

Sixty-ninth  
Legislative Assembly  
of North Dakota

## PROPOSED AMENDMENTS TO

### HOUSE BILL NO. 1505

Introduced by

Representative Lefor

Senator Hogue

1 A BILL for an Act to create and enact a new section to chapter 54-03 and a new section to  
2 chapter 54-66 of the North Dakota Century Code, relating to immunity and ~~an affirmative a~~  
3 defense for ~~individuals~~persons related to voting on legislation and closure of matters by the  
4 ethics commission; to amend and reenact sections 12.1-13-02, 54-66-10, 54-66-12, and  
5 54-66-18 of the North Dakota Century Code, relating to immunity from criminal prosecution,  
6 individuals' rights to appeals, confidential information, and conflicts of interest; to provide for  
7 application; and to declare an emergency.

### 8 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

9 **SECTION 1. AMENDMENT.** Section 12.1-13-02 of the North Dakota Century Code is  
10 amended and reenacted as follows:

#### 11 **12.1-13-02. Speculating or wagering on official action or information.**

- 12 1. ~~A person~~An individual is guilty of a class A misdemeanor if during employment as a  
13 public servant, or within one year thereafter, in contemplation of official action by  
14 ~~himself~~the individual as a public servant or by a government agency with which ~~he~~the  
15 individual is or has been associated as a public servant, or in reliance on information  
16 to which ~~he~~the individual has or had access only in ~~his~~the individual's capacity as a  
17 public servant, ~~he~~the individual:
- 18 a. Acquires a pecuniary interest in any property, transaction, or enterprise which  
19 may be affected by ~~such~~the information or official action;
- 20 b. Speculates or wagers on the basis of ~~such~~the information or official action; or

- 1           c.   Aids another individual to do any of the foregoing.
- 2           2.   ~~A person~~An individual is guilty of a class A misdemeanor if as a public servant ~~he~~the
- 3           individual takes official action which is likely to benefit ~~him~~the individual as a result of
- 4           an acquisition of a pecuniary interest in any property, transaction, or enterprise, or of a
- 5           speculation or wager, which ~~he~~the individual made, or caused or aided another to
- 6           make, in contemplation of ~~such~~the official action.
- 7           3.   An individual is immune from prosecution under this section if:
- 8           a.   The individual was a member of the legislative assembly at the time the official
- 9           action was taken;
- 10          b.   The official action was a vote on a measure in the senate or house of
- 11          representatives or a legislative committee; and
- 12          c.   The individual adhered to ~~legislative rules~~section 54-66-18 requiring an individual
- 13          to disclose a ~~personal or private~~potential conflict of interest to the member's
- 14          respective chamber of the legislative assembly, legislative committee, the
- 15          president of the senate, or the speaker of the house.

16          **SECTION 2.** A new section to chapter 54-03 of the North Dakota Century Code is created

17   and enacted as follows:

18          **Voting on legislation - Immunity - ~~Affirmative defense~~Defense.**

19          If an individual who is a member of the legislative assembly adheres to:

- 20          1.   ~~Legislative rules~~Section 54-66-18 requiring an individual to disclose a ~~personal or~~
- 21          ~~private~~potential conflict of interest to the member's respective chamber of the
- 22          legislative assembly, a legislative committee, the president of the senate, or the
- 23          speaker of the house, the individual ~~is~~and an "organization" for which the individual is
- 24          an "agent", as those terms are defined under section 12.1-03-04, are immune from
- 25          criminal prosecution under the laws of this state for an offense arising from the
- 26          individual voting on a measure in a legislative committee, the senate, or the house of
- 27          representatives.
- 28          2.   Informal ~~advice~~guidance from ~~a staff member~~the executive director of the ethics
- 29          commission, reliance on the ~~advice~~informal guidance is ~~an affirmative~~a defense in a
- 30          prosecution for an offense arising from the individual voting on a measure in a
- 31          legislative committee, the senate, or the house of representatives, if:

- 1 a. The individual acts in good faith; and
- 2 b. The material facts surrounding the conduct are substantially the same as the
- 3 conduct presented in the informal guidance.
- 4 3. Written guidance from the executive director of the ethics commission issued under
- 5 the rules of the ethics commission, reliance on the written guidance is a defense in a
- 6 prosecution for an offense arising from the individual voting on a measure in a
- 7 legislative committee, the senate, or the house of representatives.

8 **SECTION 3.** A new section to chapter 54-66 of the North Dakota Century Code is created  
9 and enacted as follows:

10 **Issuance of alleged violation - Closure of the matter.**

11 Upon completion of an informal investigation, the executive director shall prepare a report  
12 and recommendation to the commission to close the matter or ~~prepare a request to the~~  
13 ~~commission to~~ issue an alleged violation. The ~~executive director~~ commission may issue an  
14 alleged violation, require additional informal investigation, or close the matter ~~at.~~ At any time  
15 during the enforcement action, the commission may settle and close the matter. A settlement  
16 may include the issuance of an advisory opinion pursuant to section 54-66-04.2 or informal  
17 guidance pursuant to the rules of the commission.

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

20 **54-66-10. Appeals.**

21 An accused individual may appeal a ~~finding of the ethics commission order~~ to the district  
22 court of the county where the accused individual resides, the district court in Burleigh County, or  
23 a district court of the county in which a substantial part of the subject matter of the alleged  
24 violation occurred within thirty days after notice of the commission order.

