

2011 SENATE JUDICIARY

SB 2232

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2232
1/26/11
Job #13493

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the exemption of medical treatment information in an emergency response record and to joint powers agreements between political subdivisions for a joint emergency services communication system.

Minutes:

There is an attachment

Senator Nething – Chairman

Wayne Stenehjem – Attorney General of ND – In support of 2232. He speaks of the ND open meeting and record statutes being the broadest in the country. He says one of the obligations of the Office of Attorney General is to enforce and issue opinions with to respects to complaints they get regarding violations of the open meeting and open records law. He says that any citizen can make a complaint if in the proper time frame that they have denied access to a record or a meeting. He takes a very strict view recognizing that the government of this state belongs to the citizens and not to the people who happen to be in particular office that holds those records. He said they issued 14 official opinions from his office regarding complaints of open meeting and open records law last year and 20 in the previous year. He speaks of the concerns and issues that may arise. He assembled a task force to look at any changes that may need to be made with respect to the open records and open meetings laws. Their goal was to address some of the issues that have arisen and SB2232 represents some of those issues. He covers some of the changes that have been made and a provision for exemptions from medical conditions for fire departments and police who respond to emergencies. He gives an example how these records are available to the public. Another exemption, in Section 7, adds law enforcement training material and information about perspective criminal activities that could affect officer safety as well as information regarding ongoing criminal investigations. This bill also gives an option for city and county auditors to post their meetings on their web sites. He explains a Joint Powers Agreement. He says what this bill does is that when you enter into a Joint Powers Agreement with another state your Joint Powers Agreement needs to address that topic and it is permissible to say in the agreement that Minnesota law will apply with respect to Minnesota citizens who have information in ND and vice versa.

Mary Kae Kelsch – Assistant Attorney General – Provides attachment explaining the bill. See attachment.

Senator Sorvaag – Asks if records of those employee working at the state pen should be protected from everyone.

Kelsch – Replies they considered other language but the task force did not feel comfortable being that broad.

Senator Olafson – Asks where do we provide protection for personal information and personnel files of prosecutors.

Kelsch – Replies that they fall under the law enforcement protections.

Senator Olafson – Asks about the purpose and mission of a loss control committee.

Kelsch – Explains what the committee is for.

Senator Nelson – Interprets Section 6 “may not be disclosed to” as being nobody can disclose that information to wherever it is coming from.

Attorney General – Discusses who may or may not get the information.

Jack McDonald – ND Newspaper Association – ND Broadcaster Association – He says the changes in this bill are good changes that his organizations can live with and urges support of the bill.

Opposition – 0
Neutral - 0

Close the hearing 2232

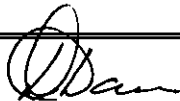
2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2232
2/9/11
Job #14275

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the exemption of medical treatment information in an emergency response record and to joint powers agreements between political subdivisions for a joint emergency services communication system.

Minutes:

Senator Nething - Chairman

Senator Nething discusses an amendment brought to him from the AG's office.

Tom Trenbeth – Chief Deputy Attorney General of ND - He explains the amendment and exempt records and adds an emergency clause. He said this will make pictures of murder victims, of rape victims and of juvenile victims, no matter the crime, exempt from the open records laws.

Senator Nelson moves a do pass on amendment #1

Senator Olafson seconds

Verbal vote – all yes

Senator Olafson moves a do pass on amendment #2

Senator Sitte seconds

Verbal vote – all yes

Senator Olafson motions for a do pass as amended

Senator Sorvaag seconds

Roll call vote – 5 yes, 0 no, 1 absent

Senator Sorvaag will carry

Proposed Amendment to SB 2232

Page 6, line 13, replace "pf" with "of"

Page 6, line 19, remove "that"

Page 6, line 20, remove "are"

Page 6, line 25, remove "that is"

Page 6, line 26, replace "that" with "which"

Page 8, line 2, remove "that"

Page 8, line 5, replace "that" with "which"

Page 9, line 19, replace "that" with "which"

