

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2038

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La Costa Rickford
Operator's Signature

10/15/03
Date

2003 SENATE JUDICIARY

SB 2038

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10/15/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2038 - 01/08/03

Senate Judiciary Committee

Conference Committee

Hearing Date 01/08/03

Tape Number	Side A	Side B	Meter #
1	x		00-31
Committee Clerk Signature <i>Maria L. Solberg</i>			

Minutes: **Senator John T. Traynor, Chairman**, called the meeting to order. Roll call was taken and all committee members present. Sen. Traynor requested meeting starts with testimony on the bill.

Testimony in support of SB 2038

Senator Larry Robinson, Dist. #24, testified as a member of the Information Technology Committee. Discussion on the constant change of the department due to its technological nature. The need for consistency, cost control, and security of system. Senator Dennis Bercier asked if this was a reaction of Homeland Security. Response was yes, and other issues. This bill passed unanimously with the ITD committee. Senator Carolyn Nelson asked for clarification to the word "plan" in the bill, he deferred question to Mr. Wolfe.

Mr. Curt Wolfe, ITD Coordinator, ND, testified that security and privacy is an ongoing constantly changing concern for the department. Security concerns; for our passwords, user ID, net config, and traffic reports. Sen. Nelson again requested more clarity on the word "plan"

Page 2

Senate Judiciary Committee

Bill/Resolution Number 2038

Hearing Date 01/08/03

discussion on subject (meter 11.3 and 20.0). Senator Thomas L. Trenbeath asked if we need to add an Emergency Clause to this bill.

Courtney Koebel, ND Newspaper Assoc.-see attached testimony.

John Walstad, Legislative Council, testified how the ITD department under 5459, is not an "administrative rule" due to a lack of having any force and affect of law. They need the ability to make changes quickly. Before ITD was an independent agency it was exempted from the definition of "administrative agency".

John Bjornson, LL, discussed the word "plan" in greater detail (meter 21.0) Mr. Wolfe discussed the wording change would not effect the integrity of the Bill (24.5)

Testimony in opposition of SB 2038:

There was no testimony in opposition of bill.

Amendment made by Sen. Nelson moved to amend. Senator Thomas L. Trenbeath second the motion

Page 1, line 8, remove "plans,", and immediately following "security-related" insert "plans and"

Roll Call Vote: 6Yes 0 No. 0 Absent

Motion carried, amendment passed.

Amendment made by Sen. Trenbeath moved to further amend. Senator Dick Dever second the motion.

Page1, line 3, after "information" insert" and to declare an emergency"

Roll Call Vote: 6Yes. 0 No. 0 Absent

Motion carried, amendment passed

Sen. Nelson moved a DO PASS. Seconded by Sen. Lyson.

Page 3

Senate Judiciary Committee

Bill/Resolution Number 2038

Hearing Date 01/08/03

Roll Call Vote: 6Yes. 0 No. 0 Absent

Carrier: Senator Carolyn Nelson

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Operator's Signature

Zacosta Rickford

10/15/03

Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2038

Senate Judiciary Committee

Conference Committee

Hearing Date 01/13/03

Tape Number	Side A	Side B	Meter #
1	x		12.40-20.

Committee Clerk Signature *Maria L. Solberg*

Minutes: Senator John T. Traynor, Chairman, called the meeting to order. Sen. Traynor requested meeting starts with testimony on the bill.

Motion Made to reconsider motion to pass SB 2038 after two (2) amendments on 01/08/03 by Senator Dick Dever and seconded by Senator Thomas L. Trenbeath.

Roll Call Vote: 5 Yes. 0 No. 1 Absent

Motion carried, amendment passed.

Moved to reconsider the actions on amendment #1, but leaving on the emergency clause in the amendment.

Motion made by Senator Carolyn Nelson and seconded by Sen. Traynor

Roll Call Vote: 5 Yes. 0 No. 1 Absent

Motion carried, amendment passed

Testimony in support of SB 2038

Page 2
Senate Judiciary Committee
Bill/Resolution Number 2038
Hearing Date 01/13/03

Sandi Tabr-Deputy Attorney General (See Attachment) (meter15.4) Regarding; Exempt Vs Confidential. Senator Dick Dever asked if I give my password Vs the public requesting it and the legality/punishment of this act. (meter 17.0) ITD fully supports this Amendment.

Testimony in opposition of SB 2038:

There was no testimony in opposition of bill.

