

2011 HOUSE EDUCATION

HB 1214

2011 HOUSE STANDING COMMITTEE MINUTES

House Education Committee
Pioneer Room, State Capitol

HB 1214
02/01/11
13794

Conference Committee

Committee Clerk Signature



MINUTES:

Chairman RaeAnn Kelsch: We will open the hearing on HB 1214. Rep. Skarphol and I serve on a longitudinal data committee and this bill is a result of the work over the interim. I am going to call on Lisa Feldner to walk through the bill.

Lisa Feldner - ITD: Testimony attachment. 7:51

Rep. Phillip Mueller: Can you tell us what the bill will do?

Lisa Feldner - ITD: It mostly cleans up language from the committee. The idea is that the committee will manage the longitudinal data system through ITD. This bill will say we need the data and we are going to keep it secure as possible, who will keep it, and who can and will use it.

Rep. Karen Rohr: Is the information put into the data base identified information? In other words no names or birthdates? That kind of thing.

Lisa Feldner - ITD: No. The information put in the base is identifiable only in that form. It is never released on individual basis. It is aggregate data. All the reporting that goes out is never identified to the individual unless it is going back to the school district in which the student resides then a teacher may be able to see assessment scores.

Rep. Karen Rohr: So there are names, birthdates, and social security numbers in this data base?

Lisa Feldner - ITD: There are no social security number.

Rep. Karen Rohr: Would a grad student have access to this on a research project or dissertation?

Lisa Feldner - ITD: No.

Rep. Karen Rohr: Where does it say that in the bill?

Lisa Feldner - ITD: It says that in the FERPA issue. We can release the reports but no one can use our information.

Chairman RaeAnn Kelsch: So Rep. Karen Rohr you ask about outcomes a lot. One of the things we will be able to identify is data on what needs to be done for students to potentially increase awareness on statistics and the full picture. When we ask for data looking from high school to college, and college to workforce, this longitudinal data will give a process of how they are doing later on. It's a done deal. It's required by federal law. The biggest reason for this bill is because we have had extreme resistance by higher education to buy into the longitudinal session.

Rep. Karen Rohr: I think we do need a data system but my concern is the identifiability of the research that is in the database.

Vice Chair Lisa Meier: How long will this take, if this bill is passed, to line it up and have the information available for people?

Lisa Feldner - ITD: We have quite a bit going on so far. We have the power school data that is automatically pulled in right now. In the spring, we hope to have pilot k-12 districts using the longitudinal data system. We won't have the workforce data yet and we hope to get higher education data. The base k-12 part is functional so I would say by next fall we will have more robust data to look at.

Rep. Bob Hunsakor: You said higher education is not too supportive yet federal law requires that, why wouldn't they be supportive?

Chairman RaeAnn Kelsch: Higher education was using FERPA as its trump card. It was a matter of walking through the whole FERPA and a bill like this to say the will is now there to share the data. Further questions? Support?

Bev Nielson - NDSBA: We support the bill. Without higher education data we don't complete the loop so it's time that be provided.

Chairman RaeAnn Kelsch: Questions? Support?

Doug Johnson – NDCEL: We are in support of HB 1214. I have served on a longitudinal data team and we have worked hard putting this together. This was needed so we can have all the data pieces put together. We shared with other states what we are doing in our state and this is probably the hardest part out system and without this piece our system would not be functional to give you the data to see what is happening in education. This is an important issue.

Rep. Karen Rohr: The data that you are putting in is obviously collected from k-12 and higher education, but do you have best practices identified so you can see the comparison?

Doug Johnson – NDCEL: That is in the other sections in other bill we have going on at this point in time. We are looking into that in other bills this session.

Chairman RaeAnn Kelsch: Futher questions? Support? Opposition? We will close the hearing on HB 1214.

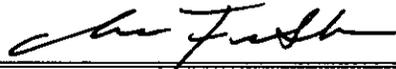
2011 HOUSE STANDING COMMITTEE MINUTES

House Education Committee
Pioneer Room, State Capitol

HB 1214
02/07/11
14090

Conference Committee

Committee Clerk Signature



MINUTES:

Chairman RaeAnn Kelsch: We will open the hearing on HB 1214. We have an amendment that was proposed that we do need to add to the bill.

