

2021 HOUSE JUDICIARY

HB 1164

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary
Room JW327B, State Capitol

HB 1164
1/20/2021

Relating to the review of presidential executive orders.

Chairman Klemin called the hearing to order at 3:42PM.

Representatives	Attendance
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

Rep. Kading: Introduced the bill. Testimony #2013.

Discussion Topics:

- Executive order definition
- States natural resources
- Farmland Policies
- 2nd Amendment Rights

Gaylynn Becker, Resident: Testimony #1736

Levi Otis: Drainage Contractor verbal-testified in favor.

Pete Hanebutt: Director of Public Policy, ND Farm Bureau: Oral testimony in favor

Opposition:

Troy Seibel , Chief Duty of Attorney General: Oral testimony. 4:07

Aaron Birst: Attorney at Law, ND Association of Counties: Oral testimony 4:15

Stephanie Dassinger, Deputy Director, ND League of Cities: Answered questions 4:20

Neutral: None

Additional Written Testimony: #1940

Chairman Klemin adjourned at 4:21 PM

DeLores D. Shimek by Donna Whetham
Committee Clerk

Thank you chairman Klemin. My name is Tom Kading and I am a Representative in District 45. This bill HB 1164 today concerns federal executive orders.

Whether you are a democrat, a republican, or something else; I would tend to think most of us here would believe the federal government is highly dysfunctional. Most of what happens in DC seems to be political bickering and vying for media time.

If our state government was anywhere near as inefficient as DC I would be scared to see what it would be like.

Now in North Dakota we have a lot of good things going for us. We have abundant natural resources, great farm land, and strong personal freedoms. As a state I believe we need to protect these things.

The 6 categories I picked for this bill are focused on the more controversial issue that are impacting the state. This bill prohibits publicly funded organization from implementing an executive order that restricts a person's rights or that the attorney general determines to be unconstitutional.

1. The intent of a. Is to provide some protection against US Executive orders related to the current pandemic. Many people are very opposed to masks and vaccines. My motivation is not because I don't like masks or vaccines but rather to protect the sovereignty of our state. The legislative intent is to not enforce any federal executive order that mandates masks or vaccine, it does not take a position as to if masks or vaccines are a good thing. To me this is solely to the issue of state sovereignty.
2. Subsection b is in regards to our states natural resources. Though I specifically site coal and oil, my intent is to include all natural resources. Coal and oil make a huge part of the GDP in North Dakota. Oil alone makes up about 20% of the states GDP and about half of the state government's budget. Some of the pclean coal and no fracking measures being proposed stand to have a significant impact on our state.
3. Subsections c and d relate to farmland and the use of land in the state. Farming also is a significant part of our heritage and our economy. The proposed Waters of the US stands to have a major impact on the ability for farmers to continue to produce at the levels we currently see. Further the drain tile industry and the cost of drain tile would significantly increase.
4. Subsection e is in relation to lending standards imposed on lenders in North Dakota. This is a tricky one since most banks are regulated at the federal level. Not enforcing an executive order does not mean a bank can't on its own comply with federal regulations. Ultimately, an ESG or Environmental, Social, or Governance standard can have a tremendous impact on our oil and coal sectors. It takes a lot of financing to run these operations, and if ESGs effectively ban the financing of funds to these companies, the impact will crush our oil and coal sectors.

5. The final subsection focuses on second amendment rights. The right to bear arms is another extremely important right held by North Dakotan citizens and I believe it should not be infringed upon by a federal executive order.

All of these issues are important to our state. In my opinion states rights are important to maintain and strongly hold onto. In fact I would further argue that if the states would assert more of their rights against the federal government, some of the dysfunction I referenced at the beginning of this bill may be reduced to some degree.

Ultimately, I urge this committee to take up this bill and protect North Dakota's economy, our citizens rights, and our state sovereignty.

Thank you,

Senate Appropriations Committee

HB 1164

By Dr. Gaylynn Becker

January 20, 2021

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Chairman Klemin and Members of the House Judiciary Committee:

I am Gaylynn Becker of Bismarck, ND. I'm here to represent myself.
I am here to testify in support of House Bill 1164.

I do not support following unconstitutional presidential executive orders that violate our Constitution. This includes the First Ten Amendments to the Constitution of the United States of America. The first 2 amendments are the most critical amendments that we have. If we lose the 2nd amendment, then we are ready to lose them all.

In doing my research years ago, I discovered that the second amendment was not primarily for hunting as is often said, but it was primarily for protecting ourselves and our neighbors as a first line of defense from criminal activity and for protecting and keeping our government in check as well.

