

2023 HOUSE JUDICIARY

HB 1442

2023 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

HB 1442
2/7/2023

Relating to prohibiting possession of public employee personnel documents; and to provide a penalty

10:30 AM Chairman Klemin opened the hearing. Members present: Chairman Klemin, Vice Chairman Karls, Rep. Bahl, Rep. Christensen, Rep. Cory, Rep. Henderson, Rep. S. Olson, Rep. Rios, Rep. S. Roers Jones, Rep. Satrom, Rep. Schneider, Rep. VanWinkle, and Rep. Vetter

Discussion Topics:

- Amendment review
- Penalty for this crime
- File privacy
- Exempt or confidential definition
- Personnel files
- State agency discretion
- Prosecution process

Rep. Murphy: Introduced the bill. Testimony #19465, #19560

Mary Kay Kelsh, ND States Attorney's office: No written testimony.

Molly Herrington, Chief People Officer & Director of HRMS, OMB: Testimony #19490

Hearing closed at 11:12 AM.

Delores Shimek, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

HB 1442
2/13/2023

Relating to prohibiting possession of public employee personnel documents; and to provide a penalty

9:31 AM Chairman Klemin opened the meeting. Members present: Chairman Klemin, Vice Chairman Karls, Rep. Bahl, Rep. Christensen, Rep. Cory, Rep. Henderson, Rep. S. Olson, Rep. Rios, Rep. S. Roers Jones, Rep. Satrom, Rep. Schneider, Rep. VanWinkle, and Rep. Vetter

Discussion Topics:

- Amendment
- Exempt records
- Penalty.

Discussion on Rep. Murphy's Amendment #19560

Rep. Vetter moved a Do Not Pass;
Seconded by Rep. Bahl

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Landon Bahl	Y
Representative Cole Christensen	N
Representative Claire Cory	Y
Representative Donna Henderson	Y
Representative SuAnn Olson	Y
Representative Nico Rios	N
Representative Shannon Roers Jones	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	Y
Representative Lori VanWinkle	N
Representative Steve Vetter	Y

Roll Call Vote: 10 Yes 3 No 0 Absent Carrier: Rep. Karls

Meeting closed at 9:41 AM.

Delores Shimek, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1442: Judiciary Committee (Rep. Klemin, Chairman) recommends **DO NOT PASS** (10 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1442 was placed on the Eleventh order on the calendar.

TESTIMONY

HB 1442

Testimony for Hearing on HB1442

Eric J. Murphy, District 43

Thank you, Chairman Klemin and my honorable colleagues on the Judiciary Committee. For the record, my name is Eric James Murphy, representative from District 43, Grand Forks.

This bill will amend and reenact section 44-04-18.1 of North Dakota Century Code relating to prohibiting possession of exempt documents in a public employee's personnel file. While these exempt documents may be in possession of an individual during their official duties, for example in evaluation of an employee, the documents must be returned and electronic copies deleted.

The rationale is that possession of these exempt documents outside of the official duties of another individual is a violation of privacy and expected privacy for personnel files as delineated in 44-04-18.1.

The proposed penalty for possession of exempt personnel documents falls into two categories, dependent upon the number of documents in position. An infraction is imposed for each document up to ten documents, whereas a class B misdemeanor is assessed for possession of each document greater than ten documents. Note that I have attached an amendment to correct this language.

A second penalty is incurred for release of possessed exempt documents. Again, I am presenting an amendment for this section. Release of documents results in a proposed class A misdemeanor.

Personnel records must be protected from possession by and release by individuals not authorized to possess and release these exempt documents. Individuals must be curtailed from possessing exempt documents of public employees beyond their official duties. Release of these exempt documents may result in unintended consequences that impacting the individual.

Amendment:

Page 2. Lines 16 and 17 ~~(1) Each document unlawfully released if the individual releases ten or few documents; or~~

Page 2, line 18 ~~(2) Each document an individual unlawfully possesses if the individual possesses ten or more documents.~~

Page 2 line 16 insert: (1) Each document an individual unlawfully possesses if the individual possesses eleven or more documents.

Page 2, line 20 A class A misdemeanor for each document unlawfully released if the individual releases more than ten documents

TESTIMONY OF

Molly Herrington, Chief People Officer, Human Resource Management Services

Good Morning, Chairmen Klemin and committee members. My name is Molly Herrington, Chief People Officer and Director of Human Resource Management Services (HRMS) Division of the Office of Management and Budget (OMB). OMB opposes HB 1442, as introduced.

North Dakota law distinguishes between records that are automatically open to the public, records that are exempt and can be released at the discretion of the agency, and records that are confidential by law. It is our position that personnel records that are confidential by law, together with the requirement that a record of access be maintained on public employee personnel files, provides sufficient protection to public employees. An exempt record, by definition, is a record that can be released to anyone at the unfettered discretion of the agency. Providing criminal penalties to "possession" of a "document," terms that are not clearly defined, under circumstances where records are simply open to anyone at the discretion of the agency is problematic.

Although exempt records should only be released pursuant to a formal process and not simply because an employee had access to a record through job responsibilities, it is unclear at what point continued possession of a document is even proscribed. The way this bill is currently written, it is unclear as to whether an individual piece of data would qualify as a document. Would having a report that includes Employer Identification Numbers saved to a hard drive qualify as unlawful possession after the specific need for that information has ended? Would having an employee's personal phone number in a contact list be deemed unlawful? If this is the case, information that is naturally obtained over the course of working with an individual could qualify as holding exempt records from personnel files after "official duties" have concluded.

Lastly, this bill appears to be extremely punitive for situations that may be unintentional or minor. Exempt information could be readily requested through the current open records process. An employee that releases an exempt record outside of the agency process for handling open records can be addressed through discipline, including termination. Given that a record of access must be maintained on each public employee's personnel file, the ability of an employee to reproduce exempt records for a non-work-related reason is sufficiently constrained.

Thank you for your consideration of these concerns. Chairman Klemin and committee members, this concludes my testimony. I would be happy to answer any questions.

Amendment HB1442

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