

2021 SENATE JUDICIARY

SB 2067

2021 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee Peace Garden Room, State Capitol

SB 2067
1/6/2021

A BILL for an Act to create and enact a new subsection to section 32-12.2-11 of the North Dakota Century Code, relating to compliance with rules of civil procedure in actions brought against the state or a state employee.

Chairwoman Larson called the committee hearing to order, and took the roll, all Senators were present Myrdal, Luick, Dwyer, Bakke, Heitkamp, Fors, Larson [1:00pm]

Discussion Topics:

- Current open record request statutes
- Civil litigation record requests

Tag Anderson testified in favor #115 [1:01pm]

Aaron Birst submitted amendment #114 and testified in favor [1:05pm]

Senator Myrdal moved to adopt the amendment [LC 21.8034.01001] [1:11pm]

Senator Luick seconded the motion [1:11pm]

Roll Call Vote

Motion passed 7-0-0

Senators	Vote
Senator Diane Larson	Yes
Senator Michael Dwyer	Yes
Senator JoNell A. Bakke	Yes
Senator Robert O. Fors	Yes
Senator Jason G. Heitkamp	Yes
Senator Larry Luick	Yes
Senator Janne Myrdal	Yes

Senator Myrdal moved for a DO PASS AS amended [1:12pm]

Senator Luick seconded the motion

Roll Call Vote

Motion passed 7-0-0

Senator Fors will carry the bill

Hearing Adjourned [1:12pm]

Jamal Omar, Committee Clerk

Senators	Vote
Senator Diane Larson	Yes
Senator Michael Dwyer	Yes
Senator JoNell A. Bakke	Yes
Senator Robert O. Fors	Yes
Senator Jason G. Heitkamp	Yes
Senator Larry Luick	Yes
Senator Janne Myrdal	Yes

January 6, 2021

PROPOSED AMENDMENTS TO SENATE BILL NO. 2067

Page 1, line 1, after "enact" insert "a new subsection to section 32-12.1-03 and"

Page 1, line 3, after "against" insert "political subdivisions, employees of political subdivisions,"

Page 1, line 3, after the first "state" insert a comma

Page 1, after line 4, insert:

"SECTION 1. A new subsection to section 32-12.1-03 of the North Dakota Century Code is created and enacted as follows:

Any party to an action against a political subdivision or a political subdivision employee acting within the scope of employment as defined in this chapter shall comply with applicable rules of civil procedure when requesting documents or other information in the possession or control of the political subdivision."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2067, as engrossed: Judiciary Committee (Sen. Larson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2067 was placed on the Sixth order on the calendar.

Page 1, line 1, after "enact" insert "a new subsection to section 32-12.1-03 and"

Page 1, line 3, after "against" insert "political subdivisions, employees of political subdivisions,"

Page 1, line 3, after the first "state" insert a comma

Page 1, after line 4, insert:

"SECTION 1. A new subsection to section 32-12.1-03 of the North Dakota Century Code is created and enacted as follows:

Any party to an action against a political subdivision or a political subdivision employee acting within the scope of employment as defined in this chapter shall comply with applicable rules of civil procedure when requesting documents or other information in the possession or control of the political subdivision."

Renumber accordingly

Testimony on SB 2067
Tag Anderson, Director
OMB Risk Management Division
January 6, 2021

Chairman Larson, and members of the Senate Judiciary Committee, my name is Tag Anderson. I am the Director of the Risk Management Division of OMB. I appear today in support of HB 2067.

Under current law, a party to a civil, criminal, or administrative proceeding must comply with applicable discovery rules when requesting records in the possession of the agency involved in the criminal, civil or administrative proceeding. N.D.C.C. 44-04-18(6). Some attorneys have been recently taking the position that a lawsuit against a state employee does not preclude them from making open records requests or a suit against one state agency does not preclude open records requests to another state entity. This legislation clarifies that when a civil action for money damages is being brought against a state employee or any agency of state government, the party and their attorney need to follow ordinary civil discovery rules to obtain documents regardless of what agency has possession of the documents.

This concludes my prepared remarks and I would be happy to answer any questions you may have.

Thank you.

PROPOSED AMENDMENT TO S.B. 2067

Page 1, after line 10, insert:

SECTION 2. A new subsection to section 32-12.1-03 of the North Dakota Century Code is created and enacted as follows:

"Any party to an action against a political subdivision or a political subdivision employee acting within the scope of employment as defined in this chapter shall comply with applicable rules of civil procedure when requesting documents or other information in the possession or control of the political subdivision."

2021 HOUSE JUDICIARY

SB 2067

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary

Room JW327B, State Capitol

SB 2067
3/22/2021

Relating to compliance with rules of civil procedure in actions brought against political subdivisions, employees of political subdivisions, the state, or a state employee.

Chairman Klemin called the hearing at 8:30 AM.

Present: Representatives Klemin, Karls, Becker, Buffalo, Christensen, Cory, K Hanson, Jones, Paulson, Paur, Roers Jones, Satrom, and Vetter. Absent; Magrum

Discussion Topics:

- DAPL protest litigation
- Political subdivisions
- Record request

Tag Anderson, Director of Risk Management, OMB: Introduced the bill. Testimony #10260

Chairman Klemin closed the hearing at 8:42.

Rep. Roers Jones: Do Pass Motion

Rep. Satrom: Seconded

Roll Call Vote:

Representatives	Vote
Chairman Klemin	Y
Vice Chairman Karls	Y
Rep Becker	Y
Rep. Christensen	Y
Rep. Cory	Y
Rep T. Jones	Y
Rep Magrum	A
Rep Paulson	Y
Rep Paur	Y
Rep Roers Jones	Y
Rep B. Satrom	Y
Rep Vetter	Y
Rep Buffalo	N
Rep K. Hanson	Y

12-1-1 Motion passed

House Judiciary
SB 2067
March 22, 2021
Page 2

Carrier; Rep. Roers Jones

Stopped 8:46

DeLores D. Shimek
Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2067: Judiciary Committee (Rep. Klemin, Chairman) recommends **DO PASS** (12 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). SB 2067 was placed on the Fourteenth order on the calendar.

TESTIMONY OF

Tag Anderson, Risk Management Division Director

Chairman Klemin, and members of the House Judiciary Committee, my name is Tag Anderson. I am the Director of the Risk Management Division of OMB. I appear today in support of SB 2067.

Under current law, a party to a civil, criminal, or administrative proceeding must comply with applicable discovery rules when requesting records in the possession of the agency involved in the criminal, civil or administrative proceeding. N.D.C.C. 44-04-18(6). However, some attorneys have been recently taking the position that a lawsuit against a state employee does not preclude them from making open records requests, or a suit against one state agency does not preclude open records requests to another state entity. This legislation clarifies that when a civil action for money damages is being brought against a state employee or any agency of state government, the party and their attorney need to follow ordinary civil discovery rules to obtain documents regardless of what agency has possession of the documents.

SB 2067 was amended in the Senate to provide similar requirements for lawsuits against political subdivision employees as well. We support those amendments.

This concludes my prepared remarks and I would be happy to answer any questions you may have.

Thank you.