2021 HOUSE POLITICAL SUBDIVISIONS

HB 1349

2021 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee
Room JW327B, State Capitol

HB 1349
2/5/2021

Relating to open record and meeting laws; and to provide a penalty

Chairman Dockter: (9:30). Opened the hearing.

Representatives	
Representative Jason Dockter	P
Representative Brandy Pyle	P
Representative Mary Adams	P
Representative Claire Cory	P
Representative Sebastian Ertelt	P
Representative Clayton Fegley	P
Representative Patrick Hatlestad	P
Representative Mary Johnson	P
Representative Lawrence R. Klemin	P
Representative Donald Longmuir	P
Representative Dave Nehring	P
Representative Marvin E. Nelson	P
Representative Luke Simons	P
Representative Nathan Toman	P

Discussion Topics:

- Electronic meetings
- Remote meetings
- Exempt vs open records

Rep. Hatlestad: Introduced the bill.

Mary Kae Kelsch, Assistant Attorney General: Testimony #5512.

Jack McDonald, ND Newspaper & Broadcaster Association: In favor, testimony #5602.

Mark Hagerott, Chancellor of ND University System: In opposition, testimony #5668.

Kathy Nesset, member State Board of Higher Education: In opposition, testimony #5542.

Andy Armacost, President of the University of North Dakota: In opposition, testimony #5632, 5626.

Merrill Schwartz, Senior Vice President Association of Governing Boards of Universities and Colleges: In opposition, testimony #5584, 5583.

Doug Jensen, President Bismarck State College: In opposition, testimony #5550.

Additional written testimony:

Bill Devlin #5675, Marvin Nelson 5682.

Chairman Dockter:(10:18). Closed the hearing.

Carmen Hickle, Committee Clerk

HOUSE POLITICAL SUBDIVISIONS
FEBRUARY 5, 2021

TESTIMONY OF MARY KAE KELSCH
OFFICE OF ATTORNEY GENERAL
HOUSE BILL NO. 1349

Mr. Chairman, members of the Committee.

I am Mary Kae Kelsch, Assistant Attorney General, and I appear on behalf of the Attorney General in support of HB 1349. This bill relates to the open records and meetings law. I will go through the proposed changes by section.

Section 1, Section 3, and Section 5 are related and I will address together. The changes proposed here address issues that emerged during the pandemic. When public buildings closed, officials started calling our office asking how to conduct public meetings when the building was unavailable. Even though our law allows for meetings to be held by video or conference call, the law required that in those instances, a speakerphone or monitor had to be at a physical location. This was almost always the county or city building. When those buildings were closed, that requirement became impossible. In addition, because the public could attend a meeting by video, the requirement to have a physical location was outdated. In order for public entities to continue to hold public meetings an executive order was issued waiving the physical location requirement. The changes are also an attempt to reflect the changes in technology. For example, much of our language about capacity focused on physical capacity and not electronic capacity. (Section 3). There

are also modifications proposed for what a notice must contain when meetings are all electronic. (Section 5).

Also in section 1 is a change that would allow regulatory boards to administer its exams without it being a public meeting.

Section 2. Last session a bill passed making the identity of applicants for public employment confidential until finalists are designated. Confidential is the highest level of protection that may be provided under the open records law. A person is guilty of a class C felony if the person knowingly discloses confidential information acquired as a public servant. NDCC § 12.1-13-01. The threshold of confidentiality is not practical when public entities at all levels are constantly receiving applications for various jobs. We are aware that there are other bills that propose changes to this law. We believe by changing the applications to exempt, rather than confidential, solves most issues that were discovered with this statute. The classification of exempt gives discretion to the public entity to decide whether it can release a record. The level of protection should be left to the entity to decide and can be protected to the degree appropriate for the situation.

Section 4. The change proposed here would protect litigation files until litigation is completed. Currently, if a party to the litigation wants records, the law provides that both parties use the discovery process which offers certain protections. However, if records are requested by someone who is not a party to litigation, the open records law applies. Unfortunately, in most cases, these requests are from a party who wants to sue the state and wants valuable information contained in the

current litigation file. This puts the state in a vulnerable and unfair position. After the case is closed, these records would be open and accessible.

Section 6. This section would give the State Fire Marshal the same protections for the records of a fire department. It also would make images of a victim of a fire exempt. Unfortunately, there have been deaths associated with fires and as a part of the investigation photos are taken. This would allow protection for those images.

Section 7. This section would make medical records or records that contain medical information in the possession of a public entity exempt. The protection for medical records is scattered throughout the code and most people do not realize that there are many situations where a medical record held by a public entity would have to be released in response to an open records request. This language proposes to close that loophole.

Section 8. Last session a Medicaid Fraud Unit was created in the Attorney General's office. This would language proposes to exempt active investigation records.

I would be happy to answer any questions.

Friday, February 5, 2021

House Political Subdivisions Committee
HB 1349

CHAIRMAN DOCKTER AND COMMITTEE MEMBERS:

My name is Jack McDonald. I'm appearing on behalf of the North Dakota Newspaper Association and the North Dakota Broadcasters Association. Surprise. Surprise. We support this bill and ask that you give it a DO PASS.

We recognize that the state's open meeting and open records laws that were substantially revised in 1997 – 24 years ago – need updating from time-to-time. No cell phones, internet, social media, web pages, etc. in 1997. HB 1394 is one of those necessary tweaks.

The changes for the most part recognize that public meetings are now often conducted by various electronic means, and will likely continue that way even after COVID.

We ask especially that you leave Section Two of the bill, beginning on page 2, line 13, intact. This retains the original intent of this legislation. There are other bills still alive that make more drastic and, we believe, unhealthy changes to this section.

Thank you for your time and consideration. I'd be happy to answer any questions.

Prepared by the
North Dakota University System
February 4, 2021

PROPOSED AMENDMENTS TO HOUSE BILL NO.

Page 2, line 26, delete "until"

Page 2, line 26, after "withheld" insert ", except that once"

Page 2, line 27, remove "at which time the"

Page 2, line 27, before "records" insert "all"

Page 2, line 27, after "records" insert "related to the application materials of the finalists"

Renumber accordingly

HB1349

House Political Subdivisions Committee

February 5, 2021

Chair Dockter and Committee Members: My name is Tim O'Keefe and I am CEO Emeritus, UND Alumni Association & Foundation and I am in opposition to H.B. 1349.

During my twelve year tenure as CEO of the UND Alumni Association & Foundation, I was involved in several searches for senior leadership roles within the UND administration and academic community.

It was incredibly frustrating to consistently hear from recruiters the reluctance top talent had applying for great jobs at UND, due to the fact they were immediately exposed to their current employers as "looking for another job".

As the search processes are typically elongated by definition, most outstanding prospects are not going to want their application public until they know they're a finalist.

Thus, when the 2017 session of the North Dakota Legislature passed new legislation providing for secure application for all public job openings until three or more finalists were named, I was extremely confident this would result in much greater depth of talent applications. Clearly the evidence supports this theory in review of recent hires at UND.

