MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M

ROLL NUMBER

DESCRIPTION

2117

2001 SENATE JUDICIARY

SB 2117

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2117

Senate Judiciary Committee

☐ Conference Committee

Hearing Date January 24th, 2001

Tape Number	Side A	Side B	Meter #
1		X	20.8-end
2	X		0.0-30.1
Committee Clerk Signature			

Minutes: **Senator Traynor** opened the hearing on SB 2117: A BILL FOR AN AT TO CREATE AND ENACT A NEW SUBSECTION TO SECTION 43-17-32.1, A NEW SUBSECTION TO SECTION 44-04-18, A NEW SUBSECTION TO SECTION 44-04-18.7, AND SECTION 44-04-21.3 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO OPEN RECORDS AND OPEN MEETINGS; TO AMEND AND REENACT SUBSECTIONS 10, 12, AND 13 OF SECTION 44-04-17.1, SUBSECTIONS 5 AND 7 OF SECTION 44-04-19.2, SUBSECTIONS 1 AND 3 OF SECTION 44-04-21.2, AND SECTION 65-05-32 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO OPEN RECORDS AND OPEN MEETINGS; AND TO PROVIDE A PENALTY.

Jim Fleming, representing the Attorney General. Included in the amendments is a clarification of most significant change of the bill. Currently, the open meetings law applies to work groups and task forces created by state agency heads or directors of state institutions. These groups perform the same function and should be equally required to operate in the sunshine of open

government. This bill would apply only to groups which have been created by the head of a state agency or institution and formally designated to meet as a group. Because of these formalities, the number of task forces and advisory groups which would be affected by the bill should be very small.

Senator Traynor where would this be put in the bill?

Jim Fleming on page 2 of the bill, beginning with line 3. This is how the language should be, it is clearer and more concise. It would not apply to staff meetings or informal gathers of operational talks. Only groups that have been created by an institution and formally designated as a group. This, we believe is very narrow in scope. Minutes are also required, but the content of those minutes should be the same or very similar to the notes or recordings which are already kept for those meetings. The office of the Attorney General believes the open meetings currently contains a loophole with regard to task forces and working groups, and asks for the committee's assistance to close the loophole and to apply the open meetings law equally to all governmental bodies. There is still a purpose to have a criminal penalty when a public servant gives misleading testimony and violates the law. Criminal violation for someone who knowingly violates the law. We are not trying to convict an innocent person but someone who knows the law and violates it. We also want personal information of an applicants to open to files.

Senator Watne was an infraction taken out of the law, then a civil process. What kind of penalty would that be?

Jim Fleming a class A misdemeanor.

Senator Traynor are political parties open to records law?

Jim Fleming no.

John Olson, representing the peace officers association (testimony attached). We should keep a patients information confidential. Real problem where board does a temporary removal o f a Doctor's license. Testimony addresses this. A complaint is issued against the doctor. If he is harmful to the public, the Board entertains the information and then decides whether it should be public information. Asks for protection of patients.

Senator Traynor did something just recently happen in Fargo?

John Olson those questions have come up. Patients name was not revealed, information was released and this could identify who the patient was.

Senator Traynor how will the board handle this if the bill is enacted?

John Olson that information will be public except the patients information and will remain sealed. Information about the patient will be available to the board.

Jack McDonald, appearing on behalf of the North Dakota Newspaper Association. (testimony attached)

Senator Traynor Do you think the UND commission regarding the Sioux logo would change anything?

Jack McDonald no. UND choose to have it open to the public. Most of these task forces are open to the public anyway.

Roger Bailey, appearing on behalf of the Newspaper Association. (testimony attached)

Senator Traynor closed the hearing on **SB 2117.**

After the discussion **SENATOR WATNE MOVED TO ADOPT THE ATTORNEY GENERAL'S AMENDMENTS. SECONDED BY SENATOR LYSON. VOTE INDICATED 7 YEAS, 0 NAYS, AND 0 ABSENT AND NOT VOTING. A SECOND MOTION WAS MADE BY SENATOR TRENBEATH TO DO PASS AS AMENDED.**

SECONDED BY SENATOR WATNE. VOTE INDICATED 7 YEAS, 0 NAYS, AND O

ABSENT AND NOT VOTING.

FISCAL NOTE

Requested by Legislative Council
03/26/2001

Bill/Resolution No.:

Amendment to: Engrossed SB 2117

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

NORTH DAKOTA WORKERS COMPENSATION
2001 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION

BILL DESCRIPTION: Open Records

BILL NO: Engrossed SB 2117 w/ Amendments

SUMMARY OF ACTUARIAL INFORMATION: North Dakota Workers Compensation, together with its actuary, Glenn Evans of Pacific Actuarial Consultants, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

FISCAL IMPACT: The engrossed bill will have no significant impact on NDWC operations.

