

2017 SENATE GOVERNMENT AND VETERANS AFFAIRS

SB 2195

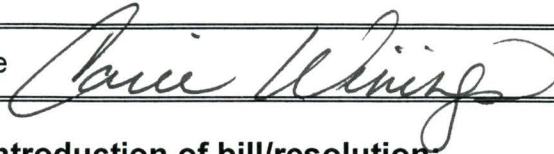
2017 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Sheyenne River Room, State Capitol

SB 2195
1/20/2017
Job Number 27170

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 44-04-18.15 of the North Dakota Century Code, relating to exempting donor records from public disclosure under open records laws.

Minutes:

Attachments: 1

Chairman Poolman: Opened the hearing SB 2195.

Senator Wardner, District 37: Testified to introduce and in support of SB 2195. I put the bill in for the non-profits. Some of the non-profits are considered public entities, therefore, they are subject to the open records laws. Which means they have to open up their books so that people can see who the donors were and how much they get. Of course there are others that donor records and non-profits affiliated with higher education and the university system that don't have to do that. This bill allows for them to not be open record where people can go in and look at the donation amounts. It makes it a level playing field between the two different groups. In regards to non- profits – if we are going to deal with all of the social issues in the state, (Gives examples) we need them. Anything we can do to help them be successful and contribute to the solutions, I think we need to do. I look at it 3 ways; you have the government, the private sector, and the non-profits. Together we are going to get it done. You cannot expect that the government is going to solve everything.

(2:30) Dana Schaar Jahner, Executive Director, North Dakota Association of Nonprofit Organizations: See Attachment #1 for testimony in support of the bill.

(5:05) Senator Bekkedahl: On this list that you provided in your testimony, are all of those ones that would be effected by this bill or is the list both public and private?

Dana Schaar: That is correct, not all of them would be subject to open records law but they are signing on just in support of protecting donor records across the state.

Chairman Poolman: You mentioned that not everyone who receives public tax dollars becomes subject to open records. Would that include if we talk about receiving Medicaid

reimbursements as part of what you do? Does that count or are we talking about direct appropriations that make them public?

Dana Schaar: I am not an expert on open records laws but as I understand it there are three ways that a non-profit organization could be deemed a public entity for purposes of open records laws; 1. If they are created by the state. 2. If they expend public funds. (but typically that would only be the case if it was not a fee for service kind of thing or for a contract and 3. If the organization is considered an agency of a government. Where they are performing a government function.

(7:50) Jack McDonald, North Dakota Newspaper Association and North Dakota Broadcasting Association: Testified in neutral capacity. Normally we oppose the closing of records, however, when Section 44-04-18.5 was created about 15 years ago we did not oppose it because we felt as a group that the donor information was not necessary or not needed for public information. What this law does is protect just the donor information and not any other information about what these groups do. Over the years, the university foundations have been held to be public entities because basically they are doing some public work. They do not always receive public funds. In fact, a lot of them don't. Some of them are housed on the campuses of universities so they receive benefits of the building, electricity, and rent etc. Often times they are not located on campus so they do not get public money, they get donor money, but they are performing public duties etc. It is important that the law is held that they are public entities, but the donor records are not something that our organizations are seeking. We will keep an eye on it. The key line is line 17 where the public entity is exempt. That is why they crossed the Board of Education off. It is not already exempt because these organizations are not part of the university system. We do think this is a legitimate exemption.

(10:15) Chairman Poolman: You bring up a good point by pointing out that it is just the donor's identification that is protected. People can still go in and find out how much they have raised.

Jack McDonald: You can find out the numbers and what they are doing with them. (Gave an example) If you put it in the general fund, then all the information becomes public. If they are doing public work, then the information is public.

Chairman Poolman: Asked for any further testimony and there was none. Closed the hearing on SB 2195. Asked the committee's wishes.

Senator Bekkedahl: Moved a Do Pass.

Senator Meyer: Seconded.

A Roll Call Vote Was Taken: 5 yeas, 0 nays, 1 absent.

Motion Carried.

Senator Bekkedahl will carry the bill.

