Representative Louser** will carry the bill.

**Chairman Jim Kasper:** Adjourned.

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2148

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study regarding article XIV of the Constitution of North Dakota and related issues.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - ETHICS COMMISSION AND LEGISLATIVE ASSEMBLY RESPONSIBILITIES.** During the 2019-20 interim, the legislative management shall study the implementation and requirements of article XIV of the Constitution of North Dakota concerning the transparency of funding sources, lobbyists, conflicts of interest, and related matters, the responsibilities of the legislative assembly and the ethics commission, and potential issues under the Constitution of the United States and the Constitution of North Dakota. The members of the ethics commission must be invited to participate on the study committee as nonvoting members. The study must include a review of existing laws and laws enacted to implement article XIV and consideration of whether the civil and criminal sanctions for violations of the constitutional provisions and the statutes are appropriate; whether legislative action regarding article XIV is necessary or desirable; and an 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."

Renumber accordingly

Date: 4/23/2019

Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2148**

House Ethics

Committee

☐ Subcommittee

Amendment LC# or Description: 19.0422.05013

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. 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: 4/23/2019

Roll Call Vote #: 2

**2019 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2148**

House Ethics

Committee

☐ Subcommittee

Amendment LC# or Description: 19.0422.05013

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. Koppelman

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	AB				
Rep. Heinert	X				
Rep. K. Koppelman	X				
Rep. Lefor	X				
Rep. Rohr	X				
Rep. D. Ruby	AB				
Rep. Steiner	X				

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep. Louser

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

**REPORT OF STANDING COMMITTEE**

**SB 2148, as reengrossed: Ethics Committee (Rep. Kasper, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Reengrossed SB 2148 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study regarding article XIV of the Constitution of North Dakota and related issues.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - ETHICS COMMISSION AND LEGISLATIVE ASSEMBLY RESPONSIBILITIES.** During the 2019-20 interim, the legislative management shall study the implementation and requirements of article XIV of the Constitution of North Dakota concerning the transparency of funding sources, lobbyists, conflicts of interest, and related matters, the responsibilities of the legislative assembly and the ethics commission, and potential issues under the Constitution of the United States and the Constitution of North Dakota. The members of the ethics commission must be invited to participate on the study committee as nonvoting members. The study must include a review of existing laws and laws enacted to implement article XIV and consideration of whether the civil and criminal sanctions for violations of the constitutional provisions and the statutes are appropriate; whether legislative action regarding article XIV is necessary or desirable; and an 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."

Renumber accordingly

**2019 TESTIMONY**

**SB 2148**

SB 2148- Senate Committee on Ethics- January 30, 2019

Chairman Hogue and Committee Members,

My name is Tim Mathern, Senator from Fargo. I sponsored SB 2148 which upon passage will fulfill legislative requirements set out by Article 14 of the North Dakota Constitution.

In the '90s I introduced legislation which eventually morphed into the educational session in ethics we now have in our organizational sessions. Before the last election I provided input to the Sponsoring Committee of ballot Measure #1. In those activities and in the teamwork of drafting of SB2148 I have consistently involved Republicans and Democrats in the discussions and content. The issues of ethics are common to us all and the prevention of unethical behavior includes clear guidelines. Leaders of both caucuses and the governor have had access to drafts of this bill which has gone through many changes.

Members of the committee, as I review our backgrounds it is apparent that each of us has been accountable to codes of ethics in our professions. Today we simply embark on building on this in the public policy aspect of our lives and that of our colleagues. In a deliberate and measured manner, we are clarifying the standards of ethical conduct of legislators, other government officials, and lobbyists. North Dakota citizens have directed us to do this by approving Article 14. I trust we can work together implementing this directive.

To make efficient use of your time; Attorney Claire Ness of the Legislative Council will explain the bill, Attorney Greg Stites will explain the rationale of the three-tiered approach this bill presents- 1. establish the ethics commission, 2. do an interim study, and 3. pass another bill in the '21 session. He will explain suggested amendments which I have provided to you numbered 19.0422.02002. The Vice President of North Dakotans for Public Integrity, Ellen Chaffee will give broader attention to the citizen environment supporting this bill. Having the National Conference of State Legislatures here did not work out but attached you will find their offer of presentation which we can discuss in committee. I have asked other advocates and those who have questions or oppose aspects to testify after that.

I ask you to adopt the amendments and I ask you to make a Do Pass recommendation to the Senate. Thank you for your consideration.



PROPOSED AMENDMENTS TO SENATE BILL NO. 2148

Page 1, line 3, remove "to amend and reenact sections"

Page 1, remove lines 4 through 7

Page 1, line 8, remove "North Dakota ethics commission;"

Page 1, line 9, remove "and"

Page 1, line 9, after "appropriation" insert "; and to declare an emergency"

Page 1, remove lines 11 through 24

Page 2, remove lines 1 through 30

Page 3, remove lines 1 through 30

Page 4, remove lines 1 through 30

Page 5, remove lines 1 through 29

Page 6, remove lines 1 through 31

Page 7, remove lines 1 through 31

Page 8, remove lines 1 through 31

Page 9, remove lines 1 through 31

Page 10, remove lines 1 through 30

Page 11, remove lines 1 through 31

Page 12, remove lines 1 through 31

Page 13, remove lines 1 through 31

Page 14, remove lines 1 through 30

Page 15, remove lines 1 through 29

Page 16, remove lines 1 through 31

Page 17, remove lines 1 through 31

Page 18, remove lines 1 through 31

Page 19, remove lines 1 through 31

Page 20, removes lines 1 through 11

Page 20, after line 14, insert:

"1. For purposes of this chapter, unless the context otherwise requires:"

Page 20, line 15, replace "1." with "a."

Page 20, line 18, replace "2." with "b."

Page 20, line 20, replace "3." with "c."

Page 20, line 23, replace "4." with "d."

Page 20, remove lines 25 through 31

Page 21, remove lines 1 through 12

Page 21, line 13, replace "8." with "e."

Page 21, after line 14, insert:

"2. For purposes of article XIV of the Constitution of North Dakota, "lobbyist":

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.

b. Does not mean:

- (1) A private citizen appearing on the citizen's own behalf; or
- (2) A public official or an employee, officer, board member, volunteer, or agent of the state or its political subdivisions acting in the individual's official capacity."

Page 24, after line 11, insert:

**"54-66-14. Personal use of contributions prohibited - Penalty.**

The ethics commission shall impose a fine of up to ten thousand dollars upon any person that violates section 16.1-08.1-04.1. The ethics commission may impose a fine of up to fifty thousand dollars per violation upon any person who violates section 16.1-08.1-04.1 more than once in a twelve-month period. Fines imposed under this section are in addition to any fines imposed under section 16.1-08.1-07 for a violation of section 16.1-08.1-04.1."

Page 24, line 21, replace "biennium" with "period"

Page 24, line 21, replace "July 1, 2019," with "with the effective date of this Act"

Page 24, after line 27, insert:

**"SECTION 4. EMERGENCY.** Section 3 of this Act and North Dakota Century Code sections 54-66-11, 54-66-12, and 54-66-14, as created by section 1 of this Act, are declared to be emergency measures."

Renumber accordingly

Sixty-sixth  
Legislative Assembly  
of North Dakota

**SENATE BILL NO. 2148**

Introduced by

Senator Mathern

1 A BILL for an Act to create and enact chapter 54-66 of the North Dakota Century Code, relating  
2 to restrictions on public officials and lobbyists, investigations of ethics violations, and  
3 implementing requirements of article XIV of the Constitution of North Dakota; ~~to amend and~~  
4 ~~reenact sections 28-32-01, 28-32-02, 28-32-03, 28-32-06, 28-32-07, and 28-32-08,~~  
5 ~~subsection 5 of section 28-32-08.1, sections 28-32-08.2, 28-32-09, 28-32-10, 28-32-11,~~  
6 ~~28-32-12, 28-32-14, 28-32-15, 28-32-16, 28-32-17, 28-32-18, and 28-32-18.1, and~~  
7 ~~subsections 2 and 4 of section 28-32-19 of the North Dakota Century Code, relating to~~  
8 ~~rulemaking procedures and requirements for the North Dakota ethics commission; to provide for~~  
9 ~~a legislative management study; to provide a penalty; and to provide an appropriation; and to~~  
10 declare an emergency.

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

12 ~~SECTION 1. AMENDMENT.~~ Section 28-32-01 of the North Dakota Century Code is  
13 amended and reenacted as follows:  
14 ~~28-32-01. Definitions.~~  
15 ~~In this chapter, unless the context or subject matter otherwise provides:~~  
16 ~~1. "Adjudicative proceeding" means an administrative matter resulting in an agency~~  
17 ~~issuing an order after an opportunity for hearing is provided or required. An~~  
18 ~~adjudicative proceeding includes administrative matters involving a hearing on a~~  
19 ~~complaint against a specific named respondent; a hearing on an application seeking a~~  
20 ~~right, privilege, or an authorization from an agency, such as a ratemaking or licensing~~  
21 ~~hearing; or a hearing on an appeal to an agency. An adjudicative proceeding includes~~  
22 ~~reconsideration, rehearing, or reopening. Once an adjudicative proceeding has begun,~~  
23 ~~the adjudicative proceeding includes any informal disposition of the administrative~~  
24 ~~matter under section 28-32-22 or another specific statute or rule, unless the matter~~

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- 1 has been specifically converted to another type of proceeding under section 28-32-22.  
 2 An adjudicative proceeding does not include a decision or order to file or not to file a  
 3 complaint, or to initiate an investigation, an adjudicative proceeding, or any other  
 4 proceeding before the agency, or another agency, or a court. An adjudicative  
 5 proceeding does not include a decision or order to issue, reconsider, or reopen an  
 6 order that precedes an opportunity for hearing or that under another section of this  
 7 code is not subject to review in an adjudicative proceeding. An adjudicative proceeding  
 8 does not include rulemaking under this chapter.
- 9 2. "Administrative agency" or "agency" means each board, bureau, commission,  
 10 department, or other administrative unit of the executive branch of state government,  
 11 including one or more officers, employees, or other persons directly or indirectly  
 12 purporting to act on behalf or under authority of the agency. An administrative unit  
 13 located within or subordinate to an administrative agency must be treated as part of  
 14 that agency to the extent it purports to exercise authority subject to this chapter. The  
 15 term administrative agency does not include:
- 16 a. The office of management and budget except with respect to rules made under  
 17 section 32-12.2-14, rules relating to conduct on the capitol grounds and in  
 18 buildings located on the capitol grounds under section 54-21-18, rules relating to  
 19 the classified service as authorized under section 54-44.3-07, and rules relating  
 20 to state purchasing practices as required under section 54-44.4-04.
  - 21 b. The adjutant general with respect to the department of emergency services.
  - 22 c. The council on the arts.
  - 23 d. The state auditor.
  - 24 e. The department of commerce with respect to the division of economic  
 25 development and finance.
  - 26 f. The dairy promotion commission.
  - 27 g. The education factfinding commission.
  - 28 h. The educational technology council.
  - 29 i. The board of equalization.
  - 30 j. The board of higher education.
  - 31 k. The Indian affairs commission.

- 1 ——— l. The industrial commission with respect to the activities of the Bank of North
- 2 Dakota, North Dakota housing finance agency, public finance authority, North
- 3 Dakota mill and elevator association, North Dakota farm finance agency, the
- 4 North Dakota transmission authority, and the North Dakota pipeline authority.
- 5 ——— m. The department of corrections and rehabilitation except with respect to the
- 6 activities of the division of adult services under chapter 54-23.4.
- 7 ——— n. The pardon advisory board.
- 8 ——— o. The parks and recreation department.
- 9 ——— p. The parole board.
- 10 ——— q. The state fair association.
- 11 ——— r. The attorney general with respect to activities of the state toxicologist and the
- 12 state crime laboratory.
- 13 ——— s. The administrative committee on veterans' affairs except with respect to rules
- 14 relating to the supervision and government of the veterans' home and the
- 15 implementation of programs or services provided by the veterans' home.
- 16 ——— t. The industrial commission with respect to the lignite research fund except as
- 17 required under section 57-61-01.5.
- 18 ——— u. The attorney general with respect to guidelines adopted under section 12.1-32-15
- 19 for the risk assessment of sexual offenders, the risk level review process, and
- 20 public disclosure of information under section 12.1-32-15.
- 21 ——— v. The commission on legal counsel for indigents.
- 22 ——— w. The attorney general with respect to twenty-four seven sobriety program
- 23 guidelines and program fees.
- 24 ——— x. The industrial commission with respect to approving or setting water rates under
- 25 chapter 61-40.
- 26 ——— 3. "Agency head" means an individual or body of individuals in whom the ultimate legal
- 27 authority of the agency is vested by law.
- 28 ——— 4. "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. "Ethics commission" means the North Dakota ethics commission established by article~~  
2 ~~XIV of the Constitution of North Dakota.~~
- 3 ~~5.6. "Hearing officer" means any agency head or one or more members of the agency~~  
4 ~~head when presiding in an administrative proceeding, or, unless prohibited by law, one~~  
5 ~~or more other persons designated by the agency head to preside in an administrative~~  
6 ~~proceeding, an administrative law judge from the office of administrative hearings, or~~  
7 ~~any other person duly assigned, appointed, or designated to preside in an~~  
8 ~~administrative proceeding pursuant to statute or rule.~~
- 9 ~~6.7. "License" means a franchise, permit, certification, approval, registration, charter, or~~  
10 ~~similar form of authorization required by law.~~
- 11 ~~7.8. "Order" means any agency action of particular applicability which determines the legal~~  
12 ~~rights, duties, privileges, immunities, or other legal interests of one or more specific~~  
13 ~~persons. The term does not include an executive order issued by the governor.~~
- 14 ~~8.9. "Party" means each person named or admitted as a party or properly seeking and~~  
15 ~~entitled as of right to be admitted as a party. An administrative agency may be a party.~~  
16 ~~In a hearing for the suspension, revocation, or disqualification of an operator's license~~  
17 ~~under title 39, the term may include each city and each county in which the alleged~~  
18 ~~conduct occurred, but the city or county may not appeal the decision of the hearing~~  
19 ~~officer.~~
- 20 ~~9.10. "Person" includes an individual, association, partnership, corporation, limited liability~~  
21 ~~company, the ethics commission, a state governmental agency or governmental~~  
22 ~~subdivision, or an agency of such governmental subdivision.~~
- 23 ~~10.11. "Relevant evidence" means evidence having any tendency to make the existence of~~  
24 ~~any fact that is of consequence to the determination of the administrative action more~~  
25 ~~probable or less probable than it would be without the evidence.~~
- 26 ~~11.12. "Rule" means the whole or a part of an agency or ethics commission statement of~~  
27 ~~general applicability which implements or prescribes law or policy or the organization,~~  
28 ~~procedure, or practice requirements of the agency or ethics commission. The term~~  
29 ~~includes the adoption of new rules and the amendment, repeal, or suspension of an~~  
30 ~~existing rule. The term does not include:~~

- 1 — a. ~~A rule concerning only the internal management of an agency or the ethics~~  
2 ~~commission which does not directly or substantially affect the substantive or~~  
3 ~~procedural rights or duties of any segment of the public.~~
- 4 — b. ~~A rule that sets forth criteria or guidelines to be used by the staff of an agency or~~  
5 ~~the ethics commission in the performance of audits, investigations, inspections,~~  
6 ~~and settling commercial disputes or negotiating commercial arrangements, or in~~  
7 ~~the defense, prosecution, or settlement of cases, if the disclosure of the~~  
8 ~~statementrule would:~~
  - 9 — (1) ~~Enable law violators to avoid detection;~~
  - 10 — (2) ~~Facilitate disregard of requirements imposed by law; or~~
  - 11 — (3) ~~Give a clearly improper advantage to persons who are in an adverse~~  
12 ~~position to the state.~~
- 13 — c. ~~A rule establishing specific prices to be charged for particular goods or services~~  
14 ~~sold by an agency.~~
- 15 — d. ~~A rule concerning only the physical servicing, maintenance, or care of~~  
16 ~~agency owned or, agency operated, ethics commission owned, or ethics~~  
17 ~~commission operated facilities or property.~~
- 18 — e. ~~A rule relating only to the use of a particular facility or property owned, operated,~~  
19 ~~or maintained by the state or any of its subdivisions, if the substance of the rule is~~  
20 ~~adequately indicated by means of signs or signals to persons who use the facility~~  
21 ~~or property.~~
- 22 — f. ~~A rule concerning only inmates of a correctional or detention facility, students~~  
23 ~~enrolled in an educational institution, or patients admitted to a hospital, if adopted~~  
24 ~~by that facility, institution, or hospital.~~
- 25 — g. ~~A form whose contents or substantive requirements are prescribed by rule or~~  
26 ~~statute or are instructions for the execution or use of the form.~~
- 27 — h. ~~An agency or ethics commission budget.~~
- 28 — i. ~~An opinion of the attorney general.~~
- 29 — j. ~~A rule adopted by an agency selection committee under section 54 44.7 03.~~



- 1 — k. Any material, including a guideline, interpretive statement, statement of general  
2 policy, manual, brochure, or pamphlet, which is explanatory and not intended to  
3 have the force and effect of law.

4 — **SECTION 2. AMENDMENT.** Section 28-32-02 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 — **28-32-02. Rulemaking power of agency authority — Organizational rule.**

- 7 — 1. The authority of an administrative agency to adopt administrative rules is authority  
8 delegated by the legislative assembly. As part of that delegation, the legislative  
9 assembly reserves to itself the authority to determine when and if rules of  
10 administrative agencies are effective. Every administrative agency may adopt, amend,  
11 or repeal reasonable rules in conformity with this chapter and any statute administered  
12 or enforced by the agency.
- 13 — 2. In addition to other rulemaking requirements imposed by law, each agency may  
14 include in its rules a description of that portion of its organization and functions subject  
15 to this chapter and may include a statement of the general course and method of its  
16 operations and how the public may obtain information or make submissions or  
17 requests.
- 18 — 3. The authority of the ethics commission to adopt rules arises from article XIV of the  
19 Constitution of North Dakota. The ethics commission shall follow the process, and  
20 meet the requirements, in this chapter to adopt, amend, or repeal its rules.

21 — **SECTION 3. AMENDMENT.** Section 28-32-03 of the North Dakota Century Code is  
22 amended and reenacted as follows:

23 — **28-32-03. Emergency rules.**

- 24 — 1. If the ethics commission or an agency, with the approval of the governor, finds that  
25 emergency rulemaking is necessary, the ethics commission or agency may declare  
26 the proposed rule to be an interim final rule effective on a date no earlier than the date  
27 of filing with the legislative council of the notice required by section 28-32-10.
- 28 — 2. A proposed rule may be given effect on an emergency basis under this section if any  
29 of the following grounds exists regarding that rule:
- 30 — a. Imminent peril threatens public health, safety, or welfare, which would be abated  
31 by emergency effectiveness;

- 1 ~~b. A delay in the effective date of the rule is likely to cause a loss of funds~~  
2 ~~appropriated to support a duty imposed by law upon the ethics commission or~~  
3 ~~agency;~~
- 4 ~~c. Emergency effectiveness is reasonably necessary to avoid a delay in~~  
5 ~~implementing an appropriations measure; or~~
- 6 ~~d. Emergency effectiveness is necessary to meet a mandate of federal law.~~
- 7 ~~3. A final rule adopted after consideration of all written and oral submissions respecting~~  
8 ~~the interim final rule, which is substantially similar to the interim final rule, is effective~~  
9 ~~as of the declared effective date of the interim final rule.~~
- 10 ~~4. The ethics commission's or agency's finding, and a brief statement of the ethics~~  
11 ~~commission's or agency's reasons for the finding, must be filed with the legislative~~  
12 ~~council with the final adopted emergency rule.~~
- 13 ~~5. The ethics commission or agency shall attempt to make interim final rules known to~~  
14 ~~persons who the ethics commission or agency can reasonably be expected to believe~~  
15 ~~may have a substantial interest in them. As used in this subsection, "substantial~~  
16 ~~interest" means an interest in the effect of the rules which surpasses the common~~  
17 ~~interest of all citizens. An The ethics commission or an agency adopting emergency~~  
18 ~~rules shall comply with the notice requirements of section 28-32-10 which relate to~~  
19 ~~emergency rules and shall provide notice to the chairman of the administrative rules~~  
20 ~~committee of the emergency status, declared effective date, and grounds for~~  
21 ~~emergency status of the rules under subsection 2. When notice of emergency rule~~  
22 ~~adoption is received, the legislative council shall publish the notice and emergency~~  
23 ~~rules on its website.~~
- 24 ~~6. An interim final rule is ineffective one hundred eighty days after its declared effective~~  
25 ~~date unless first adopted as a final rule.~~
- 26 ~~**SECTION 4. AMENDMENT.** Section 28-32-06 of the North Dakota Century Code is~~  
27 ~~amended and reenacted as follows:~~
- 28 ~~**28-32-06. Force and effect of rules.**~~
- 29 ~~Upon becoming effective, rules have the force and effect of law until amended or repealed~~  
30 ~~by the agency or ethics commission, declared invalid by a final court decision, suspended or~~  
31 ~~found to be void by the administrative rules committee, or determined repealed by the~~

1 legislative council because the authority for adoption of the rules is repealed or transferred to  
2 another agency, or the Constitution of North Dakota is amended to eliminate the authority.

