

2011 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1396

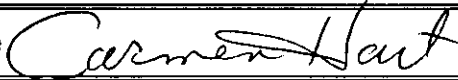
2011 HOUSE STANDING COMMITTEE MINUTES

House Government and Veterans Affairs Committee
Fort Union Room, State Capitol

HB 1396
February 11, 2011
14453 (First Set)

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to exempting certain library, archive, and museum collections from open records requirements

Minutes:

Chairman Bette Grande opened the hearing on HB 1396.

Rep. Lois Delmore, District 43, Grand Forks, appeared as a sponsor of this bill. Some of her presentation did not get recorded. She did hand out **Attachments 1 and 2**.
(Minnesota and Iowa code on confidential records)

Wilbur Stolt, Director of Libraries, University of North Dakota, appeared. **Attachment 3**.

Rep. Karen Rohr: Could you explain to me how you operationalize something like this?

Wilbur Stolt: In a negotiation with a donor, we would hear what the donor's request was and it could be for a month, 20 years, or until the death of the individual, or for a period of time after the death. The archivist would consider the potential value of the papers and the reasonableness of the request, have a discussion with the individual, and come to some neutral agreement. There have been times when a donor's request is deemed unreasonable, and the papers would indeed not be accepted.

Rep. Karen Rohr: Do you lock these and put them away for that period of time and is it a cost for the value of the document in case it would get stolen or revealed?

Wilbur Stolt: Yes. The materials would be secured by the institution, archive museum, for a period of time until the date at which it was agreed upon and they would be opened. During that time the institution, the archivist, might begin processing the papers in preparation for the opening, so there might be access within the institution.

Mr. Stolt then read a letter from **Rita Ennen, North Dakota Library Association President, Stoxen Library, Dickinson State University**. **Attachment 4**.

John Bye, Archivist and Head of the NDSU Institute for Regional Studies & University Archives, a department of the NDSU Libraries, appeared in support. Attachment 5.

Chairman Bette Grande: I have heard in all three cases the term short term. I am thinking of archives, museum, and the word short term. I was in Egypt and I was in the Cairo Museum. We think we have archives in North Dakota here. Ours are only hundreds of years, and I go into their museum and there is a whole different perspective of what is a short period of time. What does time mean in archive when you say short period?

John Bye: We attempt to make it as short as possible in a negotiation with the person. We have had an example of ten years on one and on another case, the death of the individual. They wanted it closed until they were deceased. That person did expire, and so then the records became open automatically. Another slightly different case was the meeting minutes of a group were closed without getting permission from the organization to read the minutes, and we honored that. Again, there was a definite time limit. We definitely always want to put a time limit on these. We do not want an open ended type of agreement, and so we attempt to make it as short as possible.

Chairman Bette Grande: It usually isn't something for the next five generations I don't want these records out?

John Bye: No. We have never done that, and I don't think we would agree to that because it is a mutual agreement. We would have to consider that seriously the worth of the material being donated versus the time. Obviously if something is closed for a very long time period, why are we keeping it? We are becoming housekeepers. We are becoming a storage facility you might say and we don't want that.

Chairman Bette Grande: That was kind of my concern off of especially Rep. Rohr's question is the cost of something that wasn't going to be used. I think you have addressed that.

Rep. Lisa Meier: Are the documents then locked up in a vault? What is the process?

John Bye: They are not in a vault. We do not have a vault in the archives at NDSU. We did in the case of the minutes lock them in a fireproof file cabinet. The other records were open for public use, but they were not. There was a record saying if you want to see those minutes which never occurred this was a restricted file.

Rep. Gary Paur: This is kind of an odd question, but I can't see anything negative about this bill. If you were to be an adversary to it, can you come up with anything negative?

John Bye: I haven't thought that one through. Maybe I am biased as an archivist because as an archivist we want to collect the materials and so we want to make it available. Our goal is to make it available. Unless there is some deep, dark secret in the papers that is just so terrible, but then I wonder why would they have wanted to donate them in the first place. Unless we have gone out to aggressively seek them. Donating is a two way street. People come to us and are offering material to us, and we go out to people who we think

may have records or we hear have records and say we would like to get these materials donated here. It is their ball court. Until we own them, they are their property. They are not the state's property. They are not the institute's property. They are, in essence, personal property.

