

**2017 HOUSE EDUCATION**

**HB 1333**

# 2017 HOUSE STANDING COMMITTEE MINUTES

Education Committee  
Coteau A Room, State Capitol

HB 1333  
1/23/2017  
Job 27245

- Subcommittee  
 Conference Committee

Committee Clerk Signature

## Explanation or reason for introduction of bill/resolution:

Relating to exempting information regarding individuals applying for certain position under the authority of the state board of higher education.

## Minutes:

Attachments 1, and 2.

Chairman- Mark S. Owens: welcomes Rep. Rich S. Becker.

Rep. Rich S. Becker: see attachment 1 for testimony

Chairman- Mark S. Owens: any questions

Rep. Pat D. Heinert: if I was a candidate for this position and I did not want my records disclosed knowing that the way this law reads they are going to be disclosed if I make the final 3 or 4, why would I still want to be a candidate.

Rep. Rich S. Becker: at some point I do have to agree with those in opposition to my bill, if at some point, if you become a finalist, then the public I believe has a right to know who you are, so what we are trying to do is until that point, until it gets down to three and you have to decide if you want to still remain, one of the results of remaining is you become an open record. But for the other 30 or 50 that have applied and did not make it, their records are closed forever, it is not any bodies business if Rich Becker applied for a position at some institution, does that help a little bit, did I answer your question. Kind of.

Rep. Matthew Ruby: is some of the worry here, backlash, let's say I am coaching that one college, and I am applying for a head coaching position, is some of the worry with backlash from the college I am currently working for.

Rep. Rich S. Becker: of course, yes.

Rep. Matthew Ruby: I guess I am not 100% sure how many colleges have this, but don't most of the colleges have a disclosure that if you are going to apply somewhere you have a certain amount of time to let them know, so they are not blindsided last minute that they are going to lose a coach. If they did that would negate having this, if that is their worry.

Rep. Rich S. Becker: I don't know the answer to that question, I believe it is common courtesy, and it might be contractual that you have to give a two week or a 30-day notice, that could very well be the case, but, and if I were sure if that were something a candidate might say to a university in North Dakota, I want to apply, but I need privacy, I don't want my current employer to know, until I have to give them the official 2 week or 30 notice.

Chairman- Mark S. Owens: any further questions from the committee.

Vice Chairman- Cynthia Schreiber-Beck: there are numerous states in this country that has laws regarding this issue, in my research at least 22, perhaps more. Is your bill modeled after any of those, or have you changed or have you researched the bills that exist in other states?

Rep. Rich S. Becker: I have not to the degree that you have, what I have done is talked to many presidents and vice presidents, athletic directors, and head coaches as to what their feelings are about the process of applying for those positions, either at UND or with other universities in the state. The only thing I can really say is everybody I have talked to, without exception has said, they wish this bill would have been in effect when they were in the application process, or totally believe that now is the time for it to be implemented.

Chairman- Mark S. Owens any other questions, Rep. Rich S. Becker I notice in here you said 3 or fewer, from our discussion earlier, the like flexibility if there are plenty of people to have 4 or 5. So I assume you have no objection if that was changed, following that on page 2, where you talk about someone coming in at the last minute, I am just sitting here thinking I am one of the candidates that has gone through the long arduous process, which we both know won't happen, but let's pretend for a minute, and I have applied and I am in the finalist list. And now here comes someone else, at the last minute, now mine is already open records, we have already notified newspapers of who the finalist is, and now someone comes in as a late, and they are put in, and yet they are still going to get another 14 days, not only is it private from everybody else, but it is private from the finalist. Now all of a sudden they don't know there is some mystery person there up against that they never heard about, and they are not in the same footing, they do not have the same, it is not equal as far as the candidates. You don't think at that point if you are going to come in that late they should be notified that they would be immediately subject to open records, because they are coming in late, and are part of the finalist list at that point, and I understand what you have in here about 7 days, and 7 days trying to give them the time, but that still bothers me if I am one of the other candidates, I am wondering what is going on with the board, and what decisions are being made, and we have heard if all of a sudden a superstar came in at the last minute, and my name was out there, and if I had known I was up against them I would have withdrawn perhaps.

Rep. Rich S. Becker: Mr. Chairman I think that is a perfect point. And that theoretically could happen, in the discussions that I have had with various people, principally with UND, that was not a concern, if somebody comes in you might call them a Jonny come lately. It happens at a frequent basis, what would happen is the search committee would have the ability to communicate with the press that there has been an extension, for accepting applicants, and they can even say why or they can just basically say there is an extension

without even declining it, and if that creates a real problem for somebody that might have been one of the 3 finalist, they have the right to wait it out, or they can withdraw their name at that point and the records can be kept closed.

