

**FIRST ENGROSSMENT  
with Conference Committee Amendments  
ENGROSSED HOUSE BILL NO. 1521**

Introduced by

Representative Pollert

Senator Wardner

1 A BILL for an Act to create and enact a new section to chapter 16.1-08.1 and chapter 54-66 of  
2 the North Dakota Century Code, relating to reporting campaign contributions and expenditures,  
3 restrictions on public officials and lobbyists, investigations of ethics violations, and implementing  
4 requirements of article XIV of the Constitution of North Dakota; to amend and reenact sections  
5 16.1-08.1-01, 16.1-08.1-03.7, 16.1-08.1-04.1, 16.1-08.1-06.2, 28-32-01, 28-32-03, 28-32-06,  
6 28-32-07, 28-32-08, 28-32-08.1, 28-32-08.2, 28-32-09, 28-32-10, 28-32-11, 28-32-12, 28-32-15,  
7 28-32-16, and 28-32-18.1, subsections 2 and 4 of section 28-32-19, and sections 28-32-47,  
8 28-32-48, and 28-32-49 of the North Dakota Century Code, relating to rulemaking procedures,  
9 implementing article XIV of the Constitution of North Dakota, and requirements for the North  
10 Dakota ethics commission; to provide for a penalty; to provide an appropriation; to provide an  
11 effective date; and to declare an emergency.

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

13 **SECTION 1. AMENDMENT.** Section 16.1-08.1-01 of the North Dakota Century Code is  
14 amended and reenacted as follows:

15 **16.1-08.1-01. Definitions.**

16 As used in this chapter, unless the context otherwise requires:

- 17 1. "Affiliate" means an organization that controls, is controlled by, or is under common  
18 control with another organization. For purposes of this definition, control means the  
19 possession, direct or indirect, of the power to direct or cause the direction of the  
20 management and policies of an organization, whether through the ownership of voting  
21 securities, by contract other than a commercial contract for goods or nonmanagement  
22 services, or otherwise. Control is presumed to exist if an organization, directly or  
23 indirectly, owns, controls, holds with the power to vote, or holds proxies representing  
24 fifty percent or more of the voting securities of any other organization.

- 1           2. "Association" means any club, association, union, brotherhood, fraternity, organization,  
2           or group of any kind of two or more persons, including labor unions, trade  
3           associations, professional associations, or governmental associations, which is united  
4           for any purpose, business, or object and which assesses any dues, membership fees,  
5           or license fees in any amount, or which maintains a treasury fund in any amount. The  
6           term does not include corporations, cooperative corporations, limited liability  
7           companies, political committees, or political parties.
- 8           3. "Candidate" means an individual who seeks nomination for election or election to  
9           public office, and includes:
- 10           a. An individual holding public office;
- 11           b. An individual who has publicly declared that individual's candidacy for nomination  
12           for election or election to public office or has filed or accepted a nomination for  
13           public office;
- 14           c. An individual who has formed a campaign or other committee for that individual's  
15           candidacy for public office;
- 16           d. An individual who has circulated a nominating petition to have that individual's  
17           name placed on the ballot; and
- 18           e. An individual who has, in any manner, solicited or received a contribution for that  
19           individual's candidacy for public office, whether before or after the election for  
20           that office.
- 21           4. "Conduit" means a person that is not a political party, political committee, or candidate  
22           and which receives a contribution of money and transfers the contribution to a  
23           candidate, political party, or political committee when the contribution is designated  
24           specifically for the candidate, political party, or political committee and the person has  
25           no discretion as to the recipient and the amount transferred. The term includes a  
26           transactional intermediary, including a credit card company or a money transfer  
27           service that pays or transfers money to a candidate on behalf of another person.
- 28           5. "Contribution" means a gift, transfer, conveyance, provision, receipt, subscription,  
29           loan, advance, deposit of money, or anything of value, made for the purpose of  
30           influencing the nomination for election, or election, of any person to public office or  
31           aiding or opposing the circulation or passage of a statewide initiative or referendum

1 petition or measure. The term also means a contract, promise, or agreement, express  
2 or implied, whether or not legally enforceable, to make a contribution for any of the  
3 above purposes. The term includes funds received by a candidate for public office or a  
4 political party or committee which are transferred or signed over to that candidate,  
5 party, or committee from another candidate, party, or political committee or other  
6 source including a conduit. The term "anything of value" includes any good or service  
7 of more than a nominal value. The term "nominal value" means the cost, price, or  
8 worth of the good or service is trivial, token, or of no appreciable value. The term  
9 "contribution" does not include:

- 10 a. A loan of money from a bank or other lending institution made in the regular  
11 course of business.
- 12 b. Time spent by volunteer campaign or political party workers.
- 13 c. Money or anything of value received for commercial transactions, including rents,  
14 advertising, or sponsorships made as a part of a fair market value bargained-for  
15 exchange.
- 16 d. Money or anything of value received for anything other than a political purpose.
- 17 e. Products or services for which the actual cost or fair market value are reimbursed  
18 by a payment of money.
- 19 f. An independent expenditure.
- 20 g. The value of advertising paid by a political party, multicandidate political  
21 committee, or caucus which is in support of a candidate.
- 22 h. In-kind contributions from a candidate to the candidate's campaign.

23 6. "Cooperative corporations", "corporations", and "limited liability companies" are as  
24 defined in this code, and for purposes of this chapter "corporations" includes nonprofit  
25 corporations. However, if a political committee, the only purpose of which is accepting  
26 contributions and making expenditures for a political purpose, incorporates for liability  
27 purposes only, the committee is not considered a corporation for the purposes of this  
28 chapter.

29 7. "Expenditure" means:

- 30 a. A gift, transfer, conveyance, provision, loan, advance, payment, distribution,  
31 disbursement, outlay, or deposit of money or anything of value, except a loan of

- 1 money from a bank or other lending institution made in the regular course of  
2 business, made for a political purpose or for the purpose of influencing the  
3 passage or defeat of a measure.
- 4 b. A contract, promise, or agreement, express or implied, whether or not legally  
5 enforceable, to make any expenditure.
- 6 c. The transfer of funds by a political committee to another political committee.
- 7 d. An independent expenditure.
- 8 8. "Expenditure categories" means the categories into which expenditures must be  
9 grouped for reports under this chapter. The expenditure categories are:
- 10 a. Advertising;
- 11 b. Campaign loan repayment;
- 12 c. Operations;
- 13 d. Travel; and
- 14 e. Miscellaneous.
- 15 9. "Independent expenditure" means an expenditure made for a political purpose or for  
16 the purpose of influencing the passage or defeat of a measure if the expenditure is  
17 made without the express or implied consent, authorization, or cooperation of, and not  
18 in concert with or at the request or suggestion of, any candidate, committee, or  
19 political party.
- 20 10. "Patron" means a person who owns equity interest in the form of stock, shares, or  
21 membership or maintains similar financial rights in a cooperative corporation.
- 22 11. "Person" means an individual, partnership, political committee, association,  
23 corporation, cooperative corporation, limited liability company, or other organization or  
24 group of persons.
- 25 12. "Personal benefit" means a benefit to the candidate or another person which is not for  
26 a political purpose or related to a candidate's responsibilities as a public officeholder,  
27 and any other benefit that would convert a contribution to personal income.
- 28 13. "Political committee" means any committee, club, association, or other group of  
29 persons which receives contributions or makes expenditures for political purposes and  
30 includes:

- 1           a. A political action committee not connected to another organization and free to  
2           solicit funds from the general public, or derived from a corporation, cooperative  
3           corporation, limited liability company, affiliate, subsidiary, or an association that  
4           solicits or receives contributions from its employees or members or makes  
5           expenditures for political purposes on behalf of its employees or members;  
6           b. A candidate committee established to support an individual candidate seeking  
7           public office which solicits or receives contributions for political purposes;  
8           c. A political organization registered with the federal election commission, which  
9           solicits or receives contributions or makes expenditures for political purposes;  
10          d. A multicandidate political committee, including a caucus, established to support  
11          multiple groups or slates of candidates seeking public office, which solicits or  
12          receives contributions for political purposes; and  
13          e. A measure committee, including an initiative or referendum sponsoring  
14          committee at any stage of its organization, which solicits or receives contributions  
15          or makes expenditures for the purpose of aiding or opposing a measure sought  
16          to be voted upon by the voters of the state, including any activities undertaken for  
17          the purpose of drafting an initiative or referendum petition, seeking approval of  
18          the secretary of state for the circulation of a petition, or seeking approval of the  
19          submitted petitions.
- 20          14. "Political party" means any association, committee, or organization which nominates a  
21          candidate for election to any office which may be filled by a vote of the electors of this  
22          state or any of its political subdivisions and whose name appears on the election ballot  
23          as the candidate of such association, committee, or organization.
- 24          15. "Political purpose" means any activity undertaken in support of or in opposition to the  
25          election or nomination of a candidate to public office and includes using "vote for",  
26          "oppose", or any similar support or opposition language in any advertisement whether  
27          the activity is undertaken by a candidate, a political committee, a political party, or any  
28          person. In the period thirty days before a primary election and sixty days before a  
29          special or general election, "political purpose" also means any activity in which a  
30          candidate's name, office, district, or any term meaning the same as "incumbent" or  
31          "challenger" is used in support of or in opposition to the election or nomination of a

1 candidate to public office. The term does not include activities undertaken in the  
2 performance of a duty of a public office or any position taken in any bona fide news  
3 story, commentary, or editorial.

4 16. "Public office" means every office to which an individual can be elected by vote of the  
5 people under the laws of this state.

6 17. "Subsidiary" means an affiliate of a corporation under the control of the corporation  
7 directly or indirectly through one or more intermediaries.

8 18. "Ultimate and true source" means the person that knowingly contributed over two  
9 hundred dollars solely to influence a statewide election or an election for the legislative  
10 assembly.

11 **SECTION 2. AMENDMENT.** Section 16.1-08.1-03.7 of the North Dakota Century Code is  
12 amended and reenacted as follows:

13 **16.1-08.1-03.7. Political committees that organize and register according to federal**  
14 **law that make independent expenditures or disbursements to nonfederal candidates,**  
15 **political parties, and political committees.**

16 A political committee that organizes and registers according to federal law and makes an  
17 independent expenditure or makes a disbursement in excess of two hundred dollars to a  
18 nonfederal candidate seeking public office or to a political party or political committee in this  
19 state shall file a copy of that portion of the committee's federal report detailing the independent  
20 expenditure or the disbursement made. The political committee shall file a copy of the  
21 committee's federal report, and supplementary information as necessary under this section, with  
22 the secretary of state at the time of filing the report with the applicable federal agency. The  
23 report and supplementary information must include:

- 24 1. The name, mailing address, and treasurer of the political committee;
- 25 2. The recipient's name and mailing address; ~~and~~
- 26 3. The date and amount of the independent expenditure or disbursement; and
- 27 4. The ultimate and true source of funds listed by contributor and subcontributor of any  
28 amount over two hundred dollars collected or used to make the independent  
29 expenditure or disbursement including:
  - 30 a. The name and address of the contributor;
  - 31 b. The total amount of the contribution; and

1           c. The date the last contribution was received.

2           **SECTION 3. AMENDMENT.** Section 16.1-08.1-04.1 of the North Dakota Century Code is  
3 amended and reenacted as follows:

4           **16.1-08.1-04.1. Personal use of contributions prohibited.**

5           1. A candidate may not use any contribution received by the candidate, the candidate's  
6 candidate committee, or a multicandidate political committee to:

7           1. a. Give a personal benefit to the candidate or another person;

8           2. b. Make a loan to another person;

9           3. c. Knowingly pay more than the fair market value for goods or services purchased  
10 for the campaign; or

11 4. d. Pay a criminal fine or civil penalty.

12 2. The secretary of state shall assess a civil penalty upon any person that knowingly  
13 violates this section.

14 a. If the contribution used in violation of this section has a value of two thousand  
15 five hundred dollars or more, the civil penalty must be two times the value of the  
16 contribution.

17 b. If the contribution used in violation of this section has a value of less than two  
18 thousand five hundred dollars, the civil penalty must be at least two times the  
19 value of the contribution and may be up to five thousand dollars.

20 3. The assessment of a civil penalty may be appealed to the district court of the county  
21 where the candidate resides.

22           **SECTION 4. AMENDMENT.** Section 16.1-08.1-06.2 of the North Dakota Century Code is  
23 amended and reenacted as follows:

24           **16.1-08.1-06.2. Secretary of state to provide instructions, make adjustments for**  
25 **inflation, and conduct training.**

26           The secretary of state shall provide instructions and conduct training for the purpose of  
27 promoting uniform application of campaign finance and disclosure requirements and the uniform  
28 filing of statements, registrations, or reports according to this chapter. The secretary also shall  
29 determine adjustments for inflation of the reporting thresholds in this chapter and instruct  
30 persons submitting reports under this chapter of the adjustments. On January first of each year,  
31 the secretary shall determine whether the accumulated change in the consumer price index for

1 all urban consumers (all items, United States city average), as applied to each reporting  
2 threshold in this chapter, would result in an adjustment of at least ten dollars of the threshold in  
3 effect on that date. If so, the secretary shall deem the reporting threshold adjusted by ten  
4 dollars.

5 **SECTION 5.** A new section to chapter 16.1-08.1 of the North Dakota Century Code is  
6 created and enacted as follows:

7 **Ultimate and true source of funds - Required identification.**

- 8 1. In any statement under this chapter which requires the identification of a contributor or  
9 subcontributor, the ultimate and true source of funds must be identified.
- 10 2. A resident taxpayer may commence an action in a district court of this state against a  
11 person required to comply with this section to compel compliance if all other  
12 enforcement measures under this chapter have been exhausted and the taxpayer  
13 reasonably believes the person has failed to comply with this section.

14 **SECTION 6. AMENDMENT.** Section 28-32-01 of the North Dakota Century Code is  
15 amended and reenacted as follows:

16 **28-32-01. Definitions.**

17 In this chapter, unless the context or subject matter otherwise provides:

- 18 1. "Adjudicative proceeding" means an administrative matter resulting in an agency  
19 issuing an order after an opportunity for hearing is provided or required. An  
20 adjudicative proceeding includes administrative matters involving a hearing on a  
21 complaint against a specific-named respondent; a hearing on an application seeking a  
22 right, privilege, or an authorization from an agency, such as a ratemaking or licensing  
23 hearing; or a hearing on an appeal to an agency. An adjudicative proceeding includes  
24 reconsideration, rehearing, or reopening. Once an adjudicative proceeding has begun,  
25 the adjudicative proceeding includes any informal disposition of the administrative  
26 matter under section 28-32-22 or another specific statute or rule, unless the matter  
27 has been specifically converted to another type of proceeding under section 28-32-22.  
28 An adjudicative proceeding does not include a decision or order to file or not to file a  
29 complaint, or to initiate an investigation, an adjudicative proceeding, or any other  
30 proceeding before the agency, or another agency, or a court. An adjudicative  
31 proceeding does not include a decision or order to issue, reconsider, or reopen an

1 order that precedes an opportunity for hearing or that under another section of this  
2 code is not subject to review in an adjudicative proceeding. An adjudicative proceeding  
3 does not include rulemaking under this chapter.