Rep. Glen Froseth: Have you lost any donations because you were not able to assure the family that they would not be open to the public?

John Bye: No, that has never happened. We have always usually worked it through and talked it and discussed it with a discussion with the donor. Many times people will have concerns, but I think after we talk about how the process goes in archives—most people are not familiar how archives work and who comes in and I think people think as soon as it hits the archives, there is going to be this mass of people coming in to look at it. That is not the case usually. It usually is historians, serious researchers, and students. We have never lost any collections because of that, nor have we declined any collections because of too many restrictions. We had a photographic collection. They had certain criteria that we had to scan everything and we had to do a lot of conditions and we declined.

Mr. Bye read a letter from his colleague, **Curt Hanson, Head of the Elwyn B. Robinson Department of Special Collections at the UND Chester Fritz Library. Attachment 6.**

Ann Jenks, State Archivist, State Historical Society of North Dakota, appeared in support. The previous speakers and the read testimony from others pretty much covered everything I was going to say. Primarily our mission as archivists is to preserve and make accessible our history, and it is in no way our intention to close anything. When we do enter into that donor negotiation, we try to discourage any restrictions on a collection, because what we want to do is have the public be able to use these papers whatever they may be for their benefit and knowing more about our state. The State Historical Society as far as I know has had three collections that had a donor restriction placed on them. Two of them have expired. One was a family collection and the box that was closed had to do with the donor's son and daughter, and it did have correspondence and legal papers in it. Another one was a documentary film maker and he just placed a restriction that his films not be used by others or broadcast in a theater without his permission. Those were not too onerous of restrictions, and like John Bye said if a donor said we don't ever want this open to the public, we would just say I am sorry we can't take that collection, because as you pointed out, we have storage and staff costs in terms of taking care of these collections. The main thing with the donor negotiation is that being able to promise them some sort of a reasonable restriction is an access tool for us to get our hands on a collection that otherwise would maybe remain in private hands or be destroyed.

There was no one opposed or neutral to this bill.

The hearing was closed.

2011 HOUSE STANDING COMMITTEE MINUTES

House Government and Veterans Affairs Committee
Fort Union Room, State Capitol

HB 1396
February 11, 2011
14453 (Second Set)

☐ Conference Committee

Committee Clerk Signature

Carmen Hart

Explanation or reason for introduction of bill/resolution:

Relating to exempting certain library, archive, and museum collections from open records requirements

Minutes:

Chairman Bette Grande opened further discussion on this bill.

Rep. Mark Sanford made a motion for a **Do Pass**.

Rep. Ron Guggisberg seconded the motion.

Rep. Glen Froseth: Just a comment. It is quite interesting. It just about every one of their testimonies, it looks like they are doing this already. We might as well pass the law and make it official.

Rep. Mark Sanford: I asked them afterwards. I said I didn't want to ask the question, but are you guys breaking the law, but they did mention, for example, Bill Guy's and Milton Young's papers as having some portions that were and they really wouldn't have been able to get these papers without that. That was a pretty good example.

Rep. Lonny Winrich: In the interest of full disclosure I will reveal that my wife is currently in negotiation with Mr. Stolt to donate her papers to the UND library after she retires. She has done years and years of research on the poetry of Elizabeth Barrett Browning and is considered something of an expert in that field. To the best of my knowledge she is not going to include a clause that they are to be sealed until my death or something like that. I would certainly support this bill.

DO PASS, 13 YEAS, 0 NAYS. Rep. Gary Paur is the carrier of this bill.

Date: 2-11-11
Roll Call Vote #: _____

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1396

House GOVERNMENT AND VETERAN AFFAIRS 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 Sanford Seconded By Guggisberg

Representatives	Yes	No	Representatives	Yes	No
Chairman Bette Grande	✓		Bill Amerman	✓	
Vice Chairman Randy Boehning	✓		Ron Guggisberg	✓	
Glen Froseth	✓		Lonny Winrich	✓	
Karen Karls	✓				
Lisa Meier	✓				
Gary Paur	✓				
Karen Rohr	✓				
Mark Sanford	✓				
Vicky Steiner	✓				
Roscoe Streyle	✓				

Total (Yes) 13 No 0

Absent _____

Floor Assignment Rep Paur

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

REPORT OF STANDING COMMITTEE

HB 1396: Government and Veterans Affairs Committee (Rep. Grande, Chairman)
recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
HB 1396 was placed on the Eleventh order on the calendar.

