

**FIRST ENGROSSMENT
with Senate 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, 28-32-01, 28-32-03, 28-32-06, 28-32-07,
6 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 legislative management study; to provide for a
11 penalty; to provide an appropriation; to provide an 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.** A new section to chapter 16.1-08.1 of the North Dakota Century Code is
23 created and enacted as follows:

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

25 In any statement under this chapter which requires the identification of a contributor or
26 subcontributor, the ultimate and true source of funds must be identified.

27 **SECTION 5. AMENDMENT.** Section 28-32-01 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **28-32-01. Definitions.**

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

- 1 1. "Adjudicative proceeding" means an administrative matter resulting in an agency
2 issuing an order after an opportunity for hearing is provided or required. An
3 adjudicative proceeding includes administrative matters involving a hearing on a
4 complaint against a specific-named respondent; a hearing on an application seeking a
5 right, privilege, or an authorization from an agency, such as a ratemaking or licensing
6 hearing; or a hearing on an appeal to an agency. An adjudicative proceeding includes
7 reconsideration, rehearing, or reopening. Once an adjudicative proceeding has begun,
8 the adjudicative proceeding includes any informal disposition of the administrative
9 matter under section 28-32-22 or another specific statute or rule, unless the matter
10 has been specifically converted to another type of proceeding under section 28-32-22.
11 An adjudicative proceeding does not include a decision or order to file or not to file a
12 complaint, or to initiate an investigation, an adjudicative proceeding, or any other
13 proceeding before the agency, or another agency, or a court. An adjudicative
14 proceeding does not include a decision or order to issue, reconsider, or reopen an
15 order that precedes an opportunity for hearing or that under another section of this
16 code is not subject to review in an adjudicative proceeding. An adjudicative proceeding
17 does not include rulemaking under this chapter.
- 18 2. "Administrative agency" or "agency" means each board, bureau, commission,
19 department, or other administrative unit of the executive branch of state government,
20 including one or more officers, employees, or other persons directly or indirectly
21 purporting to act on behalf or under authority of the agency. An administrative unit
22 located within or subordinate to an administrative agency must be treated as part of
23 that agency to the extent it purports to exercise authority subject to this chapter. The
24 term administrative agency does not include:
- 25 a. The office of management and budget except with respect to rules made under
26 section 32-12.2-14, rules relating to conduct on the capitol grounds and in
27 buildings located on the capitol grounds under section 54-21-18, rules relating to
28 the classified service as authorized under section 54-44.3-07, and rules relating
29 to state purchasing practices as required under section 54-44.4-04.
- 30 b. The adjutant general with respect to the department of emergency services.
- 31 c. The council on the arts.

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- 1 d. The state auditor.
- 2 e. The department of commerce with respect to the division of economic
- 3 development and finance.
- 4 f. The dairy promotion commission.
- 5 g. The education factfinding commission.
- 6 h. The educational technology council.
- 7 i. The board of equalization.
- 8 j. The board of higher education.
- 9 k. The Indian affairs commission.
- 10 l. The industrial commission with respect to the activities of the Bank of North
- 11 Dakota, North Dakota housing finance agency, public finance authority, North
- 12 Dakota mill and elevator association, North Dakota farm finance agency, the
- 13 North Dakota transmission authority, and the North Dakota pipeline authority.
- 14 m. The department of corrections and rehabilitation except with respect to the
- 15 activities of the division of adult services under chapter 54-23.4.
- 16 n. The pardon advisory board.
- 17 o. The parks and recreation department.
- 18 p. The parole board.
- 19 q. The state fair association.
- 20 r. The attorney general with respect to activities of the state toxicologist and the
- 21 state crime laboratory.
- 22 s. The administrative committee on veterans' affairs except with respect to rules
- 23 relating to the supervision and government of the veterans' home and the
- 24 implementation of programs or services provided by the veterans' home.
- 25 t. The industrial commission with respect to the lignite research fund except as
- 26 required under section 57-61-01.5.
- 27 u. The attorney general with respect to guidelines adopted under section 12.1-32-15
- 28 for the risk assessment of sexual offenders, the risk level review process, and
- 29 public disclosure of information under section 12.1-32-15.
- 30 v. The commission on legal counsel for indigents.