3 ~~SECTION 5. AMENDMENT.~~ Section 28-32-07 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 ~~28-32-07. Deadline for rules to implement statutory change.~~

6 Any rule change, including a creation, amendment, or repeal, made to implement a  
7 statutory change must be adopted and filed with the legislative council within nine months of the  
8 effective date of the statutory change. If an agency or the ethics commission needs additional  
9 time for the rule change, a request for additional time must be made to the legislative council.  
10 The legislative council may extend the time within which the agency or ethics commission must  
11 adopt the rule change if the request by the agency or ethics commission is supported by  
12 evidence that the agency or ethics commission needs more time through no deliberate fault of  
13 its own.

14 ~~SECTION 6. AMENDMENT.~~ Section 28-32-08 of the North Dakota Century Code is  
15 amended and reenacted as follows:

16 ~~28-32-08. Regulatory analysis.~~

17 1. An agency or the ethics commission shall issue a regulatory analysis of a proposed  
18 rule if:

19 a. Within twenty days after the last published notice date of a proposed rule  
20 hearing, a written request for the analysis is filed by the governor or a member of  
21 the legislative assembly; or

22 b. The proposed rule is expected to have an impact on the regulated community in  
23 excess of fifty thousand dollars. The analysis under this subdivision must be  
24 available on or before the first date of public notice as provided for in section  
25 28-32-10.

26 2. The regulatory analysis must contain:

27 a. A description of the classes of persons who probably will be affected by the  
28 proposed rule, including classes that will bear the costs of the proposed rule and  
29 classes that will benefit from the proposed rule;

30 b. A description of the probable impact, including economic impact, of the proposed  
31 rule.

- 1 — e. The probable costs to the agency or ethics commission of the implementation
- 2 and enforcement of the proposed rule and any anticipated effect on state
- 3 revenues; and
- 4 — d. A description of any alternative methods for achieving the purpose of the
- 5 proposed rule that were seriously considered by the agency or ethics commission
- 6 and the reasons why the methods were rejected in favor of the proposed rule.
- 7 — 3. Each regulatory analysis must include quantification of the data to the extent
- 8 practicable.
- 9 — 4. The agency or ethics commission shall mail or deliver a copy of the regulatory analysis
- 10 to any person who requests a copy of the regulatory analysis. The agency or ethics
- 11 commission may charge a fee for a copy of the regulatory analysis as allowed under
- 12 section 44-04-18.
- 13 — 5. If required under subsection 1, the preparation and issuance of a regulatory analysis is
- 14 a mandatory duty of the agency or ethics commission proposing a rule. Errors in a
- 15 regulatory analysis, including erroneous determinations concerning the impact of the
- 16 proposed rule on the regulated community, are not a ground upon which the invalidity
- 17 of a rule may be asserted or declared.
- 18 — **SECTION 7. AMENDMENT.** Subsection 5 of section 28-32-08.1 of the North Dakota
- 19 Century Code is amended and reenacted as follows: —
- 20 — 5. This section does not apply to the ethics commission, any agency that is an
- 21 occupational or professional licensing authority, nor does this section apply to or the
- 22 following agencies or divisions of agencies:
- 23 — a. Council on the arts.
- 24 — b. Beef commission.
- 25 — c. Dairy promotion commission.
- 26 — d. Dry bean council.
- 27 — e. Highway patrolmen's retirement board.
- 28 — f. Indian affairs commission.
- 29 — g. Board for Indian scholarships.
- 30 — h. State personnel board.
- 31 — i. Potato council.



- 1 — j. Board of public school education.
- 2 — k. Real estate trust account committee.
- 3 — l. Seed commission.
- 4 — m. Soil conservation committee.
- 5 — n. Oilseed council.
- 6 — o. Wheat commission.
- 7 — p. State seed arbitration board.
- 8 — q. North Dakota lottery.

9 — **SECTION 8. AMENDMENT.** Section 28-32-08.2 of the North Dakota Century Code is  
10 amended and reenacted as follows:

11 — **28-32-08.2. Fiscal notes for administrative rules.**

12 — ~~When an agency or the ethics commission presents rules for administrative rules committee~~  
13 ~~consideration, the agency or ethics commission shall provide a fiscal note or a statement in its~~  
14 ~~testimony that the rules have no fiscal effect. A fiscal note must reflect the effect of the rules~~  
15 ~~changes on state revenues and expenditures, including any effect on funds controlled by the~~  
16 ~~agency or ethics commission.~~

17 — **SECTION 9. AMENDMENT.** Section 28-32-09 of the North Dakota Century Code is  
18 amended and reenacted as follows:

19 — **28-32-09. Takings assessment.**

- 20 — 1. ~~An agency or the ethics commission shall prepare a written assessment of the~~  
21 ~~constitutional takings implications of a proposed rule that may limit the use of private~~  
22 ~~real property. The agency's assessment must:~~
  - 23 — a. ~~Assess the likelihood that the proposed rule may result in a taking or regulatory~~  
24 ~~taking.~~
  - 25 — b. ~~Clearly and specifically identify the purpose of the proposed rule.~~
  - 26 — c. ~~Explain why the proposed rule is necessary to substantially advance that purpose~~  
27 ~~and why no alternative action is available that would achieve the agency's or~~  
28 ~~ethics commission's goals while reducing the impact on private property owners.~~
  - 29 — d. ~~Estimate the potential cost to the government if a court determines that the~~  
30 ~~proposed rule constitutes a taking or regulatory taking.~~

1 e. Identify the source of payment within the agency's or ethics commission's budget  
2 for 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 ethics  
7 commission reconsider the application or need for the rule. Within thirty days of  
8 receiving the request, the agency or ethics commission shall consider the request and  
9 shall in writing inform the landowner whether the agency or ethics commission intends  
10 to keep the 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 10. 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 ethics commission shall prepare a full notice and an abbreviated  
25 notice of 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 ethics commission's full notice must include a statement  
10 of the provision of the Constitution of North Dakota or the bill number and general  
11 subject matter of any legislation being implemented by the proposed rule. The  
12 agency's full notice must be filed with the legislative council, accompanied by a  
13 copy of the proposed rules.
- 14 — b. ~~The agency or ethics commission~~ shall request publication of an abbreviated  
15 newspaper publication notice at least once in each official county newspaper  
16 published in this state. ~~The abbreviated newspaper publication of notice must be~~  
17 ~~in a display type format with a minimum width of one column of approximately~~  
18 ~~two inches [5.08 centimeters] and a minimum depth of approximately three~~  
19 ~~inches [7.62 centimeters] and with a headline describing the general topic of the~~  
20 ~~proposed rules. The notice must also include the telephone number or address to~~  
21 ~~use to obtain a copy of the proposed rules, identification of the emergency status~~  
22 ~~and declared effective date of any emergency rules, the address to use and the~~  
23 ~~deadline to submit written comments, and the location, date, and time of the~~  
24 ~~public hearing on the rules.~~
- 25 — 2. ~~The agency or ethics commission~~ shall mail or deliver by electronic mail a copy of the  
26 agency's full notice and proposed rule to each member of the legislative assembly  
27 whose name appeared as a sponsor or cosponsor of legislation, enacted during the  
28 most recent session of the legislative assembly, which is being implemented by the  
29 proposed rule and to each person who has made a timely request to the agency or  
30 ethics commission for a copy of the notice and proposed rule. ~~The agency or ethics~~  
31 ~~commission~~ may mail or otherwise provide a copy of the agency's full notice to any



1 person who is likely to be an interested person. The agency or ethics commission may  
2 charge persons who are not members of the legislative assembly fees for copies of  
3 the proposed rule as allowed under section 44-04-18.

4 — 3. In addition to the other notice requirements of this subsection, the superintendent of  
5 public instruction shall provide notice of any proposed rulemaking by the  
6 superintendent of public instruction to each association with statewide membership  
7 whose primary focus is elementary and secondary education issues which has  
8 requested to receive notice from the superintendent under this subsection and to the  
9 superintendent of each public school district in this state, or the president of the school  
10 board for school districts that have no superintendent, at least twenty days before the  
11 date of the hearing described in the notice. Notice provided by the superintendent of  
12 public instruction under this section must be by first class mail. However, upon request  
13 of a group or person entitled to notice under this section, the superintendent of public  
14 instruction shall provide the group or person notice by electronic mail.

15 — 4. The legislative council shall establish standard procedures for the ethics commission  
16 and all agencies to follow in complying with the provisions of this section and a  
17 procedure to allow any person to request and receive mailed copies of all filings made  
18 by agencies and the ethics commission pursuant to this section. The legislative council  
19 may charge an annual fee as established by the administrative rules committee for  
20 providing copies of the filings.

21 — 5. At least twenty days must elapse between the date of the publication of the notice and  
22 the date of the hearing. Within fifteen business days after receipt of a notice under this  
23 section, a copy of the notice must be mailed by the legislative council to any person  
24 who has paid the annual fee established under subsection 4.

25 — **SECTION 11. AMENDMENT.** Section 28-32-11 of the North Dakota Century Code is  
26 amended and reenacted as follows:

27 — **28-32-11. Conduct of hearings - Notice of administrative rules committee**  
28 **consideration - Consideration and written record of comments.**

29 — The agency or ethics commission shall adopt a procedure whereby all interested persons  
30 are afforded reasonable opportunity to submit data, views, or arguments, orally or in writing,  
31 concerning the proposed rule, including data respecting the impact of the proposed rule. The



1 ~~agency or ethics commission shall adopt a procedure to allow interested parties to request and~~  
2 ~~receive notice from the agency or ethics commission of the date and place the rule will be~~  
3 ~~reviewed by the administrative rules committee. In case of substantive rules, the agency or~~  
4 ~~ethics commission shall conduct an oral hearing. The agency or ethics commission shall~~  
5 ~~consider fully all written and oral submissions respecting a proposed rule prior to the adoption,~~  
6 ~~amendment, or repeal of any rule not of an emergency nature. The agency or ethics~~  
7 ~~commission shall make a written record of its consideration of all written and oral submissions~~  
8 ~~contained in the rulemaking record respecting a proposed rule.~~

9 ~~— SECTION 12. AMENDMENT. Section 28-32-12 of the North Dakota Century Code is~~  
10 ~~amended and reenacted as follows:~~

11 ~~— 28-32-12. Comment period.~~

12 ~~— The agency or ethics commission shall allow, after the conclusion of any rulemaking~~  
13 ~~hearing, a comment period of at least ten days during which data, views, or arguments~~  
14 ~~concerning the proposed rulemaking will be received by the agency or ethics commission and~~  
15 ~~made a part of the rulemaking record to be considered by the agency or ethics commission.~~

16 ~~— SECTION 13. AMENDMENT. Section 28-32-14 of the North Dakota Century Code is~~  
17 ~~amended and reenacted as follows:~~

18 ~~— 28-32-14. Attorney general review of rules.~~

19 ~~— Every proposed rule proposed by any administrative agency must be submitted to the~~  
20 ~~attorney general for an opinion as to its legality before final adoption, and the attorney general~~  
21 ~~promptly shall furnish each such opinion. The attorney general may not approve any rule as to~~  
22 ~~legality, and shall advise the agency or ethics commission of any necessary rewording or~~  
23 ~~revision of the rule, when the:~~

24 ~~— 1. The rule exceeds the statutory authority of the agency, or the statutory or constitutional~~  
25 ~~authority of the ethics commission;~~

26 ~~— 2. The rule is written in a manner that is not concise or easily understandable; or when~~  
27 ~~the~~

28 ~~— 3. The procedural requirements for adoption of the rule in this chapter are not~~  
29 ~~substantially met. The attorney general shall advise an agency of any revision or~~  
30 ~~rewording of a rule necessary to correct objections as to legality.~~

1 ~~SECTION 14. 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 ethics commission, a~~  
5 ~~copy of each written comment and a written summary of each oral comment on the~~  
6 ~~rule, and the attorney general's opinion on the rule must be filed by the adopting~~  
7 ~~agency or ethics commission with the legislative council for publication of the rule in~~  
8 ~~the North Dakota Administrative Code.~~

9 ~~2. a. Nonemergency rules approved by the attorney general as to legality, adopted by~~  
10 ~~an administrative agency or the ethics commission, and filed with the legislative~~  
11 ~~council, and not voided or held for consideration by the administrative rules~~  
12 ~~committee 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 15. 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 ethics commission may petition suchthe agency or ethics commission for a~~  
4 ~~reconsideration of any suchthe rule or for an amendment or repeal thereof. Suchof the rule. The~~  
5 ~~petition must state clearly and concisely the petitioners' alleged grounds for such~~  
6 ~~reconsideration or for the proposed repeal or amendment of suchthe rule. The agency or ethics~~  
7 ~~commission may grant the petitioner a public hearing upon suchon the terms and conditions as~~  
8 ~~the agency may prescribeor ethics commission prescribes.~~

9 ~~SECTION 16. 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 ethics commission, the committee may file~~  
15 ~~that objection in certified form with the legislative council. The filed objection must contain a~~  
16 ~~concise 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 ethics commission adopting the rule in question. The~~  
20 ~~legislative 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 ~~ethics commission shall indicate the existence of that objection adjacent to the rule in~~  
25 ~~any compilation containing that rule.~~

26 ~~3. Within fourteen days after the filing of a committee objection to a rule, the adopting~~  
27 ~~agency or ethics commission shall respond in writing to the committee. After receipt of~~  
28 ~~the 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 ethics 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~~



1 procedural and substantive authority delegated to the agency or ethics commission. If  
2 the agency or ethics commission fails to meet its burden of persuasion, the court shall  
3 declare the whole or portion of the rule objected to invalid and judgment must be  
4 rendered against the agency or ethics commission for court costs. These court costs  
5 must include a reasonable attorney's fee and must be payable from the appropriation  
6 of the agency or ethics commission which adopted the rule in question.

7 ~~SECTION 17. AMENDMENT.~~ Section 28-32-18 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9 ~~28-32-18. Administrative rules committee may void rule - Grounds - Amendment by~~  
10 ~~agreement of agency and committee.~~

11 ~~1. The legislative management's administrative rules committee may find that all or any~~  
12 ~~portion of a rule is void if that rule is initially considered by the committee not later than~~  
13 ~~the fifteenth day of the month before the date of the administrative code supplement in~~  
14 ~~which the rule change is scheduled to appear. The administrative rules committee may~~  
15 ~~find a rule or portion of a rule void if the committee makes the specific finding that, with~~  
16 ~~regard to that rule or portion of a rule, there is:~~

- 17 ~~a. An absence of statutory authority under statute or the constitution.~~  
18 ~~b. An emergency relating to public health, safety, or welfare.~~  
19 ~~c. A failure to comply with express legislative~~  
20 ~~intent or to substantially meet the procedural requirements of this chapter for~~  
21 ~~adoption of the rule.~~  
22 ~~d. For rules proposed by the ethics commission, a failure to substantially meet the~~  
23 ~~procedural requirements for this chapter for adoption of the rule.~~  
24 ~~e. A conflict with state law.~~  
25 ~~e.f. Arbitrariness and capriciousness.~~  
26 ~~f.g. A failure to make a written record of its consideration of written and oral~~  
27 ~~submissions respecting the rule under section 28-32-11.~~

28 ~~2. The administrative rules committee may find a rule void at the meeting at which the~~  
29 ~~rule is initially considered by the committee or may hold consideration of that rule for~~  
30 ~~one subsequent meeting. If no representative of the agency or ethics commission~~  
31 ~~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 ethics commission appears before the administrative rules committee when the rules are scheduled for committee consideration. If no representative of the agency or ethics 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 ethics commission and to the chairman of the legislative management. Within fourteen days after receipt of the notice, the adopting agency or ethics 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 ethics 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 ethics commission. If within sixty days after receipt of the petition from the adopting agency or ethics 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 ethics 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 ethics 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, ethics 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 ethics 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 ethics 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 ethics commission initiates the request to the administrative rules committee for consideration of the amendment or repeal;

b. The agency or ethics 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 ethics 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 19. 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



1 determined the legislative council determines are proper. The legislative council shall  
 2 keep and maintain a permanent code of all rules filed, including superseded and  
 3 repealed rules, which must be open to public inspection during office hours.

4 ~~SECTION 20. AMENDMENT.~~ Subsection 4 of section 28-32-19 of the North Dakota  
 5 Century Code is amended and reenacted as follows:

6 ~~4. The legislative council, with the consent of the adopting agency or ethics commission,~~  
 7 ~~may omit from the code or code supplement any rule the publication of which would be~~  
 8 ~~unduly cumbersome, expensive, or otherwise inexpedient, if the rule in printed or~~  
 9 ~~duplicate form is made available on application to the agency or ethics commission,~~  
 10 ~~and if the code or code supplement contains a notice stating the general subject~~  
 11 ~~matter of the omitted rule and stating how a copy may be obtained.~~

12 **SECTION 1.** Chapter 54-66 of the North Dakota Century Code is created and enacted as  
 13 follows:

14 **54-66-01. Definitions.**

15 1. For purposes of this chapter, unless the context otherwise requires:

16 1. a. "Accused individual" means an individual who is alleged to have violated article  
 17 XIV of the Constitution of North Dakota, this chapter, or another law or rule  
 18 regarding government ethics.

19 2. b. "Complainant" means an individual who, in writing or verbally, submits a  
 20 complaint to the ethics commission.

21 3. c. "Complaint" means a verbal or written allegation to the ethics commission that  
 22 article XIV of the Constitution of North Dakota, this chapter, or another law or rule  
 23 regarding government ethics has been violated.

24 4. d. "Ethics commission" means the North Dakota state ethics commission  
 25 established under article XIV of the Constitution of North Dakota.

26  
 27 5. "Gift" means any item, service, or thing of value not given in exchange for fair market  
 28 consideration including travel and recreation.

29 6. "Lobbyist":

30 a. Means a person who, directly or indirectly:

1 ~~(1) Attempts to secure the passage, amendment, or defeat of any legislation by~~  
2 ~~the legislative assembly;~~

3 ~~(2) Attempts to secure the approval or veto of any legislation by the governor;~~

4 ~~(3) Attempts to influence decisions regarding legislative matters made by the~~  
5 ~~legislative management or a legislative committee; or~~

6 ~~(4) Attempts to influence decisions regarding official matters made by a public~~  
7 ~~official in the executive branch of state government.~~

8 ~~b. Does not mean:~~

9 ~~(1) A private citizen appearing on the citizen's own behalf; or~~

10 ~~(2) A public official or an employee, officer, board member, volunteer, or agent~~  
11 ~~of the state or its political subdivisions acting in the individual's official~~  
12 ~~capacity.~~

13 ~~7. "Public official" means an elected or appointed official of the state's executive or~~  
14 ~~legislative branch, members of the ethics commission, members of the governor's~~  
15 ~~cabinet, and employees of the legislative branch.~~

16 ~~8. e. "Receives the complaint" means one or more members of the ethics commission~~  
17 ~~learn of the complaint.~~

18 ~~2. For purposes of article XIV of the Constitution of North Dakota, "lobbyist":~~

19 ~~a. Means a person who, directly or indirectly:~~

20 ~~(1) Attempts to secure the passage, amendment, or defeat of any legislation by~~  
21 ~~the legislative assembly;~~

22 ~~(2) Attempts to secure the approval or veto of any legislation by the governor;~~

23 ~~(3) Attempts to influence decisions regarding legislative matters made by the~~  
24 ~~legislative management or a legislative committee; or~~

25 ~~(4) Attempts to influence decisions regarding official matters made by a public~~  
26 ~~official in the executive branch of state government.~~

27 ~~b. Does not mean:~~

28 ~~(1) A private citizen appearing on the citizen's own behalf; or~~

29 ~~(2) A public official or an employee, officer, board member, volunteer, or agent~~  
30 ~~of the state or its political subdivisions acting in the individual's official~~  
31 ~~capacity.~~



1 **54-66-02. Ethics commission Members - Appointments - Compensation.**

2 1. The majority leader of the senate, the minority leader of the senate, and the governor  
3 shall appoint the five members of the ethics commission by consensus agreement for  
4 four-year terms, except all vacancies must be filled for the unexpired term. The terms  
5 of the initial members must begin on or before July 1, 2019, and be staggered to  
6 ensure no more than two members' terms expire in one year. The terms of the initial  
7 members may be less than four years to accommodate the required staggering of  
8 terms.