2011 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1396

2011 SENATE STANDING COMMITTEE MINUTES

Senate Government and Veteran's Affairs Committee Missouri River Room, State Capitol

HB 1396
March 10, 2011
15256

☐ Conference Committee

Committee Clerk Signature

Katie Oliver

Explanation or reason for introduction of bill/resolution:

Relating to exempting certain library, archive, and museum collections from open records requirements

Minutes:

Testimony Attached

Representative Lois Delmore: District 43 Grand Forks. House Bill 1396 allows some exemptions for the open records law for collections that are given to libraries, archives and museums as part of historical document collections. I have similar statutes from Minnesota and Iowa (see attachment #1) and there are people who are also going to speak in favor of the bill.

Wilbur Stolt: Director of Libraries at UND. See attached testimony #2.

Senator Nelson: So this is not much different than the Kings Speech, asking that it not be released until after her death.

Wilbur Stolt: That is correct.

Chairman Dever: What is the difference between exempt records versus confidential record?

Wilbur Stolt: This would be through an agreement with the owner.

Senator Nelson: Confidential needs statute permission from the agency.

Wilbur Stolt: There may be some activity with the library or museum but with public access it would be the donor's request.

Chairman Dever: After a while everything is open record.

Wilbur Stolt: Again, our state statute would cover public agencies within the state. I believe that would cover that part of any agreement that our agency would go into with a donor.

Chairman Dever: This could say that the agreement could be 10 years as long as it is less than 20.

Wilbur Stolt: We do not as archivists do not take this arrangement w/out consideration. If a person request that the papers be closed for 20 years and in the professional opinion of the archivist the papers are not deemed to be that valuable for that time. What we are considering here is the importance of historical information and preserving it and making it available.

Senator Cook: Is there any chance that someone might be in possession of an open record and they donate it and make it private?

Wilbur Stolt: In the case of the state agency those materials are given to an institution and would still be subject to open record law.

Senator Nelson: If I decided I wanted to give records from the state archive and I didn't want things public for a while they can keep it exempt from my lifetime plus 20 years, if that is what I specify. But by using the word exempt it is still your call if my son came in and asked for something you could let him see it.

Wilbur Stolt: If it was a family member and within the reason of an archivist. But they would not be available for general public access.

Senator Berry: If it isn't a family member it would be up to the agency?

Wilbur Stolt: It would be up to the donor. The archivist, it would be his or her call.

Senator Berry: Does it tend to be a high bar?

Wilbur Stolt: Yes based on the agreement. On the other case, if there were family papers and you had something that the family didn't want access to them we would understand that and they would not be made available

Mr. Stolt also submitted a letter from Rita Ennen, the president of the North Dakota Library Association. (see attachment # 3)

Curt Hanson: See attached testimony # 4.

Chairman Dever: Are people not donating now because of this?

Curt Hanson: We have people who donate material to us who are quite comfortable giving it to us under the assumption that we will keep it closed for a period of time.

Chairman Dever: That becomes the place with the passage of this bill, what happens before?

Curt Hanson: We have been doing this for a time but we realize that we don't technically have the ability to do this in the century code.

John Bye: Archivist and Head of NDSU libraries. See attached testimony # 5.

Mr. Bye also passed out testimony from the Dean of the NDUS libraries Michele Reid (see attachment # 6)

Ann Jenks: State Archivist at the State Historical Society. See attached testimony # 7.

Jack McDonald: North Dakota Newspaper Association & North Dakota Broadcasters Association. Normally we oppose keeping public records closed and one of the issues that we look at is the specificity of it. The law is very specific and they are taking public record and setting it aside for a specific reason. The records would need to be exempt in this case they are setting out the terms in the contract.

Senator Nelson: You have had an interesting life will you be giving your files to the archive?

Jack McDonald: It is not an unusual thing. The whole point is to get the information to the public; these types of agreements would be few and far between.

Senator Nelson: Can you explain the process?

Ann Jenks: The main ones, legal, financial and historical. Within historical there would be other smaller criteria, age of the material. We try to ascertain what the public will want in the future. In our donor agreement we ask if they would like the material that we don't use sent back to them or disposed of as we see fit.

Chairman Dever: This is an issue that comes to because they are donated to public libraries. Are there private libraries in the state?

