

## **CHAPTER 54-03.2 CONDUCT OF LEGISLATIVE INVESTIGATIONS**

### **54-03.2-01. Establishment and purpose of code.**

A code of fair procedure for legislative investigating committees is hereby established for the purpose of providing for the creation and operation of legislative investigating committees in a manner which will enable them to perform properly the powers and duties vested in them, including the conduct of hearings, in a fair and impartial manner, consistent with protection of the constitutional rights of persons called to testify at such hearings and preservation of the public good.

### **54-03.2-02. Definitions.**

As used in this code:

1. "Hearing" means any meeting in the course of an investigatory proceeding, other than a preliminary conference or interview at which no testimony is taken under oath, conducted by an investigating committee for the purpose of taking testimony or receiving other evidence. A hearing may be open to the public or closed to the public.
2. "Investigating committee" means any of the following:
  - a. A standing or select committee of either house of the legislative assembly.
  - b. A joint committee of both houses.
  - c. An authorized subcommittee of a legislative committee.
  - d. The legislative management and any interim committee of the legislative management if specifically designated by the legislative management as an investigating committee with subpoena powers.
  - e. Any other body created by law, the members of which may include nonlegislators. Investigating committees have the power to issue subpoenas and subpoenas duces tecum in the manner provided for in section 54-03.2-08. Nothing in this chapter may be construed as in derogation of any power to issue subpoenas which is inherent in the legislative assembly or any of its committees.
3. "Public hearing" means any hearing open to the public or the proceedings of which are made available to the public.

### **54-03.2-03. Establishment of investigating committees by legislative assembly.**

An investigating committee may exercise its powers during sessions of the legislative assembly and also in the interim between sessions when so provided by law or by the motion, resolution, or statute by which the committee was established or from which it derives its investigatory powers. The motion, resolution, or statute establishing a temporary investigating committee must state the committee's purposes, powers, duties, and duration, the subject matter and scope of its investigatory authority, and the number of its members.

### **54-03.2-04. Adoption of rules.**

Each investigating committee shall adopt rules, not inconsistent with law or any applicable rules of the legislative assembly, governing its procedures, including the conduct of hearings.

### **54-03.2-05. Finances and staff.**

Each investigating committee may employ such professional, technical, clerical, or other personnel as necessary for the proper performance of its duties, to the extent of funds made available to it for such purpose and subject to such restrictions and procedures relating thereto as may be provided by law or any applicable rules of the legislative assembly.

### **54-03.2-06. Membership, quorum, and voting.**

An investigating committee shall consist of not less than five members. A quorum shall consist of a majority of the total authorized membership of the committee. No action may be taken by a committee at any meeting unless a quorum is present. The committee may act by a

majority vote of the members present and voting at a meeting at which there is a quorum, unless the provisions of this code or any other statute require a greater number or proportion.

**54-03.2-07. Hearings.**

An investigating committee may hold hearings appropriate for the performance of its duties, at such times and places as the committee determines.

The committee shall provide by its rules that each member of the committee be given at least three days' written notice of any hearing to be held when the legislative assembly is in session and at least seven days' written notice of any hearing to be held when the legislative assembly is not in session. Such notices must include a statement of the subject matter of the hearing. A hearing, and any action taken at a hearing, may not be deemed invalid solely because notice of the hearing was not given in accordance with this requirement.

Any investigating committee may not conduct a hearing unless a quorum is present.

**54-03.2-08. Issuance of subpoenas.**

Every investigating committee may, by majority vote of all of its members, issue a subpoena requiring a person to appear before the committee and be examined in reference to any matter within the scope of the inquiry or investigation being conducted by the committee. The committee may also issue a subpoena or subpoena duces tecum requiring any person to appear before the committee and bring any books, papers, or other documents pertinent thereto.

A person subpoenaed to attend a hearing of an investigating committee shall receive the same fees and allowances as a person subpoenaed to give testimony in an action pending in a court of record, which fees and allowances must be paid from either the legislative appropriation, or from the appropriation, if any, to the investigating committee issuing the subpoena.

**54-03.2-09. Notice to witnesses.**

Service of a subpoena requiring the attendance of a person at a hearing of an investigating committee must be made in the manner provided by law for the service of subpoenas in civil actions at least seven days prior to the date of the hearing unless a shorter period of time is authorized by majority vote of all of the members of the committee in a particular instance when, in their opinion, the giving of seven days' notice is not practicable; but if a shorter period of time is authorized, the person subpoenaed must be given reasonable notice of the hearing, consistent with the particular circumstances involved.

Any person who is served with a subpoena to attend a hearing of an investigating committee also must be served with a copy of the motion, resolution, or statute establishing or authorizing creation of the committee, a general statement informing the person of the subject matter of the committee's investigation or inquiry, and a notice that the person may be accompanied at the hearing by counsel of the person's own choosing.

**54-03.2-10. Conduct of hearings.**

All hearings of an investigating committee must be public except an investigative hearing of an individual may be closed upon specific request by the individual or the individual's counsel with consent of a majority of the committee.

The chairman of an investigating committee, if present and able to act, shall preside at all hearings of the committee and shall conduct the examination of witnesses or supervise examination by other members of the committee, the committee's counsel, or members of the committee's staff who are so authorized. In the chairman's absence or disability, the vice chairman shall serve as presiding officer. The committee shall provide by its rules for the selection of a presiding officer to act in the absence or disability of both the chairman and the vice chairman.