9 2. Ethics commission members are entitled to:

- 10 a. Compensation per day for each day necessarily spent conducting ethics  
11 commission business in the amount provided for members of the legislative  
12 management under section 54-35-10; and  
13 b. Payment for mileage and travel expenses necessarily incurred in the conduct of  
14 ethics commission business as provided under sections 44-08-04 and 54-06-09.

15 **54-66-03. Ethics commission staff.**

16 The ethics commission shall appoint an executive director and other staff necessary to  
17 assist the ethics commission in carrying out its duties.

18 **54-66-04. Ethics commission office.**

19 The director of the office of management and budget shall allocate office space in the state  
20 capitol for the ethics commission, or, if office space in the capitol is unavailable, shall negotiate  
21 for, contract for, and obtain office space for the ethics commission in the city of Bismarck or in  
22 the Bismarck area. The ethics commission's office space may not be located in the office space  
23 of any other government agency, board, commission, or other governmental entity, and must  
24 provide sufficient privacy and security for the ethics commission to conduct its business. The  
25 director shall charge the ethics commission an amount equal to the fair value of the office space  
26 and related services the office of management and budget renders to the ethics commission.

27 **54-66-05. Making a complaint - Informing the accused individual.**

28 A complaint may be made to the ethics commission verbally or in writing. The ethics  
29 commission shall inform the accused individual the ethics commission received a complaint  
30 against the accused individual as soon as reasonably possible. If the complaint was made in  
31 writing, the ethics commission shall provide a copy of the complaint to the accused individual no

1 later than twenty calendar days after the ethics commission receives the complaint. If the  
2 complaint was made verbally, the ethics commission shall inform the accused individual of the  
3 allegations and other information provided in the complaint no later than twenty calendar days  
4 after the ethics commission receives the complaint.

5 **54-66-06. Informal resolution.**

6 The ethics commission may attempt to negotiate or mediate an informal resolution between  
7 the accused individual and the complainant after receiving a complaint.

8 **54-66-07. Investigations and referrals.**

9 1. The ethics commission may investigate a complaint if the accused individual and the  
10 complainant have not agreed on an informal resolution. An investigation must include  
11 separate interviews with the accused individual and the complainant, unless the  
12 accused individual or complainant refuses to be interviewed, and consideration of the  
13 circumstances surrounding the allegations.

14 2. The ethics commission may refer a matter described in or arising from a complaint to  
15 the bureau of criminal investigation or other appropriate law enforcement agency if a  
16 majority of the ethics commission members reasonably believes a crime was  
17 committed or the safety of the complainant is at risk.

18 **54-66-08. Investigation findings - Penalties.**

19 1. At the conclusion of an investigation, the ethics commission shall issue its written  
20 findings to the accused individual and complainant.

21 2. The findings must state whether the ethics commission believes, based on a  
22 preponderance of the evidence as viewed by a reasonable person, a violation of  
23 article XIV of the Constitution of North Dakota, this chapter, or another law or rule  
24 regarding government ethics occurred. The accused individual and complainant may  
25 respond in writing to the findings within twenty calendar days of receiving the findings.  
26 The ethics commission shall maintain copies of the findings and any written response  
27 to the findings.

28 3. If the ethics commission finds a violation occurred, the ethics commission may impose  
29 a penalty specified by law for the violation.

1 **54-66-09. Appeals.**

2 An accused individual or complainant may appeal a finding of the ethics commission to the  
3 district court of Burleigh County.

4 **54-66-10. Confidential information - Penalty.**

5 1. The following information is a confidential record as defined in section 44-04-17.1 until  
6 the ethics commission issues its findings regarding the relevant complaint, except the  
7 information may be disclosed as required by law or as necessary to conduct an  
8 investigation arising from the complaint:

9 a. Information revealing the contents of a complaint;

10 b. Information that reasonably may be used to identify an accused individual or  
11 complainant; and

12 c. Information relating to or created as part of an investigation of a complaint.

13 2. A public official who violates this section is guilty of a class C felony.

14 **54-66-11. Restriction on lobbying by public officials - Penalty.**

15 A violation of subsection 2 of section 2 of article XIV of the Constitution of North Dakota is a  
16 class A misdemeanor. The ethics commission shall impose a fine of up to ten thousand dollars  
17 upon any person that violates the subsection.

18 **54-66-12. Lobbyist delivery of campaign contributions prohibited - Penalty.**

19 A violation of subsection 3 of section 2 of article XIV of the Constitution of North Dakota is a  
20 class A misdemeanor. The ethics commission shall impose a fine of up to ten thousand dollars  
21 upon any person that violates the subsection. The ethics commission may impose a fine of up  
22 to fifty thousand dollars for each violation of the subsection upon any person that violates the  
23 subsection more than once within a twelve-month period.

24 **54-66-13. Attorney general to provide legal services.**

25 The attorney general shall serve as legal counsel for the ethics commission. When a  
26 conflict of interest prevents the attorney general from providing legal services to the ethics  
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. Personal use of contributions prohibited - Penalty.**

30 The ethics commission shall impose a fine of up to ten thousand dollars upon any person  
31 that violates section 16.1-08.1-04.1. The ethics commission may impose a fine of up to fifty

1 thousand dollars per violation upon any person who violates section 16.1-08.1-04.1 more than  
2 once in a twelve-month period. Fines imposed under this section are in addition to any fines  
3 imposed under section 16.1-08.1-07 for a violation of section 16.1-08.1-04.1.

4 **SECTION 2. LEGISLATIVE MANAGEMENT STUDY.** During the 2019-2020 interim, the  
5 legislative management shall consider studying subsection 2 of section 1 of article XIV, and  
6 subsections 1 and 5 of section 2 of article XIV of the Constitution of North Dakota, and the  
7 responsibilities of the legislative assembly under those provisions. The legislative management  
8 shall report its findings and recommendations, together with any legislation necessary to  
9 implement the recommendations, to the sixty-seventh legislative assembly.

10 **SECTION 3. APPROPRIATION.** The funds provided in this section, or so much of the funds  
11 as may be necessary, are appropriated out of any moneys in the general fund in the state  
12 treasury, not otherwise appropriated, to the North Dakota ethics commission for the purpose of  
13 defraying the expenses of the commission, for the biennium period beginning July 1, 2019, with  
14 the effective date of this Act and ending June 30, 2021, as follows:

	<u>Appropriation</u>
16 Salaries and expenses	\$754,736
17 Operating expenses	<u>207,200</u>
18 Total general fund	\$961,936
19 Full-time equivalent positions	3.00

20 **SECTION 4. EMERGENCY.** Section 3 of this Act and North Dakota Century Code sections  
21 54-66-11, 54-66-12, and 54-66-14, as created by section 1 of this Act, are declared to be  
22 emergency measures.



SB 2148 Senate Committee on Ethics

January 30, 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 support of SB 2148.

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 "SB 2148 and the 66<sup>th</sup> 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 page 1 of this handout is a summary of those required actions to be taken by the 66<sup>th</sup> Legislative Assembly. On page 1, I have noted how SB 2148 addresses those subsections requiring action. Of the 14 subsections in Article XIV, only 4 subsections require any action by the 66<sup>th</sup> 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.

Since the introduction of SB 2148, a number of improvements have been developed and are now being offered by Senator Mathern in an Amendment (19.0422.02002). That amendment would:

Strike Sections 1-20. Upon further legal review and analysis, it appears that Sections 1-20 would have required the new Ethics Commission to be subject to the Administrative Agencies Practice Act (AAPA) for rulemaking purposes. This would be inappropriate because the Ethics Commission is a constitutionally created entity. This is not to say that the Ethics Commission cannot or will not voluntarily choose to follow 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.

It was discovered that SB 2148 included definitions for “public official” and “gift” when both terms are already clearly defined in Article XIV. Those definitions in SB 2148 have been struck by amendment as unnecessary, and because neither captured the exact language contained in Article XIV.

SB 2148 does provide a definition for the term “lobbyist”. However, the definition appeared to apply only to the new Chapter 54-66 related to the affairs of the new Ethics Commission. A technical amendment clarifies that the purpose of the definition for “lobbyist” is to apply whenever that term is used in Article XIV.

It was discovered that the required civil sanction for a violation of “knowingly using a campaign contribution for personal use” was inadvertently not included in SB 2148 (addressing Subsection 4 of Section 2 of Article XIV). The amendment provides an appropriate civil penalty. The criminal penalty for such an offense already exists as a class A misdemeanor.

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Finally, because certain provisions of Article XIV became effective as of January 5, 2019, an emergency provision has been added to the amendment to fund the Ethics Commission and to immediately enact the new civil or criminal penalty sections being created as §§ 54-66-11, 54-66-12, and 54-66-14.

I support the Amendment (19.0422.02002) and ask that the Committee support it. With these improvements being made to SB 2148, I speak in favor of SB 2148 and urge the Committee to vote it out favorably as well.

Thank you for your time.

## SB 2148 and 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 67<sup>th</sup> 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 66<sup>th</sup> Legislative Assembly authorize a 2 year interim study seeking input from all interested parties that would provide necessary input for the 67<sup>th</sup> 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.*

**SB 2148 sets up an interim study in Section 22.**

#### 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 67<sup>th</sup> Legislative Assembly can then provide for the appropriate civil and criminal sanctions for violations and may consider doing so on an emergency basis.*

**SB 2148 sets up an interim study in Section 22.**

**Subsection 2-** *The 66th Legislative Assembly is to provide for appropriate civil and criminal sanctions for violations.*

**SB 2148 enacts sanctions in Section 21. The Committee may want to consider whether to do so on an emergency basis.**

**Subsection 3-** *The 66th Legislative Assembly is to provide for appropriate civil and criminal sanctions for violations.*

**SB 2148 enacts sanctions in Section 21. The Committee may want to consider whether to do so on an emergency basis.**

**Subsection 4-** *Having already set a criminal penalty, the 66th Legislative Assembly is to provide an appropriate civil sanction for violations.*

**SB 2148 does not currently address establishing a civil sanction. It is recommended the Committee amend SB 2148 to do so.**

Subsection 5- *With 3 years before the effective date, no 66<sup>th</sup> Legislative Assembly actions are necessary. Over the next 2 years, the Ethics Commission is to adopt definitional rules on bias. The 67<sup>th</sup> Legislative Assembly can then provide for the appropriate “enforcement penalties”.*

**SB 2148 sets up an interim study in Section 22.**

Subsection 6- No action ever required.

#### Section 3 —North Dakota Ethics Commission

Subsection 1- No action ever required.

**Subsection 2-** *The 66<sup>th</sup> Legislative Assembly is required to provide for timely and adequate funding of the new Ethics Commission.*

**SB 2148 does this in Section 23. The Committee may want to consider whether to do so 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.



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.)
<b>Section 1. Transparency</b>			
<b>Subsection 1</b>	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>	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.  <b>No Legislative Assembly action ever required.</b>
<b>Subsection 2</b>	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</i>	Within 3 years, requires prompt 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.  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.  <b>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</b>

*the rights provided in this subsection, a resident taxpayer may bring suit in the courts of this state to enforce such rights."*

**enforce the requirements of Subsection 2 before its effective date set for no later than 1/5/2022.**

## **Section 2. Lobbyists and Conflicts of Interest.**

Subsection	Effective Date		
1	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>

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			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 and may consider doing so on an emergency basis.
<b>Subsection 2</b>	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><b>The 66th Legislative Assembly is required to provide for appropriate civil and criminal sanctions for violations of this Subsection and may consider doing so on an emergency basis as the effective date of this Subsection was January 5, 2019.</b></p>
<b>Subsection 3</b>	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><b>The 66th Legislative Assembly is required to provide for appropriate civil and criminal sanctions for violations of this Subsection and may consider doing so on an emergency basis as the effective date of this Subsection was January 5, 2019.</b></p>
<b>Subsection 4</b>	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><b>The 66th Legislative Assembly is required to provide for an appropriate civil sanction for a violation of this Subsection and may consider doing so on an emergency basis 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).</b></p>

SB 2148 1/30/19 #21

<b>Subsection 5</b>	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 ethics commission. This Subsection does not take effect until January 5, 2022.</p> <p><b>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".</b></p>
<b>Subsection 6</b>	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><b>No Legislative Assembly action ever required.</b></p>
<b>Section 3. North Dakota Ethics Commission</b>			
<b>Subsection 1</b>	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><b>No Legislative Assembly action ever required.</b></p>
<b>Subsection 2</b>	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>Duties, powers and funding of Ethics Commission. This Subsection defines the authority and duties of the new Ethics Commission.</p> <p><b>The 66th Legislative Assembly is required to provide for timely and adequate funding of the new Ethics Commission and may consider doing so on an emergency basis as it was established on January 5, 2019.</b></p>

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#4 pg  
1/30/19  
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		<i>"The Legislative Assembly shall provide adequate funds for the proper carrying out of the functions and duties of the ethics commission."</i>	
<b>Subsection 3</b>	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>	Members, appointment and qualifications of Ethics Commission.  <b>No Legislative Assembly action ever required.</b>
<b>Section 4. General Provisions.</b>			
<b>Subsection 1</b>	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.  <b>No Legislative Assembly action ever required.</b>
<b>Subsection 2</b>	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>	Provides definitions for "public office" and "public official".  <b>No Legislative Assembly action ever required.</b>
<b>Subsection 3</b>	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.  <b>No Legislative Assembly action ever required.</b>



Senate Ethics Committee  
January 30, 2019  
Ellen Chaffee, Ph.D., Vice President  
North Dakotans for Public Integrity, Inc.  
Bismarck, ND - District 8

Testifying in Favor of SB 2148

Chairman Hogue, 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. Here's how.

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 the poll 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:

- 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:** Transparency

- 76% support prompt, electronically accessible public disclosure of the ultimate, true source of funds spent to influence elections or government actions

- **Section 2:** Integrity

- 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:** Accountability

- 82% support the Ethics Commission

Those of us who worked on Article XIV delivered a message from the people to you. They expect you to take them seriously. You do that by establishing and funding the ethics commission and pursuing an open, thoughtful process for other key elements. SB 2148 does that. It's the right thing to do next.

Thank you for your time and attention.

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Written testimony related to SB 2148 and HB 1521 in the  
66<sup>th</sup> 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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Pg 4

**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

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Pg 5

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

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pg 6

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 31<sup>st</sup> St NW 209-658-0439  
Valley City, ND 58072 Al Adams  
Sharon Adams 358 31<sup>st</sup> St NW Sharon Adams  
Valley City, ND 58072 701-840-1113  
Carol Nelson 250 4<sup>th</sup> St NW #10  
Valley City ND 58072 701-840-2577

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pg 7

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Support 2148 and Oppose HB 1521.

Thank you.

Robert Hether

Robert Hether  
921 - 14<sup>th</sup> Ave. SW  
Valley City, ND 58072

Warren Ventech - WARREN VENTECH - 3125 117 Ave SE - Valley City ND 58072  
Calder  
Valley City ND

George Dutton  
George Dutton

509 4th Ave NW  
J.C. ND  
108 3<sup>rd</sup> St. NE  
Valley City ND 58072

Bonnie Dutton  
Bonnie Dutton

108 3<sup>rd</sup> St. NE, Valley City ND 58072

Michelle Gabel

479 3rd Ave NW Valley City, ND 58072

Michelle Gabel

479 3rd Ave NW Valley City  
ND 58072

Andrea Winter  
Andrea Winter

660 Chautauqua Blvd  
Valley City, ND 58072

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Pg 8

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.

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

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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.

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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.

  
Lisa Liebersbach

Carol Perkins  
3069 Country Meadows  
Valley City, ND 58072

Lisa Liebersbach  
1297 Central Ave N  
Valley City ND 58072

Kiri Baumgartner

Kiri 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



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January 28, 2019

Mr. Chairman, Members of the Ethics Committees for the North Dakota House and Senate:

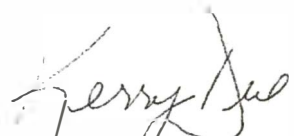
We urge a DO PASS for SB 2148 and a DO NOT PASS on HB 1521.

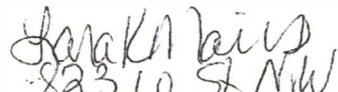
Measure 1 passed in our November election with 54% voting yes in ND, and 57% voting yes in Barnes County and in District 24. It is now titled Article 14 of our ND Constitution. This is a solid foundation that can built upon to make a stronger state.

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.

  
11776 59th St SE  
Fertigson, ND 58033

  
823 10th St NW  
Valley City, ND 58072



Voices of the People

# Measure 1 deserves careful treatment

Jan 14, 2019

The people of North Dakota are surprisingly fair-minded. In November we collectively chose to make a historic step forward in our state. By voting for Measure 1, now known as Article XIV, we put into black and white what we have always valued -- that our representatives must be ethical in the way they represent us.

Now it is law, and it's going to be a pressing issue on our elected representatives in this current legislative session. I am so excited as an ordinary citizen to get to sit down with my representatives from District 47, and talk about how we can bring as much careful thought and care into the details of enacting it, as I as a voter did as I carefully considered how I voted on Measure 1. I am very proud of my vote, both on Measure 1, and for the District 47 candidates I chose to represent me.

I'm very hopeful that the Legislature will show good faith in the people's voice as they consider how to fulfill the requirements of Measure 1, just as the people had good faith in them as they filled the bubble next to their name on the same ballot on Election Day.

**Willow Hall, Bismarck**

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# 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?"

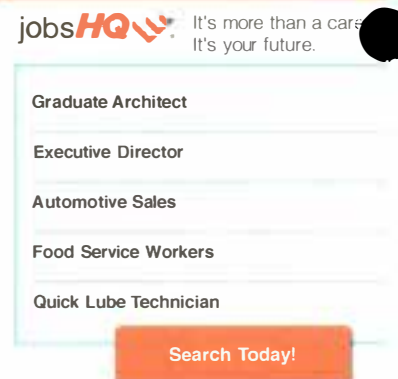
They really don't like being told what to do, especially if it affects their ability to socialize, graze and fundraise

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





## The anti-ethics establishment gets all huffy

**I**t 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,



JACK  
ZALESKI

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

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.

an ongoing process.

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@forumnewsmag.com](mailto:jzaleski@forumnewsmag.com) or 701-241-5531 or 701-566-3576.

## Let's work together to frame a trustworthy government

By Dina Butcher,  
Ellen Chaffee, Waylon  
Hedegaard, Allen Hoberg  
and Kathy Tweeten

**N**orth 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

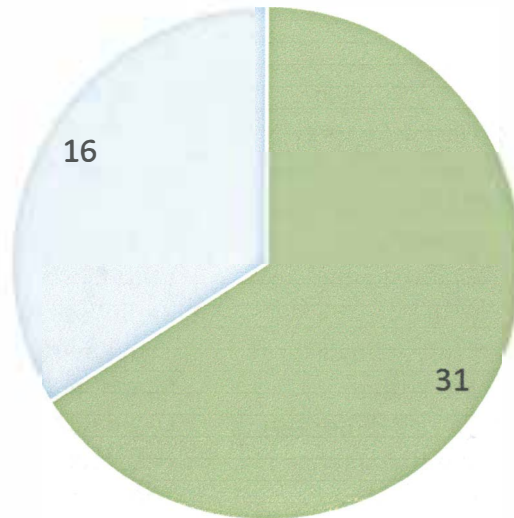
doing. The truth is, those who complain the loudest are those who gained power and perks from the broken system they helped create.

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.