Amendment made by Senator Thomas L. Trenbeath moved to adopt this second amendment and Senator Dennis Bercier second the motion.

Roll Call Vote: 5 Yes. 0 No. 1 Absent

Motion carried, amendment passed

Senator Thomas L. Trenbeath moved a DO PASS. **Seconded by Senator Dennis Bercier**

Roll Call Vote: 5 Yes. 0 No. 1 Absent

Carrier: Senator Carolyn Nelson

LaCosta Rickford
Operator's Signature

10/15/03
Date

30127.0201
Title.0300

Adopted by the Judiciary Committee
January 8, 2003

[Handwritten signature]
1-10-03

PROPOSED AMENDMENTS TO SENATE BILL NO. 2038

Page 1, line 3, after "Information" Insert "; and to declare an emergency"

Page 1, line 8, remove "plans," and after "security-related" insert "plans and"

Page 1, after line 11, insert:

"SECTION 2. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

Page No. 1

30127.0201

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Operator's Signature

La Costa Rickford

Date

10/15/03

Roll Call Vote #: _____ Date: 1/8

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2038

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Pg 1, Line 8, remove "plans", and immediately following "security-related" insert "plans and".

Motion Made By Senator Thomas L. Trenbeath Seconded By Senator Dick Dever

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	X		Sen. Dennis Bercier	X	
Sen. Stanley Lyson - Vice Chair	X		Sen. Carolyn Nelson	X	
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X				

Total (Yes) Six No ZERO

Absent ALL PRESENT

Floor Assignment Senator Carolyn Nelson

If the vote is on an amendment, briefly indicate intent:

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La Costa Rickford 10/15/03
Operator's Signature Date

Roll Call Vote #: 2 Date: 1/8

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2038

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Add Emergency Clause

Motion Made By Senator Thomas L. Trenbeath Seconded By Senator Dick Dever

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	X		Sen. Dennis Bercier	X	
Sen. Stanley Lyson - Vice Chair	X		Sen. Carolyn Nelson	X	
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X				

Total (Yes) Six No ZERO

Absent ALL PRESENT

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

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La Costa Rickford 10/15/03
Operator's Signature Date

Date: January 13, 2003
 Roll Call Vote #: 1

**2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2038**

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Motion to re-open SB 2038

Motion Made By Senator Dick Dever Seconded By Sen. Trenbeath

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	X		Sen. Dennis Bercier	X	
Sen. Stanley Lyson - Vice Chair	X		Sen. Carolyn Nelson	X	
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X				

Total (Yes) Six No ZERO

Absent ALL PRESENT

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

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LaCosta Rickford 10/15/03
 Operator's Signature Date

Sandy Taber

PROPOSED AMENDMENT TO HOUSE BILL NO. 2038
Prepared by the Office of Attorney General

Page 1, line 2, replace "exempting from open" with "the confidentiality of", and remove "requirements portions of records"

Page 1, line 7, replace "Exempt" with "Confidential", and after "Any" insert "record or"

Page 1, line 8 remove "plans," and remove "other", and replace "data" with "plans"

Page 1, line 9, replace "and" with "or", and remove "government property and"

Page 1, line 10, after the word "networks" insert "of a public entity"

Page 1, line 10, replace "exempt from section" with "confidential"

Page 1, remove line 11

Renumber accordingly

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Lacosta Rickford
Operator's Signature

10/15/03
Date

How revised bill 2038 will read:

Computer passwords and security information – Confidential. Any record or portion of a record containing security codes, passwords, combinations, or security-related plans used to protect electronic information or to prevent access to computers, computer systems, or computer or telecommunications networks of a public entity is confidential.

With Emergency Clause

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Lacosta Rickford
Operator's Signature

10/15/03
Date

Date: January 13, 2003
Roll Call Vote #: 2

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2038

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Motion to remove amendment 1, leaving in the Emergency Clause

Motion Made By Senator Carolyn Nelson Seconded By Sen. Trenbeath

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	X		Sen. Dennis Bercier	X	
Sen. Stanley Lyson - Vice Chair	X		Sen. Carolyn Nelson	X	
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X				

Total (Yes) Six No ZERO

Absent ALL PRESENT

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

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La Costa Rickford 10/15/03
Operator's Signature Date

Date: January 13, 2003
 Roll Call Vote #: 3

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2038

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Move to pass amendment.