I also recommend as soon this bill is passed by the state legislature and signed into law that it become effective immediately!

I ask that you pass HB 1164.

God bless you.

TESTIMONY ON HOUSE BILL 1164

House Judiciary Committee

January 20, 2021

Daniel L. Gaustad, City Attorney, City of Grand Forks, ND

Chairman Klemin and members of the House Judiciary Committee, my name is Daniel L. Gaustad and I am the City Attorney for the City of Grand Forks. I want to thank you for the opportunity to provide testimony and express the City of Grand Forks' opposition for HB 1164.

The proposed amendment is included in N.D.C.C. § 54-03-32, entitled Review of presidential executive orders, however, the amendment is not clear whether it is limited to only the implementation of executive orders issued by the President of the United States. The City of Grand Forks, like many cities in North Dakota, relies on the ability of the Mayor, as the executive officer, to take action through executive orders in the time of local emergencies. This includes not only executive orders like those issued to aid in combating the current pandemic, but also executive orders to combat natural disasters like the 1997 flood in Grand Forks. As it is currently drafted, the proposed amendment reads as limiting the ability of the state, political subdivisions or any other publicly funded organization to issue these types of executive orders to combat such disasters.

In addition, if this legislation is only intended to limit the ability of the state, political subdivisions or any other publicly funded organization from implementing presidential executive orders, the constitutionality of such a proposed amendment is questionable. Under the Supremacy Clause, U.S. Const. art. VI, the laws of the United States are the "supreme law of the land," and state law that conflicts with federal law is without effect. See State ex rel. Stenehjem v. FreeEats.com, Inc., 2006 ND 84, ¶ 19, 712 N.W.2d 828. Moreover, implementation of the proposed amendment may have the unintended consequence of a loss of federal funding related to the refusal to implement a presidential executive order.

Notwithstanding these two significant issues, the proposed amendment also utilizes terms that are undefined and vague which would make implementation of the proposed amendment problematic. For example, there is no definition to identify what is considered a use of land or what constitutes the financial sector as it relates to environmental, social, or governance standards.

The passage of HB 1164 will cause confusion and potentially limit the ability of the City, and other political subdivisions, from utilizing executive orders in times of emergencies. In turn, the state, political subdivisions and other publicly funded organizations will be at a disadvantage in times of local emergencies. If this proposed amendment is intended to only limit the implementation of presidential executive orders, the proposed amendment is constitutionally infirm and may result in the unintended consequence of a loss of federal funding for the state, political subdivisions and other publicly funded organizations.

The City of Grand Forks asks for a DO NOT PASS for HB 1164.

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary
Room JW327B, State Capitol

HB 1164
2/2/2021

Relating to the review of presidential executive orders.

Chairman Klemin called the meeting to order at 3:12PM.

Representatives	Attendance
Representative Lawrence R. Klemin	P
Representative Karen Karls	P
Representative Rick Becker	P
Representative Ruth Buffalo	P
Representative Cole Christensen	P
Representative Claire Cory	A
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

Discussion Topics:

- Amendments
- Separation of powers

Rep. Christensen moved a Do Pass seconded by **Rep. Magrum**.

Rep. Christensen and Rep Magrum withdrew the Do Pass Motion and second.

Rep Vetter moved to amend to strike the language starting on Line 18 after “or” through line 19 after “and”; replace it with “and has been found unconstitutional by a court of competent jurisdiction. **Rep. Christensen** seconded. Voice Vote: Motion carried.

Rep Christensen moved a Do Pass as amended. Seconded by **Rep. Magrum**

Rep. Christensen and Rep. Magrum withdrew the Do pass motion as amended and second.

Rep. Jones moved to amend by striking the underlined language on lines 11 and line 12 of the bill. Seconded by **Roers Jones**. Voice Vote: motion failed.

Rep. Christensen moved a Do Pass as amended #21.0492.03001. Seconded by **Rep Magrum**.

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	N
Representative Rick Becker	Y
Representative Ruth Buffalo	N
Representative Cole Christensen	Y
Representative Claire Cory	A
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	N
Representative Bernie Satrom	Y
Representative Steve Vetter	Y

Motion carried: 9-4-1.

Rep. Christensen bill carrier.

