

2009 SENATE JUDICIARY

SB 2172

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2172

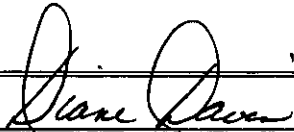
Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: January 20, 2009

Recorder Job Number: 7291

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

**Relating to exempting law enforcement work schedules from open records**

**Chief Arland Rasmussen- Chief of Police for West Fargo** – See written testimony.

**Senator Olafson** – Asks if this should be expanded to prosecuting attorney's.

The committee said that would not work since many advertise in the phone book.

**Senator Fiebiger** – Asks what neighboring states do regarding this.

**Chief Rasmussen** – Says he believes Minnesota does not release the information.

**Senator Nething** calls for opposition to 2172.

**John Val Emter** – He believes the records of police officers should be open because not all officers are legit.

**Jack McDonald** – Neutral – Lobbyist – On behalf of ND Newspaper Association and the ND Broadcasters Association. They usually oppose records being closed but if there is a good and logical reason for it they would not oppose it. He said the law should be carefully written as to not close all records. He said this bill is narrowly written so they would support it.

**Mr. McDonald** explains that records that are exempt can be given out but records that are confidential cannot be released to anyone.

**Senator Nething** – Asks if a court order, subpoena, a confidential record.

**McDonald** – Responds yes.

Discussion continues with the committee discussing personal safety of law enforcement and prosecuting attorney's.

Closed the hearing on 2172

**Senator Lyson** motions do pass

**Senator Fiebiger** seconded

Vote – 6 yes 0 no

**Senator Lyson** will carry

Date: 1/20/09  
Roll Call Vote #: 1

**2009 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO.**

SB 2172

Senate	<b>JUDICIARY</b>	Committee
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☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ☒ Pass ☐ Do Not Pass ☐ Amended

Motion Made By Sen. Lyson Seconded By Sen. Liebig

[illegible]

Total (Yes) 6 (N) 0

Absent

Floor Assignment Sen. Lyson.

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

**REPORT OF STANDING COMMITTEE**

**SB 2172: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS**  
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2172 was placed on the  
Eleventh order on the calendar.

2009 HOUSE JUDICIARY

SB 2172

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2172

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 3/10/09

Recorder Job Number: 10540, 10544, 10547

Committee Clerk Signature

*Openrose*

Minutes:

**Chairman DeKrey:** We will open the hearing on SB 2172.

**Tom Trenbeath, Attorney General's Office:** It makes the work schedule of police officers exempt from the open records, open meeting laws. This patches the crack. The AG's office has amendments (attached). As many of you know when efforts fail to resolve litigious lawsuits and when two parties to a lawsuit, then rules of discovery kick in. That allows the opposing parties to receive information from the other party in order to prosecute their lawsuit. In other words, it is trial by error. At present, the legislature had recognized that when the state or some other political subdivision is part of that process, that the rules of discovery can be circumvented by the open records law. In other words, why do I need to be bound by the limits regarding discovery, all I have to do is go under chapter 44, which presumes that all public records are open and get everything. This results in a competitive disadvantage. We have a law that in those cases, civil or criminal cases, the open records law no longer applies. You have to comply with the rules of discovery just like anybody else. Once again we discovered in the exemption and that crack is if the case is in arbitration, we're talking about an alternative to a civil action. The parties traditionally would each choose an arbitrator and those arbitrators would choose a third to arbitrate the differences. Again, those actions are governed

by the rules of discovery. But as the law stands now, it is only a party to the state or opposing party to the city, or opposing party to the county, to forego the rules of discovery and use it to get open records and get things that they probably aren't entitled to under the rules of discovery. Therefore we would like to amend that section to include arbitration along with civil and criminal actions.

**Chairman DeKrey:** Thank you. Further testimony in support of SB 2172.

**Rep. Kim Koppelman:** I'm here representing Sen. Lee, my senator. The bill itself, as he indicated, deals with the work schedules of officers, apparently there was an issue among the law enforcement community where folks are trying to find out this information by using the open records law. The purpose is not to put people in jeopardy.

**Chairman DeKrey:** Thank you. Further testimony in support. Testimony in opposition.

Neutral.

**Jack McDonald, ND Newspaper Association & ND Broadcasters Association:** Neutral.

We've always taken the position that if the agency narrows down and asks for a very specific exemption; in other words, instead of coming in and saying that they want all records closed, or all meetings closed, that they basically want this specific record closed for this specific reason, we will certainly look at it. It seems like a very valid exception so we would not have any opposition to it.

**Rep. Wolf:** Did you see the amendment.

**Jack McDonald:** I have not seen them, I just heard about them. They appear to be reasonable; this involves litigation, arbitration.

**Chairman DeKrey:** Thank you. Further testimony on SB 2172. We will close the hearing.

(Reopened later in the same session.)