## 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.

SB 2148 1/30/19 #6  
Pg 2

Ethics is a NON-Partisan Issue  
Legislators from YES districts. (93 legislators)

Richard Marcellais	Tracy Boe	Marvin E Nelson	Robert Fors
Tim Mathern	Gretchen Dobervich	Ron Guggisberg	Arne Osland
Judy Lee	Austen Schauer	Kim Koppelman	Joan Heckaman
David Clemens	Ben Koppelman	Andrew Marschall	Larry Robinson
Scott Meyer	Corey Mock	Steve Vetter	Larry Luick
Kathy Hogan	Mary Schneider	LaurieBeth Hager	Jim Dotzenrod
Gary Lee	Michael Howe	Brandy Pyle	Dick Dever
Kristin Roers	Thomas Beadle	Ruth Buffalo	Dwight Cook
Kyle Davison	Pamela Anderson	Michelle Strinden	Erin Oban
Curt Kreun	Jake Blum	Emily O'Brien	Karen Krebsbach
JoNell Bakke	Mary Adams	Matt Eidson	Wayne Trottier
Merrill Piepkorn	Josh Boschee	Karla Rose Hanson	Richard Holman
Ronald Sorvaag	Mary Johnson	Tom Kading	Don Vigasaa
Jim Roers	Jim Kasper	Shannon Roers-Jones	Daniel Johnston
Brad Bekkedahl	Patrick Hatlestad	David Richter	Cindy Schreiber-Beck
Oley Larsen	Jeff Hoverson	Bob Paulson	Sebastian Ertelt
Jordan Kannianen	Clayton Fegley	Terry Jones	Pat Heinert
Janne Myrdal	Chuck Damschen	David Monson	Todd Porter
John Grabinger	Jim Grueneich	Bernie Satrom	Bob Martinson
Dave Oehlke	Dennis Johnson	Greg Westlind	Matthew Ruby
Ray Holmberg	Mark Sanford	Mark S Owens	Dwight Kiefert
Karen Karls	Lisa Meier	Gary Paur	Alisa Mitskog
Randy Schobinger	Nathan Toman	Aaron McWilliams	Kathy Skroch
Bill Devlin			



Greater North Dakota Chamber  
SB 2148  
Senate Ethics Committee  
January 30, 2019

#7

Mr. Chairman and members of the Senate 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. We stand in opposition to SB 2148.

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 opposition to SB 2148 is not because we are upset about the passage of measure one but rather that associations, citizens, and business who wish to take part in the public policy process need certainty about any rules and laws that must be complied with.

While many of the questions that must be answered by the legislature and ethics commission to give the public the certainty we need are proposed for a study, Subsection 2 of article 2 related to gifting, becomes effective at the beginning of the next legislative session and will require quicker action than a study cannot provide without a special session.

A second area that requires clarification is a new definition of a lobbyist found on, page 20, line 27 through page 21, line 9. While this new definition is offered, the existing definition found in 54-05.1 remains the same. The creation of a second definition only serves to cause confusion about who must register as a lobbyist. If the new definition, which adds attempts to influence decisions regarding official matters made by a public official in the executive branch of state government, were to be chosen, care would have to be given about the implications for those who apply for grants, bid for contracts, or apply for various licenses. This definition change may also be hard to enforce as it may not always be possible for a public official to determine when they are being lobbied on an issue vs when private citizens advocates on an issue depending on what situation they are in.

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.

Senate 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 favor of SB 2148**

Mr. Chairman and Members of the Committee:

Article XIV is in the Constitution of North Dakota. As legislators you have taken an oath to uphold that Constitution. I respectfully ask that you recommend passage of SB 2148 to provide the relatively simple steps necessary to uphold the Constitution with sufficient funding as required in the Article XIV.

To avoid distraction from the major policy and funding issues with which this session is faced, SB 2148 wisely provides for an interim study with which that established Ethics Commission could assist in providing guidance for the 2021 Legislative Assembly to judiciously implement those sections of Article XIV which do not go into effect until later.

Thank you for all the good work you do and I respectfully ask for your recommendation of a **do pass** on SB 2148.

SB 2148 1/30/19 #9

Support SB 2148

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

Support a do pass on SB 2148 because:

**It is consistent with Article XIV of the North Dakota Constitution with amendments that have been introduced.**

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 is what SB 2148 allows.

Thank you for your attention.

Please DO Pass SB 2148.

Chairman Kasper and members of the committee, my name is Scott Skokos and I am the Executive Director of Dakota Resource Council. I stand here today in support of Senate Bill 2148.

Throughout DRC's 40-year history, DRC members have pushed for increased transparency and ethics in Government. This has meant, 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 not only a problem in North Dakota (especially with the influx of the money from the oil boom) but also a national issue due to more and more money flowing into our political system from concealed sources (i.e. dark money). There is clear need to reform our system to ensure that politicians are more accountable to the people of North Dakota, not dark money. This goes for both sides of the political aisle.

#### 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 (I might also add that 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 should not be taking money from the same companies that they have pending permitting decision with and it was clear that Judge Hovland agree 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 supports SB 2148 because it takes a measured approach allowing for the full implementation of Article 14 of the Constitution, while at the same time respecting the will of the voters. We urge this committee to give SB 2148 a do pass recommendation.

SB 2148 1/30/19

#11

January 30, 2019

RE: Public Comment on Senate Bill No. 2148

My name is Lisa DeVille. I am an enrolled member of the Mandan, Hidatsa, and Arikara Nation. I and my husband are lifelong residents of Mandaree a community on Fort Berthold Reservation.

I am writing to you in support of Senate Bill No. 2148. This bill is very important. This bill will implement an ethics committee for state held offices as approved by the voters in the last election. I believe in accountability and transparency from ND elected officials. These ND elected officials represent the people. We need structure, without it we will fall apart. I live with oil and gas in the Bakken region where I witness that industry is favored over the people of ND.

If you have any questions please email me at [lisadeville2013@gmail.com](mailto:lisadeville2013@gmail.com). Thank you!

Sincerely,

Lisa DeVille

Mandaree, ND

Testimony for SB 2148 on Ethics  
Senator Dick Dever

Early in my Legislative Career, I heard a speaker at an NCSL Conference say that our most important responsibility as Legislators is to bring honor to the institution.

As elected officials, we have a responsibility to defend the honor of the institution. I won't say that corruption doesn't exist, but I will say this; corruption in North Dakota exists to a much greater extent in perception than in reality.

It is time to break the ice. The Legislative process is best served when various opinions are freely expressed. Disagreement on the bill is not opposition to ethics and is not against the will of the people. We all support Ethics. That is why much of what became Article 14 of the Constitution already existed in Statute.

Success in the legislative process is a matter of relationships. Integrity is everything. That is true for everyone involved in the process including Legislators, lobbyists, state agencies, and the citizens who come here.

I occasionally have the opportunity visit with groups about the Legislative process, and so do others. Senators Poolman and Oban have heard me say this – Lobbyists are important to us for the information they provide. State agency people are important to us for the information they provide. But, far and away the most important people to testify before us are the people who are affected by the laws that we pass.

I know that it can feel intimidating to come to the Legislature and testify. We all wear suits and we use formal procedures. That is not because we like to hear ourselves called Senator, but because it keeps the conversation at a respectful level that allows everyone to be heard.

I have a strong reputation of listening to anyone and everyone, being respectful to all, and then making up my own mind regardless of outside influence. The same could be said of almost all legislators.



It is easy to project an image of Congress on the State Legislature. Here are some differences –

- In the ND Constitution, it is considered bribery for legislators to trade votes and a Class C felony
- ND is the only State where every bill that is introduced gets a hearing and goes to the floor for a vote. A Legislator cannot tell a constituent, "Sure I'll sponsor that bill for you." And then go to leadership and say, "I never want to see that again."
- Sometimes violated, but generally followed, the Legislature has a rule that requires that everything in a bill must be germane to the bill. Pet projects are not put in a bill in order to gain votes.
- In Congress, seniority is everything. In the Legislature, seniority only applies in the selection of a parking spot and a seat in the Chamber.
- In most States, Legislators have personal staff who serve as a gateway to access. In the ND Legislature, most legislators put their cell phone on the Legislative website.

In the first hearing on this bill, the Democrat co-chair of the Measure sponsoring committee stood at this podium and told us that she knows the will of the people of North Dakota better than you and I do.

Everyone of us is on the ballot every four years. Most of us go out and knock on all those doors. If we are seated here, it is by the will of the people. We each know the people of our Districts and they know us.

Whether the people of North Dakota read the Measure, whether they understood it, and whether they considered the implications of it, are all irrelevant. They exercised the right and assumed the responsibility and passed it.

We are now tasked with passing legislation to implement it. We each took an oath to uphold the Constitution of the United States and the Constitution of the State of North Dakota. We will do that.

The people voted to create a commission of five appointed people with the ability to make rules, to investigate violations, and to assess penalties as developed by the Legislature.

The bill before us, provides for civil penalties equal to a Class C felony on the first offense and 2 ½ times a Class A felony on the second offense.

If a person wants to preserve their fifth amendments rights, they need to refuse to cooperate with the Commission and be prepared for the due process provided under a criminal complaint.

The bill provides for the creation of a three person agency completely independent of any oversight. Included as an FTE would be an Attorney, who arguably could serve as a Special Prosecutor.

Our founding fathers created a system of separation of powers and checks and balances. If the Legislature passes a law, the Governor can veto it, or the citizens can refer it. Administrative rules have the force of law and are developed with the approval of the Legislative rules committee.

As it was introduced, this bill recognized those checks and balances. As it is proposed to be amended, it abandons any check on the power of the Commission.

We are required by Article 14 to pass legislation. We should adhere to the intent of the measure and consider the will of the people. I think it is a real stretch to say that is represented in this bill as it is currently constructed.

I think each of us will uphold the Constitution as we consider this bill. We will consider the message that came to us on Election Day.

I hope that the finished product is something that restores honor to the institution. When I say "institution", I am thinking not just of the Legislature, but of our Government of the people, by the people, and for the people. The Institution includes everyone involved.

SB 2148 2/6/19 #2

2.6.2019

Senator Mathern,

The Center for Ethics in Government at the National Conference of State Legislatures (NCSL) would be pleased to provide a presentation on state ethics commissions. The presentation would begin with an overview of how states differently define the powers, responsibilities, and structure of ethics commissions. I would draw heavily from NCSL's 50-state survey on the subject. I would follow up with a discussion of trends in legislative ethics oversight, including the results of several commission-creating ballot measures before voters during the November 2018 election.

Sincerely,

Nicholas Birdsong, J.D.  
Policy Associate, Center for Ethics in Government  
National Conference of State Legislatures  
[www.ncsl.org](http://www.ncsl.org)  
*Strong States, Strong Nation*

Geoff Simon, Lobbyist #144  
Testimony SB 2148  
Senate Ethics Committee  
February 6, 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. Our coalition was comprised of more than 40 groups and organizations, including groups as diverse as the National Rifle Association and the American Civil Liberties Union. We had the Greater North Dakota Chamber, local chambers, farm and ranch groups, energy groups, utilities, retailers, bankers, contractors, school groups, religious organizations and on and on. All of us shared a common concern, that the language in this measure – specifically subsection 2 of Section 1 – interfered with the ability of individual citizens to freely communicate with their elected officials. An honest reading of the language – which requires the disclosure of the “ultimate and true source of funds ... spent ... to influence state government action – suggests that it would compel ordinary citizens who travel to Bismarck to meet with their elected representatives, to track their expenses and report them to the government. That was my primary motivation for engaging with those opposed to the measure. I frequently call upon my members, who come to the Capitol to explain to legislators the issues they see happening on the front lines.

A reporting requirement that requires my members to track their expenses would obviously have a chilling effect on the desire of citizens to engage in the policy making process. But equally bad is the fact that there are no exemptions provided to the language in this section. We attempted to warn citizens that this measure would compel businesses and organizations to disclose the names of their members and donors, which again would have a chilling effect on speech. Even newspapers and television and radio stations, could be compelled by the plain language to submit a list of their subscribers and advertisers. But despite our best efforts to educate the public about these pitfalls, this measure was approved by a slim majority of voters in November.

This measure was carelessly written, its disclosure language is overly broad, provides no exceptions, 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 try to implement the law in a way that preserves the Free Speech rights of our citizens, and hopefully avoid a costly legal challenge.

With all due respect to Senator Mathern and SB 2148, I think I can speak for the members of the coalition that opposed this measure when I say we do not want to wait two years to learn the implications of language. And interim study is still a good thing, but we need an implementation bill now so North Dakota citizens can begin to understand what the language in this measure means.

SB 2148 2/6/19

Att. #3  
pg 2

With respect to the Ethics Commission itself, I believe the amendment Senator Mathern proposed to his own bill confirms what we suspected. Withdrawing the language that would make the rules enacted by the Ethics Commission subject to the Administrative Agencies Practices Act, confirms our suspicion that the Ethics Commission will, in effect, become a fourth branch of government. We heard in testimony last week that the rules of the Ethics Commission may be subject to the administrative rules process, but only if the Ethics Commission voluntarily submits to have its rules reviewed. The language on p.5, lines 16-17, of SB 2148 seems to suggest the Ethics Commission will be a new branch of government, with language referencing Ethics Commission ownership of property and operation of ethics commission facilities.

I think it's important that we're all honest about how we got here. This measure was billed as being anti-corruption, but I would argue the only reason it passed was because those two words were actually printed on the ballot, even though they're not found in the language of the measure.

This measure was not about weeding out corruption in our government because it doesn't exist. This measure from the outset was anti-business. It was brought by a sponsoring committee whose members believe business organizations have an out-sized influence over state government policy. It was largely funded by out-of-state anti-business groups. Organizations like End Citizens United pour thousands of dollars into the campaign. By imposing onerous reporting requirements, and restricting the ability of lobbyists to communicate with elected officials, they hoped to diminish the influence of business in North Dakota's political process.

I, for one, am very grateful we have lobbyists here to represent the business interests of North Dakota. There's an old joke that "lobbyists are the people we hire to protect us from the people we elect." It's a humorous expression, but there's some truth in it.

Legislators understand the role of lobbyists. We're basically teachers. Our job is to help legislators understand the hundreds of complicated issues they deliberate each session. I am not a business lobbyist, per se, but I appreciate the work they do. They are here to advocate for the enactment of policies that foster a positive business climate, and ultimately a strong economy in North Dakota.

We should be grateful for business lobbyists, not attempt to vilify them.

In conclusion, I would urge the defeat of SB 2148. We need to know what this measure means, and can not, and should not have to wait for an interim study committee to figure it out.

There is a competing bill on the House side. I believe House Bill 1521 takes a common sense approach to implement the Measure in a way that respects the wishes of voters for greater transparency. And by providing definitions for the terminology in Section 1.2, the House bill assures North Dakota citizens they will be allowed to freely engage with their elected officials, without fear of having to comply with a requirement that they report their expenses.

Thank you for your attention, and I will stand for questions.

Support SB 2148

February 6, 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 support a do pass on SB 2148 because:

**It is consistent with Article XIV of the North Dakota Constitution with amendments that have been introduced.**

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. The amendments make those timelines very clear as to when reporting and implementation takes place.

It is important that this not be rushed which is what SB 2148 allows with the proposed interim study.

I 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 shows 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 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.



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.

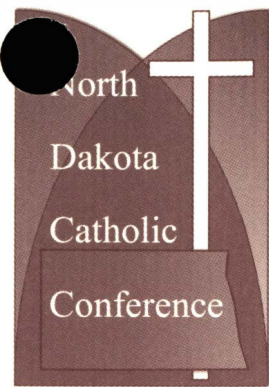
All lobbyists, just like ordinary citizens should more properly influence and advocate from their presence here in front of legislative committees and hearings and offer testimony and informational documents and materials on the record and certainly not be able to send public officials on trips around the world to rub shoulders with other people seeking to gain unfair advantage of the time and minds of those public officials.

Again, SB2148 gives 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 Pass on SB 2148.





Representing the Diocese of  
Fargo and the Diocese of  
Bismarck

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SB 2148 2/6/19 ATT. #5  
Pg 1

**To:** Senate Ethics Committee  
**From:** Christopher T. Dodson, Executive Director  
**Subject:** Senate Bill 2148 - Ethics  
**Date:** February 6, 2019

The North Dakota Catholic Conference appreciates this opportunity to provide input on Senate Bill 2148. The conference has a neutral position on SB 2148, as introduced. However, the bill currently lacks some needed provisions and some of the statements made at the last hearing about possible amendments and interpretations of Article XIV give us concern.

Although the final product of this Legislative Assembly may not be perfect and may not address all the possible constitutional problems with the new constitutional provisions, it should address two of the conference's main concerns about Measure 1. First, it should make clear that individuals who donate to the general operation of a church or charity will not have their privacy unduly infringed. Second, it should provide some certainty regarding process and what will or will not be 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 without any clarifying parameters, 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 just one dollar. During the campaign, proponents for the measure repeatedly stated that the legislature would have the authority to make sure this did not occur.<sup>1</sup> The legislature should adopt their earlier position and enact legislation now, rather than later, to place common sense parameters on the disclosure provisions.

In addition to requiring disclosure, as directed by Article XIV, the implementing legislation should define “ultimate and true source” of funds to mean the person who knowingly contributed over two hundred dollars solely to a campaign, to lobby, or to influence state government action.

This 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 be forced 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.

The bill should also include 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, SB 2148 should incorporate that definition for purposes of implementing Article XIV.

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. The bill in the other chamber, for example, defines "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," SB 2148 could address our concerns about the potential scope of the disclosure requirement. Such definitions are reasonable and consistent with purpose of Measure 1. If the national office of the Knights of Columbus gave 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. Rather than delaying the requirement, the Legislative Assembly should, as the proponents of Measure 1 said the legislature could do, put it into statute with clear parameters.

Delaying implementation of the disclosure requirements with clear definitions would create more uncertainty and have a possible chilling effect on charitable giving. Although the disclosure provisions may not go in effect prior to January 5, 2022, the donations that would be subject to the disclosure law might be made in 2021, 2020, or even 2019. Donors should know now if the contributions they might make during the next few years could be forcibly disclosed after January of 2022.

### *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.

This committee can address some those concerns without running afoul of the new article's requirements by:

- Using existing and already familiar definitions where possible, such as for "lobby" and "campaign contribution," and campaign "conduit;"
- Employing existing mechanisms and time periods for reporting;
- Setting out due process requirements for complaints;
- Providing definite effective dates;
- Clarifying 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
- Consistent with the proponents' position during the campaign, specifying a rulemaking process that gives the public advance notice of meetings and an opportunity to provide public input, just like any other rulemaking body.<sup>2</sup>

These provisions would give the public 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.

We ask this committee to take these concerns into consideration as it works on SB 2148.

<sup>1</sup> Dina Butcher, *Good Talk Minot*, September 24, 2018; ([https://directory.libsyn.com/episode/index/id/7304732/tdest\\_id/446532](https://directory.libsyn.com/episode/index/id/7304732/tdest_id/446532)); *Legal memorandum from the Campaign Legal Center in support of Measure 1* released by NDPI in support of the measure, September, 25, 2018 (<https://campaignlegal.org/document/transparency-ballot-north-dakotas-initiative-disclosure-money-politics>); *NDPI press release* citing Campaign Legal Center's endorsement of Measure 1, October 1, 2018, ([https://www.ndintegrity.org/campaign\\_legal\\_center\\_endorses\\_north\\_dakota\\_measure\\_1](https://www.ndintegrity.org/campaign_legal_center_endorses_north_dakota_measure_1)); Dina Butcher, *Prairie Public's Main Street*, October 23, 2018 (<http://radiobookmark.com/listener-interactive/webplayer/#/fullscreen/ondemand/Fc6yEw9PkL2ZANvC/program/3549>); Ellen Chaffee, *Prairie Public's Main Street*, October 23, 2018, (<http://radiobookmark.com/listener-interactive/webplayer/#/fullscreen/ondemand/Fc6yEw9PkL2ZANvC/program/3549>).

<sup>2</sup> Dina Butcher, *Good Talk Minot*, September 24, 2018; ([https://directory.libsyn.com/episode/index/id/7304732/tdest\\_id/446532](https://directory.libsyn.com/episode/index/id/7304732/tdest_id/446532)); "That commission, then, will set about to writing the rules and regulations like any commission or council or body of government would do then take out for public hearings and then be approved by the legislative process for rulemaking."

Dina Butcher, *Prairie Public's Main Street*, October 23, 2018, *Prairie Public's Main Street* (<http://radiobookmark.com/listener-interactive/webplayer/#/fullscreen/ondemand/Fc6yEw9PkL2ZANvC/program/3549>) "The ethics commission will develop rules subject to legislative review."





Office of the  
State Auditor

TESTIMONY TO SENATE 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?

# 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:

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

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.

February 6, 2019

SB 2148 2/6/19 ATT.

#7

pg 1

PROPOSED AMENDMENTS TO SENATE BILL NO. 2148

Page 1, line 8, after the semicolon insert "to provide a statement of legislative intent;"

Page 23, line 17, replace "until" with "unless"

Page 23, line 18, replace "issues its findings regarding the relevant complaint" with "has determined the accused individual violated article XIV of the Constitution of North Dakota, this chapter, or another law or rule regarding government ethics"

Page 23, line 20, replace "the" with "a"

Page 23, line 25, after "2." insert "If a complaint is informally resolved under section 54-66-06, the following information is a confidential record as defined in section 44-04-17.1, except the information may be disclosed as required by law:

- 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."

