

**2017 HOUSE EDUCATION**

**HB 1141**

# 2017 HOUSE STANDING COMMITTEE MINUTES

Education Committee  
Coteau A Room, State Capitol

HB 1141  
1/10/2017  
Job 26765

- Subcommittee  
 Conference Committee

Committee Clerk Signature

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

Relating to subjecting school board advisory committees to open record laws.

## Minutes:

Attachment 1, and 2.

**Chairman- Mark S. Owens:** opens hearing on HB 1141

**Representative Brandenburg:** This is not law and it needs to be clarified, it is really an issue on how far it is going to go. I got word from Attorney General Wayne Stenehjem, because I did contact his office, and got word about open records laws. The state attorney saw this, and later this will be addressed as open records. This advisory did not share their input with the community. When asked about financials the advisory committee did not answer, and they turned away the press. This local issue had a communication problem, the school board and superintendent knew the advisory meeting needed to be an open forum, but they used open records to not share important information to the community. The law was broken, and why do we need an advisory if it is not being used correctly, in the end the school board makes the decision anyways.

**Rep. Matthew Ruby:** There is already something in place, and what does this bill do differently?

**Representative Brandenburg:** That should have never happened in Strasberg, and it will not happen again. He will address it.

**Rep. Mary Johnson:** I am confused open records and open meetings, which one are they violating? Are they having open meeting, but hiding their engineering reports, or what is going on.

**Representative Brandenburg:** Both, they are not sharing the information with the general public, and until this date they still do not have the numbers for this project. The school board endorsed what the advisory committee was doing.

**Rep. Mary Johnson:** So you are saying there are records they are withholding.

**Representative Brandenburg:** If you look at what was handed out to you, there are issues there that have happened in this instance. The information through the advisory committee was not conveyed to a general public who are taxpayers, these questions came out 6 months after the project was passed. These are the people that are here.

**Representative Rep. Mary Johnson:** I did not get all the information, but you said it was not conveyed to the general public. Upon inquiry, someone asked for information and it was refused.

**Representative Brandenburg:** Many times. I can't tell you the number of phone calls and conversations from the Strasberg district, about this was handled. I am missing pieces and parts of this, and I am not trying to get too deep in the weeds. There is clearly a violation here using the advisory committee to get a school build for 4 million that is really going to cost more when it is done.

**Rep. Mary Johnson:** You have alternant means of enforcement, and that you are coming to the legislature to be a substitute for that enforcement, it seems to me that the issue in your school district is a foregone conclusion. Your new building is going to be built, how they came about that may not be right, but you seek an attorney general's opinion, you can obviously.

**Representative Brandenburg:** I talked to this broker at least 3 times, and requested the attorney general's opinion, she said I had to talk to the states attorney, and that was the state attorney's jurisdiction. As I stepped out of the office this morning my committee room I was informed by the attorney general that this was a violation and that he would clearly enforce it. I did not get that answer two years ago, now that the bill is here I got this answer. That is where it is at. The attachment is part of this bill

**Rep. Dennis Johnson:** are you telling us they don't need this one.

**Representative Brandenburg:** the second one you don't need. You guys know how to deal with that, and before you vote you need to hear the people that are here.

**Rep. Dennis Johnson:** Do your people know that we don't need this one.

**Representative Brandenburg:** the first bill you do need the second bill you don't. The first bill dealing with the advisory committee needs to have a discussion. The second bill dealing with open records, there are two bill I am talking about HB1140 and HB1141. So 1141 you are beating your head on the wall if you keep working on that one, because that issue has been resolved. But I do think 1140 we need to have a discussion on the advisory committee and the authority of it. If the advisory boards are not use correctly is a bad thing, but they are used correctly it can be a good thing. This is an important issue, and there have been a lot of games played here, and I am only telling you the pieces that I hear from the patrons that talk to me. As an instrument on how it worked or how it happened, this is the only place it has happened.

**Chairman- Mark S. Owens:** I understand and I have heard this issue before too in a roundabout way. Are there any other questions for Representative Brandenburg on 1141, seeing none thank you.

**Chairman- Mark S. Owens:** we have heard from the bill sponsor, is there anyone in support to 1141. Is there anyone in opposition for 1141?

**L Anita Thomas:** see attachment 2 for testimony. Her testimony is opposed to HB1141.

**Aimee Copas:** Attachment 1 for testimony.

**Vice Chairman- Cynthia Schreiber-Beck:** any other opposition on 1141, any neutral testimony on 1141.

**Rep. Dennis Johnson:** do not pass vote on HB 1141

**Rep. Longmuir:** seconds the motion.

**Vice Chairman- Cynthia Schreiber-Beck:** any further discussion. Since there is no more discussion the Vice Chairman asks the clerk to take roll for the do not pass vote. 12-0-0, the 2 people absent are Chairman- Mark S. Owens and Rep. Corey Mock. Rep. Bill Oliver will carry the bill. We can close the hearings on these two bills.

