

2013 SENATE HUMAN SERVICES

SB 2355

2013 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee Red River Room, State Capitol

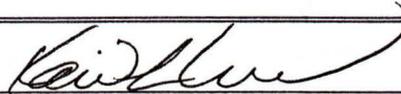
SB 2355

2/12/13

Recording Job Number: 18787

Conference Committee

Committee Clerk Signature:



Explanation or reason for introduction of bill/resolution:

Relating to the powers and duties of the state health council.

Minutes:

Attached testimony

Chairman Lee opens hearing on SB 2355.

Senator J. Lee introduced the bill to the committee, on behalf of Representative Weisz who is out sick. The idea is that the good work of the health council would report to the state health officer and the decision would move forward from there which would be consistent with what other advisory councils do in other areas. Chairman Lee also suggested some amendments for consideration. They have not been prepared by Legislative Council so she briefly goes through them with the committee:

- Page 3, lines 27-28 - delete the overstrike
- Page 5, lines 10-11 - there needs to be an opportunity to discuss an additional need
- Page 5, line 31; page 6, lines 4, 20, 28; page 7, lines 6, 16-17, 20, 26; page 8, line 7; page 11, line 1; page 12, lines 7, 12, 16 - "the health officer with the advice of the health council"
- Page 6, line 31 and Page 7, line 1 - enable them the use an electronic means for notification

No questions from the committee and no more testimony in favor.

(0:07:17) Carmen Toman, public member and Vice Chair of the State Health Council, testifies in opposition. See attached testimony #1.

(0:10:05) Chairman Lee states that after hearing the amendments she proposed, she would think that Ms. Toman would recognize that the council's ability to draft rules is still where it was before. It is just that the final rule recommendation would be presented through the health officer. Chairman Lee asks her to share this information with the council to see if it would have any impact on what their thoughts might be and Ms. Toman states that she will get their feedback.

Senator Dever asks if Ms. Toman is able to provide a list of the members on the Health Council.

Arvy Smith from the Health Department who is present during the hearing states that she will get this for the committee.

No further questions and no further testimony.

The hearing on SB 2355 is closed.

(0:12:15) Senator Anderson fills the committee in on the history of the health council.

Chairman Lee asks Ms. Smith to provide the various areas that the health council has authority over in addition to the list of the members. She then further explains her and Rep. Weisz's reasoning for introducing the bill. They will not act on this bill until the amendments get prepared by Legislative Council.

Discussion is closed.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee
Red River Room, State Capitol

SB 2355

02-19-2013

Recording Job Number: 19201

Conference Committee

Committee Clerk Signature:



Explanation or reason for introduction of bill/resolution:

Relating to the powers and duties of the state health council.

Minutes:

You may make reference to "attached testimony."

Committee Discussion on SB 2355:

Chairman Lee distributes and discusses the amendment 13.0813.01001 with the committee (see attachment #2). **Arvy Smith** from the Health Department sent a memo to Chairman Lee (see attachment #3) and Chairman Lee explains that it is important for her to be a part of this process and involved in the discussion. Since Ms. Smith was unavailable to visit the room today, the discussion is closed.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee Red River Room, State Capitol

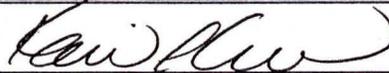
2355

2/20/13

Recording Job Number: 19245

Conference Committee

Committee Clerk Signature:



Explanation or reason for introduction of bill/resolution:

Relating to the powers and duties of the state health council.

Minutes:

Attached testimony

Continued discussion on SB 2355:

Representative Weisz, co-sponsor of the bill, was asked by Chairman Lee to speak to the committee since he was unable to be at the initial hearing. He thinks that the Health Council is important and needed; it is just a matter in the end of who is accountable. He continued to share his thoughts with the committee.

Chairman Lee followed by reiterating why she and Rep. Weisz want to move this bill forward.

(0:06:08) Senator Axness stated that he understands the intent of the bill but wants to know what the bill resulted from.

