2011 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1316

2011 HOUSE STANDING COMMITTEE MINUTES

House Government and Veterans Affairs Committee
Fort Union Room, State Capitol

HB 1316
February 10, 2011
14350

☐ Conference Committee

Committee Clerk Signature Carmen Hart

Explanation or reason for introduction of bill/resolution:

Relating to the appeal of an application for relief or assistance provided under a department of veterans' affairs program

Minutes:

Chairman Bette Grande opened the hearing on HB 1316.

Rep. Mark Owens, District 17, appeared in support. Some of our veterans need assistance both financial and other forms of assistance. They apply to the Department of Veterans' Affairs for these grants and help and for whatever reasons, maybe from not understanding the procedure, they are initially denied the grant or assistance. They have a right to appeal. During this appeal the situation is that certain information may come out about the veteran as the face to face appeal deals further into the veteran's situation. It could involve the veteran's disability as their ability to do certain jobs which could affect if it got out to the employers. Certain health information may get out which currently under the way the system is provided for and it being an open hearing in the appeals process, certain medical information is out, I am concerned certainly with how we balance that with HIPPA requirements. What this bill requests is very much like a bill that the house passed in the very first week of our deliberations where there was a bill seeking to open a meeting where medical information was discussed about an individual and it was passed 93-1 or 92-2. I bring this bill before you to apply the same reason and close this meeting and make the record exempt to protect that information for that individual as well.

Rep. Karen Rohr: I am concerned about the protected health information, the HIPPA laws, so can we amend this bill to include that somehow?

Rep. Mark Owens: That is of primary concern, the HIPPA and the medical, so certainly I would entertain a motion or your consideration if that is absolutely necessary to amend this to, I assume you are talking about if there is medical information discussed or what not, I would certainly entertain that as an option. My secondary concern was, however, if the record got out and there were certain nonmedical information from an employer's standpoint. Then again you are talking about the employer would have to know about it and have to go after it.

Rep. Lonny Winrich: It seems a little curious to me that there is a great deal of detail about the hearing process spelled out here but very little about the hearing committee. It just says it is going to be appointed by the chair of the administrative committee. Is there no need to maybe specify how many or something about the hearing committee?

Rep. Mark Owens: I didn't seek to alter what is already in code about the way the process is going. I only sought to protect the information of the individual within the hearing, so I didn't address that in this bill. I wasn't looking to change the current process that we have in law that has been working well for awhile. That is the only reason I didn't go into greater detail on the makeup of the committee or who does the appointment under the Department of Veterans' Affairs, because that is all a process within the Department of Veterans' Affairs to a certain extent.

Chairman Bette Grande: The bill speaks that shall adopt and establish the appeals process. Would that be the time that they would include then the HIPPA and the medical aspect? Should we leave it that they would establish that or do you see that it should be spelled out in code?

Rep. Mark Owens: Since we are so adamant in North Dakota, as we should be, about sunshine laws and open records for meetings and what, that to merely allow the committee to decide might be viewed by the general population as an overstepping of the powers over and above open meetings. If we specify when they may consider closing the meeting as opposed to leaving it open to them, I think there would be less questions in that arena.

Lonnie Wangen, Commissioner of Veterans' Affairs, appeared. **Attachment 1.** Before starting he asked to make sure that all committee members had a bill that had underlining on it. I actually omitted one other century code that I would like to refer you to. **Attachment 3.**

Rep. Glen Froseth: You said you had four hearings this past year. In the past has there been any abuse or misuse or inappropriate actions of the records of these hearings that you had noted?

Lonnie Wangen: I have only been with the department for about three years. We have had very few actual hearings. I did notice that they were open to the public. We haven't really turned anybody away, but normally we have to have a conference call or what not. We haven't had anybody force themselves in to be at the meetings so I haven't noted an actual big problem. This is more of a preventative. In looking through these situations, I notice that there could be a problem and we want to address it.

Vice Chairman Randy Boehning: Do you have to publish that you are having a hearing with ACOVA? What is the process with that?

Lonnie Wangen: When there is a hearing, what we like to do is if a ACOVA meeting is coming up, we will have the hearing during the ACOVA meeting, so we can save the expense of bringing people in another time or the conference calls. Those are noted publicly. That does go out that we are having a meeting, and the appeals committee does

meet during those hearings. I don't believe we have to publicize if we are going to have a hearing as a subcommittee. That one I would have to check the bylaws on.

Lonnie Winrich: Are there policies in place either under your auspice as commissioner or under the procedures of the ACOVA about the hearing committee and its constituency or is it every time it comes up, a different one is appointed or something?

