

2021 HOUSE JUDICIARY

HB 1043

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

HB 1043
1/6/2021

Relating to ethics commission complaint procedures.

Chairman Klemin called the meeting to order at 1:00 PM

Representatives	Roll Call
Representative Lawrence R. Klemin	P
Representative Karen Karls	P
Representative Rick Becker	P
Representative Ruth Buffalo	P
Representative Cole Christensen	P
Representative Claire Cory	P
Representative Karla Rose Hanson	P
Representative Terry B. Jones	P
Representative Jeffery J. Magrum	P
Representative Bob Paulson	P
Representative Gary Paur	P
Representative Shannon Roers	P
Jones Representative Bernie Satrom	P
Representative Steve Vetter	P

All members were present.

Discussion Topics:

- Constitutional mandate
- Ethics powers and duties
- Gifts to Public Officials

Dave Thiele , Executive Director (1:02) Presented this bill. Testimony #25

Questions: (1:12)

Al Jaeger, Secretary of State: testimony # 129 (1:48)

Chairman Klemin closed the hearing at 2:00pm

Delores Shimek, Committee Clerk by Donna Whetham

TESTIMONY OF DAVE THIELE
EXECUTIVE DIRECTOR, NORTH DAKOTA ETHICS COMMISSION
BEFORE THE
HOUSE JUDICIARY COMMITTEE
January 6, 2021

Mr. Chairman and Members of the Judiciary Committee, my name is Dave Thiele, Executive Director of the North Dakota Ethics Commission. The Ethics Commission in HB 1043 is attempting to fill gaps regarding its constitutional mandate and harmonize possible conflicts with NDCC 54-66. The Commission is committed to properly addressing citizen concerns in a manner that educates and corrects. We believe the proposed changes in HB 1043 will promote that goal.

Section 1 simply reflects that a “complainant” under NDCC 54-66 must be a North Dakota resident.

Section 2 provides that if a complainant is anonymous or a non-resident the Commission will review and upon determination that there is a reasonable belief that a violation has occurred and if approved by a majority vote, the Commission would proceed as the Complainant. If a complainant wishes to remain confidential, the Commission would not release their name to the respondent. If, however, the complainant is a witness, they must consent to release of their name to the respondent or their statement may not be considered as evidence of a violation. This ensures that a respondent would receive all evidence being considered to adequately defend themselves. **Section 2** also authorizes the Commission to dismiss or decline to proceed with a complaint if it does not meet certain criteria.

Section 3 eliminates the requirement for registered mail notice and eliminates the requirement that the identity of the complainant be provided to an accused individual. Article XIV of the North Dakota Constitution clearly mandates that a “confidential” complaint process be created. Mandating release of the complainant’s name is in clear conflict with the constitution. We do make clear that the respondent will receive **all** information being used as evidence of a possible violation.

Section 4 is a minor change to language regarding informal resolution.

Section 5 allows for a rapid resolution of a possible criminal violation and provides for Commission subpoena power. The Commission believes that it will be exceptionally rare that a case will rise to a level warranting criminal prosecution and rather than sending a case to the appropriate law enforcement agency where it may languish, the amendment would allow for a quick coordination and then allow for resolution of the matter. Paras 3-5 provide the Commission with subpoena power which is routine for ethics commissions and is necessary to ensure we can access documents or records necessary to investigate and resolve a complaint. Review of National Conference of State Legislators data on ethics commissions powers and duties ([NCSL ethics powers and duties](#)) verifies that every state ethics commission in the country has some form of subpoena power.

Section 6 and Section 7 reinforce that the accused individual will receive all the evidence being considered and makes clear such evidence is not confidential.

Section 8 simply authorizes the Commission to delegate duties to staff as appropriate. It also allows the Commission to change or reverse actions of delegated staff.

Finally, in **Section 9**, the Commission proposes the adoption of advisory opinion authority. The ability to issue advisory opinions that can be relied on by public officials and then to publish opinions for education is an important aspect of an effective ethics program. This language provides authority to the Commission to issue written advisory opinions in response to written requests from public officials, candidates for elected office, and lobbyists. Opinions can be based on actual or hypothetical facts, but not on past conduct. The issuance of an advisory opinion is discretionary with the Ethics Commission. Within 14 days after the receipt of a request for an opinion, the Ethics Commission must notify the requester whether an opinion will be provided and then has 90 days to issue the opinion. The bill provides that criminal and civil penalties may not be imposed upon an individual who acts, in good faith, in accordance with an ethics advisory opinion. The opinions are required to be made available to the public on the website of the Ethics Commission or on another readily available medium which will serve to educate other public officials. This language fills a gap concerning the scope of Article XIV, the statutes, and the rules of the Ethics Commission relating to

transparency, corruption, elections, and lobbying, and provides a means for written interpretations of that scope that the public can rely on. The Commission worked with Representative Klemin on this section and the language proposed is identical to SB 2034.

Mr. Chairman, Members of the Judiciary Committee, I would be happy to answer any questions.

ALVIN A. JAEGER
SECRETARY OF STATE

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SECRETARY OF STATE
STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

January 5, 2021

TO: Representative Klemin and Dave Thiele

FR: Al Jaeger Secretary of State

RE: Ethics Commission Chapter 54-66

For the past few months, I have been concerned about certain provisions of the Ethics bill passed last session, now known as Chapter 54-66 of the Century Code, and its relationship to the Secretary of State.

Specifically, I am concerned about the last sentence in 54-66-09(2), plus sections 54-66-03 and 54-66-15.

The last sentence in 54-66-09(2), which can be found in HB 1043, page 4, lines 22, 23, and 24, reads as follows:

"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" (underlined emphasis added)

Maybe it was not intended, but if the "or" referral option is chosen, it seems to imply that the Secretary of State "shall" make a few determinations as to the penalty imposed in 54-66-03 and 54-66-15. After you review the underlined portions of the following two sections, I will explain my concerns.

54-66-03. Lobbyist gifts - Penalty. (Effective after January 4, 2021)

1. A lobbyist may not give, offer, solicit, initiate, or facilitate a gift knowingly to a public official, and a public official may not accept a gift from a lobbyist knowingly.
2. The prohibition in subsection 1 does not apply when a lobbyist gives, offers, solicits, initiates, or facilitates, or a public official accepts a gift to or from a family member.
3. The secretary of state shall assess a civil penalty upon any individual who violates this section.
 - a. If the gift has a value of five hundred dollars or more, the civil penalty must be two times the value of the gift.
 - b. If the gift has a value of less than five hundred dollars, the civil penalty must be no less than two times the value of the gift and may be up to one thousand dollars.

54-66-15. Prohibition on delivering campaign contributions - Penalty.

A lobbyist may not deliver knowingly a campaign contribution made by another person in violation of subsection 3 of section 2 of article XIV of the Constitution of North Dakota. For a first violation, the secretary of state shall assess a civil penalty of five hundred dollars upon any individual who knowingly violates this section. For a second and subsequent knowing violation of this section, the person is guilty of a class B misdemeanor, and, if the lobbyist is a registered lobbyist, the secretary of state may revoke the lobbyist's registration. For purposes of this section, "deliver" means to transport, transfer, or otherwise transmit, either physically or electronically. This prohibition does not apply to an individual who delivers a campaign contribution to the individual's own campaign or to the campaign of the individual's immediate family member. This prohibition may not be interpreted to prohibit any person from making a campaign contribution, encouraging others to make a campaign contribution, or otherwise supporting or opposing a candidate.

For example, in 54-66-15, the word *knowingly* is used. If the "or" option is selected, is it the Secretary of State, having the *enforcement authority* in 54-66-09(2), who is to decide whether it was *knowingly* given or accepted? Is it the Secretary of State who decides the *value* of the gift in order to determine the civil penalty?

Likewise, in 54-66-15, is it the Secretary of State who decides whether it was *knowingly* violated?

If the answers to the above questions are yes, the Secretary of State, as an administrative agency, has to follow a certain process, provide notice, collect information, etc. in order to make determinations as to whether the violations were *knowingly* made and to make a judgement as to *value*.

Then, if the lobbyist disagrees with the determination of the Secretary of State, there has to be an appeal process similar to what the Secretary of State has to follow with certain decisions the SOS makes related to contractors, notaries, combative sports, etc. That process is not in Chapter 54-66.

