

Introduced by

Representative Hanson

1 A BILL for an Act to create and enact section 54-66-09.1 and 54-66-18 of the North Dakota  
2 Century Code, relating to the ethics commission; to amend and reenact sections 28-32-07,  
3 28-32-08, 28-32-09, 28-32-11, 28-32-18.1, 54-66-01, 54-66-02, and 54-66-03, subsection 2 of  
4 section 54-66-04, and sections 54-66-05, 54-66-08, 54-66-10, 54-66-12, and 54-66-16 of the  
5 North Dakota Century Code, relating to rulemaking, complaint handling procedures, removal,  
6 and immunity for the ethics commission; to repeal sections 54-66-06, 54-66-07, 54-66-09, and  
7 54-66-17 of the North Dakota Century Code, relating to ethics commission complaint handling  
8 procedures; and to provide a penalty.

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

10 **SECTION 1. AMENDMENT.** Section 28-32-07 of the North Dakota Century Code is  
11 amended and reenacted as follows:

12 **28-32-07. Deadline for rules to implement statutory change.**

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

20 **SECTION 2. AMENDMENT.** Section 28-32-08 of the North Dakota Century Code is  
21 amended and reenacted as follows:

22 **28-32-08. Regulatory analysis.**

23 1. An agency ~~or the commission~~ shall issue a regulatory analysis of a proposed rule if:

- 1           a.    Within twenty days after the last published notice date of a proposed rule  
2                    hearing, a written request for the analysis is filed by the governor or a member of  
3                    the legislative assembly; or
- 4           b.    The proposed rule is expected to have an impact on the regulated community in  
5                    excess of fifty thousand dollars. The analysis under this subdivision must be  
6                    available on or before the first date of public notice as provided for in section  
7                    28-32-10.
- 8        2.    The regulatory analysis must contain:
  - 9           a.    A description of the classes of persons who probably will be affected by the  
10                   proposed rule, including classes that will bear the costs of the proposed rule and  
11                   classes that will benefit from the proposed rule;
  - 12           b.    A description of the probable impact, including economic impact, of the proposed  
13                   rule;
  - 14           c.    The probable costs to the agency ~~or commission~~ of the implementation and  
15                   enforcement of the proposed rule and any anticipated effect on state revenues;  
16                   and
  - 17           d.    A description of any alternative methods for achieving the purpose of the  
18                   proposed rule that were seriously considered by the agency ~~or commission~~ and  
19                   the reasons why the methods were rejected in favor of the proposed rule.
- 20        3.    Each regulatory analysis must include quantification of the data to the extent  
21                   practicable.
- 22        4.    The agency ~~or commission~~ shall mail or deliver a copy of the regulatory analysis to  
23                   any person who requests a copy of the regulatory analysis. The agency or commission  
24                   may charge a fee for a copy of the regulatory analysis as allowed under section  
25                   44-04-18.
- 26        5.    If required under subsection 1, the preparation and issuance of a regulatory analysis is  
27                   a mandatory duty of the agency ~~or commission~~ proposing a rule. Errors in a regulatory  
28                   analysis, including erroneous determinations concerning the impact of the proposed  
29                   rule on the regulated community, are not a ground upon which the invalidity of a rule  
30                   may be asserted or declared.

1       **SECTION 3. AMENDMENT.** Section 28-32-09 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       **28-32-09. Takings assessment.**

4       1. An agency ~~or the commission~~ shall prepare a written assessment of the constitutional  
5 takings implications of a proposed rule that may limit the use of private real property.

6       The assessment must:

- 7       a. Assess the likelihood that the proposed rule may result in a taking or regulatory  
8 taking.
- 9       b. Clearly and specifically identify the purpose of the proposed rule.
- 10       c. Explain why the proposed rule is necessary to substantially advance that purpose  
11 and why no alternative action is available that would achieve the agency's ~~or~~  
12 ~~commission's~~ goals while reducing the impact on private property owners.
- 13       d. Estimate the potential cost to the government if a court determines that the  
14 proposed rule constitutes a taking or regulatory taking.
- 15       e. Identify the source of payment within the agency's ~~or commission's~~ budget for  
16 any compensation that may be ordered.
- 17       f. Certify that the benefits of the proposed rule exceed the estimated compensation  
18 costs.

