

2009 HOUSE JUDICIARY

HB 1104

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1104

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 1/13/09

Recorder Job Number: 6870, 6871

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on HB 1104.

Tag Anderson, Director, Risk Management Division of OMB: Explained the bill (attachment).

Rep. Koppelman: The term "exempt" and "privileged".

Tag Anderson: Under open records law, the terminology that is used is either confidential or exempt, so we are using the term exempt. Privilege would be more in terms of attorney/client.

Rep. Koppelman: Who determines when a record is exempt.

Tag Anderson: That would be a decision statutorily assigned to the record by the Director of Risk Management and legal.

Chairman DeKrey: Thank you. Further testimony in support of HB 1104. Testimony in opposition. We will close the hearing. What are the committee's wishes in regard to HB 1104.

Rep. Koppelman: I move a Do Pass.

Rep. Wolf: Second.

13 YES 0 NO 0 ABSENT

DO PASS

CARRIER: Rep. Hatlestad

Date: 1/13/09
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1104

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. Koppelman Seconded By Rep. Wolf

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) 13 No 0

Absent 0

Floor Carrier: Rep. Hatlestad

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

REPORT OF STANDING COMMITTEE

HB 1104: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS
(13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1104 was placed on the
Eleventh order on the calendar.

2009 SENATE JUDICIARY

HB 1104

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1104

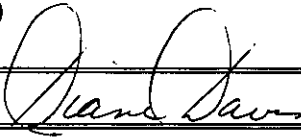
Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 2/17/09

Recorder Job Number: 9609

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

Relating to exempt records

Tag Anderson – Director of the Risk Management Division of OMB. See written testimony.

Senator Nelson – Asks how big of a problem is this.

Anderson – Not a huge problem. He gave a brief history of why this legislation has been proposed. This issue came up during the WSI problem. They refused to give out some records. The Attorney General gave an opinion.

Senator Fiebiger – Asked if it is possible to get a copy of that opinion.

Anderson – Replied, yes he will get it to the committee. He explains how this came to be and why, he said it isn't needed often.

Senator Fiebiger – Who decides when the time frame appears when it would not negatively impact the state.

Anderson – By statute, it is the Director of OMB decides when the record would no longer be exempt.

Senator Nething – Asks him what his division does.

Anderson – Explains, they are the insurance company for the state for court claims.

They handle lawsuits and claims brought against the state of ND.

Senator Nething – Says we are talking about civil records and not criminal records, correct?

Anderson – Responds, correct.

Senator Olafson motions for a do pass

Senator Lyson seconds

Vote – 6-0

Senator Schneider will carry

Date: 2/17/09
Roll Call Vote #: 1

1164

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Sen. Olafson Seconded By Sen. Hyom

[illegible]

Total (Yes) 6 (N) 0

Absent _____

Floor Assignment Sen. Schneider

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

REPORT OF STANDING COMMITTEE

HB 1104: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1104 was placed on the
Fourteenth order on the calendar.

2009 TESTIMONY

HB 1104

Testimony on HB 1104
Tag Anderson, Director
OMB Risk Management Division
January 9, 2009

Mr. Chairman, and members of the House Judiciary Committee, my name is Tag Anderson. I am the Director of the Risk Management Division of OMB. I appear today to provide information on House Bill 1104.

House Bill 1104 amends subsection 1 of N.D.C.C. § 32-12.2-11, part of the North Dakota Tort Claims Act, to clarify that exempt Risk Management records, in particular incident reports and investigative reports under the direction of Risk Management, remain exempt even when copies of the documents remain with another agency. Although most incidents are reported electronically, there have been cases where agencies have kept copies of the form as well as the substantive report itself. This language would clarify that simply because a substantive copy of an incident report is retained by an agency, ^{it} will not impact its exempt status. Similarly, investigations that are undertaken at the direction of the Risk Management Division following an incident are often undertaken by other agencies. The Risk Management Division only has five staff members and therefore the Division will sometimes call upon other agencies to assist with the investigative process. Again, this language simply clarifies that simply because the agency that assisted the Risk Management Division retains a draft or electronic copy of the investigative report will not impact the exempt status of the record. Under subsection 2 of N.D.C.C. § 32-12.2-11, these records only remain exempt if disclosure will prejudice an outstanding or reasonably predictable claim against the State or a state employee.

That concludes my prepared remarks. I would be happy to answer any questions you may have.

Thank you.

*Same
testimony given
to Senate*