My guess is that is not what was intended when the law was passed, but that is not what the law implies. Consider this, the first part of the sentence in 54-66-09(2) reads, "If the commission determined a violation occurred, the commission may impose a penalty authorized by law for the violation"

To me, that means the Commission determined if it were *knowingly* made and determined the *value* of the gift. Then, it could impose a penalty.

But the "or" gives the Commission an option to refer it to the SOS. Why would the Commission do that unless they expected the SOS, with the enforcement authority, to make the decisions? And to do that, the SOS needs the process included in the law.

I have been told the referral to the SOS would only be for the purpose of assessing the fine and collect the penalty. But that is not what the law says. In addition, if the Commission can impose a penalty, why does the SOS need to be the assessing and collection agent for the Commission?

Therefore, I recommend the following amendments.

In the bill, strike over "~~or refer the matter to the agency with enforcement authority over the violation.~~"

Amend Section 54-66-03(3) and strike over Secretary of State and then replace with the Commission.

Amend Section 54-66-15, and in the second sentence strike over Secretary of State and replace with Commission. Then, change the sentence with the words, ".....and, if the lobbyist is a registered lobbyist, the commission may require the secretary of state ~~may~~ to revoke the lobbyist's registration. That removes the SOS from any determinations.

If the SOS is to be the assessing and collection agent for the Commission, then the law must make it clear that is the sole function for the SOS and that the Commission will reimburse the SOS for any costs related to programming, staff time, etc. and for any collection fees that might be necessary if payment is not received.

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

HB 1043
1/12/2021

Relating to ethics commission compliant procedures.

Chairman Klemin called the meeting to order at 10:59 AM. Representatives	Roll Call
Representative Lawrence R. Klemin	P
Representative Karen Karls	P
Representative Rick Becker	P
Representative Ruth Buffalo	P
Representative Cole Christensen	P
Representative Claire Cory	P
Representative Karla Rose Hanson	P
Representative Terry B. Jones	P
Representative Jeffery J. Magrum	P
Representative Bob Paulson	P
Representative Gary Paur	P
Representative Shannon Roers Jones	P
Representative Bernie Satrom	P
Representative Steve Vetter	P

All members were present.

Chairman Klemin: Proposed amendments LC 21.8000.01003 #582 #583 (11:00 AM)

Rep. Hanson : Motion made to adopt amendments

Rep. Satrom: Seconded

Voice Vote: Motion carried

Rep. Hanson: Motion to approve Hanson amendments LC 21.8000.01002

Rep. Buffalo: Second motion **Roll Call Vote Taken:**

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	N
Representative Rick Becker	N
Representative Ruth Buffalo	Y
Representative Cole Christensen	N
Representative Claire Cory	N
Representative Karla Rose Hanson	Y
Representative Terry B. Jones	N
Representative Jeffery J. Magrum	N
Representative Bob Paulson	N
Representative Gary Paur	Y
Representative Shannon Roers Jones	Y
Representative Bernie Satrom	N
Representative Steve Vetter	N

5-9-0 Motion to approve proposed amendments failed

Rep. Satrom: Motion to pass as amended on Klemin amendments

Rep. Karls: seconds motion

Rep. Satrom: withdraws motion

Rep. Becker: Motion to further amend by Delete starting on Page 3 on line 24 beginning with the words "if a witness fails" all the way through line 5 on page 4.

Rep. Christenson: Seconds

Voice vote: motion carries to amend

Rep. Satrom: motion to pass as amended with amendment LC # 21.8000.01004

Rep. Karls: seconds

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Rick Becker	Y
Representative Ruth Buffalo	Y
Representative Cole Christensen	Y
Representative Claire Cory	Y
Representative Karla Rose Hanson	Y
Representative Terry B. Jones	Y
Representative Jeffery J. Magrum	N
Representative Bob Paulson	Y
Representative Gary Paur	Y
Representative Shannon Roers Jones	Y
Representative Bernie Satrom	Y
Representative Steve Vetter	Y

13-1-0 Do pass motion approved

Rep. Roers Jones: floor assignment

Chairman Klemin Hearing closed at 11:43 AM.

Delores Shimek, Committee Clerk by Donna Whetham

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1043

Page 1, line 20, after "present" insert ". The meeting under this section at which the commission discusses whether there is a reasonable belief a violation has occurred must be held in an executive session"

Page 3, line 18, remove "and policies"

Page 6, line 6, remove "and other staff"

Page 6, line 8, remove "and other staff"

Page 6, line 8, remove "or"

Page 6, line 9, remove "policies"

Page 6, line 10, remove "or other staff"

Page 6, line 28, after "are" insert "substantially"

Renumber accordingly

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1043

Page 1, line 1, replace "two" with "three"

Page 1, line 3, after "reenact" insert "section 54-05.1-03,"

Page 1, line 3, replace the second "and" with a comma

Page 1, line 3, after "sections" insert "54-66-02,"

Page 1, line 4, after "54-66-12" insert ", and subsection 2 of section 54-66-16"

Page 1, after line 6, insert:

"SECTION 1. AMENDMENT. Section 54-05.1-03 of the North Dakota Century Code is amended and reenacted as follows:

54-05.1-03. Registration as a lobbyist - Fee - Filing of information - Public inspection - Certificate of registration.

1. a. Before engaging in any of the activities listed in section 54-05.1-02, an individual shall register with the secretary of state and receive a certificate of registration and a distinctive lobbyist identification badge that must be prominently worn by the lobbyist when engaged in any of the activities listed in section 54-05.1-02 while on the capitol grounds. In lieu of wearing the official badge provided by the secretary of state, a lobbyist may wear a reasonable reproduction of the official badge that contains the name of the lobbyist and any of the following: the word lobbyist, the registration number of the lobbyist, or the organization name of the lobbyist in characters no smaller than one-quarter inch [6.35 millimeters]. If a lobbyist's official badge is lost or destroyed, the lobbyist may obtain a duplicate badge by applying to the secretary of state and paying a fee of ten dollars.
- b. The registrant shall state in writing:
 - (1) The registrant's full name and business address; and
 - (2) The name and address of any person upon whose behalf the registrant appears, any person in whose interest the registrant appears or works, the duration of the employment or appearances, and by whom the registrant is paid or is to be paid.
- c. The registration period commences on July first and expires on June thirtieth of the following calendar year unless an earlier expiration date is requested by the registrant.
- d. Each lobbyist shall file with the secretary of state, before the issuance of a certificate of registration, a written authorization to act as a lobbyist. The authorization must be signed by the official of the corporation, limited liability company, association, group, or

organization employing the lobbyist and may be filed by facsimile transmission.

- e. The secretary of state shall charge a fee of twenty-five dollars for registering each lobbyist and the first person represented by the lobbyist and an additional fee of fifteen dollars for each subsequent person represented by the lobbyist.
2. ~~Each lobbyist shall file, on~~On or before August first following the expiration of the registration period, each lobbyist shall file electronically a detailed report with the secretary of state ~~a detailed report~~. The report must include a statement as to each expenditure, if any, of sixty dollars or more expended on any single occasion on any individual, including the spouse or other family member of a member of the legislative assembly or the governor, in carrying out the lobbyist's work or include a statement that no reportable expenditures were made during the reporting period. The statement of each expenditure must include a description of the nature of the expenditure, the amount of the expenditure, the date of the expenditure, and the name of the recipient of the expenditure. The statement also must include the information required under section 54-66-02. A state official or agency may not require reporting of lobbyist expenditures other than is required under this subsection. The secretary of state shall provide ~~a prescribed~~an electronic form for reporting under this chapter. The secretary of state shall charge and collect fees for late filing of the detailed expenditure report as follows:
 - a. Within sixty days after the date provided in this subsection for filing the detailed expenditure report, twenty-five dollars; and
 - b. Thereafter, fifty dollars.
 3. If a lobbyist fails to file a detailed expenditure report and pay any late fee by October first, the lobbyist's registration is automatically revoked. The lobbyist's registration may be reinstated if the lobbyist thereafter files the detailed expenditure report and pays any outstanding late fee.
 4. All information required to be filed under this section ~~with the secretary of state and that previously filed must be compiled by the secretary of state within forty days after the close of the period for which the information is filed and the files must be open and accessible for public inspection during the normal working hours~~must be electronically accessible to the public."

