

2013 SENATE JUDICIARY

SB 2115

2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2115
1/14/2013
Job #17136

Conference Committee

Committee Clerk Signature



Minutes:

Attached written testimony

Relating to exemption of technical, financial, or marketing ideas

Senator David Hogue - Chairman

Greg Wilz - Deputy Director of ND Dept. of Emergency Services and Director of the Division of Homeland Security. - See written testimony

Senator Hogue - Asks if he is seeking an exemption for any information that a private sector business would give to you that they were intending that you would be able to incorporate into that map.

Wilz - Agrees with that partially, but in this portion of the law they are not seeking to protect the base map. That is the second change they are asking for. Here they are asking to protect the data sets that companies are willing to share that would layer on the top of the statewide seamless base map. Things like pipelines, distribution lines, single points of failures. He explains that they would like to know the risks in certain areas so they can think ahead and stage a response.

Senator Nelson - Asks if about the contradiction, confidentiality statement and remain private. She asks him what they really want.

Wilz - Explains that at the end of the day they want confidentiality to companies who bring them data that they would not release, they would be protected. He says the breakthroughs in technologies and graphical information systems now are very detailed. He hears all the time of folks that do not know where everything is in the ground. Those maps have never been brought into the level of technology today.

Senator Berry - Asks for specific examples and if this has been an ongoing problem or are they looking to prevent something in the future.

Wilz - Gives examples such as a train derailment. He believes it would be beneficial to know what is coming thru on our rail lines. It is critical information they need to know to protect the citizens.

Senator Armstrong - Sums up what he understands to be right and that is that whatever information they are giving has already been provided in some previous year to some agency. He assumes that companies are worried that this will become a clearing house with the most accurate and recent information.

Wilz - Said his intent is not to become a clearing house, their intent is to get good information that allows them to continue to detail plan for events in ND.

Senator Armstrong - Asks how many people have told him they won't give him the information.

Wilz - Replies that in the last 3 to 5 years probably less than a dozen. He said they have quit asking because the companies say there is no guarantee that it will be used for good intent.

Senator Hogue - Remarks to Wilz that he is asking companies to reveal vulnerable information about their infrastructure.

Wilz - Agrees and said that they are following what the FEDS have done with their PCII, Protective Critical Infrastructure Information, which has very similar language and that is that the owner of the information can sign a document and say that it is protected information.

Senator Grabinger - Says it seems the companies would be more reluctant to give information that could be used against them in an action later on if there were an incident.

Wilz - Replies he is partially right but they do still have the discretion to either give the information or not give it. He said his intent is to build solid response plans.

Senator Berry - Wonders if that should be written into the law.

Wilz - Responds that is why they need this. He believes most companies would release the information. He said other agencies could have the confidentiality agreement.

Mike Link - Director of ND State Radio - See written testimony included with Willz. He also offers an amendment and explains the amendment.

Senator Hogue - Asks if the seamless base map would be an exempt record unless they pay a fee and if it carries over to the amendment.

Link - Replies that it does and it also addresses how that money would be compiled and put into a fund that is carried over from year to year and that the fund would be used to maintain the base map.

Senator Hogue - Doesn't believe you can have a record that is exempt and then somehow remove the exemption by paying a fee. A record is either exempt or it's not subject to public disclosure.

Link - Said it is their intent that if the fee was paid they could obtain the digital copy of the requested information.

Senator Hogue - Asks if he would impose that fee on another state agency.

Link - Said this language is intended for those companies that would gain profit from gaining this information at no charge.

Senator Armstrong - Asks about media.

Link - Said their concern is that the map is so detailed and some layers are very detailed so they want to protect and also try to recoup the on-going maintenance costs. Their plan had been to re-fly, and re-center line one third of the state per biennium. He estimates that cost at \$527,000 per biennium.

Opposition

Jack McDonald - ND Newspaper Association & Broadcasters Association - Says they oppose this for many reasons. He believes it is a dangerous precedence when information is only available to the public when they pay for it otherwise it is an exempt record. He agreed with the chairman that it is exempt or it's not. He said the concept of somehow dividing people who want public information into profit or non-profit is not feasible. State law says you don't have to ask a reason for open record, it specifically says you can ask any state agency for an open record without a reason. He believes if they need to charge a fee for the map then just charge a fee.

Wilz - Said this is not about closing off public records and is not about public information. He said this is about the trade secrets that companies have protected today that would allow us to say bring it in with protection.