Page 24, after line 11, insert:

**"SECTION 22. LEGISLATIVE INTENT STATEMENT - CONSTITUTIONAL  
EFFECTIVE DATES - PENALTIES.**

1. Subsection 2 of section 1 of article XIV of the Constitution of North Dakota requires the legislative assembly to implement and enforce the subsection by enacting laws by January 5, 2022, which will require disclosure of funds spent for identified purposes and vest an entity with authority to administer the disclosure requirements. The subsection does not take effect or impose disclosure requirements or other obligations until the legislation is enacted. Penalties may not be imposed under subsection 2 of section 1 of article XIV until the legislative assembly enacts laws to implement and enforce the subsection. However, the requirements and penalties under chapters 16.1-08.1 and 54-05.1 remain in effect.
2. Subsection 1 of section 2 of article XIV of the Constitution of North Dakota declares the prohibition on certain gifts under the subsection is not effective until January 5, 2021. The subsection requires the ethics committee to adopt rules providing additional guidance regarding the prohibition and requires the legislative assembly to provide penalties for violations of the prohibition. Penalties may not be imposed under subsection 1 of section 2 of article XIV until the legislative assembly enacts laws establishing the penalties for violations of the subsection.

3. Subsection 5 of section 2 of article XIV of the Constitution of North Dakota declares the requirement for certain executive branch officials and employees to avoid the appearance of bias and be disqualified from quasi-judicial proceedings is not effective until January 5, 2022. The subsection requires the ethics commission and legislative assembly to enforce the subsection by adopting rules and enacting laws. Penalties may not be imposed under subsection 5 of section 2 of article XIV until the legislative assembly enacts laws establishing the penalties for violations of the subsection."

Renumber accordingly

SB 2148 2/6/19 AH. #7  
Pg 3

2.6.2019

Senator Mathern,

The Center for Ethics in Government at the National Conference of State Legislatures (NCSL) would be pleased to provide a presentation on state ethics commissions. The presentation would begin with an overview of how states differently define the powers, responsibilities, and structure of ethics commissions. I would draw heavily from NCSL's 50-state survey on the subject. I would follow up with a discussion of trends in legislative ethics oversight, including the results of several commission-creating ballot measures before voters during the November 2018 election.

Sincerely,

Nicholas Birdsong, J.D.  
Policy Associate, Center for Ethics in Government  
National Conference of State Legislatures  
[www.ncsl.org](http://www.ncsl.org)  
*Strong States, Strong Nation*



PROPOSED AMENDMENTS TO SENATE BILL NO. 2148

Page 1, line 1, after "enact" insert "a new subsection to section 16.1-08.1-01, a new section to chapter 16.1-08.1, and"

Page 1, line 2, after "to" insert "disclosures of expenditures,"

Page 1, line 4, after "sections" insert "16.1-08.1-04.1,"

Page 1, line 6, remove "28-32-14,"

Page 1, line 6, remove "28-32-17, 28-32-18, and 28-32-18.1,"

Page 1, line 7, after "to" insert "the prohibition on personal use of campaign contributions and the"

Page 1, line 8, remove "to provide for"

Page 1, line 9, remove "a legislative management study;"

Page 1, after line 10, insert:

**"SECTION 1.** A new subsection to section 16.1-08.1-01 of the North Dakota Century Code is created and enacted as follows:

"Ultimate and true source" means the person who knowingly contributed over two hundred dollars, adjusted for inflation, to influence a statewide election or an election for the legislative assembly.

**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. The secretary of state shall impose a fine of five thousand dollars or two times the value of the contribution used in violation of this section, whichever is higher, upon any person who violates this section.

**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.**

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."

Page 6, line 24, remove "ethics commission or an"

Page 6, line 24, after the second comma insert "or the ethics commission"

Page 14, remove lines 16 through 30

Page 16, remove lines 9 through 31

Page 17, remove lines 1 through 31

Page 18, remove lines 1 through 31

Page 19, remove lines 1 through 24

Page 20, after line 14, insert:

**"For purposes of this chapter, unless the context otherwise requires:"**

Page 20, line 26, after the underscored period insert: "Gift" does not mean:

- a. Purely informational material;
- b. A campaign contribution;
- 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 ethical concerns as set forth in rules adopted by the ethics commission;
- d. Meals and other items provided in social settings with twenty-five or more public officials in attendance; and
- e. Meals and other items provided in social settings to which the general public is invited with at least seventy-two hours of advance notice."

Page 21, after line 14, insert:

- "9. "Ultimate and true source" means the person that knowingly contributed over two hundred dollars, adjusted for inflation, to lobby or influence state government action."

Page 23, line 15, replace "Burleigh County" with "the county where the accused individual resides"

Page 23, line 25, after "2." insert "Information relating to or created as part of an informal resolution of a complaint is confidential except the information may be disclosed by the complainant and the accused individual."

3."

Page 23, line 25, after "who" insert "knowingly"

Page 23, line 27, after "A" insert "knowing"

Page 23, line 28, replace "ten" with "one"

Page 23, line 29, after "that" insert "knowingly"

Page 24, line 2, after "A" insert "knowing"

Page 24, line 3, replace "ten thousand" with "five hundred"

Page 24, line 4, after "that" insert "knowingly"

Page 24, line 5, replace "fifty" with "one"

Page 24, line 5, remove "for each violation of the subsection"

Page 24, line 5, replace "that violates" with "for a second or subsequent knowing violation of"

Page 24, line 6, remove "more than once within a twelve-month period"

Page 24, line 8, after "commission" insert ", unless the ethics commission objects to the representation by the attorney general in a specific matter"

Page 24, replace lines 12 through 17 with:

**"54-66-14. Disclosure of ultimate and true source of funds.**

A person who expends an amount greater than two hundred dollars, adjusted for inflation, to lobby or influence state government, other than to influence a statewide election or election for the legislative assembly, shall report the ultimate and true source of funds for the expenditure to the secretary of state.

**54-66-15. Lobbyist gifts - Penalty.**

A lobbyist may not give, offer, solicit, initiate, or facilitate a gift to a public official knowingly, and a public official may not accept a gift from a lobbyist knowingly. 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 an infraction."

Page 24, replace line 24, with:

"Salaries and expenses \$214,800"

Page 24, replace line 26, with:

"Total general fund \$422,000"

Renumber accordingly

SB 2148 2/6/19 #9

Support SB 2148

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

Support a do pass on SB 2148 because:

**It is consistent with Article XIV of the North Dakota Constitution with amendments that have been introduced.**

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 is what SB 2148 allows.

Thank you for your attention.

Please DO Pass SB 2148.

SB 2148 2/6/19

#10

Senate 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 favor of SB 2148**

Mr. Chairman and Members of the Committee:

Article XIV is in the Constitution of North Dakota. As legislators you have taken an oath to uphold that Constitution. I respectfully ask that you recommend passage of SB 2148 to provide the relatively simple steps necessary to uphold the Constitution with sufficient funding as required in the Article XIV.

To avoid distraction from the major policy and funding issues with which this session is faced, SB 2148 wisely provides for an interim study with which that established Ethics Commission could assist in providing guidance for the 2021 Legislative Assembly to judiciously implement those sections of Article XIV which do not go into effect until later.

Thank you for all the good work you do and I respectfully ask for your recommendation of a **do pass** on SB 2148.

Sixty-sixth  
Legislative Assembly  
of North Dakota

## SENATE BILL NO. 2148

*Chairman Hogue Amendment*

Introduced by

Senator Mathern

1 A BILL for an Act to create and enact a new subsection to section 16.1-08.1-01, a new section  
2 to chapter 16.1-08.1, and chapter 54-66 of the North Dakota Century Code, relating to  
3 disclosures of 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 sections 16.1-08.1-04.1, 28-32-01, 28-32-02, 28-32-03, 28-32-06, 28-32-07,  
6 and 28-32-08, subsection 5 of section 28-32-08.1, sections 28-32-08.2, 28-32-09, 28-32-10,  
7 28-32-11, 28-32-12, ~~28-32-14~~, 28-32-15, and 28-32-16, ~~28-32-17, 28-32-18, and 28-32-18.1~~,  
8 and subsections 2 and 4 of section 28-32-19 of the North Dakota Century Code, relating to the  
9 prohibition on personal use of campaign contributions and the rulemaking procedures and  
10 requirements for the North Dakota ethics commission; ~~to provide for a legislative management~~  
11 ~~study~~; to provide a penalty; and to provide an appropriation.

## 12 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

13 **SECTION 1.** A new subsection to section 16.1-08.1-01 of the North Dakota Century Code is  
14 created and enacted as follows:

15 "Ultimate and true source" means the person who knowingly contributed over two  
16 hundred dollars, adjusted for inflation, to influence a statewide election or an election  
17 for the legislative assembly.

18 **SECTION 2. AMENDMENT.** Section 16.1-08.1-04.1 of the North Dakota Century Code is  
19 amended and reenacted as follows:

20 **16.1-08.1-04.1. Personal use of contributions prohibited.**

21 1. A candidate may not use any contribution received by the candidate, the candidate's  
22 candidate committee, or a multicandidate political committee to:

23 ~~4.~~ a. Give a personal benefit to the candidate or another person;

24 ~~2.~~ b. Make a loan to another person;

1 ~~3.~~ c. Knowingly pay more than the fair market value for goods or services purchased  
2 for the campaign; or

3 ~~4.~~ d. Pay a criminal fine or civil penalty.

4 2. The secretary of state shall impose a fine of five thousand dollars or two times the  
5 value of the contribution used in violation of this section, whichever is higher, upon any  
6 person who violates this section.

7 **SECTION 3.** A new section to chapter 16.1-08.1 of the North Dakota Century Code is  
8 created and enacted as follows:

9 **Ultimate and true source of funds - Required identification.**

10 In any report under this chapter which requires the identification of a contributor or  
11 subcontributor, the ultimate and true source of funds must be identified.

12 **SECTION 4. AMENDMENT.** Section 28-32-01 of the North Dakota Century Code is  
13 amended and reenacted as follows:

14 **28-32-01. Definitions.**

15 In this chapter, unless the context or subject matter otherwise provides:

- 16 1. "Adjudicative proceeding" means an administrative matter resulting in an agency  
17 issuing an order after an opportunity for hearing is provided or required. An  
18 adjudicative proceeding includes administrative matters involving a hearing on a  
19 complaint against a specific-named respondent; a hearing on an application seeking a  
20 right, privilege, or an authorization from an agency, such as a ratemaking or licensing  
21 hearing; or a hearing on an appeal to an agency. An adjudicative proceeding includes  
22 reconsideration, rehearing, or reopening. Once an adjudicative proceeding has begun,  
23 the adjudicative proceeding includes any informal disposition of the administrative  
24 matter under section 28-32-22 or another specific statute or rule, unless the matter  
25 has been specifically converted to another type of proceeding under section 28-32-22.  
26 An adjudicative proceeding does not include a decision or order to file or not to file a  
27 complaint, or to initiate an investigation, an adjudicative proceeding, or any other  
28 proceeding before the agency, or another agency, or a court. An adjudicative  
29 proceeding does not include a decision or order to issue, reconsider, or reopen an  
30 order that precedes an opportunity for hearing or that under another section of this



- 1 code is not subject to review in an adjudicative proceeding. An adjudicative proceeding  
2 does not include rulemaking under this chapter.
- 3 2. "Administrative agency" or "agency" means each board, bureau, commission,  
4 department, or other administrative unit of the executive branch of state government,  
5 including one or more officers, employees, or other persons directly or indirectly  
6 purporting to act on behalf or under authority of the agency. An administrative unit  
7 located within or subordinate to an administrative agency must be treated as part of  
8 that agency to the extent it purports to exercise authority subject to this chapter. The  
9 term administrative agency does not include:
- 10 a. The office of management and budget except with respect to rules made under  
11 section 32-12.2-14, rules relating to conduct on the capitol grounds and in  
12 buildings located on the capitol grounds under section 54-21-18, rules relating to  
13 the classified service as authorized under section 54-44.3-07, and rules relating  
14 to state purchasing practices as required under section 54-44.4-04.
- 15 b. The adjutant general with respect to the department of emergency services.
- 16 c. The council on the arts.
- 17 d. The state auditor.
- 18 e. The department of commerce with respect to the division of economic  
19 development and finance.
- 20 f. The dairy promotion commission.
- 21 g. The education factfinding commission.
- 22 h. The educational technology council.
- 23 i. The board of equalization.
- 24 j. The board of higher education.
- 25 k. The Indian affairs commission.
- 26 l. The industrial commission with respect to the activities of the Bank of North  
27 Dakota, North Dakota housing finance agency, public finance authority, North  
28 Dakota mill and elevator association, North Dakota farm finance agency, the  
29 North Dakota transmission authority, and the North Dakota pipeline authority.
- 30 m. The department of corrections and rehabilitation except with respect to the  
31 activities of the division of adult services under chapter 54-23.4.



- 1 n. The pardon advisory board.
- 2 o. The parks and recreation department.
- 3 p. The parole board.
- 4 q. The state fair association.
- 5 r. The attorney general with respect to activities of the state toxicologist and the
- 6 state crime laboratory.
- 7 s. The administrative committee on veterans' affairs except with respect to rules
- 8 relating to the supervision and government of the veterans' home and the
- 9 implementation of programs or services provided by the veterans' home.
- 10 t. The industrial commission with respect to the lignite research fund except as
- 11 required under section 57-61-01.5.
- 12 u. The attorney general with respect to guidelines adopted under section 12.1-32-15
- 13 for the risk assessment of sexual offenders, the risk level review process, and
- 14 public disclosure of information under section 12.1-32-15.
- 15 v. The commission on legal counsel for indigents.
- 16 w. The attorney general with respect to twenty-four seven sobriety program
- 17 guidelines and program fees.
- 18 x. The industrial commission with respect to approving or setting water rates under
- 19 chapter 61-40.
- 20 3. "Agency head" means an individual or body of individuals in whom the ultimate legal
- 21 authority of the agency is vested by law.
- 22 4. "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. "Ethics commission" means the North Dakota ethics commission established by article
- 26 XIV of the Constitution of North Dakota.
- 27 ~~5-6.~~ "Hearing officer" means any agency head or one or more members of the agency
- 28 head when presiding in an administrative proceeding, or, unless prohibited by law, one
- 29 or more other persons designated by the agency head to preside in an administrative
- 30 proceeding, an administrative law judge from the office of administrative hearings, or

- 1 any other person duly assigned, appointed, or designated to preside in an  
2 administrative proceeding pursuant to statute or rule.
- 3 ~~6-7.~~ "License" means a franchise, permit, certification, approval, registration, charter, or  
4 similar form of authorization required by law.
- 5 ~~7-8.~~ "Order" means any agency action of particular applicability which determines the legal  
6 rights, duties, privileges, immunities, or other legal interests of one or more specific  
7 persons. The term does not include an executive order issued by the governor.
- 8 ~~8-9.~~ "Party" means each person named or admitted as a party or properly seeking and  
9 entitled as of right to be admitted as a party. An administrative agency may be a party.  
10 In a hearing for the suspension, revocation, or disqualification of an operator's license  
11 under title 39, the term may include each city and each county in which the alleged  
12 conduct occurred, but the city or county may not appeal the decision of the hearing  
13 officer.
- 14 ~~9-10.~~ "Person" includes an individual, association, partnership, corporation, limited liability  
15 company, the ethics commission, a state governmental agency or governmental  
16 subdivision, or an agency of such governmental subdivision.
- 17 ~~10-11.~~ "Relevant evidence" means evidence having any tendency to make the existence of  
18 any fact that is of consequence to the determination of the administrative action more  
19 probable or less probable than it would be without the evidence.
- 20 ~~11-12.~~ "Rule" means the whole or a part of an agency or ethics commission statement of  
21 general applicability which implements or prescribes law or policy or the organization,  
22 procedure, or practice requirements of the agency or ethics commission. The term  
23 includes the adoption of new rules and the amendment, repeal, or suspension of an  
24 existing rule. The term does not include:
- 25 a. A rule concerning only the internal management of an agency or the ethics  
26 commission which does not directly or substantially affect the substantive or  
27 procedural rights or duties of any segment of the public.
- 28 b. A rule that sets forth criteria or guidelines to be used by the staff of an agency or  
29 the ethics commission in the performance of audits, investigations, inspections,  
30 and settling commercial disputes or negotiating commercial arrangements, or in

- 1 the defense, prosecution, or settlement of cases, if the disclosure of the  
2 statement rule would:
- 3 (1) Enable law violators to avoid detection;  
4 (2) Facilitate disregard of requirements imposed by law; or  
5 (3) Give a clearly improper advantage to persons who are in an adverse  
6 position to the state.
- 7 c. A rule establishing specific prices to be charged for particular goods or services  
8 sold by an agency.
- 9 d. A rule concerning only the physical servicing, maintenance, or care of  
10 agency-owned ~~or~~ agency-operated, ethics commission-owned, or ethics  
11 commission-operated facilities or property.
- 12 e. A rule relating only to the use of a particular facility or property owned, operated,  
13 or maintained by the state or any of its subdivisions, if the substance of the rule is  
14 adequately indicated by means of signs or signals to persons who use the facility  
15 or property.
- 16 f. A rule concerning only inmates of a correctional or detention facility, students  
17 enrolled in an educational institution, or patients admitted to a hospital, if adopted  
18 by that facility, institution, or hospital.
- 19 g. A form whose contents or substantive requirements are prescribed by rule or  
20 statute or are instructions for the execution or use of the form.
- 21 h. An agency or ethics commission budget.
- 22 i. An opinion of the attorney general.
- 23 j. A rule adopted by an agency selection committee under section 54-44.7-03.
- 24 k. Any material, including a guideline, interpretive statement, statement of general  
25 policy, manual, brochure, or pamphlet, which is explanatory and not intended to  
26 have the force and effect of law.

27 **SECTION 5. AMENDMENT.** Section 28-32-02 of the North Dakota Century Code is  
28 amended and reenacted as follows:

29 **28-32-02. Rulemaking ~~power of agency authority~~ - Organizational rule.**

- 30 1. The authority of an administrative agency to adopt administrative rules is authority  
31 delegated by the legislative assembly. As part of that delegation, the legislative

1 assembly reserves to itself the authority to determine when and if rules of  
2 administrative agencies are effective. Every administrative agency may adopt, amend,  
3 or repeal reasonable rules in conformity with this chapter and any statute administered  
4 or enforced by the agency.

5 2. In addition to other rulemaking requirements imposed by law, each agency may  
6 include in its rules a description of that portion of its organization and functions subject  
7 to this chapter and may include a statement of the general course and method of its  
8 operations and how the public may obtain information or make submissions or  
9 requests.

10 3. The authority of the ethics commission to adopt rules arises from article XIV of the  
11 Constitution of North Dakota. The ethics commission shall follow the process, and  
12 meet the requirements, in this chapter to adopt, amend, or repeal its rules.

13 **SECTION 6. AMENDMENT.** Section 28-32-03 of the North Dakota Century Code is  
14 amended and reenacted as follows:

15 **28-32-03. Emergency rules.**

16 1. If the ~~ethics commission or an~~ agency, with the approval of the governor, or the ethics  
17 commission finds that emergency rulemaking is necessary, the ethics commission or  
18 agency may declare the proposed rule to be an interim final rule effective on a date no  
19 earlier than the date of filing with the legislative council of the notice required by  
20 section 28-32-10.

21 2. A proposed rule may be given effect on an emergency basis under this section if any  
22 of the following grounds exists regarding that rule:

23 a. Imminent peril threatens public health, safety, or welfare, which would be abated  
24 by emergency effectiveness;

25 b. A delay in the effective date of the rule is likely to cause a loss of funds  
26 appropriated to support a duty imposed by law upon the ethics commission or  
27 agency;

28 c. Emergency effectiveness is reasonably necessary to avoid a delay in  
29 implementing an appropriations measure; or

30 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 ethics commission's or agency's finding, and a brief statement of the ethics  
5        commission's or agency's reasons for the finding, must be filed with the legislative  
6        council with the final adopted emergency rule.
- 7        5. The ethics commission or agency shall attempt to make interim final rules known to  
8        persons who the ethics commission or agency can reasonably be expected to believe  
9        may have a substantial interest in them. As used in this subsection, "substantial  
10       interest" means an interest in the effect of the rules which surpasses the common  
11       interest of all citizens. ~~An~~ The ethics commission or an agency adopting emergency  
12       rules shall comply with the notice requirements of section 28-32-10 which relate to  
13       emergency rules and shall provide notice to the chairman of the administrative rules  
14       committee of the emergency status, declared effective date, and grounds for  
15       emergency status of the rules under subsection 2. When notice of emergency rule  
16       adoption is received, the legislative council shall publish the notice and emergency  
17       rules on its website.
- 18       6. An interim final rule is ineffective one hundred eighty days after its declared effective  
19       date unless first adopted as a final rule.