Chairman- Mark S. Owens: any further questions. Anyone else in support to HB 1333

Senator Kruin: I am not going over everything like Rep. Rich S. Becker, but I will tell you about my experience with this topic. I served with the city council for 12 years. And hired an array of city employees. When the people came and wanted to apply in the beginning, they did not know they were going to make it to the finals, but the ones that did make it to the finals were more than willing to indicate to their employers that they made it that far, and that they would be probably accepting that position if in fact they were chosen. But before that sometimes they are out fishing for a job, and sometimes it hurts their existing employment, and I have been told that is why individuals have not applied for certain positions, so it does make a difference, I know there is lots of people that they would get the finest and brightest and the best there is for all these position. As Rep. Rich S. Becker indicated it is even more acute in higher education in my opinion, in the higher education family so to speak. I did happen to run into by accident an applicant for the presidency of the university at an airport, she did not know me, and I did not know her until we asked, and we got into a bit of a conversation, and she specifically indicated that that was one of the draw backs, she had applied, she did apply, her name was given out, and she was somewhat fearful of repercussion back at her facility she was working at. She did go through the process, she did not make the finalist, as it turned out, but that concern was there, and really would have probably felt more comfortable had they utilized a bill in this position, I did sign on to this as a co-sign, I do believe we utilize this bill to be able to attract the best and brightest, and this bill helps with that.

Chairman- Mark S. Owens: any questions. Senator Kruin your last statement was curious to me, about misinformation, you implied that with fb rumors get out, if we kept it a secret wouldn't that grow rumors.

Senator Kruin: Not if we don't give the list out, nobody will know. Unless those individuals decide to give it out themselves. Chairman Owens, and group this becomes very personal situation with these people. It is their lively hood, it is what they do for a living, and if we are going to give it out, and it may or may not be a detriment to them, and I have had that explained to me otherwise I would not be saying it, I have not had that problem personally, but I am explaining that to you, that this is very personal to these individuals, they would like to work for Grand Forks, UND, whatever it might be. But the point is if they are not a finalist, it will in some cases be a detriment to their existing position for future advancements, and things of that nature. And that has been explained to me, I am just giving you the information I have gotten, I am not trying to make up anything.

Chairman- Mark S. Owens: it was your last statement that struck me as curious.

Senator Kruin: and I would like us to keep that as private as possible in all cases, whether we are hiring a city administrator or a school board superintendent, or whatever it might be. That would be my choice, I know there is another bill, floating around someplace that will

have all of that in there, and I may come and testify for that one too, because I firmly believe that that's a deterrent for gathering all those qualified people.

Chairman- Mark S. Owens: and that bill is on your side of the legislature. So we will see if you all pass it first, I know I said you all. Are there any other questions?

Rep. Ron Guggisberg: if we do not pass this bill let's say we went the other way and we said that if you are going to run for office you have to let everybody know as soon as you decide to run for office, you think that would affect who would put their name on the ballot, or consider running for office.

Senator Kruijn: a public office which you are choosing to represent a large number of people, which you are in some of these cases as well for hiring, well I certainly believe that the public should be well aware of a person running for an elected position, that is what you are there for, you are trying to get people to vote for you, why would you want to keep that a secret, and my livelihood does not depend on this position, if I do not win I still have my job, and nobody is going to take that job away from me. Nobody will say, because you ran for an elected position I am not going to promote you at Altru Hospital or JC Penny, or wherever it might be. In my mind that is quite a bit different.

Rep. Ron Guggisberg: I phrased that wrong. I guess I was looking at it more as me personally to choose to run for office was, obviously has some impacted on your career that you are in. It is similar like applying for a position like this, your name and aspirations will be out there for the world to see. When you go back to work and do not get that position whether it is elected representative, or athletic director, it is tough to face your co-workers when you come back, not only do they think you wanted to leave, but they also know you did not make it. That is probably more of a comment, than a question.

Chairman- Mark S. Owens: any other questions.

Rep. Rich S. Becker: something that I neglected to mention in making my case, I think that Senator Kruijn would certainly understand this as well, in trying to be communicative with the media, there is nothing in my bill that prevents any institution from saying, they may be weekly or semi-monthly updates we received 25 applicants for x position or we gained 5 in the last week, or we lost 2. That kind of communication is not covered by closed records, numbers are open, and so that is kind of a compromised way of keeping the public informed to the status of the position, without violating the privacy, thank you.

Chairman- Mark S. Owens: Any other questions. any further support to HB 1333, any opposition to HB 1333.

Jack Macdonald: I am here today on behalf of the North Dakota Newspaper Association, and the North Dakota Broadcasters Association, in opposition to HB 1333. There will be one other speaker in opposition as well, I am going to cover just a few things, because a lot of things that I think, we have a lot of problems with this bill. First of all, while there was some talk about openness and transparency, this bill, by being enacted would be the biggest anti-openness, anti-transparency bill that I have ever seen in my 30 something years working this area, what you are going to do by doing this, first of all you are talking about presidents and