Date: 2/9/11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2232

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment
word correction
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By S Nelson Seconded By S. Olafson

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman			Carolyn Nelson		
Curtis Olafson - V. Chairman					
Stanley Lyson					
Margaret Sitte					
Ronald Sorvaag					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Verbal yes

Date: 2/9/11
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2232

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment # 2
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By S Olafson Seconded By S Sitte

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman	/		Carolyn Nelson	/	
Curtis Olafson - V. Chairman					
Stanley Lyson					
Margaret Sitte					
Ronald Sorvaag					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Verbal yes

Date: 2/9/11
Roll Call Vote # 3

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2232

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By S. Olafson Seconded By S. Sorvaag

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman	X		Carolyn Nelson	X	
Curtis Olafson - V. Chairman	X				
Stanley Lyson					
Margaret Sitte	X				
Ronald Sorvaag	X				

Total (Yes) 5 No 0

Absent 1

Floor Assignment S. Sorvaag

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

REPORT OF STANDING COMMITTEE

SB 2232: Judiciary Committee (Sen. Nething, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2232 was placed on the Sixth order on the calendar.

Page 1, line 1, after "44-04" insert ", a new subsection to section 44-04-18.7,"

Page 1, line 3, after "record" insert ", the exemption of crime scene images,"

Page 1, line 12, after "entity" insert "; and to declare an emergency"

Page 6, line 13, replace "pf" with "of"

Page 6, line 19, remove "that"

Page 6, line 20, remove "are"

Page 6, line 25, remove "that is"

Page 6, line 26, replace "that" with "which"

Page 8, line 2, overstrike "that"

Page 8, line 5, replace "that" with "which"

Page 8, after line 6, insert:

"SECTION 8. A new subsection to section 44-04-18.7 of the North Dakota Century Code is created and enacted as follows:

Crime scene images of a victim of a homicide or sex crime or any image of a minor victim of any crime is an exempt record as defined in subsection 5 of section 44-04-17.1."

Page 9, line 19, replace "that" with "which"

Page 9, after line 26, insert:

"SECTION 11. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

2011 HOUSE JUDICIARY

SB 2232

2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2232
March 15, 2011
15430

☐ Conference Committee

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on SB 2232.

Wayne Stenehjem, Attorney General: Support. One of the duties of the AG is to enforce the state's broad open meetings, open records laws; although I can issue legal opinions to state officials, legislators, and others generally, the one exception to the rule that nobody else may ask is in areas where there are allegations of violation to the open meeting/open records laws and I issue about 25-35 opinions regarding that issue in the course of the average year. From time to time issues arise. Technology has provided some new issues and concerns that need to be addressed. When that happens, I like to assemble a task force that sits down and hashes through potential solutions that we can bring to the Legislature for enactment and this bill is the product of that task force. It was comprised of representatives from the media, from various state agencies, state's attorneys, the city and county organizations in ND, chambers of commerce, from law enforcement and legislators as well. I want to go through the 10 sections of the bill. I'm just going to cover the top three areas that I think are the most important in this bill, most of the other sections are largely technical changes that we think need to be address. Mary Kay Kelsch, who is the attorney in our office who handles the open meetings/open records portfolio, will go through the other provisions of the bill, but there are three significant ones I want to talk about. I think it is important that you understand that ND law provides that all records of state agencies, boards, bureaus, commissions, departments, they are all open unless there is a specific provision in the statute that says they are closed. Closed records come in two forms; there are confidential records, those records may not be disclosed and an example of those kinds of records might be your income tax returns that are filed with the Tax Dept. Not only are they closed records, it is a criminal offense, a class C felony for anyone to have those records released to the public for obvious reasons. The second category of closed records are those that are determined to be exempt. Those are records that may be released, but don't have to be released at the discretion of the agency. So those are two important distinctions that I want to cover. With respect to the three most significant changes that we suggesting in this bill, I point to section 5, which will provide an exemption from the public records law to protect from release, medical