Close 2115

2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2115
1/30/2013
Job #18017

Conference Committee

Committee Clerk Signature



Minutes:

Senator David Hogue - Chairman

Committee work

Senator Hogue explains the bill and the proposed amendment. He explains this is for companies to show data where there could be weak spot for a possible event. He said the media groups did oppose this because of the idea that it can be declared a trade secret proprietary information and that is what the purpose of the amendment is. He goes on to explain how the system works with the Public Service Commission. He says the Dept. of Emergency Services is going to have to determine whether it is proprietary. The committee also discusses taking out page 4 of the bill, lines 10-12. He explains that is not the way we provide exemptions to the open records law. Senator Berry is collaborating with Mr. Link to introduce this is a separate bill. Committee discusses DES determining whether the information is of a protected nature. Senator Lyson doesn't believe they will get what they want from the railroads.

Senator Armstrong moves the amendment
Senator Grabinger seconded

Verbal vote - All yes

Senator Grabinger moves a do pass as amended
Senator Armstrong seconded

Vote - 5 yes, 2 no
Senator Berry will carry

January 30, 2013

VR
1/30/13

PROPOSED AMENDMENTS TO SENATE BILL NO. 2115

Page 2, line 13, remove "formally"

Page 2, line 14, replace "declared by the submitting person upon submission" with "determined by the agency to which the records are submitted"

Page 4, remove lines 10 through 12

Renumber accordingly

Date: 1/30/13
 Roll Call Vote #: 1

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2115**

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.8678.01001 - Hogue amendment

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

Motion Made By S. Armstrong Seconded By S. Geabinger

Senators	Yes	No	Senator	Yes	No
Chairman David Hogue			Senator Carolyn Nelson		
Vice Chairman Margaret Sitte			Senator John Grabinger		
Senator Stanley Lyson					
Senator Spencer Berry					
Senator Kelly Armstrong					

Total (Yes) _____ No _____

Absent verbal vote - all yes

Floor Assignment _____

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

Date: 1-30-13
 Roll Call Vote #: 2

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2115**

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number 13, 8078.61001

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

Motion Made By S Grabinger Seconded By S Armstrong

Senators	Yes	No	Senator	Yes	No
Chairman David Hogue	X		Senator Carolyn Nelson		X
Vice Chairman Margaret Sitte		X	Senator John Grabinger	X	
Senator Stanley Lyson	X				
Senator Spencer Berry	X				
Senator Kelly Armstrong	X				

Total (Yes) 5 No 2

Absent 0

Floor Assignment S Berry

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

REPORT OF STANDING COMMITTEE

SB 2115: Judiciary Committee (Sen. Hogue, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2115 was placed on the Sixth order on the calendar.

Page 2, line 13, remove "formally"

Page 2, line 14, replace "declared by the submitting person upon submission" with "determined by the agency to which the records are submitted"

Page 4, remove lines 10 through 12

Renumber accordingly

2013 HOUSE JUDICIARY

SB 2115

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2115
March 19, 2013
Job 20154

Conference Committee



Explanation or reason for introduction of bill/resolution:

A BILL relating to exemption of technical, financial, or marketing records.

Minutes:

Testimony and handouts 1,2

Chairman Koppelman: Open the hearing on SB 2115.

1:25 Mike Lynk, Director of the Division of State Radio: Testimony #1, handout #2. He then explained the proposed amendment. Position of this critical infrastructure would allow the ND Department of Emergency Services to create more formidable hazard litigation response and recovery plants. It's important that SB 2115 does not seek to infringe upon open record laws. This bill allows industry to provide important information that doesn't currently exist in agencies.

Representative Boehning: Is this to help with the geographical

Mike Lynk:

Representative Boehning: Is this language to help with the GIS mapping? Does Google have to show where it is at? Do you photo shop that out or is it public information?

Mike Lynk: It could be. We want cooperation from the industry. That is not photo shopped out we are looking for critical points.

8:32 Vice Chairman Klemin: The proposed amendment changes the bill back to its original form. Is that right?

Mike Lynk: That is correct.

Chairman Koppelman: So even like the amendment that the Senate did?

Mike Lynk: Our concern is that we won't get the support from industry if the agency decides. We want the industry to decide like it is in the original bill.

9:37 Representative Delmore: Who is the contact for this type of information?