Rep. Karen Rohr: Motion to do pass on amendment.

Rep. Brenda Heller: Second.

Chairman RaeAnn Kelsch: We will do a voice vote. Motion carries. Wishes of committee?

Voice vote: Motion carries.

Rep. Karen Rohr: Move a do pass as amended.

Rep. Mike Schatz: Second.

Rep. Karen Karls: This bill authorizes the data system?

Chairman RaeAnn Kelsch: The data system is already authorized. We had to put the bill in because the university system was not playing ball with us. We have had nothing but problems with trying to get the university system to be a participant in the longitudinal data system. What we found interesting was there were a number of states that have long data systems and they are able to gather data and somehow those states were able to deal with the FERPA laws. This bill is here because if you aren't going to play fair by request, then you will play fair by statute.

Rep. David Rust: I'm looking at section three and basically what that does is it provides protection from individuals. Is that correct?

Chairman RaeAnn Kelsch: That is correct. The amendments did come from the attorney general's office to make sure we had the confidentiality portion in there.

Rep. David Rust: That basically protects students that are a part of this information system from any of that information that is there from being used against them at some point in time?

Chairman RaeAnn Kelsch: Yes that is correct.

Rep. David Rust: I'm a little more comfortable with that because sometimes I fear governments.

Chairman RaeAnn Kelsch: If you look at Lisa Feldner's testimony you can see that she lays that out.

Rep. Karen Rohr: I am excited that we are actually going to have outcomes here to look at. My concern is the variables we are going to studying are not addressed in this bill.

Chairman RaeAnn Kelsch: We already have set up a longitudinal data system and what outcomes we are looking for. We don't statutorily put all the outcomes into law because some of those change. We don't know at this point what capabilities we will have until the system is up and running. We don't know if we will be able to get down to that level of info and we won't know that until it is up and running. A lot of information we will be receiving is going to be good data but it might be a little more generalized at the beginning until we can fine tune it down to what exactly it is what we want specifically. We will take roll on a do pass as amended to HB 1214. We will close on HB 1214.

15 YEAS 0 NAYS 0 ABSENT
CARRIER: Rep. Karen Rohr

DO PASS as Amended

FISCAL NOTE

Requested by Legislative Council
01/11/2011

Bill/Resolution No.: HB 1214

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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 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.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1214 will not have any fiscal impact.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

None

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.*

N/A

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.*

N/A

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

N/A

Name:	Mike J. Ressler	Agency:	ITD
Phone Number:	328-1001	Date Prepared:	01/11/2011

February 7, 2011

VR
2/7/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1214

Page 3, line 25, replace "Any" with "Subject to any rules of the supreme court granting access to or authorizing disclosure of confidential records, any"

Page 4, line 1, after "**information**" insert "**- Confidentiality**"

Page 4, line 4, after "other" insert "educational"

Page 4, line 4, after "information" insert "the statewide longitudinal data system committee determines is"

Page 4, line 4, replace "by" with "to comply with"

Page 4, line 6, replace "Any" with "Subject to applicable restrictions on the use and disclosure of confidential information required to comply with federal and state privacy laws, any"

Page 5, line 23, remove "and educational"

Renumber accordingly

Date: 02-07-11
Roll Call Vote #: VOICE VOTE

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1214

House EDUCATION Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt
Amendment

Rerefer to Appropriations Reconsider

Motion Made By REP. ROHR Seconded By REP. HELLER

Representatives	Yes	No	Representatives	Yes	No
Chairman Kelsch			Rep. Hanson		
Vice Chairman Meier			Rep. Hunsakor		
Rep. Heilman			Rep. Mock		
Rep. Heller			Rep. Mueller		
Rep. Johnson					
Rep. Karls					
Rep. Rohr					
Rep. Rust					
Rep. Sanford					
Rep. Schatz					
Rep. Wall					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

