

2015 SENATE JUDICIARY

SB 2134

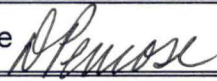
2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2134
1/21/2015
22274

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Minutes:

1, 2 A, 2 B

Ch. Hogue: We will open the hearing on SB 2134.

Larry Skogen, Interim Chancellor of ND University System: Support (see attached #1, 2).

Ch. Hogue: The bill gives the discretion to either the Board or the individual under review; why would we give that to the individual under review whether or not to have the process open.

Larry Skogen: Is that under the executive session. I think that is the language that we're agreeing with Mr. MacDonald to strike from the bill. Yes, on the second page, D, striking out "the consideration of the performance evaluations of the presidents and commissioner shall be in executive session if the board chooses unless the individual involved requests the meeting be open to other individuals or to the public".

Ch. Hogue: On page 1, this is for the appointment of the commissioner.

Larry Skogen: Yes.

Ch. Hogue: I'm reading the underscored language, "provided that the consideration of the appointment or removal of the commissioner shall be in executive session if the board chooses unless the individual involved requests that the meeting be open to other individuals or the public".

Larry Skogen: I will pass that question to Murray Sagsveen.

M. Sagsveen, Chief of Staff, Chancellor's Office: If you go up to page 1, beginning at line 11, when you are dealing with presidents, it says provided the consideration of appointment or removal of any such personnel, president, shall be an executive session if the Board chooses, unless the individual involved requests the meeting be open. This is a situation where the Board of Higher Education is considering a removal of a president; and the president wants that open. Similarly we copied the exact language and put it in the underscored, so that if the Board of Higher Education is considering the removal of a chancellor may want to have that open and not in executive session. That was the intent.

Ch. Hogue: Why do we let the person under review make the decision? If we're concerned about the process, it just seems to me that is an executive decision that should be made by the Board and not the individual.

Larry Skogen: My only answer would be that that is in the language of the law currently.

Sen. Casper: What is the justification having the individual have that option be because the Board may be choosing to take action against that individual and the Board wants that action to be kept out of public light; but the individual who is being, potentially, terminated would want that in public light? That's the only justification I could think of.

Larry Skogen: That is the language of the current law.

Ch. Hogue: I understand that it is in current law but I still want to understand the rationale that there is a person that is under review whether it's a college president or a chancellor. It seems to me that the Board wants to keep it in an executive session, that seems to me their prerogative and if the person that is subject to the review, regardless of whether it is a president or the chancellor, they can object, but they shouldn't have the right to open that process up over the wishes of the board. I don't understand that. If they want to go to the media themselves, and talk about it. I don't understand how the individual, who is an employee, has the right to override the wishes of the Board.

Larry Skogen: I don't know.

Sen. Casper: Does this, in any way, keep the final report from becoming public.

Larry Skogen: No, not at all. I was asked to come up with a better evaluation process. Here is one of the things that I know for a fact, if you go out to campuses and you want to get good, honest data by which to build the evaluation, and you talk to vice-presidents, deans, faculty, staff, they're going to want to know if the notes that you are taking or the survey that you've conducted if that is going to be public record. If there is any way that their responses can be tied to them as individuals, and it's in the public, then you're not going to get those good, honest, straightforward answers that you are seeking. If we're going to improve the evaluation process, I would think now, in the short term that I have left, I would want to be able to assure folks that what they are telling me, I can hold confidentially.

Ch. Hogue: Thank you. Further testimony in support. Testimony in opposition.

Jack MacDonald, ND Newspaper Association and ND Broadcasters Association: Opposed. We were generally opposed to the bill for the same reasons as my previous testimony, in that it is closing records and meetings that are now open. We resist those types of things. First of all, I applaud the Board; I think it is a good change to drop the language about the closed meeting to read those evaluations and they struck the language on page 2, lines 4-7. I think that if we had our druthers, we would ask the Committee to consider that on line 7, you retain the language after the word "public" so that the final sentence stays in the law. It says "the final performance evaluations are public record". I think that should stay. Either that or we need to put in another phrase back in that says "in the report". The first part of it says, in effect, that the records, information, whatever they are doing in preparation of the report, are confidential. We just wanted it to declare that the final report is open. We would ask for that. The second issue we oppose is the language that is being added on line 17 through 20 on page 1. The provisions of state law that the selection of the presidents can be done in executive session, but the selection of the commissioner has always been open, has been in state law for a long, long time. There have been other sessions where these bills have been brought up to try to close the commissioner's selection and those have always been defeated. For whatever reason, many years ago, the legislature decided that the selection of the commissioner or chancellor should be open. I think that's an important process if the head of the organization is going to be chosen, that that should be a public operation. Under this operation proposal, the public would not be aware of why the person chosen, was chosen. Again, you are taking a very important process, a statewide process, this is not the election of the superintendent in Bismarck or West

Fargo, this is for the superintendent for all the 11 colleges in the state. Now they want to close that selection process. I think that is something that should be open to the public. We would strongly object to the language on line 17-20 that is being added. I think you could just simply leave that provision of the law as it is right now. We've had commissioners; we've never had any trouble. We've had commissioners over the years that have been chosen. I'm not going to get into any argument about which commissioners are good or bad. I think the process is working and we've gotten commissioners and so I think it should stay that way.

Ch. Hogue: Don't you think it is true that the free flow of information back and forth between board members is impeded if they know everything is subject to being reported and recorded; that they are less likely to either speak candidly about a candidate or about an existing chancellor that they think needs to be removed.

Jack MacDonald: You could say that. I think at the same time, as a public official, you are charged to make those decisions. If you don't want to be on a board, you don't want to make those statements and decisions, then maybe you shouldn't be on that board. You're charged, here in the legislature, we're having open hearings right now. You have to speak candidly about things and make statements. If you meet later on to vote of these bills, those are open meetings; you're going to be talking and saying things as well. I don't see why we want to protect this particular case of protecting the board and their comments. Frankly, I think the public would be well served, if they knew some of the reservations. I mean if one of the board members had some reservations about a particular candidate, I think the public would be well served if they knew those reservations. Someone could say that they aren't sure if they should hire him because of this and that; in the end he or she is hired and I think that's a good part of the public process. I believe it should be kept open. I serve on a few public boards and I know it is sometimes difficult to make comments and I speak out publically. I don't want to close the meetings.

Ch. Hogue: Do you recognize any difference between talking about people; people have feelings and they have their credentials and when you say we talk about those things openly, we do not. We have Senate rules that prohibit us from disparaging other members of the Senate; for that very reason we're trying to have congenial relations and we're trying to have a good discussion about the issues. When you are making personnel decisions, you can't do that. Inevitably you have to talk about their personal characteristics. Do you

recognize any distinction between talking about a candidate's personal qualifications and their personal history as opposed to talking about some specific other state board of higher education policy that doesn't pertain to individuals and their personalities?

