

**2017 HOUSE JUDICIARY**

**HB 1345**

# 2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee  
Prairie Room, State Capitol

HB 1345  
1/30/2017  
27584

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to open record and meeting laws.

## Minutes:

1,2,3,4,5

**Chairman K. Koppelman:** Opened the hearing on HB 1345.

**Rep. Devlin:** Introducing that bill. (#1)

**Wayne Stenehjem, Attorney General of ND:** (1:45-9:20) See (#2) North Dakota has a long history of open meetings and open government and open records. Discussed the need to change this law and that is what this bill will do. I assembled a group comprised of public entities; both county and city, state government, members of the media, state legislatures who served on the commission to look at this and we went over the issues that we have found over the course of four to five years. That is what this bill does. One of the biggest complaints I get in enforcing the open meetings and open records laws is the penalties. I am very strict in enforcement of these laws. As went through methods to see how we could impose strict punishment or penalty every time we did that we came up with a reason why it was not a good idea. Part of the reason is the Attorney General issues an opinion based on the facts that are provided by the public entity apply the law to it and tell them whether there was a violation or not. It is probable not a very good idea to have one person who is the judge, jury and executioner. In the bill one of the things I can do is an agency who is a repeat violator has to undergo some training from our office. I did that once with the Board of Higher Education because they had had several violations.

**Representative Nelson:** If something that is available on the website it will be exempt. Would a person be required to subscribe to get information?

**Wayne Stenehjem:** It would be the website you would have to pay for. They have a website that they have established the oil and gas people.

**Chairman K. Koppelman:** How do we maintain the balance and excess and not inserting the cost on a tax payer?

**Wayne Stenejem:** You are entitled to a copy of a record and it is \$.25. The first hour of time is free from the staff.

**Sandra DePountis, Ass't Attorney General:** (#3, #4, #5) (15:00-23:00)  
Went over the testimony and handouts.

**Representative Klemin:** Does it apply to anyone including elected officials.

**Sandra DePountis:** It would apply to anyone subject to these open meeting and records laws. So it would be elected officials too. Continuing going through the testimony. (23:57)

**Representative Klemin:** The 75-day period; when does it start?

**Sandra DePountis:** I can work on an amendment to clarify that. (26:00-29:50) Section 8 continuing to go through the handout.

**Chairman K. Koppelman:** If a school board was having a meeting and wanted to retreat to meet with their counsel

**Sandra DePountis:** There is another different section on that. Continuing (30:41-35:00)

**Representative Klemin:** Page 7, liner 25 is that a typo?

**Sandra DePountis:** I will change that. Section 12 (35:50-40:00)

**Chairman K. Koppelman:** Explain what is public information and what is not in regards to EMS.

**Sandra DePountis:** They are concerned about is there a victim afterwards; is Marcy's Law going to come into play, is there criminal intelligence and investigative information in these recordings that the law enforcement doesn't want given out so that is the information they are really uncomfortable about redacting out and making that judgement call.

**Representative Klemin:** What is a summary opinion, could you tell me more about it?

**Sandra DePountis:** That is the facts for the request for the opinion.

**Steven Andrus, Exc. Director, ND Newspaper Association:** The newspaper association had a seat at the Attorney General's task force and we are in support of this bill.

**Terry Trainer, Association of County:** We are in support of this bill.

**Stephanie Dassinger, Deputy Director of the ND League of Cities:** (#4) (43:47)

Neutral:

**Illona Jeffcoat-Sacco, General Counsel, Public Service Commission:** (#5) (45:41)



**Chairman K. Koppelman:** We will check with the Attorney General's office.

Opposition: None

Neutral: None

Hearing closed



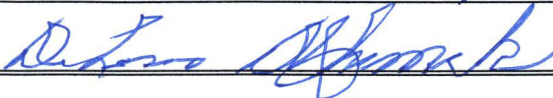
# 2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee  
Prairie Room, State Capitol

HB 1345  
1/30/2017  
27593

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to open record and meeting laws.

## Minutes:

**Chairman K. Koppelman:** Opened the meeting on HB 1345. We might need a couple of amendments here. Went through the proposals.

**Representative Klemin:** Date of the complaint. That is what she said when I asked her that question.

**Chairman K. Koppelman:** So no longer than 75 days from the date of the complaint.

**Representative Paur:** We could go 90 days or 3 months?

**Representative Jones:** What they are trying to do is protect some of the information as the day the complaint was filed. Your 75-day timeframe would be the best date.

**Chairman K. Koppelman:** The reason for the timetable that was there is they want the information to be confidential as the investigation is going on. We are probably on the right track with either the date of the complaint or date the investigation begins.

**Representative Paur:** Should be add working or calendar days?

**Representative Klemin:** Rules of civil procedure there is a rule that says that. They would not say working days which would exclude Saturday, Sunday and holidays.

**Representative Klemin:** Page 8, line 21 replace subsections 4 and 5 with subsection 4.

**Chairman K. Koppelman:** Reading the statute. 4404.20-Sub. 4 says the notice required has to be posted at the governing body holding the meeting. That only requires the posting at the location of the meeting on the day of the meeting. Sometimes these meetings are scheduled a long ways in advance so if people want an agenda there is no agenda. So I think those concerns are alleviated.