Mike Lynk: We contact industry. Industry gives us a lot of information in case of emergencies. We lack in the formidable points that they don't want to release.

Representative Delmore: The more information that is out there in different hands could increase that vulnerability.

Mike Lynk: That's why the industry decides.

11:02 Representative Steiner: I have looked under PCII. Is it under Homeland Security Protected Critical Infrastructure information as a voluntary program between owners infrastructure or as an operators in the government?

Mike Lynk: That is correct.

11:25 Chairman Koppelman: I am looking at that section again, why would emergency services have a need to know financial and marketing information?

Mike Lynk: We are looking for the technical information.

Chairman Koppelman: Is there any reason to have financial marketing information in there other than for confidentiality?

Mike Lynk: I can't think of why there might be financial information that would be permanent unless it is in the banking industry cyber-attacks. That seems to be the focus right now.

Chairman Koppelman: Would it make sense just to say records?

Mike Lynk: Defer to our attorney.

Hearing closed.

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2115
March 19, 2013
Job 20154

Conference Committee

Carman Hickle

Explanation or reason for introduction of bill/resolution:

A Bill relating to exemption of technical, financial, or marketing records.

Minutes:

Chairman Koppelman: Open SB 2115 committee work. Amendments have been offered to put the bill back to its original form.

Rep. Randy Boehning: Made a motion for amendment 13.8078.02001.

Rep. Diane Larson: Second the motion.

Voice vote carried.

Rep. Randy Boehning: Made a motion for do pass as amended.

Rep. Lois Delmore: Seconds the motion.

Vote 12-2-0

Rep. Gary Paur: Will carry the bill.

13.8078.02001
Title.03000

Adopted by the Judiciary Committee

March 25, 2013

VK
3/25/13

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2115

Page 2, line 14, replace "determined by the agency to which the records are submitted" with
"formally declared by the submitting person upon submission"

Renumber accordingly

Date: 3-25-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2115

House Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.8078.02001

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

Motion Made By Rep. Boehning Seconded By Rep. Larson

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman			Rep. Lois Delmore		
Vice Chairman Lawrence Klemin			Rep. Ben Hanson		
Rep. Randy Boehning			Rep. Kathy Hogan		
Rep. Roger Brabandt					
Rep. Karen Karls					
Rep. William Kretschmar					
Rep. Diane Larson					
Rep. Andrew Maragos					
Rep. Gary Paur					
Rep. Vicky Steiner					
Rep. Nathan Toman					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice vote - carried

Date: 3-25-13
 Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2115**

House Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.8078.0201

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

Motion Made By Rep. Boehning Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman	/		Rep. Lois Delmore	/	
Vice Chairman Lawrence Klemin	/		Rep. Ben Hanson	/	
Rep. Randy Boehning	/		Rep. Kathy Hogan	/	
Rep. Roger Brabandt	/				
Rep. Karen Karls	/				
Rep. William Kretschmar		/			
Rep. Diane Larson	/				
Rep. Andrew Maragos	/				
Rep. Gary Paur	/				
Rep. Vicky Steiner	/				
Rep. Nathan Toman		/			

Total (Yes) 12 No 2

Absent 0

Floor Assignment Rep. Paur

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

REPORT OF STANDING COMMITTEE

SB 2115, as engrossed: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2115 was placed on the Sixth order on the calendar.

Page 2, line 14, replace "determined by the agency to which the records are submitted" with "formally declared by the submitting person upon submission"

Renumber accordingly

2013 CONFERENCE COMMITTEE

SB 2115

2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2115
4/12/2013
Job #21152

Conference Committee

Committee Clerk Signature



Minutes:

Attachment

Conference committee on SB2115

Senators - Berry, Hogue, Nelson
Representatives - Boehning, Steiner, Hanson

Senator Berry chairs the committee and asks Representative Boehning to explain the changes the House made.

Mary Kay Kelsch - Assistant Attorney General - Ms. Kelsch explains the proposed amendment and what language they would like to see removed. She says they would like to see it back to the way current law reads. She further explains that they have narrowed it to address specific concerns. (1)

Senator Berry would like it on the record that members from emergency mgmt. and public radio are in agreement with the amendments.