Chairman Klemin adjourned at 4:21 PM

DeLores D. Shimek by Donna Whetham
Committee Clerk

February 2, 2021

JP
2/2/21

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1164

Page 1, line 18, remove "or that the attorney general determines to be unconstitutional under"

Page 1, line 19, remove "subsection 1"

Page 1, line 19, after "and" insert "has been found unconstitutional by a court of competent jurisdiction"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1164: Judiciary Committee (Rep. Klemin, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (9 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). HB 1164 was placed on the Sixth order on the calendar.

Page 1, line 18, remove "or that the attorney general determines to be unconstitutional under"

Page 1, line 19, remove "subsection 1"

Page 1, line 19, after "and" insert "has been found unconstitutional by a court of competent jurisdiction"

Renumber accordingly

2021 SENATE JUDICIARY

HB 1164

2021 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

HB 1164
3/22/2021

A BILL for an Act to amend and reenact section 54-03-32 of the North Dakota Century Code, relating to the review of presidential executive orders.

Chair Larson called the hearing to order, [2:37] all senators are present: **Myrdal, Luick, Dwyer, Bakke, Heitkamp, Fors, and Larson.**

Discussion Topics:

- Counteracting executive management
- Withholding state funds from federal executive orders

Representative Kading [2:37] introduced HB 1164 and testified in favor #10344, and #10345

Hearing adjourned [2:53]

Jamal Omar, Committee Clerk

#10344

Print: testimony, Section 230 highlighted, Rhode Island case law,

Thank you chairman Klemin. My name is Tom Kading and I am a Representative in District 45. This bill today concerns online censorship.

JFK once said:

libraries should be open to all—except the censor. We must know all the facts and hear all the alternatives and listen to all the criticisms. Let us welcome controversial books and controversial authors.

Another infamous individual name Joseph Stalin once said:

Ideas are far more powerful than guns. We don't let our people have guns. Why should we let them have ideas?"

Now the bill in front of you today doesn't address government actors, but rather to what level of accountability big tech should be held. Now some of the obvious questions are going to be:

1. Doesn't federal law preempt?
2. Are we over regulating or applying the first amendment to private companies?
3. Is this simply a reaction solely related to how the presidential election has been handled?

I am going to address each of those questions. But first I am going to talk about why I introduced this bill.

Back in December I began to have this drafted as I was noticing more and more censorship and selective fact checking occurring. I was hearing reports of people getting censored or fact checked for

- Posting negative things about certain candidates
- Posting positive things about candidates (and I am not just talking Biden and Trump)
- People getting censored for posting the Lord's Prayer
- People getting fact checked for details so minuscule the appearance of the fact check was merely to discredit the political position of the poster

And now lately the actions to restrict people has increased, people are not just getting fact checked or censored, but actually kicked off platforms.

And it hasn't stopped at that, the big tech is actually appearing to collude together to censor other social media platforms out of existence.

Now the censorship that is occurring today is seemingly mainly politically, but I want it to be clear that the intent of this bill is to provide recourse for any type of censorship and is not meant to be partisan as I think this important for everyone in North Dakota.

So what this bill does is relatively simple, if a large social media platform selectively censors, restricts, or edits content to create a certain narrative that may be defamatory, a breach of contract, or otherwise tortious; I believe they should be held liable.

In paragraph 1 two definitions are provided. Interactive Computer Service is the exact definition under 47 USC 230. The social media is taken from case law out of California. Paragraph 2 is the core of this bill. The 7 allowed forms of censorship are the 7 types of censorship allowed under section 230.

To be held liable under section 2 for censorship, the infringing party must be immune from under federal law, not considered the publisher, has over 1 million users, and is a social media site provider.

Paragraph 3 extends the damages to be potentially claimed by those who would have otherwise received the censored information. I would be willing to amend this paragraph off due to the fact that proving such would be difficult.

Paragraphs 4-6 provide definitions and procedural standards.

Paragraph 7 allows an interactive computer service provider to elect to be a publisher and therefore not under publisher immunity in section 230 or under section 230 immunity but subject to this law.

Paragraph 8 is important language that allows social media sites to establish terms of services that allow them to restrict content to specific subject matter. For example if a social media site said in their terms that they are only allowing business related content, they could censor anything outside that scope.

So taken in conjunction, under paragraph 2 a social media company may be held liable for certain types of censorship that is not covered in section 230 and not in their terms of service.