**Representative Klemin:** If subsection 4 requires it to be posted. Maybe we should say the agenda has to be posted at the locations as required by subsection 4.

**Representative Jones:** Didn't it say it would have to be on their place of business and on their website, which covers everything in today's world.

**Chairman K. Koppelman:** Here is what I have that has been recommended so far: on page 6 either the words after the inception of the investigation or the words from the date of the complaint could be inserted after 75 days on line 3. On page 7 another be joined as another; and on page 8 after the words locations on line 21 we would insert the word as and delete the words and five after the number four on that same line.

**Motion made to move the amendment by Representative Vetter: Seconded by Representative Maragos:**

**Voice vote carried.**

Discussion:

**Motion made to further amend by Representative Paur to have 75 calendar days on line 3, page 6: Seconded by Representative Maragos:**

Discussion:

**Chairman K. Koppelman:** We don't want to go to business days.

**Voice vote carried.**

**Do Pass as Amended Motion made by Rep. Maragos; Seconded by Representative Paur:**

**Chairman K. Koppelman:** I think this does help to clarify some ambiguity in the law.

**Roll Call Vote: 14 Yes 0 No 1 Absent Carrier: Rep. Johnston**

**Representative Jones:** Should we have a discussion about the dinners we go to and what we discuss at these places.

**Chairman K. Koppelman:** I have never heard it being an issue. You can bring up concerns on the Senate side.

**Representative Klemin:** Our emails that we send and receive from our constituents or others are exempt.

**Representative Magrum:** When I was a county commissioner we had to make sure we did not talk about county business.

Closed.

1/30/17 DA

January 30, 2017

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1345

Page 6, line 3, after "seventy-five" insert "calendar"

Page 6, line 3, after "days" insert "from the date of the complaint"

Page 7, line 25, replace "an other" with "another"

Page 8, line 21, after "locations" insert "as"

Page 8, line 21, replace "subsections 4 and 5" with "subsection 4"

Re-number accordingly



Date: 1-30-17  
 Roll Call Vote: 1

2017 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1345

House Judiciary Committee

Subcommittee

Amendment LC# or Description: Pg 6, after the insertion to the investigation pg 7 line 25  
Pg 8, line 21 after locations as #4 delete 5

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:  Reconsider

Motion Made By Rep. Vender Seconded By Rep. Maragos

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman			Rep. Hanson		
Vice Chairman Karls			Rep. Nelson		
Rep. Blum					
Rep. Johnston					
Rep. Jones					
Rep. Klemin					
Rep. Magrum					
Rep. Maragos					
Rep. Paur					
Rep. Roers-Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

*Vote carried*

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Date: 6-30-17  
Roll Call Vote: 2

2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1345

House Judiciary Committee

Subcommittee

Amendment LC# or Description: Say 75 calendar, line 3 pg 6

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar

Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Rep Paur Seconded By Rep. Maragos

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman			Rep. Hanson		
Vice Chairman Karls			Rep. Nelson		
Rep. Blum					
Rep. Johnston					
Rep. Jones					
Rep. Klemin					
Rep. Magrum					
Rep. Maragos					
Rep. Paur					
Rep. Roers-Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

2017 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1345

House Judiciary Committee

Subcommittee

Amendment LC# or Description: 17.8154.01001

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Rep. Maragos Seconded By Rep. Paur

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman	✓		Rep. Hanson	✓	
Vice Chairman Karls	✓		Rep. Nelson	✓	
Rep. Blum	✓				
Rep. Johnston	✓				
Rep. Jones	✓				
Rep. Klemin	✓				
Rep. Magrum	✓				
Rep. Maragos	✓				
Rep. Paur	✓				
Rep. Roers-Jones	✓				
Rep. Satrom	✓				
Rep. Simons	✓				
Rep. Vetter	✓				

Total (Yes) 14 No 0

Absent 1

Floor Assignment : Rep. Johnston

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1345: Judiciary Committee (Rep. K. Koppelman, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1345 was placed on the Sixth order on the calendar.

Page 6, line 3, after "seventy-five" insert "calendar"

Page 6, line 3, after "days" insert "from the date of the complaint"

Page 7, line 25, replace "an other" with "another"

Page 8, line 21, after "locations" insert "as"

Page 8, line 21, replace "subsections 4 and 5" with "subsection 4"

Renumber accordingly

**2017 SENATE JUDICIARY**

**HB 1345**

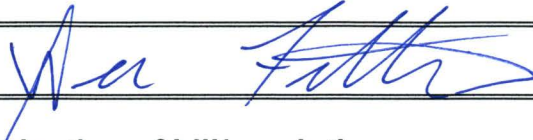
# 2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee  
Fort Lincoln Room, State Capitol

HB 1345  
3/6/2017  
28714

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to open record and meeting laws.

Minutes:                      Testimony attached #

1,2,3

**Chairman Armstrong** called the committee to order on HB 1345. All committee members were present.

**Bill Devlin, North Dakota Representative District 23**, introduced testified in support of the bill. No written testimony. Attorney General opening meeting task force.