Date: 1/20
 Roll Call Vote #: 1

**2017 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2195**

Senate Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Bekkedahl Seconded By Meyer

Senators	Yes	No	Senators	Yes	No
Chairman Poolman	✓		Senator Marcellais	✓	
Vice Chairman Davison	Ab				
Senator Bekkedahl	✓				
Senator Meyer	✓				
Senator Vedaa	✓				

Total (Yes) 5 No 0

Absent 1

Floor Assignment Bekkedahl

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

REPORT OF STANDING COMMITTEE

SB 2195: Government and Veterans Affairs Committee (Sen. Poolman, Chairman)
recommends **DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
SB 2195 was placed on the Eleventh order on the calendar.

2017 HOUSE JUDICIARY

SB 2195


2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2195
3/21/2017
29512

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to exempting donor records from public disclosure under open records laws.

Minutes:

1

Chairman K. Koppelman: Opened the hearing on SB 2195.

Senator Wardner: Introduced the bill. (1:45) Went through the bill. State government cannot take care of all the needs out there. We have the non-profits out there and they are our partners. The non-profits are the friend of government. This helps the non-profits fund raise. There are people out there if they know they name is going to be out there they are not going to give.

Representative Paur: I wonder if you are mistaken on the exempt. Exempt gives them the option of keeping the records sealed or not. Would it had been better to be confidential?

Senator Wardner: That is possible. This is the way the representative of the non-profits wanted it done.

Representative Klemin: On that issue. I think if it was confidential the organization couldn't release that information even if they wanted to and maybe it would have to be the donor who would have to release it. The UND School of Medicine wants \$100 million dollars to name the building; certainly they would want to announce that. If it was confidential that might not be able to do it because it is exempt under subsection 1 of this bill under existing law. By a non-profit organization that is a public entity? So this is distinguishing between non-profit organizations and ones that are a public entity. I am trying to think of a non-profit organization that is a public entity. Could you give me an example?

Senator Wardner: I can't but someone here can. Someone here can.

Representative Klemin: Subsection 1 deals with university's and affiliated non-profit organizations.

Chairman K. Koppelman: The holder of the record has the power whether or not to release it and yet it is they who are seeking the anonymity so they would be judicious about not releasing it unless there was a reason they would want to. Government doesn't protect records for someone who is not a public entity.

Senator Wardner: It is your bill now so look out for the non-profits.

Dana Shaar Jahner, NDANO Executive Director: (#1) Went through testimony.
7:50-10:08)

Representative Vetter: Why wouldn't we include all non-profits?

Dana Jahner: If an organization isn't considered public entity than their records are never open to the public in terms of donor records.

Chairman K. Koppelman: You are saying if an organization that we would typically think is a public entity is not a public entity is considered a public entity or agent because they are involved in a project that is a public project in some way; your point is they could shield any of their information from the public view to the extent they are a private organization and do private work and except donations from people as a private entity, but that the donations received as part of that public activity could be claimed to be open records so this bill allows them the ability to exempt that.

Dana Johner: Yes that is correct. As we understand current law; say they received a \$3000 grant from the ND Counsel of Arts to present a theater production for example. That would open up all the records relating to that particular production to open records. We wanted to make sure those donors supporting that would remain be exempt. We are concerned about the private donor information that would not be accessible to the public in this case.

Representative Klemin: Most non-profit organizations are organized with some kind of 503 c; the ones that are also considered a public entity because they might receive some public funds. The Attorney General held that those records would be open if they had received some public funds. Does that mean an organization like the Chamber of Commerce might want to keep some of their donor's private could do that and not keep some of their donor's private because they wanted other prospective donors to know who all the members were and they could be selective on deciding who is private and who isn't?

Dana Johner: As I understand the law; only the portions of that organizations activities that are supported by public funds would be subject to open records. In terms of the Greater ND Chamber, they are not a charitable non-profit 501 c 3 which is primarily who we represent.

Representative Klemin: These non-profits since they are exempt they could be selective on whose names they were going to release and whose name they are not going to release. That would be the case under this wouldn't it be?

Dana Johner: I believe it is up to the donor or organization to decide what information would be released. We are concerned about additional information beyond a person's name.

Representative Klemin: Has there been a problem with this? Our open records laws have been around since state hood.

Dana Johner: We were working on a best practice program this fall and we were reviewing century code and actually didn't realize that donor information wasn't exempt.

Representative Paur: A lot of organizations it is a common practice to share or sell their donor lists? Is that a practice in the ND non-profits?

Dana Johner: I am not aware of that happening in the state.