Motion Made By Sen. Trenbeath Seconded By Sen. Bercier

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	X		Sen. Dennis Bercier	X	
Sen. Stanley Lyson - Vice Chair	X		Sen. Carolyn Nelson	X	
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X				

Total (Yes) Six No ZERO

Absent ALL PRESENT

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

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LaGosta Rickford 10/15/03
 Operator's Signature Date

30127.0202
Title.0400

Adopted by the Judiciary Committee
January 13, 2003

QJB
1-14-03

PROPOSED AMENDMENTS TO SENATE BILL NO. 2038

Page 1, line 2, replace "exempting from open" with "the confidentiality of" and remove "requirements portions of records"

Page 1, line 3, after "information" insert "; and to declare an emergency"

Page 1, line 7, replace "Exempt" with "Confidential" and after "Any" insert "record or"

Page 1, line 8, remove "plans,", remove "other", and replace "data" with "plans"

Page 1, line 9, replace "and government property and" with "or"

Page 1, line 10, after "networks" insert "of a public entity" and replace "exempt from section" with "confidential."

SECTION 2. EMERGENCY. This Act is declared to be an emergency."

Page 1, remove line 11

Renumber accordingly

Date: January 13, 2003
Roll Call Vote #: 4

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2038

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Due pass

Motion Made By Sen. Trenbeath Seconded By Sen. Dever

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	X		Sen. Dennis Bercier	X	
Sen. Stanley Lyson - Vice Chair	X		Sen. Carolyn Nelson	X	
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X				

Total (Yes) Six No ZERO

Absent ALL PRESENT

Floor Assignment Senator Carolyn Nelson

If the vote is on an amendment, briefly indicate intent:

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LaCosta Rickford 10/15/03
Operator's Signature Date

REPORT OF STANDING COMMITTEE (410)
January 15, 2003 1:43 p.m.

Module No: SR-07-0608
Carrier: Nelson
Insert LC: 30127.0202 Title: .0400

REPORT OF STANDING COMMITTEE

SB 2038: Judiciary Committee (Sen. Traynor, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2038 was placed on the Sixth order on the calendar.

Page 1, line 2, replace "exempting from open" with "the confidentiality of" and remove "requirements portions of records"

Page 1, line 3, after "information" insert "; and to declare an emergency"

Page 1, line 7, replace "Exempt" with "Confidential" and after "Any" insert "record or"

Page 1, line 8, remove "plans,", remove "other", and replace "data" with "plans"

Page 1, line 9, replace "and government property and" with "or"

Page 1, line 10, after "networks" insert "of a public entity" and replace "exempt from section" with "confidential."

SECTION 2. EMERGENCY. This Act is declared to be an emergency."

Page 1, remove line 11

Renumber accordingly

2003 HOUSE JUDICIARY

SB 2038

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La Costa Rickford 10/15/03
Operator's Signature Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2038

House Judiciary Committee

Conference Committee

Hearing Date 2-26-03

Tape Number	Side A	Side B	Meter #
1	XX		7.2-20.1
2	XX		4.5-5.6
Committee Clerk Signature <i>A. Penrose</i>			

Minutes: 12 members present, 1 member absent (Rep. Onstad).

Chairman DeKrey: We will open the hearing on SB 2038.

Sen. Larry Robinson: Introduced bill SB 2038. The next two bills on your agenda, 2038 and 2039 were the result of the Information Technology Interim Committee. I was chairperson of that committee. We have John Bjornson here from LC to answer technical aspects of the bills. We also have Mike Ressler from ITD that can get into some of the background of the bills, the direction of the bills, why the bills are necessary. Both bills did enjoy unanimous support from the IT committee in the interim and both are short and to the point. SB 2038 really is necessary because at the present time, under today's rules and regulations, unless records are identified as exempt from open records, they are considered to be available upon request. Any portion of a record containing security codes, passwords, combinations or other security-related plans used to protect electronic information and government property should be exempt from the open records requirement. If they are not, anyone can access information and can obtain access to computer

Page 2
House Judiciary Committee
Bill/Resolution Number SB 2038
Hearing Date 2-26-03

systems or computer or telecommunication networks. That in essence is what is embedded in SB 2038. There are minor revisions on the Senate side to the bill, as was introduced by the Information Technology committee, and I think a word or two changed. Mr. Ressler or Mr. Bjornson can speak to that. It enjoyed unanimous support from ITD and strong support from the Senate committee and on the floor of the Senate during the first half of this legislative session.