Lonnie Wangen: No, the chairman and the secretary of the ACOVA set up the subcommittees, and the subcommittees appoint a chairman and that subcommittee will serve for that year. We do have booklets here for them with directions and all that they need to know as far as how to conduct hearings and with all the policies and information in place for them. Normally there will be people on that committee that will go from one year to the next as new people come in.

Rep. Lonny Winrich: In the citation that you gave us here about an exempt record at the end it says exempt means that all or part of the record is neither required by law to be opened to the public nor is confidential but may be opened at the discretion of the public entity. If someone makes an open records request for that record, who is the public entity that makes the decision? Is that you or is the ACOVA?

Lonnie Wangen: If someone were to make an opens record request and it was just an individual, I would be contacting our attorney general to get a for sure answer on that, but I would not allow an individual to look at somebody's individual medical records. For instance when we have our biannual audits and the auditing comes in, they do look at some of the records. They don't really look at the medical part. They just look at the financial. Did we take the money and did we spend it on the medical care? Those records then would be open to those entities.

John Jacobsen, Chairman of the Legislative Committee of the ND Veterans Coordinating Council, appeared in support. **Attachment 2.**

Opposition:

Jack McDonald, ND Newspaper Association and ND Broadcasters Association, appeared in opposition. I am not unsympathetic to the proposals at all. We are concerned a little bit about the closed record and closed and hearing provisions. Our groups have always maintained that if you are going to close records or meetings, they should be as specific as possible. If you want to close something, say exactly what you want to close. We ask that you consider an amendment which we could provide that would say what types of records and information you are trying to protect and not the whole process. In this case you are just closing the whole entire appeals process that may or may not involve medical records. There already are laws on the books. The commissioner mentioned one of them, and there are laws on the books under the open meeting, open records laws, 44-04-18 and 19 that protect medical information and some financial information. We would ask that you have an amendment that would look at the specific records that are trying to be protected, and then let the other process remain open as it is right now. These laws have been on the books since the 1960s, and the world hasn't come to an end. We are talking about a problem that may or may not happen in the future. This is kind of a solution

looking for a problem and so we would just ask that you consider an amendment to zone in on these particular records and meetings.

Rep. Lonny Winrich: If we amended the bill as you wished and so on so that when someone made a request for the hearing record, some of the information was available and some of it was not, what sort of redacting process is in place? What happens then? Do portions of the record get blocked out and you get a copy of it or what?

Jack McDonald: Yes. That is exactly what happens right now under state law. Under state law there are several provisions that provide that certain information, personal information for instance, social security numbers, ATM pin numbers, home phone numbers, that sort of thing are already redacted under the state law. This could follow that same state law. You would simply provide the record and what information that is confidential would be redacted or not released. The rest of it would be. Our experience is that in a lot of these provisions the actual protected records are sometimes a small part. You may have a three hour meeting or hearing and maybe you submit some of the medical records, some of the financial records, but a lot of that three hour hearing does not concern those specific records. It concerns other issues. Those would be public, but the medical records, the financial records would be closed.

Vice Chairman Randy Boehning: Reading through the bill most of it has to do with financial assistance. It is grant programs, loans, and so forth. Most of the information that will be discussed in the meeting will be financial and personal information in order to get these grants and loans. Then you have the HIPPA records coming into the mix. Basically what you end up in the whole meeting is the name and the outcome. Could you get us a draft amendment that we can take a look at so we can see how it would fit in?

Jack McDonald: Yes, I certainly would. There would be a lot of other information that would not be closed. I understand what you are saying entirely, but in this type of thing there are other factors involved in that type of hearing. There are already state laws that protect this sort of thing. The HIPPA laws really concern medical providers. I am not so sure that HIPPA is directly involved in this type of thing. HIPPA would be more involved if there was a medical provider involved like for instance if you were appealing through the veterans' administration, the VA hospital, or something like that. I will provide an amendment for you if the committee wishes.

There was no one neutral to this bill.

The hearing was closed.

2011 HOUSE STANDING COMMITTEE MINUTES

House Government and Veterans Affairs Committee
Fort Union Room, State Capitol

HB 1316
February 11, 2011
14451

☐ Conference Committee

Committee Clerk Signature Carmen Hart

Explanation or reason for introduction of bill/resolution:

Relating to the appeal of an application for relief or assistance provided under a department of veterans' affairs program

Minutes:

Chairman Bette Grande opened the meeting on HB 1316.

Vice Chairman Randy Boehning: Jack McDonald gave him the attached amendment. **Attachment 1.** Page 1, Line 13 replace A with Upon an applicant's request, that portion of a. Line 13, after committee insert dealing with the applicant's medical history. Line 13, delete upon the request of. Line 14, delete applicant. It would read Upon an applicant's request, that portion of a hearing before the appeals committee dealing with the applicant's medical history may be closed. The financial part of the hearing would be open.