4 2. "Administrative agency" or "agency" means each board, bureau, commission,  
5 department, or other administrative unit of the executive branch of state government,  
6 including one or more officers, employees, or other persons directly or indirectly  
7 purporting to act on behalf or under authority of the agency. An administrative unit  
8 located within or subordinate to an administrative agency must be treated as part of  
9 that agency to the extent it purports to exercise authority subject to this chapter. The  
10 term administrative agency does not include:

- 11 a. The office of management and budget except with respect to rules made under  
12 section 32-12.2-14, rules relating to conduct on the capitol grounds and in  
13 buildings located on the capitol grounds under section 54-21-18, rules relating to  
14 the classified service as authorized under section 54-44.3-07, and rules relating  
15 to state purchasing practices as required under section 54-44.4-04.
- 16 b. The adjutant general with respect to the department of emergency services.
- 17 c. The council on the arts.
- 18 d. The state auditor.
- 19 e. The department of commerce with respect to the division of economic  
20 development and finance.
- 21 f. The dairy promotion commission.
- 22 g. The education factfinding commission.
- 23 h. The educational technology council.
- 24 i. The board of equalization.
- 25 j. The board of higher education.
- 26 k. The Indian affairs commission.
- 27 l. The industrial commission with respect to the activities of the Bank of North  
28 Dakota, North Dakota housing finance agency, public finance authority, North  
29 Dakota mill and elevator association, North Dakota farm finance agency, the  
30 North Dakota transmission authority, and the North Dakota pipeline authority.

- 1 m. The department of corrections and rehabilitation except with respect to the  
2 activities of the division of adult services under chapter 54-23.4.
- 3 n. The pardon advisory board.
- 4 o. The parks and recreation department.
- 5 p. The parole board.
- 6 q. The state fair association.
- 7 r. The attorney general with respect to activities of the state toxicologist and the  
8 state crime laboratory.
- 9 s. The administrative committee on veterans' affairs except with respect to rules  
10 relating to the supervision and government of the veterans' home and the  
11 implementation of programs or services provided by the veterans' home.
- 12 t. The industrial commission with respect to the lignite research fund except as  
13 required under section 57-61-01.5.
- 14 u. The attorney general with respect to guidelines adopted under section 12.1-32-15  
15 for the risk assessment of sexual offenders, the risk level review process, and  
16 public disclosure of information under section 12.1-32-15.
- 17 v. The commission on legal counsel for indigents.
- 18 w. The attorney general with respect to twenty-four seven sobriety program  
19 guidelines and program fees.
- 20 x. The industrial commission with respect to approving or setting water rates under  
21 chapter 61-40.
- 22 3. "Agency head" means an individual or body of individuals in whom the ultimate legal  
23 authority of the agency is vested by law.
- 24 4. "Commission" means the North Dakota ethics commission established by article XIV  
25 of the Constitution of North Dakota.
- 26 5. "Complainant" means any person who files a complaint before an administrative  
27 agency pursuant to section 28-32-21 and any administrative agency that, when  
28 authorized by law, files such a complaint before such agency or any other agency.
- 29 ~~5-6.~~ "Hearing officer" means any agency head or one or more members of the agency  
30 head when presiding in an administrative proceeding, or, unless prohibited by law, one  
31 or more other persons designated by the agency head to preside in an administrative

1 proceeding, an administrative law judge from the office of administrative hearings, or  
2 any other person duly assigned, appointed, or designated to preside in an  
3 administrative proceeding pursuant to statute or rule.

4 ~~6-7.~~ "License" means a franchise, permit, certification, approval, registration, charter, or  
5 similar form of authorization required by law.

6 ~~7-8.~~ "Order" means any agency action of particular applicability which determines the legal  
7 rights, duties, privileges, immunities, or other legal interests of one or more specific  
8 persons. The term does not include an executive order issued by the governor.

9 ~~8-9.~~ "Party" means each person named or admitted as a party or properly seeking and  
10 entitled as of right to be admitted as a party. An administrative agency may be a party.  
11 In a hearing for the suspension, revocation, or disqualification of an operator's license  
12 under title 39, the term may include each city and each county in which the alleged  
13 conduct occurred, but the city or county may not appeal the decision of the hearing  
14 officer.

15 ~~9-10.~~ "Person" includes an individual, association, partnership, corporation, limited liability  
16 company, the commission, a state governmental agency or governmental subdivision,  
17 or an agency of such governmental subdivision.

18 ~~10-11.~~ "Relevant evidence" means evidence having any tendency to make the existence of  
19 any fact that is of consequence to the determination of the administrative action more  
20 probable or less probable than it would be without the evidence.

21 ~~11-12.~~ "Rule" means the whole or a part of an agency or commission statement of general  
22 applicability which implements or prescribes law or policy or the organization,  
23 procedure, or practice requirements of the agency or commission. The term includes  
24 the adoption of new rules and the amendment, repeal, or suspension of an existing  
25 rule. The term does not include:

26 a. A rule concerning only the internal management of an agency or the commission  
27 which does not directly or substantially affect the substantive or procedural rights  
28 or duties of any segment of the public.

29 b. A rule that sets forth criteria or guidelines to be used by the staff of an agency or  
30 the commission in the performance of audits, investigations, inspections, and  
31 settling commercial disputes or negotiating commercial arrangements, or in the

- 1 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, commission-owned, or  
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 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 7. AMENDMENT.** Section 28-32-03 of the North Dakota Century Code is  
28 amended and reenacted as follows:

29 **28-32-03. Emergency rules.**

- 30 1. If the agency, with the approval of the governor, or the commission finds that  
31 emergency rulemaking is necessary, the commission or agency may declare the

- 1 proposed rule to be an interim final rule effective on a date no earlier than the date of  
2 filing with the legislative council of the notice required by section 28-32-10.
- 3 2. A proposed rule may be given effect on an emergency basis under this section if any  
4 of the following grounds exists regarding that rule:
- 5 a. Imminent peril threatens public health, safety, or welfare, which would be abated  
6 by emergency effectiveness;
  - 7 b. A delay in the effective date of the rule is likely to cause a loss of funds  
8 appropriated to support a duty imposed by law upon the commission or agency;
  - 9 c. Emergency effectiveness is reasonably necessary to avoid a delay in  
10 implementing an appropriations measure; or
  - 11 d. Emergency effectiveness is necessary to meet a mandate of federal law.
- 12 3. A final rule adopted after consideration of all written and oral submissions respecting  
13 the interim final rule, which is substantially similar to the interim final rule, is effective  
14 as of the declared effective date of the interim final rule.
- 15 4. The commission's or agency's finding, and a brief statement of the commission's or  
16 agency's reasons for the finding, must be filed with the legislative council with the final  
17 adopted emergency rule.
- 18 5. The commission or agency shall attempt to make interim final rules known to persons  
19 who the commission or agency can reasonably be expected to believe may have a  
20 substantial interest in them. As used in this subsection, "substantial interest" means an  
21 interest in the effect of the rules which surpasses the common interest of all citizens.  
22 ~~An~~ The commission or an agency adopting emergency rules shall comply with the  
23 notice requirements of section 28-32-10 which relate to emergency rules and shall  
24 provide notice to the chairman of the administrative rules committee of the emergency  
25 status, declared effective date, and grounds for emergency status of the rules under  
26 subsection 2. When notice of emergency rule adoption is received, the legislative  
27 council shall publish the notice and emergency rules on its website.
- 28 6. An interim final rule is ineffective one hundred eighty days after its declared effective  
29 date unless first adopted as a final rule.