vice presidents, provost, deans, athletic directors, head coaches, at institutions there are 11 institutions that are under the board of higher education. Just a rough calculation, we are talking maybe 225 positions when you consider all the coaches at all the colleges and universities, all the deans that there are, all the vice presidents, we all know there are 8 or 9 vice presidents at UND alone. So we are talking about 225 it is a conservative amount that would be closing the records for, but what you are doing now is taking 225 to 250 records of applications or positions that are open, have been open for 50 years, ever since we have had the open records law in 1957, and now all of a sudden we are closing them, I guess what it is, is an admission that we have not had good presidents for 57 years, so now we got to close these records so we get good presidents. I do not think that is the case at all, you are talking about some of the highest profile people in the state, the highest paid people in the state. I think that the taxpayer deserves to know who is applying for those positions or sometimes just as important who is not applying for those positions, and we all know that there are rumors going around that so and so is going to apply for the president of this, president of that, and so and so is going to apply for a coach, and then the names come out and whoa he did not apply for a coach, he did not apply for the presidency, why not. Well there is maybe some reasons that the public should know for that, the other thing that I think is important to consider in this bill, is that we are not only closing records, but we are closing meetings. So what you are doing by saying, it already is state law that if you are considering a closed record, a public body, whether it is city commission, school board, county commission, whatever commission it is, if you are considering closed or confidential records, you can close that meeting. That is state law right now. So what you are doing in effect by this bill is authorizing 200 additional closed meeting, where we let the higher board of education who we all know they are do not have the best record for open meetings and open records to begin with, no you are saying the board of higher education can hold 15 to 20 more closed meetings, because if you had 40 applicants for a job, for instance you had at Dickenson recently, then what you can do is you can close your meetings until you winnow that down to three people, you could have 2, 3, 4, 5 closed meetings. Until such time as you finally got down to the three finalist. 3 or fewer finalist. So not only are you closing all the records that have been open for 57 years, you are closing all these meetings as well, rather than bringing more openness and transparency to the system, you are closing the system completely. As we said before this is either some of the high profile area, don't you think the people in Grand Forks would be interested to know who is going to be the president of UND, and who is applying for that job, but the only thing we will know now is when they get it down to the final three, as well all know there is a system that everybody, if you are a coach in a small college, you want to be a coach in a big college. Everybody knows that, if you are a president of a small college, you want to be a president of a big college, if you are a vice president some place you want to be a president some place. That's the way life goes, so to say that oh, it is going to be so terrible if we knew that our coach is actually going to apply for another position, I do not think it was any secret that NDSU football coach for example was applying for different positions, and we knew that when he started getting championships he applied for a different position, coach got it, his name was rumored in Minnesota, his name was rumored at Nebraska again, and finally got the job in Wyoming. At the same time, he was a coach at NDSU, and nobody said oh my god we do not want him as a coach anymore, because he is applying to other places. Don't you think that if one of the presidents, said well, we just saw in the paper last week that president was a finalist at, had applied for a job in Ohio University, and I do not think that means that the people of NDSU think anything less of president, I think they are probably pretty happy that they think that he is considered good

enough to be a president at a college like that, so we would urge you to give a do not pass to HB 1333 as it is now written. There could be some changes made, there have been bills like this in the past, there was a bill last session that Rep. Rich S. Becker talked about, there have been bills previously, the next speaker will talk a little bit about bill in 2009, that was almost passed, that had a little bit different nature on it, I think that some of the opposition of this would certainly be different if it was limited for instance just to presidents and the commissioner of higher education as your previous bill HB 1309 was. I think there would be a lot less opposition to that, I think there would be a lot less opposition if you maybe raised the number of finalist a little bit, but otherwise this bill is really a tremendous hit on open meetings and open records in North Dakota, and as we said these are considered some of the highest paying jobs in the state, and if you look at a list of the top 50 jobs in the state you will see almost all of them are coaches, deans, and vice presidents, and presidents of the universities, and I think the public needs to know who is applying for these jobs. If you have any questions, I will be glad to answer them.

Chairman- Mark S. Owens: are there any questions

Vice Chairman- Cynthia Schreiber-Beck: are you aware of how laws may be written in other states regarding this sunshine laws.

Jack Macdonald: yes, I am, I am very much aware. North Dakota there are about half the states that as you mentioned earlier, about half the states already have something similar to this, I am not saying we need to do that, we have a great open meeting open record law, we have one of the best open meeting open record laws in the United States, and I just do not want to see that watered down, but there are other ones, and as I said there could be a way that maybe something like this could work. But not in this fashion right now.

Vice Chairman- Cynthia Schreiber-Beck: distorted audio.

Jack Macdonald: I cannot tell you for sure, I just know that we found out about it here in North Dakota when he was a finalist, I do not know in Ohio if the names are released or not, I probably suspect not or we would have heard about it sooner.

Vice Chairman- Cynthia Schreiber-Beck: back to when you were speaking about the board of higher education and closed meetings, in essence they would only have the number that you thought whether it be (distorted audio)

Jack Macdonald: I got chocked up just thinking about this bill, well yes and no, because right now on every campus there are hiring committees that are appointed to screen the athletic director for instance, or the screening of whatever position you are doing, and those are open meeting too. You don't have to have a board of higher education.

Vice Chairman- Cynthia Schreiber-Beck: I was just going to verify that

Jack Macdonald: Certainly the board of higher education does not consider the coaches at UND, I do not know if they do or not, but the committee that is hiring them at UND would be doing that, and almost all these instances there are committees, under our present law those committees would be open committee meeting as well as open records too. I am sorry if I

gave you the impression that we would have 225 closed meeting of the board of higher education, that was not correct. Probably would only have 200.

