

2025 HOUSE JUDICIARY

HB 1046

2025 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee Room JW327B, State Capitol

HB 1046
1/8/2025

A BILL for an Act to amend and reenact section 54-66-04.2 of the North Dakota Century Code, relating to ethics commission advisory opinions.

9:30 a.m. Chairman Klemin opened the hearing.

Members Present: Chairman Lawrence R. Klemin, Vice-Chairman Karen Karls, Vice-Chairman Steve Vetter, Representatives Nels Christianson, Donna Henderson, Jeff Hoverson, Daniel Johnston, Carrie McLeod, SuAnn Olson, Bernie Satrom, Bill Tveit, Lori VanWinkle, Christina Wolff, Mary Schneider

Discussion Topics:

- Process of requesting advisory opinions.
- Who can request advisory opinions.

9:31 a.m. Rebecca Binstock, Executive Director of the North Dakota Ethics Commission, testified in favor and submitted testimony #28165

10:01 a.m. Representative Satrom proposed a verbal amendment to raise the parameters of the ethics commissions majority vote from 3 out of 5 commissioners to a unanimous decision.

10:04 a.m. Representative VanWinkle seconded the motion.

Representatives	Vote
Representative Lawrence R. Klemin	N
Representative Karen Karls	N
Representative Steve Vetter	N
Representative Nels Christianson	N
Representative Donna Henderson	Y
Representative Jeff Hoverson	N
Representative Daniel Johnston	Y
Representative Carrie McLeod	N
Representative SuAnn Olson	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	N
Representative Bill Tveit	N
Representative Lori VanWinkle	Y
Representative Christina Wolff	Y

10:10 a.m. Motion failed 6-8-0.

10:12 a.m. Rep VanWinkle proposed a verbal amendment to raise the parameters of the ethics commissions majority vote from 3 out of 5 commissioners to 4 out of 5 commissioners.

10:12 a.m. Representative Satrom seconded the motion.

Representatives	Vote
Representative Lawrence R. Klemin	N
Representative Karen Karls	Y
Representative Steve Vetter	Y
Representative Nels Christianson	Y
Representative Donna Henderson	Y
Representative Jeff Hoverson	Y
Representative Daniel Johnston	Y
Representative Carrie McLeod	N
Representative SuAnn Olson	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	N
Representative Bill Tveit	Y
Representative Lori VanWinkle	Y
Representative Christina Wolff	Y

Motion Passed 11-3-0.

10:17 a.m. Representative Schneider Moved for a Do Pass as Amended.

10:18 a.m. Representative VanWinkle seconded the motion.

Representatives	Vote
Representative Lawrence R. Klemin	N
Representative Karen Karls	N
Representative Steve Vetter	N
Representative Nels Christianson	N
Representative Donna Henderson	N
Representative Jeff Hoverson	N
Representative Daniel Johnston	N
Representative Carrie McLeod	Y
Representative SuAnn Olson	N
Representative Bernie Satrom	N
Representative Mary Schneider	Y
Representative Bill Tveit	N
Representative Lori VanWinkle	N
Representative Christina Wolff	N

Motion Failed 2-12-0.

10:22 a.m. Representative Vetter Moved for a Do Not Pass as Amended.

10:22 a.m. Representative VanWinkle seconded the motion.

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Steve Vetter	Y
Representative Nels Christianson	Y
Representative Donna Henderson	Y
Representative Jeff Hoverson	Y
Representative Daniel Johnston	Y
Representative Carrie McLeod	Y
Representative SuAnn Olson	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	N
Representative Bill Tveit	Y
Representative Lori VanWinkle	Y
Representative Christina Wolff	Y

Motion Passed 13-1-0.

Representative Satrom will carry the bill.

10:25 a.m. Chairman Klemin closed the hearing.

Wyatt Armstrong, Committee Clerk

January 8, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

HOUSE BILL NO. 1046

Introduced by

Judiciary Committee

(At the request of the Ethics Commission)

JJM
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1 A BILL for an Act to amend and reenact section 54-66-04.2 of the North Dakota Century Code,
2 relating to ethics commission advisory opinions.

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

4 **SECTION 1. AMENDMENT.** Section 54-66-04.2 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **54-66-04.2. Advisory opinions - Authority - Effect.**

- 7 1. In response to a request from a public official, candidate for elected office, or lobbyist,
8 or upon ~~a majority~~ the vote of ~~the entire~~ four of the five members of the commission, the
9 ethics commission may provide a written advisory opinion regarding the application of
10 the following to specified hypothetical facts or prospective conduct:
11 a. Article XIV of the Constitution of North Dakota; or
12 b. State statutes and ethics commission rules related to transparency, corruption,
13 elections, and lobbying.
14 2. A public official, candidate for elected office, or lobbyist only may request an advisory
15 opinion related to hypothetical facts or prospective conduct of the public official,
16 candidate for elected office, or lobbyist making the request. Another individual, board,
17 entity, or organization may request an advisory opinion on behalf of a public official,
18 candidate for elected office, or lobbyist with corroborating evidence demonstrating the
19 request is authorized and made on behalf of the public official, candidate for elected
20 office, or lobbyist.