**(1:20- 11:36 ) Wayne Stenehjem, Attorney General of North Dakota**, testified in support of the bill 1345. No written testimony.

"I want to mention two issues that got our attention. The first is the complaint that we hear from the public that the penalties are not stringent enough". One of the ideas was that the attorney general to go through the process and he decides if there is a problem or not. That idea is problematic from a due process standpoint. I only issue a legal opinion. The other option is having the attorney general provide a fine. That's an issue to because you may have an Attorney General who becomes judge, jury, and executioner from that option. We didn't come up with a solution except the one thing you see in section 5 which is something I was allowed to do before. A controversial issue deals with requests coming in to other agencies that are repetitive such as we want all the records the state has relating to Dwight Eisenhower and L. Ron Hubbard. You can imagine how long that takes. We see instances like that and that is an issue. In conclusion, I want to say we are recognized as one the most open states regarding records.

**Chairman Armstrong:** (11:40): "I think it's important to point out whether there's a civil or criminal penalty because that changes the penalty."

**Attorney General Stenehjem:** "Not ever AG will be as beneficent as I am. In all seriousness it's not a good idea to have someone fulfill all that."

**Chairman Armstrong:** "If they don't like your opinion they have a remedy in civil court?"

**Attorney General Stenehjem:** "Yes, they do."

**Sandra Depountis, Assistant Attorney General of North Dakota,** testified in support of the bill (15-4120). (see attachment 1) (14:35-16:48)

**Senator Luick** (16:50): "What should happen to those individuals who do conduct those business during training seminars?"

**Ms. Sandra Depountis:** "We would do an investigation into that, it would be up to Wayne to determine what to do." (16:55-17:16)

**Senator Luick:** "It'd be treated as if it was a meeting violation of the same sort."

**Ms. Sandra Depountis:** "Correct."

**Senator Myrdal:** "How do you clarify who is there for a meeting?"

**Ms. Sandra Depountis:** "You could attend those training seminars with this language without providing notice." You don't have to create meeting minutes. (18:13-25:11) Continued with testimony.

**Senator Nelson:** (25:13): "So until the leave is taking you can't give out any information?"

**Ms. Sandra Depountis:** "Leave is exempt. They wouldn't have to give out any information of what leave is taking until it is taking." They wouldn't have to give that information on that until it is actually taken.

**Senator Nelson:** "If you're on long term disability, people will know you'll be gone, you can't give that information out until that person is back from long term absence, is that right?"

**Ms. Sandra Depountis:** "Yes." (26:04-28:18) continued with her testimony.

**Chairman Armstrong:** (28:20) "Have we've seen providing that information or have we not been providing that information and say it's based on a medical report so were not giving it to you because it is based on a medical report"?

**Ms. Sandra Depountis:** "We haven't had anyone complain about it, or bring it to the Attorney General's office for an opinion, but I do not know for sure. I know they are using their best discretion for that."

**Chairman Armstrong:** "I'm hoping that's what they are doing?"

**Ms. Sandra Depountis:** "Me too." (29:27-29:59)

**Senator Nelson:** "So that section should have been in our previous bill?"

**Chairman Armstrong:** (30:10) "It could have been."

**Ms. Sandra Depountis:** (30:16-37:48) she continued with her testimony.

**Chairman Armstrong:** (37:50): "So if you change your meeting date after you already filed it with the Secretary of State, do you have to change one of those meeting dates, do you have to notice the change or just notice the new meeting"?

**Ms. Sandra Depountis:** "You can change your meeting days, just make sure you let the Secretary of State has a new notice on that making it very clear." Ms. DePountis continued with her testimony.

**Senator Luick:** "Recently we saw a bill not too long ago about the meetings that are called for interviews for higher education applicants, how does that affect what's in here or doesn't that affect that at all?"

**Ms. Sandra Depountis:** No, it doesn't. That would be a separate provision within our open records and meeting contacts. So open records and meeting laws say that you can go into an executive session if you can point to a law that allows you to do that. So that would just be the law that they would point to allow them to go into that executive session.

**Senator Nelson:** (42:25) Early on Wayne said, there is a problem with because you have things like the Council on the Arts, it gets money from the state and then they give money out to some a music club that is sponsoring a concert in Bismarck, now does that mean that music club has have all our records open to the public, just that concert open to the public, nothing open to the public, whatever. Because it's been that every time we've have a convention it's a problem.

**Ms. Sandra Depountis:** That's one of the most complicated analysis that comes to our office. Just because you get money doesn't mean you are supported by public funds. It's only a meeting about the public funds that would be open. But just because you received public funds doesn't mean it's open to the public.

**Senator Nelson:** It's just not a percentage like a lobbyist can't or an organization can't spend more than 5 % of their operating funds for governmental purposes. That kind of thing.

**Senator Myrdal:** "If there's federal money partially going to something here in the state. Does that apply equally under ND law?"

**Ms. Sandra Depountis:** No. Federal funds is different than state funds. So our state open records and meeting laws is just involving state funds that we would look at.

**Jim Neubauer:** (45:00-48:24) State Administrator for Mandan, ND. Testified in support of the bill. No written testimony. Particularly section 5 which deals with the repeated requests for records that disrupt other essential functions of the public entity. I'd like to say that I'm a believer in the transparency of government to the people. Individually these may take longer than an hour to fill, however, collected as a total the time spent takes significant amount of time. I ask to support this bill because it will help."