Rep. Maragos: Did you sit on the Committee that heard this bill in the Senate.

Rep. Robinson: I did not. I did testify before the committee, and there was minor discussion on the floor. At first I think there was a feeling of why is this department unusual, but I think once you get into the testimony, you will find that what we are doing here, is something that other states are doing, how other ITD operations are doing. It's pretty much a basic common sense approach to the issue of SB 2038.

Chairman DeKrey: Thank you.

John Bjornson, LC Staff: Neutral. I will try and give you some a little explanation to SB 2038 and answer your questions that you may have. I drafted this bill for the Interim Committee and there were a few changes made by the Senate, one is the emergency clause that was added, and the other significant change is that the bill provides that the information would be exempt from the open records requirement. That essentially means that ITD, would have some discretion to decide what was open or what should be protected. As the bill stands now, a person could walk in and request records and get them.

Rep. Kretschmar: Would it be possible if an administrator put something like passwords or combination or whatever in the record with other stuff, and then say this whole record is confidential.

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House Judiciary Committee
Bill/Resolution Number SB 2038
Hearing Date 2-26-03

Mr. Bjornson: That is a possibility, and there was a question alluded to that during the Interim and during the Senate hearings as well. I think we tried to address it by saying any record or portion of a record containing information that is confidential, etc. but you still have a record or the entire record.

Rep. Kretschmar: In the first instance, who decides if it is confidential.

Mr. Bjornson: The holder of the record, ITD, would say that anything related to security will be confidential. There may be some gray area of what is a record.

Chairman DeKrey: Thank you. Further testimony in support.

Mr. Mike Ressler, CIO, ITD: Support (see attached testimony).

Chairman DeKrey: Thank you. Further testimony in support.

Jack McDonald, ND Newspaper Association and ND Broadcasters Association: Support (see attached testimony and amendments).

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition? We will close the hearing.

(Reopened later in the day)

Chairman DeKrey: What are the committee's wishes in regard to SB 2038.

Rep. Maragos: I move the amendments proposed by Jack McDonald.

Rep. Delmore: Seconded.

Voice vote: Carries.

Rep. Maragos: I move a Do Pass as amended.

Rep. Delmore: Seconded.

12 YES 0 NO 1 ABSENT DO PASS AS AMENDED CARRIER: Rep. Maragos

30127.0401
Title.0500

Adopted by the House Judiciary Committee
February 26, 2003

VR
2/26/03

SENATE AMENDMENTS TO ENGROSSED SENATE BILL NO. 2038 JUD 2/27/03

Page 1, line 7, replace "Any record or" with "Security"

Page 1, line 8, remove "portion of a record containing security"

Page 1, line 10, replace "is" with "are"

Renumber accordingly

Page No. 1

30127.0401

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LaCosta Rickford
Operator's Signature

10/15/03
Date

Date: 2/26/03
 Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2038

House Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number 30127.0401 .0500

Action Taken Do Pass as Amended

Motion Made By Rep. Maragos Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Vice Chairman Maragos	✓		Rep. Eckre	✓	
Rep. Bernstein	✓		Rep. Onstad	AB	
Rep. Boehning	✓				
Rep. Galvin	✓				
Rep. Grande	✓				
Rep. Kingsbury	✓				
Rep. Klein	✓				
Rep. Kretschmar	✓				
Rep. Wrangham	✓				

Total (Yes) 12 No 0

Absent 1

Floor Assignment Rep. Maragos

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
February 27, 2003 8:40 a.m.

Module No: HR-35-3544
Carrier: Maragos
Insert LC: 30127.0401 Title: .0500

REPORT OF STANDING COMMITTEE
SB 2038, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends
AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS**
(12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2038 was placed
on the Sixth order on the calendar.

Page 1, line 7, replace "Any record or" with "Security"

Page 1, line 8, remove "portion of a record containing security"

Page 1, line 10, replace "is" with "are"

Renumber accordingly

(2) DESK, (3) COMM

Page No. 1

HR-35-3544

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La Costa Rickford
Operator's Signature

10/15/03
Date

2003 TESTIMONY

SB 2038

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LaCosta Rickford 10/15/03
Operator's Signature Date

January 8, 2003

SENATE JUDICIARY COMMITTEE
SB 2038

CHAIRMAN TRAYNOR AND COMMITTEE MEMBERS:

My name is Courtney Koebele. I'm appearing here today on behalf of the North Dakota Newspaper Association (NDNA). NDNA worked with the Information Technology legislative committee on this bill. We do not oppose the bill because it is very specific in stating what records are exempt.