- 1 w. The attorney general with respect to twenty-four seven sobriety program
2 guidelines and program fees.
- 3 x. The industrial commission with respect to approving or setting water rates under
4 chapter 61-40.
- 5 3. "Agency head" means an individual or body of individuals in whom the ultimate legal
6 authority of the agency is vested by law.
- 7 4. "Commission" means the North Dakota ethics commission established by article XIV
8 of the Constitution of North Dakota.
- 9 5. "Complainant" means any person who files a complaint before an administrative
10 agency pursuant to section 28-32-21 and any administrative agency that, when
11 authorized by law, files such a complaint before such agency or any other agency.
- 12 5.6. "Hearing officer" means any agency head or one or more members of the agency
13 head when presiding in an administrative proceeding, or, unless prohibited by law, one
14 or more other persons designated by the agency head to preside in an administrative
15 proceeding, an administrative law judge from the office of administrative hearings, or
16 any other person duly assigned, appointed, or designated to preside in an
17 administrative proceeding pursuant to statute or rule.
- 18 6.7. "License" means a franchise, permit, certification, approval, registration, charter, or
19 similar form of authorization required by law.
- 20 7.8. "Order" means any agency action of particular applicability which determines the legal
21 rights, duties, privileges, immunities, or other legal interests of one or more specific
22 persons. The term does not include an executive order issued by the governor.
- 23 8.9. "Party" means each person named or admitted as a party or properly seeking and
24 entitled as of right to be admitted as a party. An administrative agency may be a party.
25 In a hearing for the suspension, revocation, or disqualification of an operator's license
26 under title 39, the term may include each city and each county in which the alleged
27 conduct occurred, but the city or county may not appeal the decision of the hearing
28 officer.
- 29 9.10. "Person" includes an individual, association, partnership, corporation, limited liability
30 company, the commission, a state governmental agency or governmental subdivision,
31 or an agency of such governmental subdivision.

- 1 ~~40.11.~~ "Relevant evidence" means evidence having any tendency to make the existence of
2 any fact that is of consequence to the determination of the administrative action more
3 probable or less probable than it would be without the evidence.
- 4 ~~44.12.~~ "Rule" means the whole or a part of an agency or commission statement of general
5 applicability which implements or prescribes law or policy or the organization,
6 procedure, or practice requirements of the agency or commission. The term includes
7 the adoption of new rules and the amendment, repeal, or suspension of an existing
8 rule. The term does not include:
- 9 a. A rule concerning only the internal management of an agency or the commission
10 which does not directly or substantially affect the substantive or procedural rights
11 or duties of any segment of the public.
- 12 b. A rule that sets forth criteria or guidelines to be used by the staff of an agency or
13 the commission in the performance of audits, investigations, inspections, and
14 settling commercial disputes or negotiating commercial arrangements, or in the
15 defense, prosecution, or settlement of cases, if the disclosure of the
16 ~~statement~~rule would:
- 17 (1) Enable law violators to avoid detection;
18 (2) Facilitate disregard of requirements imposed by law; or
19 (3) Give a clearly improper advantage to persons who are in an adverse
20 position to the state.
- 21 c. A rule establishing specific prices to be charged for particular goods or services
22 sold by an agency.
- 23 d. A rule concerning only the physical servicing, maintenance, or care of
24 agency-owned ~~or~~ agency-operated, commission-owned, or
25 commission-operated facilities or property.
- 26 e. A rule relating only to the use of a particular facility or property owned, operated,
27 or maintained by the state or any of its subdivisions, if the substance of the rule is
28 adequately indicated by means of signs or signals to persons who use the facility
29 or property.

- 1 f. A rule concerning only inmates of a correctional or detention facility, students
2 enrolled in an educational institution, or patients admitted to a hospital, if adopted
3 by that facility, institution, or hospital.
- 4 g. A form whose contents or substantive requirements are prescribed by rule or
5 statute or are instructions for the execution or use of the form.
- 6 h. An agency or commission budget.
- 7 i. An opinion of the attorney general.
- 8 j. A rule adopted by an agency selection committee under section 54-44.7-03.
- 9 k. Any material, including a guideline, interpretive statement, statement of general
10 policy, manual, brochure, or pamphlet, which is explanatory and not intended to
11 have the force and effect of law.

12 **SECTION 6. AMENDMENT.** Section 28-32-03 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **28-32-03. Emergency rules.**

- 15 1. If the agency, with the approval of the governor, or the commission finds that
16 emergency rulemaking is necessary, the commission or agency may declare the
17 proposed rule to be an interim final rule effective on a date no earlier than the date of
18 filing with the legislative council of the notice required by section 28-32-10.
- 19 2. A proposed rule may be given effect on an emergency basis under this section if any
20 of the following grounds exists regarding that rule:
 - 21 a. Imminent peril threatens public health, safety, or welfare, which would be abated
22 by emergency effectiveness;
 - 23 b. A delay in the effective date of the rule is likely to cause a loss of funds
24 appropriated to support a duty imposed by law upon the commission or agency;
 - 25 c. Emergency effectiveness is reasonably necessary to avoid a delay in
26 implementing an appropriations measure; or
 - 27 d. Emergency effectiveness is necessary to meet a mandate of federal law.
- 28 3. A final rule adopted after consideration of all written and oral submissions respecting
29 the interim final rule, which is substantially similar to the interim final rule, is effective
30 as of the declared effective date of the interim final rule.

