

2019 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1363

2019 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Fort Union Room, State Capitol

HB 1363
2/1/2019
32015

- Subcommittee
 Conference Committee

Committee Clerk Carmen Hart by Marjorie Conley

Explanation or reason for introduction of bill/resolution:

Relating to maintaining and providing records; to provide for application; and to declare an emergency

Minutes:

Attachments 1-7

Chairman Kasper: opened the hearing on HB 1363.

Rep. Bill Devlin appeared in support. Attachment 1 and 2. End 2:34

Rep. Schauer: Governor's office breaking the open records law?

Rep. Devlin: Yes. We are not questioning security.

Rep. B. Koppelman: Would it satisfy your concerns if these requests were made public? You wouldn't expect to get the information in real time, like 30 days later, that would be satisfactory wouldn't it?

Rep. Devlin: After the fact public needs to know. I think the public has a right to know.

Rep. Rohr: You say the record needs to be retained for 3 years?

Rep. Devlin: I believe that is standard language elsewhere in the law that is retained.

Rep. C. Johnson: The governor must have a budget for his office. Is there any auditing or accounting done of the governor's budget?

Rep. Devlin: Yes, the governor does have a budget. I do not believe the accounting has not been forthcoming on this issue. You may want to check with the state auditor.

Rep. B. Koppelman: Has the attorney general's opinion been done on this subject?

Rep. Devlin: It has not. We thought that the time is now.

Jack McDonald, North Dakota Newspaper Association, appeared in support. Attachment 3. (6:26-8:09)

Rep. Schauer: Why should the governor go by the open meetings law and I could look at that open meetings law and I could just look the other way and it doesn't affect me at all. Why should the governor go by the open meetings law if you indeed believe that he is violating it?

Mr. McDonald: Believe the law should be followed.

Rep. B. Koppelman: Shouldn't we have that same transparency in North Dakota as that of the president?

Mr. McDonald: We think that this bill will make it clear that this information is available. We are looking for numbers, dollar amounts.

Chairman Kasper: How about the other agencies or just executive branch?

Mr. McDonald: Not sure about the others, but I suspect that the information is available from other branches. I can't say how often it has been asked for. It has been sought from the governor's office and not revealed.

Chairman Kasper: Should include the other executive branches if it does not.

Mr. McDonald: Yes. I believe it should.

Chairman Kasper: Anyone else in support of HB 1363?

Opposition

Mark Nelson, Deputy Director of ND Department of Transportation, appeared in opposition. Attachment 4. (12:31-14:17)

Attachments 5 and 6 handed out to the committee requested of the law intern by **Chairman Kasper**.

Chairman Kasper: Would you be able to provide this committee the travel records for the governor and lieutenant governor on this form for the last 12 months?

Mr. Nelson: Yes, we could.

Rep. Laning: What you are saying is that all departments are required to fill this form out, including the governor's office?

Mr. Nelson: That is correct.

Rep. B. Koppelman: I don't recall an agency coming out in opposition to a bill that was codifying what their practice is. I have seen some come out in neutral

testimony and say, we don't need this bill because we are already doing it. Why be in opposition of something that you are already doing?

Mr. Nelson: The reason that we did this is because we already abide by the open records law. This information is already available so we didn't see the purpose of putting it into statute when we are already following the open records law.

Rep. Rohr: So why wasn't the information not given to the media when they asked for it?

Mr. Nelson: We do supply that information. I believe what was spoken to was in reference to security, not for the airplane.

Chairman Kasper: Any other questions committee? Your department has the ability. Does that mean the statute requires or does that mean as a matter of practice, you have the ability and you are doing it?

Mr. Nelson: This is currently our policy within the agency that we have this under the open records law. It is information that we have provided upon request.

Chairman Kasper: You are testifying that your department has not had a request for these records that you can recall ever?

Mr. Nelson: That's not true. We have had requests for the governor's transportation and we have supplied it when requested.

Chairman Kasper: Any questions committee? Anyone else to testify against HB 1363?

Colonel Brandon Solberg, Superintendent of the North Dakota Highway Patrol, appeared in opposition. Attachment 7. (17:42-28:17)

Vice Chair Steiner: Are you referring to general security at the door? How many individuals get individual security?

Colonel Solberg: We would offer a higher level of security to the office of governor whoever is the governor at the time. If something were to happen to the governor, we would transfer that to the next order in that succession, so it is not that we are protecting every single person in the order of succession. As far as individuals, we have had threats to legislators for example, we would provide a level of protection during hearings and things like that, on an individual basis as needed.

Rep. B. Koppelman: If you are doing a quarterly allocation of costs and hours spent, How does that put at risk your plans for daily operations to keep the governor and any other office safe?

Colonel Solberg: Breaking down to minutes exposes vulnerability. We would release the information as to what we spend in total.

Rep. B. Koppelman: How does that jeopardize your operation if you break it down into quarterly averages and then monthly averages?

Colonel Solberg: Information leads to more questions. Tracking time at that level is very specific information.

Rep. Schauer: How long have you been in law enforcement?

Colonel Solberg: I started on the highway patrol in 1999. I was deputy sheriff for a couple of years before that.

Rep. Schauer: Have you ever been accused of breaking the law professionally?

Colonel Solberg: No although last session I had to confess that we weren't following the law as far as the wording on our badges and I made a statement that if anyone should follow the law, it should be the highway patrol.

Rep. Schauer: We are in a situation right now for professionally that you are being accused of breaking the law. The open records law by a legislator and I'm a bit surprised that you have taken an opposition to this as opposed to a neutral position. This is a very serious charge and I'm curious why you would not take a neutral position as opposed to opposing after being accused of breaking the law.

Colonel Solberg: I couldn't agree more. This is very awkward because we are using against legislative management, we use these exemptions and we are using exemptions in law and Century Code against the authors of the Century Code. Our legal counsel comes from the Attorney General's Office and so we are guided by that input. I feel comfortable in taking a stand with the backing of the Attorney General's Office.

Chairman Kasper: The bill talks about the total of all cost. It does not ask for dates. It could be one line and the total for the quarter. It does not ask for any other details. On such a broad request how does that inhibit security that you are providing?

Colonel Solberg: We do break out security functions into sub categories. We don't have an issue with overall releasing general security costs, but when it is detailed to specific individuals that is my concern. We submitted overall security costs and that wasn't sufficient, they wanted to break it down into more details.

Chairman Kasper: Who is they?

Colonel Solberg: Legislative management.

Vice Chair Steiner: If we went into executive session of legislative management would you be willing to share cost with them as other states do?

Colonel Solberg: Yes, I feel that this information could be discussed in a confidential Format and I have shared that with legislative management and during our appropriations testimony. Nobody seems to be interested in that, they seem more

interested in exposing the numbers publicly.

Neutral

Don LeFleur, Auditor's Office, appeared in a neutral position. There were some questions that I thought I could clear up and answer any questions that you might have. I am also the manager that Colonel Solberg referenced that dealt with the governor's office use of the state airplane and the security detail. During that audit, there was a question earlier about does the auditor's office audit the governor's and look at those costs. We do audit the office of the governor once every two years just like every other state agency, however, the cost associated with the governors' use of the state airplane and security is not in the governor's budget because the governor has an exemption from paying for the state airplane when he uses it. The cost of using the state airplane is not in the governor's budget. Every other state agency that uses the state airplane must pay DOT the cost of using it. You can see those costs in their agency budgets. That does not apply to the office of the governor or the lieutenant governor, or the first lady. To get that information during the audit, we had to get the records from the DOT. We had to calculate those costs on our own to come up to that in the audit. The same thing goes for the security detail. Nobody pays the highway patrol for security detail that is provided as part of the services that they provide.

Vice Chair Steiner: So are there standard rules as to where they go in the airplane and who is in the airplane or is it where they want to go and whoever they take?

Mr. LeFleur: We found that there are no rules associated with the governor's Office. They have used the airplane to go on out of state trips. They do not have to pay for the use of this airplane, that is provided free of charge. It is in the DOT budget. The governor has first choice so any other agency is bumped if he wants to use it.

Chairman Kasper: Did you identify all the individual trips and individual costs?

Mr. LeFleur: We did not identify all of the costs. We did identify certain trips that we thought merited for their attention and we detailed the cost and the nature of those trips. We put the manifest in the report.

Chairman Kasper: Did the governor respond to the audit report where you indicated some questions?

Mr. LeFleur: Yes, there were several recommendations in there, and as with all recommendations the office of the governor did provide responses to those recommendations.

Closed the hearing.

2019 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Fort Union Room, State Capitol

HB 1363
2/8/2019
32488

- Subcommittee
 Conference Committee

Committee Clerk Signature Carmen Hart

Explanation or reason for introduction of bill/resolution:

Relating to maintaining and providing records; to provide for application; and to declare an emergency

Minutes:

Attachment 1

Chairman Kasper opened the meeting on HB 1363.