19       2. Any private landowner who is or may be affected by a rule that limits the use of the  
20 landowner's private real property may request in writing that the agency ~~or~~  
21 ~~commission~~ reconsider the application or need for the rule. Within thirty days of  
22 receiving the request, the agency ~~or commission~~ shall consider the request and shall  
23 in writing inform the landowner whether the agency ~~or commission~~ intends to keep the  
24 rule in place, modify application of the rule, or repeal the rule.

25       3. In an analysis of the takings implications of a proposed rule, "taking" means the taking  
26 of private real property, as defined in section 47-01-03, by government action which  
27 requires compensation to the owner of that property by the fifth or fourteenth  
28 amendment to the Constitution of the United States or section 16 of article I of the  
29 Constitution of North Dakota. "Regulatory taking" means a taking of real property  
30 through the exercise of the police and regulatory powers of the state which reduces  
31 the value of the real property by more than fifty percent. However, the exercise of a

1 police or regulatory power does not effect a taking if it substantially advances  
2 legitimate state interests, does not deny an owner economically viable use of the  
3 owner's land, or is in accordance with applicable state or federal law.

4 **SECTION 4. AMENDMENT.** Section 28-32-11 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 **28-32-11. Conduct of hearings - Notice of administrative rules committee**  
7 **consideration - Consideration and written record of comments.**

8 The agency or commission shall adopt a procedure whereby all interested persons are  
9 afforded reasonable opportunity to submit data, views, or arguments, orally or in writing,  
10 concerning the proposed rule, including data respecting the impact of the proposed rule. The  
11 agency ~~or commission~~ shall adopt a procedure to allow interested parties to request and  
12 receive notice from the agency ~~or commission~~ of the date and place the rule will be reviewed by  
13 the administrative rules committee. In case of substantive rules, the agency or commission shall  
14 conduct an oral hearing. The agency or commission shall consider fully all written and oral  
15 submissions respecting a proposed rule prior to the adoption, amendment, or repeal of any rule  
16 not of an emergency nature. The agency or commission shall make a written record of its  
17 consideration of all written and oral submissions contained in the rulemaking record respecting  
18 a proposed rule.

19 **SECTION 5. AMENDMENT.** Section 28-32-18.1 of the North Dakota Century Code is  
20 amended and reenacted as follows:

21 **28-32-18.1. Administrative rules committee review of existing rules.**

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

- 1           b. The agency ~~or commission~~ provides notice to the regulated community, in a  
2           manner reasonably calculated to provide notice to those persons interested in the  
3           rule, of the time and place the administrative rules committee will consider the  
4           request for amendment or repeal of the rule; and
- 5           c. The agency ~~or commission~~ and the administrative rules committee agree the rule  
6           amendment or repeal eliminates a provision that is obsolete or no longer in  
7           compliance with law and that no detriment would result to the substantive rights  
8           of the regulated community from the amendment or repeal.

9           **SECTION 6. AMENDMENT.** Section 54-66-01 of the North Dakota Century Code is  
10 amended and reenacted as follows:

11           **54-66-01. Definitions.**

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

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

- 1 opportunities for state residents to meet with public officials in educational and  
2 social settings in the state.
- 3 6. a. "Influence state government action" means ~~promoting~~:
- 4 (1) Promoting or opposing the adoption of a rule by an administrative agency or  
5 the commission under chapter 28-32;
- 6 (2) Attempting to influence substantively a discretionary state administrative  
7 action or inaction, including all substantive decisionmaking matters before  
8 the public service commission, industrial commission, and similar regulatory  
9 and administrative agencies, by communicating with, or urging others to  
10 communicate with, a public official, state employee, or agent of the state  
11 regarding the legal duties and obligations of the official, employee, or agent  
12 in a particular set of circumstances; or
- 13 (3) Taking action defined by an ethics commission rule as influencing state  
14 government action.
- 15 b. "Influence state government action" does not mean activities taken to apply for or  
16 receive ministerial actions for motor vehicle licenses, hunting licenses, or grants  
17 or similar ministerial, uncontested filings not involving hearings or substantive  
18 state action.
- 19 7. a. "Lobby" means an activity listed in subsection 1 of section 54-05.1-02:
- 20 (1) Attempting to influence the passage, amendment, or defeat of legislation by  
21 the legislative assembly, or the approval or veto of legislation by the  
22 governor;
- 23 (2) Attempting to influence decisions regarding legislative matters made by the  
24 legislative management or a legislative committee; or
- 25 (3) Attempting to otherwise influence state government action.
- 26 b. "Lobby" does not mean activities taken to apply for or receive ministerial actions  
27 for motor vehicle licenses, hunting licenses, or grants or similar ministerial,  
28 uncontested filings not involving hearings or substantive state action.
- 29 c. The ethics commission may define "lobby" further by rule consistent with  
30 article XIV of the Constitution of North Dakota.

- 1           8.   "Lobbyist" means an individual required to register under section 54-05.1-03a person  
2           that engages in lobbying. "Lobbyist" does not include:
- 3           a.   A private citizen on the citizen's own behalf exercising the right to vote;  
4           participating in public or private discourse; appearing before the legislative  
5           assembly, legislative management, an interim committee of the legislative  
6           management, or a standing committee of the legislative assembly; or engaging in  
7           similar activities;
- 8           b.   Communication by a representative of a media organization if the purpose of the  
9           communication is gathering and disseminating news and information to the  
10          public;
- 11          c.   A public official or an employee, officer, board member, volunteer, or agent of the  
12          state or a political subdivision of the state, acting in the individual's official  
13          capacity;
- 14          d.   A person invited by the chairman of the legislative management, an interim  
15          committee of the legislative management, or a standing committee of the  
16          legislative assembly to appear before the committee to provide nonpartisan  
17          educational information publicly; or
- 18          e.   A person invited by a public official to provide nonpartisan educational information  
19          publicly.
- 20          9.   "Public official" means an elected or appointed official of the state's executive or  
21          legislative branch, members of the commission, members of the governor's cabinet,  
22          and employees of the legislative branch.
- 23          10.  "Receives the complaint" means one or more members of the commission learn of the  
24          complaint.
- 25          11.  "Ultimate and true source" means the person that knowingly contributed over two  
26          hundred dollars solely to lobby or influence state government action. The ethics  
27          commission may define "ultimate and true source" further by rule consistent with  
28          article XIV of the Constitution of North Dakota.

29           **SECTION 7. AMENDMENT.** Section 54-66-02 of the North Dakota Century Code is  
30   amended and reenacted as follows:

1           **54-66-02. Disclosure of ultimate and true source of funds. (Effective after January 4,**  
2 **2021)**

- 3           1. A lobbyist who expends an amount greater than two hundred dollars to lobby shall file  
4           with the secretary of state a report that includes the known ultimate and true source of  
5           funds for the expenditure. ~~The report must be filed with the lobbyist expenditure report~~  
6           ~~required under subsection 2 of section 54-05.1-03.~~
- 7           2. A person that expends an amount greater than two hundred dollars, not including the  
8           individual's own travel expenses ~~and membership dues~~ or salary and benefits paid by  
9           the person's employer, to influence state government action shall file with the  
10          secretary of state a report including the known ultimate and true source of funds for  
11          the expenditure. ~~A report under this subsection must be filed on or before the August~~  
12          ~~first following the date of the expenditure. The secretary of state shall provide a form~~  
13          ~~for reports under this subsection and make the form electronically accessible to the~~  
14          ~~public. The secretary of state also shall charge and collect fees for late filing of the~~  
15          ~~reports as follows:~~
- 16          a. ~~Twenty five dollars for a report filed within sixty days after the deadline; or~~  
17          b. ~~Fifty dollars for a report filed more than sixty days after the deadline.~~
- 18          3. ~~The secretary of state shall compile the reports required under this section and make~~  
19          ~~the reports electronically accessible to the public.~~ Reports under this section must be  
20          filed electronically within thirty days of an expenditure. The secretary of state shall  
21          provide an electronic form for reports under this section and make each report  
22          electronically accessible to the public within five days of receipt.
- 23          4. ~~A resident taxpayer may commence an action in a district court of this state against a~~  
24          ~~person required to comply with this section to compel compliance if all other~~  
25          ~~enforcement measures under this chapter have been exhausted and the taxpayer~~  
26          ~~reasonably believes the person has failed to comply with this section.~~ The secretary of  
27          state shall charge and collect twenty-five dollars for a report filed within sixty days after  
28          the deadline and fifty dollars for a report filed more than sixty days after the deadline.  
29          For a second or subsequent failure to file a report required under this section by the  
30          deadline, the lobbyist or other person is guilty of a class B misdemeanor.