Page 1, after line 11, insert:

"SECTION 3. AMENDMENT. Section 54-66-02 of the North Dakota Century Code is amended and reenacted as follows:

54-66-02. Disclosure of ultimate and true source of funds. (Effective after January 4, 2021)

1. A lobbyist who expends an amount greater than two hundred dollars to lobby shall file with the secretary of state a report that includes the known ultimate and true source of funds for the expenditure. The report must be filed with the lobbyist expenditure report required under subsection 2 of section 54-05.1-03.

2. A person that expends an amount greater than two hundred dollars, not including the individual's own travel expenses, salary and benefits paid by the person's employer, and membership dues, to influence state government action shall file with the secretary of state a report including the known ultimate and true source of funds for the expenditure. A report under this subsection must be filed on or before the August first following the date of the expenditure. The secretary of state shall provide a form for reports under this subsection and make the form electronically accessible to the public. The secretary of state also shall charge and collect fees for late filing of the reports as follows:
 - a. Twenty-five dollars for a report filed within sixty days after the deadline; or
 - b. Fifty dollars for a report filed more than sixty days after the deadline.
3. The secretary of state shall compile the reports required under this section and make the reports electronically accessible to the public.
4. A resident taxpayer may commence an action in a district court of this state against a person required to comply with this section to compel compliance if all other enforcement measures under this chapter have been exhausted and the taxpayer reasonably believes the person has failed to comply with this section.
5. The secretary of state shall determine adjustments for inflation of the reporting thresholds in this section and instruct persons submitting reports under this section of the adjustments. On January first of each year, the secretary shall determine whether the accumulated change in the consumer price index for all urban consumers (all items, United States city average), as applied to each reporting threshold in this section, would result in an adjustment of at least ten dollars of the threshold in effect on that date. If so, the secretary of state shall deem the reporting threshold adjusted by ten dollars."

Page 3, line 18, remove "and policies"

Page 6, after line 2, insert:

"SECTION 10. AMENDMENT. Subsection 2 of section 54-66-16 of the North Dakota Century Code is amended and reenacted as follows:

2. Removal of an ethics commission member under subsection 1 requires agreement by ~~a majority~~consensus of:
 - a. The governor;
 - b. The majority leader of the senate; and
 - c. The minority leader of the senate."

Page 6, line 8, remove "or"

Page 6, line 9, remove "policies"

Page 7, after line 2, insert:

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

Immunity from liability.

1. A cause of action may not arise from, and liability may not be imposed against the ethics commission, members or representatives of the ethics commission, or investigators appointed by the ethics commission, for any statements made or actions taken to carry out this chapter, provided the statements were made or actions were taken:
 - a. In good faith;
 - b. Without malice; and
 - c. Without fraudulent intent or intent to deceive.
2. A cause of action may not arise from, and liability may not be imposed against any person for communicating with or delivering information to the ethics commission, the ethics commission's authorized representative, or an investigator appointed by the ethics commission as part of an investigation under this chapter, provided the communication or delivery was made:
 - a. In good faith;
 - b. Without malice; and
 - c. Without fraudulent intent or intent to deceive.
3. This section does not limit or modify any immunity or privilege in common law or statute a person identified in subsection 1 or 2 may invoke."

Renumber accordingly

1 of 1
JB
1/12/21

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1043

Page 1, line 20, after "present" insert ". The meeting under this section at which the commission discusses whether there is a reasonable belief a violation has occurred must be held in an executive session"

Page 3, line 18, remove "and policies"

Page 3, line 24, remove "If a"

Page 3, remove lines 25 through 30

Page 4, remove lines 1 through 5

Page 6, line 6, remove "and other staff"

Page 6, line 8, remove "and other staff"

Page 6, line 8, remove "or"

Page 6, line 9, remove "policies"

Page 6, line 10, remove "or other staff"

Page 6, line 28, after "are" insert "substantially"

Re-number accordingly

REPORT OF STANDING COMMITTEE

HB 1043: Judiciary Committee (Rep. Klemin, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (13 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1043 was placed on the Sixth order on the calendar.

Page 1, line 20, after "present" insert ". The meeting under this section at which the commission discusses whether there is a reasonable belief a violation has occurred must be held in an executive session"

Page 3, line 18, remove "and policies"

Page 3, line 24, remove "If a"

Page 3, remove lines 25 through 30

Page 4, remove lines 1 through 5

Page 6, line 6, remove "and other staff"

Page 6, line 8, remove "and other staff"

Page 6, line 8, remove "or"

Page 6, line 9, remove "policies"

Page 6, line 10, remove "or other staff"

Page 6, line 28, after "are" insert "substantially"

Renumber accordingly

21.8000.01003
Title.

Prepared by the Legislative Council staff for
Representative Klemin

January 11, 2021

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1043

Page 1, line 20, after "present" insert ". The meeting under this section at which the commission discusses whether there is a reasonable belief a violation has occurred must be held in an executive session"

Page 3, line 18, remove "and policies"

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Page 6, line 8, remove "or"

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Page 6, line 10, remove "or other staff"

Page 6, line 28, after "are" insert "substantially"

Renumber accordingly

21.8000.01003

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, the ethics commission may ~~not investigate, refer, or take~~
18 ~~other action regarding the complaint~~ proceed as the complainant, provided the
19 commission determines there is a reasonable belief a violation has occurred and
20 approves proceeding by a majority vote at a meeting at which a quorum is present.
21 The meeting under this section at which the commission discusses whether there is a
22 reasonable belief a violation has occurred must be held in an executive session. The
23 commission shall summarize each oral complaint in writing ~~unless the complaint must~~
24 ~~be disregarded under this section.~~

- 1 2. Upon receipt of a complaint or information regarding a violation, the commission may
2 summarily dismiss the complaint or decline to proceed with a complaint if the alleged
3 violation does not fall within the commission's jurisdiction, is insufficient to identify a
4 possible violation, or fails to comply with rules adopted by the commission. In lieu of
5 summary dismissal, the commission may refer the matter under section 54-66-08.
6 3. If a complainant would like the complainant's identity to remain confidential, the
7 commission may not release the complainant's name and address to the accused
8 individual without the authorization of the complainant. If the complainant also is a
9 witness to the alleged violation and does not authorize release of the complainant's
10 name and address to the accused individual, the statement of the complainant may
11 not be used as evidence of a violation.

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

14 **54-66-06. Informing the accused individual - Written response permitted.**

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

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

27 **54-66-07. Informal resolution.**

28 The commission shall attempt to negotiate or mediate an informal resolution between the
29 accused individual and the complainant unless the commission ~~disregards~~summarily dismissed
30 the complaint ~~pursuant to~~under section 54-66-05 ~~or for any other reason.~~ The accused
31 individual may be accompanied by legal counsel in a negotiation or mediation.

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

3 **54-66-08. Investigations - Referrals.**

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

6 a. ~~Disregard~~Dismiss the complaint;

7 b. Require ethics commission staff to investigate the allegations in the complaint; or

8 c. Engage an outside investigator to investigate allegations in the complaint.

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

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

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

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

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

10 **54-66-09. Investigation findings - Ethics commission determinations.**

- 11 1. An investigator, other than a law enforcement agency, of a complaint shall provide
12 written findings of the investigation to the ethics commission within a reasonable
13 amount of time. The ethics commission shall provide copies of the written findings and
14 evidence considered to the accused individual, who may respond to the commission in
15 person or in writing within a reasonable time. If the accused individual responds in
16 person, no fewer than three members of the commission shall meet in a closed
17 meeting with the accused individual. An accused individual may be accompanied by
18 legal counsel when responding to the commission in person.
- 19 2. After providing a reasonable time for an accused individual to respond to the
20 investigation findings and considering any response to the findings, the ethics
21 commission shall determine whether a violation of article XIV of the Constitution of
22 North Dakota, this chapter, or another law or rule regarding transparency, corruption,
23 elections, or lobbying occurred, and inform the accused individual of the
24 determination. If the commission determined a violation occurred, the commission may
25 impose a penalty authorized by law for the violation or refer the matter to the agency
26 with enforcement authority over the violation.
- 27 3. The commission may not terminate the employment of a public official or otherwise
28 remove a public official from the public official's public office.
- 29 4. The ethics commission may not reconsider, invalidate, or overturn a decision, ruling,
30 recommended finding of fact, recommended conclusion of law, finding of fact,
31 conclusion of law, or order by a hearing officer under chapter 28-32 on the grounds the

1 hearing officer failed to grant a request for disqualification under section 28-32-27 or
2 failed to comply with subsection 5 of section 2 of article XIV of the Constitution of
3 North Dakota.