condition/treatment that is provided to an individual during an emergency medical response. An example, a person has a fire or other emergency at their house. They call the fire department, the police department and an ambulance. The fire department or the police department arrives first and provides first aid to the individual in the house. That record of the first aid that might be provided is a public record and believe it or not, people do call and say why was the fire department or the police department at my neighbor's house, give me the police report. Give me the fire department report and if that report says something like, we appeared at this house and a gentleman was in distress, appeared to be suffering a heart attack and his wife informed us, by the way, he's HIV positive and put that into that medical report, that's an open record and has to be divulged. Once the ambulance arrives, of course, the service that they provide is protected by HIPAA, so that's not releasable, but in the hands of the police/fire department that same information is a public record. So this bill seeks to provide that information will be exempt, it will not need to be released. The second is in section 7, that will expand the definition of law enforcement sensitive information and provide the training materials, information about prospective criminal activities that affect officer safety are an exempt record. An example, law enforcement may conduct training and explain to the people that are assembled, that there is a new way to manufacture meth or other controlled substances and here it is and you need to be on the look-out if you go out to a crime scene to see that this kind of thing isn't going on. That is, arguably, an open record. Frankly, we would just as soon not have it released to the public that there are new ways to manufacture controlled substances. Of if there is information about how law enforcement need to be careful when they come to a crime scene because criminal organizations are booby-trapping vehicles. If you go to conduct a search of this vehicle, you need to be aware that this is an innovative way that they are putting booby-traps into cars or elsewhere. We would just as soon that not be a public record, or if we are following a criminal enterprise, a gang, we would prefer that information be exempt as well. That's the purpose for section 7. Section 8, is a provision that was added over in the Senate, and we should have taken this up during the course of our discussions at the Task Force, because it is an issue that does come up. A situation where police will conduct an investigation of a homicide or a sexual assault and in connection with that we will take photographs. Those records, under the current status of the law, are public records and people do call and say there was a homicide of a person, send me the pictures; or if there is a sexual assault, you can imagine in some situations, there might be some potentially embarrassing detailed photographs of victims that ought not to be public records either. So section 8 will include crime scene images of victims of a homicide or a sex crime, or any image of a minor. I recall that this committee enacted a bill a couple of sessions ago that made autopsy photographs confidential or exempt so that when someone was taken in and had an autopsy performed on them, that the record would not become a public record for very good public policy reasons, but a police department can have the very same photograph of the very same person, that went to the coroner/medical examiner and becomes an exempt record. But when the police have it, it's a public record and they have to release it. You can imagine that people, like the police or state's attorney who have the images are distressed

when they have to release them to the public. The final provision in section 11 will add an emergency clause to all of the provisions of this bill. I hate to give people a 4.5 month head start or warning that they have until August 1, to go and get the kinds of records that I have been talking about here today. With that, thank you for your attention.

Rep. Koppelman: I'm looking at lines 21 and 22 of page 1, the language says that these records are exempt from section 44-04-18 and section 6 of Article 11 of the Constitution of the state of ND. How can we make something exempt from the Constitution by saying so in law? I looked up the section and it says there, "unless otherwise provided by law, all records of governmental bodies, etc. are public records". Don't we accomplish it simply by saying that it is exempt from the open records statute without.... It's the term exempt from a section of the Constitution.

Wayne Stenehjem: The Constitution says that everything is open unless it is specifically closed by law and that's the reason it was put in there. That has been the long-standing practice of these kinds of exemptions and might I suggest that it was Legislative Council who started adding that in. That is simply the wording that has been provided in these exemptions from the beginning. Does it make a difference, I think it probably doesn't.

Rep. Koppelman: I also looked at that section of statute and I see in some places where it says "not subject to" and that might be a little clearer than saying "exempt from".

Rep. Steiner: On section 8, on the crime scene images, does that include if there is a case where the police say it is a suicide and the family disagrees and hires a private investigator. Can the private investigator get access to the images of that situation, or a sex crime in case the police have determined the case is one way and the family disagrees and they want their own private investigation?

