

ARTICLE XIV ETHICS COMMISSION

Section 1.

1. The people of North Dakota need information to choose candidates for office, vote on ballot measures, and ensure that their representatives are accountable. This transparency must be sufficient to enable the people to make informed decisions and give proper weight to different speakers and messages. The people therefore have the right to know in a timely manner the source, quantity, timing, and nature of resources used to influence any statewide election, election for the legislative assembly, statewide ballot-issue election, and state government action. This right is essential to the rights of free speech, assembly, and petition guaranteed by the First Amendment to the Constitution of the United States and shall be construed broadly.
2. The legislative assembly shall implement and enforce this section by enacting, no more than three years after the effective date of this article, laws that require prompt, electronically accessible, plainly comprehensible, public disclosure of the ultimate and true source of funds spent in any medium, in an amount greater than two hundred dollars, adjusted for inflation, to influence any statewide election, election for the legislative assembly, statewide ballot-issue election, or to lobby or otherwise influence state government action. The legislative assembly shall have an ongoing duty to revise these laws as necessary to promote the purposes of this section in light of changes in technology and political practices. The legislative assembly shall vest by law one or more entities with authority to implement, interpret, and enforce this section and legislation enacted thereunder. If the laws or rules enacted or an implementation, interpretation, or enforcement action taken under this section fail to fully vindicate the rights provided in this section, a resident taxpayer may bring suit in the courts of this state to enforce such rights.

Section 2.

1. A lobbyist may not knowingly give, offer, solicit, initiate, or facilitate a gift to a public official. A public official may not knowingly accept a gift from a lobbyist. These prohibitions do not apply if the lobbyist is an immediate family member of the public official. "Gift," as used in this subsection, means any item, service, or thing of value not given in exchange for fair market consideration, including gifts of travel or recreation. However, "gift" does not mean any purely informational material, campaign contribution, or, in order to advance opportunities for North Dakota residents to meet with public officials in educational and social settings inside the state, any item, service, or thing of value given under conditions that do not raise ethical concerns, as determined by rules adopted by the ethics commission. Such rules must be adopted within two years after the effective date of this article. So as to allow for the adoption of these rules, these prohibitions shall take effect two years after the effective date of this article. Appropriate civil and criminal sanctions for violations of this subsection shall be set by the legislative assembly.
2. An elected public official may not be a lobbyist while holding office or for two years after holding office. Appropriate civil and criminal sanctions for violations of this subsection shall be set by the legislative assembly.
3. A lobbyist may not knowingly deliver a campaign contribution made by another individual or entity. "Deliver," as used in this subsection, means to transport, transfer, or otherwise transmit, either physically or electronically. This prohibition does not apply to a person who delivers a campaign contribution to the person's own campaign, or to the campaign of the person's immediate family member. This prohibition shall not be interpreted to prohibit any person from making a campaign

- contribution or from encouraging others to make a campaign contribution or to otherwise support or oppose a candidate. Appropriate civil and criminal sanctions for violations of this subsection shall be set by the legislative assembly.
4. A statewide candidate, candidate for the legislative assembly, or public official may not knowingly use a campaign contribution for personal use or enrichment. Appropriate civil and criminal sanctions for violations of this subsection shall be set by the legislative assembly.
 5. Directors, officers, commissioners, heads, or other executives of agencies shall avoid the appearance of bias, and shall disqualify themselves in any quasi-judicial proceeding in which monetary or in-kind support related to that person's election to any office, or a financial interest not shared by the general public as defined by the ethics commission, creates an appearance of bias to a reasonable person. The legislative assembly and the ethics commission shall enforce this provision by appropriate legislation and rules, respectively. So as to allow for the adoption of such legislation or rules, this subsection shall take effect three years after the effective date of this article.
 6. Governments of foreign countries, foreign nationals not lawfully admitted for permanent residence in the United States, and corporations organized under the laws of or having their principal place of business in a foreign country, are prohibited from making contributions or expenditures in connection with any statewide election, election for the legislative assembly, or statewide ballot-issue election.

Section 3.

1. In order to strengthen the confidence of the people of North Dakota in their government, and to support open, ethical, and accountable government, the North Dakota ethics commission is hereby established.
2. The ethics commission may adopt ethics rules related to transparency, corruption, elections, and lobbying to which any lobbyist, public official, or candidate for public office shall be subject, and may investigate alleged violations of such rules, this article, and related state laws. The ethics commission shall maintain a confidential whistleblower hotline through which any person acting in good faith may submit relevant information. The legislative assembly shall provide adequate funds for the proper carrying out of the functions and duties of the commission.
3. The ethics commission shall consist of five members, appointed for four-year terms by consensus agreement of the governor, the majority leader of the senate, and the minority leader of the senate. No member of the ethics commission may hold other public office or be a lobbyist, candidate for public office, or political party official.