**VOICE VOTE ON AMENDMENT
MOTION CARRIES**

Date: 02-07-11
 Roll Call Vote #: _____

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. 1214

House EDUCATION Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt
 Amendment

Rerefer to Appropriations Reconsider

Motion Made By REP. ROHR Seconded By REP. SCHATZ

Representatives	Yes	No	Representatives	Yes	No
Chairman Kelsch	X		Rep. Hanson	X	
Vice Chairman Meier	X		Rep. Hunsakor	X	
Rep. Heilman	X		Rep. Mock	X	
Rep. Heller	X		Rep. Mueller	X	
Rep. Johnson	X				
Rep. Karls	X				
Rep. Rohr	X				
Rep. Rust	X				
Rep. Sanford	X				
Rep. Schatz	X				
Rep. Wall	X				

Total (Yes) 15 No 0

Absent 0

Floor Assignment REP. ROHR

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

REPORT OF STANDING COMMITTEE

HB 1214: Education Committee (Rep. R. Kelsch, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1214 was placed on the Sixth order on the calendar.

Page 3, line 25, replace "Any" with "Subject to any rules of the supreme court granting access to or authorizing disclosure of confidential records, any"

Page 4, line 1, after "information" insert "- Confidentiality"

Page 4, line 4, after "other" insert "educational"

Page 4, line 4, after "information" insert "the statewide longitudinal data system committee determines is"

Page 4, line 4, replace "by" with "to comply with"

Page 4, line 6, replace "Any" with "Subject to applicable restrictions on the use and disclosure of confidential information required to comply with federal and state privacy laws, any"

Page 5, line 23, remove "and educational"

Renumber accordingly

2011 SENATE EDUCATION

HB 1214

2011 SENATE STANDING COMMITTEE MINUTES

Senate Education Committee
Missouri River Room, State Capitol

HB 1214
March 16, 2011
15502

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the statewide longitudinal data system and the follow-up information on North Dakota education and training system.

Minutes:

See "attached testimony."

Chairman Freborg opened the hearing on HB 1214; fiscal note attached.

Lisa Feldner, CIO, Information Technology Department introduced the provisions of the bill (#1 Testimony)

Senator Flakoll: In the smaller enrollment areas, how is that being handled? Not posting those as far as what is available publicly? **Lisa Feldner:** The smaller schools that don't have Power School yet report data into the Stars System at DPI, and they pull that data from Stars into the longitudinal data system. Then they will have a portal; pilot schools will go on in April—a portal, a dashboard for teachers to use so the small schools will be able to see their data through that.

Warren Larson, North Dakota Council of Educational Leaders supports the bill as presented. Believe in ITD and the work they do; phenomenal. Very much in support of what Lisa's team does to make sure the data is safe and does a wonderful job.

No further testimony in favor; no opposition.

Bill Neumann, Executive Director, North Dakota State Bar Association not opposed to HB 1214; only here for the purpose of offering an amendment as there is language regarding confidentiality that they are not comfortable with, and may be unconstitutional. The US Constitution is very different from the North Dakota Constitution. (#2 Testimony & #3 Amendment)

Michael Mullen, Assistant Attorney General provided legal assistance to ITD in drafting the bill (#4 Testimony) and disagrees with Mr. Neumann.

No further testimony; hearing closed. Mr. Neumann was not able to offer the amendments to the House; did not know of the bill prior to hearing there.

Senator Heckaman: Feels she's not very wise in the legal aspects of this, but if the Attorney General office helped draft this original bill not sure what would hurt to pass it the way it is without the amendment. Only question she would have is, in the bill right now, it says the identified individual has to give consent and she doesn't see that in the amendment.

(the rest of minutes/tape follows morning hearing)

Senator Flakoll: Move a Do Pass . . . **Chairman Freborg:** Sorry, Senator Flakoll—thinks that Senator Heckaman has some amendments to offer.

Senator Heckaman: During the recess she visited with the Intern about the language on the proposed amendment and the language on page 3 of the bill. He took them to Legislative Council and did some checking with others regarding the amendment offered.

Ike Umannah, Intern, Senate Education Committee: Checked with John Bjornson, Legislative Council, and he felt the amendment was more in line with what should be. Also went over to the Supreme Court and checked with Jim Grant who handles a lot of legislative matters; he felt this as is written is too broad and that the amendment was more in line with where it should be. Also his personal opinion given the position of Mr. Neumann as a former Justice and the State Bar president, that he may have a better understanding of this than most people. May be in the committee's best interest to adopt this amendment as present—but at the committee's decision, of course.