Representative Simons: There has never been an issue before of this happening. Can you give us an example where this could be a problem?

Dana Johner: Say a theater non-profits received a \$3000 grant from the arts to do this. In additional they receive donations from other individuals for that production. As we understand current law, if someone made a request to that theater non-profit to request donor information that is not exempt at this time so all the donor information they had collected related to that particular production would have to be shared.

Chairman K. Koppelman: If there is an organization that is strictly a private non-profit organization and it received donations and does its work; it is always assumed its information is its information and they can choose to share it or not. Then all of a sudden some government entity gives it some money for some reason and all of a sudden; they are caught up in this public record issue and the records related to that are public records. Your intent of the bill is to make sure just as with all the other donations they received it is their discursion whether to share it or not. Is that accurate?

Dana Johner: That is correct. The majority of organizations do not fall under this public records law.

Chairman K. Koppelman: Is there any potential for an organization to somehow have all their records exposed under open records? Are you confident that is even in those situations; it is only the donations that are attached to that public funding?

Dana Johner: I understand it is related to that particular funding. I am not an expert on open records laws.

Representative Klemin: If the park district gives some money to a non-profit organization; is that donation by the park district become exempt?

Dana Johner: I believe that the particular information about that would become exempt if there was an open records request. We are concerned about personnel contact information; estate plans and financial plans. Some donors do want to be unanimous and we think they should be able to do that.

Representative Klemin: Is that information of that donation from a public entity to another public entity in that example. My question was being that information from that donation from that public entity to this non-profit public entity exempt?

Dana Johner: I would suspect that is probably not. It is government funding, which would be open. The park district could provide that information.

Representative Klemin: What you are talking about any non-public donors who makes this donation; that is probably exempt. For public donors for a public entity, I am not sure why that should be exempt.

Chairman K. Koppelman: That may be true in subsection 1 of the bill as well; which is current law you could read it that way.

Opposition: None

Neutral: None

Hearing closed.

2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2195
3/21/2017
29526

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Minutes:

1

Chairman K. Koppelman: Opened the meeting on SB2195. Passed out an emailed (#1) He had requested some information about whether a public entity could claim exemption to its records if donated to a non-profit organization that is a public entity under the language of the bill and his example was if a park district gave a contribution to somebody could that organization then shield the fact that it received money from a public entity? The answer here that they think perhaps they could. So adding private before donor or prospective donor would clear up that confusion.

Motion Made to Move the amendment on line 8 & 14 of the bill after the word private after any in the new language of the bill by Rep. Klemin; Seconded by Rep. Jones

Discussion:

Rep. Satroms: We are not forbidding people from getting the information out there if they want to do it; are we?

Chairman K. Koppelman: The wording of the bill is exempt information and this is information that can be disclosed or can be withheld based at the judgement of the organization.

Rep. Simons: What would happen if a charitable donation was maybe going corrupt or something or did something not honest and someone who had money gave to that organization?

Chairman K. Koppelman: I think if there was an official investigation by law enforcement or a court ordered release of information that could still be able to get it.

Voice Vote Carried.

Do Pass as Amended Motion Made by Rep. Simons; Seconded by Rep. Roers Jones

Discussion:

Representative Nelson: This is not a necessary bill at all. I am going to resist the do pass.

Representative Paur: Is this really necessary for records to be open if public funds and as far as those funds go; but we are talking about private funds.

Representative Nelson: Let's say you are doing a particular program and you get a bunch of public funds for that; as long as you don't commingle all your funds; just the information for that program would be public. I don't think this performs any function.

Chairman K. Koppelman: The testimony stated three reasons under which non-profits are or could be considered public entities under state law and therefore subject to open record laws. Discussed the differences.

Representative Simons: I won't be voting for this bill. I wish to withdraw my motion.

Representative Roers Jones: I do not want to withdraw mine.

Chairman K. Koppelman: Then the motion stands.

Representative Klemin: In this situation we are not talking about public money here. We are talking about private donors.

Chairman K. Koppelman: Gave an example. (11:10)

Representative Jones: This is public entities we are talking about?

Chairman K. Koppelman: Yes, they can be classified as a public entity by some circumstance. Either they receive some public money for a project or they have a record that is considered a public record for some reason and sometimes that can get them classified as a public entity. When that happens do they then have to release their list of private donors; they phone numbers and addresses?