Three examples which jump out are as follows:

1. The hiring of Bill Chaves as Director of Athletics brought a young talent with deep experience and track record of excellence to Grand Forks. Yet, choosing Bill wasn't easy, as there were several candidates in a deep field worthy of consideration. This has never occurred before in similar searches where choices became narrow in fields of marginal prospects.

2. Recent critical hires of Deans in some of the Colleges at UND, brought similar results. Perhaps the best example is the hiring of Robert Kraus as Dean of the School of Aerospace at UND. The 6 finalists included high level executives from private sector companies like Boeing, outstanding prospects from various members of academic settings in the US, and a couple with outstanding military background track records of leadership and aerospace experience.

3. You may recall the two prior Presidential searches at UND, neither of which produced a deep field of candidates. Compare those to the depth of the competitive field of candidates which produced Andy Armacost as the current President of UND.

The bottom line in either recruiting or promoting from within is ensuring the best pool of candidates for whatever the role is in the public sector. Clearly the current law allows for such, is doing exactly what the wisdom of the 2017 Legislature intended.

I strongly suggest a NO vote against proposed bill HB1349.

Respectfully, Tim O'Keefe
CEO Emeritus, UND Alumni Association & Foundation
(218) 791-9804

NORTH DAKOTA
UNIVERSITY SYSTEM
ACCESS. INNOVATION. EXCELLENCE.

HB1349
House Political Subdivisions Committee
February 5, 2021
Nick Hacker, Chair, SBHE; Kathy Neset, Member, SBHE; and
Mark Hagerott, Chancellor, NDUS
701.328.2963 | mark.hagerott@ndus.edu

Chair Dockter and Committee Members: Our names are Nick Hacker, Chair State Board of Higher Education; Kathy Neset, member State Board of Higher Education; and Mark Hagerott, Chancellor of the North Dakota University System. We are here today on behalf of the North Dakota University System and its eleven institutions in opposition to H.B. 1349, as it is currently proposed.

The North Dakota University System has a biennial budget of over $2.5 billion, of which $648.7 million was appropriated from the general fund during the 2019-2021 biennium. This significant investment by the people of the state of North Dakota resulted in an economic impact of over $5.5 billion during Fiscal Year 2019, per a recent report by North Dakota State University's Department of Agribusiness and Applied Economics. This is over double the economic impact in Fiscal Year 1999, a significant increase.

This economic impact could not have been achieved without dedicated leadership and sound financial stewardship, much of which takes place at the NDUS's eleven institutions. One of the most challenging jobs of the State Board of Higher Education and the North Dakota University System is recruiting and hiring the presidents of those eleven institutions. On average, one institution president or dean retires or leaves the North Dakota University System every year – since 2015, the SBHE has hired eight institution presidents, along with the Dean of Dakota College at Bottineau, and one presidential search is currently ongoing. Given the high profile of these positions in the state, it is crucial that the SBHE receives a high number of qualified applicants, including preferably applicants who are currently presidents of colleges or universities. We are pleased to report that the SBHE has had incredible success in hiring highly qualified presidents in the last two years. These include President Andrew Armacost, a former Dean of the Faculty at the United States Air Force Academy and Colonel in the United States Air Force. The SBHE hired President Doug Jensen, the then-president of Rock Valley College, to be the President of Bismarck State College. Finally, the SBHE's choice for first interim, and then President at Dickinson State College, Steve Easton, a former United States Attorney and North Dakota native, has been instrumental in addressing many of the challenges at that institution.

One major reason for the successful recruitment and hire of these presidents, not to mention the presidents of Mayville State University and Valley City State University in 2018, is North Dakota Century Code Section 44-04-18.27, which Section 2 of H.B. 1349 amends. Prior to the Legislative Assembly's implementation of Section 18.27 during the 2017 session, all application materials submitted to search committees were considered open records. This had a number of negative effects on the recruitment of institution presidents, most importantly limiting the number of highly qualified candidates who applied for open positions.

Prior to the current version of Section 18.27, having non-finalist application materials be open to the public served as a significant disincentive for highly qualified candidates to apply for open positions, including current presidents, deans, and provosts. These professionals work in a highly competitive field and face potential blowback from their boards of trustees if they (unsuccessfully) apply to be president of an NDUS institution. Since 2017, the number of applicants for these extremely important positions have increased in both quantity and quality of candidates. For example, when the SBHE hired UND's current president in December 2019, the SBHE had the luxury of choosing between the current Dean of the Faculty of the Air Force Academy and two candidates with presidential experience at other universities. Many other applicants were also highly qualified for the position, even though they may not have been named as finalists. The search firm the SBHE has worked with for these searches has relayed that many candidates who applied for the position may not have done so if their applications would have been made public.

However, the proposed change to Section 18.27 would undermine that recent success. Instead of requiring that the application materials of non-finalists remain confidential, the proposed amendment would make those application materials public once the finalists are named. This public disclosure would place the NDUS back in its pre-2017 process, which resulted in lower levels of interest from high quality candidates, a lower total number of applications for open positions, and several hires who saw significant public controversy.

To be clear, the NDUS institutions and we support many of the changes proposed by this bill, including changing the designation of application materials from confidential to exempt. We also support the changes proposed in Section 1, Sections 3-5, and Section 7 (Sections 6 and 8 do not meaningfully impact the NDUS). In particular, the NDUS supports making active litigation records exempt from disclosure, the further clarification of the requirements for electronic meetings, and the designation of records containing medical information as exempt. However, the NDUS opposes the changes in Section 2.

To assist the Committee, we have provided a proposed amendment to H.B. 1349 which would retain all of the proposed changes, except that application records of non-finalists would remain exempt from disclosure after the finalists are selected.

Thank you for your consideration of H.B. 1349. We respectfully request that the members of the Committee adopt NDUS's proposed amendment, or else adopt a "do not pass" recommendation, and we stand ready to answer your questions. Thank you for your time.

HB1349
Political Subdivisions Committee
February 5, 2021
Andrew P. Armacost
President, University of North Dakota
(701) 777-2121 | andrew.armacost@und.edu

Chair Dockter and members of the committee, good morning. My name is Andy Armacost, and I serve as the President of the University of North Dakota. I'm speaking in opposition to House Bill 1349 as currently drafted. If this bill is passed, it will have a profoundly negative impact on the state's ability to attract candidates for senior positions such as mine. Let me share my own personal experience.

If this provision was in Century Code when I considered applying for the UND Presidency, I can state confidently that I would not have applied. Other presidential candidates have expressed the same concern. Why would they be concerned? For two reasons. First, if an applicant is currently employed elsewhere and is publicly identified as an applicant, it might harm their standing with their current employer. Second, being publicly identified as a non-finalist will harm their chance to compete for other positions. For these reasons, I believe the most qualified candidates will opt out of competing for presidential positions in the North Dakota University System. Furthermore, I have the same concern for any position where we execute a search.

We must protect the confidentiality of all search candidates, except for the finalists. If you wish to attract the top talent to the North Dakota University System, do not pass this bill as currently proposed, and accept the recommendations of Board Chair Hacker, Board Member Neset, and Chancellor Hagerott.

