

**2023 SENATE EDUCATION**

**SB 2343**

# 2023 SENATE STANDING COMMITTEE MINUTES

**Education Committee**  
Room JW216, State Capitol

SB 2343  
1/31/2023

Relating to records of a public entity governing body; relating to defining a public entity governing body and state board of higher education policy.
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10:42 AM Chair Elkin opened the hearing. Present: Chair Elkin, Vice Chair Beard, Sen Axtman, Sen Conley, Sen Lemm, and Sen Wobbema.

## **Discussion Topics:**

- Confidentiality
- Public board meetings
- Transparency
- Record access
- Exempt records and sensitive information
- Information requests
- Conflict of interest

10:42 AM Sen Judy Lee, District 13, bill sponsor, introduced the bill and testified in support #18178

10:50 AM Jeffery Volk, member of the State Board of Education, testified as a citizen and not on behalf of the State Board via ZOOM in support #17987

10:59 AM Mark Hagerott, Chancellor of the North Dakota University System, testified in opposition #18089.

11:12 AM Kathleen Neset, served on the State Board of Higher Education, testified in opposition #18086.

11:27 AM Amy De Kok, General Counsel for the ND School Boards Association, testified in opposition #18179

11:34 AM Mary Kay Kelsch, Assistant Attorney General, Division Director of the General Council Division of the Attorney General's Office, testified in neutral position with no written testimony.

11:38 AM Chair Elkin closed the hearing.

*Pam Dever, Committee Clerk*

# 2023 SENATE STANDING COMMITTEE MINUTES

**Education Committee**  
Room JW216, State Capitol

SB 2343  
2/1/2023

Relating to defining a public entity governing body and state board of higher education policy.
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10:07 AM Chair Elkin opened meeting. Present: Chair Elkin, Vice Chair Beard, Sen Axtman, Sen Conley, Sen Lemm, and Sen Wobbema.

**Discussion Topics:**

- Committee action

Sen Wobbema moved a DO NOT PASS.

Sen Conley seconded the motion.

Senators	Vote
Senator Jay Elkin	Y
Senator Todd Beard	Y
Senator Michelle Axtman	Y
Senator Cole Conley	Y
Senator Randy D. Lemm	Y
Senator Michael A. Wobbema	Y

VOTE: YES 6 NO 0 Absent 0 Motion PASSED.

Sen Wobbema will carry the bill.

10:13 AM Chair Elkin closed the meeting.

*Pam Dever, Committee Clerk*

**REPORT OF STANDING COMMITTEE**

**SB 2343: Education Committee (Sen. Elkin, Chairman)** recommends **DO NOT PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2343 was placed on the Eleventh order on the calendar. This bill does not affect workforce development.

**2023 HOUSE EDUCATION**

**SB 2343**

# 2023 HOUSE STANDING COMMITTEE MINUTES

**Education Committee**  
Coteau AB Room, State Capitol

SB 2343  
3/15/2023

Relating to records of a public entity governing body; relating to defining a public entity governing body and state board of higher education policy.
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10:18 AM

Chairman Heinert opened the hearing. Members present: Chairman Heinert, Vice Chairman Schreiber-Beck, Representatives Conmy, Dyk, Hager, Hauck, Heilman, Hoverson, Jonas, Longmuir, Marschall, Murphy, Novak, and Timmons.

**Discussion Topics:**

- Equal access
- New board members
- Transparency
- Confidentiality
- Executive session
- Public entity authority
- FERPA

Sen Judy Lee, District 13, introduced SB 2343, Testimony 25315  
Jeffry Volk, member of ND State Board of Higher Education but speaking on his own behalf, Testimony 25079

Amy DeKok Legal Counsel, ND School Boards Association, Testimony 25125

Nick Hacker, Board Member, NDUS, Testimony 25309

Mark Haggerott, Chancelor, NDUS, 25307

Dr Casey Ryan, Chairman, NDSBHE, Testimony 25191

**Additional written testimony:**

Bernie Dardis, President of West Fargo Commission, Testimony 23644

Kathy Neset, President of Neset Consulting, Testimony 25163

11:19 AM Chairman Heinert closed the hearing.

*Kathleen Davis, Committee Clerk*

# 2023 HOUSE STANDING COMMITTEE MINUTES

**Education Committee**  
Coteau AB Room, State Capitol

SB 2343  
3/27/2023

Relating to records of a public entity governing body; relating to defining a public entity governing body and state board of higher education policy.
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10:40 AM Chairman Heinert opened the meeting.

Members present: Chairman Heinert, Vice Chairman Schreiber-Beck, Representatives Dyk, Hager, Hauck, Heilman, Hoverson, Jonas, Marschall, Murphy, Novak, and Timmons.  
Absent: Representatives Longmuir and Conmy.

## Discussion Topics:

- Committee action.

Rep Schreiber-Beck, proposed Higher Ed amendment, Testimony 26739, and Sen. Judy Lee's Amendment 23.0931.02001, Testimony 26740

Rep Murphy, conflict of interest board member amendment, Testimony 26738

Rep Heinert, proposed amendment, Testimony 26741

## 10:52 AM Recess

Rep Murphy moved Amendment 23.0931.02001 (Testimony 26740), seconded by Rep. Jonas. **Voice vote was undetermined.**

Roll call vote was taken:

Representatives	Vote
Representative Pat D. Heinert	Y
Representative Cynthia Schreiber-Beck	Y
Representative Liz Conmy	AB
Representative Scott Dyk	N
Representative LaurieBeth Hager	Y
Representative Dori Hauck	N
Representative Matt Heilman	N
Representative Jeff A. Hoverson	N
Representative Jim Jonas	Y
Representative Donald W. Longmuir	AB
Representative Andrew Marschall	Y
Representative Eric James Murphy	Y
Representative Anna S. Novak	Y
Representative Kelby Timmons	N

**7-5-2 Motion carried.**

Rep Murphy moved his amendment (Testimony 26738) to add Section 3, seconded by Representative Schreiber-Beck. **Voice vote, motion failed.**

Rep Hoverson moved to adopt the Higher Education Board amendment (Testimony 26739), seconded by Rep Heilman.

<b>Representatives</b>	<b>Vote</b>
Representative Pat D. Heinert	N
Representative Cynthia Schreiber-Beck	Y
Representative Liz Conmy	AB
Representative Scott Dyk	Y
Representative LaurieBeth Hager	Y
Representative Dori Hauck	Y
Representative Matt Heilman	Y
Representative Jeff A. Hoverson	Y
Representative Jim Jonas	N
Representative Donald W. Longmuir	AB
Representative Andrew Marschall	N
Representative Eric James Murphy	Y
Representative Anna S. Novak	N
Representative Kelby Timmons	N

**7-5-2 Motion carried.**

Rep. Hoverson moved a Do Not Pass, seconded by Representative Heilman.