25 **SECTION 5. AMENDMENT.** Section 54-66-12 of the North Dakota Century Code is  
26 amended and reenacted as follows:

27 **54-66-12. Confidential information.**

- 28 1. The following ~~information is~~ ~~are~~ confidential ~~record as defined in~~ ~~records under~~  
29 ~~section 44-04-17.1~~ ~~when in the possession of the commission~~, unless the commission  
30 ~~has determined the accused individual violated article XIV of the Constitution of North~~  
31 ~~Dakota, this chapter, or another law or rule regarding transparency, corruption,~~

elections, or lobbying, issued ~~an~~ a final commission order in the relevant matter and a court affirmed the determination final commission order, if appealed, except the information records may be disclosed as required by law, ~~as allowed under this chapter,~~ or as necessary to conduct an investigation arising from a complaint during an enforcement action:

a. ~~Information Recorded facts relating to an allegation of a violation of article XIV of the Constitution of North Dakota, this chapter, or another law or rule regarding transparency, corruption, elections, or lobbying which were~~ Relevant information submitted to the commission by an individual;

b. ~~A record Information prepared for the commission by the commission's staff or agents to help the commission~~ determine whether to issue an alleged violation;

c. ~~A record Information~~ revealing the contents of ~~a complaint~~ an alleged violation;

~~b. Information~~

d. ~~A record Information~~ that reasonably may be used to identify ~~an accused individual~~ a respondent; and

~~e. Information~~

e. ~~A record Information~~ relating to or created as part of an investigation of ~~a complaint~~ an alleged violation.

2. ~~If a complaint is informally resolved under section 54-66-07, the following information is a confidential record as defined in section 44-04-17.1 when in the possession of the commission:~~

~~a. Information A record revealing the contents of the complaint;~~

~~b. Information A record that reasonably may be used to identify the accused individual;~~

~~c. Information A record relating to or created as part of the process leading to the informal resolution; and~~

~~d. Information A record revealing the informal resolution.~~

~~3. Information A record~~ that reasonably may be used to identify ~~the complainant~~ an individual who provides relevant information to the commission is confidential unless the ~~complainant~~ individual waives confidentiality, authorizes its disclosure, or divulges information that reasonably would identify the ~~complainant~~ individual. ~~Information A~~

1 ~~record~~, including evidence under consideration by the investigator or commission,  
2 deemed confidential under this subsection may be disclosed as required by law or as  
3 necessary to conduct an investigation ~~arising from a complaint~~ to include disclosure of  
4 evidence being considered to ~~an accused individual~~ a respondent.

5 ~~4.3.~~ The information ~~A record~~ deemed confidential in ~~subsections 1 and 2~~ subsection 1 may  
6 be disclosed by the ~~ethics~~ individual who provides relevant information to the  
7 commission, the respondent, and the commission if the ~~accused individual~~ respondent  
8 agrees to the disclosure.

9 ~~5. Notwithstanding this chapter:~~

10 ~~a. If an individual who is a member of a department, board, agency, commission, or~~  
11 ~~other public entity is a subject of a complaint or other commission process or~~  
12 ~~proceeding, the individual may disclose to the other members a record or other~~  
13 ~~information reasonably necessary for the department, board, agency,~~  
14 ~~commission, or other public entity to carry out the entity's duties.~~

15 ~~b. If a department, board, agency, commission, or other public entity is a subject of~~  
16 ~~a complaint or other commission process or proceeding, a member of the entity~~  
17 ~~may disclose to the other members a record or other information reasonably~~  
18 ~~necessary for the department, board, agency, commission, or other public entity~~  
19 ~~to carry out the entity's duties.~~

20 ~~6. Notwithstanding any statute or administrative rule, including a rule of the ethics~~  
21 ~~commission, an individual may disclose a record or other information to the legal~~  
22 ~~counsel for the individual, whether in the individual's personal or official capacity, and~~  
23 ~~to legal counsel for any department, board, agency, commission, or other public entity~~  
24 ~~to which the individual belongs or in which the individual is employed.~~

25 ~~7. Notwithstanding any statute or administrative rule, during the course of any process or~~  
26 ~~proceeding of the commission, an individual may disclose a record or other~~  
27 ~~information to a codefendant, individual with common interests, or individual who~~  
28 ~~possesses information reasonably necessary for the individual to use in the~~  
29 ~~commission's process or proceeding.~~

30 4. The commission may disclose the information deemed confidential in subsection 1 to  
31 an entity with appropriate enforcement authority.

1     5. A record created or maintained by a public entity, other than the commission, retains  
2     its status as an open, closed, exempt, or confidential record as defined in section  
3     44-04-17.1, notwithstanding the disclosure of the record to the ethics commission  
4     during an enforcement action or the relevance of the record to an enforcement action.

5     **SECTION 6. AMENDMENT.** Section 54-66-18 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7     **54-66-18. Conflicts of interest - Legislative assembly.**

- 8     1. Each legislative assembly shall adopt conflict of interest rules. The rules must:
- 9         a. Require the disclosure by a member of a potential conflict of interest relating to
- 10             any bill in which the member may have a ~~direct, unique, substantial, or~~ and
- 11             individual interest.
- 12         b. Ensure a mechanism is in place to record each disclosure and make it readily
- 13             available to the public.
- 14     2. If the legislative assembly adopts rules under subsection 1 which are at least as
- 15         restrictive as the conflict of interest rules adopted by the ethics commission, the
- 16         disclosure process portion of the conflict of interest rules adopted by the ethics
- 17         commission may not apply to members of the legislative assembly.

18     **SECTION 7. APPLICATION.** This Act applies to actions occurring on or after the effective  
19 date of this Act.

20     **SECTION 8. EMERGENCY.** This Act is declared to be an emergency measure.