30 **SECTION 8. AMENDMENT.** Section 28-32-06 of the North Dakota Century Code is  
31 amended and reenacted as follows:

1       **28-32-06. Force and effect of rules.**

2       Upon becoming effective, rules have the force and effect of law until amended or repealed  
3       by the agency or commission, declared invalid by a final court decision, suspended or found to  
4       be void by the administrative rules committee, or determined repealed by the legislative council  
5       because the authority for adoption of the rules is repealed or transferred to another agency.

6       **SECTION 9. AMENDMENT.** Section 28-32-07 of the North Dakota Century Code is  
7       amended and reenacted as follows:

8       **28-32-07. Deadline for rules to implement statutory change.**

9       Any rule change, including a creation, amendment, or repeal, made to implement a  
10      statutory change must be adopted and filed with the legislative council within nine months of the  
11      effective date of the statutory change. If an agency or the commission needs additional time for  
12      the rule change, a request for additional time must be made to the legislative council. The  
13      legislative council may extend the time within which the agency or commission must adopt the  
14      rule change if the request by the agency or commission is supported by evidence that the  
15      agency or commission needs more time through no deliberate fault of its own.

16      **SECTION 10. AMENDMENT.** Section 28-32-08 of the North Dakota Century Code is  
17      amended and reenacted as follows:

18      **28-32-08. Regulatory analysis.**

- 19      1. An agency or the commission shall issue a regulatory analysis of a proposed rule if:
- 20          a. Within twenty days after the last published notice date of a proposed rule  
21             hearing, a written request for the analysis is filed by the governor or a member of  
22             the legislative assembly; or
- 23          b. The proposed rule is expected to have an impact on the regulated community in  
24             excess of fifty thousand dollars. The analysis under this subdivision must be  
25             available on or before the first date of public notice as provided for in section  
26             28-32-10.
- 27      2. The regulatory analysis must contain:
- 28          a. A description of the classes of persons who probably will be affected by the  
29             proposed rule, including classes that will bear the costs of the proposed rule and  
30             classes that will benefit from the proposed rule;

- 1           b. A description of the probable impact, including economic impact, of the proposed
- 2           rule;
- 3           c. The probable costs to the agency or commission of the implementation and
- 4           enforcement of the proposed rule and any anticipated effect on state revenues;
- 5           and
- 6           d. A description of any alternative methods for achieving the purpose of the
- 7           proposed rule that were seriously considered by the agency or commission and
- 8           the reasons why the methods were rejected in favor of the proposed rule.
- 9        3. Each regulatory analysis must include quantification of the data to the extent
- 10       practicable.
- 11       4. The agency or commission shall mail or deliver a copy of the regulatory analysis to
- 12       any person who requests a copy of the regulatory analysis. The agency or commission
- 13       may charge a fee for a copy of the regulatory analysis as allowed under section
- 14       44-04-18.
- 15       5. If required under subsection 1, the preparation and issuance of a regulatory analysis is
- 16       a mandatory duty of the agency or commission proposing a rule. Errors in a regulatory
- 17       analysis, including erroneous determinations concerning the impact of the proposed
- 18       rule on the regulated community, are not a ground upon which the invalidity of a rule
- 19       may be asserted or declared.

20        **SECTION 11. AMENDMENT.** Section 28-32-08.1 of the North Dakota Century Code is  
21       amended and reenacted as follows:

22        **28-32-08.1. Rules affecting small entities - Analysis - Economic impact statements -**  
23       **Judicial review.**

- 24        1. As used in this section:
- 25        a. "Small business" means a business entity, including its affiliates, which:
- 26           (1) Is independently owned and operated; and
- 27           (2) Employs fewer than twenty-five full-time employees or has gross annual
- 28           sales of less than two million five hundred thousand dollars;
- 29        b. "Small entity" includes small business, small organization, and small political
- 30        subdivision;

- 1           c. "Small organization" means any not-for-profit enterprise that is independently  
2           owned and operated and is not dominant in its field; and
- 3           d. "Small political subdivision" means a political subdivision with a population of less  
4           than five thousand.
- 5           2. Before adoption of any proposed rule, the adopting agency shall prepare a regulatory  
6           analysis in which, consistent with public health, safety, and welfare, the agency  
7           considers utilizing regulatory methods that will accomplish the objectives of applicable  
8           statutes while minimizing adverse impact on small entities. The agency shall consider  
9           each of the following methods of reducing impact of the proposed rule on small  
10          entities:
- 11          a. Establishment of less stringent compliance or reporting requirements for small  
12          entities;
- 13          b. Establishment of less stringent schedules or deadlines for compliance or  
14          reporting requirements for small entities;
- 15          c. Consolidation or simplification of compliance or reporting requirements for small  
16          entities;
- 17          d. Establishment of performance standards for small entities to replace design or  
18          operational standards required in the proposed rule; and
- 19          e. Exemption of small entities from all or any part of the requirements contained in  
20          the proposed rule.
- 21          3. Before adoption of any proposed rule that may have an adverse impact on small  
22          entities, the adopting agency shall prepare an economic impact statement that  
23          includes consideration of:
- 24          a. The small entities subject to the proposed rule;
- 25          b. The administrative and other costs required for compliance with the proposed  
26          rule;
- 27          c. The probable cost and benefit to private persons and consumers who are  
28          affected by the proposed rule;
- 29          d. The probable effect of the proposed rule on state revenues; and
- 30          e. Any less intrusive or less costly alternative methods of achieving the purpose of  
31          the proposed rule.

- 1           4. For any rule subject to this section, a small entity that is adversely affected or  
2           aggrieved by final agency action is entitled to judicial review of agency compliance  
3           with the requirements of this section. A small entity seeking judicial review under this  
4           section must file a petition for judicial review within one year from the date of final  
5           agency action.
- 6           5. This section does not apply to the ethics commission, any agency that is an  
7           occupational or professional licensing authority, ~~nor does this section apply to~~ and the  
8           following agencies or divisions of agencies:
- 9           a. Council on the arts.
  - 10          b. Beef commission.
  - 11          c. Dairy promotion commission.
  - 12          d. Dry bean council.
  - 13          e. Highway patrolmen's retirement board.
  - 14          f. Indian affairs commission.
  - 15          g. Board for Indian scholarships.
  - 16          h. State personnel board.
  - 17          i. Potato council.
  - 18          j. Board of public school education.
  - 19          k. Real estate trust account committee.
  - 20          l. Seed commission.
  - 21          m. Soil conservation committee.
  - 22          n. Oilseed council.
  - 23          o. Wheat commission.
  - 24          p. State seed arbitration board.
  - 25          q. North Dakota lottery.
- 26          6. This section does not apply to rules mandated by federal law.
- 27          7. The adopting agency shall provide the administrative rules committee copies of any  
28          regulatory analysis or economic impact statement, or both, prepared under this section  
29          when the committee is considering the associated rules.

30           **SECTION 12. AMENDMENT.** Section 28-32-08.2 of the North Dakota Century Code is  
31           amended and reenacted as follows:

1       **28-32-08.2. Fiscal notes for administrative rules.**

2       When an agency or the commission presents rules for administrative rules committee  
3       consideration, the agency or commission shall provide a fiscal note or a statement in its  
4       testimony that the rules have no fiscal effect. A fiscal note must reflect the effect of the rules  
5       changes on state revenues and expenditures, including any effect on funds controlled by the  
6       agency or commission.