- 1 4. The commission's or agency's finding, and a brief statement of the commission's or
2 agency's reasons for the finding, must be filed with the legislative council with the final
3 adopted emergency rule.
- 4 5. The commission or agency shall attempt to make interim final rules known to persons
5 who the commission or agency can reasonably be expected to believe may have a
6 substantial interest in them. As used in this subsection, "substantial interest" means an
7 interest in the effect of the rules which surpasses the common interest of all citizens.
- 8 ~~An~~The commission or an agency adopting emergency rules shall comply with the
9 notice requirements of section 28-32-10 which relate to emergency rules and shall
10 provide notice to the chairman of the administrative rules committee of the emergency
11 status, declared effective date, and grounds for emergency status of the rules under
12 subsection 2. When notice of emergency rule adoption is received, the legislative
13 council shall publish the notice and emergency rules on its website.
- 14 6. An interim final rule is ineffective one hundred eighty days after its declared effective
15 date unless first adopted as a final rule.

16 **SECTION 7. AMENDMENT.** Section 28-32-06 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **28-32-06. Force and effect of rules.**

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

23 **SECTION 8. AMENDMENT.** Section 28-32-07 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **28-32-07. Deadline for rules to implement statutory change.**

26 Any rule change, including a creation, amendment, or repeal, made to implement a
27 statutory change must be adopted and filed with the legislative council within nine months of the
28 effective date of the statutory change. If an agency or the commission needs additional time for
29 the rule change, a request for additional time must be made to the legislative council. The
30 legislative council may extend the time within which the agency or commission must adopt the

1 rule change if the request by the agency or commission is supported by evidence that the
2 agency or commission needs more time through no deliberate fault of its own.

3 **SECTION 9. AMENDMENT.** Section 28-32-08 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **28-32-08. Regulatory analysis.**

- 6 1. An agency or the commission shall issue a regulatory analysis of a proposed rule if:
7 a. Within twenty days after the last published notice date of a proposed rule
8 hearing, a written request for the analysis is filed by the governor or a member of
9 the legislative assembly; or
10 b. The proposed rule is expected to have an impact on the regulated community in
11 excess of fifty thousand dollars. The analysis under this subdivision must be
12 available on or before the first date of public notice as provided for in section
13 28-32-10.
- 14 2. The regulatory analysis must contain:
15 a. A description of the classes of persons who probably will be affected by the
16 proposed rule, including classes that will bear the costs of the proposed rule and
17 classes that will benefit from the proposed rule;
18 b. A description of the probable impact, including economic impact, of the proposed
19 rule;
20 c. The probable costs to the agency or commission of the implementation and
21 enforcement of the proposed rule and any anticipated effect on state revenues;
22 and
23 d. A description of any alternative methods for achieving the purpose of the
24 proposed rule that were seriously considered by the agency or commission and
25 the reasons why the methods were rejected in favor of the proposed rule.
- 26 3. Each regulatory analysis must include quantification of the data to the extent
27 practicable.
- 28 4. The agency or commission shall mail or deliver a copy of the regulatory analysis to
29 any person who requests a copy of the regulatory analysis. The agency or commission
30 may charge a fee for a copy of the regulatory analysis as allowed under section
31 44-04-18.

- 1 5. If required under subsection 1, the preparation and issuance of a regulatory analysis is
2 a mandatory duty of the agency or commission proposing a rule. Errors in a regulatory
3 analysis, including erroneous determinations concerning the impact of the proposed
4 rule on the regulated community, are not a ground upon which the invalidity of a rule
5 may be asserted or declared.

6 **SECTION 10. AMENDMENT.** Section 28-32-08.1 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **28-32-08.1. Rules affecting small entities - Analysis - Economic impact statements -**
9 **Judicial review.**

- 10 1. As used in this section:
- 11 a. "Small business" means a business entity, including its affiliates, which:
- 12 (1) Is independently owned and operated; and
- 13 (2) Employs fewer than twenty-five full-time employees or has gross annual
14 sales of less than two million five hundred thousand dollars;
- 15 b. "Small entity" includes small business, small organization, and small political
16 subdivision;
- 17 c. "Small organization" means any not-for-profit enterprise that is independently
18 owned and operated and is not dominant in its field; and
- 19 d. "Small political subdivision" means a political subdivision with a population of less
20 than five thousand.
- 21 2. Before adoption of any proposed rule, the adopting agency shall prepare a regulatory
22 analysis in which, consistent with public health, safety, and welfare, the agency
23 considers utilizing regulatory methods that will accomplish the objectives of applicable
24 statutes while minimizing adverse impact on small entities. The agency shall consider
25 each of the following methods of reducing impact of the proposed rule on small
26 entities:
- 27 a. Establishment of less stringent compliance or reporting requirements for small
28 entities;
- 29 b. Establishment of less stringent schedules or deadlines for compliance or
30 reporting requirements for small entities;