Jack MacDonald: Yes, I recognize what you are saying, what you're getting at. But at the same time, to use another example, you're going to be holding conference meetings sometime during the session, for some of the board members, for the appointment of some board members. Those confirmation hearings are open. If the Bismarck School Board is meeting, and they are going to hire a new football coach, the decision to hire that football coach is made at a public meeting and you have to make comments about that football coach and there might be some personal comments made. Well, he's coming from West Fargo and there were a lot of complaints about him in West Fargo. It's kind of part of the process. I understand what you're saying and it's one thing for the Senate rules to keep civility and I think that's great. There is a different purpose for that, to keep the civility and the debate; the appointment of someone is not really a debate, it's a deliberation.

Sen. Grabinger: Do you think, when you take the step of being involved in a public funded organization of some kind, you accept the fact that we have these laws, to keep these meetings open and even with the Higher Ed Board, is that what you are getting at. Because this is a publically funded board, just like any other. I was on my city council; we had to evaluate our city administrator in public. It's not fun, but at the same time, all our public boards do that. I think the question comes down to, whether or not we should set the precedent here and where are we setting the precedent.

Jack MacDonald: I agree with you, yes. In all honesty, I feel that this is one of the most important boards we have in the state. If the public policy is good for the city commission in Jamestown, or the Bismarck School Board, I think it should be good for the ND Board of Higher Education, which in my mind is probably the most important commission or board in the state.

Sen. C. Nelson: Years ago, we used to have a lot of applicants for our jobs because we didn't always publish their names until the preliminary round was over. People wouldn't apply for a job because they had a job somewhere else and they didn't want to jeopardize the job they had. Now, it seems like the minute somebody applies, it makes the papers the next day, and we know all 35 people who applied for whatever job. Do you think that is taking away our chances of getting the best people by us being "too open".

Jack MacDonald: No, I don't. I know what you are talking about, and there is a bill in the session to close those records as well. I think that you get good people in the process. Two things, first of all I don't think that it's bad, if you have good people, I don't think it is a bad mark against you when they are applying for a better job. If you have a football coach in West Fargo and he's a winning coach, you know he's going to apply for a better coaching job. If Coach Bohl wins things at NDSU, they knew that Coach Bohl was going to try for a better job sooner or later. Just a matter of when. If you're an assistant dean someplace, you want to be a dean. If you're president of a small college, you want to be president of a big college. I think that if somebody is a president at Kent State in Ohio, a small college, and he wants to be president of NDSU, a bigger college, I think people understand. People want to advance. I'm not so sure that you need to protect that. The other matter is that the public should be aware of the type of people that are applying. If the public has any input in the situation at all, it's in this application process. By the time it gets down to the final three names, the public doesn't have a lot of input anymore at that stage; but they do have an input if they know who is being involved. If you only say these are the three finalists right now, we announce these Sunday, Monday night we're going to make a selection, that doesn't leave much time for the public to be involved. I don't think you suffer. NDSU won the next championship with the coach that was selected on an open basis. I think we have fine presidents of our colleges and universities. They are selected on open basis.

L. Skogen: I just want to say that on the mark-up we gave you, we completely agree with Jack on line 7 on the second page, "the final performance evaluations are public record" should not have been struck out.

Ch. Hogue: Any further testimony in opposition. Neutral testimony. We will close the hearing.


2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2134
2/11/2015
23649

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Minutes:

1

Ch. Hogue: Let's take a look at SB 2134. This is an amendment I had (#1) prepared. I don't like the idea that the employee whether it's the president, the instructor, the teacher, the officer can decide over the objection of the Board that the process will be open as opposed to an executive session. So in subsection (a), (b) and (d), the decision to go into executive session to either hire somebody or fire somebody is up to the Board of Higher Education as the employer. That's where I think the decision should rest, not with the person who is the subject of the hiring or firing. That's the purpose of the amendment. My amendment does not support the change requested by the Board and I don't know where everybody else is at on that issue. We can take that up when we come back.

Sen. Nelson: On pg. 1, line 19, there is new language and shouldn't it be underlined since it was language in the bill and you are leaving it in.

Ch. Hogue: Where are you at?

Sen. Nelson: Starting with page 1, line 19 on the Hogue amendment (2/11) starting with "provided...". All of that is underlined in the original bill as new language; it's not underlined on your amendment and continuing on page 2.

Ch. Hogue: We will recess.

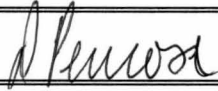
2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2134
2/16/2015
23883

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Minutes:

1

Ch. Hogue: I think it is bad policy if the Board loses control of the individuals set out in 1a, to do or not do. This amendment (see attached #1) essentially says that as a college president or is the chancellor, or a faculty head, you could request that the process be open, but ultimately the Board would always have the final say. If you look at this Christmas tree version, you see on line 14, "and the Board consents"; you see it again on line 20, "and the Board consents", then if you go to page 2, these performance evaluations, "and the Board consents". The Board is going to have to consent and approve making these proceedings either open or not open.

Sen. Nelson: I have a problem with the "shall" and "must". I'm reading that you changed it to "must" be an executive session if the Board chooses. How can you use "must" and then put in an "if". I would think that the "shall" would have been the better language. Is that something that Legislative Council decided was the proper semantics?

Ch. Hogue: I think they did. When I originally requested the amendment, what I requested was that the college president or chancellor can request that it be open and I suggested to them that the Board would have discretion to do it and not a two-way street. This is what they gave me back.

Sen. Armstrong: I think the reason that the "must" is in there instead of "shall" is because "shall" is absolute. "Must" not quite as absolute and "may" is completely discretionary. I don't know if you can have a "shall" and then an "if" afterwards. That is completely contrary to what you are saying if you write like a normal human being but they write like lawyers. "Shall" is compulsory, and I assume that the reason they used "must" instead of "shall" is because there is an "if" afterwards, so it is no longer completely compulsory.

Sen. Luick: It's not quite as weak as "may".

Ch. Hogue: There is another change, going down in (b); we're addressing separately the Commissioner. So that's why you see the underscored language in lines 18 and 20 on page 1. If you look at the existing statute, it gives the Board the discretion to be an executive session for all of these people; the presidents, the professors, instructors, teachers, the officers and other employees, but it didn't specifically name the Commissioner. So in subsection (b) of 15-10-17, the Commissioner is listed. On lines 15-20 is where we give them the same discretion for the Commissioner that we for college presidents and high ranking members of the institutions. I think that is a change that I guess we are adopting that provision of the bill as presented to us by the Board of Higher Education.

Sen. Nelson: In the drafting rules it says that "must" is used to qualify an inactive verb, but then it goes on to say "must" in reference to a thing rather than a person.

Ch. Hogue: I guess the Board would be a thing, not a person; a group of persons a thing.