Chairman Lee explains that this resulted from an example that was brought to their attention, not from being unhappy with the way things were going. **Rep. Weisz** proceeded to explain this particular example which was a situation with long term care. Chairman Lee and Rep. Weisz continue with a discussion on the purpose behind this bill. (Ends at 0:13:17)

Chairman Lee explained the purpose of the proposed amendment to **Brenda Weisz** from the Health Department (who entered the room during the discussion) and began to review the memo from **Arvy Smith** from the Health Department with both Ms. Weisz and the committee (see attachment #3).

Chairman Lee asked the law intern to pull SB 2308, which was referenced in Ms. Smith's memo, to see how we can make it consistent with this bill.

Ms. Weisz continued to review Ms. Smith's recommendations with the committee.

Chairman Lee references the State Health Council list that was provided (see attachment #4) and continued to read Ms. Smith's email to the committee. Chairman Lee gave the memo to the law intern and asked her to meet with Legislative Council to make sure the issues are adequately addressed.

Ms. Weisz stated that she will also work with the law intern on these before they get the final review from Legislative Council. .

Senator Dever excused himself from the room during the discussion so Chairman Lee didn't want to move forward with the discussion without him present.

Discussion was recessed.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee
Red River Room, State Capitol

SB 2355

2/20/13

Recording Job Number: 19277

Conference Committee

Committee Clerk Signature:



Explanation or reason for introduction of bill/resolution:

Relating to the powers and duties of the state health council.

Minutes:

Attachments

Chairman Lee opens the discussion on SB 2355:

Human Services Law Intern, Bethany Myles, informed the committee on Legislative Council's thoughts.

Chairman Lee followed by explaining to Arvy Smith, Brenda Weisz, and Dr. Terry Dwelle from the Health Department the intent of the bill.

Arvy Smith, Deputy State Health Officer for the Health Department, asked for clarification from Legislative Council. The law intern called John Bjornson from Legislative Council to see if he was available to come down to the committee room.

(There is a brief pause in the recording as they wait on word from Mr. Bjornson - meter 0:04:48 - 0:06:20)

Chairman Lee and **Ms. Smith** proceeded to go through her memo (attachment #3) and the proposed amendment 13.0813.01001 (attachment #2) as they go through the bill. Language changes are noted.

(0:14:05) Dr. Dwelle discussed the intent.

(0:17:35) Ms. Smith explained her memo further and questioned the inconsistency.

(0:23:19) Chairman Lee invited John Bjornson (who entered the room during the discussion) to the podium to discuss the intent. Chairman Lee stated she is okay with this but wants to make sure the Health Department is. Ms. Smith still thought there was inconsistency and asked Mr. Bjornson for further clarification.

(0:27:42) Ms. Smith went over the sections that are in question with the committee.

(0:30:16) Mr. Bjornson offered to draft up amendments to add these sections if it's going to make everyone feel better, but feels it's unnecessary to clutter the bill.

(0:32:30) Ms. Smith asked the committee to consider clarifying the Loan Repayment Programs as well, which are listed on the bottom of the last page of her memo (attachment #3). Mr. Bjornson stated that there was no intent to address this type of function but he will review them.

(0:34:06) Senator Dever stated that he is trying to understand the rationale for the reason why it's structured the way it is and wants to know if the State Health Council relationship with the State Health Officer is similar in counterpart to the local health director and local board of public health.

Dr. Dwelle, State Health Officer, explained his/Health Department's relationship with the Health Council.

Senator Anderson offered this parallel explanation: The local boards of public health are appointed by the county commissioners and they run the local board of public health much like the health council runs the health department.

Chairman Lee followed by stating that the main difference is that local board of public health hires the public health unit director and the Governor appoints the health officer in the state department of health.

(0:37:09) Chairman Lee asked the committee if they would be interested in having Mr. Bjornson draft the amendments. She reviewed them again with Mr. Bjornson for clarification.