Rep. Rich S. Becker: He is a very worthy opponent in this situation because he is trying to do what he believes is in the best interest of not keeping any secrets from anybody in the general public, as where what I am trying to do is protect the privacy of a select few, one of the things that bothered me a little bit, Jack is the media is built somewhat on the case of firing up the flames of sensationalism, and I just wanted to indicate that when you say there is 200 plus applicants that this applies to, that is a big number whether it is 200 or 250 or 50, my point in submitting an opposite point of view, is at any given time or any one time you might have one president every four years, or maybe 2 presidents in four years, it is not like we are having hiring decisions made for head coaches, athletic directors, it is not an everyday sort of thing, I think I would prefer to not sensationalize that we are trying to have everything closed, and no information getting out, you also mentioned all the coaches in the state, well my bill specifically is only for a head coach, and I do not know if you caught that or not, and then the other thing that Vice Chairman- Cynthia Schreiber-Beck has already asked about was the open meetings, the only open meeting that I was aware of that my bill would affect is the search committees, when they are sitting down negotiating a contract, and putting forth that kind of information, I guess I just shutter at the thought that this is taken away the role of the newspaper association, or any person in the media from not having any information from what is going on, I just think we are both trying to do our jobs, and maybe are representing different constituencies, but I do know that there is a feeling that is certainly more than just one university or one city pretty much throughout the state that are not attracting the best people, and I still stand on that basis. Thank you.

Jack Macdonald: I appreciate your comments, we are not trying to sensationalize things, we are just trying to provide information that tells you who is applying, and I think that sometimes the list of the people applying tells a lot about the job that is available, and you can tell by that. When I talked about coaches however there are a lot of head coaches, I was aware of the head coaches, but at UND you have got 14 sports, so you have 14 head coaches, at NDSU go have 13 sports, so you have 13 head coaches. So that is 27 right there, and you do not count all the head coaches at Williston, Minot, Bismarck State College, Valley City, and all of the other places, so there are a lot of people involved, and as far as the meetings are concerned, as I mentioned to Vice Chairman- Cynthia Schreiber-Beck, these are the meetings because on most of those campuses there are committees formed to fill a deans position of aerospace or to fill a coaching position in hockey or football, and those search committees would fall under this law as well.

Chairman- Mark S. Owens: any further questions. Seeing none, thank you. Anyone else in opposition to HB 1333.

Steve Andrist: see attachment 2 for testimony

Chairman- Mark S. Owens: any questions. Anyone else in opposition for HB 1333, any neutral testimony for HB 1333

Lisa Feldner: I serve as a Chief of Staff for the North Dakota University system, the board has not taken any positions yet on these open record bills with regard to searches, and they

are going to do so on their meeting, they have a board meeting on Thursday, so that is why nobody is here, they are very supportive of limiting the open records to finalist however, and so this is kind of one of those neutral testimonies, anyways that is all I had to say, we will more information after Thursday.

Chairman- Mark S. Owens: I completely understand about neutral testimony that we can consider re-categorizing later, are there any questions. Seeing none thank you, any additional neutral testimony. Closing hearing for HB 1333.

# 2017 HOUSE STANDING COMMITTEE MINUTES

**Education Committee**  
Coteau A Room, State Capitol

HB 1333  
1/25/2017  
Job 27338

- Subcommittee  
 Conference Committee

Committee Clerk Signature

## Explanation or reason for introduction of bill/resolution:

Relating to exempting information regarding individuals applying for certain positions under the authority of the state board of higher education.

## Minutes:

No attachments

Rep. Rich S. Becker: I have had contact with our esteemed newspaper association, and they would like to sit down and talk which I am hoping will be in the next day or so.

Chairman- Mark S. Owens: we will hold it for you. So we are pending yours. Ok I guess we are done for today.

# 2017 HOUSE STANDING COMMITTEE MINUTES

**Education Committee**  
Coteau A Room, State Capitol

HB 1333  
2/1/2017  
Job 27768

- Subcommittee  
 Conference Committee

Committee Clerk Signature

## Explanation or reason for introduction of bill/resolution:

Relating to exempting information regarding individuals applying for certain positions under the authority of the state board of higher education.

## Minutes:

No attachments

Rep. Rich S. Becker: just as a quick summary, reminder to everybody. What HB 1333 is all about is putting into the statute a form for higher education categories of positions as closed records for the purpose of interviewing and determining selection process for future 7 or 8 positions. I am going to come back to that in just a second, my weekend was made, as you may recall, two of those positions I had where chancellor and presidents of the various universities, but the most liberal newspaper in North Dakota the Grand Forks Herald came out in full endorsement that we need, let presidents and chancellor's candidates apply quietly, so in regardless of what our committee does with my bill, I took a little bit of satisfaction in that happening. But as I had discussed, I am not that far along if Jerry came in.

Chairman- Mark S. Owens: if you just do the amendment really quick, and to explain to them what your amendment does, and pass that out.

Rep. Rich S. Becker: you should have a copy of the original bill in front of you, and what is being handed out now are the amendments to it, the corrections, and in spite of everywhere I go in terms of people that I know that are in agreement that we need to make records for these positions closed, I think it was going to be a difficult decision on your part, as a committee to give that a due pass, and so our esteemed chairman of our committee counseled me and said, well Representative Rich S. Becker sometimes it is easier to win the battle but lose the war, so that is what we are trying to do here, you have the amendments in front of you, and next I am going to pass out a Christmas tree version of what the bill would read with the amendments that you have, to help basically what the new bill will say is that the open records we are talking about will only apply to the chancellor position, and the heads of the presidents for the various institutions. So that is what we are asking for, I sat down with the North Dakota newspaper association, on four different meetings to get their buy in, and they are in agreement with what is being passed out. For the proposed amendment, as both a Minnesota practice under number one and number is the wording on how Wisconsin

does it for maintaining closed records for these positions, of the two the Minnesota one is the one I am recommending, and it is the one that you have.