Thank you.

HB1349
Joint Political Subdivisions Committee
February 5, 2021
Andrew P. Armacost
President, University of North Dakota
(701) 777-2121 | andrew.armacost@und.edu

Chair Burckhard, Chair Dockter, and members of the joint committee, good morning. My name is Andy Armacost, and I serve as the President of the University of North Dakota. I'm speaking in opposition to House Bill 1349 as currently drafted. If this bill is passed, it will have a profoundly negative impact on the state's ability to attract candidates for senior positions such as mine. Let me share my own personal experience.

If this provision was in Century Code when I considered applying for the UND Presidency, I can state confidently that I would not have applied. Other presidential candidates have expressed the same concern. Why would they be concerned? For two reasons. First, if an applicant is currently employed elsewhere and is publicly identified as an applicant, it might harm their standing with their current employer. Second, being publicly identified as a non-finalist will harm their chance to compete for other positions. For these reasons, I believe the most qualified candidates will opt out of competing for presidential positions in the North Dakota University System. Furthermore, I have the same concern for any position where we execute a search.

We must protect the confidentiality of all search candidates, except for the finalists. If you wish to attract the top talent to the North Dakota University System, do not pass this bill as currently proposed, and accept the recommendations of Board Chair Hacker, Board Member Neset, and Chancellor Hagerott.

Thank you.

AGB GOVERN WITH CONFIDENCE

February 4, 2021

North Dakota Legislature
H.B. 1349
House Political Subdivisions Committee

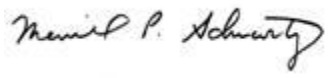
Chair Docker and Committee Members:

I write in opposition to H.B 1349, as currently proposed, specifically in opposition to Section 2, which amends North Dakota Century Code Section 44-04-18.27 and would require making public non-finalist application materials when finalists are named in searches for chief executives of a college, university, or system.

In 2017, the president of the Association of Governing Boards of Universities and Colleges (AGB) wrote in support of the legislation that established the current practice of maintaining confidentiality of application materials in presidential searches. Please see attached letter from Richard D. Legon. The arguments in favor of confidentiality are the same now as then. The proposed change in H.B. 1349 would be a step backwards, reversing the best practice of confidentiality of candidates who do not become finalists. This practice contributes to a robust candidate pool. Confidentiality attracts leading candidates who would not otherwise risk their current positions and relationships if subject to revealing their candidacy along with a large pool of applicants, rather than only if selected as a finalist.

AGB joins in support of the State Board of Higher Education and urges the Committee to adopt NDUS's proposed amendment.

Sincerely,



Merrill P. Schwartz, Ph.D.
Senior Vice President
Association of Governing Boards of Universities and Colleges
202.776.0822 / mschwartz@agb.org

Attachment: Letter from Rick Legon ND

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NORTH DAKOTA STATE SENATE
POLITICAL SUBDIVISIONS COMMITTEE
SENATOR RANDALL BURCKHARD, CHAIRMAN
FRIDAY, JANUARY 27, 2017

Senate Bill 2152 -- Relating to Open Records, Meetings and Searches
Letter of Concern
Richard D. Legon
President, Association of Governing Boards of Universities and Colleges

On behalf of the Association of Governing Boards of Universities and Colleges (AGB), I am pleased to provide this letter in support of Senate Bill 2152 (SB 2152), which would allow the North Dakota University System (NDUS) to maintain the confidentiality of candidates who apply for chancellor/president positions, except those confirmed as finalists.

Established in 1921, AGB's mission is educate the governing bodies of some 2000 institutions. We work with institution and state system leadership and their board members, providing education and counsel to over 37,000 leaders across higher education. AGB has helped to shape best practices in institution and board governance with a primary focus on institution mission achievement. AGB's board of directors, most of whom serve as college and university board members is committed to advancing policies that strengthen and improve governance and leadership, and SB 2152 is one such piece of legislation.

In today's higher education environment, the selection of a chief executive of a college, university, or university system is among the paramount responsibilities for which a governing body assumes responsibility. To meet this fundamental responsibility, boards (and search committees) must have confidence that their search is well positioned to attract the best pool of candidates possible. Current state law requires that the names of all candidates who apply for a presidency in the system will be made public—on websites associated with the search and in public meetings. While the appeal of a fully open process is understood, the reality is that such a process can chill the overall quality of the pool of candidates. The competition for quality leadership is intense across all of higher education; the mandate that all candidates shall commit to initial exposure as candidates, does have the unintended risk of limiting the overall quality of the candidate pool.

AGB recognizes that the State Board of Higher Education is appropriately concerned about current search practices within the System and that it supports SB 2152—demonstrating its understanding of the importance and strategic significance of some level of confidentiality in executive searches. The challenges assigned to institution leaders, including ensuring accessible and affordable education, increased retention and completion rates, a viable and sustainable financing model, innovation and knowledge creation, and an ability to educate a diverse population, mandate strong and visionary leadership. A search process should facilitate the ability to attract those skills that are needed to meet the profile of leadership. While respecting the essence of openness, the greater cause, in my

opinion, is stimulating interest among the best candidates. Both objectives can be met by SB 2152. Many of the best higher education leaders may think twice before entering the search process knowing the risks to their current professional circumstances and their reputation, should they not move to finalist status.

If enacted, SB 2152 would require that only the names of the top three finalists be announced, which is in line with 35 other public higher education systems across the country. To be clear, the majority of states have thus far retained their commitment to full disclosure of all candidates in a search pool. We think that North Dakota has the opportunity to join the 22 states plus the District of Columbia that have come to recognize the need for some protections for candidates while balancing the commitment to the public's interests. The proposed legislation allows for transparency regarding the search, yet does not provide unintended consequences for candidates or the search committee.

Further, it is our understanding that open-meeting requirements would not be affected as a result of SB 2152.

It is noteworthy that all eight members of the State Board of Higher Education were nominated by the governor and confirmed by the legislature. As the governing body with fiduciary authority over NDUS and the responsibility to ensure institution independence, the board's judgment and support of SB 2152 should be valued and taken into consideration.

In my role as CEO of the Association of Governing Boards of Universities and Colleges, I am pleased to represent the association's endorsement of SB 2152, a bill that if passed will help to ensure that the state's higher education sector can continue to advance the state's priorities. I am available to answer any questions related to this endorsement. Please do not hesitate to contact me at rlegon@agb.org or 703-505-6916.

Respectfully submitted,

Richard D. Legon
President, AGB

Enclosure: *Consequential Board Governance in Public Higher Education Systems*

Mr. Chairman and members of the committee,

I am Doug Jensen and it's my great privilege to be president of Bismarck State College. I'm here to testify in opposition to HB1349.

My understanding is that HB1349 would make all candidate application materials part of the open record, once finalists are designated by a public entity.

The challenge I find with this as a sitting president and as a president that applied for a position in the NDUS system, is that my application materials could be become part of the public record even if I wasn't selected to be interviewed. As someone who has recently gone through this process with the NDUS, I would not have made application for the BSC presidential opening if this practice was in place.