Senator Heckaman: This is referencing the amendment offered in the morning; don't know if it needs to be drafted any differently than is. Guess her concern, before making a motion, she doesn't want anyone to get hurt in doing what the committee does either way. Not having the legal knowledge of whether Section 3 is going to be causing any problems, or whether the amendment is causing any problems—that is why she asked the intern to look into it further and guess it wouldn't hurt anybody by doing the amendment.

Move to adopt the amendments to Engrossed HB 1214 as presented by Mr. Bill Neumann from the State Bar Association (11.0289.04001); second by **Senator Marcellais**. **Senator Luick:** The first time he read the amendment, the first sentence in that amendment should already have precedence over what is written into the bill. The last sentence though is the one he thought had some merit to it. Glad it is being proposed.

Motion carried 6-1-1 (Vote 1A).

Senator Heckaman: Move a Do Pass as amended to Engrossed HB 1214; second by **Senator Marcellais**. Motion carried 7-0-0 (Vote 1B) **Senator Flakoll** will carry the bill.

March 16, 2011
William Neumann
State Bar Association
Of North Dakota

11.0289.04001

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL 1214

On page 3, delete line 25 and insert: "The committee shall take all necessary steps to protect the confidentiality of any information that identifies an individual and which is collected or stored by the statewide longitudinal data system. Such information may be disclosed only pursuant to a court order which protects the confidentiality of the information."

On page 3, delete lines 26 through 29

Renumber accordingly

#3 HB 1214

Date: 3/16/11
Roll Call Vote # 1A

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1214

Senate Education Committee

Check here for Conference Committee 11.0289.04001
Legislative Council Amendment Number William Neumann amend.

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Sen. Heckaman Seconded By Sen Marcellais

Senators	Yes	No	Senators	Yes	No
Chairman Layton Freborg	X		Senator Joan Heckaman	X	
Vice Chair Donald Schaible	X		Senator Richard Marcellais	X	
Senator Tim Flakoll		X			
Senator Gary A. Lee	X				
Senator Larry Luick	X				

Total (Yes) 6 No 1

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:
chg legal language regarding info. privacy

Date: 3/16/11
 Roll Call Vote # 1B

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. 1214

Senate Education Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Sen Heckaman Seconded By Sen. Marcellais

Senators	Yes	No	Senators	Yes	No
Chairman Layton Freborg	X		Senator Joan Heckaman	X	
Vice Chair Donald Schaible	X		Senator Richard Marcellais	X	
Senator Tim Flakoll	X				
Senator Gary A. Lee	X				
Senator Larry Luick	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen. Flakoll

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

REPORT OF STANDING COMMITTEE

HB 1214, as engrossed: Education Committee (Sen. Freborg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1214 was placed on the Sixth order on the calendar.

Page 3, replace lines 25 through 29 with "The committee shall take all necessary steps to protect the confidentiality of any information that identifies an individual and which is collected or stored by the statewide longitudinal data system. Information that identifies an individual may be disclosed only pursuant to a court order that protects the confidentiality of the information."

Renumber accordingly

2011 HOUSE EDUCATION

CONFERENCE COMMITTEE

HB 1214

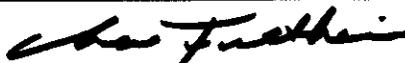
2011 HOUSE STANDING COMMITTEE MINUTES

House Education Committee
Pioneer Room, State Capitol

HB 1214
04/06/11
16410

Conference Committee

Committee Clerk Signature



MINUTES:

Chairman RaeAnn Kelsch: We will call the conference committee on HB 1214 to order. The House didn't care too much for the amendments that were put on and apparently neither did some other individuals. Since the time that the senate amended HB 1214 and the bill has got over to the Senate there has been an agreement between the different parties and the attorneys. While I am not reopening the hearing on this, I am going to ask Mike Mullen to come up and explain the compromise because it is different than what the house and senate agreed upon.