20       **SECTION 7. AMENDMENT.** Section 28-32-06 of the North Dakota Century Code is  
21       amended and reenacted as follows:

22       **28-32-06. Force and effect of rules.**

23       Upon becoming effective, rules have the force and effect of law until amended or repealed  
24       by the agency or ethics commission, declared invalid by a final court decision, suspended or  
25       found to be void by the administrative rules committee, or determined repealed by the  
26       legislative council because the authority for adoption of the rules is repealed or transferred to  
27       another agency, or the Constitution of North Dakota is amended to eliminate the authority.

28       **SECTION 8. AMENDMENT.** Section 28-32-07 of the North Dakota Century Code is  
29       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 ethics 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 ethics commission must adopt the rule change if the request by the agency or ethics commission is supported by evidence that the agency or ethics commission needs more time through no deliberate fault of its own.

**SECTION 9. 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 ethics 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 ethics commission of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues; and



- 1 d. A description of any alternative methods for achieving the purpose of the
- 2 proposed rule that were seriously considered by the agency or ethics commission
- 3 and the reasons why the methods were rejected in favor of the proposed rule.
- 4 3. Each regulatory analysis must include quantification of the data to the extent
- 5 practicable.
- 6 4. The agency or ethics commission shall mail or deliver a copy of the regulatory analysis
- 7 to any person who requests a copy of the regulatory analysis. The agency or ethics
- 8 commission may charge a fee for a copy of the regulatory analysis as allowed under
- 9 section 44-04-18.
- 10 5. If required under subsection 1, the preparation and issuance of a regulatory analysis is
- 11 a mandatory duty of the agency or ethics commission proposing a rule. Errors in a
- 12 regulatory analysis, including erroneous determinations concerning the impact of the
- 13 proposed rule on the regulated community, are not a ground upon which the invalidity
- 14 of a rule may be asserted or declared.

15 **SECTION 10. AMENDMENT.** Subsection 5 of section 28-32-08.1 of the North Dakota  
16 Century Code is amended and reenacted as follows:

- 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 or 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 **SECTION 11. AMENDMENT.** Section 28-32-08.2 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **28-32-08.2. Fiscal notes for administrative rules.**

9 When an agency or the ethics commission presents rules for administrative rules committee  
10 consideration, the agency or ethics commission shall provide a fiscal note or a statement in its  
11 testimony that the rules have no fiscal effect. A fiscal note must reflect the effect of the rules  
12 changes on state revenues and expenditures, including any effect on funds controlled by the  
13 agency or ethics commission.

14 **SECTION 12. AMENDMENT.** Section 28-32-09 of the North Dakota Century Code is  
15 amended and reenacted as follows:

16 **28-32-09. Takings assessment.**

- 17 1. An agency or the ethics commission shall prepare a written assessment of the  
18 constitutional takings implications of a proposed rule that may limit the use of private  
19 real property. The agency's assessment must:
  - 20 a. Assess the likelihood that the proposed rule may result in a taking or regulatory  
21 taking.
  - 22 b. Clearly and specifically identify the purpose of the proposed rule.
  - 23 c. Explain why the proposed rule is necessary to substantially advance that purpose  
24 and why no alternative action is available that would achieve the agency's or  
25 ethics commission's goals while reducing the impact on private property owners.
  - 26 d. Estimate the potential cost to the government if a court determines that the  
27 proposed rule constitutes a taking or regulatory taking.
  - 28 e. Identify the source of payment within the agency's or ethics commission's budget  
29 for any compensation that may be ordered.
  - 30 f. Certify that the benefits of the proposed rule exceed the estimated compensation  
31 costs.

- 1        2. Any private landowner who is or may be affected by a rule that limits the use of the  
2        landowner's private real property may request in writing that the agency or ethics  
3        commission reconsider the application or need for the rule. Within thirty days of  
4        receiving the request, the agency or ethics commission shall consider the request and  
5        shall in writing inform the landowner whether the agency or ethics commission intends  
6        to keep the rule in place, modify application of the rule, or repeal the rule.
- 7        3. In an agency's analysis of the takings implications of a proposed rule, "taking" means  
8        the taking of private real property, as defined in section 47-01-03, by government  
9        action which requires compensation to the owner of that property by the fifth or  
10       fourteen amendment to the Constitution of the United States or section 16 of article I  
11       of the Constitution of North Dakota. "Regulatory taking" means a taking of real  
12       property through the exercise of the police and regulatory powers of the state which  
13       reduces the value of the real property by more than fifty percent. However, the  
14       exercise of a police or regulatory power does not effect a taking if it substantially  
15       advances legitimate state interests, does not deny an owner economically viable use  
16       of the owner's land, or is in accordance with applicable state or federal law.

17       **SECTION 13. AMENDMENT.** Section 28-32-10 of the North Dakota Century Code is  
18       amended and reenacted as follows:

19       **28-32-10. Notice of rulemaking - Hearing date.**

- 20       1. An agency or the ethics commission shall prepare a full notice and an abbreviated  
21       notice of rulemaking.
- 22       a. The agency's full notice of the proposed adoption, amendment, or repeal of a rule  
23       must include a short, specific explanation of the proposed rule and the purpose of  
24       the proposed rule, identify the emergency status and declared effective date of  
25       any emergency rules, include a determination of whether the proposed  
26       rulemaking is expected to have an impact on the regulated community in excess  
27       of fifty thousand dollars, identify at least one location where interested persons  
28       may review the text of the proposed rule, provide the address to which written  
29       comments concerning the proposed rule may be sent, provide the deadline for  
30       submission of written comments, provide a telephone number and post-office or  
31       electronic mail address at which a copy of the rules and regulatory analysis may

- 1 be requested, and, in the case of a substantive rule, provide the time and place  
2 set for each oral hearing. ~~The~~An agency's full notice must include a statement of  
3 the bill number and general subject matter of any legislation, enacted during the  
4 most recent session of the legislative assembly, which is being implemented by  
5 the proposed rule. The ethics commission's full notice must include a statement  
6 of the provision of the Constitution of North Dakota or the bill number and general  
7 subject matter of any legislation being implemented by the proposed rule. The  
8 agency's full notice must be filed with the legislative council, accompanied by a  
9 copy of the proposed rules.
- 10 b. The agency or ethics commission shall request publication of an abbreviated  
11 newspaper publication notice at least once in each official county newspaper  
12 published in this state. The abbreviated newspaper publication of notice must be  
13 in a display-type format with a minimum width of one column of approximately  
14 two inches [5.08 centimeters] and a minimum depth of approximately three  
15 inches [7.62 centimeters] and with a headline describing the general topic of the  
16 proposed rules. The notice must also include the telephone number or address to  
17 use to obtain a copy of the proposed rules, identification of the emergency status  
18 and declared effective date of any emergency rules, the address to use and the  
19 deadline to submit written comments, and the location, date, and time of the  
20 public hearing on the rules.
- 21 2. The agency or ethics commission shall mail or deliver by electronic mail a copy of the  
22 agency's full notice and proposed rule to each member of the legislative assembly  
23 whose name appeared as a sponsor or cosponsor of legislation, enacted during the  
24 most recent session of the legislative assembly, which is being implemented by the  
25 proposed rule and to each person who has made a timely request to the agency or  
26 ethics commission for a copy of the notice and proposed rule. The agency or ethics  
27 commission may mail or otherwise provide a copy of the agency's full notice to any  
28 person who is likely to be an interested person. The agency or ethics commission may  
29 charge persons who are not members of the legislative assembly fees for copies of  
30 the proposed rule as allowed under section 44-04-18.

- 1        3. In addition to the other notice requirements of this subsection, the superintendent of  
2        public instruction shall provide notice of any proposed rulemaking by the  
3        superintendent of public instruction to each association with statewide membership  
4        whose primary focus is elementary and secondary education issues which has  
5        requested to receive notice from the superintendent under this subsection and to the  
6        superintendent of each public school district in this state, or the president of the school  
7        board for school districts that have no superintendent, at least twenty days before the  
8        date of the hearing described in the notice. Notice provided by the superintendent of  
9        public instruction under this section must be by first-class mail. However, upon request  
10       of a group or person entitled to notice under this section, the superintendent of public  
11       instruction shall provide the group or person notice by electronic mail.
- 12       4. The legislative council shall establish standard procedures for the ethics commission  
13       and all agencies to follow in complying with the provisions of this section and a  
14       procedure to allow any person to request and receive mailed copies of all filings made  
15       by agencies and the ethics commission pursuant to this section. The legislative council  
16       may charge an annual fee as established by the administrative rules committee for  
17       providing copies of the filings.
- 18       5. At least twenty days must elapse between the date of the publication of the notice and  
19       the date of the hearing. Within fifteen business days after receipt of a notice under this  
20       section, a copy of the notice must be mailed by the legislative council to any person  
21       who has paid the annual fee established under subsection 4.

22       **SECTION 14. AMENDMENT.** Section 28-32-11 of the North Dakota Century Code is  
23       amended and reenacted as follows:

24       **28-32-11. Conduct of hearings - Notice of administrative rules committee**  
25       **consideration - Consideration and written record of comments.**

26       The agency or ethics commission shall adopt a procedure whereby all interested persons  
27       are afforded reasonable opportunity to submit data, views, or arguments, orally or in writing,  
28       concerning the proposed rule, including data respecting the impact of the proposed rule. The  
29       agency or ethics commission shall adopt a procedure to allow interested parties to request and  
30       receive notice from the agency or ethics commission of the date and place the rule will be  
31       reviewed by the administrative rules committee. In case of substantive rules, the agency or

1 ethics commission shall conduct an oral hearing. The agency or ethics commission shall  
2 consider fully all written and oral submissions respecting a proposed rule prior to the adoption,  
3 amendment, or repeal of any rule not of an emergency nature. The agency or ethics  
4 commission shall make a written record of its consideration of all written and oral submissions  
5 contained in the rulemaking record respecting a proposed rule.

6 **SECTION 15. AMENDMENT.** Section 28-32-12 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **28-32-12. Comment period.**

9 The agency or ethics commission shall allow, after the conclusion of any rulemaking  
10 hearing, a comment period of at least ten days during which data, views, or arguments  
11 concerning the proposed rulemaking will be received by the agency or ethics commission and  
12 made a part of the rulemaking record to be considered by the agency or ethics commission.

13 ~~**SECTION 16. AMENDMENT.** Section 28-32-14 of the North Dakota Century Code is~~  
14 ~~amended and reenacted as follows:~~

15 ~~**28-32-14. Attorney general review of rules.**~~

16 ~~Every proposed rule proposed by any administrative agency must be submitted to the~~  
17 ~~attorney general for an opinion as to its legality before final adoption, and the attorney general~~  
18 ~~promptly shall furnish each such opinion. The attorney general may not approve any rule as to~~  
19 ~~legality, and shall advise the agency or ethics commission of any necessary rewording or~~  
20 ~~revision of the rule, when the:~~

21 ~~1. The rule exceeds the statutory authority of the agency, or the statutory or constitutional~~  
22 ~~authority of the ethics commission;~~

23 ~~2. The rule is written in a manner that is not concise or easily understandable; or when~~  
24 ~~the~~

25 ~~3. The procedural requirements for adoption of the rule in this chapter are not~~  
26 ~~substantially met. The attorney general shall advise an agency of any revision or~~  
27 ~~rewording of a rule necessary to correct objections as to legality.~~

28 **SECTION 16. AMENDMENT.** Section 28-32-15 of the North Dakota Century Code is  
29 amended and reenacted as follows:



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**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 ethics 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 ethics 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 ethics 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 17. 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 ethics commission may petition ~~sue~~ the agency or ethics commission for a reconsideration of ~~any sue~~ the rule or for an amendment or repeal ~~thereof. Sue~~ of the rule. The.

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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 ethics  
commission may grant the petitioner a public hearing upon ~~such~~on the terms and conditions as  
the agency ~~may prescribe~~or ethics commission prescribes.

**~~SECTION 19. 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 ethics 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 ethics 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  
ethics 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 ethics 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 ethics 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 ethics commission. If  
the agency or ethics 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 ethics commission for court costs. These court costs



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1 must include a reasonable attorney's fee and must be payable from the appropriation  
2 of the agency or ethics commission which adopted the rule in question.

3 ~~SECTION 20. AMENDMENT.~~ Section 28-32-18 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 ~~28-32-18. Administrative rules committee may void rule~~ **Grounds** ~~Amendment by~~  
6 **agreement of agency and committee.**

7 1. The legislative management's administrative rules committee may find that all or any  
8 portion of a rule is void if that rule is initially considered by the committee not later than  
9 the fifteenth day of the month before the date of the administrative code supplement in  
10 which the rule change is scheduled to appear. The administrative rules committee may  
11 find a rule or portion of a rule void if the committee makes the specific finding that, with  
12 regard to that rule or portion of a rule, there is:

13 a. An absence of statutory authority under statute or the constitution.

14 b. An emergency relating to public health, safety, or welfare.

15 c. ~~A~~For rules proposed by an agency, a failure to comply with express legislative  
16 intent or to substantially meet the procedural requirements of this chapter for  
17 adoption of the rule.

18 d. For rules proposed by the ethics commission, a failure to substantially meet the  
19 procedural requirements for this chapter for adoption of the rule.

20 e. A conflict with state law.

21 e.f. Arbitrariness and capriciousness.

22 f.g. A failure to make a written record of its consideration of written and oral  
23 submissions respecting the rule under section 28-32-11.

24 2. The administrative rules committee may find a rule void at the meeting at which the  
25 rule is initially considered by the committee or may hold consideration of that rule for  
26 one subsequent meeting. If no representative of the agency or ethics commission  
27 appears before the administrative rules committee when rules are scheduled for  
28 committee consideration, those rules are held over for consideration at the next  
29 subsequent committee meeting. Rules are not considered initially considered by the  
30 committee under this subsection until a representative of the agency or ethics  
31 commission appears before the administrative rules committee when the rules are

1 scheduled for committee consideration. If no representative of the agency or ethics  
2 commission appears before the administrative rules committee meeting to which rules  
3 are held over for consideration, the rules are void if the rules were adopted as  
4 emergency rules and for rules not adopted as emergency rules the administrative  
5 rules committee may void the rules, allow the rules to become effective, or hold over  
6 consideration of the rules to the next subsequent committee meeting. Within three  
7 business days after the administrative rules committee finds that a rule is void, the  
8 legislative council shall provide written notice of that finding and the committee's  
9 specific finding under subdivisions a through f of subsection 1 to the adopting agency  
10 or ethics commission and to the chairman of the legislative management. Within  
11 fourteen days after receipt of the notice, the adopting agency or ethics commission  
12 may file a petition with the chairman of the legislative management for review by the  
13 legislative management of the decision of the administrative rules committee. If the  
14 adopting agency or ethics commission does not file a petition for review, the rule  
15 becomes void on the fifteenth day after the notice from the legislative council to the  
16 adopting agency or ethics commission. If within sixty days after receipt of the petition  
17 from the adopting agency or ethics commission the legislative management has not  
18 disapproved by motion the finding of the administrative rules committee, the rule is  
19 void.

20 — 3. An agency or the ethics commission may amend or repeal a rule or create a  
21 related rule if, after consideration of rules by the administrative rules committee, the  
22 agency or ethics commission and the committee agree that the rule amendment,  
23 repeal, or creation is necessary to address any of the considerations under  
24 subsection 1. A rule amended, repealed, or created under this subsection is not  
25 subject to the other requirements of this chapter relating to adoption of administrative  
26 rules and may be published by the legislative council as amended, repealed, or  
27 created. If requested by the agency, ethics commission, or any interested party, a rule  
28 amended, repealed, or created under this subsection must be reconsidered by the  
29 administrative rules committee at a subsequent meeting at which public comment on  
30 the agreed rule change must be allowed.

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**SECTION 21. 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 ethics 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 ethics 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 ethics commission initiates the request to the administrative rules committee for consideration of the amendment or repeal;
  - b. The agency or ethics 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 ethics 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 18. 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 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.

1       **SECTION 19. AMENDMENT.** Subsection 4 of section 28-32-19 of the North Dakota  
2 Century Code is amended and reenacted as follows:

- 3       4. The legislative council, with the consent of the adopting agency or ethics commission,  
4 may omit from the code or code supplement any rule the publication of which would be  
5 unduly cumbersome, expensive, or otherwise inexpedient, if the rule in printed or  
6 duplicated form is made available on application to the agency or ethics commission,  
7 and if the code or code supplement contains a notice stating the general subject  
8 matter of the omitted rule and ~~stating~~ how a copy may be obtained.

9       **SECTION 20.** Chapter 54-66 of the North Dakota Century Code is created and enacted as  
10 follows:

11       **54-66-01. Definitions.**

12       For purposes of this chapter and article XIV of the Constitution of North Dakota, unless the  
13 context otherwise requires:

- 14       1. "Accused individual" means an individual who is alleged to have violated article XIV of  
15 the Constitution of North Dakota, this chapter, or another law or rule regarding  
16 government ethics.
- 17       2. "Complainant" means an individual who, in writing or verbally, submits a complaint to  
18 the ethics commission.
- 19       3. "Complaint" means a verbal or written allegation to the ethics commission that article  
20 XIV of the Constitution of North Dakota, this chapter, or another law or rule regarding  
21 government ethics has been violated.
- 22       4. "Ethics commission" means the North Dakota state ethics commission established  
23 under article XIV of the Constitution of North Dakota.
- 24       5. "Gift" means any item, service, or thing of value not given in exchange for fair market  
25 consideration including travel and recreation. "Gift" does not mean:
- 26       a. Purely informational material;
- 27       b. A campaign contribution;
- 28       c. To advance opportunities for state residents to meet with public officials in  
29 educational and social settings in the state, any item, service, or thing of value  
30 given under conditions that do not raise ethical concerns as set forth in rules  
31 adopted by the ethics commission;



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1 d. Meals and other items provided in social settings to which twenty-five or more  
2 public officials were invited; and

3 e. Meals and other items provided in social settings to which the general public is  
4 invited with at least seventy-two hours of advance notice.

5 6. "Lobbyist":

6 a. Means a person who, directly or indirectly:

7 (1) Attempts to secure the passage, amendment, or defeat of any legislation by  
8 the legislative assembly;

9 (2) Attempts to secure the approval or veto of any legislation by the governor;

10 (3) Attempts to influence decisions regarding legislative matters made by the  
11 legislative management or a legislative committee; or

12 (4) Attempts to influence decisions regarding official matters made by a public  
13 official in the executive branch of state government.

14 b. Does not mean:

15 (1) A private citizen appearing on the citizen's own behalf; or

16 (2) A public official or an employee, officer, board member, volunteer, or agent  
17 of the state or its political subdivisions acting in the individual's official  
18 capacity.

19 7. "Public official" means an elected or appointed official of the state's executive or  
20 legislative branch, members of the ethics commission, members of the governor's  
21 cabinet, and employees of the legislative branch.

22 8. "Receives the complaint" means one or more members of the ethics commission learn  
23 of the complaint.

24 9. "Ultimate and true source" means the person that knowingly contributed over two  
25 hundred dollars, adjusted for inflation, to lobby or influence state government action.

26 **54-66-02. Ethics commission Members - Appointments - Compensation.**

27 1. The majority leader of the senate, the minority leader of the senate, and the governor  
28 shall appoint the five members of the ethics commission by consensus agreement for  
29 four-year terms, except all vacancies must be filled for the unexpired term. The terms  
30 of the initial members must begin on or before July 1, 2019, and be staggered to  
31 ensure no more than two members' terms expire in one year. The terms of the initial

1 members may be less than four years to accommodate the required staggering of  
2 terms.

3 2. Ethics commission members are entitled to:

4 a. Compensation per day for each day necessarily spent conducting ethics  
5 commission business in the amount provided for members of the legislative  
6 management under section 54-35-10; and

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

9 **54-66-03. Ethics commission staff.**

10 The ethics commission shall appoint an executive director and other staff necessary to  
11 assist the ethics commission in carrying out its duties.

12 **54-66-04. Ethics commission office.**

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

21 **54-66-05. Making a complaint - Informing the accused individual.**

22 A complaint may be made to the ethics commission verbally or in writing. The ethics  
23 commission shall inform the accused individual the ethics commission received a complaint  
24 against the accused individual as soon as reasonably possible. If the complaint was made in  
25 writing, the ethics commission shall provide a copy of the complaint to the accused individual no  
26 later than twenty calendar days after the ethics commission receives the complaint. If the  
27 complaint was made verbally, the ethics commission shall inform the accused individual of the  
28 allegations and other information provided in the complaint no later than twenty calendar days  
29 after the ethics commission receives the complaint.

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**54-66-06. Informal resolution.**

The ethics commission may attempt to negotiate or mediate an informal resolution between the accused individual and the complainant after receiving a complaint.

**54-66-07. Investigations and referrals.**

1. 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.

2. The ethics 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 ethics commission members reasonably believes a crime was committed or the safety of the complainant is at risk.