In addition, as someone who has gone through multiple presidential searches and has been a president at other higher education institutions, the proposed amendments outlined are uncommon and I have not, in my experience, ever encountered this type of access of applicant materials for the public record

without being a finalist. This practice I believe would severely limit applicants from applying for these positions. As a result, would impact, in my opinion, the quality of the applicants received due to the personal and professional risk they would have to take and be exposed to.

I do support and understand the releasing of applicant materials during the finalist stage of a search process. I have experienced this process many times in my professional career. If the proposed amendment would pass, requiring all materials relating to the applicant's submission regardless of how far the applicant proceeds in the search process be open record, it would be detrimental to the candidates and the institutions, therefore would have a negative impact on the quality of candidates you would receive for these leadership positions.

Good Morning Chairman Dockter and esteemed members of the House Political Subdivisions Committee. For the record, I am Rep. Bill Devlin of District 23 and I live in Finley. I am here to introduce HB1308 which I introduced on behalf of the Secretary of State. They will provide all details you will need and answer any questions the committee might have. Thank you, Chairman Dockter and committee members.

Good Morning Chairman Dockter and esteemed members of the House Political Subdivisions Committee. For the record, I am Rep. Bill Devlin of District 23 and I live in Finley. I am here to introduce HB1349 which I introduced on behalf of the Attorney General. They will provide all details you will need and answer any questions the committee might have. Thank you, Chairman Dockter and committee members.

of the governing body are present but are not discussing public business as the full governing body or as a task force or working group;

(3) The attendance of members of a governing body at meetings of any national, regional, or state association to which the public entity, the governing body, or individual members belong; ~~and~~

(4) Training seminars ~~where~~at which no other public business is considered or discussed; and

(5) Administration of examinations by a regulatory board when no other public business is considered or discussed.

c. Notwithstanding subdivisions a and b, as applied to the legislative assembly, "meeting" means any gathering subject to section 14 of article IV of the Constitution of North Dakota.

SECTION 2. AMENDMENT. Section 44-04-18.27 of the North Dakota Century Code is amended and reenacted as follows:

44-04-18.27. Applications for public employment - Hiring process - Confidential records and open records.

If a public entity or any person delegated authority by a public entity to review applications or make hiring decisions receives applications from three or more applicants who meet the minimum qualifications for a vacant position, the public entity or other person shall designate three or more of the qualified applicants as finalists for further consideration before the public entity or other person may issue an offer of employment to fill the position. However, if the public entity or other person does not wish to consider any of the applications further and decides not to make an offer of employment for the vacant position, the public entity need not designate any finalist. The applications and any records related to the applications which contain information that could reasonably be used to identify an applicant are ~~confidential, except records related to finalists are open to the public after~~exempt and may be withheld until the finalists are designated, at which time the records are open to the public. The public entity or other person reviewing applications on behalf of the public entity shall comply with all requirements for an executive session to discuss ~~confidential~~exempt applications. If, by the close of the application period for a vacant position, a public entity receives applications from

fewer than three applicants who meet the minimum qualifications, the applications and records related to the applications are open to the public.

SECTION 3. AMENDMENT. Section 44-04-19 of the North Dakota Century Code is amended and reenacted as follows:

44-04-19. Access to public meetings.

Except as otherwise specifically provided by law, all meetings of a public entity must be open to the public. That portion of a meeting of the governing body of a public entity as defined in subdivision c of subsection 13 of section 44-04-17.1 which does not regard public business is not required to be open under this section.

1. This section is violated when any person is denied access to a meeting under this section, unless such refusal, implicitly or explicitly communicated, is due to a lack of physical space in the meeting room for the ~~person or~~ persons seeking access or lack of electronic capacity to allow public viewing of the meeting through electronic means.
2. For purposes of this section, if the meeting is held in person, the meeting room must be accessible to, and the size of the room must accommodate, the number of persons reasonably expected to attend the meeting. If the meeting is held by electronic means, the electronic capacity must accommodate the number of persons reasonably expected to attend the meeting remotely.
3. The right of a person to attend a meeting under this section includes the right to photograph, to record ~~on~~ audio~~tape~~ or video~~tape~~ and to broadcast live ~~on radio or television~~ the portion of the meeting that is not held in executive session, provided ~~that~~ there is no active interference with the conduct of the meeting. The exercise of this right may not be dependent upon the prior approval of the governing body. However, the governing body may impose reasonable limitations on recording activity to minimize the possibility of disruption of the meeting.
4. For meetings subject to this section ~~when one or more of the members of the governing body is participating by telephone or video, a speakerphone or monitor must be provided at the location specified~~, if the meeting is held through any electronic means, the information necessary to join or view the meeting electronically must be included in the notice issued under section 44-04-20.

2021 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee
Room JW327B, State Capitol

HB 1349
2/12/2021

Relating to open record and meeting laws; and to provide a penalty

Vice Chairman Pyle: (11:09). Opened for committee work.

Representatives	
Representative Jason Dockter	P
Representative Brandy Pyle	P
Representative Mary Adams	P
Representative Claire Cory	P
Representative Sebastian Ertelt	P
Representative Clayton Fegley	P
Representative Patrick Hatlestad	P
Representative Mary Johnson	P
Representative Lawrence R. Klemin	P
Representative Donald Longmuir	P
Representative Dave Nehring	P
Representative Marvin E. Nelson	P
Representative Luke Simons	P
Representative Nathan Toman	P

Discussion Topics:

- Electronic meetings
- Remote meetings
- Amendment

Rep. Hatlestad: Explained the proposed amendment. Section 2 only the top 3 candidates in the University system would be released to the public. Section 4 deals with active litigations. Section 5 if you are going to have a public meeting you have to let the public know of the meeting and how to connect.

Mary Kae Kelsch, Assistant Attorney General: Explained the proposed amendment. Testimony #6375.

Rep. Hatlestad: Made a motion on amendment 21.0723.01002.

Vice Chairman Pyle: Second the motion.

Rep. Hatlestad: Withdrew his motion.

Vice Chairman Pyle: Withdrew her second.

Rep. Hatlestad: Made a motion on sections 2,4,8 on the amendment 21.0723.01002 and delete section 5.

Vice Chairman Pyle: Second the motion.

Voice vote carried

Vice Chairman Pyle: Made a do pass as amended motion.

Rep. Hatlestad: Second the motion.

Representatives	Vote
Representative Jason Dockter	Y
Representative Brandy Pyle	Y
Representative Mary Adams	Y
Representative Claire Cory	Y
Representative Sebastian Ertelt	Y
Representative Clayton Fegley	Y
Representative Patrick Hatlestad	Y
Representative Mary Johnson	Y
Representative Lawrence R. Klemin	Y
Representative Donald Longmuir	Y
Representative Dave Nehring	Y
Representative Marvin E. Nelson	N
Representative Luke Simons	Y
Representative Nathan Toman	Y

13-1-0 carried.

Rep. Hatlestad: Will carry the bill.

Chairman Dockter: (11:33). Closed committee work.

