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ROLL NUMBER

DESCRIPTION

10999

2007 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1099

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1099

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: January 15, 2007

Recorder Job Number: 1120

Committee Clerk Signature



Minutes:

Chair Keiser opened the hearing on HB 1099.

Mike Hillman, Academic & Student Affairs: See written testimony #1.

Rep. Johnson: You said you took language from the Attorney General opinion.

Mike: The interim committee on economic develop, as working with the Attorney General and work with the legislative council in drafting a bill that was actually on the agenda late this summer for the committee. Our office worked close with the Attorney General's office to identify any potential concerns, and address them.

Rep. Nottestad: As companies have dealt with our universities pertaining to Centers of Excellence programs, have they expressed concern about the lack of protection that ND has in these hearings?

Mike: Yes, it's an issue that we have to explain. Attorneys from companies in California look at ND laws, and they're concerned. Things are not clearly defined. We have to explain to them the Attorney General's opinions in order to get them comfortable with it.

Rep. Boe: Would the names of the companies contracting with the universities or Centers of Excellence be kept confidential also?

Mike: The names of the companies that we work with are open to public information.

Rep. Nottestad: There's always the concern about companies being made public as cities deal with different companies, the competition is great. Is it kept confidential until it's bought in, or is it released immediately so that the other universities can compete against it?

Pat Zerwith, State Board of Education University System: Those documents that maybe confidential are governed by different statutes. Those statutes would not permit university system entities to keep the name of a company confidential.

Rep. Nottestad: What if there was city economic development money in the mix?

Mike: In those negotiations relating to economic development projects, if there's another statute that provides that those documents are confidential, and a university is a partner in that project and has received confidential documents from the city, then the university would be obligated to comply with that statute, and keep those documents confidential.

Rep. Keiser: On page 4, line 2; I'm having a problem with the word exempt at the end of that line. I read it one way and it means it's not confidential, then I read it another way and it's confidential. Can we use those words instead of saying exempt from something?

Pat: That term exempt is defined in another section in chapter 44-04. The records that are governed by this chapter are divided into different categories. One is information that is confidential, cannot be released or disclosed. Exempt means that the record is exempt from the open records requirement and the head of the agency or government official in possession of the document has the discretion to disclose or not disclose that information.

Dale Zetica, Director at Tech Transfer At NDSU: Support of HB 1099. As we negotiate licensing agreements with private entities, it's important during that process to keep that information confidential.

Rep. Kasper: Under this statute, or any other confidentiality statute in ND law, are you able comfortably to the identity of companies that we negotiate with confidential and private as long

as you need to, or do you have some area there where you might have to disclose a name that you really wouldn't like to expose during this negotiation process?

Dale: It may be difficult to keep the name confidential, although I think the issue of if it's not previously disclosed, especially in licensing negotiations; we would like to be able to keep that confidential until an agreement is in place.

Rep. Kasper: Under the current law is it easy enough to keep things quiet, or would there be some place in statute to give you a little more leeway in keeping these companies names confidential while you go through the process you just described?

Dale: I'm not sure I can answer the statute. On the university side as we enter into research agreements, the name of the company can be released. Part of what we were trying to get in the statute was to keep the negotiations confidential as well.

Pat: It's not easy under current law, and it would not be easy under the amended law to keep the name of a company confidential.

Rep. Nottestad: Has there been a problem with any projects being lost to other institutions, because of the lack of confidentiality?

Pat: I'm not aware of losing any projects. I am aware of quite a number of cases in which I've been involved, and then get a general council or high level legal officer involved for the sell of the company, because the lack of clarity in the statute. I have to supply copies of AG opinions and explain our position, and that has caused delays.

Dale: What we've experienced is there definitely is a sensitivity for companies being concerned about what their competitors might find out about what's going on. I'm not sure we've lost any; however, we may not know if companies have decided not to work with us if they were to look at the statute and there was uncertainty about this.

Rep. Kasper: Are you aware of any states that these companies site where they say something along the lines that if ND law were like other states law, we really have no problem with talking to you very easily, because we know it's going to be confidential?

Dale: On some negotiations, some have expressed a desire to use, let's say California law, because their trip trade secret languages were better from a companies perspective.

Rep. Keiser: Is this the best in the country right now on confidentiality for our state?

Dale: I think what we were trying to do was stay consistent with recommendations from the consulting company.

Mike: The approach that we took is what do we have to put in place? We worked with the Attorney General's Office, representatives, and the media in order to balance everybody's expectations here. I think it is very clean and direct.