DATE: March 27, 2001

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Paul R. Kramer	**Agency:**	ND Workers Compensation
Phone Number:	328-3856	**Date Prepared:**	03/27/2001

FISCAL NOTE

Requested by Legislative Council
01/26/2001

Bill/Resolution No.:

Amendment to: SB 2117

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

NORTH DAKOTA WORKERS COMPENSATION
2001 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION

BILL DESCRIPTION: Open Records

BILL NO: Engrossed SB 2117

SUMMARY OF ACTUARIAL INFORMATION: North Dakota Workers Compensation, together with its actuary, Glenn Evans of Pacific Actuarial Consultants, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

FISCAL IMPACT: The engrossed bill will have no significant impact on rate and reserve levels.

DATE: January 29, 2001

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Paul R. Kramer	**Agency:**	ND Workers Compensation
Phone Number:	328-3856	**Date Prepared:**	01/29/2001

FISCAL NOTE

Requested by Legislative Council
01/03/2001

Bill/Resolution No.: SB 2117

Amendment to:

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

NORTH DAKOTA WORKERS COMPENSATION
2001 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION

BILL DESCRIPTION: Open Records

BILL NO: SB 2117

SUMMARY OF ACTUARIAL INFORMATION: North Dakota Workers Compensation, together with its actuary, Glenn Evans of Pacific Actuarial Consultants, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

The proposed bill removes subsection 5 of Section 65-05-32, which details the claim specific information that is available to the public and the methods of how it can be distributed.

FISCAL IMPACT: Anticipate no impact to rate and reserve levels.

DATE: January 4, 2001

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and*

fund affected and any amounts included in the executive budget.

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Paul R. Kramer	**Agency:**	ND Workers Compensation
Phone Number:	328-3856	**Date Prepared:**	01/05/2001

Proposed by
Office of Attorney General

PROPOSED AMENDMENTS TO SENATE BILL 2117

Page 1, line 1, after "section 43-17-32.1," insert "a new subsection to section 44-04-17.1,"

Page 1, line 6, after "44-04-19.2," insert "and" and remove ", and section 65-05-32"

Page 2, line 3, remove "order of the"

Page 2, remove line 4

Page 2, line 5, remove "education," and replace "director of a" with "individual in charge of a state agency or institution,"

Page 2, remove line 6

Page 2, line 7, remove "employees of the agency,"

Page 2, after line 18, insert:

"**SECTION 3.** A new subsection to section 44-04-17.1 of the 1999 Supplement to the North Dakota Century Code is created and enacted as follows:

"Task force or working group" means a group of individuals which has been formally designated 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.

Page 5, remove lines 14 through 30

Page 6, removes lines 1 through 12

Renumber accordingly

Date: 1/24/01
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2117

Senate Judiciary Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Adopt Attorney General's Amendments.

Motion Made By Watne Seconded By [redacted] Lyson

Senators	Yes	No	Senators	Yes	No
Traynor, J. Chairman	X		Bercier, D.	X	
Watne, D. Vice Chairman	X		Nelson, C.	X	
Dever, D.	X				
Lyson, S.	X				
Trenbeath, T.	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

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

Date: 1/24/01
Roll Call Vote #: 2

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2117

Senate Judiciary Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Trenbeath Seconded By Watne

Senators	Yes	No	Senators	Yes	No
Traynor, J. Chairman	X		Bercier, D.	X	
Watne, D. Vice Chairman	X		Nelson, C.	X	
Dever, D.	X				
Lyson, S.	X				
Trenbeath, T.	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Trenbeath.

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

REPORT OF STANDING COMMITTEE

SB 2117: Judiciary Committee (Sen. Traynor, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2117 was placed on the Sixth order on the calendar.

Page 1, line 1, after the comma insert "a new subsection to section 44-04-17.1,"

Page 1, line 6, after the first comma insert "and" and remove ", and section 65-05-32"

Page 2, line 3, remove the overstrike over "~~of~~" and remove ", order of the"

Page 2, remove line 4

Page 2, line 5, remove "education," and replace "director" with "individual in charge"

Page 2, line 6, remove "administrative" and replace "when a majority of the members are not" with "or institution"

Page 2, line 7, remove "employees of the agency"

Page 2, after line 18, insert:

"**SECTION 3.** A new subsection to section 44-04-17.1 of the 1999 Supplement to the North Dakota Century Code is created and enacted as follows:

"Task force or working group" means a group of individuals which has been formally designated 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."

Page 5, remove lines 14 through 30

Page 6, remove lines 1 through 12

Renumber accordingly

2001 HOUSE POLITICAL SUBDIVISIONS

SB 2117

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2117

House Political Subdivisions Committee

☐ Conference Committee

Hearing Date 3-2-01

Tape Number	Side A	Side B	Meter #
1		xx	300--2749
1		xx	3500--3800
Committee Clerk Signature			

Minutes: Chair Froseth opened the hearing on SB2117 relating to open records and open meetings; and to provide a penalty.

Jim Fleming, Office of Attorney General : testified in support of SB2117. **(SEE ATTACHED TESTIMONY AND AMENDMENT)** This bill will close a loophole. The engrossed bill put the penalty back in. Putting "may" in stead of "shall" leaves the door open for us when there is an honest mistake.