Wayne Stenehjem: Those records are exempt, so that does permit the police department to have the choice to release or not, depending on the circumstances.

Rep. Klemin: If it's an exempt record, then it's in the discretion of the entity or agency whether it should be released or not. But if they release it to one person, do they have to release it to everybody.

Wayne Stenehjem: No. If it's exempt they can release it to one person and not to anyone else.

Rep. Klemin: So it is determined on a case-by-case basis.

Wayne Stenehjem: Yes. That's why we didn't make the record confidential, so that there would be some avenue for someone to request the records and a decision be made by that agency or department.

Chairman DeKrey: Thank you. Further testimony in support.

Mary Kay Kelsch, Assistant Attorney General: Support (see attached 1).

Rep. Klemin: Is section 6, these records are confidential, is that correct.

Mary Kay Kelsch: The home telephone number and address are confidential; that's the information contained within their personnel file. We are adding language that would protect the personnel file. We would add information contained in a personnel file, could not be given to an inmate. We're not making it confidential; we're just saying that when an inmate asks for it, the HR person at DOCR does not have to give it to the inmate. Someone else could still go and get the non-confidential part of the personnel file.

Rep. Klemin: In this particular situation, a personnel record is an open record.

Mary Kay Kelsch: Yes.

Rep. Klemin: Except for inmates.

Mary Kay Kelsch: Yes.

Rep. Delmore: Explain a little more about blackmailing done by the inmate to the corrections officer.

Mary Kay Kelsch: The examples that have been given to me, inmates will look through the personnel file for any sort of mistake that they might have been written up for, any kind of negative review by a supervisor or something in there, for whatever reason, they threaten to tell other inmates and sometimes it's even things that the inmate will bring up themselves. Maybe they've manipulated a correctional officer to feel bad for them and let them have a few extra phone calls, then those extra phone calls might lead to something bad and the correctional officer gets in trouble for that. Now, they'll get a copy of that, and they'll find out exactly what was said to them in the reprimand, and they'll start using it to harass and use the information to blackmail the officer, saying they will tell the other inmates if they don't get what they want. It's unlimited in scope of what can happen. I've heard of instances where a correctional officer has been trying to adopt, and they've found items in the personnel file and then brought up information about the adoption process to torture them.

Rep. Onstad: Along those lines, it seems odd that the inmate can't ask for that, but I am assuming that a friend or family member could do the same thing and still get the information to the inmate and have the same problems.

Mary Kay Kelsch: Yes, that is a concern. The Task Force deliberated about that for a long time. This was the language that law enforcement and media could agree to. We are hoping that this will at least cut off the initial request, but we have to tweak this in the future if it poses a problem with them just recruiting other people to ask for them. (Continued with written testimony.)

Rep. Klemin: Filing it with the county auditor, city auditor, secretary of state provides evidence that it was actually posted. Websites change all of the time, how are we going to have the proof of fact that the notice was given if they just post it on their website.

Mary Kay Kelsch: They would still have to post at the office building at the location of the meeting. They would still be required to do things. You're correct; it is possible that they could take a notice down from a website. A person has 90 days to ask us whether or not a meeting was held in secret. Most public entities know to keep their notices, even the ones that are filed with the county auditor for at least 90 days. The same advice would be given to the school boards, county officers on their website. If they do take it off, we always have 44-04-21.1, by law; we take the word of the public entity. We take the facts given to us by the public entity. We actually don't need visual proof that they put it on their website. If they tell me that it was on their website for 48 hours or whatever it would be, those facts given to me by them, our office takes as the facts of the opinion. They don't actually have to show me proof for us to believe them. I would take their word for it if they said that they posted it; most entities if they didn't post it, they tell me they forgot to post it on there.

Rep. Klemin: If there ever was an issue, then you could still go to the county/city auditor to find the filed notice. In a case where they've updated the website and I'm sure that they do this all the time, old information disappears and new information goes on the site. I don't know if they keep a copy of the old website every time they change some part of it, I doubt it. So we've lost the proof, haven't we?

