

Sixty-seventh  
Legislative Assembly  
of North Dakota

**HOUSE BILL NO. 1043**

Introduced by

Judiciary Committee

(At the request of the Ethics Commission)

1 A BILL for an Act to create and enact two new sections to chapter 54-66 of the North Dakota  
2 Century Code, relating to the ethics commission delegation of duties and advisory opinions; to  
3 amend and reenact subsection 2 of section 54-66-01 and sections 54-66-05, 54-66-06,  
4 54-66-07, 54-66-08, 54-66-09, and 54-66-12 of the North Dakota Century Code, relating to  
5 ethics commission complaint procedures.

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

7 **SECTION 1. AMENDMENT.** Subsection 2 of section 54-66-01 of the North Dakota Century  
8 Code is amended and reenacted as follows:

9 2. "Complainant" means ~~an individual~~ a North Dakota resident who, in writing or verbally,  
10 submits a complaint to the commission or, as permitted in section 54-66-05, the  
11 commission.

12 **SECTION 2. AMENDMENT.** Section 54-66-05 of the North Dakota Century Code is  
13 amended and reenacted as follows:

14 **54-66-05. Making a complaint - Summary dismissal of complaint.**

15 1. A complaint may be made to the commission orally or in writing. If a complainant ~~is a~~  
16 ~~nonresident or~~ does not provide the complainant's name, address, and telephone  
17 number with the complaint and, for an oral complaint, the commission has verified by  
18 any available means the complainant contacted the commission from within North  
19 Dakota, the ethics commission may ~~not investigate, refer, or take other action~~  
20 ~~regarding the complaint~~ proceed as the complainant, provided the commission  
21 determines there is a reasonable belief a violation has occurred and approves  
22 proceeding by a majority vote at a meeting at which a quorum is present. The meeting  
23 under this section at which the commission discusses whether there is a reasonable  
24 belief a violation has occurred must be held in an executive session. The commission

shall summarize each oral complaint in writing ~~unless the complaint must be~~  
~~disregarded under this section.~~

2. Upon receipt of a complaint or information regarding a violation, the commission may summarily dismiss the complaint or decline to proceed with a complaint if the alleged violation does not fall within the commission's jurisdiction, is insufficient to identify a possible violation, or fails to comply with rules adopted by the commission. In lieu of summary dismissal, the commission may refer the matter under section 54-66-08.

3. If a complainant would like the complainant's identity to remain confidential, the commission may not release the complainant's name and address to the accused individual without the authorization of the complainant. If the complainant also is a witness to the alleged violation and does not authorize release of the complainant's name and address to the accused individual, the statement of the complainant may not be used as evidence of a violation.

**SECTION 3. AMENDMENT.** Section 54-66-06 of the North Dakota Century Code is amended and reenacted as follows:

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

The commission shall inform an accused individual ~~by registered mail of the identity of the complainant who made the allegation against the accused individual~~ complaint and include the written complaint or written summary of the oral complaint, witness statements, and other documentary evidence considered as soon as reasonably possible but no later than twenty calendar days after the commission receives the complaint. If the commission is the complainant under section 54-66-05, the documents must be provided to the accused individual as soon as reasonably possible but no later than twenty calendar days after the date the commission voted to proceed with a complaint. The accused individual may respond to the complaint in writing within twenty calendar days of receipt of the complaint or summary of the complaint.

**SECTION 4. AMENDMENT.** Section 54-66-07 of the North Dakota Century Code is amended and reenacted as follows:

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

The commission shall attempt to negotiate or mediate an informal resolution between the accused individual and the complainant unless the commission ~~disregards~~ summarily dismissed

the complaint pursuant to ~~under~~ section 54-66-05 or for any other reason. The accused individual may be accompanied by legal counsel in a negotiation or mediation.

**SECTION 5. AMENDMENT.** Section 54-66-08 of the North Dakota Century Code is amended and reenacted as follows:

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

1. If an informal resolution is not reached under section 54-66-07, the ethics commission may:

- a. ~~Disregard~~Dismiss the complaint;
- b. Require ethics commission staff to investigate the allegations in the complaint; or
- c. Engage an outside investigator to investigate allegations in the complaint.

2. If the commission believes a complaint contains allegations of criminal conduct, the ethics commission shall refer the allegations of criminal conduct to the bureau of criminal investigations or other law enforcement agency and may not take further action on the referred allegations. The commission shall inform the accused individual by registered mail of a referral under this section and the nature of the referred allegations as soon as reasonably possible matter must be coordinated with the appropriate law enforcement agency with jurisdiction over the offense. If the law enforcement agency agrees to accept a referral for possible criminal prosecution, the commission may not take further action on the complaint until the law enforcement agency informs the commission law enforcement proceedings regarding the complaint are complete. If the law enforcement agency declines a referral for prosecution, the commission may investigate the complaint under the rules and policies adopted by the commission. Unless the agency accepting the referral objects, the commission shall inform the complainant and respondent as soon as reasonably possible of a referral and the nature of the referred allegations.

