

**1999 HOUSE GOVERNMENT AND VETERANS AFFAIRS**

**HB 1049**

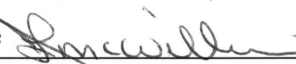
1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1049

House Government and Veterans Affairs Committee

Conference Committee

Hearing Date 1-14-1999

Tape Number	Side A	Side B	Meter #
1	X		46 - 54.7 End
1		X	0 - 33.0
Committee Clerk Signature 			

Minutes: Some of the individuals testifying submit written testimony. When noted please refer to it for more detailed information.

Representative Klein, Chairman of the GVA Committee opened the hearing on January 14, 1999.

Summary of the Bill: Relating to the powers and duties of the state board of higher education and the confidentiality of audit reports.

Testimony in Favor:

Paul Kramer, Legislative Council appeared before the committee to explain the bill. Section 2 creates new language and section 1 covers higher education and it's ability to go into executive session.

Representative Winrich, Do you know under what conditions the committee would meet now in an executive session and how would this expand?

Kramer, I believe it is only under personal matters of hiring and firing. Expanding it would be to hear their audit reports.

Representative Devlin, What's going to change about the audit. If it's been done, what's the change. I don't understand that.

Kramer, Nothing will change in the audit. The way it works now when the audit is done, the auditors office or the public accounting firm would review it with the agency. You would have the finding and the agencies response. The way it is now, the press is getting to hear about it before they are actually seeing it (audit report). They want to see it before it goes out to the press.

Representative Devlin, I don't see a lot of reason that it should be hidden from the people of ND that pay the taxes to support whatever it is. Don't see a real need for this.

Representative Klemin, The way it reads now, if they weren't going to present the report to the audit and fiscal review committee it would remain confidential.

Kramer, No. We decide which ones are actually submitted in a formal report to the committee. But any committee member would have the options to ask to have one come back to committee for review. They all eventually show up there.

Tape 1, Side A, End.

Ed Nagel, ND Auditors Office appeared before the committee and submitted written testimony which he read in it's entirety (**please refer to his testimony**). He also submitted amendments that are attached to the back of his testimony.

Representative Klemin, It' presented in a form of a list?

Nagel, All reports go to the committee, but are not heard in a formal matter.

Representative Winrich, The amendments you have proposed are added to the bill, that the auditors office would have discretion about whether to release the audit or to withhold it?

Nagel, That discretion only until the time of the last proceeding. Once the last proceeding was held then that report becomes public information.

Representative Devlin, Last line-public entity refers to the auditors office.

Nagel, That term refers to our office.

Representative Dorso, This bill is all about the UND problem. The problem we have is that misinformation can be out there. The audit hasn't been final and we don't think it's fair that it's all made public. I think the agencies should have an opportunity to work with the auditor, but in the mean time, the agencies can be held up over some public scrutiny or take some heat over something that isn't even finished yet. They have to be able to work these things through until they are in final form and then become public record. This is a good bill, maybe it needs an amendment, but we have to give these agencies the ability to have a final product or the right to disagree until they have their audit completed or resolve the issue.

Representative Winrich, In section 1, was in fact the final audit report. Or was it not the final or was it a preliminary report.

Dorso, They have to get the audit done before it's made public. They can't keep it secret forever, sooner or later it's going to come before the audit and fiscal review committee. They have to be able to get through this phase-work in process. If you have a better way of doing it, were happy to hear about it.

Testimony in Opposition:



Jack McDonald, ND Newspaper Association appeared before the committee. He submitted a written testimony (**please refer to his testimony**). I think the bill as written is a step backwards and I believe this bill needs more amendments besides the one Mr. Nagel submitted. I believe this bill needs to be fine tuned.

Representative Cleary, Don't you think that the amendments submitted would cover your view?

McDonald, Not entirely.

Representative Winrich, Reference to the UND Audit, was that the final audit report? And that same information would have been released under this law, just later?

McDonal, Yes.

John Hoeven, Bank of North Dakota. As it currently stands in section 2, I am opposed. He submitted written testimony (**please refer to his testimony**).

Bob Peterson, ND State Auditor stated that the UND audit was a complete audit. Mr. Peterson went into a lengthy description of the audit and how it was undertaken. Meter# 21.

Representative Klemin, Can you discuss a preliminary audit.