<b>Representatives</b>	<b>Vote</b>
Representative Pat D. Heinert	N
Representative Cynthia Schreiber-Beck	N
Representative Liz Conmy	AB
Representative Scott Dyk	Y
Representative LaurieBeth Hager	N
Representative Dori Hauck	N
Representative Matt Heilman	Y
Representative Jeff A. Hoverson	Y
Representative Jim Jonas	Y
Representative Donald W. Longmuir	AB
Representative Andrew Marschall	N
Representative Eric James Murphy	N
Representative Anna S. Novak	N
Representative Kelby Timmons	Y

**5-7-2 Motion failed.**

Rep Marschall moved a Do Pass as Amended, seconded by Rep Hauck.

<b>Representatives</b>	<b>Vote</b>
Representative Pat D. Heinert	Y
Representative Cynthia Schreiber-Beck	Y
Representative Liz Conmy	AB
Representative Scott Dyk	N
Representative LaurieBeth Hager	Y
Representative Dori Hauck	Y
Representative Matt Heilman	N
Representative Jeff A. Hoverson	N



Representative Jim Jonas	N
Representative Donald W. Longmuir	AB
Representative Andrew Marschall	Y
Representative Eric James Murphy	Y
Representative Anna S. Novak	Y
Representative Kelby Timmons	N

**7-5-2 Motion carried. Rep Murphy is carrier.**

11:26 AM Meeting adjourned.

*Kathleen Davis, Committee Clerk*

March 27, 2023

DK  
171  
3-27-2023

PROPOSED AMENDMENTS TO SENATE BILL NO. 2343

Page 1, line 1, replace "44-04" with "15-10"

Page 1, line 2, replace "records of a public entity governing body" with "the state board of higher education and the required report by the state commissioner of higher education"

Page 1, line 3, replace "sections" with "section"

Page 1, line 3, remove "and 44-04-17.1"

Page 1, line 3, remove "defining a"

Page 1, line 4, remove "public entity governing body and"

Page 6, remove lines 9 through 31

Page 7, remove lines 1 through 31

Page 8, remove lines 1 through 30

Page 9, replace lines 1 through 23 with:

"**SECTION 2.** A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:

**State commissioner of higher education - Board member information access - Report to interim higher education committee.**

The state commissioner of higher education shall provide a report to the interim higher education committee on state board of higher education policies regarding communications between board members and board member access to current and historic board information."

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**SB 2343: Education Committee (Rep. Heinert, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 5 NAYS, 2 ABSENT AND NOT VOTING). SB 2343 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "44-04" with "15-10"

Page 1, line 2, replace "records of a public entity governing body" with "the state board of higher education and the required report by the state commissioner of higher education"

Page 1, line 3, replace "sections" with "section"

Page 1, line 3, remove "and 44-04-17.1"

Page 1, line 3, remove "defining a"

Page 1, line 4, remove "public entity governing body and"

Page 6, remove lines 9 through 31

Page 7, remove lines 1 through 31

Page 8, remove lines 1 through 30

Page 9, replace lines 1 through 23 with:

**"SECTION 2.** A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:

**State commissioner of higher education - Board member information access - Report to interim higher education committee.**

The state commissioner of higher education shall provide a report to the interim higher education committee on state board of higher education policies regarding communications between board members and board member access to current and historic board information."

Renumber accordingly

**2023 CONFERENCE COMMITTEE**

**SB 2343**

# 2023 SENATE STANDING COMMITTEE MINUTES

**Education Committee**  
Room JW216, State Capitol

SB 2343  
4/10/2023  
CONFERENCE COMMITTEE

Relating to defining a public entity governing body and state board of higher education policy.
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10:00 AM Chair Elkin opened the meeting. Present: Chair Elkin, Sen Conley, Sen Axtman, Chair Marschall, Rep Novak, and Rep Longmuir.

**Discussion Topics:**

- Amendment

Chair Elkin asked Chair Marschall why Section 2 and section 3 were eliminated. This relates to the red initialed amendment 23.0931.02003 from the House.

Chair Marschall said he would check into this and bring back information in the afternoon.

10:05 AM Chair Elkin adjourned the meeting.

*Pam Dever, Committee Clerk*

# 2023 SENATE STANDING COMMITTEE MINUTES

**Education Committee**  
Room JW216, State Capitol

SB 2343  
4/10/2023  
CONFERENCE COMMITTEE

Relating to defining a public entity governing body and state board of higher education policy.
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3:34 PM Chair Elkin opened meeting. Present: Chair Elkin, Sen Axtman, Chair Marschall, Rep Novak, and Rep Longmuir.

**Discussion Topics:**

- Public entity
- University system
- Transparency

Rep Marschall explained the amendment. Section 2 had a legal question and bill sponsor agreed to have section 2 removed. .2004 was voted in committee. Sect 3 should never have been removed.

Chair Elkin asked for more time to study.

3:55 PM Chair Elkin adjourned the meeting.

*Pam Dever, Committee Clerk*

# 2023 SENATE STANDING COMMITTEE MINUTES

**Education Committee**  
Room JW216, State Capitol

SB 2343  
4/12/2023  
CONFERENCE COMMITTEE

Relating to defining a public entity governing body and state board of higher education policy.
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9:33 AM Chair Elkin opened the meeting. Present: Chair Elkin, Sen Conley, Sen Axtman, Chair Marschall, Rep Novak, and Rep Longmuir.

**Discussion Topics:**

- Section 3
- Executive committee
- Transparency issue

Rep Marschall brought amendment and verbally read to add section 3 from version .02005.

Sen Conley moved the Senate accede to House Amendments and further amend.  
(NOTE: Legislative Council changed these words to House Recede from House amendments and further amend with LC 23.0931.02006)

Sen Axtman seconded the motion.

ROLL CALL VOTE: YES – 6 NO – 0 Absent – 0 Motion PASSED

Sen Conley will carry the bill for the Senate.

Rep Marshall will carry the bill for the House.

9:43 AM Chair Elkin adjourned the meeting.

*Pam Dever, Committee Clerk*

Note: Committee met on April 14, 2023 at 9:02 AM to clarify the amendment. The actions remained as voted on today.

April 12, 2023

ST  
4-12-23

PROPOSED AMENDMENTS TO SENATE BILL NO. 2343

That the House recede from its amendments as printed on pages 1333 and 1334 of the Senate Journal and page 1393 of the House Journal and that Senate Bill No. 2343 be amended as follows:

Page 1, line 1, replace "a" with "two"

Page 1, line 1, replace "section" with "sections"

Page 1, line 1, replace "44-04" with "15-10"

Page 1, line 2, after the first "to" insert "the state board of higher education, reporting by the state commissioner of higher education, and"

Page 1, line 2, replace "a public entity governing body" with "the state board of higher education"

Page 1, line 2, remove the first "and"

Page 1, line 3, replace "sections" with "section"

Page 1, line 3, remove "and 44-04-17.1"

Page 1, line 3, remove "defining a"

Page 1, line 4, remove "public entity governing body and"

Page 1, line 4, after "policy" insert "; and to provide for a legislative management report"

Page 6, remove lines 9 through 31

Page 7, remove lines 1 through 31

Page 8, remove lines 1 through 30

Page 9, replace lines 1 through 23 with:

"**SECTION 2.** A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:

**State commissioner of higher education - Board member information access - Report to the legislative management.**

The state commissioner of higher education shall provide a report to the legislative management on state board of higher education policies regarding communications between board members and board member access to current and historic board information.