Mr. Bjornson stated that he will work the law intern in preparing the amendment for committee discussion on Monday.

Discussion is recessed until Monday.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee
Red River Room, State Capitol

SB 2355
2/25/13

Recording Job Number: 19434

Conference Committee

Committee Clerk Signature:



Explanation or reason for introduction of bill/resolution:

Relating to the powers and duties of the state health council.

Minutes:

Attached testimony

Continued discussion on SB 2355:

All members of the committee are present except for Senator Dever who stepped out briefly.

Chairman Lee distributed the new amendment prepared by Legislative Council 13.0813.01002 that addressed the concerns from last Wednesday's discussion (see attachment #5). The committee walked through the changes and Chairman Lee asked the law intern to check with John Bjornson from Legislative Council on a language change on page 1, line 15. While they waited for a response, Chairman Lee explained that it's now down to their original intent to create the consistency between the important roles of the state health council flowing through to the head of the department which is the state health officer. The committee then reviews the amendment further on their own (there is a brief moment of silence on the recording during this).

Senator Larsen states that this cleans up the bill considerably.

Chairman Lee asked the committee whether or not they agree with having the health council send its findings to the health officer for where the ultimate responsibility would be, or if they want to have them continue to be the ultimate authority without it going to the health officer.

Senator Anderson states that he disagrees with this, which Chairman Lee is already aware of, and that he is reluctant to help with the amendments but is looking forward to the debate on the floor. Senator Anderson continues to express his opinion in which he thinks the department and the health officer like the idea that the health council stands between them and that they have performed this service very well over the years.

The law intern heard back from Mr. Bjornson and informed Chairman Lee that the language on line 19 is intended to make it clear that any rule or standard adopted by the county will

be submitted to the state health officer, which makes the change on line 15 is no longer necessary.

Senator Larsen moved to adopt the amendment to make the bill more palatable.

Senator Axness seconded.

Roll Call Vote: 5-0, motion to amend passes.

(Vote was originally kept open for Senator Dever who later voted "YES" off the record which is indicated in the roll call above)

Senator Anderson moved a Do Not Pass as Amended.

Senator Larsen seconded.

Committee discussion: Senator Axness stated that he understands the intent but he just feels that this is meddling in too many things at this point and there isn't a firm grasp on what it is they are impacting which makes him uncertain on wanting the bill to move forward. Chairman Lee expresses that she is not taking this personally. Senator Larsen followed but stating that he appreciates all the work put into this but that he is also reluctant and continued to share his opinion.

Senator Dever is now back in the committee room and Chairman Lee briefly filled him in.

Chairman Lee continued the discussion on the intent.

Roll Call Vote: 4-1, Do Not Pass as Amended.

Senator Axness is the carrier.



Handwritten signature and date: 2-24-13

PROPOSED AMENDMENTS TO SENATE BILL NO. 2355

Page 1, line 2, remove "23-07-02.3,"

Page 1, line 3, remove "23-19-07,"

Page 1, line 19, after "rule" insert "that the council is authorized by law to adopt"

Page 2, line 5, remove the overstrike over "6."

Page 2, line 7, after the overstruck period insert "Advise the state health officer regarding the conduct and disposition of hearings and appeals that may come before the state health officer."

Page 3, remove lines 14 through 28

Page 5, remove lines 19 through 31

Page 6, remove lines 1 through 5

Renumber accordingly

Date: 2/25/13
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2355

Senate Human Services Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.0813.01002

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

Motion Made By Sen-Larsen Seconded By Sen-Axness

Senators	Yes	No	Senator	Yes	No
Chairman Judy Lee	✓		Senator Tyler Axness	✓	
Vice Chairman Oley Larsen	✓				
Senator Dick Dever	✓				
Senator Howard Anderson, Jr.	✓				

