

2021 SENATE GOVERNMENT AND VETERANS AFFAIRS

SB 2069

2021 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Room JW216, State Capitol

SB 2069
1/7/2021

Relating to applications for public employment.
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Chair Vedaa opened the hearing at 2:00 p.m. with Sen. Vedaa, Sen Meyer, Sen Elkin, Sen K Roers, Sen Wobbema, Sen Weber, and Sen. Marcellais present.

Discussion Topics:

- Eliminate the penalty phase because class C felony, now.

Lisa Kudelka, HRMS, testified in support of the bill. #153.

Additional written testimony:

Jack McDonald, ND Newspapers & Broadcaster Assoc.: testified against SB 2069. #242.

. Adjourned at 2:40 p.m.

Pam Dever, Committee Clerk

TESTIMONY OF

Lisa Kudelka, Chief People Officer, Human Resource Management Services (HRMS)

Chairman Vedda and members of the Government and Veterans Affairs Committee, I am Lisa Kudelka, Chief People Officer, HRMS. I am here to testify in support of Senate Bill No. 2069 which amends and reenacts section 44-04-18.27 of the North Dakota Century Code relating to an application for public employment.

This bill would eliminate the penalty section of the confidentiality requirement of the employment application process for public entities. The current penalty for a violation of this section of the Century Code is a class c felony. We believe any violation of the confidentiality requirement should be handled by a public entity's disciplinary process.

The bill would also clarify that all applications are confidential, regardless of the number of applications, until the public entity identifies the finalists for the position. In the current statute if there are fewer than three applications the application materials maybe open to a public record request.

Mr. Chairman and committee members, this concludes my testimony. I ask your support for Senate Bill 2069. I would be happy to answer any questions.

Thursday, January 7, 2021

Senate Government and Veterans Affairs Committee SB 2069

CHAIRMAN VEDAA AND COMMITTEE MEMBERS:

My name is Jack McDonald. I'm appearing on behalf of the North Dakota Newspaper and Broadcasters Associations. We strongly oppose SB 2069 and respectfully ask for a **DO NOT PASS**.

This bill arbitrarily closes records of applicants for public employment that have been open for more than 50 years.

The 2017 Legislative Assembly decided that, in an effort to encourage more persons to apply for public jobs, the records of those not chosen as one of three finalists would be closed. The records of the three finalists became open records when designated as finalists.

However, the 2017 Legislature also determined that if there were fewer than three applicants then those were, in effect finalists, and the records would remain open as they always had been once the application deadline passed.

Now SB 2069 says no, if the public entity decides not to consider them further, they are closed. However, as a practical matter, this just won't work.

If, for example, the application deadline was today, January 7, and there were only two applicants, those applications would become open today. However, SB 2069 says no, they will be closed if the public entity decides to take no further action. But when will it make that decision. Today? Not likely. Probably at its next meeting, whenever that will be. In the meantime, these records sit in limbo.

While we weren't crazy about this law when it passed, it has worked well. There's no need for SB 2069. The Attorney General is planning legislation to make some necessary changes in other portions of this law.

You should take a good look at his bill and give SB 2069 your first DO NOT pass of the 67TH Legislative Assembly.

Thank you for your time and consideration. I'd be happy to answer any questions.

2021 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Room JW216, State Capitol

SB 2069
1/8/2021

Relating to applications for public employment

Chair Vedaa: opened the meeting at 9:10 a.m.

All Senators present: Vedaa, Meyer, Elkin, Roers, Wobbema, Weber, and Marcellais

Discussion Topics:

- **Committee Work**
- **Possible amendments**

Adjourned the meeting at 9:15 a.m.

Pam Dever, Committee Clerk

2021 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Room JW216, State Capitol

SB 2069
1/22/2021

Committee Work - A BILL relating to applications for public employment.

Chair Vedaa: called to order at 11:00 a.m. with Sen Vedaa, Sen Meyer, Sen Elkin, Sen K Roers, Sen Wobbema, Sen Weber, and Sen Marcellais present

Discussion Topics:

- Committee Work – amendment

Sen Roers: I move amendment 21.8037.01001. **Sen Meyer:** I second.

Roll Call. 4 - YES 3 -- NO -0-ab. Motion PASSED.

Senators	Vote
Senator Shawn Vedaa	Y
Senator Scott Meyer	N
Senator Jay R. Elkin	N
Senator Richard Marcellais	N
Senator Kristin Roers	Y
Senator Mark F. Webber	Y
Senator Michael A. Wobbema	Y

Sen Roers moves **Do Pass as Amended** on SB 2069.