7       **SECTION 13. AMENDMENT.** Section 28-32-09 of the North Dakota Century Code is  
8       amended and reenacted as follows:

9       **28-32-09. Takings assessment.**

- 10       1. An agency or the commission shall prepare a written assessment of the constitutional  
11       takings implications of a proposed rule that may limit the use of private real property.  
12       The agency's assessment must:
- 13       a. Assess the likelihood that the proposed rule may result in a taking or regulatory  
14       taking.
  - 15       b. Clearly and specifically identify the purpose of the proposed rule.
  - 16       c. Explain why the proposed rule is necessary to substantially advance that purpose  
17       and why no alternative action is available that would achieve the agency's or  
18       commission's goals while reducing the impact on private property owners.
  - 19       d. Estimate the potential cost to the government if a court determines that the  
20       proposed rule constitutes a taking or regulatory taking.
  - 21       e. Identify the source of payment within the agency's or commission's budget for  
22       any compensation that may be ordered.
  - 23       f. Certify that the benefits of the proposed rule exceed the estimated compensation  
24       costs.
- 25       2. Any private landowner who is or may be affected by a rule that limits the use of the  
26       landowner's private real property may request in writing that the agency or  
27       commission reconsider the application or need for the rule. Within thirty days of  
28       receiving the request, the agency or commission shall consider the request and shall  
29       in writing inform the landowner whether the agency or commission intends to keep the  
30       rule in place, modify application of the rule, or repeal the rule.

- 1           3. In an agency's analysis of the takings implications of a proposed rule, "taking" means  
2           the taking of private real property, as defined in section 47-01-03, by government  
3           action which requires compensation to the owner of that property by the fifth or  
4           fourteenth amendment to the Constitution of the United States or section 16 of article I  
5           of the Constitution of North Dakota. "Regulatory taking" means a taking of real  
6           property through the exercise of the police and regulatory powers of the state which  
7           reduces the value of the real property by more than fifty percent. However, the  
8           exercise of a police or regulatory power does not effect a taking if it substantially  
9           advances legitimate state interests, does not deny an owner economically viable use  
10          of the owner's land, or is in accordance with applicable state or federal law.

11          **SECTION 14. AMENDMENT.** Section 28-32-10 of the North Dakota Century Code is  
12          amended and reenacted as follows:

13          **28-32-10. Notice of rulemaking - Hearing date.**

- 14          1. An agency or the commission shall prepare a full notice and an abbreviated notice of  
15          rulemaking.
- 16               a. The agency's full notice of the proposed adoption, amendment, or repeal of a rule  
17               must include a short, specific explanation of the proposed rule and the purpose of  
18               the proposed rule, identify the emergency status and declared effective date of  
19               any emergency rules, include a determination of whether the proposed  
20               rulemaking is expected to have an impact on the regulated community in excess  
21               of fifty thousand dollars, identify at least one location where interested persons  
22               may review the text of the proposed rule, provide the address to which written  
23               comments concerning the proposed rule may be sent, provide the deadline for  
24               submission of written comments, provide a telephone number and post-office or  
25               electronic mail address at which a copy of the rules and regulatory analysis may  
26               be requested, and, in the case of a substantive rule, provide the time and place  
27               set for each oral hearing. ~~The~~An agency's full notice must include a statement of  
28               the bill number and general subject matter of any legislation, enacted during the  
29               most recent session of the legislative assembly, which is being implemented by  
30               the proposed rule. The commission's full notice must include a statement of the  
31               provision of the Constitution of North Dakota or the bill number and general

1                   subject matter of any legislation that is being implemented by the proposed rule.

2                   The agency's full notice must be filed with the legislative council, accompanied by  
3                   a copy of the proposed rules.

4                   b.    The agency or commission shall request publication of an abbreviated  
5                   newspaper publication notice at least once in each official county newspaper  
6                   published in this state. The abbreviated newspaper publication of notice must be  
7                   in a display-type format with a minimum width of one column of approximately  
8                   two inches [5.08 centimeters] and a minimum depth of approximately three  
9                   inches [7.62 centimeters] and with a headline describing the general topic of the  
10                  proposed rules. The notice must also include the telephone number or address to  
11                  use to obtain a copy of the proposed rules, identification of the emergency status  
12                  and declared effective date of any emergency rules, the address to use and the  
13                  deadline to submit written comments, and the location, date, and time of the  
14                  public hearing on the rules.

15                  2.    The agency or commission shall mail or deliver by electronic mail a copy of the  
16                  agency's full notice and proposed rule to each member of the legislative assembly  
17                  whose name appeared as a sponsor or cosponsor of legislation, enacted during the  
18                  most recent session of the legislative assembly, which is being implemented by the  
19                  proposed rule and to each person who has made a timely request to the agency or  
20                  commission for a copy of the notice and proposed rule. The agency or commission  
21                  may mail or otherwise provide a copy of the agency's full notice to any person who is  
22                  likely to be an interested person. The agency or commission may charge persons who  
23                  are not members of the legislative assembly fees for copies of the proposed rule as  
24                  allowed under section 44-04-18.

25                  3.    In addition to the other notice requirements of this subsection, the superintendent of  
26                  public instruction shall provide notice of any proposed rulemaking by the  
27                  superintendent of public instruction to each association with statewide membership  
28                  whose primary focus is elementary and secondary education issues which has  
29                  requested to receive notice from the superintendent under this subsection and to the  
30                  superintendent of each public school district in this state, or the president of the school  
31                  board for school districts that have no superintendent, at least twenty days before the

1 date of the hearing described in the notice. Notice provided by the superintendent of  
2 public instruction under this section must be by first-class mail. However, upon request  
3 of a group or person entitled to notice under this section, the superintendent of public  
4 instruction shall provide the group or person notice by electronic mail.

5 4. The legislative council shall establish standard procedures for the commission and all  
6 agencies to follow in complying with the provisions of this section and a procedure to  
7 allow any person to request and receive mailed copies of all filings made by agencies  
8 and the commission pursuant to this section. The legislative council may charge an  
9 annual fee as established by the administrative rules committee for providing copies of  
10 the filings.

11 5. At least twenty days must elapse between the date of the publication of the notice and  
12 the date of the hearing. Within fifteen business days after receipt of a notice under this  
13 section, a copy of the notice must be mailed by the legislative council to any person  
14 who has paid the annual fee established under subsection 4.

15 **SECTION 15. AMENDMENT.** Section 28-32-11 of the North Dakota Century Code is  
16 amended and reenacted as follows:

17 **28-32-11. Conduct of hearings - Notice of administrative rules committee**  
18 **consideration - Consideration and written record of comments.**

19 The agency or commission shall adopt a procedure whereby all interested persons are  
20 afforded reasonable opportunity to submit data, views, or arguments, orally or in writing,  
21 concerning the proposed rule, including data respecting the impact of the proposed rule. The  
22 agency or commission shall adopt a procedure to allow interested parties to request and  
23 receive notice from the agency or commission of the date and place the rule will be reviewed by  
24 the administrative rules committee. In case of substantive rules, the agency or commission shall  
25 conduct an oral hearing. The agency or commission shall consider fully all written and oral  
26 submissions respecting a proposed rule prior to the adoption, amendment, or repeal of any rule  
27 not of an emergency nature. The agency or commission shall make a written record of its  
28 consideration of all written and oral submissions contained in the rulemaking record respecting  
29 a proposed rule.