Total (Yes) 5 No 0

Absent 0

Floor Assignment _____

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

Date: 2/25/13
 Roll Call Vote #: 2

2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2355

Senate Human Services Committee

Check here for Conference Committee

Legislative Council Amendment Number 13-0813-01002

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

Motion Made By Sen. Anderson Seconded By Sen. Larsen

Senators	Yes	No	Senator	Yes	No
Chairman Judy Lee		<input checked="" type="checkbox"/>	Senator Tyler Axness	<input checked="" type="checkbox"/>	
Vice Chairman Oley Larsen	<input checked="" type="checkbox"/>				
Senator Dick Dever	<input checked="" type="checkbox"/>				
Senator Howard Anderson, Jr.	<input checked="" type="checkbox"/>				

Total (Yes) 4 No 1

Absent 0

Floor Assignment Sen. Axness

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

REPORT OF STANDING COMMITTEE

SB 2355: Human Services Committee (Sen. J. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (4 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2355 was placed on the Sixth order on the calendar.

Page 1, line 2, remove "23-07-02.3,"

Page 1, line 3, remove "23-19-07,"

Page 1, line 19, after "rule" insert "that the council is authorized by law to adopt"

Page 2, line 5, remove the overstrike over "5."

Page 2, line 7, after the overstruck period insert "Advise the state health officer regarding the conduct and disposition of hearings and appeals that may come before the state health officer."

Page 3, remove lines 14 through 28

Page 5, remove lines 19 through 31

Page 6, remove lines 1 through 5

Renumber accordingly

2013 TESTIMONY

SB 2355

Testimony
Senate Bill 2355
Senate Human Services Committee
Tuesday, February 12, 2013; 9 a.m.
State Health Council

Good morning, Chairman Lee and members of the Senate Human Services Committee. I am Carmen Toman from Bismarck, a public member and Vice Chair of your State Health Council. Our Chairman, Gordon Myerchin from Grand Forks (also a public member), would love to be here with you, but is on a short vacation to Arizona.

The State Health Council has asked me to speak to you regarding Senate Bill 2355. We believe the State Health Council works very well as it is currently used in North Dakota law.

The State Health Council is made up of 11 members appointed by the Governor. Originally, there were nine members – four representing various areas of health care and five public members. A few years ago when the energy and manufacturing industry felt they were not getting adequate input into rule making, a representative of each of these groups was added, thus making the current group of 11, a majority of whom are public members outside of the health care industry.

We believe that when the State Health Council was created, the intention was to ensure the public is represented in the rule making process. We also believe that it is much more difficult for individuals to put political pressure on the 11 members of the State Health Council than one individual, such as a State Health Officer.

The rule making authority of the state health department has been assigned to the State Health Council since 1885, before statehood. Currently rules are brought from the many programs in the health department to the State Health Council for approval to go out to a public hearing. Once they come back from the hearing process, they are brought back to the State Health Council for final approval.

The State Health Officer is always present at State Health Council meetings. We spend a great deal of time discussing and advising the department on priorities for the department. If there is a dispute about decisions the department

#1

makes regarding issues where authority lies with the health council, they are brought to the State Health Council as the final arbiter of the decision, before an appeal to the courts.

Please carefully consider the changes you are asked to make and consider whether you have had any problems with the current process, before making the changes suggested by Senate Bill 2355.

Thank you. I am happy to answer any questions you may have.

13.0813.01001
Title.

Prepared by the Legislative Council staff for
Senator J. Lee

February 13, 2013

PROPOSED AMENDMENTS TO SENATE BILL NO. 2355

Page 1, line 2, remove "23-07-02.3,"

Page 2, line 5, remove the overstrike over "5."

Page 2, line 7, after the overstruck period insert "Advise the state health officer regarding the conduct and disposition of hearings and appeals that may come before the state health officer."

Page 3, remove lines 14 through 28

Renumber accordingly

From: Smith, Arvy J.
Sent: Friday, February 15, 2013 11:07 AM
To: Lee, Judy E.
Subject: RE: SB 2355

Below is the memo I am working on. Again note that # 4 is not yet complete and will be forwarded later. Would you like me to forward this email the committee members or would you prefer I get hard copies of this information to them?