Sen Weber seconds the motion.

Roll Call: 4 – YES 3 – NO -0-ab Motion PASSED

Senators	Vote
Senator Shawn Vedaa	Y
Senator Scott Meyer	N
Senator Jay R. Elkin	N
Senator Richard Marcellais	N
Senator Kristin Roers	Y
Senator Mark F. Webber	Y
Senator Michael A. Wobbema	Y

Sen Roers will carry the bill

Adjourned at 11:31 a.m.

Pam Dever, Committee Clerk

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PROPOSED AMENDMENTS TO SENATE BILL NO. 2069

Page 1, line 8, overstrike "If a" and insert immediately thereafter "Upon the close of an application period, a"

Page 1, line 9, overstrike "receives applications from three or more applicants who meet the"

Page 1, overstrike line 10

Page 1, line 11, overstrike "three" and insert immediately thereafter "may designate one"

Page 1, line 12, overstrike "may issue" and insert immediately thereafter "issues"

Page 1, line 12, overstrike "However, if the"

Page 1, overstrike lines 13 and 14

Page 1, line 15, overstrike "designate any finalist."

Page 1, line 19, overstrike "If, by the"

Page 1, overstrike lines 20 and 21

Page 1, line 22, overstrike "related to the applications are open to the public"

Page 1, line 22, remove ", unless the public entity or other person"

Page 1, line 23, remove "decides not to consider the applications further."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2069: Government and Veterans Affairs Committee (Sen. Vedaa, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (4 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). SB 2069 was placed on the Sixth order on the calendar.

Page 1, line 8, overstrike "If a" and insert immediately thereafter "Upon the close of an application period, a"

Page 1, line 9, overstrike "receives applications from three or more applicants who meet the"

Page 1, overstrike line 10

Page 1, line 11, overstrike "three" and insert immediately thereafter "may designate one"

Page 1, line 12, overstrike "may issue" and insert immediately thereafter "issues"

Page 1, line 12, overstrike "However, if the"

Page 1, overstrike lines 13 and 14

Page 1, line 15, overstrike "designate any finalist."

Page 1, line 19, overstrike "If, by the"

Page 1, overstrike lines 20 and 21

Page 1, line 22, overstrike "related to the applications are open to the public"

Page 1, line 22, remove ", unless the public entity or other person"

Page 1, line 23, remove "decides not to consider the applications further."

Renumber accordingly

2021 HOUSE GOVERNMENT AND VETERANS AFFAIRS

SB 2069

2021 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Pioneer Room, State Capitol

SB 2069
3/12/2021

Relating to applications for public employment
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Chairman Kasper opened the hearing at 9:20 a.m.

Representatives	Roll Call
Representative Jim Kasper	P
Representative Ben Koppelman	P
Representative Pamela Anderson	P
Representative Jeff A. Hoverson	A
Representative Karen Karls	P
Representative Scott Louser	P
Representative Jeffery J. Magrum	P
Representative Mitch Ostlie	P
Representative Karen M. Rohr	P
Representative Austen Schauer	P
Representative Mary Schneider	P
Representative Vicky Steiner	P
Representative Greg Stemen	P
Representative Steve Vetter	P

Discussion Topics:

- Penalty section of confidentiality requirement
- Clarification of confidentiality

Lisa Kudelka, Director of Operations, HRMS within OMB, testified in favor, #8903.

Mary Kae Kelsch, Attorney General's Office, testified in opposition as was written without the proposed amendments.

Rep. B. Koppelman moved **Do Not Pass**. **Rep. Vetter** seconded.

Representatives	Vote
Representative Jim Kasper	Y
Representative Ben Koppelman	Y
Representative Pamela Anderson	Y
Representative Jeff A. Hoverson	A
Representative Karen Karls	N
Representative Scott Louser	Y
Representative Jeffery J. Magrum	Y
Representative Mitch Ostlie	Y
Representative Karen M. Rohr	Y
Representative Austen Schauer	Y
Representative Mary Schneider	Y
Representative Vicky Steiner	Y

Representative Greg Stemen	Y
Representative Steve Vetter	Y

Motion passes. 12-1-1. **Rep. Magrum** is the carrier.

Chairman Kasper ended at 9:42 a.m.

Carmen Hart, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2069, as engrossed: Government and Veterans Affairs Committee (Rep. Kasper, Chairman) recommends DO NOT PASS (12 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). Engrossed SB 2069 was placed on the Fourteenth order on the calendar.