Sen. Armstrong: Yes.

Sen. Nelson: It doesn't have any examples with "must" and "if" used together.

Ch. Hogue: What are the committee's wishes in regard to the amendment?

Sen. Armstrong: I move the amendment, 15.8097.01002.

Sen. Casper: Second the motion.

Sen. Nelson: Somewhere along the line, in the title of the bill, the introduction, after relating on line 2, there was a suggestion, "appointment or removal of the Commissioner and the performance evaluations of". Since this is more than just the performance evaluations of the presidents, commissioners and higher education. Now it relates to the appointment, removal of commissioner. Shouldn't that we added in line 2.

Ch. Hogue: We can add that, as a clarification of the amendment. What is your proposal?

Sen. Nelson: All three of these talk about the appointment and removal of, not just the commissioner; its appointment and removal of all higher education personnel and to the performance evaluation of institutional presidents. The introduction to the bill is wrong with the amendment you are making. That's my concern.

Ch. Hogue: We will add the new wording from Sen. Nelson's suggestion to the amendment. Voice vote, motion carried. We now have the bill before us as amended.

Sen. Armstrong: I move a Do Pass as amended.

Sen. Casper: Second the motion.

5 YES 1 NO 0 ABSENT

DO PASS AS AMENDED

CARRIER: Ch. Hogue

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2134
2/18/2015
24044

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Menrose

Minutes:

1

Ch. Hogue: The language on the last amendment was very hard to understand and didn't read quite right (explained Hogue amendment #1).

Sen. Armstrong: So all the original language in the bill that was introduced is essentially gone and the only change is that the Board decides whether it is open or closed and if the person, who is the subject of that hearing, asks for it to be open, the Board still has to consent.

Ch. Hogue: No, the Board does not have to consent. The Board always has the ultimate authority.

Sen. Armstrong: The individual, on his own, cannot require the meeting to be open. The Board would have to say yes.

Ch. Hogue: Correct.

Sen. Armstrong: I move that we reconsider our actions on SB 2134.

Sen. Casper: Second the motion.

Ch. Hogue: We will take a voice vote on reconsidering our action. Motion carried.

Sen. Armstrong: I move the amendment, 15.8097.01003.

Sen. Casper: Second the motion.

Ch. Hogue: We will take a voice vote. Motion carried. We now have the bill before us amended.

Sen. Armstrong: I move a Do Pass as amended.

Sen. Casper: Second the motion.

4 YES 2 NO 0 ABSENT DO PASS AS AMENDED

CARRIER: Ch. Hogue

February 16, 2015

TV
2/16/15

PROPOSED AMENDMENTS TO SENATE BILL NO. 2134

- Page 1, line 2, after "to" insert "appointment or removal and"
- Page 1, line 2, replace "and" with a comma
- Page 1, line 3, after the first "education" insert ", and all university system personnel"
- Page 1, line 10, overstrike "therefor"
- Page 1, line 11, overstrike "thereof"
- Page 1, line 12, overstrike "shall" and insert immediately thereafter "must"
- Page 1, line 12, after "chooses" insert an underscored comma
- Page 1, line 13, remove the overstrike over "~~that~~"
- Page 1, line 14, after "public" insert "and the board consents"
- Page 1, line 18, replace "shall" with "must"
- Page 1, line 18, after "chooses" insert an underscored comma
- Page 1, line 19, after "requests" insert "that"
- Page 1, line 20, after "public" insert "and the board consents"
- Page 2, line 1, remove "All records used by the board, university system employees, and consultants to"
- Page 2, remove lines 2 and 3
- Page 2, line 4, remove "North Dakota."
- Page 2, line 5, replace "shall" with "must"
- Page 2, line 5, after "chooses" insert an underscored comma
- Page 2, line 6, after "requests" insert "that"
- Page 2, line 7, after the first "public" insert "and the board consents"
- Renumber accordingly

February 17, 2015

TD
2/18/15

PROPOSED AMENDMENTS TO SENATE BILL NO. 2134

In lieu of the amendments printed on pages 434 and 435 of the Senate Journal, Senate Bill No. 2134 is amended as follows:

Page 1, line 2, replace "performance evaluations" with "the appointment and removal"

Page 1, line 2, after "and" insert "the"

Page 1, line 9, overstrike "and to"

Page 1, line 10, overstrike "therefor"

Page 1, line 10, overstrike the first "to"

Page 1, line 10, overstrike the second "to"

Page 1, line 11, overstrike "any"

Page 1, line 12, overstrike "shall be" and insert immediately thereafter "must take place"

Page 1, line 12, overstrike "if the" and insert immediately thereafter ", unless:

(1) The"

Page 1, line 12, overstrike "unless the" and insert immediately thereafter "to open the meeting;
or

(2) The"

Page 1, line 13, remove the overstrike over "that"

Page 1, line 14, after "public" insert "and the board consents to the request"

Page 1, line 18, replace "shall be" with "must take place"

Page 1, line 18, replace "if the" with ", unless:

(1) The"

Page 1, line 19, replace "unless the" with "to open the meeting; or

(2) The"

Page 1, line 19, after "requests" insert "that"

Page 1, line 20, after "public" insert "and the board consents to the request"

Page 2, remove lines 1 through 7

Renumber accordingly

Date: 2/16/2015
Voice Vote # 1

2015 SENATE STANDING COMMITTEE
VOICE VOTE
BILL/RESOLUTION NO. 2134

Senate Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: 15. 8097. 01002

Recommendation: ☒ Adopt Amendment

☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation

☐ As Amended ☐ Rerefer to Appropriations

☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Seconded By

Motion Made By Sen. Armstrong

Sen. Casper

Senators	Yes	No	Senators	Yes	No
Ch. Hogue			Sen. Grabinger		
Sen. Armstrong			Sen. C. Nelson		
Sen. Casper					
Sen. Luick					

Total (Yes) _____ No _____

Absent _____

Floor
Assignment _____

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

Voice Vote, Motion Carried.

Date: 2/16/15
Roll Call Vote #: 2

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTE
BILL/RESOLUTION NO. 2134

Senate

JUDICIARY

Committee

☐ Subcommittee

Amendment LC# or
Description:

15. 8097. 01002 02000

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

Sen. Armstrong

Seconded By

Sen. Casper

Senators	Yes	No	Senators	Yes	No
Chairman Hogue	✓		Sen. Grabinger		✓
Sen. Armstrong	✓		Sen. C. Nelson	✓	
Sen. Casper	✓				
Sen. Luick	✓				

Total (Yes) 5 No 1

Absent 0

Floor

Assignment

Sen. Hogue

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

Date: 2/18/15
Voice Vote # 1

2015 SENATE STANDING COMMITTEE
VOICE VOTE
BILL/RESOLUTION NO. 2134

Senate Judiciary 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 ☐ _____

Seconded By

Motion Made By Sen. Armstrong Sen. Casper

Senators	Yes	No	Senators	Yes	No
Ch. Hogue			Sen. Grabinger		
Sen. Armstrong			Sen. C. Nelson		
Sen. Casper					
Sen. Luick					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice Vote: Motion Carried.