**Ch. DeKrey:** This bill was closed but we will let you testify.



**Sen. Judy Lee:** Thank you. There are concerns that the police officers and law enforcement in general are at risk, as well as their families. This risk is when a criminal knows the schedule and therefore would know when the officer is home or not, or when their family is home or not. That is the reason we put this bill in.

**Ch. DeKrey:** Thank you. We will close the hearing.

**(Reopened in the afternoon session.)**

**Chairman DeKrey:** We will take a look at SB 2172. What are the committee's wishes?

**Rep. Koppelman:** I move the amendments of the West Fargo police chief and the AG's office:

**Rep. Delmore:** Second.

**Chairman DeKrey:** Voice vote, motion carried. We now have the bill before us as amended.

What are the committee's wishes?

**Rep. Koppelman:** I move a Do Pass as amended.

**Rep. Wolf:** Second.

**10 YES 1 NO 2 ABSENT**

**DO PASS AS AMENDED**

**CARRIER: Rep. Dahl**

VR  
3/10/09

PROPOSED AMENDMENTS TO SENATE BILL NO. 2172

Page 1, line 1, after "reenact" insert "subsection 6 of section 44-04-18 and"

Page 1, line 2, after "to" insert "access to public records in arbitration proceedings and to"

Page 1, after line 3, insert:

**"SECTION 1. AMENDMENT.** Subsection 6 of section 44-04-18 of the North Dakota Century Code is amended and reenacted as follows:

6. Any request under this section for records in the possession of a public entity by a party to a criminal or civil action ~~or~~, adjudicative proceeding as defined in subsection 1 of section 28-32-01, or arbitration in which the public entity is a party, or by an agent of the party, must comply with applicable discovery rules or orders and be made to the attorney representing that entity in the criminal or civil action ~~or~~, adjudicative proceeding, or arbitration. 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."

Renumber accordingly

Date: 3/10/09  
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2172

**HOUSE JUDICIARY COMMITTEE**

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ☐ DP ☐ DNP ☒ DP AS AMEND ☐ DNP AS AMEND

Motion Made By Rep. Seconded By \_\_\_\_\_

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin			Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Vig		✓
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Hatlestad	✓		Rep. Zaiser		
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 10 No 1

Absent 2

Floor Carrier: Rep. Dahl

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

**REPORT OF STANDING COMMITTEE**

**SB 2172: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 1 NAY, 2 ABSENT AND NOT VOTING). SB 2172 was placed on the Sixth order on the calendar.

Page 1, line 1, after "reenact" insert "subsection 6 of section 44-04-18 and"

Page 1, line 2, after "to" insert "access to public records in arbitration proceedings and to"

Page 1, after line 3, insert:

**"SECTION 1. AMENDMENT.** Subsection 6 of section 44-04-18 of the North Dakota Century Code is amended and reenacted as follows:

6. Any request under this section for records in the possession of a public entity by a party to a criminal or civil action ~~or~~, adjudicative proceeding as defined in subsection 1 of section 28-32-01, or arbitration in which the public entity is a party, or by an agent of the party, must comply with applicable discovery rules or orders and be made to the attorney representing that entity in the criminal or civil action ~~or~~, adjudicative proceeding, or arbitration. 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."

Renumber accordingly

2009 SENATE JUDICIARY

CONFERENCE COMMITTEE

SB 2172

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB2172

Senate Judiciary Committee

☒ Check here for Conference Committee

Hearing Date: 4/22/09

Recorder Job Number: 12114

Committee Clerk Signature



Minutes:

**Senator Lyson, Chairman**

**Representative Dahl**

**Senator Olafson**

**Representative Koppelman**

**Senator Schneider**

**Representative Zaiser**

Senator Lyson asks Rep. Dahl to explain the House amendments. Rep. Dahl said they did not change section 2, exempting the work schedule of law enforcement employees. The change they did make was at the request of the Attorney General in section 2 dealing with public records. She explains the change is if your involved in litigation, state law says you can't use public records to get around discovery rules in litigation and arbitration is a form of litigation, so if you can't do it in one, you can't do it in the other. Senator Lyson said he also visited with Tom Trenbeth and he drew it up. Senator Olafson makes a motion for the Senate to accede to House amendments, Senator Schneider seconds.

Roll call vote – 6 yes, 0 no,

Senator Schneider will carry

Date: 4/22/09Roll Call Vote #: 1

## 2009 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. **SB2172** as (re) engrossed

Senate \_\_\_\_\_ Judiciary \_\_\_\_\_ Committee \_\_\_\_\_

☒ Check here for **Conference Committee**

- Action Taken ☒ SENATE accede to House Amendments  
☐ SENATE accede to House Amendments and further amend  
☐ HOUSE recede from House Amendments  
☐ HOUSE recede from House amendments and amend as follows

Senate/House Amendments on SJ/HJ pages(s) 771 -- 772☐ **Unable to agree**, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the calendar.

