

SB 2004
5-1-25

25.0171.02020
Title.

Prepared by the Legislative Council
staff for Senator Mathern

May 1, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

**PROPOSED AMENDMENTS TO
FIRST ENGROSSMENT**

ENGROSSED SENATE BILL NO. 2004

Introduced by

Appropriations Committee

*In place of amendment (25.0171.02007) adopted by the House, Engrossed Senate Bill
No. 2004 is amended by amendment (25.0171.02020) as follows:*

1 A BILL for an Act to provide an appropriation for defraying the expenses of the ethics
2 commission; to create and enact a new section to chapter 54-03 and three new sections to
3 chapter 54-66 of the North Dakota Century Code, relating to immunity and a defense for
4 individuals voting on legislation, closure of a matter of the ethics commission, rules for
5 complaint management time standards, and an ethics commission annual report; to amend and
6 reenact sections 12.1-13-02, 54-66-01, 54-66-04, 54-66-05, 54-66-06, and 54-66-07,
7 subsection 2 of section 54-66-08, and sections 54-66-09, 54-66-10, 54-66-12, and 54-66-18 of
8 the North Dakota Century Code, relating to immunity from criminal prosecution, definitions,
9 ethics commission meetings, complaints, an informal resolution process, law enforcement
10 referrals, findings, appeals, confidential information related to a complaint, and conflicts of
11 interest; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds
as may be necessary, are appropriated out of any moneys in the general fund in the state
treasury, not otherwise appropriated, to the ethics commission for the purpose of defraying the
expenses of the ethics commission, for the biennium beginning July 1, 2025, and ending
June 30, 2027, as follows:

Adjustments or

Base Level

Enhancements

Appropriation

Sixty-ninth
Legislative Assembly

1	Ethics commission	\$1,041,374	\$308,563	\$1,349,937
2	New and vacant FTE pool	0	246,304	246,304
3	Total general fund	\$1,041,374	\$554,867	\$1,596,241
4	Full-time equivalent positions	3.00	1.00	4.00
5	Ethics commission	\$1,041,374	\$316,707	\$1,358,081
6	New and vacant FTE pool	0	201,369	201,369
7	Total general fund	\$1,041,374	\$518,076	\$1,559,450
8	Full-time equivalent positions	3.00	0.75	3.75

9 **SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO**
10 **SEVENTIETH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding
11 items included in the appropriation in section 1 of this Act which are not included in the entity's
12 base budget for the 2027-29 biennium and which the entity shall report to the appropriations
13 committees of the seventieth legislative assembly regarding the use of this funding:

14	<u>One-Time Funding Description</u>	<u>General Fund</u>
15	Case management system	\$50,000
16	Office furniture	2,348
17	New FTE position one-time costs	5,484
18	Total	\$57,832
19	Office furniture	2,348
20	Total	\$52,348

21 **SECTION 3. NEW AND VACANT FTE POOL - LIMITATION - TRANSFER REQUEST.** The
22 ethics commission may not spend funds appropriated in the new and vacant FTE pool line item
23 in section 1 of this Act, but may request the office of management and budget to transfer funds
24 from the new and vacant FTE pool line item to the ethics commission line item in accordance
25 with the guidelines and reporting provisions included in House Bill No. 1015, as approved by the
26 sixty-ninth legislative assembly.

27 **SECTION 4. AMENDMENT.** Section 12.1-13-02 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **12.1-13-02. Speculating or wagering on official action or information.**

- 30 1. ~~A person~~An individual is guilty of a class A misdemeanor if during employment as a
31 public servant, or within one year thereafter, in contemplation of official action by

1 ~~himself~~the individual as a public servant or by a government agency with which ~~he~~the
2 individual is or has been associated as a public servant, or in reliance on information
3 to which ~~he~~the individual has or had access only in ~~his~~the individual's capacity as a
4 public servant, ~~he~~the individual:

- 5 a. Acquires a pecuniary interest in any property, transaction, or enterprise which
6 may be affected by ~~such~~the information or official action;
7 b. Speculates or wagers on the basis of ~~such~~the information or official action; or
8 c. Aids another individual to do any of the foregoing.