Now to answer the questions I stated:

1. Does federal law preempt? Yes and no
 1. It preempt the regulations specifically stated in the section
 2. The two liabilities it provides is
 1. They are not a publisher of content provided by another - therefore they are not held liable as the publisher. This bill does not declare social media sites to be publishers. All this bill effectively does is declare the censorship or manipulation of information can in effect be speech.^[SEP] This standard is based on established case law out of the Rhode Island Supreme Court. The case effectively stated:^[SEP] If a web site (1) selectively publishes true information, while suppressing exculpatory information, or (2) manipulates true information, in order to create a desired impression in readers, either (1) or (2) can amount to defamation by implication, which is sometimes called defamation by innuendo.^[SEP] Here is a textbook example. Directors of a YMCA held a meeting. A rally was held nearby, which objected to policies of the YMCA. A participant in the rally suffered a heart

attack and died. A newspaper reported that the family of the man was upset that he did not receive medical treatment quickly. The newspaper also stated that the president of the YMCA was a doctor present at the meeting.^[L]^[SEP]The court held that a reasonable reader could draw a defamatory interpretation from the newspaper's report.^[L]^[SEP] (Healy v. New England Newspapers, Inc., 555 A.2d 321 (R.I.), cert denied, 493 U.S. 814 (1989).

2. The second liability protection is for the censorship of 7 categories. These 7 categories are exempted from the bill.
3. Further, under section 230(e)3, the federal law states quote, "Nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section."
4. Given the two types of liability protection are not changed with this bill, it is consistent with section 230 and therefore not preempted.
2. Are we over regulating or applying the first amendment to private companies?
 1. This is a form of regulation on social media companies, but it keeps the enforcement mechanism in the hands of private individuals, not government. I would equate this approach more to establishing contractual guidelines allowed in this context.
 2. Secondly, this allows social media companies to censor certain subject matter consistent under the terms of services provided and agreed to by the consumer. This bill simply looks to add guidelines that restricts the interpretation of the terms of services such that social media can't selectively allow posts while selectively suppressing other posts in that subject matter. Without this interpretation, defamation by implication can occur with very little recourse for those being defamed.
3. Is this simply a reaction solely related to the recent presidential election?
 1. The simple answer is no, I had started to have this bill drafted in early December. In December I didn't know that social media censorship would grow into such an issue in January.
 2. My intent has always to bring forward a bill than can address the growing issue of censorship online and how social media terms of service should be interpreted. There are many issues with the growth and the boom of social media in recent years, this happens to be one of them.
 3. Further, this bill applies to those in North Dakota. Someone in Florida will not have a claim under this bill.

Censoring people does not create unity, it does not help the situation of division in our country, it does not deescalate tensions, and it only makes those being silenced dig in even deeper and just cause people to go to the back channel.

Laws surrounding social media right are confusing right now, and I believe we need to act as a state. Regardless of party the federal government has been a bit dysfunctional at regulating social media. I am not saying social media can't set their own terms of

service, rather I am trying to the average person a chance against the massive social media empires.

Whether this committee moves forward with the bill as is or decides it needs modifications, I am happy to make work with you. I would hope that we as legislators can step back and recognize this is a real issue. It is not an issue about scoring political points, it is not an issue about the presidential election, and it is not an issue about which party can benefit from the censorship. We need to look at this as to what is best for the future of our country and our state. I would hope that we could at least agree there is a problem with the sheer amount of power social media has over our lives and the lack of recourse our citizens have when they are wronged by social media.

Thank you,

§230. Protection for private blocking and screening of offensive material

(a) Findings

The Congress finds the following:

(1) The rapidly developing array of Internet and other interactive computer services available to individual Americans represent an extraordinary advance in the availability of educational and informational resources to our citizens.

(2) These services offer users a great degree of control over the information that they receive, as well as the potential for even greater control in the future as technology develops.

(3) The Internet and other interactive computer services offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity.

(4) The Internet and other interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation.

(5) Increasingly Americans are relying on interactive media for a variety of political, educational, cultural, and entertainment services.

(b) Policy

It is the policy of the United States-

(1) to promote the continued development of the Internet and other interactive computer services and other interactive media;

(2) to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation;

(3) to encourage the development of technologies which maximize user control over what information is received by individuals, families, and schools who use the Internet and other interactive computer services;

(4) to remove disincentives for the development and utilization of blocking and filtering technologies that empower parents to restrict their children's access to objectionable or inappropriate online material; and

(5) to ensure vigorous enforcement of Federal criminal laws to deter and punish trafficking in obscenity, stalking, and harassment by means of computer.