Rep. Bill Devlin appeared. Handed out Attachment 1 which was an amendment that replaced the one given at the hearing. I have no problem treating all elected officials the same, and that is what it does.

Chairman Kasper: There might be too much detail. Can you clarify the type of report or data we are asking to be provided?

Rep. Devlin: We were looking for data and reporting after the fact.

Rep. B. Koppelman: I appreciate you expanding this to the other elected officials.

Rep. Rohr: All of Colonel Solberg's questions have been addressed with this amendment?

Rep. Devlin: Everyone is on the same page as far as I know. It only matters to me when the cost and people involved becomes transparent.

Rep. Rohr moves the amendment.

Rep. B. Koppelman seconded the motion.

Voice vote. Motion carries.

Rep. B. Koppelman made a motion for a DO PASS AS AMENDED.

Rep. Schauer seconded the motion.

Chairman Kasper: If you want to know about the travel records of legislators, ask legislative council to provide you a report, and I think you would be very interested in what you see.

Rep. P. Anderson: I am going to oppose the motion. I am not comfortable with Section 2.

Chairman Kasper: I had a brief discussion with the attorney general after the hearing. His comment to me was he was going to revisit his recommendations and discussion with the highway patrol as far as what they should or shouldn't do.

Rep. B. Koppelman: I think Colonel Solberg's was a different reading of what the bill said.

Rep. P. Anderson: He said they don't track by people. It would be a cumbersome logging process to do this for a specific individual.

Vice Chair Steiner: You could say it is cumbersome, but I think the public deserves to know how their money is being spent.

Rep. Vetter: If it is not a detailed thing, I would be in favor of it.

Chairman Kasper: He read Page 1, Lines 23-24.

A roll call vote was taken. 11-1, 2 absent.

Rep. B. Koppelman will carry the bill.

CA
1 of 1
2/8/19

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1363

Page 1, line 9, after "by" insert "each of"

Page 1, line 9, replace "and" with an underscored comma

Page 1, line 10, after "governor" insert ", and all other elected officials"

Page 1, line 11, after "and" insert ", notwithstanding any other provision of law,"

Page 1, line 17, after "to" insert "each of"

Page 1, line 17, replace the second "and" with an underscored comma

Page 1, line 18, after "governor" insert ", and all other elected officials"

Page 1, line 19, after "to" insert "each of"

Page 1, line 19, replace the second "and" with an underscored comma

Page 1, line 19, after the second "governor" insert ", and all other elected officials"

Page 1, line 23, after "and" insert ", notwithstanding any other provision of law,"

Renumber accordingly

Date: 2-8-19
 Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1363**

House Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: 19.0615.04602

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. Rohr Seconded By Rep. B. Koppelman

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper			Rep. Pamela Anderson		
Vice Chair Vicky Steiner			Rep. Mary Schneider		
Rep. Jeff Hoverson					
Rep. Craig Johnson					
Rep. Daniel Johnston					
Rep. Karen Karls					
Rep. Ben Koppelman					
Rep. Vernon Laning					
Rep. Scott Louser					
Rep. Karen Rohr					
Rep. Austen Schauer					
Rep. Steve Vetter					

*Vote
 motion
 carries*

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Date: 2-8-19
 Roll Call Vote #: 2

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1363**

House Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: 19.0615.04002

- 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. B. Koppelman Seconded By Rep. Schauer

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper	X		Rep. Pamela Anderson		X
Vice Chair Vicky Steiner	X		Rep. Mary Schneider	X	
Rep. Jeff Hoverson	A				
Rep. Craig Johnson	X				
Rep. Daniel Johnston	A				
Rep. Karen Karls	X				
Rep. Ben Koppelman	X				
Rep. Vernon Laning	X				
Rep. Scott Louser	X				
Rep. Karen Rohr	X				
Rep. Austen Schauer	X				
Rep. Steve Vetter	X				

Total (Yes) 11 No 1

Absent 2

Floor Assignment Rep. B. Koppelman

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

REPORT OF STANDING COMMITTEE

HB 1363: Government and Veterans Affairs Committee (Rep. Kasper, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 1 NAYS, 2 ABSENT AND NOT VOTING). HB 1363 was placed on the Sixth order on the calendar.

Page 1, line 9, after "by" insert "each of"

Page 1, line 9, replace "and" with an underscored comma

Page 1, line 10, after "governor" insert ", and all other elected officials"

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Page 1, line 19, after the second "governor" insert ", and all other elected officials"

Page 1, line 23, after "and" insert ", notwithstanding any other provision of law."

Renumber accordingly

2019 SENATE GOVERNMENT AND VETERANS AFFAIRS

HB 1363

2019 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Sheyenne River Room, State Capitol

HB1363
3/7/2019
#33364

- Subcommittee
 Conference Committee

Committee Clerk: Pam Dever

Explanation or reason for introduction of bill/resolution:

Relating to maintaining & providing records; provide for application.

Minutes:

Att # 1_Rep/ Devlin; Att #2 -Steve Andrist; Att#3-
Mark Nelson; Att #4- Brandon Solberg

Chairman Davison: Call to order. Attendance was taken and all were present. Let's open the hearing for HB1363.

Rep. Bill Devlin, Dist. 23, Finley: (see att #1) (0.34-4.24) This is a transparency bill. Any questions? Please pass this for the people's right to know.

Chairman Davison: Aren't these costs in the budgeting process?

Rep. Devlin: We don't have the break down. There is security that all of us benefit from. They could not give us the breakdown because of exemptions in Code.

Sen. Shawn Vedaa: Is there a certain dollar amount that the governor can or cannot use over? Is the entire security in his budget?

Rep Devlin: I have been told by appropriations that you can break down for any elected office. That is what I am looking for. The governor's office asked us why we are not looking into other elected officials travel cost. We were not trying to pick on the governor. It just happened that all the complaints and questions I had just happened to be of Governor Burgum's office. (6.15)

Vice Chair Meyer: Has anything changed from previous administrations. Was House Appropriations asking for these for past governors?

Rep Devlin: I have never run in to this question before in the legislature. I think that information was always provided. Some may have started with the DAPL protest. I am not arguing that at all.

Vice Chair Meyer: You never requested that?

Rep Devlin: (7.24) I have never had a request from media in the last 12 years because they could not get it from the governor's office. If media was having a problem, I guarantee I would have heard being in the newspaper business.

Steve Andrist, Executive Director N.D. Newspaper Assoc.: There are 78 weekly and 10 daily newspapers I represent. We support this bill. (see att# 2) (9.00-10.13) This is not a security issue. Any questions?

Chairman Davison: Any more in support? Any agency?

Troy Seibel, Chief Deputy Attorney General: The Attorney General supports this bill. AG is in charge of open meetings laws and open records. He is also the chief law information officer. He is aware of the security issue. He does not believe that this bill jeopardizes security. Any questions? (11.46)

Josh Gallion, State Auditor: I am happy to provide some basic information. We performed the audit for travel for the governor's office. It is false that this bill is targeting this administration. We tried to evaluate the purpose of certain trips. The previous administrations lieutenant governor's calendar no longer existed. That was 15 months after they left office. Mr. Wrigley took many trips to Fargo. Without the documentation that DOT requires that all other agencies have to fill out. We had no idea why he went back and forth so much. One trip he brought his mother with him. The First Lady's calendars are not available because they are not state employees. Why was the First Lady using the plane? There was no elected official with her. The governor's office does not pay for these costs. They stay within DOT. Every other state agency that uses the plane gets billed for the cost. You would have to go to DOT and get the manifest and request the log and cross check. I think people need to know what they are paying for and why. (14.38) Governor Burgum went to Fargo to meet with Bill Gates. What is the purpose?

Sen. Shawn Vedaa: (15.30) Is it our responsibility to make sure that the governor is safe when he personally meets someone? Should he pay himself?

Josh: There should be confidentiality. This bill wants to look backwards. I support transparency and open records. If the government would just change the laws on conceal/carry, security would be our own and take care of myself.

Sen. Shawn Vedaa: We do cover him for security on person.

Josh: I am not at liberty to discuss what we discovered regarding security during our audit. I direct you to highway patrol. (17.36)

Sen. Erin Oban: When Lt. Gov. Wrigley flew to Fargo, if he was there for business, is there anything in Code that he could give a ride to anyone?

Josh: We looked at the risk for non-state employees. There is nothing listed on state airplane. We were told there was insurance for them. A non-state employee is not eligible to ride in a car. How does that change when a plane?

Chairman Davison: Any opposed?

