

House Education Committee

March 15, 2023

Dr. Casey Ryan, Chair, North Dakota State Board of Higher Education
701.780.3088 | casey.ryan.2@ndus.edu

Chair Heinert and members of the House Education Committee. My name is Dr. Casey Ryan and I am the current chair of the North Dakota State Board of Higher Education (SBHE) and I have served on the board since 2017. I am testifying today on behalf of the SBHE in opposition to SB2343, which relates to board communications and the release of closed, exempt, confidential, or other related records. At the February 23, 2023, SBHE meeting, the board voted 6-2 to oppose SB2343.

I want to focus my testimony by clearly distinguishing the difference between information and an exempt record. Current and historic *information* exists in prepared documents, reports, or datasets. Or, staff time may be necessary to research and produce the request for information.

An exempt record, on the other hand, is completely different. Exempt records are unique in that they typically contain extremely sensitive information that is exempt from public disclosure. State law and SBHE policies narrowly define when executive session can be used. State law and SBHE policy also narrowly defines the process for releasing an exempt record and its retention schedule.

During my six years on the board, the system office staff and the institutions have been forthcoming on providing the necessary information I have requested. Not once have I had any difficulty in getting answers to my requests for information. In short, I believe all board members already have equal access to current and historical information as it pertains to section 1 of SB2343. However, with respect to internal analysis and process improvement, I do support further review by the board of how information is requested by and provided to board members.

But the proposed changes in section 2 and 3 target exempt records, not just information. This is troubling. State law requires that executive sessions must be recorded and can only be released pursuant to court order or by Attorney General request for administrative review. The law further provides governing bodies with the discretion to disclose the recording "upon majority vote of the governing body unless the executive session was required to be confidential." This discretion would be eliminated by sections 2 and 3.

The proposed changes in sections 2 & 3 of SB2343 are there because one board member wanted access to one exempt record (the physical recording) that was created before the board member was seated on the board. Per state law and SBHE policy, the board voted 1-7 at the September 30, 2021, board meeting to not provide that exempt record to the board member. In short, law and policy is already in place to accommodate requests for an exempt record and the board acted in accordance with state law and procedure.

In summary, I would like to conclude my testimony by reiterating the clear difference between information and an exempt record. Information exists in many forms and many places. Sometimes the information has already been published and sometimes, the information request requires a heavy lift. I would be willing to lead the review of how information is requested by and provided to the board and individual board members. But, exempt records are already narrowly defined by state law – including when and how they can be used. They exist to minimize access to only the most sensitive information. It is essential that these laws remain unchanged.

This concludes my testimony for SB2343. I understand that Kathleen Neset, former board member and former president of the board has submitted testimony and I would encourage you to review it. Meanwhile, I respectfully request a **Do Not Pass** because current law and Board policies already provide for the issues contained in the bill. I will stand for questions from Committee members.