Rep. Kasper: I don't think we're even close to making ND the best based upon what I've heard.

Mike: It really revolves around one of the key discussions that we've had. ND's heritage in an open records open meeting state, we wanted to honor that. Right now we work with the public institutes. If the research foundations were not a public institute, that would be the only way to address this.

Rep. Keiser: It doesn't even have the emergency clause on it, should it?

Mike: We think that we've done our homework. In fact, the reason the Interim Economic Development Committee did endorse the bill, the comment was made that there wasn't time for the broader discussion with everybody involved, we took the approach not to rush, but to be very specific getting in place what we needed.

Dale: I think it needs to be put in place as soon as possible, because we have ongoing discussions.

Pat: The reason I did not include an emergency clause is because the bill that is before you is not quite word for word copied from a graph that was presented to the interim EDC committee. It was drafted by the Attorney General's Office, and it was based, or closely tracked Attorney General opinions issued interpreting the current law. So, if an issue would come up between now and August 1, we would point to those AG opinions, and say that's our position. After August 1, then we have that in statute.

Shane Goettle: Department of Commerce: The question pertaining to the location the cities or company might make. In our open records laws we rely that the Department of Commerce, on the resumption that pertains to businesses trying to make expansion decisions in ND, doesn't have to reveal those companies. It's an exempt record until such time as the company chooses to reveal that.

Karlene Fine, Industrial Commission: I don't want to oppose a bill that is about clarification, because this is a very important topic. When you change definition, it may make a difference somewhere else. We may need to add another provision so we don't impact the research section.

Hearing Closed

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1099

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: January 22, 2007

Recorder Job Number: 1496

Committee Clerk Signature



Minutes:

Chair Keiser opened the hearing on HB 1099. This bill was on laying the confidentiality of trade secrets for proprietary commercial and financial information. It gives a clear definition of commercial information, and financial information for proprietary information that removes the ambiguity and uncertainty that existed prior to defining these extreme areas.

Rep. Nottestad: I move a do pass.

Rep. Ruby: Second.

Rep. Dosch: There was some talk about adding the emergency clause onto here.

Rep. Nottestad: I withdraw my motion.

Rep. Ruby: Withdraw second.

Rep. Keiser: The chair would entertain a motion to so move for the emergency clause.

Rep. Nottestad: I move the motion.

Rep. Ruby: Second.

Voice vote was taken, motion adopted.

Rep. Nottestad: I move a do pass, as amended.

Rep. Thorpe: Second.

Roll call vote was taken. 11 Yeas, 0 Nays, 3 Absent, Carrier: Rep. Nottestad

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1099

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: 01-23-2007

Recorder Job Number: 1651

Committee Clerk Signature

Lisa M Thomas

Minutes:

Chairman Keiser opened the hearing on HB 1099. HB 1099 relates to confidentiality of trade secret, proprietary, commercial and financial information.

Rep. Ruby moved to reconsider the committee's previous action. Rep. Johnson seconded. Voice vote: motion carried.

Rep. Keiser: The first component information including technical and financial or marketing records that are received by a public entity that are owned or controlled by the submitting person and are intended to be and are treated by the submitting person is private and the disclosure of the information would cause harm to the submitting person's business operations. They want that inserted. The other technical issue on page four, this section does not limit the release or use of records obtained in an investigation by the ND Attorney General or other law enforcement and on page four, line seven, the addition of for partner with a public entity to conduct research or to license an innovation. These amendments strengthen our confidentiality for the university and research sector.

Rep. Ruby moved to adopt the amendments. Rep. Nottestad seconded.

Voice vote: motion carried.

Rep. Nottestad moved a DO PASS AS AMENDED. Rep. Dietrich seconded.

Page 2
House Industry, Business and Labor Committee
Bill/Resolution No. HB 1099
Hearing Date: 01-23-2007

Roll Call Vote: 13 yes. 0 no. 1 absent.

Carrier: Rep. Nottestad

78153.0101
Title.0200

Adopted by the Industry, Business and Labor
Committee

January 22, 2007

**House Amendments to HB 1099 (78153.0101) - Industry, Business and Labor
Committee 01/22/2007**

Page 1, line 2, after "information" insert "; and to declare an emergency"

**House Amendments to HB 1099 (78153.0101) - Industry, Business and Labor
Committee 01/22/2007**

Page 4, after line 21, insert:

"SECTION 2. EMERGENCY. This Act is declared to be an emergency
measure."