Date: 2/18/15
Voice Vote # 2

2015 SENATE STANDING COMMITTEE
VOICE VOTE
BILL/RESOLUTION NO. 2134

Senate Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: 15.8097.01003

Recommendation: ☒ Adopt Amendment

☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation

☐ As Amended ☐ Rerefer to Appropriations

☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Seconded By

Motion Made By Sen. Armstrong

Sen. Casper

Senators	Yes	No	Senators	Yes	No
Ch. Hogue			Sen. Grabinger		
Sen. Armstrong			Sen. C. Nelson		
Sen. Casper					
Sen. Luick					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice Vote: Motion Carried.

Date: 2/18/15

Roll Call Vote #: 3

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTE

BILL/RESOLUTION NO. 2134

Senate

JUDICIARY

Committee

☐ Subcommittee

Amendment LC# or Description: 15.8097.01003 03000

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 Sen. Armstrong Seconded By Sen. Casper

Senators	Yes	No	Senators	Yes	No
Chairman Hogue	✓		Sen. Grabinger		✓
Sen. Armstrong	✓		Sen. C. Nelson		✓
Sen. Casper	✓				
Sen. Luick	✓				

Total (Yes) 4 No 2

Absent 0

Floor Assignment Sen. Hogue

REPORT OF STANDING COMMITTEE

SB 2134: Judiciary Committee (Sen. Hogue, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2134 was placed on the Sixth order on the calendar.

Page 1, line 2, after "to" insert "appointment or removal and"

Page 1, line 2, replace "and" with a comma

Page 1, line 3, after the first "education" insert ", and all university system personnel"

Page 1, line 10, overstrike "therefor"

Page 1, line 11, overstrike "thereof"

Page 1, line 12, overstrike "shall" and insert immediately thereafter "must"

Page 1, line 12, after "chooses" insert an underscored comma

Page 1, line 13, remove the overstrike over "that"

Page 1, line 14, after "public" insert "and the board consents"

Page 1, line 18, replace "shall" with "must"

Page 1, line 18, after "chooses" insert an underscored comma

Page 1, line 19, after "requests" insert "that"

Page 1, line 20, after "public" insert "and the board consents"

Page 2, line 1, remove "All records used by the board, university system employees, and consultants to"

Page 2, remove lines 2 and 3

Page 2, line 4, remove "North Dakota."

Page 2, line 5, replace "shall" with "must"

Page 2, line 5, after "chooses" insert an underscored comma

Page 2, line 6, after "requests" insert "that"

Page 2, line 7, after the first "public" insert "and the board consents"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2134: Judiciary Committee (Sen. Hogue, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2134 was placed on the Sixth order on the calendar.

In lieu of the amendments printed on pages 434 and 435 of the Senate Journal, Senate Bill No. 2134 is amended as follows:

Page 1, line 2, replace "performance evaluations" with "the appointment and removal"

Page 1, line 2, after "and" insert "the"

Page 1, line 9, overstrike "and to"

Page 1, line 10, overstrike "therefor"

Page 1, line 10, overstrike the first "to"

Page 1, line 10, overstrike the second "to"

Page 1, line 11, overstrike "any"

Page 1, line 12, overstrike "shall be" and insert immediately thereafter "must take place"

Page 1, line 12, overstrike "if the" and insert immediately thereafter ", unless:

(1) The"

Page 1, line 12, overstrike "unless the" and insert immediately thereafter "to open the meeting; or

(2) The"

Page 1, line 13, remove the overstrike over "that"

Page 1, line 14, after "public" insert "and the board consents to the request"

Page 1, line 18, replace "shall be" with "must take place"

Page 1, line 18, replace "if the" with ", unless:

(1) The"

Page 1, line 19, replace "unless the" with "to open the meeting; or

(2) The"

Page 1, line 19, after "requests" insert "that"

Page 1, line 20, after "public" insert "and the board consents to the request"

Page 2, remove lines 1 through 7

Renumber accordingly

2015 HOUSE EDUCATION

SB 2134

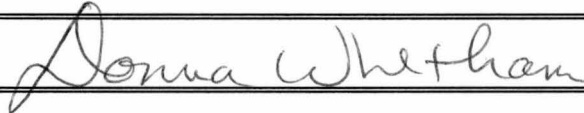
2015 HOUSE STANDING COMMITTEE MINUTES

Education Committee
Pioneer Room, State Capitol

SB 2134
3/16/2015
24868

☒ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to performance evaluations of institution presidents and the commissioner of higher education by the state board of higher education.

Attachment # 1-2.

Minutes:

Chairman Nathe: opened the hearing on SB 2134.

Larry Skogen: Interim Chancellor of Department (2:11-3:56) Introduced SB 2134. (See Attachment #1).

Chairman Nathe: Could you explain line 17 through the new language how that would work.

Larry Skogen: If you look at 1 A you can see the appointment and removal of personnel that can take place in executive session includes the president, faculty head, professors, teachers, officers and other employees of the several institutions under its control. In line 17 what is added to that is the appointment and removal of the commissioner of Higher Education and what has been added is "provided that the consideration of the appointment or removal of the commissioner shall be in executive session if the board chooses unless the individual involved requests the meeting be open". So it really is offering the board the exact same thing they can do when they hire a president and that is to go into executive session to discuss the qualifications of the individual and then come out of executive session to do the hiring.

Rep Hunskor: What is the current policy now?

Larry Skogen: The board can go into executive session now when hiring a president of an institution but all the activity of hiring the commissioner or chancellor has to be done in open session.

Chairman Nathe: Why the change?

Larry Skogen: It allows the board to then have that conversation in executive session relative to hire that person who is the CEO of the entire system. When they hired me they had to do it in open session and then when they hired me for Bismarck State College they got to go into executive session for that. It is just giving them the same tool.

Rep Hunsakor: When you are in open session is there the fear that you can't ask the pertinent or personal questions versus executive session?

Larry Skogen: Asking the questions among themselves, they don't go into executive session with the candidates for the position. It allows the board to have more freedom to have a very frank discussion about how you feel the individuals are qualified. Under the current law they are not allowed to do that with the CEO of the entire system.

Rep Kelsh: When they come out of executive session to take a vote do they have to give any reason why they do that or does that all stay in the executive session?

Larry Skogen: I can tell you my experience. When they are in executive session there is no motion, no vote or count just each board members states the reasons why the applicant is qualified or not. You can really see there is a developing movement in some area. Then they say we have had enough discussion and it ends. Then they move to hire the individual.