Representative Jones: This summer we had the DAPL protest going on; then the donors to that protest can be charged.

Chairman K. Koppelman: This is public information and you can ask for it. Should it be appropriate for private non-profit donations.

Roll Call Vote: 11 Yes 3 No 1 Absent **Carrier: Rep. Karls**

Closed.

3/21/17 DO

17.0731.01001
Title.02000

Adopted by the Judiciary Committee

March 21, 2017

PROPOSED AMENDMENTS TO SENATE BILL NO. 2195

Page 1, line 8, after "Any" insert "private"

Page 1, line 14, after "Any" insert "private"

Renumber accordingly

**2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2195**

House **Judiciary** Committee

Subcommittee

Amendment LC# or Description: **amendment on line 8 & 14 of the bill after the word private**
 after any in the new language of the bill, 17.0731.01001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Rep. Klemin Seconded By Rep. Jones

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman			Rep. Hanson		
Vice Chairman Karls			Rep. Nelson		
Rep. Blum					
Rep. Johnston					
Rep. Jones					
Rep. Klemin					
Rep. Magrum					
Rep. Maragos					
Rep. Paur					
Rep. Roers-Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

0 Total (Yes) _____ No _____

Absent _____

Floor Assignment Rep.

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

Voice Vote Carried

**2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2195**

House **Judiciary** Committee

Subcommittee

Amendment LC# or Description: **17.0731.01001**

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Simons Seconded By Rep. Roers Jones

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman	X		Rep. Hanson	X	
Vice Chairman Karls	X		Rep. Nelson		X
Rep. Blum	X				
Rep. Johnston		X			
Rep. Jones	X				
Rep. Klemin	X				
Rep. Magrum	---				
Rep. Maragos	X				
Rep. Paur	X				
Rep. Roers-Jones	X				
Rep. Satrom	X				
Rep. Simons		X			
Rep. Vetter	X				

0
Total (Yes) 11 No 3

Absent 1

Floor Assignment Rep. Karls

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

REPORT OF STANDING COMMITTEE

SB 2195: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING). SB 2195 was placed on the Sixth order on the calendar.

Page 1, line 8, after "Any" insert "private"

Page 1, line 14, after "Any" insert "private"

Renumber accordingly

2017 TESTIMONY

SB 2195

SB 2195 1-20-17 #1 pg 1

**Testimony by Dana Schaar Jahner, NDANO Executive Director
Senate Government and Veterans Affairs Committee
In Support of SB 2195
Friday, January 20, 2017**

Chairman Poolman and Members of the Committee, my name is Dana Schaar Jahner, and I am the executive director of the North Dakota Association of Nonprofit Organizations (NDANO). We are here today to express our support for Senate Bill 2195.

NDANO is a membership organization of more than 170 nonprofit members from all across North Dakota working in many different mission areas – from human services and the environment to education and the arts. Charitable nonprofits are vital to North Dakota and provide public benefits that strengthen our urban and rural communities.

Some North Dakota nonprofits are considered public entities under state law, generally if they are supported in part by public funds, and are therefore subject to open records laws. Nonprofits are required to make significant public disclosures regarding our governance and finances and are the most transparent segment of the economy, but we do not believe that personal donor information such as contact information, tax records, and estate plans should be subject to open records laws. Donors provide essential revenue to nonprofits to carry out their charitable missions to advance the public good across the state. NDANO believes that donor records of all nonprofits, not just those organizations affiliated with higher education or the university system, should be exempt from open records laws.

NDANO asks for a do pass recommendation on SB 2195 to ensure donors continue to feel confident in supporting North Dakota nonprofits without concern about their personal information becoming public.