Carmen Hickle, Committee Clerk

DA 2/12/21
1 of 1

21.0723.01002
Title.02000

Adopted by the Political Subdivisions Committee

February 12, 2021

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1349

Page 2, line 26, replace "and may be withheld until" with ". Once"

Page 2, line 27, remove "at which time"

Page 2, line 27, after "the" insert "applications and related"

Page 2, line 27, after "records" insert "of the finalists"

Page 4, line 3, replace "Active" with "Unless subject to subsection 6 of section 44-04-18, active"

Page 5, line 18, after the second "record" insert "unless the investigation is closed and not referred for further investigation or adjudication"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1349: Political Subdivisions Committee (Rep. Dockter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1349 was placed on the Sixth order on the calendar.

Page 2, line 26, replace "and may be withheld until" with ". Once"

Page 2, line 27, remove "at which time"

Page 2, line 27, after "the" insert "applications and related"

Page 2, line 27, after "records" insert "of the finalists"

Page 4, line 3, replace "Active" with "Unless subject to subsection 6 of section 44-04-18, active"

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PROPOSED AMENDMENTS TO HOUSE BILL NO. 1349

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Page 2, line 27, remove "at which time"

Page 2, line 27, after "the" insert "applications and related"

Page 2, line 27, after "records" insert "of the finalists"

Page 4, line 3, replace "Active" with "Unless subject to subsection 6 of section 44-04-18, active"

Page 4, line 22, replace "and" with "or"

Page 5, line 18, after "record" insert "until the investigation is closed and not referred for further investigation or adjudication"

Renumber accordingly

HOUSE BILL NO. 1349

Section 2

Page 2, lines 24-28

designate any finalist. The applications and any records related to the applications which contain information that could reasonably be used to identify an applicant are ~~confidential, except records related to finalists are open to the public after open to the public after~~exempt~~ and may be withheld until~~. Once the finalists are designated, ~~at which time~~ the applications and related records of the finalists are open to the public.

Section 4

Page 4, lines 3-7

12. ~~Active~~ Unless subject to subsection 6 of section 44-04-18, active litigation records are exempt from section 44 - 04 - 18. For purposes of this subsection, "active litigation records" means records obtained, compiled, or prepared by a public entity or the attorney representing a public entity for the purpose of litigation unless the records already have been filed publicly or the litigation is completed.

Section 5

Page 4, lines 20-24

held during the meeting. For meetings to be held by ~~telephone or videoconference, or other~~ electronic means, the location of the meeting ~~and the place the meeting is held~~ is the ~~location of a speakerphone or monitor~~electronic address ~~and~~or any other information necessary to allow the public to join or view the electronic meeting as required under section 44-04-19.

Section 8

Page 5, line 18

6. An active investigation record of the Medicaid fraud control unit is an exempt record until the investigation is closed and not referred for further investigation or adjudication.

2021 SENATE POLITICAL SUBDIVISIONS

HB 1349

2021 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee
Sakakawea, State Capitol

HB 1349
3/25/2021 08:33 AM

A BILL for an Act to create and enact subsection 12 of section 44-04-19.1, a new section to chapter 44-04, and subsection 6 of section 50-24.8-12 of the North Dakota Century Code, relating to open record and meeting laws; to amend and reenact subsection 9 of section 44-04-17.1, sections 44-04-18.27 and 44-04-19, subsections 1 and 2 of section 44-04-20, and section 44-04-30 of the North Dakota Century Code, relating to open record and meeting laws; and to provide a penalty.

Chairman Burckhard opened the hearing on HB 1349 at 8:30 a.m. Members present: Burckhard, Anderson, Lee, Larson, Kannianen, Oban, Heitkamp.

Discussion Topics:

- Virtual meeting disruptions
- Zoom/Microsoft Teams security
- HIPAA
- Home rule
- Zoom bombing
- Registration for virtual meetings
- Virtual link publishing

[8:33] Mary Kae Kelsch, Assistant Attorney General, On Behalf of Wayne Stenehjem, Attorney General. Provided testimony #10685 in favor.

[8:55] Lisa Kudelka, Director of Operations, HRMS within the Office of Management and Budget. Provided testimony #10687 in favor.

[8:59] Jack McDonald, Lobbyist, ND Newspaper & Broadcasters Association. Provided testimony #10710 in favor.

[9:04] Tag Anderson, Director, Risk Management Division, OMB. Provided oral testimony in favor.

[9:12] Mary Soucie, ND State Librarian. Provided neutral testimony #10690.

[9:20] Jim Upgren, Assistant Director, Office of School Approval and Opportunity, DPI. Provided neutral testimony #10374.
Additional written testimony: (2)\
S. Paul Jordan, Mandan Resident. Written testimony #10713 in opposition.
Mitchell S. Sanderson, Park River Resident. Written testimony #10428 in opposition.

Chairman Burckhard closed the hearing on HB 1349 at 9:35 a.m.

Patricia Lahr, Committee Clerk

SENATE POLITICAL SUBDIVISIONS
MARCH 25, 2021

TESTIMONY OF MARY KAE KELSCH
OFFICE OF ATTORNEY GENERAL
SENATE BILL NO. HB 1349

Mr. Chairman, members of the Committee.

I am Mary Kae Kelsch, Assistant Attorney General, and I appear on behalf of the Attorney General in support of HB 1349. This bill relates to the open records and meetings law. I will go through the proposed changes by section.

Section 1, Section 3, and Section 5 are related, and I will address together. The changes proposed here address issues that emerged during the pandemic. When public buildings closed, officials started calling our office asking how to conduct public meetings when the building was unavailable. Even though our law allows for meetings to be held by video or conference call, the law required that in those instances, a speakerphone or monitor had to be at a physical location. This was almost always the county or city building. When those buildings were closed, that requirement became impossible. In addition, because the public could attend a meeting by video, the requirement to have a physical location was outdated. In order for public entities to continue to hold public meetings, an executive order was issued waiving the physical location requirement. The changes are also an attempt to reflect the changes in technology. For example, much of our language about capacity focused on physical capacity and not electronic capacity. (Section 3.) There

are also modifications proposed for what a notice must contain when meetings are all electronic. (Section 5.)

Also, in section 1 is a change that would allow a regulatory board to administer exams without it being a public meeting.

Section 2. Last session a bill passed making the identity of applicants for public employment confidential until finalists are designated. Confidential is the highest level of protection that may be provided under the open records law. A person is guilty of a class C felony if the person knowingly discloses confidential information acquired as a public servant. N.D.C.C. § 12.1-13-01. This law applies to all public entities and the threshold of confidentiality is not practical when public entities at all levels are constantly receiving applications for various jobs openings. This bill would change the status of the applications to exempt in order to give public entities more flexibility in handling job applications. This change solves the issues that were discovered with this statute. The classification of exempt gives discretion to the public entity to decide whether it can release a record. The level of protection should be left to the entity to decide and can be protected to the degree appropriate for the situation. The finalists records would still be open to the public.

Section 4. The change proposed here would protect litigation files until litigation is completed. Currently, if a party to the litigation wants records, the law provides that both parties use the discovery process which offers certain protections. However, if records are requested by someone who is not a party to litigation, the open records law applies. Unfortunately, in most cases, these requests are from a

party who wants to sue the state and wants valuable information contained in the current litigation file. This puts the state in a vulnerable and unfair position. After the case is closed, these records would be open and accessible.