Rep. Herbel : (945) On page 2, you want to add a penalty for people knowingly violating open records. What is knowingly? Who determines that?

Jim : They knew what they were doing. If the law requires they do something and they knowingly did not do it. If they did not know and it was an honest mistake, there is no criminal offense. We don't think it is ambiguous. It follows language already in code and is defined in code. The state's attorney will have to determine if it was intentional. We have a good relationship with local governments in working throug honest mistakes.

Rep. Delmore : (1115) Are there safeguards in here for meetings when confidentiality of individuals is involved?

Jim : There are provisions when you are talking about closed records; you can have a closed meeting. Procedures are in place because of the laws that are passed in the legislature.

John Olson, Board of Medical Examiners : We support this bill. Section 1 closes the gap.

Jack McDonald, ND Newspaper Assoc./ND Broadcasters Assoc. : (1300) here in support of SB2117. **(SEE ATTACHED)**

Rep. Delmore : Do you think there are lots of violations that go on in open meetings?

Jack : No, not a lot. Some are inadvertent. Since the passage of the 1997 bill, the number has gone down dramatically.

Vice-Chair Severson : Will this bill protect our house caucuses, being they are closed.

Jack : No, the out house meetings will stay out.

Barbara Norby, ND School Boards Assoc. : (1500) opposed to bill because of the criminal offense element. It makes it a class A misdemeanor with maximum of 1 year in jail or $2,000 fine or both. We have a hard time getting people to run for school board offices now. This will not help that at all.

Chair Froseth : I understand your concern. But city governments and school boards should make their membership aware of what laws are concerning open meetings, etc. Jim, can you address school boards.

Jim : If they unknowingly violate, it is not a criminal offense. We do training videos, prepare manuals, and have web site aides. It will never be perfect because you will always have new township officers and school boards members. If they knowingly violate, then they should be subject to a criminal penalty.

Rep. N. Johnson : (1890) Ms. Norby, in section 3, it talks about task force and working groups. Do you have a problem with that?

Barbara : I don't have a problem. It talks about state institutions and appointments. I don't think that deals with school boards.

Chair Froseth : What's the definition of institution?

Jack : It would cover school boards. All political subdivisions are institutions of the state.

Barbara : We already recommend that all committees appointed by a school board are subject to open meeting laws. This doesn't change our recommendation at all.

Rep. Delmore : As a school Board association, aren't you making every effort to let members know what the laws are regarding open meetings?

Barbara : Yes, we are.

Rep. Herbel : (2400) What happens if the school board adjourns, and most of the members go to the bar and discuss school issues? What constitutes open meetings violations in that case?

Jim : A gathering, in any form, that has a quorum of the members. Do your business at the meeting and not at the bar to be safe.

Rep. Delmore : Did you say that the penalties were enforced until 1997 when we redid the open records? If so, how often was the penalty enforced?

Jim : In the 40 years between 1957 and 1997, no one had been prosecuted.

Chair Froseth : Any more testimony? Hearing none, SB2117 is closed. (Discussion-3580)

Rep. Delmore : **I move the amendment** 18211.0201. Rep. N. Johnson : **I second.**

VOICE VOTE: ALL YES. PASSED.

Rep. Delmore : **I move a DO PASS AS AMENDED.** Rep.Severson : **I second.**

VOTE: 10 YES and 0 NO with 5 absent. PASSED. Rep. Kretschmar will carry.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2117 b

House Political Subdivisions Committee

☐ Conference Committee

Hearing Date 3-22-01

Tape Number	Side A	Side B	Meter #
2	xx		2060--3300
Committee Clerk Signature			

Minutes: Chair Froseth : We need to reconsider SB2117.

Rep. Maragos : I move to reconsider SB2117.

Rep. N.Johnson : I second.

VOICE VOTE to reconsider: ALL YES. MOTION PASSED.

Jim Flemming, AG Office : We worked on adding some additional wording to the amendments you had before.

Rep. Kretschmar : **I move these new amendments.**

Vice-Chair Severson : **I second.**

VOICE VOTE: ALL YES. MOTION CARRIED.

Vice-Chair Severson : **I move a DO PASS AS FURTHER AMENDED.**

Rep. Delmore : **I second.**

VOTE: 13 YES and 1 NO with 1 absent. Rep. Kretschmar will carry the bill.