Chairman Nathe: Say this bill doesn't pass and the current system would it impede any candidates from applying or would it stop us from getting a high quality candidate?

Larry Skogen: No, that really has to do with the application. Are people prevented from applying because of the open records here? Personally I think they are if they have a good job and they don't want their boss to know they are applying to go someplace else. They probably would not apply if they applied in an area of open records. But I don't think it really impedes anyone from applying. We have seen the wisdom of allowing the board to talk about candidates that apply to be president of an institution and to do that in executive session. We are asking to have that same tool for the commissioner.

Chairman Nathe: I have been on several boards and it is a good tool to have but it seems to be with the commissioner of Higher Education with everything that has transpired the last several years. The public desire to know what is going on. The board has a bad history of open records and it kind of feeds into this. Would it be so terrible if we left it like it is?

Larry Skogen: Our position is that it would improve the process if we could go into executive session for the commissioner.

Vice Chairman Schatz: Why was the bill introduced by the Judiciary committee instead of the Education committee?

Larry Skogen: It was prefiled by the State Board of Higher Ed and it got assigned to the Judiciary committee?

Rep B. Koppelman: I have served on boards where it was done it both ways. I think the difference to me was easier for board members to speak more frank when they were in an executive session. But I am not sure it yields a better product. When you do have to do it on the record much like we do here, you probably say things differently and make sure you are spot on with your point as opposed to thinking out loud. Can you make an argument that this produces a better product? I think this is a little different than what we discussed earlier in the session about keeping the identity secret for a longer period of time?

Larry Skogen: Clearly keeping the identity as part of a closed record is a dead issue. I understand that, our argument would be that it does impede some very qualified candidate for the reason that I stated earlier. That is a matter of opinion, I don't have statistics to demonstrate that. I think having a very frank discussion has some real value.

Rep B. Koppelman: I agree it is good to have a frank discussion. There may be a benefit to have the public hearing the frank discussion as well because there are two things we don't want to have. We don't want all the frank discussion to happen in a closed meeting in an executive session and then come out of that and say "here is the guy". The opposite of that is if we have two or three highly qualified people should we not be able to have that discussion open and shouldn't we have culled them out earlier in the process?

Larry Skogen: I don't know if I have an answer to that. Back to frank discussion. I am an old history professor. Our constitution was written in executive session. We love our constitution and people have died for it and that was written in executive session. The founding fathers thought there was some value to executive session. It makes sense to me to have that frank discussion.

Rep B. Koppelman: I just want to mention the constitution had to be ratified by another party after it was written in executive session so it might be different.

Larry Skogen: Good point.

Rep Mock: This bill has been through quite a few different variations, it was introduced originally as this language then also to exempt performance evaluations, can you speak to that?

Larry Skogen: Originally as it was prefiled we were trying to accomplish two things relative to open records and open meeting, one was what we are talking about today. The other one was evaluation of presidents but not the evaluation itself but the working papers. One of the challenges when I was appointed this position was the presidential evaluations that had not gone over very well. The board instructed me to fix them and come up with a better evaluation process. I have spent 20 months in this position. I have had many conversations with consultants that do 360 evaluations and a thing that comes across clearly on all those 360 evaluation is the working papers. if you want honest answers from the vice presidents that work for presidents is they have to have some degree of

confidence that their statements to the evaluator would be confidential. We had originally asked for that and in committee they decided it was not a workable thing. The result is you will have a depreciated 360 evaluation at best if it cannot be confidential. So there was a misnomer that was to protect the presidents but it was to protect the people who worked for the presidents. So there good honest answers in an evaluation process and what they were saying would not be public record. That was part of this bill and that was stripped out of the bill.

Rep Mock: If passed this would not change the publication of applicants for any executive level positions it only relates to executive session for the selection process.

Larry Skogen: It is for the appointment or removal.

Rep Mock: It is not to discourage a person who is interested in filling that position, that would be public, this would only exempt the meeting by which they appoint or remove the person in that position.

Larry Skogen: Yes.

Rep Mock: The second question is without the emergency clause this would not effect the next process of searching for a new chancellor?

Larry Skogen: Yes. They should be selecting the next commissioner at the May 14th meeting. Applications close in March 17, 2015 and those are released on March 20, 2015.

Rep Mock: The language would keep it consistent for the selection or removal of the CEO of the system office as it is currently with CEO's of the institutions as you stated here.

Larry Skogen: Exactly.

Rep Mock: Do you know why that language was inserted regarding the selection or removal of an institution CEO, because a person could argue if you wanted to make it consistent instead of exempting the selection or removal process for the system office to instead remove that clause from the entire section altogether.

Larry Skogen: I don't have the history on that.

Chairman Nathe: Why does the board bring this to us now, why not years ago to get it into line especially what has happened in the past?

Larry Skogen: I don't have a good answer to that. This is my first legislative session General Saugsveen and I were talking about prefiling we thought it would be appropriate because we were in a middle of a search in this legislative session and it would be appropriate to try to bring this into line.

Chairman Nathe: Any other support of SB 2134? Any opposition of SB 2134?

Jack McDonald: North Dakota Newspaper Association: (21:40-24:55) in opposition to SB 2134. (See Attachment # 2). When I was talking about evaluations in the bill it has been taken out in the 4000 version, well when I talk about evaluations that language is gone. We ask that you give this bill a do not pass. We don't think it is needed. I would like to make the other change like Representative Mock says to hire the presidents with open records as well instead, but we don't need to add another closed meeting with the hiring of the commissioner or chancellor.

Rep. Olson: How long have the presidents been hired with executive session?

Jack McDonald: No I don't, the first enactment was in 1883. It has been a long time.

Rep. Olson: In Subsection 1 paragraph C on the 4000 version, on hiring and firing office personnel does that happen in public record like when the chancellor is hired?

Jack McDonald: Yes I think it is.

Rep Kelsh: Do you think the law works well the way it is?

Jack McDonald: Those things come and go and we have had some excellent commissioners. I don't think that they were hired in an open meeting doesn't have anything how they performed. We have had some excellent commissioners. Over all it has been good system.

Rep Kelsh: I wonder in open meeting and they were vetted by the public and didn't turn out very well and some of them did. I just wondered if it would make any difference if they could go behind closed doors and ask them better questions? If it really would make a difference?

Vice Chairman Schatz: I am looking at this bill and the Senate passed 3000 and the emergency clause failed and we get the 4000 version. Does that mean they just took the emergency clause off? Why is our bill different than the one they passed?

Chairman Nathe: The emergency failed and they took off the other evaluations. I think you are right Vice Chairman Schatz since the emergency clause failed it would be a different version. It is not the exact same bill that passed.