**54-66-08. Investigation findings - Penalties.**

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.

**54-66-09. Appeals.**

An accused individual or complainant may appeal a finding of the ethics commission to the district court of ~~Burleigh County~~ the county where the accused individual resides.

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

1. The following information is a confidential record as defined in section 44-04-17.1 until the ethics commission issues its findings regarding the relevant complaint, except the



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1 information may be disclosed as required by law or as necessary to conduct an  
2 investigation arising from the 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. Information relating to or created as part of an informal resolution of a complaint is  
8 confidential except the information may be disclosed by the complainant and the  
9 accused individual.

10 3. A public official who knowingly violates this section is guilty of a class C felony.

11 **54-66-11. Restriction on lobbying by public officials - Penalty.**

12 A knowing violation of subsection 2 of section 2 of article XIV of the Constitution of North  
13 Dakota is a class A misdemeanor. The ethics commission shall impose a fine of up to ~~ten~~one  
14 thousand dollars upon any person that knowingly violates the subsection.

15 **54-66-12. Lobbyist delivery of campaign contributions prohibited - Penalty.**

16 A knowing violation of subsection 3 of section 2 of article XIV of the Constitution of North  
17 Dakota is a class A misdemeanor. The ethics commission shall impose a fine of up to ~~ten~~  
18 ~~thousand~~five hundred dollars upon any person that knowingly violates the subsection. The  
19 ethics commission may impose a fine of up to ~~fifty~~one thousand dollars for each violation of the  
20 ~~subsection~~ upon any person that violates for a second or subsequent knowing violation of the  
21 subsection more than once within a twelve-month period.

22 **54-66-13. Attorney general to provide legal services.**

23 The attorney general shall serve as legal counsel for the ethics commission, unless the  
24 ethics commission objects to the representation by the attorney general in a specific matter.

25 When a conflict of interest prevents the attorney general from providing legal services to the  
26 ethics commission, the attorney general may appoint a special assistant attorney general to  
27 serve as legal counsel for the commission.

28 ~~SECTION 22. LEGISLATIVE MANAGEMENT STUDY. During the 2019-2020 interim, the~~  
29 ~~legislative management shall consider studying subsection 2 of section 1 of article XIV, and~~  
30 ~~subsections 1 and 5 of section 2 of article XIV of the Constitution of North Dakota, and the~~  
31 ~~responsibilities of the legislative assembly under those provisions. The legislative management~~

shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-seventh legislative assembly.

**54-66-14. Disclosure of ultimate and true source of funds.**

A person who expends an amount greater than two hundred dollars, adjusted for inflation, to lobby or influence state government, other than to influence a statewide election or election for the legislative assembly, shall report the ultimate and true source of funds for the expenditure to the secretary of state.

**54-66-15. Lobbyist gifts - Penalty.**

A lobbyist may not give, offer, solicit, initiate, or facilitate a gift to a public official knowingly, and a public official may not accept a gift from a lobbyist knowingly. 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 an infraction.

**54-66-16. Lobbyist requirements.**

A person who meets the definition of a lobbyist under this chapter and article XIV of the Constitution of North Dakota 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.

**SECTION 21. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the 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:

	Appropriation
<del>Salaries and expenses</del>	<del>\$754,736</del>
<u>Salaries and expenses</u>	<u>\$214,800</u>
Operating expenses	207,200
<del>Total general fund</del>	<del>\$961,936</del>
<u>Total general fund</u>	<u>\$422,000</u>
Full-time equivalent positions	3.00

19.0422.02005  
Title.

Prepared by the Legislative Council staff for  
Senator Mathern

February 11, 2019

PROPOSED AMENDMENTS TO SENATE BILL NO. 2148

Page 1, line 3, remove "to amend and"

Page 1, remove lines 4 through 7

Page 1, line 8, replace "rulemaking procedures and requirements for the North Dakota ethics commission" with "to provide a statement of legislative intent"

Page 1, line 9, remove "and"

Page 1, line 9, after "appropriation" insert "; and to declare an emergency"

Page 1, remove lines 11 through 24

Page 2, remove lines 1 through 30

Page 3, remove lines 1 through 30

Page 4, remove lines 1 through 30

Page 5, remove lines 1 through 29

Page 6, remove lines 1 through 31

Page 7, remove lines 1 through 31

Page 8, remove lines 1 through 31

Page 9, remove lines 1 through 31

Page 10, remove lines 1 through 30

Page 11, remove lines 1 through 31

Page 12, remove lines 1 through 31

Page 13, remove lines 1 through 31

Page 14, remove lines 1 through 30

Page 15, remove lines 1 through 29

Page 16, remove lines 1 through 31

Page 17, remove lines 1 through 31

Page 18, remove lines 1 through 31

Page 19, remove lines 1 through 31

Page 20, removes lines 1 through 11

Page 20, line 15, after "1." insert "For purposes of this chapter, unless the context otherwise requires:

a."

Page 20, line 18, replace "2." with "b."

Page 20, line 20, replace "3." with "c."

Page 20, line 23, replace "4." with "d."

Page 20, remove lines 25 through 31

Page 21, remove lines 1 through 12

Page 21, line 13, replace "8." with "e."

Page 21, after line 14, insert:

"2. For purposes of article XIV of the Constitution of North Dakota, "lobbyist":

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.

b. Does not mean:

- (1) A private citizen appearing on the citizen's own behalf; or
- (2) A public official or an employee, officer, board member, volunteer, or agent of the state or its political subdivisions acting in the individual's official capacity."

Page 23, line 17, replace "until" with "unless"

Page 23, line 18, replace "issues its findings regarding the relevant complaint" with "has determined the accused individual violated article XIV of the Constitution of North Dakota, this chapter, or another law or rule regarding government ethics"

Page 23, line 25, after "2." insert "If a complaint is informally resolved under section 54-66-06, the following information is a confidential record as defined in section 44-04-17.1, except the information may be disclosed as required by law:

- 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."

Page 24, after line 11, insert:

**"54-66-14. Personal use of contributions prohibited - Penalty.**

The ethics commission shall impose a fine of up to ten thousand dollars upon any person that violates section 16.1-08.1-04.1. The ethics commission may impose a fine of up to fifty thousand dollars per violation upon any person who violates section 16.1-08.1-04.1 more than once in a twelve-month period. Fines imposed under this section are in addition to any fines imposed under section 16.1-08.1-07 for a violation of section 16.1-08.1-04.1.

**SECTION 2. LEGISLATIVE INTENT STATEMENT - CONSTITUTIONAL EFFECTIVE DATES - PENALTIES.**

1. Subsection 2 of section 1 of article XIV of the Constitution of North Dakota requires the legislative assembly to implement and enforce the subsection by enacting laws by January 5, 2022, which will require disclosure of funds spent for identified purposes and vest an entity with authority to administer the disclosure requirements. The subsection does not take effect or impose disclosure requirements or other obligations until the legislation is enacted. Penalties may not be imposed under subsection 2 of section 1 of article XIV until the legislative assembly enacts laws to implement and enforce the subsection. However, the requirements and penalties under chapters 16.1-08.1 and 54-05.1 remain in effect.
2. Subsection 1 of section 2 of article XIV of the Constitution of North Dakota declares the prohibition on certain gifts under the subsection is not effective until January 5, 2021. The subsection requires the ethics committee to adopt rules providing additional guidance regarding the prohibition and requires the legislative assembly to provide penalties for violations of the prohibition. Penalties may not be imposed under subsection 1 of section 2 of article XIV until the legislative assembly enacts laws establishing the penalties for violations of the subsection.
3. Subsection 5 of section 2 of article XIV of the Constitution of North Dakota declares the requirement for certain executive branch officials, and employees to avoid the appearance of bias and be disqualified from quasi-judicial proceedings is not effective until January 5, 2022. The subsection requires the ethics commission and legislative assembly to enforce the subsection by adopting rules and enacting laws. Penalties may not be imposed under subsection 5 of section 2 of article XIV until the legislative assembly enacts laws establishing the penalties for violations of the subsection."

Page 24, line 21, replace "biennium" with "period"

Page 24, line 21, replace "July 1, 2019," with "with the effective date of this Act"

Page 24, after line 27, insert:

**"SECTION 5. EMERGENCY.** Section 2 through 4 of this Act and North Dakota Century Code sections 54-66-11, 54-66-12, and 54-66-14, as created by section 1 of this Act, are declared to be emergency measures."

Renumber accordingly



PROPOSED AMENDMENTS TO SENATE BILL NO. 2148

Page 1, line 4, after "sections" insert "16.1-08.1-03.7,"

Page 1, line 7, after "to" insert "reports of contributions and"

Page 1, after line 10, insert:

**"SECTION 1. 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, 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 14, line 1, remove "or ethics commission"

Page 14, line 2, remove "or ethics commission"

Renumber accordingly

February 12, 2019

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PROPOSED AMENDMENTS TO SENATE BILL NO. 2148

Page 1, line 1, after "enact" insert "a new subsection to section 16.1-08.1-01, a new section to chapter 16.1-08.1, a new section to chapter 28-32, and"

Page 1, line 2, after "to" insert "disclosures of expenditures,"

Page 1, line 4, after "sections" insert "16.1-08.1-04.1,"

Page 1, line 6, remove "28-32-14, 28-32-15,"

Page 1, line 6, remove "and 28-32-18.1,"

Page 1, line 7, remove "subsections 2 and 4 of section"

Page 1, line 7, after "to" insert "the prohibition on personal use of campaign contributions and the"

Page 1, line 8, remove "to provide for"

Page 1, line 9, remove "a legislative management study;"

Page 1, after line 10, insert:

**"SECTION 1.** A new subsection to section 16.1-08.1-01 of the North Dakota Century Code is created and enacted as follows:

"Ultimate and true source" means the person who knowingly contributed over two hundred dollars, adjusted for inflation, to influence a statewide election or an election for the legislative assembly.

**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. The secretary of state shall impose a fine of five thousand dollars or two times the value of the contribution used in violation of this section, whichever is higher, upon any person who violates this section.

**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.**

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."

Page 6, line 20, after "chapter" insert ", as specified,"

Page 6, line 24, remove "ethics commission or an"

Page 6, line 24, after the second comma insert "or the ethics commission"

Page 7, line 30, overstrike the first comma and insert immediately thereafter "or"

Page 7, line 30, overstrike the second comma and insert immediately thereafter "; or, for an administrative agency rule, until"

Page 7, line 31, overstrike the comma

Page 8, line 2, remove ", or the Constitution of North Dakota is amended to eliminate the authority"

Page 10, line 12, remove "or the ethics commission"

Page 10, line 13, remove "or ethics commission"

Page 10, line 14, after the period insert "The ethics commission shall develop a fiscal note for each ethics commission rule prior to adoption unless the ethics commission finds the rule has no fiscal effect."

Page 12, line 29, after "rule" insert ", if applicable,"

Page 14, remove lines 16 through 30

Page 15, remove lines 1 through 27

Page 16, line 13, after "rule" insert "other than an ethics commission rule"

Page 16, line 14, remove "or ethics commission"

Page 16, line 19, remove "or ethics commission"

Page 16, line 23, remove "or"

Page 16, line 24, remove "ethics commission"

Page 16, line 27, remove "or ethics commission"

Page 16, line 30, remove "or ethics commission"

Page 17, line 1, remove "or ethics commission"

Page 17, line 2, remove "or ethics commission"

Page 17, line 4, remove "or ethics commission"

Page 17, line 6, remove "or ethics commission"

Page 17, line 10, remove the overstrike over "~~of agency and committee~~"

Page 17, line 12, after the first "rule" insert "other than an ethics commission rule"

Page 17, line 17, remove the overstrike over "~~statutory~~"

Page 17, line 17, remove "under statute or the constitution"

Page 17, line 19, remove the overstrike over "A"

Page 17, line 19, remove "For rules proposed by an agency, a"

Page 17, line 22, remove "For rules proposed by the ethics commission, a failure to substantially meet the"

Page 17, remove line 23

Page 17, line 24, remove "e."

Page 17, line 25, remove the overstrike over "e."

Page 17, line 25, remove "f."

Page 17, line 26, remove the overstrike over "f."

Page 17, line 26, remove "g."

Page 17, line 28, overstrike "a" and insert immediately thereafter "an administrative agency"

Page 17, line 30, remove "or ethics commission"

Page 18, line 3, remove "or ethics"

Page 18, line 4, remove "commission"

Page 18, line 5, remove "or ethics"

Page 18, line 6, remove "commission"

Page 18, line 14, remove "or ethics commission"

Page 18, line 15, remove "or ethics commission"

Page 18, line 18, remove "or ethics commission"

Page 18, line 20, remove "or ethics commission"

Page 18, line 21, remove "or ethics commission"

Page 18, line 24, remove "or the ethics commission"

Page 18, line 25, remove "or"

Page 18, line 26, remove "ethics commission"

Page 18, line 31, remove ", ethics commission"

Page 19, remove lines 4 through 31

Page 20, replace lines 1 through 11 with:

**"SECTION 19.** A new section to chapter 28-32 of the North Dakota Century Code is created and enacted as follows:

**Final report to administrative rules committee.**

For each rule the ethics commission adopts, the ethics commission shall provide to the administrative rules committee a copy of the rule and a final report summarizing the rule and the procedures followed to adopt the rule.

**SECTION 20. AMENDMENT.** Section 28-32-19 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-19. Publication of administrative code and code supplement.**

1. The legislative council shall compile, index, and publish all rules filed by administrative agencies pursuant to this chapter in a publication which must be known as the North Dakota Administrative Code, in this chapter referred to as the code. The code also must contain all objections filed with the legislative council by the administrative rules committee pursuant to section 28-32-17. The legislative council shall revise all or part of the code as often as the legislative council determines necessary.
2. The legislative council may prescribe a 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 legislative council requirements. In arranging rules for publication, the legislative council may make ~~such~~ corrections in spelling, grammatical construction, format, and punctuation of the rules as determined proper. The legislative council shall keep and maintain a permanent code of all rules filed, including superseded and repealed rules, ~~which and the administrative agency rules~~ must be open to public inspection during office hours.
3. The legislative council shall compile and publish the North Dakota Administrative Code supplement according to the schedule of effective dates of rules in section 28-32-15.
  - a. The code supplement must contain all rules that have been filed with the legislative council or which have become effective since the compilation and publication of the preceding issue of the code supplement.
  - b. The code supplement must contain all objections filed with the legislative council by the administrative rules committee pursuant to section 28-32-17.
4. The legislative council, with the consent of the adopting administrative agency, 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, 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.
5. The code must be arranged, indexed, and printed or duplicated in a manner to permit separate publication of portions ~~thereof~~ of the code relating to individual agencies. An agency may print as many copies of such separate portions of the code as it may require. If the legislative

council does not publish the code supplement due to technological problems or lack of funds, the agency whose rules would have been published in the code supplement shall provide a copy of the rules to any person upon request. The agency may charge a fee for a copy of the rules as allowed under section 44-04-18.

6. The ethics commission shall consult with the legislative council regarding the publication of the rules of the ethics commission in conjunction with the North Dakota Century Code."

Page 20, after line 14, insert:

"For purposes of this chapter, unless the context otherwise requires:"

Page 20, line 26, after the underscored period insert: "Gift" does not mean:

- a. Purely informational material;
- b. A campaign contribution;
- c. Any item, service, or thing of value given under conditions that do not raise ethical concerns in order to advance opportunities for state residents to meet with public officials in educational and social settings in the state, as defined in rules adopted by the ethics commission."

Page 21, after line 14, insert:

9. "Ultimate and true source" means the person that knowingly contributed over two hundred dollars, adjusted for inflation, to lobby or influence state government action."

Page 22, remove lines 10 through 31

Page 23, replace lines 1 through 25 with:

**"54-66-05. Ethics commission rules.**

The ethics commission shall adopt rules:

1. To identify any item, service, or thing of value given under conditions that do not raise ethical concerns in order to advance opportunities for North Dakota residents to meet with public officials in educational and social settings inside the state, for purposes of subsection 1 of section 2 of article XIV of the Constitution of North Dakota;
2. To enforce the requirements for a director, officer, commissioner, head, or other executive of an agency to avoid the appearance of bias and self-disqualify in quasi-judicial proceedings in which monetary or in-kind support related to the individual's election for any office or in which the individual's financial interest, not shared by the general public, creates an appearance of bias to a reasonable person, for purposes of subsection 5 of section 2 of article XIV of the Constitution of North Dakota;
3. To define "financial interest not shared by the general public" under subsection 2;

4. Regarding the confidential whistleblower hotline maintained by the ethics commission;
5. Related to transparency, corruption, elections, and lobbying, applicable to any lobbyist, public official, or candidate for public office; and
6. Governing complaints to the ethics commission, informal resolutions of the complaints, investigations of the complaints, referrals of the complaints to other governmental agencies, investigative findings, impositions of penalties established by the legislative assembly, and appeals.

**54-66-06. Ethics commission duty and authority.**

1. The ethics commission shall maintain a confidential whistleblower hotline through which any person acting in good faith may submit relevant information.
2. The ethics commission may investigate any alleged violation of an ethics commission rule, article XIV of the Constitution of North Dakota, or related statutes.
3. If the ethics commission finds a violation of an ethics commission rule, article XIV of the Constitution of North Dakota, or a related statute occurred, the ethics commission may impose a penalty authorized by law for the violation."

Page 23, line 26, replace "**54-66-11**" with "**54-66-07**"

Page 23, line 27, after "A" insert "knowing"

Page 23, line 28, replace "ten" with "one"

Page 23, line 29, after "that" insert "knowingly"

Page 24, line 1, replace "**54-66-12**" with "**54-66-08**"

Page 24, line 2, after "A" insert "knowing"

Page 24, line 3, replace "ten thousand" with "five hundred"

Page 24, line 4, after "that" insert "knowingly"

Page 24, line 5, replace "fifty" with "one"

Page 24, line 5, remove "for each violation of the subsection"

Page 24, line 5, replace "that violates" with "for a second or subsequent knowing violation of"

Page 24, line 6, remove "more than once within a twelve-month period"

Page 24, line 7, replace "**54-66-13**" with "**54-66-09**"

Page 24, line 8, after "commission" insert ", unless the ethics commission objects to the representation by the attorney general"

Page 24, replace lines 12 through 17 with:

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**"54-66-10. Disclosure of ultimate and true source of funds.**

A person who expends an amount greater than two hundred dollars, adjusted for inflation, to lobby or influence state government, other than to influence a statewide election or election for the legislative assembly, shall report the ultimate and true source of funds for the expenditure to the secretary of state.

**54-66-11. Lobbyist gifts - Penalty.**

A lobbyist may not give, offer, solicit, initiate, or facilitate a gift to a public official knowingly, and a public official may not accept a gift from a lobbyist knowingly. 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 an infraction."

Page 24, replace lines 24 through 26 with:

Salaries and wages	\$450,000
Operating expenses	350,000
Total general fund	\$800,000"

Renumber accordingly



19.0422.04001  
Title.

Prepared by the Legislative Council staff for  
Senator Mathern

February 15, 2019

# 1 5B 2148  
2-18-2019  
PJ1

## PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2148

Page 1, line 5, after "sections" insert "16.1-08.1-03.7,"

Page 1, line 9, after "contributions" insert ", reporting requirements for certain political committees,"

Page 1, after line 16, insert:

**"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~~ one thousand 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 or 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, 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 14, line 29, remove "or ethics commission"

Page 14, line 30, remove "or ethics commission"

Page 22, replace lines 11 through 13 with:

"Ethics commission  
Total general fund

\$667,155  
\$667,155"



Renumber accordingly

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2-18-19 Pg 2

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#1

SB 2148  
2-18-2019

pg 3

**ETHICS COMMISSION BUDGET**

2 year budget

**STAFF\*\*\***

Salary (based on ND OMB Salary rates)

Attorney w/ 4+ yrs experience	\$ 171,780.00
Admin Asst. III w/3+ yrs experience	\$ 86,160.00
Criminal Investigator I	\$ 103,960.00

Benefits @ 35%

\$ 123,200.00\$ 485,100.00

\$ 485,100.00

**Expenses**

Start up costs (computers, furniture, supplies, etc)	\$ 30,000.00
Operating @ 40,000 each position*	\$ 120,000.00
Hotline @ \$ 28.00 (OMB fiscal note.)	\$ 672.00
Commissioner travel and per diem - \$10,000 ea	\$ 50,000.00
Office space @ \$1.40 per sq ft for 3 10x12 offices**	<u>\$ 12,096.00</u>
	\$ 212,768.00

\$ 212,768.00

Total

\$ 697,868.00

\* Operating includes average for 3 positions for travel, per diem, professional development, internet, utilities, Assume operating will be more for some positions and less for others but will average out to be about \$40,000 each. This is the number that we used at NDSU for ea. new position.