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- 1 3. Within fourteen days after receiving a request for a written advisory opinion, the ethics
- 2 commission shall notify the requester whether the commission will provide an opinion.
- 3 ~~3-4.~~ Within ninety days after notifying a requester a written advisory opinion will be
- 4 provided, the ethics commission shall issue the opinion.
- 5 4-5. Criminal and civil penalties may not be imposed upon an individual for an action taken
- 6 in accordance with an opinion issued under this section if:
- 7 a. The individual acts in good faith; and
- 8 b. The material facts surrounding the action taken are substantially the same as the
- 9 conduct presented in the opinion.
- 10 ~~5-6.~~ Opinions and requests for opinions under this section are open records, except names
- 11 of persons in the opinions and requests are exempt records.
- 12 ~~6-7.~~ The ethics commission shall publish all written advisory opinions issued under this
- 13 section on a website that is accessible to the public.

**REPORT OF STANDING COMMITTEE
HB 1046**

Judiciary Committee (Rep. Klemin, Chairman) recommends **AMENDMENTS** ([25.8023.01001](#)) and when so amended, recommends **DO NOT PASS** (13 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1046 was placed on the Sixth order on the calendar.



North Dakota Ethics Commission
House Bill 1046
Testimony presented by
Rebecca Binstock, Executive Director
Before the House Judiciary Committee
January 8, 2025

Good morning, Mr. Chairman and Committee members, my name is Rebecca Binstock. I serve as the Executive Director of the North Dakota Ethics Commission.

North Dakota citizens created the Ethics Commission in 2018 by passing an initiated measure which created Article XIV of the North Dakota Constitution. The Ethics Commission, an independent constitutional entity, consists of five commissioners:

- Chair Dave Anderson (Bismarck)
- Vice-Chair Ward Koeser (Williston)
- Dr. Cynthia Lindquist (Grand Forks)
- Ron Goodman (Oakes)
- Murray Sagsveen (Bismarck)

HB 1046

House Bill 1046 consists of the Ethics Commission's proposed amendments to Section 54-66-04.2 of the North Dakota Century Code, the Ethics Commission's advisory opinion statute. Advisory opinions allow individuals under the Ethics Commission's jurisdiction to submit hypothetical facts or prospective conduct to the Commission for analysis of potential ethical issues under Article XIV of the North Dakota Constitution and "state statutes and ethics commission rules related to transparency, corruption, elections, and lobbying." The Ethics Commission can then provide a formal written advisory opinion to the requester so the requester can feel comfortable navigating future ethical dilemmas. A formal advisory opinion provides a "safe harbor" when the requester acts in good faith and the material facts surrounding the requester's action are substantially the same as presented in the request for an opinion.

The Ethics Commission believes the amendments proposed in this bill will provide further clarity for those subject to the Ethics Commission's jurisdiction generally and as it relates to submitting requests for advisory opinions. The amendments consist of two parts.

The first part in subsection 1 adds the ability for the Ethics Commission to provide a written advisory opinion "upon a majority vote of the entire commission." Currently, the Ethics Commission can only provide an advisory opinion upon the request of a "public official, candidate for elected office, or lobbyist." However, on occasion individuals will raise genuine and important questions, and do not follow up with a request for an advisory opinion when directed to submit one. Oftentimes it is multiple individuals with the same or similar questions. Commissioners also raise questions that would provide a good basis for an advisory opinion. In those instances, the Ethics Commission believes it would be helpful to both the Commission and those individuals under its jurisdiction to have a formal advisory opinion on these issues to provide clarity.

Additionally, the amendment would require a majority vote of the **entire** Ethics Commission, rather than a majority of a quorum, to issue an opinion on the Ethics Commission's own initiative. This would require three out of the five commissioners to agree before the Ethics Commission can initiate an advisory opinion.

The second part of the bill adds a new subsection 2 to section 54-66-04.2. This provision clarifies a request for an advisory opinion from a public official, candidate for elected office, or lobbyist must relate to hypothetical facts or prospective conduct of that same individual. Alternatively, another individual, board, entity, or organization can submit the request for an advisory opinion, but the submitting individual, board, entity, or organization must corroborate it is at the public official, candidate for office, or lobbyist's request. The Ethics Commission believes this addition to the statute will make it clear an advisory opinion request must relate to the requester's own hypothetical or prospective conduct. If someone has concerns about the conduct of someone else, it becomes an enforcement issue, as the advisory opinion process is not the proper channel to address those issues.

The Ethics Commission currently follows the protocol proposed in subsection 2. However, under the advisement of legal counsel, the Ethics Commission believes it should be formalized in the statute itself.

Mr. Chairman, that concludes my testimony, and I will gladly stand for any questions you may have.