**Steve Andrist, Executive Director of North Dakota Newspaper Association**, testified in support of the bill. (48:41) Executive Director of the North Dakota Newspaper Association. (see attachment 2)

**Senator Nelson:** (49:50) Were you on the task force?

**Steve Andrist:** I was not, but other media representatives were.

**Attorney General Stenejem** provided copy of who was in the task force. (see attachment 3)

**Chairman Armstrong** closed the hearing on HB 1345.

# 2017 SENATE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Fort Lincoln Room, State Capitol

HB 1345 Committee Work  
3/6/2017  
28749

- Subcommittee  
 Conference Committee

Committee Clerk Signature 

## Explanation or reason for introduction of bill/resolution:

Relating to open record and meeting laws.

**Minutes:**

**Attachments**

1

**Chairman Armstrong** began the discussion on HB 1345. **Senator Luick** absent but did come back to vote after the hearing was closed and recording was off.

Proposed Amendment was handed out and reviewed by the committee. (see attachment 1)

**Senator Nelson** motioned to Adopt the Amendment. **Senator Larson** seconded.

A Roll Call Vote was taken. Yea: 6 Nay: 0 Absent: 0.  
The motion carried.

**Senator Myrdal** motioned for Do Pass as Amended. **Senator Larson** seconded.

A Roll Call Vote was taken. 6 Yea: Nay: 0 Absent: 0.  
The motion carried.

**Senator Myrdal** carried the bill.

**Chairman Armstrong** ended the discussion on HB 1345.

March 6, 2017

ET  
3-6-17  
p. 1 of 1

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1345

Page 1, line 3, replace the first "and" with "to"

Page 1, line 8, after "laws" insert "; and to declare an emergency"

Page 10, after line 15, insert:

**"SECTION 15. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

2017 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1345

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: 17.8156.02001

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Senator Nelson Seconded By Senator Larson

Senators	Yes	No	Senators	Yes	No
Chairman Armstrong	X		Senator Nelson	X	
Vice-Chair Larson	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Osland	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

2017 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1345

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: 17.8156.02001

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Place on Consent Calendar  
Other Actions:  Reconsider

Motion Made By Senator Myrdal Seconded By Senator Larson

Senators	Yes	No	Senators	Yes	No
Chairman Armstrong	X		Senator Nelson	X	
Vice-Chair Larson	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Osland	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Myrdal

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1345, as engrossed: Judiciary Committee (Sen. Armstrong, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1345 was placed on the Sixth order on the calendar.

Page 1, line 3, replace the first "and" with "to"

Page 1, line 8, after "laws" insert "; and to declare an emergency"

Page 10, after line 15, insert:

**"SECTION 15. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

**2017 TESTIMONY**

**HB 1345**

#1  
1345  
1-30-17

Good morning Chairman Koppelman and esteemed members of the House Judiciary Committee. For the record I am Rep. Bill Devlin of District 23 which is a rural district covering four and one-half counties in eastern North Dakota.

I am here to introduce HB 1345 on behalf of Attorney General Wayne Stenehjem. The bill is the result of several months of work by the Attorney General's Open Meeting Task Force. I was a volunteer member of the committee trying to bring the perspective of a rural newspaper publisher and former rural county commissioner to the meetings.

The legislation updates our open meeting statutes. It is the product of lots of work from volunteers across the state who helped put it together under the Attorney General and his excellent staff.

I could try answer questions about the bill but believe you would be better served to receive the details and answers to specific questions from Attorney General Stenehjem who will follow me to the podium.

Thank you for allowing me to introduce HB 1345 on behalf of Attorney General Stenehjem.



#2  
1345  
1-30-17  
(2016)

# Office of Attorney General

## OPEN MEETINGS GUIDE

600 E. Boulevard Avenue, Bismarck, ND 58505  
(701) 328-2210

The public has the right to know how state and local government functions are performed and how public funds are spent. North Dakota's laws state that all government records and meetings must be open to the public unless otherwise specifically authorized in law. The basic open meeting laws are found in Chapter 44-04 of the North Dakota Century Code, beginning at Section 44-04-17.1.

### Definition of Meeting

**Meeting** means any gathering of a quorum of the members of a governing body of a public entity regarding public business, and includes committees and subcommittees, informal gatherings or work sessions, and discussions where a quorum of members are participating by phone or any other electronic communication (either at the same time or in a series of individual contacts).

- If a governing body delegates any authority to two or more people, the newly formed committee is subject to the open meetings law even if the committee does not have final authority or is just fact-finding. What it is called does not matter, it is still a committee. Committee meetings must be noticed and minutes taken.
- Portfolios are a committee of the governing body if more than one commissioner holds the portfolio.

A purely social gathering of a quorum of a public entity is not a meeting, however, if the members discuss any public business, it becomes a "meeting."

### Meeting Schedules

If the governing body holds regularly scheduled meetings, the schedule of these meetings must be posted annually in January on the entity's official website **OR** filed with the Secretary of State (for state agencies), the City Auditor (city level entities), or the County Auditor (all other entities).

