

1999 HOUSE AGRICULTURE

HB 1116

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1116

House Agriculture Committee

Conference Committee

Hearing Date 1-7-99

Tape Number	Side A	Side B	Meter #
1	x		10.2--21.0
Committee Clerk Signature <i>Arlin Hanson</i>			

Minutes:

Summary of Bill: Relating to confidentiality of North Dakota Mill and Elevator information.

Michael Strobel: General Manager North Dakota Mill & Elevator presented testimony on the need for this legislation. During the 1997 Legislative Session the Legislature considered and approved a bill clarifying the open records/open meeting law. Following the passage of that legislation the Industrial Commission reviewed it's statue as it relates the ND Mill & Elevators records and open meetings. It was determined by the commission that rather than having a separate confidentiality statute, the mill should follow what's being included in the open meeting law. House bill 1116 will repeal 54-18-04.2 of the ND Century Code. Copy attached for your information.

Rep Renner; Has there been any problems in the past?

Mike Strobel: Non in past.. some discrepancies in State Law though.

Rep Brusegaard: Primary concern is in the transaction & dealings. Does the law now do this?

Strobel: No as interpreted by the Attorney General there was some problems. We need meetings with customers a little more confidential otherwise the competition will steal the customers away from them.

Rep Berg: I was a sponsor of the open records law in the past sessions. The portion you want repealed was law before this and doesn't quite coincide with the new law.

Chm Nicholas: Dakota Growers has specific customers and press able to come in and get information about them then competition took customers away.

Strobel: Everyday we are on the phone selling floor. If the competition knows who you are selling too and the price gives them a big advantage.

Jack McDonald: Newspaper and Broadcasters Assoc.. are in favor of this bill. A good compromise to help the St. Mill and Elv.

Rep Warren moved a DO PASS for HB 1078 and Rep Nowatzki seconded the motion.

COMMITTEE ACTION: DO PASS

15 Yes 0 No 0 Absent

Carrier: Rep Pollert

Date: 1-7
Roll Call Vote #: 3

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1126

House Agriculture Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By John Warner Seconded By Rep Nowolicki

Representatives	Yes	No	Representatives	Yes	No
Eugene Nicholas, Chaiman	✓		Bob Stefonowicz	✓	
Dennis E. Johnson, Vice Chm	✓				
Thomas T. Brusegaard	✓				
Earl Rennerfeldt	✓				
Chet Pollert	✓				
Dennis J. Renner	✓				
Michael D. Brandenburg	✓				
Gil Herbel	✓				
Rick Berg	✓				
Myron Koppang	✓				
John M. Warner	✓				
Rod Forlich	✓				
Robert E. Nowatzki	✓				
Phillip Mueller	✓				

Total (Yes) 15 No 0

Absent _____

Floor Assignment Rep Pollert

If the vote is on an amendment briefly indicate intent: Berg Backer

REPORT OF STANDING COMMITTEE (410)
January 11, 1999 4:49 p.m.

Module No: HR-05-0484
Carrier: Pollert
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1116, as engrossed: **Agriculture Committee (Rep. Nicholas, Chairman)** recommends **DO PASS** (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1116 was placed on the Eleventh order on the calendar.

1999 SENATE AGRICULTURE

HB 1116

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1116

Senate Agriculture Committee

Conference Committee

Hearing Date 2/26/99

Tape Number	Side A	Side B	Meter #
1	X	4210-5560	
Committee Clerk Signature <i>Tricia Jorgensen</i>			

Minutes:

Senator Wanzek called the meeting to order, roll call was taken, all were present.

Senator Wanzek opened the hearing on HB 1116.

Mike Strobel from the ND Mill spoke in support of the bill. Testimony enclosed.

Senator Wanzek: Could you summarize the law being repealed.

Mike Strobel: That is open to interpretation.

Senator Kroeplin: Any purchase by mill of Canadian grain?

Mike Strobel: No, have not and will not buy Canadian grain.

Courtney Koebele from the ND Newspaper Association/ND Broadcasters spoke in support of the bill. Testimony enclosed.

Senator Wanzek closed the hearing on HB 1116.

Senator Sand made the motion for a Do Pass.

Page 2

Senate Agriculture Committee
Bill/Resolution Number Hb 1116
Hearing Date 2/26/99

Senator Klein seconded.