Re-number accordingly

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1099
Revised January 23, 2007

Page 2, after line 9, after "(5)" insert "Information including technical, financial, or marketing records that are received by a public entity that are owned or controlled by the submitting person and are intended to be and are treated by the submitting person as private and the disclosure of the information would cause harm to the submitting person's business operations."

(6)"

Page 2, line 9, overstrike "or" and after "2" insert "or 6"

Page 2, line 20, after "copyright" insert an underscoring comma

Page 4, line 1, after "4." insert "This section does not limit the release or use of records obtained in an investigation by the North Dakota Attorney General or other law enforcement."

5"

Page 4, line 7, overstrike "or" and after "state" insert ", or partner with a public entity to conduct research or to license a discovery or innovation."

Page 4, line 15, remove the overstrike over "5"

Page 4, line 16, remove "4"

Add the Emergency Clause.

Renumber accordingly

These proposed amendments have been prepared by the Attorney General's Office and revised by the North Dakota University System.

January 23, 2007

**House Amendments to HB 1099 (78153.0102) - Industry, Business and Labor
Committee 01/25/2007**

Page 1, line 2, after "information" insert "; and to declare an emergency"

**House Amendments to HB 1099 (78153.0102) - Industry, Business and Labor
Committee 01/25/2007**

Page 2, line 1, remove "into"

Page 2, line 8, after "1" insert an underscored comma

Page 2, line 9, remove "or" and after "2" insert ", or 6"

Page 2, line 10, after "(5)" insert "Technical, financial, or marketing records that are received by a public entity, which are owned or controlled by the submitting person, are intended to be and are treated by the submitting person as private, and the disclosure of which would cause harm to the submitting person's business."

(6)"

Page 2, line 12, replace "(6)" with "(7)"

Page 2, line 20, replace "(7)" with "(8)" and after "copyright" insert an underscored comma

**House Amendments to HB 1099 (78153.0102) - Industry, Business and Labor
Committee 01/25/2007**

Page 4, line 1, after "4." insert "This section does not limit the release or use of records obtained in an investigation by the attorney general or other law enforcement official."

5."

Page 4, line 7, overstrike "or" and after "state" insert ", or partner with a public entity to conduct research or to license a discovery or innovation"

Page 4, line 15, remove the overstrike over "6.", remove "5.", and remove the overstrike over "6"

Page 4, line 16, remove "4"

Page 4, after line 21, insert:

"SECTION 2. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

Date: 1-22-07
Roll Call Vote #: _____

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1099

House Industry Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass, AS Amended

Motion Made By Rep. Nottestad Seconded By Rep. Thorpe

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep. Amerman		
Vice Chairman Johnson	X		Rep. Boe		
Rep. Clark	X		Rep. Gruchalla	X	
Rep. Dietrich	X		Rep. Thorpe		
Rep. Dosch	X		Rep. Zaiser		
Rep. Kasper	X				
Rep. Nottestad	X				
Rep. Ruby	X				
Rep. Vigesaa	X				

Total Yes 11 No 0

Absent 3

Floor Assignment Rep. Nottestad

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

Date: 1-23-07
 Roll Call Vote #: _____

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. HB 1099

House Industry Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass, AS Amended

Motion Made By Dietrich Nottestad Seconded By Dietrich

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep. Amerman	X	
Vice Chairman Johnson	X		Rep. Boe	X	
Rep. Clark	X		Rep. Gruchalla	X	
Rep. Dietrich	X		Rep. Thorpe	X	
Rep. Dosch	X		Rep. Zaiser	A	
Rep. Kasper	X				
Rep. Nottestad	X				
Rep. Ruby	X				
Rep. Vigesaa	X				

Total Yes 13 No 0

Absent 1

Floor Assignment Nottestad

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

REPORT OF STANDING COMMITTEE

HB 1099: Industry, Business and Labor Committee (Rep. Kelsner, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). HB 1099 was placed on the Sixth order on the calendar.

Page 1, line 2, after "information" insert "; and to declare an emergency"

Page 2, line 1, remove "into"

Page 2, line 8, after "1" insert an underscored comma

Page 2, line 9, remove "or" and after "2" insert ", or 6"

Page 2, line 10, after "(5)" insert "Technical, financial, or marketing records that are received by a public entity, which are owned or controlled by the submitting person, are intended to be and are treated by the submitting person as private, and the disclosure of which would cause harm to the submitting person's business.