**SECTION 3.** A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:



**Records of the North Dakota university system and state board of higher education.**

29  
4-12-23

The North Dakota university system and the state board of higher education may not deny a member of the governing body access to a record that is closed or confidential, as defined in chapter 44-04, including a meeting record, whether written or recorded, unless otherwise prohibited by law."

Renumber accordingly



**REPORT OF CONFERENCE COMMITTEE**

**SB 2343:** Your conference committee (Sens. Elkin, Conley, Axtman and Reps. Marschall, Novak, Longmuir) recommends that the **HOUSE RECEDE** from the House amendments as printed on SJ page 1333, adopt amendments as follows, and place SB 2343 on the Seventh order:

That the House recede from its amendments as printed on page 1333 of the Senate Journal and page 1393 of the House Journal and that Senate Bill No. 2343 be amended as follows:

Page 1, line 1, replace "a" with "two"

Page 1, line 1, replace "section" with "sections"

Page 1, line 1, replace "44-04" with "15-10"

Page 1, line 2, after the first "to" insert "the state board of higher education, reporting by the state commissioner of higher education, and"

Page 1, line 2, replace "a public entity governing body" with "the state board of higher education"

Page 1, line 2, remove the first "and"

Page 1, line 3, replace "sections" with "section"

Page 1, line 3, remove "and 44-04-17.1"

Page 1, line 3, remove "defining a"

Page 1, line 4, remove "public entity governing body and"

Page 1, line 4, after "policy" insert "; and to provide for a legislative management report"

Page 6, remove lines 9 through 31

Page 7, remove lines 1 through 31

Page 8, remove lines 1 through 30

Page 9, replace lines 1 through 23 with:

**"SECTION 2.** A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:

**State commissioner of higher education - Board member information access - Report to the legislative management.**

The state commissioner of higher education shall provide a report to the legislative management on state board of higher education policies regarding communications between board members and board member access to current and historic board information.

**SECTION 3.** A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:

Insert LC: 23.0931.02006  
Senate Carrier: Conley  
House Carrier: Marschall

**Records of the North Dakota university system and state board of higher education.**

The North Dakota university system and the state board of higher education may not deny a member of the governing body access to a record that is closed or confidential, as defined in chapter 44-04, including a meeting record, whether written or recorded, unless otherwise prohibited by law."

Renumber accordingly

SB 2343 was placed on the Seventh order of business on the calendar.

# 2023 SENATE STANDING COMMITTEE MINUTES

**Education Committee**  
Room JW216, State Capitol

SB 2343  
4/14/2023  
Conference Committee

Relating to defining a public entity governing body and state board of higher education policy.
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9:02 AM Chairman Elkin opened the meeting. Present: Chair Elkin, Sen Conley, Sen Axtman, Chair Marschall, Rep Novak, and Rep Longmuir.

**Discussion Topics:**

- Senate accede

Chair Elkin asked for clarity on motion when conference committee met 4/12/23. It was decided the initial motion was correct for Senate to accede to House Amendments and further amend. NOTE: Legislative Council changed the words to House recede from House amendments and further amend on 4/19/23.

9:03 AM Chairman Elkin closed the meeting.

*Pam Dever, Committee Clerk*

**TESTIMONY**

**SB 2343**

Senate Education Committee

SB 2343

Testimony in support by Jeffry Volk, a SBHE member NOT representing the board.

January 31, 2023

Chairman Elkin and Committee Members

My name is Jeffry Volk, a member of the ND State Board of Higher Education (SBHE). My term as a member of the ND State Board of Higher Education began on July 1, 2021. I want to make it very clear I am here on my own behalf as a member of a board for a public entity. I do not represent the SBHE on this matter. I requested Senator Lee prepare and introduce this bill on my behalf specifically because of challenges I have with the SBHE as it relates to gaining access as a SBHE member to records, information and documents.

SB 2343 simply asks to add language to Chapters 15-10 and 44-04 of the NDCC making it clear that a member of the board of a public entity does not need to ask permission of the board of that public entity to gain access to the records of the public entity, whether those records were created before or while the individual requesting access to records is a member of the public entity. As a board member of a public entity you have the responsibility to be knowledgeable and prepared to discharge your duty to the public. Not having access to the same facts and information as other board members is a disservice to the member, the board and the public. Limiting access to information and records for any public entity board member smacks in the face of transparency and accountability.

I do not want to go deep in the weeds with my requests for records that have been denied, so I will briefly describe the first and latest incidents. There are several others.

My first request for a record was the very first day I became a member of the SBHE when I requested, and was ultimately denied, access to the recording of the SBHE executive session that occurred two days before I became a member. Interestingly, in addition to the SBHE members, the Chancellor and several NDSO staff were invited to attend this executive session while the newly appointed student member and I both drove to Minot to observe this SBHE meeting and had requested to be able to attend the executive session. We were not allowed to attend and ultimately, I was not allowed to listen to the recording.

Coincidentally, both of us were allowed to attend the SBHE executive session one month earlier.

My latest experience relates to a request I made to NDSO staff three months ago to receive more detailed enrollment data than what gets published in the annual fall enrollment reports and what was provided as a result of another SBHE member's request for supplemental enrollment data. After waiting for the data for a couple of months, which of itself is not the issue as I was told it would take several hours of time to compile the data, I recently got a call from the SBHE chair where he advised me going forward I was only allowed to ask staff for information that could be compiled in 5 minutes or less. Further I was advised by staff at our SBHE meeting last week that my now 3 month old enrollment data request was not on staffs list of things to do.

As I mentioned earlier, for me this is a transparency and an accountability matter. Public entities need to be transparent to the public they serve and for the board members that serve. Board members are accountable to the public. I take that responsibility seriously. I know gaining access to records is an important part of preparing and discharging my duty to the public. I should have access to the same NDUS records as any SBHE member who has served longer than I have.

I ask for your do-pass recommendation as SB 2343 moves to the Senate floor.

I am more than willing to stand for questions from the committee.

Thank you for your consideration and support.