Chairman Bette Grande: Say it to me one more time.

Vice Chairman Randy Boehning: Upon an applicant's request that portion of a hearing before the appeals committee dealing with the applicant's medical may be closed.

Chairman Bette Grande: I see where he is going with this. The closing of the hearing limits it to the medical.

Vice Chairman Randy Boehning: That is correct.

Rep. Gary Paur: I wonder why he didn't want financial.

Vice Chairman Randy Boehning: They are going to have to discuss why he is there wanting money from the public fund type of thing. I am assuming that is why he would want it open.

Rep. Lonny Winrich: I am not certain, but I believe this would be consistent with normal open meeting procedures where a body is going to close their meeting has to make a statement about what they are going to consider a closed meeting, and so on.

Chairman Bette Grande: What I thought was interesting and I don't think we received the correct answer but these hearings aren't posted to the public anyway. I am hoping he spoke inaccurately because I think they do have to be. I will let that one ride for now.

Rep. Glen Froseth: I think what they are talking about is the record of the meeting. If anybody wanted to go back and look at the record of the meeting that portion would not be available to them. It would be a public record and if you wanted to go back and look at that, any medical portion of that would be closed.

Rep. Lonny Winrich moved to adopt the amendment.

Rep. Vicky Steiner seconded the motion.

A voice vote was taken. Motion carried.

Rep. Glen Froseth made a motion for a **Do Pass as amended.**

Rep. Lonny Winrich seconded the motion.

DO PASS AS AMENDED. 13 YEAS, 0 NAYS. Rep. Karen Karls is the carrier of this bill.

FISCAL NOTE

Requested by Legislative Council
01/13/2011

Bill/Resolution No.: HB 1316

1A. **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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	$0	$0	$0	$0	$0	$0
Expenditures	$0	$0	$0	$0	$0	$0
Appropriations	$0	$0	$0	$0	$0	$0

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

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

This bill gives an applicant the option to close their hearing to the public.

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.*

There is no fiscal impact for this bill.

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.*

There are no revenue amounts connected with this bill.

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.*

There are no expenditures connected with this bill.

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.*

There are no appropriated funds connected with this bill.

Name:	Cathy Halgunseth	**Agency:**	Veterans Affairs
Phone Number:	701-298-4692	**Date Prepared:**	01/19/2011

11.8195.01003
Title.02000

Adopted by the Government and Veterans Affairs Committee
February 11, 2011

YR 2/11/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1316

Page 1, line 13, replace "A" with "Upon an applicant's request, that portion of a"

Page 1, line 13, after "committee" insert "dealing with the applicant's medical history"

Page 1, line 13, remove "upon request of the"

Page 1, line 14, remove "applicant"

Renumber accordingly

Date: 2-11-11
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1316

House GOVERNMENT AND VETERAN AFFAIRS 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 Winrich Seconded By Steiner

Representatives	Yes	No	Representatives	Yes	No
Chairman Bette Grande			Bill Amerman		
Vice Chairman Randy Boehning			Ron Guggisberg		
Glen Froseth			Lonny Winrich		
Karen Karls					
Lisa Meier					
Gary Paur					
Karen Rohr					
Mark Sanford					
Vicky Steiner					
Roscoe Streyle					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice vote
motion
Carried
to accept
amendment

Date: 2-11-11
Roll Call Vote #: 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1316

House GOVERNMENT AND VETERAN AFFAIRS 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 Froseth Seconded By Winrich

Representatives	Yes	No	Representatives	Yes	No
Chairman Bette Grande	✓		Bill Amerman	✓	
Vice Chairman Randy Boehning	✓		Ron Guggisberg	✓	
Glen Froseth	✓		Lonny Winrich	✓	
Karen Karls	✓				
Lisa Meier	✓				
Gary Paur	✓				
Karen Rohr	✓				
Mark Sanford	✓				
Vicky Steiner	✓				
Roscoe Streyle	✓				

Total (Yes) 13 No 0

Absent 0

Floor Assignment Rep Karls

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

REPORT OF STANDING COMMITTEE

HB 1316: Government and Veterans Affairs Committee (Rep. Grande, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1316 was placed on the Sixth order on the calendar.