ROLL CALL: 7 Yes, 0 No

CARRIER: Senator Sand

REPORT OF STANDING COMMITTEE (410)
February 26, 1999 10:22 a.m.

Module No: SR-35-3645
Carrier: Sand
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1116: Agriculture Committee (Sen. Wanzek, Chairman) recommends **DO PASS**
(7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1116 was placed on the
Fourteenth order on the calendar.

1999 TESTIMONY

HB 1116

January 7, 1999

HOUSE AGRICULTURE COMMITTEE
HB 1116

CHAIRMAN NICHOLAS 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 support **HB 1116** and urge that you give it a DO PASS.

Two years ago, you as legislators made substantive and, I think, some very good changes in the state's open meetings and open records laws. Among those changes was a revision of §44-04-18.4 of the North Dakota Century Code (see copy on the back of this page), which provides confidentiality of trade secret, proprietary, commercial and financial information.

While we're generally not in the business of promoting confidentiality laws, we believe §44-04-18.4 is a good compromise that protects necessary business information. It just makes sense to have government agencies following the same law in this regard because it will make it easier for government officials, the public and the media to know what is and is not confidential.

We respectfully request your **FAVORABLE CONSIDERATION** of this bill.

If you have any questions, I'll be happy to answer them. THANK YOU FOR YOUR TIME AND CONSIDERATION.

[OVER]

*18962 N.D. Code § 44-04-18.4

WEST'S NORTH DAKOTA CODE
TITLE 44. OFFICES AND OFFICERS
CHAPTER 44-04. DUTIES, RECORDS, AND MEETINGS

Current through the 1997 Regular Session of the 55th Legislative Assembly (1997)

§ 44-04-18.4. Confidentiality of trade secret, proprietary, commercial, and financial information

1. Trade secret, proprietary, commercial, and financial information is confidential if it is of a privileged nature and it has not been previously publicly disclosed.
2. "Trade secret" includes:
 - a. A computer software program and components of a computer software program which are subject to a copyright or a patent, and any formula, pattern, compilation, program, device, method, technique, or process supplied to any state agency, institution, department, or board which is the subject of efforts by the supplying person or organization to maintain its secrecy and that may derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons or organizations that might obtain economic value from its disclosure or use; and
 - b. A discovery or innovation which is subject to a patent or a copyright, and any formula, pattern, compilation, program, device, method, technique, or process supplied to or prepared by any public entity which is the subject of efforts by the supplying or preparing entity, person, business, or industry to maintain its secrecy and that may derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, any person who might obtain economic value from its disclosure or use.
3. "Proprietary information" includes information received from a sponsor of research conducted by a public entity, as well as any discovery or innovation generated by that research, technical, financial, and marketing information and other documents related to the commercialization, and any other discovery or innovation produced by the public entity which an employee or the entity intends to commercialize.
4. This section does not limit or otherwise affect a record pertaining to any rule of the state department of health or to any record pertaining to the application for a permit or license necessary to do business or to expand business operations within this state, except as otherwise provided by law.
5. Unless made confidential under subsection 1, the following economic development records and information are exempt:
 - *18963 a. Records and information pertaining to a prospective location of a business or industry, including the identity, nature, and location of the business or industry, when no previous public disclosure has been made by the business or industry of the interest or intent of the business or industry to locate in, relocate within, or expand within this state. This exemption does not include records pertaining to the application for permits or licenses necessary to do business or to expand business operations within this state, except as otherwise provided by law.
 - b. Trade secrets and commercial or financial information received from a person, business, or industry that is interested in or is applying for or receiving financing or technical assistance, or other forms of business assistance.



Testimony on House Bill No. 1116
By Michael Strobel
General Manager
North Dakota State Mill
January 7, 1999 – House Agriculture Committee

Chairman Nicholas and members of the House Agriculture Committee, my name is Mike Strobel and I am General Manager of the North Dakota Mill. I am appearing today in support of House Bill 1116.

During the 1997 Legislative Session the Legislature considered and approved a bill clarifying the open records/open meeting law. Following the passage of that legislation, the Industrial Commission reviewed its statutes as they relate to the North Dakota Mill's records/meetings. It was determined by the Commission that rather than having a separate confidentiality statute the Mill should follow what has been included in the open records/open meetings law. House Bill 1116 will repeal 54-18-04.2 of the North Dakota Century Code (a copy is attached for your information) and the Mill would follow the provisions that are established for state agencies in 44-04-18.4.