Chairman- Mark S. Owens: If you would just focus on that one, and make a motion.

Rep. Rich S. Becker: The first paragraph, the amendment is based on the Minnesota data practice act which treats records that identify an applicant or candidate for state employment is confidential, unless and until the applicant or candidate becomes a finalist. Under the law a finalist is defined as someone who is selected to be interviewed by the appointing authority prior to selection of the person to fill the open vacancy. The second paragraph says this amendment the house bill 1333 would treat records identifying an applicant or candidate for commissioner of higher education or president of a state university or college as confidential, unless and until the individual becomes a finalist. Until he becomes a finalist it is a closed record, the amendment also clarifies the applicant or candidate must agree to be interviewed, and that is very key. To get down to the finalist you have to be willing to be interviewed, that could be through skype or in person. If the hiring authority asks for an interview, and the applicant or candidate declines, the applicant or candidate does not become a finalist and his records are closed. I would recommend a motion to do pass.

Chairman- Mark S. Owens: you are making to adopt the amendment.

Rep. Rich S. Becker: I would make the motion that we adopt the amendments that were just passed out.

Chairman- Mark S. Owens: seconded by Rep. Longmuir. Discussion.

Rep. Denton Zubke: just want to make sure 2001.

Rep. Rich S. Becker: 2001.

Chairman- Mark S. Owens: any discussion. Taking a voice vote, and amendment passes. What is the committees wishes?

Rep. Brandy Pyle: I make a motion for a do pass as amended.

Chairman- Mark S. Owens: we have a do pass as amended, Rep. Longmuir seconded the motion. Any discussion. I invite the clerk to call the role for a do pass as amended on HB 1333. Vote is 13-0-1, Rep. Corey Mock is absent, and Rep. Bill Oliver will carry this bill.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1333

Page 1, line 7, replace "**Exempt**" with "**Confidential**"

Page 1, line 8, replace ""hiring" with "unless context otherwise requires:

a. "Hiring"

Page 1, line 10, remove "a"

Page 1, line 10, remove ", vice president, provost, dean,"

Page 1, line 11, replace "athletic director, or head coach at" with "of"

Page 1, after line 12, insert:

"b. "Finalist" means an applicant or candidate for the position of commissioner of higher education or president of an institution under the control of the state board of higher education who is selected to be interviewed and agrees to be interviewed by the hiring authority prior to the selection of the commissioner or president."

Page 1, line 13, replace "Except as otherwise provided in this section, a" with "A"

Page 1, line 15, remove "a"

Page 1, line 15, remove ", vice president, provost, dean,"

Page 1, line 16, replace "athletic director, or head coach at" with "of"

Page 1, line 17, replace "an exempt" with "a confidential"

Page 1, line 17, replace "as defined in section 44-04-17.1" with "until the individual becomes a finalist"

Page 1, line 20, remove "Once the hiring authority reduces the number of applicants or candidates to three or"

Page 1, remove lines 21 through 24

Page 2, remove lines 1 through 13

Page 2, line 14, remove "5."

Page 2, line 16, replace "exempt" with "confidential"

Renumber accordingly

Date: 2/1/17

Roll Call Vote # 1

2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1333

House Education Committee

Subcommittee

Amendment LC# or Description: 17.0297.02001 title. 03000

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Rep. Becker    Seconded By Rep. Longmuir

Representatives	Yes	No	Representatives	Yes	No
Chairman- Mark S. Owens			Rep. Andrew Marschall		
Vice Chairman- Cynthia Schreiber-Beck			Rep. Bill Oliver		
Rep. Rich S. Becker			Rep. Brandy Pyle		
Rep. Pat D. Heinert			Rep. Matthew Ruby		
Rep. Dennis Johnson			Rep. Denton Zubke		
Rep. Mary Johnson			Rep. Ron Guggisberg		
Rep. Donald W. Longmuir			Rep. Corey Mock		

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment Rep. \_\_\_\_\_

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

*Voice vote. passed*

Date: 2/1/17

Roll Call Vote # 2

2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1333

House Education Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Place on Consent Calendar  
Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Rep. Pyle Seconded By Rep. Longmuir

Representatives	Yes	No	Representatives	Yes	No
Chairman- Mark S. Owens	✓		Rep. Andrew Marschall	✓	
Vice Chairman- Cynthia Schreiber-Beck	✓		Rep. Bill Oliver	✓	
Rep. Rich S. Becker	✓		Rep. Brandy Pyle	✓	
Rep. Pat D. Heinert	✓		Rep. Matthew Ruby	✓	
Rep. Dennis Johnson	✓		Rep. Denton Zubke	✓	
Rep. Mary Johnson	✓		Rep. Ron Guggisberg	✓	
Rep. Donald W. Longmuir	✓		Rep. Corey Mock	AB	

Total (Yes) 13 No 0

Absent 1 Rep. Mock

Floor Assignment Rep. Oliver

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

**REPORT OF STANDING COMMITTEE**

**HB 1333: Education Committee (Rep. Owens, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1333 was placed on the Sixth order on the calendar.