Jeffrey J Volk, PE  
SBHE member  
1843 7<sup>th</sup> St E  
West Fargo, ND





## Senate Education Committee

January 31, 2023

Kathleen Neset

701.641.0004 | [kathleenneset@nesetconsulting.com](mailto:kathleenneset@nesetconsulting.com)

Chair Elkin and members of the Senate Education Committee. My name is Kathleen Neset and I served on the State Board of Higher Education from 2012 to 2021 and I also served as chair of the board from 2015 to 2017. I am here today to provide testimony in opposition to SB2343, which relates to board communications and release of closed, exempt, confidential, or other related records.

During my nine years on the board, executive session was used sparingly but intentionally. We used executive session to discuss topics like presidential performance, personnel actions, and contract negotiations. These extremely sensitive topics required openness and sometimes frank discussions related to specific individuals.

Because of that, we carefully limited participation in executive session to the fewest members possible. For example, if we were hiring a new campus president, salary negotiations were limited to a single board member (typically the chair), the chancellor, and legal counsel. We were purposeful about limiting participation because the more people have access to confidential information the greater the risk that confidential information could leak out.

SB2343 could increase the threat of a leak and in turn, it would create a chilling effect on the candid discussions that are required in executive session. Leaked information could be harmful to the individual being discussed or the board member's name that was attributed to specific comments. One needs to go no further than the latest news cycle to understand the concerns over the mishandling of closed, exempt, confidential information.

Moreover, the current law provides a public entity or governing body with discretionary authority to control access to closed, exempt, confidential, or other records which for one reason or another have been deemed so sensitive that an executive session is necessary. So there is a mechanism in

place for the board to determine whether a specific request for confidential information should or should not be accommodated. SB2343 would eliminate that discretionary authority.

Finally, SB2343 requires the State Board of Higher Education (SBHE) to establish “a policy ensuring transparent communication between members of the board” and provides that all members must have “equal access to all current and historic information.”

I am not sure how you would define transparent communication in policy or measure it in procedure. I can tell you that during my years on the board, we had multiple committees in place and they met on a routine basis. Committee chairs reported out at each SBHE meeting and committee actions were either confirmed, denied, or modified by vote of the full board.

New board members participated in a thorough onboarding process to include orientation on all issues pertinent to board operations. The NDUS office staff responded expediently to board member questions and information requests, within limits of available staffing & resources.

This concludes my testimony related to SB2343. I respectfully request a **Do Not Pass** because current law and Board policies already provide for the issues contained in the bill. I will stand for questions from Committee members.



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## Senate Education Committee

January 31, 2023

Mark Hagerott, Chancellor, NDUS  
701.328.2963 | mark.hagerott@ndus.edu

Chair Elkin and members of the Senate Education Committee. My name is Mark Hagerott, and I serve as the Chancellor of the North Dakota University System (NDUS). I am here today on behalf of the North Dakota University System and in opposition to SB2343, which relates to board communications and release of closed, exempt, confidential, or other related records.

I can attest that current state law and State Board of Higher Education (SBHE) policies already govern board communication and release of closed, exempt, confidential, or other records; therefore, the statutory changes proposed in SB2343 are unnecessary.

You have already or will receive testimony from former or current SBHE members and legal experts. I provide testimony from the perspective of the Office of the Chancellor.

Since assuming my current role in North Dakota, I have worked closely with four different SBHE chairs, five vice chairs, and thirty-five current and former board members. Of those three dozen SBHE members spanning more than eight years, there has been just one complaint about law and policy pertaining to protecting sensitive information. I dug deeper into historical records and could not find any additional documented complaints in recent history, other than this one issue.

I can offer additional perspectives on the benefits of maintaining current law. In short, NDCC 44-04-19.2, provides governing bodies like the SBHE with the ability to hold an executive session to consider closed, exempt, or confidential records. The law further provides governing body with the discretion to disclose the recording “upon majority vote of the governing body unless the executive session was required to be confidential.” What may not be apparent, is that the SBHE deals with exceptionally sensitive information, particularly as it relates to legal matters of a multi-billion-dollar enterprise, cyber security threats which may threaten the personal data of approximately 50,000

students and faculty, as well as highly sensitive academic searches involving candidates from across the nation.

Over eight years I have witnessed the SBHE use great discretion and exercise self-restraint in limiting the disclosure of sensitive information to protect students, faculty, academic candidates, and financial assets of the state of North Dakota. I have seen multiple situations wherein with a majority vote, the Board has limited the disclosure of sensitive information to members of itself, out of an abundance of caution, to protect candidates, the financial health of institutions, or cyber security information, to name just a few.

SB2343 would remove a public entity or governing body's discretionary authority to control access to closed, exempt, confidential, or other records which for one reason or another have been deemed so sensitive that an executive session is necessary. Removing the ability to determine who can view recordings of meetings that discuss presidential performance, personnel actions, or contract negotiations could be devastating for an individual, but also increase the possibility of release of sensitive cyber security or financial information.

In such a legal structure, the ability of the SBHE to self-discipline the release of sensitive and confidential information in presidential searches from a single, empowered SBHE member, to all ten current SBHE members or a potentially large number of future Board members. Such a profound expansion of the release of information may decrease the confidence of candidates of high-profile positions from applying, both in interim searches and the search for permanent employees. Removing the ability to determine who has access to exempt records related to presidential or other executive search committees and/or other sensitive topics could lead to failed searches or other unintended consequences.

Having observed the three dozen members of SBHE in action for eight years, under the leadership of multiple different chairs, I can assure you the SBHE already prioritizes communication with all board members while ensuring compliance with the State's open meetings and open records laws. To that end, the board has multiple committees to strengthen communication. The current



committees include Academic & Student Affairs, Audit, Budget & Finance, and Research & Governance. Agenda items/reports and action items are made available to all SBHE members & the public. Committee chairs report out at each SBHE meeting, and committee actions are either confirmed, denied, or modified by vote of the full board.

New board members participate in a thorough onboarding process to include orientation on all issues pertinent to board operations. The NDUS office staff respond expediently to board member questions and information requests, within limits of available staffing & resources.

This concludes my testimony related to SB2343. I respectfully request a **Do Not Pass** because current law and Board policies already provide for the issues contained in the bill. I will stand for questions from Committee members.

## **Senate Bill 2343**

**Senator Judy Lee, January 31, 2023 .**

SB 2343 enables access to documents important to a board's business to be available to new board members.

Section 1 applies to the State Board of Higher Education and calls for them to establish a policy ensuring transparent communication between members of the board on all topics relating to the specific powers and duties assigned to them. Each member must have equal access to all current and historic information relating to their discussions and duties.

This is intended to give new members of the board all of the information about current decisions being made by providing the background which came before a new board member's service. It is perfectly reasonable for any new person, whether hired in a business or appointed to a board, to know what has transpired before their arrival.

There has never been any intention of revealing information inappropriately. The documents will all be in the same categories in which they were originally placed, whether exempt or confidential. SB 2343 is to enable a current or incoming board member to have access to exempt records, for example, to understand all about a building project that may have begun before he or she joined the board. It is also appropriate in my view, for a new board member to have an idea of the caliber of candidates who have applied for various positions in order to understand if the best plans have been in place for recruiting new hires. The names would still be confidential.