Michael Mullen – Assistant Attorney General: (proposed amendment, attachment). I provided some advice to ITD regarding HB 1214. There was an amendment added to the House passed version of the bill relating to the confidentiality of records and that appeared in the first engrossment. It talked about the fact that individually identifiable information could not be disclosed subject to rules of the Supreme Court. The North Dakota Bar Association was not particularly enamored with that language and they suggested alternative language which was adopted by the Senate. We reviewed that language and discussed it with ITD and we weren't particularly pleased with the Senate version of the way to deal with disclosure of confidential educational records in judicial proceedings. After discussion with the Executive Director of the North Dakota State Bar Association, I suggested we drop this language from both the Senate and House bills and just remove any reference to the disclosure of confidential information in judicial proceedings and just leave it up to the standard rules of the courts to deal with this issue. We really have an agreement between the parties that testified that we could just remove that language from the bill. That is what the amendment before you would accomplish. That is the first part of the amendment that says on page three of the house engrossed version of the bill remove lines 22 through 29. The next part of the amendment is really a clarification that we are seeking. This is an issue that came up subsequent to the Senate and the House hearings. We have had discussions about the longitudinal data system for exchanging educational records and we also had discussions regarding the health information exchange. What we want to do is make sure the Department of Health can grant limited access to birth and death record information, which is already permitted under existing law, to the Department of Human Services. We also want to add the language that would say "and can make limited disclosure to the Department of Information Technology necessary for the purposes of completing their official duties." The official duties of ITD include this longitudinal data system's exchange of educational records and by allowing limited access to birth records,

ITD will be better able to identify that a student named James Johnson is the James Johnson that is in the eleventh grade at Century High School in Bismarck or Grand Forks Central High School. The purpose is to match up identities to make sure that we are identifying the correct student.

Chairman RaeAnn Kelsch: Questions?

Rep. David Rust: You said there are rules of the court that deals with exchange of information. Can you elaborate on that?

Michael Mullen – Assistant Attorney General: Under North Dakota law the basic constitutional authority to set rules for the admissibility of evidence in judicial proceedings is under the control of the Supreme Court and they establish rules. I don't have the rule with me but it deals with disclosure of confidential records in judicial proceedings. What will sometimes be done is when someone asks for the disclosure of confidential records in a judicial proceeding, the party who has those records may object and say there is a privilege and they are not required to disclose that information or the party that has the records may say they will disclose them under court order but only if the court places those records under seal so they are available to the judge or the parties, but they are not disclosed to the public. In the case of educational records, those are subject to confidentiality under a federal law called FERPA. What we would do by removing the language in the bill is we would just fall back to the rules of the courts and those rules would still provide that the record be kept under seal and not made available to the public. I would also add that ITD believes and we believe that request for longitudinal data system records would be a fairly rare occurrence because if a student wants to find out what their educational records are they can go back to their own school and ask for their records. The longitudinal data system really is a system to aggregate records and produce reports about educational achievement. It is not really a system to disclose any individual student's records to the public. We believe that the likelihood that any party is going to seek these records in a judicial proceeding is going to be a fairly rare event. If it does occur we believe the rules of the court to provide the disclosure of records under seal will adequately protect the privacy of students or others whose records are involved.

Sen. Tim Flakoll: Are you ready for a motion?

Chairman RaeAnn Kelsch: I sure am.

Sen. Tim Flakoll: I move that the Senate recede from its amendments as printed on page 755 and 756 of the Senate Journal and page 1066 of the House Journal and that HB 1214 be amended as it is shown before us.

Sen. Donald Schaible: Second.

Chairman RaeAnn Kelsch: Is there any discussion? We will take the roll on the proposed amendments to engrossed HB 1214. The motion carries and that would conclude our business on HB 1214.

**6 YEAS 0 NAYS 0 ABSENT Senate recede from Senate
amendments and amend**

April 6, 2011

VR
4/7/11

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1214

That the Senate recede from its amendments as printed on page 1066 of the House Journal and pages 755 and 756 of the Senate Journal and that Engrossed House Bill No. 1214 be amended as follows:

Page 1, line 1, replace the first comma with "and"

Page 1, line 1, remove ", and 15.1-02-18.3"

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

Page 1, line 3, after "15.1-02-18" insert ", subsection 6 of section 23-02.1-27,"

Page 1, line 3, after the second "and" insert "section"

Page 1, line 4, after "system" insert "and to the disclosure of records"

Page 3, remove lines 22 through 28

Page 3, line 29, replace "15.1-02-18.3" with "15.1-02-18.2"

Page 4, line 1, replace "15.1-02-18.3." with "15.1-02-18.2."