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

9       **SECTION 8. AMENDMENT.** Section 54-66-03 of the North Dakota Century Code is  
10      amended and reenacted as follows:

11       **54-66-03. Lobbyist gifts - Penalty. (Effective after January 4, 2021)**

- 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       4. For a second or subsequent violation of this section, a lobbyist is guilty of a class B  
24       misdemeanor.

25       **SECTION 9. AMENDMENT.** Subsection 2 of section 54-66-04 of the North Dakota Century  
26      Code is amended and reenacted as follows:

- 27       2. Unless the complaint at issue has resulted in the imposition of a penalty or referral for  
28       criminal enforcement under section ~~54-66-09~~, any portion of a meeting during which  
29       commission members discuss complaints, informal resolutions, attempts to informally  
30       resolve complaints, investigations, or referrals under this chapter, the identity of an

1           accused ~~individual~~person or complainant, or any other matter arising from a complaint  
2           are closed meetings.

3           **SECTION 10. AMENDMENT.** Section 54-66-05 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5           **54-66-05. Making a complaint - Informing the accused person.**

6           A complaint may be made to the commission ~~orally~~verbally or in writing. ~~If a complainant~~  
7 ~~does not provide the complainant's name, address, and telephone number with the complaint,~~  
8 ~~the ethics commission may not investigate, refer, or take other action regarding the complaint.~~  
9 ~~The commission shall summarize each oral complaint in writing unless the complaint must be~~  
10 ~~disregarded under this section.~~If, after an investigation of the complaint, the ethics commission  
11 decides to issue an administrative complaint against the accused person, the ethics  
12 commission shall serve an ethics commission complaint against the accused person and give  
13 the accused person at least twenty days to respond.

14           **SECTION 11. AMENDMENT.** Section 54-66-08 of the North Dakota Century Code is  
15 amended and reenacted as follows:

16           **54-66-08. ~~Investigations~~Hearings - Referrals.**

- 17           1. ~~If an informal resolution is not reached under section 54-66-07, the ethics commission~~  
18           ~~may:~~  
19           a. ~~Disregard the complaint;~~  
20           b. ~~Require ethics commission staff to investigate the allegations in the complaint; or~~  
21           c. ~~Engage an outside investigator to investigate allegations in the complaint.~~The  
22           ethics commission may hold a public hearing regarding a complaint if the ethics  
23           commission and the accused person do not agree to an informal resolution.  
24           2. ~~If the commission believes a complaint contains allegations of criminal conduct, the~~  
25           ~~ethics commission shall refer the allegations of criminal conduct to the bureau of~~  
26           ~~criminal investigations or other law enforcement agency and may not take further~~  
27           ~~action on the referred allegations. The commission shall inform the accused individual~~  
28           ~~by registered mail of a referral under this section and the nature of the referred~~  
29           ~~allegations as soon as reasonably possible.~~The ethics commission may refer a matter  
30           described in or arising from a complaint to the bureau of criminal investigation or other

1           appropriate law enforcement agency if a majority of the ethics commission members  
2           reasonably believe a crime was committed or the safety of the complainant is at risk.  
3        3.   The ethics commission may refer a complaint alleging a violation of open meetings or  
4           open records requirements to the attorney general, and the attorney general shall  
5           review the allegation under section 44-04-21.1 if the complaint was submitted to the  
6           ethics commission by the review deadline in section 44-04-21.1.