- 1 c. Consolidation or simplification of compliance or reporting requirements for small
2 entities;
- 3 d. Establishment of performance standards for small entities to replace design or
4 operational standards required in the proposed rule; and
- 5 e. Exemption of small entities from all or any part of the requirements contained in
6 the proposed rule.
- 7 3. Before adoption of any proposed rule that may have an adverse impact on small
8 entities, the adopting agency shall prepare an economic impact statement that
9 includes consideration of:
- 10 a. The small entities subject to the proposed rule;
- 11 b. The administrative and other costs required for compliance with the proposed
12 rule;
- 13 c. The probable cost and benefit to private persons and consumers who are
14 affected by the proposed rule;
- 15 d. The probable effect of the proposed rule on state revenues; and
- 16 e. Any less intrusive or less costly alternative methods of achieving the purpose of
17 the proposed rule.
- 18 4. For any rule subject to this section, a small entity that is adversely affected or
19 aggrieved by final agency action is entitled to judicial review of agency compliance
20 with the requirements of this section. A small entity seeking judicial review under this
21 section must file a petition for judicial review within one year from the date of final
22 agency action.
- 23 5. This section does not apply to the ethics commission, any agency that is an
24 occupational or professional licensing authority, ~~nor does this section apply to and~~ the
25 following agencies or divisions of agencies:
- 26 a. Council on the arts.
- 27 b. Beef commission.
- 28 c. Dairy promotion commission.
- 29 d. Dry bean council.
- 30 e. Highway patrolmen's retirement board.
- 31 f. Indian affairs commission.

- 1 g. Board for Indian scholarships.
- 2 h. State personnel board.
- 3 i. Potato council.
- 4 j. Board of public school education.
- 5 k. Real estate trust account committee.
- 6 l. Seed commission.
- 7 m. Soil conservation committee.
- 8 n. Oilseed council.
- 9 o. Wheat commission.
- 10 p. State seed arbitration board.
- 11 q. North Dakota lottery.
- 12 6. This section does not apply to rules mandated by federal law.
- 13 7. The adopting agency shall provide the administrative rules committee copies of any
- 14 regulatory analysis or economic impact statement, or both, prepared under this section
- 15 when the committee is considering the associated rules.

16 **SECTION 11. AMENDMENT.** Section 28-32-08.2 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **28-32-08.2. Fiscal notes for administrative rules.**

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

24 **SECTION 12. AMENDMENT.** Section 28-32-09 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **28-32-09. Takings assessment.**

- 27 1. An agency or the commission shall prepare a written assessment of the constitutional
- 28 takings implications of a proposed rule that may limit the use of private real property.
- 29 The agency's assessment must:
 - 30 a. Assess the likelihood that the proposed rule may result in a taking or regulatory
 - 31 taking.

- 1 b. Clearly and specifically identify the purpose of the proposed rule.
- 2 c. Explain why the proposed rule is necessary to substantially advance that purpose
- 3 and why no alternative action is available that would achieve the agency's or
- 4 commission's goals while reducing the impact on private property owners.
- 5 d. Estimate the potential cost to the government if a court determines that the
- 6 proposed rule constitutes a taking or regulatory taking.
- 7 e. Identify the source of payment within the agency's or commission's budget for
- 8 any compensation that may be ordered.
- 9 f. Certify that the benefits of the proposed rule exceed the estimated compensation
- 10 costs.
- 11 2. Any private landowner who is or may be affected by a rule that limits the use of the
- 12 landowner's private real property may request in writing that the agency or
- 13 commission reconsider the application or need for the rule. Within thirty days of
- 14 receiving the request, the agency or commission shall consider the request and shall
- 15 in writing inform the landowner whether the agency or commission intends to keep the
- 16 rule in place, modify application of the rule, or repeal the rule.
- 17 3. In an agency's analysis of the takings implications of a proposed rule, "taking" means
- 18 the taking of private real property, as defined in section 47-01-03, by government
- 19 action which requires compensation to the owner of that property by the fifth or
- 20 fourteenth amendment to the Constitution of the United States or section 16 of article I
- 21 of the Constitution of North Dakota. "Regulatory taking" means a taking of real
- 22 property through the exercise of the police and regulatory powers of the state which
- 23 reduces the value of the real property by more than fifty percent. However, the
- 24 exercise of a police or regulatory power does not effect a taking if it substantially
- 25 advances legitimate state interests, does not deny an owner economically viable use
- 26 of the owner's land, or is in accordance with applicable state or federal law.

27 **SECTION 13. AMENDMENT.** Section 28-32-10 of the North Dakota Century Code is

28 amended and reenacted as follows:

29 **28-32-10. Notice of rulemaking - Hearing date.**

- 30 1. An agency or the commission shall prepare a full notice and an abbreviated notice of
- 31 rulemaking.