No hearing, or part thereof, may be televised, filmed, or broadcast except upon approval of the committee, by majority vote of all of its members.

#### **54-03.2-11. Right to counsel and submission of questions.**

Every witness at a hearing of an investigating committee may be accompanied by counsel of the witness's own choosing, who may advise the witness as to the witness's rights, subject to reasonable limitations which the committee may prescribe to prevent obstruction of or interference with the orderly conduct of the hearing.

Any witness at a hearing, or the witness's counsel, may submit to the committee proposed questions to be asked of the witness or any other witness relevant to the matters upon which there has been any questioning or submission of evidence, and the committee shall ask such of the questions as are appropriate to the subject matter of the hearing.

#### **54-03.2-12. Testimony.**

1. An investigating committee shall cause a record to be made of all proceedings in which testimony or other evidence is demanded or adduced, which record must include rulings of the chair, questions of the committee and its staff, the testimony or responses of witnesses, sworn written statements submitted to the committee, and such other matters as the committee or its chairman may direct.
2. All testimony given or adduced at a hearing must be under oath or affirmation unless the requirement is dispensed with in a particular instance by majority vote of the committee members present at the hearing.
3. Any member of an investigating committee may administer an oath or affirmation to a witness at a hearing of such committee.
4. The presiding officer at a hearing may direct a witness to answer any relevant question or furnish any relevant book, paper, or other document, the production of which has been required by subpoena duces tecum. Unless the direction is overruled by majority vote of the committee members present, disobedience constitutes a contempt.
5. A witness at a hearing or the witness's counsel, with the consent of a majority of the committee members present at the hearing, may file with the committee for incorporation into the record of the hearing sworn written statements relevant to the purpose, subject matter, and scope of the committee's investigation or inquiry.
6. A witness at a hearing, upon the witness's advance request and at the witness's own expense, must be furnished a certified transcript of the witness's testimony at the hearing.
7. Testimony and other evidence given or adduced at a hearing closed to the public may not be made public unless authorized by majority vote of all of the members of the committee, which authorization must also specify the form and manner in which the testimony or other evidence may be released.
8. All information of a defamatory or highly prejudicial nature received by or for the committee other than in an open or closed hearing must be deemed to be confidential. No such information may be made public unless authorized by majority vote of all of the members of the committee for legislative purposes, or unless its use is required for judicial purposes.

#### **54-03.2-13. Interested persons.**

Any person whose name is mentioned or who is otherwise identified during a hearing of an investigating committee and who, in the opinion of the committee, may be adversely affected thereby, may, upon that person's request or upon the request of any member of the committee, appear personally before the committee and testify in that person's own behalf, or, with the committee's consent, file a sworn written statement of facts or other documentary evidence for incorporation into the record of the hearing.

Upon the consent of a majority of its members, an investigating committee may permit any other person to appear and testify at a hearing or submit a sworn written statement of facts or other documentary evidence for incorporation into the record thereof. No request to appear, appearance, or submission of evidence limits in any way the investigating committee's power of subpoena.

Any person who appears before an investigating committee pursuant to this section shall have all the rights, privileges, and responsibilities of a witness provided by this code.

**54-03.2-14. Contempt.**

1. A person is in contempt if that person:
  - a. Fails or refuses to appear in compliance with a subpoena or, having appeared, fails or refuses to testify under oath or affirmation;
  - b. Fails or refuses to answer any relevant question or fails or refuses to furnish any relevant book, paper, or other document subpoenaed by or on behalf of an investigating committee; or
  - c. Commits any other act or offense against an investigating committee which, if committed against the legislative assembly or either house thereof, would constitute a contempt.
2. An investigating committee may, by majority vote of all of its members, apply to the legislative assembly or the house thereof by which it was established for a contempt citation. The application must be considered as though the alleged contempt had been committed in or against such house or the legislative assembly itself. If the investigating committee is an interim committee, its application may in the alternative be made to the district court of Burleigh County.

**54-03.2-15. Penalties.**

A person guilty of contempt under section 54-03.2-14 is guilty of a class B misdemeanor, or if tried to the legislative assembly, or an appropriate house thereof, the legislative assembly or the appropriate house may impose such punishment as it deems appropriate, in the exercise of its inherent powers.

If any investigating committee fails in any material respect to comply with the requirements of this code, any person subject to a subpoena or a subpoena duces tecum who is injured by such failure is relieved of any requirement to attend the hearing for which the subpoena was issued or, if present, to testify or produce evidence therein; and such failure is a complete defense in any proceeding against such person for contempt or other punishment.

Any person other than the witness concerned or that person's counsel who violates subsection 7 or 8 of section 54-03.2-12 is guilty of a class B misdemeanor. The attorney general, on the attorney general's own motion or on the application of any person claiming to have been injured or prejudiced by an unauthorized disclosure, may institute proceedings for trial of the issue and imposition of the penalties provided herein. Nothing in this section limits any power which the legislative assembly or either house thereof may have to discipline a member or employee or to impose a penalty in the absence of action by a prosecuting officer or court.

**54-03.2-16. Limitations of code.**

Nothing contained in this code may be construed to limit or prohibit the acquisition of evidence or information by an investigating committee by any lawful means not provided for herein.