

CONSTITUTIONAL AMENDMENTS APPROVED

CHAPTER 534

ETHICS COMMISSION

This initiated measure would add a new article to the North Dakota Constitution establishing a North Dakota ethics commission. The commission, using funds provided by the legislature, would be responsible for adopting rules related to corruption, elections, and lobbying and for reporting and investigating alleged violations of those rules and related state laws. The measure would provide for prohibitions for lobbyists related to gift giving and delivery of campaign contributions and prohibitions for public officials against lobbying, use of campaign contributions, and conflicts of interest in certain proceedings. The measure would direct the legislative assembly to enact laws that require electronically accessible public disclosure of the source of funds spent (in any medium and in an amount greater than two hundred dollars) to influence statewide and legislative elections and statewide ballot measures or to lobby or otherwise influence state government action.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

SECTION 1. A new article of the Constitution of the State of North Dakota is created and enacted as follows:

Section 1. Transparency.

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

technology and political practices. The legislative assembly shall vest by law one or more entities with authority to implement, interpret, and enforce this section and legislation enacted thereunder. If the laws or rules enacted or an implementation, interpretation, or enforcement action taken under this section fail to fully vindicate the rights provided in this section, a resident taxpayer may bring suit in the courts of this state to enforce such rights.

Section 2. Lobbyists and Conflicts of Interest.

1. A lobbyist may not knowingly give, offer, solicit, initiate, or facilitate a gift to a public official. A public official may not knowingly accept a gift from a lobbyist. These prohibitions do not apply if the lobbyist is an immediate family member of the public official. "Gift," as used in this subsection, means any item, service, or thing of value not given in exchange for fair market consideration, including gifts of travel or recreation. However, "gift" does not mean any purely informational material, campaign contribution, or, in order to advance opportunities for North Dakota residents to meet with public officials in educational and social settings inside the state, any item, service, or thing of value given under conditions that do not raise ethical concerns, as determined by rules adopted by the ethics commission. Such rules must be adopted within two years after the effective date of this article. So as to allow for the adoption of these rules, these prohibitions shall take effect two years after the effective date of this article. Appropriate civil and criminal sanctions for violations of this subsection shall be set by the legislative assembly.
2. An elected public official may not be a lobbyist while holding office or for two years after holding office. Appropriate civil and criminal sanctions for violations of this subsection shall be set by the legislative assembly.
3. A lobbyist may not knowingly deliver a campaign contribution made by another individual or entity. "Deliver," as used in this subsection, means to transport, transfer, or otherwise transmit, either physically or electronically. This prohibition does not apply to a person who delivers a campaign contribution to the person's own campaign, or to the campaign of the person's immediate family member. This prohibition shall not be interpreted to prohibit any person from making a campaign contribution or from encouraging others to make a campaign contribution or to otherwise support or oppose a candidate. Appropriate civil and criminal sanctions for violations of this subsection shall be set by the legislative assembly.
4. A statewide candidate, candidate for the legislative assembly, or public official may not knowingly use a campaign contribution for personal use or enrichment. Appropriate civil and criminal sanctions for violations of this subsection shall be set by the legislative assembly.
5. Directors, officers, commissioners, heads, or other executives of agencies shall avoid the appearance of bias, and shall disqualify themselves in any quasi-judicial proceeding in which monetary or in-kind support related to that person's election to any office, or a financial interest not shared by the general public as defined by the ethics commission, creates an appearance of bias to a reasonable person. The legislative assembly and the ethics commission shall enforce this provision by appropriate legislation and rules, respectively. So as to allow for the adoption of such legislation or rules, this subsection shall take effect three years after the effective date of this article.

6. Governments of foreign countries, foreign nationals not lawfully admitted for permanent residence in the United States, and corporations organized under the laws of or having their principal place of business in a foreign country, are prohibited from making contributions or expenditures in connection with any statewide election, election for the legislative assembly, or statewide ballot-issue election.

Section 3. North Dakota Ethics Commission.

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

Section 4. General Provisions.

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

Approved November 6, 2018

169,676 to 146,709

NOTE: This was measure No. 1 on the general election ballot