- 1 a. The agency's full notice of the proposed adoption, amendment, or repeal of a rule
2 must include a short, specific explanation of the proposed rule and the purpose of
3 the proposed rule, identify the emergency status and declared effective date of
4 any emergency rules, include a determination of whether the proposed
5 rulemaking is expected to have an impact on the regulated community in excess
6 of fifty thousand dollars, identify at least one location where interested persons
7 may review the text of the proposed rule, provide the address to which written
8 comments concerning the proposed rule may be sent, provide the deadline for
9 submission of written comments, provide a telephone number and post-office or
10 electronic mail address at which a copy of the rules and regulatory analysis may
11 be requested, and, in the case of a substantive rule, provide the time and place
12 set for each oral hearing. ~~The~~An agency's full notice must include a statement of
13 the bill number and general subject matter of any legislation, enacted during the
14 most recent session of the legislative assembly, which is being implemented by
15 the proposed rule. The commission's full notice must include a statement of the
16 provision of the Constitution of North Dakota or the bill number and general
17 subject matter of any legislation that is being implemented by the proposed rule.
18 The agency's full notice must be filed with the legislative council, accompanied by
19 a copy of the proposed rules.
- 20 b. The agency or commission shall request publication of an abbreviated
21 newspaper publication notice at least once in each official county newspaper
22 published in this state. The abbreviated newspaper publication of notice must be
23 in a display-type format with a minimum width of one column of approximately
24 two inches [5.08 centimeters] and a minimum depth of approximately three
25 inches [7.62 centimeters] and with a headline describing the general topic of the
26 proposed rules. The notice must also include the telephone number or address to
27 use to obtain a copy of the proposed rules, identification of the emergency status
28 and declared effective date of any emergency rules, the address to use and the
29 deadline to submit written comments, and the location, date, and time of the
30 public hearing on the rules.

- 1 2. The agency or commission shall mail or deliver by electronic mail a copy of the
2 agency's full notice and proposed rule to each member of the legislative assembly
3 whose name appeared as a sponsor or cosponsor of legislation, enacted during the
4 most recent session of the legislative assembly, which is being implemented by the
5 proposed rule and to each person who has made a timely request to the agency or
6 commission for a copy of the notice and proposed rule. The agency or commission
7 may mail or otherwise provide a copy of the agency's full notice to any person who is
8 likely to be an interested person. The agency or commission may charge persons who
9 are not members of the legislative assembly fees for copies of the proposed rule as
10 allowed under section 44-04-18.
- 11 3. In addition to the other notice requirements of this subsection, the superintendent of
12 public instruction shall provide notice of any proposed rulemaking by the
13 superintendent of public instruction to each association with statewide membership
14 whose primary focus is elementary and secondary education issues which has
15 requested to receive notice from the superintendent under this subsection and to the
16 superintendent of each public school district in this state, or the president of the school
17 board for school districts that have no superintendent, at least twenty days before the
18 date of the hearing described in the notice. Notice provided by the superintendent of
19 public instruction under this section must be by first-class mail. However, upon request
20 of a group or person entitled to notice under this section, the superintendent of public
21 instruction shall provide the group or person notice by electronic mail.
- 22 4. The legislative council shall establish standard procedures for the commission and all
23 agencies to follow in complying with the provisions of this section and a procedure to
24 allow any person to request and receive mailed copies of all filings made by agencies
25 and the commission pursuant to this section. The legislative council may charge an
26 annual fee as established by the administrative rules committee for providing copies of
27 the filings.
- 28 5. At least twenty days must elapse between the date of the publication of the notice and
29 the date of the hearing. Within fifteen business days after receipt of a notice under this
30 section, a copy of the notice must be mailed by the legislative council to any person
31 who has paid the annual fee established under subsection 4.

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

3 **28-32-11. Conduct of hearings - Notice of administrative rules committee**
4 **consideration - Consideration and written record of comments.**

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

16 **SECTION 15. AMENDMENT.** Section 28-32-12 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **28-32-12. Comment period.**

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

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

25 **28-32-15. Filing of rules for publication - Effective date of rules.**

26 1. A copy of each rule adopted by an administrative agency or the commission, a copy of
27 each written comment and a written summary of each oral comment on the rule, and
28 the attorney general's opinion on the rule, if any, must be filed by the adopting agency
29 or commission with the legislative council for publication of the rule in the North
30 Dakota Administrative Code.

- 1 2. a. Nonemergency rules approved by the attorney general as to legality, adopted by
2 an administrative agency or the commission, and filed with the legislative council,
3 and not voided or held for consideration by the administrative rules committee
4 become effective according to the following schedule:
- 5 (1) Rules filed with the legislative council from August second through
6 November first become effective on the immediately succeeding January
7 first.
- 8 (2) Rules filed with the legislative council from November second through
9 February first become effective on the immediately succeeding April first.
- 10 (3) Rules filed with the legislative council from February second through May
11 first become effective on the immediately succeeding July first.
- 12 (4) Rules filed with the legislative council from May second through August first
13 become effective on the immediately succeeding October first.
- 14 b. If publication is delayed for any reason other than action of the administrative
15 rules committee, nonemergency rules, unless otherwise provided, become
16 effective when publication would have occurred but for the delay.
- 17 c. A rule held for consideration by the administrative rules committee becomes
18 effective on the first effective date of rules under the schedule in subdivision a
19 following the meeting at which that rule is reconsidered by the committee.