I assume that the Board, just as some businesses do, has new members sign an agreement stating that documents that are viewed will remain confidential. If not, surely the orientation would make that clear. It is unacceptable to suggest that new members are going to publicize anything in an exempt or confidential document, just as it would be insulting to a physician or other health care provider to think that they will share health care information inappropriately after reviewing a chart. I am very familiar with confidentiality in my own work life.

Many positions have that expectation. You must trust your colleagues in order to work together well.

It is, of course, also ridiculous to think that departing Board members are going to forget everything that they have heard or seen in their years of service. They honor that expectation of confidentiality, too.

Page 8 line 28-30 defines 'public entity governing body' to include public boards, including a state institution of higher education.

Section 3 on page 9 states that a public entity may not deny a member of the governing body access to a closed, exempt, confidential or other record, including meeting records, whether written or recorded, which was created by or for the current or a prior governing body in the course of conducting the business of the public entity,

The business and activities of public boards must be transparent, with proper privacy for certain information as specified here, but with all information available to board members. The taxpayers supporting these public entities deserve to know that the people who are supposed to be conducting public business are able to have access to all information needed to make important decisions. Transparency is critical to good governing, always ensuring that the details which are protected remain that way.

SB 2343 is intended to support the good work of all public boards, including the board of higher education, by insuring that all board members have the information they need to contribute to the discussions and decisions being made.

Members will know that there will be information which cannot be shared outside of those board meetings, just as many of us have known in our work lives that much of what we have learned cannot be shared.

I respectfully request that you give favorable review to SB 2343 to support not only the boards which need all members to be fully informed in order to discuss and make wise decisions, but so citizens can trust that the work of the board is being done properly.





**SB 2343**  
**Testimony of Amy De Kok**  
**Senate Education Committee**  
**January 31, 2023**

Chairman Elkin and members of the committee, my name is Amy De Kok. I am General Counsel for the North Dakota School Boards Association. NDSBA represents all North Dakota public school districts and their boards. NDSBA stands in opposition to SB 2343.

NDSBA's opposition relates to the language in Section 3 of the bill. Section 3 prohibits a governing body of a public entity, including a school board, from denying a member of the governing body access to a closed, exempt, confidential or other record if the record was created by or for the current or prior governing body. The language does not take into account situations where it would be necessary or required for the governing body to deny access to one of its members. For example, the Family Educational Rights and Privacy Act (FERPA) prohibits the disclosure of student education records to third-parties without parental consent. This includes to school board members unless those individuals have a legitimate educational interest in having access and are designated as school officials for this purpose. There will rarely be a circumstance where a board member has a legitimate educational interest in having access to a student's records relating to a past experience. NDSBA recommends that the bill be amended to include language such as "Except as prohibit under title 34, Code of Federal Regulations, part 99" as the beginning of the paragraph referenced in Section 3.

In addition, the language in Section 2 does not take into account circumstances where a board member or member of the governing body may have a conflict of interest. If there is a conflict of interest, the governing body should have the ability to prohibit the board member with the conflict from accessing certain records relating to that conflict. Therefore, we recommend language be added to allow for this. For example, Section 2 could be amended to include the following language: "except when the member has a conflict of interest pursuant to section 15.1-07-17 or section 44-04-22."

For these reasons, NDSBA urges a Do Not Pass recommendation on SB 2343, and I am happy to stand for any questions. Thank you for your time.





**Testimony on SB 2343**  
**Presented to the House Education Committee**  
**Prepared by Bernie Dardis, West Fargo Commission President**  
**Monday, March 6, 2023**

1 Chairman Heinert and members of the House Education Committee: I would like  
2 to submit my testimony in support of SB 2343, which ensures open, transparent  
3 communication between members of the State Board of Higher Education (SBHE).

4 The SBHE's policy manual dictates that board members serve with a reasonable  
5 level of knowledge and advocate for quality, efficient and effective higher education  
6 in North Dakota. To provide this service, they must understand context and decisions  
7 from the past, so they may make thoughtful, strategic decisions for the future. This  
8 requires access to records they feel are necessary to understand North Dakota's higher  
9 education landscape.

10 Opponents to this bill testified that limiting access to records and executive  
11 sessions decreases the risk of information leaking out. This argument disregards the  
12 thorough vetting and selection process to select high-quality board members who  
13 agree to operate with the best interest of the SBHE at heart. Limiting access to this  
14 information also creates an imbalance of members who are knowledgeable and those  
15 who are not. How can a board have valuable, strategic conversations that lead to  
16 sound decisions when not everyone is privy to the same information?

17 When I became the City of West Fargo's Commission President, I requested a  
18 number of records from staff so that I could become knowledgeable about our  
19 policies, processes and decisions. I continue to make these requests so that I can serve  
20 the community in the best possible way. We do not select board members who can  
21 access certain information, because each vote holds the same weight. Therefore,  
22 each vote should have the same opportunity for information.

23 The same should be true for the SBHE. Board members wanting to understand  
24 the full context of a past or future decision should not experience roadblocks to

25 accessing that information. For these reasons, I ask that you support SB 2343 with a DO  
26 PASS recommendation.

27 Thank you,

28 

29 Bernie Dardis, Commission President  
30 City of West Fargo

House Education Committee

SB 2343

Testimony in support by Jeffry Volk, a SBHE member NOT representing the board.

March 15, 2023

Chairman Heinert and Committee Members

My name is Jeffry Volk, a member of the ND State Board of Higher Education (SBHE). My term as a member of the ND State Board of Higher Education began on July 1, 2021. I want to make it very clear I am here on my own behalf as a member of a board for a public entity. I do not represent the SBHE on this matter.

It seems ironic that during National Sunshine Week, as the nation celebrates years of progress with transparency and accountability of public entities by improved access to records for the public, today we're discussing challenges board members of public entities in North Dakota are having with gaining access to records and documents created for the public entity on which the board member serves. The challenges I have experienced may not be unique to the SBHE as Chapter 44 pertains to all public entities.

SB 2343 simply asks to add language to Chapters 15-10 and 44-04 of the NDCC making it clear that a member of the board of a public entity does not need to ask permission of the board of that public entity to gain access to the records of the public entity, whether those records were created before or while the individual requesting access to records is a member of the public entity.

A board member of a public entity has the responsibility to be knowledgeable and have access to all information surrounding any matter brought to a board before they are asked to vote on that matter. Not having access to the same information as other board members, simply because they have not served on the board as long, is a disservice to the new member, and ultimately to the full board and to the public. Limiting access to information and records to any board member of a public entity smacks in the face of transparency and accountability.

I do not want to go deep in the weeds with my requests for records that have been denied, so I will briefly describe the first and latest incidents. There are several others.