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

6 **54-66-12. Confidential information.**

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

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

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

5 **Commission delegation of duties.**

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

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

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

14 **Advisory opinions - Authority - Effect.**

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

18 a. Article XIV of the Constitution of North Dakota; or

19 b. State statutes and ethics commission rules related to transparency, corruption,
20 elections, and lobbying.

21 2. Within fourteen days after receiving a request for a written advisory opinion, the ethics
22 commission shall notify the requester whether the commission will provide an opinion.

23 3. Within ninety days after notifying a requester a written advisory opinion will be
24 provided, the ethics commission shall issue the opinion.

25 4. Criminal and civil penalties may not be imposed upon an individual for an action taken
26 in accordance with an opinion issued under this section if:

27 a. The individual acts in good faith; and

28 b. The material facts surrounding the action taken are **substantially** the same as the
29 facts presented in the opinion.

30 5. Opinions and requests for opinions under this section are open records, except names
31 of persons in the opinions and requests are exempt records.

- 1 6. The ethics commission shall publish all written advisory opinions issued under this
- 2 section on a website or in another medium readily available to the public.

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

HB 1043
2/15/2021

Relating to ethics commission compliant procedures.

Chairman Klemin called the meeting to order at 3:50PM.

Present: Representatives Klemin, Karls, Becker, Christensen, Cory, K Hanson, Jones, Magrum, Paulson, Paur, Roers Jones, Satrom, and Vetter. Absent: Buffalo

Discussion Topics:

- ND Citizen
- Confidential information.
- Further amendments

Chairman Klemin: Proposed amendment 21.8000.01008 discussed. Testimony #6603, #6604

Rep. Cory: Proposed amendment 21.8000.01007. Testimony # 6670, #6671

Rep. Vetter: Motion Made to reconsider the bill

Rep. Satrom: Seconded

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Rick Becker	Y
Representative Ruth Buffalo	A
Representative Cole Christensen	Y
Representative Claire Cory	Y
Representative Karla Rose Hanson	Y
Representative Terry B. Jones	Y
Representative Jeffery J. Magrum	Y
Representative Bob Paulson	Y
Representative Gary Paur	Y
Representative Shannon Roers Jones	Y
Representative Bernie Satrom	Y
Representative Steve Vetter	Y

13-0-1 Passed

Closed 4:14

DeLores Shimek
Committee Clerk

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

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

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

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

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

16 **54-66-06. Informing the accused individual - Written response permitted.**

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

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

29 **54-66-07. Informal resolution.**

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

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

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

5 **54-66-08. Investigations - Referrals.**

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

8 a. ~~Disregard~~Dismiss the complaint;

9 b. Require ethics commission staff to investigate the allegations in the complaint; or

10 c. Engage an outside investigator to investigate allegations in the complaint.

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

26 3. The commission may require the testimony of a witness or the production of a book,
27 record, document, data, or other object at any of the commission's investigator
28 interviews or proceedings held in connection with the investigation of a complaint. ~~If a~~
29 witness fails or refuses to appear or any individual fails to produce requested
30 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~~Information,
31 including evidence under consideration by the investigator or commission, deemed

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

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

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

8 **Commission delegation of duties.**

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

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

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

17 **Advisory opinions - Authority - Effect.**

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

22 a. Article XIV of the Constitution of North Dakota; or

23 b. State statutes and ethics commission rules related to transparency, corruption,
24 elections, and lobbying.

25 2. Within fourteen days after receiving a request for a written advisory opinion, the ethics
26 commission shall notify the requester whether the commission will provide an opinion.

27 3. Within ninety days after notifying a requester a written advisory opinion will be
28 provided, the ethics commission shall issue the opinion.

29 4. Criminal and civil penalties may not be imposed upon an individual for an action taken
30 in accordance with an opinion issued under this section if:

31 a. The individual acts in good faith; and

- 1 b. The material facts surrounding the action taken are **substantially** the same as the
2 ~~facts~~**conduct** 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 available~~**that is accessible** to the
7 public.

21.8000.01008
Title.

Prepared by the Legislative Council staff for
House Judiciary Committee
February 12, 2021

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1043

Page 1, line 15, remove "is a"

Page 1, line 16, remove "nonresident or"

Page 1, line 17, after "complaint" insert "and, for an oral complaint, the commission has verified by any available means the complainant contacted the commission from within North Dakota"

Page 1, line 20, after "present" insert ". The meeting under this section at which the commission discusses whether there is a reasonable belief a violation has occurred must be held in an executive session"

Page 3, line 18, remove "and policies"

Page 3, line 24, remove "If a"

Page 3, remove lines 25 through 30

Page 4, remove lines 1 through 5

Page 6, line 6, remove "and other staff"

Page 6, line 8, remove "and other staff"

Page 6, line 8, remove "or"

Page 6, line 9, remove "policies"

Page 6, line 10, remove "or other staff"

Page 6, line 17, remove "a"

Page 6, line 17, remove "set of hypothetical or actual"

Page 6, line 17, after "facts" insert "or prospective conduct"

Page 6, line 28, after "are" insert "substantially"

Page 6, line 28, replace "facts" with "conduct"

Page 7, line 2, replace "or in another medium readily available" with "that is accessible"

Renumber accordingly

21.8000.01007
Title.

Prepared by the Legislative Council staff for
Representative Cory
January 15, 2021

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1043

Page 1, line 3, remove "subsection 2 of section 54-66-01 and"

Page 1, line 3, remove "54-66-05, 54-66-06,"

Page 1, remove lines 7 through 24

Page 2, remove lines 1 through 22

Page 5, line 24, remove the overstrike over "~~However, the ethics~~"

Page 5, remove the overstrike over line 25

Page 5, line 26, remove the overstrike over "~~made an allegation against the accused individual~~"

Page 5, line 26, after "information" insert an underscored period

Page 5, line 29, remove "to include disclosure of"

Page 5, line 30, remove "evidence being considered to an accused individual"

Renumber accordingly

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, the ethics commission may not investigate, refer, or take~~
18 ~~other action regarding the complaint proceed as the complainant, provided the~~
19 ~~commission determines there is a reasonable belief a violation has occurred and~~
20 ~~approves proceeding by a majority vote at a meeting at which a quorum is present.~~
21 ~~The commission shall summarize each oral complaint in writing unless the complaint~~
22 ~~must be disregarded under this section.~~

23 ~~— 2. Upon receipt of a complaint or information regarding a violation, the commission may~~
24 ~~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 1. 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 2. AMENDMENT. Section 54-66-08 of the North Dakota Century Code is amended and reenacted as follows:

1 **54-66-08. Investigations - Referrals.**

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

4 a. ~~Disregard~~Dismiss the complaint;

5 b. Require ethics commission staff to investigate the allegations in the complaint; or

6 c. Engage an outside investigator to investigate allegations in the complaint.

7 2. If the commission believes a complaint contains allegations of criminal conduct, the

8 ~~ethics commission shall refer the allegations of criminal conduct to the bureau of~~

9 ~~criminal investigations or other law enforcement agency and may not take further~~

10 ~~action on the referred allegations. The commission shall inform the accused individual~~

11 ~~by registered mail of a referral under this section and the nature of the referred~~

12 ~~allegations as soon as reasonably possible~~matter must be coordinated with the

13 appropriate law enforcement agency with jurisdiction over the offense. If the law

14 enforcement agency agrees to accept a referral for possible criminal prosecution, the

15 commission may not take further action on the complaint until the law enforcement

16 agency informs the commission law enforcement proceedings regarding the complaint

17 are complete. If the law enforcement agency declines a referral for prosecution, the

18 commission may investigate the complaint under the rules and policies adopted by the

19 commission. Unless the agency accepting the referral objects, the commission shall

20 inform the complainant and respondent as soon as reasonably possible of a referral

21 and the nature of the referred allegations.

22 3. The commission may require the testimony of a witness or the production of a book,

23 record, document, data, or other object at any of the commission's investigator

24 interviews or proceedings held in connection with the investigation of a complaint. If a

25 witness fails or refuses to appear or any individual fails to produce requested

26 information, the commission may issue a subpoena to compel the witness to appear or

27 a subpoena duces tecum to compel the production of any book, record, document,

28 data, or other object.