Page 1, line 13, replace "A" with "Upon an applicant's request, that portion of a"

Page 1, line 13, after "committee" insert "dealing with the applicant's medical history"

Page 1, line 13, remove "upon request of the"

Page 1, line 14, remove "applicant"

Renumber accordingly

2011 SENATE GOVERNMENT AND VETERANS AFFAIRS

HB 1316

2011 SENATE STANDING COMMITTEE MINUTES

Senate Government and Veteran's Affairs Committee
Missouri River Room, State Capitol

HB 1316
March 18, 2011
15682

☐ Conference Committee

Committee Clerk Signature Katie Oliver

Explanation or reason for introduction of bill/resolution:

Relating to the appeal of an application for relief or assistance provided under a department of veterans' affairs program.

Minutes: *Testimony attached.*

Representative Mark Owens: See attached testimony #1. Veterans can see grants of applications from certain financial programs. This law deals with what happens they are denied assistance. Keeping with North Dakota open records law we support that. In the process of doing that we wanted to exempt the meeting if it was requested. The primary reason I brought the bill was in the instance of medical information. What my concern was is anybody who got access to the record and could use that information against hiring the veteran. Not saying that it would but it could. I support the amendment from the House.

Chairman Dever: Do you have a copy of the bill in front of you. Upon request the hearing may be closed.

Representative Mark Owens: I would prefer that yes.

Chairman Dever: AN exempt record is kept confidential by the agency and the

Senator Cook: I think you all better change 'may' to 'shall' as well.

Lonnie Wangen: See attached testimony #2

Chairman Dever: Veteran applies for a loan, is that confidential?

Lonnie Wangen: Anyone can walk into our office and get pretty much anything.

Lyle Schucard: See testimony #3

Chairman Dever: Confidential vs. exempt records.

John Jacobsen: See attached testimony #4

2011 SENATE STANDING COMMITTEE MINUTES

Senate Government and Veteran's Affairs Committee
Missouri River Room, State Capitol

HB 1316
March 31, 2011
16214

☐ Conference Committee

Committee Clerk Signature Katie Olver

Explanation or reason for introduction of bill/resolution:

Relating to the appeal of an application for relief or assistance provided under a department of veterans' affairs program

Minutes: *No testimony attached.*

Mike Mullen: Attorney General's Office. If under the provisions of HB 1316 it would be a conflict of interest, in my view there is not a conflict of interest there. The open records law can be exempt or confidential. Confidential information can only be disclosed as provided by statute so in some part of century code some things that can only be disclosed in certain instances, for example civil commitment for mental illness the evaluation by a psychiatrist is confidential. In other areas of the century code records are designated as exempt; what that means is that a member of the public or the press cannot request those records under open records but an agency can determine, in its discretion, if it wants to disclose a record. The version that the House passed provides that the record of an appeals hearing of a veterans claim for hardship benefits is an exempt record sp the department of veteran's affairs would have discretion to disclose that. If that record contained information regarding a medical history of the applicant that information would still be confidential and would not be disclosed. This bill amends chapter 37-14 section 12 there is also another party of the century code that is relevant, 37-18-11 in that section it says that records pertaining to benefits would be deemed confidential. It also provides that information provided in medical records will be kept confidential. As

Chairman Dever: Really the exempt record of the appeal hearing is not to include the medical history?

Mike Mullen: That is correct.

Laura Bearfield: Assistant Attorney General. In speaking with commissioner Wangen their stance is because the initial application is confidential in written form and as it is now. The medical portion would be for financial benefits and they want to keep that information private at the discretion of the department of veteran's affairs. The change was to add the portion about closing the hearing when it pertained to medical records.

Chairman Dever: The bill as it is they would need to redact that

Laura Bearfield: That is correct. They can opt to have the entire hearing closed.

Chairman Dever: Is this in a full committee or a subcommittee.

Mike Mullen: Subcommittee from the Administrative committee on Veteran's Affairs.

Senator Nelson: The confusion comes that if in the original piece then it confidential it is confidential.

Chairman Dever: I think that the subcommittee is made up of 5 people that would hear the appeal.

Senator Nelson: You still need statutory authority to release anything that is confidential; you don't need it if it is exempt.

Chairman Dever: But the applicant is giving permission for that to happen though.

Senator Berry: By virtue of the fact that they are appealing you are saying that is what gives consent and by doing so you are saying that it is ok to go from confidential to exempt.

Laura Bearfield: Yes sir that is how it is reflected in the amended format. We are against that version, we would like to see the applicant close the hearing regardless of the topic of the hearing.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Government and Veteran's Affairs Committee
Missouri River Room, State Capitol

HB 1316
March 31, 2011
16239

☐ Conference Committee

Committee Clerk Signature Katie Auer

Explanation or reason for introduction of bill/resolution:

Relating to the appeal of an application for relief or assistance provided under a department of veterans' affairs program

Minutes: *No testimony attached*

Chairman Dever: This one seems likely that we will go to conference committee on. In the appeal process at the request of the applicant they can close the entire hearing. Any thoughts on the amendment?