Wilbur Stolt: Jamestown College and University of Mary.

Chairman Dever then closed the public hearing on HB 1396. A motion for a do pass was made by Senator Cook with a second by Senator Berry, there was no further discussion, roll was taken, the motion passed 7-0 with Senator Nelson carrying the bill to the floor.

Date: 3-10-11
Roll Call Vote # 4

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1396

Senate Government and Veterans Affairs 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 Cook Seconded By Benny

Senators	Yes	No	Senators	Yes	No
	X				
Chairman Dever			Senator Marcellais	X	
Vice Chairman Sorvaag	X		Senator Nelson	X	
Senator Barry	X				
Senator Cook	X				
Senator Schaible	X				

Total (Yes) 7 No 0

Absent _____

Floor Assignment Senator Nelson

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

REPORT OF STANDING COMMITTEE

HB 1396: Government and Veterans Affairs Committee (Sen. Dever, Chairman)
recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
HB 1396 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

HB 1396

Attachment 1
1396

2010 Minnesota Statutes

13.40 LIBRARY AND HISTORICAL DATA.

Subdivision 1. **Records subject to this chapter.** (a) For purposes of this section, "historical records repository" means an archives or manuscript repository operated by a government entity whose purpose is to collect and maintain data to further the history of a geographic or subject area. The term does not include the state archives as defined in section 138.17, subdivision 1, clause (5).

(b) Data collected, maintained, used, or disseminated by a library or historical records repository operated by a government entity shall be administered in accordance with the provisions of this chapter.

Subd. 2. **Private data; library borrowers.** (a) Except as provided in paragraph (b), the following data maintained by a library are private data on individuals and may not be disclosed for other than library purposes except pursuant to a court order:

(1) data that link a library patron's name with materials requested or borrowed by the patron or that link a patron's name with a specific subject about which the patron has requested information or materials; or

(2) data in applications for borrower cards, other than the name of the borrower.

(b) A library may release reserved materials to a family member or other person who resides with a library patron and who is picking up the material on behalf of the patron. A patron may request that reserved materials be released only to the patron.

Subd. 3. **Nongovernmental data.** Data held in the custody of a historical records repository that were not originally created, received, maintained, or disseminated by a government entity are not government data. These data are accessible to the public unless:

(1) the data are contributed by private persons under an agreement that restricts access, to the extent of any lawful limitation; or

(2) access would significantly endanger the physical or organizational integrity of the data.

History: 1980 c 603 s 21; 1981 c 311 s 39; 1982 c 545 s 6,24; 1991 c 319 s 3; 1992 c 499 art 10 s 1; 1996 c 440 art 1 s 7; 2007 c 129 s 20,21

2009 Iowa Code

22.7 Confidential records.

The following public records shall be kept confidential, unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information:

13. The records of a library which, by themselves or when examined with other public records, would reveal the identity of the library patron checking out or requesting an item or information from the library. The records shall be released to a criminal or juvenile justice agency only pursuant to an investigation of a particular person or organization suspected of committing a known crime. The records shall be released only upon a judicial determination that a rational connection exists between the requested release of information and a legitimate end and that the need for the information is cogent and compelling.

14. The material of a library, museum or archive which has been contributed by a private person to the extent of any limitation that is a condition of the contribution.

Attachment 3
1396

February 11, 2011

North Dakota House of Representatives
House Committee on Government and Veterans Affairs

Good morning Madam Chairperson and members of the Committee. Thank you for the opportunity to address the House Committee on Government and Veterans Affairs in support of proposed House Bill 1396, which will allow public libraries, archives and museums to exempt donated papers temporarily from the North Dakota Open Records Statute.

One of the important missions for libraries, archives, and museums is to preserve and make available historical papers for future research use. These organizations will occasionally encounter a donor who wishes to close his or her personal papers for a period of time.

The reasons for closing donated collections are varied:

Information in papers may be used in a future publication and the author does not want to open the papers until after the book is published.

Information in the papers may be deemed sensitive to a family. Subjects may include personal notes, legal matters such as divorce or adoption, and financial concerns.

The papers may include business information which is proprietary.

It is standard archival practice to allow the closing of personal papers for a period of time. This is recognized in other state legislation including Minnesota Statute 13.40 and Iowa Code 22.7.

The ultimate objective of libraries, archives and museums is to preserve and make available historic papers for research and study. It is not the wish of these organizations to close collections indefinitely or forever. This would go against their mission.