- 9 2. ~~A person~~An individual is guilty of a class A misdemeanor if as a public servant ~~he~~the
10 individual takes official action which is likely to benefit ~~him~~the individual as a result of
11 an acquisition of a pecuniary interest in any property, transaction, or enterprise, or of a
12 speculation or wager, which ~~he~~the individual made, or caused or aided another to
13 make, in contemplation of ~~such~~the official action.

14 3. An individual is immune from prosecution under this section if:

- 15 a. The individual was a member of the legislative assembly at the time the official
16 action was taken;
17 b. The official action was a vote on a measure in the senate or house of
18 representatives or a legislative committee; and
19 c. The individual adhered to legislative conflict of interest rules requiring an
20 individual to disclose a personal or private interest to the member's respective
21 chamber of the legislative assembly, a legislative committee, the president of the
22 senate, or the speaker of the house.

23 **SECTION 5.** A new section to chapter 54-03 of the North Dakota Century Code is created
24 and enacted as follows:

25 **Voting on legislation - Immunity - Affirmative defense.**

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

- 27 1. Legislative rules requiring an individual to disclose a personal or private interest to the
28 member's respective chamber of the legislative assembly, a legislative committee, the
29 president of the senate, or the speaker of the house, the individual and an
30 organization for which the individual is an agent, as defined in section 12.1-03-04, is
31 immune from criminal prosecution under the laws of this state for an offense arising

from the individual voting on a measure in a legislative committee, the senate, or the house of representatives.

2. Informal advice from a staff member of the ethics commission, reliance on the advice is an affirmative defense in a prosecution for an offense arising from the individual voting on a measure in a legislative committee, the senate, or the house of representatives.

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

54-66-01. Definitions.

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

1. ~~"Accused individual" means a lobbyist, public official, candidate for public office, political committee, or contributor who is alleged to have violated article XIV of the Constitution of North Dakota, this chapter, or another law or rule regarding transparency, corruption, elections, or lobbying.~~

~~2.~~ "Complainant" means an individual who, in writing or verbally, submits a complaint to the commission and is:

- a. A North Dakota resident;
- b. Subject to licensing by a state agency or other public official subject to the jurisdiction of the ethics commission; or
- c. A party to a quasi-judicial proceeding before a state agency or other public official subject to the jurisdiction of the ethics commission.

~~3.2.~~ "Complaint" means a verbal or written allegation to the commission that a lobbyist, public official, candidate for public office, political committee, or contributor has violated article XIV of the Constitution of North Dakota, this chapter, or another law or rule regarding transparency, corruption, elections, or lobbying.

~~4.3.~~ "Ethics commission" or "commission" means the North Dakota ethics commission established by article XIV of the Constitution of North Dakota.

~~5.4.~~ "Gift" means any item, service, or thing of value not given in exchange for fair market consideration including travel and recreation, except:

- a. Purely informational material;
- b. A campaign contribution; and

c. An item, service, or thing of value given under conditions that do not raise ethical concerns, as set forth in rules adopted by the ethics commission, to advance opportunities for state residents to meet with public officials in educational and social settings in the state.

~~6.5.~~ "Influence state government action" means promoting or opposing the adoption of a rule by an administrative agency or the commission under chapter 28-32.

~~7.6.~~ "Lobby" means an activity listed in subsection 1 of section 54-05.1-02.

~~8.7.~~ "Lobbyist" means an individual required to register under section 54-05.1-03.

~~9.8.~~ "Public official" means an elected or appointed official of the state's executive or legislative branch, members of the commission, members of the governor's cabinet, and employees of the legislative branch.

~~10.9.~~ "Receives the complaint" means one or more members of the commission learn of the complaint.

10. "Respondent" means a lobbyist, public official, candidate for public office, political committee, or contributor who is alleged to have violated article XIV of the Constitution of North Dakota, this chapter, or another law or rule regarding transparency, corruption, elections, or lobbying.

11. "Ultimate and true source" means the person that knowingly contributed over two hundred dollars solely to lobby or influence state government action.