Peterson, Until it's final we can discuss it with the agency, not the public. We do not talk to the Board of Education, but if we do or as soon as we do, it is now a public meeting. This bill only allows them to go into executive session if they choose to. It doesn't require them to.

Representative Devlin, Isn't it a fact that they will open it (the board).

Peterson, I think they would.

Laura Glatt, ND University System stated that there are generally 3 circumstances that a board will go into an executive session. 1. hiring or firing of president, 2. law suit, 3. confidential matters. We believe that section 1 isn't necessary if you pass section 2. The audit report process

is under the stature that applies to the board. We don't take a particular position on this. In my experience, all of the reports that have been presented to board members have been in final form. Nothing to my knowledge has ever changed after those reports are submitted to the board.

Representative Kroeber, You have the ability to discuss and work with the auditors office before these reports go to you audit and review committee.

Glatt, We do.

Representative Winrich, It would seem to me that the board or it's audit review committee could hear the preliminary report in an executive session now as long as it has not been finalized.

Glatt, I am not sure, we have never done that.

Representative Klein, Closed the hearing on HB 1049.

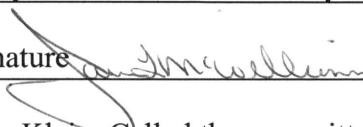
1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1049

House Government and Veterans Affairs Committee

Conference Committee

Hearing Date 1-28-1999

Tape Number	Side A	Side B	Meter #
1	X		57.8 - 60.8
1		X	0 - 22.3
Committee Clerk Signature 			

Minutes: Representative Klein, Called the committee to order to work on HB 1049.

Representative Grande, Submitted amendments to the committee. These amendments come about do to auditor bringing in his concerns as to confidentiality and exempt records. It also addresses the BND concerns also.

Representative Klein, Would you walk us through the amendments? **Representative Grande walked the committee through the amendments-reading amendments. Please refer to tape 1.0 - 4.2.**

Representative Metcalf, What does the term otherwise considered for acceptance mean? What conditions must come about?

Representative Klein, When is it accepted, the audit. That was the problem at UND.

Representative Haas, Even if the audit and fiscal review committee received those audits and approves them, it's unlikely the members of the committee would be able to answer questions to that audit then they were before.

Representative Kliniske, I didn't care for the bill before and I still don't care for it. I met with the people at UND and they don't want to have it confidential in case something happens and it leaks out.

Representative Devlin, I go real problems with the amendments and the bill. It sets open meeting law in ND back about 100 years. Why would you want a final audit of anyplace and hold it for months.

Representative Grande, What had happened that the committee didn't have the opportunity to go over anything/review. The press and constituents came out and called members of the committee and they couldn't address certain issues. Misinformation came out. This could happen to any agency, not just UND.

Representative Winrich, This is a blow to open records law. The final audit report doesn't change. The only thing this bill would do is delay the release of that report.

Representative Devlin, This is a final audit, and it belongs to the public.

Representative Kliniske, The problem would be removing the word confidentiality.

Chester Nelson, Legislative Council, I was wondering why the word was removed.

Representative Grande, It came out of the auditors wording. What I understood it left the higher education the opportunity to call the executive session so they could go over this without having to go over public records.

Representative Kroeber, Laura Glatt stated that it's not necessary.

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House Government and Veterans Affairs Committee

Bill/Resolution Number HB 1049

Hearing Date 1-28-1999

Committee Action:

Representative Grande, Made a motion for a Do Pass on the amendments.

Representative Thoreson, Seconded the motion.

Motion Passes: Yes (vocal).

Representative Cleary, Made a motion for Do Not Pass on the amended bill.

Representative Winrich, Seconded the motion.

Motion Passes, Do Not Pass **11-2-2**.

Representative Winrich, Is the carrier for the bill.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1049

Page 1, line 3, replace "confidentiality" with "release"

Page 1, line 13, replace "**Confidential**" with "**Open records requirements**"

Page 1, line 16, replace "confidential" with "not a public record under section 44-04-18" and  
replace "to" with "or otherwise considered for acceptance at a meeting of"

Renumber accordingly

Roll Call Vote #: 1 Date: 1-28-99

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1049

House GOVERNMENT AND VETERANS AFFAIRS Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO NOT PASS AMENDMENT