My first request for a record was the very first day I became a member of the SBHE. I requested, and was ultimately denied, access to the recording of an SBHE executive session that occurred just two days before I became a member. Currently NDCC 44-04-19.2 (5) states in part – ‘The recording may be disclosed upon majority vote of the governing body unless the executive session was required to be confidential.’ In this instance the attorney for the SBHE opined this section of the NDCC pertains to everyone – the public, the press as well as to current board members.

Interestingly, in addition to the SBHE members, the Chancellor and several NDSO staff were invited to attend the June 2021 executive session while both the newly appointed student member and I drove to Minot to observe this SBHE meeting and had requested to be able to attend the executive session. We were not allowed to attend the executive session. Ultimately, after multiple attempts over three months to have my request to listen to the tape of the executive session be placed on a SBHE meeting agenda, I needed to add the item to the SBHE agenda myself. With very limited board discussion I was denied the right to listen to the recording. Coincidentally, both the student member and I were invited to attend the May 2021 SBHE executive session.

My latest experience relates to a request I made to NDSO staff four months ago to receive more detailed enrollment data than what is published in the annual enrollment reports. After waiting for the data for several months, which of itself is not the issue as I was told it would take several hours of time to compile the data, I later received a call from the SBHE chair when he advised me going forward I was only allowed to ask the NDUS staff for information that could be compiled in 5 minutes or less. Further I was also recently advised that my now 4-month-old campus enrollment data request is not on staffs list of things to do.

As I mentioned earlier, this is a transparency and an accountability matter. Board members need to be held accountable for their decisions while public entities need to be transparent to the public. As a member of the SBHE I take this responsibility seriously. Gaining access

to critical records and data is an important part of preparing and discharging my duty to the public.

Newer board members of any public entity need to have equal access to the same records as any board member who may have served longer. Further, any board member who receives a record prepared for a prior board must hold that record in the same regard as when that record was made available to the prior board.

I ask for your do-pass recommendation for SB 2343 as it moves to the House floor.

I am more than willing to stand for questions from the committee.

Thank you for your consideration and support.

Jeffrey J Volk, PE  
SBHE member  
1843 7<sup>th</sup> St E  
West Fargo, ND



**SB 2343**  
**Testimony of Amy De Kok**  
**House Education Committee**  
**March 15, 2023**

Chairman Heinert and members of the committee, my name is Amy De Kok. I am General Counsel for the North Dakota School Boards Association. NDSBA represents all North Dakota public school districts and their boards. NDSBA stands in opposition to SB 2343.

NDSBA's opposition relates to the language in Section 3 of the bill. Section 3 prohibits a governing body of a public entity, including a school board, from denying a member of the governing body access to a closed, exempt, confidential or other record if the record was created by or for the current or prior governing body. The language does not take into account situations where it would be necessary or required for the governing body to deny access to one of its members. For example, the federal Family Educational Rights and Privacy Act (FERPA) prohibits the disclosure of student education records to third-parties without parental consent. This includes to school board members unless those individuals have a legitimate educational interest in having access and are designated as school officials for this purpose. There will rarely be a circumstance where a board member has a legitimate educational interest in having access to a student's records relating to a past experience. NDSBA recommends that the bill be amended to include language such as "Except as ed under title 34, Code of Federal Regulations, part 99" at the beginning of the paragraph referenced in Section 2.

In addition, the language in Section 2 does not take into account circumstances where a board member or member of the governing body may have a conflict of interest. If there is a conflict of interest, the governing body should have the ability to prohibit the board member with the conflict from accessing certain records relating to that conflict. Therefore, we recommend language be added to allow for this. For example, Section 2 could be amended to include the following language: "except when the member has a conflict of interest pursuant to section 15.1-07-17 or section 44-04-22."

For these reasons, NDSBA urges a Do Not Pass recommendation on SB 2343 in its current form, and I am happy to stand for any questions. Thank you for your time.

## House Education Committee

March 15, 2023

Kathleen Neset

701.641.0004 | kathleenneset@nesetconsulting.com

Chair Heinert and members of the House Education Committee. My name is Kathleen Neset and I served on the State Board of Higher Education from 2012 to 2021 and I also served as chair of the board from 2015 to 2017. I am providing written testimony in opposition to SB2343, which relates to board communications and release of closed, exempt, confidential, or other related records.

We already have safeguards in place to self-govern the release of sensitive information to protect students and hiring of new administrators, making this bill unnecessary. Existing Century Code (NDCC 44- 04-19.2), provides governing bodies like the SBHE with the ability to hold an executive session to consider closed, exempt, or confidential records. The law further provides the governing body with the discretion to disclose the recording “upon majority vote of the governing body unless the executive session was required to be confidential.” The SBHE deals with exceptionally sensitive information, particularly as it relates to legal matters of a multi-billion-dollar enterprise, cyber security threats which may threaten the personal data of approximately 50,000 students and faculty, as well as highly-sensitive academic searches involving candidates from across the nation.

The SBHE uses discretion to limit the disclosure of sensitive information to protect students, faculty, academic candidates, and financial assets of the state of North Dakota. I have seen multiple situations wherein with a majority vote, the Board has limited the disclosure of sensitive information to members of itself to protect candidates, the financial health of institutions, or cyber security information.

During my nine years on the board, executive session was used sparingly but intentionally. We used executive session to discuss topics like presidential performance, personnel actions, and contract negotiations. These extremely sensitive topics required openness and sometimes frank discussions related to specific individuals.

Because of that, we carefully limited participation in executive session to the fewest members possible. For example, if we were hiring a new campus president, salary negotiations were limited to a single board member (typically the chair), the chancellor, and legal counsel. We were purposeful

about limiting participation because the more people have access to confidential information the greater the risk that confidential information could leak out.

SB2343 could increase the threat of a leak and in turn, it would create a chilling effect on the candid discussions that are required in executive session. Leaked information could be harmful to the individual being discussed or the board member's name that was attributed to specific comments. One needs to go no further than the latest news cycle to understand the concerns over the mishandling of closed, exempt, confidential information.

Moreover, the current law provides a public entity or governing body with discretionary authority to control access to closed, exempt, confidential, or other records which for one reason or another have been deemed so sensitive that an executive session is necessary. So there is a mechanism in place for the board to determine whether a specific request for confidential information should or should not be accommodated. SB2343 would eliminate that discretionary authority.

Finally, SB2343 requires the State Board of Higher Education (SBHE) to establish "a policy ensuring transparent communication between members of the board" and provides that all members must have "equal access to all current and historic information."

I am not sure how you would define transparent communication in policy or measure it in procedure. I can tell you that during my years on the board, we had multiple committees in place and they met on a routine basis. Committee chairs reported out at each SBHE meeting and committee actions were either confirmed, denied, or modified by vote of the full board.