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

22 **28-32-16. Petition for reconsideration of rule - Hearing by agency.**

23 Any person substantially interested in the effect of a rule adopted by an administrative
24 agency or the commission may petition ~~such~~the agency or commission for a reconsideration of
25 ~~any such~~the rule or for an amendment or repeal thereof. ~~Such of the rule.~~ The petition must
26 state clearly and concisely the petitioners' alleged grounds for ~~such~~ reconsideration or ~~for~~ the
27 proposed repeal or amendment of ~~such~~the rule. The agency or commission may grant the
28 petitioner a public hearing ~~upon such~~on the terms and conditions as the agency ~~may~~
29 prescribeprescribes.

30 **SECTION 18. AMENDMENT.** Section 28-32-18.1 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **28-32-18.1. Administrative rules committee review of existing administrative rules.**

2 1. Upon request by the administrative rules committee, an administrative agency or the
3 commission shall brief the committee on its existing administrative rules and point out
4 any provisions that appear to be obsolete and any areas in which statutory or
5 constitutional authority has changed or been repealed since the rules were adopted or
6 amended.

7 2. An agency or the commission may amend or repeal a rule without complying with the
8 other requirements of this chapter relating to adoption of administrative rules and may
9 resubmit the change to the legislative council for publication provided:

- 10 a. The agency or commission initiates the request to the administrative rules
11 committee for consideration of the amendment or repeal;
- 12 b. The agency or commission provides notice to the regulated community, in a
13 manner reasonably calculated to provide notice to those persons interested in the
14 rule, of the time and place the administrative rules committee will consider the
15 request for amendment or repeal of the rule; and
- 16 c. The agency or commission and the administrative rules committee agree the rule
17 amendment or repeal eliminates a provision that is obsolete or no longer in
18 compliance with law and that no detriment would result to the substantive rights
19 of the regulated community from the amendment or repeal.

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

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

30 **SECTION 20. AMENDMENT.** Subsection 4 of section 28-32-19 of the North Dakota
31 Century Code is amended and reenacted as follows:

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

7 **SECTION 21. AMENDMENT.** Section 28-32-47 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **28-32-47. Scope of and procedure on appeal from agency rulemaking.**

- 10 1. A judge of the district court shall review an appeal from an administrative agency's or
11 ethics commission's rulemaking action based only on the record filed with the court. If
12 an appellant requests documents to be included in the record but the agency or
13 commission does not include them, the court, upon application by the appellant, may
14 compel their inclusion. After a hearing, the filing of briefs, or other disposition of the
15 matter as the judge may reasonably require, the court shall affirm the agency's
16 rulemaking action unless it finds that any of the following are present:
- 17 4. a. The provisions of this chapter have not been substantially complied with in the
18 agency's rulemaking actions.
- 19 2. b. A rule published as a result of the rulemaking action appealed is unconstitutional
20 on the face of the language adopted.
- 21 3. c. A rule published as a result of the rulemaking action appealed is beyond the
22 scope of the agency's or commission's authority to adopt.
- 23 4. d. A rule published as a result of the rulemaking action appealed is on the face of
24 the language adopted an arbitrary or capricious application of authority granted
25 by statute.
- 26 2. If the rulemaking action of the agency or commission is not affirmed by the court, ~~it~~the
27 rulemaking action must be remanded to the agency or commission for disposition in
28 accordance with the order of the court, or the rule or a portion of the rule resulting from
29 the rulemaking action of the agency or commission must be declared invalid for
30 reasons stated by the court.

1 **SECTION 22. AMENDMENT.** Section 28-32-48 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **28-32-48. Appeal - Stay of proceedings.**

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

11 **SECTION 23. AMENDMENT.** Section 28-32-49 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **28-32-49. Review in supreme court.**

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

23 **SECTION 24.** Chapter 54-66 of the North Dakota Century Code is created and enacted as
24 follows:

25 **54-66-01. Definitions.**

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

- 27 1. "Accused individual" means an individual who is alleged to have violated article XIV of
28 the Constitution of North Dakota, this chapter, or another law or rule regarding
29 transparency, corruption, elections, or lobbying.
30 2. "Complainant" means an individual who, in writing or verbally, submits a complaint to
31 the commission.