Some of the Mill's records that are currently public and would remain public if this bill passed include:

- Mission Statement
- Goals and Objectives
- Mill Policies considered by the Industrial Commission
- Quarterly and Annual Reports which include
 - Overall profit numbers
 - Overall sales figures
 - Overall cwts. shipped (broken down to spring wheat and durum)
 - Overall bag production and overall bulk production
 - Overall bushels ground
 - Yields
 - Average price per bushel

Annual Mill Independent Audit
Annual Consolidated Balance Sheet and Operating Statement
Requests for Capital Expenditures to the Industrial Commission
Biennial Budget
Employee Compensation including gain sharing-

Some examples of items under the General Open Records/Meeting Law that would be closed include:

Names of Customers/Suppliers
Hedging information, grain and feed market positions
Pricing formulas
Product formulas
Margins on products
Confidential information given to us by customers

The mill's primary concerns on confidentiality deal with individual transactions with specific customers and suppliers. As with any other business some of the mill's business dealings with customers, suppliers, competitors, contractors, brokers and distributors must be done with the mutual understanding that the discussions, terms, conditions, and trade secrets of both parties remain confidential so that advantage is not lost in the market place. If the mill cannot deal with our customer's formulations, pricing strategies, expansion plans, merger and acquisition strategies, and other business discussions in a confidential manner we put ourselves and the businesses we deal with at risk.

If you have any questions, I am available to answer them at this time.

54-18-04.2. Confidentiality exemption.

1. The industrial commission may provide for the confidentiality of trade secrets and certain commercial and financial information related to specific business transactions of the North Dakota mill and elevator, including subsidiaries of the North Dakota mill and elevator.
2. Information may be designated as confidential only when such information would impair the mill and elevator's ability to obtain necessary information in the future or cause substantial harm to their competitive position, or when such information would cause substantial harm to the privacy or competitive position of a business partner of the mill and elevator.
3. Only information regarding specific business transactions and concerning trade secrets as that term is defined in subsection 4 of section 47-25.1-01, commercial information such as bids, prices for products and commodities, quantities, market strategies, distribution channels, and patterns of competition, or financial information of business partners of the mill and elevator may be designated as confidential.
4. Before any information is designated as confidential pursuant to this section, a request by the mill and elevator for designation of confidentiality must be made public at least five days before the industrial commission acts to designate information as confidential. Any person may protest the requested designation of confidentiality in writing or orally with the industrial commission, or seek an injunction to prevent the designation of confidentiality in the district court. The request for confidentiality must state the general nature and type of information to be protected, but need not state the name of any business partner or the specific substance of the information which is the subject of the request.
5. Any information designated as confidential pursuant to this section shall not remain confidential when the transaction is reported to the industrial commission or discussed by the industrial commission at a regular or special meeting, unless the transaction is continuing and disclosure of the information may jeopardize the successful completion of the transaction, or it is information concerning the business partner of the mill and elevator and disclosure of information would impair the mill and elevator's ability to obtain necessary information in the future or cause substantial harm to the privacy or competitive position of the business partner.

Source: S.L. 1987, ch. 633, § 1; 1991, ch. 590, § 3.

February 26, 1999

SENATE AGRICULTURE COMMITTEE
HB 1116

CHAIRMAN WANZEK AND COMMITTEE MEMBERS:

My name is Courtney Koebele. I'm appearing today on behalf of The North Dakota Newspaper Association and The North Dakota Broadcasters Association. We support **HB 1116** and urge that you give it a DO PASS.

Two years ago, you as legislators made substantive and, I think, some very good changes in the state's open meetings and open records laws. Among those changes was a revision of §44-04-18.4 of the North Dakota Century Code (see copy on the back of this page), which provides confidentiality of trade secret, proprietary, commercial and financial information.

While we're generally not in the business of promoting confidentiality laws, we believe §44-04-18.4 is a good compromise that protects necessary business information. It just makes sense to have government agencies following the same law in this regard because it will make it easier for government officials, the public and the media to know what is and is not confidential.