But, without the ability to close collections, there is a greater possibility donors will choose not to donate their papers. The situation increases the possibility that the materials will be lost to future examination, which will limit the type and amount of historical information available to students and researchers and ultimately influence our knowledge of past events and people.

I wish to thank again Chairperson Grande and members of the Committee for the opportunity to speak in favor of HB 1396 and would appreciate your support.



Wilbur Stolt

501 Plain Hills Drive
Grand Forks, ND 58201
North Dakota Legislative District 17

TESTIMONY ON HB1396
House Committee on Government and Veterans Affairs

Attachment 4
1396

February 11, 2011

Dear Chairperson and Members of the Committee:

Thank you for this opportunity to address the committee in support of House Bill 1396 which would allow public libraries, archives and museums to temporarily exempt papers from private donors from the North Dakota Open Records Statute.

Libraries, archives and museums fulfill an important role in preserving our cultural heritage for future generations. Such agencies around the country allow for donations of personal papers to be accepted with provisions to close all or part of the collection on a temporary basis – often for the natural life of the contributor or their family members. Although it is common practice to allow for such provisions, it is not a frequent occurrence. The ultimate goal is not for these collections to be hidden away, but to preserve them for future use and scholarship. Allowing a donor to specify a short time period before their personal papers are opened to the public can help to ensure that these items will be preserved for future public use, not privately disposed of or lost.

Thank you again for the opportunity to ask for your consideration in favor of House Bill 1396.

Sincerely,

Rita Ennen
North Dakota Library Association President
c/o Stoxen Library, Dickinson State University
701-483-2883

Attachment 5
1396

North Dakota House of Representatives Committee on Government and Veterans Affairs
Testimony of John E. Bye
February 11, 2011

Madame Chairperson Grande and Members of the Committee

I am John Bye, Archivist and Head of the North Dakota State University Institute for Regional Studies & University Archives, a department of the NDSU Libraries. I thank you for this opportunity to address the Committee on Government and Veterans Affairs in support of House Bill 1396 allowing certain library, archive and museum collections to be exempt from the Open Records Statute.

The Institute, founded in 1950 by action of the State Board of Higher Education, has as one of its primary missions to collect and preserve personal papers and records that document the history of North Dakota and its people. Our goal, and that of the donors, has been to make these records available to everyone as soon as they are formally donated, including students, faculty and the general public.

However, we realize that in certain cases we need to accommodate special requests by the donor, who is the owner and many times creator of the papers, regarding personal, sensitive items in a collection, as well as privacy issues, an oral history interview, or items authored by third-party correspondents. To date the Institute for Regional Studies archives staff has worked under the assumption that if a donor wished certain personal documents or files closed for a fixed time period and we agreed to that request and made part of the deed of gift signed by both the donor and NDSU, we were duty-bound to uphold that provision. In my many years working at the Institute archives we have had only a hand-full of such requests. In each case, by allowing restricted access for a specific time period, the donor was willing to gift the archival documents, knowing their concerns on access and privacy were addressed and would be honored by the Institute. From the archives perspective, North Dakota's historical record also was enriched by each of these donation, which may not have been the case had we not agreed to limiting access for a short time period.

Archives, libraries and museums obviously want their collections open and freely available for use, and we have always strived for that. However, to ensure some documents are not lost forever for research use, we need to be able to clearly and confidently assure potential donors that we can uphold their concerns about legitimate, privacy issues. Doing so will make North Dakota's historical record the winner.

I thank each one of you again for this opportunity to speak in favor of House Bill 1396.

John E. Bye
1313 4th Street North
Fargo ND 58102
North Dakota Legislative District 44

February 11, 2011

To Members of the Committee on Government and Veterans Affairs:

Greetings. My name is Curt Hanson, and I am Head of the Elwyn B. Robinson Department of Special Collections at the UND Chester Fritz Library. This department seeks to "identify, acquire, preserve, and make available published resources and historical records" relating to the state of North Dakota.¹ I was hired as the Assistant Archivist in the Department of Special Collections in 1999, and became the Department Head in 2007. I have a Master's Degree in Library Science, with a Special Collections Specialization, from Indiana University. During my educational career, I was fortunate to have interned at various institutions, including the Historical and Cultural Society of Clay County in Moorhead, Minnesota, the Special Collections and University Archives at the University of Northern Iowa, and the Lilly Library at Indiana University.