18211.0201
Title.0300

Adopted by the Political Subdivisions Committee

March 2, 2001

YR
3/5/01

HOUSE AMENDMENTS to ENG. SB2117 **HOUSE POL. SUBS. 3-5-01**

Page 5, line 13, replace "shall" with "may"

Renumber accordingly

Date: 3-2-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2117

House POLITICAL SUBDIVISIONS Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number Do PASS As Amended

Action Taken 18.2-11.0201 .0300

Motion Made By Rep. Delmore Seconded By Vice Chair Severson

Representatives	Yes	No	Representatives	Yes	No
Chairman Glen Froseth	✓		Rep. Wayne W. Tieman	AB	
Vice-Chair Dale C. Severson	✓				
Rep. Lois Delmore	✓				
Rep. Rachael Disrud	AB				
Rep. Bruce Eckre	✓				
Rep. Mary Ekstrom	AB				
Rep. April Fairfield	AB				
Rep. Michael Grosz	✓				
Rep. Jane Gunter	✓				
Rep. Gil Herbel	✓				
Rep. Nancy Johnson	✓				
Rep. William E. Kretschmar	✓				
Rep. Carol A.Niemeier	✓				
Rep. Andrew G. Maragos	AB				

Total (Yes) 10 No 0

Absent 5

Floor Assignment Rep. Kretschmar

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

Recommended
DR 3-2-01

REPORT OF STANDING COMMITTEE

SB 2117, as engrossed: Political Subdivisions Committee (Rep. Froseth, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 0 NAYS, 5 ABSENT AND NOT VOTING). Engrossed SB 2117 was placed on the Sixth order on the calendar.

Page 5, line 13, replace "shall" with "may"

Renumber accordingly

18211.0202
Title.0400

Adopted by the Political Subdivisions Committee
March 22, 2001

VR
3/22/01

HOUSE AMENDMENTS to ENG.SB2117 HOUSE POL. SUBS. 3-23-01

Page 1, line 4, after "reenact" insert "subsection 1 of section 6-09-35,"

Page 1, after line 9, insert:

"**SECTION 1. AMENDMENT.** Subsection 1 of section 6-09-35 of the North Dakota Century Code is amended and reenacted as follows:

1. Commercial or financial information of a customer, whether obtained directly or indirectly, except for routine credit inquiries or unless required by due legal process. As used in this subsection, "customer" means any person who has transacted or is transacting business with, or has used or is using the services of, the Bank of North Dakota, or for whom the Bank of North Dakota has acted as a fiduciary with respect to trust property."

HOUSE AMENDMENTS to ENG.SB2117 HOUSE POL. SUBS. 3-23-01

Page 2, line 18, replace "which has" with "who have"

Page 2, line 19, replace "designated" with "appointed and delegated"

HOUSE AMENDMENTS to ENGSB2117 HOUSE POL. SUBS. 3-23-01

Page 5, line 13, replace "shall" with "may"

Renumber accordingly

Date: 3-22-01
Roll Call Vote #: 2

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2117

House POLITICAL SUBDIVISIONS Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number 18211.0202 .0400

Action Taken Do Pass As Further Amended

Motion Made By Vice Chair Severson Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Chairman Glen Froseth	✓		Rep. Wayne W. Tieman	✓	
Vice-Chair Dale C. Severson	✓				
Rep. Lois Delmore	✓				
Rep. Rachael Disrud	✓				
Rep. Bruce Eckre	✓				
Rep. Mary Ekstrom	✓				
Rep. April Fairfield	AB				
Rep. Michael Grosz	✓				
Rep. Jane Gunter	✓				
Rep. Gil Herbel	✓				
Rep. Nancy Johnson		✓			
Rep. William E. Kretschmar	✓				
Rep. Carol A.Niemeier	✓				
Rep. Andrew G. Maragos	✓				

Total (Yes) 13 No 1

Absent 1 ab

Floor Assignment Rep. Kretschmar

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

REPORT OF STANDING COMMITTEE (410)
March 23, 2001 10:21 a.m.

Module No: HR-51-6511
Carrier: Kretschmar
Insert LC: 18211.0202 Title: .0400

REPORT OF STANDING COMMITTEE

SB 2117, as engrossed: Political Subdivisions Committee (Rep. Froseth, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). Engrossed SB 2117 was placed on the Sixth order on the calendar.

Page 1, line 4, after "reenact" insert "subsection 1 of section 6-09-35,"

Page 1, after line 9, insert:

"**SECTION 1. AMENDMENT.** Subsection 1 of section 6-09-35 of the North Dakota Century Code is amended and reenacted as follows:

1. Commercial or financial information of a customer, whether obtained directly or indirectly, except for routine credit inquiries or unless required by due legal process. As used in this subsection, "customer" means any person who has transacted or is transacting business with, or has used or is using the services of, the Bank of North Dakota, or for whom the Bank of North Dakota has acted as a fiduciary with respect to trust property."

Page 2, line 18, replace "which has" with "who have"

Page 2, line 19, replace "designated" with "appointed and delegated"

Page 5, line 13, replace "shall" with "may"

Renumber accordingly

2001 TESTIMONY

SB 2117

SENATE BILL 2117
Senate Judiciary Committee
January 24, 2001

Chairman Traynor, members of the Senate Judiciary Committee, my name is James C. Fleming. I am an assistant attorney general working in the open records and meetings area and I am here on behalf of the Office of Attorney General Wayne Stenehjem to ask for a do-pass recommendation on Senate Bill 2117 **as amended**.