TESTIMONY OF

Lisa Kudelka, Director of Operations, Human Resource Management Services (HRMS)

Chairman Kasper and members of the House Government and Veterans Affairs Committee, I am Lisa Kudelka, Director of Operations, HRMS within the Office of Management and Budget (OMB). I am here to testify in support of Engrossed Senate Bill No. 2069 which amends and reenacts section 44-04-18.27 of the North Dakota Century Code (NDCC) relating to an application for public employment.

When OMB developed this legislation, we had two goals. One was to eliminate the penalty section of the confidentiality requirement relating to the employment application process for public entities. The current penalty for a violation of this section of the Century Code is a class C felony. We believe any violation of the confidentiality requirement should be handled by a public entity's disciplinary process. This section of the Century Code covers applications for all state government and political subdivision positions.

The second goal was to clarify that all applications are confidential, regardless of the number of applications, until the public entity identifies the finalists for the position. In the current statute, if there are fewer than three applications, the application materials maybe open to a public records request. This requirement puts the applicant in a difficult position. They wouldn't know how many applications were received for a position or if their materials would be automatically open to a public records request. In some cases, when an agency or political subdivision only receives one or two applications for a position, they may not consider any of the applicants to be finalists, and therefore choose not to move forward with the hiring process.

OMB worked with Senator Roers to amend the bill. Senator Roers was interested in simplifying the language in the Century Code. We agree with and support the Senate amendments.

Section 2 of House Bill 1349 also amends NDCC Section 44-04-18.7, and it appears the two bills will need to be reconciled. SB 2069 was an agency bill and was heard in committee before HB 1349 was introduced. OMB proposes amendments to SB 2069 to align the two bills. The proposed amendments would designate application records as exempt rather than confidential. As defined in NDCC Section 44-04-17.1, an exempt record is "neither required by law to be open to the public, nor is confidential, but may be open in the discretion of the public entity."

The proposed amendment would also provide that a public entity shall not release exempt application records except pursuant to written policies adopted by the public entity. A copy of the policy must be provided to applicants so it is clear when and if the application records could be open to the public.

Attached to my testimony is both the proposed amendment and a marked-up draft of Engrossed SB 2069 as it would look if you adopt this proposed amendment.

Mr. Chairman and committee members, this concludes my testimony. I ask your support for Engrossed Senate Bill 2069 with the suggested amendments. I would be happy to answer any questions.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2069

Page 1, line 17, after “are” overstrike “confidential, except records related to finalists are open to the public after” and immediately thereafter insert “Exempt. Once”

Page 1, Line 18 after designated insert “, the applications and related records of the finalists are open to the public”

Page 1, line 20 overstrike “confidential” and immediately thereafter insert “exempt”

Page 1, line 20 after “applications.” Insert “A public entity shall not release exempt records under this section except pursuant to written policies governing the use and dissemination of such records. A public entity shall provide a copy or other notice of the public entity’s policies governing use and dissemination of applications to prospective job applicants at the time a position is opened or advertised.”

Page 1, Line 23 remove “Section 12.1-13-01 does not apply to confidential records under this section.”

PROPOSED ENGROSSED SENATE BILL NO. 2069 WITH HOUSE AMENDMENTS

SECTION 1. AMENDMENT. Section 44-04-18.27 of the North Dakota Century Code is amended and reenacted as follows:

44-04-18.27. Applications for public employment - Hiring process - Confidential records and open records.

~~If a~~Upon the close of an application period, a public entity or any person delegated authority by a public entity to review applications or make hiring decisions ~~receives applications from three or more applicants who meet the minimum qualifications for a vacant position, the public entity or other person shall designate three~~may designate one or more of the qualified applicants as finalists for further consideration before the public entity or other person ~~may issue~~issues an offer of employment to fill the position. ~~However, if the public entity or other person does not wish to consider any of the applications further and decides not to make an offer of employment for the vacant position, the public entity need not designate any finalist.~~ The applications and any records related to the applications which contain information that could reasonably be used to identify an applicant are ~~confidential, except records related to finalists are open to the public after~~ exempt. Once the finalists are designated, the applications and related records of the finalists are open to the public. The public entity or other person reviewing applications on behalf of the public entity shall comply with all requirements for an executive session to discuss ~~confidential~~ exempt applications. A public entity shall not release exempt records under this section except pursuant to written policies governing the use and dissemination of such records. A public entity shall provide a copy or other notice of the public entity's policies governing use and dissemination of applications to prospective job applicants at the time a position is opened or advertised.~~If, by the close of the application period for a vacant position, a public entity receives applications from fewer than three applicants who meet the minimum qualifications, the applications and records related to the applications are open to the public~~Section 12.1-13-01 does not apply to confidential records under this section.