

## House Education Committee

March 15, 2023

Kathleen Neset

701.641.0004 | kathleenneset@nesetconsulting.com

Chair Heinert and members of the House Education Committee. My name is Kathleen Neset and I served on the State Board of Higher Education from 2012 to 2021 and I also served as chair of the board from 2015 to 2017. I am providing written testimony in opposition to SB2343, which relates to board communications and release of closed, exempt, confidential, or other related records.

We already have safeguards in place to self-govern the release of sensitive information to protect students and hiring of new administrators, making this bill unnecessary. Existing Century Code (NDCC 44-04-19.2), provides governing bodies like the SBHE with the ability to hold an executive session to consider closed, exempt, or confidential records. The law further provides the governing body with the discretion to disclose the recording “upon majority vote of the governing body unless the executive session was required to be confidential.” The SBHE deals with exceptionally sensitive information, particularly as it relates to legal matters of a multi-billion-dollar enterprise, cyber security threats which may threaten the personal data of approximately 50,000 students and faculty, as well as highly-sensitive academic searches involving candidates from across the nation.

The SBHE uses discretion to limit the disclosure of sensitive information to protect students, faculty, academic candidates, and financial assets of the state of North Dakota. I have seen multiple situations wherein with a majority vote, the Board has limited the disclosure of sensitive information to members of itself to protect candidates, the financial health of institutions, or cyber security information.

During my nine years on the board, executive session was used sparingly but intentionally. We used executive session to discuss topics like presidential performance, personnel actions, and contract negotiations. These extremely sensitive topics required openness and sometimes frank discussions related to specific individuals.

Because of that, we carefully limited participation in executive session to the fewest members possible. For example, if we were hiring a new campus president, salary negotiations were limited to a single board member (typically the chair), the chancellor, and legal counsel. We were purposeful

about limiting participation because the more people have access to confidential information the greater the risk that confidential information could leak out.

SB2343 could increase the threat of a leak and in turn, it would create a chilling effect on the candid discussions that are required in executive session. Leaked information could be harmful to the individual being discussed or the board member's name that was attributed to specific comments. One needs to go no further than the latest news cycle to understand the concerns over the mishandling of closed, exempt, confidential information.

Moreover, the current law provides a public entity or governing body with discretionary authority to control access to closed, exempt, confidential, or other records which for one reason or another have been deemed so sensitive that an executive session is necessary. So there is a mechanism in place for the board to determine whether a specific request for confidential information should or should not be accommodated. SB2343 would eliminate that discretionary authority.

Finally, SB2343 requires the State Board of Higher Education (SBHE) to establish "a policy ensuring transparent communication between members of the board" and provides that all members must have "equal access to all current and historic information."

I am not sure how you would define transparent communication in policy or measure it in procedure. I can tell you that during my years on the board, we had multiple committees in place and they met on a routine basis. Committee chairs reported out at each SBHE meeting and committee actions were either confirmed, denied, or modified by vote of the full board.

New board members participated in a thorough onboarding process to include orientation on all issues pertinent to board operations. The NDUS office staff responded expediently to board member questions and information requests, within limits of available staffing & resources. Opening past and prior executive sessions to new and future board members will have a chilling effect on the ability to have open and honest discussions in executive session. This may also keep future candidates to presidential positions reluctant to engage with ND Higher Education knowing their executive sessions may be seen by unknown future board members. New board members are very adequately updated on all board business.

This concludes my testimony related to SB2343. I respectfully request a **Do Not Pass** because current law and Board policies already provide for the issues contained in the bill. Please contact me directly if you need additional information.



March 15, 2023

---

Kathleen Neset

NESET - President