This bill was introduced to make a few substantive changes to the open records and meetings laws and to make other technical corrections. Since this bill was filed in December, the Attorney General's office has received some helpful questions and comments on the proposed legislation. Along with my testimony, I have passed out a page of amendments which respond to the input we have received and we ask for your favorable consideration of the bill with those amendments.

Included in these amendments is clarification of perhaps the most significant substantive change proposed in the bill. Currently, the open meetings law applies to work groups and task forces created by a city council or county commission or a state board, but not to similar groups created by state agency heads or directors of state institutions. These groups perform the same function and should be equally required to operate in the sunshine of open government.

Examples of the groups not currently covered would be the previous Attorney General's task force on gasoline pricing or the University of North Dakota name change commission. As these examples show, the task forces and advisory groups affected by this bill frequently address important items of public interest. With the amendments I have distributed, the bill language would read as follows:

12. "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;

16. "Task force or working group" means a group of individuals which has been formally designated 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.

This language is limited. It does not apply to staff meetings. It does not apply to informal gatherings of the head of an agency or institution with a group of friends or

peers about the operation of the agency. And it does not apply to a meeting between the head of an agency or institution and a local chamber of commerce or other existing organization. **The bill would apply only to groups which have been created by the head of a state agency or institution and formally designated to meet as a group. Because of these formalities, the number of task forces and advisory groups which would be affected by the bill should be very small.**

If enacted, this bill would require the members of these task forces and advisory groups to exhibit the same candor the law currently requires of other public servants who serve on multi-member bodies. While a public notice must be prepared of such meetings, I have enclosed a form notice prepared by the Office of Attorney General which shows how easy it can be to prepare and file a meeting notice. Minutes are also required, but the content of those minutes should be the same or very similar to the notes or recordings which are already kept for those meetings.

The Office of Attorney General believes the open meetings currently contains a loophole with regard to task forces and working groups, and asks for the committee's assistance to close the loophole and to apply the open meetings law equally to all governmental bodies.

The other major change in this legislation is to add a potential criminal penalty for people who knowingly violate the open records and meetings laws. To facilitate an investigation of potential criminal violations, the Attorney General is required to refer to the appropriate state's attorney any public servant who has been found in more than one attorney general's opinion to have violated the open records and meetings laws. Since the opinion process began in 1997, there have been a handful of occasions when violations appear to have been intentional, when a public servant may have attempted to mislead the Office of Attorney General, and when a public servant continues to disregard the open records and meetings laws even after our office has intervened and issued multiple opinions. Some of the violations have been very blatant.

Below is a brief summary of the other changes in the bill:

1. The current exemption for personal information of a public employee would extend to applicants for employment and former employees (Section 5). Current law only protects personal information provided by current employees in the course of employment. Personal information submitted in a job application is not protected under current law.

2. Medical records and personal information about a patient obtained by the Board of Medical Examiners would be exempt (Section 1).

3. Disclosure of an open record is not a waiver of any copyright of the state in the requested record or a waiver of any applicable evidentiary privilege (Section 4). On occasion, requesters of public records have sought to exploit the commercial value of the records. This amendment would clarify that the state has not waived

its copyright simply by making the records open to the public upon request. Use of copyrighted material would be governed by the fair-use doctrine in federal copyright law.

4. A new exemption is created for computer indexes of names included in criminal files maintained by criminal justice agencies (Section 6). Excising the names of individuals which are still being actively investigated or which are juveniles would take an extremely long period of time. The source documents from which the index is compiled would be unaffected by the amendment.

5. The bill establishes a minimum retention period for executive session recordings of at least six months (Section 8). Currently there is no minimum retention period and the tape could be destroyed immediately after the conclusion of the executive session.

6. The three-day notice and opportunity to cure a violation before a public entity may be sued does not apply to repeated violations (Section 9).

7. The bill clarifies that that a public entity can deny a request for records from a party to litigation involving the public entity if the records are privileged (Section 3).

8. The definition of public funds is clarified to include non-cash assets with more than minimal value, codifying an earlier attorney general's opinion (Section 2).

9. Airport authorities added to list of public entities (Section 2).

Mr. Chairman, this concludes my testimony on Senate Bill 2117 and I would be happy to answer any question the committee may have on the bill.

SAMPLE MEETING NOTICE

The _____ [Name of Governing Body] of the _____ [Name of Public Entity] (hereafter referred to as "governing body") will be holding a(n) _____ [regular, special, or emergency] meeting on _____ [Date] at _____ [Time]. The meeting will be held in the _____ room at _____ [Location of the Meeting]. In the event that any or all of the members of the governing body participate in the meeting by telephone or video, a speakerphone or monitor will be available at the location noted above.

At the time this notice is being prepared, the governing body expects the agenda of its meeting to include the following topics: [Include all topics the governing body expects to discuss. Also include the topics to be discussed during, and the legal authority for holding, any anticipated executive sessions.]

1.

2.

3.

4.

5.

Where noted, the discussion of some of the above topics may be held in executive session rather than during the portion of the meeting which is open to the public. If this is a regular meeting, additional topics may be discussed. If this is a special or emergency meeting, the governing body's discussion will be limited to the topics and executive sessions listed above.