I regret that I am unable to present my testimony in person regarding House Bill 1396. I am very much in support of this bill. House Bill 1396 is important for archives and other cultural heritage institutions which accept material from private donors, as it would codify in state law the ability of these institutions to temporarily close material. Closing a collection is done rarely, but for very valid reasons. For example:

- Family members may wish to close documents, such as diaries, letters, and legal files, which contain sensitive information.
- University professors and other researchers often prefer to close their research files until after the results of that research has been published.
- Politicians sometimes close their personal collections until after their death or the end of their political career. This is done in order to protect the privacy of their constituents.
- The records of many businesses contain proprietary information, which needs to be kept confidential from their competition.

Archivists do not promote access restrictions, but understand there are times when they are necessary. In 2009, the American Library Association and Society of American Archivists issued a Joint Statement on Access to Research Materials in Archives and Special Collections Libraries:

"Repositories must be committed to preserving research materials and to making them available for research as quickly as practicable following their acquisition. Nevertheless, a repository must fulfill legal and institutional obligations to protect confidentiality and physical security of its collections. Moreover, donors may wish to impose reasonable restrictions upon their papers for a defined period of time to protect privacy or confidentiality."²

¹ Mission Statement, Elwyn B. Robinson Department of Special Collections:
<http://www.library.und.edu/Collections/mission.php>

² ALA/SAA Joint Statement On Access To Research Materials In Archives And Special Collections Libraries:
<http://www2.archivists.org/statements/alasaa-joint-statement-on-access-to-research-materials-in-archives-and-special-collection>


House Bill 1396 would in no way restrict access to open records such as those of public institutions or city, county, and state governments. Some of the states that have similar laws include Iowa, Minnesota, and South Dakota.

The bill would have the very positive effect of balancing the needs of cultural heritage institutions to collect, preserve, and make available historical materials, while also honoring the wishes of donors by protecting their right to privacy. Thank you for allowing me to submit this written testimony in favor of House Bill 1396.

A handwritten signature in black ink, appearing to read 'Curt Hanson', written over a horizontal line.

Curt Hanson
1515 South 10th Street
Grand Forks, ND 58201
North Dakota Legislative District 17

curthanson@mail.und.edu



March 10, 2011


North Dakota Senate
Committee on Government and Veterans Affairs

Good morning Chairperson Dever and members of the Committee. Thank you for the opportunity to address the Senate Committee on Government and Veterans Affairs in support of proposed House Bill 1396, which will allow public libraries, archives and museums to exempt donated papers temporarily from the North Dakota Open Records Statute.

One of the important missions for libraries, archives, and museums is to preserve and make available historical papers for future research use. These organizations will occasionally encounter a donor who wishes to close his or her personal papers for a period of time.

The reasons for closing donated collections are varied:

Information in papers may be used in a future publication and the author does not want to open the papers until after the book is published.



Information in the papers may be deemed sensitive to a family. Subjects may include personal notes, legal matters such as divorce or adoption, and financial concerns.

The papers may include business information which is proprietary.

It is standard archival practice to allow the closing of personal papers for a period of time. This is recognized in other state legislation including Minnesota Statute 13.40 and Iowa Code 22.7.

The ultimate objective of libraries, archives and museums is to preserve and make available historic papers for research and study. It is not the wish of these organizations to close collections indefinitely or forever. This would go against their mission.

But, without the ability to close collections, there is a greater possibility donors will choose not to donate their papers. The situation increases the possibility that materials will be lost to future examination, which will limit the type and amount of historical information available to students and researchers and ultimately influence our knowledge of past events and people.

I wish to thank again Chairperson Dever and members of the Committee for the opportunity to speak in favor of HB 1396 and would appreciate your support.



Wilbur Stolt
501 Plain Hills Drive
Grand Forks, ND 58201
North Dakota Legislative District 17

TESTIMONY ON HB1396
Senate Committee on Government and Veterans Affairs

March 10, 2011

Dear Chairperson and Members of the Committee:

Thank you for this opportunity to address the committee in support of House Bill 1396 which would allow public libraries, archives and museums to temporarily exempt papers from private donors from the North Dakota Open Records Statute.