- The annual meeting schedule also must be furnished to anyone who requests the information.

### Meeting Notices

Prior written notice is required for all meetings of a public entity, including committees and subcommittees.

- Generally, there is **no minimum advance notice period** for public meetings.

The notice must include the date, time and location of the meeting and the agenda topics the governing body expects to address during the meeting.

- If an executive session is anticipated, the meeting notice also must include the executive session as an agenda item, along with the subject matter and the legal authority for the executive session.

**Regular** meeting agendas may be added to or altered at the time of the meeting. For **special** or **emergency** meetings, however, **only** the specific topics included in the notice may be discussed.

### Providing Public Notice of Meetings

At the same time the governing body is notified of the meeting, the meeting notice must be:

1. Posted at the main office of the public entity, if the entity has a main office.
  2. Posted at the location of the meeting, if held somewhere other than the entity's main office.
  3. Posted on the public entity's website **OR** filed with the appropriate official [the Secretary of State for state-level entities, the city auditor for city-level entities, and the county auditor(s) for all other entities].
  4. Provided to any individual who has requested notice of the meeting.
- Notice of special or emergency meetings also must be given to the entity's official newspaper.

If asked, a public entity must provide a requester with personal notice of its meetings. Unless the requester specifies a shorter time period, the request to receive notice is good for one year.

- A member of the public has the right to attend an open meeting and to record or broadcast the meeting, but **does not have the right to speak**.

### Executive Sessions

Only the portions of a public meeting that are specifically confidential or exempt from the open meetings law may be closed to the public and held in executive session. The

remainder of the meeting must be open to the public. There are several reasons why a meeting may not be open to the public. For instance:

- The portion of a meeting during which confidential or exempt records are considered may be closed to the public. This is particularly common for school board meetings to discuss student records.
- Board meetings concerning the nonrenewal, dismissal for cause, or suspension of a teacher, principal, superintendent, or directors may be closed except for certain representatives of the board and the teacher, principal, superintendent, and director.
- A governing body may close a meeting to talk with its attorney if the discussion pertains to the attorney's advice regarding a "pending or reasonably predictable" lawsuit involving the public entity.
- An executive session also may be held to discuss negotiating strategy if holding an open meeting would have an adverse fiscal effect on the bargaining or litigating position of the public entity.
- In addition to discussing closed or confidential economic development records, an executive session is authorized to discuss a public entity's efforts to recruit a new business to the area served by the public entity.
- State agency loss control committee meetings regarding closed records of a specific pending or reasonably predictable claim against the state or a state employee may be held in executive session.

### **Closed Meetings Procedures**

Although certain statutes may apply to particular meetings or entities, state law specifies the following general procedure for holding an executive session.

1. Convene in an open session preceded by public notice;
2. Pass a motion to hold an executive session, unless a motion is unnecessary because a confidential meeting is required;
3. Announce during the open portion of the meeting the topics to be considered during the executive session and the legal authority for holding an executive session on those topics;
4. Record the executive session electronically;
5. Limit the topics considered during the executive session to the announced, authorized topics; and
6. Take final action on the topics considered in the executive session during the open portion of a meeting.

Under these provisions, a governing body's authority to hold an executive session may be invoked only during a properly noticed open meeting, and not during a separate meeting for which public notice is not provided.

To close a portion of the meeting, the governing body may either excuse the public or reconvene in another location.

A vote to go into executive session is not necessary if a confidential meeting is required or if the governing body is closing the meeting to discuss confidential records. However, because a discussion of exempt records does not necessarily have to occur in an executive session, a vote is necessary to determine whether the discussion will occur in an open meeting or in an executive session.

- Final action on the topics considered in the executive session must be taken during the open portion of the meeting. All substantive votes must be recorded by roll call.

### **Minutes**

The minutes of meetings are public records and must be provided to anyone upon request. Draft minutes should be made available to the public even if the minutes have not been approved. Some public entities are required by law to provide minutes to the official newspaper.

Minutes must include, at a minimum:

1. The names of the members attending the meeting;
2. The date and time the meeting was called to order and adjourned;
3. A list of topics discussed regarding public business;
4. A description of each motion made at the meeting and whether the motion was seconded;
5. The results of every vote taken at the meeting; and
6. The vote of each member on every recorded roll call vote.

This requirement applies to all governing bodies, including committees and subcommittees.

### **Opinion Requests**

- A request for an Opinion alleging that a public entity held a meeting without posting public notice must be received by the Office of Attorney General within 90 days of the alleged violation, regardless of when the requester learned about the violation. For all other violations of the open meetings laws, the request for an Opinion must be received within 30 days of the alleged violation.

#2  
1345  
1-30-17

JANUARY 30, 2017

TESTIMONY OF SANDRA DEPOUNTIS  
OFFICE OF ATTORNEY GENERAL  
HOUSE BILL NO. 1345

Mr. Chairman, members of the Committee, I am Sandra DePountis, Assistant Attorney General in the State and Local Government Division, and I hold the open records and meeting portfolio. I'm here today to walk you through the proposed amendments to the open records and meeting laws, submitted by the Open Record and Meeting Task Force.