Mark Nelson, Deputy Director Driver-Vehicle Services & Business, DOT: We oppose this bill. We will provide the information through open records law. We already supply this information when we are asked through open records law. We oppose this bill because we already provide this information so why put it in Code. (see att# 3) (20.01-) I have shared my concern with Rep. Devlin because we already do it.

Chairman Davison: Did the concern start with the audit. Can you give more detail for more access to be available? Is it new technology or new process within the department?

Mark: We are looking at an electronic program. It will be able to tract this information. We are at a point today, where if you ask for information today, as far as the total cost for the governor, I could have that to you in an hour. If you the breakdown of passengers, etc., that is what we want the electron technology. (22.23)

Chairman Davison: That is my concern with the bill. I think it is vague. I think they are looking for more. How do you feel.

Mark: I believe in transparency. The governor does, also. I think what the bill wants to do is OK. There should be transparency. I believe we already provide it.

Chairman Davison: Sen. Erin Oban did bring up a good point. Within a state vehicle, you can't have a non-state employee to ride with you?

Mark: Correct.

Chairman Davison: What is the difference between air transportation?

Mark: Through risk management on aircraft, we look at policy. It covers all people. We don't question why a person is on the flight. IF governor or agency head has other people on board, we document who is on the plane. We have the purpose of the trip and we leave that to the explanation of the individual of governor or elected official. (25.11)

Vice Chair Meyer: How long so you maintain your records? I think it is three years.

Mark: We follow the open records Code retention schedule.

Sen. Shawn Vedaa: Do we cover the governor in personal issues. Like the Bill Gates in Fargo meeting? Do we cover all the security?

Mark: I will let Highway Patrol answer.

Sen. Richard Marcellais: What is the target date for your electronic technology?

Mark: We hope by this summer. (27.02)

Colonel Brandon Solberg, Superintendent of N.D. Highway Patrol: (see att# 4) (28.20-44.15) We are opposed to this bill. This bill lifts the exemption, and we are opposed to that. We provide the lowest level of security in the nation. Any questions?

Sen. Kristin Roers: Sen. Erin Oban had to leave, but this is her question. Does the Highway Patrol make all decisions on level of security or do the elected officials have input?

Colonel Brandon: It is mainly up to the highway Patrol today. The current governor has given us that flexibility. It should be based on our inputs. I guess the governor could tell us to back off. I would counter that depending on the threat level. He could also tell us he wanted increase protection. (45.27)

Sen. Shawn Vedaa: If you were to break down the expense for each individual event, it would be simple math to see how many people were there. It is not simple math, if we get the whole total at the end of the year?

Colonel Brandon: I agree. A quarterly report is OK. I am not in conflict with Attorney General's Office. I don't think it is necessary. It is more of an appropriations issue. Driving the governor to the capitol from home is minutes of time. We don't want to give too much information in case someone wants to harm him. (46.52)

Chairman Davison: Any more questions? Any more in opposition? Hearing is closed.

Done (47.11)

2019 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Sheyenne River Room, State Capitol

HB1363
3/7/2019
#33401

- Subcommittee
 Conference Committee

Committee Clerk: Pam Dever

Explanation or reason for introduction of bill/resolution:

Relating to maintaining & providing records; provide for application.

Minutes:

Chairman Davison: Let's talk about HB1363 since we have a little time.

Vice Chair Meyer: I think we need to think about the governor and our elected officials and the security we want them to have. It is important.

Sen. Shawn Vedaa: Simple math can tell you that is information is released, then the crazies can figure stuff out. I agree with security for personal trips, etc. (.34) If they want to do the math at the end of the biennium, so be it.

Chairman Davison: I asked our appropriations people and they heard this yesterday. I think there was frustration early on with the governor. The Highway Patrol determines the level of security, not the governor. If something happened, the Highway Patrol will be blamed. You have to request the information instead of us regularly releasing it. (2.34)

Sen. Erin Oban: Is there any validity in making this clear in Code? I see some of the language is questionable and could be removed.

Chairman Davison: Don't know. I am not comfortable with the bill as it stands. (3.13) I will watch for the new technology that Mr. Nelson talked about the new documentation. He said this summer. I am interested in the progress. I don't think it needs a study. This was brought forward by the governor's travel audit within the last 18 months.

Sen. Shawn Vedaa: I listened to Clint Hill, the secret service guy from N.D., who was with Pres. Kennedy when he was shot. He is regretful to this day for the decisions they did and did not make to put the route out and give it to the public. Too much information. There is heart burn out there. People don't think that the governor lives here. And there is lots of money spent going back and forth to Fargo. (5.25) I hate to make a poor decision here.

Chairman Davison: If something happens to the governor, it comes right back to the Highway Patrol. That was tough to disagree with that.

Sen. Richard Marcellais: I have been here since 2007, and we did have a threat to a legislator. The Highway Patrol was outside the hearing room and I teased them. Our chairman asked if we wanted to meet or not because there was a threat. There is some confidentially we need. I had top security clearance in military, and my wife, to this day, does not know what I did for the army. I introduced a bill in 2007 that all legislators and state officials do trip reports to provide accountability. The bill did not go anywhere.

Chairman Davison: I think they are working towards that.

Vice Chair Meyer: Are they more concerned with the air transport and we cut out section 2. Is the bill really doing anything? (7.44)

Chairman Davison: We will vote in afternoon. We are in pause.

Afternoon 2.25: **Chairman Davison:** (14.13) Back to order. I need to leave to testify. What are the committee wishes?

Sen. Kristin Roers: I move a DO NOT PASS.

Sen. Shawn Vedaa: I second.

Chairman Davison: Any discussion?

Sen. Erin Oban: I want to go on record saying if this is truly unnecessary because all the information can be gotten if they request, I hope that it is practice. I don't want this to come in front of us again. (15.28) Certain legislators will not be thrilled at not passing this.

Chairman Davison: Take the roll: **YES -- 7 NO -- 0 -0-absent. DO NOT PASSED – passed. Chairman Davison will carry the bill.**

Done (16.16)

3-7-19

Date:
Roll Call Vote #:

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1363

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 Sen. Roers Seconded By Sen. Vedaa

Senators	Yes	No	Senators	Yes	No
Chair Davison	/		Sen. Oban	/	
Vice Chair Meyer	/		Sen. Marcellais	/	
Sen. Elkin	/				
Sen. K. Roers	/				
Sen. Vedaa	/				

Total (Yes) 7 No 0

Absent -0-

Floor Assignment Chair Davison

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

REPORT OF STANDING COMMITTEE

HB 1363, as engrossed: Government and Veterans Affairs Committee (Sen. Davison, Chairman) recommends DO NOT PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1363 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

HB 1363

#1
HB 1363
2-1-19
page 1

Good morning, Chairman Kasper and esteemed members of the GVA Committee. It is always a pleasure to be back in front of the committee where I served earlier in my legislative career. For the record, I am Rep. Bill Devlin of District 23 and I live in Finley.

I bring HB1363 to the committee for your consideration. It is one of the most important transparency bills you will see this session. This bill came about when I learned from several members of the news media as well as some state officials that they were unable to get any type of reports detailing the costs on the amount of money we spend on security for the Governor's office and how many people were involved in providing the security.

I want to make it perfectly clear that this bill will not threaten the security of the Governor, his family or his staff. We are not interested in finding out in advance when the Governor will be travelling. That is a security issue and we don't want to know. What we do want to have is an accounting of how many people are involved and at what cost to the state.

Are we removing dollars from other areas of the budget to pay for this? Are we moving highway patrol personnel off the roads to provide enough people to provide this unprecedented level of security? The cost of government is a basic right to know question for the people the state. I can think of no justifiable reason to hide this information from our state's citizens and I think this bill will correct the issue.

I understand that the Department of Transportation says they can now provide any costs incurred in using the state plane. They can also tell you who travelled on the plane and what was the reason for the trip. That is great, but I think it is important to leave that language in bill because the next supervisor may not be as open with that information.

When I started looking into this I talked to Legislative Council and they said they were an open record under our laws. However, some of the executive branch feels differently and we need to fix this issue.

#1
HB 1363
2-1-19
Page 2

That is what this bill does, and I hope you will give it your favorable consideration. I also have an amendment that clarifies that no other section of law can over-rule this issue.

Thank you, Chairman Kasper and members of the GVA Committee. I would be happy to answer any question you might have but I also know there are others here to testify on this bill and they might be able to provide more information and answers to your questions as well.

19.0615.04001
Title.

Prepared by the Legislative Council staff for
Representative Devlin
January 14, 2019

2
HB 1363
2-1-19

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1363

Page 1, line 11, after "and" insert ", notwithstanding any other provision of law."

Page 1, line 23, after "and" insert ", notwithstanding any other provision of law."