Mary Kay Kelsch: I don't really need that proof, because the law allows me to take the facts given to me by the public entity. I've had instances where the public entity has lost the notice, been thrown away or deleted. They are unable to give me a copy of the notice, they tell me what the notice said, we've recreated it for you and I, by law, take that as a fact of the case. Even if they do delete it and update it, if they tell me it happened, I have to take that as fact, under the current law.

Rep. Steiner: On the website that I work on, we have an expiration date, and it might be possible if there is a 90 day limit, I know I have annual meeting notice and I have an expiration date the day after the annual meeting because there is no reason to still have it on the website. You could put expiration dates in your website that would allow that timeframe to last if there was any challenge, and then the website does automatically in our system dump it. It is possible to hold it for 90 days, it's just not seen by the public, but you can recall it.

Mary Kay Kelsch: (Continued with written testimony).

Rep. Klemin: Going back to section 3 on the access to electronic records. With respect to the emergency clause, we just had a bill with the Secretary of State's office dealing with redacting social security numbers and federal tax identification numbers. I believe that information is confidential I believe, but it is in a lot of their liens. So they have to go through a process of taking that off of all their electronic records. But we've given them a delayed effective date of January 1, 2012 to do that. In this bill, we have an emergency clause that would apply to all of this bill, including section 3. Are we going to have some kind of conflict between the emergency clause here and the delayed effective date in that bill, and there be others bills that might apply to as well.

Mary Kay Kelsch: Right now, if someone asked the Secretary of State's office for a copy of those records, and I'm not exactly sure of which law you are talking about, I am assuming that the liens are open records, other than the federal tax ID number and the social security number. Right now, they are still subject to open records law. If somebody would ask for them, they would still have to respond by and be crossing off that information. By putting an emergency clause on this, they then would be allowed to give an estimate to the requester to say all of these have social security numbers, we have 10,000 of them, we estimate it will take 40 hours, we can charge you \$25/hr. therefore we will not start until you have paid X amount of dollars before we would start. That might make the person change their mind. Right now, without the emergency clause, it is not clear that they could do that. Unless the law has been passed has exempted all of those records from the open records law in general, they still have an obligation upon a request to give those records to someone if they asked for them. So I believe that passing the emergency clause would in fact help them if that would arise. If you like, I can talk to them and make sure that it isn't a problem.

Rep. Klemin: I don't think it's going to be a problem, but it just seemed like there might be a potential for conflict between a delayed effective date and an emergency clause covering electronic records, since this section 3 doesn't seem to be specific to any particular agency.

Mary Kay Kelsch: No.

Chairman DeKrey: Thank you. Further testimony in support.

Jack McDonald, ND Newspaper Association, ND Broadcasters Association: We participated in the task force that Ms. Kelsch just described and worked with the Attorney General and, while we generally oppose changes in the open meeting, open records law, we do support very specific changes that are aimed at a particular record or particular meeting. In this case, the changes that were made are very specific and so we have supported these changes and we will ask you to support this bill.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition. We will close the hearing. Let's take a look at SB 2232.

Rep. Koppelman: I've looked at the Constitution in the section that was cited here, it is a short section. "Unless otherwise provided by law, all records of public or governmental bodies, boards, bureaus, commissions or agencies of the state or any political subdivisions of the state, or organizations or agencies supported in whole or part by public funds, or expending public funds shall be public records, open and accessible for inspection during reasonable office hours". It clearly says that this is the way it is unless we provide otherwise by law. What concerns me about the language in the bill is that it says it's exempt from that section of the Constitution. I don't think that's appropriate terminology. I know we might have used it before, but I think exempting the statute from the statute is fine. As the Attorney General indicated, if we eliminate that Constitutional reference it doesn't change the effect at all, because by passing a law that makes these records in some way private, confidential, exempt, etc. we are abiding by the Constitution, not exempting from it. I would move that we remove the wording beginning on page 1, line 21 with "and section...and ending with ND" on line 22. We're removing "in section 6 of Article 11 of the Constitution of ND".