Date: 1/10/17

Roll Call Vote # 1

2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1141

House Education Committee

Subcommittee

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

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

Motion Made By Rep. D. Johnson Seconded By Rep. Longmuir

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

Total (Yes) 12 No 0

Absent Chairman Owens, and Rep Mock

Floor Assignment Rep. Oliver

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

withdrawn bill

**2017 TESTIMONY**

**HB 1141**

**HB 1141 – School Board Advisory Committees – open records****Testimony in Opposition****North Dakota Council of Educational Leaders – Dr. Aimee Copas**

Good morning Education Chair Owens, Vice Chair Shreiber-Beck and members of the House Education Committee. Thank you for the opportunity to speak to you today on HB1140. For the record, my name is Dr. Aimee Copas. I serve as the Executive Director for the ND Council of

I stand before you today asking for your quick opposition to HB1141. Beyond our opposition to the concept discussed in HB1140 regarding advisory committees – it is currently already in law that any advisory committee created by a board is subject to open record – that makes this piece of law unnecessary.

In the ND Attorney General Manual, page 6 of 57 (available here:

<https://attorneygeneral.nd.gov/sites/ag/files/documents/OpenRecordsManual.pdf>) it states:

**2. Who Is Subject to the Open Records Law?**

North Dakota's open records law applies to records of a "public entity," which is defined to include three categories of entities:

- i. Public or governmental bodies, boards, bureaus, commissions or agencies of the state, including any entity created or recognized by the Constitution of North Dakota, state statute, or executive order of the governor or **any task force or working group created by the individual in charge of a state agency or institution,**<sup>5</sup> to exercise public authority or perform a governmental function;
- ii. Public or governmental bodies, boards, bureaus, commissions or agencies of any political subdivision<sup>6</sup> of the state and any entity created or recognized by the Constitution of North Dakota, state statute, executive order of the governor, resolution, ordinance, rule, bylaw, or executive order of the chief executive authority of a political subdivision of the state to exercise public authority or perform a governmental function; and
- iii. Organizations or agencies supported in whole or in part by public funds, or expending public funds.<sup>7</sup>

N.D.C.C. § 44-04-17.1(13). An entity is subject to the open records law if it falls into any one of these three categories.

<sup>3</sup>*Grand Forks Herald, Inc. v. Lyons*, 101 N.W.2d 543, 546 (N.D. 1960).

<sup>4</sup> See N.D.C.C. § 1-02-01 (statute construed liberally to further its purpose); N.D.A.G. 2000-O-12; *Hovet v. Hebron Public School Dist.*, 419 N.W.2d 189, 191 (N.D. 1988).

5 “‘Task force or working group’ means a group of individuals who have been formally appointed and delegated to meet as a group to assist, advise, or act on behalf of the individual in charge of a state agency or institution when a majority of the members of the group are not employees of the agency or institution.” N.D.C.C. § 44-04-17.1(17).

6 “‘Political subdivision’ includes any county or city, regardless of the adoption of any home rule charter, and any airport authority, township, school district, park district, rural fire protection district, water resource district, solid waste management authority, rural ambulance service district, irrigation district, hospital district, soil conservation district, recreation service district, railroad authority, or district health unit.”

N.D.C.C. § 44-04-17.1(11).

7 “‘Public funds’ means ‘cash and other assets with more than minimal value received from the state or any political subdivision of the state.’” N.D.C.C. § 44-04-17.1(14). *See also* N.D.A.G. 98-O-24; N.D.A.G. 98-O-23.

2



NORTH DAKOTA  
SCHOOL BOARDS  
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I N C O R P O R A T E D

Excellence in North Dakota public education through local school board governance

**HB 1141 – TESTIMONY**

**L. Anita Thomas, J.D., LL.M.**

**General Counsel**

**North Dakota School Boards Association**

**January 11, 2017**

HB 1141 provides that if a school board appoints an advisory committee, the committee shall be subject to open records laws under section 44 - 04 - 18 and section 6 of article XI of the Constitution of North Dakota.

School boards fall within the definition of a governing body set forth in 44-04-17.1(6):

"Governing body" means the multimember body responsible for making a collective decision on behalf of a public entity.

That section goes on to state that:

"Governing body" also includes any group of persons, regardless of membership, acting collectively pursuant to authority delegated to that group by the governing body.

In other words, a school board advisory committee is subject to the same open records and open meeting requirements as is the school board itself.

NDCC 44-04-18 provides that except as otherwise specifically provided by law, all records of a public entity are public records, open and accessible for inspection . . . That's the same language found in the constitutional section.

So, what is a public entity? NDCC 44-04-17.1(13) states that a "Public entity" means among other things:

Public or governmental bodies, boards, bureaus, commissions, or agencies of any political subdivision of the state -- (i.e. A school board) -- and any entity created or recognized by the Constitution of North Dakota, by state statute, by executive order of the governor, *by resolution*, by ordinance, by rule, by bylaw, or by executive order of the *chief executive authority of a political subdivision* of the state to exercise public authority or perform a governmental function  
....

A school board advisory committee would fall under this language -- i.e. it is a governmental body and it is an entity created by resolution of the chief executive authority of a political subdivision.

This concept is already in law. It is in the NDCC chapter that deals with open records and open meetings. That's a well-known chapter. It is a well-known location.

We are unaware of any confusion regarding the applicability of open records and open meetings provisions to school board advisory committees and we therefore respectfully request that this bill be given a **DO NOT PASS**.

2