29 4. If a person refuses to obey a subpoena by the commission, the district court, upon

30 application by the commission, may issue to the person an order requiring the person

1 to appear and give evidence or otherwise produce documentary evidence requested
2 by the commission regarding the matter under investigation.

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

6 **SECTION 3. AMENDMENT.** Section 54-66-09 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **54-66-09. Investigation findings - Ethics commission determinations.**

- 9 1. An investigator, other than a law enforcement agency, of a complaint shall provide
10 written findings of the investigation to the ethics commission within a reasonable
11 amount of time. The ethics commission shall provide copies of the written findings and
12 evidence considered to the accused individual, who may respond to the commission in
13 person or in writing within a reasonable time. If the accused individual responds in
14 person, no fewer than three members of the commission shall meet in a closed
15 meeting with the accused individual. An accused individual may be accompanied by
16 legal counsel when responding to the commission in person.
- 17 2. After providing a reasonable time for an accused individual to respond to the
18 investigation findings and considering any response to the findings, the ethics
19 commission shall determine whether a violation of article XIV of the Constitution of
20 North Dakota, this chapter, or another law or rule regarding transparency, corruption,
21 elections, or lobbying occurred, and inform the accused individual of the
22 determination. If the commission determined a violation occurred, the commission may
23 impose a penalty authorized by law for the violation or refer the matter to the agency
24 with enforcement authority over the violation.
- 25 3. The commission may not terminate the employment of a public official or otherwise
26 remove a public official from the public official's public office.
- 27 4. The ethics commission may not reconsider, invalidate, or overturn a decision, ruling,
28 recommended finding of fact, recommended conclusion of law, finding of fact,
29 conclusion of law, or order by a hearing officer under chapter 28-32 on the grounds the
30 hearing officer failed to grant a request for disqualification under section 28-32-27 or

1 failed to comply with subsection 5 of section 2 of article XIV of the Constitution of
2 North Dakota.

3 **SECTION 4. AMENDMENT.** Section 54-66-12 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **54-66-12. Confidential information.**

6 1. The following information is a confidential record as defined in section 44-04-17.1,
7 unless the commission has determined the accused individual violated article XIV of
8 the Constitution of North Dakota, this chapter, or another law or rule regarding
9 transparency, corruption, elections, or lobbying, and a court affirmed the determination
10 if appealed, except the information may be disclosed as required by law or as
11 necessary to conduct an investigation arising from a complaint:

- 12 a. Information revealing the contents of a complaint;
13 b. Information that reasonably may be used to identify an accused individual; and
14 c. Information relating to or created as part of an investigation of a complaint.

15 2. If a complaint is informally resolved under section 54-66-07, the following information
16 is a confidential record as defined in section 44-04-17.1:

- 17 a. Information revealing the contents of the complaint;
18 b. Information that reasonably may be used to identify the accused individual;
19 c. Information relating to or created as part of the process leading to the informal
20 resolution; and
21 d. Information revealing the informal resolution.

22 3. Information that reasonably may be used to identify the complainant is confidential
23 unless the complainant waives confidentiality, authorizes its disclosure, or divulges
24 information that reasonably would identify the complainant. However, the ethics
25 commission shall notify an accused individual of the identity of the complainant who
26 made an allegation against the accused individual, and the information. Information,
27 including evidence under consideration by the investigator or commission, deemed
28 confidential under this subsection may be disclosed as required by law or as
29 necessary to conduct an investigation arising from a complaint ~~to include disclosure of~~
30 ~~evidence being considered to an accused individual.~~

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

3 **SECTION 5.** A new section to chapter 54-66 of the North Dakota Century Code is created
4 and enacted as follows:

5 **Commission delegation of duties.**

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

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

12 **SECTION 6.** A new section to chapter 54-66 of the North Dakota Century Code is created
13 and enacted as follows:

14 **Advisory opinions - Authority - Effect.**

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

18 a. Article XIV of the Constitution of North Dakota; or

19 b. State statutes and ethics commission rules related to transparency, corruption,
20 elections, and lobbying.

21 2. Within fourteen days after receiving a request for a written advisory opinion, the ethics
22 commission shall notify the requester whether the commission will provide an opinion.

23 3. Within ninety days after notifying a requester a written advisory opinion will be
24 provided, the ethics commission shall issue the opinion.

25 4. Criminal and civil penalties may not be imposed upon an individual for an action taken
26 in accordance with an opinion issued under this section if:

27 a. The individual acts in good faith; and

28 b. The material facts surrounding the action taken are the same as the facts
29 presented in the opinion.

30 5. Opinions and requests for opinions under this section are open records, except names
31 of persons in the opinions and requests are exempt records.

- 1 6. The ethics commission shall publish all written advisory opinions issued under this
- 2 section on a website or in another medium readily available to the public.

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

HB 1043
2/17/2021

Relating to ethics commission compliant procedures.

Chairman Klemin called the meeting to order at 3:50PM.

Present: Representatives Klemin, Karls, Becker, Buffalo, Christensen, Cory, K Hanson, Jones, Magrum, Paulson, Paur, Roers Jones, Satrom, and Vetter.

Discussion Topics:

- Committee Work

Chairman Klemin: Went over proposed amendment 21.8000.01010. Testimony #6826, #6827

Rep. Paur: Moved to adopt the amendment 21.8000.01010

Rep. Christensen: Seconded

Voice vote carried

Rep. Satrom: Motion Do Pass as Amended

Rep. Christensen: Seconded

Roll Call Vote:

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Rick Becker	Y
Representative Ruth Buffalo	N
Representative Cole Christensen	Y
Representative Claire Cory	Y
Representative Karla Rose Hanson	N
Representative Terry B. Jones	Y
Representative Jeffery J. Magrum	Y
Representative Bob Paulson	Y
Representative Gary Paur	Y
Representative Shannon Roers Jones	Y
Representative Bernie Satrom	Y
Representative Steve Vetter	Y

Motion carried. **12-2-0 Carrier: Rep. Roers Jones**

Closed 3:58

DeLores Shimek
Committee Clerk

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1043

- Page 1, line 10, remove "or, as permitted in section 54-66-05, the"
- Page 1, line 11, remove "commission"
- Page 1, line 15, remove "is a"
- Page 1, line 16, remove "nonresident or"
- Page 1, line 17, remove the overstrike over "~~not investigate, refer, or take~~"
- Page 1, line 18, remove the overstrike over "~~other action regarding the complaint~~"
- Page 1, line 18, remove "proceed as the complainant, provided the"
- Page 1, remove line 19
- Page 1, line 20, replace "approves proceeding by a majority vote at a meeting at which a quorum is present" with ". A meeting under this section at which the commission discusses whether there is a reasonable belief a violation has occurred must be held in an executive session"
- Page 1, line 21, remove the overstrike over "~~unless the complaint~~"
- Page 1, line 22, remove the overstrike over "~~must be disregarded under this section~~"
- Page 2, line 6, remove "also is a"
- Page 2, line 7, remove "witness to the alleged violation and"
- Page 2, line 17, remove "If the commission is the"
- Page 2, remove lines 18 and 19
- Page 2, line 20, remove "commission voted to proceed with a complaint."
- Page 3, line 18, remove "and policies"
- Page 3, line 24, remove ". If a"
- Page 3, remove lines 25 through 30
- Page 4, remove lines 1 through 4
- Page 4, line 5, remove "mileage as a witness in a civil case in district court"
- Page 5, line 24, remove the overstrike over "~~However, the ethics~~"
- Page 5, remove the overstrike over line 25
- Page 5, line 26, remove the overstrike over "~~made an allegation against the accused individual~~"
- Page 5, line 26, after "~~information~~" insert an underscored period
- Page 6, line 6, remove "and other staff"
- Page 6, line 8, remove "and other staff"

2/17
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2 of 2

- Page 6, line 8, remove "or"
 - Page 6, line 9, remove "policies"
 - Page 6, line 10, remove "or other staff"
 - Page 6, line 17, remove "a"
 - Page 6, line 17, remove "set of"
 - Page 6, line 17, remove "or actual"
 - Page 6, line 17, after "facts" insert "or prospective conduct"
 - Page 6, line 28, after "are" insert "substantially"
 - Page 6, line 28, replace the second "facts" with "conduct"
 - Page 7, line 2, replace "or in another medium readily available" with "that is accessible"
- Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1043, as engrossed: Judiciary Committee (Rep. Klemin, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1043 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "two" with "three"

Page 1, line 3, after "reenact" insert "sections 16.1-09-05 and 54-05.1-03,"

Page 1, line 3, replace the second "and" with a comma

Page 1, line 3, after "sections" insert "54-66-02,"

Page 1, line 4, after "54-66-12" insert ", and subsection 2 of section 54-66-16"

Page 1, after line 6, insert:

"SECTION 1. AMENDMENT. Section 16.1-09-05 of the North Dakota Century Code is amended and reenacted as follows:

16.1-09-05. Powers and duties of the secretary of state and county and city auditors.