Rep. Boehning motions the House recede from House amendments and amend as follows, amendment 13.8078.02002

Senator Nelson seconded

Vote - 5 yes, 0 no, 1 absent
Motion passes

Adjourned

April 12, 2013

4/12/13
TD

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2115

That the House recede from its amendments as printed on pages 939 and 940 of the Senate Journal and page 1061 of the House Journal and that Engrossed Senate Bill No. 2115 be amended as follows:

Page 2, line 13, remove "as"

Page 2, line 14, remove "determined by the agency to which the records are submitted"

Page 4, after line 9, insert:

"7. Unless made confidential under subsection 1, records received by the state department of emergency services under chapter 37-17.1 from the federal government and any public or private agency or entity for disaster mitigation, preparation, response, and recovery are exempt."

Renumber accordingly

Date 4-12-13

Roll Call Vote # 1

**2013 SENATE CONFERENCE COMMITTEE
ROLL CALL VOTES**

BILL/RESOLUTION NO. 2115 as (re) engrossed

Senate Judiciary Committee

- Action Taken
- SENATE accede to House Amendments
 - SENATE accede to House Amendments and further amend
 - HOUSE recede from House amendments
 - HOUSE recede from House amendments and amend as follows
13,8078.02002
 - Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Rep. Boehning Seconded by: Senator Nelson

Senators	Y/N	Yes	No	Representatives	Y/N	Yes	No
Berry	X	X		Boehning	X	X	
Hogue	A	A		Steiner	X	X	
Nelson	X	X		Hanson	X	X	
Total Senate Vote				Total Rep. Vote			

Vote Count Yes: 5 No: 0 Absent: 1

Senate Carrier Berry House Carrier Boehning

LC Number _____ of amendment

LC Number 13,8078 . 02002 of engrossment

REPORT OF CONFERENCE COMMITTEE

SB 2115, as engrossed: Your conference committee (Sens. Berry, Hogue, Nelson and Reps. Boehning, Steiner, Hanson) recommends that the **HOUSE RECEDE** from the House amendments as printed on SJ pages 939-940, adopt amendments as follows, and place SB 2115 on the Seventh order:

That the House recede from its amendments as printed on pages 939 and 940 of the Senate Journal and page 1061 of the House Journal and that Engrossed Senate Bill No. 2115 be amended as follows:

Page 2, line 13, remove "as"

Page 2, line 14, remove "determined by the agency to which the records are submitted"

Page 4, after line 9, insert:

"7. Unless made confidential under subsection 1, records received by the state department of emergency services under chapter 37-17.1 from the federal government and any public or private agency or entity for disaster mitigation, preparation, response, and recovery are exempt."

Renumber accordingly

Engrossed SB 2115 was placed on the Seventh order of business on the calendar.

2013 TESTIMONY

SB 2115

TESTIMONY – SB 2115
SENATE COMMITTEE – JUDICIARY
JANUARY 14, 2013
BY GREG WILZ
DEPUTY DIRECTOR, DEPARTMENT OF EMERGENCY SERVICES

Mr. Chairman and members of the committee, my name is Greg Wilz. I am the Deputy Director of the North Dakota Department of Emergency Services (NDDDES) and Director of the Division of Homeland Security.

NDDDES recommends two changes to NDCC 44-04-18.4. The first appears on page 2 in paragraph (5) lines 13 and 14 seeks clarification by defining who has express authority to decide which records or informational releases pertaining to the business constitute harmful disclosures. The second change appears as an added section on page 4 paragraph 7, lines 10-12. Mr. Mike Lynk, Director of State Radio, will address the second recommendation.

One of the Department's critical functions is to build and maintain the State Emergency Response Plan. The document has evolved and advanced from general format to a series of very specific plans based upon the ability to leverage technology, communicate needs, and obtain vital data. Sixteen industry sectors with critical infrastructure in North Dakota have been incorporated into the planning process. For instance, knowledge of pipeline routes, key production facilities, transmission and distribution sites, provides direct understanding of essential dependencies, single points of failure along an entire system, and other areas of risk translates into a more rapid, efficient, and less costly response that will lessen the impact of the damage. The same concept is applicable to the other 15 sectors.

However, business and industry officials are reluctant and many flatly refuse to provide indispensable information. Rejection of requests for information can be directly correlated to a belief state law does not provide adequate information protection.

With its significant investments in Graphical Information Systems (GIS), NDDDES now possesses a much more robust capability to manage the needed information. Implementing this recommendation will afford the appropriate safeguards businesses deserve resulting in a greater willingness to share technical data that is vital to detailed planning and more effective response measures.

I strongly urge member support of the first recommendation and will respond to member questions.