(6)"

Page 2, line 12, replace "(6)" with "(7)"

Page 2, line 20, replace "(7)" with "(8)" and after "copyright" insert an underscored comma

Page 4, line 1, after "4." insert "This section does not limit the release or use of records obtained in an investigation by the attorney general or other law enforcement official.

5."

Page 4, line 7, overstrike "or" and after "state" insert ", or partner with a public entity to conduct research or to license a discovery or innovation"

Page 4, line 15, remove the overstrike over "6-", remove "5.", and remove the overstrike over "5"

Page 4, line 16, remove "4"

Page 4, after line 21, insert:

"SECTION 2. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

2007 SENATE JUDICIARY

HB 1099

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1099

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: February 28, 2007

Recorder Job Number: 4120

Committee Clerk Signature

Morie L. Solberg

Minutes: Relating to confidentiality of trade secret proprietary, commercial and financial information.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following hearing:

Testimony in Favor of the Bill:

Pat Seaworth, General Counsel ND University System. Introduced the bill and gave his testimony #Att. #1

Sen. Nething requested (meter 3:20) he review the bill for the committee.

Sen. Fiebiger asked (meter 8:51) page 2, Section 2, the new language referring to "private business" sounds to broad? **Mr. Seaworth** referred to page 1, line 9 and 10 proceeds to the information with its limitations.

Sen. Nelson questioned (meter 10:32) on line 11 after the "unless the contexts otherwise requires", Would this alter the above statement? Yes, he spoke to research being done for a company but the information the company provided for the research is "confidential" already, they want it to stay confidential/proprietary and that is addressed in the contract.

Sen. Fiebiger asked for (meter 12:17) the definition to "technical know how" and he deferred the question.

Dale Zetocha, NDSU & NDSU Res. Foundation (meter 13:00) Gave Testimony Att. #2

Sen. Fiebiger questioned the statement pertaining to the "opportunity to work", has section 44-04 18.4 cause you to lose opportunities? He **Mr. Zetocha** responded that currently it is a very sensitive environment. It would be talk amongst the industry and we would not be aware of lost opportunities. Things are even as sensitive as they asking who is on our board.

Sen. Fiebiger asked for (meter 20:01) the definition to "technical know how" and responded the technical information important in addition to what is published in a patent to make you more able to advance or a better incite into the topic.

Testimony Against the bill:

Barb Price, Organizer for Dakota Resource Council – Att. #3 (meter 24:30) Also submitted additional information Appendix A-F

Sen. Fiebiger wanted clarification (meter 32:19) of her concerns. She spoke to the liability may come back to the "state" via the college and not to the organization (i.e. Monsanto). She also referred to information never being published about a product after a "recall". She submitted additional testimony: **Todd Leake**, Grand Forks Farmer – Att. #4.

Sen. Olafson asked Ms. Price what the bases of there opposition is? Her concern was the loss of the over sees market, ND being used as "guinea pigs", and the loss of seed varieties.

Sen. Olafson questioned her definition of "sound science" (meter 36:40). Ms. Price responded, science that happens in ND that is well researched and in a reputable institution and can be

reproduced in any part of the world.

Sen. Feibiger stated that page 4, section 4, should help with her concerns; investigative ability of the attorney general's office. She replied that this process is long and involved. Our requests have been stuck in a draw or a file and this I have been told by the Attorney Generals office.

Testimony Neutral to the bill:

None

Senator David Nething, Chairman closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1099

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: March 12, 2007

Recorder Job Number: 4885

Committee Clerk Signature *Maria L Solberg*

Minutes: Relating to confidentiality of trade secret proprietary, commercial and financial information.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following committee work:

The committee discussed the Dakota Resources objections and the contract they submitted as an example of there objection was 10 years old. Sen. Lyson and Sen. Fiebiger reviewed the hearing. The committee sensed that the issues they brought up would have no effect with the

Sen. Lyson made the motion to Do Pass HB 1099 and **Sen. Olafson** seconded the motion.

All members were in favor and the motion passes.

Carrier: **Sen. Olafson**

Senator David Nething, Chairman closed the hearing.

REPORT OF STANDING COMMITTEE (410)
March 12, 2007 2:13 p.m.

Module No: SR-46-5018
Carrier: Olafson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1099, as engrossed: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1099 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

HB 1099

#1

**Testimony before House Industry, Business and Labor
Committee – HB 1099**

**By Dr. Michel Hillman,
Vice Chancellor for Academic and Student Affairs
North Dakota University System**

January 15, 2007

Chairman Keiser and members of the House Industry, Business and Labor Committee:

My name is Mike Hillman, Vice Chancellor for Academic and Student Affairs, North Dakota University System and I am here today supporting HB 1099 on behalf of the North Dakota University System.

