

TESTIMONY OF

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

Chairman Kasper and members of the House Government and Veterans Affairs 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 Senate Bill No. 2069 which amends and reenacts section 44-04-18.27 of the North Dakota Century Code (NDCC) relating to an application for public employment.

When OMB developed this legislation, we had two goals. One was to eliminate the penalty section of the confidentiality requirement relating to the employment application process for public entities. The current penalty for a violation of this section of the Century Code is a class C felony. We believe any violation of the confidentiality requirement should be handled by a public entity's disciplinary process. This section of the Century Code covers applications for all state government and political subdivision positions.

The second goal was to clarify that all applications are confidential, regardless of the number of applications, until the public entity identifies the finalists for the position. In the current statute, if there are fewer than three applications, the application materials maybe open to a public records request. This requirement puts the applicant in a difficult position. They wouldn't know how many applications were received for a position or if their materials would be automatically open to a public records request. In some cases, when an agency or political subdivision only receives one or two applications for a position, they may not consider any of the applicants to be finalists, and therefore choose not to move forward with the hiring process.

OMB worked with Senator Roers to amend the bill. Senator Roers was interested in simplifying the language in the Century Code. We agree with and support the Senate amendments.

Section 2 of House Bill 1349 also amends NDCC Section 44-04-18.7, and it appears the two bills will need to be reconciled. SB 2069 was an agency bill and was heard in committee before HB 1349 was introduced. OMB proposes amendments to SB 2069 to align the two bills. The proposed amendments would designate application records as exempt rather than confidential. As defined in NDCC Section 44-04-17.1, an exempt record is "neither required by law to be open to the public, nor is confidential, but may be open in the discretion of the public entity."

The proposed amendment would also provide that a public entity shall not release exempt application records except pursuant to written policies adopted by the public entity. A copy of the policy must be provided to applicants so it is clear when and if the application records could be open to the public.

Attached to my testimony is both the proposed amendment and a marked-up draft of Engrossed SB 2069 as it would look if you adopt this proposed amendment.

Mr. Chairman and committee members, this concludes my testimony. I ask your support for Engrossed Senate Bill 2069 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 public~~Section 12.1-13-01 does not apply to confidential records under this section.