\*\* These would be small offices with no allowance given for storage or reception area. Should probably be m

\*\*\*Staff salaries are based on ND OMB salaries for similar positions and responsibilities. (see attached)

[https://www.nd.gov/omb/state-employee/employment-and-compensation/job-class-descriptions?field\\_cate](https://www.nd.gov/omb/state-employee/employment-and-compensation/job-class-descriptions?field_cate)

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Appropriations Committee

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2-18-2019  
pg 4

Article XIV — Constitutional Responsibilities of Ethics Commission

1. **Section 3, Subsection 2. Adopt rules regarding: 1) transparency, 2) corruption, 3) elections, and 4) lobbying. Investigate alleged violations of such rules, this Article XIV and related state laws. Maintain a confidential hotline to report violators. See underlined authority from Article XIV:**

"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.

The Legislative Assembly shall provide adequate funds for the proper carrying out of the functions and duties of the ethics commission."

2. **Section 2, Subsection 1. Adopt rules regarding gifts. See underlined authority from Article XIV:**

"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.

"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.

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."

3. **Section 2, Subsection 5. Adopt rules regarding bias. See underlined authority from Article XIV:**

"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.

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."

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pg 5

**Appropriations Committee, February 2019, Tim Mathern**

**Source:** ND OMB [https://www.nd.gov/omb/state-employee/employment-and-compensation/job-class-descriptions?field\\_category\\_tid=All&field\\_code\\_value=&title=investigator&field\\_grade\\_selecton\\_category\\_tid=All](https://www.nd.gov/omb/state-employee/employment-and-compensation/job-class-descriptions?field_category_tid=All&field_code_value=&title=investigator&field_grade_selecton_category_tid=All)

### **Administrative Assistant III**

This work is considered the highest level of administrative office support. Therefore, individuals in positions assigned this classification most often report to senior-level management. Work involves significant responsibility for management and coordination of administrative office support and/or business functions, such as purchasing, printing, and fundamental accounting-related functions. Therefore, work at this level is of a highly complex and sensitive nature, often requiring extensive contact with customers and the general public, and requires a high degree of knowledge, skills, and abilities and/or specialization in specific subject matter. Work activities involve decision-making within parameters of approved policies and procedures.

### **Ethics Commission Director/Attorney III**

Work at this level involves providing legal services that include a broad scope and a variety of cases for an entire agency and/or supervision of other attorneys. Serve as legal advisor to an agency. Direct the work activities of subordinate legal staff to facilitate the attainment of work goals and ensure the consistent application of administrative policies, procedures, standards, and legal requirements. Present information or testimony at public meetings or judicial/legislative hearings to provide and explain legal and policy information. May serve as hearing officer in issues involving legal disputes between the agency and persons or parties who are appealing administrative decisions and/or rulings of the agency.

### **Criminal Investigator I**

Work involves planning, developing, coordinating, and conducting investigations of cases involving public official misconduct/complaints.

**Note:** these are abbreviated descriptions and not the full duties or required qualifications of the positions since these are new.

March 12, 2019

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2148

Page 1, line 5, after "sections" insert "16.1-08.1-03.7,"

Page 1, line 9, after "contributions" insert ", reporting requirements for certain political committees,"

Page 1, after line 16, insert:

**"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 or 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, 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."

Renumber accordingly

SB 2148 Second Engrossment  
House Committee on Ethics

March 12, 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 support of SB 2148.

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 retained early this year 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.

Mar 12, 2019

SB 2148

#2

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 SB 2148 Second Engrossment.

The next document I have prepared for you is a Summary of SB 2148 Second Engrossment. I have chosen to highlight the 10 most significant provisions of Article XIV followed by comments on how SB 2148 addresses those requirements.

Chairman Hogue and the members of the Senate Special Committee on Ethics were razor-focused on properly implementing Article XIV in ways consistent with the Constitution.

In summary, in keeping with the mandate given to the Legislative Assembly by the people, SB 2148 Second Engrossment principally implements the requirements of Article XIV in a manner so as to facilitate, safeguard, or expand the substance of Article XIV; and, hopefully, not in any manner that would hamper, restrict, or impair Article XIV in legal ways that would give rise to constitutional challenges.

I support SB 2148 Second Engrossment as passed by the Senate and ask that the House Special Committee on Ethics vote it out favorable.

Thank you for your time.



Mar 12, 2019

SB 2148

#2

### Summary of SB 2148 Second Engrossment

Article XIV to the ND Constitution was passed by ND voters 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.

What Article XIV provides for is shown below in ***bolded italics*** followed by comments on how SB 2148 addresses those requirements:

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. Goes into effect no later than January 5, 2022.***

SB 2148 requires disclosure of the ultimate and true source of funds by any person who knowingly contributes over \$200 to influence any of the 5 categories.<sup>1</sup> SB 2148 requires the Secretary of State to collect and make this data publicly available in a timely manner.

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.***

SB 2148 provides a civil penalty of up to \$500 for a first offense. Subsequent violations are an infraction.

3. ***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 2 years after leaving state government.***

SB 2148 provides a civil penalty of up to \$1000 and makes it a class A misdemeanor.

4. ***Stops a lobbyist from delivering a campaign contribution made by another individual or entity.***

SB 2148 provides a civil penalty of up to \$500 for a first offense and up to \$1000 for subsequent violations and makes it a class A misdemeanor.

5. ***Stops a statewide candidate, candidate for the legislative assembly, or state public official from using campaign contributions for personal use or enrichment.***

SB 2148 provides a civil penalty of up to \$5000 or 2 times the value of the contribution used in the violation, whichever is greater. Current law already makes it a class A misdemeanor.

6. ***Directs all officers, commissioners, directors, 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 as defined by the new Ethics Commission. Goes into effect on January 5, 2022.***

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<sup>1</sup> A legislative change remains to be made to NDCC §16.1-08.1-03.7 regarding certain political committees that do not currently report contributions. Article XIV requires these political committees to report the ultimate and true source of funds collected or used to make independent expenditures or disbursements.

With 3 years before the effective date, no 66th Legislative Assembly actions are necessary because over the next 2 years, the Ethics Commission is required to adopt definitional rules on bias. Based upon those rules, the 67th Legislative Assembly will be able to provide for appropriate enforcement penalties based upon those definitional terms.

- 7. *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 66<sup>th</sup> Legislative Assembly action is required. This ban on foreign contributions and expenditures was already prohibited by statute and is now also part of the ND Constitution.

- 8. *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.***

SB 2148 creates a new Chapter 54-66 to the ND Century Code for laws appropriate to the Ethics Commission. The Chapter codifies commission members appointments and compensation, provides for staffing and office space, permits the attorney general to provide legal services, and provides for an appropriation of \$517,155.

- 9. *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.***

SB 2148 requires the Ethics Commission to use specific provisions of the Administrative Agency Practices Act to adopt its ethics rules. SB 2148 does not include those provisions of the AAPC that would be unconstitutional to apply to the Ethics Commission.

- 10. *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.***

SB 2148 provides in a new Chapter 54-66, the due process and confidentiality protections for individuals accused of wrongdoing. Applicable definitions are provided. Reasonable procedures are put in place for making complaints, investigations, informal resolutions, referrals to law enforcement, provisions for investigation findings, penalties and appeals.

Section 1 of Article XIV has a unique provision that gives any resident taxpayer the right to bring suit against the legislature, 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. SB 2148 is a good first step in implementing Section 1 of Article XIV. Further refinements, if necessary, can be enacted in the next session.

In summary, in keeping with the mandate given to the Legislative Assembly by the people, SB 2148 implements the requirements of Article XIV in a manner so as to facilitate, safeguard, or expand the substance of Article XIV; and, hopefully, not in a way to hamper, restrict, or impair Article XIV in legal ways that would give rise to constitutional challenges.

## Legislative Assembly Required Implementation of Article XIV to the North Dakota Constitution

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 [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.*

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3/12/19

>**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.

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.)
<b>Section 1. Transparency</b>			
<b>Subsection 1</b>	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.  <b>No Legislative Assembly action ever required.</b>
<b>Subsection 2</b>	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.  <b>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.</b>



#3 SB2148  
6/12/19

## Section 2. Lobbyists and Conflicts of Interest.

<b>Subsection 1</b>	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><b>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.</b></p>
<b>Subsection 2</b>	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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3/12/19

		<i>Subsection shall be set by the Legislative Assembly."</i>	<b>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.</b>
<b>Subsection 3</b>	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><b>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.</b></p>
<b>Subsection 4</b>	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><b>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).</b></p>
<b>Subsection 5</b>	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 <u>as defined by the Ethics Commission</u>. This subsection does not take effect until January 5, 2022.</p> <p><b>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.</b></p>



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<b>Subsection 6</b>	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>	This subsection makes constitutional the 2017 Legislative Assembly's ban on foreign contributions and expenditures.  <b>No Legislative Assembly action ever required.</b>
<b>Section 3. North Dakota Ethics Commission</b>			
<b>Subsection 1</b>	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>	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.  <b>No Legislative Assembly action ever required.</b>
<b>Subsection 2</b>	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>	This subsection defines the authority and duties of the new Ethics Commission, and requires adequate funding.  <b>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.</b>
<b>Subsection 3</b>	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>	Provides for appointment and qualifications of members of the Ethics Commission.  <b>No Legislative Assembly action ever required.</b>
<b>Section 4. General Provisions.</b>			
<b>Subsection 1</b>	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 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.  <b>No Legislative Assembly action ever required.</b>

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<b>Subsection 2</b>	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".  <b>No Legislative Assembly action ever required.</b>
<b>Subsection 3</b>	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.  <b>No Legislative Assembly action ever required.</b>

#1  
SB 2148  
4/10/19

## Suggested Amendment to 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 10, 2019

April 9, 2019

#2  
4/10/19

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2148

Page 1, line 10, after the first semicolon insert "to provide for a legislative management study;"

Page 22, after line 4, insert:

**"SECTION 21. 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 two members of the ethics commission 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."

Renumber accordingly

#3  
SB 2148  
4/10/19

**From:** Tracey Wilkie <tracey\_wilkie@yahoo.com>  
**Sent:** Wednesday, April 10, 2019 6:16 PM  
**To:** NDLA, H AGR - Kuehn, ReMae  
**Subject:** SB 2148

**CAUTION:** This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

Boozoo,

SB 2148 is effective in its current form.

The voters have made it clear they want transparency. I was not in North Dakota for the election, I'm an enrolled member of the Turtle Mountain Reservation and spent half of my 52 years here. This is my home and I'm thankful to witness this accountability.

If changes are made to SB 2148 they should be to increase the budget of the ethics committee. Let's strengthen the confidence of all North Dakotains.

Chi Miigwech,

Tracey L Wilkie Waabishki Giiwedin Miquay White North Wind Woman

Sent from Yahoo Mail on Android

#1  
4/23/19

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2148

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study regarding article XIV of the Constitution of North Dakota and related issues.

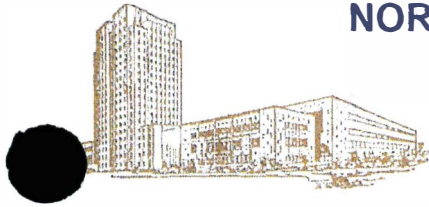
**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - ETHICS COMMISSION AND LEGISLATIVE ASSEMBLY RESPONSIBILITIES.** During the 2019-20 interim, the legislative management shall study the implementation and requirements of article XIV of the Constitution of North Dakota concerning the transparency of funding sources, lobbyists, conflicts of interest, and related matters, the responsibilities of the legislative assembly and the ethics commission, and potential issues under the Constitution of the United States and the Constitution of North Dakota. The members of the ethics commission must be invited to participate on the study committee as nonvoting members. The study must include a review of existing laws and laws enacted to implement article XIV, consideration of whether the civil and criminal sanctions for violations of the constitutional provisions and the statutes are appropriate; whether legislative action regarding article XIV is necessary or desirable; and an 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."

Renumber accordingly



## NORTH DAKOTA HOUSE OF REPRESENTATIVES



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**Speaker of the House**

**TESTIMONY OF REP. LAWRENCE R. KLEMIN  
HOUSE ETHICS COMMITTEE  
HOUSE CONCURRENT RESOLUTION 3028  
FEBRUARY 12, 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 Concurrent Resolution No. 3028, relating to a study of Article XIV of the North Dakota Constitution which establishes a North Dakota Ethics Commission.

Article XIV contains requirements for transparency of funding sources used to influence statewide elections, elections for the Legislative Assembly, statewide ballot issue elections and state government action. There are also requirements relating to lobbying and conflicts of interest, as well as the powers and duties of the Legislature and the Ethics Commission. Some of the provisions in Article XIV are internally inconsistent and ambiguous. Many issues in Article XIV are left to the Legislature to implement.

Although there are two bills pending in the Legislature, namely SB 2148 and HB 1521, there are many questions that arise about the meaning of the words and phrases in Article XIV that may not be fully answered by either bill. In addition, there are deferred effective dates in Article XIV, which gives the Legislature time to further analyze its provisions regardless of whether either bill gains legislative approval. Consequently, an interim study is appropriate.

Some of the questions raised by a review of Article XIV include:

**Section 1. Transparency.**

What is the meaning of "timely," "source," and "nature of resources"?

Does the word "transparency" in Section 1, relating to the Legislature, have the same or a different meaning than the word "transparency" as used in Section 3, relating to the Ethics Commission?

What is the extent and meaning of the "right to know" in Article 1, Section 1, and how does that reasonably relate to the rights of free speech, assembly and petition guaranteed by the First Amendment to the United States Constitution?



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Does "petition" in the First Amendment, which is referenced in Article XIV, include "petitions" provided for in the North Dakota Constitution and the laws enacted thereunder, such as a "petition" for the initiative or referendum contained in Article III of the North Dakota Constitution?

How is the "ultimate and true source of funds" to be defined for purposes of implementation of Article XIV?

What are the potential "one or more entities" in Section 1, subsection 2, that the Legislature is authorized to "vest" with the "authority to implement, interpret, and enforce" Section 1? Is that authority limited to campaign finance and lobbyist reporting requirements currently vested in the Secretary of State, or does it encompass other entities and responsibilities since Section 1 is required to be "construed broadly"?

With regards to citizen suits, can those suits be brought against the Legislature or the Ethics Commission if the "laws" (enacted by the Legislature) or the "rules" (adopted by the Ethics Commission) fail to fully "vindicate" the "rights" in Section 1. What does "vindicate" mean? Are the "rights" in a citizen suit limited to the "right to know," since that is the only "right" mentioned in Section 1. What is the meaning of "resident taxpayer"? Does this include anyone who pays income tax, property tax, sales tax, use tax, excise tax, or other taxes?

Are the existing provisions of the law related to campaign finance and lobbyists in compliance with the mandates of Article XIV or is more required?

Do the provisions of Article XIV impair, impede, or violate the rights in the United States Constitution, particularly with respect to the right of freedom of speech in the First Amendment and the right of confrontation guaranteed to accused persons by the Fifth Amendment?

Are there other provisions in the United States Constitution which may invalidate provisions in Article XIV of the North Dakota Constitution?

What are the inconsistencies in Article XIV and can the Legislature implement laws to reconcile those inconsistencies?

## **Section 2. Lobbyists and Conflicts of Interest.**

"Gift" is defined by both inclusion and exclusion in subsection 1 of Section 2. The Legislature is authorized by Section 4, subsection 1, to enact laws as follows: "Laws may be enacted to facilitate, safeguard, or expand, but not to hamper, restrict, or impair, this article." To what extent can the Legislature enact laws to explain or expand upon the definition of "gift"?

There are also terms within the definition of "gift" that may require further definition. Some of those terms include:

"not given in exchange for fair market consideration" -- is this in money or other consideration such as trade, barter, services, property, equipment, and so forth?

"social settings" -- what is included? Is this to be construed broadly or narrowly?

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Does "gift" include items of small or nominal value?

The prohibitions on "gifts" by lobbyists in Article XIV and as further defined by rules of the Ethics Commission don't take effect until January 5, 2021. We already have statutes and constitutional provisions relating to criminal acts, bribery, and corrupt practices. For example: ND Const Art. IV, Sec. 9 -- bribery in legislative assembly; ND Const. Art. IV, Sec. 10, legislator disqualification due to criminal act; ND Const. Art. V, Sec. 10 -- bribery of the Governor; N.D.C.C. Ch. 16.1-10 -- corrupt practices act; to name a few. Do the rules to be adopted by the Ethics Commission supersede these existing laws and constitutional provisions? You may think not, but arguments can be made that they could because of the "supremacy" clause in Article XIV, Section 4, subsection 3.

To what extent, if at all, can "rules" adopted by the Ethics Commission supersede existing laws enacted by the Legislature or laws enacted to implement Article XIV?

The Legislature is to set "appropriate" civil and criminal sanctions for violations of Section 2 of Article XIV. Are the existing sanctions in the law "appropriate"? Are the sanctions in HB 1521 or SB 2148 "appropriate"? Should there be different or additional sanctions? What does "appropriate" mean?

How does the delayed effective date of Ethics Commission rules (2 years) affect or interact with the delayed effective date of Legislative laws enacted under subsection 5 of Section 2 (3 years) with respect to "directors, officers, commissioners, heads, or other executives of agencies"? What is the definition of "bias" in subsection 5? Can duly elected public officials legally accept campaign contributions from any person that potentially may later come before them in a regulatory proceeding? Example: Industrial Commission member, Public Service Commissioner, Tax Commissioner. How about appointed commissioners? What is the definition of "executives" of agencies. How far down the chain of command does it go?

Can the Legislature enact other laws relating to ethics in 2019 or 2021 that take effect before 2022?

Can the Legislature set "appropriate" sanctions for violations by the Commissioners and staff of the Ethics Commission, including for violations of their own their own ethics rules?

### **Section 3. North Dakota Ethics Commission.**

Subsection 1 creates the Ethics Commission and subsection 3 states that the Ethics Commission consists of 5 members. Article XIV does not say anything about the staff, offices, furnishings, equipment, salaries, benefits, or other matters relating to the Ethics Commissioners and staff, other than that the Legislature shall provide "adequate" funds for the Ethics Commission's functions and duties.

What is "adequate" now and during the interim until 2021 without knowing anything more about the composition of the staff and functioning of the Ethics Commission? Is this something that can be determined more appropriately through an interim study as more about the needs of the Ethics Commission become known?

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The Ethics Commission is authorized by subsection 2 to adopt "ethics rules". What is included within the meaning of "ethics rules"? Do they have authority to adopt any other rules? What is the rulemaking procedure to be followed by the Ethics Commission? Is it subject to judicial review?

What is the procedure to be followed by the Ethics Commission for the determination of violations to ensure compliance with requirements for procedural due process of law and other rights of accused persons under the United States Constitution and the North Dakota Constitution? Hearings, appeals, right to counsel if an accused person can't afford a lawyer?

Appointment of the commissioners is to be done by "consensus" agreement of the Governor, Majority Leader of the Senate, and Minority Leader of the Senate. What is meant by "consensus"? Do they all have to agree or can 2 of 3 make the decision?

How is the Ethics Commission to be organized? Chairman? Vice Chairman? Staggered terms? When do terms start? Term limits? Meetings? Public, private, notice, frequency, location? Open meetings and open records except for "confidential" whistleblowers?

Commissioners are to be appointed to 4-year terms. Can a commissioner be removed or impeached? What is the procedure?

#### **Section 4. General Provisions.**

Subsection 1 provides that laws may be enacted to "facilitate, safeguard, or expand, but not to hamper, restrict, or impair" Article XIV. How are these terms defined? Who decides what the terms mean? Who decides if there has been a hampering, restriction, or impairment? What is the penalty if there is?

Does the definition of "agency" include licensing boards and their employees? Is there no limit to who is covered as a "public employee"? The definition appears to cover everyone in state government. Can we give tips or monetary "gifts" to the parking lot attendants employed by the Legislature?

Subsection 3 contains a "supremacy clause". Does this supremacy clause conflict with inalienable rights granted under other parts of the North Dakota Constitution? Does Article XIV violate the United States Constitution, and if so, to what extent? Is the "supremacy clause" itself unconstitutional?

As you can see, there are many questions about Article XIV. Some of those questions are answered in HB 1521 (with my proposed amendments), but not all. HB 1521 provides a good starting point. There needs to be procedures in place to address the rulemaking and adjudicatory conduct of the Ethics Commission during the interim between the sessions. A study is needed to determine what else is needed to implement Article XIV in the 2021 Legislative Session and whether the provisions in HB 1521 should be revised.

I urge your support for HCR 3028. Article XIV should be studied in detail.

Rep. Lawrence R. Klemin, Speaker of the House