HB 1099 was introduced at the request of the State Board of Higher Education. The bill amends section 44-04-18.4 of the North Dakota Century Code, relating to confidentiality of trade secret, proprietary, commercial and financial information. The bill is intended to implement one of the key recommendations in a recent study completed for the Department of Commerce and NDUS. This study by RTI International on Intellectual Property and Technology Commercialization in North Dakota was mandated and funded by the 2005 Legislative Assembly. The RTI report recommended amendments to section 44-04-18.4 to adopt clear definitions of confidential information under North Dakota's open records law. As RTI pointed out, current law defining confidential information does not define "commercial" or "financial" information and current definitions of "trade secret" and "proprietary" information are less than ideal and in need of updating.

Not having a definite and clear definition of these terms in state law creates unnecessary confusion and can cause North Dakota institutions to be at a competitive disadvantage with public institutions in other states and private institutions in competition for research funding. Companies looking for higher education partners for research and development projects need clarity and guarantees that the higher education partner will not release or disclose the company's confidential proprietary information and intellectual property except as that company permits or when it would otherwise become public.

As state entities, NDUS institutions are subject to state statutes defining what information is and is not confidential. A lack of a clear definition of confidential information causes concern and uncertainty on the part of company officials involved in negotiations with state officials. Since "commercial" and "financial" information now used in section 44-04-18.4 are not defined in the statute and language in definitions of "proprietary" and "trade secrets" is less than ideal or inconsistent, the attorney general has in a series of opinions provided guidance on interpreting this section.

However, opinions of the attorney general are not binding and courts may disagree with the opinions. For private companies interested in contracting with North Dakota entities, an opinion of the attorney general does not provide the same degree of certainty as is provided by carefully crafted legislation. Often, negotiating parties may not even be aware of the Attorney General Opinions, particularly those negotiating for our commercial partners.

HB 1099 is intended to remove uncertainty and ambiguity in application of NDCC section 44-04-18.4. The new (or revised) definitions closely track attorney general opinions interpreting this section and similar statutes in other states.

It's important to remember that all the definitions in subsection 2 are subject to subsection 1's limiting language that the information be privileged and not previously publicly disclosed. Additionally, most of the subsections clarifying "proprietary" information are taken from the current law and rearranged, with the exception of (2) and (4) relating to licensing and commercialization, and adding "technical know-how" under (7) and d for the trade secret definition.

Mr. Chairman and committee members, on behalf of the North Dakota University System, I urge your support of HB1099.



January 15, 2007

Chairman Keiser, Members of the House Industry, Business, and Labor Committee,

For the record, my name is Dan Wogsland, Executive Director of the North Dakota Grain Growers Association. I appear before you today in support of HB 1099.

The New Economy Initiative from the North Dakota Chamber of Commerce states the following "Successful economic developments rests on the creation of strong public/private partnerships that promote a dynamic business climate." In entering into public/private partnerships, confidentiality is critical for businesses in protecting developmental concepts, ideas, products and processes. Additionally, it is critical to protect negotiations and communications related to research and intellectual property agreements. It is also critical for non-profits affiliated with universities to keep confidential information confidential. Given these factors, there is a real need for the passage of HB 1099.

Current state statute exempts records and information pertaining to a prospective location of a business, including identity and location of the business when no previous public disclosure is made by the business or industry of intent of the business or industry to locate, relocate, or expand within the state. Licensing and certain research-related activities should be afforded the same or similar status. Related agreements, records, negotiations and communications pertaining to licensing or certain research agreements should be exempt.

Current statute hinders related university non-profits such as research foundations, centers of excellence, and technology parks working with businesses on inventions, products and research that foster economic development.

Solutions to the current problem include fine-tuning what type of information is excluded under Section 44-04-18.4; excluding the definition of propriety information; and expanding the definition of trade secret. Updating state statutes to address confidential information dealing with licensing, sensitive research-related activities, agreements, intellectual property, including related communications and negotiations, is needed to help foster and ensure a dynamic public/private business climate.

Citizens and organizations that provide funding for research have the right to know how such money is spent, and oversight and protections already exist in that regard. If we want to maximize the research capabilities of institutions in the state to work with

NDGGA provides a voice for wheat and barley producers on domestic policy issues – such as crop insurance, disaster assistance and the Farm Bill – while serving as a source for agronomic and crop marketing education for its members.