Senator Schaible made a motion to adopt the amendment with a second by Senator Berry, there was no further discussion, roll was taken and the amendment was adopted. A further motion for a do pass as amended was made by Senator Schaible with a second by Vice Chairman Sorvaag, there was no further discussion, roll was taken, the motion passed 7-0 with Senator Berry carrying the bill to the floor.

11.8195.02001
Title.03000

Adopted by the Government and Veterans Affairs Committee
March 31, 2011

3-31-11

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1316

Page 1, line 13, remove "Upon an applicant's request, that portion of a hearing before the appeals"

Page 1, replace lines 14 through 19 with "A hearing before the appeals committee may be closed upon request of the applicant. An applicant who requests a closed hearing may invite to that hearing any two representatives and the applicant's spouse or one other family member. Each decision of the appeals committee must give the reasons for granting or refusing an application for relief or assistance. The decision of the appeals committee is final. The record of the hearing, including the identity of the applicant, is an exempt record."

Renumber accordingly

Date: 3/31/11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1316

Senate GVA 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 Schaible Seconded By Berry

Senators	Yes	No	Senators	Yes	No
Chairman Dever	X		Senator Marcellais	X	
Vice Chairman Sorvaag	X		Senator Nelson	X	
Senator Barry	X				
Senator Cook	X				
Senator Schaible	X				

Total (Yes) 7 No 0

Absent _____

Floor Assignment _____

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

Date: 3/31/17
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1310

Senate GVA 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 Schaible Seconded By Sorvaag

Senators	Yes	No	Senators	Yes	No
Chairman Dever	X		Senator Marcellais	X	
Vice Chairman Sorvaag	X		Senator Nelson	X	
Senator Barry	X				
Senator Cook	X				
Senator Schaible	X				

Total (Yes) 7 No 0

Absent _____

Floor Assignment Berry

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

REPORT OF STANDING COMMITTEE

HB 1316, as engrossed: Government and Veterans Affairs Committee (Sen. Dever, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1316 was placed on the Sixth order on the calendar.

Page 1, line 13, remove "Upon an applicant's request, that portion of a hearing before the appeals"

Page 1, replace lines 14 through 19 with "A hearing before the appeals committee may be closed upon request of the applicant. An applicant who requests a closed hearing may invite to that hearing any two representatives and the applicant's spouse or one other family member. Each decision of the appeals committee must give the reasons for granting or refusing an application for relief or assistance. The decision of the appeals committee is final. The record of the hearing, including the identity of the applicant, is an exempt record."

Renumber accordingly

2011 TESTIMONY

HB 1316

Attachment 1
13 16

Friday, February 11, 2011

Jack McDonld

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1316

Page 1, line 13, replace "A" with "Upon an applicant's request, that portion of a"

Page 1, line 13, after "committee" insert "dealing with the applicant's medical history"

Page 1, line 13, delete "upon the request of"

Page 1, line 14, delete "applicant."

Renumber accordingly

Attachment 1
1316

February 10, 2011

HB 1316

Testimony of Lonnie Wangen Commissioner of Veterans Affairs

Madam Chairman Grande and Committee Members,

HB 1316 is a bill to protect our Veterans medical and financial information in the event of an appeal hearing with regards to our programs.

If a Veteran or Eligible spouse applies for benefits through the North Dakota Department of Veterans Affairs and they are denied, the applicant has a right to appeal the denial. The appeal is heard by the Administrative Committee of Veterans Affairs (ACOVA) appeals subcommittee. These hearings are in person, by telephone or a combination of the two.

- During these hearings the applicants' financial and medical information may be discussed.
    - Appeal hearings concern
        - Applications for un-met medical needs
            - Dental
            - Hearing
            - Vision
            - Emergency-special
                - Life threatening
                - Medical in nature
        - Applications for transportation to medical appointments
            - Need to travel for specialized treatments
                - Medical need is discussed

- Average 4 hearing per year.

Under current law, because an appeal is heard before the ACOVA subcommittee, the proceeding is open to the public. The intent of this bill is to allow for an applicant to request a closed hearing to prevent the public disclosure of highly personal financial or medical information.

The bill provides that, "The record of the hearing, including the identity of the applicant, is an exempt record."

This distinction allows for the ACOVA to use discretion in determining if the record should be made open to the public if an open records request is made.

The open records law defines an exempt record as follows:

N.D. Cent. Code § 44-04-17.1(5)
"Exempt meeting" or "**exempt record**" means all or part of a record or meeting 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.

Thank you for considering this important bill. I will be happy to answer any questions you may have.