3. The commission may require the testimony of a witness or the production of a book, record, document, data, or other object at any of the commission's investigator interviews or proceedings held in connection with the investigation of a complaint. ~~If a witness fails or refuses to appear or any individual fails to produce requested information, the commission may issue a subpoena to compel the witness to appear or~~

~~a subpoena duces tecum to compel the production of any book, record, document,  
data, or other object.~~

~~4. If a person refuses to obey a subpoena by the commission, the district court, upon  
application by the commission, may issue to the person an order requiring the person  
to appear and give evidence or otherwise produce documentary evidence requested  
by the commission regarding the matter under investigation.~~

~~5. A witness who is subpoenaed under this section and who appears before the  
commission or the commission's investigator is entitled to receive the same fees and  
mileage as a witness in a civil case in district court.~~

**SECTION 6. AMENDMENT.** Section 54-66-09 of the North Dakota Century Code is  
amended and reenacted as follows:

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

1. An investigator, other than a law enforcement agency, of a complaint shall provide written findings of the investigation to the ethics commission within a reasonable amount of time. The ethics commission shall provide copies of the written findings and evidence considered to the accused individual, who may respond to the commission in person or in writing within a reasonable time. If the accused individual responds in person, no fewer than three members of the commission shall meet in a closed meeting with the accused individual. An accused individual may be accompanied by legal counsel when responding to the commission in person.
2. After providing a reasonable time for an accused individual to respond to the investigation findings and considering any response to the findings, the ethics commission shall determine whether a violation of article XIV of the Constitution of North Dakota, this chapter, or another law or rule regarding transparency, corruption, elections, or lobbying occurred, and inform the accused individual of the determination. If the commission determined a violation occurred, the commission may impose a penalty authorized by law for the violation or refer the matter to the agency with enforcement authority over the violation.
3. The commission may not terminate the employment of a public official or otherwise remove a public official from the public official's public office.

- 1        4. The ethics commission may not reconsider, invalidate, or overturn a decision, ruling,  
2        recommended finding of fact, recommended conclusion of law, finding of fact,  
3        conclusion of law, or order by a hearing officer under chapter 28-32 on the grounds the  
4        hearing officer failed to grant a request for disqualification under section 28-32-27 or  
5        failed to comply with subsection 5 of section 2 of article XIV of the Constitution of  
6        North Dakota.

7        **SECTION 7. AMENDMENT.** Section 54-66-12 of the North Dakota Century Code is  
8        amended and reenacted as follows:

9        **54-66-12. Confidential information.**

- 10       1. The following information is a confidential record as defined in section 44-04-17.1,  
11       unless the commission has determined the accused individual violated article XIV of  
12       the Constitution of North Dakota, this chapter, or another law or rule regarding  
13       transparency, corruption, elections, or lobbying, and a court affirmed the determination  
14       if appealed, except the information may be disclosed as required by law or as  
15       necessary to conduct an investigation arising from a complaint:  
16       a. Information revealing the contents of a complaint;  
17       b. Information that reasonably may be used to identify an accused individual; and  
18       c. Information relating to or created as part of an investigation of a complaint.
- 19       2. If a complaint is informally resolved under section 54-66-07, the following information  
20       is a confidential record as defined in section 44-04-17.1:  
21       a. Information revealing the contents of the complaint;  
22       b. Information that reasonably may be used to identify the accused individual;  
23       c. Information relating to or created as part of the process leading to the informal  
24       resolution; and  
25       d. Information revealing the informal resolution.
- 26       3. Information that reasonably may be used to identify the complainant is confidential  
27       unless the complainant waives confidentiality, authorizes its disclosure, or divulges  
28       information that reasonably would identify the complainant. ~~However, the ethics-~~  
29       ~~commission shall notify an accused individual of the identity of the complainant who~~  
30       ~~made an allegation against the accused individual, and the information.~~  
31       Information,  
including evidence under consideration by the investigator or commission, deemed

confidential under this subsection may be disclosed as required by law or as necessary to conduct an investigation arising from a complaint to include disclosure of evidence being considered to an accused individual.

4. The information deemed confidential in subsections 1 and 2 may be disclosed by the ethics commission if the accused individual agrees to the disclosure.

**SECTION 8.** A new section to chapter 54-66 of the North Dakota Century Code is created and enacted as follows:

**Commission delegation of duties.**

The commission may delegate duties to the commission's executive director ~~and other staff~~ as necessary to assure the efficient administration of the commission's responsibilities.

Delegation of duties to the executive director ~~and other staff~~ must be made through rules ~~or policies~~ adopted by the commission at a public meeting. The commission may reconsider, modify, or reverse actions taken by the executive director ~~or other staff~~ pursuant to a delegated duty.

**SECTION 9.** A new section to chapter 54-66 of the North Dakota Century Code is created and enacted as follows:

**Advisory opinions - Authority - Effect.**

1. In response to a request from a public official, candidate for elected office, or lobbyist, the ethics commission may provide a written advisory opinion regarding the application of the following to a specified ~~set of hypothetical or actual facts or~~ prospective conduct:

- a. Article XIV of the Constitution of North Dakota; or
- b. State statutes and ethics commission rules related to transparency, corruption, elections, and lobbying.
2. Within fourteen days after receiving a request for a written advisory opinion, the ethics commission shall notify the requester whether the commission will provide an opinion.
3. Within ninety days after notifying a requester a written advisory opinion will be provided, the ethics commission shall issue the opinion.
4. Criminal and civil penalties may not be imposed upon an individual for an action taken in accordance with an opinion issued under this section if:
- a. The individual acts in good faith; and

- 1           b.   The material facts surrounding the action taken are substantially the same as the  
2               factsconduct presented in the opinion.
- 3       5.   Opinions and requests for opinions under this section are open records, except names  
4           of persons in the opinions and requests are exempt records.
- 5       6.   The ethics commission shall publish all written advisory opinions issued under this  
6           section on a website or in another medium readily availablethat is accessible to the  
7           public.