Page 1, line 7, replace "Exempt" with "Confidential"

Page 1, line 8, replace "hiring" with "unless context otherwise requires:

a. "Hiring"

Page 1, line 10, remove "a"

Page 1, line 10, remove ", vice president, provost, dean,"

Page 1, line 11, replace "athletic director, or head coach at" with "of"

Page 1, after line 12, insert:

"b. "Finalist" means an applicant or candidate for the position of commissioner of higher education or president of an institution under the control of the state board of higher education who is selected to be interviewed and agrees to be interviewed by the hiring authority prior to the selection of the commissioner or president."

Page 1, line 13, replace "Except as otherwise provided in this section, a" with "A"

Page 1, line 15, remove "a"

Page 1, line 15, remove ", vice president, provost, dean,"

Page 1, line 16, replace "athletic director, or head coach at" with "of"

Page 1, line 17, replace "an exempt" with "a confidential"

Page 1, line 17, replace "as defined in section 44-04-17.1" with "until the individual becomes a finalist"

Page 1, line 20, remove "Once the hiring authority reduces the number of applicants or candidates to three or"

Page 1, remove lines 21 through 24

Page 2, remove lines 1 through 13

Page 2, line 14, remove "5."

Page 2, line 16, replace "exempt" with "confidential"

Re-number accordingly

**2017 SENATE EDUCATION**

**HB 1333**

# 2017 SENATE STANDING COMMITTEE MINUTES

**Education Committee**  
Sheyenne River Room, State Capitol

HB 1333  
3/6/2017  
Job Number 28702

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*Sandy Baumgardner*

## Explanation or reason for introduction of bill/resolution:

Relating to exempting information regarding individuals applying for certain positions under the authority of the state board of higher education

## Minutes:

#1, #2,

**Chairman Schaible:** Meeting back to order. Open hearing on engrossed bill 1333.

**Repr. Rich Becker:** District 43 from Grand Forks. Testimony #1. It is for the purpose of exempting records applicants until they become finalists for position of president of one of the 11 campuses and for the chancellor of the State board of Higher Education. I feel we are not getting top notch applicants for these positions. Applicants have withdrawn their applications from other states because they were to be made public when they were to be made public. We didn't get a single application from a president for the position of president at UND last year. The point being for upper level positions people be protected and have an exemption of having their name out there until they become a finalist. I think the bill is reasonable and modified by taking out the deans and vice-presidents out of the bill. He explained his handout parts 1-2, which are proposed amendments. About 38 other colleges in the country do for protection of candidates.

**Chairman Schaible:** We have 2 amendments. The first defines what a candidate is. And the second is asked that it not be published. Is that correct?

**Repr. Rich Becker:** That is correct.

**Senator Oban:** Were these amendments done in the House?

**Repr. Rich Becker:** they were done in the House.

**Senator Oban:** Was going to ask about how many states do this and you said 38. Do you feel that the public has the right to know since it is public dollars?

**Repr. Rich Becker:** I do, but we as tax payers are not getting out money worth. When the largest school in ND does not even draw one applicant as president for the positions. And there are other situations in the other institutions in the state.

**Senator Rust:** I see the amendment in the record 2001 was adopted but 2002 was not adopted, is that correct? It does not show it.

**Repr. Rich Becker:** That is not my understanding. The last numbers were .03000.

**Senator Rust:** But 02002 does not look like it was adopted in writing. Did I miss it?

**Repr. Rich Becker:** I saw it in writing in the proposed amendment in one of those two paragraphs. It may not be in the bill.

**Senator Rust:** Looking at the law it does show that 2001 was adopted but that's it, and then it goes to 3000. I assume that 2002 was not adopted or didn't get proposed.

**Senator Davison:** In previous committee interviews search committees have flown to Minn. to interview previous of them going to UND or wherever. You used the word "on-site" interview. It doesn't say the last interview.

**Repr. Rich Becker:** Declaring yourself as a finalist as an on-site interview, the interviewing committee could say the Minn. interview could be on-site.

**Senator Davison:** I am not interrupting that from here. The bill is long overdue.

**Repr. Rich Becker:** It was my understanding that the hiring authority could declare the 1<sup>st</sup> interview to become a finalist normally would be on campus, but they could do it off campus.

**Senator Kannianen:** Has there been a discussion on the number of the finalists?

**Repr. Rich Becker:** No discussion was on that. It could be different.

**Senator Kannianen:** Each campus could have flexibility for number of finalist.

**Senator Oban:** Why aren't they getting quality applicants for these positions?

**Repr. Rich Becker:** I can only say heresay. People have a common feeling of not attacking the best of the best. I think part is that they don't want their names out there, there are other factors. People want their privacy until they become a finalist. There is a senate bill in contention. Changes could be made.

**Senator Curt Kreun:** Represent district 42 with the university in my district. In the 80's this wasn't a real problem because the issue wasn't pronounced as it is today. Those laws weren't in place and we were able to do what this bill is asking. We did get good applicants. On the city council these laws are a little different and we would only get one or two applicants. Same thing happened with our Public Works Director and Human Services director. People don't want a rejection put out there for all to see.