Libraries, archives and museums fulfill an important role in preserving our cultural heritage for future generations. Such agencies around the country allow for donations of personal papers to be accepted with provisions to close all or part of the collection on a temporary basis – often for the natural life of the contributor or their family members. Although it is common practice to allow for such provisions, it is not a frequent occurrence. The ultimate goal is not for these collections to be hidden away, but to preserve them for future use and scholarship. Allowing a donor to specify a short time period before their personal papers are opened to the public can help to ensure that these items will be preserved for future public use, not privately disposed of or lost.

Thank you again for the opportunity to ask for your consideration in favor of House Bill 1396.

Sincerely,

Rita Ennen
North Dakota Library Association President
c/o Stoxen Library, Dickinson State University
701-483-2883

Greetings. Thank you for allowing me to testify to the Committee on Government and Veterans Affairs regarding House Bill 1396. My name is Curt Hanson, and I am Head of the Elwyn B. Robinson Department of Special Collections at the UND Chester Fritz Library. My department seeks to "identify, acquire, preserve, and make available published resources and historical records" relating to the state of North Dakota.¹ I was hired as the Assistant Archivist in the Department of Special Collections in 1999, and became the Department Head in 2007. I have a Master's Degree in Library Science, with a Special Collections Specialization, from Indiana University.

House Bill 1396 is important for archives and other cultural heritage institutions which accept material from private donors, as it would codify in state law the ability of these institutions to temporarily close material. Closing a collection is done rarely, but for very valid reasons. For example:

- Family members may wish to close documents, such as diaries, letters, and legal files, which contain sensitive information.
- University professors and other researchers often prefer to close their research files until after the results of that research have been published.
- Politicians sometimes close their personal collections until after their death or the end of their political career. This is done in order to protect the privacy of their constituents.
- The records of many businesses contain proprietary information, which needs to be kept confidential from their competition.

Archivists do not promote access restrictions, but understand there are times when they are necessary. In 2009, the American Library Association and Society of American Archivists issued a Joint Statement on Access to Research Materials in Archives and Special Collections Libraries:

"Repositories must be committed to preserving research materials and to making them available for research as quickly as practicable following their acquisition. Nevertheless, a repository must fulfill legal and institutional obligations to protect confidentiality and physical security of its collections. Moreover, donors may wish to impose reasonable restrictions upon their papers for a defined period of time to protect privacy or confidentiality."²

House Bill 1396 would in no way restrict access to open records such as those created by public institutions or by city, county, and state governments. Other states that have similar laws include Iowa, Minnesota, and South Dakota.

The bill would have the very positive effect of balancing the needs of cultural heritage institutions to collect, preserve, and make available historical materials, while also honoring the wishes of donors by protecting their right to privacy. Thank you for allowing me to testify in favor of House Bill 1396.

Curt Hanson
1515 South 10th Street
Grand Forks, ND 58201
North Dakota Legislative District 17

curthanson@mail.und.edu

¹ Mission Statement, Elwyn B. Robinson Department of Special Collections:
<http://www.library.und.edu/Collections/mission.php>

² ALA/SAA Joint Statement On Access To Research Materials In Archives And Special Collections Libraries:
<http://www2.archivists.org/statements/alasaa-joint-statement-on-access-to-research-materials-in-archives-and-special-collection>

North Dakota Senate Committee on Government and Veterans Affairs
Testimony of John E. Bye
March 10, 2011

Chairman Dever and Members of the Committee

I am John Bye, Archivist and Head of the North Dakota State University Institute for Regional Studies & University Archives, a department of the NDSU Libraries. I thank you for this opportunity to address the Committee on Government and Veterans Affairs in support of Senate Bill 1396 allowing certain library, archive and museum collections to be exempt from the Open Records Statute.

The Institute, founded in 1950, has as one of its primary missions to collect and preserve personal papers and records that document the history of North Dakota and its people. Our goal, and that of the many private donors, has been to make these records available for research use as soon as they are formally donated.

For a number of potential donations, the donor has expressed concern about certain documents or files being immediately available due to perceived sensitive items within the papers or privacy issues. In most cases after discussing this matter openly with the potential donor, we have been able to address their concerns and assure them that a researcher's intent in using such documents is not to embarrass or intrude upon the privacy of the donor or the creator of personal family letters. Thus we have kept access restrictions to donated personal papers to only a handful during my tenure as Institute archivist. That always has been our goal and will continue to be our policy.