30 **SECTION 16. AMENDMENT.** Section 28-32-12 of the North Dakota Century Code is  
31 amended and reenacted as follows:

1       **28-32-12. Comment period.**

2       The agency or commission shall allow, after the conclusion of any rulemaking hearing, a  
3 comment period of at least ten days during which data, views, or arguments concerning the  
4 proposed rulemaking will be received by the agency or commission and made a part of the  
5 rulemaking record to be considered by the agency or commission.

6       **SECTION 17. AMENDMENT.** Section 28-32-15 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8       **28-32-15. Filing of rules for publication - Effective date of rules.**

- 9       1. A copy of each rule adopted by an administrative agency or the commission, a copy of  
10 each written comment and a written summary of each oral comment on the rule, and  
11 the attorney general's opinion on the rule, if any, must be filed by the adopting agency  
12 or commission with the legislative council for publication of the rule in the North  
13 Dakota Administrative Code.
- 14       2. a. Nonemergency rules approved by the attorney general as to legality, adopted by  
15 an administrative agency or the commission, and filed with the legislative council,  
16 and not voided or held for consideration by the administrative rules committee  
17 become effective according to the following schedule:
- 18           (1) Rules filed with the legislative council from August second through  
19           November first become effective on the immediately succeeding January  
20           first.
- 21           (2) Rules filed with the legislative council from November second through  
22           February first become effective on the immediately succeeding April first.
- 23           (3) Rules filed with the legislative council from February second through May  
24           first become effective on the immediately succeeding July first.
- 25           (4) Rules filed with the legislative council from May second through August first  
26           become effective on the immediately succeeding October first.
- 27       b. If publication is delayed for any reason other than action of the administrative  
28       rules committee, nonemergency rules, unless otherwise provided, become  
29       effective when publication would have occurred but for the delay.

- 1           c. A rule held for consideration by the administrative rules committee becomes  
2           effective on the first effective date of rules under the schedule in subdivision a  
3           following the meeting at which that rule is reconsidered by the committee.

4           **SECTION 18. AMENDMENT.** Section 28-32-16 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6           **28-32-16. Petition for reconsideration of rule - Hearing by agency.**

7           Any person substantially interested in the effect of a rule adopted by an administrative  
8 agency or the commission may petition ~~such~~the agency or commission for a reconsideration of  
9 ~~any such~~the rule or for an amendment or repeal ~~thereof. Such~~of the rule. The petition must  
10 state clearly and concisely the petitioners' alleged grounds for ~~such~~ reconsideration or ~~for the~~  
11 proposed repeal or amendment of ~~such~~the rule. The agency or commission may grant the  
12 petitioner a public hearing ~~upon such~~on the terms and conditions as the agency ~~may~~  
13 ~~prescribe~~prescribes.

14           **SECTION 19. AMENDMENT.** Section 28-32-18.1 of the North Dakota Century Code is  
15 amended and reenacted as follows:

16           **28-32-18.1. Administrative rules committee review of existing administrative rules.**

- 17           1. Upon request by the administrative rules committee, an administrative agency or the  
18 commission shall brief the committee on its existing ~~administrative~~ rules and point out  
19 any provisions that appear to be obsolete and any areas in which statutory or  
20 constitutional authority has changed or been repealed since the rules were adopted or  
21 amended.
- 22           2. An agency or the commission may amend or repeal a rule without complying with the  
23 other requirements of this chapter relating to adoption of administrative rules and may  
24 resubmit the change to the legislative council for publication provided:
- 25           a. The agency or commission initiates the request to the administrative rules  
26 committee for consideration of the amendment or repeal;
- 27           b. The agency or commission provides notice to the regulated community, in a  
28 manner reasonably calculated to provide notice to those persons interested in the  
29 rule, of the time and place the administrative rules committee will consider the  
30 request for amendment or repeal of the rule; and

- 1           c. The agency or commission and the administrative rules committee agree the rule  
2           amendment or repeal eliminates a provision that is obsolete or no longer in  
3           compliance with law and that no detriment would result to the substantive rights  
4           of the regulated community from the amendment or repeal.

5           **SECTION 20. AMENDMENT.** Subsection 2 of section 28-32-19 of the North Dakota  
6 Century Code is amended and reenacted as follows:

- 7           2. The legislative council may prescribe ~~at~~the format, style, and arrangement for rules  
8           ~~which are~~ to be published in the code and may refuse to accept the filing of any rule  
9           that is not in substantial compliance ~~therewith~~with the format, style, and arrangement.  
10          In arranging rules for publication, the legislative council may make ~~such~~ corrections in  
11          spelling, grammatical construction, format, and punctuation of the rules as  
12          ~~determined~~the legislative council determines are proper. The legislative council shall  
13          keep and maintain a permanent code of all rules filed, including superseded and  
14          repealed rules, which must be open to public inspection during office hours.

15          **SECTION 21. AMENDMENT.** Subsection 4 of section 28-32-19 of the North Dakota  
16 Century Code is amended and reenacted as follows:

- 17          4. The legislative council, with the consent of the adopting agency or commission, may  
18          omit from the code or code supplement any rule the publication of which would be  
19          unduly cumbersome, expensive, or otherwise inexpedient, if the rule in printed or  
20          duplicated form is made available on application to the agency or commission, and if  
21          the code or code supplement contains a notice stating the general subject matter of  
22          the omitted rule and ~~stating~~ how a copy may be obtained.

23          **SECTION 22. AMENDMENT.** Section 28-32-47 of the North Dakota Century Code is  
24 amended and reenacted as follows:

25          **28-32-47. Scope of and procedure on appeal from agency rulemaking.**

- 26          1. A judge of the district court shall review an appeal from an administrative agency's or  
27          ethics commission's rulemaking action based only on the record filed with the court. If  
28          an appellant requests documents to be included in the record but the agency or  
29          commission does not include them, the court, upon application by the appellant, may  
30          compel their inclusion. After a hearing, the filing of briefs, or other disposition of the

1 matter as the judge may reasonably require, the court shall affirm the agency's-  
2 rulemaking action unless it finds that any of the following are present:

3 1. a. The provisions of this chapter have not been substantially complied with in the  
4 agency's rulemaking actions.

5 2. b. A rule published as a result of the rulemaking action appealed is unconstitutional  
6 on the face of the language adopted.

7 3. c. A rule published as a result of the rulemaking action appealed is beyond the  
8 scope of the agency's or commission's authority to adopt.

9 4. d. A rule published as a result of the rulemaking action appealed is on the face of  
10 the language adopted an arbitrary or capricious application of authority granted  
11 by statute.

