

2013 HOUSE POLITICAL SUBDIVISIONS

HB 1448

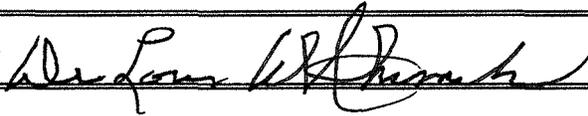
2013 HOUSE STANDING COMMITTEE MINUTES

House Political Subdivisions Committee Prairie Room, State Capitol

HB 1448
February 7, 2013
Job # 18546

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Act to provide free electronic access to state-funded research.

Minutes:

Testimony #1

Chairman N. Johnson: Opened the hearing on HB 1448.

Rep. Beadle: Introduced the bill. This is a bill for state funded research and public access to that. This bill is in response to the National Right to Research Collation as well as the Scholarly Publishing and Academic Resources Coalition for institutes of higher learning or the general public who are working to advance and build off the research. The initial goal of it is to open up academic research that is published in peer-review scholarly articles in order to limit the cost for public institution libraries to help lower the barrier for that. In the last twenty years MIT's journal budget had to increase by 360% for pier reviewed journals because the costs of those journals have gone up so much. Gave background information on this bill and information on grant or scholarly academic journals in other states. This bill is an effort that if taxes payers are paying for the research; then our taxpayers are students should be able to have excess to that research. This bill could come into conflict with some of our grant programs we have for new business development and tech expansion. The intention of the bill is not to conflict with those public, private partnerships toward expending the immediate tech sector growth, but rather to get back to academic journal articles that comes about; not the stuff that goes directly into the private sector.

Rep. Hatlestad: Is any of this research potentially ended up in copy write information or patents? Who would then own them?

Rep. Beadle: that is where some of the opposition is going to come about since this bill is not clear. However with purely academic journal publications then there is usually the copy write issue on there. Some places have put a six month window on it so the information is available after six months. For most academic peer review journals copy write issues don't become a concern.

Rep. Hatlestad: If there is a patient or copy writer from this research who owns it?

Rep. Beadle: My reason for introducing this bill does not have to do with the copy write information or patent issue. If it is a new tech product or example or new coding product that might be coming out of the Center for Technology at NDSU. My goal is not to make it so that patent or information is available. My goal is if you have new information regarding studies in math or physiology or whatever that those articles or publications that I am looking to try to get open excess for the students to build off of.

Rep. L. Meier: Seems like this is a real strong national effort. How many years have this been a national effort?

Rep. Beadle: It has really only been going since 2005 or 2006. That is when these coalitions started forming and growing. It started in Texas in response to Texas Christian University, Trinity University, Texas A & M University and the library budgets that were severely bloated and those fees were passed on to those students. It has since gone to California and Minnesota and a few other states that have started to look at it. California and Washington have enacted some legislation that provides for some delays on it, but the federal legislation has been stalled.

Rep. Klemin: I was wondering if someone is going to be here to address the fiscal note. The fiscal note says the State Library is already doing this.

Rep. Beadle: The State Library makes available a lot of the academic research but they have to pay for the journals. So they make available the stuff that is already being published because they subscribe to it. This would cut down the State Libraries budget as well. Currently state funded research is not a high bar. We do not have a large dollar amount of it with the exception of some of our center schools. This really does not have as much impact now so this legislation might be premature. There is a cost saving to the libraries both the state and campus level.

Rep. Kathy Hogan: When I worked for Cass County social services we did research projects on individuals. Typically the university maintained all of that information. My reading of this is the county would then get the research and publish it on their website. Is that your intent?

Rep. Beadle: No. Not one line, but if you are going to the libraries database or through the institutes of higher learning that you are able to excess it in those venues and not that it is freely maintained on county websites. This bill went away from the higher ed aspect and more toward the political subs aspect of it.

Opposition:

Andy Peterson, Greater ND Chamber of Commerce: (See testimony #1). I spend a lot of money to get information. Often times those places call me and ask about information and they interview me. But if I want to look at my picture in the paper or read my quote somewhere I have to pay for it to get it done. This is a similar issue here. Universities are contracted to do research. But they are not contracted to get the journal articles from the peer-review sources. That is a private entity that pays big dollars to maintain these libraries of journal articles and that is how they support their staff. Just like the Wall Street Journal,

the Grand Forks Herald, The Fargo Forum, the Bismarck Tribune and the list goes on. Universities are entitled to the basic work that they contract, but not the work of somebody else. If that happens and it gets to be public information the first people that will get this are the Chinese and use it or sell it to whoever they can. No state has done this. In Florida when I was there meeting with state chamber presidents and I was in front of the group and we were talking about an issue like fracking and they were asking me to talk about it and I made a comment about New York liberals. Even New York said they could not do this. It is getting government involved in private business in a way that gets our attention. In this case it is government getting into the business of free enterprise. Rep. Beadle is very good about coming to me and we work together on things. This is the wrong way of getting that information to them. There are costs involved in journal articles. I was a student once too. I am sensitive to the issues of students, but this is the wrong way to go about it.