- 1 3. "Complaint" means a verbal or written allegation to the commission that article XIV of
2 the Constitution of North Dakota, this chapter, or another law or rule regarding
3 transparency, corruption, elections, or lobbying has been violated.
- 4 4. "Ethics commission" or "commission" means the North Dakota ethics commission
5 established by article XIV of the Constitution of North Dakota.
- 6 5. "Gift" means any item, service, or thing of value not given in exchange for fair market
7 consideration including travel and recreation, except:
- 8 a. Purely informational material;
9 b. A campaign contribution; and
10 c. An item, service, or thing of value given under conditions that do not raise ethical
11 concerns, as set forth in rules adopted by the ethics commission, to advance
12 opportunities for state residents to meet with public officials in educational and
13 social settings in the state.
- 14 6. "Influence state government action" means promoting or opposing the adoption of a
15 rule by an administrative agency or the commission under chapter 28-32.
- 16 7. "Lobby" means an activity listed in subsection 1 of section 54-05.1-02.
- 17 8. "Lobbyist" means an individual required to register under section 54-05.1-03.
- 18 9. "Public official" means an elected or appointed official of the state's executive or
19 legislative branch, members of the commission, members of the governor's cabinet,
20 and employees of the legislative branch.
- 21 10. "Receives the complaint" means one or more members of the commission learn of the
22 complaint.
- 23 11. "Ultimate and true source" means the person that knowingly contributed over two
24 hundred dollars solely to lobby or influence state government action.

25 **54-66-02. Disclosure of ultimate and true source of funds.**

- 26 1. A lobbyist who expends an amount greater than two hundred dollars to lobby shall file
27 with the secretary of state a report that includes the known ultimate and true source of
28 funds for the expenditure. The report must be filed with the lobbyist expenditure report
29 required under subsection 2 of section 54-05.1-03.
- 30 2. A person that expends an amount greater than two hundred dollars, not including the
31 individual's own travel expenses and membership dues, to influence state government

1 action shall file with the secretary of state a report including the known ultimate and
2 true source of funds for the expenditure. A report under this subsection must be filed
3 on or before the August first following the date of the expenditure. The secretary of
4 state shall provide a form for reports under this subsection and make the form
5 electronically accessible to the public. The secretary of state also shall charge and
6 collect fees for late filing of the reports as follows:

7 a. Twenty-five dollars for a report filed within sixty days after the deadline; or

8 b. Fifty dollars for a report filed more than sixty days after the deadline.

9 3. The secretary of state shall compile the reports required under this section and make
10 the reports electronically accessible to the public.

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 a public hearing or the imposition of a
30 penalty, any portion of a meeting during which commission members discuss
31 complaints, informal resolutions, attempts to informally resolve complaints,

- 1 investigations, or referrals under this chapter, the identity of an accused individual or
2 complainant, or any other matter arising from a complaint are closed meetings.
- 3 3. The commission shall abide by a code of ethics adopted in a public meeting. The code
4 of ethics must specify when a commission member is disqualified from participating in
5 matters before the commission.
- 6 4. Ethics commission members are entitled to:
- 7 a. Compensation for each day necessarily spent conducting commission business
8 in the amount provided for members of the legislative management under section
9 54-35-10; and
- 10 b. Payment for mileage and travel expenses necessarily incurred in the conduct of
11 commission business as provided under sections 44-08-04 and 54-06-09.
- 12 5. The director of the office of management and budget shall allocate office space in the
13 state capitol for the ethics commission, or, if office space in the capitol is unavailable,
14 shall negotiate for, contract for, and obtain office space for the ethics commission in
15 the city of Bismarck or in the Bismarck area. The ethics commission's office space
16 may not be located in the office space of any other government agency, board,
17 commission, or other governmental entity, and must provide sufficient privacy and
18 security for the ethics commission to conduct its business. The director shall charge
19 the ethics commission an amount equal to the fair value of the office space and
20 related services the office of management and budget renders to the ethics
21 commission.

22 **54-66-05. Making a complaint.**

23 A complaint may be made to the commission orally or in writing.

24 **54-66-06. Informal resolution - Investigation - Referrals.**

25 After receiving a complaint, the ethics commission may:

- 26 1. Attempt to negotiate or mediate an informal resolution between the accused individual
27 and the complainant.
- 28 2. Investigate the allegations in the complaint.
- 29 3. Refer a matter described in or arising from a complaint to the bureau of criminal
30 investigation or other appropriate law enforcement agency if a majority of the ethics

1 commission members reasonably believes a crime was committed or the safety of the
2 complainant is at risk.

3 4. Refer a complaint alleging a violation of open meetings or open records requirements
4 to the attorney general, and the attorney general shall review the allegation under
5 section 44-04-21.1 if the complaint was submitted to the ethics commission by the
6 relevant deadline in section 44-04-21.1.

7 **54-66-07. Ethics commission complaint - Informing the accused individual.**

8 If, after investigating a complaint, the ethics commission decides to charge the accused
9 individual with a violation of law, the ethics commission shall serve an ethics commission
10 complaint against the accused individual and give the accused individual no less than twenty
11 days to respond.