Senator Lee and Senate Human Services Committee:

At the hearing on Senate Bill 2355 regarding the duties and authority of the State Health Council you requested two items from the Department of Health – a listing of the Health Council members and a listing of the specific authority of the Health Council. I also have two technicalities of the bill to make you aware of. The information is provided below.

- 1.) First a technical correction. The way we interpret your intentions, we suspect there may be a typo on page 4 line 4 at the end of the sentence – we think the word “council” should be “officer” to be consistent with the rest of the bill.
- 2.) I wanted to alert you that there is another bill that is also affecting the language in SB 2355 that you will probably want to coordinate with. As you know, SB 2355 Section 9 amends NDCC 23-19-07. SB 2308 repeals NDCC chapter 23-19 and establishes new language regarding septic tanks, etc. in chapter 61-28. The new language in SB 2308 has rule making authority and issuance, suspension and revocation of permits with the department, not the State Health Council.
- 3.) The State Health Council membership listing is attached.
- 4.) A legal review of the duties of the State Health Council was conducted in August of 2009 by Mike Mullen, then Assistant Attorney General. In his memo, Mr. Mullen lists 23 chapters of the century code that include duties of the State Health Council. My response to your question will be based on his legal review in 2009 and is attached. (Not complete yet – will be forwarded later.) Note that in my preliminary review I have noted several other areas of the century code where rule making is with the health council. They are 25-17-02, 25-17-05, 43-38-03, 23-01.2-03, 23-35-02 and licensing authority in 43-38-02, and to establish a trauma system in 23-01.2-01. Also, the health council holds the authority with regard to approval of the recipients of the loan repayment programs however for the veterinarian loan repayment program they award in consultation with the state board of animal health.

Arvy Smith
Deputy State Health Officer

Senator Lee and Senate Human Services Committee:

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Arvy Smith
Deputy State Health Officer

Statutory Duties of the State Health Council (content per 8/1/09 review by Michael J. Mullen, Assistant Attorney General updated by Arvy Smith, Deputy State Health Officer Dept. of Health 2/19/13.)

NDCC 23-01-03. Powers and duties of the health council. Establish standards, rules, and regulations which are found necessary for the maintenance of public health, including sanitation and disease control. Provide for the development, establishment, and enforcement of basic standards for hospitals and related medical institutions which render medical and nursing care, and for the construction and maintenance of such institutions, etc.

NDCC 23-01-03.2. Duties of the health council. Monitor overall health care costs and quality of health care in the state, recommend to the appropriate interim legislative committees changes to the health care system in the state, and public an annual report on health care in the state.

NDCC 23-01.1. Health care data committee. Report and publish various health care information. This is being amended by HB 1036.

NDCC 23-01.2. Trauma and emergency medical system. The health council with the department of health may establish and maintain a comprehensive trauma system. NDCC 23-01.2-03 the state health council shall adopt rules that allow provisional trauma designation for a hospital partially compliant with standards.

NDCC 23-07. Reportable diseases. Responsibilities seem to lie with the state health officer. NDCC 23-07-01.2. The department may adopt rules under chapter 28-32 for the efficient enforcement of this chapter. (Seems to conflict with 23-01-03 “Establish standards, rules, and regulations which are found necessary for the maintenance of public health, including sanitation and disease control.”)

NDCC 23-16-06. Authority to issue, deny, suspend, or revoke licenses. To hold hearings and issue orders regarding issuance, denial, suspension or revocation of licenses of medical hospitals.

NDCC 23-17.5-11. Assessment - Health care provider cooperative agreement fund. To approve additional assessments for extraordinary need regarding health care provider cooperative agreements and hear any appeals.