Rep. Boehning: Second the motion.

Rep. Klemin: I think the testimony was that the same language we use in other places and I'm just looking here, it seemed like we used it somewhere else in the bill. I'm going to resist the motion; I don't know if that really says that we're being exempt from that section. What it says to me is that the record is exempt from the open record requirement. I think that's consistent.

Rep. Koppelman: Where was the other reference, I saw the reference on the top of page 2. Where was the other reference?

Rep. Kretschmar: On page 3.

Rep. Klemin: This is fairly common language that we've been using and if we take it out here, I don't know that's really going to change anything.

Rep. Koppelman: I was looking at those references, and none of them say exempt from except for the one I mentioned on page 1. I think the other references are not public meetings subject to section so and so and article such and such of the Constitution. What I'm objecting to is the word "exempt from" because I think it is a misnomer. I think other places in law, I double-checked in 44-04-18 elsewhere and it does say not subject to that section of the Constitution. I think that would be another alternative. We could say "not subject to" instead of in front of section 6, if you prefer to leave it in. That's why I specifically asked the Attorney General about it

and he said it would have the same effect without that phrase and that's why I am suggesting deleting it.

Chairman DeKrey: Clerk will take a roll call vote on the amendment. **5 YES 8 NO 1 ABSENT** - motion failed. We have SB 2232 before us.

Rep. Steiner: Did you want to put in something that a web administrator must allow the meeting notice to reside within the server for 90 days or whatever the law requirement is so that if someone does want to check, it is available. I know on the website that I put items onto, I have a beginning date and an expiration date. It would be very simple for me to always make sure that that is met with. I would assume that I have a basic system.

Chairman DeKrey: I would be leery of telling anyone how to do anything electronically as fast as that IT changes.

Rep. Steiner: It is possible to meet the standards.

Chairman DeKrey: They know what the requirements of the law are, so open records have been around for a long time.

Rep. Koppelman: One more attempt to clean up what the Senate gave us, as a fallback from the other motion I made, I'm move that after page 1, line 21, after 44-04-18 and, insert the words "not subject to" and leave everything else. That would accomplish a similar purpose simply by not having exempt relate to the constitution.

Rep. Maragos: Second the motion.

Rep. Klemin: Rep. Koppelman would you read the introductory clause to that section 6 again in the Constitution.

Rep. Koppelman: Is this a trap. It says, "unless otherwise provided by law".

Rep. Klemin: Stop right there. But what you just said is that this is exempt and not subject to section 6 which has the "unless otherwise provided by law" in it. I think you're creating a problem that we don't actually have the way it's written.

Rep. Koppelman: Well it says that in several places elsewhere in 44-04-18 in the current century code. I think the point I am trying to make is that it is fine, if the Constitution said "unless provided by law..." this or that should occur and in law you say, this is not subject to that section or you leave no reference to the constitution in at all, then you are applying that statutory authority. But I don't think statutes should say that something is exempt from the Constitution. You can't make things exempt from the Constitution as a Legislature.

Rep. Klemin: But you're saying that it's not subject to the "except as otherwise provided by law" part of that section.

Rep. Koppelman: If you look at the bottom of the page, Rep. Klemin, the very last words there, "subject to..." and goes right into that same thing in that section of the Constitution.

Rep. Klemin: But that deals with open meetings.

Rep. Koppelman: Correct.

Rep. Klemin: But we're dealing with open records in this part.

Rep. Koppelman: But exempt has a whole different meaning with respect to open records vs. making something not subject to a section.

Rep. Klemin: I think if you really wanted to change this, and I'm not suggesting that we need to, it would maybe be better to say that is, "not an open record under section 6 of the Constitution".

Rep. Koppelman: I wouldn't object to that if you prefer that language.

Rep. Klemin: Although personally I don't think it's necessary, but it takes away the objection that I had to what you are proposing.