**Vice-Chair Rust:** Any questions in favor?

**Andy Peterson:** Greater North Dakota Chamber; testimony #2. We stand for a "Do Pass" on HB 1333.

**Vice-Chair Rust:** Welcomed students in attendance.

**Dr. Richard Rothaus:** Vice-Chancellor of ND University System: Testify in favor of this bill. The problem is real. When words get out if you are a president and apply for somewhere else everyone wants to know what is happening and why are they leaving. Another thing if you apply and you don't get it you go into a lame duck status until you have proven you will stay for a while. Really good candidates don't want to take the risk.

Vice-Chair Rust: Any opposition to 1333? Any neutral?

**Jack MacDonald:** North Dakota Newspaper and Broadcasters Association; We strongly opposed this bill when it was first introduced because we thought it was way too broad and encompassed a great many individuals. Since it is amended to what it is now, we can't support a closed record bill, but we don't feel in this case that we are going to oppose it. We will go neutral on this bill and don't make any changes.

**Vice-Chair Rust:** Any other testimony? None, we will close the meeting on 1333.

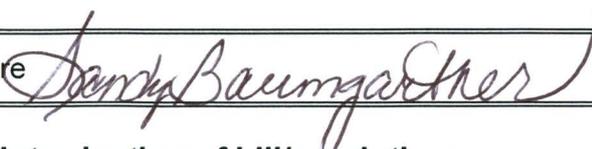
# 2017 SENATE STANDING COMMITTEE MINUTES

**Education Committee**  
Sheyenne River Room, State Capitol

HB 1333  
3/27/2017  
Job Number 29722

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to exempting information regarding individuals applying for certain positions under the authority of the state board of higher education

## Minutes:

none

**Chairman Schaible:** Meeting called to order. Roll taken and all present except Senator Davison.

**Kyle Forester:** IT Manager: Wanted feedback on the pilot program for electronic testimony. Will continue with the pilot and may extend into share and send profile. Will extend into annotating in the future. You will be hearing more about this as we go forward.

Senators saw it as a great benefit and commented on such.

**Chairman Schaible:** Other questions or comments? Let's look at 1333 to start with.

**Senator Rust:** We recently passed in both houses a bill that is broader than this bill with everything that is in here. It is 2152. I see no need for this bill. I move a Do Not Pass.

**Senator Oban:** I second.

**Chairman Schaible:** Discussion? I agree completely. The 2152 is much broader than this one. It is not needed. Other discussion? Clerk take roll: 5 Yeas, 0 Nay, 1 absent

**Senator Rust** will carry.

Date: 3-27-2017  
Roll Call Vote #: 1

2017 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1333

Senate Education Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Place on Consent Calendar

Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Rust Seconded By Oban

Senators	Yes	No	Senators	Yes	No
Chairman Schaible	✓		Senator Oban	✓	
Vice-Chairman Rust	✓				
Senator Davison		do			
Senator Kannianen	✓				
Senator Vedaa	✓				

Total (Yes) 5 No 0

Absent 1

Floor Assignment Rust

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

**REPORT OF STANDING COMMITTEE**

**HB 1333, as engrossed: Education Committee (Sen. Schaible, Chairman) recommends  
DO NOT PASS (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).**  
Engrossed HB 1333 was placed on the Fourteenth order on the calendar.

**2017 TESTIMONY**

**HB 1333**

Attachment 1

HB 1333

1/23/17

**Testimony of Representative Rich Becker District 43 Grand Forks to the  
House Education Committee House Bill No. 1333, January 23, 2017**

**Mr. Chairman and members of the committee, I am Rich Becker and as you know, one of your fellow members on this committee. I am more than pleased to have this opportunity to introduce you to my bill 1333 requesting Exempt records. This bill will provide protection for applicants to select position in the North Dakota Higher Education System. Although UND borders my district and many faculty, students and UND staff live in my district, my bill is of concern and applies to all colleges and universities in the North Dakota Higher Education System.**

**It is my belief that we the citizens of North Dakota are in many cases not attracting the best candidates to the positions being advertised. WHY IS THIS THE CASE AND HOW DOES THIS BILL ALLEVIATE THE CONCERN IS WHAT I WILL NOW DISCUSS WITH YOU.**

**The passage of House Bill 1333 will be of benefit to all institutions in the NDSBOHE system, all applicants for the various positions and a win/win result for the citizens of North Dakota!**

**Thank You,**

*Rich Becker*

**Representative Rich Becker**

Attachment 2  
HB 1333

1/23/17



**Testimony of Steve Andrist**  
**Executive Director, North Dakota Newspaper Association**  
*Before the North Dakota House Education Committee*  
*In Opposition to HB 1333*

Chairman Owens and members of the committee, my name is Steve Andrist and I'm the executive director of the North Dakota Newspaper Association, which represents the state's 90 daily and weekly newspapers.

The issue before you today in HB 1333 is one the NDNA board of directors has struggled with for more than 10 years. Our current board members come from newspapers in Minnewaukan, Crosby, Dickinson, Garrison, Steele, Fargo and Linton, and they are unanimous in their belief that the public's business ought to be done in public.

But understanding the realities of politics and talent attraction, they have struggled over whether to accept a level of compromise, and with reluctance I believe they have concluded that some level of compromise might be appropriate. Regrettably, HB 1333 doesn't ask us to compromise as much as it does to surrender. We believe it simply goes way to far in sacrificing government transparency.