Nonprofits in Support of SB 2195

Anne Carlsen Center	Jamestown
Beyond Shelter Inc.	Fargo
Catholic Charities North Dakota Centre Inc.	Fargo
Charles Hall Youth Services	Fargo, Grand Forks & Mandan
Development Homes Inc.	Bismarck
Dickinson Public Schools Foundation	Grand Forks
FirstChoice Clinic	Dickinson
Gateway to Science	Fargo, Bismarck & Devils Lake
Grand Forks Senior Center	Bismarck
North Dakota Community Foundation	Grand Forks
Outdoor Adventure Foundation	Statewide (Bismarck, Grand Forks & Dickinson)
Prairie Learning Center Foundation	Fargo
The Tom and Frances Leach Foundation	Raleigh
Theodore Roosevelt Presidential Library Foundation	Bismarck
United Way of Grand Forks, East Grand Forks & Area	Dickinson
Valley Memorial Foundation	Grand Forks

**Testimony by Dana Schaar Jahner, NDANO Executive Director
House Judiciary Committee
In Support of SB 2195
Tuesday, March 21, 2017**

#1
2195
3-21-17

Chairman Koppelman and Members of the Committee, my name is Dana Schaar Jahner, and I am the executive director of the North Dakota Association of Nonprofit Organizations (NDANO). I am here to express our support for Senate Bill 2195.

NDANO is a membership organization of more than 170 nonprofit members from all across North Dakota working in many different mission areas – from human services and the environment to education and the arts. Charitable nonprofits are vital to North Dakota and provide public benefits that strengthen our urban and rural communities.

Some North Dakota nonprofits are considered public entities under state law and are therefore subject to open records laws. According to the North Dakota Attorney General's Open Records Manual, there are three such circumstances:

- First, the organization may be created or recognized by state law or by an action of a political subdivision to exercise public authority or perform a governmental function.
- Second, an organization may be a "public entity" if the organization is supported by public funds or is expending public funds.
- Third, even if an organization is paid fair market value for the services it provides, the organization may be considered an agent or agency of a public entity if the organization performs a governmental function or possesses records regarding public business on behalf of or in place of a public entity.

The types of nonprofits that are sometimes deemed public entities in North Dakota include arts organizations, humane societies, historical societies, and domestic violence organizations.

Nonprofits are required to make significant public disclosures regarding our governance and finances and are the most transparent segment of the economy, but we do not believe that personal donor information such as contact information, tax records, and estate plans should be subject to open records laws. Donors provide essential revenue to nonprofits to carry out their charitable missions to advance the public good across the state. NDANO believes that donor records of all nonprofits, not just those organizations affiliated with higher education or the university system, should be exempt from open records laws.

NDANO asks for a do pass recommendation on SB 2195 to ensure donors continue to feel confident in supporting North Dakota nonprofits without concern about their personal information becoming public.

Nonprofits in Support of SB 2195

Anne Carlsen Center	Jamestown
Beyond Shelter Inc.	Fargo
Bishop Ryan Catholic School Foundation	Minot
Catholic Charities North Dakota	Fargo
Centre Inc.	Fargo/Grand Forks/Mandan
Charles Hall Youth Services	Bismarck
Development Homes Inc.	Grand Forks
Dickinson Public Schools Foundation	Dickinson
FirstChoice Clinic	Fargo/Bismarck/Devils Lake
Gateway to Science	Bismarck
Global Friends Coalition	Grand Forks
Grand Forks Senior Center	Grand Forks
Lutheran Social Services of North Dakota	Statewide
Minot Area Homeless Coalition	Minot
North Dakota Community Foundation	Statewide (Bismarck/Grand Forks/Dickinson offices)
Outdoor Adventure Foundation	Fargo
Prairie Learning Center Foundation	Raleigh
The Tom and Frances Leach Foundation	Bismarck
Theodore Roosevelt Presidential Library Foundation	Dickinson
United Way of Grand Forks, East Grand Forks & Area	Grand Forks
Valley Memorial Foundation	Grand Forks

#1 PM
2195
3-21-17

Klemin, Lawrence R.

From: DePountis, Sandra L.
nt: Tuesday, March 21, 2017 9:26 AM
b: Klemin, Lawrence R.
Subject: SB 2195

Representative Klemin:

I'm following up on the question you posed during the hearing on SB 2195 on whether a public entity could claim exemption to its records if it donated to a nonprofit organization that is a public entity under the language of the bill.

I think a nonprofit could claim exemption to all of its donor records which would include donations received from a public entity with the way the draft language is written. The public entity making the donation, however, would not be able to claim such an exemption. The public would have the right to demand financial records of its public entity and it would need to disclose such records which would include donations made to the nonprofits. Adding in "private" before donor or prospective donor, would clear up this confusion.

I hope the above makes sense. I would be happy to discuss further or answer any other questions.

Sincerely,

Sandra DePountis
Assistant Attorney General
ate of North Dakota

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