7        **SECTION 12.** Section 54-66-09.1 of the North Dakota Century Code is created and enacted  
8 as follows:

9        **54-66-09.1. Hearing findings - Penalties.**

- 10       1.   At the conclusion of a hearing, the ethics commission shall issue and make public its  
11           written findings of fact, conclusions of law, and any noncriminal penalty the  
12           commission imposes. If the commission concludes a crime was committed, the  
13           commission may refer the matter to the appropriate prosecutor.  
14       2.   The findings of fact must include a statement whether the ethics commission believes,  
15           based on a preponderance of the evidence as viewed by a reasonable person, a  
16           violation of article XIV of the Constitution of North Dakota, this chapter, or another law  
17           or rule regarding transparency, corruption, elections, or lobbying occurred.

18       **SECTION 13. AMENDMENT.** Section 54-66-10 of the North Dakota Century Code is  
19 amended and reenacted as follows:

20       **54-66-10. Appeals.**

21       An accused ~~individual~~person may appeal a finding of the ethics commission to the district  
22 court of the county where the accused ~~individual~~person resides.

23       **SECTION 14. AMENDMENT.** Section 54-66-12 of the North Dakota Century Code is  
24 amended and reenacted as follows:

25       **54-66-12. Confidential information.**

- 26       1.   The following information is a confidential record as defined in section 44-04-17.1,  
27           unless the commission ~~has determined~~issued conclusions of law stating the accused  
28           ~~individual~~person violated article XIV of the Constitution of North Dakota, this chapter,  
29           or another law or rule regarding transparency, corruption, elections, or lobbying, ~~and a~~  
30           ~~court affirmed the determination if appealed,~~ except the information may be disclosed

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

23 **SECTION 15. AMENDMENT.** Section 54-66-16 of the North Dakota Century Code is  
24 amended and reenacted as follows:

25 **54-66-16. Removal of ethics commission members.**

- 26 1. An ethics commission member may be removed from office for:  
27 a. Substantial neglect of duty;  
28 b. Gross misconduct in office;  
29 c. Violation of the commission's code of ethics; or  
30 d. Willful or habitual neglect or refusal to perform the duties of the member.

- 1           2.   Removal of an ethics commission member under subsection 1 requires agreement by  
2           a ~~majority~~consensus of:
- 3           a.   The governor;
- 4           b.   The majority leader of the senate; and
- 5           c.   The minority leader of the senate.

6           **SECTION 16.** Section 54-66-18 of the North Dakota Century Code is created and enacted  
7 as follows:

8           **54-66-18. Immunity from liability.**

- 9           1.   No cause of action arises from, and no liability may be imposed against the ethics  
10           commission, members or representatives of the ethics commission, or investigators  
11           appointed by the ethics commission, for any statements made or actions taken to  
12           carry out this chapter, if the statements were made or actions were taken:
- 13           a.   In good faith;
- 14           b.   Without malice; and
- 15           c.   Without fraudulent intent or intent to deceive.
- 16           2.   No cause of action arises from, and no liability may be imposed against any person for  
17           communicating with or delivering information to the ethics commission, the ethics  
18           commission's authorized representative, or an investigator appointed by the ethics  
19           commission as part of an investigation under this chapter if the communication or  
20           delivery was made:
- 21           a.   In good faith;
- 22           b.   Without malice; and
- 23           c.   Without fraudulent intent or intent to deceive.
- 24           3.   This section does not limit or modify any immunity or privilege in common law or  
25           statute a person identified in subsection 1 or 2 may invoke.

26           **SECTION 17. REPEAL.** Sections 54-66-06, 54-66-07, 54-66-09, and 54-66-17 of the North  
27 Dakota Century Code are repealed.