12 **54-66-08. Informal resolutions - Public hearings - Referrals.**

13 After serving an ethics commission complaint, the ethics commission may:

- 14 1. Resolve the charges in the ethics commission complaint informally with the accused
15 individual; or
16 2. Hold a public hearing regarding the charges in the ethics commission complaint. The
17 accused individual must be afforded due process, including an opportunity to respond
18 to the charges.

19 **54-66-09. Hearing findings - Penalties.**

- 20 1. At the conclusion of a hearing, the ethics commission shall issue and make public its
21 written findings of fact, conclusions of law, and any penalty authorized by law which
22 the ethics commission imposes.
23 2. The written findings of fact must state whether the ethics commission believes, based
24 on a preponderance of the evidence, as viewed by a reasonable person, a violation of
25 article XIV of the Constitution of North Dakota, this chapter, or another law or rule
26 regarding transparency, corruption, elections, or lobbying occurred.

27 **54-66-10. Appeals.**

28 An accused individual or complainant may appeal a finding of the ethics commission to the
29 district court of the county where the accused individual resides.

1 **54-66-11. Confidential information - Penalty.**

- 2 1. The following information is a confidential record as defined in section 44-04-17.1,
3 unless the commission has issued an ethics commission complaint, except the
4 information may be disclosed as required by law or as necessary to conduct an
5 investigation arising from a complaint:
- 6 a. Information revealing the contents of a complaint;
7 b. Information that reasonably may be used to identify an accused individual or
8 complainant; and
9 c. Information relating to or created as part of an investigation of a complaint.
- 10 2. If a complaint is informally resolved under section 54-66-06, the following information
11 is a confidential record as defined in section 44-04-17.1:
- 12 a. Information revealing the contents of the complaint;
13 b. Information that reasonably may be used to identify the accused individual or
14 complainant;
15 c. Information relating to or created as part of the process leading to the informal
16 resolution; and
17 d. Information revealing the informal resolution.
- 18 3. Publication of information included in subsections 1 and 2 by a person that knows the
19 information to be false is a class B misdemeanor.
- 20 4. The information deemed confidential in this section may be disclosed by the ethics
21 commission if the accused individual agrees to the disclosure.

22 **54-66-12. Restriction on lobbying by public officials - Penalty.**

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

26 **54-66-13. Attorney general to provide legal services.**

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

1 **54-66-14. Prohibition on delivering campaign contributions - Penalty.**

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

8 **54-66-15. Removal of ethics commission members.**

9 1. An ethics commission member may be removed from office for:

10 a. Substantial neglect of duty;

11 b. Gross misconduct in office;

12 c. Violation of the commission's code of ethics; or

13 d. Willful or habitual neglect or refusal to perform the duties of the member.

14 2. Removal of an ethics commission member under subsection 1 requires agreement by
15 a majority of:

16 a. The governor;

17 b. The majority leader of the senate; and

18 c. The minority leader of the senate.

19 **SECTION 25. LEGISLATIVE MANAGEMENT STUDY - ETHICS COMMISSION AND**

20 **LEGISLATIVE ASSEMBLY RESPONSIBILITIES.** During the 2019-20 interim, the legislative
21 management shall consider studying subsection 2 of section 1 of article XIV and subsections 1
22 through 5 of section 2 of article XIV of the Constitution of North Dakota, and the responsibilities
23 of the legislative assembly and ethics commission under the subsections. The study committee
24 must include members of the ethics commission as selected by the ethics commission. The
25 study must include consideration of whether the civil and criminal sanctions for violations of the
26 constitutional provisions are appropriate; whether additional authority is needed by the entity
27 vested to implement, interpret, and enforce section 1 of article XIV; and effective means to
28 educate public officials, lobbyists, and the public on the requirements of article XIV and other
29 laws regarding government ethics. The legislative management shall report its findings and
30 recommendations, together with any legislation necessary to implement the recommendations,
31 to the sixty-seventh legislative assembly.

1 **SECTION 26. APPROPRIATION.** There is appropriated out of any moneys in the general
2 fund in the state treasury, not otherwise appropriated, the sum of \$517,155, or so much of the
3 sum as may be necessary, to the ethics commission for the purpose of the operations of the
4 commission, for the biennium beginning July 1, 2019, and ending June 30, 2021. The ethics
5 commission is authorized two full-time equivalent positions for this purpose.

6 **SECTION 27. EFFECTIVE DATE.** Sections 1, 3, and 4 of this Act, and sections 54-66-02
7 and 54-66-03 of the North Dakota Century Code, as created by section 24 of this Act, become
8 effective January 5, 2021.

9 **SECTION 28. EMERGENCY.** Sections 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19,
10 20, 21, 22, and 23 of this Act are declared to be an emergency measure.