The secretary of state, or the county or city auditor, when appropriate shall:

1. Accept and file any statement submitted pursuant to this chapter.
2. Make statements filed available for public inspection and copying during regular office hours. A reasonable fee may be charged to cover the cost of copying. Proceeds from any fees charged must be deposited in the general fund of the appropriate governmental entity.
3. Make each statement available electronically to the public without charge within seven days after the statement is filed.
4. ~~Preserve statements filed under this chapter for the term of office to which the person making disclosure is elected or appointed or until a new statement is filed and preserve statements filed pursuant to this chapter by those candidates who are not elected or appointed for a period of one year at least ten years~~ after the date of receipt.

SECTION 2. AMENDMENT. Section 54-05.1-03 of the North Dakota Century Code is amended and reenacted as follows:

54-05.1-03. Registration as a lobbyist - Fee - Filing of information - Public inspection - Certificate of registration.

1. a. Before engaging in any of the activities listed in section 54-05.1-02, an individual shall register with the secretary of state and receive a certificate of registration and a distinctive lobbyist identification badge that must be prominently worn by the lobbyist when engaged in any of the activities listed in section 54-05.1-02 while on the capitol grounds. In lieu of wearing the official badge provided by the secretary of state, a lobbyist may wear a reasonable reproduction of the official badge that contains the name of the lobbyist and any of the following: the word lobbyist, the registration number of the lobbyist, or the organization name of the lobbyist in characters no smaller than one-quarter inch [6.35 millimeters]. If a lobbyist's official badge is lost or destroyed, the lobbyist may obtain a duplicate badge by applying to the secretary of state and paying a fee of ten dollars.

- b. The registrant shall state in writing:
 - (1) The registrant's full name and business address; and
 - (2) The name and address of any person upon whose behalf the registrant appears, any person in whose interest the registrant appears or works, the duration of the employment or appearances, and by whom the registrant is paid or is to be paid.
 - c. The registration period commences on July first and expires on June thirtieth of the following calendar year unless an earlier expiration date is requested by the registrant.
 - d. Each lobbyist shall file with the secretary of state, before the issuance of a certificate of registration, a written authorization to act as a lobbyist. The authorization must be signed by the official of the corporation, limited liability company, association, group, or organization employing the lobbyist and may be filed by facsimile transmission.
 - e. The secretary of state shall charge a fee of twenty-five dollars for registering each lobbyist and the first person represented by the lobbyist and an additional fee of fifteen dollars for each subsequent person represented by the lobbyist.
2. ~~Each lobbyist shall file, on~~On or before August first following the expiration of the registration period, ~~each lobbyist shall file electronically a detailed report~~ with the secretary of state ~~a detailed report~~. The report must include a statement as to each expenditure, if any, of sixty dollars or more expended on any single occasion on any individual, including the spouse or other family member of a member of the legislative assembly or the governor, in carrying out the lobbyist's work or include a statement that no reportable expenditures were made during the reporting period. The statement of each expenditure must include a description of the nature of the expenditure, the amount of the expenditure, the date of the expenditure, and the name of the recipient of the expenditure. The statement also must include the information required under section 54-66-02. A state official or agency may not require reporting of lobbyist expenditures other than is required under this subsection. The secretary of state shall provide ~~a prescribed~~an electronic form for reporting under this chapter. The secretary of state shall charge and collect fees for late filing of the detailed expenditure report as follows:
- a. Within sixty days after the date provided in this subsection for filing the detailed expenditure report, twenty-five dollars; and
 - b. Thereafter, fifty dollars.
3. If a lobbyist fails to file a detailed expenditure report and pay any late fee by October first, the lobbyist's registration is automatically revoked. The lobbyist's registration may be reinstated if the lobbyist thereafter files the detailed expenditure report and pays any outstanding late fee.
4. All information required to be filed under this section ~~with the secretary of state and that previously filed must be compiled by the secretary of state within forty days after the close of the period for which the information is filed and the files must be open and accessible for public inspection during the normal working hours~~must be electronically accessible to the public."

Page 1, after line 11, insert:

"SECTION 4. AMENDMENT. Section 54-66-02 of the North Dakota Century Code is amended and reenacted as follows:

54-66-02. Disclosure of ultimate and true source of funds. (Effective after January 4, 2021)

1. A lobbyist who expends an amount greater than two hundred dollars to lobby shall file with the secretary of state a report that includes the known ultimate and true source of funds for the expenditure. The report must be filed with the lobbyist expenditure report required under subsection 2 of section 54-05.1-03.
2. A person that expends an amount greater than two hundred dollars, not including the individual's own travel expenses, salary and benefits paid by the person's employer, and membership dues, to influence state government action shall file with the secretary of state a report including the known ultimate and true source of funds for the expenditure. A report under this subsection must be filed on or before the August first following the date of the expenditure. The secretary of state shall provide a form for reports under this subsection and make the form electronically accessible to the public. The secretary of state also shall charge and collect fees for late filing of the reports as follows:
 - a. Twenty-five dollars for a report filed within sixty days after the deadline; or
 - b. Fifty dollars for a report filed more than sixty days after the deadline.
3. The secretary of state shall compile the reports required under this section and make the reports electronically accessible to the public.
4. A resident taxpayer may commence an action in a district court of this state against a person required to comply with this section to compel compliance if all other enforcement measures under this chapter have been exhausted and the taxpayer reasonably believes the person has failed to comply with this section.
5. The secretary of state shall determine adjustments for inflation of the reporting thresholds in this section and instruct persons submitting reports under this section of the adjustments. On January first of each year, the secretary shall determine whether the accumulated change in the consumer price index for all urban consumers (all items, United States city average), as applied to each reporting threshold in this section, would result in an adjustment of at least ten dollars of the threshold in effect on that date. If so, the secretary of state shall deem the reporting threshold adjusted by ten dollars."

Page 6, after line 2, insert:

"SECTION 11. AMENDMENT. Subsection 2 of section 54-66-16 of the North Dakota Century Code is amended and reenacted as follows:

2. Removal of an ethics commission member under subsection 1 requires agreement by a majority consensus of:
 - a. The governor;
 - b. The majority leader of the senate; and

- c. The minority leader of the senate."

Page 7, after line 2, insert:

"**SECTION 14.** A new section to chapter 54-66 of the North Dakota Century Code is created and enacted as follows:

Immunity from liability.

1. A cause of action may not arise from, and liability may not be imposed against the ethics commission, members or representatives of the ethics commission, or investigators appointed by the ethics commission, for any statements made or actions taken to carry out this chapter, provided the statements were made or actions were taken:
 - a. In good faith;
 - b. Without malice; and
 - c. Without fraudulent intent or intent to deceive.
2. A cause of action may not arise from, and liability may not be imposed against any person for communicating with or delivering information to the ethics commission, the ethics commission's authorized representative, or an investigator appointed by the ethics commission as part of an investigation under this chapter, provided the communication or delivery was made:
 - a. In good faith;
 - b. Without malice; and
 - c. Without fraudulent intent or intent to deceive.
3. This section does not limit or modify any immunity or privilege in common law or statute a person identified in subsection 1 or 2 may invoke."