New board members participated in a thorough onboarding process to include orientation on all issues pertinent to board operations. The NDUS office staff responded expediently to board member questions and information requests, within limits of available staffing & resources. Opening past and prior executive sessions to new and future board members will have a chilling effect on the ability to have open and honest discussions in executive session. This may also keep future candidates to presidential positions reluctant to engage with ND Higher Education knowing their executive sessions may be seen by unknown future board members. New board members are very adequately updated on all board business.



This concludes my testimony related to SB2343. I respectfully request a **Do Not Pass** because current law and Board policies already provide for the issues contained in the bill. Please contact me directly if you need additional information.



March 15, 2023

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Kathleen Neset

NESET - President



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**House Education Committee**

March 15, 2023

Dr. Casey Ryan, Chair, North Dakota State Board of Higher Education  
701.780.3088 | casey.ryan.2@ndus.edu

Chair Heinert and members of the House Education Committee. My name is Dr. Casey Ryan and I am the current chair of the North Dakota State Board of Higher Education (SBHE) and I have served on the board since 2017. I am testifying today on behalf of the SBHE in opposition to SB2343, which relates to board communications and the release of closed, exempt, confidential, or other related records. At the February 23, 2023, SBHE meeting, the board voted 6-2 to oppose SB2343.

I want to focus my testimony by clearly distinguishing the difference between information and an exempt record. Current and historic *information* exists in prepared documents, reports, or datasets. Or, staff time may be necessary to research and produce the request for information.

An exempt record, on the other hand, is completely different. Exempt records are unique in that they typically contain extremely sensitive information that is exempt from public disclosure. State law and SBHE policies narrowly define when executive session can be used. State law and SBHE policy also narrowly defines the process for releasing an exempt record and its retention schedule.

During my six years on the board, the system office staff and the institutions have been forthcoming on providing the necessary information I have requested. Not once have I had any difficulty in getting answers to my requests for information. In short, I believe all board members already have equal access to current and historical information as it pertains to section 1 of SB2343. However, with respect to internal analysis and process improvement, I do support further review by the board of how information is requested by and provided to board members.

But the proposed changes in section 2 and 3 target exempt records, not just information. This is troubling. State law requires that executive sessions must be recorded and can only be released pursuant to court order or by Attorney General request for administrative review. The law further provides governing bodies with the discretion to disclose the recording "upon majority vote of the governing body unless the executive session was required to be confidential." This discretion would be eliminated by sections 2 and 3.

The proposed changes in sections 2 & 3 of SB2343 are there because one board member wanted access to one exempt record (the physical recording) that was created before the board member was seated on the board. Per state law and SBHE policy, the board voted 1-7 at the September 30, 2021, board meeting to not provide that exempt record to the board member. In short, law and policy is already in place to accommodate requests for an exempt record and the board acted in accordance with state law and procedure.

In summary, I would like to conclude my testimony by reiterating the clear difference between information and an exempt record. Information exists in many forms and many places. Sometimes the information has already been published and sometimes, the information request requires a heavy lift. I would be willing to lead the review of how information is requested by and provided to the board and individual board members. But, exempt records are already narrowly defined by state law – including when and how they can be used. They exist to minimize access to only the most sensitive information. It is essential that these laws remain unchanged.

This concludes my testimony for SB2343. I understand that Kathleen Neset, former board member and former president of the board has submitted testimony and I would encourage you to review it.

Meanwhile, I respectfully request a **Do Not Pass** because current law and Board policies already provide for the issues contained in the bill. I will stand for questions from Committee members.



## House Education Committee

March 15, 2023

Mark Hagerott, Chancellor, NDUS  
701.328.2963 | mark.hagerott@ndus.edu

Chair Heinert and members of the House Education Committee, My name is Mark Hagerott, and I serve as the Chancellor of the North Dakota University System (NDUS). I am here today on behalf of the State Board of Higher Education (SBHE) & NDUS in opposition to SB2343, which relates to board communications and release of closed, exempt, confidential, or other related records.

The SBHE voted on 2/23/2023 to **oppose SB2343**, which eliminates the statutory authority of all public entities or governing bodies to control access to closed, exempt, confidential, or other records arising from an executive session. **SB2343** also encroaches on the SBHE's authority to establish governance policies surrounding board communications.

SBHE Chairman Casey Ryan and SBHE Member Nick Hacker explained the Board's objections to Sections 2 & 3 of bill regarding release of closed, exempt, and confidential records from an executive session. I whole-heartedly agree with their position and respectfully request Sections 2 & 3 not be approved. My testimony focuses on the changes proposed in Section 1.

Section 1 directs the SBHE to establish policies to ensure transparent communication between board members and provide equal access to all current and historic information. Having observed the three dozen members of SBHE in action for eight years, under the leadership of multiple different chairs, I can assure you the SBHE already prioritizes communication with all board members while ensuring compliance with the State's open meetings and open records laws. To that end, new board members also participate in a thorough onboarding process to include orientation on all issues pertinent to board operations.

Additionally, the board has multiple committees to strengthen communication. The current committees include Academic & Student Affairs, Audit, Budget & Finance, and Research & Governance. Agenda items/reports and action items are made available to all SBHE members & the

public. Committee chairs report out at each SBHE meeting, and committee actions are either confirmed, denied, or modified by vote of the full board.

The NDUS office staff responds expediently to board member questions and information requests, within limits of available staffing & resources. The board member who initiated this bill submitted nine requests for information in less than a two-month period with the first eight requests fulfilled. These requests consumed more than a half-week of staff work of the lone institutional researcher in the System Office. Fulfilling the ninth request would have consumed considerable time. So at the direction of the chair of the SBHE, the system office was directed to devote time and effort to the board's budget request for the Governor's office and legislative preparation.

System Office staff continue to work closely with this board member and the other 10 members to ensure they are provided adequate information to make board decisions. The SBHE and System Office also continually look to improve policies & procedures. If the legislature passes Section 1 of the bill, the board will work diligently to implement the changes and will gladly provide a progress report to the Interim Higher Education Committee.

In conclusion, I stand opposed to SB2343, especially sections 2 & 3 which eliminate the statutory authority of all public entities or governing bodies to control access to closed, exempt, confidential, or other records arising from an executive session. I respectfully request a Do Not Pass on the bill or the removal of sections 2 & 3.

**House Education Committee**

SB 2343 Hearing

Nick Hacker, Member, State Board of Higher Education  
(240) 688-2210 | nicholas.hacker@ndus.edu

Chair Heinert and members of the House Education Committee. My name is Nick Hacker and I am finishing my eighth year and second term as a member of the North Dakota State Board of Higher Education (SBHE). I also served as chair of the board from 2019-2021. I am here today on behalf of the SBHE in opposition to SB 2343, which relates to board communications and the release of closed, exempt, confidential, or other related records. The Board rarely takes official positions on legislation. At the February 23rd meeting it voted 6-2 to oppose SB 2343.

This bill in front of you today is from a single grievance from a member of the SBHE. The board member requested access to an exempt record of an executive session that occurred **prior** to the member taking their seat on the board when they were a member of the public.