Renumber accordingly

Friday, February 1, 2019

3
HB 1363
2-1-19

House Government & Veteran Affairs Committee
HB 1363

CHAIRMAN KASPER AND COMMITTEE MEMBERS:

My name is Jack McDonald. I'm appearing on behalf of the North Dakota Newspaper Association (NDNA) and the North Dakota Broadcasters Association (NDBA).

We support HB 1363 and urge you give it a **DO PASS**.

North Dakota has some of the best open meetings and open records laws in the nation. As a state it has always prided itself on citizen access to government information. The legislature should be proud of the role it has played in making North Dakota so transparent and open to its constituents.

HB 1363 is one more step toward even greater transparency. It asks that certain costs associated with the Governor's and Lieutenant Governor's offices be identified.

This is **not a security issue**. In no way does it threaten the protections rightfully afforded the Governor and Lieutenant Governor.

Rather, all it asks is that the costs of their air transportation services and the costs, number of employees and total cost hours for transportation services between the Governor's residence and the Capital be open.

This information should be open under the state's open records laws. This in no way is a threat to the security provided these two public officials. It won't reveal any of the security details which rightfully should be confidential. Rather, all it asks is that the costs associated with this security be open and transparent to North Dakota citizens.

Again, we respectfully request a **DO PASS**.

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

1

4
HB 1363
2-1-19
page 1

GOVERNMENT AND VETERANS AFFAIR COMMITTEE

Fort Union

February 1, 2019 8:00am

North Dakota Department of Transportation

Mark Nelson-Deputy Director

HB1363

Good Morning Mr. Chairman and members of the committee, my name is Mark Nelson and I serve as the Deputy Director for Driver-Vehicle Services and Business Operations for the Department of Transportation. I am appearing today in opposition to HB 1363.

The reason the department is opposing is not because we don't agree with the transparency of reporting of the aircraft use by the Governor's office, but rather that the information identified in the bill is currently available upon request.

The proposed language contained under Section 1 of 24-02-49 would require that "the Department of Transportation shall maintain records identifying the total of all costs related to the use of the department's air transportation services by the Governor and Lieutenant Governor each quarter." In addition, we are to provide the records quarterly to the legislative council, and it requires that the records be maintained for at least three years and are open records.

Currently, the Department has the ability of tracking all costs associated with the airplane use by each entity utilizing the plane, including the Governor's office. In addition to tracking the cost of operations, we also require that all users of our air services complete an internal "Request for Air Transportation" form (SFN9705), which is included as an attachment to my testimony. This form contains pertinent information that includes the requesting agency, the date and time of the departure, the destination, the passenger manifest, the purpose of the trip, and the date and time of the return.

All documentation regarding the air transportation services provided by our agency is already open record, and our retention schedule is the current year plus three prior years.

The information being asked for in HB1363 is already available to the legislative body upon your request.

Mr. Chairman, that concludes my testimony and I would be happy to answer any questions that you or your committee may have.

REQUEST FOR AIR TRANSPORTATION

North Dakota Department of Transportation, State Fleet Services
SFN 9705 (11-2018)

#4
HB1363
2-1-19
page 2

Requesting Agency	Date	Destination(Explain if en route stops or deviations from direct course are intended.)
Date of Departure	Time of Departure	

Person to be contacted if delay or cancellation of this trip should become necessary.

Name of Contact Person	Office Telephone Number	Cellphone Number
------------------------	-------------------------	------------------

Passenger and Emergency Contact Information

	Name of Passenger	Agency	Cell Number	Emergency Contact Name	Cell Number	Address Work/Home
1.						
2.						
3.						
4.						
5.						
6.						
7.						
8.						

Date of Intended Return	Intended Departure Time from Destination
-------------------------	--

Business Purpose of Trip

Method of Ground Transportation at Each Destination

Agency/Agencies to be Billed

Authorization:

State Agency/Division Requesting Aircraft

Approved:

Signature of Agency/Division Director	Date	State Fleet Services Director	Date
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(2)

#5
HB 1363
2-1-19

ARTICLE XI GENERAL PROVISIONS

Section 1. The name of this state shall be "North Dakota." The state of North Dakota shall consist of all the territory included within the following boundary, to wit: Commencing at a point in the main channel of the Red River of the North, where the forty-ninth degree of north latitude crosses the same; thence south up the main channel of the same and along the boundary line of the state of Minnesota to a point where the seventh standard parallel intersects the same; thence west along said seventh standard parallel produced due west to a point where it intersects the twenty-seventh meridian of longitude west from Washington; thence north on said meridian to a point where it intersects the forty-ninth degree of north latitude; thence east along said line to place of beginning.

Section 2. The following described seal is hereby declared to be and hereby constituted the great seal of the state of North Dakota, to wit: A tree in the open field, the trunk of which is surrounded by three bundles of wheat; on the right a plow, anvil and sledge; on the left, a bow crossed with three arrows, and an Indian on horseback pursuing a buffalo toward the setting sun; the foliage of the tree arched by a half circle of forty-two stars, surrounded by the motto "Liberty and Union Now and Forever, One and Inseparable"; the words "Great Seal" at the top; the words "State of North Dakota" at the bottom; "October 1st" on the left and "1889" on the right. The seal to be two and one-half inches in diameter.

Section 3. All flowing streams and natural watercourses shall forever remain the property of the state for mining, irrigating and manufacturing purposes.

Section 4. Members of the legislative assembly and the executive and judicial branches, except such inferior officers as may be by law exempted, before they enter on the duties of their respective offices, shall take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm as the case may be) that I will support the Constitution of the United States and the Constitution of the State of North Dakota; and that I will faithfully discharge the duties of the office of _____ according to the best of my ability, so help me God" (if an oath), (under pains and penalties of perjury) if an affirmation, and any other oath, declaration, or test may not be required as a qualification for any office or public trust.

Section 5. Unless otherwise provided by law, all meetings of public or governmental bodies, boards, bureaus, commissions, or agencies of the state or any political subdivision of the state, or organizations or agencies supported in whole or in part by public funds, or expending public funds, shall be open to the public.

Section 6. Unless otherwise provided by law, all records of public or governmental bodies, boards, bureaus, commissions, or agencies of the state or any political subdivision of the state, or organizations or agencies supported in whole or in part by public funds, or expending public funds, shall be public records, open and accessible for inspection during reasonable office hours.

Section 7. The legislative assembly, in order to ensure continuity of state and local governmental operations in periods of emergency resulting from disasters caused by enemy attack, shall have the power and immediate duty (1) to provide for prompt and temporary succession to the powers and duties of public offices, of whatever nature and whether filled by election or appointment, the incumbents of which may become unavailable for carrying on the powers and duties of such offices, and (2) to adopt such other measures as may be necessary and proper for ensuring the continuity of governmental operations including, but not limited to,

- c. Notwithstanding subdivisions a and b, as applied to the legislative assembly, "meeting" means any gathering subject to section 14 of article IV of the Constitution of North Dakota
- 10. "Organization or agency supported in whole or in part by public funds" means an organization or agency in any form which has received public funds exceeding the fair market value of any goods or services given in exchange for the public funds, whether through grants, membership dues, fees, or any other payment. An exchange must be conclusively presumed to be for fair market value, and does not constitute support by public funds, when an organization or agency receives a benefit under any authorized economic development program.
- 11. "Political subdivision" includes any county or city, regardless of the adoption of any home rule charter, and any airport authority, township, school district, park district, rural fire protection district, water resource district, solid waste management authority, rural ambulance service district, irrigation district, hospital district, soil conservation district, recreation service district, railroad authority, or district health unit.
- 12. "Public business" means all matters that relate or may foreseeably relate in any way to:
 - a. The performance of the public entity's governmental functions, including any matter over which the public entity has supervision, control, jurisdiction, or advisory power; or
 - b. The public entity's use of public funds.
- 13. "Public entity" means all:
 - a. Public or governmental bodies, boards, bureaus, commissions, or agencies of the state, including any entity created or recognized by the Constitution of North Dakota, state statute, or executive order of the governor or any task force or working group created by the individual in charge of a state agency or institution, to exercise public authority or perform a governmental function;
 - b. Public or governmental bodies, boards, bureaus, commissions, or agencies of any political subdivision of the state and any entity created or recognized by the Constitution of North Dakota, state statute, executive order of the governor, resolution, ordinance, rule, bylaw, or executive order of the chief executive authority of a political subdivision of the state to exercise public authority or perform a governmental function; and
 - c. Organizations or agencies supported in whole or in part by public funds, or expending public funds.
- 14. "Public funds" means cash and other assets with more than minimal value received from the state or any political subdivision of the state.
- 15. "Quorum" means one-half or more of the members of the governing body, or any smaller number if sufficient for a governing body to transact business on behalf of the public entity.
- 16. "Record" means recorded information of any kind, regardless of the physical form or characteristic by which the information is stored, recorded, or reproduced, which is in the possession or custody of a public entity or its agent and which has been received or prepared for use in connection with public business or contains information relating to public business. "Record" does not include unrecorded thought processes or mental impressions, but does include preliminary drafts and working papers. "Record" also does not include records in the possession of a court of this state.
- 17. "Task force or working group" means a group of individuals who have been formally appointed and delegated to meet as a group to assist, advise, or act on behalf of the individual in charge of a state agency or institution when a majority of the members of the group are not employees of the agency or institution.