Renumber accordingly

21.8000.01010
Title.

Prepared by the Legislative Council staff for
Representative Klemin
February 16, 2021

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1043

- Page 1, line 10, remove "or, as permitted in section 54-66-05, the"
- Page 1, line 11, remove "commission"
- Page 1, line 15, remove "is a"
- Page 1, line 16, remove "nonresident or"
- Page 1, line 17, remove the overstrike over "~~not investigate, refer, or take~~"
- Page 1, line 18, remove the overstrike over "~~other action regarding the complaint~~"
- Page 1, line 18, remove "proceed as the complainant, provided the"
- Page 1, remove line 19
- Page 1, line 20, replace "approves proceeding by a majority vote at a meeting at which a quorum is present" with ". The meeting under this section at which the commission discusses whether there is a reasonable belief a violation has occurred must be held in an executive session"
- Page 1, line 21, remove the overstrike over "~~unless the complaint~~"
- Page 1, line 22, remove the overstrike over "~~must be disregarded under this section~~"
- Page 2, line 6, remove "also is a"
- Page 2, line 7, remove "witness to the alleged violation and"
- Page 2, line 17, remove "If the commission is the"
- Page 2, remove lines 18 and 19
- Page 2, line 20, remove "commission voted to proceed with a complaint."
- Page 3, line 18, remove "and policies"
- Page 3, line 24, remove "If a"
- Page 3, remove lines 25 through 30
- Page 4, remove lines 1 through 5
- Page 5, line 24, remove the overstrike over "~~However, the ethics~~"
- Page 5, remove the overstrike over line 25
- Page 5, line 26, remove the overstrike over "~~made an allegation against the accused individual~~"
- Page 5, line 26, after "information" insert an underscored period
- Page 6, line 6, remove "and other staff"
- Page 6, line 8, remove "and other staff"
- Page 6, line 8, remove "or"

Page 6, line 9, remove "policies"

Page 6, line 10, remove "or other staff"

Page 6, line 17, remove "a"

Page 6, line 17, remove "set of"

Page 6, line 17, remove "or actual"

Page 6, line 17, after "facts" insert "or prospective conduct"

Page 6, line 28, after "are" insert "substantially"

Page 6, line 28, replace the second "facts" with "conduct"

Page 7, line 2, replace "or in another medium readily available" with "that is accessible"

Renumber accordingly

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, the ethics commission may not investigate, refer, or take
18 other action regarding the complaint ~~proceed as the complainant, provided the~~
19 ~~commission determines there is a reasonable belief a violation has occurred and~~
20 ~~approves proceeding by a majority vote at a meeting at which a quorum is present.~~
21 The meeting under this section at which the commission discusses whether there is a
22 reasonable belief a violation has occurred must be held in an executive session. The
23 commission shall summarize each oral complaint in writing unless the complaint must
24 be disregarded under this section.

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

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

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

14 **54-66-06. Informing the accused individual - Written response permitted.**

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

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

27 **54-66-07. Informal resolution.**

28 The commission shall attempt to negotiate or mediate an informal resolution between the
29 accused individual and the complainant unless the commission ~~disregards~~summarily dismissed
30 the complaint ~~pursuant to~~under section 54-66-05 ~~or for any other reason.~~ The accused
31 individual may be accompanied by legal counsel in a negotiation or mediation.

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

3 **54-66-08. Investigations - Referrals.**

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

6 a. ~~Disregard~~Dismiss the complaint;

7 b. Require ethics commission staff to investigate the allegations in the complaint; or

8 c. Engage an outside investigator to investigate allegations in the complaint.

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

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

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

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

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

10 **54-66-09. Investigation findings - Ethics commission determinations.**

- 11 1. An investigator, other than a law enforcement agency, of a complaint shall provide
12 written findings of the investigation to the ethics commission within a reasonable
13 amount of time. The ethics commission shall provide copies of the written findings and
14 evidence considered to the accused individual, who may respond to the commission in
15 person or in writing within a reasonable time. If the accused individual responds in
16 person, no fewer than three members of the commission shall meet in a closed
17 meeting with the accused individual. An accused individual may be accompanied by
18 legal counsel when responding to the commission in person.
- 19 2. After providing a reasonable time for an accused individual to respond to the
20 investigation findings and considering any response to the findings, the ethics
21 commission shall determine whether a violation of article XIV of the Constitution of
22 North Dakota, this chapter, or another law or rule regarding transparency, corruption,
23 elections, or lobbying occurred, and inform the accused individual of the
24 determination. If the commission determined a violation occurred, the commission may
25 impose a penalty authorized by law for the violation or refer the matter to the agency
26 with enforcement authority over the violation.
- 27 3. The commission may not terminate the employment of a public official or otherwise
28 remove a public official from the public official's public office.
- 29 4. The ethics commission may not reconsider, invalidate, or overturn a decision, ruling,
30 recommended finding of fact, recommended conclusion of law, finding of fact,
31 conclusion of law, or order by a hearing officer under chapter 28-32 on the grounds the

1 hearing officer failed to grant a request for disqualification under section 28-32-27 or
2 failed to comply with subsection 5 of section 2 of article XIV of the Constitution of
3 North Dakota.

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

6 **54-66-12. Confidential information.**

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

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

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

5 **Commission delegation of duties.**

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

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

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

14 **Advisory opinions - Authority - Effect.**

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

19 a. Article XIV of the Constitution of North Dakota; or

20 b. State statutes and ethics commission rules related to transparency, corruption,
21 elections, and lobbying.

22 2. Within fourteen days after receiving a request for a written advisory opinion, the ethics
23 commission shall notify the requester whether the commission will provide an opinion.

24 3. Within ninety days after notifying a requester a written advisory opinion will be
25 provided, the ethics commission shall issue the opinion.

26 4. Criminal and civil penalties may not be imposed upon an individual for an action taken
27 in accordance with an opinion issued under this section if:

28 a. The individual acts in good faith; and

29 b. The material facts surrounding the action taken are **substantially** the same as the
30 ~~facts~~conduct presented in the opinion.

- 1 5. Opinions and requests for opinions under this section are open records, except names
2 of persons in the opinions and requests are exempt records.
- 3 6. The ethics commission shall publish all written advisory opinions issued under this
4 section on a website ~~or in another medium readily available~~that is accessible to the
5 public.

2021 SENATE JUDICIARY

HB 1043

2021 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

HB 1043
3/10/2021

Relating to the ethics commission delegation of duties and advisory opinions; to amend and reenact subsection 2 of section 54-66-01 and sections 54-66-05, 54-66-06, 54-66-07, 54-66-08, 54-66-09, and 54-66-12 of the North Dakota Century Code, relating to ethics commission complaint procedures.

Hearing called to order, [2:58] all senators are present: **Myrdal, Luick, Dwyer, Bakke, Heitkamp, Fors, and Larson.**

Discussion Topics:

- Actions of commissions on Non-resident & anonymous complaint
- Confidential information
- Proposal to adopt advisory opinion authority

Dave L Thiele [2:58] ND Ethics Commissioner, testified in favor #8509

Senator Bakke [3:23], to head sub-committee

Consideration and Vote is postponed for further information

Representative Jim Kasper [3:25], testified in favor of HB 1043 without amendments

Senator Myrdal [3:36] moved to DO PASS HB 1043

Senator Luick [3:36] seconded the motion

The motion did Not Pass 3-4-0

Chair Larson closed the Hearing [3:38]

Jamal Omar, Committee Clerk

Senators	Vote
Senator Janne Myrdal	Y
Senator Michael Dwyer	N
Senator JoNell A. Bakke	N
Senator Robert O. Fors	N
Senator Jason G. Heitkamp	Y
Senator Larry Luick	Y
Senator Diane Larson	N

Additional written testimony: Michael S Sanderson #8051

TESTIMONY OF DAVE THIELE
EXECUTIVE DIRECTOR, NORTH DAKOTA ETHICS COMMISSION
BEFORE THE
SENATE JUDICIARY COMMITTEE
Engrossed HB 1043 March 10, 2021

Mr. Chairman and Members of the Judiciary Committee, my name is Dave Thiele, Executive Director of the North Dakota Ethics Commission. The Ethics Commission in HB 1043 is attempting to fill gaps regarding its constitutional mandate and harmonize conflicts with NDCC 54-66. The Commission is committed to properly addressing citizen concerns in a manner that educates and corrects. The Commission has worked to create an environment that is not a “gotcha” entity, but instead focuses on identifying the problem, fixing the problem and then educate so others don’t make the same mistake. We believe our proposed changes to NDCC 54-66 will promote that goal.

Section 1 simply reflects that a “complainant” under NDCC 54-66 must be a North Dakota resident.