Attachment 2
1316

TESTIMONY ON HB 1316 - ND VETERANS COORDINATING COUNCIL.

A veteran is an individual that has signed a blank check in the amount of and up to including his or her life for their country. Good morning, my name is John L. Jacobsen. I am the Chairman of the Legislative Committee of the North Dakota Veterans Coordinating Council. I am also a member of the American Legion and the Veterans of Foreign Wars.

I served in the North Dakota National Guard and the US Army Reserve for a total of 30 years. I retired in 1995 as a Colonel. I was mobilized for Active Duty in 1991 during Operation Desert Shield/Desert Storm. Like all mobilizations, I left my home and family to serve in the Persian Gulf, stationed in the United Arab Emirates.

The Coordinating Council is made up of 15 members, 3 from each of the five Veterans Organizations in North Dakota:

- American Legion
- AMVETS
- Disabled American Veterans
- Veterans of Foreign Wars
- Vietnam Veterans of America

It is the policy of the Coordinating Council to support legislation that will benefit the welfare of the members of the Armed Forces. The committee MUST concur totally, that is all 15 members must agree on the legislation to be supported or else it does not get the support.

In this case, I have been instructed to recommend to this legislative committee that a "DO PASS" on HB 1316 is supported by the entire membership of the Veterans Coordinating Council.

Attachment 3
3/16
(Handed out by Lawson intern after hearing

CHAPTER 37-18
DEPARTMENT OF VETERANS' AFFAIRS

37-18-01. Department established - Commissioner. There is hereby established a department of veterans' affairs under the supervision and control of a commissioner known as commissioner of veterans' affairs, hereinafter referred to as the commissioner.

37-18-02. Qualifications and appointment of commissioner. Repealed by S.L. 1971, ch. 344, § 25.

37-18-03. Advisory committee. Repealed by S.L. 1971, ch. 344, § 25.

37-18-04. Duties of commissioner. It is the duty of the commissioner to coordinate agencies or instrumentalities of the state set up to render service and benefits to returning veterans; to have charge of and implement programs and benefits authorized by statute; to assist or represent veterans or their widows, administrators, executors, guardians, or heirs, in processing claims; to advise and assist veterans in taking advantage of the provisions of the Servicemen's Readjustment Act of 1944 [Pub. L. 78-346; 58 Stat. 291], or any similar or related measures afforded by the federal government; to provide counties with recommended qualifications and standards for county veterans' service officers; to assist counties with training of county veterans' service officers; to provide county veterans' service officers with educational materials; to assist county veterans' service officers in the performance of their duties; to disseminate information; and to do any and all things necessary and proper for the purpose of carrying out the intent and purposes of this chapter.

37-18-05. Seal of commissioner - Power to administer oaths and make certifications. The commissioner shall have a seal of office and may administer oaths and take acknowledgments in connection with the prosecution of any claim for compensation, hospitalization, insurance, or other aid or benefits. The commissioner may certify to the correctness of any document or documents which may be submitted in connection with any such application.

37-18-06. Establishment of divisions - Assistants. The commissioner is hereby authorized and empowered to establish within the department a claims division, a loan division, a field division, and such other divisions as from time to time may become necessary to carry out the purposes of the chapter; to appoint such assistants as may be necessary; and to prescribe regulations and rules of procedure.

37-18-07. Commissioner - Appointment - Qualifications - Term - Salary. The appointment, qualifications, term of office, and salary of the commissioner must be as prescribed in section 37-18.1-03. The commissioner must be allowed such amounts for travel, clerkhire, and expenses as may be prescribed from time to time by legislative appropriations.

37-18-08. Office of commissioner - Where located. The office of the commissioner shall be located in the same city as the principal office of the veterans' administrator for this state. If the veterans' administrator is removed from the state, such commissioner's office must be located in the state capitol.

37-18-09. Department a continuation of veterans' service commissioner. Repealed by S.L. 1971, ch. 344, § 25.

37-18-10. Unexpended funds transferred. Repealed by omission from this code.

37-18-11. Release of information and records - Confidential nature. All records and papers pertaining or relating to veterans which are transmitted by the United States government to the department of veterans' affairs must be kept and maintained by said department under the following provisions and conditions:

1. All records and papers of the department are to be utilized in the manner to best serve the public interest, but the veteran's right of privacy as to information pertaining to the veteran's military or naval service and to confidential information contained in the veteran's application for benefits will be respected.

2. All reports of investigation made by employees of the department or at the direction of the department for official departmental purposes are for the use of the commissioner and the commissioner's staff only. Materials and information which disclose the investigative techniques of the department or the identity of confidential informants and material received in confidence by representatives of the department will not be released.