Date of Notice:_____ Name of Person Preparing Notice: _____

Posting Instructions:

1. Post at the main office of the public entity, if the entity has a main office.
2. Post at the location of the meeting, if held somewhere other than the entity's main office.
3. File with the appropriate official [the Secretary of State for state-level entities, the appropriate city auditor for city-level entities, and the county auditor(s) for all other entities].
4. Provide a copy of the notice to any individual who has requested notice of the meeting.
5. For special or emergency meetings, notify the entity's official newspaper, if any, and any other media representative who has asked to be notified of such special or emergency meetings.

N.D.C.C. § 44-04-20. Notice of public meetings required--Exceptions--Schedule set by statute, ordinance, or resolution.

1. Unless otherwise provided by law, public notice must be given in advance of all meetings of a public entity as defined in section 44-04-17.1, including executive sessions, conference call meetings, and video conferences. Unless otherwise specified by law, resolution, or ordinance, or as decided by the public entity, notices required by this section need not be published.
2. The notice required in this section must contain the date, time, and location of the meeting and, where practicable, the topics to be considered. However, the lack of an agenda in the notice, or a departure from, or an addition to, the agenda at a meeting, does not affect the validity of the meeting or the actions taken thereat. The notice must also contain the general subject matter of any executive session expected to be held during the meeting. For meetings to be held by telephone or video conference, the location of the meeting and the place the meeting is held is the location of a speakerphone or monitor as required under section 44-04-19.
3. In cases where the governing body holds regularly scheduled meetings, the schedule of these meetings, including the aforementioned notice information, if available, must be filed annually in January with the secretary of state for state-level bodies or for public entities defined in subdivision c of subsection 12 of section 44-04-17.1, the city auditor or designee of the city for city-level bodies, and the county auditor or designee of the county for all other bodies. This schedule must be furnished to anyone who requests the information. When reasonable and practicable, a governing body of a public entity should attempt to set a regular schedule for its meetings by statute, ordinance, or resolution. This subsection does not apply to meetings of the legislative assembly or any committee thereof.
4. The notice required in this section must be posted at the principal office of the governing body holding the meeting, if such exists, and at the location of the meeting on the day of the meeting. In addition, unless all the information contained in the notice was previously filed with the appropriate office under subsection 3, the notice must be filed in the office of the secretary of state for state-level bodies or for public entities defined in subdivision c of subsection 12 of section 44-04-17.1, the city auditor or designee of the city for city-level bodies, and the county auditor or designee of the county for all other bodies. This subsection does not apply to meetings of the legislative assembly or any committee thereof.
5. The governing body's presiding officer has the responsibility of assuring that such public notice is given at the same time as such governing body's members are notified, and that this notice is available to anyone requesting such information.
6. In the event of emergency or special meetings of a governing body, the person calling such a meeting shall also notify the public entity's official newspaper, if any, and any representatives of the news media which have requested to be so notified of such special or emergency meetings, of the time, place, date, and topics to be considered at the same time as such governing body's members are notified. Topics that may be considered at an emergency or special meeting are limited to those included in the notice to the media.
7. A committee of an institution under the authority of the state board of higher education, in lieu of the notice requirements in this section, may file in the office of the president of the institution the name, address, and telephone number of a person who may be contacted to obtain specific times, dates, and locations of any meetings of that committee or to request specific notification of each meeting of that committee.
8. The attorney general shall prepare general guidelines to assist public entities in following the provisions of this section.
9. This section is violated when a notice is not provided in substantial compliance with this section.

North Dakota State
Board of Medical Examiners

ROLF P. SLETTEN
Executive Secretary and Treasurer

LYNETTE LEWIS
Administrative Assistant

TO: CHAIRMAN TRAYNOR AND THE MEMBERS OF THE SENATE JUDICIARY COMMITTEE

FROM: ROLF P. SLETTEN, EXECUTIVE SECRETARY & TREASURER

RE: SENATE BILL NO. 2117

DATE: JANUARY 24, 2001

Our comments pertain only to Section 1 of this bill. The Board of Medical Examiners supports Section 1. Section 1 creates a new subsection to Sec. 43-17-32.1, NDCC. A copy of that statute is attached to this statement.

This statute sets forth the Board's authority to summarily suspend a doctor's license in certain limited circumstances.

This bill will insure that documents containing personal information about patients can remain confidential during that process.

The need for this legislation arises as follows:

1. The North Dakota State Board of Medical Examiners is comprised of eleven members.
2. For purposes of conducting investigations, the Board is divided into two panels (Panel A and Panel B).

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PHONE (701) 328-6500 • FAX (701) 328-6505

3. When a complaint comes into the office it is assigned to one of the two investigative panels. In the normal course of events, the panel investigates the case and then decides whether or not a formal disciplinary action should be instituted against the doctor.

4. Once in a great while, perhaps once per year, the investigating panel will conclude that the circumstances under review are so alarming, and the danger is so great, that an emergency suspension of the doctor's license should be ordered.