Section 2 The original bill provided that if a complainant is anonymous or a non-resident the Commission would review and upon determination that there is a reasonable belief that a violation has occurred and if approved by a majority vote, the Commission would proceed as the Complainant. If a complainant wished to remain confidential, the Commission would not release their name to the respondent. If, however, the complainant is a witness, they must consent to release of their name to the respondent or their statement may not be considered as evidence of a violation. This ensures that a respondent would receive all evidence being considered to adequately defend themselves. The House eliminated the Commissions ability to consider either non-resident or anonymous complaints. Current law allows non-resident complaints but does not allow the Commission to act on anonymous complaints regardless the evidence or violation. The Commission believes that it is very important to be able to act in the unlikely event that physical evidence of a violation is provided. The Commission believes that the proposed review process will eliminate frivolous complaints or those politically motivated. It needs to be emphasized that an anonymous complaint can only be

acted on if there is actual evidence of a crime. A “statement” by an anonymous complainant is not evidence and could not be used. In any instance a witness must authorize release of their name and address to the respondent or the statement may not be used as evidence. We would respectfully request that the Senate reinstate original changes to **Section 2**. **Section 2** also authorizes the Commission to dismiss or decline to proceed with a complaint if it does not meet certain criteria.

Section 3 eliminates the requirement for registered mail notice and eliminates the requirement that the identity of the complainant be provided to an accused individual. Article XIV of the North Dakota Constitution clearly mandates that a “confidential” complaint process be created. Mandating release of the complainant’s name is in clear conflict with the constitution. We do make clear that the respondent will receive **all** information being used as evidence of a possible violation. We would request that the House removal of language allowing the Commission to proceed as a Complainant be reinstated for the reasons outlined above.

Section 4 is a minor change to language regarding informal resolution.

Section 5 allows for a rapid resolution of a possible criminal violation and provides for Commission subpoena power. The Commission believes that it will be exceptionally rare that a case will rise to a level warranting criminal prosecution and rather than sending a case to the appropriate law enforcement agency where it may languish, the amendment would allow for a quick coordination and then allow for resolution of the matter. Paras 3-5 in the original bill provide the Commission with subpoena power which is routine for ethics commissions and is necessary to ensure we can access documents or records necessary to investigate and resolve a complaint. Review of National Conference of State Legislators data on ethics commissions powers and duties ([NCSL ethics powers and duties](#)) verifies that every state ethics commission in the country has some form of subpoena power. The House eliminated much of the subpoena power language over concerns expressed by a Representative about too much power being vested with the Commission. Subpoena power is an investigative tool necessary for proper investigation and resolution of a complaint. It should be noted that if the Commission is required to go to the District Court to get a subpoena the complaint will no longer be confidential. We believe maintaining confidentiality is a positive aspect of the program and supports informal resolution of

complaints. It should also be noted that the Legislature and committees all have subpoena power.

Section 6 and Section 7 reinforce that the accused individual will receive all the evidence being considered and makes clear such evidence is not confidential.

Section 8 simply authorizes the Commission to delegate duties to staff as appropriate. It also allows the Commission to change or reverse actions of delegated staff.

Finally, in **Section 9**, the Commission proposes the adoption of advisory opinion authority. The ability to issue advisory opinions that can be relied on by public officials and then to publish opinions for education is an important aspect of an effective ethics program. This language provides authority to the Commission to issue written advisory opinions in response to written requests from public officials, candidates for elected office, and lobbyists. Opinions can be based on actual or hypothetical facts, but not on past conduct. The issuance of an advisory opinion is discretionary with the Ethics Commission. Within 14 days after the receipt of a request for an opinion, the Ethics Commission must notify the requester whether an opinion will be provided and then has 90 days to issue the opinion. The bill provides that criminal and civil penalties may not be imposed upon an individual who acts, in good faith, in accordance with an ethics advisory opinion. The opinions are required to be made available to the public on the website of the Ethics Commission or on another readily available medium which will serve to educate other public officials. This language fills a gap concerning the scope of Article XIV, the statutes, and the rules of the Ethics Commission relating to transparency, corruption, elections, and lobbying, and provides a means for written interpretations of that scope that the public can rely on. The Commission worked with Representative Klemin on this section and the language proposed is identical to SB 2034.

Mr. Chairman, Members of the Judiciary Committee, I would be happy to answer any questions.

Senator,

The Ethics Commission at this point is a total joke!

You can provide the evidence of a law violated or a crime and they will dismiss any and all complaints stating nothing, or they do not have any authority!

David Theile is as arrogant as a person can get and it is clear he has no intension of ever finding a person to have done anything wrong much less forward the complaint to any legal authority even if evidence and the laws that were violated are provided.

If the Senate does not amend this bill to fix these problems so the Ethics Commission actually works, we will be forced to file legal action against the Ethics Commission and file legal action ourselves on those government employees. **This is not how the Ethics commission was intended to work!**

The commission refuses to provide a list of all addresses of the commission so they can be served for refusing to do their jobs!

The Ethics Commission should not be meeting in Executive Session! Where is the transparency in this? I ask the senate to amend this bill to remove the executive session so all information can be gotten in open records and there is clear transparency in this commission.

The Commission should not be able to dismiss a complaint if evidence of the violation is provided and the laws that were violated!

The commission is currently violating the process in all aspects and needs to be held accountable when they do not refer to the BCI, AG office or Law enforcement.

The commission most definitely should publish all complaints with their findings!

I will be filing legal action on this Commission for its criminal refusal to follow the citizen initiative directive! The one thing the people thought would help them

keep the government honest is just another criminal enterprise using the taxpayer's money to screw them!!!

Please reply,

Mr. Mitchell S. Sanderson

2021 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

HB 1043
3/15/2021

Relating to ethics commission complaint procedures.

Hearing called to order, [3:00] all senators are present: **Myrdal, Luick, Dwyer, Bakke, Heitkamp, Fors, and Larson.**

Discussion Topics:

- Addition of two NDCC sections
- Changing complainant to ND resident
- Complainants identity and confidentiality
- Informing accused individual
- Ethics commission attempt to resolve charges

Dave L Thiele [3:10], ND Ethics Commission, Oral testimony in favor

Senator Bakke [3:27] moved to remove 'refer'
From line 16 and overstrike lines 17-19 page 1
Senator Luick [3:27] seconded the motion

The motion to adopt the Amendment fails 1-6-0.

Senators	Vote
Senator Janne Myrdal	N
Senator Larry Luick	N
Senator Michael Dwyer	N
Senator Jonell A Bakke	Y
Senator Robert O Fors	N
Senator Jason G Heitkamp	N
Senator Diane Larson	N

Senator Myrdal [3:33] moved Amendment
21.8000.03002.
Senator Dwyer [3:27] seconded the motion.

The motion to adopt the proposed Amendment passed
7-0-0

Senators	Vote
Senator Janne Myrdal	Y
Senator Larry Luick	Y
Senator Michael Dwyer	Y
Senator Jonell A Bakke	Y
Senator Robert O Fors	Y
Senator Jason G Heitkamp	Y
Senator Diane Larson	Y

Senator Luick [3:33] motioned moved a DO PASS AS
AMENDED.

Senator Dwyer [3:27] seconded the motion.
The motion to adopt the proposed Amendment
passed.

Motion passed 7-0-0

Senator Myrdal carries the HB 1043

Hearing adjourned [3:45]

Jamal Omar, Committee Clerk

Senators	Vote
Senator Janne Myrdal	Y
Senator Larry Luick	Y
Senator Michael Dwyer	Y
Senator Jonell A Bakke	Y
Senator Robert O Fors	Y
Senator Jason G Heitkamp	Y
Senator Diane Larson	Y

March 15, 2021

CS
316
1043

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1043

Page 1, line 16, overstrike ", refer,"

Page 1, line 17, remove ". A meeting under this section at which the commission"

Page 1, remove line 18

Page 1, line 19, remove "in an executive session"

Page 2, after line 7, insert:

"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."

Page 5, line 7, overstrike "However, the ethics"

Page 5, overstrike line 8

Page 5, line 9, overstrike "made an allegation against the accused individual"

Page 5, line 9, remove the underscored period

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1043, as engrossed: Judiciary Committee (Sen. Larson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1043 was placed on the Sixth order on the calendar.

Page 1, line 16, overstrike ", refer,"

Page 1, line 17, remove ".A meeting under this section at which the commission"

Page 1, remove line 18

Page 1, line 19, remove "in an executive session"

Page 2, after line 7, insert:

"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."

Page 5, line 7, overstrike "However, the ethics"

Page 5, overstrike line 8

Page 5, line 9, overstrike "made an allegation against the accused individual"

Page 5, line 9, remove the underscored period

Renumber accordingly