Chairman Nathe: Any other opposition? Seeing none. Closed the hearing on SB 2134

Rep Kelsh: Two gentlemen say the 3000 and 4000 versions of the bill are totally different. If it is only the emergency clause off. I would like to know why the bills are different?

Chairman Nathe: We will have Anita Thomas come to explain this. We will talk about this at 2 pm. The emergency clause failed and we will have Anita explain this to the committee.

2015 HOUSE STANDING COMMITTEE MINUTES

Education Committee
Pioneer Room, State Capitol

SB 2134
3/16/2015
24914 (00:10-1:54)

☒ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Donna Wetham

Explanation or reason for introduction of bill/resolution:

Relating to performance evaluations of institution presidents and the commissioner of higher education by the state board of higher education.

Minutes:

Chairman Nathe: reopened the hearing on discussion on SB 2134. Anita Thomas will talk to us on the bill, the difference between the 4000 version and now we have the 5000 version.

Anita Thomas: Legislative Counsel: Essentially what happened is the senate had amended 2134 and passed the 3000 version. The emergency clause did not carry so it had to go back up to our office for another version to strip off the emergency clause. It was human error was involved and the emergency clause was stripped off of the wrong version. The emergency clause should have been stripped off the 3000 version, we have done that now, so the 5000 is what you need to be working on. That is what the senate had intended to send you.

Chairman Nathe: The 5000 version is no different than the 4000 as far as the meat of the bill. Which are lines 18-22 on page one.

Anita Thomas: That is correct. We are just talking about when there is removal, when the board can go into executive session and when it has the option to be open.

Chairman Nathe: Any questions on that, is everyone comfortable with the explanation? Seeing none. Closed the hearing on SB 2134.

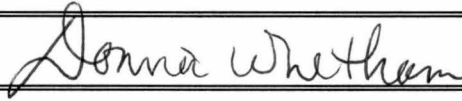
2015 HOUSE STANDING COMMITTEE MINUTES

Education Committee
Pioneer Room, State Capitol

SB 2134
3/16/2015
24915

☒ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to performance evaluations of institution presidents and the commissioner of higher education by the state board of higher education.

Minutes:

Chairman Nathe: opened the hearing on SB 2134.

Rep Looyen: I think it is really bringing it into line with what we already do with the presidents so I **Move a Do Pass on SB 2134.**

Rep Zubke: seconded.

Vice Chairman Schatz: I think this will make everything more secret and I don't think we need that in our government.

Chairman Nathe: I agree with you, and I agree with some of the comments by Mr. McDonald as far as filling out this board. It is a high profile position and I think any and all conversations about who they hire should be made public. I will resist the motion.

Rep Meier: I will resist the do pass motion as well. In light of what has happened in the last 6-7 years we need to be as transparent as possible and I resist the motion.

Rep Hunsakor: I will support the motion, my reason why is I believe that when you are talking about getting the very best person to run the show you need to get all the information out. You will not get it all in an open meeting. There may be some very personal things that need to be discussed and no matter how good the person is there are things that they would not talk about in an open meeting. It is just too personal and it isn't going to happen. If you truly want to get all the information to get the best person it has to be done in a closed meeting. We want the best person, that is how I feel.

Chairman Nathe: I did ask Commissioner Skogen if we would not pass this would that stop us from getting the best candidate. He said no it would not. I do question Higher Ed's timing on this in asking for us to do this now considering everything that has happened in the past with the public's reluctance as far as how Higher Ed has acted and some of the violations. I suggest to resist this motion.

Rep. Olson: Why I will resist the motion and to Rep Hunskor's point, I understand the psychology of being on the record and in the public eye. But I think people should be courageous enough to share their most candid comments especially with a high profile position like this. I don't think there is really anything that is worthy of being said in secret that isn't worthy of being heard by the general public. If people are worried about that I think that is a personal problem. You shouldn't be afraid of that kind of thing. We in committee are discussing very important bill and we don't get to hide behind an executive session to discuss these bills and I don't think we would be any better served if we did. I do not feel afraid to speak my mind about the bills we hear. I think it is the same concept here.

Rep Hunskor: They should be courageous enough but they won't be. No matter what when you get down to the personal. We all know what we are talking about. They will not come out. They should have enough strength to do it but will they and If they don't you will not come up with the person that is the best qualified.

Chairman Nathe: Clerk will take the roll on the do pass motion for SB 2134. Seeing none.

A Roll Call Vote was taken. Yes: 3 No: 10 Absent: 0. Motion fails.

Rep B. Koppelman: Moved Do Not Pass on SB 2134.

Rep Schatz: seconded.

Chairman Nathe: Any discussion on the do not pass motion? Seeing none.

A Roll Call Vote was taken. Yes: 10 No: 3 Absent: 0 . Motion Carried.

Rep Schreiber Beck: will carry the bill.

Date: 3/16/15
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2134

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. Looyzen Seconded By Rep. Zubke

Representatives	Yes	No	Representatives	Yes	No
Chairman Nathe		✓	Rep. Hunsakor	✓	
Vice Chairman Schatz		✓	Rep. Kelsh		✓
Rep. Dennis Johnson		✓	Rep. Mock		✓
Rep. B. Koppelman		✓			
Rep. Looyzen	✓				
Rep. Meier		✓			
Rep. Olson		✓			
Rep. Rohr		✓			
Rep. Schreiber Beck		✓			
Rep. Zubke	✓				

Total (Yes) 3 No 10

Absent 0

Floor Assignment _____

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

Date: 3/16/15
Roll Call Vote #: 2

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2134

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. Koppelman Seconded By Rep. Schatz

Representatives	Yes	No	Representatives	Yes	No
Chairman Nathe	✓		Rep. Hunsakor		✓
Vice Chairman Schatz	✓		Rep. Kelsh	✓	
Rep. Dennis Johnson	✓		Rep. Mock	✓	
Rep. B. Koppelman	✓				
Rep. Looyen		✓			
Rep. Meier	✓				
Rep. Olson	✓				
Rep. Rohr	✓				
Rep. Schreiber Beck	✓				
Rep. Zubke		✓			

Total (Yes) 10 No 3

Absent 0

Floor Assignment Rep. Schreiber Beck

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

REPORT OF STANDING COMMITTEE

SB 2134, as engrossed: Education Committee (Rep. Nathe, Chairman) recommends DO NOT PASS (10 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed SB 2134 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

SB 2134

SB 2134

Senate Judiciary Committee

January 21, 2015

Larry C. Skogen, Interim Chancellor

701.328.2974 | larry.skogen@ndus.edu

Good morning Chairman Hogue and committee members. I am Larry Skogen, Interim Chancellor of the University System, and I'm here today to speak in support of SB 2134, with an amendment.