**SECTION 1.** The language adds protection for information that could be used to locate a victim or witness to a crime. This is in keeping with the newly enacted Constitutional measure - Marsy's Law, and extends the protection to witnesses.

**SECTION 2.** Subsections 1 and 3 clarify that it is the name of the child victim and child witness that are protected under this section. The additional language found in subsection 2 protects interviews from child victims and witnesses obtained during the investigation of crimes of a violent or sexual nature. Currently there is no protection for such statements and it was the view of the task force that such statements made by a child in such crimes should not be available to the general public.

**SECTION 3.** This section adds an additional exception to what is considered a "meeting" subject to open meeting laws - which would require notice, public access, and minutes to be taken. The exception is for training opportunities. For example, the Association of Counties and League of Cities provide numerous training seminars to our City Councils and County Commissioners. With this exception, the governing bodies

can attend the training without needing to post notice, as long as other public business is not considered or discussed.

**SECTION 4.** North Dakota Century Code section 44-04-18 is the main statute regarding implementation and duties under the open records law.

Subsection 2 – Under current open record laws, a public entity cannot require record requests to be put in writing. However, some requests are very complicated. At times, a public entity responds to the request only to have the requester complain that the wrong records were provided. The proposed amendment would allow a public entity to have a request for records put in writing for clarification purposes. The language is a compromise between needing certain requests to be put in writing for clarification purposes, but not to be used as a tool to discourage record requests or as a means to harass requestors.

Subsection 4 – The proposed language clarifies that a public employee is not required to turn over his or her mobile device if someone requests, much like a public employee does not need to turn over their computer. This section also provides that if records are readily available online, a public entity can point the requestor to the website where the records can be accessed. However, if the requestor does not have internet access, the public entity would be responsible for producing a copy of the records.

Subsection 7 – Under open records law, a public entity must provide records requested within a reasonable time or describe the legal authority for a denial of records. The proposed language clarifies that if records do not exist, this must also be communicated to a requestor.

**SECTION 5.** Two proposed amendments to the open records law. First, there has been an increase in requestors wanting to bring in their own devices to make copies of records, in order to avoid the \$.25 copying fee public entities are allowed to charge. This provision clarifies individuals may do so, subject to reasonable restrictions from a public entity. For example, the Historical Society may not want certain documents touched or scanned in, and are allowed to make such restrictions, as long as the restrictions do not impede access to the records.

Next is proposed language that would address an ongoing complaint by many public entities. Unfortunately, there are some individuals who utilize the open records law as a means to harass public entities. The task force received specific examples from various public entities receiving numerous requests every day, amounting to hundreds of request every month, from the same requestor. These requests are overwhelming and used as a weapon to harass our public entities. In such instances, if it rises to the level of disrupting the essential functions of the office, the public entity can refuse to provide access or copies of further records to such requestors. A requestor may ask for an opinion from the Office of Attorney General on whether the decision of the public entity was proper, so the office of Attorney General will oversee that this provision is not abused by a public entity.

**SECTION 6.** North Dakota Century Code 44-04-18.1 protects certain records and information of public employees. The first proposed amendment would add an employee's day and month of birth as protected information - for safety and identity protection reasons. Also, public entities were running into situations where providing certain information on employee's medical leave was creating concerns about revealing

medical information. For example, a requestor calling a public entity and saying “I want to know how much time this female employee took for maternity leave – give me records showing her leave time” or “give me records showing how much leave time this employee took for cancer treatment.” Producing any response on the leave would confirm and disclose medical information, i.e. what medical condition the leave was taken for. The amendment would provide protection on what type of leave is taken, although the total amounts of leave and the dates of leave taken will still be open.

An additional proposed amendment addresses leave time applied for but not yet taken. Public employees generally must apply for leave time in advance. To have this information open to the public would provide information on when an employee’s residence would be vacant. The proposed language provides that only leave time actually taken would be public information.

**SECTION 7.** This proposed language addresses an ongoing concern with Human Resource Management and public entities. Currently, if there is an internal investigation on employee discipline or misconduct, all the records would be open through all stages of the investigation. The task force heard reports of sensitive investigations being hindered by requests for records before the investigation was completed. Conversely, task force members agreed the public should have access to these records in order to know what is going on with their government. The proposed language is a compromise of the two competing interests making internal investigation records exempt until the investigation is complete, but no longer than seventy five days.

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**SECTION 9.** Clean up language. Last session the Century Code chapter on human trafficking was moved to 12.1-41, so the amendment cites the correct chapter. Law enforcement is also replaced with criminal justice agencies and correctional facilities as these terms are defined by law, closing a loophole so records in the hands one agency are protected in the hands of the other.