Page 4, after line 10, insert:

"SECTION 4. AMENDMENT. Subsection 6 of section 23-02.1-27 of the North Dakota Century Code is amended and reenacted as follows:

6. The state department of health may grant limited access to birth and death information to the department of human services and the department of information technology necessary for the purpose of completing its official duties."

Renumber accordingly

2011 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: HOUSE EDUCATION

Bill/Resolution No. HB 1214 as (re) engrossed

Date: 04/06/11

Roll Call Vote #: _____

Action Taken

- HOUSE accede to Senate amendments
- HOUSE accede to Senate amendments and further amend
- SENATE recede from Senate amendments
- SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) 1066 ..

- Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) _____ was placed on the Seventh order of business on the calendar

Motion Made by: SEN. FLAKOLL Seconded by: SEN. SCHAIBLE

Representatives				Senators			
		Yes	No			Yes	No
REP. R. KELSCH	X	X		SEN. FLAKOLL	X	X	
REP. RUST	X	X		SEN. SCHAIBLE	X	X	
REP. HUNSKOR	X	X		SEN. MARCELLAIS	X	X	

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier REP. R. KELSCH Senate Carrier SEN. FLAKOLL

LC Number 11.0289.05001 Title 06000 of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

HB 1214, as engrossed: Your conference committee (Sens. Flakoll, Schaible, Marcellais and Reps. R. Kelsch, Rust, Hunsakor) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ page 1066, adopt amendments as follows, and place HB 1214 on the Seventh order:

That the Senate recede from its amendments as printed on page 1066 of the House Journal and pages 755 and 756 of the Senate Journal and that Engrossed House Bill No. 1214 be amended as follows:

Page 1, line 1, replace the first comma with "and"

Page 1, line 1, remove ", and 15.1-02-18.3"

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

Page 1, line 3, after "15.1-02-18" insert ", subsection 6 of section 23-02.1-27,"

Page 1, line 3, after the second "and" insert "section"

Page 1, line 4, after "system" insert "and to the disclosure of records"

Page 3, remove lines 22 through 28

Page 3, line 29, replace "15.1-02-18.3" with "15.1-02-18.2"

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Page 4, after line 10, insert:

"SECTION 4. AMENDMENT. Subsection 6 of section 23-02.1-27 of the North Dakota Century Code is amended and reenacted as follows:

6. The state department of health may grant limited access to birth and death information to the department of human services and the department of information technology necessary for the purpose of completing its official duties."

Renumber accordingly

Engrossed HB 1214 was placed on the Seventh order of business on the calendar.

2011 TESTIMONY

HB 1214

TESTIMONY ATTACHMENT

PROPOSED AMENDMENTS TO HB 1214

Page 3, line 25, remove "Any" and insert "Subject to any rules of the supreme court granting access to or authorizing disclosure of confidential records, any"

Page 4, line 1, after "information" insert a hyphen and "Confidentiality"

Page 4, line 4, after "other" insert "educational," after "information" insert "the statewide longitudinal data system committee determines is" and remove "by" and insert "to comply with"

Page 4, line 6, remove "Any" and insert "Subject to applicable restrictions on the use and disclosure of confidential information required to comply with federal and state privacy laws, any"

Page 5, Line 23, remove "and educational"

Re-number accordingly.