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

17 **SECTION 23. AMENDMENT.** Section 28-32-48 of the North Dakota Century Code is  
18 amended and reenacted as follows:

19 **28-32-48. Appeal - Stay of proceedings.**

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

27 **SECTION 24. AMENDMENT.** Section 28-32-49 of the North Dakota Century Code is  
28 amended and reenacted as follows:

29 **28-32-49. Review in supreme court.**

30 The judgment of the district court in an appeal from an order or rulemaking action of an  
31 administrative agency or the commission may be reviewed in the supreme court on appeal in

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

8 **SECTION 25.** Chapter 54-66 of the North Dakota Century Code is created and enacted as  
9 follows:

10 **54-66-01. Definitions.**

11 As used in this chapter, unless the context otherwise requires:

- 12 1. "Accused individual" means a lobbyist, public official, candidate for public office,  
13 political committee, or contributor who is alleged to have violated article XIV of the  
14 Constitution of North Dakota, this chapter, or another law or rule regarding  
15 transparency, corruption, elections, or lobbying.
- 16 2. "Complainant" means an individual who, in writing or verbally, submits a complaint to  
17 the commission.
- 18 3. "Complaint" means a verbal or written allegation to the commission that a lobbyist,  
19 public official, candidate for public office, political committee, or contributor has  
20 violated article XIV of the Constitution of North Dakota, this chapter, or another law or  
21 rule regarding transparency, corruption, elections, or lobbying.
- 22 4. "Ethics commission" or "commission" means the North Dakota ethics commission  
23 established by 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, except:
  - 26 a. Purely informational material;
  - 27 b. A campaign contribution; and
  - 28 c. An item, service, or thing of value given under conditions that do not raise ethical  
29 concerns, as set forth in rules adopted by the ethics commission, to advance  
30 opportunities for state residents to meet with public officials in educational and  
31 social settings in the state.

- 1       6. "Influence state government action" means promoting or opposing the adoption of a  
2       rule by an administrative agency or the commission under chapter 28-32.
- 3       7. "Lobby" means an activity listed in subsection 1 of section 54-05.1-02.
- 4       8. "Lobbyist" means an individual required to register under section 54-05.1-03.
- 5       9. "Public official" means an elected or appointed official of the state's executive or  
6       legislative branch, members of the commission, members of the governor's cabinet,  
7       and employees of the legislative branch.
- 8       10. "Receives the complaint" means one or more members of the commission learn of the  
9       complaint.
- 10      11. "Ultimate and true source" means the person that knowingly contributed over two  
11      hundred dollars solely to lobby or influence state government action.

12      **54-66-02. Disclosure of ultimate and true source of funds.**

- 13      1. A lobbyist who expends an amount greater than two hundred dollars to lobby shall file  
14      with the secretary of state a report that includes the known ultimate and true source of  
15      funds for the expenditure. The report must be filed with the lobbyist expenditure report  
16      required under subsection 2 of section 54-05.1-03.
- 17      2. A person that expends an amount greater than two hundred dollars, not including the  
18      individual's own travel expenses and membership dues, to influence state government  
19      action shall file with the secretary of state a report including the known ultimate and  
20      true source of funds for the expenditure. A report under this subsection must be filed  
21      on or before the August first following the date of the expenditure. The secretary of  
22      state shall provide a form for reports under this subsection and make the form  
23      electronically accessible to the public. The secretary of state also shall charge and  
24      collect fees for late filing of the reports as follows:
- 25          a. Twenty-five dollars for a report filed within sixty days after the deadline; or
- 26          b. Fifty dollars for a report filed more than sixty days after the deadline.
- 27      3. The secretary of state shall compile the reports required under this section and make  
28      the reports electronically accessible to the public.
- 29      4. A resident taxpayer may commence an action in a district court of this state against a  
30      person required to comply with this section to compel compliance if all other

1 enforcement measures under this chapter have been exhausted and the taxpayer  
2 reasonably believes the person has failed to comply with this section.

3 5. The secretary of state shall determine adjustments for inflation of the reporting  
4 thresholds in this section and instruct persons submitting reports under this section of  
5 the adjustments. On January first of each year, the secretary shall determine whether  
6 the accumulated change in the consumer price index for all urban consumers (all  
7 items, United States city average), as applied to each reporting threshold in this  
8 section, would result in an adjustment of at least ten dollars of the threshold in effect  
9 on that date. If so, the secretary of state shall deem the reporting threshold adjusted  
10 by ten dollars.

11 **54-66-03. Lobbyist gifts - Penalty.**

- 12 1. A lobbyist may not give, offer, solicit, initiate, or facilitate a gift knowingly to a public  
13 official, and a public official may not accept a gift from a lobbyist knowingly.  
14 2. The prohibition in subsection 1 does not apply when a lobbyist gives, offers, solicits,  
15 initiates, or facilitates, or a public official accepts a gift to or from a family member.  
16 3. The secretary of state shall assess a civil penalty upon any individual who violates this  
17 section.  
18 a. If the gift has a value of five hundred dollars or more, the civil penalty must be  
19 two times the value of the gift.  
20 b. If the gift has a value of less than five hundred dollars, the civil penalty must be  
21 no less than two times the value of the gift and may be up to one thousand  
22 dollars.

23 **54-66-04. Ethics commission member terms - Meetings - Code of ethics -**

24 **Compensation - Office.**

- 25 1. The terms of the initial members of the ethics commission must be staggered to  
26 ensure no more than two members' terms expire in one year. The terms of the initial  
27 members may be less than four years to accommodate the required staggering of  
28 terms.  
29 2. Unless the complaint at issue has resulted in the imposition of a penalty or referral for  
30 enforcement under section 54-66-09, any portion of a meeting during which  
31 commission members discuss complaints, informal resolutions, attempts to informally

1 resolve complaints, investigations, or referrals under this chapter, the identity of an  
2 accused individual or complainant, or any other matter arising from a complaint are  
3 closed meetings.

4 3. The commission shall abide by a code of ethics adopted in a public meeting. The code  
5 of ethics must specify when a commission member is disqualified from participating in  
6 matters before the commission.

7 4. Ethics commission members are entitled to:

8 a. Compensation for each day necessarily spent conducting commission business  
9 in the amount provided for members of the legislative management under section  
10 54-35-10; and

11 b. Payment for mileage and travel expenses necessarily incurred in the conduct of  
12 commission business as provided under sections 44-08-04 and 54-06-09.

13 5. The director of the office of management and budget shall allocate office space in the  
14 state capitol for the ethics commission, or, if office space in the capitol is unavailable,  
15 shall negotiate for, contract for, and obtain office space for the ethics commission in  
16 the city of Bismarck or in the Bismarck area. The ethics commission's office space  
17 may not be located in the office space of any other government agency, board,  
18 commission, or other governmental entity, and must provide sufficient privacy and  
19 security for the ethics commission to conduct its business. The director shall charge  
20 the ethics commission an amount equal to the fair value of the office space and  
21 related services the office of management and budget renders to the ethics  
22 commission.

23 **54-66-05. Making a complaint.**

24 A complaint may be made to the commission orally or in writing. If a complainant does not  
25 provide the complainant's name, address, and telephone number with the complaint, the ethics  
26 commission may not investigate, refer, or take other action regarding the complaint. The  
27 commission shall summarize each oral complaint in writing unless the complaint must be  
28 disregarded under this section.

29 **54-66-06. Informing the accused individual - Written response permitted.**

30 The commission shall inform an accused individual by registered mail of the identity of the  
31 complainant who made the allegation against the accused individual and include the written

1 complaint or written summary of the oral complaint as soon as reasonably possible but no later  
2 than twenty calendar days after the commission receives the complaint. The accused individual  
3 may respond to the complaint in writing within twenty calendar days of receipt of the complaint  
4 or summary of the complaint.

5 **54-66-07. Informal resolution.**

6 The commission shall attempt to negotiate or mediate an informal resolution between the  
7 accused individual and the complainant unless the commission disregards the complaint  
8 pursuant to section 54-66-05 or for any other reason. The accused individual may be  
9 accompanied by legal counsel in a negotiation or mediation.