Motion Made By CLEARY Seconded By WINRICH

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN KLEIN		✓	REP. WINRICH	✓	
VICE-CHAIR KLINISKE	✓				
REP. BREKKE					
REP. CLEARY	✓				
REP. DEVLIN	✓				
REP. FAIRFIELD					
REP. GORDER	✓				
REP. GRANDE		✓			
REP. HAAS	✓				
REP. HAWKEN	✓				
REP. KLEMIN	✓				
REP. KROEBER	✓				
REP. METCALF	✓				
REP. THORESON	✓				

Total (Yes) 11 No 2

Absent 2

Floor Assignment WINRICH

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

**REPORT OF STANDING COMMITTEE**

**HB 1049: Government and Veterans Affairs Committee (Rep. Klein, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (11 YEAS, 2 NAYS, 2 ABSENT AND NOT VOTING). HB 1049 was placed on the Sixth order on the calendar.

Page 1, line 3, replace "confidentiality" with "release"

Page 1, line 13, replace "**Confidential**" with "**Open records requirements**"

Page 1, line 16, replace "confidential" with "not a public record under section 44-04-18" and replace "to" with "or otherwise considered for acceptance at a meeting of"

Renumber accordingly



**1999 TESTIMONY**

**HB 1049**

January 14, 1999

**HOUSE GOVERNMENT & VETERANS AFFAIRS**  
**HB 1049**

**CHAIRMAN KLEIN AND COMMITTEE MEMBERS:**

My name is Jack McDonald. I'm appearing today on behalf of The North Dakota Newspaper Association and The North Dakota Broadcasters Association. We **OPPOSE HB 1049** and respectfully urge that you give it a **DO NOT PASS**.

North Dakotans have a long tradition of open government. We were one of the first states to pass a comprehensive open meetings and open records law in 1957. And, we were the first state in the nation to put those same protections into the constitution in the 1960s, by overwhelming votes of nearly four-to-one I might add.

The interest of North Dakota citizens in open government is evident by their interest in open meetings and open records. If you ask any custodian of public records, you will find that the vast majority of requests for public records come not, as many believe, from the media, but from the public. The same holds true for open meetings. The Attorney General's office now handles open meeting and open record disputes. It has issued more than 50 opinions in this area since August 1997, and 80% have been requested by the general public.

You...as legislators...recognized this public interest in open meetings and records last session when you passed a comprehensive update of the open meetings and open records law. This was a big step forward. Now you're being asked to take a step backward with this bill.

In this case, the audit is complete. It's not going to change. It doesn't have to be approved by the Legislative Audit & Fiscal Review Committee. The questions the audit might pose, or the problems, are not going to change. Why keep them from the public for many weeks, or maybe even months, until the committee meets? The law says the committee is to review these audits. It doesn't say it has to be the first persons to review them.

We all know this bill is here because of the contretemps which arose last year surrounding UND president Kendell Baker and an unfavorable audit concerning certain accounting practices. The release of that audit did not change the committee's response. It just gave the public the opportunity to respond and react to the audit early, and perhaps, gave the committee the chance to judge the public's reaction prior to the committee meeting.

We don't see anything wrong with that. Therefore, we respectfully request your **DO NOT PASS**. If you have any questions, I'll be happy to answer them. THANK YOU FOR YOUR TIME AND CONSIDERATION.

**TESTIMONY TO THE  
HOUSE COMMITTEE ON GOVERNMENT AND VETERANS AFFAIRS**

**January 14, 1999**

**HOUSE BILL 1049**

**JOHN HOEVEN - BANK OF NORTH DAKOTA**

Section 2 of this bill provides for a new section to Chapter 54-10 of the North Dakota Century Code which would require that all state agencies and institutions maintain the confidentiality of their audit reports until those audit reports have been presented to the Legislative Audit and Fiscal Review Committee. This section would create a problem for Bank of North Dakota as we are required to disclose our audit to business partners and other institutions or organizations in the normal course of business. In some cases we would be precluded from conducting normal business operations if we were not able to disclose our audit report until after the Legislative Audit and Fiscal Review Committee had had opportunity to meet and review the audit. Examples would include instances where we serve as bond trustee or provide letters of credit and are required to provide audited financial statements within 90 days or 120 days after our year end.