(c) Protection for "Good Samaritan" blocking and screening of offensive material

(1) Treatment of publisher or speaker

No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

(2) Civil liability

No provider or user of an interactive computer service shall be held liable on account of-

(A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or

(B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).¹

(d) Obligations of interactive computer service

A provider of interactive computer service shall, at the time of entering an agreement with a customer for the provision of interactive computer service and in a manner deemed appropriate by the provider, notify such customer that parental control protections (such as computer

hardware, software, or filtering services) are commercially available that may assist the customer in limiting access to material that is harmful to minors. Such notice shall identify, or provide the customer with access to information identifying, current providers of such protections.

(e) Effect on other laws

(1) No effect on criminal law

Nothing in this section shall be construed to impair the enforcement of [section 223 or 231 of this title](#), [chapter 71](#) (relating to obscenity) or 110 (relating to sexual exploitation of children) of title 18, or any other Federal criminal statute.

(2) No effect on intellectual property law

Nothing in this section shall be construed to limit or expand any law pertaining to intellectual property.

(3) State law

Nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section. No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.

(4) No effect on communications privacy law

Nothing in this section shall be construed to limit the application of the Electronic Communications Privacy Act of 1986 or any of the amendments made by such Act, or any similar State law.

(5) No effect on sex trafficking law

Nothing in this section (other than subsection (c)(2)(A)) shall be construed to impair or limit-

(A) any claim in a civil action brought under [section 1595 of title 18](#), if the conduct underlying the claim constitutes a violation of section 1591 of that title;

(B) any charge in a criminal prosecution brought under State law if the conduct underlying the charge would constitute a violation of [section 1591 of title 18](#); or

(C) any charge in a criminal prosecution brought under State law if the conduct underlying the charge would constitute a violation of [section 2421A of title 18](#), and promotion or facilitation of prostitution is illegal in the jurisdiction where the defendant's promotion or facilitation of prostitution was targeted.

(f) Definitions

As used in this section:

(1) Internet

The term "Internet" means the international computer network of both Federal and non-Federal interoperable packet switched data networks.

(2) Interactive computer service

The term "interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

(3) Information content provider

The term "information content provider" means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service.

(4) Access software provider

The term "access software provider" means a provider of software (including client or server software), or enabling tools that do any one or more of the following:

(A) filter, screen, allow, or disallow content;

(B) pick, choose, analyze, or digest content; or

(C) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content.

(June 19, 1934, ch. 652, title II, §230, as added [Pub. L. 104–104, title V, §509, Feb. 8, 1996, 110 Stat. 137](#); amended [Pub. L. 105–277, div. C, title XIV, §1404\(a\), Oct. 21, 1998, 112 Stat. 2681–739](#); [Pub. L. 115–164, §4\(a\), Apr. 11, 2018, 132 Stat. 1254](#).)

THE MAIN POINT: EXTENT OF SECTION 230:

Defamation lawsuits are governed by state tort law. Congress has no authority to modify state tort law. This is Constitutional Law 101. Each state controls its own tort law.

Here is an example of how a web site can face a defamation suit.

If a web site (1) selectively publishes true information, while suppressing exculpatory information, or (2) manipulates true information, in order to create a desired impression in readers, either (1) or (2) can amount to defamation by implication, which is sometimes called defamation by innuendo.

Here is a textbook example. Directors of a YMCA held a meeting. A rally was held nearby, which objected to policies of the YMCA. A participant in the rally suffered a heart attack and died. A newspaper reported that the family of the man was upset that he did not receive medical treatment quickly. The newspaper also stated that the president of the YMCA was a doctor present at the meeting.

The court held that a reasonable reader could draw a defamatory interpretation from the newspaper's report.

(Healy v. New England Newspapers, Inc., 555 A.2d 321 (R.I.), cert denied, 493 U.S. 814 (1989).

21.0492.04001

FIRST ENGROSSMENT

Sixty-seventh
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1164

Introduced by

Representatives Kading, Jones, M. Ruby, Schatz, Schauer, Toman

Senators Heitkamp, Kannianen, O. Larsen

1 A BILL for an Act to amend and reenact section 54-03-32 of the North Dakota Century Code,
2 relating to the review of presidential executive orders.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 54-03-32 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **54-03-32. Review of presidential executive orders - Restriction.**

7 1. The legislative management may review any executive order issued by the president
8 of the United States which has not been affirmed by a vote of the Congress of the
9 United States and signed into law as prescribed by the Constitution of the United
10 States and recommend to the attorney general and the governor that the executive
11 order be further reviewed. Upon recommendation from the legislative management,
12 the attorney general shall review the executive order to determine the constitutionality
13 of the order and whether the state should seek an exemption from the application of
14 the order or seek to have the order declared to be an unconstitutional exercise of
15 legislative authority by the president.