5. An emergency suspension can only be ordered by the full Board.

6. The records and proceedings of the investigating panels are confidential, however, the records and proceedings of the full Board are public

7. In order for the Board to consider the information that the investigating panel found to be so alarming we must put that information before the Board. In most cases, that information then becomes public, even though no hearing officer has ruled on the admissibility of the evidence, and in spite of the fact that some of the information might be very personal to individual patients. In other words, that very personal patient information has suddenly transferred from the confidential investigative panel file to the public file merely because the Board of Medical Examiners was called upon to consider an emergency/summary suspension.

8. This bill would allow the Board to keep that information confidential even though it was presented to the Board for the purpose of considering the suspension.

43-17-32.1. Temporary suspension - Appeal. -

1. When, based on verified evidence, the board has probable cause to believe that the suspension of a physician's license is required to reasonably protect the public from imminent or critical harm, the board may order a temporary suspension ex parte.

2. An ex parte temporary suspension remains in effect for not more than sixty days, unless otherwise terminated by the board.

3. The board shall set the date of a full hearing for suspension or revocation of the physician's license for not later than sixty days from the issuance of the ex parte temporary suspension order. Within three days after the issuance of the ex parte suspension order the board shall serve the physician with a copy of the order along with a copy of the complaint and notice of the date set for the full hearing.

4. The physician may appeal the ex parte temporary suspension order prior to the full hearing. For purposes of appeal, the district court shall decide whether the board acted reasonably or arbitrarily. The court shall give priority to the appeal for prompt disposition thereof.

January 24, 2001

SENATE JUDICIARY COMMITTEE
SB 2117

CHAIRMAN TRAYNOR AND COMMITTEE MEMBERS:

My name is Jack McDonald. I am appearing today on behalf of the North Dakota Newspaper Association and the North Dakota Broadcasters Association. We strongly support SB 2117, and urge you to adopt the amendments and give the bill a unanimous **do pass.**

We especially support the amendments proposed by the Attorney General's office. This area of task forces has been a particularly troubling one, since when they're created, they are usually fairly high profile and are definitely carrying out public functions...usually using state facilities and state funds.

The number of these task forces will be small, so there should be no administrative problems with treating them as public meetings as far as notices, minutes and other matters are concerned.

The criminal portions of the bill are nothing new. The old open record law carried criminal provisions for nearly 50 years, so this is just going back to the beginnings. We think its needed in those rare instances when nothing else works. It will rarely be used.

This is a good bill that will be beneficial to all North Dakotans. The general public, and not the media, continue to be the biggest users of the open meetings and open records laws, and these changes will benefit them.

Again, we respectfully urge you to adopt the amendments and give the bill a **do pass.**

If you have any questions, I'd be glad to try to answer them. THANK YOU FOR YOUR TIME AND CONSIDERATION.

Testimony before the Senate Judicial Committee
January 24, 2001
SB 2117

CHAIRMAN TRAYNOR AND MEMBERS OF THE COMMITTEE:

My name is Roger Bailey and I represent the members of the North Dakota Newspaper Association.

For most of the past 28 years I was the owner, publisher and editor of a North Dakota weekly newspaper. As a result of still having a large financial stake in that newspaper, I have a large interest in SB 2117.

Open records and open meetings are the hallmarks of North Dakota government at every level.

I can tell you from my experience that the residents of North Dakota and most government officials I've worked with over the years very much favor North Dakota's open government. I had very few problems in working with government officials and agencies during my years in the weekly newspaper business. I can tell you that in the situations in which government officials or agencies did not follow North Dakota's open meetings and open records laws -- invariably, it turned out to be a regrettable experience for everyone – the public as well as those government officials and agencies. It is not easy to keep secrets in a small town, or even in a large city.

The best government is open government – just as this country's and North Dakota's founding fathers believed. Conducting the public's business behind closed doors and closed records only leads to public suspicion.

I ask for your support of SB 2117.

Thank you for your consideration. I will try to answer questions that you might have.

SENATE BILL 2117
House Political Subdivisions Committee
March 2, 2001

Chairman Froseth, members of the House Political Subdivisions Committee, my name is James C. Fleming. I am an assistant attorney general working in the open records and meetings area and I am here on behalf of Attorney General Wayne Stenehjem to ask for a do-pass recommendation on Engrossed Senate Bill 2117 **as further amended**.

This bill was introduced to make a few substantive changes to the open records and meetings laws and to make other technical corrections. Along with my testimony, I have passed out an amendment which further refines one of the more significant changes proposed in the bill and we ask for your favorable consideration of the engrossed bill with that amendment.

Currently, the open meetings law applies to work groups and task forces created by a city council or county commission or a state board, but not to similar groups created by state agency heads or directors of state institutions. These groups perform the same function and should be equally required to operate in the sunshine of open government. Examples of the groups not currently covered would be the previous Attorney General's task force on gasoline pricing or the University of North Dakota name change commission. As these examples show, the task forces and advisory groups affected by this bill frequently address important items of public interest.