STATE OF NORTH DAKOTA  
**OFFICE OF THE STATE AUDITOR**  
STATE CAPITOL  
600 E. BOULEVARD AVENUE  
BISMARCK, NORTH DAKOTA 58505

**GOVERNMENT AND VETERANS AFFAIRS COMMITTEE**  
January 14, 1999

House Bill No. 1049

Testimony – Presented by Ed Nagel, Jr.  
Director

Chairman Klein, members of the committee, I'm here to testify on House Bill No. 1049.

We cannot support the bill with its current language. We believe that the language in Section 2 needs to be amended for the following reasons.

We have discussed the effects of Section 2 of this bill with our legal representative from the Attorney General's Office. His opinion is that if audit reports are deemed to be "confidential" until presented to the legislative audit and fiscal review committee (LAFRC), then our office would be prohibited from sending copies of the audit report to anyone prior to the report being presented at a LAFRC meeting. This is because of the definition of "confidential" in NDCC § 44-04-17.1 (3). That definition states "Confidential meeting or "confidential record" means all or part of a record or meeting that is either expressly declared confidential or is prohibited from being open to the public." Under Section 2 of the bill, we could only discuss the contents of a report with the agency, but not release the report.

Most of the state agencies who have issued bonds have a bond indenture requirement that requires the state agency to send a completed audit report to the bonding agency within a certain number of days after the end of the state agency's fiscal year. If this time deadline occurs before the report is presented at a LAFRC meeting, then agencies having issued bonds may not be able to comply with their bond indenture agreement.

Also, the State is required to send a final copy of the statewide single audit to the Federal Government within 9 months after the end of the audit period. It could happen that the State would not be able to meet this federal requirement, if the single audit report was not presented to the LAFRC until after the 9 month deadline.

We are also concerned with the wording in lines 16 and 17, since not every audit report is formally "presented" to the LAFRC. Some reports are merely received by the committee and accepted for filing as one of a large group of audits, without any discussion.

We ask this committee to adopt the proposed amendments that we have prepared and attached for section 2 of this bill. The amendments make audit reports "exempt" rather than "confidential". NDCC § 44-04-17.1 (5) defines exempt record as all or part of a record that is neither required by law to be open to the public, nor is confidential, but may be open in the discretion of the public entity.



## NORTH DAKOTA UNIVERSITY SYSTEM

TO: Members, House Government and Veterans Affairs

FROM: Laura Glatt, Vice Chancellor for Administrative Affairs

DATE: January 21, 1999

RE: HB1049

A handwritten signature in black ink, appearing to read "Laura Glatt", written over the "FROM:" line.

During the hearing on HB1049, the State Auditor's Office proposed a set of amendments that would remove confidential with exempt records. You asked what effect this would have on the State Board of Higher Education and/or the Board Audit Subcommittee to meet and discuss the report prior to the meeting of the Legislative Audit and Fiscal Review Committee.

Staff counsel provides the following interpretation:

As introduced, this bill provides that audit reports would be "confidential". That means that the state auditor could not release copies of the reports until the reports are presented to LAFRC, although the auditor could review the report contents with an agency. The proposed amendments make the documents "exempt" until presented to LAFRC. That means that the documents may be released or withheld at the discretion of the agency in possession of the documents. The auditor's office could, but would not be required to, release a report to the SBHE before presentation to LAFRC. If the SBHE, or the NDUS office, is in possession of an audit report prior to presentation to LAFRC, the SBHE or NDUS Office has full discretion to release or not release the report.

Section 1 of the bill is probably not necessary. The SBHE (or other state agency) may, pursuant to NDCC section 44-04-19.2, go into executive session to discuss or consider a confidential or closed ("exempt") document. Generally, a draft document or report presented to a governing body becomes public once it is presented to that body or distributed to a member of the governing board (meaning that under current law the SBHE may not go into executive session to consider or discuss an audit report). However, section 2 of the bill creates an exception to the general rule and provides that audit reports remain exempt from the open records law, or closed, until presented to LAFRC. That means that the SBHE may, pursuant to section 44-04-19.2, go into executive session to consider or discuss an audit report if the report has not been presented to LAFRC.

If you have any other questions, please feel free to contact me at 328-4116 or Pat Seaworth, Legal Counsel, at 328-4169.

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The North Dakota University System is governed by the State Board of Higher Education and consists of: Bismarck State College - Dickinson State University - Mayville State University - Minot State University, Minot and Bottineau Campus - North Dakota State College of Science - North Dakota State University, Fargo - University of North Dakota, Grand Forks, Lake Region and Williston - Valley City State University