44-04-18. Access to public records - Electronically stored information.

- 1. Except as otherwise specifically provided by law, all records of a public entity are public records, open and accessible for inspection during reasonable office hours. As used in this subsection, "reasonable office hours" includes all regular office hours of a

#6
HB1363
2-1-19
page 2

- public entity. If a public entity does not have regular office hours, the name and telephone number of a contact person authorized to provide access to the public entity's records must be posted on the door of the office of the public entity, if any. Otherwise, the information regarding the contact person must be filed with the secretary of state for state-level entities, for public entities defined in subdivision c of subsection 13 of section 44-04-17.1, the city auditor or designee of the city for city-level entities, or the county auditor or designee of the county for other entities.
2. Upon request for a copy of specific public records, any entity subject to subsection 1 shall furnish the requester one copy of the public records requested. An initial request need not be made in person or in writing, and the copy must be mailed upon request. A public entity may require written clarification of the request to determine what records are being requested, but may not ask for the motive or reason for requesting the records or for the identity of the person requesting public records. A public entity may charge up to twenty-five cents per impression of a paper copy. As used in this section, "paper copy" means a one-sided or two-sided duplicated copy of a size not more than eight and one-half by fourteen inches [19.05 by 35.56 centimeters]. For any copy of a record that is not a paper copy as defined in this section, the public entity may charge a reasonable fee for making the copy. As used in this section, "reasonable fee" means the actual cost to the public entity of making the copy, including labor, materials, and equipment. The entity may charge for the actual cost of postage to mail a copy of a record. An entity may require payment before locating, redacting, making, or mailing the copy. The public entity may withhold records pursuant to a request until such time as a requester provides payment for any outstanding balance for prior requests. An entity may impose a fee not exceeding twenty-five dollars per hour per request, excluding the initial hour, for locating records, including electronic records, if locating the records requires more than one hour. An entity may impose a fee not exceeding twenty-five dollars per hour per request, excluding the initial hour, for excising confidential or closed material under section 44-04-18.10 from the records, including electronic records. If a public entity receives five or more requests from the same requester within seven days, the public entity may treat the requests as one request in computing the time it takes to locate and excise the records. If the entity is not authorized to use the fees to cover the cost of providing or mailing the copy, or both, or if a copy machine is not readily available, the entity may make arrangements for the copy to be provided or mailed, or both, by another entity, public or private, and the requester shall pay the fee to that other entity. This subsection does not apply to copies of public records for which a different fee is specifically provided by law.
 3. Automation of public records must not erode the right of access to those records. As each public entity increases its use of and dependence on electronic recordkeeping, each agency must provide reasonable public access to records electronically maintained and must ensure that exempt or confidential records are not disclosed except as otherwise permitted by law. A public entity may not enter into a contract for the creation or maintenance of a public records database if that contract impairs the ability of the public to inspect or copy the public records of the agency, including public records online or stored in an electronic recordkeeping system used by the agency. An electronic copy of a record must be provided upon request at no cost, other than costs allowed in subsection 2, except if the nature or volume of the public records requested to be accessed or provided requires extensive use of information technology resources, the agency may charge no more than the actual cost incurred for the extensive use of information technology resources incurred by the public entity. "Extensive" is defined as a request for copies of electronic records which take more than one hour of information technology resources to produce.
 4. Except as provided in this subsection, nothing in this section requires a public entity to create or compile a record that does not exist. Access to an electronically stored record under this section, or a copy thereof, must be provided at the requester's option in either a printed document or through any other available medium. A computer file is not an available medium if no means exist to separate or prevent the disclosure of any

#6
HB1363
2-1-19
page 3

closed or confidential information contained in that file. Except as reasonably necessary to reveal the organization of data contained in an electronically stored record, a public entity is not required to provide an electronically stored record in a different structure, format, or organization. This section does not require a public entity to provide a requester with access to a computer terminal or mobile device. A public entity is not required to provide a copy of a record that is available to the requester on the public entity's website or on the internet. The public entity shall notify the requester the record is available online and direct the requester to the website where the record can be accessed. If the requester does not have reasonable access to the internet due to lack of computer, lack of internet availability, or inability to use a computer or the internet, the public entity shall produce paper copies for the requester, but may charge the applicable fees under this section.

5. A state-level public entity as defined in subdivision a of subsection 13 of section 44-04-17.1 or a political subdivision as defined in subsection 11 of section 44-04-17.1, may establish procedures for providing access from an outside location to any computer database or electronically filed or stored information maintained by that entity. The procedures must address the measures that are necessary to maintain the confidentiality of information protected by federal or state law. Except for access provided to another state-level public entity or political subdivision, the state or political subdivision may charge a reasonable fee for providing that outside access. If the original information is keyed, entered, provided, compiled, or submitted by any political subdivision, the fees must be shared by the state and the political subdivision based on their proportional costs to make the data available.
6. Any request under this section for records in the possession of a public entity by a party to a criminal or civil action, adjudicative proceeding as defined in subsection 1 of section 28-32-01, or arbitration in which the public entity is a party, or by an agent of the party, must comply with applicable discovery rules or orders and be made to the attorney representing that entity in the criminal or civil action, adjudicative proceeding, or arbitration. The public entity may deny a request from a party or an agent of a party under this subsection if the request seeks records that are privileged under applicable discovery rules.
7. A denial of a request for records made under this section must describe the legal authority for the denial, or a statement that a record does not exist, and must be in writing if requested.
8. This section is violated when a person's right to review or receive a copy of a record that is not exempt or confidential is denied or unreasonably delayed or when a fee is charged in excess of the amount authorized in subsections 2 and 3.
9. It is not an unreasonable delay or a denial of access under this section to withhold from the public a record that is prepared at the express direction of, and for presentation to, a governing body until the record is mailed or otherwise provided to a member of the body or until the next meeting of the body, whichever occurs first. It also is not an unreasonable delay or a denial of access to withhold from the public a working paper or preliminary draft until a final draft is completed, the record is distributed to a member of a governing body or discussed by the body at an open meeting, or work is discontinued on the draft but no final version has been prepared, whichever occurs first.
10. For public entities headed by a single individual, it is not an unreasonable delay or a denial of access to withhold from the public a working paper or preliminary draft until a final draft is completed, or work is discontinued on the draft but no final version has been prepared, whichever occurs first. A working paper or preliminary draft shall be deemed completed if it can reasonably be concluded, upon a good-faith review, that all substantive work on it has been completed.
11. A disclosure of a requested record under this section is not a waiver of any copyright held by the public entity in the requested record or of any applicable evidentiary privilege.

#6
HB1363
2-1-19
page 4

12. A public entity may allow an individual to utilize the individual's own personal devices for duplication of records and, if so, shall establish reasonable procedures to protect the integrity of the records as long as the procedures are not used to prevent access to the records.
13. If repeated requests for records disrupt other essential functions of the public entity, the public entity may refuse to permit inspection of the records, or provide copies of the records. A public entity refusing to provide access or copies of public records under this section shall state in writing the reasons supporting the refusal and provide the reasoning to the requester. The requester may seek an attorney general's opinion under section 44-04-21.1, on whether the public entity's decision was proper.

44-04-18.1. Public employee personal, medical, and employee assistance records - Confidentiality - Personal information maintained by state entities - Exempt.

1. Any record of a public employee's medical treatment or use of an employee assistance program is not to become part of that employee's personnel record and is confidential and, except as otherwise authorized by law, may not be used or disclosed without the written authorization of the employee. As used in this section, the term "public employee" includes any individual who has applied for employment, is employed, or has been employed by a public entity.
2. Except as otherwise specifically provided by law, personal information regarding a public employee contained in an employee's personnel record or given to the state or a political subdivision by the employee in the course of employment is exempt. As used in this section, "personal information" means a person's month and day of birth; home address; home telephone number or personal cell phone number; photograph; medical information; motor vehicle operator's identification number; public employee identification number; payroll deduction information; the name, address, telephone number, and date of birth of any dependent or emergency contact; any credit, debit, or electronic fund transfer card number; and any account number at a bank or other financial institution. Information regarding the type of leave taken by an employee is exempt, although the amount of leave taken or accrued, and the dates of the leave taken, is public record. Information regarding leave applied for but not yet taken is exempt until the leave is taken.
3. Nonconfidential information contained in a personnel record of an employee of a public entity as defined in subdivision c of subsection 13 of section 44-04-17.1 is exempt.
4. Except as otherwise specifically provided by law, personal information regarding a licensee maintained by an occupational or professional board, association, state agency, or commission created by law is exempt. As used in this section, "licensee" means an individual who has applied for, holds, or has held in the past an occupational or professional license, certificate, credential, permit, or registration issued by a state occupational or professional board, association, agency, or commission.
5. Information relating directly to persons engaged in an organized public safety peer counseling or a public safety peer debriefing is exempt.
6. Records relating to a public entity's internal investigation of a complaint against a public entity or employee for misconduct are exempt until the investigation of the complaint is complete, but no longer than seventy-five calendar days from the date of the complaint.