Section 6. This section would give the State Fire Marshal the same protections for the records of a fire department. It also would make images of a victim of a fire exempt. Unfortunately, there have been deaths associated with fires and as a part of the investigation photos are taken. This would allow protection for those images.

Section 7. This section would make medical records or records that contain medical information in the possession of a public entity exempt. The protection for medical records is scattered throughout the code and most people do not realize that there are many situations where a medical record held by a public entity would have to be released in response to an open records request. This language proposes to close that loophole.

Section 8. Last session the Medicaid Fraud Control Unit was created in the Attorney General's office. This language proposes to exempt active investigation records.

I would be happy to answer any questions.

NORTH Dakota | Management and Budget
Be Legendary.

Testimony in Support of

Engrossed House Bill No. 1349

Senate Political Subdivisions

March 25, 2021

TESTIMONY OF

Lisa Kudelka, Director of Operations, Human Resource Management Services (HRMS)

Chairman Burkhard and members of the Senate Political Subdivisions Committee, I am Lisa Kudelka, Director of Operations, HRMS within the Office of Management and Budget (OMB). I am here to testify in support of Engrossed HB 1349 and offer amendments to section 2 of the bill, which amends and reenacts section 44-04-18.27 of the North Dakota Century Code (NDCC) relating to applications for public employment.

SB 2069 which passed the Senate, also amended NDCC 44-04-18.27. SB 2069 was heard before Senate Government and Veterans Affairs prior to HB 1349 being introduced. After HB 1349 was amended and passed out of the House, it was recognized SB 2069 and section 2 of HB 1349 would have to be reconciled. Amendments to SB 2069 were offered before House Government and Veterans Affairs, but it was determined that the better approach was to amend section 2 of HB 1349. Consequently, House GVA recommended a Do Not Pass on SB 2069 and the bill was defeated on March 17, 2021.

Attached to this testimony are proposed amendments as well as a marked-up version of section 2 amending NDCC 44-04-18.27. The first 4 amendments we are proposing, lines 17 through 21, as well as the last one on line 29 striking the last sentence of NDCC 44-04-18.27, were initiated by the Senate Government and Veterans Affairs Committee in addressing SB 2069. We supported those amendments to SB 2069 and ask that those amendments be incorporated into HB 1349.

The primary substantive difference between SB 2069 and section 2 of HB 1349 is that SB 2069 retained the confidential nature of non-finalist job applications but removed the criminal penalty for disclosure, while HB 1349 would make non-finalist job application materials exempt records. The language we are proposing on line 29 acknowledges the records are exempt under the open records laws but would require a public entity to adopt a policy on how it will handle non-finalist application materials and communicate that policy to prospective job applicants. This will let individuals know how their application materials will be handled and encourage people to apply for public employment.

Mr. Chairman and committee members, this concludes my testimony. I ask your support for Engrossed House Bill 1349 with the suggested amendments. I would be happy to answer any questions.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2069

Page 1, line 17, after “are” overstrike “confidential, except records related to finalists are open to the public after” and immediately thereafter insert “Exempt. Once”

Page 1, Line 18 after designated insert “, the applications and related records of the finalists are open to the public”

Page 1, line 20 overstrike “confidential” and immediately thereafter insert “exempt”

Page 1, line 20 after “applications.” Insert “A public entity shall not release exempt records under this section except pursuant to written policies governing the use and dissemination of such records. A public entity shall provide a copy or other notice of the public entity’s policies governing use and dissemination of applications to prospective job applicants at the time a position is opened or advertised.”

Page 1, Line 23 remove “Section 12.1-13-01 does not apply to confidential records under this section.”

PROPOSED ENGROSSED SENATE BILL NO. 2069 WITH HOUSE AMENDMENTS

SECTION 1. AMENDMENT. Section 44-04-18.27 of the North Dakota Century Code is amended and reenacted as follows:

44-04-18.27. Applications for public employment - Hiring process - Confidential records and open records.

~~If a~~Upon the close of an application period, a public entity or any person delegated authority by a public entity to review applications or make hiring decisions ~~receives applications from three or more applicants who meet the minimum qualifications for a vacant position, the public entity or other person shall designate three~~may designate one or more of the qualified applicants as finalists for further consideration before the public entity or other person ~~may issue~~issues an offer of employment to fill the position. ~~However, if the public entity or other person does not wish to consider any of the applications further and decides not to make an offer of employment for the vacant position, the public entity need not designate any finalist.~~ The applications and any records related to the applications which contain information that could reasonably be used to identify an applicant are ~~confidential, except records related to finalists are open to the public after~~ exempt. Once the finalists are designated, the applications and related records of the finalists are open to the public. The public entity or other person reviewing applications on behalf of the public entity shall comply with all requirements for an executive session to discuss ~~confidential~~ exempt applications. A public entity shall not release exempt records under this section except pursuant to written policies governing the use and dissemination of such records. A public entity shall provide a copy or other notice of the public entity's policies governing use and dissemination of applications to prospective job applicants at the time a position is opened or advertised.~~If, by the close of the application period for a vacant position, a public entity receives applications from fewer than three applicants who meet the minimum qualifications, the applications and records related to the applications are open to the publicSection 12.1-13-01 does not apply to confidential records under this section.~~

Thursday, March 25, 2021

Senate Political Subdivisions Committee
HB 1349

CHAIRMAN BURCKHARD AND COMMITTEE MEMBERS:

My name is Jack McDonald. I'm appearing on behalf of the North Dakota Newspaper Association and the North Dakota Broadcasters Association. We support this bill as is, but strongly oppose any amendments that will in reality make all applications for public employment at any level in the state – from college presidencies to a director of the Minot Water Plant to manager of the Turtle Lake cemetery - closed to the public that is paying the salaries for those positions.

We recognize that the open meeting and open records laws that were substantially revised in 1997 – 24 years ago – need updating. No cell phones, internet, social media, web pages, etc. in 1997.

The changes for the most part recognize that public meetings are now often conducted by various electronic means, and will likely continue that way even after COVID.

We ask especially that you leave Section Two of the bill, beginning on page 2, line 13, intact. This retains the original intent of this legislation. Proposed amendments to allow the selection of one finalist means in reality that the whole selection process will be done in secret. The public will have absolutely zero chance to participate and no opportunity to review the backgrounds of the candidates or offer opinions on them. This is the situation in Minnesota and it's not good.

Thank you for your time and consideration. I'd be happy to answer any questions.

TESTIMONY ON HB1349
SENATE POLITICAL SUBDIVISIONS COMMITTEE

MARY J. SOUCIE
NORTH DAKOTA STATE LIBRARIAN
msoucie@nd.gov
(701)328-4654

Dear Chairman Burckhard and members of the committee,

I am State Librarian Mary Soucie and I am testifying neutrally on HB1349 pertaining to public meetings. One of the core tenets of libraries is to share information and that extends to encouraging and supporting open meetings. The bill being considered before the committee includes a provision that would require a meeting link to be shared on a publicly posted agenda and we have concerns about this. When the world turned upside down last year and we switched to online meetings and online education, a phenomenon known as “Zoom-bombing” began to happen. According to Tufts University, Zoom-bombing is when a person joins a Zoom meeting and shares unwanted content through video, audio, screensharing, screen annotation, chat, or file sharing. This can happen on other videoconferencing platforms as well.