To date the Institute for Regional Studies archives staff has worked under the assumption that if a donor wished certain personal documents or files closed for a fixed time period and we agreed to that request and made it part of the deed of gift signed by both the donor and NDSU, we were duty-bound to uphold that provision. From an archives perspective, North Dakota's historical record was enriched by each of these donations. However this may not have been the case had we not agreed to limit access for a short time period and thus the potential donor declined to donate the personal papers.

Archives, libraries and museums obviously want their collections open and freely available for use, and we have always strived for that. However, to ensure some documents are not lost forever for research use, we need to be able to clearly and confidently assure potential donors that we can uphold their concerns about legitimate, privacy issues. Doing so will make North Dakota's historical record the winner.

I thank each one of you again for this opportunity to speak in favor of Senate Bill 1396.

John E. Bye
1313 4th Street North
Fargo ND 58102
North Dakota Legislative District 44

The Libraries

NDSU Dept. 2080

P.O. Box 6050

Fargo, ND 58108-6050

701.231.8753

Fax 701.231.6128

Ariel 134.129.115.34

ILL Fax 701.231.7138

March 10, 2011

Government and Veterans Affairs Committee
North Dakota Senate

Dear Chairman Dever and Committee Members,

We are writing to ask for your support of Senate Bill 1396 exempting certain library, archives, and museum collections from the North Dakota Open Records statute. North Dakota State University Libraries are responsible for the archival collections preserved at the Institute for Regional Studies & University Archives. For over sixty years, the Institute has collected and maintained a wide variety of personal papers and private organization records, all done in order to make them available to students, faculty and the public for research purposes.

Our very purpose in collecting these private papers and records is to make them publically accessible, yet we know from personal experience that the owner and potential donor at times has concerns regarding making some of these records, particularly items they feel are sensitive in nature, immediately available for public use.

Examples of past restrictions include:

- A series of personal letters not available for public use until the writer is deceased
- An organization's meeting minutes cannot be used for a certain number of years, except if allowed by the organization's representative
- The donor, the author of a long run of personal diaries, not be identified until she was deceased

In each of these cases we felt the potential donations were historically valuable and would help to document the history of North Dakota. Thus we were willing to agree to the donor's request and incorporated the access restrictions into the deed of gift that is signed by both NDSU and the donor. In all cases we honored the donor's wishes.

We always strive to minimize any access restrictions, since our commitment is to make all donated personal records open for research purposes. Even with the passage of this bill, our goal will always be to have as few restrictions as possible regarding access to a donated collection.

Again, we ask you to support this bill. In doing so, you are assisting public, cultural institutions such as the NDSU Libraries in preserving a part of North Dakota's rich history.

Sincerely,



Michele Reid
Dean of Libraries



John Bye
Director, Institute for Regional Studies Archives

Government and Veterans Affairs Committee
March 10, 2011

Testimony by Ann Jenks, State Archivist
State Historical Society of North Dakota

Chairman Dever and members of the Government and Veterans Affairs Committee, my name is Ann Jenks and I am the State Archivist at the State Historical Society of North Dakota. I am here today to present testimony on HB1396.

Preservation and access are the archivists' two main guiding principles and closing records is done only when necessary. We can't justify the expense of space and staff time to store materials over the long term that will not be available to the public.

When negotiating donor agreements, archivists can try to keep restrictions as few as possible, but in some cases the only way to ensure donation of the collection is to accede to the donor's restrictions. When restrictions are placed on a collection, they must be clear, temporary, and for a "reasonable" period of time. Should the donor's restriction request be unreasonable, the archives would refuse the collection.

The American Library Association/Society of American Archivists Joint Statement of Access says: "A repository is committed to preserving manuscript and archival materials and to making them available for research as soon as possible. At the same time, it is recognized that...private donors have the right to impose reasonable restrictions upon their papers to protect privacy or confidentiality for a reasonable period of time."

The Code of Ethics for Archivists states:

"Archivists may place restrictions on access for protection of privacy or confidentiality of information in records."

In my experience, the number of restrictions placed on manuscript collections have been very few. One collection was closed for a limited time period because it revealed the names of local members of the Ku Klux Klan. Another collection of short stories and poetry was closed as the author was working to get them published.

This bill is written in the spirit of standard archival operating procedures.

This concludes my testimony. I am happy to answer any questions.