Chairman DeKrey: A second to the amendment of the amendment?

Rep. Koppelman: Not an open record, what was your terminology, Rep. Klemin.

Rep. Klemin: After "and" insert "are not open records under" section 6.

Rep. Koppelman: I view that as a friendly amendment to the amendment.

Rep. Maragos: Second the motion.

Chairman DeKrey: Voice vote, motion carried. We now have the amendment to the amendment, voice vote on the amendment, motion carried. We now have the bill before us as amended.

Rep. Koppelman: I move a Do Pass as amended on SB 2232.

Rep. Maragos: Second the motion.

13 YES 0 NO 1 ABSENT

DO PASS AS AMENDED

CARRIER: Rep. Kretschmar

Date: 3/15/11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2232

House JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number Koppelman Amendment

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Koppelman Seconded By Rep. Boehning

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey		✓	Rep. Delmore		✓
Rep. Klemin		✓	Rep. Guggisberg		✓
Rep. Beadle		✓	Rep. Hogan		✓
Rep. Boehning	✓		Rep. Onstad		
Rep. Brabandt		✓			
Rep. Kingsbury		✓			
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos	✓				
Rep. Steiner	✓				

Total (Yes) 5 No 8

Absent 1

Floor Assignment _____

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

Motion failed

11.8217.02001
Title.03000

Adopted by the Judiciary Committee

March 15, 2011

V12
3/15/11

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2232

Page 1, line 21, after "and" insert "are not open records under"

Renumber accordingly

Date: 3/15/11
Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2232

House JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 11-8217.02001 03000

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Koppelman Seconded By Rep. Maragos

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Guggisberg	✓	
Rep. Beadle	✓		Rep. Hogan	✓	
Rep. Boehning	✓		Rep. Onstad		
Rep. Brabandt	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos	✓				
Rep. Steiner	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Kretschmar

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

REPORT OF STANDING COMMITTEE

SB 2232, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2232 was placed on the Sixth order on the calendar.

Page 1, line 21, after "and" insert "are not open records under"

Renumber accordingly

2011 TESTIMONY

SB 2232

①

Office of the Attorney General
Testimony on S.B. 2232
Before the Senate Judiciary Committee
January 26, 2011

Prepared by: Mary Kae Kelsch
Assistant Attorney General

SECTION ONE

Section 1 amends N.D.C.C. § 32-12.2-12 to clarify that the meetings of loss control committees are not subject to the open meetings law. It also provides that the records are exempt but may be released unless disclosure would not prejudice any pending or reasonably predictable claim.

SECTION TWO

Section 2, on page 3, adds a definition of "information technology resources" to the definitions found in N.D.C.C. § 44-04-17.1. The phrase is used in proposed legislation and as technology advances the Taskforce believed it was time to add such a definition to the law.

SECTION THREE

Section 3, starts on page 5, and updates language in the general open records statute, N.D.C.C. § 44-04-18, with regard to technology. There has been confusion regarding what charges apply to copies of electronic records.

First, on page 5, language is added to clarify that if it takes longer than one hour to locate or redact an electronic record, the charges already allowed under N.D.C.C. § 44-04-18(2) for locating and redacting confidential information may be applied.

The second aspect of Section 3, found on page 6, clarifies that an electronic copy must be provided at no cost except if providing the electronic record takes longer than an hour. Language was also added to clearly set forth that automation of public records must not erode the right of access to the records. This language is important as more and more records are kept only in electronic format.

SECTION FOUR

Section 4, on page 7, makes a personal cell phone number and the employee identification number of a public employee exempt from the open records law.

SECTION FIVE

On page 7, Section 5 adds an exemption to the open records chapter that would exempt the medical condition, treatment, and name of an individual who receives medical treatment from a public entity during an emergency medical response.

SECTION 6

The amendment in Section 6, on page 7 would protect the information contained in a personnel record of an employee of the department of corrections by prohibiting inmates from receiving copies of personnel files.