Mr. Chairman and members of the committee, my name is Mike Lynk. I am the Director of the North Dakota Division of State Radio.

(2)

The statewide seamless map is comprised of the base map and informational layers overlaying the base map. Under changes proposed by the Department, the informational layers will be protected.

The base map is composed of aerial pictures digitally stitched together, digital centerlines containing data (i.e. address ranges, speed limits, and road names), and a digital geocode address point to produce a very accurate nine inch error rate geocode map of North Dakota. The informational layers for 911 public safety services will include address and residential information, combined with the address point used by all Public Safety Answering Points (PSAP's) in North Dakota.

Language on page 4 paragraph 7, lines 10-12 was intended to exempt the Statewide Seamless Base Map from open records laws and allows the state to charge a fee for its use. There are no plans to charge North Dakota governmental jurisdictions only entities/businesses that generate profit from the data. Revenues will be used to support ongoing map maintenance. The Department of Emergency Services also plans to copyright the base map to prevent additional distribution.

Since the time SB2115 was introduced, the Department has determined a new section added to N.D.C.C. 37-17.3 would improve the law.

Therefore, I am offering an amendment to remove language on Page 4, lines 10 through 12 and request committee members consider adding the new language into N.D.C.C. 37-17.3.

I urge committee support and will respond to questions.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2115

Page 4, remove line 10 through 12

Renumber accordingly

SECTION 1. A new subsection to section 37-17.3 of the North Dakota Century Code is created and enacted as follows:

The director shall establish the appropriate fees for access to the statewide seamless base map. All fees collected for access to the statewide seamless base map must be deposited in the statewide seamless base map maintenance fund. The fund must be maintained as a revolving fund and all moneys transferred into the fund are hereby appropriated and must be used and disbursed solely for the purpose of paying the maintenance costs of the statewide seamless base map and distributing the data. This fund is not subject to section 54-44.1-11. Section 44-04 is applicable to confidential and exempt portions of the statewide seamless base map.

January 15, 2013

13.8078.01000
Sixty-third
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO SENATE BILL NO. 2115

Page 2, line 13, replace "formally declared by the submitting person upon submission" with "determined by the agency to whom the records are submitted".

Page 4, remove lines 10 through 12

Renumber accordingly

/

TESTIMONY – SB 2115
HOUSE COMMITTEE – JUDICIARY
MARCH 19, 2013
BY MIKE LYNK
DIRECTOR, DIVISION OF STATE RADIO

Mr. Chairman and members of the committee, my name is Mike Lynk. I am the Director of the Division of State Radio, North Dakota Department of Emergency Services (NDDDES).

Before natural or manmade disasters strike North Dakota citizens, it is imperative NDDDES possess all possible data to prudently plan and execute comprehensive response. Due to issues of confidentiality, the Department is unable to access specific information concerning critical infrastructure. Possession of this crucial information would allow NDDDES to create more formidable hazard mitigation, response, and recovery plans.

Senate Bill 2115 originally sought to provide industry the ability to determine the level at which proprietary information relating to technical, financial and marketing records may be released upon submission to an agency. Current language confers responsibility upon the agency to determine the types of information that would cause harm to industry. Without assurances provided by law, industry will never consent to provide confidential proprietary information except that which is legally required for purposes like permitting, licensing, and reporting.

It is important to recognize Senate Bill 2115 does not seek to infringe upon open record laws or allow industry to declare all information confidential. Because compulsory information required by law will continue to be provided, the public will retain the same access it enjoys today. This bill allows industry to provide important information that does not currently exist in agencies. The information is essential to implement enhanced planning and preparation not only to mitigate risk but to provide more efficient and effective response capacity that limits consequences.

I urge committee support for SB 2115 with amendments and will respond to questions.

mike LYNN
3-19-15

#2

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL 2115

Page 2, line 13 remove "as"

Page 2, line 14 replace "determined by the agency to which the records are submitted" with "as formally declared by the submitting person upon submission"

Renumber accordingly

Cont. comm. on
2115
Kelsch

(1)

PROPOSED AMENDMENT TO ENGROSSED SENATE BILL NO. 2115

Page 4, after line 9, insert:

7. Unless made confidential under subsection 1, records received by the state division of emergency management pursuant to chapter 37-17.1 from the federal government and any public or private agency or entity for disaster mitigation, preparation, response, and recovery are exempt.

Renumber accordingly