**SECTION 10.** Public entities do not have attorney client privileges with their legal counsel. Instead, counsel can only protect conversations and records as provided by law. Two such laws include “attorney consultations” and “attorney work products.” The law currently is very limited on what conversations and records are protected and only apply to situations in which there is pending or reasonably predictable litigation. Public entity attorneys, however, also provide guidance and advice on matters that might not reach this threshold - such as providing guidance on how to avoid litigation or the risks and liabilities that would be associated with a certain course of action of the public entity. To give such advice in the open, could give a roadmap to someone unhappy with a decision or proposed action on how to sue the public entity. It would be

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Subsection 9 addresses a loophole in the law regarding negotiation strategy sessions. Under the law, public entities can go into an executive session to discuss negotiation strategy, or provide instructions to its negotiator, if doing so in public would have an adverse fiscal impact on the public entity. However, there was nothing preventing records revealing the negotiating strategy or instruction. For example, the public entity is negotiating a contract – the public entity provides its negotiator guidance on a price range it would pay and terms and conditions. If the party involved in the negotiations knew about the top dollar amount the public entity was willing to pay, there would be no negotiations, resulting in increased payment. If the negotiators want to take notes on such terms, price ranges, and conditions, previously this would be open to the public. This additional language would close this loophole.

In addition, there is a proposed added protection for draft contracts and agreements if release would have an adverse fiscal effect. Currently under the law, there is a protection for drafts, but once the draft has been provided to a member of the governing body, the protection ceases. This was causing problems when, for example, an attorney would draft a contract for the public entity to review. The public entity has



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**SECTION 11.** This proposed language addresses a concern involving public entities entering into settlement agreements with multiple parties. For cases in which there is a potential claim against a public entity involving several individuals – if the public entity settles with one party, this could be used against the public entity in future negotiations with another party. The settled case could set a standard that all would now require, undercutting any future negotiations and resulting in an adverse fiscal impact on the public entity.

**SECTION 12.** Currently under the law, public entities are to post a yearly schedule of upcoming meeting dates, which sets their regular meeting schedule. However, not all public entities, such as school boards, follow the January through December calendar year. The removal of “January” provides some flexibility so such entities can set its yearly schedule of regular meetings at a different time. Clarifying language is also added that the filing of this yearly schedule does not relieve a public entity from the requirement of creating an agenda before each meeting.

In subsection 5, clarification is provided on when meeting notices and agendas must be posted to the public. Some entities do not hold regular meetings and will sometimes set a meeting date and time months in advance, but do not yet have an agenda created. This clarifies that public notice of the date and time must still be given to the public as soon as members of a governing body know that a meeting will take

place. The agenda should be posted when prepared and provided to members of the governing body.

**SECTION 13.** The task force spent a lot of time considering the issue of public entities that repeatedly violate the open record and meeting laws. The task force recognized that the review and opinion process by the Office of Attorney General was never supposed to replace a court proceeding, nor could it as recognized by a separation of powers. Criminal penalties cannot be imposed because there are no protections in place with court rules and procedures satisfying due process. The task force considered many options but ultimately rejected further penalties to the open records and meeting laws.

You will see two proposed changes to the law in this section, the first is to specifically allow the Office of Attorney General to issue “summary opinions.” Summary opinions would be used for situations already analyzed in previous opinions - would provide a brief overview of the facts, refer to the analysis of a previous opinion, and come to a conclusion. This will hopefully cut down on the time it takes to prepare such opinions where the analysis is similar to that previously done by the office. Next, the proposed amendment would allow the Office of Attorney General to mandate training for entities in violation of the open records and meeting laws.

**SECTION 14.** This proposed amendment addresses concerns by the 911 dispatcher’s office. Under open records law, if a public entity possesses a record regarding public business, it is responsible for responding to open record requests involving the record. There are many exceptions for law enforcement and criminal justice agency records. However, the dispatcher’s office is not involved with the case

after a 911 call comes in and would not know which exceptions would apply that would protect information in the recordings. The proposed language allows the dispatcher's office to refer open record requests to the appropriate investigating agency so such agency can properly analyze what, if any, part of the record is exempt or confidential by law.

#4  
1345  
1-30-17

January 26, 2017

House Judiciary Committee  
HB 1345

Chairman Koppelman and members of the committee, for the record I am Stephanie Dassinger, Deputy Director of the North Dakota League of Cities. I also serve as the staff attorney for the League.

I appear before you today to express the League's support of HB 1345. As part of my job with the League, I correspond with elected city officials and appointed city officials to help them understand the provisions in the Century Code and how those laws apply to cities. I frequently receive questions about the open records and open meetings laws. Additionally, I sit on the Attorney General's Open Records and Open Meetings Task Force, as the League's appointee. Attorney General Wayne Stenehjem and his staff do an amazing job of coordinating the Task Force meetings. The Task Force includes members from diverse groups that have varying interests who work together on changes that clarify or enhance the open records and open meeting law. This bill is a result of the Task Force's meetings.

In the interest of time, I am not going to review every section of this bill and why the League supports each individual section but I wanted to bring to your attention Sections 10 and 11 and explain why these sections are important.

Section 10 which begins at line 24 on page 6 adds clarity to the definition of attorney consultation. Under the current statute, it is unclear how imminent litigation must be before a public entity may close a meeting to consult its attorney. The change in this bill allows a public entity to close its meeting to get attorney advice on the strengths and weaknesses of an action if holding that discussion in public would have an adverse fiscal effect on the public entity. Closing the meeting is limited to receiving attorney advice and guidance. Further, any executive session would be required to be recorded so that it could be reviewed by the attorney general's office if a complaint arises. This allows a public entity to receive attorney advice about an issue that could result in litigation before litigation arises and be better stewards of public money by potentially avoiding lawsuits or at least understanding what was at stake before an action is taken.