44-04-18.2. Certain economic development records exempt from disclosure.

Repealed by S.L. 1997, ch. 381, § 23.

44-04-18.3. Records of juvenile court supervisors and probation officers and law enforcement and correctional employees - Law enforcement work schedules - Confidential informants.

1. Any telephone number and the home address of a juvenile court director or probation officer, an employee of a law enforcement agency, employee of a state or local

7
HB 1363
2-1-19

House Government and Veterans Affairs Committee
House Bill 1363
February 1, 2019

Submitted By:
Colonel Brandon Solberg

Good morning Mr. Chairman and members of the committee. My name is Colonel Brandon Solberg, superintendent of the North Dakota Highway Patrol. I am here to provide testimony in opposition to House Bill 1363 because I believe it creates a conflict with existing exemptions in law.

North Dakota Century Code (NDCC) 39-03-09 covers the powers of the highway patrol, and dignitary protection is one of our agency's primary responsibilities:

- *The superintendent and each member of the highway patrol shall have the power:*
 14. *To provide security and protection for the governor, the governor's immediate family, and other officers next in order of succession to the office of governor...*
 15. *To provide security and protection for both houses of the legislative assembly while in session...*

NDCC 27-04-09 relates to security for the North Dakota Supreme Court and states:

- *The state highway patrol... shall provide security services to the supreme court...*

The North Dakota Highway Patrol has restricted the release of security-related information based on NDCC 44-04-24 which exempts security system plans from open records, NDCC 44-04-25 which exempts information related to the protection of the public or public officials, and NDCC 44-04-18.3(3) which exempts law enforcement work schedules.

The Attorney General's Office advised us that if we choose to release exempt information then we've acknowledged this type of information is no longer considered exempt.

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#7
HB 1363
2-1-19

The Office of Attorney General's open records manual states the following:

Records Regarding Security of a Public Entity, Public Officials and the Public

Certain records regarding security of public entities are exempt or confidential due to concerns that the release of this information would put the security of public buildings, public officials, or the public at risk.

Security system plans kept by a public entity are exempt from the open records law. This includes a wide range of records relating directly to the physical electronic security of a public facility or critical infrastructure of a public entity, including threat response plans and emergency evacuation plans. Not only are the plans protected, but the portions of the records, information, surveys, communications, and consultations used to produce plans relating to protecting the public or public officials are also exempt.

I believe detailed information about the security of our public officials should remain exempt and should only be viewed in a confidential format such as was done by the auditor's office.

The state auditor reviewed financial records and work schedules related to our security details during a performance audit of the Governor's Office. The audit was very thorough and included interviews with employees assigned to dignitary protection. We released all records that we would consider exempt because the auditor's office was able to maintain that exemption. The final report states, "Due to the confidentiality of executive security, the Office of the State Auditor is unable to provide additional details." This statement acknowledges the sensitivity of the information we provided. The audit findings conclude that the "State Auditor found no issues related to the executive security provided by the North Dakota State Highway Patrol to report."

Back in August of 2018, legislative management requested the highway patrol's overtime and security expenses from January 1, 2016, through August 7, 2018. We provided that information, and a follow-up request sought more specific information which our agency considers exempt such as the number of person hours assigned to an individual.

Related to the number of security hours requested by the Governor, Lieutenant Governor, or their families, I responded that the Governor's Office does not request security but rather we provide it by statute. The highway patrol employs security professionals, and I strongly believe our agency should handle the coordination and assignment of security details. We can adjust resources based on the current threat level, and fortunately in North Dakota that threat level is usually fairly low – although, as we saw two years ago, it can escalate quickly.

Related to the number of hours assigned to protect the Governor, Lieutenant Governor, or their families, I responded that "any record containing the work schedule of an employee of a law enforcement agency is exempt." Legislative management felt that releasing past security details would not create a problem, but I countered that past assignments would be a clear indicator of future activities.

We also provided legislative management with information related to a survey conducted by the National Governors Security Association in October of 2016. This association is comprised of executive security professionals, and the survey focused on dignitary protection. After providing our input and reviewing the survey results, it was apparent our agency was well below the national standards for executive security.

The highway patrol has made ongoing improvements regarding dignitary protection in an effort to be more in line with national trends and standards concerning security. While some progress has been made, we are continually re-evaluating our policies and practices to ensure appropriate security measures are in place. One concern is that the public release of detailed security information would expose these potential vulnerabilities.

I would trust detailed security information in the hands of legislators and nearly every citizen in North Dakota, but when information is released publicly it is accessible to anyone on the planet with internet access. My level of trust does not extend that far.

The Attorney General's Office and State Auditor's Office both have the ability to review confidential or exempt information and maintain that confidentiality. I believe that if the legislative assembly wants to review detailed security information specific to individual assignments, there should be a similar confidential process in place.

#7
HB 1363
2-1-19

Recently, the highway patrol sent out a request for information to other states to obtain data on how their security records and costs are handled. There were thirteen (13) states who responded, and South Carolina indicated they use an executive session to provide security-related records to their legislative body. Most states that responded limited the release of specific, detailed information because it would compromise or jeopardize the safety and welfare of their dignitaries.

I understand there is a desire to view detailed information to ensure the highway patrol has adequate resources. As superintendent, the responsibility to ensure the highway patrol has appropriate staffing falls directly on my shoulders. If additional resources were needed, I would request and attempt to justify the need. Currently, I believe we have adequate resources in the area of dignitary protection, and we are not exceeding appropriations for salaries or overtime.

I realize that we're a small state, and North Dakota is one of the safest states in the nation, but that doesn't mean we're crime-free or that threats are non-existent. The Governor's Office receives concerning communications nearly every day, and intelligence periodically shows the potential for violence. Direct threats have been made in the past to the Governor and individual legislators. A little over two years ago we were taking people into custody for unlawful behavior on the front lawn of the Governor's residence and inside the judicial wing.

We feel much safer today, but it only takes one incident to reset that feeling. In March of last year, a suspect was arrested after breaking into the home of Wyoming Governor Matt Mead's residence, and the suspect was carrying a hunting knife. If something like that were to happen in North Dakota, all eyes would be on the highway patrol.

Detailed information as stated in this bill such as "the total number of employee... hours spent providing security and transportation to the governor and lieutenant governor" and "hours spent providing transportation services to the governor from the governor's residence" should remain exempt because detailed information like that may compromise or jeopardize the safety and welfare of those public officials.

W

#7
HB 1363
2-1-19

When it comes to determining if the level of security is adequate, the proof is the ongoing safety of those we're here to protect. The highway patrol takes our responsibility to provide dignitary protection for the Governor's Office, Legislative Assembly, and Supreme Court seriously, and I don't believe that any public official is expendable regardless of our state's size. The highway patrol provides security in a fiscally responsible manner, and resources are adjusted as threat levels fluctuate.

Legislative sessions add a substantial cost, but our security levels are based on a meeting with legislative management and legislative leadership at the start of each session. Security at the south entrance also adds a substantial cost, but those capitol security employees and ongoing operations are approved legislatively. I support these security measures because they reduce the risk to the thousands of employees, visitors, and dignitaries who work in or visit the Capitol.

House Bill 1363 targets two public officials and doesn't consider all of the other individuals who receive our security services. The highway patrol's presence is here for more than one or two people. I believe it's unnecessary to track expenses at an individual level regardless of who is receiving security, and it would be a cumbersome logging process when considering other areas such as the Legislative Assembly and Supreme Court.

The highway patrol has released and will continue to release overall security expenses upon request. The desire of this bill to obtain specific details about individuals is what creates a conflict.

Mr. Chairman and members of the committee, based on these reasons I urge you to oppose this bill. This concludes my testimony, and I'd be happy to answer any questions.