We experienced one instance of Zoom bombing at a meeting that the State Library was holding in conjunction with the State Census Advisory Committee. As quickly as I kicked one person out another would enter.

Zoom has enabled many security features that minimize this happening, but those measures are not completely failproof. In January of 2021, the American Library Association experienced Zoom bombing during their virtual Midwinter Conference; on February 24, an event to commemorate Black History Month in DC was disrupted and on March 22 a North Carolina virtual vigil to commemorate those who lost their lives in the Atlanta spa shooting was interrupted with racial slurs. The last event had shared an open link for their event.

One of the easiest ways to secure a meeting is to avoid posting an unsecured link to an online meeting. When NDSL hosts a meeting, we require attendees to register in order to receive the link. People that are participating in Zoom bombing are not taking the time to register to get the meeting link, rather they are scouring the web for unsecured links. Other security measures include limiting screen sharing, enabling a waiting room and muting attendees. Allowing a registration link on the public agenda rather than the meeting link would be one way to limit the likelihood of a disrupted meeting.

The other concern that libraries have expressed is the ability for someone to attend an online meeting without making their presence known. An individual cannot attend an in-person meeting without their

presence being known. We hope that the bill may be able to address a requirement for anyone attending a virtual meeting to make their presence known.

Chairman Burckhard and members of the committee that concludes my prepared remarks. Thank you for your time and attention. I will try to answer any questions you may have.

TESTIMONY ON HB 1349
SENATE POLITICAL SUBDIVISIONS COMMITTEE
March 25, 2021
By: Jim Upgren, Assistant Director, Office of School Approval and Opportunity
701-328-2244
North Dakota Department of Public Instruction

Chairman Burckhard and Members of the Committee:

My name is Jim Upgren, Assistant Director in the Office of School Approval and Opportunity with the Department of Public Instruction. I am here on behalf of the department to speak on HB 1349.

One of my duties with the department is to lead the effort to make updates to administrative rules, and one of those components is the public notice for the public comment hearing. We would like to see some clarity added to Section 3, Subsection 4 on page 3, lines 28-30, as well as Section 5, Subsection 2 on page 4, lines 22 and 23 of the bill, regarding publishing of information to join the meeting online. If we allow a virtual option for a public comment hearing, would we be required to include the entire website address for the virtual meeting link, or simply contact information for who at our office can provide it? There are two reasons that we are asking for this clarity. First, since we must public notice for administrative rules in all 53 county newspapers, adding the full website link could significantly increase the cost of our public notice. And second, publishing the full link could potentially lead to "zoom bombing" and other forms of online disruption of meetings. If an individual had to

reach out to our office in advance to get the weblink, they would likely be attending for legitimate reasons and not just to disrupt the meeting.

While we will do whatever is required by law, these are some things that we feel should be clarified in the bill. We also stand willing to assist committee members in drafting any amendments that may further strengthen the bill.

Chairman Burckhard and Members of the Committee that concludes my prepared testimony and I will stand for any questions that you may have.

My name is S. Paul Jordan and I am submitting this written testimony at this time in opposition to HB 1349 due to the fact that such legislation should be considered as violating N.D. Const., Art. I, Sec. 21, by allowing acts of discrimination perpetuating a terrible good ol' boy style of government that results in favoritism and unequal treatment for citizens.

The inclusion of "exempt" in N.D.C.C. Ch. 44-04 creates abusive exclusion by public entities through granting discretionary authority that results in discriminatory acts on who may receive a copy of records and who may not. Within certain wording in HB 1349 the use of the word "exempt" is added related to records, where public entities will be able to both pick and choose who can receive copies of records and who will be excluded.

This is now the fourth straight legislative assembly where Rep. Bill Devlin, a former President of the North Dakota Newspaper Association (NDNA), has introduced some form of legislation that benefits the media at the expense of the people's own rights to have access to records because the less the people can have access to regarding records that the people want access to the more dependent the people are on the media.

HB 1337 was introduced by Rep. Devlin in 2015 to allow any public entity to make it cost prohibitive for the people to request or obtain public records at the same rate that the media obtained records and HB 1337 violated N.D. Const., Art. I, Sec. 21, due to its failure to require that the wording added to N.D.C.C. § 44-04-18(2) be applied to all equally instead of applying to the people however a public entity wants while ignoring it for the media. HB 1337 received false testimony by then Assistant Attorney General (AAG) Sandra DePountis since it appears that oral testimony is not given under oath, so perjury does not apply.

HB 1345 was introduced by Rep. Devlin in 2017 to add language to N.D.C.C. § 44-04-18(4) to allow any public entity to bypass requirements in N.D.C.C. § 44-04-18(2) by allowing a public entity to merely provide its website address instead of the specific URL to the webpage where the requested record is allegedly located in an electronic format; making it as difficult to find a record on a website, like trying to find a book in a library lacking the Dewey Decimal System and when the books are neither in alphabetical order by title nor by author.

HB 1345 also created N.D.C.C. § 44-04-18(13) to allow any public entity to permanently deny any person access to public records merely based on the word of that public entity that would deny any person that right to records that would otherwise be deemed public under N.D. Const., Art. XI, Sec. 6, and N.D.C.C. § 44-04-18(1) that would represent discrimination that violates N.D. Const., Art. I, Sec. 21, because any public entity can use N.D.C.C. § 44-04-18(13) against any person without applying it to either another person or to the media.

Further, and though a public entity invoking N.D.C.C. § 44-04-18(13) grants a person the right to request an opinion under N.D.C.C. § 44-04-21.1 to challenge the actions of a public entity, the North Dakota Office of Attorney General (OAG) uses a layperson, not licensed to practice law in North Dakota, to reject opinion requests properly and timely made under N.D.C.C. § 44-04-21.1(1) and the OAG has sent anonymous letters to hide who at the OAG lied to reject properly and timely opinions that were submitted to the OAG.

Further still, and though the North Dakota Supreme Court stated in *Saefke v. Stenehjem*, 2003 ND 202, ¶ 13, 673 N.W.2d 41, that the Attorney General has a statutory duty under N.D.C.C. § 54-12-01(19) to issue an opinion [requested under N.D.C.C. § 44-04-21.1], N.D.C.C. § 44-04-21.1 is useless rhetoric because it fails to include language mandating when an opinion has to be issued by. Though Section 8 in SB 2003 in 2015 sought to rectify this oversight and error, then Governor Jack Dalrymple vetoed it on May 12, 2015.

HB 1345 resulted in false testimony given by then AAG DePountis since it appears that oral testimony is not given under oath, so perjury does not apply and the OAG could not produce a copy of even one record that supported the false testimony given by then AAG DePountis.