We respectfully request your **FAVORABLE CONSIDERATION** of this bill.

If you have any questions, I'll be happy to answer them. THANK YOU FOR YOUR TIME AND CONSIDERATION.

[OVER]

*18962 N.D. Code § 44-04-18.4

WEST'S NORTH DAKOTA CODE
TITLE 44. OFFICES AND OFFICERS
CHAPTER 44-04. DUTIES, RECORDS, AND MEETINGS

Current through the 1997 Regular Session of the 55th Legislative Assembly (1997)

§ 44-04-18.4. Confidentiality of trade secret, proprietary, commercial, and financial information

1. Trade secret, proprietary, commercial, and financial information is confidential if it is of a privileged nature and it has not been previously publicly disclosed.
2. "Trade secret" includes:
 - a. A computer software program and components of a computer software program which are subject to a copyright or a patent, and any formula, pattern, compilation, program, device, method, technique, or process supplied to any state agency, institution, department, or board which is the subject of efforts by the supplying person or organization to maintain its secrecy and that may derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons or organizations that might obtain economic value from its disclosure or use; and
 - b. A discovery or innovation which is subject to a patent or a copyright, and any formula, pattern, compilation, program, device, method, technique, or process supplied to or prepared by any public entity which is the subject of efforts by the supplying or preparing entity, person, business, or industry to maintain its secrecy and that may derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, any person who might obtain economic value from its disclosure or use.
3. "Proprietary information" includes information received from a sponsor of research conducted by a public entity, as well as any discovery or innovation generated by that research, technical, financial, and marketing information and other documents related to the commercialization, and any other discovery or innovation produced by the public entity which an employee or the entity intends to commercialize.
4. This section does not limit or otherwise affect a record pertaining to any rule of the state department of health or to any record pertaining to the application for a permit or license necessary to do business or to expand business operations within this state, except as otherwise provided by law.
5. Unless made confidential under subsection 1, the following economic development records and information are exempt:
 - *18963 a. Records and information pertaining to a prospective location of a business or industry, including the identity, nature, and location of the business or industry, when no previous public disclosure has been made by the business or industry of the interest or intent of the business or industry to locate in, relocate within, or expand within this state. This exemption does not include records pertaining to the application for permits or licenses necessary to do business or to expand business operations within this state, except as otherwise provided by law.
 - b. Trade secrets and commercial or financial information received from a person, business, or industry that is interested in or is applying for or receiving financing or technical assistance, or other forms of business assistance.



Testimony on House Bill No. 1116
By Michael Strobel
President and General Manager
North Dakota State Mill
February 26, 1999 – Senate Agriculture Committee

Mr. Chairman and members of the Senate Agriculture Committee, my name is Mike Strobel and I am President and General Manager of the North Dakota Mill. I am appearing today in support of House Bill 1116.

During the 1997 Legislative Session the Legislature considered and approved a bill clarifying the open records/open meeting law. Following the passage of that legislation, the Industrial Commission reviewed its statutes as they relate to the North Dakota Mill's records/meetings. It was determined by the Commission that rather than having a separate confidentiality statute the Mill should follow what has been included in the open records/open meetings law. House Bill 1116 will repeal 54-18-04.2 of the North Dakota Century Code (a copy of 54-18-04.2 is attached as Exhibit A) and the Mill would follow the provisions that are established for state agencies in 44-04-18.4 (see Exhibit B).

Some of the Mill's records that are currently public and would remain public if this bill passed include:

- Mission Statement
- Goals and Objectives
- Mill Policies considered by the Industrial Commission
- Quarterly and Annual Reports which include
 - Overall profit numbers
 - Overall sales figures
 - Overall cwts. shipped (broken down to spring wheat and durum)
 - Overall bag production and overall bulk production
 - Overall bushels ground
 - Yields
 - Average price per bushel

Annual Mill Independent Audit
Annual Consolidated Balance Sheet and Operating Statement
Requests for Capital Expenditures to the Industrial Commission
Biennial Budget
Employee Compensation including gain sharing-

Some examples of items under the General Open Records/Meeting Law that would be closed include:

Names of Customers/Suppliers
Hedging information, grain and feed market positions
Pricing formulas
Product formulas
Margins on products
Confidential information given to us by customers

The Mill's primary concerns on confidentiality deal with individual transactions with specific customers and suppliers. As with any other business some of the Mill's business dealings with customers, suppliers, competitors, contractors, brokers and distributors must be done with the mutual understanding that the discussions, terms, conditions, and trade secrets of both parties remain confidential so that advantage is not lost in the market place. If the Mill cannot deal with our customer's formulations, pricing strategies, expansion plans, merger and acquisition strategies, and other business discussions in a confidential manner we put ourselves and the businesses we deal with at risk.