If you have any questions, I will be happy to try to answer them. THANK YOU FOR YOUR TIME AND CONSIDERATION.

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Operator's Signature

LaCosta Rickford

10/15/03

Date

2038

44-04-18. Access to public records - Electronically stored information.

1. Except as otherwise specifically provided by law, all records of a public entity are public records, open and accessible for inspection during reasonable office hours. As used in this subsection, "reasonable office hours" includes all regular office hours of a public entity. If a public entity does not have regular office hours, the name and telephone number of a contact person authorized to provide access to the public entity's records must be posted on the door of the office of the public entity, if any.

Page No. 10

Otherwise, the information regarding the contact person must be filed with the secretary of state for state-level entities, for public entities defined in subdivision c of subsection 12 of section 44-04-17.1, the city auditor or designee of the city for city-level entities, or the county auditor or designee of the county for other entities.

2. Upon request for a copy of specific public records, any entity subject to subsection 1 shall furnish the requester one copy of the public records requested. A request need not be made in person or in writing, and the copy must be mailed upon request. The entity may charge a reasonable fee for making or mailing the copy, or both. An entity may require payment before making or mailing the copy, or both. If the entity is not authorized to use the fees to cover the cost of providing or mailing the copy, or both, or if a copy machine is not readily available, the entity may make arrangements for the copy to be provided or mailed, or both, by another entity, public or private, and the requester shall pay the fee to that other entity. As used in this subsection, "reasonable fee" means the actual cost to the public entity of making or mailing a copy of a record, or both, including labor, materials, postage, and equipment, but excluding any cost associated with excising confidential or closed material under section 44-04-18.8. An entity may impose a fee not exceeding twenty-five dollars per hour per request, excluding the initial hour, for locating records if locating the records requires more than one hour. This subsection does not apply to copies of public records for which a different fee is specifically provided by law.

3. Except as provided in this subsection, nothing in this section requires a public entity to create or compile a record that does not exist. Access to an electronically stored record under this section, or a copy thereof, must be provided at the requester's option in either a printed document or through any other available medium. A computer file is not an available medium if no means exist to separate or prevent the disclosure of any closed or confidential information contained in that file. Except as reasonably necessary to reveal the organization of data contained in an electronically stored record, a public entity is not required to provide an electronically stored record in a different structure, format, or organization. This section does not require a public entity to provide a requester with access to a computer terminal.

4. A state-level public entity as defined in subdivision a of subsection 12 of section 44-04-17.1 may establish procedures for providing access from an outside location to any computer data base or electronically filed or stored information maintained by that entity. The procedures must address the measures that are necessary to maintain the confidentiality of information protected by federal or state law. Except for access provided to another state-level public entity, the entity may charge a reasonable fee for providing that outside access. If the original information is keyed, entered, provided, compiled, or submitted by any political subdivision, the fees must be shared by the state and the political subdivision based on their proportional costs to make the data available.

5. Any request under this section for records in the possession of a public entity by a party to a criminal or civil action or adversarial administrative proceeding in which

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the public entity is a party, or by an agent of the party, must comply with applicable discovery rules and be made to the attorney representing that entity in the criminal or civil action or adversarial administrative proceeding. The public entity may deny a request from a party or an agent of a party under this subsection if the request seeks records that are privileged under applicable discovery rules.

6. A denial of a request for records made under this section must describe the legal authority for the denial and must be in writing if requested.

7. This section is violated when a person's right to review or receive a copy of a record that is not exempt or confidential is denied or unreasonably delayed or when a fee is charged in excess of the amount authorized in subsection 2.

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8. It is not an unreasonable delay or a denial of access under this section to withhold from the public a record that is prepared at the express direction of, and for presentation to, a governing body until the record is mailed or otherwise provided to a member of the body or until the next meeting of the body, whichever occurs first. It also is not an unreasonable delay or a denial of access to withhold from the public a working paper or preliminary draft until a final draft is completed, the record is distributed to a member of a governing body or discussed by the body at an open meeting, or work is discontinued on the draft but no final version has been prepared, whichever occurs first.