Motion Made By Sen. Olafson Seconded By Sen. Schneider

Senators				Representatives			
	Attended	Y	N		Attended	Y	N
		e	o			e	o
		s				s	
Senator Lyson-Chair	X	X		Rep. Dahl	X	X	
Senator Olafson	X	X		Rep. Koppelman	X	X	
Senator Nelson				Rep. Zaiser	X	X	
Sen. Schneider	X	X					

Vote Count \_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_ Absent

Senate Carrier Sen. Schneider House Carrier \_\_\_\_\_

LC NO. \_\_\_\_\_ of amendment

LC NO. \_\_\_\_\_ of engrossment

Emergency clause added or deleted \_\_\_\_\_

Statement of purpose of amendment \_\_\_\_\_

**REPORT OF CONFERENCE COMMITTEE**

**SB 2172:** Your conference committee (Sens. Lyson, Olafson, Schneider and Reps. Dahl, Koppelman, Zaiser) recommends that the **SENATE ACCEDE** to the House amendments on SJ pages 771-772 and place SB 2172 on the Seventh order.

SB 2172 was placed on the Seventh order of business on the calendar.



2009 TESTIMONY

SB 2172

SB 2172

The request to amend NDCC 44-04-18.3 is made for the purpose of exempting law enforcement work schedules from the open records requirements. A recent request for an employee's work schedule highlighted a troubling fact. A law enforcement agency's staffing and work schedule are open to any person who makes the request.

As the statute now stands a person with evil intent may obtain a law enforcement agency's staffing and work schedule. With this information the person would have the ability to select the date and time of day when a community would be most vulnerable to a criminal attack.

The agency's work schedule and staffing has little legitimate value to persons outside of the agency. I ask your consideration in approval of SB2172.

Arland H Rasmussen, Chief of Police

West Fargo Police Department

800 4<sup>th</sup> Ave E #2

West Fargo, ND 58078

701-433-5500

20 January 2009

Tom Tuenbenth  
AG's Office

Amendments to SB 2172  
Offered by Office of Attorney General  
March 2, 2009

PROPOSED AMENDMENTS TO SENATE BILL 2172

Page 1, line 1, after "reenact" insert "subsection 6 of section 44-04-18 of the North Dakota Century Code, relating to the use of discovery rules rather than the open records law by parties involved in arbitration proceedings with public entities; and to amend and reenact"

Page 1, after line 3, insert:

**"SECTION 1 AMENDMENT.** Subsection 6 of section 44-04-18 of the North Dakota Century Code is amended and reenacted as follows:

6. Any request under this section for records in the possession of a public entity by a party to a criminal or civil action, ~~or~~ adjudicative proceeding as defined in subsection 1 of section 28-32-01, or arbitration in which the public entity is a party, or by an agent of the party, must comply with applicable discovery rules or orders and be made to the attorney representing that entity in the criminal or civil action, ~~or~~ adjudicative proceeding, or arbitration. 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."

Page 1, line 4, replace "1" to "2"

Renumber accordingly.

**DeKrey, Duane L.**

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**From:** Arland H. Rasmussen [Arland.Rasmussen@westfargond.gov]  
**Sent:** Tuesday, March 10, 2009 8:20 AM  
**To:** DeKrey, Duane L.; Klemin, Lawrence R.; Boehning, Randy G.; Dahl, Stacey A.; Hatlestad, Patrick; Kingsbury, Joyce M.; Kretschmar, William E.; Delmore, Lois M.; Griffin, Chris D.; Vig, Benjamin A.; Wolf, Lisa A.; Zaiser, Steve L.; Koppelman, Kim A.  
**Subject:** SB:2172 (Please support proposed change)

Greetings,  
I write today to ask your support for SB:2172.

The only change in this law is that we are asking that: "Any record containing the work schedule of employees of a law enforcement agency is exempt."

Reasoning behind this is security for our communities both large and small. In small communities the chief and patrol officer may be out of town for some training one day and you really don't want the "bad guys" to know when they are gone. In larger departments shift change is often an issue as there are far fewer cars left on the street.

We have asked that this be EXEMPT. The word EXEMPT is important because that allows us to release the info to others when we feel necessary. For example, we could release the schedule to our Sheriff's Office so they knew when the officers of a certain small town in their county were not on duty.

Also, this is one of the only times that the media is agreeing with making a record exempt. Jack McDonald (I believe I have the name correct), attorney for the media, actually testified in agreement with this bill at the hearing in the Senate.

Please support our proposed change to SB2172.

*Respectfully,*  
*Arland H. Rasmussen*

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