If you have any questions, I am available to answer them at this time.

Respectfully submitted,



Michael L. Strobel
President & General Manager

54-18-04.2. Confidentiality exemption.

1. The industrial commission may provide for the confidentiality of trade secrets and certain commercial and financial information related to specific business transactions of the North Dakota mill and elevator, including subsidiaries of the North Dakota mill and elevator.
2. Information may be designated as confidential only when such information would impair the mill and elevator's ability to obtain necessary information in the future or cause substantial harm to their competitive position, or when such information would cause substantial harm to the privacy or competitive position of a business partner of the mill and elevator.
3. Only information regarding specific business transactions and concerning trade secrets as that term is defined in subsection 4 of section 47-25.1-01, commercial information such as bids, prices for products and commodities, quantities, market strategies, distribution channels, and patterns of competition, or financial information of business partners of the mill and elevator may be designated as confidential.
4. Before any information is designated as confidential pursuant to this section, a request by the mill and elevator for designation of confidentiality must be made public at least five days before the industrial commission acts to designate information as confidential. Any person may protest the requested designation of confidentiality in writing or orally with the industrial commission, or seek an injunction to prevent the designation of confidentiality in the district court. The request for confidentiality must state the general nature and type of information to be protected, but need not state the name of any business partner or the specific substance of the information which is the subject of the request.
5. Any information designated as confidential pursuant to this section shall not remain confidential when the transaction is reported to the industrial commission or discussed by the industrial commission at a regular or special meeting, unless the transaction is continuing and disclosure of the information may jeopardize the successful completion of the transaction, or it is information concerning the business partner of the mill and elevator and disclosure of information would impair the mill and elevator's ability to obtain necessary information in the future or cause substantial harm to the privacy or competitive position of the business partner.

Source: S.L. 1987, ch. 633, § 1; 1991, ch. 590, § 3.

44-04-18.4. Confidentiality of trade secret, proprietary, commercial, and financial information.

1. Trade secret, proprietary, commercial, and financial information is confidential if it is of a privileged nature and it has not been previously publicly disclosed.
2. "Trade secret" includes:
 - a. A computer software program and components of a computer software program which are subject to a copyright or a patent, and any formula, pattern, compilation, program, device, method, technique, or process supplied to any state agency, institution, department, or board which is the subject of efforts by the supplying person or organization to maintain its secrecy and that may derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons or organizations that might obtain economic value from its disclosure or use; and
 - b. A discovery or innovation which is subject to a patent or a copyright, and any formula, pattern, compilation, program, device, method, technique, or process supplied to or prepared by any public entity which is the subject of efforts by the supplying or preparing entity, person, business, or industry to maintain its secrecy and that may derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, any person who might obtain economic value from its disclosure or use.
3. "Proprietary information" includes information received from a sponsor of research conducted by a public entity, as well as any discovery or innovation generated by that research, technical, financial, and marketing information and other documents related to the commercialization, and any other discovery or innovation produced by the public entity which an employee or the entity intends to commercialize.
4. This section does not limit or otherwise affect a record pertaining to any rule of the state department of health or to any record pertaining to the application for a permit or license necessary to do business or to expand business operations within this state, except as otherwise provided by law.
5. Unless made confidential under subsection 1, the following economic development records and information are exempt:
 - a. Records and information pertaining to a prospective location of a business or industry, including the identity, nature, and location of the business or industry, when no previous public disclosure has been made by the business or industry of the interest or intent of the business or industry to locate in, relocate within, or expand within this state. This exemption does not include records pertaining to the application for permits or licenses necessary to do business or to expand business operations within this state, except as otherwise provided by law.
 - b. Trade secrets and commercial or financial information received from a person, business, or industry that is interested in or is applying for or receiving financing or technical assistance, or other forms of business assistance.