3. Records pertaining to any application for benefits, whether pending or adjudicated, will be deemed confidential and no disclosure therefrom will be made except in the circumstances and under the conditions set forth in this chapter, and any person making application for benefits must hereinafter be referred to as the applicant.

4. An applicant may not have access to official department records concerning the applicant, but information from official records may be disclosed to an applicant or the applicant's duly authorized representative as to matters concerning the applicant.

5. "Duly authorized representative" is defined as any person authorized in writing by the applicant to act for the applicant, or the applicant's legally constituted representative if the applicant is incompetent or deceased. If for proper reason no such representative has been or will be appointed, the applicant's spouse, an adult child, or if the applicant is unmarried, either of the applicant's parents shall be recognized as the duly authorized representative of the applicant.

6. Medical information may be disclosed as follows:

   a. Except as otherwise required by law, information contained in medical records on file shall be disclosed to the resident on request.

   b. Information contained in medical records of residents and beneficiaries pertaining to medical history, diagnosis, findings, or treatment may be disclosed directly to physicians and hospitals for treatment, payment, and health care operations, and as otherwise authorized by law. This information is to be treated as confidential information. This information also may be disclosed without the consent of the resident or the resident's personal representative when a request for the information is received from the veterans' administration, the United States public health service, the superintendent of a state hospital, a commissioner or head of a state department of mental hygiene, or head of a state, county, or city health department and the disclosure is required by law, or for the purpose of treatment, payment, or health care operations.

7. Information contained in loan files may be made available to any party having an interest in such loan transaction upon approval by the director or pursuant to rules and regulations promulgated by the director.

8. Information contained in department files required for official purposes by any agency of the United States government or by any agency of the state of North Dakota, or by any law enforcement or public welfare agency of any North Dakota county or municipality may be furnished in response to an official request, written or oral, from such agency. The requesting agency must be asked to specify the purpose for which such information is to be used.

9. Subject to the limitations of any other law, members of the legislative assembly may be furnished such information contained in department files as may be requested for official use.

10. A county veterans' service officer may be permitted to inspect records pertaining to any application for benefits in which the officer's office may be directly involved upon the condition that only such information contained therein as may be properly disclosed will be disclosed by the officer only to the applicant or if the applicant is incompetent, to the applicant's legally constituted representative.

11. When records pertaining to any application for benefits are requested for use in any judicial proceedings, they will be released only upon service of a proper subpoena and upon the condition that they will be returned upon conclusion of such proceedings.

12. Addresses of applicants from department records will not be furnished, except as provided in subsections 5 through 10. When an address is requested by a person to whom it may not be furnished, the person making the request will be informed that correspondence enclosed in an unsealed envelope showing no return address, with the name of the addressee thereon, and bearing sufficient postage to cover mailing costs will be forwarded by the department. At the time the correspondence is forwarded, the department's return address will be placed on the envelope. If undelivered mail is returned to the department, the original sender will be notified thereof, but the envelope will be retained by the department. In no event will letters be forwarded for the purposes of debt collection, canvassing, or harassment.

13. Separation documents evidencing service in the armed forces of the United States will be considered confidential and privileged, anything contained in subsections 4 through 10 notwithstanding. Examination of such records will be limited to authorized employees of the department and information entered thereon will be disclosed only to interested governmental agencies for the purpose of assisting veterans and their dependents to obtain the rights and benefits to which they may be entitled.

37-18-12. Funding authority - Continuing appropriation. The department of veterans' affairs may accept and expend funds from any source, including federal or private sources, to be used to assist veterans or qualified veterans' spouses in obtaining assistance and to pay other expenses authorized by law incurred in carrying out programs of benefit and service for resident North Dakota veterans as authorized by the administrative committee on veterans' affairs with the approval of the emergency commission. However, all interest earnings from the veterans' postwar trust fund received by the department of veterans' affairs from the administrative committee on veterans' affairs are appropriated to the department on a continuing basis.

37-18-13. Records. The department of veterans' affairs may receive from the United States such records of veterans as the United States may wish to turn over to the department of veterans' affairs and same shall keep and maintain the records as provided in this chapter.

37-18-14. Department of veterans' affairs employees - Conservatorship activities prohibited. An employee of the department of veterans' affairs may not serve as a conservator for an individual who is receiving benefits or services from the department, except if the individual is the spouse or an immediate family member of the employee.

March 18, 2011

HB 1316

Testimony of Lonnie Wangen Commissioner of Veterans Affairs

Chairman Devers and Committee Members,

HB 1316 is a bill to protect our Veterans medical information in the event of an appeal hearing with regards to our programs.