Any time we ask the citizens of this great state to forfeit the right to know something that is being done on their behalf, especially in the realm of higher education, it must be done with great reluctance and caution, if at all.

HB 1333 asks North Dakotans to give up their right to know who is applying to be chancellor, university president, provost, dean, athletic director and coach. They would have no way of knowing who is being considered for any of those jobs, or who is being eliminated from consideration, until the field has been narrowed to three finalists. That's asking way too much. Plus, it implies the system we've had in place all these years isn't working. I can think of any number of deans and coaches and athletic directors and yes, even presidents, who have done us proud after being selected without any restrictions on transparency.

It's the way of the world for people, even higher ed administrators, to pursue upward mobility, and at some point it becomes an expectation that they will seek other jobs. We know, for example, that Dr. Bresciani is a candidate for a job in Ohio, and if he's not selected for it he'll continue to do his work at NDSU. That's one indication that your employer knowing you may move on isn't the hardship some would make it out to be.

Perhaps a much less dramatic change would justify considering reduced transparency in higher education, but HB 1333 asks the people to sacrifice in order to extend convenience to prospects. For these reasons I ask you to reject this bill.

Thank you.

HB 1333  
3-06-17  
#1 p. 1

1. Proposed Amendment 17.0297.02001

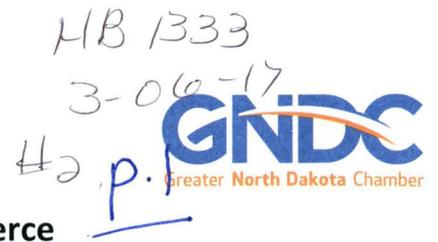
This amendment is based on the Minnesota Data Practices Act, which treats records that identify an applicant or candidate for state employment as confidential, unless and until the applicant or candidate becomes a finalist. Under that law, a "finalist" is defined as someone who is selected to be interviewed by the appointing authority prior to selection of the person to fill the open vacancy in state government.

This amendment to House Bill 1333 would treat records identifying an applicant or candidate for Commissioner of Higher Education or President of a state university or college as confidential, unless and until the individual becomes a finalist. The amendment also clarifies the applicant or candidate must agree to be interviewed in order to be a finalist. If the hiring authority asks for an interview and the applicant or candidate declines, the applicant or candidate does not become a finalist.

2. Proposed Amendment 17.0297.02002

This amendment is based on the procedures used by search committees at the University of Wisconsin - Madison. If a candidate or applicant for Commissioner of Higher Education or President of a state college or university asks the hiring authority - in writing - not to publicly release records that identify the applicant or candidate, those records become exempt records unless and until the applicant or candidate becomes a finalist. (This amendment uses the same definition of finalist as the other amendment.) By making the records exempt rather than confidential, this amendment gives the hiring authority the discretion to release the records if they choose. It also eliminates any penalties for releasing the records.

**Testimony of Andy Peterson**  
**Greater North Dakota Chamber of Commerce**  
**HB 1333**  
**Senate Education**  
**Honorable Don Schaible - Chair**  
**March 6, 2017**



Mr. Chairman and members of the committee, my name is Andy Peterson and I am here today representing the Greater ND Chamber, local chambers of commerce, and other business associations throughout North Dakota. Some members of the media describe the GNDC as the most prominent business organization in North Dakota. We stand in support of HB 1333 and ask for a "do pass" recommendation.

However, to be clear we prefer SB 2152, sponsored by Senator Laffen.

One of the business community's greatest challenges is recruitment of workforce. There are numerous traditions and nuances in the hiring process; this includes the concept of confidentiality. Without it businesses would not be able to have discussions with well qualified candidates, and the process of recruiting the best candidates would be fatally altered.

We know employees look around from time to time. Sometimes they are serious and at other times they are simply testing the market or practicing their interviewing skills for a position they might really want in the near future. For whatever the reason; confidentiality goes along with the process. Even if there were no issues with a lack of confidentiality – which might include the erosion in current job stature or in the worst case scenario the elimination of a current position – private business would not likely operate well in a system where these kinds of negotiations were subject to open meeting laws.

Besides the erosion or elimination of jobs in a situation like this employers and employees would no longer be able to negotiate new employment agreements without being subject to new dynamics, and those dynamics would likely not be positive for the employer or employee.



PO Box 2639 P: 701-222-0929  
Bismarck, ND 58502 F: 701-222-1611

[www.ndchamber.com](http://www.ndchamber.com)

It is clear there is a public right to know when it comes to government operations. However, the current practice goes too far. We should protect potential candidates until which time they become a finalist for the job. In my own situation, both the GNDC and I kept the process confidential until which time I was a finalist. At that point I revealed my intent to the Chamber of Commerce where I was currently employed. This allowed the GNDC to conduct background checks, openly call references, and so forth. I also felt it the right thing to do in the situation. The choice to enlarge the circle of knowledge was mine. I'd like to think it also allowed the GNDC to choose the best candidate at the end of the day.

Again, we are not supporting a closed system of hiring at state government. Rather, we think there are positions where confidentiality matters in the hiring practice and support limited protection for candidates until which time they become a finalist for a position.

Again, we support HB 1333 and if it is the vehicle to get to accomplish the goal of limited confidentiality we would like to see it amended to include other sensitive leadership positions in the state.