February 6, 2019

#1
HB 1363
2-8-19

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1363

Page 1, line 9, after "by" insert "each of"

Page 1, line 9, replace "and" with an underscored comma

Page 1, line 10, after "governor" insert ", and all other elected officials"

Page 1, line 11, after "and" insert ", notwithstanding any other provision of law."

Page 1, line 17, after "to" insert "each of"

Page 1, line 17, replace the second "and" with an underscored comma

Page 1, line 18, after "governor" insert ", and all other elected officials"

Page 1, line 19, after "to" insert "each of"

Page 1, line 19, replace the second "and" with an underscored comma

Page 1, line 19, after the second "governor" insert ", and all other elected officials"

Page 1, line 23, after "and" insert ", notwithstanding any other provision of law."

Renumber accordingly

HB 1363
3-7-19
att #1
pg 1

Good morning, Chairman Davison and esteemed members of the Senate GVA Committee. For the Record, I am Rep. Bill Devlin of District 23 and I live in Finley. District 23 is a rural district in Eastern North Dakota.

I bring HB1363 to the committee for your consideration. It is one of the most important transparency bills you will see this session. This bill came about when I learned from several members of the news media that they were unable to get any type of report detailing the travel costs for the Governor and his staff as well as the total amount of money we spend on security for the Governor's office.

The bill was amended in the House to allow the legislature, media and members of the public to obtain those costs for any state officials and their offices.

I want to make it perfectly clear that this bill will not threaten the security of the Governor, his family or his staff. We are not interested in finding out in advance when the Governor or any state official will be travelling. That is a security issue and we don't want to know. We are not interested in a day by day cost sheet that someone could use if they were looking to see how security was handled on any certain days. What we do want to have is an accounting that shows the total amount spent and how many people were involved. This could be done on a quarterly basis.

When a member of the House Appropriations Committee asked how much it cost they were told it was a security issue and they couldn't release it. I don't believe the exemption in the open records laws for security was ever meant to stop an accounting to the people of North Dakota of the costs.

As they look at the overall costs, I believe the appropriations committee in both chambers need a breakdown of the costs. Some might wonder if we are removing dollars from other areas of the budget to pay for this? Are we moving highway patrol personnel off the roads to provide enough people to provide this unprecedented level of security? The cost of government is a basic right to know question for the people the state. I can think of no justifiable reason to hide this information from our state's citizens and I think this bill will correct this issue.

HB 1363
3-7-19
#1
Add
pg 2

I understand that the Department of Transportation says they can now provide any costs incurred in using the state plane. However, according to members of the media when they have sought that information they need to go through several binders and other records to compile it. I would think it shouldn't be too hard to make a quarterly report on who travelled on the state airplane at taxpayers' expense and at what cost. I also think it is important to state the reason for the trip. In past administrations there was apparently a log kept that showed who travelled on the state plane and for what reason. You would not have to list any of the security people just the state officials, family members and staff that went on the trip and the reason why the plane owned by the taxpayers of North Dakota was used for the trip.

When I started looking into this I talked to Legislative Council and they said they were an open record under our laws. However, some of the executive branch feels differently and we need to fix this issue. This bill will do that without compromising the security of anyone.

It is mind boggling to me as a taxpayer and lifelong newspaper publisher that we can find out what the local taxpayers had to pay for extra security when President Trump visited Fargo. But if we want to know what it cost for travel and security if our Governor travelled to Fargo we are told it is none of our business. That is totally unacceptable.

Thank you, Chairman Davison and members of the GVA Committee, I would hope we can work together to make sure the people's right to know is always protected in our great state.

I would be happy to answer any questions you might have on this issue.

HB 1363
3/7/19
AH #2
DS1

Testimony of Steve Andrist
Executive Director, North Dakota Newspaper Association
Before the North Dakota House Government & Veterans Affairs Committee
In Support of HB 1363

Chairman Davison and members of the committee: My name is Steve Andrist, and as executive director of the North Dakota Newspaper Association I represent the 78 weekly and 10 daily newspapers in the state.

We support HB 1363 and urge you give it a DO PASS. North Dakota has some of the best open meetings and open records laws in the nation. The legislature should be proud of the role it has played in making North Dakota so transparent and open to its constituents.

HB 1363 is one more step toward even greater transparency. It asks that certain costs associated with the transportation and security of the governor and other elected state officials be identified.

This is not a security issue. In no way does it threaten the protections rightfully afforded the governor and other officials. This bill doesn't release information about security plans or details. In fact, we agree such information should not be public.

Rather, it simply asks that information about the costs of such services be available to those who pay for them. We have a long history in this state of transparency of the purse, whether it's how much the governor is paid to the amount spent on legislator per diems to the full budget of the University of North Dakota.

We believe the cost of transporting and security elected state officials should be no different, and hope you will give 1363 a DO PASS.

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

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SENATE GOVERNMENT AND VETERANS AFFAIR COMMITTEE
Sheyenne River
March 7, 2019 9:00am

HB 1363
3-7-19
Att # 3
pg 1

North Dakota Department of Transportation
Mark Nelson-Deputy Director

HB1363

Good Morning Mr. Chairman and members of the committee, my name is Mark Nelson and I serve as the Deputy Director for Driver-Vehicle Services and Business Operations for the Department of Transportation. I am appearing today in opposition to HB 1363.

The reason the department is opposing is not because we don't agree with the transparency of reporting of the aircraft use by the Governor's office, but rather that the information identified in the bill is currently available upon request.

The proposed language contained under Section 1 of 24-02-49 would require that "the Department of Transportation shall maintain records identifying the total of all costs related to the use of the department's air transportation services by the Governor and Lieutenant Governor each quarter." In addition, we are to provide the records quarterly to the legislative council, and it requires that the records be maintained for at least three years and are open records.

Currently, the Department has the ability of tracking all costs associated with the airplane use by each entity utilizing the plane, including the Governor's office. In addition to tracking the cost of operations, we also require that all users of our air services complete an internal "Request for Air Transportation" form (SFN9705), which is included as an attachment to my testimony. This form contains pertinent information that includes the requesting agency, the date and time of the departure, the destination, the passenger manifest, the purpose of the trip, and the date and time of the return.

All documentation regarding the air transportation services provided by our agency is already open record, and our retention schedule is the current year plus three prior years.

The information being asked for in HB1363 is already available to the legislative body upon your request.

Mr. Chairman, that concludes my testimony and I would be happy to answer any questions that you or your committee may have.

HA 1363
 3-7-19
 alt # 3
 pg 2

REQUEST FOR AIR TRANSPORTATION

North Dakota Department of Transportation, State Fleet Services
 SFN 9705 (11-2018)

Requesting Agency	Date	Destination(Explain if en route stops or deviations from direct course are intended.)
Date of Departure	Time of Departure	

Person to be contacted if delay or cancellation of this trip should become necessary.

Name of Contact Person	Office Telephone Number	Cellphone Number
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Passenger and Emergency Contact Information

	Name of Passenger	Agency	Cell Number	Emergency Contact Name	Cell Number	Address Work/Home
1.						
2.						
3.						
4.						
5.						
6.						
7.						
8.						

Date of Intended Return	Intended Departure Time from Destination
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Business Purpose of Trip

Method of Ground Transportation at Each Destination

Agency/Agencies to be Billed

Authorization:

State Agency/Division Requesting Aircraft

Approved:

Signature of Agency/Division Director	Date	State Fleet Services Director	Date
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HB 1363

3-7-19

att #4

pg 1

**Senate Government and Veterans Affairs Committee
Senator Kyle Davison, Chairman
House Bill 1363
March 7, 2019**

**Submitted By:
Colonel Brandon Solberg**

Good morning Mr. Chairman and members of the committee. My name is Colonel Brandon Solberg, superintendent of the North Dakota Highway Patrol. I am here to provide testimony in opposition to House Bill 1363 because I believe it creates a conflict with existing exemptions in law.

I'd like to start by providing some background about why the highway patrol is named in this bill and why I'd take an opposing stance. North Dakota Century Code (NDCC) 39-03-09 covers the powers of the highway patrol, and dignitary protection is one of our agency's primary responsibilities:

- *The superintendent and each member of the highway patrol shall have the power:*
 14. *To provide security and protection for the governor, the governor's immediate family, and other officers next in order of succession to the office of governor...*
 15. *To provide security and protection for both houses of the legislative assembly while in session...*

NDCC 27-04-09 relates to security for the North Dakota Supreme Court and states:

- *The state highway patrol... shall provide security services to the supreme court...*

The North Dakota Highway Patrol has restricted the release of detailed security-related information based on NDCC 44-04-25 which exempts information related to the protection of the public or public officials and NDCC 44-04-18.3(3) which exempts law enforcement work schedules.