9. A disclosure of a requested record under this section is not a waiver of any copyright held by the public entity in the requested record or of any applicable evidentiary privilege.

44-04-18.1. Public employee personal, medical, and employee assistance records - Confidentiality - Personal information maintained by professional boards.

1. Any record of a public employee's medical treatment or use of an employee assistance program is not to become part of that employee's personnel record and is confidential and may not be released without the written consent of the employee. As used in this section, the term "public employee" includes any individual who has applied for employment, is employed, or has been employed by a public entity.

2. Except as otherwise specifically provided by law, personal information regarding a public employee contained in an employee's personnel record or given to the state or a political subdivision by the employee in the course of employment is exempt. As used in this section, "personal information" means a person's home address; home telephone number; photograph; medical information; motor vehicle operator's identification number; social security number; payroll deduction information; the name, address, telephone number, date of birth, and social security number of any dependent or emergency contact; any credit, debit, or electronic fund transfer card number; and any account number at a bank or other financial institution.

3. Nonconfidential information contained in a personnel record of an employee of a public entity as defined in subdivision c of subsection 12 of section 44-04-17.1 is exempt.

4. Except as otherwise specifically provided by law, personal information regarding a licensee maintained by an occupational or professional board, association, or commission created by law is exempt. As used in this section, "licensee" means an individual who has applied for, holds, or has held in the past an occupational or professional license, certificate, permit, or registration issued by a state occupational or professional board, association, or commission.

44-04-18.2. Certain economic development records exempt from disclosure.

Repealed by S.L. 1997, ch. 381, § 23.

44-04-18.3. Records of law enforcement and correctional employees - Confidential

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**ARTICLE XI
GENERAL PROVISIONS**

Section 6. Unless otherwise provided by law, all records of public or governmental bodies, boards, bureaus, commissions, or agencies of the state or any political subdivision of the state, or organizations or agencies supported in whole or in part by public funds, or expending public funds, shall be public records, open and accessible for inspection during reasonable office hours.

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February 26, 2003

HOUSE JUDICIARY COMMITTEE
SB 2038

CHAIRMAN DEKREY AND COMMITTEE MEMBERS:

My name is Jack McDonald. I'm appearing here today on behalf of the North Dakota Newspaper Association and the North Dakota Broadcasters Association. We support a short amendment to this bill, and then, as amended, encourage a do pass.

We certainly don't oppose trying to protect security-related information, but we also think any exemptions to the open records law should be very specific. As the bill now reads, "any record" that contained security-related information would be closed. For example, if ITD had a 25 page report, and one page listed security information, the whole 25 page report would be confidential. This is not what the interim committee that sponsored this bill wanted.

State law already provides that otherwise public records shouldn't be closed just because they contain some confidential information. The confidential information should be redacted, or deleted, and then the records made public [See §44-04-18.10(1)].

The best approach would be to simply make the security information confidential and skip references to records or portions of records.

Please adopt the following amendment and the pass the bill. If you have any questions, I will be happy to try to answer them. THANK YOU FOR YOUR TIME AND CONSIDERATION.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL 2038

Page 1, line 7, remove "Any records or"

Page 1, line 8, remove "portion of a record containing security" and insert "Security"

Page 1, line 10, remove "is" and insert "are"

Renumber accordingly

WITH THE ABOVE AMENDMENTS, THE BILL WOULD READ:

Computer passwords and security information – Confidential. Security codes, passwords, combinations, or security-related plans used to protect electronic information or to prevent access to computers, computer systems, or computer or telecommunications networks of a public entity are confidential.

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**SB 2038 Testimony
House Judiciary Committee
By: Mike J. Ressler, Deputy CIO
Information Technology Department
February 26, 2003**

Good morning Mr. Chairman and members of the committee. My name is Mike Ressler and I am the Deputy CIO with Information Technology Department.

ITD worked with the interim Legislative IT Committee in crafting this language and supports this bill. After 9/11, ITD conducted an internal review of our overall security process and noticed security records are not classified as confidential in the Century Code. What this means is if anybody would request security information, like agency user-ids or network configurations, we would be required to give them this information. It is obvious why this would not be a good practice and hope you will support passage of this bill.

The Senate Judiciary Committee added 2 amendments to this bill. The first was to make security records confidential instead of exempt and the second was to put an emergency clause on this bill. We support both of these amendments.

This concludes my testimony Mr. Chairman. I would be happy to answer any questions you may have.

Thank you.