10 **54-66-08. Investigations - Referrals.**

- 11 1. If an informal resolution is not reached under section 54-66-07, the ethics commission  
12 may:
- 13 a. Disregard the complaint;
  - 14 b. Require ethics commission staff to investigate the allegations in the complaint; or
  - 15 c. Engage an outside investigator to investigate allegations in the complaint.
- 16 2. If the commission believes a complaint contains allegations of criminal conduct, the  
17 ethics commission shall refer the allegations of criminal conduct to the bureau of  
18 criminal investigations or other law enforcement agency and may not take further  
19 action on the referred allegations. The commission shall inform the accused individual  
20 by registered mail of a referral under this section and the nature of the referred  
21 allegations as soon as reasonably possible.

22 **54-66-09. Investigation findings - Ethics commission determinations.**

- 23 1. An investigator, other than a law enforcement agency, of a complaint shall provide  
24 written findings of the investigation to the ethics commission within a reasonable  
25 amount of time. The ethics commission shall provide copies of the written findings to  
26 the accused individual, who may respond to the commission in person or in writing  
27 within a reasonable time. If the accused individual responds in person, no fewer than  
28 three members of the commission shall meet in a closed meeting with the accused  
29 individual. An accused individual may be accompanied by legal counsel when  
30 responding to the commission in person.

- 1       2. After providing a reasonable time for an accused individual to respond to the  
2       investigation findings and considering any response to the findings, the ethics  
3       commission shall determine whether a violation of article XIV of the Constitution of  
4       North Dakota, this chapter, or another law or rule regarding transparency, corruption,  
5       elections, or lobbying occurred, and inform the accused individual of the  
6       determination. If the commission determined a violation occurred, the commission may  
7       impose a penalty authorized by law for the violation or refer the matter to the agency  
8       with enforcement authority over the violation.
- 9       3. The commission may not terminate the employment of a public official or otherwise  
10      remove a public official from the public official's public office.
- 11      4. The ethics commission may not reconsider, invalidate, or overturn a decision, ruling,  
12      recommended finding of fact, recommended conclusion of law, finding of fact,  
13      conclusion of law, or order by a hearing officer under chapter 28-32 on the grounds the  
14      hearing officer failed to grant a request for disqualification under section 28-32-27 or  
15      failed to comply with subsection 5 of section 2 of article XIV of the Constitution of  
16      North Dakota.

17      **54-66-10. Appeals.**

18      An accused individual may appeal a finding of the ethics commission to the district court of  
19      the county where the accused individual resides.

20      **54-66-11. Rulemaking.**

21      When adopting rules, the ethics commission shall follow the provisions in chapter 28-32  
22      which are specifically applicable to the commission.

23      **54-66-12. Confidential information.**

- 24      1. The following information is a confidential record as defined in section 44-04-17.1,  
25      unless the commission has determined the accused individual violated article XIV of  
26      the Constitution of North Dakota, this chapter, or another law or rule regarding  
27      transparency, corruption, elections, or lobbying, and a court affirmed the determination  
28      if appealed, except the information may be disclosed as required by law or as  
29      necessary to conduct an investigation arising from a complaint:
- 30      a. Information revealing the contents of a complaint;  
31      b. Information that reasonably may be used to identify an accused individual; and

- 1           c. Information relating to or created as part of an investigation of a complaint.
- 2           2. If a complaint is informally resolved under section 54-66-07, the following information  
3 is a confidential record as defined in section 44-04-17.1:
- 4           a. Information revealing the contents of the complaint;
- 5           b. Information that reasonably may be used to identify the accused individual;
- 6           c. Information relating to or created as part of the process leading to the informal  
7 resolution; and
- 8           d. Information revealing the informal resolution.
- 9           3. Information that reasonably may be used to identify the complainant is confidential  
10 unless the complainant waives confidentiality, authorizes its disclosure, or divulges  
11 information that reasonably would identify the complainant. However, the ethics  
12 commission shall notify an accused individual of the identity of the complainant who  
13 made an allegation against the accused individual, and the information deemed  
14 confidential under this subsection may be disclosed as required by law or as  
15 necessary to conduct an investigation arising from a complaint.
- 16           4. The information deemed confidential in subsections 1 and 2 may be disclosed by the  
17 ethics commission if the accused individual agrees to the disclosure.

18           **54-66-13. Restriction on lobbying by public officials - Penalty.**

19           A knowing violation of subsection 2 of section 2 of article XIV of the Constitution of North  
20 Dakota is a class A misdemeanor. The ethics commission shall assess a civil penalty of up to  
21 one thousand dollars on any individual who knowingly violates the subsection.

22           **54-66-14. Attorney general to provide legal services.**

23           The attorney general shall serve as legal counsel for the commission unless the  
24 commission objects to representation by the attorney general in a specific matter. When a  
25 conflict of interest prevents the attorney general from providing legal services to the  
26 commission, the attorney general may appoint a special assistant attorney general to serve as  
27 legal counsel for the commission.

28           **54-66-15. Prohibition on delivering campaign contributions - Penalty.**

29           A lobbyist may not deliver knowingly a campaign contribution made by another person in  
30 violation of subsection 3 of section 2 of article XIV of the Constitution of North Dakota. For a first  
31 violation, the secretary of state shall assess a civil penalty of five hundred dollars upon any

1 individual who knowingly violates this section. For a second and subsequent knowing violation  
2 of this section, the person is guilty of a class B misdemeanor, and, if the lobbyist is a registered  
3 lobbyist, the secretary of state may revoke the lobbyist's registration. For purposes of this  
4 section, "deliver" means to transport, transfer, or otherwise transmit, either physically or  
5 electronically. This prohibition does not apply to an individual who delivers a campaign  
6 contribution to the individual's own campaign or to the campaign of the individual's immediate  
7 family member. This prohibition may not be interpreted to prohibit any person from making a  
8 campaign contribution, encouraging others to make a campaign contribution, or otherwise  
9 supporting or opposing a candidate.

10 **54-66-16. Removal of ethics commission members.**

- 11 1. An ethics commission member may be removed from office for:
- 12 a. Substantial neglect of duty;
  - 13 b. Gross misconduct in office;
  - 14 c. Violation of the commission's code of ethics; or
  - 15 d. Willful or habitual neglect or refusal to perform the duties of the member.
- 16 2. Removal of an ethics commission member under subsection 1 requires agreement by  
17 a majority of:
- 18 a. The governor;
  - 19 b. The majority leader of the senate; and
  - 20 c. The minority leader of the senate.

21 **54-66-17. Participation in quasi-judicial proceedings.**

22 For purposes of subsection 5 of section 2 of article XIV of the Constitution of North Dakota,  
23 an individual is not disqualified from participating in any capacity in a quasi-judicial proceeding,  
24 including an adjudicative proceeding under chapter 28-32, due to an investment in a mutual  
25 fund, an ownership interest in one of the parties to the proceeding which is shared by the  
26 general public, and an investment or ownership interest in a retirement account of one of the  
27 parties to the proceeding.

28 **SECTION 26. APPROPRIATION.** There is appropriated out of any moneys in the general  
29 fund in the state treasury, not otherwise appropriated, the sum of \$517,155, or so much of the  
30 sum as may be necessary, to the ethics commission for the purpose of the operations of the

1 commission, for the biennium beginning July 1, 2019, and ending June 30, 2021. The ethics  
2 commission is authorized two full-time equivalent positions for this purpose.

3 **SECTION 27. EFFECTIVE DATE.** Sections 1, 3, 4, and 5 of this Act, and sections 54-66-02  
4 and 54-66-03 of the North Dakota Century Code, as created by section 25 of this Act, become  
5 effective January 5, 2021.

6 **SECTION 28. EMERGENCY.** Sections 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20,  
7 21, 22, 23, and 24 of this Act are declared to be an emergency measure.