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HB 1363
3-7-14
Att #4
P 2

4-04-25. Public health and security plans - Exemption

Any plans and only those portions of the records, information, surveys, communications, and consultations used to produce the plans relating to protection of the public or public officials against threats of violence or other harm are exempt from the provisions of section 44-04-18 and section 6 of article XI of the Constitution of North Dakota.

44-04-18.3. Records of law enforcement employees

3. Any record containing the work schedule of employees of a law enforcement agency is exempt.

The Attorney General's Office advised us that if we choose to release exempt information then we've acknowledged this type of information is no longer considered exempt. This bill would lift that exemption regardless of our opinion. The Attorney General's open records manual states:

Certain records regarding security of public entities are exempt or confidential due to concerns that the release of this information would put the security of public buildings, public officials, or the public at risk.

Not only are the plans protected, but the portions of the records, information, surveys, communications, and consultations used to produce plans relating to protecting the public or public officials are also exempt.

I acknowledge the importance of transparency in government related to the spending of taxpayer dollars, and that's why the highway patrol has released security-related expenses and hours which I'll cover. But, I believe distinct details about the security of our public officials should remain exempt and should only be viewed in a confidential format. There are two formats available today to maintain the exemption on security records while still being transparent. The first is through the legislative assembly and the second is through the state auditor's office.

State agencies are audited on a regular basis. Our agency is audited every two years, and we are subject to a performance audit at any time. This process keeps state agencies and the spending of funds in check on behalf of the taxpayer.

HB 1363
3-7-19
att #4
pg 3

The Governor's Office was selected for a performance audit last year, and the highway patrol's security function was reviewed as a portion of the audit. The state auditor reviewed financial records and work schedules related to our security details. The audit was very thorough and included interviews with employees assigned to dignitary protection. We released all records that we would consider exempt because the auditor's office was able to maintain that exemption.

The final report states, "Due to the confidentiality of executive security, the Office of the State Auditor is unable to provide additional details." This statement acknowledges the sensitivity of the information we provided, and it shows the authority the auditor's office has to maintain those exemptions. The audit findings concluded that the "State Auditor found no issues related to the executive security provided by the North Dakota State Highway Patrol to report."

The second format available to review detailed security information is through legislators who represent our citizens. Security expenses could be discussed during our appropriations hearings, as they were this session, and any specific details could be shared during an executive session or in separate conversations with the bill carrier. I want to clarify that I'm comfortable sharing certain security-related information in a public format, but if questions become precise such as the number of officers assigned to a public official during a specific event, that type of information should remain exempt. The exemptions are in law for good reason.

When it comes to executive security, my concern is not the disclosure of large figures but rather that our level of security is likely the lowest in the nation. Those compromising details shouldn't be shared publicly.

Recently, the highway patrol sent out a request for information to other states to obtain data on how their security records and costs are handled. Thirteen states responded, and South Carolina indicated they use an executive session to provide security-related records to their legislative body. Most states limited the release of specific, detailed information because it would compromise or jeopardize the safety and welfare of their dignitaries.

HB 1363
3-7-19
att #4
pg 4

It was stated on the House floor that the highway patrol wouldn't release security information, but in fact information has been released. In August of 2018, legislative management requested the highway patrol's overtime and security expenses from January 1, 2016, through August 7, 2018. We provided that information (below), and a follow-up request sought more specific information which our agency considered exempt such as the number of person hours assigned to an individual.

- **Security Expenses**

- 1/1/16 through 12/22/16 (12 months)
 - Overtime - \$59,396.23
 - Regular Time - \$457,918.38
 - *This amount includes increased security during the pipeline protests.*
- 12/23/16 through 8/7/18 (19 months)
 - Overtime - \$79,129.10
 - Regular Time - \$152,977.66
- Lodging - \$7,041.61
- Meals - \$2,529.31
- Training and Other Miscellaneous - \$5,586.70
- **Total costs - \$764,578.99**

In December of 2016 a new work activity code was added to our daily activity system to log "Governor/Executive Protection" hours as a subcategory under security. That code is used for multiple activities such as "providing security for the Governor, Legislative Assembly, other officials, and Supreme Court, including conducting advances on locations and other preparatory work." As an example of how expenses can fluctuate, President Trump visited Fargo on June 27, 2018. The cost to the highway patrol was estimated at \$46,500 factoring in vehicle mileage, salaries, and lodging.

Legislative management asked for the number of security hours requested by the Governor, Lieutenant Governor, or their families, and I responded that the Governor's Office does not request security but rather we provide it by statute. The highway patrol employs the security professionals, and I strongly believe our agency should handle the coordination and assignment of security details. We can adjust resources based on the current threat level, and fortunately in North Dakota that threat level is usually fairly low – although, as we saw two years ago, it can escalate quickly.

HB 1363
3-7-19
att 24
pg 5

Legislative management asked for the number of hours employees were assigned to protect the Governor, Lieutenant Governor, or their families, and I responded that “any record containing the work schedule of an employee of a law enforcement agency is exempt.” Legislative management felt that releasing past security details would not create a problem, but I countered that past assignments would be a clear indicator of future activities. What we did last week would be a strong indicator of what we’ll do next week.

We also provided legislative management with information related to a survey conducted by the National Governors Security Association in October of 2016. This association is comprised of executive security professionals, and the survey focused on dignitary protection. After providing our input and reviewing the survey results, it was apparent our agency was well below the national standards for executive security.

The highway patrol has made ongoing improvements regarding dignitary protection in an effort to be more in line with national trends and standards concerning security. While some progress has been made, we are continually re-evaluating our policies and practices to ensure appropriate security measures are in place. Security was ramped up during the pipeline protests prior to Governor Burgum taking office, and we have tried to maintain some of those additional security measures such as screening visitors at the south doors.

I would trust detailed security information in the hands of legislators and nearly every citizen in North Dakota, but when information is released publicly it is accessible to anyone on the planet with internet access. My level of trust does not extend that far. As a law enforcement officer, I take pride in saying that North Dakota is one of the safest states in the nation, but I also recognize that we’re not a crime-free state nor free from threats.

The Governor’s Office receives concerning communications nearly every day, and intelligence periodically shows the potential for violence. Direct threats have been made in the past to the Governor and individual legislators. A little over two years ago we were taking people into custody for unlawful behavior on the front lawn of the Governor’s residence and inside the judicial wing.

HB 1363
3-7-19
att #4
pg 6

We feel much safer today, but it only takes one incident to reset that feeling. In March of last year, a suspect was arrested after breaking into the home of Wyoming Governor Matt Mead's residence, and the suspect was carrying a hunting knife. Thankfully the suspect tripped a fire alarm and was taken into custody. If something like that were to happen in North Dakota, all eyes would be on the highway patrol.

If someone wants to cause harm to a public official, the highway patrol's job is to prevent it. Releasing security details is counter to that mission. Detailed information as stated in this bill such as "the total number of employee... hours spent providing security and transportation to the governor and lieutenant governor" and "hours spent providing transportation services to the governor from the governor's residence" should remain exempt because detailed information like that may compromise or jeopardize the safety and welfare of those public officials.

When it comes to determining if the level of security is adequate, the proof is the ongoing safety of those we're here to protect. The highway patrol takes our responsibility to provide dignitary protection for the Governor's Office, Legislative Assembly, and Supreme Court seriously, and I don't believe that any public official is expendable regardless of our state's size. The highway patrol provides security in a fiscally responsible manner, and resources are adjusted as threat levels fluctuate.

Legislative sessions add a substantial cost, but our security levels are based on a meeting with legislative management and legislative leadership at the start of each session. Security at the south entrance also adds a substantial cost, but those capitol security employees and ongoing operations are approved legislatively. I support these security measures because they reduce the risk to the thousands of employees, visitors, and dignitaries who work in or visit the Capitol.

Tracking expenses at an individual level based on who is receiving security would be an incredibly cumbersome logging process when considering other areas such as the Legislative Assembly and Supreme Court. An amendment to this bill added the tracking of security for other elected officials which means we'd be tracking individual security hours for over 150 elected officials.

HB 1363

3-7-19

AH #4

pg 7

Many meetings during the legislative session involve elected officials from multiple branches of government. If legislative leaders meet with the Governor in the Governor's Office, or the Governor meets with legislative leaders in their offices, how are we to assign the security costs? The scenarios are endless.

Many of us came from a time when house doors and vehicles were left unlocked, schools were wide open, and home security systems were rare, but security is an important part of our communities today. The highway patrol has been doing executive transportation and security details at some level long before I started in 1999.

Our agency has released and will continue to release overall security expenses upon request so the quarterly reporting requirement in this bill is unnecessary. We are also willing to disclose exempt information to the State Auditors Office and the Legislative Assembly in a confidential format.

Mr. Chairman and members of the committee, based on these reasons, I urge you to oppose this bill. This concludes my testimony, and I'd be happy to answer any questions.