A little history: Most of you may remember that when the Board appointed me to this office 18 months ago, one of the most controversial issues involved presidential evaluations. I was instructed to fix those evaluations, and in the process, come up with a better way to conduct presidential evaluations. One of the best solutions discussed in this process was the 360 evaluation. Such evaluations involve surveying individuals who worked directly or indirectly for a president, those who interact with a president on a number of levels, and those other stakeholders who have an interest in the best leadership on a campus. In my conversations with consultants from California to Washington DC I've been told that one of the lynchpins to a good 360 evaluation is confidentiality of those responses to the surveys of all those stakeholders.

There has been a misunderstanding on this proposal that somehow this is designed to protect the presidents. That is simply not true. Rather, the proposal is designed to ensure we can get honest, forthright data from which to develop thorough evaluations of the presidents. These administrators run complex organizations and good evaluations of their effectiveness as leaders is vital to the success of your institutions.

Neither the Board nor I hold any cards here. As you know, you hold all the cards. Very simply, we're asking for your help to give us the tools we need so we can improve the evaluations of presidents. If you don't, we'll still have evaluations, no doubt about that. But they won't be as good as they could be. We would appreciate your help in making them better.

A second issue in the bill is very simple: please give the Board the same tools to hire a new chancellor as you've already provided when hiring a president. I don't know why we would want to treat the hiring of the CEO of the entire system differently than the hiring of a CEO of an institution. Again, you hold all the cards. And we'd appreciate your help on this issue too.

Finally, in the pre-filed bill there was wording about holding an executive session to go over evaluations. I'm told that that provision is unacceptable to many of our good friends, and we're certainly supportive of removing that language.

Thank you for your time. Know that we will very much appreciate your support of an improved evaluation process for our presidents and the hiring of a new chancellor.

Introduced by

Judiciary Committee

(At the request of the State Board of Higher Education)

- 1 A BILL for an Act to amend and reenact subsection 1 of section 15-10-17 of the North Dakota
2 Century Code, relating ^{to the appointment or removal of the commissioner and} to performance evaluations of institution presidents and commissioner of
3 higher education by the state board of higher education; and to declare an emergency.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Subsection 1 of section 15-10-17 of the North Dakota Century
6 Code is amended and reenacted as follows:

- 7 1. a. Appoint and remove the president or other faculty head, and the professors,
8 instructors, teachers, officers, and other employees of the several institutions
9 under its control, and to fix their salaries within the limits of legislative
10 appropriations therefor, and to fix the terms of office and to prescribe the duties
11 thereof, provided that the consideration of the appointment or removal of any
12 such personnel shall be in executive session if the board chooses unless the
13 individual involved requests that the meeting be open to other individuals or to
14 the public.
- 15 b. Appoint and remove the commissioner of higher education, fix the
16 commissioner's salary within the limits of legislative appropriations, and prescribe
17 the commissioner's duties, provided that the consideration of the appointment or
18 removal of the commissioner shall be in executive session if the board chooses
19 unless the individual involved requests the meeting be open to other individuals
20 or the public.
- 21 c. Appoint and remove all university system office personnel, fix their salaries within
22 the limits of legislative appropriations, fix their terms of office, and prescribe their
23 duties.

- 1 d. All records used by the board, university system employees, and consultants to
2 prepare performance evaluations of the presidents and the commissioner are
3 exempt from section 44-04-18 and section 6 of article XI of the Constitution of
4 North Dakota. The consideration of the performance evaluations of the presidents
5 and commissioner shall be in executive session if the board chooses unless the
6 individual involved requests the meeting be open to other individuals or to the
7 public. The final performance evaluations are public records.

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

1 A BILL for an Act to amend and reenact subsection 1 of section 15-10-17 of the North
2 Dakota Century Code, relating to the appointment or removal of the commissioner and
3 to performance evaluations of institution presidents and commissioner of higher
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13 terms of office and to prescribe the duties thereof, provided that
14 the consideration of the appointment or removal of any such
15 personnel shall be in executive session if the board chooses
16 unless the individual involved requests that the meeting be open
17 to other individuals or to the public.
- 18 b. Appoint and remove the commissioner of higher education, fix the
19 commissioner's salary within the limits of legislative
20 appropriations, and prescribe the commissioner's duties, provided
21 that the consideration of the appointment or removal of the
22 commissioner shall be in executive session if the board chooses
23 unless the individual involved requests that the meeting be open
24 to other individuals or the public.
- 25 c. Appoint and remove all university system office personnel, fix their
26 salaries within the limits of legislative appropriations, fix their
27 terms of office, and prescribe their duties.
- 28 d. All records used by the board, university system employees, and
29 consultants to prepare performance evaluations of the presidents
30 and the commissioner are exempt from section 44 - 04 - 18 and
31 section 6 of article XI of the Constitution of North Dakota. ~~The~~
32 ~~consideration of the performance evaluations of the presidents~~
33 ~~and commissioner shall be in executive session if the board~~
34 ~~chooses unless the individual involved requests the meeting be~~
35 ~~open to other individuals or to the public.~~ The final performance
36 evaluations are public records.

2-2B

1

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

2-3B
1/21/15

PROPOSED AMENDMENTS TO SENATE BILL NO. 2134

Page 1, line 2, after "relating" insert "to the appointment or removal of the commissioner and"

Page 2, line 4, remove "The consideration of the performance evaluations of the presidents"

Page 2, remove lines 5 through 6

Page 2, line 7, remove "public"

PROPOSED SB 2134

1 A BILL for an Act to amend and reenact subsection 1 of section 15-10-17 of the
2 North Dakota Century Code, relating to performance evaluations of institution
3 presidents and commissioner of higher education by the state board of higher
4 education; and to declare an emergency.

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12 terms of office and to prescribe the duties thereof, provided that
13 the consideration of the appointment or removal of any such
14 personnel ~~shall~~ must be in executive session if the board chooses
15 unless the individual involved requests that the meeting be open
16 to other individuals or to the public and the board consents.
- 17 b. Appoint and remove the commissioner of higher education, fix the
18 commissioner's salary within the limits of legislative
19 appropriations, and prescribe the commissioner's duties, provided
20 that the consideration of the appointment or removal of the
21 commissioner ~~shall~~ must be in executive session if the board
22 chooses

1 unless the individual involved requests that the meeting be open
2 to other individuals or the public and the board consents.

3 c. Appoint and remove all university system office personnel, fix
4 their salaries within the limits of legislative appropriations, fix their
5 terms of office, and prescribe their duties.

6 ~~d. All records used by the board, university system employees, and~~
7 ~~consultants to prepare performance evaluations of the presidents~~
8 ~~and the commissioner are exempt from section 44-04-18 and~~
9 ~~section 6 of article XI of the Constitution of North Dakota.~~ The
10 consideration of the performance evaluations of the presidents
11 and commissioner ~~shall~~ must be in executive session if the board
12 chooses unless the individual involved requests that the meeting
13 be open to other individuals or to the public. The final performance
14 evaluations are public records and the board consents.