Section 4.

1. This article is self-executing and all of its provisions are mandatory. Laws may be enacted to facilitate, safeguard, or expand, but not to hamper, restrict, or impair, this article. This article shall take effect sixty days after approval.
2. For the purposes of this article, "public office" or "public official" means any elected or appointed office or official of the state's executive or legislative branch, including members of the ethics commission, or members of the governor's cabinet, or employees of the legislative branch, and "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency.
3. If any provision of this article is held to be invalid, either on its face or as applied to any person, entity, or circumstance, the remaining provisions, and the application thereof to any person, entity, or circumstance other than those to which it is held invalid, shall not be affected thereby. In any case of a conflict between any provision

of this article and any other provision contained in this constitution, the provisions of this article shall control.

ARTICLE 115-04 CONFLICT OF INTEREST

Chapter
115-04-01 Conflict of Interest

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Section
115-04-01-01 Definitions
115-04-01-02 Disclosure of Potential Conflict of Interests
115-04-01-03 Neutral Reviewer Evaluation of Potential Conflict Disclosures, Decision, and Action
115-04-01-04 Disclosure Form and Documentation
115-04-01-05 Adoption of More Restrictive Rules

115-04-01-01. Definitions.

1. "Disqualifying conflict of interest" means one of the following:
 - a. A potential conflict of Interest disclosed pursuant to this rule which the public official has determined requires recusal and abstention from further action in the matter; or
 - b. A potential conflict of Interest disclosed pursuant to this rule which the neutral reviewer has determined requires the public official to recuse and abstain from further action in the matter.
2. "Potential conflict of interest" means a public official as part of the public official's duties must make a decision or take action in a matter in which the public official has:
 - a. Received a gift from one of the parties;
 - b. A significant financial interest in one of the parties or in the outcome of the proceeding; or
 - c. A relationship in private capacity with one of the parties.
3. "Gift" means a gift not otherwise permitted under article XIV of the Constitution of North Dakota, North Dakota Century Code chapter 54-66, or North Dakota Administrative Code chapter 115-03-01.
4. "Immediate family" means a public official's parent, sibling, spouse, grandparent, grandchild, stepchild, or child by blood or adoption.
5. "Neutral reviewer" means the individual or committee designated by an agency, legislative body, board, commission, or committee to receive disclosures of potential conflicts of interest and determine whether the potential conflict of interest is a disqualifying conflict of interest. In the absence of a rule or policy designating a neutral reviewer, the following shall apply:
 - a. If a public official with a potential conflict of interest is a member of a legislative body, board, commission, or committee the remaining individuals who are members of the legislative body, board, commission, or committee shall be considered as the neutral reviewer;
 - b. If a public official with a potential conflict of interest is an employee of the legislature, the public official's supervisor may be considered as the neutral reviewer;

- c. If a public official with a potential conflict of interest is a member of the governor's cabinet, the governor's designated ethics officer shall be considered as the neutral reviewer;
 - d. If the public official with a potential conflict of interest is an appointed public official, the appointing official shall be considered as the neutral reviewer; or
 - e. If none of the above apply, the public official shall make the determination but must report the disclosure and decision in the manner set forth in section 115-04-01-04 within seven calendar days.
- 6. "Public official" means any elected or appointed official of the North Dakota executive or legislative branches, including members of the ethics commission, members of the governor's cabinet, and employees of the legislative branch.
 - 7. "Relationship in a private capacity" means a past or present commitment, interest or relationship of the public official in a matter involving the public official's immediate family, individual's residing in the public official's household, the public official's employer, or employer of the public official's immediate family, or individuals with whom the public official has a substantial and continuous business relationship.
 - 8. "Significant financial interest" means a direct and substantial in-kind or monetary interest, or its equivalent, not shared by the general public; however, does not include investments in a widely held investment fund, such as mutual funds, exchange-traded funds, participation in a public employee benefits plan, or lawful campaign contributions.

History: Effective October 19, 2022.

115-04-01-02. Disclosure of potential conflict of interests.

- 1. Subject to the requirements of section 115-04-01-05, this section shall only apply if an agency, board, or commission does not have a current conflicts of interest statute or rule. In any assessment of a possible conflict of interest the matter will be reported to the ethics commission in accordance with section 115-04-01-04.
- 2. When a matter comes before a public official and the public official has a known potential conflict of interest, the public official must disclose the potential conflict of interest.
- 3. The disclosure of potential conflict of interest must be made prior to the public official taking any action or making any decision in the matter and must provide sufficient information concerning the matter and the public official's potential conflict of interest. Disclosure shall be on the written form approved by the ethics commission as set forth in section 115-04-01-04.
- 4. In emergency or other exigent circumstances where time is of the essence, and a public official is not permitted or is otherwise unable to abstain from action in connection with the matter, the public official must disclose the potential conflict of interest and the action with the neutral reviewer in the manner requested by the neutral reviewer. The disclosure must occur within seven calendar days of the public official's action in the matter.
- 5. Upon the completion of the required disclosure of a potential conflict of interest, the public official may voluntarily recuse himself and abstain from further action in the matter.