If a Veteran or Eligible spouse applies for benefits such as hearing aids, Dental, Vision and Medical transportation, through the North Dakota Department of Veterans Affairs and they are denied. The applicant has a right to appeal the denial. The appeal is heard by the Administrative Committee of Veterans Affairs (ACOVA) appeals subcommittee. These hearings are in person, by telephone or a combination of the two.

- During these hearings the applicants' financial and medical information may be discussed.
- ACOVA and ACOVA subcommittee meetings are open to the public due to open records laws.
- Average 4 hearing per year.

I ask that you help protect the privacy of our veterans by supporting this bill.

Thank you.

References:

44-04-19. Access to public meetings. Except as otherwise specifically provided bylaw, all meetings of a public entity must be open to the public. That portion of a meeting of the governing body of a public entity as defined in subdivision c of subsection 12 of section 44-04-17.1 which does not regard public business is not required to be open under this section

44-04-17.1 (12)(c): Organizations or agencies supported in whole or in part by public funds, or expending public funds.

37-18-11. (3). Records pertaining to any application for benefits, whether pending or adjudicated, will be deemed confidential and no disclosure there from will be made except in the circumstances and under the conditions set forth in this chapter, and any person making application for benefits must hereinafter be referred to as the applicant.

TESTIMONY ON HB 1316
11AM MISSOURI RIVER ROOM
GOVERNMENT & VETERANS AFFAIRS COMMITTEE
LYLE SCHUCHARD, CHAIRPERSON
ND AMINISTRATIVE COMMITTEE ON VETERANS' AFFAIRS
March 18, 2011

GOOD MORNING CHAIRMAN DEVER AND COMMITTEE MEMBERS. I AM LYLE SCHUCHARD, CHAIRMAN OF THE ADMINISTRATIVE COMMITTEE ON VETERAN'S AFFAIRS.

THE ADMINISTRATIVE COMMITTEE ON VETERANS' AFFAIRS IS A 15 MEMBER COMMITTEE APPOINTED BY THE GOVERNOR FROM NAMES SUBMITTED BY EACH OF THE STATE'S 5 MAJOR VETERANS ORGANIZATAIONS. THE FIVE ARE THE AMERICAN LEGION, DISABLED AMERICAN VETERANS, (DAV), VETERANS OF FOREIGN WARS (VFW), VIETNAM VETERANS OF AMERICA (VVA), AND THE AMERICAN VETERANS (AMVETS). WE ARE RESPONSIBLE FOR OVERSEEING THE OPERATIONS OF THE NORTH DAKOTA DEPARTMENT OF VETERANS AFFAIRS.

THE ADMINISTRATIVE COMMITTEE ON VETERANS' AFFAIRS HAS VOTED TO APPROVE HB 1316 THAT WOULD ALLOW FOR PORTIONS OF A HEARING DEALING WITH AN APPLICANT'S MEDICAL HISTORY MAY BE CLOSED. THEREFORE I ASK THAT THE COMMITTEE GIVE FAVORABLE CONSIDERABLE TO PASSING THIS BILL.

I WILL TRY TO ANSWER ANY QUESTIONS YOU HAVE AT THIS TIME. THANK YOU FOR ALLOWING ME TO TESTIFY TODAY.

TESTIMONY ON HB 1316 - ND VETERANS COORDINATING COUNCIL.

A veteran is an individual that has signed a blank check in the amount of and up to including his or her life for their country. Good morning, my name is John L. Jacobsen. I am the Chairman of the Legislative Committee of the North Dakota Veterans Coordinating Council.

The Coordinating Council is made up of 15 members, 3 from each of the membership of the five Veterans Organizations in North Dakota:

- American Legion
- AMVETS
- Disabled American Veterans
- Veterans of Foreign Wars
- Vietnam Veterans of America

It is the policy of the Coordinating Council to support legislation that will benefit the welfare of the veterans of the State of North Dakota. The committee MUST concur totally, that is all 15 members must agree on the legislation to be supported or else it does not get the support.

In this case, I have been instructed to recommend to this legislative committee that a "DO PASS" on HB 1316 is supported by the membership of the Veterans Coordinating Council.

Dever Amendment HB 1316

Page 1, line 13, remove "Upon an applicant's request, that a portion of a hearing before the appeals"

Page 1, remove line 14-19, and replace with "A hearing before the appeals committee may be closed upon request of the applicant. An applicant who requests a closed hearing may invite to that hearing any two representatives and the applicant's spouse or one other family member. Each decision of the appeals committee must give the reasons for granting or refusing an application for relief or assistance. The decision of the appeals committee is final. The record of the hearing, including the identity of the applicant, is an exempt record."

Renumber accordingly

DRAFT