EXPLANATION OF PROPOSED AMENDMENTS TO HB 1214

Relating to the Longitudinal Data System

1. This amendment on page 3 line 25, adds a qualification specifying that:
"Subject to any rules of the Supreme Court granting access to or authorizing disclosure of confidential records," records of the longitudinal data system are immune from legal process and may not be admitted as evidence or used for any other purpose in any judicial or administrative proceeding without the consent of the identified individual. *This amendment recognizes that the Supreme Court may have rules that specify when a party may be granted access to records or when a party possessing records may be required to disclose the records in connection with any judicial proceeding.* The bill as introduced provides protection from discovery to educational and workforce records stored in the longitudinal data system. This is intended to recognize that LDS records are confidential under both state and federal law, and that ITD is a "secondary" holder of these records. If a party wishes to obtain student records for example, the party should obtain those records from the school or college that created and maintains those records.
2. The next amendment, on page 4 line 1, simply modifies the headnote of the section to state that, if amended, the section will address the confidentiality of longitudinal data system records.
3. The next amendment, on page 4, line 4, amends that line so that if the amendment is adopted it will read: "Any other educational information the statewide longitudinal data system committee determines is required for a longitudinal data system by to comply with state or federal law." *The*

amendment simply states more clearly and specifically the intent of the bill as introduced.

4. The next amendment on page 4, line 6, inserts a phrase at the beginning of this section as follows: "Subject to applicable restrictions on the use and disclosure of confidential information required to comply with federal and state privacy laws, any state agency receiving a request for information under subsection 1 **shall provide the information** at the time and in the manner required by the information technology department. *The purpose of this amendment is to provide assurance that ITD and each participant in the longitudinal data system must comply with the requirements of FERPA, the federal educational privacy act, requirements restricting the use of unemployment compensation records, and other federal and state laws regarding the confidentiality of educational and workforce information. **The amendment is not, however, intended to provide an excuse or a reason for any educational institution, or workforce or job training, or technical training agency or institution a reason to refuse to disclose specified records that are necessary to produce the reports and analysis required by the longitudinal data system law.***
5. The amendment on page 5, line 23 removes the term "educational" from subsection 3 of section 52-01-03 of the North Dakota Century Code because the section relates to Job Service and the use of unemployment compensation insurance records, not educational records.

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TESTIMONY BEFORE SENATE EDUCATION COMMITTEE
HB 1214 – RELATING TO STATEWIDE LONGITUDINAL DATA SYSTEM
MARCH 16, 2011

Good morning, my name is Lisa Feldner and I serve as the Chief Information Officer for the Information Technology Department and the chairman of the Statewide Longitudinal Data System. The first two sections of the bill are cleaning up language in the code. On page 2, subsections 4 and 8 are removed and relocated on page 3 in Section 2 of the bill.

Section 3 adds further privacy provisions. It is intended to recognize that longitudinal data system records are confidential under both state and federal law, and that the information technology department is a "secondary" holder of these records. If a party wishes to obtain student records, for example, they should obtain those records from the school or college that created and maintains those records, not the statewide longitudinal data system.

Section 4 addresses the confidentiality of longitudinal data system records. The purpose of this section is to provide assurance that ITD and each participant in the longitudinal data system comply with the requirements of FERPA, the federal educational privacy act, requirements restricting the use of unemployment compensation records, and other federal and state laws regarding the confidentiality of educational and workforce information. The amendment is not, however, intended to provide an excuse or a reason for any educational institution, workforce, job training, or technical training agency or institution to refuse to disclose specified records that are necessary to produce the reports and analysis required by the longitudinal data system law.

The only change in Section 5 is replacing the followup information on North Dakota education and training with information technology department for purposes of the statewide longitudinal data system.

#1 HB1214

March 16, 2011

Senate Education Committee

House Bill No. 1214

CHAIRMAN FREBORG AND COMMITTEE MEMBERS:

My name is Bill Neumann, Executive Director of the State Bar Association of North Dakota. I appear for the very limited purpose of offering a small amendment to HB 1214. There is a bit of language in HB 1214 regarding confidentiality that I think is confusing, and it possibly may be unconstitutional.

The current language in the bill, on page 3 beginning at line 25, says "Subject to any rules of the supreme court granting access to or authorizing disclosure of confidential records, any information that identifies an individual and which is collected or stored by the statewide longitudinal system is immune from legal process and may not be admitted as evidence or used for any other purpose in any judicial or administrative proceeding without the consent of the identified individual." The problem with this language comes from Article VI, section 3 of the North Dakota Constitution, which gives the court sole authority to promulgate rules of procedure dealing with legal process and the admission of evidence. The North Dakota Supreme Court has promulgated such rules. That means the first phrase of the quoted language renders the rest of the quoted language ineffective. The proposed amendment will do a much better job of preserving the confidentiality of identifying information, and it will also avoid looking as if the Legislative branch is intending to ignore Article VI, section 3 of the North Dakota Constitution.