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

PROPOSED SB 2134

1 A BILL for an Act to amend and reenact subsection 1 of section 15-10-17 of the North Dakota
2 Century Code, relating to ^{the appt. removal of} ~~performance evaluations of institution presidents and commissioner of~~ ^{NDUS personnel, Comm/higher education}
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11 ~~thereof~~, provided that the consideration of the appointment or removal of any
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- 15 b. Appoint and remove the commissioner of higher education, fix the
16 commissioner's salary within the limits of legislative appropriations, and prescribe
17 the commissioner's duties, provided that the consideration of the appointment or
18 removal of the commissioner shall must be in executive session if the board
19 chooses unless the individual involved requests that the meeting be open to
20 other individuals or the public and the board consents.
- 21 c. Appoint and remove all university system office personnel, fix their salaries
22 within the limits of legislative appropriations, fix their terms of office, and
23 prescribe their duties.

1 ~~d. — All records used by the board, university system employees, and consultants to~~
2 ~~prepare performance evaluations of the presidents and the commissioner are~~
3 ~~exempt from section 44-04-18 and section 6 of article XI of the Constitution of~~
4 ~~North Dakota.~~ The consideration of the performance evaluations of the presidents
5 and commissioner ~~shall~~ must be in executive session if the board chooses unless
6 the individual involved requests that the meeting be open to
7 other individuals or to the public and the board consents. The final performance
8 evaluations are public records

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

PROPOSED AMENDMENTS TO SENATE BILL NO. 2134

In lieu of the amendments printed on pages 434 and 435 of the Senate Journal, Senate Bill No. 2134 is amended as follows:

Page 1, line 2, replace "performance evaluations" with "the appointment and removal"

Page 1, line 2, after "and" insert "the"

Page 1, line 9, overstrike "and to"

Page 1, line 10, overstrike "therefor"

Page 1, line 10, overstrike the first "to"

Page 1, line 10, overstrike the second "to"

Page 1, line 11, overstrike "any"

Page 1, line 12, overstrike "shall be" and insert immediately thereafter "must take place"

Page 1, line 12, overstrike "if the" and insert immediately thereafter ", unless:

(1) The"

Page 1, line 12, overstrike "unless the" and insert immediately thereafter "to open the meeting;
or

(2) The"

Page 1, line 13, remove the overstrike over "that"

Page 1, line 14, after "public" insert "and the board consents to the request"

Page 1, line 18, replace "shall be" with "must take place"

Page 1, line 18, replace "if the" with ", unless:

(1) The"

Page 1, line 19, replace "unless the" with "to open the meeting; or

(2) The"

Page 1, line 19, after "requests" insert "that"

Page 1, line 20, after "public" insert "and the board consents to the request"

Page 2, remove lines 1 through 7

Renumber accordingly

SB 2134

House Education Committee

March 16, 2015

Larry C. Skogen, Interim Chancellor

701.328.2974 | larry.skogen@ndus.edu

Good morning Chairman Nathe and committee members. I am Larry Skogen, Interim Chancellor of the University System, and I'm here today to speak in support of SB 2134.

The bottom line to this proposed bill is that we're asking you to please give the Board the same tools to hire a new chancellor as you've already provided when hiring a president. I don't know why we would want to treat the hiring of the CEO of the entire system differently than the hiring of a CEO of an institution. As you know, you hold all the cards. We can't change the law to provide the Board these tools. Only you can, and we'd appreciate your help on this issue.

As we're going through the hiring process now, we're hopeful that this will pass with an emergency clause so that we can use this tool in the hiring of the new chancellor.

Thank you for your time. Know that we will very much appreciate your support.

Monday, March 16, 2015

#2
SB 2134
3/16/15

HOUSE EDUCATION COMMITTEE
SB 2134

CHAIRMAN NATHE AND COMMITTEE MEMBERS:

My name is Jack McDonald. I am appearing today on behalf of the North Dakota Newspaper Association and the North Dakota Broadcasters Association. We oppose this bill since it allows the Board of Higher Education –as if it needs it – the authority to hold even more closed or secret meetings.

This bill allows the Board of Higher Education to fill perhaps the single most important position in higher education – the commissioner or chancellor as it is now known – in a closed meeting completely shielded from public view.

And, as if that was not enough, it allows the Board to review the evaluations of all of the college presidents – there are eight institutions – in a closed meeting.

These are some of the most high profile government positions in North Dakota.

So, shouldn't the public, whom these schools are there to serve, and who pay the bills, know about the selection or evaluation process? We think so. And I'm sure the members of the public would agree.

If the city of Fargo or Bismarck decides to hire a new city administrator, this is done at a public meeting. Similarly, if these cities evaluate these individuals, it is done at a public meeting. The Bismarck or Fargo school districts evaluate their superintendents at public meetings.

Why shouldn't the Board of Higher Education do likewise? The commissioner has been chosen at a public meeting of the board since 1883. Why now does the board need to do this in a closed meeting?

The March 11, 2015, editorial from The Bismarck Tribune on the reverse of my testimony speaks well to this issue as well.

We respectfully request that you give this bill a DO NOT PASS.

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

Higher education meetings should remain open

MARCH 11, 2015 2:00 AM

The Bismarck Tribune has consistently opposed efforts to weaken the state's open meetings and records laws. Senate Bill 2134 would allow the hiring and firing of the North Dakota chancellor be done in executive session. This process has been open in the past and worked. The measure also would allow the state Board of Higher Education to conduct evaluations of university presidents and the chancellor in closed session.

These efforts to exclude North Dakotans from the public's business should be rejected. If there are issues with a university president or the chancellor they should be aired in a manner where the public can make their own judgments. The university personnel are employees of the public and should answer to them through open meetings of the board.

Things got messy at the end of Chancellor Hamid Shirvani's tenure when some of his reviews of presidents became public before a board meeting was held. Before the board could discuss the evaluations in public, weighing the pros and cons of the reviews, the public was hearing about the documents without any context. The hiring and firing of chancellors and evaluations of the presidents should be done in public. Closing them just increases the temptation to leak the documents.

During Senate hearings it was argued that the bill isn't intended to protect university presidents but to encourage a frank discussion during evaluations. Why shouldn't the public know if there are areas that need improvement? Must the doors be closed to have an honest discussion?

Jack McDonald, an attorney for the North Dakota Newspaper Association, noted the open meeting process has been working and urged the committee not to change it.

The Senate passed SB2134 and the final decision rests with the House.

The Board of Higher Education has a lousy record when it comes to open meetings with numerous violations over the last few years. When people can't obey the law do we change it? The best way for the board to rebuild its reputation is to conduct its business in the open. The public can regain its faith in the board by observing them conducting their business in an open, orderly manner.

Keeping the law as is will best serve the public and the North Dakota Board of Higher Education.