HB 1117 was introduced by Rep. Devlin in 2019 to add language to N.D.C.C. Ch. 46-05 by creating N.D.C.C. § 46-05-09, such that newspapers would be held harmless for errors created when posting notices of public meetings electronically on websites.

Now comes HB 1349, which attorney Jack McDonald spoke in favor of on February 5, 2021, before the House Political Subdivisions Committee on behalf the NDNA and the North Dakota Broadcasters Association (NDBA) because it would allow the media to have access to records when the public could still be denied access to those records based on HB 1349.

To again voice objections to HB 1349, please keep in mind of the abuses that have occurred as a result of the misuse of having records classified as "exempt" because it means that any of the members of the state legislatures, or a member of their extended family, could contact police to report unlawful activity and under N.D.C.C. § 44-04-18.7 all records containing information on them could be withheld from them but those same records could be released to the suspects based on N.D.C.C. § 44-04-17.1(5) that allows public entities to have discretionary authority on who can have access to "exempt" records.

HB 1349 will expand N.D.C.C. § 44-04-17.1(5) to include "medical records" by making those records "exempt" so that public entities can disseminate "medical records" however a public entity wishes whether or not a person the "medical records" are on wants them withheld while a public entity can withhold "medical records" from the person the "medical records" are on. What if those are your "medical records" or are on a member of your extended family, which complete strangers, to include members of the media, could get their hands on at the discretion of public entities but you could neither get them nor could members of your extended family?

Nothing in N.D.C.C. Ch. 44-04 grants a person access to any records that contains information on them, so that a police state can exist where the people cannot see both records government created on them and records containing information on them. This is not China or Russia doing it, but North Dakota on its citizens.

Senator,

Any and **ALL** government meetings should be open record and open to the public.

This includes executive sessions.

I have had numerous open record requests blatantly ignored by the government and many by the governor's office alone. The worthless Ethics Commision will not forward them on to the AG or BCI for future charges!

Please amend the bill to reflect these issues:

First violation is a $1000 fine for all involved.
Second violation is a $5000 fine for all involved.
Third violation is a $10000 fine and you can never hold any public office again.

--
Mitchell S. Sanderson

2021 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee
Sakakawea, State Capitol

HB 1349
3/25/2021 10:04 AM

A BILL for an Act to create and enact subsection 12 of section 44-04-19.1, a new section to chapter 44-04, and subsection 6 of section 50-24.8-12 of the North Dakota Century Code, relating to open record and meeting laws; to amend and reenact subsection 9 of section 44-04-17.1, sections 44-04-18.27 and 44-04-19, subsections 1 and 2 of section 44-04-20, and section 44-04-30 of the North Dakota Century Code, relating to open record and meeting laws; and to provide a penalty.

Chairman Burckhard opened the discussion on HB 1349 at 10:04 a.m. Members present: Burckhard, Anderson, Lee, Larson, Kannianen, Oban, Heitkamp.

Discussion Topics:

- Proposed amendment from Lisa Kudelka, HRMS
- Confidentiality of public job applicants
- Exempt records

Chairman Burckhard will hold on HB 1349 pending additional amendments from Senator Oban.

Additional written testimony: N/A

Chairman Burckhard closed the discussion on HB 1349 at 10:11 a.m.

Patricia Lahr, Committee Clerk

2021 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee
Sakakawea, State Capitol

HB 1349
3/25/2021 11:38 AM

A BILL for an Act to create and enact subsection 12 of section 44-04-19.1, a new section to chapter 44-04, and subsection 6 of section 50-24.8-12 of the North Dakota Century Code, relating to open record and meeting laws; to amend and reenact subsection 9 of section 44-04-17.1, sections 44-04-18.27 and 44-04-19, subsections 1 and 2 of section 44-04-20, and section 44-04-30 of the North Dakota Century Code, relating to open record and meeting laws; and to provide a penalty.

Chairman Burckhard opened the discussion on HB 1349 at 11:38 a.m. Members present: Burckhard, Anderson, Lee, Larson, Kannianen, Oban, Heitkamp.

Discussion Topics:

- Public notice
- Newspaper publishing

[11:38] Senator Erin Oban, District 35. Provided the committee with clarification on public notification for virtual meetings from DPI and the Attorney General's Office as well as an update on proposed amendments to be drafted.

Additional written testimony: N/A

Chairman Burckhard closed the discussion on HB 1349 at 11:43 a.m.

Patricia Lahr, Committee Clerk

2021 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee
Sakakawea, State Capitol

HB 1349
3/26/2021

A BILL for an Act to create and enact subsection 12 of section 44-04-19.1, a new section to chapter 44-04, and subsection 6 of section 50-24.8-12 of the North Dakota Century Code, relating to open record and meeting laws; to amend and reenact subsection 9 of section 44-04-17.1, sections 44-04-18.27 and 44-04-19, subsections 1 and 2 of section 44-04-20, and section 44-04-30 of the North Dakota Century Code, relating to open record and meeting laws; and to provide a penalty.

Chairman Burckhard opened the discussion on HB 1349 at 10:57 a.m. Members present: Burckhard, Anderson, Lee, Larson, Kannianen, Oban, Heitkamp.
Discussion Topics:

- Proposed amendment

[10:58] Senator Erin Oban, District 35. Provided the committee with proposed amendment 21.0723.02001 (testimony #10853).

Senator Oban moves to **ADOPT AMENDMENT** 21.0723.02001
Senator Kannianen seconded.

Senators	Vote
Senator Randy A. Burckhard	Y
Senator Howard C. Anderson, Jr.	Y
Senator Jason G. Heitkamp	Y
Senator Jordan Kannianen	Y
Senator Diane Larson	Y
Senator Judy Lee	Y
Senator Erin Oban	Y

The motion passed 7-0-0

Senator Oban moves **DO PASS, AS AMENDED.**
Senator Kannianen seconded.

Senators	Vote
Senator Randy A. Burckhard	Y
Senator Howard C. Anderson, Jr.	Y
Senator Jason G. Heitkamp	Y
Senator Jordan Kannianen	Y
Senator Diane Larson	Y
Senator Judy Lee	Y
Senator Erin Oban	Y

The motion passed 7-0-0
Senator Oban will carry HB 1349.
Additional written testimony: N/A
Chairman Burckhard closed the discussion on HB 1349 at 11:03 a.m.

Patricia Lahr, Committee Clerk

21.0723.02001
Title.03000

Prepared by the Legislative Council staff for
Senator Oban
March 25, 2021

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1349

Page 3, line 2, after the period insert "A public entity may adopt policies regarding the release of exempt records under this section."

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1349, as engrossed: Political Subdivisions Committee (Sen. Burckhard, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1349 was placed on the Sixth order on the calendar.

Page 3, line 2, after the period insert "A public entity may adopt policies regarding the release of exempt records under this section."

Renumber accordingly

21.0723.02001
Title.

Prepared by the Legislative Council staff for
Senator Oban

March 25, 2021

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1349

Page 3, line 2, after the period insert "A public entity may adopt policies regarding the release of exempt records under this section."

Renumber accordingly