The proposed amendment simply says the committee will take all necessary steps to protect the confidentiality of such information, and will disclose such information only pursuant to a protective court order.

If you have any questions, I will try to answer them.

2 HB1214

March 16, 2011
William Neumann
State Bar Association
Of North Dakota

11.0289.04001

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL 1214

On page 3, delete line 25 and insert: "The committee shall take all necessary steps to protect the confidentiality of any information that identifies an individual and which is collected or stored by the statewide longitudinal data system. Such information may be disclosed only pursuant to a court order which protects the confidentiality of the information."

On page 3, delete lines 26 through 29

Renumber accordingly

#3 HB 1214

Comments on State Bar Association Amendments to HB 1214

[oral testimony presented by Assistant Attorney General Michael J. Mullen]

With all due respect to the North Dakota Bar Association and with due deference to the Supreme Court and its constitutional authority to establish rules regarding the admissibility of evidence and access to court documents, I would observe that the first sentence of the proposed amendment is superfluous.

That sentence states: "the [longitudinal data] committee shall take all necessary steps to protect the confidentiality of any information that identifies an individual and which is collected or stored by the statewide longitudinal data system." That duty and legal result is already established by other sections of HB 1214 and is, therefore, unnecessary.

The amendment then continues stating: "such [individually identifiable student and workforce] information may be disclosed only pursuant to a court order which protects the confidentiality of the information." It is unclear whether the amendment gives a court authority to disclose only "de-identified information," from which all direct identifiers such as name, phone number, e-mail address, postal address, and all indirect identifiers such as date of birth, zip code, etc. have been removed, or exactly what this amendment is intended to permit. Moreover, the amendment ignores the fact that most of the records collected by the statewide longitudinal data system are subject to FERPA – the federal law on the privacy of educational records. Under the supremacy clause of the Constitution, North Dakota agencies and courts must comply with the requirements of

for the FERPA. The amendment does not reflect that, and, therefore, should not be adopted.

I would also like to draw the committee's attention to the fact that other sections of the Century Code impose similar restrictions -- without any reference to Supreme Court rules -- on the disclosure of confidential information. For example, section 13-10-15(3)(b) provides:

Information or material that is subject to a privilege or confidentiality under subsection 1 [relating to information provided to the nationwide mortgage licensing system and registry] is not subject to... subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless... the person to whom such information... pertains waives... that privilege.

Another example, relates to reports received by the Department of Health regarding individuals diagnosed with HIV/AIDS. Section 23-07-02.2 provides:

A report [of AIDS or HIV] held by the state Department of Health... may not be disclosed, shared with any agency or institution, or made public, upon subpoena, search warrant, discovery proceedings, or otherwise except [for statistical purposes, investigation of HIV by public health officials, or treatment of a patient].

Section 23-07-02.to further provides: "No officer or employee of the state Department of Health may be examined in any judicial, executive, legislative or other proceedings

#4 HB1214

regarding the existence or content of any individual's a report of HIV retained by the Department of Health."

The sections I have just referenced do not acknowledge they are subject to any rules of the Supreme Court. So we believe our amendment that recognizes the authority of the Supreme Court sets a fair balance regarding confidentiality. Under the bill before the Committee the default rule is that information in the LDS may not be disclosed, unless there is a court rule requiring disclosure.

Consequently, we urge that the bill be maintained in its current form.

#4 HB1214

ATTACHMENT

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1214

That the Senate recedes from its amendments as printed on pages 755 and 756 of the Senate Journal and page 1066 of the House Journal and that House Bill No. 1214 be amended as follows:

Page 3, remove lines 22-29

Page 4, after line 10 insert:

“SECTION 4. AMENDMENT. Subsection 6 of section 23-02.1-27 of the North Dakota Century Code is amended and reenacted as follows:

6. The state department of health may grant limited access to birth and death information to the department of human services and the department of information technology necessary for the purpose of completing its their official duties.”

Re-number accordingly.