The language in the engrossed bill is limited. It does not apply to staff meetings. It does not apply to informal gatherings of the head of an agency or institution with a group of friends or peers about the operation of the agency. And it does not apply to a meeting between the head of an agency or institution and a local chamber of commerce or other existing organization. **The bill would apply only to groups which have been created by the head of a state agency or institution and formally designated to meet as a group. Because of these formalities, the number of task forces and advisory groups which would be affected by the bill should be very small.**

If enacted, this bill would require the members of these task forces and advisory groups to exhibit the same candor the law currently requires of other public servants who serve on multi-member bodies. While a public notice must be prepared of such meetings, I have enclosed a form notice prepared by the Office of Attorney General which shows how easy it can be to prepare and file a meeting notice. Minutes are also required, but the content of those minutes should be the same or very similar to the notes or recordings which are already kept for those meetings.

The Attorney General believes the open meetings law currently contains a loophole with regard to task forces and working groups, and asks for the committee's assistance to close the loophole and to apply the law equally to all governmental bodies.

The other major change in this legislation is to add a criminal penalty for people who knowingly violate the open records and meetings laws. To facilitate an investigation of potential criminal violations, the Attorney General can refer to the appropriate state's attorney any public servant who has been found in more than one attorney general's opinion to have violated the open records and meetings laws. Since the opinion process began in 1997, there have been a handful of occasions when violations appear to have been intentional, when a public servant may have attempted to mislead the Office of Attorney General, and when a public servant continues to disregard the open records and meetings laws even after our office has intervened and issued multiple opinions. Some of the violations have been very blatant.

In response to some concerns raised about the mandatory language in the present bill draft, the Attorney General is requesting the committee amend the bill to allow discretion in pursuing a criminal complaint. The amendment I have handed out gives our office discretion to recognize when a public servant has made an innocent mistake and to choose not to refer such a violation to the state's attorney.

Below is a brief summary of the other changes in the bill:

1. The current exemption for personal information of a public employee would extend to applicants for employment and former employees (Section 6). Current law only protects personal information provided by current employees in the course of employment. Personal information submitted in a job application is not protected under current law.

2. Medical records and personal information about a patient obtained by the Board of Medical Examiners would be exempt (Section 1).

3. Disclosure of an open record is not a waiver of any copyright of the state in the requested record or a waiver of any applicable evidentiary privilege (Section 5). On occasion, requesters of public records have sought to exploit the commercial value of the records. This amendment would clarify that the state has not waived its copyright simply by making the records open to the public upon request. Use of copyrighted material would be governed by the fair-use doctrine in federal copyright law.

4. A new exemption is created for computer indexes of names included in criminal files maintained by criminal justice agencies (Section 7). Excising the names of individuals which are still being actively investigated or which

are juveniles would take an extremely long period of time. The source documents from which the index is compiled would be unaffected by the amendment.

5. The bill establishes a minimum retention period for executive session recordings of at least six months (Section 9). Currently there is no minimum retention period and the tape could be destroyed immediately after the conclusion of the executive session.

6. The three-day notice and opportunity to cure a violation before a public entity may be sued does not apply to repeated violations (Section 10).

7. The bill clarifies that that a public entity can deny a request for records from a party to litigation involving the public entity if the records are privileged (Section 4).

8. The definition of public funds is clarified to include non-cash assets with more than minimal value, codifying an earlier attorney general's opinion (Section 2).

9. Airport authorities added to list of public entities (Section 2).

Mr. Chairman, this concludes my testimony on Engrossed Senate Bill 2117 and I would be happy to answer any question the committee may have on the bill.

Prepared by
James C. Fleming
Assistant Attorney General

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL 2117

Page 5, line 13, replace "shall" with "may"

Renumber accordingly

MARCH 2, 2001

HOUSE POLITICAL SUBDIVISIONS COMMITTEE
SB 2117

CHAIRMAN FROSETH AND COMMITTEE MEMBERS:

My name is Jack McDonald. I am appearing today on behalf of the North Dakota Newspaper Association and the North Dakota Broadcasters Association. We strongly support SB 2117, and urge you to adopt the amendments and give the bill a unanimous **do pass.**

One of the key areas of this bill are the provisions covering task forces. This area has been a particularly troubling one, since when they're created, they are usually fairly high profile and are definitely carrying out public functions...usually using state facilities and state funds.

The number of these task forces will be small, so there should be no administrative problems with treating them as public meetings as far as notices, minutes and other matters are concerned.

The criminal portions of the bill are nothing new. The old open record law carried criminal provisions for nearly 50 years, so this is just going back to the beginnings. We think its needed in those rare instances when nothing else works. It will rarely be used.

This is a good bill that will be beneficial to all North Dakotans. The general public, and not the media, continue to be the biggest users of the open meetings and open records laws, and these changes will benefit them.

Again, we respectfully urge you to adopt the amendments and give the bill a **do pass.**

If you have any questions, I'd be glad to try to answer them. THANK YOU FOR YOUR TIME AND CONSIDERATION.