NDCC 23-19-06. Rules, regulations, and inspections. To promulgate rules and regulations, to make inspections as may be necessary to implement chapter 23-19 regarding cesspools, septic tanks and privies, and to provide adequate health safeguards. Approve denial, suspension, or revocation of licenses. **Note SB 2308 repeals NDCC chapter 23-19 and establishes new language regarding septic tanks, etc. in chapter 61-28. The new language in SB 2308 has rule making with the department, not the State Health Council.**

NDCC 23-20.1-04.6. X-ray operators – Rules. To require that x-ray operators obtain continuing education every two years and to establish minimum standards for x-ray operator provision of limited pediatric examinations.

NDCC 23-24-02. Petition for establishment of vector control districts- Hearing thereon and investigation – District when created. To hold public hearings and determine establishment of vector control districts.

NDCC 23-25-08. Administrative procedure and judicial review. Right to hearing before health council within ten days regarding air pollution control proceeding.

NDCC 23-27-01. Licensing of emergency medical services operations. To adopt rules for special licenses and waiver provisions for an operator of an emergency medical services operation intended for industrial sites not available to the general public. **NDCC 23-2-7 04 and NDCC 27-04.3.** To adopt rules for emergency medical services operations.

NDCC 23-29-10. Right to hearing before health council within ten days regarding solid waste management proceeding.

NDCC 23-35-02 Public health units. Issue rules defining the core functions a public health unit shall undertake.

NDCC 23-35.1-02. Regional public health network. Adopt rules regarding regional public health networks.

NDCC 23-39-07. Enforcement-Rules-Penalty (Tanning Facilities). Adopt rules necessary to implement the chapter.

NDCC 25-17-02 Testing and Treatment of Newborns. Rulemaking requirement. To adopt rules necessary to implement the chapter.

NDCCC 43-38-02 and 43-38-03. Electrologists and Electronic Hair Removal. Issue licenses, establish fees and establish standards, rules and regulations for maintenance of public health.

Loan Repayment Programs

In addition the health council has duties with regard to several loan repayment programs:

- NDCC 43-28.1 Dentists' loan repayment program
- NDCC 43-29.1 Veterinarian loan repayment program
- NDCC 43-17.2 Physician loan repayment program
- NDCC 43-12.2 Medical personnel loan repayment program
- NDCC 50-21 Nursing homes and basic care facilities revolving loan fund
- NDCC 23-01-03.3 Long-term care nursing scholarship and loan repayment program

State Health Council

The State Health Council serves as the North Dakota Department of Health's governing and advisory body. The council's 11 members are appointed by the governor for three-year terms. Four members are appointed from the health-care provider community, five from the public sector, one from the energy industry and one from the manufacturing and process industry.

Duties

The State Health Council's duties include monitoring overall health-care costs and quality of health-care in North Dakota. The council establishes standards, rules and regulations which are found necessary for the maintenance of public health. They provide for the development, establishment and enforcement of basic standards for hospitals and related medical institutions which render medical and nursing care, and for the construction and maintenance of such institutions. These standards cover matters pertaining to sanitation, building construction, fire protection measures, nursing procedures and preservation of medical records. The council also holds hearings on all matters brought before it by applicants and licensees of medical hospitals.

Chair

- Gordon Myerchin (Consumer)

Vice Chair

- Carmen Toman (Consumer)

Secretary

- Marlene Kouba (Consumer)

Members

- Dennis E. Wolf, M.D. (Health Care)

#4

- Howard C. Anderson, R.Ph. (Health Care)
- Jerry Jurena (Health Care)
- Vacant (Consumer)
- Wade Peterson (Health Care)
- Hjalmer Carlson, Jr. (Consumer)
- Greg Allen (Manufacturing and Processing)
- Mike Jones (Energy)

Messages or questions for any member of the State Health Council can be sent to health@nd.gov. Please indicate in your e-mail which Health Council member the message is for.

13.0813.01002
Title.

Prepared by the Legislative Council staff for
Senator J. Lee
February 21, 2013

PROPOSED AMENDMENTS TO SENATE BILL NO. 2355

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Renumber accordingly