Rep. Toman: I am not in the research department at the company I work for, but I was and I wasn't involved in the peer- review publication side of it. We in our research department made our data public to our members and anybody that would hit our website. If we are not going to pay with tax dollars to supple peer review articles would there be opposition to supple the data from the research project saying this has not been peer reviewed but this is what has come out of our research project and make that public to the taxpayer since they funded it or to the students since they might be interested in that research.

Andy Peterson: If a company wants to release that information they are free to do that. If they want to do the research and if they want to give it out they can do that. If they want to do that research and then sell it that is their portative and that is what we are talking about here.

Luke Rollins, Midwest Government Affairs, Madison, Wisconsin: Government actually funds whether it is a state, whether it is NIH or CDC is a research report in return. So the state does the first part or the federal government or private sector. The government gets that research report and that is what you are getting at so it is a government document and this is an open record state so it falls within those guidelines.

Rep. Hatlestad: If the public funds the research who has control of the intellectual property rights?

Luke Rollins: The research reports if it is a government funded project that is the governments. But the journals are usually the copy write holders. Sometimes the university is the copy write holder; sometimes it is the researcher and sometimes it is the publisher. There are nearly 10,000 academic journals that are in one of our data basis that we help distribute around the world.

Rep. Koppelman: Is it something that is typically provided contractually and is it often that an institution of higher education would ask for this kind of right in a contract to do research?

Luke Rollins: I have not heard of a case but I can double check that.

Rep. Koppelman: Is it something that is typically provided contractually and is it often that an institution of higher education would ask for this kind of right in a contract to do research?

Luke Rollins: I have not heard of a case where an educational university has contracted with us to then provide stuff for free on the internet. I can double check that and get back to you.

Rep. Koppelman: Or to have some freedom to make it available in some fashion.

Luke Rollins: Most of the universities subscribe to journals for distributing the content. This bill is what happens after the research is done.

Rep. Koppelman: The point of the bill if that institution is involved in helping create that research what rights should they have to it so my question to you is do those universities sometimes request contracts that would grant them some of those rights?

Luke Rollins: I have not heard of that type of request.

Rep. Kathy Hogan: Could that be electronically stored at the university?

Luke Rollins: You did not send it to a journal but that is a different scenario.

Rep. Beadle: Who typically does the peer reviewing?

Luke Rollins: We have a worldwide collection of peer reviewers.

Rep. Klemin: If we have a state agency or political subdivision the entered into a contract with the university to do some research I would think it would be routine for them to expect a report back when you hire somebody to do that work.

Luke Rollins: That would be just fine. This is all pre academic side of life.

Rep. Klemin: It doesn't say the peer review article has to be provided in electronic format. Only that the research paper that was developed under that contract must be provided in electronic format, which I would think is pretty simple.

Luke Rollins: My understanding is that when a researcher transmitted then it becomes property of the academic journal.

Rep. Klemin: So if a state agency with a university for some research and that research is subsequently published in the journal the state agency has no ownership rights over it?

Luke Rollins: The researcher is trying to build a name for themselves to build their career and portfolio.

Rep. Klemin: This says if that research paper is published then it has to be provided in electronic format but that doesn't get at the issue then because somebody may do some

research and write a paper and then they would take the results of the research and write an article that is published in the journal and it is not really the research paper that is published.

Luke Rollins: If I wrote a political science article and APSA accepts it is then their published work that they send around the world. That article is then the product of someone else.

Rep. Klemin: The research paper that was done under the contract would the state agency; that belongs to the state agency and somebody can't.

Luke Rollins: That is all pre articles.

Rep. B. Hanson: You said the bill was well intended so did you want to see this bill amended or what was the stance of the chamber?

Andy Peterson: Yes in my discussion with Rep. Beadle it is my understanding that we are open to amendments on this or even hog housing the bill.

Rep. J. Kelsh: I am confused about how all this works. It seems you have a contract and that says how it should be used?

Andy Peterson: We can go back to work on this bill it is unclear and we are worried about this.

Opposition: None

Neutral: None

Rep. Klemin: I did not get my questions answered on the fiscal note? I want to know what the state library program is.

Recessed.

Chairman N. Johnson reopened the hearing.

Rep. Klemin: I am interested in the fiscal note for HB 1448. It says the state library currently has a program in place to do so. What is in place at the state library?