16 2. Notwithstanding any other provision of law, the state, a political subdivision, or any
17 other publicly funded organization may not implement an executive order ~~that if, by a~~
18 ~~majority vote, the legislative management determines the executive order~~ restricts a
19 ~~person's rights and has been found unconstitutional by a court of competent~~
20 ~~jurisdiction which~~ the executive order relates to:

- 21 a. Pandemics or other health emergencies;
22 b. The regulation of natural resources, including coal and oil;
23 c. The regulation of the agriculture industry;
24 d. The use of land;

- 1 e. The regulation of the financial sector as it relates to environmental, social, or
- 2 governance standards; or
- 3 f. The regulation of the constitutional right to keep and bear arms.

2021 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

HB 1164
3/24/2021

A BILL for an Act to amend and reenact section 54-03-32 of the North Dakota Century Code, relating to the review of presidential executive orders.
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Hearing called to order all Senators Present: **Myrdal, Luick, Dwyer, Bakke, Fors, Heitkamp, Larson. [10:50]**

Discussion Topics:

- Executive Overreach
- 10th Amendment Protections

Senator Myrdal Moved Amendment [LC 21.0492.04001] [10:53]
Senator Luick Seconded the Motion
Vote Passed 4-3-0

Vote to Amend HB 1164	Vote
Senator Diane Larson	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 Janne Myrdal	Y

Senator Myrdal Moved a DO PASS AS AMENDED [10:54]
Senator Luick Seconded the Motion
Vote Passed 5-2-0
Senator Myrdal Carried the Bill

Vote to DO PASS AS AMENDED HB 1164	Vote
Senator Diane Larson	Y
Senator Michael Dwyer	Y
Senator JoNell A. Bakke	N
Senator Robert O. Fors	N
Senator Jason G. Heitkamp	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Hearing Adjourned [10:55]

Jamal Omar, Committee Clerk

5*
1501
3/24

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1164

Page 1, line 17, replace "that" with "if, by a majority vote, the legislative management determines the executive order"

Page 1, line 18, remove "has been found unconstitutional by a court of competent"

Page 1, line 19, replace "jurisdiction which" with "the executive order"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1164, as engrossed: Judiciary Committee (Sen. Larson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1164 was placed on the Sixth order on the calendar.

Page 1, line 17, replace "that" with "if, by a majority vote, the legislative management determines the executive order"

Page 1, line 18, remove "has been found unconstitutional by a court of competent"

Page 1, line 19, replace "jurisdiction which" with "the executive order"

Renumber accordingly

2021 CONFERENCE COMMITTEE

HB 1164

2021 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Room JW327C, State Capitol

HB 1164
4/7/2021
Conference Committee

Relating to the review of presidential executive orders.
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Rep. Satrom, Chairman opened the conference committee at 3:00 PM.

Attendance: Rep. Satrom, Rep. Vetter. Rep. K. Hanson, Senator Myrdal, Senator Luick and Senator Dwyer.

Discussion Topics:

- Legislative management
- Federal district court
- Separation of powers
- Constitutionality

Rep. Satrom closed the meeting at 3:33 PM.

DeLores D. Shimek
Committee Clerk

2021 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Room JW327C, State Capitol

HB 1164
4/12/2021
Conference Committee

Relating to the review of presidential executive orders.
--

Rep. Satrom , Chairman opened the conference committee at 9:30 AM.

Attendance: Rep. Satrom, Rep. Vetter. Rep. K. Hanson, Senator Myrdal, Senator Luick and Senator Dwyer.

Discussion Topics:

- Scheduling issue
- Amendments

Rep. Satrom closed the meeting at 9:31AM.

DeLores D. Shimek
Committee Clerk

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee

Room JW327B, State Capitol

HB 1164

4/14/2021

Conference Committee

Relating to the review of presidential executive orders.
--

Rep. Satrom , Chairman opened the conference committee at 2:30PM.

Attendance: Rep. Satrom, Rep. Vetter. Rep. K. Hanson, Senator Myrdal, Senator Luick and Senator Dwyer.

Rep. Vetter introduced amendment 21.0492.04007. Testimony #11522, 11523

Discussion Topics:

- Amendment
- Executive powers
- Attorney general involvement

Rep. Vetter Moved Senate recede from Senate amendments and amend as follows 21.0492.04007 moved delete Section 2; line 24 after person's insert constitutional after person's.