History: Effective October 19, 2022.

115-04-01-03. Neutral reviewer evaluation of potential conflict disclosures, decision, and action.

1. Subject to section 115-04-01-05, this section shall only apply if an agency, board, or commission does not have a current conflict of interest statute or rule. In any assessment of a possible conflict of interest the matter will be reported to the ethics commission in accordance with section 115-04-01-04.
2. If a public official elects not to recuse themselves from the matter, the public official may consult with or defer to the neutral reviewer. The neutral reviewer, if utilized, shall evaluate the disclosure, may request further information from the public official regarding the disclosure, and shall determine if the disclosed potential conflict of interest constitutes a disqualifying conflict of interest.
3. Upon completion of the review of the potential conflict of interest, the neutral reviewer should communicate to the public official one of the following:
 - a. The potential conflict of interest does not constitute a disqualifying conflict of interest, and the public official may participate in the matter; or
 - b. The potential conflict of interest does constitute a disqualifying conflict of interest, and the public official shall recuse himself and abstain from participating in the matter.
4. A violation of article XIV of the Constitution of North Dakota or these rules will not be found if:
 - a. The public official consults with and adheres to the neutral reviewer's suggested course of action;
 - b. The public official acts in good faith; and
 - c. The disclosed material facts surrounding the potential conflict of interest are substantially the same as the facts presented in the complaint.
5. If applicable the neutral reviewer shall comply with the requirements of North Dakota Century Code chapter 44-04 in its consideration and review of the potential conflict of interest. During any discussion of a potential conflict of interest, upon request by the neutral reviewer, the public official may provide additional information regarding the potential conflict of interest and the matter in question. Where North Dakota Century Code chapter 44-04 applies, the public official may not be asked to leave the discussion of the potential conflict of interest; however, the disclosing public official may voluntarily leave the meeting at which the discussion occurs.
6. If the neutral reviewer is a group of individuals in which the public official is a member, the public official may not vote on the issue of whether a potential conflict of interest constitutes a disqualifying conflict of interest. The public official may not be counted for purposes of determining whether a quorum is present. Any quorum requirement established under statute or rule shall be reduced as though the public official were not a member of the group of individuals that constitutes the neutral reviewer.
7. The following standards shall guide the review and decision of either a public official or the neutral reviewer with respect to any public official's potential conflict of interest:
 - a. Appropriate weight and proper deference must be given to the requirement that a public official perform the duties of elected or appointed office, including the duty to vote or otherwise act upon a matter, provided the public official has properly disclosed the potential conflict of interest as required by this rule.

- b. A decision that requires a public official to recuse or abstain from further action or decision in a matter should only occur in cases where the independence of judgment of a reasonable person in the public official's situation would be materially affected by the disclosed potential conflict of interest.
- c. The review of a potential conflict of interest and any decision that would require a public official to recuse themselves or abstain from further involvement in a matter shall consider any applicable North Dakota law which precludes the public official from recusal or abstention in the matter.
- d. It is presumed that a public official does not have a disqualifying conflict of interest if the public official would not derive any personal benefit which is greater than that accruing to any other member of the general public or any general business, profession, occupation, or group affected by the matter.
- e. Any guidance issued by the ethics commission, including informal guidance, advisory opinions, rules, standards, and precedent.

History: Effective October 19, 2022.

115-04-01-04. Disclosure form and documentation.

- 1. Disclosure required under these rules shall be made using the form approved by the ethics commission and available on the ethics commission website. The form will allow public officials and directors, officers, commissioners, heads, or other executives of agencies to input information and attach relevant documentation.
- 2. The neutral reviewer or public official shall document the decision regarding any disclosures on the approved form. Upon completion, the neutral reviewer or public official shall provide a copy of the completed form to the relevant department, agency, board, body, commission, or committee, and the ethics commission. The public official may retain a copy of the completed form.
- 3. Departments, agencies, boards, commissions, or public entities shall document in the official minutes of a proceeding information, if applicable, that a public official or director, officer, commissioner, head, or other executive has been recused from any further involvement in the matter.

History: Effective October 19, 2022.

115-04-01-05. Adoption of more restrictive rules.

Any agency, office, commission, board, or entity subject to these rules may adopt conflict of interest rules that are more restrictive than these rules but may not adopt conflict of interest rules that are less restrictive.

History: Effective October 19, 2022.