SECTION 7. AMENDMENT. Section 54-66-04 of the North Dakota Century Code is amended and reenacted as follows:

54-66-04. Ethics commission member terms - Meetings - Code of ethics - Compensation - Office.

1. The terms of the initial members of the ethics commission must be staggered to ensure no more than two members' terms expire in one year. The terms of the initial members may be less than four years to accommodate the required staggering of terms.
2. Unless the complaint at issue has resulted in the imposition of a penalty or referral for enforcement under section 54-66-09, any portion of a meeting during which commission members discuss complaints, informal resolutions, attempts to informally resolve complaints, investigations, or referrals under this chapter, the identity of ~~an~~

1 ~~accused individual~~ a respondent or complainant, or any other matter arising from a
2 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 **SECTION 8. AMENDMENT.** Section 54-66-05 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **54-66-05. Making a complaint - Summary dismissal of complaint.**

25 1. A complaint may be made to the commission orally or in writing. If a complainant does
26 not provide the complainant's name, address, and telephone number with the
27 complaint, the ethics commission may not investigate or take other action regarding
28 the complaint. The commission shall summarize each oral complaint in writing unless
29 the complaint must be disregarded under this section.

30 2. Upon receipt of a complaint or information regarding a violation, the commission may
31 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~~ respondent without the authorization of the complainant. If the complainant does not authorize release of the complainant's name and address to the ~~accused individual~~ respondent, the statement of the complainant may not be used as evidence of a violation.
4. If the commission receives an anonymous complaint that contains documentary or real evidence of possible criminal conduct, the commission may refer the matter to the appropriate law enforcement agency as provided under section 54-66-08, and may not otherwise divulge the documentary or real evidence.

SECTION 9. AMENDMENT. Section 54-66-06 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Within thirty calendar days, the commission shall inform ~~an accused individual~~ a respondent of the complaint. Subject to the confidentiality requirements set forth in section 54-66-05, the ~~accused individual~~ respondent will be provided with the written complaint or written summary of the oral complaint, witness statements, and other documentary evidence included with the complaint. The ~~accused individual~~ respondent may provide a written response to the complaint within thirty calendar days, or after the commission requests a written response to the complaint or summary of the complaint, a period as set by the commission. This subsection does not preclude the ~~accused individual~~ respondent from providing a written response to the complaint before receiving a request for written response from the commission.
2. If the commission has summarily dismissed the complaint under subsection 2 of section 54-66-05, before notifying the ~~accused individual~~ respondent as required by this section, the notification to the ~~accused individual~~ respondent must include notice of the summary dismissal.

SECTION 10. 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~~ respondent and the complainant unless the commission summarily dismissed the complaint under section 54-66-05. The ~~accused individual~~ respondent may be accompanied by legal counsel in a negotiation or mediation. If the informal resolution process between the respondent and the complainant is unsuccessful, the commission may work with the respondent to settle and close the matter.

SECTION 11. AMENDMENT. Subsection 2 of section 54-66-08 of the North Dakota Century Code is amended and reenacted as follows:

2. If the commission believes a complaint contains allegations of criminal conduct, the matter ~~must~~ may 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 adopted by the commission. If the law enforcement agency takes no action on the referral for prosecution within sixty days, the commission may resume its review of the complaint. 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.

SECTION 12. 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~~ respondent, who may respond to the commission in person or in writing within a reasonable time. If the ~~accused~~

1 ~~individual~~respondent responds in person, no fewer than three members of the
2 commission shall meet in a closed meeting with the ~~accused individual~~respondent. An
3 ~~accused individual~~A respondent may be accompanied by legal counsel when
4 responding to the commission in person.