Current state law limits access to exempt records created by any public board across North Dakota because exempt records typically contain sensitive information ranging from the hiring of campus presidents and their contract renewals to financial matters and cybersecurity protocols.

There is a clear distinction between information and an exempt record. The board members are provided with ample information related to all matters that came before the board prior to their service. The only thing that is not provided is who specifically said what during the sensitive discussions in executive session.

NDCC 44-04-19.2, provides governing bodies like the SBHE with the ability to hold an executive session to consider closed, exempt, or confidential records. Executive sessions must be recorded and can only be released pursuant to court order or to the Attorney General for administrative review. The law further provides governing body with the discretion to disclose the recording “upon majority vote of the governing body unless the executive session was required to be confidential.”



In compliance with Century Code and SBHE policy 311(10)(a)(i), a member requested to review and listen to executive sessions prior to their service on the board. The request was brought before the SBHE on September 30, 2021. After a motion, a second, and discussion, the SBHE voted 7-1 to deny access to the exempt records that were requested. Reasons for the denial included the precedent that would be set for opening exempt records and potential litigation risks.

Sections 2 and 3 of SB2343, the most concerning part of the bill, would eliminate the authority of all public entities or governing bodies, such as the SBHE and local school boards, to control access to closed, exempt, confidential records.

I can tell you firsthand that executive session is narrowly defined and used sparingly by the board. It represents just a sliver – albeit an important sliver – of the volume of information that is provided to existing board members and incoming board members.

Over eight years I have witnessed the SBHE use great discretion and exercise self-restraint in limiting the disclosure of sensitive information to protect students, faculty, academic candidates, and financial assets of the state of North Dakota. I have seen multiple situations wherein with a majority vote, the Board has limited the disclosure of sensitive information to members of itself, out of an abundance of caution, to protect candidates, the financial health of institutions, or cyber security information, to name just a few. The SBHE also used this discretion to allow this same board member, before being appointed to the board, to participate in a May 27, 2021, executive session.

This concludes my testimony related to SB2343. I respectfully request a **Do Not Pass** because current law and Board policies already provide for the issues contained in the bill. I will stand for questions from Committee members.

## **Senate Bill 2343**

**Senator Judy Lee, March 15, 2023**

SB 2343 enables access to documents important to a board's business to be available to new board members.

Section 1 applies to the State Board of Higher Education and calls for them to establish a policy ensuring transparent communication between members of the board on all topics relating to the specific powers and duties assigned to them. Each member must have equal access to all current and historic information relating to their discussions and duties.

This is intended to give new members of the board all of the information about current decisions being made by providing the background which came before a new board member's service. It is perfectly reasonable for any new person, whether hired in a business or appointed to a board, to know what has transpired before their arrival.

There has never been any intention of revealing information inappropriately. The documents will all be in the same categories in which they were originally placed, whether exempt or confidential. SB 2343 is to enable a current or incoming board member to have access to exempt records, for example, to understand all about a building project that may have begun before he or she joined the board. It is also appropriate in my view, for a new board member to have an idea of the caliber of candidates who have applied for various positions in order to understand if the best plans have been in place for recruiting new hires. The names would still be confidential.

I assume that the Board, just as some businesses do, has new members sign an agreement stating that documents that are viewed will remain confidential. If not, surely the orientation would make that clear. It is unacceptable to suggest that new members are going to publicize anything in an exempt or confidential document, just as it would be insulting to a physician or other health care provider to think that they will share health care information inappropriately after reviewing a chart. I am very familiar with confidentiality in my own work life.



Many positions have that expectation. You must trust your colleagues in order to work together well.

It is, of course, also ridiculous to think that departing Board members are going to forget everything that they have heard or seen in their years of service. They honor that expectation of confidentiality, too.

Page 8 line 28-30 defines 'public entity governing body' to include public boards, including a state institution of higher education.

Section 3 on page 9 states that a public entity may not deny a member of the governing body access to a closed, exempt, confidential or other record, including meeting records, whether written or recorded, which was created by or for the current or a prior governing body in the course of conducting the business of the public entity,

The business and activities of public boards must be transparent, with proper privacy for certain information as specified here, but with all information available to board members. The taxpayers supporting these public entities deserve to know that the people who are supposed to be conducting public business are able to have access to all information needed to make important decisions.

Transparency is critical to good governing, always ensuring that the details which are protected remain that way.

SB 2343 is intended to support the good work of all public boards, including the board of higher education, by insuring that all board members have the information they need to contribute to the discussions and decisions being made.

Members will know that there will be information which cannot be shared outside of those board meetings, just as many of us have known in our work lives that much of what we have learned cannot be shared.

I respectfully request that you give favorable review to SB 2343 to support not only the boards which need all members to be fully informed in order to discuss and make wise decisions, but so citizens can trust that the work of the board is being done properly.

### Section 3

No member of the state board of higher education may ~~serve on~~ be a member of any other board of any higher education institution in the State of North Dakota.

Section 3 → Section 4

PROPOSED AMENDMENTS TO SENATE BILL No. 2343

Page 6, after line 8 replace the remainder of the bill with:

**SECTION 2.** A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:

State commissioner of higher education – Board member information access – Report to interim higher education committee.

The state commissioner of higher education shall provide a report to the interim higher education committee on state board of higher education policies regarding communications between board members and board member access to current and historic board information.

~~signature validation~~

23.0931.02001  
Title.

Prepared by the Legislative Council staff for  
Senator Lee

March 15, 2023

PROPOSED AMENDMENTS TO SENATE BILL NO. 2343

Page 1, line 3, replace "sections" with "section"

Page 1, line 3, remove "and 44-04-17.1"

Page 1, line 3, remove "defining a"

Page 1, line 4, remove "public entity governing body and"

Page 6, remove lines 9 through 31

Page 7, remove lines 1 through 31

Page 8, remove lines 1 through 30

Page 9, remove lines 1 through 16

Page 9, line 21, replace ". exempt record." with "or"

Page 9, line 21, remove ". or other record"

Page 9, line 22, remove "which was created by or for the current or a prior governing"

Page 9, line 23, replace "body in the course of conducting the business of the public entity" with "except as otherwise prohibited by law"

Renumber accordingly

## PROPOSED AMENDMENTS TO SENATE BILL NO. 2343

Page 8, line 28 remove “Public entity governing body” means a body of members, including a board , which is granted the administration and control of a public entity, including a state institution of higher education.

Page 9, line 21 remove “closed record, exempt record, confidential record, or other record”

Page 9, line 21 after the first “a” insert “that is closed or confidential as defined in chapter 44-04.”

Page 9, line 22 after “recorded” insert “unless otherwise provided by law.”

Page 9, line 22 remove “which was created by or for the current or a prior governing”

Page 9, line 23 remove “body in the course of conducting the business of the public entity.”

Renumber accordingly