The main change in Section 11 which begins at line 25 on page 7, is to how a public entity handles settlement agreements in a case that involves multiple parties. Currently, as soon as all parties execute a settlement agreement, it is an open public record. That means that, for example, if a public entity is procuring an easement across several different land owners' properties, as soon as the public entity settles with one party, that parties' settlement agreement becomes a public record. That settlement amount becomes the baseline from where all the other land owners' start negotiating his or her settlement price, driving up the cost of the easement for the public entity and ultimately, the tax payers. This amendment allows that first settlement agreement to be an exempt record until a settlement has been reached with all the land owners.

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As this bill is the result of meetings that involved representatives from diverse backgrounds working together to clarify and enhance open records and open meetings laws, the League urges the committee to vote DO PASS on HB 1345.

THANK YOU FOR YOUR TIME AND CONSIDERATION. I will try to answer any questions.

#5  
1345  
1-30-17

## House Bill 1345

**Presented by:** Illona A. Jeffcoat-Sacco  
General Counsel, Public Service Commission

**Before:** House Judiciary Committee  
The Honorable Kim Koppelman, Chairman

**Date:** January 30, 2017

### TESTIMONY

Mister Chairman and committee members, I am Illona Jeffcoat-Sacco, General Counsel with the Public Service Commission. The commission has no position on House Bill 1345, but asked me to appear today to bring one item of concern to the attention of the committee.

The commission is concerned with the new language found on page 8, lines 19 - 22. There it states: "As soon as an agenda is prepared for a meeting with the information required in subsection 2 and given to members of the governing body, the agenda must be posted at the locations required by subsections 4 and 5 and given to anyone requesting the information."

Almost every gathering of the commission, or any other multi-member public entity, is a meeting and subject to the state's open meeting requirements. This means that every commission hearing, meeting with a federal or state agency, and meeting with stakeholders is a meeting subject to the law. The commission holds many hearings and meetings throughout the state and they are often scheduled months in advance. In fact, each commission hearing must be scheduled well in advance in order to meet the state's legal publication requirements. In addition,

these hearings and meetings are often held at hotels or other commercial meeting venues, or at county or municipal meeting rooms.

If the new language becomes law, we believe it will impose a substantial yet unnecessary burden on those who own or manage these meeting venues. Once the commission schedules a hearing, for example, perhaps at a city meeting room in Dickinson or Watford City, the person responsible for that meeting room will need to post and maintain a notice we provide from the time we first schedule the hearing (and provide them the notice) through the conclusion of the hearing. Similarly, when commissioners plan to attend the meeting of another entity, the agenda of that other meeting would need to be posted at the meeting venue from the time the commission decided to attend until the meeting concludes. The commission believes the requirement to post notices on location as soon as an agenda is first provided to commissioners will substantially burden the entities providing meeting rooms, without providing any discernable benefit to the public.

The commission also wants the committee to know that we do provide as much notice of upcoming meetings and hearings as we possibly can. This includes, in addition to the notice required by existing law, legal publications, press releases, web page postings, and often additional outreach to those who we believe may have an interest.

This concludes my testimony. I will be happy to answer any questions you may have.

MARCH 6, 2017

TESTIMONY OF SANDRA DEPOUNTIS  
OFFICE OF ATTORNEY GENERAL  
ENGROSSED HOUSE BILL NO. 1345

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2

3/6/17



**Testimony of Steve Andrist**  
**Executive Director, North Dakota Newspaper Association**  
*To the Senate Judiciary Committee*  
*In Support of HB 1345*

Chairman Armstrong and members of the committee, my name is Steve Andrist and I'm the executive director of the North Dakota Newspaper Association, which represents the state's 90 daily and weekly newspapers.

Members of NDNA appreciate the leadership of the attorney general in working to modernize the language of the Open Meetings and Open Records laws, and of the task force members who examined these questions and issues.

It is our view that the work of the task force resulted in necessary proposals that reflect our changing times, while resisting the urge to muddy the waters with discussion of related but contentious issues.

For these reasons we support HB 1345 and hope you will, too.

Thank you.

HB 1345

③

3/6/17

Stephanie Dassinger

Rep. Bill Devlin

Lisa Feldner

Jim Fleming

Jon Godfread

Dave Maring

Jack McDonald

Wayne Stenehjem

Dave Todd

Matt Von Pinnon

Charlie Whitman

Aaron Birst

Tom Dennis

Tom Gerhardt

Mike Ressler

Mac Schneider.

~~DHS~~ RITERS

DHS

GND members  
w/ foundations

chr

Attorney General  
Task for Open  
Records

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3/6/17

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Sixty-fifth  
Legislative Assembly  
of North Dakota

**FIRST ENGROSSMENT  
ENGROSSED HOUSE BILL NO. 1345**

*INTERN DRAFT AMENDMENT*

Page 1, line 8, after "laws" insert "; and to declare an emergency"

Page 10, after line 15 insert

**SECTION 15. EMERGENCY.** This Act is declared to be an emergency measure.

Renumber accordingly