Senator Myrdal: Seconded

Roll call vote: 5 yes 1 no 0 absent Motion carried.

Carriers: House: Rep. Vetter Carrier: Senate: Senator Myrdal

Rep. Satrom closed the meeting at 3:00PM.

*DeLores D. Shimek
Committee Clerk*

No standing done since the Chairman stopped the process and will reconsider this amendment.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1164

That the Senate recede from its amendments as printed on page 1314 of the House Journal and page 982 of the Senate Journal and that Engrossed House Bill No. 1164 be amended as follows:

Page 1, line 17, after "order" insert "if the attorney general issues an opinion"

Page 1, line 17, after "that" insert "the executive order"

Page 1, line 18, after "person's" insert "constitutional"

Page 1, line 18, remove "has been found unconstitutional by a court of competent"

Page 1, line 19, replace "jurisdiction which" with "the executive order"

Renumber accordingly

**2021 HOUSE CONFERENCE COMMITTEE
ROLL CALL VOTES**

BILL No. HB 1164 as (re) engrossed

House Judiciary Committee

- Action Taken** ☐ **HOUSE accede to Senate Amendments**
☐ **HOUSE accede to Senate Amendments and further amend**
☐ **SENATE recede from Senate amendments**
☒ **SENATE recede from Senate amendments and amend as follows**
- ☐ **Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Rep. Vetter Seconded by: Senator Myrdal

Representatives	4/7	4/12	4/14	Yes	No		Senators	4/7	4/12	4/14	Yes	No
Rep. Satrom - Chairman	P	P	P	Y			Senator Myrdal - Chairman	P	P	P	Y	
Rep. Vetter	P	P	P	Y			Senator Luick	P	P	P	Y	
Rep. K. Hanson	P	P	p		N		Senator Dwyer	P	P	P	Y	
Total Rep. Vote				2	1		Total Senate Vote				3	0

Vote Count Yes: 5 No: 1 Absent: 0

House Carrier Rep. Vetter Senate Carrier Senator Myrdal

LC Number 21.0492 . 04008 of amendment

LC Number 21.0492 . 06000 of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

21.0492.04007
Title.

Prepared by the Legislative Council staff for
Representative Kading
April 14, 2021

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1164

That the Senate recede from its amendments as printed on page 1314 of the House Journal and page 982 of the Senate Journal and that Engrossed House Bill No. 1164 be amended as follows:

Page 1, line 16, after "2." insert "The attorney general may initiate a review of an executive order issued by the president of the United States for the purpose of issuing an opinion on whether the executive order infringes on a person's rights. The legislative management may request the attorney general review an executive order for the purpose of determining whether an executive order infringes on a person's rights and upon a determination, the attorney general shall issue an opinion.

3."

Page 1, line 17, after "order" insert "if the attorney general issues an opinion"

Page 1, line 17, after "that" insert "the executive order"

Page 1, line 18, remove "has been found unconstitutional by a court of competent"

Page 1, line 19, replace "jurisdiction which" with "the executive order"

Renumber accordingly

21.0492.04007

FIRST ENGROSSMENT

Sixty-seventh
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1164

Introduced by

Representatives Kading, Jones, M. Ruby, Schatz, Schauer, Toman

Senators Heitkamp, Kannianen, O. Larsen

1 A BILL for an Act to amend and reenact section 54-03-32 of the North Dakota Century Code,
2 relating to the review of presidential executive orders.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 54-03-32 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **54-03-32. Review of presidential executive orders - Restriction.**

7 1. The legislative management may review any executive order issued by the president
8 of the United States which has not been affirmed by a vote of the Congress of the
9 United States and signed into law as prescribed by the Constitution of the United
10 States and recommend to the attorney general and the governor that the executive
11 order be further reviewed. Upon recommendation from the legislative management,
12 the attorney general shall review the executive order to determine the constitutionality
13 of the order and whether the state should seek an exemption from the application of
14 the order or seek to have the order declared to be an unconstitutional exercise of
15 legislative authority by the president.

16 2. The attorney general may initiate a review of an executive order issued by the
17 president of the United States for the purpose of issuing an opinion on whether the
18 executive order infringes on a person's rights. The legislative management may
19 request the attorney general review an executive order for the purpose of determining
20 whether an executive order infringes on a person's rights and upon a determination,
21 the attorney general shall issue an opinion.

22 3. Notwithstanding any other provision of law, the state, a political subdivision, or any
23 other publicly funded organization may not implement an executive order if the
24 attorney general issues an opinion that the executive order restricts a person's rights.