Hulen Bivins, State Library: (did not submit testimony). Under Century Code 54-24-09 we have a state documents program that is presently under way. We at the State Library receive two documents of state documents and these documents are generated with total state dollars, state and federal dollars, or federal dollars. The legislature doesn't require anything from the private industry. We catalog and maintain those documents as long as their life. Right now I am working on a grant from the federal government to get digital equipment so that we can begin the process of taking the paper records of a lot of these documents and putting them in digital form. It proposes that everything come to us in electronic form; that would be excellent. I cannot answer whether the state IT department

charged me extra storage space on the server to maintain these digital documents. We are prepared at the State Library to absorb for the fire biennium the entire costs that might come and we would ask the opportunity to come back in our budget in January 2015 if the cost is substantial to request it.

Hearing closed.

2013 HOUSE STANDING COMMITTEE MINUTES

House Political Subdivisions Committee
Prairie Room, State Capitol

HB 1448
February 8, 2013
Job # 18637

Conference Committee

Committee Clerk Signature 

Minutes:

Chairman N. Johnson reopened the HB 1448.

Do Not Pass Motion Made by Rep. Beadle: Seconded by Rep. A. Looyen

Chairman N. Johnson: I think it is a good concept. If the state fully funds it can we get back in I know you will keep working on it.

Vote: 13 Yes 0 No 2 Absent Carrier: Rep. A. Looyen

Closed.

FISCAL NOTE
Requested by Legislative Council
01/22/2013

Bill/Resolution No.: HB 1448

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB1448 says that the State Library shall provide for free access to research papers. The State Library currently has an established program in place to do so. There may be minimal publishing costs associated with providing the required 8 copies of publications to the State Library.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name: Cynthia Clairmont-Schmidt

Agency: North Dakota State Library

Telephone: 701-328-2492

Date Prepared: 01/24/2013

Date: 2-8-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1448

House Political Subdivisions Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

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

Motion Made By Rep. Beadle Seconded By Rep. Looyesen

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson	✓		Rep. Ben Hanson	✓	
Vice Chairman Patrick Hatlestad	✓		Rep. Kathy Hogan	✓	
Rep. Thomas Beadle	✓		Rep. Jerry Kelsh	✓	
Rep. Matthew Klein	✓		Rep. Naomi Muscha	—	
Rep. Lawrence Klemin	✓				
Rep Kim Koppelman	—				
Rep. William Kretschmar	✓				
Rep. Alex Looyesen	✓				
Rep. Andrew Maragos	✓				
Rep. Lisa Meier	✓				
Rep. Nathan Toman	✓				

Total (Yes) 13 No 0

Absent 2

Floor Assignment Rep. Looyesen

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

REPORT OF STANDING COMMITTEE

HB 1448: Political Subdivisions Committee (Rep. N. Johnson, Chairman) recommends DO NOT PASS (13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1448 was placed on the Eleventh order on the calendar.

2013 TESTIMONY

HB 1448

#1

TESTIMONY ON HOUSE BILL # 1448

HOUSE APPROPRIATIONS COMMITTEE

February, 2013

Hulen E. Bivins
State Librarian
North Dakota State Library

Mister Chairman and members of the committee:

My name is Hulen Bivins and I am the State Librarian of North Dakota. Thank you for the opportunity today to comment on House Bill #1448 and note the affect of this proposed legislation regarding the services of the North Dakota State Library (NDSL).

Bill #1448 provides for the preservation of papers, generated by a state agency or a political subdivision of the state, to be held by the North Dakota State Library. Said papers would, per the legislation, be maintained in an electronic form and would be a collection, as developed, reporting state-funded research.

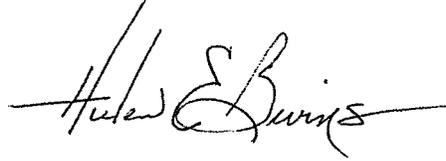
As noted by the North Dakota State Library in a "Fiscal Note" comment on January 22, 2013, it is anticipated that only a minimal publishing cost and a minimal storage cost would be felt by the State Library. Specifics of such cost cannot be estimated at this time due to several variables. Primary variables to be considered are the size of the collection of the works to be indexed and maintained, plus any additional cost charged to the State Library by the state's IT Department for computer server storage space as may be needed for the collection.

The North Dakota State Library is therefore willing for the new Biennium to absorb any publishing cost and storage cost as may occur. Should such costs be substantial, the North Dakota State Library would request the opportunity to, in January of 2015, present in the agency's budget any new money request for this program with a justification of such costs.

Presently, the North Dakota State library coordinates the state's Document Depository Program as set forth in the Century Code, 54-24-09. This legislation

provides for the receipt of state documents by several entities in the state. The State Library is the curator of the permanent collection.

I thank you for your consideration of my testimony today.

A handwritten signature in cursive script, appearing to read "Helen E. Swain". The signature is written in black ink and is positioned in the upper right quadrant of the page.