SECTION 7

Section 7 adds language, on page 8, that broadens the current definition of "criminal intelligence information" to include training materials and information regarding prospective criminal activities that impact officer safety until the information is publicly disclosed.

SECTION 8

Section 8 amends the language in several sections of N.D.C.C. § 44-04-20, the meeting notice statute, in order to take into account current and emerging technologies. On lines 14 and 15 it allows for meetings that may take place by electronic means. On lines 22 and 23 of page 8 and line 4 of page 9, it gives public entities the option of posting the meeting notice on the website of the governing body instead of filing it with the auditor. Finally, on line 7 of page 9, it clarifies that a governing body must follow the posting requirements in N.D.C.C. § 44-04-20(4) for special meetings.

SECTION 9

Section 9 adds a new section to chapter 54-40.3 that would allow political subdivisions that enter into a joint powers agreement with a partner state to establish a joint emergency services communications system to provide that records originating from the partner state would be subject to the public records law of the partner state.

Office of the Attorney General
Testimony on S.B. 2232
Before the House Judiciary Committee
March 15, 2011

Prepared by: Mary Kae Kelsch
Assistant Attorney General

SECTION ONE

Section 1 amends N.D.C.C. § 32-12.2-12 to clarify that the meetings of loss control committees are not subject to the open meetings law. It also provides that the records are exempt but may be released unless disclosure would prejudice any pending or reasonably predictable claim.

SECTION TWO

Section 2, on page 3, adds a definition of "information technology resources" to the definitions found in N.D.C.C. § 44-04-17.1. The phrase is used in proposed legislation and as technology advances the Taskforce believed it was time to add such a definition to the law.

SECTION THREE

Section 3, starts on page 5, and updates language in the general open records statute, N.D.C.C. § 44-04-18, with regard to technology. There has been confusion regarding what charges apply to copies of electronic records.

First, on page 5, language is added to clarify that if it takes longer than one hour to locate or redact an electronic record, the charges already allowed under N.D.C.C. § 44-04-18(2) for locating and redacting confidential information may be applied.

The second aspect of Section 3, found on page 6, clarifies that an electronic copy must be provided at no cost except if providing the electronic record takes longer than an hour. Language was also added to clearly set forth that automation of public records must not erode the right of access to the records. This language is important as more and more records are kept only in electronic format.

SECTION FOUR

Section 4, on page 7, makes a personal cell phone number and the employee identification number of a public employee exempt from the open records law.

SECTION FIVE

On page 7, Section 5 adds an exemption to the open records chapter that would exempt the medical condition, treatment, and name of an individual who receives medical treatment from a public entity during an emergency medical response.

SECTION 6

The amendment in Section 6, on page 7 would protect the information contained in a personnel record of an employee of the department of corrections by prohibiting inmates from receiving copies of personnel files.

SECTION 7

Section 7 inserts language, on page 8, that broadens the current definition of "criminal intelligence information" to include training materials and information regarding prospective criminal activities that impact officer safety until the information is publicly disclosed.

SECTION 8

Section 8 makes crime scene images of victims of a homicide or sex crime or any images of victims who are minors exempt. Currently, such images would be an open record.

SECTION 9

Section 9 amends the language in several sections of N.D.C.C. § 44-04-20, the meeting notice statute, in order to take into account current and emerging technologies. On lines 14 and 15 it allows for meetings that may take place by electronic means. On lines 22 and 23 of page 8 and line 4 of page 9, it gives public entities the option of posting the meeting notice on the website of the governing body instead of filing it with the auditor. Finally, on line 7 of page 9, it clarifies that a governing body must follow the posting requirements in N.D.C.C. § 44-04-20(4) for special meetings.

SECTION 10

Section 10 adds a new section to chapter 54-40.3 that would allow political subdivisions that enter into a joint powers agreement with a partner state to establish a joint emergency services communications system to provide that records originating from the partner state would be subject to the public records law of the partner state.

SECTION 11

We are asking for an emergency clause for this bill because many of the proposed changes are related to law enforcement.