- 1 ~~and has been found unconstitutional by a court of competent jurisdiction which~~
2 executive order relates to:
- 3 a. Pandemics or other health emergencies;
- 4 b. The regulation of natural resources, including coal and oil;
- 5 c. The regulation of the agriculture industry;
- 6 d. The use of land;
- 7 e. The regulation of the financial sector as it relates to environmental, social, or
8 governance standards; or
- 9 f. The regulation of the constitutional right to keep and bear arms.

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

HB 1164
4/15/2021
Conference Committee

Relating to the review of presidential executive orders.
--

Rep. Satrom, Chairman opened the conference committee at 3:30PM.

Attendance: Rep. Satrom, Rep. Vetter. Rep. K. Hanson, Senator Myrdal, Senator Luick and Senator Dwyer.

Discussion Topics:

- Amendment

Rep. Vetter moved to reconsider our actions
Senator Myrdal: Seconded

Roll Call Vote: 6 Yes 0 No 0 Absent; Motion carried

Rep. Vetter introduced amendment 21.0492.04009. Testimony #11543

Rep. Vetter moved Senate recede from Senate amendments and amend as follows using 21.0492.04009.

Senator Myrdal: Seconded

Roll Call Vote: 6 Yes 0 No 0 Absent

Carriers: House: Rep. Vetter Carrier: Senate: Senator Myrdal

Rep. Satrom closed the meeting at 3:37PM.

DeLores D. Shimek
Committee Clerk

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1164

That the Senate recede from its amendments as printed on page 1314 of the House Journal and page 982 of the Senate Journal and that Engrossed House Bill No. 1164 be amended as follows:

Page 1, line 17, after the "order" insert "if the attorney general issues an opinion"

Page 1, line 17, after "that" insert "the executive order unconstitutionally"

Page 1, line 18, replace "and" with "or"

Page 1, line 19, replace "which" with "and the executive order"

Renumber accordingly

**2021 HOUSE CONFERENCE COMMITTEE
ROLL CALL VOTES**

BILL No. HB 1164 as (re) engrossed

House Judiciary Committee

- Action Taken** ☐ **HOUSE accede to Senate Amendments**
☐ **HOUSE accede to Senate Amendments and further amend**
☐ **SENATE recede from Senate amendments**
☒ **SENATE recede from Senate amendments and amend as follows**
- ☐ **Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Rep. Vetter Seconded by: Senator Myrdal

Representatives	4/15			Yes	No		Senators	4/15			Yes	No
Rep. Satrom - Chairman	P			Y			Senator Myrdal - Chairman	P			Y	
Rep. Vetter	P			Y			Senator Luick	P			Y	
Rep. K. Hanson	P			Y			Senator Dwyer	P			Y	
Total Rep. Vote				3	0		Total Senate Vote				3	0

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier Rep. Vetter Senate Carrier Senator Myrdal

LC Number 21.0492. 04009 of amendment

LC Number 21.0492 07000 of engrossment

Insert LC: 21.0492.04009
House Carrier: Vetter
Senate Carrier: Myrdal

REPORT OF CONFERENCE COMMITTEE

HB 1164, as engrossed: Your conference committee (Sens. Myrdal, Luick, Dwyer and Reps. Satrom, Vetter, Hanson) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ page 1314, adopt amendments as follows, and place HB 1164 on the Seventh order:

That the Senate recede from its amendments as printed on page 1314 of the House Journal and page 982 of the Senate Journal and that Engrossed House Bill No. 1164 be amended as follows:

Page 1, line 17, after the "order" insert "if the attorney general issues an opinion"

Page 1, line 17, after "that" insert "the executive order unconstitutionally"

Page 1, line 18, replace "and" with "or"

Page 1, line 19, replace "which" with "and the executive order"

Renumber accordingly

Engrossed HB 1164 was placed on the Seventh order of business on the calendar.

21.0492.04009
Title.

Prepared by the Legislative Council staff for
Representative Vetter
April 14, 2021

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1164

That the Senate recede from its amendments as printed on page 1314 of the House Journal and page 982 of the Senate Journal and that Engrossed House Bill No. 1164 be amended as follows:

Page 1, line 17, after the "order" insert "if the attorney general issues an opinion"

Page 1, line 17, after "that" insert "the executive order unconstitutionally"

Page 1, line 18, replace "and" with "or"

Page 1, line 19, replace "which" with "and the executive order"

Renumber accordingly