- 5 2. After providing a reasonable time for ~~an accused individual~~a respondent to respond to
6 the investigation findings and considering any response to the findings, the ethics
7 commission shall determine whether a violation of article XIV of the Constitution of
8 North Dakota, this chapter, or another law or rule regarding transparency, corruption,
9 elections, or lobbying occurred, and inform the ~~accused individual~~respondent of the
10 determination. If the commission determined a violation occurred, the commission may
11 impose a penalty authorized by law for the violation or refer the matter to the agency
12 with enforcement authority over the violation.
- 13 3. The commission may not terminate the employment of a public official or otherwise
14 remove a public official from the public official's public office.
- 15 4. The ethics commission may not reconsider, invalidate, or overturn a decision, ruling,
16 recommended finding of fact, recommended conclusion of law, finding of fact,
17 conclusion of law, or order by a hearing officer under chapter 28-32 on the grounds the
18 hearing officer failed to grant a request for disqualification under section 28-32-27 or
19 failed to comply with subsection 5 of section 2 of article XIV of the Constitution of
20 North Dakota.

21 **SECTION 13.** A new section to chapter 54-66 of the North Dakota Century Code is created
22 and enacted as follows:

23 **Closure of the matter.**

- 24 1. A case arising from a complaint received by the commission on or after July 1, 2025
25 must be closed within one hundred eighty days of receipt by the commission of the
26 underlying complaint, unless the commission finds good cause for the case to remain
27 open. Good cause may include a determination by the commission that additional
28 investigation is required.
- 29 2. If the case remains open for good cause under subsection 1, the respondent may
30 petition the commission to dismiss the complaint in the manner prescribed by the
31 commission.

SECTION 14. AMENDMENT. Section 54-66-10 of the North Dakota Century Code is amended and reenacted as follows:

54-66-10. Appeals.

~~An accused individual~~A respondent may appeal a finding of the ethics commission to the district court of the county where the ~~accused individual~~respondent resides.

SECTION 15. AMENDMENT. Section 54-66-12 of the North Dakota Century Code is amended and reenacted as follows:

54-66-12. Confidential information.

1. The following information is a confidential record as defined in section 44-04-17.1, unless the commission has determined the ~~accused individual~~respondent violated article XIV of the Constitution of North Dakota, this chapter, or another law or rule regarding transparency, corruption, elections, or lobbying, and a court affirmed the determination if appealed, except the information may be disclosed as required by law or as necessary to conduct an investigation arising from a complaint:
 - a. Information revealing the contents of a complaint;
 - b. Information that reasonably may be used to identify ~~an accused individual~~a respondent; and
 - c. Information relating to or created as part of an investigation of a complaint.
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:
 - a. Information revealing the contents of the complaint;
 - b. Information that reasonably may be used to identify the ~~accused individual~~respondent;
 - c. Information relating to or created as part of the process leading to the informal resolution; and
 - d. Information revealing the informal resolution.
3. Information that reasonably may be used to identify the complainant is confidential unless the complainant waives confidentiality, authorizes its disclosure, or divulges information that reasonably would identify the complainant. 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

1 an investigation arising from a complaint to include disclosure of evidence being
2 considered to ~~an accused individual~~ a respondent.

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

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

8 **54-66-18. Conflicts of interest - Legislative assembly.**

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

19 **SECTION 17.** A new section to chapter 54-66 of the North Dakota Century Code is created
20 and enacted as follows:

21 **Complaint management time standards.**

22 The commission shall adopt rules for the efficient and timely disposition of complaints from
23 receipt to resolution.

24 **SECTION 18.** A new section to chapter 54-66 of the North Dakota Century Code is created
25 and enacted as follows:

26 **Ethics commission annual report.**

- 27 1. The ethics commission shall prepare an annual report each fiscal year. The ethics
28 commission shall make the annual report available on its public website within sixty
29 days of the end of each fiscal year.
30 2. The annual report must include:

- 1 a. The number of complaints received by the commission, the status of those
2 complaints, the commission's actions to resolve the complaints, and the timing
3 related to those actions;
- 4 b. The number of advisory opinions requested and issued, as well as information
5 regarding general conflict disclosures and quasi-judicial disclosures received;
6 and
- 7 c. Information regarding education and outreach and the status of the commission's
8 budget.
- 9 3. The annual report may include recommendations for new or revised laws, rules, or
10 policies that could improve the confidence that North Dakota citizens have in their
11 government.

12 **SECTION 19. EMERGENCY.** Sections 4, 5, 10, 11, 13, 15, and 16 of this Act are declared
13 to be an emergency measure.